

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

THE HARTZELL HOMEOWNERS ASSOCIATION, INC.
c/o Betty Morris, Manager
33 Summerhill Way
San Rafael, CA 94903

TITLE OF DOCUMENT

**Declaration of Covenants, Conditions and Restrictions
THE HARTZELL HOMEOWNERS ASSOCIATION, INC.
(As Restated in 2016)**

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

(Dir: 2/5/2106)

**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
THE HARTZELL HOMEOWNERS ASSOCIATION, INC.
(As Restated in 2016)**

TABLE OF CONTENTS

RECITALS	1
1. Legal Description	1
2. The Property	1
3. This Restated Declaration	1
4. Applicability of Restrictions	1
ARTICLE I DEFINITIONS	1
Section 1.1 "Articles"	1
Section 1.2. "Assessment"	2
Section 1.3. "Association"	2
Section 1.4. "Board" or "Board of Directors"	2
Section 1.5. "Bylaws"	2
Section 1.6. "Common Area"	2
Section 1.7. "Davis-Stirling Common Interest Development Act"	2
Section 1.8. "Declaration"	2
Section 1.9. "Eligible Holder"	2
Section 1.10. "First Mortgage"	2
Section 1.11. "First Mortgagee"	2
Section 1.12. "General Notice"	2
Section 1.13. "Governing Documents"	2
Section 1.14. "Improvements"	3
Section 1.15. "Individual Notice"	3
Section 1.16. "Institutional Mortgagee"	3
Section 1.17. "Lot"	3
Section 1.18. "Map"	3
Section 1.19. "Member"	3
Section 1.20. "Mortgage"	3
Section 1.21. "Mortgagee"	3
Section 1.22. "Occupant"	3
Section 1.23. "Owner"	3
Section 1.24. "Party Wall"	4
Section 1.25. "Person"	4
Section 1.26. "Property"	4
Section 1.27. "Residence"	4
Section 1.28. "Voting Power"	4
ARTICLE II PROPERTY RIGHTS	4
Section 2.1. Owners' Easements of Enjoyment	4
Section 2.2. Delegation of Use	5
Section 2.3. Encroachment Easements.	5
Section 2.4. Common Area Easements or Licenses	5

