



**DECLARATION OF RESTRICTIONS  
OF  
OAKMORE HIGHLANDS,  
A PLANNED DEVELOPMENT**

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**RECITALS**

A. This Declaration of Restrictions makes reference to the Declaration of Restrictions of Oakmore Highlands, a Planned Development, made and declared by Park Boulevard Company, dated May 15, 1926, and titled May 17, 1926 in Volume 1332, Page 1, et seq., of the Official Records of Alameda County, State of California, and as from time-to-time thereafter amended and extended. Said declaration of 1926 was binding on every property within its defined area and has expired. This Declaration entirely replaces that earlier document.

B. This Declaration confers upon the Oakmore Homes Association, an existing non-profit corporation composed of owners of real property burdened and benefited by said Declaration, the power to enforce and interpret the conditions, covenants and restriction contained therein, and enforce them as equitable servitudes, which corporation is hereafter referred to as the "Association". Property owners within the Oakmore Area automatically become Members of the Association and their property becomes burdened

and benefited by this Declaration when all owners of a given property agree to be bound by this Declaration and execute the documents provided by the Association for this purpose. The Association shall not approve nor accept the application of any property owner for membership whose property does not lie within the Oakmore Area (the "Project Area") as defined in Exhibit A or as later amended. This Declaration shall require an initial subscription of not less than 200 Lots in order for this Declaration to become effective.

C. The undersigned, whose names are subscribed or appended hereto in the attached signature pages incorporated herein as Exhibit B, are owners of record of not less than 200 of such Lots within the Project Area and, as such, have the power and authority to make this Declaration, and hereby do so, said owners being referred to herein as "Declarant".

D. The real property (the "Property") burdened and benefited by this Declaration are those properties situated, lying and being in the City of Oakland, County of Alameda, State of California, and more particularly described in Exhibit C attached hereto, and those properties added in the future, and by this reference made a part hereof as though fully set forth herein.

NOW, THEREFORE, Declarant declares the Property is held and shall be held, transferred, encumbered, used, sold, conveyed, leased, rented, occupied and improved subject to the covenants and restrictions hereinafter set forth expressly for the use and benefit of the Property and of each and every person or entity who now or in the future owns any portion or portions of the Property. All of the limitations, uses, obligations, covenants, restrictions and conditions stated herein shall run with the Property, shall be binding on all parties having or acquiring any right, title or interest in the Property or any part thereof, shall be for the benefit of each owner of any portion of the Property or any interest therein and shall inure to the benefit of and be binding upon each successor in interest of the owners thereof, and for the purpose of enhancing and perfecting the value, desirability, attractiveness and common usefulness of the Property and every part thereof. Each and all of said limitations, uses, obligations, covenants, conditions and restrictions shall be deemed to be and shall be construed as equitable servitudes enforceable by any owner of all or any portion of, or any interest in, a Member Lot against any other owner, tenant or occupant of all or any portion of, or any interest in, a member Lot or Lots, and by the Oakmore Homes Association.

## **ARTICLE I DEFINITIONS**

Unless the context clearly indicates a different meaning therefor, the terms used in this document shall have the meaning specified in this Article.

1.1 "Articles" shall mean the Articles of Incorporation of the Oakmore Homes Association which are filed in the Office of the Secretary of State of the State of California and as from time to time amended.

1.2 "Association" shall mean and refer to Oakmore Homes Association, its successors and assigns, an incorporated nonprofit mutual benefit corporation composed of all owners of Member Lots as described in Recitals above.

1.3 Not Used.

1.4 "Board" shall mean the Board of Directors of the Association.

1.5 "Building Site" shall refer to a Member Lot, or in the case of any contiguous Member Lot, Member Lots or portions thereof which have been merged or aggregated to form a single parcel of real property under common ownership, either by grant or act of the owner thereof or by operation of law, such contiguous Member Lot, Member Lots, or portions thereof.

1.6 "By-Laws" shall mean the By-Laws of the Association which are or shall be adopted by the Board or Association and as from time to time amended.

1.7 "Declarant" shall have the meaning referred to in Recital C, above, and shall also include the heirs and assigns of those persons executing the signature pages attached hereto as Exhibit B.

1.8 "Declaration" shall mean and refer to this document, sometimes hereinafter referred to as the "Restrictions."

