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**VIEWPOINT  
DECLARATION  
OF  
RESTRICTIONS (CC&Rs)**

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

**This Declaration contains alternative dispute resolution procedures. These procedures bind subsequent purchasers as well as the initial purchasers. See Claims Procedures in Exhibit C. You are advised to read these procedures carefully and consult with legal counsel if you have any questions.**

**VIEWPOINT**  
**DECLARATION OF RESTRICTIONS (CC&Rs)**

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## VIEWPOINT

### DECLARATION OF RESTRICTIONS (CC&Rs)

**THIS DECLARATION OF RESTRICTIONS (CC&Rs)** is executed by MV VIEWPOINT 2013 INC., a California corporation (the "Declarant") with reference to the following facts:

- A. Declarant is constructing a residential development in multiple phases located on certain real property in Mountain View, California. The first phase consists of Lots 1 through 18 and Common Lots A and B, more particularly described on the subdivision map entitled "Tract No. 10247 Viewpoint Subdivision" filed in the records of Santa Clara County, California, on July 14, 2014, in Book 873 of Maps at pages 45 through 48 (the "Map").
- B. Declarant desires to impose certain restrictions on the lots in the development that will benefit and bind each lot, and each owner and successive owner thereto, as covenants running with the land and equitable servitudes, to grant and describe certain easements that will be appurtenant to the lots and/or in favor of the homeowners association, and to establish a planned development within the meaning of Civil Code section 4175.
- C. The property in the first phase and the property that may be annexed as described in **Exhibit A** (the "Annexable Property") will benefit and be bound by the provisions of **Sections 2.3.1, 2.4, 11.5 and 14.2** of this Declaration on the recordation of this Declaration and the conveyance of title to a Lot in Phase 1 to a third party under the authority of a final subdivision public report issued by the California Bureau of Real Estate. The other covenants, easements, restrictions, rights, and duties described in this Declaration will benefit and bind the lots in Phase 1 on the date Declarant first transfers title to a Lot in Phase 1 to a third party and the Annexable Property on the recordation of a declaration of annexation annexing that portion of the Annexable Property into the development.

#### DECLARANT DECLARES AS FOLLOWS:

#### ARTICLE 1 Definitions

Unless the context indicates otherwise, the following terms shall have the following definitions:

1.1 Annexable Property. The real property described in **Exhibit A**, and depicted on the site plan attached as **Exhibit A-1**, that may be annexed into the Development as a part of a subsequent phase as described in **Section 14.1**. Upon annexation of any portion of the Annexable Property and the commencement of assessments against that portion, the portion no longer shall be considered Annexable Property and shall be part of the Development.

1.2 Architectural Committee or Committee. The Architectural Committee described in **Section 7.1**.

1.3 Articles. The Articles of Incorporation of the Association and any amendments thereto.

1.4 Association. Viewpoint of Mountain View-Homeowners Association, a California nonprofit mutual benefit corporation.

1.5 Board. The Board of Directors of the Association.

1.6 Bylaws. The Bylaws of the Association and any amendments thereto.

1.7 City. The City of Mountain View, California.

1.8 Common Area. Common Lots A and B as shown on the Map and any additional common area lots that may be subsequently annexed into the Development as described in **Article 14**. Declarant reserves the right to modify Common Lots A and B, including the Improvements therein, as reasonably necessary to comply with the requirements of the City of Mountain View and/or any other governmental agencies for the development of subsequent phases of the Development.

1.9 Davis-Stirling Act. The Davis-Stirling Common Interest Development Act as set forth in Part 5 (commencing with Civil Code section 4000) to Division 4 of the Civil Code and any subsequent modifications thereto.

1.10 Declarant. MV Viewpoint 2013 Inc., a California corporation, or any successor or assign that assumes in writing all or a portion of the rights and duties of the Declarant hereunder. There may be more than one Declarant.

1.11 Declaration. This Declaration of Restrictions (CC&Rs) and any amendments or corrections thereto.

1.12 Development. The residential development that is constructed on the property shown on the Map and subject to all the provisions in this Declaration, including the Residential Lots, the Common Area, and all other Improvements thereon.

1.13 Governing Documents. This Declaration, the Articles of Incorporation, the Bylaws and the Rules, provided that the Claims Procedure attached as **Exhibit C** is not a part of the Governing Documents.

1.14 Improvements. Any property in the Development constituting a fixture within the meaning of Civil Code section 660.

1.15 Lot or Residential Lot. Lots 1 through 18 as shown on the Map and all Improvements thereon, and any additional residential lots that may be subsequently annexed into the Development as described in **Article 14** and any improvements thereon.

1.16 Map. The subdivision map entitled "Tract No. 10247 Viewpoint Subdivision" filed for record in Santa Clara County, California, on July 14, 2014, in Book 873 of Maps at pages 45 through 48, including any subsequently-recorded amended final maps, parcel maps, certificates of correction, lot-line adjustments, and/or records of survey. "Map" shall also mean any other recorded subdivision maps describing property that may be subsequently annexed into the Development as described in **ARTICLE 14**.

1.17 Member. A member of the Association.

1.18 Mortgage. A recorded mortgage or deed of trust against one or more Lots in the Development.

1.19 Mortgagee. A mortgagee under a Mortgage or a beneficiary under a deed of trust recorded against a Lot in the Development.

1.20 Occupant(s). Any Person entitled to use and reside in a Lot pursuant to an ownership right or any lease, license or other similar agreement with the Owner of the Lot.

1.21 Owner. The owner or owners of the fee (perpetual) estate of a Lot in the Development.

1.22 Permittee(s). All Owners and Occupants and their agents and invitees.

1.23 Person. Any natural person, partnership, trust, corporation, limited liability company, or other legal entity.

1.24 Rules. Rules or regulations adopted by the Board from time to time pursuant to the authority of **Section 5.6.2**.

1.25 Storm Water Management Plan. The Storm Water Management Plan dated February 7, 2014, prepared for the Development by BKF Engineers, and any modifications thereto.

1.26 Utility Maintenance Plan. The Utility Maintenance Plan prepared for the Development by Declarant or the Association, and any modifications thereto. The Utility Maintenance Plan includes a Sanitary Sewer Overflow Plan, as described in **Section 4.5.2**, and may be included in the Common Area maintenance manual provided by Declarant to the Association.

1.27 Vapor Intrusion Mitigation Plan. The Vapor Intrusion Mitigation Plan dated June 10, 2014, prepared for the Development by Light, Air & Space Construction Environmental Service Company and approved by the U.S. Environmental Protection Agency, and any modifications thereto. If a separate plan is required for subsequent phases of the Development, the term "Vapor Intrusion Mitigation Plan" shall include all subsequent plans approved for the Development by the U.S. Environmental Protection Agency and/or state or local agencies with jurisdiction thereof.

## ARTICLE 2

### Property Rights and Easements

2.1 Type of Development. This Development is a planned development within the meaning of Civil Code section 4175. Phase 1 consists of the Common Area and 18 Residential Lots. The property that may be annexed into the Development is described in **Exhibit A**. If all the subsequent phases are annexed into the Development as described in **Article 14**, the Development may consist of 53 Residential Lots and all Improvements thereon. Declarant has no obligation to annex any subsequent phase into the Development.

Notwithstanding the foregoing, all Lots in the first phase and the Annexable Property described in **Exhibit A** are subject to the benefits and burdens set forth in **Sections 2.3.1, 2.4, 11.5 and 14.2**.

2.2 Property Rights. Each Owner owns a fee (perpetual) estate in a Residential Lot and is a Member of the Association. The Association owns the fee (perpetual) estate in the Common Area.

2.3 Easements. The Development is subject to the easements described in this **Section 2.3** and the general easement rights in **Section 2.4**.

2.3.1 Common Area Easements. Declarant grants to the Owner of each Lot and to the Annexable Property described in **Exhibit A** an easement in favor of the Owner's Lot or Annexable Property as the dominant tenement over the Common Area as the servient tenement for: (i) ingress and egress over the walkways and drive aisles within the Common Area; (ii) support from any land or Improvements within the Common Area providing structural support to the dominant tenement; (iii) access to and use of (including the right to install, maintain, repair or replace as provided in **Section 4.1**) any utility lines, cables, wires, pipes, meters or other equipment installed within, on or over the Common Area that provides utility service to the Lot including water, electricity, gas, telecommunications, storm drainage and sanitary sewer services and life

safety system; and (iv) access to and use of the Common Area by Declarant and its contractors, subcontractors and other agents to construct, maintain and market the Lots and the Improvements thereon. Pending annexation of the Annexable Property (or any portion thereof) and the commencement of assessments against the Annexable Property (or any portion thereof), the easement granted to the Annexable Property (or any portion thereof) is subject to the terms and conditions in **Section 14.2**.

**2.3.2 Boundary Line Easements.** As a part of the original construction of the Development, Declarant has constructed or will construct certain residential Improvements on or within three feet of the boundary line of an adjoining Lot. Declarant grants to each Owner of a Lot on which such Improvements are constructed an easement in favor of the Owner's Lot as the dominant tenement over the adjoining Lot as the servient tenement for purposes of maintaining, repairing and replacing any encroachments (such as roof overhangs) into the servient tenement and for purposes of access to that portion of the servient tenement as may be reasonably necessary to maintain (including repainting), repair or replace any portion of any Improvement on the dominant tenement that is located on or within three feet of the common boundary line. Prior to entering the servient tenement for purposes of maintenance, repair or replacement, the Owner or Occupant of the dominant tenement shall provide the Owner or Occupant of the servient tenement with at least three days' prior notice except in the event of an emergency.

**2.3.3 Drainage Easement.** Declarant grants to the Owner of each Lot and to the Association as the Owner of the Common Area an easement in favor of the Owner's Lot and the Common Area as the dominant tenement over each other Lot and the Common Area as the servient tenement for: (i) the retention, inspection, maintenance, repair or replacement of any storm drainage system installed on the servient tenement as a part of the original construction of the Development; and (ii) the flow of surface and subsurface waters through and over any drainage system and/or drainage patterns established as a part of the original construction of the Development.

**2.3.4 Utility Easement.** Declarant grants to the Owner of each Lot an easement in favor of the Owner's Lot as the dominant tenement over each other Lot as the servient tenement that contains any utility equipment that serves the dominant tenement for the installation, maintenance, retention, repair and replacement of any utility lines and equipment installed within the servient tenement as a part of the original construction of the Development that provides utility service to the dominant tenement, including, but not limited to, electricity, gas and water. The easement is limited to the area within which the utilities were originally installed or is relocated with the prior written consent of the Owner of the servient tenement.

**2.3.5 Encroachment Easement.** Declarant grants to the Owner of each Lot and to the Association as the Owner of the Common Area an easement in favor of each Owner's Lot and the Common Area as the dominant tenements over each adjoining Lot as the servient tenements for the purposes of accommodating any encroachment of roof overhangs, windows, eaves or other residential structural Improvements resulting from the original construction of the Improvements, settlement or shifting of structures, and minor original construction changes during the course of construction, and any encroachment easements granted in accordance with **Section 2.6**. The extent of the encroachment easement shall be the location of the encroaching structure as originally constructed by Declarant and such reasonable access to the servient tenement in order to inspect, maintain, repair, and replace the encroaching Improvement. If a structure on any Lot is partially or totally destroyed, the structure may be repaired or rebuilt in accordance with the original plans, including the replacement of any encroaching Improvement.

**2.3.6 Maintenance and Repair Easement.** Declarant grants to the Owner of each Lot and to the Association as the Owner of the Common Area an easement in favor of each Owner's Lot and the Common Area as the dominant tenements over each other Lot as the servient tenements for purposes of providing the agents of the Association such access as may be necessary to perform the Association's maintenance and repair duties as described in **Sections 4.3 and 4.4**.

**2.3.7 Clustered Mailbox Easements.** The Development has "clustered" mailboxes in which two or more mailboxes are located on one Lot or in the Common Area that serves two or more Lots. Declarant grants to each Owner an easement in favor of the Owner's Lot as the dominant tenement over any Lot and Common Area containing a clustered mailbox as the servient tenement for the installation, retention,

maintenance, repair and/or replacement of the clustered mailbox that serves the dominant tenement and for access to the servient tenement to deposit and retrieve mail. The easement is located in the area within the servient tenement where the clustered mailbox was originally installed by Declarant or as relocated with the prior written consent of the Association or Owner of the servient tenement. The easement includes reasonable access to the clustered mailbox to deposit and retrieve mail and to perform necessary maintenance or repair. The clustered mailboxes shall be maintained as described in **Section 4.3.7**.

2.3.8 Map Easements. Declarant grants to the Owner of each Lot an easement in favor of the Owner's Lot as the dominant tenement over each other Lot and the Common Area as the servient tenements for the easements described on the Map that benefit the dominant tenement and burden the servient tenements as shown on the Map, including the roof cross access easement ("R.C.A.E."), private gas line easement ("P.G.L.E."), private ingress & egress easement ("P.I.E.E."), private storm drain easement ("P.S.D.E."), private sanitary sewer easement ("P.S.S.E.") and private water easement ("P.W.E."). In addition, the Lots and Common Area are subject to the emergency vehicle access easement ("E.V.A.E."), public utility easement ("P.U.E.") and public water meter easement ("W.M.E.") shown on the Map to the extent applicable.

2.4 General Easement Rights. Each easement described in **Section 2.3** shall be subject to, and construed in accordance with, the following provisions, except as otherwise expressly provided for elsewhere in this Declaration: (i) the easement shall be appurtenant to the dominant and servient tenements and any transfer of a dominant or servient tenement automatically transfers the easement appurtenant thereto regardless of whether the easement is described in the instrument of transfer; (ii) the easement is in perpetuity unless otherwise terminated by operation of law; (iii) no easement may be modified or relocated except with the written consent of the Owners of the dominant and servient tenements; (iv) except as otherwise provided in **Article 4**, the Owner of the dominant tenement shall maintain the Improvements within any easement that exclusively benefits the dominant tenement; (v) all easement uses shall comply with the covenants, rights, duties and restrictions set forth in this Declaration, with all applicable laws and ordinances and with any Rules adopted by the Board under the provisions of **Section 5.6.2**; (vi) each easement granted hereunder exists by virtue of this Declaration, without the necessity of confirmation by any other documents; (vii) the easements are nonexclusive unless expressly provided otherwise; (viii) no easement provided or reserved under this Declaration shall restrict the Owner of the servient tenement from granting other easements or interests therein as long as the other easement or interest does not unreasonably interfere with the easement rights of the dominant tenement; (ix) easement access and use rights are subject to the rights reserved in **Section 2.5** and the rights of Declarant as described in **Section 13.10**; (x) the easement granted to the Annexable Property in **Section 2.3.1** is effective automatically on the date Declarant transfers title to the Common Area to the Association and the remaining easements are granted automatically to each Lot within the Annexable Property effective on the date assessments commence against the annexed Lot; and (xi) the easements granted in **Section 2.3** are granted to the Lot Owners of each Lot in Phase 1 effective automatically on the date Declarant transfers title to a Lot in Phase 1 to a third party.

2.5 Reservation of Rights. Notwithstanding any property rights, including easements, granted or reserved herein, each Lot and the Common Area, as the case may be, are subject to each of the following:

(a) the right of Declarant or its agents to enter on any portion of the Development to construct the Improvements that Declarant intends to construct within the Development, to advertise and sell Lots in the Development, to make repairs, and to correct any construction problems thereon, provided that such entry does not unreasonably interfere with the use or occupancy of any occupied Lot unless authorized by its Owner, which authorization shall not be unreasonably withheld;

(b) the right of Declarant to modify the Common Area as reasonably necessary to comply with the requirements of governmental agencies for the development of subsequent phases of the Development;

(c) the right of the Association's agents to enter any Lot to cure any violation or breach of this Declaration or the Bylaws or the Rules, provided that at least 30 days' prior written notice of such violation

or breach (except in the cases of emergency) has been given to the Owner and provided that within the 30-day period such Owner has not acted to cure such violation or breach;

(d) the right of the Association's agents to enter any Lot to perform its obligations and duties under this Declaration, including the obligations and the duties with respect to maintenance or repair of any Improvement or landscaping located on the Lot;

(e) the rights reserved in **Sections 2.6, 2.8 and 13.10**;

(f) the right of the Association to adopt and enforce Rules as described in **Section 5.6**;  
and

(g) the right of the Association to suspend an Owner's right to use any recreational facilities as described in **Section 5.6.4**; limit the number of guests to use the Common Area and any Improvements therein; and assign, rent, license or otherwise designate and control the use of any recreational facilities located on the Common Area.

**2.6 Authority Over Common Area.** The Board or Declarant (as long as Declarant owns 25% or more of the Lots in the Development) shall have the power and the right in the name of the Association and all of the Owners as their attorney-in-fact, to grant, convey or otherwise transfer to any Owner or any other Person fee title, easements, leasehold estates, exclusive use easements or rights, licenses, lot-line adjustments, rights-of-way and/or dedications in, on, over or under the Common Area in order to: (i) construct, erect, operate, maintain or replace lines, cables, wires, conduits or other devices for electricity, cable television, internet services, fiber optics, and other telecommunications equipment, power, telephone and other purposes, public sewers, storm water drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes and any similar public or quasi-public Improvements or facilities; (ii) accommodate any encroachment that in the sole discretion of the Board or Declarant does not unreasonably interfere with the use and enjoyment of the Common Area; or (iii) accomplish any other purpose that in the sole discretion of the Board or Declarant is in the interest of the Association and its Members and does not unreasonably interfere with the use and enjoyment of the Common Area. Each Owner in accepting a deed to a Lot expressly consents to such action and authorizes and appoints the Association and Declarant (as long as Declarant owns 25% or more of the Lots in the Development) as attorney-in-fact of such Owner to execute and deliver all documents and interests to accomplish the action, including, but not limited to, grant deeds, easements, subdivision maps, and lot-line adjustments. Notwithstanding anything herein to the contrary, in no event shall the Board or Declarant: (a) take any action authorized hereunder that would permanently and unreasonably interfere with the use, occupancy and enjoyment by any Owner of his or her Lot, or the use of any recreational facilities located on the Common Area, without the prior written consent of that Owner; or (b) grant exclusive use of any portion of the Common Area to any Owner without the affirmative vote of a majority of the Members present in person or by proxy at a duly held meeting, unless Member approval is not required as described in Civil Code section 4600. If Member approval is required, the Board in placing the measure before the Members shall describe whether the Association will receive a monetary consideration for the grant and whether the Association or the transferee is responsible for providing insurance coverage for the Common Area and shall comply with the secret balloting requirements of Article 4 (commencing with Civil Code section 5100) of Chapter 6 of the Davis-Stirling Act. Furthermore, the conveyance of fee title to any portion of the Common Area as authorized in this **Section 2.6** (other than conveyances made as a part of lot-line adjustments) shall require the consent of a majority of the total voting power of the Association other than Declarant and such consent of the Mortgagees as may be required by **ARTICLE 10**.

**2.7 Delegation of Use Rights.** An Owner's Permittees may use and enjoy any Common Area Improvements, including any recreational facilities. All such use shall be subject to restrictions contained in this Declaration and the Rules. If an Owner leases his or her Lot, neither the Owner nor the Owner's Permittees shall be entitled to use any Common Area Improvements, including the recreational facilities other than such use as is directly related to the Owner's rights and duties as a landlord. Such rights may be enjoyed by the Occupant and Occupant's Permittees during the term of the rental agreement.

Any Owner who rents his or her Lot must comply with the requirements of **Section 3.2**.

2.8 Conveyance of Common Area. The Common Area in a phase shall be conveyed to the Association on or before the date the Declarant first conveys title to a Lot in that phase which triggers the commencement of assessments under **Section 6.7**. The Common Area as the servient tenement is subject to the applicable easements described in **Section 2.3**, the rights reserved in **Section 2.5**, and the rights retained by Declarant and its subcontractors and agents include the right to restrict access to any portion of the Common Area that is undergoing construction or development activity for safety or other reasons by the construction of fences or other barriers, or by the adoption of such other measures that restrict access to authorized personnel only, and the right to use portions of the Common Area as a staging or storage areas for materials and equipment to be used in connection with the construction of Improvements within the Development and to restrict access thereto by means of a fence or otherwise. The Board may adopt Rules regulating the use of the Common Area provided such Rules do not unreasonably interfere with the exercise of the foregoing easement rights and are consistent with the restrictions contained in this Declaration.

2.9 Construction Activity. Each Owner acknowledges that: (i) the construction of the Development may occur over an extended period of time; (ii) the quiet use and enjoyment of the Owner's Lot may be disturbed as a result of the noise, dust, vibrations, and other effects of construction activities; and (iii) the disturbance may continue until the completion of the construction of the Development.

2.10 Notice of Airport in Vicinity. This property is presently located in the vicinity of an airport, within what is known as an airport influence area. For that reason, the property may be subject to some of the annoyances or inconveniences associated with proximity to airport operations (for example: noise, vibrations or odors). Individual sensitivities to these annoyances can vary from person to person. You may wish to consider what airport annoyances, if any, are associated with the property before you complete your purchase and determine whether they are acceptable to you.

2.11 Noise Transmissions. The Development has been designed to meet the acoustical building code standards in effect at the time the Development was constructed. The standards establish minimum performance criteria and do not eliminate all noise transmissions. Occupants will hear noise from other Lots as well as noises from outside. The residences are not soundproof; Occupants will hear noise generated from activities outside the residence, including vehicle, truck and airplane noise.

### ARTICLE 3 Restrictions

3.1 Residential Use. Each Lot shall be used for residential purposes only; and no part of the Development shall be used or caused, allowed or authorized to be used in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending or other nonresidential purpose. Notwithstanding the foregoing, Owners or Occupants of the Lots may use a room or rooms in the residence as an office, provided that the primary use of the Lot is as a residence, no advertising or signage is used in any manner in connection with the office use, no customers, clients or patients enter the Lot on any regular basis, and the use is in compliance with all local ordinances. The Board shall have the authority to adopt Rules regarding the use of offices within the Development in order to maintain the residential characteristics of the Development. The use of Lots by the Declarant or its designees as models and sales and construction offices for purposes of developing, improving and selling the Lots in the Development shall not be a violation of this restriction.

3.2 Renting. The Owner may rent his or her Lot provided each of the following conditions is satisfied:

- (a) the rental agreement must be in writing;
- (b) the initial rental term shall not be less than 30 days;

(c) the rental agreement must contain a provision that the rental agreement is subject to this Declaration, the Bylaws and the Rules and that any violation of any of the foregoing shall be a default under the rental agreement; and

(d) before commencement of the rental agreement, the Owner shall provide the Association with the names of the Occupants who will reside on the Lot and the address, telephone number, and email address of the Owner.

Any Owner that rents his or her Lot shall keep the Association informed at all times of the Owner's address, telephone number, and email address. Any rental agreement shall be subject to this Declaration, the Bylaws and the Rules, and any breach of any of the foregoing shall constitute a breach by the Owner and also a default under the rental agreement, regardless of whether it so provides in the rental agreement. If any Occupant breaches any restriction contained in this Declaration, the Bylaws or the Rules, the Owner, on demand from the Association, immediately shall take such steps as may be necessary to correct the breach, including, if necessary, eviction of the Occupant.

