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County Clerk-Recorder

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**AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF  
SECOND UNIVERSITY VILLAGE HOMEOWNERS ASSOCIATION**

**ORIGINAL**

**AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF  
SECOND UNIVERSITY VILLAGE HOMEOWNERS ASSOCIATION  
A Planned Development  
*Goleta, California***

**AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS OF  
SECOND UNIVERSITY VILLAGE HOMEOWNERS ASSOCIATION  
*Goleta, California***

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**AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF  
SECOND UNIVERSITY VILLAGE  
HOMEOWNERS ASSOCIATION  
A Planned Development  
Goleta, California**

This Amended and Restated Declaration of Covenants, Conditions and Restrictions of Second University Village Homeowners Association, a California non-profit mutual benefit corporation, is made this 18 day of November, 2020, by the undersigned with reference to the following:

**RECITALS**

A. A Declaration of Covenants, Conditions, and Restrictions ("Original Declaration") was executed by University Exchange Corporation, a Delaware corporation, and Walter Scholtz Building Corporation, a California corporation, and recorded on July 22, 1969 as Instrument No. 2048 in Book 2278, Pages 539-564, in the Official Records of Santa Barbara County, for the real property legally described as:

*Lots 1 to 139 inclusive, in Tract No. 10846, in the County of Santa Barbara, State of California, as shown on Map recorded in Book 77, Pages 11-17, inclusive of Miscellaneous Records, in the office of the County Recorder of Santa Barbara County.*

*Lots 1 to 21 inclusive, in Tract No. 10670, in the County of Santa Barbara, State of California, as shown on Map recorded in Book 76, Pages 18-19, inclusive of Miscellaneous Records, in the office of the County Recorder of Santa Barbara County.*

B. A Declaration of Covenants, Conditions, and Restrictions ("Original Declaration") was executed by University Exchange Corporation, a Delaware corporation, and The Wittenberg Corporation, a California corporation, and recorded on November 15, 1972 as Instrument No. 45099 in Book 2430, Pages 1371-1391, in the Official Records of Santa Barbara County, for the real property legally described as:

*Lots 23 to 42 inclusive of Unit 2, and Lots 44 to 77 inclusive of Unit 3, in Tract No. 11524, in the County of Santa Barbara, State of California, as shown on Map recorded in Book 79, Pages 36-39, inclusive of Miscellaneous Records, in the office of the County Recorder of Santa Barbara County.*

C. A *Declaration of Covenants, Conditions, and Restrictions* (“Original Declaration”) was executed by University Exchange Corporation, a Delaware corporation, and Michael Towbes Construction & Development, Inc., a California corporation, and recorded on May 25, 1970 as Instrument No. 13403 in Book 2309, Pages 1112 – 1132, in the Official Records of Santa Barbara County, for the real property legally described as:

*Lots 1 to 22 inclusive, in Tract No. 11524, in the County of Santa Barbara, State of California, as shown on Map recorded in Book 78, Pages 99-100, inclusive of Miscellaneous Records, in the office of the County Recorder of Santa Barbara County.*

D. A *Declaration of Covenants, Conditions, and Restrictions* (“Original Declaration”) was executed by University Exchange Corporation, a Delaware corporation, and The Wittenberg Corporation, a California corporation, and recorded on July 17, 1972 as Instrument No. 26756 in Book 2410, Pages 1352 – 1370, in the Official Records of Santa Barbara County, for the real property legally described as:

*Lots 1 to 36 inclusive, in Tract No. 11125, in the County of Santa Barbara, State of California, as shown on Map recorded in Book 77, Pages 70-71, inclusive of Miscellaneous Records, in the office of the County Recorder of Santa Barbara County.*

E. An *Amendment to Declaration of Covenants, Conditions and Restrictions* (“First Amendment”) was executed and recorded on March 10, 1989, as Instrument No. 89-015904 in the Official Records of Santa Barbara County, for said real property.

F. The undersigned certify and confirm that the necessary percentage of the Owners of the Lots required by the Declaration, as amended or restated, have approved this Amended and Restated Declaration of Covenants, Conditions and Restrictions, which follows.

G. All real property in the Development shall be held, conveyed, leased, rented, used, occupied, hypothecated, encumbered, and improved, subject to the covenants, conditions, restrictions, and easements set forth in this Declaration, for the purpose of enhancing and protecting the value, desirability and attractiveness of the Development, all of which shall run with the Property and be binding on all parties having or acquiring any right, title or interest in the Property, or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.



## ARTICLE I APPLICATION AND CONSTRUCTION

1.1 Application. This Declaration applies to all Common Areas and Lots within the Development, as well as their respective Owners, Tenants, Residents, and Invitees. Any Lease shall provide that all Tenants, Residents, and Invitees are bound by the Governing Documents. All present and future Owners, Tenants, Residents, and Invitees shall be subject to, and shall observe, comply with and abide by, each and every provision of the Governing Documents, as defined herein, for the purpose of protecting the interests of all Owners and the Common Areas. The acceptance of a deed, Lease, or contract of sale with respect to any Lot, or occupancy of any Lot, shall constitute consent and agreement that each and all of the provisions of the Governing Documents, as defined herein, shall be binding and that said person(s) will observe and comply with them.

1.2 Term. This Declaration and its provisions shall continue to run with, benefit, and burden the Lots and the Common Area as herein provided, and shall inure to the benefit of and be binding upon the Owners, the Association, and their respective successors in interest, for a term of sixty (60) years from the date of the recording of this Declaration, after which time the same shall be automatically extended for successive periods of ten (10) years each unless, within six (6) months prior to the expiration of the initial 60-year term or any such 10-year extension period, a written instrument, approved by at least fifty -one percent (51%) of all Owners terminating the effectiveness of this Declaration shall be recorded in the Official Records of Santa Barbara County.

1.3 Conflicts. In the case of any conflict between this Declaration and the Articles or the Bylaws, this Declaration shall control. In the event of any conflict between the Articles and the Bylaws, the Articles shall control. The Rules, Architectural Guidelines, Board Resolutions, and all other policies are subordinate to, and shall not be inconsistent with or materially alter, any provision of the other Governing Documents.

1.4 General Plan. The Governing Documents create and perpetuate a general plan of development for the Development, and may be supplemented by additional covenants, restrictions, and easements applicable to particular areas within the Development, which may be more restrictive than the provisions of this Declaration, in which case the more restrictive provisions shall control as to the encumbered area. The Association may enforce any such additional covenants, restrictions, or other instruments, but unless required by this Declaration, shall be under no obligation to do so.

### 1.5 Construction of Declaration.

A. Restrictions Construed Together. All of the covenants, conditions, and restrictions of this Declaration shall be liberally construed together to promote and effectuate the fundamental concepts of the development of the Property, as set forth in this Declaration.

B. Restrictions Severable. Notwithstanding the provisions of Paragraph A above, the covenants, conditions, and restrictions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

## ARTICLE II DEFINITIONS

2.1 "Annual Meeting" shall mean a meeting of the members, which shall be held each year as further outlined in the Bylaws, at which directors are to be elected and to transact any other proper business which may be brought before the Members.

2.2 "Articles" refers to the Articles of Incorporation of the Association, as filed with the California Secretary of State.

2.3 "Assessment" means any Regular, Special, or Special Individual Assessment levied or imposed by the Association against an Owner and his or her Lot in accordance with this Declaration.

2.4 "Association" means Second University Village Homeowners Association, a California non-profit mutual benefit corporation, its successors and assigns. The Association is an "association" as defined by applicable law.

2.5 "Board" means the Board of Directors of the Association.

2.6 "Bylaws" means the Bylaws of the Association, as the same may be amended from time to time.

2.7 "Common Area" means (i) all real property (including any Improvements thereon) owned or to be owned by the Association for the common use and enjoyment of the Owners, (ii) all real property (including the Improvements thereon) over which the Association or the Owners own or will own or an easement for the maintenance of the area for the benefit of the Owners, and (iii) Lot 139 of Tract 10846. The Common Area owned by the Association at the time of recordation of this Declaration is defined pursuant to Civil Code Section 4095, or its amendments. Unless the context clearly

indicates a contrary intent, any reference herein to the "Common Areas" shall also include any Common Facilities located thereon, as defined in Section 2.10 of this Declaration.

2.8 "Common Expense" means any use of Common Funds authorized by this Declaration, by law, or by the Bylaws, including without limitation, expenditures for the administration, management, operation, insurance, maintenance, improvement, replacement, repair, addition, alteration or reconstruction of all or any portion of the Common Area; any amounts estimated to be reasonably necessary for reserves for anticipated long-term maintenance, repair and replacement of capital improvements upon the Common Area (the cost of which would not ordinarily be incurred on an annual basis); taxes paid by the Association; expenditures for the discharge of any lien or encumbrance levied against any Common Area; expenditures in collecting Assessments, including amounts expended to purchase a Lot in connection with the foreclosure of an Assessment lien against such Lot; unpaid Assessments; contingencies; and the service obligations of the Association, including costs for water, sewer, garbage, electrical, communications, gas, and other utilities services for the Common Area and (if not separately metered or charged) for the individual Lots. Common Expenses, however, shall not include the cost of any new construction, or unanticipated repair or replacement of a capital improvement upon the Common Area, including the necessary fixtures and personal property related thereto.

2.9 "Common Facilities" means that portion of the Common Areas, the use of which may be suspended by the Board for violations of the Governing Documents, and includes the recreational landscaped areas, swimming pool, pool furniture and equipment, spa and associated equipment, storage spaces, lawns, trees, hedges, plants, shrubs and landscaping, ponds and streams, fences, lines, lighting fixtures, community buildings, community park, walkways, driveways, structures, and other facilities constructed or installed, or to be constructed or installed, or located within the Common Area, to the extent the same are not necessary for access to or use of a Lot. Lot 139 of Tract 10846 shall be used for common park and recreation areas for the use of Owners, guests, tenants and invitees of Tracts 11524, 11125, 10846 and 10670. Said Lot shall also be used by Owners, guests, tenants and invitees of the Association.

2.10 "Common Funds" means all funds collected or received by or on behalf of the Association and/or due and payable to the Association, including but not limited to the proceeds from insurance carried or obtained by the Association which are payable to or received by the Association for the benefit of the Owners or otherwise.

2.11 "Declarant" refers to the original Developers of the Development, i.e., University Exchange Corporation, The Wittenberg Corporation, Michael Towbes Construction and Development, Inc and UJAY Ventures.

2.12 "Declaration" means this instrument, as it may be amended or restated from time to time.

2.13 "Development" means the Property, and all Improvements on the Property, which are intended to create a planned development as described by applicable law.

2.14 "Exclusive Use Common Area" means a portion of the Common Area over which an exclusive easement(s) is reserved appurtenant to one or more, but fewer than all, of the Lots, or otherwise designated for the exclusive use of one or more, but fewer than all, of the Owners of the Lots.