Section 2.5. No Partition 6

ARTICLE III AUTHORITY OF THE ASSOCIATION 6

Section 3.1. Utilities 6

Section 3.2. Common Area Services 6

Section 3.3. User Fees 6

Section 3.4. Professional Services 6

Section 3.5. Taxes 6

Section 3.6. Discharge of Liens 7

Section 3.7. Hazardous Materials 7

Section 3.8. Other Obligations of the Board 7

Section 3.9. Manager 7

Section 3.10. Rules 7

 3.10(a) Rule and Policy Making Power 7

 3.10(b) Breach of Rules and/or Policies 7

Section 3.11. Variances 7

ARTICLE IV ASSESSMENTS 8

Section 4.1. Assessments Generally 8

 4.1(a) Regular Assessments 8

 4.1(b) Special Assessments 8

 4.1(c) Extraordinary Expense Assessments 8

 4.1(d) Reimbursement Assessments 9

 4.1(d)(1) Definition 9

 4.1(d)(2) Implementation 9

 4.1(d)(3) Collection 9

Section 4.2. Assessment Level Increases 9

 4.2(a) Approval of Board of Directors 9

 4.2(b) Approval of the Owners 10

 4.2(c) Notice 10

Section 4.3. Enforcement of Assessments 10

 4.3(a) Delinquency 10

 4.3(b) Returned Checks and Other Charges 10

 4.3(c) Acceleration of Assessment 10

 4.3(d) Lien 11

 4.3(e) Non-judicial Foreclosure 11

 4.3(f) Other Recourse 11

Section 4.4. Grantee Liability 12

 4.4(a) Voluntary Conveyance 12

 4.4(b) Conveyance by Foreclosure 12

 4.4(c) Priorities 12

 4.4(d) Termination and Commencement of Assessment Obligations. 12

Section 4.5. No Waiver or Offset 13

ARTICLE V RESPONSIBILITIES FOR MAINTENANCE, REPAIR AND REPLACEMENT .. 13

Section 5.1. Association Responsibilities - Common Area 13

Section 5.2. Responsibilities for Maintenance, Repair and Replacement - Owners' Lots	13
5.2(a) Building Exteriors	13
5.2(a)(1) Walls and Trim	13
5.2(a)(2) Other Exterior Components	14
5.2(a)(3) Windows and Exterior Fixtures	14
5.2(a)(4) Exterior and Garage Doors	14
5.2(a)(5) Off Schedule Work	14
5.2(a)(6) Crawl Spaces	14
5.2(b) Roofing	14
5.2(c) Fireplaces, Flues and Caps	15
5.2(d) Patios and Decks	15
5.2(d)(1) Patios	15
5.2(d)(2) Decks	15
5.2(e) Walkways, Driveways and Streets	15
5.2(e)(1) Walkways	15
5.2(e)(2) Driveways	15
5.2(e)(3) Streets	15
5.2(f) Fences	15
5.2(g) Retaining Walls	16
5.2(h) Matters Affecting Contiguous Residences	16
5.2(i) Service and Utility Lines	17
5.2(j) Landscaping	17
5.2(j)(1) Common Area	17
5.2(j)(2) Unfenced Area of the Lot	17
5.2(j)(3) Fenced Area of the Lot	17
5.2(j)(4) Guidelines	18
5.2(k) Pest Control and Wood Destroying Organisms	18
Section 5.3. Extraordinary Repairs	18
5.3(a) Interior Damage	18
5.3(b) No Loss of Use	19
Section 5.4. Failure to Maintain	19
5.4(a) Common Area	19
5.4(b) Lot and Dwelling	19
5.4(c) Access for Repairs	19
5.4(d) Entry by Owners for Repairs	19
5.4(d) Continuing Nuisance	19
5.4(e) Other Options	19
Section 5.5. Right of the City to Repair	19
ARTICLE VI USE RESTRICTIONS	20
Section 6.1. Use of Lots	20
Section 6.2. Use of Common Area	20
Section 6.3. Air Conditioning Units	21
Section 6.4. Animals	21
Section 6.5. Clotheslines	22
Section 6.6. Exterior Lighting	22

Section 6.7. Exterior Fires	22
Section 6.8. Exterior Wiring	22
Section 6.9. Garages	22
Section 6.10. Hillside.	22
Section 6.11. Hot Tubs and Spas	22
Section 6.12. Illegal Acts	22
Section 6.13. Local Ordinances	22
Section 6.14. Nuisance	23
Section 6.15. Owners or Other Occupants May Not Direct Association Employees, Agents or Vendors	23
Section 6.16. Parking and Vehicles	23
6.16(a) Rules	23
6.16(b) Vehicle Type Restrictions	23
6.16(c) Other Limitations	24
6.16(d) Towing	24
Section 6.17. Patios	24
Section 6.18. Restriction on Businesses	24
Section 6.19. Satellite Dishes and Antennae	24
Section 6.20. Signs and Flags	25
Section 6.21. Smoking Prohibited.	25
Section 6.22. Solar Energy Systems	25
Section 6.23. Sound Devices	25
Section 6.24. Sports Fixtures	25
Section 6.25. Trash Disposal	25
ARTICLE VII SALE OR LEASE OF LOTS	26
Section 7.1. Owner Occupancy Before Rental or Lease of Lot.	26
7.1(a) Objectives.	26
7.1(b) Definitions.	26
7.1(c) New Owner Residency Required.	26
7.1(d) Limited Exceptions.	26
7.1(e) Evidence of Owner Residency.	27
7.1(f) Evidence of Civil Code Section 4740 Exempt Transfer.	27
7.1(g) Hardship Exceptions.	27
7.1(h) No Time Share, Transient or Partial Use.	27
7.1(i) Rental of Entire Lot.	27
7.1(j) No Vacant Lots.	27
7.1(k) Owner Liability for Tenants.	27
7.1(l) Tenant/Rental Offset.	28
7.1(m) Tenant Identification	28
7.1(n) Tenant Insurance.	28
7.1(o) Violation and Enforcement.	28
7.1(p) Notice to Potential New Owners.	28
7.1(q) Other Provisions	28
7.1(q)(1) Written Lease	28
7.1(q)(2) Minimum Lease Term	28