3.3 Nuisance. No activity shall be conducted in any Lot or Common Area that constitutes a nuisance or unreasonably interferes with the use or quiet enjoyment of the Occupants of any other Lot.

3.4 Vehicle and Parking Restrictions. No mobile home, camper or recreational vehicle, boat, truck or similar equipment shall be parked or stored within the Development. For purposes herein, "truck" does not include a pickup truck that does not exceed one ton or a sports utility vehicle. Trucks may park on a temporary basis for delivery or pickup purposes.

Occupants shall park their vehicles in their garages. No parking is allowed within any driveway apron at any time. Garages shall be used for resident parking only and shall be equipped with "listed" automatic garage door openers.

Parking shall be prohibited within the Common Area streets, except within the Common Area guest parking spaces. Common Area guest parking spaces are available exclusively for guest parking and shall be open and accessible for guest parking on a first-come, first-served basis. Subject to the foregoing, the Board may adopt Rules regulating parking in the guest parking spaces.

The Common Area streets shall have appropriate signage, curb paint and striping indicating "No Parking" or "No Parking – Fire Lane," as required by the City of Mountain View.

**Garage access may not be sufficient in size to accommodate larger vehicles, including in particular sports utility vehicles and vans. In addition, certain parking spaces may be smaller in size than a standard parking space and certain spaces may have limited vertical clearance. It is each Owner's sole responsibility to confirm that the garage is accessible for the Owner's vehicle(s), and that the Owner's vehicle(s) can fit within the Owner's garage.**

3.5 Towing Authority. Any vehicle wrongfully parked within the Development may be towed in compliance with the requirements and procedures of Vehicle Code section 22658 or any successor statute thereto. In addition and without limiting the foregoing or any other right or remedy available to the Board, the Board may impose monetary penalties for violation of any parking restrictions or Rules.

3.6 Animals. Normal and customary household pets may be maintained within the Development in compliance with all local ordinances and the following conditions:

(a) there shall be no more than (a) two dogs; or (b) two cats; or (c) one dog and one cat maintained by the Occupants of any one residence unless otherwise authorized in writing by the Board;

(b) no animal shall be maintained for any commercial purposes;

(c) the use of the Common Area by animals shall be subject to such Rules as may be adopted by the Board;

(d) the Lot Owner of the animal immediately shall clean up after his or her animal; and

(e) the Owner shall be responsible for any damage to any Common Area caused by any animal maintained within the Owner's Lot.

The Board, after notice and a hearing, may require the permanent removal from the Development of any animal that the Board, in its discretion, determines is a nuisance, a danger to the health or safety of any Occupant, or otherwise interferes with the quiet use and enjoyment of Occupants of any Lot. The Board may find that an animal is a nuisance if the animal or the animal's owner continue to violate the Rules regulating animals after receipt of a demand from the Board to comply with the Rules.

3.7 Television or Radio Equipment. No television, video or radio poles, antennae, satellite dishes, cables or other transmission and/or reception fixtures or personal property (individually and collectively the "Antenna Equipment") shall be installed or maintained on any Lot except as follows:

(a) Antenna Equipment that is one meter or less in length or diameter or diagonal measurement, provided that the location, color and screening requirements shall be in accordance with any guidelines imposed by the Architectural Committee, which guidelines shall comply with applicable State and federal laws regulating restrictions on Antenna Equipment; and

(b) Antenna Equipment not covered under subparagraph (i) above, the installation of which is approved in advance by the Architectural Committee in accordance with the procedures described in **Article 7**.

Nothing herein shall be construed to restrict in any manner Declarant's or the Board's right to authorize a cable television franchisee or other provider of similar services to provide cable television, satellite dish, radio or other similar services to the Development.

3.8 Barbeque Restrictions. Only gas or propane operated barbeques may be used within the Development. No wood-burning or charcoal barbeques or fire pits are allowed at any time.

3.9 Signs. Subject to the provisions of **Section 13.10** and Civil Code Sections 712, 713, and 4710, no sign of any kind shall be displayed from any Lot that is visible from any other Lot except any sign approved by the Board either on an individual basis or pursuant to Rules adopted by the Board or as may be otherwise authorized by law.

3.10 Clothesline. No exterior clothesline shall be erected or maintained on any Lot; and there shall be no exterior drying or laundering of clothes on any balcony, patio, porch or other outside area of any Lot unless otherwise authorized by the Board in writing.

3.11 Window Coverings. The interior surfaces of all windows shall be covered with normal and customary window coverings such as curtains, drapes, shutters or blinds. The exterior side of window coverings shall be white or off-white or light or dark wood unless approved otherwise in writing by the Architectural Committee.

3.12 Subdivision. No subdivision of any Lot is allowed.

3.13 Automobile Maintenance. There shall be no maintenance or repairs performed on any automobile except within an enclosed garage or except for any emergency repairs that are necessary in order to remove the vehicle to a proper repair facility.

3.14 Alterations, Modifications or Additions. There shall be no alterations, modifications or additions made to any Lot or any Improvement thereon except in compliance with the provisions of **Article 7**.

3.15 Compliance with Law. No Owner shall permit anything to be done or kept in his or her Lot that violates any law, ordinance, statute, rule or regulation of any local, county, state or federal agency. Nothing shall be done or kept in any Lot that might increase the rate of or cause the cancellation of any insurance maintained by the Association.

3.16 Sound Transmissions. No residential structure shall be altered in any manner that would increase sound transmissions, resonances or reverberations to any adjoining or other Lot, including, but not limited to, the replacement, modification or penetration of any wall abutting an adjoining residence that increases sound transmissions, resonances or reverberations to any other residential structure.

3.17 Post Tension Concrete Slab System. The residences have been constructed using a post tension concrete slab system ("System"), which involves placing a grid of steel cables under high tension in the concrete slab foundation of each residence. Any attempt to modify, alter or otherwise tamper with the foundation (for example, saw cutting, drilling or installation of a subterranean safe) is very hazardous and might result in serious injury or damage. No Owner or Occupant of any Lot shall: (i) cut into or otherwise tamper with the System; or (ii) knowingly permit or allow any other Person to cut into or tamper with the System. In addition, the Owner shall disclose the existence of the System to any Occupant of the residence. Any disturbance of the System shall occur only after consultation with a qualified consultant.

#### ARTICLE 4

##### Maintenance and Repair Obligations

4.1 Owner's Maintenance Obligations. Except for that portion of any Lot maintained by the Association as described in **Section 4.3**, each Owner shall maintain the Owner's Lot and all Improvements thereon in good condition and repair at all times, and in compliance with this **Section 4.1**. Shared Improvements with adjoining Lot Owners shall be maintained as described in **Section 4.2**. Each Owner shall have the Improvements on the Owner's Lot periodically inspected for construction material destroying pests or organisms and, if necessary, immediately shall take appropriate corrective action therefor. Each Owner shall comply with each of the following in performing the Owner's maintenance obligations: (a) the Guidelines and Plans described in **Section 4.5** and (b) commonly-accepted homeowners' maintenance obligations.

If any portion of any Improvement on a Lot that is maintained by the Owner is damaged or destroyed as a result of a covered loss under the property insurance maintained by the Association as described in **Section 8.2**, the Association, on request from the Owner, immediately shall take the appropriate steps to process the necessary claim. On receipt of any insurance proceeds allocated to the Improvements maintained by the Owner, the Association shall distribute the proceeds to the Owner subject to the rights of the Owner's Mortgagee and subject to such reasonable terms and conditions as may be imposed by the Association to assure that the proceeds are used to make the necessary repair or restoration. For example, the Association may distribute the proceeds to an insurance trustee or financial institution for distribution in accordance with normal and customary construction loan practices.

Each Owner shall allow agents of the Association access to the Owner's Lot and Common Area appurtenant to the Owner's Lot for purposes of performing any of the Association's inspection, maintenance and repair obligations under this Declaration. If any Owner fails or refuses to provide access, the Owner shall be responsible for any maintenance and repair costs that could have been avoided if access had been provided, and the Association may levy a reimbursement assessment against the Lot to recover the additional costs. If any Owner fails to maintain his or her Lot as required herein, the Association, after notice and hearing as described in the Bylaws, may, but is not obligated to, enter the Lot and perform the necessary maintenance and repair. The Association may levy a reimbursement assessment against the Lot in the manner described in **Section 6.5**.

4.1.1 Residences. Except as maintained by the Association as described in **Section 4.3.2**, each Owner shall have the exterior surfaces of the Owner's residence (including the windows, patios and decks) periodically inspected and repaired, and replaced in accordance with a schedule that maintains substantially the same quality appearance as existed at the time original construction was completed and no less than the recommendations of the manufacturer and/or the maintenance guidelines described in **Section 4.5**. The exterior surfaces shall be maintained and replaced only with the same materials and in the same color and specifications as originally installed on the residence, and the roof materials shall only be replaced with the same roof materials originally used on the residence. Any variations from the colors and materials initially installed on the residence must be specifically approved in advance by the Board in writing. Exterior light fixtures mounted to the residence shall be maintained, repaired and replaced by the Owner, subject to the Association's right to maintain said light fixtures in good working order at the Owner's expense.

In order to reduce the potential for water damage (including mold growth) within the residence, each Owner shall perform each of the following steps: (i) periodically inspect the residence for water leaks, other evidence of water intrusion (such as condensation on the windows or walls, water stains or other types of water damage) and for the presence of molds, fungi and their spores (collectively "Mold"); (ii) if any water leaks, water intrusion and/or Mold are detected, immediately notify the Association and, if applicable, take appropriate corrective steps to repair the leak and/or reduce water intrusion and repair any resulting water damage (including the removal of any Mold); (iii) maintain proper ventilation (particularly in the bathrooms) and humidity levels to reduce the risk of water damage (including Mold growth); (iv) periodically inspect refrigerator condensation pans, air conditioners (if applicable) and any other water-retaining appliances to ensure they are properly functioning and not leaking water or otherwise creating water damage to the residence (including Mold growth); (v) periodically inspect carpeting or similar types of floor covering in bathrooms that may be conducive to Mold growth; (vi) replace heating and air conditioning filters not less frequently than quarterly or as recommended by the manufacturer; and (vii) take such other prudent steps as may be appropriate to prevent water leaks and water intrusion and to repair all leaks, sources of water intrusion and water damage (including Mold growth) within the residence.

4.1.2 Storm Drain System. Each Owner shall maintain and repair that portion of the drainage system located on the Owner's Lot. Each Owner shall at all times keep the drainage system and any intake drains, catch basins or area basins free and clear of debris at all times, and no Owner shall take any action that would in any manner interfere with the operation of the system, modify any drainage facilities, or modify any flow pattern unless approved by the City of Mountain View Public Works Department. No Owner shall alter the grading on any Lot without the prior consent of the Architectural Committee.

4.1.3 Utilities. Except as maintained by the Association as described in **Section 4.3.3** and to the extent not maintained by a government agency or a public or private utility company, each Owner shall be responsible for maintaining and repairing any utility line or equipment that exclusively serves the Owner's Lot, including any portion of an interconnected system such as a lateral plumbing, water or gas pipe exclusively serving the Lot. Specifically, each Owner shall maintain, repair and replace the following utility lines and equipment: (i) sanitary sewer lines and facilities from the cleanout located in the Lot driveway to and into the Lot residence; (ii) water lines and facilities from the shutoff valve at the exterior of the garage to and into the Lot residence; (iii) electrical, telephone and cable lines and facilities from the meter on the exterior of the garage and to and into the Lot residence to the extent not maintained by a governmental agency or a public or private utility company; (iv) gas lines from the valve at the front of the residence on the Owner's Lot to and into the Lot residence; and (v) life safety systems located on the Owner's Lot, including the fire sprinkler system and smoke and carbon monoxide detectors. Each Owner shall be responsible for the inspection, testing, maintenance, repair and replacement of said life safety systems. Maintenance and repair of electrical, gas, sanitary sewer and plumbing lines and life safety systems shall only be performed by appropriately licensed contractors.

4.1.4 Landscaping and Irrigation Systems. The landscaping and irrigation systems within each Lot are maintained by the Association to the extent required under **Section 4.3.5**, provided that street trees abutting the Owner's Lot are to be irrigated by the Owner of the Lot adjacent to the street trees in accordance with Section 32.15 of the Mountain View Municipal Code. No Owner shall excavate, alter or otherwise disturb any Improvement or landscaping on the Lot or any other property without the prior written

consent of the Architectural Committee and/or the other property Owner. If the property is Common Area, the Association may require the Owner to comply with such terms and conditions as the Board may direct prior to commencement of any work within any Common Area.

**4.1.5 HVAC Air Filtration System.** Each Owner shall be responsible for maintaining and repairing the HVAC air filtration system that exclusively serves the Unit. Owners are to maintain and replace the filters installed in the HVAC air filtration system to reduce exposure to pollutants. Owners' responsibilities shall include cleaning, maintaining and monitoring for air flow leaks, and payment of any fees associated with such cleaning, maintenance, monitoring and filter replacement.

**4.2 Shared Improvements.** As part of the original construction of the Development, Declarant constructed certain Improvements on or about the common boundary line between two adjoining Lots that are to be shared by the adjoining Lot Owners (collectively, the "Shared Improvements"). The Shared Improvements include: (i) the portion of the slab foundation which straddles the common boundary line, to the extent not maintained by the Association as described in **Section 4.3.2**; (ii) siding, rain gutters and downspouts that straddle the common boundary line, to the extent not maintained by the Association as described in **Section 4.3.2**; (iii) the materials that straddle the common boundary line and that are connected into the facade or roof of each adjoining residence to the extent not maintained by the Association as described in **Section 4.3.2**; and (iv) the portions of the storm drainage system straddling the common boundary line, to the extent not maintained by the Association as described in **Section 4.3.3**.

Except to the extent maintained by the Association as described in **Section 4.3**, the adjoining Owners shall jointly share the maintenance and repair of the Shared Improvements. The cost of the maintenance and repair shall be allocated equally between the Lots unless the circumstances warrant a different allocation for a fair and equitable allocation of such costs. If the need for maintenance, repair or replacement was caused by the act or omission of one Lot Owner or Occupant, then that Lot Owner shall pay the cost. Each Lot as a dominant tenement shall have an easement over the adjoining Lot as the servient tenement for access to that portion of the servient tenement as may be reasonably necessary to maintain, repair or replace the Shared Improvement.

Any dispute between the adjoining Lot Owners regarding the need for maintenance or repair, the quality or type of maintenance or repair, the allocation of costs, or any related issues shall be submitted to the American Arbitration Association (AAA), any successor thereto or any other alternative dispute resolution provider acceptable to the parties for resolution. The dispute first shall be submitted to non-binding mediation for resolution. If the dispute cannot be resolved through mediation, the dispute shall be submitted to binding arbitration. Unless the parties agree otherwise, the dispute shall be heard by a single arbitrator in the county where the Development is located. In the arbitration proceeding, each party shall have full discovery rights as authorized by Code of Civil Procedure section 1283.05 or any successor statute thereto. The decision of the arbitrator shall be binding on the parties and may be enforced in any court of appropriate jurisdiction. The arbitrator in his or her discretion may award costs, including reasonable attorneys' fees, to the prevailing party.

**4.3 Association's Maintenance Responsibilities.** The Association shall maintain the Improvements and landscaping described in **Sections 4.3.1, 4.3.2, 4.3.3, 4.3.4, 4.3.5, 4.3.6 and 4.3.7** in good condition and repair at all times. The Association shall comply with each of the following in performing the Association's maintenance obligations: (i) the Guidelines described in **Section 4.5.1**; (ii) the Utility Plan (including the Storm Water Management Plan and Sewer Plan) described in **Section 4.5.2**; and (iii) commonly-accepted homeowners' maintenance obligations. All landscaping to be maintained by the Association shall be maintained in a healthy and weed-free environment. All lawns shall be kept neatly mown and trees neatly trimmed and pruned at all times. The Association shall take appropriate steps to maintain the irrigation of the landscaping and to prevent damage resulting from misdirected and/or excessive watering. The Association maintenance responsibilities described in this **Section 4.3** shall commence over the Improvements and landscaping that are in the first phase when the Association commences its operations as described in **Sections 5.1 and 6.7**. The Association maintenance responsibilities over Improvements and landscaping that are in a later phase shall commence on the date assessments commence against the Lots in that phase.

4.3.1 Common Area. The Association shall maintain the Common Area and all Improvements and landscaping thereon, including, but not limited to, driveways, private streets, sidewalks and pathways; paseos; retaining walls (including the masonry and/or retaining walls along the perimeter of the Development); fences; site furnishings, including benches, tables, and light fixtures; trellises and shade structures; parking spaces; trash collection areas; irrigation systems; street lights; landscaping; and utilities serving the Common Area. The private streets within the Development shall be swept at least four (4) times a year. Private drain inlets shall be cleaned out at least once per year prior to October 15<sup>th</sup>. The Association shall be responsible for the Common Area trash management and litter control.

4.3.2 Residences. The Association shall maintain the foundation, roof, rain gutters, downspouts, stucco, window frames, and exterior door surfaces of each residence on a Lot. The Association's maintenance and repair responsibility shall be limited to the following items as often as the Board in its sole discretion considers necessary or advisable: (i) the routine maintenance and repair (but not replacement) of the exterior of the residence Improvements, limited to the periodic re-caulking and repainting or re-staining of the exterior stucco walls of the residences, deck rails, potshelves, window and door trim, window and door frames, garage door frames and trim, and exterior door surfaces, (ii) the routine maintenance, periodic repair and replacement of the roof tiles and the underlayment material, (iii) the routine maintenance, periodic repair and replacement of the rain gutters and downspouts, and (iv) the routine maintenance and periodic repair of foundations. The Association's maintenance and repair responsibility shall include the periodic inspection of the exterior of the residence Improvements for wood-destroying pests and organisms, and notifying the Owner(s) of appropriate corrective measures with respect thereto.

All other maintenance, repair and replacement, including without limitation structural repairs, window and door repair, the replacement of exterior door hardware and roof structural components, and the replacement of damage caused by wood-destroying organisms, shall be done by and at the expense of the Owner of the residence as described in **Section 4.1**.

4.3.3 Private Utilities. The Association shall maintain the following private, on-site utilities serving the Lots to the extent not maintained by a government agency or a public or private utility company:

(a) The private storm drainage systems and bioretention facilities within the Common Area, and the routine maintenance of the storm drainage systems on each Lot (including cleanouts, catch basins and manholes), provided that each Lot Owner shall keep the drainage system and any intake drains, catch basins or area basins located on the Owner's Lot free and clear of debris at all times as described in **Section 4.1.2**;

(b) The private, on-site water system main lines and facilities within the Common Area, and the facilities within each Lot extending through the Common Area to the shutoff valve at the exterior of the garage of each Lot;

(c) The private, on-site sanitary sewer system main lines and laterals and other system facilities within the Common Area, and the system facilities within each Lot extending from the Common Area to the cleanout at the exterior of the garage of each Lot. The sanitary sewer main is private on-site to the City main most closely adjacent to the Development's boundary lines; and

(d) The private, on-site gas lines and laterals within the Common Area and the Lots, extending from the gas meters to the valves at the front of each Owner's residence.

The storm drainage system and the storm water bioretention facilities shall be maintained in accordance with the Storm Water Management Plan approved by the City of Mountain View. Storm drain inlets shall be labeled in accordance with the City of Mountain View's storm drain inlet label program ("NO DUMPING, FLOW TO BAY"). The City shall assume maintenance and repair responsibilities over the sanitary sewer, storm drain and water lines at the point where the public facilities connect into the on-site utility structure (e.g., manhole, valve, clean-out, catch basin) most closely adjacent to the Development's boundary lines. The water meters shall be owned and maintained by the City.

4.3.4 Vapor Intrusion Mitigation Plan. This development is required by the City of Mountain View and the U.S. Environmental Protection Agency to mitigate potential vapor intrusion into the residences. The Association shall inspect and maintain the vapor mitigation facilities in accordance with the Vapor Intrusion Mitigation Plan. The Association and each Owner shall cooperate with any ongoing or future groundwater and/or vapor intrusion investigation, monitoring, and remediation required by the U.S. Environmental Protection Agency and the Regional Water Quality Control Board.

4.3.5 Lot Landscaping. The Association shall maintain the landscaping and irrigation system located within each Lot.

4.3.6 Public Right-of-Way / Landscape Strips. The Association shall maintain the irrigation and the landscaping within the landscaped strip (i) between the sidewalk and the back of curb adjacent to any public street, and (ii) between the public right-of-way behind the sidewalk and the Development.

4.3.7 Clustered Mailbox Maintenance. The Association shall maintain the clustered mailboxes within the Development, provided that each Owner shall be responsible for maintenance and repair of the lock on the Owner's mailbox.

4.4 Maintenance Responsibility List. Attached to this Declaration as **Exhibit B** is a list that identifies the party responsible for the maintenance and repair of certain Improvements and landscaping within the Development. The purpose of this list is to identify whether the Association or the Owner has the maintenance responsibility over specific Improvements and landscaping. The Board from time to time may update **Exhibit B** by recording an amended **Exhibit B** in the records of Santa Clara County, California. The consent of the Members is not required as long as the allocation of the maintenance and repair responsibilities as reflected in the amended **Exhibit B** is not inconsistent with the allocation of responsibilities described in **Sections 4.1** and **4.3**.

4.5 Inspection and Maintenance Guidelines and Schedules; Utility Maintenance Plan.

4.5.1 Guidelines. Declarant shall provide each Owner and the Association with inspection and maintenance guidelines and schedules, including manufacturers' guidelines and schedules, for the inspection and maintenance of certain Improvements and personal property situated within the Development with respect to the Improvements and landscaping to be maintained by that party (collectively the "Guidelines").

Each Owner and the Association shall retain the Guidelines and shall take all appropriate steps to implement and comply with the Guidelines as required herein. Each Owner, on the transfer of the Owner's Lot, shall deliver the Guidelines pertaining to the Improvements and any landscaping to be maintained by the Owner to the transferee on or before title is transferred. The Board periodically and at least once every three years shall review and update the Guidelines and Plans for Improvements and any landscaping maintained by the Association, which may be done in conjunction with the preparation of the reserves study described in **Section 6.3**. Replacement copies of the original Guidelines prepared by Declarant may be obtained from Declarant as described in Section 4 of the Claims Procedure described in **Exhibit C** attached to this Declaration. Declarant may charge a reasonable fee for providing replacement copies.

4.5.2 Utility Plan. The Declarant or the Association shall prepare a private utility maintenance plan (the "Utility Maintenance Plan") for the on-site water, sanitary sewer, and storm drainage facilities. The Utility Maintenance Plan must include elements such as a sanitary sewer overflow plan, flushing of the sanitary sewer and storm lines, cleaning of storm drain inlets and grates, and inspection of the water systems, including but not limited to flushing and exercising of valve and blowoffs. The Utility Maintenance Plan will include, or incorporate by reference, any Storm Water Management Plan for the Project approved by the City of Mountain View. The sanitary sewer overflow plan attached to or incorporated into the Utility Maintenance Plan shall also include 24-hour contact information, response times, confinement, and methods to contain and remediate spills. A copy of the Utility Maintenance Plan (including the Storm Water Management Plan) shall be provided or made available to each Owner.