2.15 "Good Standing" shall mean those Members who are current in the payment of Assessments, fees, and fines, and who are not in violation of the Governing Documents, and/or not engaged as an opponent in any litigation or other formal action against the Association. Members who are more than thirty (30) days delinquent in the payment of their Assessments, fees or fines, or have been found in violation of the Governing Documents, following notice and hearing as described in the Bylaws, shall be in Good Standing only at such time as all Assessments, fees and fines are paid, any violations of the Governing Documents are cured, and any litigation or formal action against the Association resolved or terminated.

2.16 "Governing Documents" means and refers to all of the following, collectively: this Declaration and recorded amendments and supplemental declarations, if any; the Subdivision Map; the Articles; the Bylaws; the Rules and Architectural Guidelines; and any Resolutions of the Board; all as the same may be lawfully amended or modified from time to time.

2.17 "Greenbelt" means Lot 22 of Tract 11524 and Lot 138 of Tract 10846, which are owned by the City of Goleta, for the benefit of the Association and its members to be used as public open space, including, but not limited to, recreation, parks and flood control uses.

2.18 "Improvement" includes, without limitation, any buildings, walls, fences, swimming pools, landscaping, landscape structures, solar heating equipment, spas, saunas, utility lines, or any physical structure of any kind, or to the construction, installation, alteration, or remodeling of any such structure. In no event shall the term "Improvement" be interpreted to include improvement projects that are restricted entirely to the interior of any Residence and which involve no modification of or entry into the roof, foundation or slab, or Party Walls or other load bearing walls, nor any alteration, modification, or additional stress upon any physical portion or mechanical system (including plumbing or electrical systems) of the Common Area or of any other Residence.

2.19 "Invitee" means any person or entity entering any part of the Development for purposes relating to a Lot, or to any Owner, Tenant, or Resident thereof, including without limitation guests, vendors, contractors, maids, child care providers, health care providers, and any other visitor to a Lot.

2.20 "Lease" refers to an agreement between an Owner and a Tenant, as defined herein, for occupancy of a Lot or any part thereof. "Lease" includes any lease, rental agreement, occupancy agreement, contract of sale, or any other form of agreement providing for occupancy of a Lot by any person other than the Owner and his or her co-resident family members.

2.21 "Lot" shall mean any plot of land or parcel in the Development that is not part of the Common Area, as shown on any recorded Subdivision Map for the Development. When appropriate within the context of this Declaration, the term "Lot" shall also include the Residence and other Improvements constructed or to be constructed on a Lot.

2.21.1 A "Single-Family Lot" shall refer to all single-family residential Lots within the Property, with the exception of the Duplex Lots, as defined below.

2.21.2 The "Duplex Lots" shall be Lots 1-27 of Tract No.10846; Lots 5-10 of Tract No. 10670; and Lots 1-36 of Tract No. 11125.

2.22 "Manager" shall mean any person or company employed or retained by the Association to administer the operation, maintenance, and management of the Association and the Development.

2.23 "Member" means every person or entity who owns or exercises a Membership in the Association. The Members are the Owners of each of the two hundred sixty-nine (269) Lots which are located on the Property, as further described herein and in the Bylaws.

2.24 "Membership" refers to the legal relationship and status of being a Member of the Association, and an entitlement to the rights and privileges appurtenant thereto as defined herein and in the Bylaws. Membership rights and privileges may be limited or suspended as provided in the Governing Documents and by applicable law. "Membership" may also refer to the Members collectively.

2.25 "Mortgagee" shall mean a holder of a Mortgage including the beneficiary of a deed of trust that constitutes a Mortgage.

2.26 "Owner" means any person or entity in which title to a Lot is vested as shown by the Official Records of Santa Barbara County. Family members and entity

officials in whom title to a Lot is not so vested are not "Owners" for purposes of this Declaration, notwithstanding their occupancy of the Lot.

2.27 "Property" means all land described in **Recitals A – D**.

2.28 "Record," and/or its variants, refer to a complete, valid, lawful, and verifiable document evidencing rights or title to any part of the Property, including without limitation a Lot, recorded in the Official Records of Santa Barbara County, or to the process of recording a document in said Official Records.

2.29 "Residence" means a private, single family dwelling designed, constructed, or to be constructed on a Lot, together with garages, structures and other Improvements on the same Lot or parcel.

2.30 "Resident" means any natural person residing in a Lot or any part thereof, for any duration, including any Owner, Tenant, family member, guest, or otherwise.

2.31 "Residential Use" means occupancy and use of a Lot for single family dwelling purposes, and recreational and other purposes incidental to such purposes, in conformity with this Declaration and the requirements imposed by applicable zoning or other applicable laws or governmental regulations limiting the number of persons who may occupy residential dwellings.

2.32 "Rules" or "Rules and Regulations" means any and all written operating rules, regulations, architectural standards or guidelines (including the Architectural Guidelines), and other policies lawfully adopted by the Board, all as the same may be in effect from time to time.

2.33 "Subdivision Map" means the Maps recorded in Book 77, Pages 11-17; Book 77, Pages 70-70; Book 78, Pages 99-100; and Book 79, Pages 36-39 inclusive of Parcel Maps, in the Official Records of Santa Barbara County, respecting the Property, and any amendments thereto pursuant to applicable law. A copy of the Subdivision Map may be obtained from the County Recorder.

2.34 "Tenant" means any natural person or entity occupying a Lot, except the Owner and his or her co-resident family members, with or without the payment of rent.

2.35 "Civil Code", "Corporations Code" and similar references shall refer to those California statutes so referenced and any and all comparable superseding statutes.

**ARTICLE III**  
**PROPERTY RIGHTS AND OBLIGATIONS OF OWNERS**

3.1 Lot Ownership. Each Lot within the Development includes a fee simple interest in the Lot; a Membership in the Association; and any exclusive or nonexclusive easement(s) appurtenant to such Lot over the Common Area as described in the Declaration, the Subdivision Map, and the deed to the Lot. The fee title to all such elements of the respective Lot shall conclusively be deemed to be conveyed, transferred or encumbered with its respective Lot even though the description in the instrument of conveyance or encumbrance may refer only to a Lot.

A. Joint Ownership. In the event of joint ownership of any Lot, the obligations and liabilities of such Owners shall be joint and several. Joint and several liability shall apply to all obligations, duties and responsibilities of Owners as set forth in this Declaration, including, without limitation, the payment of all Assessments. All Owners may exercise rights to use and enjoy the Lot and Common Areas, subject to the provisions and limitations herein.

B. Entity Ownership. If fee title to a Lot is owned by any trust, LLC, corporation, partnership, or other impersonal entity, the entity shall be responsible for the obligations and liabilities of the Owner. Unless the entity designates a natural person to exercise the rights and privileges of Membership, such rights and privileges may be exercised only by the trustee(s), president, proprietor, managing partner, or similarly empowered executor of such entity's interests; however, the entity shall be deemed to delegate its rights to use and enjoy the Common Facilities to any Tenant(s) or Resident(s).

3.2 Ownership of Common Areas. The Common Areas shall be owned in fee by the Association.

3.3 Prohibition of Partition or Severance. No Owner shall have any right to partition, subdivide, or sever his or her Lot from the Development, except as such partition may be provided for in provisions of this Declaration relating to destruction or condemnation, or as otherwise provided by applicable law. Nothing herein shall prevent partition of a co-tenancy in a Lot.

3.4. Power of Attorney for Partition after Destruction or Condemnation. Each Owner hereby irrevocably appoints the Association as attorney-in-fact for partition of the Common Areas, when the same may lawfully be partitioned in cases of destruction and condemnation, and irrevocably grants to the Association full power in the Owner's name and stead to sell the Common Areas, and to execute deeds and conveyances to it in one or more transactions, for the benefit of all Owners. Such power of attorney shall:

(a) be binding on all Owners, whether they assume the obligations under this Declaration or not; (b) be exercisable by a majority of the Board acting on behalf of the Owners, subject to the prior approval by vote or written consent of a majority of the Members and institutional Mortgagees; and (c) be exercisable only after Recordation of a certificate, executed by those who have power to exercise the power of attorney, confirming that the power of attorney is properly exercisable under applicable law. This certificate shall be conclusive evidence of proper exercise in favor of any person relying on it in good faith.

3.5 Prohibition on Avoidance of Obligations. No Owner, by non-use of the Common Area or Common Facilities, abandonment of the Lot, or otherwise, may avoid the burdens and obligations imposed by the Governing Documents, including, without limitation, the payment of Assessments.

3.6 Termination of Obligations. Upon the conveyance, sale, assignment or other transfer of a Lot, the transferor Owner shall not be liable for any Assessments respecting such Lot which become due after the date of Recording of the instrument evidencing said transfer and, upon such Recording, all Membership rights possessed by the transferor by virtue of the ownership of said Lot shall cease.

#### **ARTICLE IV LEASING OF LOTS**

4.1 Delegation of Use and Leasing of Lots. Any Owner may lease or otherwise convey the rights to use and enjoy the Lot and the Common Area to Tenants or other Occupants, subject to the following. A Lot shall be considered a "Rental" whenever it is occupied by one or more persons but does not include the Owner or the Owner's immediate family members (i.e., persons related to the Owner by marriage, domestic partnership, or direct lineal relationship, such as parents, children, grandchildren and grandparents), with or without payment of rent or other consideration to the Owner. Each Owner shall provide any Tenant with a current copy of all Governing Documents or refer Tenant to the Governing Documents on the website, and shall be responsible for compliance by the Tenant with all of the provisions of the Governing Documents during the Tenant's occupancy and use of the Lot. One pool, tennis court and clubhouse grounds key will be provided per single family lot, and two per duplex lot.

A. Common Area Use Rights. Any delegated rights of use and enjoyment are subject to suspension to the same extent as are the rights of Owners. No such delegation shall relieve an Owner from liability to the Association or to other Owners for payment of Assessments or performance of the obligations of the Governing Documents.



4.2 Discipline of Tenants. Subject to Paragraph 4.3 below, in the event that any Tenant fails to honor the provisions of any Governing Document, the Association may, but shall not be obligated to, take such corrective action as it deems necessary or appropriate under the circumstances, which may include, but is not limited to suspension of the Tenant's privileges to use any recreational Common Facilities, or the imposition of fines and penalties against the Owner and/or Tenant.

Any fine or penalty levied pursuant to this Section shall be considered a Special Individual Assessment, but shall not be enforced by foreclosure of a lien. If a Special Individual Assessment is imposed as a result of the conduct of a Tenant, the Tenant agrees to be personally obligated for the payment of such assessments in the event the Owner fails to pay the assessments prior to the delinquency date. This provision, however, shall not be interpreted to release the Owner from any obligation, including the obligation to pay any duly imposed Special Individual Assessments for which such Owner would otherwise be responsible. Any Tenant charged with a violation of the Governing Documents is entitled to the same notice and hearing rights to which the Owner is entitled as provided in Section 4.3 below. Every Owner shall be responsible for assuring his or her Tenant's compliance with the Governing Documents.