1.9 "Dwelling" shall refer to a Structure situated upon a Building Site designed and constructed in accordance with local law and suited for use and occupancy as a residence, and shall include both the main structure and all projections therefrom, such as bay, bow or oriel windows, exterior chimneys, covered porches or porticoes, garages (whether or not attached), and the like.

1.10 "Family" shall mean one or more persons each related to the other by blood, marriage or legal adoption, or a group of persons not all so related, provided the number of such persons does not exceed that permitted under applicable zoning laws, who maintain a common household in a Dwelling, which term shall be synonymous with the term "Single Family."

1.11 "Improvements" and "Structures" shall be synonymous and shall include, but not be limited to, buildings, outbuildings, garages, fences, screening walls, retaining walls, exterior stairs, decks, exterior flower boxes, hedges, awnings, sheds, windbreaks, planted trees and shrubs, poles, signs and all other structures or landscaping improvements of every type and kind, whether temporary or permanent.

1.12 "Lot" shall refer to one of the legally subdivided parcels located within the Project Area.

1.13 Not Used.

1.14 "Maintenance" shall mean the exercise of reasonable care to keep the exterior of buildings, Improvements, parking spaces, landscaping and other structures and fixtures in a state similar to their original condition, normal wear and tear excepted. Maintenance of landscaping shall further mean the garden management practices necessary to promote a healthy, weed free environment.

1.15 "Member" refers to the holder or holders of record fee title to Building Sites within the Project Area, including parties to an installment land contract to the extent of their interests and shall exclude those persons having an interest in a Lot merely as security for performance of an obligation.

1.16 "Member Lot" shall mean a Lot in the Project Area whose owner(s) has agreed to be bound by this Declaration and whose legal description has been recorded for purposes of effecting the restrictions.

1.17 "Mortgage" shall mean a deed of trust as well as a mortgage.

1.18 "Mortgagee" shall mean a beneficiary or mortgagee under a Mortgage.

1.19 "Project Area" shall have the meaning ascribed to it in Recital B.

1.20 "Property" shall have the meaning ascribed to it in Recital D.

1.21 "Restrictions" shall have the meaning ascribed to it in Paragraph 1.8.

1.22 "Rules" shall refer to the rules adopted by the Board as they may from time to time be in effect for the governance of the use and activities of all Members.

1.23 "Setback" refers to the distance between any Dwelling, or other Structure and the given setback line, e.g., street, plot, lot, etc. The setback herein provided for any Dwelling or other Structure from any line shall be deemed and construed to be the minimum distance between the Dwelling or Structure and the line.

1.24 "Street" refers to any street, highway, pathway or other thoroughfare shown on any map designating and describing and delineating any of the lands now or hereafter subject to this Declaration or tangent or contiguous thereto, which has been created for public purposes and/or dedicated to any governmental agency or body.

1.25 "Street frontage" refers to that portion of a Lot or Building Site which borders upon a Street which is for motor vehicular traffic.

1.26 "Structure" shall have the meaning ascribed to it in Paragraph 1.11.

1.27 "Vehicle" shall mean any automobile, truck, boat trailer or other self-propelled vehicle for transportation across land or water or through the air.

## **ARTICLE II PROPERTY SUBJECT TO RESTRICTIONS**

2.1 BOUNDARIES OF THE PROJECT AREA AND THE PROPERTY. The boundaries of the Project Area are shown in Exhibit A and include properties subject to these Restrictions and properties not subject to these Restrictions. Properties subject to these Restrictions are listed in Exhibit C.

2.2 LAND CLASSIFICATION. All land within the Project Area shall be divided into the following land classifications:

A. Single Family Residential Area, being all property other than Multiple Family Area and Commercial Area.

B. Commercial Area, being all property described in Exhibit A along Leimert Boulevard which is presently zoned and used for commercial purposes.

C. Multiple Family Area, being all property more fully described in Exhibit A which is presently zoned and used for multiple family residential purposes.

2.3 BOUNDARY EXTENSION. The boundaries of the Project Area may be extended by the written consent of the owners of not less than 51% of the Building Sites. Upon such extension, the Association shall cause to be filed with the Office of the Recorder of Alameda County a certificate evidencing the same.