7.1(q)(3) Governing Documents to Tenant	28
7.1(q)(4) Use of Facilities	29
7.1(r) Policy	29
Section 7.2. Sale of Lots - Obligations of Selling Owners	29
7.2(a) Owner's Duty to Notify Association of Contract Purchasers	29
7.2(b) Contract Purchasers	29
7.2(c) Documents and Information Relating to Sale	29
Section 7.3. Notice of Acquisition	29
Section 7.4. Acceptance of Lot Conditions	29
<u>ARTICLE VIII INSURANCE</u>	30
Section 8.1. Types of Insurance	30
8.1(a) Fire and Hazard Insurance	30
8.1(b) Additional Endorsements	30
8.1(c) Liability Insurance	30
8.1(d) Fidelity Bonds	30
8.1(e) Director and Officer Liability Insurance	30
8.1(f) Other Insurance	30
Section 8.2. Coverage Not Available	30
Section 8.3. Owner Required Insurance	31
Section 8.4. Adjustment of Losses	31
Section 8.5. Association Insurance Deductible	32
Section 8.6. Earthquake Insurance	32
<u>ARTICLE IX DAMAGE AND DESTRUCTION</u>	32
Section 9.1. Destruction of Common Area	32
Section 9.2. Destruction of a Lot	32
Section 9.3. Owner's Failure to Proceed; Reimbursement Assessment	33
Section 9.4. Board Discretion	33
Section 9.4. Condemnation	33
9.4(a) Lot	33
9.4(b) Common Area	33
<u>ARTICLE X ARCHITECTURAL CONTROL</u>	34
Section 10.1. Architectural Approval	34
Section 10.2. Architectural Review / Committee	34
Section 10.3. Architectural Procedures/Guidelines	34
Section 10.4. Deemed Approval of Alteration on Lot	34
Section 10.5. Non-Waiver	35
Section 10.6. Liability	35
Section 10.7. Architectural Enforcement	35
10.7(a) Notice of Noncompliance	35
10.7(b) Hearing and Determination	35
10.7(c) Association Options for Abating Continuing Nuisances	35
Section 10.8. Architectural Agreement	36

ARTICLE XI ENFORCEMENT OF GOVERNING DOCUMENTS	36
Section 11.1. Violation	36
Section 11.2. Jurisdiction	36
Section 11.3. Enforcement Options	36
11.3(a) Suspension of Rights	37
11.3(b) Fines	37
11.3(c) Alternative Dispute Resolution (ADR)	37
11.3(c)(1) Owner and Association Disputes.	37
11.3(c)(1)(i) Internal Dispute Resolution Procedure (IDR)	37
11.3(c)(1)(ii) Mediation	37
11.3(c)(2) Owner-to-Owner Disputes: Mediation/Arbitration	37
11.3(d) Legal Action	38
11.3(e) Self Help	38
11.3(e)(1) Maintenance, Repair and Replacement	38
11.3(e)(2) Removal of Nuisance	38
11.3(f) Imposition of Reimbursement Assessment	38
11.3(g) Referral to Governmental Agency	39
Section 11.4. Implementation	39
11.4(a) Notices	39
11.4(b) Meeting re: Compliance	39
11.4(c) Notice of Hearing Results	39
Section 11.5. Miscellaneous	39
11.5(a) Cumulative Remedies	39
11.5(b) Non-Waiver	39
11.5(c) Rules re: Disciplinary Proceedings	39
11.5(d) Noncompliance with Procedure	39
11.5(e) Owner Standing	40
11.5(f) Fees and Costs of Enforcement	40
11.5(g) Foreclosed Lot	40
ARTICLE XII PARTY WALLS	40
Section 12.1. Interests of Owners.	40
Section 12.2. General Rules.	40
Section 12.3. Maintenance and Decoration.	40
Section 12.4. Damage to Party Walls.	40
Section 12.5. Weatherproofing.	41
Section 12.6. Easement for Repair of Party Walls.	41
Section 12.7. Alterations.	41
Section 12.8. Sound Transmission.	41
Section 12.9. Right to Contribution Runs With Land.	41
Section 12.10. Arbitration.	41
ARTICLE XIII GENERAL PROVISIONS	41
Section 13.1. Severability	41
Section 13.2. Interpretation	41
Section 13.3. Term of Declaration	41