4.6 Trash and Recycling Removal. Each Owner shall be responsible for the removal of all the trash, refuse and recycling from that Owner's Lot to the central trash collection area within the Common Area. The Association shall be responsible for the maintenance of the central trash collection area and for the periodic removal of trash therefrom. The Association shall provide and designate central trash and recycling containers as reasonably required, and the Occupant of each Lot shall ensure that trash is properly placed within the appropriate container provided. All trash, refuse and/or recycling shall be kept only in sanitary containers, which shall be kept within the garage or otherwise screened from view in areas approved in writing by the Board. Each Owner shall take all appropriate, proper and required precautions to protect Persons and property from any injuries or damages from the trash or other refuse generated from the Owner's Lot and shall comply with all laws and ordinances regarding the disposal of any hazardous materials. In addition, if the Board determines, in the Board's sole discretion, that a Lot is generating trash and/or recycling in excess of that typically generated by other Lots, it may reallocate collection costs so that the Lot generating the excess trash and/or recycling pays for the excess trash collection.

4.7 Cooperation and Access. Each Owner and Occupant shall fully cooperate with the agents of the Association in the performance of the Association's maintenance and repair obligations described in **Section 4.3** above. Such cooperation shall include, but is not limited to, immediate notification to the Board or its managing agent of any maintenance or repair problems for which the Association is responsible and access to the Owner's or Occupant's Lot as may be necessary to inspect and, if appropriate, to perform any necessary maintenance or repairs.

4.8 Reimbursement and Indemnification. If the Association incurs any maintenance or repair costs because of the willful or negligent act or omission of any Owner or Occupant or their Permittees, the Association shall charge the cost to the Owner of the Lot responsible for the costs and may levy a reimbursement assessment as described in **Section 6.5**. The Owner immediately shall pay the charge or reimbursement assessment to the Association, together with interest thereon at the rate of 12% per annum, but not in excess of the maximum rate authorized by law. If the Owner disputes the charge, the Owner shall be entitled to notice and a hearing as provided in **Section 5.6.4**. The Association shall not charge the Owner to the extent that the cost is met through insurance maintained by the Association, provided that any deductible amount and any costs in excess of such insurance coverage shall be paid by the Owner.

Furthermore, the Owner shall defend, indemnify and hold the Association harmless from any claim, demand, liability or cost, including attorneys' fees arising from such damage, except to the extent the demand, claim, cost or liability is covered by insurance maintained by the Association. The Owner shall pay the amount of any deductible and any amount in excess of insurance coverage.

## ARTICLE 5 The Association

5.1 Formation of the Association. The Association is a nonprofit mutual benefit corporation formed under the laws of the State of California. The Association shall commence operations no later than the date that assessments commence as described in **Section 6.7**. Pending the commencement of the Association's operations, Declarant shall perform the duties and shall have the rights of the Association as described herein.

5.2 Governing Body. The governing body of the Association shall be the Board. It shall be the responsibility of the Board to ensure that the Association exercises its rights and performs its duties as described within this Declaration, the Articles, Bylaws and any amendments thereto.

The Board shall adopt Rules in accordance with procedures required by Civil Code sections 4340 through 4370 regarding the elections to the Board and related matters that satisfy the requirements set forth in Article 4 (commencing with Civil Code section 5100) of Chapter 6 of the Davis-Stirling Act.

5.3 Membership. Each Owner shall automatically be a Member of the Association. If there is more than one fee title Owner of a Lot, each Owner shall be a Member. The holder of a security interest in a Lot shall not be a Member of the Association except and until that holder obtains both the legal and equitable interest in the Lot. Membership shall be appurtenant to the Lot and may not be separated therefrom. Any transfer of an Owner's interest in a Lot (other than a security interest), by operation of law or otherwise, automatically transfers the membership to the Owner's successor in interest. No Owner may resign or revoke his or her membership for any reason.

5.4 Membership Classes and Voting Rights. The Association shall have the following two classes of voting memberships:

5.4.1 Class A. Class A Members are all Owners except the Declarant. Class A Members shall be entitled to one vote for each Lot in which he or she owns an interest. If more than one Owner owns an interest in a Lot, only one vote may be cast with respect to that Lot.

5.4.2 Class B. The Class B Member shall be the Declarant, who shall be entitled to three votes for each Lot owned by the Declarant. Class B membership shall cease and be irreversibly converted to Class A on the first to occur of the following:

(a) the total outstanding votes held by the Class A Members equal the total outstanding votes held by the Class B Members; or

(b) the second anniversary of the first conveyance of a Lot in the Development.

Voting rights shall vest at the time that assessments are levied against the Owner's Lot.

Except as set forth below, all matters requiring the approval of the Members shall be approved if: (i) approved by a majority of the votes cast either in person or by proxy at a duly-held regular or special meeting at which a quorum was present; (ii) approved by a majority of the written ballots cast in compliance with the requirements of Article 4 (commencing with Civil Code section 5100) of Chapter 6 of the Davis-Stirling Act and if not applicable, Corporations Code section 7513 or any successor statute thereto; or (iii) approved by unanimous written consent of all the Members. Notwithstanding the foregoing, approval by the Members shall be subject to each of the following:

(i) Two Membership Classes. As long as two classes of voting membership exist, any action by the Association that requires approval by the Members shall require approval by the members of each class.

(ii) Single Membership Class/Declarant-Owned Lots. If one class of voting membership exists and Declarant owns any Lots, any action by the Association that requires approval by the Members shall require approval by the Members including Declarant's vote(s) and approval by the Members excluding Declarant's votes.

(iii) Greater Than a Majority. If, under the terms of this Declaration, a particular action requires approval by more than a majority, the action shall be approved by the Members only if the required percentage of votes approves the action.

(iv) Completion Bond and Section 896 Claims. Votes of the Declarant shall be excluded as provided in **Sections 5.11 and 5.15** of this Declaration.

(v) Amendments. Member approval requirements for any amendments to this Declaration, the Articles or Bylaws shall comply with the amendment requirements set forth in the applicable document.

(vi) Legal Requirements. If the voting requirements and/or procedures conflict with any applicable statutory requirements, the statutory requirements shall control.

5.5 Joint Ownership Votes. The vote that is attributed to each Lot may not be cast on a fractional basis. If the Lot has more than one Owner and the Owners are unable to agree as to how the vote shall be cast, the vote shall be forfeited on the matter in question. Any vote cast by an Owner for any Lot is presumed conclusively to be the vote cast by all the Owners of that Lot. If more than one Owner casts a vote attributed to a Lot on any matter on which only one vote could be cast for that Lot, the votes cast by such Owners shall be counted as one vote if the votes are the same; if the votes are different, the vote cast by such Owners shall not be counted and shall be forfeited.

5.6 Powers of the Association. The Association shall have all the powers of a nonprofit mutual benefit corporation organized under the general nonprofit mutual benefit corporation laws of California, subject only to such limitations on the exercise of these powers as are set forth in the Articles, Bylaws and this Declaration. The Association shall have the power to do any lawful thing that may be authorized, required or permitted to be done by the Association under this Declaration, the Articles and the Bylaws and to do and perform any act that may be necessary or proper for or incidental to the exercise of any of the express powers of the Association, including, without limitation, each of the following:

5.6.1 Levying Assessments: The Board shall establish, fix and levy assessments against the Lots and collect and enforce payment of such assessments in accordance with the provisions of **Article 6** of this Declaration.

5.6.2 Adopting Rules: The Board may adopt, amend and repeal Rules as it considers appropriate. Rules shall apply generally to the management and operation of the Development and/or the conduct of the business and affairs of the Association and may regulate the use and enjoyment of the Common Area, the use of any commonly-metered utilities that are paid by the Association and such other matters as are authorized in this Declaration. The adoption, amendment or repeal of Rules shall satisfy the applicable requirements of Civil Code sections 4350, 4360 and 4365. If any provision of this Declaration, the Articles or the Bylaws is inconsistent with or materially alters any Rules, this Declaration, the Articles and the Bylaws shall control to the extent of any such inconsistencies. Members shall have the same access to the Rules as they have to the accounting books and records of the Association.

Any Rules adopted by the Board shall apply to all Owners or Occupants in a uniform and nondiscriminatory manner. The Board may adopt a Rule as the result of an act or omission of any Owner or Occupant or their family members or guests or a Rule that does not directly affect all Owners or Occupants in the same manner as long as the Rule applies to all Owners or Occupants.

5.6.3 Borrowing Money: The Board may borrow money to meet any anticipated or unanticipated cost of the Association and, subject to the provisions of **Section 5.13(v)**, may mortgage, encumber or pledge Association assets (including, but not limited to, assessments) as security for such borrowing.

5.6.4 Imposing Disciplinary Action: In addition to any other enforcement rights described in this Declaration and the Bylaws or as may be authorized by law and subject to the due process requirements imposed by this Declaration, the Bylaws or by law, the Board may take any of the following actions against any Person whose act or failure to act violates or threatens to violate any provisions of this Declaration, the Bylaws or Rules: (a) impose monetary penalties, including late charges and interest; (b) suspend voting rights in the Association; (c) commence any legal or equitable action for damages, injunctive relief or both; and (d) suspend use privileges for any Common Area facilities within the Development subject to the restrictions in **Section 5.12(i)**. Subject to the provisions of **Section 13.8**, the determination of whether to impose any of the foregoing sanctions shall be within the sole discretion of the Board. Any legal action may be brought in the name of the Association on its own behalf and on behalf of any Owner who consents; and, except as otherwise provided herein, the prevailing party in such action shall be entitled to recover costs and reasonable attorneys' fees. The Board, in its sole discretion, may resolve or settle any dispute, including any legal action in which the Association is a party, under such terms and conditions as it considers appropriate.

(a) If the Board adopts a policy imposing monetary penalties, including any fee on any Member for a violation of the governing documents or the Rules, including any monetary penalty relating to the activity of a Member or Member's Permittee or the Member's Occupant or their Permittee, the Board shall adopt and distribute to each Member, by personal delivery or first-class mail, a schedule of the monetary penalties that may be assessed. The Board may change the schedule from time to time and shall distribute a notice of such changes to the Members in the same manner as the schedule of penalties.

(b) The imposition of any disciplinary action, including, but not limited to, the imposition of monetary penalties or the suspension of use and/or voting privileges except as otherwise noted herein, shall be subject to the following procedures and requirements:

(i) **Notice of Hearing:** Prior to the time the Board meets to consider or impose discipline upon a Member, the Board shall notify the Member, by either personal delivery or first-class mail, at least 15 days prior to the meeting. The notice shall contain, at a minimum, the date, time and place of the meeting, the nature of the alleged violation for which the Member may be disciplined, and a statement that the Member has a right to attend and may address the Board at the meeting.

(ii) **Hearing:** If requested by the Member, the Board shall conduct the disciplinary proceeding in executive session. The Member, the Member's legal counsel, and the Association's legal counsel shall be entitled to attend the executive session meeting. The Board may interview witnesses and other interested parties in executive session.

(iii) **Notice of Action Taken:** If the Board elects to impose discipline on the Member, the Board shall notify the Member of the disciplinary action within ten days following the election to impose the disciplinary action.

(iv) **No Forfeiture:** Under no circumstances may the Association cause a forfeiture or abridgement of an Owner's right to the full use and enjoyment of the Owner's Lot on account of the failure of the Owner to comply with the provisions of this Declaration, the Articles, Bylaws or Rules, except by judgment of a court or decision of an arbitrator or on account of a foreclosure or sale under power of sale for failure of the Owner to pay assessments duly levied by the Association.

(v) **Assessment Charges:** The provisions of this **Section 5.6.4** do not apply to charges imposed against a Member for reasonable late payment penalties or charges to reimburse the Association for loss of interest and for costs reasonably incurred (including attorneys' fees) in collecting delinquent assessments.

**5.6.5 Delegating Duties:** Except as may be limited by the Bylaws, the Board may delegate any of the Association's powers and duties to its employees, committees or agents, including a professional management agent.

**5.6.6 Implementing Special Fees:** The Board may implement special fees to reimburse the Association for special costs incurred as a result of actions taken by Owners. Fees not paid in a timely manner may be collected through a reimbursement assessment levied against the Owner's Lot.

**5.6.7 Dispute Resolution Procedures:** The Board shall implement dispute resolution procedures that comply with the requirements of Civil Code sections 5900 through 5920 for disputes between the Association and a Member involving the rights, duties or liabilities under the Governing Documents, the Davis-Stirling Act or the Nonprofit Mutual Benefit Corporation Law (Corporations Code sections 7110-8910).

**5.7 Duties of the Association.** In addition to the duties described in the Articles or Bylaws, or elsewhere in this Declaration, the Association shall have the duty to manage the Common Area, perform the maintenance as described in **Section 4.3**, prepare, periodically update, and comply with the maintenance and inspection guidelines described in **Section 4.5**, prepare and distribute financial statements, reports and the other documents and notices described in **Section 5.10**, enforce bonded obligations as described in

**Section 5.11**, levy and collect assessments as described in **Article 6**, prepare when required the reserve studies described in **Section 6.3** and annually review and implement adjustments as required, and procure, maintain and review the insurance as described in **Article 8**. The Association shall perform such other acts as may be reasonably necessary to exercise its powers to perform its duties under any of the provisions of this Declaration, the Articles, Bylaws, Rules or Board resolutions.

5.8 Taxes and Assessments. The Association shall pay all real and personal property taxes and assessments and all other taxes levied against the Association, the Common Area or the personal property owned by the Association. Such taxes and assessments may be contested or compromised by the Association, provided that they are paid or that a bond insuring payment is posted before the sale or the disposition of any property to satisfy the payment of such taxes.

5.9 Utility Service to the Common Area. The Association shall acquire, provide and pay for water, trash collection, electrical, and other necessary utility services for the Common Area and any recreational facilities.

5.10 Reporting and Notice Requirements. The Association shall prepare and distribute the documents described in this **Section 5.10**. The annual budget report required under **Section 5.10.1** and the annual policy statement required under **Section 5.10.4** shall be delivered to each Member by individual delivery pursuant to Civil Code section 4040. The Association shall deliver either the full report or a summary. If the Member has requested to receive all reports in full, the Association shall deliver the full reports to that Member. If a summary is delivered, the summary shall include a general description of the content of the report. Instructions on how to request a complete copy of the report at no cost to the Member shall be printed in at least 10-point boldface type on the first page of the summary.

5.10.1 Annual Budget Report. An annual budget report for each fiscal year shall be distributed not less than 30 days nor more than 90 days before the beginning of the Association's fiscal year containing the following information:

(a) A pro forma operating budget showing the estimated revenue and expenses on an accrual basis.

(b) A summary of the Association's reserves prepared in accordance with the requirements in Civil Code section 5565.

(c) A summary of the reserve funding plan adopted by the Board, as specified in Civil Code section 5550(b)(5). The summary shall include notice to Members that the full reserve study plan is available upon request and the Association shall provide the full reserve plan to any Member upon request.

(d) A statement as to whether the Board has determined to defer or not undertake repairs or replacement of any Major Component with a remaining life of 30 years or less, including a justification for the deferral or decision not to undertake the repairs or replacement;

(e) A statement as to whether the Board, consistent with the reserve funding plan adopted pursuant to Civil Code section 5560, has determined or anticipates that the levy of one or more special assessments will be required to repair, replace or restore any Major Component or to provide adequate reserves therefor; and if so, the statement shall also set out the estimated amount, commencement date and duration of the assessment;

(f) A statement as to the mechanism or mechanisms by which the Board will fund reserves to repair or replace major components, including assessments, borrowing, use of other assets, deferral of selected replacement or repair, or alternative mechanisms; and

(g) A general statement addressing the procedures used for the calculation and establishment of those reserves to defray the future repair, replacement or additions to the Major

Components. The statement shall include, but need not be limited to, reserve calculations made using the formula described in Civil Code section 5570(b)(4) and may not assume a rate of return on cash reserves in excess of 2 percent above the discount rate published by the Federal Reserve Bank of San Francisco at the time the calculation was made.

(h) A statement as to whether the Association has any outstanding loans with an original term of more than one year, including the payee, interest rate, amount outstanding, annual payment and when the loan is scheduled to be retired.

(i) A summary of the Association's property, general liability, earthquake, flood and fidelity insurance policies. The summary shall include: (i) the name of the insurer; (ii) the type of insurance; (iii) the Policy limits of the insurance; and (iv) the amount of deductibles, if any. To the extent that the information required to be disclosed is specified in the insurance policy declaration page, the Association may meet its disclosure obligations by making copies of that page and distributing copies to all its Members.

The summary shall contain, in at least 10-point boldface type, the following statement:

**This summary of the Association's policies of insurance provides only certain information as required by subdivision Civil Code Section 5300 and should not be considered a substitute for the complete policy terms and conditions contained in the actual policies of insurance. Any Association member, upon request and reasonable notice, may review the Association's insurance policies and, upon request and payment of reasonable duplication charges, obtain copies of those policies. Although the Association maintains the policies of insurance specified in this summary, the Association's policies of insurance may not cover your property, including personal property, or real property improvements to or around your dwelling, or personal injuries or other losses that occur within or around your dwelling. Even if a loss is covered, you may nevertheless be responsible for paying all or a portion of any deductible that applies. Association members should consult with their individual insurance broker or agent for appropriate additional coverage.**

The Association, as soon as reasonably practical, shall notify its Members by first-class mail if any of the Policies have lapsed, been cancelled and not immediately renewed or restored or if there is a significant change such as a reduction in coverage or limits or an increase in the deductible for any Policy. If the Association receives any notice of non-renewal of a Policy, the Association immediately shall notify its Members if replacement coverage will not be in effect by the date the existing coverage will lapse.

5.10.2 Assessment and Reserve Funding Disclosure Summary. The Assessment and Reserve Funding Disclosure Summary form prepared under Civil Code section 5570 shall be distributed with each annual budget report or summary.

5.10.3 Financial Statement Review. A review of the financial statement of the Association shall be prepared in accordance with Generally Accepted Accounting Principles by a licensee of the California State Board of Accountancy for any fiscal year in which the gross income of the Association exceeds \$75,000. A copy of the review of the financial statement shall be distributed within 120 days after the close of each fiscal year by individual delivery pursuant to Civil Code section 4040.

5.10.4 Annual Policy Statement. The Board shall distribute an annual policy statement that provides the Member with information about Association policies, which shall include the following information:

(a) The name and address of the person designated to receive official notices sent to the Association, pursuant to Civil Code section 4035.

(b) A statement explaining that a Member may submit a request to have notices sent to up to two different specified addresses, pursuant to Civil Code section 4040(b).

(c) The location, if any, designated for posting of a general notice, pursuant to Civil Code section 4045(a)(3).

(d) Notice of a Member's option to receive general notices by individual delivery, pursuant to Civil Code section 4045(b).

(e) Notice of a Member's right to receive copies of meeting minutes, pursuant to Civil Code section 4950(b).

(f) The statement of assessment collection policies required by Civil Code section 5730.

(g) A statement describing the Association's policies and practices in enforcing lien rights or other legal remedies for default in the payment of assessments.

(h) A statement describing the Association's discipline policy, if any, including any schedule of penalties for violations of the Governing Documents pursuant to Civil Code section 5850.

(i) A summary of dispute resolution procedures, pursuant to Civil Code sections 5920 and 5965. The summary required by Civil Code section 5965 shall include the following language:

"Failure of a Member of the Association to comply with all the alternative dispute resolution requirements of Section 5930 of the Civil Code may result in the loss of the Member's right to sue the Association or another Member of the Association regarding enforcement of the Governing Documents or the applicable law."

(j) A summary of any requirements for Association approval of a physical change to property, pursuant to Civil Code section 4765.

(k) The mailing address for overnight payment of assessments, pursuant to Civil Code section 5655.

(l) The annual policy statement shall include the notice required by Civil Code section 5730(a) in at least 12-point type.

(m) Any other information that is required by law or the Governing Documents or that the Board determines to be appropriate for inclusion.

**5.10.5 Transfer Documents.** Copies of the transfer documents described in Civil Code section 4525 shall be provided to any Owner or any other recipient requested by Owner within ten days of the mailing or delivery of a written request. The transfer documents shall be provided and reasonable fees charged in accordance with the procedures, requirements and restrictions set forth in Civil Code section 4530.

**5.11 Enforcement of Bonded Obligations.** If the Association is the obligee under a bond or other arrangement ("Bond") to secure performance of the commitment of the Declarant or a successor or assign to complete the Common Area Improvements not completed at the time the California Bureau of Real Estate issued a final subdivision report for the latest phase of the Development, the Board will consider and vote on the question of action by the Association to enforce the obligations under the Bond with respect to any Improvement for which a notice of completion has not been filed by the later of: (i) 60 days after the completion date specified for that Improvement in the "planned construction statement" appended to the

Bond; or (ii) 30 days after the expiration of any written extension given by the Association. If the Board fails to consider and vote on the action to enforce the obligations under the Bond, or if the Board decides not to initiate action to enforce the obligations under the Bond, then on receipt of a petition signed by Owners representing not less than 5% of the total voting power of the Association, the Board shall call a special meeting of Owners for the purpose of voting to override the decision of the Board not to initiate action or to compel the Board to take action to enforce the obligations under the Bond. The Board shall give written notice of the meeting to all Owners entitled to vote in the manner provided in this Declaration or in the Bylaws for notices of special meetings of Owners. The meeting shall be held not less than 35 days nor more than 45 days after receipt of the petition. At the meeting, the vote in person or by proxy by a majority of the Owners entitled to vote (other than Declarant) in favor of taking action to enforce the obligations under the Bond shall be considered the decision of the Association; and the Board shall implement this decision by initiating and pursuing appropriate action in the name of the Association.

Upon satisfaction of the Declarant's obligation to complete the Common Area Improvements, the Board shall acknowledge in writing that it approves the release of the Bond and shall execute any other documents or instruments as may be necessary or advisable to affect the release of the Bond. The Board shall not condition its approval to release the Bond on the satisfaction of any condition other than the completion of the Common Area Improvements as described in the "planned construction statement." Any dispute between the Declarant and the Association regarding the release of the Bond shall be resolved in accordance with the Bond escrow instructions or, if these instructions are not operative for any reason, in accordance with the procedures of **Article 12**.

5.12 Limitations on Authority of the Board. The Association is prohibited from taking any of the following actions:

(a) except as otherwise provided in law, or order of the court, or an order pursuant to a final and binding arbitration decision, the Association shall not deny an Owner or Occupant physical access to his or her Lot, either by restricting access through the Common Areas to the Owner's Lot or by restricting access solely to the Owner's Lot;

(b) the Association may not voluntarily assign or pledge the Association's right to collect payments or assessments or to enforce or foreclose a lien to a third party except when the assignment or pledge is made to a financial institution or lender chartered or licensed under federal or State law when acting within the scope of that charter or license as security for a loan obtained by the Association; however, the foregoing provision may not restrict the right or ability of the Association to assign any unpaid obligations of a former Member to a third party for purposes of collection;

(c) adopt a Rule or regulation that arbitrarily or unreasonably restricts an Owner's ability to market the Owner's Lot; or

(d) establish an exclusive relationship with a real estate broker through which the sale or marketing of Lots is required to occur. This restriction does not apply to the sale or marketing of Common Areas owned by the Association.