## **ARTICLE III USES, RESTRICTIONS AND COVENANTS**

The following restrictions are intended to supplement existing City of Oakland zoning and land use ordinances.

3.1 OCCUPANCY. Each Dwelling shall be used as a residence by a Single Family.

3.2 RENTAL OF AN ENTIRE DWELLING. A Member shall be entitled to rent a Dwelling in accordance with Section 3.1. Any rental or lease of a Dwelling shall be subject to this Declaration and the Rules, and each tenant or lessee shall be

provided with a copy of same by the Member so renting or leasing. Members shall at all times be responsible for their tenants' or lessees' compliance with all of the provisions of this Declaration and the Rules relative to the occupancy and use of the Dwelling.

**3.3 RENTAL OF A PORTION OF A DWELLING.** It is the intent of this Section 3.3 to prevent the conversion of a Dwelling to a boarding house but not to restrict the reasonable rental of a portion of a Dwelling. A Member shall be entitled to rent a portion of a Dwelling provided that no more than two (2) bedrooms or sleeping spaces within a Dwelling are separately rented.

**3.4 RESTRICTION ON BUSINESS.** Except as provided in Sections 3.2 and 3.3 above, no business or other activity entered into for profit or gain of any kind whatsoever shall be established, maintained, operated, permitted or conducted in the Single Family Residential Area or Multiple Family Area, or any portion thereof, except such professional and administration businesses as may be permitted by city ordinance, provided there is no external evidence thereof and provided there is not generated an unreasonable flow of public or delivery vehicles to and from the business or an unreasonable demand for street parking.

**3.5 PARKING.** No Vehicle shall be parked on any Member Lot other than on the driveway or on any portion of a Member Lot adjacent to a Street over which an easement has been granted in favor of the City of Oakland. Parking spaces and driveways which are visible from a Street, and all legal parking areas of any public Street within the Project Area, shall be used only for the parking of motor vehicles, as defined in the California Vehicle Code, and shall not be used for the parking or storage of any boat, trailer, mounted or unmounted camper or recreation vehicle of any kind or nature, except for temporary parking which in no case shall exceed 72 hours in any two week period. There shall be no dilapidated and/or inoperable vehicles, vehicle parts, machinery, hardware, or equipment stored or kept on any Member Lot or Street within the Project Area so as to be visible from the Street.

**3.6 MAINTENANCE.** Each Member shall keep his or her property reasonably clean, free from debris and in a neat and orderly condition, including removing unsightly or overgrown weeds, trimming lawns and removing debris.

**3.7 SIGNS.** No signs, notices, posters, decorations or billboards whatsoever shall be placed, erected or maintained at any place within the Project Area except the following:

- A. Signs as required by law;
- B. Building numbers and identification signs of a customary size;
- C. No more than two (2) temporary signs regarding current election matters, neither of which signs exceed dimensions of 2 feet by 3 feet;

D. No more than one (1) "for sale" or "for rent" sign on any Lot which is for sale or rent, which sign shall be of reasonable and customary dimension, except that a noncorner Lot fronting on two Streets may have one such sign on each Street;

E. Such temporary signs and decorations as may be appropriate for a current holiday or special event; and

F. Any sign to which the Board has given approval and consent. Any such signs shall be attractive, non-offensive and compatible with the design and character of the Project Area.

3.8 ANIMALS. In no event shall animals be kept, bred or maintained for any commercial purpose, or in any unreasonable number. No pet enclosure or run shall be placed or kept on any Lot so as to be visible from any street.

3.9 STORAGE OF WASTE MATERIALS. All garbage, trash, debris and accumulated waste materials shall be disposed of in trash containers or receptacles provided by each Member. The Association may contract to provide for the disposal of garden and lawn cuttings. Use of such disposal service shall be subject to and in accordance with such reasonable Rules as are adopted by the Board for the use of said services by the Members, their families, guests and tenants. Each Member shall separately contract and pay for regular garbage and rubbish removal services with the municipal or franchise collector authorized by the City of Oakland. In no event shall any containers or receptacles be maintained so as to be visible from any front or side street, except for such reasonable minimum period in which the receptacle must be placed within such view for pickup.