Section 13.4. Amendment 42

Section 13.5. Document Hierarchy. 42

Section 13.6. Owner Responsibility 42

Section 13.7. Safety and Security 42

Section 13.8. Davis-Stirling Act. 42

 13.8(a) Correction of Numbering 42

 13.8(b) Updating of Preempted Content or Other Statutory Reference in CC&Rs 42

Section 13.9. Mortgagees 43

Section 13.10. Transition Provisions 43

CERTIFICATE OF AMENDMENT 44

EXHIBIT A : Site Map 45

EXHIBIT B : Rights of Mortgagees 46

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**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
THE HARTZELL HOMEOWNERS ASSOCIATION, INC.
(As Restated in 2016)**

This Declaration of Covenants, Conditions and Restrictions of THE HARTZELL HOMEOWNERS ASSOCIATION, INC. ("**Declaration**" or "CC&Rs") is a revised version of the now superceded Declaration entitled "DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS THE HARTZELL HOMEOWNERS ASSOCIATION, INC." which was recorded in the office of the Marin County Recorder on November 6, 1987 November 15, 2003 as Document No. 2003-0138634, and subsequently amended (hereinafter "Former Declaration").

RECITALS

1. Legal Description. This **Declaration** governs all of the real property and **Improvements** located in the City of San Rafael, described as:

Lots 1 through 48 and Parcels A and D, as shown upon that certain map entitled "Map of Summerhill" filed for record on August 24, 1987 in Book 20 of Maps at Page 20 in the Official Records of Marin County, California.

2. The Property. There are 48 homes in Hartzell which is a Planned Development within the meaning of the provisions of the California **Davis-Stirling Act**. Attached as **Exhibit A** is a site map generally depicting the **Property**. It is included for convenient reference and not as part of any legal description.

3. This Restated Declaration. The **Association** determined that its Former Declaration is outdated. Therefore the **Owners** have approved and recorded this **Declaration** which supersedes the Former Declaration. This **Declaration** is intended to enhance and protect the value, enjoyment, safety, desirability and attractiveness of Hartzell Homeowners Association.

4. Applicability of Restrictions. As revised, these covenants, conditions and restrictions shall run with the **Property** and shall be binding on all parties having or acquiring any right, title or interest in any portion of the **Property** in the same manner as the Former Declaration, and shall be for the benefit of all **Owners**.

**ARTICLE I
DEFINITIONS**

The following terms, when shown in bold type throughout this **Declaration**, shall have the following meanings:

Section 1.1 "Articles" means the **Articles** of Incorporation of The Hartzell Homeowners Association, Inc., as amended from time to time.

Section 1.2. "Assessment" means a Regular, Special, Extraordinary Expense or Reimbursement **Assessment** made or assessed against an **Owner** and his or her **Lot** in accordance with the provisions of [Article IV](#) of this **Declaration**.

Section 1.3. "Association" means THE HARTZELL HOMEOWNERS ASSOCIATION, INC., a California nonprofit mutual benefit corporation, its successors and assigns.

Section 1.4. "Board" or "Board of Directors" means the governing body of the **Association**.

Section 1.5. "Bylaws" means the **Bylaws** of the **Association**, as may be amended or restated from time to time.

Section 1.6. "Common Area" means all of the real property and **Improvements** thereon owned by the **Association**, including mutual or reciprocal easement rights, for the common use and enjoyment of the **Owners** and more particularly described as follows.

Parcels A and D as shown upon that certain map entitled "Map of Summerhill" filed for record on August 24, 1987 in Book 20 of Maps at Page 20 in the Official Records of Marin County, California.

Section 1.7. "Davis-Stirling Common Interest Development Act" means that set of statutes governing Common Interest Developments which starts with California Civil Code [§4000](#) and is also referred to as the **Davis-Stirling Act** or the **Act**.

Section 1.8. "Declaration" means this restated **Declaration** and any further revisions or amendments. The term **Declaration** is interchangeable with the term "Covenants, Conditions and Restrictions" or "CC&Rs".