5.13 Additional Limitations on Authority of the Board. The Board shall not take any of the following actions except with the consent, by vote at a meeting of the Association or by written ballot without a meeting pursuant to Corporations Code section 7513 or any successive statute thereto, of a simple majority of the Members other than Declarant constituting a quorum of more than 50% of the voting power of the Association residing in Members other than the Declarant:

(a) incur aggregate expenditures for capital Improvements to the Common Area in any fiscal year in excess of 5% of the budgeted gross expenses of the Association for that fiscal year;

(b) sell during any fiscal year property of the Association having an aggregate fair market value greater than 5% of the budgeted gross expenses of the Association for that fiscal year;

(c) pay compensation to members of the Board or to officers of the Association for services performed in the conduct of the Association's business, provided that the Board may reimburse a member or officer for expenses incurred in carrying on the business of the Association;

(d) enter into a contract with a third Person to furnish goods or services for the Common Area or the Association for a term longer than one year with the following exceptions:

(i) a management contract, the terms of which have been approved by the Federal Housing Administration or Veterans Administration;

(ii) a contract with a public utility company if the rates charged for the materials or services are regulated by the Public Utilities Commission, provided the term does not exceed the shortest term for which the supplier will contract at the regulated rate;

(iii) prepaid casualty or liability insurance policies not to exceed three years' duration, provided the policy permits for short rate cancellation by the insured;

(iv) lease agreements for laundry room fixtures and equipment not to exceed five years' duration, provided the Declarant does not have a direct or indirect ownership interest of 10% or more in any lessor under such agreements;

(v) agreements for cable television services and equipment or satellite dish television services and equipment not exceeding five years in duration, provided the supplier is not an entity in which the Declarant has a direct or indirect ownership interest of 10% or more;

(vi) agreements for sale or lease of burglar alarm and fire alarm equipment, installation and services not exceeding five years' duration, provided that the supplier or suppliers are not entities in which the Declarant has a direct or indirect ownership interest of 10% or more; and

(vii) a contract for a term not to exceed three years that is terminable by the Association after no longer than one year without cause, penalty or other obligation upon 90 days written notice of termination to the other party; or

(e) borrow money secured by any Association assets as authorized under **Section 5.6.3**.

5.14 Notice of Significant Legal Proceedings. Notwithstanding anything herein to the contrary, not later than 30 days prior to the filing of any civil action against the Declarant or other developer for alleged damage to the Common Area, alleged damage to the separate interests that the Association is obligated to maintain or repair, or alleged damage to the separate interests that arises out of, or is integrally related to, damage to the Common Area or separate interests that the Association is obligated to maintain or repair, the Board shall provide written notice to each Member of the Association. The notice shall specify the date and location of the meeting and both of the following:

(a) that a meeting will take place to discuss problems that may lead to the filing of a civil action; and

(b) the options, including civil actions, that are available to address the problems.

If the Board in good faith determines that there is insufficient time to provide prior notice to the Members as required herein prior to the expiration of any applicable statute of limitations, the Board may take the necessary steps to commence the proceeding to preserve the rights of the Association, provided that as soon as is reasonably practical thereafter, and not later than 30 days following the commencement of the proceeding, the Board shall provide the Members with notice as required herein.

5.15 Civil Code Sections 896 and 897 Claims. The sole and exclusive authority to initiate claims on behalf of the Association in connection with Improvements or landscaping maintained by the Association for violations of the functionality standards set forth in Civil Code sections 896 and 897 shall rest with the Board members elected solely by Class A Members described in **Section 5.4.1** of this Declaration (the "Non-Declarant Directors"). Any Non-Declarant Director may at any time request a meeting for the purpose of discussing, inspecting, investigating and/or initiating any claims under Civil Code sections 896 or 897. Notice of the meeting shall be sent in the same manner as notice for special meetings of the Board. Any member of the Board appointed by Declarant or elected by votes cast by Declarant shall be entitled to attend the meeting but shall not be entitled to vote. The meeting shall be open for all Members of the Association unless the Non-Declarant Directors adjourn to an executive session as authorized by the Bylaws. The decision of a majority of the Non-Declarant Directors shall control. If the Non-Declarant Directors elect to initiate a claim, the authority to initiate a claim also shall require the approval of the votes cast by a majority of the Class A Members present in person or by proxy at a duly-held meeting. Any Non-Declarant Director may call a special meeting of the Members for this purpose. For purposes of this **Section 5.15**, if the Class B membership has been converted to Class A membership as described in **Section 5.4**, the quorum requirements shall be based on the total votes of the Class A Members other than the votes held by Declarant and the Declarant votes shall not count for approval or disapproval purposes. The claim is subject to the provisions and procedures set forth in **Article 12**. If requested by the Non-Declarant Directors, the Association shall provide the administrative support for the notice and conduct of its meetings and any meeting of the Members called to approve the initiation of a claim. In addition, the Association shall provide such reasonable financial support as may be necessary in order for the Non-Declarant Directors to inspect, investigate and/ or initiate the claim on behalf of the Association, subject to the applicable requirements and procedures set forth in **Sections 5.14, 6.6** and **Article 12**. The provisions of this **Section 5.15** are effective automatically on the date the first Non-Declarant Director is elected to the Board.

5.16 Access to Association Records. The Association shall provide Members with access to the Association records in accordance with the procedures and requirements in Article 5 (commencing with Civil Code section 5200) of Chapter 6 of the Davis-Stirling Act.

## ARTICLE 6 Assessments

6.1 Obligations to Pay Assessments. The Owner of each Lot is obligated to pay any assessments levied against that Owner's Lot on or before the due date of the assessment. If there is more than one Owner of the Lot, the obligation is joint and several. Each Owner on acceptance of a deed to a Lot automatically personally assumes the obligation to pay any assessments against the Owner's Lot (including, but not limited to, any portion of the annual regular assessment not yet due and payable) and agrees to allow the Association to enforce any assessment lien established hereunder by nonjudicial proceedings under the power of sale or by any other means authorized by law. The Owner shall be liable for the full assessment levied against that Owner's Lot regardless of the Owner's possession or use of the Lot, the Common Area or any services rendered by the Association. The Owner has no right or power to commit or omit any act, such as waiving the right to use the Common Area Improvements, in an attempt to eliminate or reduce the assessments against that Owner's Lot. An assessment shall be both a personal obligation of the Owners of the Lot against which the assessment is levied and, on the recordation of a notice of delinquent assessment, a lien against the Lot. Any Owner who transfers a Lot shall remain personally liable for any unpaid assessments that accrued on or before the date of the transfer. No Owner shall be liable for any defaults of the Owner's predecessor in interest in the payment of any assessment that has accrued prior to the Owner taking title to the Lot unless that Owner expressly assumes the obligation to cure the delinquent assessments. Notwithstanding the foregoing, any Owner who takes title to a Lot on which a lien for a delinquent assessment has been established will take title subject to the lien and the Association's enforcement remedies as a result thereof unless the Owner takes title under a foreclosure or trustee sale resulting from a foreclosure or exercise of a power of sale under a Mortgage, deed of trust, or other lien recorded before the recordation of the notice of delinquent assessment and except as provided in **Section 10.3**.

Declarant's obligation to pay regular assessments for Lots owned by Declarant may be reduced or abated pursuant to a maintenance or subsidy agreement between Declarant and the Association and approved by the California Bureau of Real Estate.

6.2 Annual Regular Assessment. Prior to the beginning of each fiscal year of the Association, the Board shall meet for the purpose of establishing the annual regular assessment for the forthcoming fiscal year. At such meeting, the Board shall review the preliminary pro forma operating budget prepared for the forthcoming fiscal year, any written comments received from Members and Mortgagees, and such other related information that has been made available to the Board. After making any adjustments that the Board considers appropriate and subject to such Member approval as may be required by **Section 6.6**, the Board will establish an annual regular assessment for the forthcoming fiscal year. Each annual regular assessment may include a portion for reserves as described in **Section 6.3**.

If the Board for any reason fails to take the appropriate steps to establish the annual regular assessment for the next fiscal year, the annual regular assessment for the preceding fiscal year shall continue in effect subject to the Board's right at any time during the next fiscal year to adjust the assessment pursuant to the procedures described herein.

6.3 Reserves, Reserve Accounts and Reserves Study. Each annual regular assessment shall include a portion for reserves in such amount as the Board in its discretion considers appropriate to meet the cost of the future repair, replacement or additions to the Major Components as described in **Section 5.10.1** that the Association is obligated to maintain and repair. For all purposes in this Declaration and in the Bylaws, reserve accounts shall mean: (i) the funds that the Board has identified for the foregoing purposes ("Regular Reserve Funds") and (ii) the funds received and not yet expended or disposed from either a compensatory damage award or settlement to the Association from any Person for injuries to property, real or personal arising from any construction or design defects (the "Construction Reserve Funds"). Construction Reserve Funds shall be separately itemized from funds designated as Regular Reserve Funds.

Reserve funds shall be deposited in a separate account; and the signatures of at least two persons, who shall either be members of the Board or one officer who is not a member of the Board and a member of the Board, shall be required to withdraw monies from the reserve account. Reserve funds may not be expended for any purpose other than the repair, restoration, replacement, or maintenance of, or litigation involving the repair, restoration, replacement, or maintenance of, Major Components that the Association is obligated to maintain.

Notwithstanding the foregoing, the Board may authorize the temporary transfer of money from a reserve fund to the Association's general operating fund to meet short-term cash-flow requirements or other expenses in accordance with the requirements of Civil Code section 5515.

If the Board elects to use reserve funds or to temporarily transfer money from the reserve fund to pay for litigation, the Association shall provide a general notice pursuant to Civil Code section 4045 of that decision and of the availability of an accounting of these expenses. The Board shall distribute a written accounting of this expense to the Members on at least a quarterly basis, with the first accounting to be delivered no later than the 30th day following the Board's decision to use reserve funds for litigation, either directly or through a transfer to operating funds. In any proposed litigation in which the amount in controversy is expected to exceed \$25,000, the first accounting shall include a description of expenses paid to date, a description of the principal terms and conditions of any contract with any Person providing services in connection with the litigation, including attorneys and expert witnesses, a good faith estimate of the total legal fees, expert fees and other litigation costs that may be incurred, and a sample disclosure that Members should provide prospective purchasers, lenders and other parties that have obtained or may obtain an interest in the Owner's Lot regarding the litigation. In each subsequent accounting, the information required in the first accounting shall be appropriately updated.

At least once every three years, the Board shall cause to be conducted a reasonably competent and diligent visual inspection of the accessible areas of the Major Components that the Association is obligated to repair, replace, restore or maintain as a part of a study of the reserve account requirements of the

Development if the current replacement value of the Major Components is equal to or greater than one-half of the gross budget of the Association, excluding the Association's reserve account for that period. **The Board shall review this study annually and shall consider and implement necessary adjustments to the Board's analysis of the reserve account requirements as a result of that review.**

The study, at a minimum, shall include:

- (a) identification of the Major Components that the Association is obligated to repair, replace, restore, or maintain that, as of the date of the study, have a remaining useful life of less than 30 years;
- (b) identification of the probable remaining useful life of the Major Components identified in subparagraph (a) as of the date of the study;
- (c) an estimate of the cost of repair, replacement, restoration, or maintenance of the Major Components identified in subparagraph (a) during and at the end of its useful life;
- (d) an estimate of the total annual contribution necessary to defray the cost to repair, replace, restore, or maintain the Major Components during and at the end of its useful life after subtracting total reserve funds as of the date of the study; and
- (e) a reserve funding plan that indicates how the Association plans to fund the contribution identified in paragraph (iv) to meet the Association's obligations for the repair and replacement of all Major Components with an expected remaining life of 30 years or less, not including those components that the Board has determined will not be replaced or repaired. The plan shall include a schedule of the date and amount of any change in regular or special assessments that would be needed to sufficiently fund the reserve funding plan. The plans shall be adopted by the Board at an open meeting before the membership of the Association as described in Article 2 (commencing with Civil Code section 4900) of Chapter 6 of the Davis-Stirling Act. If the Board determines that an assessment increase is necessary to fund the reserve funding plan, any increase shall be approved in a separate action of the Board that is consistent with the procedure described in Civil Code section 5605.

As used herein, "reserve accounts" has the meaning set forth in Civil Code section 4177 or any successor statute thereto.

6.4 Special Assessments. Subject to the restrictions described in **Section 6.6**, the Board may levy a special assessment if the Board in its discretion determines that the Association's available funds are or will become inadequate to meet the estimated expenses of the Association, including, but not limited to, expenses resulting from inadequate reserves, unanticipated delinquencies, costs of construction, unexpected repairs or replacements of capital improvements, inadequate insurance proceeds, or other unanticipated expenses. The Board may levy the entire special assessment immediately or levy it in installments over a period the Board considers appropriate.

6.5 Reimbursement Assessments. The Board shall have the authority to levy reimbursement assessments against one or more Lot Owners to reimburse the Association for any costs incurred or to be incurred by the Association as the result of any act or omission of any Owner or Occupant of any Lot or their Permittees or pets. The levy shall not include any portion that is paid or will be paid by any insurer under a policy maintained by the Association. Payment of the deductible amount shall be the responsibility of the Owner and is subject to a reimbursement assessment. If the reimbursement assessment is levied and paid before all or any portion of the costs have been incurred by the Association and the amount paid exceeds the costs incurred, the Association promptly shall refund the excess to the Owner. If the costs exceed the amount, the Owner shall reimburse the Association within 30 days thereafter. If payment is not made when due, the payment shall be considered a delinquent assessment and the Association may enforce the delinquent assessment as described in **Section 6.10**, subject to the non-judicial foreclosure restrictions described in this **Section 6.5**.

In addition to reimbursing the Association for costs necessary to repair any Common Area or other property that is maintained by the Association, the Association may seek reimbursement for any costs incurred by the Association, including attorneys' fees, to bring the Owner or Occupant or the Owner's Lot into compliance with this Declaration, the Articles, Bylaws or Rules. A reimbursement assessment may not be levied against any Lot until notice and hearing have been provided the Owner as described in **Section 5.6.4**; and under no circumstances may a reimbursement assessment (or a monetary penalty imposed by the Association as a disciplinary measure for violation of this Declaration or the Rules) become a lien against the Owner's Lot that is enforceable by nonjudicial foreclosure proceedings under a power of sale. The foregoing restriction on enforcement is not applicable to late payment penalties or interest for delinquent assessments or charges imposed to reimburse the Association for loss of interest or for collection costs, including reasonable attorneys' fees, for delinquent assessments.

**6.6 Assessment Increase Restrictions.** The Association shall provide notice by personal delivery or by first-class mail to the Owners of any increase in the regular or special assessments not less than 30 days nor more than 60 days prior to the due date of the increased assessment.

The Board may not (i) impose an annual regular assessment for any fiscal year more than 20% above the annual regular assessment for the Association's preceding fiscal year or (ii) impose special assessments which in the aggregate exceed 5% of the budgeted gross expenses of the Association for that fiscal year without the approval of a majority of a quorum of Members, pursuant to Civil Code section 4070, at a meeting or election. For purposes of this **Section 6.6**, a "quorum" means more than 50% of the Owners. The foregoing restrictions on assessment increases do not apply to increases necessary for emergency situations. An emergency situation is any one of the following:

- (a) an extraordinary expense required by an order of court;
- (b) an extraordinary expense necessary to repair or maintain the Development or any part of it that the Association is responsible to maintain where a threat to personal safety within the Development is discovered; and/or
- (c) an extraordinary expense necessary to repair or maintain the Development or any part of it that the Association is responsible to maintain that could not have been reasonably foreseen by the Board in preparing and distributing the annual budget report required under Civil Code section 5300, provided that before the imposition or collection of any assessment under this subdivision the Board must 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 shall distribute the resolution to the Members with the notice of the assessment.

If the Board fails to distribute the annual budget report containing items (1), (2), (4), (5), (6), (7) and (8) required by **Section 5.10.1** for any fiscal year, the Association may not increase its annual regular assessment for that fiscal year, unless the Board has obtained the approval of a majority of a quorum of Members, pursuant to Civil Code section 4070, at a Member meeting or election. For the foregoing purposes, a quorum means more than 50% of the Owners of the Association.

**6.7 Commencement of Regular Assessments.** Annual regular assessments shall commence for all Lots in a phase on the first day of the month coinciding with or immediately following the date of the first transfer of title of a Lot in that phase by the Declarant to a purchaser under the authority of a final subdivision public report issued by the California Bureau of Real Estate or at an earlier date at the discretion of the Declarant. No Lot shall be subject to any special assessments until regular assessments have commenced against that Lot.

**6.8 Due Dates of Assessments.** Unless otherwise directed by the Board or unless accelerated as described herein, the annual regular assessment shall be collected in 12 equal monthly installments and each installment shall be due and payable on the first day of each month. If any monthly installment is delinquent, the Board, at its election, may accelerate the remaining installment payments so that the entire remaining balance of the annual regular assessment is immediately due and payable. Special assessments

shall be due on such date or dates as selected by the Board. Reimbursement assessments shall be due and payable ten days after the Owner receives the notice of the reimbursement assessment. The notice shall be deemed received on the date described in **Section 13.13**.

Any annual regular assessment installment (including any accelerated installments), special assessment, or reimbursement assessment not paid within 15 days after the due date shall be delinquent, shall bear interest at the rate of 12% per annum from 30 days after the due date until paid, and shall incur a late penalty in an amount to be set by the Board from time to time, not to exceed the maximum amount permitted by law.

**6.9 Allocation of Regular and Special Assessments.** Regular and special assessments levied by the Board shall be allocated in equal amounts among the Residential Lots. Notwithstanding anything herein to the contrary, if the use of any Lot, the equipment or facilities maintained within any Lot or any related reason results in an increase in the Association costs, including, but not limited to, increases in maintenance and repair costs, trash removal costs, commonly-metered utility costs or insurance costs, the Board may allocate the amount of the increase to the Lot or Lots responsible for the increase.

**6.10 Enforcement of Delinquent Assessments.** The Association may elect to pursue one or more of the following remedies in the event of a delinquent assessment:

**6.10.1 Personal Obligation.** The Association may bring a legal action directly against the Owner for breach of the Owner's personal obligation to pay the assessment and in such action shall be entitled to recover the delinquent assessment or assessments, accompanying late charges, interest, costs and reasonable attorneys' fees. Commencement of a legal action shall not constitute a waiver of any lien rights as described in **Section 6.10.2**.

**6.10.2 Assessment Lien.** Except as otherwise provided in **Section 6.5**, the Association may impose a lien against the Owner's Lot for the amount of the delinquent assessment or assessments, plus any costs of collection (including attorneys' fees), late charges and interest by taking the following steps:

(a) At least 30 days prior to recording a lien upon the Owner's Lot to collect a delinquent assessment, the Association shall notify the Owner in writing by certified mail of the following (the "Delinquency Notice"):

(i) A general description of the collection and lien enforcement procedures of the Association and the method of calculation of the amount, a statement that the Owner of the Lot has the right to inspect the Association records, pursuant to section 8333 of the Corporations Code, and the following statement in 14-point boldface type, if printed, or in capital letters, if typed: "IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST IS PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT ACTION".

(ii) An itemized statement of the charges owed by the Owner, including items on the statement which indicate the amount of any delinquent assessments, the fees and reasonable costs of collection, reasonable attorneys' fees, any late charges, and interest, if any.

(iii) A statement that the Owner shall not be liable to pay the charges, interest, and costs of collection, if it is determined the assessment was paid on time to the Association.

(iv) the right to request a meeting with the Board as provided by **Section 6.10.2(e)**.

(v) The right to dispute the assessment debt by submitting a written request for dispute resolution to the Association pursuant to the Association's "meet and confer" program required in Article 2 (commencing at Civil Code section 5900) of Chapter 10 of the Davis-Stirling Act.

(vi) The right to request alternative dispute resolution with a neutral third party pursuant to Article 3 (commencing at Civil Code section 5925) of Chapter 10 of the Davis-Stirling Act before the Association may initiate foreclosure against the Owner's Lot, except that binding arbitration shall not be available if the Association intends to initiate a judicial foreclosure.

(b) Any payments made by the Lot Owner toward the delinquent assessment shall first be applied to the assessments owed; and only after the assessments owed are paid in full shall the payments be applied to the fees and the costs of collection, attorneys' fees, late charges or interest. When an Owner makes a payment, the Owner may request a receipt and the Association shall provide it. The receipt shall indicate the date of payment and the Person who received it. The Association shall provide a mailing address for overnight payment of assessments.

(c) Prior to recording a lien for delinquent assessments, the Association shall offer the Owner and, if so requested by the Owner, participate in dispute resolution pursuant to the Association's "meet and confer" program required in Article 2 (commencing at Civil Code section 5900) of Chapter 10 of the Davis-Stirling Act.

Prior to initiating a foreclosure for delinquent assessments, the Association shall offer the Owner and, if so requested by the Owner, shall participate in dispute resolution pursuant to the Association's "meet and confer" program required in Article 2 (commencing at Civil Code section 5900) of Chapter 10 of the Davis-Stirling Act or alternative dispute resolution with a neutral third party pursuant to Article 3 (commencing at Civil Code section 5925) of Chapter 10 of the Davis-Stirling Act. The decision to pursue dispute resolution or a particular type of alternative dispute resolution shall be the choice of the Owner, except that binding arbitration shall not be available if the Association intends to initiate a judicial foreclosure.

(d) The decision to record a lien for delinquent assessments shall be made only by the Board and may not be delegated to an agent of the Association. The Board shall approve the decision by a majority vote of the Board members in an open meeting. The Board shall record the vote in the minutes of that meeting.

(e) An Owner may submit a written request to meet with the Board to discuss a payment plan for the delinquent assessment. The Association shall provide the Owners the standards for payment plans if any exist. The Board shall meet with the Owner in executive session within 45 days of the postmark of the request if the request is mailed within 15 days of the date of the postmark of the Delinquency Notice unless there is no regularly-scheduled Board meeting within that period, in which case the Board may designate a committee of one or more Members to meet with the Owner. Payment plans may incorporate any assessments that accrue during the payment plan period. Payment plans shall not impede an Association's ability to record a lien on the Owner's Lot to secure payment of delinquent assessments. Additional late fees shall not accrue during the payment plan period if the Owner is in compliance with the terms of the payment plan. In the event of a default on any payment plan, the Association may resume its efforts to collect the delinquent assessments from the time prior to entering into the payment plan.