3.10 FURTHER SUBDIVISION. There shall be no further subdivision of any Member Lot which is, as of the recordation date of this Declaration, established by a final subdivision map. Nor shall there be the sale or conveyance of less than all of any such Member Lot by the owner thereof. However, nothing stated herein shall prevent a Member from duly causing a lot line adjustment with any adjoining owner or as to any adjoining lots owned by one owner. A Member may petition the Board for approval of further subdivision of a Member Lot, which approval may be given as follows: a majority vote of the Board shall be required to approve or disapprove such petition; upon the vote of the Board (whether to approve or disapprove), the Members of the Association shall, within fifteen (15) days of the vote of the Board, be notified of the Board's decision and shall be polled as to the membership's approval or disapproval of the Board's vote; the Board's decision shall be final unless, within sixty (60) days of the date of notice to the membership, not less than two thirds (2/3) of the Building Sites vote their disapproval of the Board's decision; such vote shall not require a membership meeting, but may be accomplished by mail.

3.11 NUISANCES. No rubbish or debris or animal waste of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot or Building Site so as to render any Lot or Building Site or any portion thereof unsanitary, noxious,

unsightly, offensive, or detrimental to any Lot in the vicinity thereof or to the occupants thereof. Nor shall anything be done or placed anywhere within the Project Area which would cause or constitute an unreasonable hazard, or outrageous embarrassment, disturbance or annoyance to an owner or occupant of any Lot in the enjoyment of his or her property. No Member shall permit any thing or condition to exist upon his or her Member Lot, Building Site or Dwelling which shall induce, breed, or harbor infectious and destructive plant diseases, noxious insects, vermin or pests.

3.12 EXTERIOR ANTENNAS. No exterior, above-ground lines, wires, dishes or other devices for the reception, communication or transmission of television, radio or data signals shall be constructed, placed or maintained anywhere in or upon any Member Lot or Building Site, except for no more than one customary television antenna not extending more than ten (10) feet above the highest point of roof line on the Member Lot or Building site, without the prior written consent of the Board. Nothing herein shall be deemed to forbid the erection and use of temporary power or telephone service incident to the construction of approved buildings.

3.13 TREES. No tree, having a diameter of twelve (12) inches at a height of four (4) feet shall be cut down, removed or knowingly damaged, mutilated or destroyed without the prior written consent of the Board. If the Board fails to respond within sixty (60) days of receiving a complete written application, such application shall be deemed to be approved.

3.14 OBSTRUCTIONS. No fence, wall, hedge, trellis or other such obstruction shall be erected or maintained anywhere upon any Member Lot which is greater in height than (i) six (6) feet above the finished graded surface (or the higher of two adjacent finished grades) of the ground upon which such improvement is situated or abuts, (ii) four (4) feet above such surface where such wall, fence, hedge or similar obstruction is situated in whole or part within the Setback area of any Dwelling as to any Street or (iii) such lesser height prescribed by any applicable building, zoning or housing Code or ordinance.

## **ARTICLE IV RESTRICTIONS ON IMPROVEMENTS**

4.1 APPROVAL BY BOARD. No building, fence, wall, retaining wall, deck, sport court, swimming pool or any other Structure or addition shall be placed, erected, altered or maintained upon any Member Lot, unless and until plans and specifications therefor, and a plot plan showing the location thereof, shall have been first approved by the Board as to a) quality of workmanship and materials, b) harmony of exterior design with existing structures and neighborhood appearance, and c) location with respect to topography, finish grade, and placement on the Member Lot.



Any plans and specifications submitted to the Board shall meet all of the following standards:

A. The work of improvement or alteration shown on the plans and specifications and other exhibits submitted shall comply with each of the specific conditions, covenants and restrictions herein contained and such reasonable implementing rules as the Board may from time to time adopt.

B. The finished or altered improvement 1) as proposed in the plans and specifications and other exhibits submitted and 2) as completed, shall exhibit quality of workmanship and materials, shall be in harmony with existing structures and neighborhood appearance, and shall be consistent with existing topography and finish grades.

C. Completed plans and specifications shall first be submitted to the Board and, if approved, shall then be forwarded to the appropriate City and/or County department(s) for their review and approval, if required. For major improvements, it is strongly recommended that preliminary plans and specifications be submitted to the Board for review prior to submitting final plans and specifications.