4.3 Due Process Requirements for Disciplinary Action. Except for circumstances in which immediate corrective action is necessary to prevent damage or destruction to the Property or to preserve the rights of quiet enjoyment of other Owners and Residents, the Association shall have no right to initiate disciplinary action against an Owner or Tenant on account of the misconduct of the Tenant unless and until the following conditions have been satisfied:

A. The Owner has received written notice from the Board, Manager or authorized representative detailing the nature of the Tenant's alleged infraction or misconduct and advising the Owner of his or her right to a hearing on the matter. Such written notice shall be deemed satisfied by sending it to the Owner's address, as it appears in the Association's records.

B. The Owner has been given a reasonable opportunity to take corrective action on a voluntary basis or to appear at a hearing, not less than ten (10) days from the date of the notice.

C. The Owner has failed to prevent or correct the Tenant's objectionable actions or misconduct, or evict the Tenant.

**ARTICLE V**  
**SECOND UNIVERSITY VILLAGE HOMEOWNERS ASSOCIATION**

5.1 Association Membership. One Membership shall be appurtenant to each Lot. Every Owner of a Lot shall be deemed a Member of the Association, except as described in this Declaration or the Bylaws. The Association shall have one class of Membership and the rights, duties, obligations and privileges of the Members shall be uniformly as set forth herein and in the Bylaws.

5.2 Transfer of Memberships. No Membership may be transferred, encumbered, pledged or alienated in any way, except upon the sale, transfer, or encumbrance of the Lot to which it is appurtenant and then only to the purchaser or transferee. In the case of a sale, inheritance, or other transfer, the Membership transfers automatically to the transferee upon recording of a deed evidencing transfer of title to the Lot. In the case of an encumbrance, Membership does not transfer to a Mortgagee until Recording of a foreclosure or deed in lieu thereof. Delegation of rights does not constitute a transfer of Membership. Any attempt to make a prohibited transfer is void. In the event any Owner should fail or refuse to transfer his or her Membership to the lawful purchaser or other transferee, the Association shall have the right to record the transfer upon its books and thereupon any Membership in the name of the transferor shall be null and void.

5.3 Voting Rights of Members. Each Membership shall be entitled to one vote in any Membership action, or to one vote for each vacancy to be filled in an election, as provided in the Bylaws. In no event shall more than one such vote per action, or per vacancy, be cast with respect to any Lot. Voting rights may be temporarily suspended, following the notice and hearing procedures herein or in the Bylaws, for non-payment of Assessments or other violations of the Governing Documents.

5.4 Powers and Authority of the Association.

A. Powers Generally. The Association shall have the power, and responsibility, to manage and maintain the Common Areas and to discharge the other duties and responsibilities imposed on the Association by the Governing Documents. In the discharge of such responsibilities and duties, the Association shall have all of the powers of a non-profit corporation organized under the laws of the State of California in the ownership and management of the Property and the discharge of its responsibilities hereunder for the benefit of its Members, subject only to such limitations upon the exercise of such powers as are expressly set forth in the Governing Documents. The Association and Board shall have the power to do any and all lawful acts which may be authorized, required or permitted to be done under and by virtue of the Governing Documents, and to do and perform any and all acts which may be necessary or proper

for, or incidental to, the exercise of any of the express powers of the Association for the peace, health, comfort, safety or general welfare of the Owners. The Association shall have the power to establish, fix and levy Assessments against the Lots and to collect and enforce payment thereof in accordance with the provisions of this Declaration and applicable law. Specific powers and limitations of the Association shall be as set forth in the Bylaws.

B. Association's Limited Right of Entry. The Association, and/or its agents, shall have the right, when necessary, to enter any Lot to perform the Association's obligations under this Declaration, including: (i) exterior maintenance or repair obligations; (ii) obligations to enforce the Governing Documents; (iii) any obligations with respect to construction, maintenance and repair of adjacent Common Areas; or (iv) after ten (10) days written notice, to make necessary repairs (including landscaping) to a Lot, Residence, or Exclusive Use Common Area (including the patio or yard area) that an Owner has failed to perform which, if left undone, will pose a threat to, or cause an unreasonable interference with, any property, health, or welfare of the Association or other Owners.

In case of an emergency originating in or threatening the Lot where entry is required, or any adjoining Lots or Common Areas, the Association's rights of entry hereunder shall be immediate and the entry and repair may be performed whether or not the Owner, Tenant, or Resident of the Lot is present. In all other situations, the Association or its agents shall furnish the Owner, and any Tenant or other Resident, with at least 24 hours' written notice of its intent to enter the Lot, specifying the purpose and scheduled time of such entry and shall make every reasonable effort to schedule and perform its entry and work in a manner that respects the privacy of the Resident(s). **In no event shall the Association's right of entry, for non-emergency situations, be construed to permit the Association or its agents to enter any Lot without the Owner's express permission.**

C. Security

(1) Owners, Residents, and Invitees of a Lot are responsible for their own personal safety and the security of their property in the Development. The Association may, but shall not be obligated to, maintain or support certain activities within the Development designed to enhance the level of safety or security which each person provides for himself and his property, but neither the Association nor any board member, Manager, agent or employee, shall in any way be considered an insurer or guarantor of safety or security within the Development, nor shall such parties be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

(2) No representation or warranty is made that any systems or measures, including any mechanism, gate, or other system for limiting access to the Development, cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands, and shall be responsible for informing all Tenants, Residents and Invitees of its Lot that the Association, its Board and committees, are not insurers or guarantors of safety and security and that each person within the Development assumes all risks of personal injury and loss or damage to property, including Lots and the contents of Lots and Residences, resulting from acts of third parties.

D. Enforcement of Association's Rights. The Association shall have the right to institute, defend, settle or intervene in litigation, arbitration, mediation, or administrative proceedings in its own name as the real party in interest and without joining with it the Owners, in matters pertaining to the following:

- (1) Enforcement of the Governing Documents.
- (2) Damage to the Common Area.
- (3) Damage to the Lots that the Association is obligated to maintain or repair.
- (4) Damage to the Lots that arises out of, or is integrally related to, damage to the Common Area or Lots that the Association is obligated to maintain or repair.

#### 5.5 Association Rules.

A. Rule-Making Power. The Board may, from time to time, propose, enact, amend, or repeal reasonable Rules and Regulations. Such Rules may concern, but are not limited to: (i) the management and use of the Common Area by Owners, Tenants, Residents, and Invitees; (ii) use of a Lot, including pets, conduct, leasing/rental of Lots and any aesthetic or architectural standards; (iii) discipline, including any procedure for conducting disciplinary proceedings and schedule(s) of monetary or other penalties for violation of the Governing Documents; (iv) standards and procedures for resolution of Assessment disputes, including for delinquent Assessment payment plans; restrictions on the use and parking of vehicles within the Common Area; and any other matter within the authority of the Association as provided in the Governing Documents.

#### B. Adoption and Amendment of Rules.

(1) Notice. The Board shall provide written notice to the Members of a proposed rule change, except for an emergency rule change, at least

twenty-eight (28) days before making the rule change. The notice shall include the text of, and a description of the purpose and effect of, the proposed rule change.

(2) Adoption. A decision on a proposed rule change shall be made at a meeting of the Board, after consideration of any comments made by Members.

(3) Distribution of Rules. As soon as possible, but not more than 15 days, after making a rule change, the Board shall post the rule change on the Association's website. If an emergency rule change is made under paragraph (4), the notice shall include the text of the rule change, a description of the purpose and effect of the rule change, and the date that the rule change expires.

(4) Emergency Rule Change. If the Board determines that an immediate rule change is required to address an imminent threat to public health or safety, or an imminent risk of substantial economic loss to the Association, it may make an emergency rule change without prior notice to the Members. An emergency rule change is effective for 120 days, unless the rule change provides for a shorter effective period. An emergency rule change made may not be readopted.

**C. Reversal of Rule Change**

(1) Five percent (5%) or more of the Members may call a special meeting of the Members to reverse a rule change (other than an emergency rule change) by delivering a written request to the President or Secretary not more than thirty (30) days after notice of the rule change. Upon receipt of such request, the Board shall either notice and hold a Membership meeting, or distribute a written ballot to each Member, in conformity with applicable law and the Bylaws, to vote on reversal of the rule change.

(2) Not more than fifteen (15) days after the close of voting, the Board shall mail or otherwise deliver notice of the results to each Member and each Lot.

(3) The rule change may be reversed by a majority of a quorum of Members present in person, by proxy, or by ballot at the meeting. If the rule change is reversed by this procedure, the rule change may not be readopted for one year after the date of the reversal; however, the Board may adopt a different rule on the same subject.

**D.** All Rules must be in writing and available to Members in the Common Area or on the Association's website. Any duly adopted Rule or amendment to the Rules shall become effective immediately following the date of adoption and made available to the Owners and Tenants.

5.6 Breach of Rules or Restrictions. Any breach of the Association Rules or of any other Governing Document provision shall give rise to the rights and remedies set forth in this Declaration.

5.7 Limitation on Liability of Association's Directors and Officers.

A. Claims Regarding Breach of Duty. No director, officer, committee member, Manager, employee, or other agent of the Association shall be personally liable to any of the Association's Members, or to any other party, including the Association, for any error, negligence, or omission in the discharge of their duties and responsibilities or for their failure to provide any service required hereunder or under the Bylaws, provided that such director or other actor has, upon the basis of such information as may be possessed by the director or actor, acted in good faith, in a manner that such person believes to be in the best interests of the Association and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

B. Other Claims Involving Tortious Acts and Property Damage. No person who suffers bodily injury (including, without limitation, emotional distress or wrongful death) and/or property damage as a result of the tortious act or omission of a volunteer director or officer of the Association shall recover damages from such director or officer if all of the following conditions are satisfied:

(1) The act or omission was performed within the scope of the volunteer director's or officer's Association duties;

(2) The act or omission was performed in good faith;

(3) The act or omission was not willful, wanton, or grossly negligent;

(4) The Association maintained and had in effect at the time the act or omission occurred and at the time a claim was made one or more policies of insurance that include coverage for general liability of the Association in a sum not less than \$3,000,000 and individual liability of the officers and directors of the Association for negligent acts or omissions in their official capacities, with minimum coverage of insurance being not less than \$1,000,000.

(a) The reimbursement of actual expenses incurred by a director or officer in the execution of that person's Association duties shall not affect that person's status as a volunteer for the purposes of this section.

(b) The provisions of this paragraph B are intended to reflect the protections accorded to volunteer directors and officers of community

associations under applicable law. In the event that any applicable law providing such liability protections is amended or superseded by another similar provision of the California statutes, this paragraph B shall be deemed amended, without the necessity of further Member approval, to correspond to the amended or successor statutory provision.

## ARTICLE VI ASSESSMENTS

6.1 Covenant to Pay Assessments. Each Owner, by acceptance of the deed to the Owner's Lot, is deemed to covenant and agree to pay to the Association Regular, Special and Special Individual Assessments levied pursuant to the provisions of this Declaration. Each such Assessment shall be established and collected as hereinafter provided. The Owner may not waive or otherwise escape liability for these assessments by non-use of the Common Area or abandonment of the Owner's Lot.