(f) The amount of the assessment, plus any costs of collection, late charges, and interest assessed in accordance with **Section 6.8**, shall be a lien on the Owner's Lot from and after the time the Association causes to be recorded with the county recorder of the county in which the Lot is located a notice of delinquent assessment, which shall state the amount of the assessment and other sums imposed in accordance with Civil Code section 5650(b), a legal description of the Owner's interest in the Development against which the assessment and other sums are levied, and the name of the record owner of the Owner's interest in the Development against which the lien is imposed. The itemized statement of the charges owed by the Owner described in **Section 6.10.2(a)(ii)** shall be recorded together with a notice of delinquent assessment. In order for the lien to be enforced by nonjudicial foreclosure as provided in Civil Code sections 5700 to 5710, inclusive, the notice of delinquent assessment shall state the name and address of the trustee authorized by the Association to enforce the lien by sale. The notice of delinquent assessment shall be signed by any officer of the Association or by the Person designated by the Association for that purpose. A copy of the recorded notice of delinquent assessment shall be mailed by certified mail to every person whose name is shown as an Owner in the Association's records, and the notice shall be mailed no later than ten

calendar days after recordation. Within 21 days of the payment of the sums specified in the notice of delinquent assessment, the Association shall 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 Lot Owner a copy of the lien release or notice that the delinquent assessment has been satisfied.

A monetary charge imposed by the Association: (i) as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to Common Area Improvements or landscaping for which the Member or the Member's Occupants or Permittees were responsible; or (ii) as a disciplinary measure for failure of a Member to comply with the Governing Documents, except for the late payments, may not be characterized nor treated as an assessment that may become a lien against the Member's Lot enforceable by the sale of the interest under Civil Code sections 2924, 2924b and 2924c.

(g) A lien created pursuant to **Section 6.10.2(f)** shall be prior to all other liens recorded subsequent to the notice of assessment, except as described in **Article 10**.

(h) Subject to the limitations of this **Section 6.10**, after the expiration of 30 days following the recording of a lien created pursuant to **Section 6.10.2(f)**, the lien may be enforced in accordance with the procedures and requirements set forth in Article 3 (commencing with Civil Code section 5700) of Chapter 8 of the Davis-Stirling Act, including the applicable restrictions against judicial or nonjudicial foreclosure actions for delinquent regular or special assessments in an amount less than \$1,800 described in Civil Code section 5720(b).

(i) Within 21 days of the payment of the sums specified in the notice of delinquent assessment, the Association shall 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 a copy of the lien release or notice that the delinquent assessment has been satisfied.

(j) If it is determined that a lien previously recorded against a Lot was recorded in error, the party who recorded the lien, within 21 calendar days, shall 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 Lot Owner with a declaration that the lien filing or recording was in error and a copy of the lien release or notice of rescission.

(k) If the Association fails to comply with the procedures set forth in this **Section 6.10.2**, prior to recording a lien, the Association shall recommence the required notice process. Any costs associated with recommencing the notice process shall be borne by the Association and not by the Lot Owner.

(l) 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, attorneys' fees, costs of collection, costs imposed for the notice required under **Section 6.10.2(a)** and pay all costs related to the dispute resolution or alternative dispute resolution.

**6.10.3 Small Claims Court Resolution.** If a dispute exists between an Owner and the Association regarding any disputed charge or sum levied by the Association, including, but not limited to, an assessment, fine, penalty, late fee, collection cost, or monetary penalty imposed as a disciplinary measure, and the amount in dispute does not exceed the jurisdictional limits stated in Sections 116.220 and 116.221 of the Code of Civil Procedure, the Owner, in addition to pursuing dispute resolution under Article 3 of Chapter 10 of the Davis-Stirling Act commencing with Civil Code section 5925, may pay under protest the disputed amount and all other amounts levied, including any fees and reasonable costs of collection, reasonable attorneys' fees, late charges, and interest, if any, pursuant to Civil Code section 5650(b), and commence an action in small claims court for resolution of the dispute. Nothing in this **Section 6.10.3** shall impede the Association's ability to collect delinquent assessments as provided in **Section 6.10.2**.

The provisions of this Section 6.10 are intended to comply with the requirements of the Davis-Stirling Act. If these sections are amended, restated or rescinded in any manner, the provisions of this Section 6.10 automatically shall be amended, restated or rescinded in the same manner. The Board is advised to confirm the current statutory requirements prior to commencing any delinquent assessment enforcement action.

6.11 Assessment Exemption. Any Lot having no structural Improvement for human occupancy shall be exempt from the payment of that portion of any assessment that is for the purpose of defraying expenses and reserves directly attributable to the existence and use of the structural Improvement. The exemptions may include, but are not limited to:

- (a) roof replacement;
- (b) insurance;
- (c) exterior maintenance; and
- (d) landscaping.

The foregoing exemptions shall be in effect until the earliest of the following events:

- (i) a notice of completion of the structural Improvements has been recorded;
- (ii) occupation or use of the Lot; or
- (iii) completion of all elements of the residential structures that the Association is obligated to maintain.

The Declarant and any other Owner of a Lot are exempt from the payment of that portion of any assessment that 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 assessments commence. This exemption from the payment of assessments shall be in effect until the earliest of the following events:

- (i) a notice of completion of the common facility has been recorded; or
- (ii) the common facility has been placed into use.

6.12 Estoppel Certificate. Within ten days of the mailing or delivery of a written request by any Owner, the Board shall provide the Owner with a written statement containing the following information: (i) whether to the knowledge of the Association, the Owner or Occupant of the Owner's Lot is in violation of any of the provisions of this Declaration, the Articles, Bylaws or Rules; (ii) the amount of regular and special assessments, including installment payments, paid by the Owner during the fiscal year in which the request is received; and (iii) the amount of any assessments levied against the Owner's Lot that are unpaid as of the date of the statement, including any late charges, interest or costs of collection, and that, as of the date of the statement, are or may be made a lien against the Owner's Lot as provided by this Declaration. The Association may charge a fee to provide this information provided the fee shall not exceed the Association's reasonable cost to prepare and reproduce the requested items.

6.13 Restrictions on Association Funds. Pursuant to the requirements of Civil Code section 5135, no Member funds shall be used for campaign purposes in connection with any election of members to the Board or for company purposes in connection with any other Association election, except to the extent necessary to comply with duties of the Association imposed by law.

ARTICLE 7  
Architectural Review

7.1 Architectural Committee. An Architectural Committee may be established by the Declarant or by the Board. The Committee shall consist of three members. Declarant may appoint all of the original members of the Committee and all replacements until the first anniversary of the issuance of the original final subdivision public report for the Development. Declarant's appointees need not be Members of the Association. Declarant shall have the right to appoint a majority of the members of the Committee until 90% of all the Lots in the Development have been sold or until the fifth anniversary of the issuance of the final public report for the first phase of the Development, whichever occurs first. On the first anniversary date of the issuance of the original public report for the Development, the Board shall have the power to appoint one member to the Committee until 90% of the Lots of the Development have been sold or until the fifth anniversary date of the issuance of the final public report for the first phase of the Development, whichever first occurs. Thereafter, the Board shall have the power to appoint all of the members of the Committee. The Board appointees shall be Members of the Association and shall serve at the will of the Board. The term of the members shall be as designated by the Declarant or by the Board. If a member is removed from the Committee for any reason, the person appointing the member immediately shall appoint a replacement for the balance of the removed member's term. Until a replacement is named, the remaining members of the Committee shall have full authority to act on behalf of the Committee. No member of the Committee shall be entitled to any compensation for serving as a member, provided that member shall be entitled to be reimbursed by the Committee for any expenses incurred by the member in performing its duties, provided the member received prior authorization for the incurrence of the expense.

All actions of the Committee shall be governed by a majority vote of the members. The Committee shall meet at such times and places as it shall designate. Meetings of the Committee shall be open to all Members of the Association. The Committee may adopt guidelines regarding the type, location, quality, size, height and other matters relating to any Improvements or landscaping to be constructed or installed on the Lots and may establish a procedure for reviewing all plans and specifications submitted to it for prior approval and shall be responsible for periodic review and modification of the guidelines. The guidelines shall comply with the use restrictions described in Article 3. Factors that shall be considered in approving proposed plans and specifications shall include without limitation: (i) conformity and harmony of external design with other Lots in the Development; (ii) effect of the proposed location on neighboring Lots; (iii) relation of the topography, grade and finished ground elevation to that of adjoining Lots; (iv) proper facing of elevations with respect to nearby streets and adjoining Lots; (v) overall conformity with the general purpose of the Development and the restrictions in this Declaration; and (vi) the guidelines.

7.2 Approval Requirements. None of the following actions shall take place anywhere within the Development without the prior written approval of the Committee:

- (a) any construction, installation, addition, repair (including exterior painting), replacement, alteration or removal of any building, outbuilding, structure, exterior wall, roof, windows, exterior doors, exterior stairs, fence, sign, garage, trash enclosure, storage area, berms, utilities, fixtures (gas, electricity, telephone, water, or otherwise) or other Improvements visible from any other Lot or Common Area;
- (b) any planting or landscaping (including the removal of any tree);
- (c) any grading, excavation or site preparation;
- (d) any placement or storage of building materials or temporary structures (including trailers, tents, mobile homes, offices or vehicles); or
- (e) any replacement or modification to any wall materials, or any penetration or other disturbance of any wall if the replacement, modification, penetration or disturbance could result in any increase in the sound or impact transmissions from the residence to any adjoining residence.

If the Committee has established landscaping guidelines, the installation or replacement of all landscaping and planting (including tree removal) shall comply with the guidelines, subject to such variances as may be approved in writing by the Committee. Notwithstanding the foregoing to the contrary, the landscaping on each Lot is maintained by the Association, and shall be installed, maintained, removed and replaced by the Association in its discretion. In addition, any change to a building or to landscaping requires the prior approval of the City of Mountain View's Community Development Director, as provided in **Article 15** below.

The Committee may impose terms and conditions on any approval, including: (i) contractor licensing and insurance requirements (including workers compensation and liability insurance) (ii) completion and labor and material bonds or other acceptable collateral; and (iii) construction regulations such as authorized hours of construction, access restrictions, noise restrictions and clean-up requirements.

Changes to any landscaping or removal of trees may require the approval of the City of Mountain View.

**7.3 Architectural Rules.** The Committee, from time to time, may adopt, amend and repeal rules and regulations to be known as "Architectural Rules." Pending adoption of the Architectural Rules, the provisions of this **Section 7.3** shall control the actions of the Committee and shall bind all Owners. The Architectural Rules shall interpret and implement the provisions of this **Article 7**, and shall contain the following mandatory elements and such other elements as the Committee considers necessary or advisable:

**7.3.1 Application Requirements.** The Architectural Rules shall set forth the necessary documents to be submitted by the applicant. Unless otherwise waived in writing by the Committee, or an authorized representative thereof, the application shall include plans and specifications prepared by an architect or a licensed building designer which adequately describe the proposed work and shall include the following to the extent applicable to the proposed work: plot layout; location of all existing and proposed Improvements; setbacks from Lot lines of all existing and proposed Improvements; proposed drainage; exterior designs; roofing and siding materials; elevations; of all Improvements; floor plans; location of all heating or cooling equipment; decking; screening devices; bearing walls and retaining walls; materials and colors; landscaping plans; construction schedule; and such other information as the Committee shall reasonably require. Landscaping plans shall include a complete and professionally prepared plan including the name, location and sizes of all proposed trees, sodding, shrubbery, lawn areas, hardscape and irrigation system. The plans shall identify any trees scheduled for removal and describe the plans for replanting trees and vegetation.

If the proposed work does not merit extensive plans and specifications, the Committee may, but shall not be obligated to, waive or modify any of the above requirements upon receipt of a written request from the applicant to do so.

An application shall not be considered a "complete application" for purposes of **Section 7.4** until the Committee has received all the required documents. After the submission of an application, the applicant may request in writing from the Committee confirmation that the application is complete. The initial confirmation request may be made no sooner than seven calendar days after the initial application has been received by the Committee. If the Committee fails to respond within 30 days of receipt of the request, the application shall be considered complete for purposes of **Section 7.4** only. The foregoing does not preclude the Committee from requesting additional documentation unless the application has been deemed approved pursuant to the provisions of **Section 7.4**. If a timely request for additional documentation is received, this documentation or the failure to receive the documentation can be considered by the Committee in rendering its decision on the proposed work.

The application, any request for confirmation of a complete application, any additional documents requested by the Committee, and any other notices or documents given to the Committee under the provisions of this **Article 7** shall be considered received by the Committee in accordance with the "receipt" procedures described in the Architectural Rules or, if there are no such procedures, on the date of personal delivery to the Association's manager, the President of the Association, or the Chair of the Committee or, if

mailed, on the date receipt is acknowledged on the return receipt when mailed certified mail, return receipt requested, addressed to the President of the Association or Chair of the Committee and mailed to the principal office of the Association.

7.3.2 Application Fee. The Architectural Rules may require that the application be accompanied by a reasonable application fee to pay for any out-of-pocket costs incurred by the Committee in reviewing any plans and specifications. This fee may include the cost of retaining outside consultants for purposes of assisting the Committee in reviewing the plans and specifications. If, during the review process, the Committee determines that additional fees will be necessary to cover additional out-of-pocket costs, the Committee may require the applicant to advance any additional fees before the review can be completed. The proposed work can be denied for the sole reason that the applicant has failed to pay the required fees.

7.3.3 Guidelines and Variances. The Architectural Rules may include guidelines for any proposed work that are not inconsistent with any use restriction contained in this Declaration. The guidelines can apply to structures and/or landscaping. The guidelines may set forth specific standards regarding color, height, quality, setbacks, materials, size and such other standards as the Committee may adopt from time to time that are consistent with the approval conditions described in **Section 7.4**. The Committee, from time to time and upon request from the applicant, may grant variances from any guidelines established by the Committee. Under no circumstances shall the Committee have any authority to grant any variance that would result in violation of any use restrictions contained in this Declaration.

7.3.4 Hearings (Optional). If the Committee, in its sole discretion, elects to conduct a hearing on an application, reasonable notice of the time, place and proposed agenda for the Committee's hearing shall be distributed prior to the date of a hearing to any applicant whose application is scheduled to be heard. The applicant shall be entitled to appear at the hearing, shall be entitled to be heard on the matter, and may be accompanied by the applicant's architect, engineer and/or contractor. Notice also shall be given to such adjoining or nearby Lot Owners that the Committee reasonably believes could be affected by the proposed work. These Owners shall be entitled to attend the hearing and given reasonable opportunity to present their views on the proposed work.

7.3.5 Preliminary Approval Procedures. The Committee may adopt procedures for preliminary approval. This would enable applicants who are proposing to make Improvements an opportunity to obtain guidance and comments from the Committee prior to the expenditure of substantial sums on completed plans and specifications. Preliminary approval shall be granted if the Committee, in its sole discretion, determines that it would approve final plans as described in **Section 7.4**. Pending or denying preliminary approval, the Committee may give the applicant such directions or recommendations concerning the form and substance of the final application for approval as it may deem proper or desirable for guidance of the applicant. Any preliminary approval granted by the Committee shall be effective for a period of 90 days from the date of issuance or such longer period as, in the Committee's discretion, may be granted. During this period, any application for final approval that presents complete plans and specifications for the proposed Improvements, consistent with the provisions of preliminary approval and otherwise acceptable under the terms of this Declaration and the Architectural Rules, shall be approved by the Committee. In no event shall any preliminary approval of a proposed Improvement constitute final approval authorizing construction of the Improvement. The purpose of the preliminary review procedure is to give the applicant a measure of security in proceeding with completion of plans and specifications for the proposed Improvement, committing funds thereto. Final approval shall be based on a complete submittal conforming to the requirements of this **Section 7.3**.

7.4 Basis for Approval. The Committee shall not approve the application unless the Committee, in its sole discretion, finds all of the following conditions have been satisfied:

(a) the applicant has complied with the application procedures described in **Section 7.3** and any additional procedures adopted by the Committee;

(b) the proposed work is in compliance with the use restrictions contained in this Declaration, the Architectural Rules, and, unless a variance is granted, any guidelines established by the Committee under **Section 7.3.3** in effect at the time the application was submitted to the Committee;

(c) the proposed work is in compliance with all governmental laws and ordinances (the Committee shall have no duty to independently confirm such compliance);

(d) if the proposed work involves any exterior modifications or additions, the work is in harmony with the external design of other structures and/or landscaping within the Development and is consistent with the architectural and aesthetic standards prevailing within the Development and with the overall general plan and scheme of the Development; and

(e) if the residence immediately abuts the wall of an adjoining residence, the proposed work will not unreasonably increase the sound transmissions, resonances or reverberations to the other residence.

The Committee shall be entitled to determine that the proposed work is unacceptable even if the same or similar work previously had been approved for another Lot as long as the Committee finds that reasonable factors exist to distinguish this application from the approved work. The Committee shall be entitled to make subjective judgments and to consider the aesthetics of a proposal when the proposed work will result in Improvements and/or landscaping that can be seen from any other Lot or public right-of-way as long as the Committee acts in good faith and not unreasonably, arbitrarily or capriciously.

In approving any proposed work, the Committee may grant conditional approval on the adoption of modifications to the proposed work that in the Committee's judgment are necessary to bring the proposed work into compliance with the approval conditions contained in this **Section 7.4**. In addition, the Committee may impose reasonable construction restrictions, such as construction hours, dust controls, noise abatement measures, and such other conditions as the Committee may reasonably require, to minimize the interference with the quiet use and enjoyment of the surrounding residences during the course of construction.

In reviewing and approving plans, the Committee shall comply with the requirements of Civil Code section 4765, the applicable requirements of Civil Code section 714, the restrictions contained in **Article 3** and with all federal, State and local laws regulating the rights of handicapped persons. If there is any conflict between this **Article 7** and Civil Code section 4765, Civil Code section 4765 shall control to the extent of the conflict.

**7.5 Architectural Committee's Decision.** The decision on any proposed work shall be in writing. If a proposed change is disapproved by the Committee, the written decision shall include both an explanation of why the proposed change is disapproved and a description of the procedure for reconsideration of the decision by the Board. If disapproved, the applicant is entitled to reconsideration by the Board at an open meeting of the Board unless the disapproval decision was made by the Board instead of the Committee or unless the Architectural Committee has the same members as the Board. Reconsideration by the Board does not constitute a dispute resolution procedure described in **Section 5.6.7**.

If the Committee fails to approve or disapprove any application or fails to request additional information within 60 days of receipt of either the complete application or any advance fees required by the Committee, whichever shall occur later, the application shall be deemed approved unless a written extension is executed by the Person submitting the application and by the Committee. The burden shall be on the applicant to establish that the Committee did receive the complete application and/or advance fees and to establish the date of receipt.

**7.6 Completion of Work.** On receipt of approval, the Owner shall commence the work as soon as reasonably practicable and shall diligently pursue the completion of the work. If the work is not commenced within 90 days after receipt of approval or completed within 180 days or such later date as the Committee shall approve in writing, the approval automatically shall be deemed revoked and no further work

shall be done without again obtaining the written approval of the Committee as described herein. The work shall be done in strict compliance with the approved plans except for minor non-material changes as may be necessary during the course of construction.

7.7 Non-liability. The Association, the Committee, the Declarant, and the other Lot Owners, and their respective successors or assigns, shall not be liable to any Person submitting plans to the Committee for approval or to any other Lot Owners or Occupants by reason of any act or omission arising out of or in connection with the approval or disapproval of any plans or specifications. Approval shall not constitute any warranty or representation by the Committee or its members that the plans satisfy any applicable governmental law, ordinance or regulation or that any Improvement constructed in accordance with the plans shall be fit for the use for which it was intended and safe for use and occupancy. Applicants shall make their own independent verifications of the foregoing and shall not rely on the Committee or its members in any manner in this regard.

7.8 Enforcement. If any Owner or Occupant violates the provisions of this **Article 7**, the Declarant or the Association, in addition to levying monetary fines and penalties and in addition to any other remedy available at law or equity, may bring an action to compel compliance, including an action for a court order mandating the removal of any Improvement or other property constructed or installed in violation of the provisions of this **Article 7**. In such action, the prevailing party shall be entitled to recover costs and reasonable attorneys' fees.

7.9 Board's Authority. If for any reason the Committee is not established or not active, the Board shall perform the duties and shall have the rights of the Committee as described in this **Article 7**.

7.10 Governmental Approval. Before commencement of any addition of any Improvement or any alteration to any Improvement approved by the Committee, the Owner shall comply with all the appropriate governmental laws and regulations. Approval by the Committee does not satisfy the appropriate approvals that may be required from any governmental entity with appropriate jurisdiction.

7.11 Declarant Exemption. Declarant, or its successor or assign, shall not be subject to the approval requirements of this **Article 7** in connection with the construction or alteration of any Improvement within the Development or the installation of any landscaping, provided that this exemption shall expire on the third anniversary date of the recordation of this Declaration. In addition Declarant, or its successor or assign shall not be subject to the approval requirements of this **Article 7** in connection with any repairs or modifications made to any Improvements as may be required by law or pursuant to an agreement with any Lot Owner or the Association.

## ARTICLE 8 Insurance

8.1 Liability Insurance. The Association shall obtain and maintain the following liability policies:

8.1.1 Commercial General Liability Policy: A commercial general liability insurance policy insuring the Association, any manager, Declarant, the Association's directors and officers, and the Owners against bodily injury or property damage from an accident or occurrence within the Common Area. Subject to the terms and conditions of the policy, the policy also shall cover bodily injury or property damage from an accident or occurrence within any Lot related to any maintenance or repair work required to be performed on any Lot by the Association pursuant to this Declaration, including, but not limited to, work performed in any Common Area. The policy shall include, if obtainable, cross liability or severability of interest coverage. The limits of such insurance shall not be less than \$1,000,000 covering all claims for bodily injury and property damage arising out of a single occurrence. Such insurance shall include coverage against liability for owned, non-owned and hired automobiles and other liability or risk customarily covered with respect to projects similar in construction, location and use and shall require at least 30 days' written notice to the Association before the policy can be cancelled or substantially modified unless the policy is being replaced with a policy of

equivalent coverage. The policy shall be primary and noncontributing with any other liability policy covering the same liability.

8.1.2 Directors and Officers Liability Policy: A directors and officers liability policy containing such terms and conditions that are normally and customarily carried for directors and officers of a residential association and in sufficient amounts to satisfy the insurance requirements of Civil Code section 5800 or any successor statute thereto.

8.2 Association Property Insurance. The Association shall obtain and maintain a master property insurance policy that satisfied each of the following conditions:

8.2.1 Property Covered. The policy shall cover the following real and personal property:

(a) Residential Structures. All residential structures, including buildings and any additions or extensions thereto; all fixtures, machinery and equipment permanently affixed to the building; windows; fences; monuments; lighting fixtures situated outside the Units; exterior signs; and personal property owned or maintained by the Association; and recreational facilities; but excluding land; excavations; and other items typically excluded from property insurance coverage;

(b) Residential Interiors. The fixtures originally installed by or on behalf of the Declarant, including upgrades and any equivalent replacements thereto, including interior walls and doors; ceiling, floor and wall surface materials (e.g., paint, wallpaper, mirrors, carpets, and hardwood floors); utility fixtures (including gas, electrical and plumbing); cabinets; built-in appliances; heating and air-conditioning systems; water heaters installed as a part of the original construction of the residence and any equivalent replacements; but excluding any personal property located in the residential structure; and excluding any additions or upgrades to any of the insured Improvements made after completion of the original construction of the residence to the extent the replacement cost of any such upgrade or addition exceeds the replacement cost of the original Improvements as determined on the date that immediately precedes the date of the damage or destruction of the Improvement or upgrade; and

(c) Common Area Furnishings, Landscaping & Utilities. All fixtures and furnishings installed in the Common Area, including benches, tables, bike racks, mailboxes, shade and other structures, Common Area and Lot landscaping including lawn, trees, shrubs and plants, and utilities located in the Common Area to the extent typically included in such insurance.