Section 1.9. "Eligible Holder" means any **Institutional Mortgagee** who has delivered a written notice to the **Association** which contains the name and address of the **Lot** encumbered by the **Mortgage** and requests that the **Association** deliver a written notice to it of any or all of the events specified in [Exhibit B, Section B.7](#) - Notices to **Eligible Holders**.

Section 1.10. "First Mortgage" means a **Mortgage** that has priority over all other **Mortgages**.

Section 1.11. "First Mortgagee" means the beneficiary under a **First Mortgage**.

Section 1.12. "General Notice" means delivery of documents and/or information to an **Owner** by **Individual Notice**, inclusion in a billing statement or newsletter, or posting the printed document in a prominent place at the **Property** designated for such notices.

Section 1.13. "Governing Documents" means collectively this **Declaration**, the **Bylaws**, **Articles**, rules, and any policies or guidelines approved and adopted by the **Board**, and any amendments to such documents.

Section 1.14. "Improvements" means everything constructed, installed or planted on property subject to this **Declaration**, including without limitation, buildings, streets, fences, walls, retaining walls, paving, sidewalks, trails, paths, pipes, wires, utility lines, grading, drainage systems, landscaping, irrigation systems and other works of **Improvement** as defined in [§8050\(b\)](#) of the California Civil Code, excluding only those **Improvements** which are dedicated to the public or a public or quasi-public entity or utility company, and accepted for maintenance by the public, such entity or utility company.

Section 1.15. "Individual Notice" means transmittal of notices, documents, or other communications to an **Owner** via first class mail, or via email, facsimile, or other electronic means, provided that the **Owner** has agreed in writing to that method of delivery. The **Owner** shall be responsible for maintaining his or her current addresses - mail and email (if applicable) - with the **Association**. The **Association** may, but shall not be required to, provide an undelivered communication by some other means. If a document is delivered by mail, delivery is deemed to be complete on deposit into the United States mail. If a document is delivered by electronic means, delivery is complete at the time of transmission. If a document or information is required to be "in writing", then the information provided must be in an electronic record capable of retention by the receiving **Owner** (i.e., able to be printed and/or stored).

Section 1.16. "Institutional Mortgagee" means (a) a **First Mortgagee** that is a bank, a savings and loan association, mortgage company, or other entity or institution chartered under or regulated by any federal and/or state law; or (b) an insurer or governmental guarantor of a **First Mortgage** including but not limited to the Federal Housing Authority and the Veterans Administration.

Section 1.17. "Lot" means any plot of land, whether improved or unimproved, shown on the recorded subdivision **Map** of the **Property**, with the exception of the **Common Area**. Each **Lot** specifically includes any and all **Improvements** on it, including the **Residence** itself.

Section 1.18. "Map" means the subdivision **Maps** identified in [Recitals](#), Section 1, above.

Section 1.19. "Member" means every **Person** holding a membership in the **Association** and is synonymous with the term **Owner**.

Section 1.20. "Mortgage" means a Deed of Trust, as well as a recorded **Mortgage** interest.

Section 1.21. "Mortgagee" means a beneficiary (such as a bank) under a **Mortgage** and/or Deed of Trust.

Section 1.22. "Occupant" means an **Owner**, resident, guest, invitee, tenant, lessee, sublessee, or other **Person** in possession of a **Lot**.

Section 1.23. "Owner" means the owner of record in the chain of title, whether one or more **Persons** or entities, having a recorded fee simple title to or undivided fee interest in any **Lot**. This includes contract purchasers, but excludes **Persons** having any interest merely as security for the performance of an obligation. If title is in the name of a Trust, each Trustee is an **Owner**. If title

is not held by a natural person or Trustee, the **Board** may adopt a policy defining “**Owner**” for purposes of use, residency and Director qualifications.

Section 1.24. "Party Wall" means any wall which is physically attached to or part of two homes. If the homes are offset along the common **Lot** line, the **Party Wall** shall include any wall within twelve (12) inches of the common boundary line of such adjacent **Lots** (regardless of whether or not such wall is located on one or both of such **Lots**). The **Party Walls** shall include the common foundation, common framing, common insulation and that point where the roofs join or abut neighboring roofs.