4.2 VALUE OF IMPROVEMENT. No Dwelling shall be permitted to be built or rebuilt on any Building Site if the cost thereof indicates that the completed structure would have a fair market value significantly less than the average fair market value of the other Dwellings in the general neighboring area.

4.3 AREA OF BUILDINGS. The ground floor area of the main residential structure of a Dwelling, exclusive of porches and garages, shall be not less than 1600 square feet for a one-story Dwelling, and said ground floor area shall be not less than 1200 square feet for a Dwelling of more than one story, provided, however, that the Board may grant exceptions from said requirement upon a showing that a smaller Dwelling proposed would be of such high architectural quality as to justify the exception. The finding of the Board in this regard shall be binding upon any Member Lot subject hereto and the owners of any part thereof and of any interest therein.

#### 4.4 SETBACK OF BUILDINGS

A. Free spaces shall be left and maintained on each Building Site extending on both sides for the full length of every Dwelling or other principal Structure which may be built thereon, which free spaces shall be independent of any free spaces pertaining to or required for any other Dwelling or principal Structure. No portion of any Dwelling or other principal Structure, except eaves, open pergolas, or uncovered porches, stoops or steps shall encroach on these free spaces, except that exterior chimneys may encroach for not more than eighteen (18) inches into such free spaces; the width of the free spaces which shall be left and maintained on each side of any Dwelling erected upon any of the

Building Sites shall be as more particularly specified in the applicable building and zoning codes in effect in Oakland on July 1, 1990.

B. In all other cases, provisions regarding restrictions, limitations and reservations of setback requirements as to any improvement shall be as set forth in applicable building, zoning and housing codes and ordinances in effect in Oakland on July 1, 1990; provided however, that there shall be no exception or variance from such code, or ordinance, notwithstanding governmental permit, authorization or grant of same, without the prior grant of variance by the Board as provided in Paragraph C, below.

C. In the case of special circumstances, the Board may, subject to any zoning laws or regulations of the City of Oakland, permit variances from the requirements for reserves, set-back lines and free spaces above established to relieve hardship or to do equity, and such variances, when granted in writing, shall be binding upon all Member Lots subject hereto and the owners of any part thereof or any interest therein; provided that the granting of a variance by the Board shall not relieve the requirements of obtaining applicable variance approvals from any City or other governmental body having proper jurisdiction.

4.5 AMOUNT OF PAVING. All plans for improvements, alterations and/or additions submitted to the Board shall be designed to minimize the amount of ground covered by paving, asphalt, cement or similar material. The Board shall consider any plans submitted based upon the amount of ground so covered and shall evaluate said plans according to the amount of ground so covered in determining whether or not said plans are satisfactory.

4.6 COMPLETION OF CONSTRUCTION. When the construction of any building, fence, wall or other improvement is begun, work must proceed diligently and be completed within a reasonable time and in a workmanlike manner.

4.7 APPROVAL OF BOARD. The Board's approval or disapproval of a proposed improvement shall be given in writing. However, the work of construction or alteration so completed shall be conclusively deemed to have received the approval required by these Restrictions: (1) in the event the Board falls to disapprove within sixty (60) days after a full, final and complete submittal has been made and delivered to it, or (2) if no action or suit to enjoin or require removal of any work of construction or alteration has been commenced by the Board or any Member within four (4) months after the completion thereof.

4.8 EXISTING STRUCTURES AND IMPROVEMENTS. Any Structure or improvement on any Lot which is completed prior to the effectiveness of this Declaration shall be deemed to be in compliance herewith; provided however, that any rebuilding or replacement of a destroyed or razed or moved Structure or Improvement shall comply herewith; and provided further, that all landscaping requirements and restrictions regarding obstructions caused by hedges or other vegetation shall be fully applicable.

4.9 LIABILITY. Neither the Board nor the Association nor any committee or member thereof shall be liable to any Member, nor to the Association, for any damage, loss or prejudice suffered or claimed on account of:

A. The approval or disapproval or failure to approve, disapprove or act on, any plans, drawings or proposal, whether or not defective.

B. The construction or performance of any work, whether or not done pursuant to approved or disapproved plans, drawings, or proposal.