A. All Assessments, together with late charges, interest, and reasonable costs (including reasonable attorneys' fees) for the collection thereof, shall be a debt and a personal obligation of the persons who were the Owners of the Lot at the time the Assessment was levied. Each Owner who acquires title to a Lot (whether at judicial sale, trustee's sale or otherwise) shall be personally liable only for Assessments attributable to the Lot so purchased which become due and payable after the date of such sale, and shall not be personally liable for delinquent Assessments of prior Owners unless the new Owner expressly assumes the personal liability. Any unpaid Assessment of a previous Owner shall remain the debt of such previous Owner against whom assessed.

B. All Assessments, together with late charges, interest, and reasonable costs (including reasonable attorneys' fees) for the collection thereof, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which such Assessment is made. Any lien for unpaid Assessments created pursuant to the provisions of this article may be subject to foreclosure as provided in this Declaration.

6.2 Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote, protect, enhance and maintain the recreation, health, safety and welfare of the residents in the Development and for the improvement, maintenance, replacement, repair and operation of the Common Area and the improvements and personal property in the Common Area that are owned or maintained by the Association, as set forth in this Declaration, and to further any other purpose that is for the common benefit of the Owners in their use and enjoyment of the Development.

### 6.3 Regular Assessments.

A. Preparation of Annual Budget: Establishment of Regular Assessments. Not less than thirty (30) nor more than ninety (90) days prior to the beginning of the Association's fiscal year, the Board shall estimate the total amount required to fund the Association's anticipated Common Expenses for the next succeeding fiscal year (including additions to any reserve fund established to defray the costs of future repairs, replacement or additions to the Common Facilities) by preparing and distributing to all Association Members a budget satisfying the requirements of the Bylaws and this Declaration. If the Board fails to distribute the budget for any fiscal year within the time period provided for in this section, the Board shall not be permitted to increase Regular Assessments for that fiscal year unless the Board first obtains the approval of eligible Members, constituting a quorum, casting a majority of the votes at a meeting or election of the Association conducted in accordance with the Bylaws.

B. Establishment of Assessments; Membership Approval Requirements. The total annual expenses estimated in the Association's budget (less projected income from sources other than assessments) shall become the aggregate Regular Assessment for the next succeeding fiscal year, provided that, except as provided in this Declaration otherwise, the Board of Directors may not impose a Regular Assessment that is more than twenty percent (20%) greater than the Regular Assessment for the Association's immediately preceding fiscal year without the vote or written assent of eligible Members, constituting a quorum, casting a majority of the votes at a meeting or election of the Association, conducted in accordance with applicable law.

C. Assessments to Address Emergency Situations. The requirement of a membership vote to approve Regular Assessment increases in excess of twenty percent (20%) of the previous year's Regular Assessment shall not apply to assessment increases necessary to address emergency situations. For purposes of this subparagraph (c), an "emergency situation" is defined by applicable law, and includes the following:

- (1) An extraordinary expense required by an order of a court.
- (2) An extraordinary expense necessary to repair or maintain the Common Areas, Common Facilities or any portion of the separate interests which the Association is obligated to maintain where a threat to personal safety is discovered.
- (3) An extraordinary expense necessary to repair or maintain the Common Areas, Common Facilities or any portion of the separate interests which the Association is obligated to maintain that could not have been reasonably foreseen by the Board in preparing and distributing the budget pursuant to Paragraph A, above,



provided that, prior to the imposition or collection of an assessment under this Subparagraph (3), the Board shall adopt 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. The Resolution shall be distributed to the Members together with the notice of assessment.

6.4 Mailing Notice of Assessment. The Board of Directors shall mail to each Owner (or send by electronic means, if consent has been given by the Owner pursuant to *Civil Code* Section 4040), at the street address of the Owner's Lot, or at such other address as the Owner may from time to time designate in writing to the Association, notice of any increase or decrease in the amount of the Regular or Special Assessments for the next succeeding fiscal year no less than thirty (30) days nor more than ninety (90) days prior to the increased assessment becoming due.

6.5 Failure to Make Estimate. If, for any reason, the Board of Directors fails to make an estimate of the Common Expenses for any fiscal year, then the Regular Assessment made for the preceding fiscal year, together with any Special Assessment made for that year, shall be assessed against each Owner and his or her Lot on account of the then current fiscal year, and installment payments (as hereinafter provided) based upon such automatic Assessment shall be payable on the regular payment dates established by the Association.

6.6 Reserve Funds. Each annual regular assessment shall include a portion for reserves in such amounts as the Board in its discretion considers appropriate to meet the cost of the future repair, replacement, or additions to the major components of the Common Area Improvements and Common Facilities that the Association is obligated to maintain and repair. 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 money from the reserve account. Except as provided below, no money shall be transferred from a reserve fund to the Association's general operating fund and reserve funds may not be expended for any purpose other than the repair, restoration, replacement, or maintenance of major components that the Association is obligated to maintain or as otherwise permitted by applicable law.

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, provided the Board has made a written finding, recorded in the Board's minutes, explaining the reasons that the transfer is needed and describing when and how the money will be repaid to the reserve fund. The transferred funds shall be restored to the reserve fund within one (1) year of the date of the initial transfer, except that the Board may, on the making of a finding supported by documentation that a temporary delay is in the best interest of the

Association, temporarily delay the restoration. The Board shall exercise prudent fiscal management in delaying restoration of these funds and in restoring the expended funds to the reserve accounts, and shall, if necessary, levy a Special Assessment to recover the full amount of the expended funds within the time limits required by applicable law. This special assessment is subject to the limitations imposed by applicable law and the restrictions imposed herein. The Board may, at its discretion, extend the date the payment on the Special Assessment is due. Any extension shall not prevent the Board from pursuing any legal remedy to enforce the collection of any unpaid special assessment.

When the decision is made to use reserve funds or to temporarily transfer money from the reserve fund to pay for litigation, the Association shall notify the Members of the Association of that decision in the next available mailing to all Members pursuant to applicable law and of the availability of an accounting of those expenses. Unless the Governing Documents impose more stringent standards, the Association shall make an accounting of expenses related to the litigation on at least a monthly basis. The accounting shall be made available for inspection by Members at the Association's office.

6.7 Installment Payment of Assessments. The Regular Assessment levied against each Owner and his or her Lot shall be due and payable to the Association in full on or before March 31st each year.

6.8 Equal Allocation of Assessments. Regular and Special Assessments shall be allocated among, assessed against, and charged to each Owner so that assessments are fixed at a uniform rate for all Single-Family Lots and at one and one-half (1.5) times the uniform rate for all Duplex Lots.

6.9 Special Assessments.

A. Purposes for Which Special Assessments May Be Levied. Subject to the membership approval requirements set forth in paragraph B below, the Board of Directors shall have the authority to levy Special Assessments against the Owners and their Lots for the following purposes, among others:

(1) Regular Assessment Insufficient in Amount. If, at any time, the Regular Assessment for any fiscal year is insufficient in amount due to extraordinary expenses not contemplated in the budget prepared for said fiscal year, then the Board of Directors shall levy and collect a Special Assessment, for the purpose of defraying, in whole or in part, any deficit which the Association may incur in the performance of its duties and the discharge of its obligations hereunder.

(2) Capital Improvements. The Board may levy Special Assessments for capital improvements within the Common Area.

(3) Loan Repayments. The Board may levy Special Assessments to repay disaster loans or loans obtained for the purpose of repairing Common Area facilities or financing litigation.

(4) Litigation. The Board may levy Special Assessments to fund litigation.

B. Special Assessments Requiring Owner Approval. No Special Assessments which in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Association for the fiscal year in which the Special Assessment(s) is levied shall be made without the vote or written assent of Owners, constituting a quorum, casting a majority of the votes at a meeting or election of the Association, provided that this membership approval requirement shall not apply to any Special Assessment levied to address "emergency situations" as defined above.

C. Special Assessments for purposes described in this Section shall be due as a separate debt of each Owner and a lien against his or her Lot.

#### 6.10 Special Individual Assessments.

A. Circumstances Giving Rise to Special Individual Assessments. In addition to the Special Assessments levied against all Owners in accordance with Section 6.7, above, the Board of Directors may impose Special Individual Assessments against an Owner in any of the following circumstances, after the Owner has been given the notice and hearing rights to which the Owner is entitled, and, if appropriate, has been given a reasonable opportunity to comply voluntarily with the Association's Governing Documents.

(1) Damage to Common Area or Common Facilities. If any damage or destruction of any portion of the Development is caused by the willful misconduct or negligent act or omission of any Owner, Tenant, or Resident, or any Invitee, servant, or employee thereof, which causes the Association to incur any costs and expenses to repair, all such costs and expenses incurred in connection therewith shall be assessed and charged solely to and against such Lot as a Special Individual Assessment.

(2) Expenses Incurred in Gaining Member Compliance. If the Association incurs any costs or expenses to (a) obtain the compliance with any provision of the Governing Documents (including to remedy any noncompliance) of a Lot's Owner Tenant, Resident, or Invitee, and/or the Lot itself, or to (b) accomplish any repair,

maintenance or replacement to any portion of the Property that the Owner is responsible to maintain but has failed to undertake or complete after at least fifteen (15) days' written notice, the amount incurred by the Association (including without limitation fines and penalties, accounting fees, management fees, court costs and reasonable attorney's fees, including those incurred prior to filing a lawsuit) shall be assessed and charged solely to and against such Owner as a Special Individual Assessment.

(3) Attorneys' Fees. Any reasonable attorneys' fees and costs incurred by the Association in the enforcement of the Governing Documents with respect to a Lot, or its Owner, Tenant, Resident or Invitee, or to determine the rights or duties of a Member under the Governing Documents, may be levied against that Member as a Special Individual Assessment which may be collected in any manner provided for by the Governing Documents or by law.

B. Levy of Special Individual Assessment and Payment. Once a Special Individual Assessment has been levied, notice of such Special Individual Assessment shall be mailed to the affected Owner(s) and shall thereafter be due as a separate debt of the Owner(s) payable in full to the Association within thirty (30) days after the mailing of notice of the Assessment, or within such other time period as the Board may determine.

6.11 Maintenance of Assessment Funds. All sums received or collected by the Association from Assessments, together with any interest or late charges thereon, shall be promptly deposited in one or more insured checking, savings or money market accounts in a bank or savings and loan association selected by the Board of Directors which has offices located within the State of California, County of Santa Barbara. In addition, the Board shall be entitled to make prudent investment of reserve funds in insured certificates of deposit, money market funds or similar investments consistent with the investment standards normally observed by trustees.

6.12 Collection of Assessments; Enforcement of Liens.

A. Delinquent Assessments. If any installment payment of a Regular Assessment or lump sum or installment payment of any Special Assessment or Special Individual Assessment assessed to any Owner is not paid within fifteen (15) days after the same becomes due, such payment shall be delinquent and may, at the Board's election, bear interest at the rate of twelve percent (12%) per annum, or any other percentage provided by law, beginning thirty (30) days after the due date until the same is paid. In addition to the accrual of interest, the Board of Directors is authorized and empowered to impose a late charge for any delinquent Assessments not exceeding ten percent ten percent (10%) of the delinquent assessment or \$10.00, whichever is greater, or such other amount as provided by law.