8.2.2 Covered Cause of Loss. The policy shall provide coverage against losses caused by fire and all other hazards normally covered by a "special form" policy or its equivalent.

8.2.3 Dollar Limit. The dollar limit of the policy shall not be less than the full replacement value of the covered property described in Section 8.2.1 above based on the insurance industry standards for determination of replacement costs, provided that there may be lower dollar limits for specified items as is customarily provided in property insurance policies.

8.2.4 Primary. The policy shall be primary and noncontributing with any other insurance policy covering the same loss.

8.2.5 Endorsements. The policy shall contain the following endorsements or their equivalents: agreed amount, inflation guard, ordinance or law, and replacement cost, and such other endorsements as the Board in its discretion shall elect after consultation with a qualified insurance consultant.

8.2.6 Waiver of Subrogation. The Association waives all subrogation rights against any Owner or Occupant and their family members and invitees. The policy shall include an acknowledgment of the Association's right to waive all subrogation rights against the Owner.

8.2.7 Deductible. Except as otherwise provided by the Board in writing, when a claim is made on the Association's property insurance policy, an Owner is responsible for payment of damage up to the amount of the deductible in circumstances: (i) where damage is caused by the fault of the Owner or the Owner's Occupants or their Permittees; and/or (ii) where damage is caused by the failure of some portion of the Lot which the Owner is responsible for maintaining. In cases where fault cannot be determined, the Association shall pay the deductible. Association may levy a reimbursement assessment against an Owner's Lot as authorized under **Section 6.5** for the Owner's share of the deductible.

8.3 Insurance Rating and Cancellation. The insurance company providing the Association's insurance under **Sections 8.1** and **8.2**, if applicable, shall have an A.M. Best rating of not less than A:VII if licensed to do business in the State of California and a rating of not less than A:X if not licensed to do business in the State of California. If the A.M. Best ratings are no longer available, the insurance ratings shall be based on equivalent ratings issued by an independent insurer company rating entity used by financial institutions for insurance rating purposes. All of the policies of insurance maintained by the Association shall contain a provision that such policy or policies shall not be cancelled or terminated, or expired by their terms, or not renewed without 30 days' prior written notice to the Board, the Owners and their respective first Mortgagees (provided that such Owners or Mortgagees have filed written requests with the carrier for such notice) and every other Person in interest who shall have requested such notice of the insurer.

8.4 Board's Authority to Revise Insurance Coverage. The Board shall have the power and right to deviate from the insurance requirements contained in this **Article 8** in any manner that the Board, in its discretion, considers to be in the best interests of the Association, provided that the Board shall maintain the minimum insurance requirements set forth in Civil Code section 5800 or in any successor statute thereto. If the Board elects to materially reduce the coverage from the coverage required in this **Article 8**, the Board shall make all reasonable efforts to notify the Members of the reduction in coverage and the reasons therefor at least 30 days prior to the effective date of the reduction.

The Board is authorized to negotiate and agree on the value and extent of any loss under any policy carried by the Association, including, but not limited to, the right and authority to compromise and settle any claim or enforce any claim by legal action or otherwise and to execute releases in favor of any insurer.

Each Owner, by acceptance of a deed to a Lot, irrevocably appoints the Association or the Insurance Trustee, described in **Section 8.6**, as that Owner's attorney-in-fact for purposes of procuring, negotiating, accepting, compromising, releasing, settling, distributing and taking other related actions in connection with any insurance policy maintained by the Association and any losses or claims related thereto and agrees to be bound by the actions so taken as if the Owner had personally taken the action.

8.5 Periodic Insurance Review. The Board periodically (and not less than once every three years) shall review the Association's insurance policies and make such adjustments to the policies' terms and conditions as the Board considers to be in the best interests of the Association. If applicable, the review shall include an appraisal by a qualified appraiser of the current replacement costs of all covered property under the Association's property insurance policy unless the Board is satisfied that the current dollar limit of the property insurance policy, coupled with the amount of actual reserves on hand, is equal to or greater than the current replacement costs.

8.6 Insurance Trustee. All property insurance proceeds payable to the Association under any property insurance policy procured by the Association as described in **Section 8.2**, subject to the rights of Mortgagees under **Article 10**, may be paid to a trustee as designated by the Board to be held and expended for the benefit of the Owners and Mortgagees as their respective interests shall appear. The trustee shall be a commercial bank or other financial institution with trust powers in the county in which the Development is located that agrees in writing to accept such trust. If repair or reconstruction is authorized, the Association will have the duty to contract for such work as provided for in this Declaration.

8.7 Owners' Liability and Property Insurance. Each Owner shall obtain and maintain property insurance against losses to personal property located within the residence and to any additions or upgrades not covered under **Section 8.2.1(b)** and shall maintain liability insurance against any liability resulting from

any injury or damage occurring on, in, under or within the Lot. **The Association's insurance policies will not provide coverage against any of the foregoing.** Nothing herein imposes any duty or obligation on the Association or any director, officer or agent thereof to confirm that Owners are carrying the insurance required under this **Section 8.7.**

**Each Owner is strongly advised to seek the advice of a qualified insurance consultant regarding: (i) the amount of personal liability and personal property insurance coverage the Owner should maintain and (ii) the availability of loss assessment insurance coverage. In addition, Owners, particularly subsequent Owners, should determine whether any upgrades or additions to the Lot have been made after the initial occupancy of the Lot to determine whether the Owner should acquire additional insurance coverage.**

8.8 Other Insurance. In addition to the policies described in **Sections 8.1 and 8.2,** the Association may obtain and maintain the following insurance:

- (a) Workers Compensation Insurance to the extent required by law;
- (b) fidelity bonds or insurance covering officers, directors and employees who have access to any Association funds; and
- (c) such other insurance as the Board in its discretion considers necessary or advisable.

#### ARTICLE 9

##### Damage, Destruction or Condemnation

9.1 Restoration Defined. As used in this **Article 9,** the term "restore" shall mean repairing, rebuilding or reconstructing Improvements damaged or destroyed as a result of a fire or other casualty to substantially the same condition and appearance in which they existed prior to fire or other casualty damage.

9.2 Insured Casualty. If any Improvement is damaged or destroyed from a risk covered by the insurance required to be maintained by the Association and the insurance proceeds are sufficient to cover the loss, then the Association, to the extent permitted under existing laws and except as otherwise authorized under this **Article 9,** shall restore the Improvement subject to such changes as may be approved by the Architectural Committee or required by law. The Association shall proceed with the filing and adjustment of all claims arising under the existing insurance policies. The insurance proceeds shall be paid to and held by the Association or an insurance trustee selected under the provisions of **Section 8.6.** If the insurance proceeds exceed the costs of restoration, the excess proceeds shall be paid into reserves and held for the benefit of the Association.

9.3 Inadequate Insurance Proceeds or Uninsured Loss. If the insurance proceeds are insufficient to restore the damaged Improvement or the loss is uninsured, the Board shall add to any available insurance proceeds all reserve account funds designated for the repair or replacement of the damaged Improvement. If the total funds then available are sufficient to restore the damaged Improvement, the Improvement shall be restored. If the aggregate amount of insurance proceeds and such reserve account funds are insufficient to pay the total costs of restoration, a special assessment shall be levied by the Board up to the maximum amount permitted without the approval of the Members in accordance with the limitations set forth in this Declaration and by law. If the total funds then available are sufficient to restore the damaged Improvement, the Improvement shall be restored.

If the total funds available to the Association are still insufficient to restore the damaged Improvement, then the Board first shall attempt to impose an additional special assessment pursuant to **Section 9.4** below and, second, use a plan of alternative reconstruction pursuant to **Section 9.5** below. If the Members do not approve such actions, then **Section 9.6** shall apply.

9.4 Additional Special Assessment. If the total funds available to restore the damaged Improvement as provided in **Section 9.3** are insufficient, then a meeting of the Members shall be called for the purpose of approving a special assessment to make up all or a part of the deficiency ("Additional Special Assessment"). If the amount of the Additional Special Assessment approved by the Members and the amounts available pursuant to **Section 9.3** above are insufficient to restore the damaged Improvement or if no Additional Special Assessment is approved, the Association shall consider a plan of alternative reconstruction in accordance with **Section 9.5**.

9.5 Alternative Reconstruction. The Board shall consider and propose plans to reconstruct the damaged Improvement making use of whatever funds are available to it pursuant to **Section 9.3** and **Section 9.4** above ("Alternative Reconstruction"). All proposals shall be presented to the Owners. If two-thirds of the voting power of the Owners whose residences were materially damaged as determined by the Association ("Affected Owners") and a majority of the voting power of the Members, including the Affected Owners, agree to any plan of Alternative Reconstruction, then the Board shall contract for the reconstruction of the damaged Improvement in accordance with the plan of Alternative Reconstruction making use of whatever funds are then available to it. If no plan of Alternative Reconstruction is agreed to, then the provisions of **Section 9.6** shall apply.

9.6 Sale of Lots. If the damage renders a residence sharing the same roofing system uninhabitable, and the Improvements will not be restored in accordance with the provisions of **Sections 9.3, 9.4 and/or 9.5**, the Board, as the attorney-in-fact for each Owner of a Lot sharing the same roofing system shall be empowered to sell the Lots sharing the same roofing system in their then-present condition on terms to be determined by the Board, provided that the Board receives adequate assurances that the purchaser shall, and has the financial capability to: (i) restore the Improvement (either by renovation or removal and rebuilding); (ii) remove the Improvement and restore any remaining Improvements as may be necessary; (iii) remove the Improvement (including foundations), grade the area, and appropriately landscape or otherwise improve the area in any manner as may be acceptable to the Board; or (iv) perform any combination of the foregoing. Any work to be performed by the purchaser with respect to any of the foregoing shall be subject to the provisions of **Article 7**.

The proceeds from the sale, together with the insurance proceeds received and any reserve funds allocated to the Improvements, after deducting therefrom the Association's sale expenses, including commissions, title and recording fees, legal costs, and that portion of the proceeds used to fence, screen and otherwise secure the damaged area shall be distributed to the Owners of the Lots and their respective Mortgagees in proportion to the respective fair market values of the damaged Lots immediately prior to the date of the event causing the damage as determined by an independent appraisal made by a qualified real estate appraiser selected by the Board. The allocation of the insurance proceeds and reserve funds to the damaged Lots shall be made by the Board after consultation with a qualified consultant. Notwithstanding the foregoing, the Board and the Owners of the Lots that could be sold under this **Section 9.6** and their Mortgagees may agree in writing to modify the provisions in this **Section 9.6** as long as the damaged or destroyed Improvements are properly secured and screened pending repair and/or removal and repaired or removed within a time period that is reasonable under the circumstances and no later than one year from the date of the damage or destruction.

9.7 Rebuilding Contract. If there is a determination to restore, the Board or its authorized representative shall obtain bids from at least two licensed and reputable contractors and shall accept the repair and reconstruction work from whomever the Board determines to be in the best interests of the Members. The Board shall have the authority to enter into a written contract with the contractor for such repair and reconstruction, and the repair and reconstruction funds shall be disbursed to the contractor according to the terms of the contract. The Board shall take all steps necessary to assure the commencement and completion of authorized repair and reconstruction at the earliest possible date. Such construction shall be commenced no later than 180 days after the event requiring reconstruction and shall thereafter be diligently prosecuted to completion. Such construction shall return the Development to substantially the same condition and appearance in which it existed prior to the damage or destruction.

9.8 Condemnation. If any action for condemnation of all or any portion of the Common Area is proposed or threatened by any governmental agency having the right of eminent domain, then, after approval by vote or written consent of Members holding at least 51% of the total voting power of the Association and with the consent of the first mortgagees as may be required herein, the Common Area or a portion of it may be sold and conveyed to the condemning authority by the Association or its designees acting as the attorney-in-fact of all the Owners under an irrevocable power of attorney, which each Owner by accepting a deed to a Lot in the Development grants to the Board, and which shall be coupled with the interest of all other Owners, for a price deemed fair and equitable by the Board. Proceeds of any such sale shall be allocated equally among the Lots and distributed to each Owner and their Mortgagees as their respective interests may appear. If the Common Area or any portion of it is not sold but is instead taken, the award shall be apportioned among the Owners and their respective Mortgagees by the terms of the judgment of condemnation; and if not so apportioned, then the award shall be allocated equally among the Lots and distributed equally to each Owner and their Mortgagees as their respective interests may appear.

9.9 Dispute Resolutions. If there are any disputes regarding the rights and/or duties of the Owners or the Association under this **Article 9**, the dispute shall be submitted to mediation and, if necessary binding arbitration, to the American Arbitration Association (AAA), any successor thereto or any other alternative dispute resolution provider acceptable to the parties for resolution. If the mediation is unsuccessful, the dispute shall be resolved by binding arbitration in accordance with AAA's commercial rules. The mediation and arbitration shall be held in the county where the Development is located. The parties shall be entitled to the discovery rights provided by Code of Civil Procedure section 1283.05. The arbitrator may award costs and attorneys' fees to the prevailing party. The arbitrator's decision shall be binding on the parties and may be enforced in any court of competent jurisdiction.

## ARTICLE 10 Rights of Mortgagees

10.1 Lender Definitions. Unless the context indicates otherwise, the following terms as used in this **Article 10** shall have the definitions contained in this **Section 10.1**. An "institutional" Mortgagee is a first Mortgagee that is: (i) a federally or state chartered or licensed bank or savings and loan association; (ii) a mortgage company or other entity chartered or licensed under federal or state laws whose principal business is lending money on the security of real property or investing in such loans; (iii) an insurance company; (iv) a federal or state agency or instrumentality including, without limitation, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation; or (v) an insurer or governmental guarantor of a first Mortgage including the Federal Housing Administration and the Veterans Administration. A "first Mortgage" or "first Mortgagee" is one having a priority as to all other Mortgages encumbering the same Lot or other portions of the Development.

10.2 Encumbrance. Any Owner may encumber his or her Lot with a Mortgage or Mortgages.

10.3 Rights of Institutional Mortgagees. Any institutional Mortgagee who obtains title to a Lot pursuant to the remedies provided in the first Mortgage, including judicial foreclosure or nonjudicial foreclosure under a power of sale (but excluding voluntary conveyance to the first Mortgagee), shall take the Lot free of any obligation to pay any assessments that were delinquent as of the date the institutional Mortgagee acquired title to the Lot, including any interest, penalties or late charges in connection therewith. The institutional Mortgagee as Owner of the Lot shall be obligated to pay any assessments that were not delinquent as of the date the institutional Mortgagee took title to the Lot and all future assessments levied against the Lot as long as the institutional Mortgagee remains in title, including any special assessments levied by the Association to raise operating or reserve funds needed because of uncollected delinquent assessments, as long as the special assessment is allocated among all the Lots as provided in **Section 6.9**.

10.4 Subordination. Any assessment lien established under the provisions of this Declaration is expressly made subject to and subordinate to the rights of any Mortgage that encumbers all or any portion of the Development or any Lot made in good faith and for value and recorded before the recordation of a notice

of delinquent assessment. No assessment lien shall in any way defeat, invalidate or impair the obligation or priority of such Mortgage unless the Mortgagee expressly subordinates in writing its interest to such lien. If any Lot is encumbered by a Mortgage made in good faith and for value, the foreclosure of any assessment lien cannot operate to affect or impair the lien of any Mortgage recorded prior to the recordation of the notice of delinquent assessment. Upon the foreclosure of any prior-recorded Mortgage, any lien for delinquent assessment shall be subordinate to the Mortgage lien; and the purchaser at the foreclosure sale shall take title free of the assessment lien. By taking title, the purchaser shall be obligated to pay only assessments or other charges that were not delinquent at the time the purchaser acquired title or that were levied by the Association on or after the date the purchaser acquired title to the Lot. Any subsequently-levied assessments or other charges may include previously-unpaid assessments, provided all Owners, including the purchaser and its successors and assigns, are required to pay their proportionate share of such unpaid assessments.

10.5 Breaches. No breach of any provision of this Declaration shall invalidate the lien of any Mortgage made in good faith or for value; but all of the covenants, conditions and restrictions shall be binding on any Owner whose title is derived through foreclosure sale, trustee sale or otherwise.

## ARTICLE 11 Amendments

11.1 Amendment Before Close of First Sale. Before the close of the first sale of a Lot in the Development to a purchaser other than Declarant or an entity controlled by Declarant, this Declaration may be amended in any respect or rescinded by Declarant by recording an instrument amending or rescinding this Declaration. Before the close of the first sale of a Lot in a subsequent phase of the Development to a purchaser other than Declarant or entity controlled by Declarant, any declaration of annexation recorded pursuant to **Article 14** with respect to such phase may be amended in any respect or rescinded by the Declarant by recording an instrument amending the declaration of annexation or rescinding the declaration of annexation. If the declaration of annexation is rescinded, the phase shall be de-annexed from the Development and no longer subject to this Declaration. The amending or rescinding instrument shall make appropriate reference to this Declaration and its amendments and shall be acknowledged and recorded in the county in which the Development is located. For purposes herein, a Person is considered controlled by Declarant if the Declarant holds 50% or more of the capital and profit interests if a partnership or limited liability company, 50% or more of the voting shares if a corporation, and 50% or more of the beneficial interests if a trust.

11.2 Amendment After Close of First Sale. After the close of the first sale of a Lot in the Development to a purchaser other than Declarant or an entity controlled by Declarant, this Declaration may be amended as described in **Section 4.4** or amended or rescinded in any respect with the vote or written consent of the holders of not less than a majority of the voting rights of each class of Owners or, if a single class of Owners is then in effect, by the vote or written consent of not less than a majority of all votes and a majority of all votes excluding Declarant. If any provision of this Declaration requires a greater or lesser percentage of the voting rights of any class of Owners in order to take affirmative or negative action under such provision, the same percentage of such class or classes of Owners shall be required to amend or revoke such provision. Also, if the consent or approval of any governmental authority, Mortgagee, Owner or other person, firm, agency or entity is required under this Declaration with respect to any amendment or revocation of any provision of this Declaration, no such amendment or revocation shall become effective unless such consent or approval is obtained. Notwithstanding anything herein to the contrary, any provision in this Declaration that specifically confers rights or benefits on Declarant as the Declarant and not on any other Owner may not be amended or rescinded without the prior written consent of Declarant except as expressly authorized by Civil Code section 4230. The amendment is effective when it has been approved by the appropriate percentage of Owners as required herein, the approval has been certified in a writing executed and acknowledged by the officer designated in this Declaration or by the Association for that purpose (or, if no one has been designated, the President of the Association), and the amendment and certification have been recorded in the county in which the Development is located.

Notwithstanding anything herein to the contrary, the easements appurtenant to any Lot or Annexable Property as described in **Sections 2.3 and 2.4** may not be modified or terminated without the prior written consent of the Owner of the Lot or the owner of the Annexable Property, as applicable.

11.3 Corrections. Notwithstanding anything herein to the contrary, Declarant reserves the right as the attorney-in-fact for each Lot Owner to record an amendment or appropriate instrument of correction to correct any errors in this Declaration, any Declarations of Annexation, or any exhibits thereto, and the consent of neither the Association nor any Lot Owner shall be required provided that if the correction affects the size, location or access or use rights to any Lot, the consent of that Lot Owner shall be required.

11.4 Mortgagee Reserved Amendment Rights. Notwithstanding anything herein to the contrary, Declarant reserves the right to amend this Declaration as may be necessary or advisable in order to include provisions that satisfy the requirements of the Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), the Federal Housing Administration (FHA) and/or the Veterans Administration (VA). The Association and each Owner shall fully cooperate in the delivery, execution and recordation of any documents necessary to effect the amendments.

11.5 Amendment Rights of Annexable Property Owners. Notwithstanding anything herein to the contrary, the provisions granting rights (including easements) and imposing duties on the Annexable Property and its owners may not be rescinded or amended without the prior written consent of the Annexable Property owner.

11.6 City of Mountain View. Notwithstanding anything herein to the contrary, any amendment to any provision in this Declaration is subject to the approval rights of the City of Mountain View as described in **Section 15.1**.

## ARTICLE 12 Declarant Disputes

Any claim, dispute or other controversy between: (i) the Association and/or any Owner(s) and (ii) the Declarant or any affiliated general contractor or affiliated contractor who is a "builder" within the meaning of Civil Code section 911, or any director, officer, member, shareholder, partner, employee or agent thereof (individually and collectively the "Declarant" for purposes of this **Article 12**) and/or any non-affiliated general contractor, non-affiliated contractor, subcontractor, material supplier, individual product manufacturer, design professional or any other Person that provided materials or services to the Development on behalf of Declarant, relating to this Declaration, the use, condition, design, specifications, surveying, grading, construction, installation, operation or sale of any Improvements or landscaping located within the Development, including (a) claims for actual and/or economic damages; (b) fraud claims; (c) personal injury claims; (d) breach of contract claims; and (e) violation of statute claims made under Civil Code sections 896 and 897 (individually and collectively the "Claim"), shall be subject to the claims procedures set forth in **Exhibit C** attached hereto and incorporated herein.

The claims procedures in **Exhibit C** do not apply to any action taken by the Association to enforce delinquent assessments against Declarant, which shall be governed by **Section 6.10** of this Declaration.

## ARTICLE 13 Miscellaneous Provisions

13.1 Headings. The headings used in this Declaration are for convenience only and are not to be used to interpret the meaning of any of the provisions of this Declaration.

13.2 Severability. The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any provision or provisions or any portion thereof shall not invalidate any other provision or any portion of the provisions not found invalid or unenforceable.

13.3 Cumulative Remedies. Each remedy provided for in this Declaration shall be cumulative and nonexclusive. Failure to exercise any remedy provided for in this Declaration shall not, under any circumstances, be construed as a waiver of the remedy.

13.4 Discrimination. No Owner shall execute or cause to be recorded any instrument that imposes a restriction on the sale, leasing or occupancy of the Owner's Lot on the basis of race, color, religion, sex, gender identity, gender expression, sexual orientation, familial status, marital status, disability, genetic information, national origin, source of income as defined in Government Code section 12955(p), or ancestry.

13.5 Notification of Sale. No later than five days after the closing of the sale of any Lot, the new Owner shall notify the Association of such sale. Such notification shall be in writing and shall set forth the name and address of the new Owner and the date of sale.

13.6 Reservation or Grant of Easements. Any easements referred to in this Declaration shall be deemed reserved or granted, or both reserved and granted, by reference to this Declaration in any deed to any Lot.

13.7 Incorporation of Exhibits. All exhibits referred to herein and attached to this Declaration are incorporated herein by reference as fully set forth herein.