C. The development or Improvement of any Member Lot within the Project Area.

D. Specifically, and without limitation of the foregoing, plans, drawings and proposals are not approved for engineering or structural design (even if any reviewing person may be qualified to do so), and by approving any plans and specifications and proposals neither the Board, Association, Members, agents nor employees thereof shall assume or be imputed with, any liability or responsibility therefor, or for any defect in any proposal constructed with the approval of the Board.

## **ARTICLE V ASSESSMENTS**

5.1 ANNUAL CHARGE. Every Building Site shall be assessed, and the owner of the Building Site shall be liable for, an annual charge ("assessment") calculated in accordance with Paragraph 5.3.

5.2 LIMIT ON ASSESSMENT. Notwithstanding anything to the contrary herein contained, the annual assessment shall not exceed the amount of ONE HUNDRED AND 00/100 DOLLARS (\$100.00) per Building Site without an amendment of this provision, which amendment shall require a vote of the owners of not less than fifty one percent (51%) of the Building Sites. Such assessment shall not include any fees which may be additionally required for cartage or other special services.

5.3 AUTHORITY TO FIX ASSESSMENT. The Board shall have authority to determine the rate of the annual charge, subject to the veto by a vote of two-thirds (2/3) of the voting power of the membership. The annual charge shall be determined on or prior to the first day of December of each calendar year for the ensuing year, after the Board has prepared a budget of estimated costs and revenues for said ensuing year. The charge per Building Site shall be determined as follows: the total budget shall be divided by the number of Building Sites and the quotient of such computation shall be assessed to each Building Site; thus, the Building Sites shall be assessed equally. On or prior to the fifteenth (15th) day of December of each calendar year, the Board shall cause notice of said annual

charge, and a copy of the budget in accordance with Paragraph 6.7, to be delivered to the membership at the various Members' last known addresses.

5.4 PAYMENT AND COLLECTION. The annual charge shall be paid, annually, to the Association and shall be due on or before the first day of January of each year, and the same shall become a lien upon the respective Building Site so assessed on said date, which lien shall continue until fully paid or collected as herein provided. The Association, or the Board on behalf of the Association, shall have the sole power and standing to collect any assessment and shall have full power, standing and authority to collect said sums by bringing suit for collection thereof; provided however, there has first been prepared, recorded (in Alameda County) and served upon the delinquent Member a "Notice of Assessment Due" signed by any two (2) members of the Board and at least thirty (30) days has elapsed since the latter of 1) recordation of the Notice of Assessment Due in the Official Records, Alameda County, or ii) service of the Notice of Assessment Due upon the delinquent Member. The Association shall, upon request of and payment by any Member of a reasonable charge therefor, furnish a Member a certificate duly executed by any officer or Board member declaring the status of any assessment due or paid against any lot. All funds collected by the Association shall be held in such account or accounts as the Board may determine and shall be applied for and on behalf of the Association in accordance with its annual budget.

5.5 TRANSFER OF OWNERSHIP. Each assessment shall also be a separate and personal obligation of the Member, owning the Building Site at the time when the assessment fell due, and shall bind his or her heirs, successors, assigns and personal representatives. The personal obligation for unpaid or delinquent assessments shall not pass to a Member's successor in title, unless expressly assumed, but the lien therefor shall remain; provided, such assumption of a delinquent assessment shall not relieve the assignor of liability therefor. After a Member has transferred legal title of record to his or her Building Site, he or she shall not be liable for any charges thereafter assessed against his or her Building Site. In connection with any transfer of legal title to any Building Site, no Member or other person shall be reimbursed for all or any portion of any assessment which came due with respect to that Building Site prior to such transfer.

5.6 MORTGAGEE PROTECTION. No breach of these restrictions nor any lien created hereby shall defeat or render invalid the lien of any Mortgage made in good faith and for value, but all the provisions hereof shall be binding upon and effective against any Member whose title is derived by or through foreclosure or trustee's sale or otherwise; provided that any Mortgagee under a first Mortgage who comes into possession of a Member Lot pursuant to the remedies available in the Mortgage or foreclosure thereof, except upon a voluntary conveyance to the Mortgagee, shall take the property free of any claim for unpaid assessments or charges (and interest, etc.) against the encumbered Member Lot which accrue prior to, but not after, the time such encumbrancer comes into possession of the Member Lot.