**B. Effect of Nonpayment of Assessments.**

**(1) Creation and Imposition of a Lien for Delinquent Assessments.**

As more particularly provided by applicable law, the amount of any delinquent Regular Assessment, Special Assessment, Special Individual Assessment (pursuant to Section 6.13 of this Article), or Emergency Assessment, together with any late charges, interest and costs (including reasonable attorneys' fees) shall become a lien upon the Lot of the Owner so assessed when the Association causes to be recorded, in the Office of the County Recorder, a Notice of Delinquent Assessment (or equivalent) executed by the Board or an representative of the Association authorized by the Board. The Association shall record the lien in accordance with and pursuant to applicable statutory law.

**(2) Remedies Available to the Association to Collect Assessments.** After the expiration of the statutory time period, prescribed by applicable law, following the recording of Notice of Delinquent Assessment, the Association may initiate legal action against the Owner personally obligated to pay the delinquent Assessment for a money judgment and/or foreclosure of said lien against the Owner's Lot, or accept a deed in lieu of foreclosure, in a manner consistent with applicable statutory law. Foreclosure by the Association of said lien may be by judicial or non-judicial foreclosure.

**6.13 Limitation on Right to Lien Lots for Special Individual Assessments.** A Special Individual Assessment imposed by the Association as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to Common Areas and Common Facilities for which the Owner, or his or her Tenants, Residents, or Invitees were responsible may become a lien against the Lot enforceable by the sale of the Lot pursuant to applicable law. However, other Special Individual Assessments imposed by the Association pursuant to Section 6.10A(2), as a disciplinary measure for failure to comply with the Governing Documents, such as for fines, levied pursuant to this Declaration and/or applicable law, except for late payment penalties for delinquent Assessments, may not be characterized nor treated as an Assessment that may become a lien against the Lot that is enforceable by sale pursuant to applicable law. Special Individual Assessments relating to delinquent Assessments shall be subject to imposition of a lien and enforceable through foreclosure or sale under a power of sale for failure of an Owner to pay such Assessment, all as more particularly provided in herein.

**6.14 Waiver of Exemptions.** Each Owner, to the extent permitted by law, waives, to the extent of any liens created pursuant to this Article, the benefit of any homestead or exemption law of California in effect at the time any Assessment or installment thereof becomes delinquent or any lien is imposed against the Owner's Lot.

**6.15 Prohibition on Avoidance of Obligations.** No Owner, by non-use of the Common Area or Common Facilities, abandonment of the Owner's Lot or otherwise may

avoid the burdens and obligations imposed on such Owner by the Governing Documents, including, without limitation, the payment of Assessments levied against the Owner and his or her Lot pursuant to this Declaration.

6.16 No Offsets. All Assessments shall be payable in the amount specified by the Assessment and no offsets against such amount shall be permitted for any reason, including, without limitation, a claim that (i) the Association is not properly exercising its duties and powers as provided in this Declaration; (ii) a Member has made or elects to make no use of the Common Areas; or (iii) any construction or maintenance performed or not performed by the Association shall in any way postpone Assessments or entitle a Member to claim any such offset or reduction.

## ARTICLE VII RESTRICTIONS ON USE OF LOTS AND COMMON AREA

In addition to the restrictions established by law and the Rules, which are not inconsistent with this Declaration, the following restrictions are hereby imposed upon the use of Lots, Common Areas, and Exclusive Use Common Areas within the Property.

7.1 Residential Use. The Lots, Residences, and Exclusive Use Common Areas are restricted to Residential Use except as provided herein.

7.2 Business Activities. No commercial business activities of any kind whatsoever shall be conducted in any Lot, Residence, garage, Exclusive Use Common Areas, or Common Areas. No restrictions contained herein shall be interpreted to prohibit any Owner or Tenant from maintaining a home office, nor from conducting any other activities within the Lot otherwise compatible with Residential Use and the provisions of this Declaration which are permitted under applicable zoning laws, and health ordinances, resolutions, Rules and Regulations of the County of Santa Barbara without the necessity of a special use permit or governmental authorization, unless other Residents are disturbed by an unreasonable number of visitors to the Property, excessive noise, or additional traffic and provided further there shall be no signs advertising their home office. Notwithstanding the foregoing, nothing shall prohibit business signs on vehicles.

7.3 Prohibition of Noxious Activities. No illegal, noxious or offensive activities shall be carried on or conducted within the Property, including within any Residence, nor shall anything be done within the Property which is or could become an unreasonable annoyance or nuisance to other Residents nor otherwise interfere with the quiet enjoyment of the Property by other Residents. Without limiting the foregoing, no Owner shall permit unreasonable noise, including, but not limited to, the operation of excessively noisy stereo amplifier systems, television systems, or motor vehicles to emanate from Lot or from activities within the Common Area, which would unreasonably disturb any other

Resident's enjoyment of his or her Residence or the Common Area.

7.4 Behavior of Persons on the Property. Each Owner and Tenant of a Lot shall be accountable for the conduct and behavior of all Residents and Invitees of such Owner or Tenant, and shall be liable to the Association and to other Owners, Residents, and Invitees, for any property damage or nuisance caused by such persons.

7.5 Damage to Common Area. No Owner, Tenant, Resident, Invitee, or contractor employed by anyone other than the Board may make any Improvement to the Common Area, nor remove or alter any furnishings, structures, improvements or landscaping materials therein. The Common Area shall not be obstructed by any person. Each Owner shall be liable to the remaining Owners for any damage to the Common Area that may be sustained by reason of the negligent or willful conduct of said Owner, or that Owner's family members, contract purchasers, Tenants, Residents, or Invitees. Each Owner, by acceptance of his or her deed, agrees personally and for family members, contract purchasers, Tenants, Residents, and Invitees, to indemnify each and every other Owner, and to hold every other Owner harmless from, and to defend him or her against any claim of any person for personal injury or property damage occurring within the Lot or Exclusive Use Common Area of the Owner, except to the extent that the injury or damage occurred by reason of the willful or negligent act or omission of the Association or of an Owner, Tenant, Resident, or Invitee of another Lot.

7.6 Activities Affecting Insurance. Nothing shall be done or kept within any Lot, Exclusive Use Common Area, or the Common Area which will increase the rate of insurance on any policy maintained by the Association without the prior written consent of the Association and no Owner shall permit anything to be done or kept within his or her Lot, Exclusive Use Common Area, or the Common Area which would cause any Improvements to be uninsurable against loss by fire or casualty or result in the cancellation of insurance on any Lot or any part of the Common Area.

7.7 Oil and Mineral Rights. No oil, mineral, or water drilling, development operations, refining, quarrying, or mining operations of any kind shall be permitted upon or in the Property nor, subsequent to the recording of this Declaration, shall wells, tanks, tunnels, or excavations or shafts be installed upon the surface of the Property or within five hundred (500) feet below the surface of such properties. No derrick or other structure designed for use in boring for water, oil or natural gas shall be erected, maintained or permitted upon the Property.

7.8 Drainage. As used herein, the term "drainage pattern and system" includes, but is not necessarily limited to, underground drain pipes, area drains, gutters, downspouts, berms, swales, and other drainage facilities and above or below ground patterns of drainage over or through Lots and roofs from and to adjoining properties and

improvements. Each Owner with respect to his Residence and the Association with respect to the Common Area shall have the right to use the established drainage pattern and system for the purpose of draining their respective Lots and Improvements thereon; provided that such right of drainage shall not include the right to discharge noxious or offensive matter. Water from any Lot and the Improvements thereon may drain or flow into adjacent streets. Water shall not be allowed to drain or flow onto adjacent Lots except to the extent provided for by the natural drainage contour and/or the established drainage pattern and system. All slopes or terraces on any Lot shall be maintained as provided herein so as to prevent the modification or erosion of the established drainage patterns and system and to prevent any erosion of the Lot upon adjacent streets or adjoining property. No structure, planting, or other material shall be placed or permitted to remain or other activities undertaken on any slope area or any other area within the Property which might damage or interfere with established slope ratios, drainage facilities or systems or create erosion or subsidence problems. Any drainage patterns and systems which are not maintained by the Association shall be maintained by the Lot Owner in a neat, orderly, safe and sanitary condition and in such a manner as to facilitate the orderly discharge of water.

7.9 Variances. Upon application by any Owner, the Board shall be authorized and empowered to grant reasonable variances from the property use restrictions set forth in this Article, if specific application of the restriction will, in the sole discretion of the Board, either deny a substantial right of the affected Owner or Tenant, or cause an undue hardship to the affected Owner or Tenant, or fail to further or preserve the common plan and scheme of development contemplated by this Declaration.

## ARTICLE VIII MAINTENANCE RESPONSIBILITIES

8.1 Association's Responsibilities. The Association shall be solely responsible for all maintenance, repair, upkeep and replacement of the Common Area and Common Facilities, as required by applicable law, and to keep the same in good order and repair. No person other than the Association or its duly authorized representatives shall construct, reconstruct, refinish, alter or maintain any Improvement upon, or shall create any excavation or fill or change the natural or existing drainage of any portion of the Common Area. The Association's maintenance, repair and replacement obligations, which may differ from any applicable law are specifically set forth, in detail, in the Maintenance Responsibility Check List, attached hereto as **Exhibit "A"** and incorporated by this reference. In the event of any ambiguities or conflicts regarding maintenance, repair or upkeep obligations, the Maintenance Responsibility Check List shall control. Without limiting the foregoing, the Association shall be responsible for:



A. The maintenance, reconstruction, replacement, or refinishing of any Common Facility or other Common Area Improvements, including sewer, water, telephone, plumbing and electrical lines located under or within the Common Area.

B. The maintenance, construction, reconstruction, replacement, refinishing of any driveway or surface upon any portion of Common Area.

C. The maintenance, replacement and planting of Common Area landscaping, trees, shrubs, ground covering and other vegetation, and the maintenance and replacement of Common Area irrigation equipment, debris-detention basins and utilities. Any natural slope areas within the Common Area shall be maintained in a natural condition and in such a manner as to prevent noxious or dangerous weeds, sagebrush, chaparral or any other brush or weeds from such growth as to become, when dry, a fire menace or public nuisance. Without limitation, the Association shall repair, replace and reconstruct any Common Area which is damaged as the result of, or in connection with, the use of, or the exercise of any rights under, the easements reserved, if any.

D. The placement, maintenance and replacement of such signs as the Board may deem necessary for the identification of the Development, the regulation of use of Common Area and Common Facilities and for the health, welfare and safety of Owners, tenants and guests. Any such signs to be placed within the street area shall be subject to city and county approval.

E. The Association shall be responsible for the repair and maintenance of the Common Area occasioned by the presence of wood-destroying pests or organisms, and for all pest eradication services within the Common Areas, except for Exclusive Use Common Areas.