13.8 Enforcement Rights and Remedies. The covenants, restrictions, rights and duties contained in this Declaration constitute covenants running with the land and equitable servitudes that benefit and bind each Lot in the Development, each Owner, and each successive Owner thereto, and may be enforced by the Association, the Declarant or any Owner in any legal or equitable action pursuant to the procedures described herein. Declarant may enforce any covenants, restrictions, and rights set forth in this Declaration that expressly benefit Declarant without regard to whether Declarant owns any Lots in the Development.

Each Owner acknowledges and agrees that if any Person breaches any of the restrictions contained herein, money damages may not be adequate compensation. As a result, each Owner agrees that in the event of a breach, the non-breaching party, in addition to any other remedy available at law or equity, shall be entitled to equitable relief, including, but not limited to, an order compelling the breaching party to perform an act which the party is required to perform under this Declaration or which is necessary to bring the breaching party or the breaching party's Lot into compliance with restrictions contained herein or prohibiting the breaching party from performing any act that violates the restrictions.

Notwithstanding anything herein to the contrary, the Association shall have the exclusive right to levy assessments and to take appropriate action to enforce delinquent assessments, including imposition of an assessment lien and the foreclosure of the lien. Furthermore, the Association shall have the primary responsibility for enforcing the restrictions contained in **Article 3** and the architectural provisions contained in **Article 7**. If any Owner or Occupant desires the Association to take any enforcement action, the Owner or Occupant shall notify the Association in writing of the alleged violation. On receipt, the Board shall review the matter and shall determine what action, if any, to take. Neither the Board nor the Association or any director, officer or agent thereof shall be liable if the Board in the exercise of its judgment elects not to take any action. To the extent applicable, the Board shall comply with the due process requirements described in this Declaration. If within 90 days after receipt of the notice the Board has failed to take any corrective action and the alleged violation has not been cured and is continuing, any Owner may bring an action on the Owner's behalf for appropriate legal and/or equitable relief. In such action, the Owner shall bear his or her own costs and attorneys' fees, provided that the prevailing party in such action shall be entitled to recovery of such costs and fees.

Prior to the commencement of any action by the Association, the Declarant or Owner to enforce the Governing Documents, the Davis-Stirling Act or the Nonprofit Mutual Benefit Corporation Law (Corporations Code sections 7110-8910), the Association, the Declarant or the Owner shall comply with the applicable requirements of Article 3 (commencing with Civil Code section 5925) of Chapter 10 of the Davis-Stirling Act.

13.9 Term. The term of this Declaration shall be for a period of 50 years from the date on which this Declaration is recorded in the records of the county in which the Development is located. After that time, this Declaration and each of its restrictions and covenants and other provisions automatically shall be extended for successive ten-year periods unless this Declaration is rescinded by the written consent of Owners holding a majority of the total voting power of the Association. The rescission shall be effective on recordation of a notice of rescission in the records of the county in which the Development is located.

13.10 Reserved Rights of Declarant. Declarant is recording this Declaration as part of the construction of a residential development. No covenant or restriction contained herein shall be applied in any manner that would unreasonably interfere with Declarant's rights to complete the construction of the Improvements and to sell the Improvements. The rights retained by Declarant during the construction and sales period include, but are not limited to, the right to:

- (a) maintain construction equipment, personnel and materials within the Development;
- (b) use such portions within the Development as may be necessary or advisable to complete the construction or sales;
- (c) maintain construction and/or sales offices within the Development and appropriate parking to accommodate the foregoing;
- (d) maintain sale signs or other appropriate advertisements within the Development ;
- (e) maintain model homes for viewing by prospective purchasers; and
- (f) allow prospective purchasers access to the Development to inspect any Common Area or any model homes.

13.11 Assignment by Declarant. Declarant may assign all or any portion of its rights and delegate all or any portion of its duties to any other Person; and from and after the date of such assignment and/or delegation, the Declarant shall have no further rights and/or duties hereunder with respect to the rights assigned and duties delegated. Any successor or assignee of rights and duties of the Declarant shall execute an instrument assuming the rights and duties of the Declarant assigned and delegated hereunder and thereafter shall be entitled to exercise all the rights of Declarant so assigned and shall be obligated to perform all the Declarant's duties so delegated, provided such successor or assignee shall not be liable in any manner for any act or omission committed or omitted by the Declarant before the date the successor or assignee succeeded to the rights of the Declarant hereunder.

13.12 Attorneys' Fees. Except as provided in **Article 12**, in the event of any litigation, alternative dispute resolution procedure, or arbitration regarding the rights or duties under the Governing Documents of the Association or any Member, the prevailing party in such proceeding, in the discretion of the judge or decision-maker, shall be entitled to recover costs, including reasonable attorneys' fees.

13.13 Notices. Any notice permitted or required by this Declaration, the Articles, Bylaws or Rules shall be considered received on the date the notice is personally delivered to the recipient or 48 hours after the notice is deposited in the United States mail, first-class, registered or certified, postage prepaid and addressed to the recipient at the address that the recipient has provided the Association for receipt of notice or, if no such address was provided, at the recipient's Lot address in the Development.

13.14 No Enforcement Waiver. Failure to enforce a restriction in the past in and of itself shall not constitute a defense to any action brought against any Owner for violation of any restriction contained herein. Each Owner, by acceptance of a deed to a Lot in the Development, acknowledges that the enforcement of these restrictions may vary as a result of different Owners, Boards or Architectural Committees, changing conditions, or other reasons and agrees that the failure of any Owner, Board or Committee to enforce any particular restriction, even if such failure is for an extended period of time, shall not in any manner restrict or estop the right of any Owner, Board or Committee to enforce these restrictions at any future time.

13.15 Statutory Reference. Any reference to a governmental statute in this Declaration includes any amendments to the statute. If the statute is replaced by an equivalent statute, the equivalent statute shall be the applicable statute.

#### ARTICLE 14 Annexation

14.1 Automatic Annexation. The Annexable Property described in **Exhibit A** or any portion thereof may be annexed at any time into the Development in one or more phases and made subject to this Declaration at the election of the Declarant (or by the successors in title to such real property and to whom Declarant has assigned annexation rights). Declarant reserves the right to determine the number of phases, the number of lots in a phase, and the building types in a phase. Declarant makes no representations or warranty that any subsequent phase will be annexed into the Development and has no obligation to annex any subsequent phase into the Development. Each election shall be made by the recording of a declaration of annexation. The declaration of annexation shall describe the real property to be annexed and shall state that it is being executed pursuant to the terms of this Declaration for the purpose of annexing the property described in the declaration of annexation into the Development and to subject the property to the terms of this Declaration. Any declaration of annexation recorded in accordance with the terms of this section shall be conclusively presumed valid in favor of all Persons who relied on it in good faith. In recording the declaration of annexation in accordance with the provisions of this Declaration, the real property described in the declaration of annexation shall be a part of the Development and subject to the provisions of this Declaration and to the rights and powers of the Association pursuant to the terms of this Declaration, the Articles and the Bylaws; and thereafter all Owners of Lots constituting a portion of the annexed real property shall automatically be Members of the Association with voting rights commencing on the date regular assessments commence. Regular and special assessments with respect to the annexed property shall commence at the time and to the extent described in **Section 6.7**.

Declarant reserves the right to rescind any declaration of annexation before Declarant has transferred title to any Lot in the declaration of annexation to any purchaser under the authority of a final subdivision public report issued by the California Bureau of Real Estate. The rescission shall be effective on the date a notice of rescission is recorded in the records of Santa Clara County, California. From and after this rescission, the property described in the declaration of annexation shall no longer be subject to the covenants, rights, duties, benefits or burdens set forth in this Declaration except as otherwise provided in the notice of rescission. Any declaration of annexation may be amended or corrected in the manner described in **Article 11**.

The declaration of annexation may contain complementary additions, amendments and modifications to this Declaration necessary to reflect the different character, if any, of the real property being annexed which are not consistent with the general scheme of this Declaration or which are required by any institutional Mortgagee as defined in **Section 10.1** to make Lots in the Development eligible for mortgage, purchase, guarantee or insurance, or by the City of Mountain View in approving subsequent phases of the Development.

If the annexed property has been rented for at least one year before the closing of the first Lot in the annexed phase, the Declarant shall pay the Association appropriate amounts for reserves for replacement or deferred maintenance of Common Area Improvements or other Improvements that the Association is required to maintain in the annexed phase.

14.2 Pre-Annexation Easement Rights and Duties. Pending annexation and the commencement of assessments, if the owner of the Annexable Property (or any portion thereof) uses the easement rights granted in **Section 2.3.5**, the owner shall pay an equitable share of the cost of the maintenance, repair, replacement and insurance of the Improvements located within the Common Area private streets. The owner's allocable share shall be based on the amount of use, type of use and other relevant factors. The owner shall remit to the Association its share of the costs within 30 days after receipt of demand for same. If owner fails to pay its share when due, the Association may bring an action in any court of competent jurisdiction to recover the cost, together with interest therein at the rate of 12% per annum, but in no event greater than the maximum rate authorized by law. In such action, the prevailing party shall be entitled to recover costs and attorneys' fees.

If there are any disputes regarding the owner's allocable share of the cost, the dispute shall be submitted to mediation and, if necessary binding arbitration, to the American Arbitration Association (AAA), any successor thereto or any other alternative dispute resolution provider acceptable to the parties for resolution. If the mediation is unsuccessful, the dispute shall be resolved by binding arbitration in accordance with AAA's commercial rules. The mediation and arbitration shall be held in Santa Clara County, California. The parties shall be entitled to the discovery rights provided by Code of Civil Procedure section 1283.05. The arbitrator may award costs and attorneys' fees to the prevailing party. The arbitrator's decision shall be binding on the parties and may be enforced in any court of competent jurisdiction. If the owner fails to initiate mediation within the 30-day period after receipt of written demand from the Association for payment of the owner's share of the cost, it shall be presumed conclusively that the owner has waived its mediation and arbitration rights with respect to that demand, and the Association may commence legal action to collect the owner's share of the costs.

14.3 Annexation by Approval. Except for the automatic annexation provision contained in **Section 14.1**, no additional real property shall be annexed into the Development without the approval of Members holding two-thirds of the total voting power of the Association other than Declarant and such approval of Mortgagees as may be required herein.

## ARTICLE 15

### City of Mountain View Requirements

15.1 Amendments. **Section 3.4, Article 4, Article 6 and this Article 15** shall not be amended without the prior written consent of the City of Mountain View (the "City").

15.2 No Discrimination Against Families with Children Allowed. There shall be no discrimination against any person or persons having children in the sale, lease or rental of any residence; nor shall any person of any age be discriminated against in the use and availability of common facilities, services or other privileges associated with his or her occupancy of a residence. The City shall also be entitled to enforce this **Section 15.2** in any manner provided by law.

15.3 Modifications or Additions to Any Building Structures. A master plan that establishes rules for the modification or addition of any building at this site, including fences, trellises, sunshades and accessory buildings is on file with the Planning Department of the City, and incorporates the provisions set forth in the Master Plan attached as **Exhibit D**. The rules are consistent with the provisions of the Evandale Precise Plan and were approved by the Zoning Administrator. No modifications to any building structure may be made by the Association or an Owner unless such modifications are in accordance with an approved master plan for such modifications approved by and on file with the City. Any changes to the master plan require prior approval of the City Community Development Department. Under the master plan, the exteriors of buildings may not be modified, nor any structures added to the Common Area without the prior approval of the City Community Development Department. The Development is fully built out and no accessory structures will be permitted by the City Community Development Department.

Any modifications or additions must be approved by the Community Development Department. This approval is required over and above any approvals required by the Architectural Committee of the Association. In addition, if the work falls within the purview of the Uniform Building Code, the applicant must obtain building permits as required by the Building Department of the City of Mountain View.

This Development is consistent with the Approved Planned Unit Development and is complete as built, and no further expansions to the building structures are permitted without Community Development Department approval. Any revisions to the Development would require a separate application to the City and would need to establish rules for all Lots in the Development.

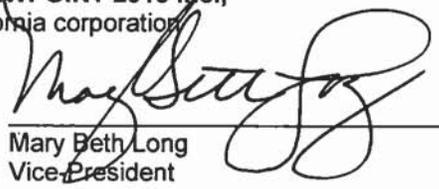
15.4 Designated Liaison. The President of the Association shall be the designated liaison to the City.

15.5 Automatic Fire Sprinklers. To the extent required by the City of Mountain View, all units shall be provided with automatic fire sprinklers.

THIS DECLARATION is executed this 24<sup>th</sup> day of February, 2015.

MV VIEWPOINT 2013 Inc.,  
a California corporation

By:

  
Mary Beth Long

Its: Vice President

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

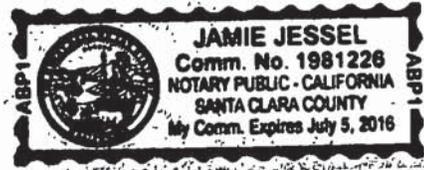
State of California )  
County of Santa Clara )

On March 11, 2015, before me, Jamie Jessel, a Notary Public, personally appeared Mary Beth Long, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature Jamie Jessel



(seal)

EXHIBIT A - Annexable Property<sup>1</sup>

Real property in the City of Mountain View, County of Santa Clara, State of California, described as follows:

PARCEL 1:

PORTION OF LOTS 42 AND 43, AS SHOWN ON THE MAP OF HAMWOOD, FILED FEBRUARY 23, 1912, IN BOOK N OF MAPS, PAGE 86, SANTA CLARA COUNTY RECORDS, DESCRIBED AS FOLLOWS:

BEGINNING ON THE CENTER LINE OF EVANDALE AVENUE, DISTANT THEREON 50 FEET SOUTHEAST OF THE DIVIDING LINE BETWEEN LOTS 41 AND 42, AS SHOWN ON SAID MAP, THENCE FROM SAID POINT OF BEGINNING SOUTHEAST ALONG SAID CENTER LINE, 100 FEET; THENCE NORTHEAST PARALLEL WITH SAID DIVIDING LINE 340 FEET, MORE OR LESS, TO THE SOUTHEAST LINE OF THE STATE HIGHWAY (BAYSHORE); THENCE NORTHWEST ALONG SAID LINE 100 FEET, MORE OR LESS, TO THE SOUTHEAST LINE OF THE PARCEL OF LAND DESCRIBED IN THE DEED TO CHARLES F. AWALT, RECORDED AUGUST 3, 1934, BOOK 693 OFFICIAL RECORDS, PAGE 537; THENCE SOUTHWEST ALONG SAID LINE 340 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THAT PORTION DESCRIBED IN THE DEED TO THE CITY OF MOUNTAIN VIEW, RECORDED JANUARY 18, 1982, INSTRUMENT NO. 7260744, SANTA CLARA COUNTY RECORDS.

PARCEL 2:

PORTION OF LOTS 43 AND 44, AS SHOWN ON THE "MAP OF HAMWOOD" FILED FEBRUARY 23, 1912 IN BOOK N OF MAPS, AT PAGE 86 DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE CENTER LINE OF EVANDALE AVENUE, AT THE COMMON CORNER FOR LOTS 44 AND 45, AS SHOWN ON THE MAP HEREINABOVE REFERRED TO; RUNNING THENCE WESTERLY ALONG THE CENTER LINE OF EVANDALE AVENUE 150 FEET, THENCE NORTHERLY AND PARALLEL WITH THE DIVIDING LINE BETWEEN LOTS 43 AND 44 OF SAID HAMWOOD, 340 FEET, MORE OR LESS, TO THE SOUTHERLY LINE OF THE STATE HIGHWAY (BAYSHORE); THENCE EASTERLY AND ALONG THE SOUTHERLY LINE OF SAID STATE HIGHWAY 150 FEET, MORE OR LESS, TO THE DIVIDING LINE BETWEEN SAID LOTS 44 AND 45; THENCE SOUTHERLY AND ALONG SAID LAST NAMED DIVIDING LINE 340 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

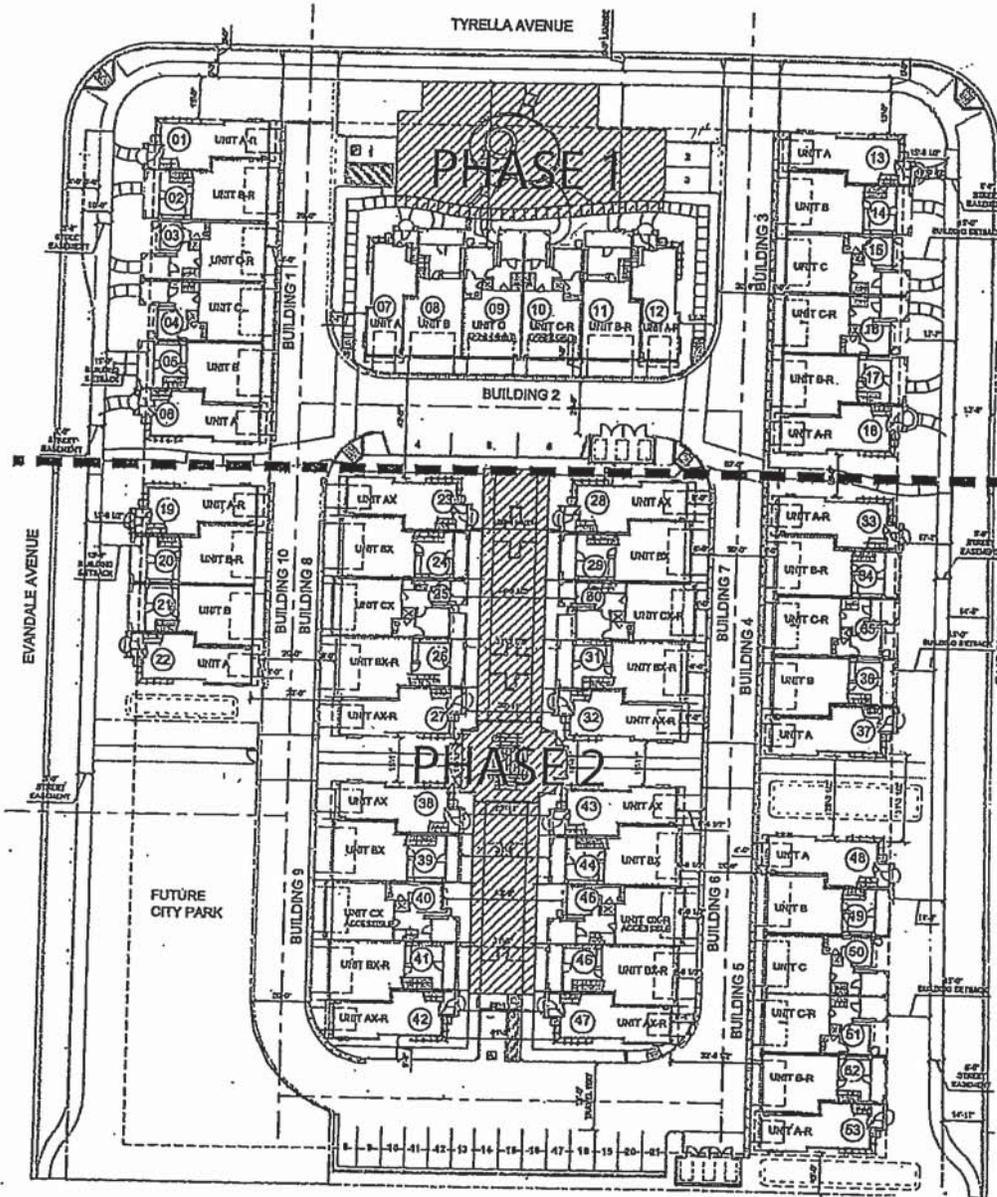
EXCEPTING THEREFROM THAT PORTION DESCRIBED IN THE DEED TO THE CITY OF MOUNTAIN VIEW, RECORDED JANUARY 15, 1982, INSTRUMENT NO. 7259816, SANTA CLARA COUNTY RECORDS.

APN: 160-07-003 (Parcel 1) and 160-07-004 (Parcel 2)

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<sup>1</sup> Declarant at its discretion reserves the right to establish the order of phases; the number of Common Area Lots or Residential Lots in a phase, the number of phases, or the building types in a phase.

EXHIBIT A-1 – Site Plan Showing Annexable Property



Phase 1:  
Tract 10247 18 units

Phases 2/3:  
Planned future phase(s)  
approximately 35 units  
[Final Unit Count and Phasing  
to be determined; subject to  
approval by City of Mountain View]

**EXHIBIT B – Maintenance Responsibility List**

This Maintenance Responsibility List is a brief summary only of the division of maintenance responsibilities for this Development. In the event of any conflict between the maintenance allocations in **Article 4** and this Exhibit, **Article 4** shall control.

<b>RESPONSIBILITY FOR MAINTENANCE, REPAIR &amp; REPLACEMENT<sup>1</sup></b>					
	<b>COMPONENT</b>	<b>ROUTINE MAINTENANCE<sup>2</sup></b>	<b>MINOR REPAIRS</b>	<b>REPAINTING &amp; RESTAINING</b>	<b>MAJOR REPAIRS &amp; REPLACEMENT<sup>3</sup></b>
<b>BUILDING SYSTEM</b>					
<b>ROOF</b>	Roof Tiles & Underlayment	Association	Association	Association	Association
	Rain Gutters & Downspouts	Association	Association	Association	Association
<b>EXTERIOR WALLS</b>	Stucco Exterior Walls	Homeowner	Homeowner	Homeowner (Association will periodically re-caulk and re-paint)	Homeowner
	Periodic Inspection for Wood-Destroying Pests & Organisms	Association [Periodic Inspection Only]	Homeowner	Homeowner	Homeowner
<b>DECKS, RAILS, POTSELVES &amp; SHUTTERS</b>	Exterior Decks	Homeowner	Homeowner	Homeowner [Association will periodically repaint Shutters and Exterior Wood and Stucco Components which are attached to and part of Exterior Building]	Homeowner
	Deck Rails & Deck Floor	Homeowner	Homeowner	Homeowner [Association will periodically repaint Deck Rails with Exterior Building]	Homeowner

<sup>1</sup> All Common Area Improvements are maintained by the Association per **Section 4.3** of the Declaration.

<sup>2</sup> Individual Lot Owners will pay for any damage caused by the Lot Owner to Improvements maintained by the Association.

<sup>3</sup> In the event of casualty covered under the Association's property insurance policy (see **Sections 8.1 and 8.2** of the Declaration), cost of repair and/or replacement may be partially or fully covered by insurance (subject to payment of deductible).