## **ARTICLE VI THE ASSOCIATION**

**6.1 MEMBERSHIP.** Every person or entity who is a record owner of the fee or undivided fee interest in any Building Site shall be a Member of the Association, except for persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from the ownership of a Building Site. The Association shall have one class of voting Members. When more than one person or entity is shown of record to be the owner of a Building Site, all such persons or entities shall be Members; however, there shall be only one (1) Building Site and the vote for such Building Site shall be exercised as the owners thereof among themselves determine; in no event shall more than one vote be cast with respect to any Building Site. A Member who has sold his or her interest in a Building Site to a contract purchaser under an agreement to purchase shall assign to such contract purchaser his or her membership rights in the Association. Such assignment shall be in writing and shall be delivered to the Board before such contract purchaser may vote. Such assignment shall not relieve the Member of any of the Member's liabilities and obligations hereunder and such Member as the contract seller shall remain liable for all charges and assessments until fee title to the Building Site sold is transferred. Members shall be entitled to cumulative voting and voting by proxy as provided in the Mutual Benefit Non-Profit Corporation Law.

**6.2 ENFORCEMENT POWERS.** The Association shall have the right and power to enforce each and every provision of this Declaration, including the duty to seek to enjoin any breach or threatened breach of any of the provisions hereof and to pay all costs including attorneys' fees incurred by the Association in connection with any such action or other enforcement procedure. The Association shall have no power or authority to levy any fine or penalty for any breach or violation of the Declaration, Articles, By-Laws or Rules, except as specified herein.

**6.3 MEETINGS.** The Association shall have membership meetings as provided by the By-Laws.

**6.4 BOARD OF DIRECTORS.** The Members shall elect Members to a Board of Directors, as provided in the By-Laws. The Board of Directors shall be empowered to perform any duty and do anything allowed or directed to be undertaken by the Association as provided in the Declaration or the By-Laws. The Board may delegate any of its powers, or the powers of the Association as herein conferred on the Board, to such committees as a majority of the Board deems appropriate. In addition, the Board shall have the power to elect such officers as are required by the By-Laws and to supervise their activities.

**6.5 EXECUTIVE SECRETARY.** The Board may employ an Executive Secretary or other employee(s) and delegate the day-to-day management duties of the Board and Association to said employee(s), who shall be subject to the direction and control of the Board.

6.6 SALARIES. Neither the Board nor any officer or committee member shall be entitled to receive any salary or other favor or compensation by reason of his or her position or performance of duties; however, they each shall be entitled to reimbursement for reasonably incurred out-of-pocket expenses. The person(s) employed pursuant to Paragraph 6.5 shall receive compensation as agreed upon between such person(s) and the Board; provided no contract for such person(s)' services may exceed a term of three (3) years, and it shall be cancelable for any reason at any time by the Association on thirty (30) days' written notice.

6.7 BUDGET. The Association shall prepare a pro forma operating budget for each fiscal year, and shall distribute a copy of the budget to each Member not less than 15 and not more than 45 days before the beginning of the fiscal year. As an alternative to the foregoing distribution of the budget, the Association may elect to do all of the following in the manner required by statute; distribute a summary of the budget to each Member, make the budget available for inspection at a designated location, and provide copies of the budget to Members on request and at the expense of the Association. The budget shall contain at least the following:

- (1) The estimated revenue and expenses on an accrual basis; and
- (2) The amount of the total cash reserves currently available for contingencies.

6.8 ANNUAL REPORT. Within 120 days after the close of each fiscal year, the Association shall prepare and distribute to the Members an annual report consisting of the following:

- (1) A balance sheet as of the end of the fiscal year.
- (2) An operating (Income) statement for the fiscal year.
- (3) A statement of changes in financial position for the fiscal year.
- (4) For any fiscal year in which the gross income to the Association exceeds \$75,000, a copy of the annual report prepared in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy. If this report is not prepared by an independent accountant, it shall be accompanied by the certificate of an authorized officer of the Association that the statement was prepared without independent audit or review from the books and records of the Association.