## 8.2 Owner Maintenance, Repair and Replacement Responsibilities.

A. Each Owner of a Lot shall be responsible for the maintenance, repair, and upkeep of his or her Lot and Residence in a clean, sanitary and attractive condition and good state of repair. No Improvements (including but not limited to Residences, garages, carports, walls and fences) shall be permitted to fall into disrepair and all Improvements shall at all times be kept in good condition and repair and adequately painted or otherwise finished. In addition each Owner shall have the right, at his or her sole cost and expense, to paint, tile, finish, alter, substitute, add, or remove any fixtures within such Owner's Residence; however, no Owner may interfere with or damage any Common Area or otherwise impair the structural integrity of the building in which the Residence is located, or interfere with the use and enjoyment of the Common Areas or the Lots or any other part of the Development. Each Owner's maintenance, repair and replacement obligations, which may differ from any such applicable law are specifically set forth, in detail, in the Maintenance Responsibility Check List (Exhibit "A"). In the

event of any ambiguities or conflicts in regards to maintenance, repair or upkeep obligations, the Maintenance Responsibility Check List shall control.

B. Each Owner of a Lot shall be responsible for the maintenance, repair, upkeep of plumbing, electrical, telephone, and other utility installations within such Owner's Lot, and for all heating and air conditioning systems, including air conditioning compressors and equipment, servicing his or her Lot whether located within the Lot or otherwise.

(i) With respect to said systems located within the Common Area, the Association may maintain, repair and/or replace same and assess the costs to the Owner of the Lot that is so serviced by way of a Special Individual Assessment.

(ii) Each Owner shall also be responsible for maintaining in an open and unobstructed condition all sewer and drainage pipes and lines serving only his or her Lot.

C. Owners shall be responsible for the cost to repair any damage to any property, including property which is Common Area or which is part of or appurtenant to another Lot, which is caused by any component within and/or servicing his or her Lot, whether or not said damage was foreseeable to occur.

D. No Owner or Resident shall alter or obstruct a natural drainage course, or materially add to the natural water volume of said drainage course without making adequate provisions with respect to neighboring Lots and Common Areas. Any such alterations, obstructions, or additions to water volume shall be subject to prior review and approval by the County or City.

8.3 Obligation To Permit Entry by Association and Adjacent Owners. Each Owner shall be obligated to permit the Owners or representatives of adjacent Lots to enter the Owner's Lot for purposes of performing installations, alterations, maintenance or repairs to utilities, mechanical or electrical services, including installation of television antennas and related cables, which are reasonably necessary for the use and enjoyment of the adjacent Lot, provided that requests for entry are made at least twenty-four (24) hours in advance to the Owner whose Lot is being entered, except in the event of an emergency when no notice shall be required. Each Owner shall also honor the right of the Association and its agents to enter his or her Lot as provided in this Declaration for maintenance, repairs and/or to gain compliance with this Declaration.

8.4 Cooperative Maintenance Obligations. To the extent necessary or desirable to accomplish the Association's maintenance and repair obligations hereunder, individual Owners shall cooperate with the Association and its agents and maintenance personnel in the prosecution of its work.

8.5 Non-Responsibility for Consequential Damages/Mold Remediation/Re-construction. Except for damages for which the Association has insurance, neither the Association nor its Board of Directors, officers, manager or its employees or agents shall be liable to any Owner, or any other person, for injury, damage or loss to any Owner or any Owners' property, or any other persons or property, in the Properties resulting from any casualty, or from any water, rain, dust, sand, or any other element which may leak or flow from outside of any Lot or from any part of the building, or from any pipes, drains, conduits, appliances or equipment or from any other place or cause, provided the Association, such Board Members or other persons have, upon the basis of such information as may be possessed by them, acted in good faith, and without willful or intentional misconduct. The Association's Non-Responsibility for Consequential Damages, as herein stated, includes, but is not limited to, fixtures, cabinets, paint, wall coverings, window coverings and floor coverings, costs necessary to test for the presence of mold, abate the same, and reconstruct Lots damaged by said damages.

8.6. Party Walls. Each wall or fence which is built as a part of the original construction of the Residences within the Properties and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. A party wall shall be considered to adjoin and abut against the property line dividing the Lots from the bottom of the foundation over the full length and height of any structure or wall.

A. Use of Party Wall. Owners whose Lots are separated by a party wall shall equally have the right to use such party wall, except that each shall have the right to the exclusive use of the surface of the wall on his side. Neither such Owner shall use any portion of such party wall so as to interfere with the use and enjoyment of the other Owner.

B. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use. If a party wall is destroyed or damaged by fire or other casualty, then, to the extent such damage is not covered by insurance and repaired out of the proceeds of same, any Owner who has used the wall may restore it, and the other adjoining Owner shall contribute to the cost of restoration thereof in equal proportion to such use without prejudice, however, subject to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions. Notwithstanding any other provision of this Article, to the extent that any such damage is not covered and paid by the insurance provided for herein, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements. The right of any Owner to contribution from any other Owner under this

Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

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

## ARTICLE IX EASEMENTS

9.1 Owners' Nonexclusive Easements of Enjoyment. Every Owner shall have a nonexclusive right and easement of enjoyment in and to the Common Areas within the Property, including ingress and egress to and from his or her Lot, which shall be appurtenant to and shall pass with the title to every Lot, subject to the following rights and restrictions:

A. The right of the Association to limit the number of guests who may use any Common Facilities.

B. The right of the Association to adopt Rules regulating the use and enjoyment of the Property for the benefit and well-being of the Owners in common, and, in the event of the breach of such rules or any provision of any Governing Documents by any Owner, Tenant, Resident, or Invitee of a Lot, to temporarily suspend the voting rights and/or right to use the Common Facilities, by any person and any other Owner or Resident of the Lot, subject to compliance with due process requirements.

C. The right of the Association to enter into or upon any Lot or Exclusive Use Common Areas when such access is essential for the maintenance of the Common

Area or to enforce the provisions of the Governing Documents, subject to Section 5.6(B) hereof.

D. The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Area and in aid thereof to mortgage said property; provided, however, that the rights of any such Mortgagee in said properties shall be subordinate to the rights of the Owners hereunder; and further provided that any such indebtedness shall be considered a Common Expense.

E. The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed by the Owners; provided, however, that no such dedication or transfer shall be effective unless an instrument, approved by at least fifty-one percent (51%) of the voting power of the Members, consenting to such dedication or transfer has been recorded. Furthermore, no dedication shall be permitted that impairs the ingress and egress to any Lot. Said instrument may be executed in counterparts so long as each counterpart is in recordable form.

F. The right of the Board to approve any proposed alteration or modification to the Common Area or any Lot.

9.2 Encroachment Easements. If any portion of the Common Area encroaches on any Lot or if any portion of a Lot encroaches on the Common Area, regardless of the cause which may include but is not limited to settlement or shifting of the building, except to the extent any encroachment is due to the willful conduct of an Owner or other party, a valid easement exists for such encroachment and for the maintenance of it as long as it remains, and all Lots and the Common Area are made subject to such easements.

9.3 Blanket Utility Easement. There is hereby created a blanket easement upon, across, over and under all of the Property for ingress, egress, installation, replacing, repairing and maintaining all utilities, including but not limited to water, sewer, gas, telephones, drainage and electricity and the master television antenna or cable television system, if any. By virtue of this easement, it shall be expressly permissible for the providing utility company to erect and maintain the necessary equipment and underground facilities on the Common Area. Notwithstanding the foregoing, no sewer, electrical lines, water lines, or other utilities may be installed or relocated on said Property except as initially designed and approved by the Declarant or thereafter approved by the Board. The easements provided for in this Section shall in no way effect any other recorded easement on the Property.

9.4 Other Easements. Each Lot and its Owner, and the Association as to the Common Area, are hereby declared to be subject to all the easements, dedications and rights-of-way granted or reserved in, on, over and under the Property and each Lot and Common Area.

9.5 Maintenance Easements. An easement is hereby granted to the Association, its officers, agents, employees, and to any Manager or contractor selected by the Board, to enter in or to cross over the Common Area and any Lot to perform the duties of maintenance and repair of the Common Area, Common Facilities, Maintenance Areas, or any other area required or permitted to be maintained by the Association, provided that any entry by the Association or its agents shall only be undertaken in strict compliance with this Declaration.

## ARTICLE X INSURANCE

10.1 Fire and Casualty Insurance. The Association shall obtain and maintain a policy of fire and casualty insurance naming as parties insured the Association and any Mortgagee of the Common Area, and containing the standard extended coverage and replacement cost endorsements and, in the Board's discretion, such other or special endorsements as will afford protection and insure, for the full insurable, current replacement cost, all Common Area, Common Facilities, and Maintenance Areas that the Association is required to repair or restore in the event of partial or total destruction thereof and, also in the Board's discretion, all or portions of the Lots, and the personal property of the Association for or against the following:

- (a) Loss or damage by fire or other risks covered by the standard extended coverage endorsement;
- (b) Loss or damage from theft, vandalism or malicious mischief; and
- (c) Such other risks, perils or coverage as the Board may determine.

Such policy or the endorsement made a part thereof shall, to the extent available, provide that the insurer issuing the policy agrees to abide by the decision of the Association made in accordance with the provisions of this Declaration as to whether or not to repair, reconstruct or restore all or any damaged or destroyed portion of the Common Facilities. If available for a reasonable cost, the insurance policy shall include building code upgrade coverage.

The insurance shall be kept in full force and effect at all times and the full replacement value of the insured property shall be reevaluated on an annual basis.

10.2 General Liability and Property Damage Insurance. The Association shall obtain and maintain a policy of commercial general liability and property damage insurance naming as parties insured the Association, each member of the Association's Board of Directors, any manager, the Owners of all Lots, and such other persons as the Board may determine and agreed upon by the respective carrier. The policy shall insure each named party against liability incident to the ownership, maintenance, and repair of the Common Area and any other Association-owned or maintained real or personal property. The limits of such insurance shall not be less than three million dollars (\$3,000,000.00) covering all claims for death, personal injury, and property damage arising out of a single occurrence, or in such other minimum amount as required by applicable law to protect Owners from civil liability arising solely by reason of their ownership interest in the Common Area.

10.3 Directors and Officers Liability Insurance. The Association shall obtain and maintain Directors and Officers Liability Insurance covering prior acts in order to ensure that past Board Members are protected for decisions made during their term of service. The policy shall name as insureds not only the current Board Members but also volunteer committee members, if such insurance is available. The limits of such insurance shall not be less than one million dollars (\$1,000,000.00), or in such other minimum amount as required by applicable law to protect volunteer officers or directors from personal liability in excess of the insurance coverage. If commercially available for a reasonable price, such Directors of Officers Liability coverage shall include an endorsement extending coverage for the acts, errors, and omissions committed by the Association's Manager.

10.4 Fidelity Bond and Other Insurance.

A. The Board shall obtain and maintain fidelity bonds or insurance, in an amount equal to at least three (3) months operating expenses plus Reserves." Any such policies or bonds must include coverage for computer fraud and fund transfers fraud, pursuant to Civil Code Section 5806, and contain an endorsement that includes as covered individuals under said policies or bonds any non-compensated Board members and also the Association's Manager.