<b>RESPONSIBILITY FOR MAINTENANCE, REPAIR &amp; REPLACEMENT<sup>1</sup></b>					
	<b>COMPONENT</b>	<b>ROUTINE MAINTENANCE<sup>2</sup></b>	<b>MINOR REPAIRS</b>	<b>REPAINTING &amp; RESTAINING</b>	<b>MAJOR REPAIRS &amp; REPLACEMENT<sup>3</sup></b>
	Potshelves & Shutters	Homeowner	Homeowner	Homeowner [Association will periodically repaint Shutters which are attached to and part of Exterior Building]	Homeowner
<b>EXTERIOR LIGHT FIXTURES (Building Mounted)</b>	Light Fixtures	Homeowner	Homeowner	Homeowner	Homeowner
<b>WINDOWS</b>	Window System [glass, screens, hardware & casements]	Homeowner	Homeowner	N/A	Homeowner
	Exterior Window Frames & Trim [not part of window system]	Homeowner	Homeowner	Homeowner [Association will periodically repaint Exterior Wood Components which are attached to and part of Exterior Building]	Homeowner
<b>EXTERIOR DOORS, including GARAGE DOORS</b>	Doors & Garage Doors	Homeowner	Homeowner	Homeowner	Homeowner
	Exterior Door Frames & Trim [not part of door system]	Homeowner	Homeowner	Homeowner	Homeowner
<b>HVAC</b>		Homeowner	Homeowner	N/A	Homeowner
<b>FIRE SAFETY SYSTEMS [Including Smoke Detectors &amp; Sprinklers]</b>		Homeowner	Homeowner	Homeowner	Homeowner
<b>FOUNDATIONS</b>		Association	Association	N/A	Homeowner

<b>RESPONSIBILITY FOR MAINTENANCE, REPAIR &amp; REPLACEMENT<sup>1</sup></b>					
	<b>COMPONENT</b>	<b>ROUTINE MAINTENANCE<sup>2</sup></b>	<b>MINOR REPAIRS</b>	<b>REPAINTING &amp; RESTAINING</b>	<b>MAJOR REPAIRS &amp; REPLACEMENT<sup>3</sup></b>
<b>ONSITE UTILITIES</b>					
<b>WATER</b>	Water Lines and Facilities from Shutoff Valve at Exterior Garage of Each Lot	Homeowner	Homeowner	N/A	Homeowner
	Water Lines from Onsite Main Line Water Valves to Shutoff Valve at Exterior Garage	Association	Association	N/A	Association
	Main Lines, Laterals and Facilities within Common Area	Association	Association	N/A	Association
<b>SANITARY SEWER</b>	Lines and Facilities from cleanout in the Lot driveway to and into the Lot Residence	Homeowner	Homeowner	N/A	Homeowner
	Laterals from Common Area to Cleanout at the exterior of the garage on Each Lot	Association	Association	N/A	Association
	Main Lines, Laterals and Facilities within Common Area	Association	Association	N/A	Association
<b>STORM DRAIN</b>	Storm Drainage Systems on each Lot	Homeowner to keep drainage system & basins clear of debris	Association	N/A	Association
	Private Storm Drainage Systems & Bioretention Facilities within Common Area	Association	Association	N/A	Association
<b>IRRIGATION SYSTEM</b>		Association	Association	N/A	Association

<b>RESPONSIBILITY FOR MAINTENANCE, REPAIR &amp; REPLACEMENT<sup>1</sup></b>						
	<b>COMPONENT</b>	<b>ROUTINE MAINTENANCE<sup>2</sup></b>	<b>MINOR REPAIRS</b>	<b>REPAINTING &amp; RESTAINING</b>	<b>MAJOR REPAIRS &amp; REPLACEMENT<sup>3</sup></b>	
	<b>GAS SYSTEM &amp; FACILITIES</b> [To the extent not maintained by the utility provider]	Gas Lines and Facilities from Valve at Front of the Lot Residence to and into the Residence	Homeowner	Homeowner	N/A	Homeowner
		Gas Lines from Gas Meters to Valves at Front of Each Lot Residence	Association	Association	N/A	Association
		Gas Lines & Laterals within Common Area	Association	Association	N/A	Association
	<b>ELECTRIC, TELEPHONE &amp; CABLE LINES &amp; FACILITIES</b> [To the extent not maintained by the utility provider]	Lines & Facilities from the Meter on the Exterior Garage into the Lot Residence	Homeowner	Homeowner	N/A	Homeowner
		All other Lines & Facilities	Utility Provider	Utility Provider	N/A	Utility Provider

EXHIBIT C

**VIEWPOINT OF MOUNTAIN VIEW**

**CLAIMS PROCEDURE**

**This Exhibit contains alternative dispute resolution procedures. These procedures bind subsequent purchasers as well as initial purchasers. You are advised to read these procedures carefully and consult with legal counsel if you have any questions.**

This document describes the procedures for filing claims against Declarant and certain other designated parties related to this Development. Unless the context indicates otherwise, the definitions set forth in Article 1 of the Declaration shall apply in this Exhibit.

Any claim, dispute or other controversy between: (i) the Association and/or any Owner(s) (the "Claimant") and (ii) the Declarant or any affiliated general contractor or affiliated contractor who is a "builder" within the meaning of Civil Code section 911 or any director, officer, member, shareholder, partner, employee or agent thereof (individually and collectively the "Declarant" for purposes of this Exhibit) and/or any non-affiliated general contractor, non-affiliated contractor, subcontractor, material supplier, individual product manufacturer, design professional or any other Person that provided materials or labor or other services to the Development on behalf of Declarant, relating to this Declaration, the sale of the Lot or use, condition, design, specifications, surveying, grading, construction, installation, budgeting and/or operation of any Improvements or landscaping located within the Development or maintained by the Association, including but not limited to any claim for: (i) violation of the functionality standards set forth in Civil Code sections 896 and 897, whether based in contract, tort or statutory violation; (ii) actual and economic damages or injuries; (iii) breach of contract; (iv) breach of warranty; (v) fraud; or (vi) violation of a statute (individually and collectively the "Claim"), shall be subject to the claim procedures set forth in **Sections 1 and 2** of this Exhibit. Construction defect claims for actual damages are subject to Title 7, Part 2 of Division 2 of the Civil Code ("Title 7") in the same manner and to the same extent that Title 7 applies to claims for economic damages.

The intention and purpose of this Exhibit is to provide that all Claims against the Declarant relating to the Development be resolved in accordance with the claims procedures set forth in this Exhibit regardless of the legal theory upon which the Claim is based so that a certain and efficient method is established for resolution of the Claim. As a result, any Claim based on misrepresentation, fraud, breach of contract, breach of warranty, violation of a statute or personal injury, as well as Claims for breach of the functionality standards, are subject to the claims procedures in this Exhibit.

**The procedures in this Exhibit do not apply to Declarant's normal customer service procedures. Owners are encouraged to resolve any potential Claim first through Declarant's normal customer service procedures.**

Declarant, the Association and each Owner covenant not to commence any litigation without complying with the procedures described in **Sections 1 and 2**. If any party breaches the foregoing, the other party may obtain an appropriate order compelling the breaching party to comply with the procedures. Except as is expressly authorized by law, nothing herein shall reduce or extend any applicable time frame within which legal action must be commenced, including applicable statutes of limitation or repose and time frames set forth in Civil Code sections 896, 897 and 941.

Title 7 of Part 2 of Division 2 of the Civil Code (Civil Code sections 895 through 945.5) commonly known as "SB 800" sets forth functionality standards in Civil Code sections 896 and 897 that describe how the Improvements and landscaping within this Development should function during certain applicable time periods (the "Functionality Standards"). SB 800 impacts the legal rights of the Association and each Owner.

The Association and Owner have certain rights under SB 800 if the Improvement or landscaping fails to meet a Functionality Standard during the applicable time period. These rights may be lost as described in Civil Code Section 945.5, including if the Association or Owner: (1) fails to follow the Declarant's or the manufacturer's reasonable recommendations regarding inspection and maintenance, including schedules; (2) fails to follow commonly accepted homeowner maintenance guidelines; (3) fails to provide Declarant with timely notice after a discovery of the violation of the Functionality Standard or to allow Declarant reasonable and timely access for repairs; or (4) unreasonably fails to minimize or prevent damages in a timely manner.

Civil Code sections 910 through 938 contain prelitigation procedures for resolution of a claim for violation of Functionality Standards. As authorized by Civil Code section 914, Declarant may elect to use these prelitigation procedures or use alternative procedures. Declarant has elected to use the alternative nonadversarial prelitigation procedures set forth in **Section 1**.

**1. Nonadversarial Prelitigation Procedures** The Claim is subject to the nonadversarial prelitigation procedures set forth in this **Section 1**.

1.1 Claim Notice. The Claimant shall notify Declarant in writing of the Claim addressed to the agent for service of the Claim Notice described in **Section 3**. The notice shall: (i) contain the Claimant's name and address and preferred method of contact; (ii) state that the Claimant elects to commence the procedures in this Exhibit to resolve the Claim; (iii) describe the Claim in reasonable detail sufficient to determine the nature and location, to the extent known, of the claimed violation; and (iv) if applicable, state that the Claimant alleges a violation of the Functionality Standards (the "Claim Notice").

1.2 Right to Inspect, and Right to Corrective Action. Within 30 days of Declarant's receipt of the Claim Notice, the Claimant and Declarant's representatives shall meet at the Claimant's property to discuss the Claim. At such meeting or at such other mutually-agreeable time, Declarant's representatives shall have full access to the property for the purposes of inspecting the property and investigating the Claim. The parties shall negotiate in good faith in an attempt to resolve the Claim. If the Claimant and Declarant cannot agree on the validity of the Claim, the corrective action needed, the party to take the corrective action, or any other matter related to the Claim within 60 days of Declarant's receipt of the Claim Notice or such longer time as may be mutually acceptable to the Claimant and Declarant, either party may commence the mediation procedures described in **Section 1.3** below. If the parties agree on any corrective action, Declarant's representatives shall be provided full access to the property to take and complete corrective action. Declarant shall commence the corrective work no later than 30 days following the Claimant's acceptance of the proposed corrective action, and shall use commercially reasonable efforts to complete the work within 90 days. If Declarant fails to respond to the Claim Notice or fails to meet with the Claimant within the time period required herein, the Claimant is released from any further obligation to comply with the nonadversarial procedures in this **Section 1** and may proceed to initiate the binding adversarial procedures in **Section 2**.

1.3 Mediation. If the Claim is not resolved in accordance with the procedures described in **Section 1.2** and except as otherwise provided in **Section 1.2**, either the Claimant or the Declarant may submit the Claim to mediation under the mediation procedures adopted by the Judicial Arbitration and Mediation Services ("JAMS") or any successor thereto or to any other entity offering mediation services that is acceptable to the Claimant and the Declarant. The parties shall cooperate so that the mediation hearing can be held as soon as practicable. If the mediation hearing cannot take place within 90 days of Declarant's receipt of the Claims Notice or such later date as may be acceptable to Claimant and Declarant, the parties are released from any further obligation under this **Section 1.3** and either party may proceed to initiate the binding adversarial procedures described in **Section 2**.

Each party shall bear its own mediation expenses provided that the initial mediation administrative fee and the mediator's fee for a maximum of four hours shall be borne by Declarant and thereafter equally by the parties unless they agree otherwise. Any party to the mediation may at any time after a minimum of four hours of mediation terminate the mediation by notifying the other parties and the mediator and proceed to the binding adversarial procedures described in **Section 2**.

No person shall serve as a mediator who has any financial or personal interest in the result of the mediation, except by the written consent of all parties. Prior to accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or prevent a prompt commencement of the mediation process.

Each party shall submit a brief memorandum setting forth its position with regard to the issues that need to be resolved within ten days of the selection of the mediator or within such time frame established by the mediator. The mediation shall be commenced within ten days following the submittal of the memoranda. The mediation shall be held in the county in which the property is located or such other place as is mutually acceptable to the parties.

The mediator has discretion to conduct the mediation in the manner in which the mediator believes is most appropriate for reaching a settlement of the Claim. The mediator is authorized to conduct joint and separate meetings with the parties and to make oral and written recommendations for settlement. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the Claim, provided the parties agree and assume the expenses of obtaining such advice. The mediator does not have the authority to impose a settlement on the parties.

The mediation shall be subject to the provisions of Evidence Code sections 1115 through 1128, or any successor statutes thereto, except as the parties may agree otherwise in writing or orally in accordance with the requirements of Evidence Code section 1118.

Persons other than the parties, their representatives and the mediator may attend mediation sessions only with the permission of the parties and the consent of the mediator. Confidential information disclosed to a mediator by the parties or by witnesses in the course of the mediation shall not be divulged by the mediator. All records, reports, or other documents received by the mediator while serving in such capacity shall be confidential. There shall be no stenographic record of the mediation process.

If the Claim is not resolved in accordance with these nonadversarial prelitigation procedures, the Claim shall be resolved in accordance with the binding adversarial procedures set forth in **Section 2**.

**2. Binding Adversarial Procedures.** If Claimant and Declarant cannot resolve the entire Claim in accordance with the procedures in **Section 1** of this Exhibit or if corrective action is undertaken by Declarant and the parties disagree on the adequacy of the corrective action or any other claims arising from the corrective action, including any unresolved claims arising out of the corrective action undertaken by Declarant or Declarant's agents, shall be resolved in accordance with the following binding adversarial procedure.

Either party may commence binding judicial reference under the reference procedures of the Judicial Arbitration and Mediation Services (JAMS) or any other reference provider acceptable to the parties for resolution and the provisions of Code of Civil Procedure section 638, et seq., by a general referee appointed under the provisions of Code of Civil Procedure section 638(a) or any successor statutes thereto (the "Referee"). Either or both parties may take the necessary steps to secure the appointment of the Referee.

The Referee shall have the authority to hear and determine any and all issues in the action or proceeding, whether of fact or law, and to report a statement of decision. The following rules and procedures shall apply in all cases unless the parties agree otherwise in writing:

- (a) the proceedings shall be heard in Santa Clara County, California;
- (b) the Referee shall be a retired judge, or an attorney with at least five years' real estate experience; provided that either party may object to the appointment of a particular referee for any grounds authorized under Code of Civil Procedure section 641 or any successor statute thereto;

(c) any dispute regarding the selection of the Referee shall be resolved by the entity providing the reference services or, if no entity is involved, by the court in which the action or proceeding is pending;

(d) each party shall bear its own attorneys' fees (including expert costs);

(e) the Referee may require one or more pre-trial conferences;

(f) the parties shall be entitled to such discovery as the Referee may authorize in the Referee's sole and absolute discretion, provided that the parties shall be provided with copies of the reports of any experts that will testify at the hearing or that will be introduced at the hearing, shall be entitled to take the deposition of any party to the proceeding and any party's expert witness(es), and shall be provided with the opportunity to inspect and/or test any areas that have been inspected and/or tested by the claimant;

(g) the Referee shall have the power to hear and dispose of motions in the same manner as a trial court judge;

(h) the Referee shall apply the rules of law, including the rules of evidence, unless expressly waived by both parties in writing;

(i) a stenographic record of the hearing shall be made, provided that the record shall remain confidential unless the Referee's decision is appealed;

(j) the Referee's decision may include legal and/or equitable remedies;

(k) the Referee's statement of decision shall contain a description of the grounds for the Referee's decision and shall stand as the decision of the court as authorized under Code of Civil Procedure section 644(a), and judgment may be entered thereon in the same manner as if the action had been tried by a court; and

(l) the Referee shall have the authority to rule on all post-hearing motions in the same manner as a trial judge.

Each party retains the same appeal rights from the Referee's decision as if judgment had been entered on a trial court judge's statement of decision.

If any provision of this **Section 2** 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.

Notwithstanding anything to the contrary, if any party determines in good faith that not all necessary and appropriate parties, including, but not limited to, contractors, subcontractors, design professionals, and/or material suppliers, will participate in the judicial reference in order to accomplish a complete and final resolution of the Claim, this party shall notify the other party or parties in writing identifying the parties that will not participate; and thereafter all parties to the Claim shall be released from any obligation to participate in the judicial reference, and any party may file a lawsuit in any court of competent jurisdiction to resolve the Claim.

**3. Agent for Services of Claim Notice.** Notice of any Claim against Declarant or any affiliated general contractor or affiliated contractor who is a "builder" within the meaning of Civil Code section 911, including Civil Code sections 896 and 897 claims, or requests for information including requests for copies of the documents described in **Section 4**, shall be served on Declarant's agent via certified mail, overnight mail or personal delivery. The name and address of Declarant's agent for this purpose is:

Claims Procedure Agent – Viewpoint of Mountain View  
385 Woodview Avenue, Suite 100  
Morgan Hill, CA 95037

If the notice cannot be served on Declarant's agent at the above-referenced address because the agent is no longer located at the address or the agent has changed and Declarant has not provided the Claimant with an updated address or the name and/or address of the new agent, the Claimant may serve the claim notice on Declarant's agent for notice 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.ss.ca.gov](http://www.ss.ca.gov). Written request can be mailed to the California Secretary of State, Special Filings, P.O. Box 942877, Sacramento, California, 94277-0001.

If the Claim notice is served via mail, it shall be assumed received by Declarant on the third business day following deposit into the U.S. Mail. If delivered via overnight mail, such as Federal Express or UPS, it shall be assumed received on the next business day. If delivered personally, it shall be assumed received on the date of personal delivery. These assumptions may be rebutted by Declarant if Declarant did not receive actual notice.

**4. Documents and Subsequent Owners** Declarant has provided copies of the following documents to the initial purchasers of homes in this Development:

- (i) inspection and maintenance schedules and guidelines;
- (ii) a limited fit and finish warranty and manufacturers' products limited warranties;
- (iii) a copy of Title 7 of Part 2 of the Civil Code (SB 800).

The initial purchasers shall retain the foregoing documents (the "Documents") and on transfer of title to the property to a subsequent owner shall transfer the Documents or provide true and complete copies to the new owner(s) on or before transfer of title and instruct the new owner(s) that they are to retain the Documents and transfer or provide copies to any subsequent owner(s). **Replacement copies of the Documents may be obtained from Declarant by contacting Declarant at Declarant's principal place of business or through the agent for claim notice purposes described in Section 3 of this Exhibit.** Declarant may charge a reasonable fee for providing replacement copies. Initial purchasers and subsequent owners must comply with the inspection and maintenance guidelines provided by the Declarant and any manufacturer.

5. **Covenants.** The covenants, restrictions, rights, duties, benefits and burdens set forth herein benefit and bind each Lot and each Owner and successive Owner thereto as covenants running with the land and equitable servitudes and as authorized under Civil Code sections 945 and 5975.

6. **Amendments.** Notwithstanding anything in the Declaration to the contrary: (i) the provisions in this Exhibit may not be modified or waived without the prior written consent of Declarant; and (ii) the provisions in this Exhibit may be modified or waived with respect to any particular Claim with the written consent of Declarant and the Claimant or Claimants that made the Claim. The Board of Directors shall have full power and authority to approve any modifications or waivers with Declarant with respect to any Claim made by the Association. In addition, the provisions in this Exhibit may be modified with respect to any Lots owned by Declarant by filing an amendment to this Exhibit in the records of the County in which the Development is located. The amendment shall affect only Lots owned by Declarant at the time the amendment is recorded and such other Lots whose owners consent to the amendment in writing.

7. **Claims Filing Period.** Nothing herein extends any time periods in which a Claim must be filed under Civil Code sections 896 or 897 or otherwise extends any applicable statutes of limitations or statutes of repose, except as expressly authorized by law.

## EXHIBIT D

### **VIEWPOINT OF MOUNTAIN VIEW - MASTER PLAN**

This is a Master Plan (the "**Master Plan**") relating to additions or modifications to the residential development located at the intersection of Fairchild Drive and Tyrella Avenue, Mountain View California (the "**Development**"). The first phase of the Development, consisting of Lots 1-18 of Tract No. 10247 filed on July 14, 2014, in Book 873 of Maps at Pages 45-48, Santa Clara County Recorder's Office, has been approved by the City of Mountain View. This Master Plan was prepared in compliance with Condition No. 31 set forth in the City of Mountain View's Findings Report/Zoning Permit dated January 21, 2014, for Application No. 454-12-PUD and described in Section 15.3 of the Viewpoint of Mountain View Declaration of Restrictions recorded in Santa Clara County Recorder's Office. This Master Plan may be supplemented or amended, or a new master plan adopted, as future phases of the Development are approved by the City of Mountain View. Any capitalized terms not otherwise defined herein shall have the meaning ascribed to it in the Viewpoint CC&Rs (defined below).

#### 1. The Viewpoint of Mountain View Development

The Development is considered complete as built, on a phase by phase basis. Any modification to any building structures at the Viewpoint Development, including but not limited to, fences, trellises, and sunshades, shall be subject to the strictest of: (i) the applicable City of Mountain View Zoning Ordinance; (ii) the Viewpoint Declaration of Restrictions ("**Viewpoint CC&Rs**") for the Development; and (iii) this Master Plan. In addition, pursuant to Article 7 of the Viewpoint CC&Rs, an Architectural Review Committee ("**Committee**") has been or will be established to review certain modifications within the Viewpoint Development, and the Committee may impose additional restrictions or guidelines for modifications within the Development, as more particularly described herein, at Section 3.0, below.

Notwithstanding anything herein to the contrary, any Owner may repaint the exteriors or any Improvements on the Owner's Lot in the same colors, and remove and replace any siding or roofing materials with the same material and in the same color, as originally constructed or installed by the Developer prior to such change.

Revisions and changes to the interior of any home do not fall under the review of the Committee in so far as they do not impact the exterior of the home. Alterations to the interior of the home may still require review and approval of the Community Development Department.

#### 2. City of Mountain View, Community Development Department

The exteriors of the buildings may not be modified, nor any structures added to the common areas without prior approval of the City of Mountain View's Community Development Department. The community is fully built out when completed per the applicable City approvals, and no accessory structures will be permitted by the City of Mountain View's Community Development Department.

#### 3. Architectural Review Committee

As set forth in Section 7.2 of the Viewpoint CC&Rs, none of the following actions shall take place anywhere within the Development without the prior written approval of the Committee:

Any construction, installation, addition repair (including exterior painting), replacement, modification, alteration or removal of any building, outbuilding, structure, building exterior, roof, windows, exterior doors, exterior stairs, fence, sign garage, trash enclosure, storage area, berms, landscaping, fences, utilities, fixtures (gas, electricity, telephone, water or otherwise) or other Improvements visible from any other Lot or Common Area.

**SUBORDINATION**

The undersigned, the beneficiary under the deed of trust recorded on April 11, 2014, as Document No. 22566459 in the records of Santa Clara County, California (the "Deed of Trust"), executed by MV VIEWPOINT 2013 INC., a California corporation, as Trustor, hereby subordinates the Deed of Trust to the foregoing Viewpoint Declaration of Restrictions (CC&Rs) (the "Declaration") so that for all purposes the Declaration shall be deemed executed and recorded prior to the execution and recordation of the Deed of Trust.

Dated: February 24, 2015

**Bank of the West,**  
a California banking corporation

By: Paula Tponce  
Name: Paula Tponce  
Its: Vice President

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

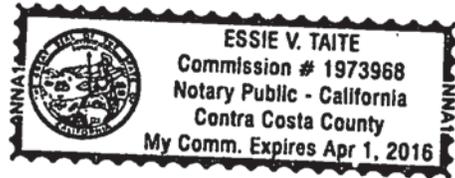
State of California )  
County of Contra Costa )

On 2-24-15, before me, Essie V. Tait, a Notary Public, personally appeared Paula Tponce, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies); and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature Essie V. Tait



(seal)