6.9 BALANCE SHEET. The Association shall prepare a balance sheet as of an accounting date that is the last day of the month closest in time to six months from the date of the recordation of the Declaration, and an operating statement for the period from the date of the recordation to the foregoing accounting date. The Association shall distribute this statement to the Members within 60 days after the accounting date. This operating statement shall include a schedule of assessments

received and receivable identified by the number of the Member Lot and the name of the Members assessed.

6.10 GOVERNING DOCUMENT. The Association shall provide any Member with the following documents within 10 days of the mailing or delivery of a written request therefor:

(1) A copy of the Articles, By-Laws, Rules and Restrictions.

(2) A copy of the most recent budget distributed pursuant to Paragraph 6.7 of this Declaration.

(3) A written statement from an authorized representative of the Association specifying 1) the amount of any assessments levied on the Member's Lot that are unpaid on the date of the statement; and 2) the amount of late charges, interest, and costs of collection that, as of the date of the statement, are or may be a lien on the Member's Lot pursuant to Paragraph 5.4 of this Declaration. The Association may charge the Members a reasonable fee to cover its cost to prepare and reproduce those requested items.

## **ARTICLE VII GENERAL PROVISIONS**

7.1 BINDING ON SUCCESSORS. The covenants, conditions and restrictions herein contained are to run with the Property and shall be binding on all parties and all persons claiming under them until September 1, 2010, at which time the same shall be automatically extended for successive periods of twenty (20) years, unless at least three-fourths (3/4) of the voting power of the Association subject hereto vote to record an instrument terminating these restrictions not more than one (1) year prior to, and not later than, the commencement of any such twenty (20) year period. Any such termination shall take effect upon expiration of the period during which it is elected.

7.2 DISCRIMINATION ON TRANSFER. No person or persons shall be denied the purchase, use or occupancy of any Member Lot, or construction of any Improvements on any such Member Lot by reason of race, religion, sex, national origin, ethnic background, age, ancestry, or color, which said factors are deemed not relevant to the qualifications of any person to own, use, occupy or construct Improvements on any Member Lot.

7.3 ENFORCEMENT. In the event the owner of any Member Lot or part thereof or of any interest therein violates any provision hereof, other than the provisions for enforcement of assessments, the owner of any other Member Lot or part thereof or of any interest therein (including the Association), may bring any appropriate proceeding at law or in equity against the defaulting Member to enforce as equitable servitudes the provisions herein contained, or to recover damages for such violation as may have been incurred by the plaintiff Member in such proceeding or action. Any partial

enforcement by the Association, Declarant, any Member, or any of their respective representatives, heirs, successors, or assigns of any of the covenants, restrictions, reservations or charges herein contained shall not preclude any future partial or total enforcement of any such covenants, restrictions, reservations or charges unless otherwise herein provided.

7.4 SEVERABILITY. In the event any covenant, restriction, or reservation herein contained is held or declared to be invalid or unenforceable in whole or in part, by any order, judgment or decree of any Court or other authority, then such decision shall in no way affect the validity of the other conditions, covenants, restrictions or reservations herein contained, and they shall remain in full force and effect.

7.5 AMENDMENT. The provisions hereof may be amended by a vote or written consent of the Members constituting not less than two-thirds (2/3) of the voting power of the Association. Said amendment shall be effective upon the recordation in the Office of the Recorder of Alameda County, of an instrument setting forth the terms thereof duly certified and executed by the President and Secretary of the Association. Notwithstanding anything to the contrary herein contained, no such amendment shall affect the rights of the holder of any Mortgage recorded prior to the recordation of such amendment. No vote of the Association is required to add a Member Lot as described in Recital C.

7.6 COUNTERPARTS. This Declaration and any document executed by Declarant, any Member and/or the Association may be executed in counterparts, each of which shall be deemed an original and all of which counterparts taken together shall constitute but one and the same instrument.

7.7 INTERPRETATION. All terms used in this Declaration shall include the plural as well as the singular, and any reference to "he", "she", "his", or "her" shall include the masculine and feminine genders, and the neuter shall also include the masculine and feminine genders.

7.8 COSTS AND EXPENSES. In the event of any litigation between Declarant, Member, and/or the Association to enforce any provision of this Declaration or any right of any party hereto, or to secure a judicial determination of any right or obligation of any party hereto, the unsuccessful party in such litigation shall pay to the successful party all costs and expenses including reasonable attorneys' fees, incurred therein.