B. To the extent such insurance is reasonably obtainable or required by any institutional Mortgagee, the Association may also purchase with Common Funds such additional insurance and bonds as it may, from time to time, determine to be necessary or desirable, including, without limitation, demolition insurance, flood insurance, worker's compensation, commercial umbrella coverage, and boiler and machinery coverage.

10.5 Coverage Not Available. If any insurance policy or endorsement required herein is for any reason not available, then the Association shall obtain such other or substitute policy or endorsement as may be available which provides, as nearly as possible, the coverage described above.

10.6 Copies of Policies. Copies of all insurance policies shall be retained by the Association and shall be available for inspection by any Owner in accordance with applicable law.

10.7 Trustee. All insurance proceeds payable pursuant to policies maintained by the Association may, in the discretion of the Board of Directors, be paid to a trustee to be held and expended for the benefit of the Owners, Mortgagees and others, as their respective interests appear. Said trustee shall be a commercial bank, escrow company, title company, or other person or institution with trust powers within the County that agrees in writing to accept such trust.

10.8 Adjustment of Losses. The Board is appointed attorney-in-fact by each Owner to negotiate and agree on the value and extent of any loss under any policy carried by the Association. The Board is granted full right and authority to compromise and settle any claims or enforce any claim by legal action or otherwise and to execute releases in favor of any insured.

10.9 Board's Discretion to Submit Insured Losses. The Board shall have the discretion as to whether or not it is in the best interests of the Association to submit an insurance claim to its insurer.

10.10 Losses Solely Attributable to a Lot; Deductibles. Each Owner shall be responsible to pay the deductible for any claims made under the Association's policies of insurance for losses solely attributable to the respective Owner's Lot.

## ARTICLE XI DAMAGE OR DESTRUCTION

11.1 Destruction of Common Area. If there is a destruction of some or all of the Common Area, resulting from any casualty loss, including without limitation fire, earthquake, wind, rain, subsidence, flood, or any other cause, the procedures in this Article shall be followed. For purposes of this Article, "destruction" applies to any Improvements that are rendered unsafe for any human habitation by being razed, destroyed, or annihilated, but not merely unsatisfactory for habitation by a particular individual, regardless of sensitivity to particular conditions.



A. If the proceeds of insurance maintained by the Association is at least eighty-five percent (85%) of the projected costs of the repair, the Common Area shall be repaired to its former condition as promptly as is practical and in a lawful and workmanlike manner. Available insurance proceeds shall be used for such purpose and the Board shall levy a uniform Special Assessment at such time and in such amount as is necessary to cover any costs in excess of insurance proceeds.

B. If such proceeds of insurance is less than eighty-five percent (85%) of the projected costs of the repair, the Common Area shall nevertheless be repaired unless, within ninety (90) days from the date of destruction, Members holding at least fifty-one percent (51%) of the total voting power of the Association object in writing to such repair. In such event, the Common Area shall be cleared and landscaped for community park use; provided, however, that there shall exist in such Common Area adequate vehicular and pedestrian rights of way to ensure lawful access to the Lots. The costs of such clearing and landscaping shall be paid for with available insurance proceeds, and any deficiency shall be raised by the levy of Special Assessments in an amount determined by the Board. In the event any excess insurance proceeds remain, the Board may, in its discretion, retain such funds in the Common Funds or distribute pro rata all or a portion of such sums to the Owners, subject to any prior rights of mortgagees whose interests may be protected by the insurance policies.

11.2 Minor Restoration and Repair Work. The Association shall order restoration or repair work of the Common Area without complying with the other provisions of this Article whenever the estimated cost of the work does not exceed \$50,000.00. If insurance proceeds are unavailable or insufficient, the Association shall levy a Special Assessment for the cost of the work.

11.3 Destruction of Residences Not Covered by Association Insurance.

A. Obligation to Rebuild. Except as provided in Section 12.2, if all or any portion of any Residence is damaged or destroyed by fire or other casualty, it shall be the duty of the Lot Owner to rebuild, repair or reconstruct said Residence in a manner which will restore it substantially to its appearance and condition immediately prior to the casualty, or to remove any damaged structures from the Lot without unreasonable delay.

## ARTICLE XII CONDEMNATION

12.1 Sale by Unanimous Consent or Taking. If an action to condemn all or any portion of the Common Area is proposed or threatened by any governmental agency having the right of eminent domain, then, upon consent of fifty-one percent (51%) of

all Owners and all institutional Mortgagees, the Common Area, or a portion thereof may be sold and conveyed to the condemning authority by the Board or its designees acting as the attorney-in-fact of all Owners pursuant to Section 3.4 hereof, for a price deemed fair and equitable by the Board. However, if the Owners or Mortgagees do not consent to such a sale, and the condemning authority institutes condemnation proceedings, the court shall fix and determine the condemnation award.

## 12.2 Distribution and Sale; Proceeds of Condemnation Award.

A. Total Sale or Taking. A total sale or taking of the Property is a sale or taking that: (i) renders more than fifty percent (50%) of the Lots uninhabitable (such determination to be made by the Board in the case of a sale and by the court in the case of a taking); or (ii) renders the Property as a whole uneconomical as determined by the vote or written consent of fifty-one percent (51%) of those Owners and their respective institutional Mortgagees whose Lots will remain habitable after the taking. However, any determination that a sale or taking is total must be made before the proceeds from any sale or award are distributed. The proceeds of any such total sale or taking of the Property, after payment of all expenses relating to the sale or taking, shall be paid to all Owners and to their respective Mortgagees in the proportion that the fair market value of each Lot bears to the fair market value of all Lots on the Property. The fair market value of Lots shall be determined in the condemnation action, if such be instituted, or by an appraiser.

B. Partial Sale or Taking. In the event of a partial sale or taking of the Properties, meaning a sale or taking that is not a total taking, as determined in section 12.2, paragraph A, above, the proceeds from the sale or taking shall be paid or applied in the following order of priority and any judgments of condemnation shall include the following provisions as part of its terms:

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

(2) To Owners and to their respective Mortgagees, as their interests may appear, of Lots on the Property whose Lots have been sold or taken, an amount up to the fair market value of such Lots as determined by the court in the condemnation proceeding or by an appraiser, less such Owners' share of expenses paid pursuant to section 12.2, subparagraph B(1) (which share shall be in proportion to the ratio that the fair market value of each Owner's Lot bears to the fair market value of all Lots.

(3) To any remaining Owner(s) and to his or her Mortgagees, as their interests may appear, whose Lot has been diminished in value as a result of the sale or taking disproportionate to any diminution in value of all Lots, as determined by

the Court in the condemnation proceeding or by an appraiser, an amount up to the total diminution in value; then

(4) To all remaining Owners and to their respective Mortgagees, as their interests may appear, the balance of the sale proceeds or award in proportion to the ratio that the fair market value of each remaining Owner's Lot bears to the fair market value of all remaining Owners' Lots as of a date immediately prior to commencement of condemnation proceedings, as determined by the Court in the condemnation proceeding or by an appraiser.

12.3 Appraiser. Wherever in this Article reference is made to a determination of the value or fair market value of one or more Lots by an appraiser, this shall mean an appraisal by an independent appraiser selected by the Board, who shall be a member of the Appraisal Institute (AI) or other nationally recognized appraiser organization and who shall apply the AI or other national appraisal organization's standards in determining the value or fair market value of each Lot. The costs of such appraisals shall be paid from the condemnation proceeds as an expense of the Association.

### ARTICLE XIII ENFORCEMENT

13.1 Remedy at Law Inadequate. Except for nonpayment of any Assessment, the remedy at law to recover damages for the breach, default or violation of any of the Governing Documents are hereby declared and agreed to be inadequate. Any such breach, default, or violation may be enjoined by appropriate legal proceedings instituted by any Owner, the Association, its officers or Board of Directors, or by their respective successors in interest.

13.2 Nuisance. Without limiting the generality of the foregoing section, the result of every act or omission whereby any provision of this Declaration is violated is hereby declared to be a nuisance. Violation of any law, ordinance or regulation by any Owner, Tenant, resident, guest, invitee, agent or contractor which affects the health, safety, or property rights of other Members is hereby declared to be a nuisance and a violation of this Declaration. Every remedy against nuisance, either public or private, shall be applicable against every such violation of law or the Declaration.

13.3 Costs and Attorneys' Fees. In any action brought because of any alleged breach or default of any Owner or Tenant of any Lot, the court may award to the prevailing party in any such action such attorneys' fees and other costs as the court deems just and reasonable. An Owner shall be responsible for attorneys' fees and costs incurred by the Association to cure the defaults respecting his or her Lot, including those of his or her Tenant(s) or of any guest, invitee, agent, or contractor thereof.

13.4 Cumulative Remedies. The respective rights and remedies provided by this Declaration or by law shall be cumulative, and the exercise of any one or more of such rights or remedies shall not preclude or affect the exercise, at the same or at different times, of any other such rights or remedies for the same or any different default or breach or for the same or any different failure of any Owner or Tenant or others to perform or observe any provision of this Declaration.

13.5 Failure Not a Waiver. The failure of any Owner, the Association, or its Board, officers, or agents to enforce any of the provisions of this Declaration shall not constitute a waiver of the right to enforce the same thereafter, nor shall such failure result in or impose any liability upon the Association or the Board, or any of its officers or agents.

13.6 Rights and Remedies of the Association.

A. Rights Generally. In the event of a breach or violation of any Rule or of any of the restrictions contained in any Governing Document by an Owner, his or her family, or the Owner's Tenants, guests, employees, invitees, or contractors, the Board, for and on behalf of all other Owners, may enforce the obligations of each Owner to obey such Rules, covenants, or restrictions through the use of such remedies as are deemed appropriate by the Board and available in law or in equity, including but not limited to, the hiring of legal counsel, the imposition of fines and monetary penalties, the pursuit of legal action, or the suspension of the Owner's right to use recreational Common Facilities or suspension of the Owner's voting rights as a Member of the Association.

B. Schedule of Fines: Due Process. The Board may implement a schedule of reasonable fines and penalties for particular offenses that are common or recurring in nature and for which a uniform fine schedule is appropriate. The Board shall distribute to each Owner, by personal delivery, first-class mail, or electronic means if the Owner has so consented in writing or by e-mail, a schedule of the monetary penalties that may be assessed for those violations, or any changes thereto. Such fines may not be levied unless the Board first provides written notice to the Owner, by either personal delivery, first-class mail, or electronic means (if the Owner has consented to such electronic delivery in writing or by e-mail), at least ten (10) days prior to the meeting to consider or impose discipline upon an Owner, and provides the Owner an opportunity for a hearing before the Board. The notice shall contain the date, time, and place of the meeting, the nature of the alleged violation for which the Owner is subject to discipline, and a statement that the Owner has a right to attend and may address the Board at the meeting. The Board shall meet in executive session if requested by the Owner being disciplined. No penalty or temporary suspension of rights shall be imposed pursuant to this Section unless the Owner alleged to be in violation is given, by either personal delivery, first-class mail, or by facsimile, e-mail or other electronic means (if the Owner

has consented to such electronic delivery in writing or by e-mail), at least fifteen (15) days prior written notice of the penalty imposed or temporary suspension.

C. Notwithstanding the foregoing, under circumstances involving conduct that constitutes: (1) an immediate and unreasonable infringement of, or threat to, the safety or quiet enjoyment of neighboring Owners; (2) a traffic, life safety, or fire hazard; (3) a threat of material damage to, or destruction of, the Common Area or Common Facilities; or (4) a violation of the Governing Documents that is of such a nature that there is no material question regarding the identity of the violator or whether a violation has occurred (such as parking violations), the Board of Directors or its duly authorized agents may undertake immediate corrective or disciplinary action and, upon request of the offending Owner, or on its own initiative, conduct a hearing as soon thereafter as reasonably practicable.

D. Rules Regarding Disciplinary Proceedings. The Board shall be entitled to adopt rules that further elaborate and refine the procedures for conducting disciplinary proceedings. Such rules, when approved and adopted by the Board, shall become a part of the Association Rules and shall provide for notices and procedures satisfying the alternative dispute resolution requirements of applicable law.

E. Court Actions. Before initiating any court action seeking solely declaratory or injunctive relief to interpret or enforce the Governing Documents or declaratory or injunctive relief in conjunction with a claim for monetary damages not in excess of the jurisdictional limits for small claims court, the Association or Owner shall first comply with the provisions of applicable law relating to alternative dispute resolution, except in the case of an emergency in which immediate injunctive relief is necessary.

#### **ARTICLE XIV AMENDMENT OF DECLARATION**

14.1 Amendment in General. This Declaration may be amended or revoked by the vote or assent of fifty-one percent (51%) of all eligible votes, using voting procedures prescribed in the Bylaws or by law. The percentage of Owners necessary to amend a specific provision of this Declaration shall not be less than the percentage of affirmative votes prescribed for action to be taken under that provision.

14.2 Effective Date of Amendment. An amendment will be effective upon the Recording of a Certificate of Amendment, and the distribution of a copy of the Recorded amendment to each Owner. The Certificate of Amendment shall be executed by the President and Secretary of the Association, setting forth the amendment in full, and certifying that the approval requirements herein have been duly met. Notwithstanding anything to the contrary herein, no amendment shall affect the rights of the holder of any

deed of trust or Mortgage recorded prior to such amendment.

14.3 Amendment by Board. Where permitted by the *Davis-Stirling Common Interest Development Act* or other applicable law, the Board may amend this Declaration to conform to current law, to remove restrictive covenants in violation of law, or otherwise. Any such amendment shall be approved by the Board in a duly held open meeting, and shall be conducted in strict accordance with applicable law.

## ARTICLE XV GENERAL PROVISIONS

15.1 No Public Rights. Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any portion of the Development to the general public or for any public use or purpose whatsoever.

15.2 Survival of Association. In the event the Association as a corporate entity is dissolved, then a nonprofit, unincorporated association shall automatically be deemed formed to succeed to all the rights and duties of the Association, all of which shall continue to be governed by the Governing Documents and applicable law.

15.3 Notices. Communications or notices of any kind required, permitted, or described herein shall be in writing, and may be served and delivered (unless otherwise provided by applicable law), as an alternative to personal service, by mailing same as provided in the Bylaws. Notwithstanding, to the extent any document must be delivered by the Association by individual delivery or notice, whether required by law or as stated herein, effective delivery includes e-mail, facsimile, or other electronic means, if the recipient has consented to such delivery, in writing or by e-mail. Consent to electronic delivery may be revoked in writing, or by e-mail, by the recipient. (*Civil Code* § 4040(a)(2).)

15.4 Failure of Mortgagee to Respond. Any Mortgagee and/or governmental agency who receives a written request from the Board to respond or consent to any action shall be deemed to have approved such action, unless the Association receives a written response from the Mortgagee within thirty (30) days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

IN WITNESS WHEREOF, this Amended and Restated Declaration of Covenants, Conditions and Restrictions has been adopted as provided above effective this 4 day of December, 2020

**SECOND UNIVERSITY VILLAGE  
HOMEOWNERS ASSOCIATION**

By: *[Signature]*  
President

By: Irene Milton  
Print Name

By: *[Signature]*  
Secretary

By: Karen Ann Boemler  
Print Name

**CERTIFICATE**

I, the undersigned, the duly elected and acting Secretary of Second University Village Homeowners Association, a California non-profit corporation, do hereby certify that the foregoing AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS were duly approved and adopted by the membership of Second University Village Homeowners Association by secret ballot vote pursuant to the requirements of the Davis-Stirling Common Interest Development Act (Civil Code §§ 4000-6150) on    , 20   ; and that the same do now constitute the AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS of the Association.

This Certificate is executed under penalty of perjury on December 4,  
2020, in Goleta, CA,  
California.

Karen Ann Boemler  
SECRETARY



**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

**CIVIL CODE § 1189**

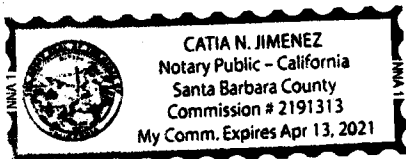
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of Santa Barbara  
On 12/04/2020 before me, Catia N. Jimenez, A Notary Public.  
Date Here Insert Name and Title of the Officer  
personally appeared Irene Louise Milton and Karen Ann Boemler.  
Name(s) of Signer(s)

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

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

WITNESS my hand and official seal.



Signature [Handwritten Signature]  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

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

**Description of Attached Document**

Title or Type of Document: Declaration of CC and RS Document Date: 12/04/2020  
Number of Pages: 50 Signer(s) Other Than Named Above: N/A

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

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

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

**EXHIBIT "A"**

**SECOND UNIVERSITY VILLAGE HOMEOWNERS ASSOCIATION**  
*Summary of Association/Owner Responsibility\**

<b>COMPONENT</b>	<b>OWNER Duty to Maintain</b>	<b>OWNER Duty to Repair</b>	<b>OWNER Duty to Replace</b>	<b>HOA Duty to Maintain</b>	<b>HOA Duty to Repair</b>	<b>HOA Duty to Replace</b>
<b>LOTS<sup>1</sup></b>						
Driveways	✓	✓	✓			
Front Yard Landscaping	✓	✓	✓			
Garage	✓	✓	✓			
Garage Doors and Hardware	✓	✓	✓			
Lighting	✓	✓	✓			
Party Walls <sup>2</sup>	✓	✓	✓			
Rear and Side Yards	✓	✓	✓			
Residence	✓	✓	✓			
Irrigation Systems	✓	✓	✓			
Walkways	✓	✓	✓			
Yard Fence/Gate and Hardware	✓	✓	✓			
<b>RESIDENCE</b>						
Address Numbers	✓	✓	✓			
Balconies	✓	✓	✓			
Ceilings	✓	✓	✓			
Doors	✓	✓	✓			
Door Frames	✓	✓	✓			
Downspouts, gutters	✓	✓	✓			
Electrical wiring, outlets, meters	✓	✓	✓			
Exterior Surfaces of Residence	✓	✓	✓			
Fireplace/Firebox/Chimney	✓	✓	✓			

<sup>1</sup> "Lot" shall mean any plot of land or parcel in the Development owned by an Owner and that is not part of the Common Area, as shown on any recorded Subdivision Map for the Development.

<sup>2</sup> The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

<b>COMPONENT</b>	<b>OWNER Duty to Maintain</b>	<b>OWNER Duty to Repair</b>	<b>OWNER Duty to Replace</b>	<b>HOA Duty to Maintain</b>	<b>HOA Duty to Repair</b>	<b>HOA Duty to Replace</b>
Floors and Floor Covering	✓	✓	✓			
Foundations	✓	✓	✓			
Heating, Ventilation and Air Conditioning	✓	✓	✓			
Interior Doors	✓	✓	✓			
Interior Walls	✓	✓	✓			
Lighting	✓	✓	✓			
Mailboxes	✓	✓	✓			
Patios	✓	✓	✓			
Pest Control: Eradication and Prevention of Pests (including, but not limited to termites) within the Lot	✓	✓	✓			
Pest Control: Repair of Damage caused by Pests (including, but not limited to termites) within the Lot	✓	✓	✓			
Porches	✓	✓	✓			
Plumbing (lines and fixtures within Lot boundaries)	✓	✓	✓			
Residence	✓	✓	✓			
Rodents: eradication and prevention	✓	✓	✓			
Screen Door	✓	✓	✓			
Screens	✓	✓	✓			
Slabs	✓	✓	✓			
Sliding Glass Door	✓	✓	✓			
Structural Components	✓	✓	✓			
Telephone Wires - internal and external serving single Lot	✓	✓	✓			
Utility Outlets/Lines	✓	✓	✓			
Walls	✓	✓	✓			
Window Frames	✓	✓	✓			

<b>COMPONENT</b>	<b>OWNER Duty to Maintain</b>	<b>OWNER Duty to Repair</b>	<b>OWNER Duty to Replace</b>	<b>HOA Duty to Maintain</b>	<b>HOA Duty to Repair</b>	<b>HOA Duty to Replace</b>
Windows	✓	✓	✓			
<b>COMMON AREA</b>						
Barbecue Area				✓	✓	✓
Clubhouse (including kitchen, restrooms, pool equipment and electrical room)				✓	✓	✓
Guest Parking				✓	✓	✓
Landscaping				✓	✓	✓
Pest Control: Eradication and Prevention of Pests (including, but not limited to termites) within Common Area				✓	✓	✓
Pest Control: Repair of Damage caused by Pests (including, but not limited to termites) within Common Area				✓	✓	✓
Recreation/Patio Area				✓	✓	✓
Swimming Pool, including Pool Area and Equipment				✓	✓	✓

\*If any damage to, or destruction of, any portion of the Development, including any of the above listed components for which the Association is responsible to maintain, repair or replace, is caused by the willful misconduct or negligent act or omission of any Owner, any member of his or her family, or any of his or her Tenants, guests, servants, employees, or invitees, which causes the Association to incur any costs and expenses to repair, all such costs and expenses incurred in connection therewith shall be assessed and charged solely to and against such Owner as a Special Individual Assessment.

**MAINTAIN, REPAIR, AND REPLACE:** "Maintain" (or "maintenance") means general upkeep: painting, periodic cleaning, trimming, irrigation (of plants), lubrication, replacement of filters or similar components when necessary, and ensuring that the item is generally free from trash, debris, dirt, grit, contamination, mold, mildew, excess water accumulation, insect or other infestations, and any other action that does not amount to "repair" or "replacement" as defined here. "Repair" means refurbishment of items that have sustained damage or severe deterioration, such as rusted, rotted, or broken components, as well as any services necessary to return an item from a non-operating condition to an operable and safe condition, short of complete "replacement." "Replacement" means removal of an existing item which, because of its age, deterioration, or disrepair, cannot be (or for whatever reason simply will not be) repaired to its former condition, and installation of another (generally new) item with the identical or substantially similar purpose in its place.