Section 1.25. "Person" means a natural person, corporation, partnership, trustee or legal entity. This term includes any **Owner, Member**, a family member, tenant, resident, guest or invitee.

Section 1.26. "Property" means all of the real property and **Improvements** of The Hartzell Homeowners Association, Inc. and includes all **Lots** and **Common Area**.

Section 1.27. "Residence" means a dwelling structure used for human habitation on a **Lot**. The term **Residence** specifically includes any and all **Improvements**, both interior (including, for example, all fixtures, finishes & systems) and exterior.

Section 1.28. "Voting Power" means **Owners** representing all 48 **Lots**.

ARTICLE II

PROPERTY RIGHTS

Section 2.1. Owners' Easements of Enjoyment. Every **Owner** has a fee interest, right and an easement of enjoyment in and to the **Common Area**, an easement for the installation, maintenance, operation and repair of utility lines serving the **Lot** of each **Owner**, and such easements upon the **Common Area** as are shown upon the **Map**, which are linked to and pass with the title to every **Lot**, subject to the following provisions:

2.1(a) 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 to by the **Owners**. Any such dedication shall have the assent of a majority of a quorum of the Voting Power. The **Board** may grant **Common Area** easements or licenses to utility companies, communication companies or public entities, so long as the grant, in whole or in part, benefits the **Owners** and/or does not significantly interfere with the **Owners'** use of the **Common Area**.

2.1(b) The declarations, limitations, covenants, conditions, restrictions and easements set forth in this **Declaration** and the right of the **Association** to make reasonable rules and regulations regarding the use of the **Common Area** by **Owners**, their guests and tenants and other **Persons** entering upon the **Common Area** for any purpose, provided that any rule or regulation which allocates or divides among the **Lots** or **Owners** the use of any portion of the

Common Area, such as vehicular parking spaces, shall be fair and equitable as to each of the **Lots** and **Owners** affected thereby.

Section 2.2. Delegation of Use. Any **Owner** may delegate his or her right of enjoyment of the **Common Area** and facilities to the members of his or her family, tenants, or contract purchasers who reside on the **Property**.

Section 2.3. Encroachment Easements. Each **Lot** has an easement over all adjoining **Lots** and the **Common Area** for the purpose of accommodating any encroachment of a structure or other **Improvement** due to engineering errors, errors in original construction, settlement or shifting of the building, or any other cause. There are valid easements for the maintenance of said encroachments as long as they shall exist, and the rights and obligations of the **Owners** shall not be altered in any way by said encroachment, settlement or shifting; provided, however, that in no event shall a valid easement for encroachment be created in favor of an **Owner** if said encroachment occurred due to the misconduct of such **Owner** or predecessor. In the event a structure is partially or totally destroyed and then repaired or rebuilt, the **Association** and the **Owners** of each **Lot** agree that minor encroachments over adjoining **Common Area** shall be permitted and that there shall be valid easements for the maintenance of said encroachments so long as they shall exist.

Section 2.4. Common Area Easements or Licenses.

2.4(a) The **Board** and/or **Owners** may approve the grant of exclusive use of a portion of the **Common Area** to an **Owner** under the limited circumstances provided for in Civil Code [§4600](#) and this Section. The **Owner** must make application to the **Board**, which must include a drawing which shows the proposed modifications and a full description of the encroachment including dimensions, elevations, sizes, heights, etc (as specified on the application).

2.4(b) If the **Board** determines that the subject **Common Area** is generally inaccessible and is not of general use to the membership at large, then the **Board** at its sole discretion may approve such use. Such an area may include landscape immediately adjacent to the applicant's **Lot**. The **Board** may also have similar discretion where the request conforms to other provisions of the above-cited statute. Typically, if a grant is made, a license is granted to a **Person** and may have conditions and/or be of limited duration.

2.4(c) If the **Board** finds that the proposed modification does not comply with the exceptions stated in the above-referenced statute and/or this section, then for the **Board** to grant an exclusive use license or easement, there must also be an affirmative approval by at least twenty percent (20%) of the **Voting Power**, but not less than a majority of votes cast.

2.4(d) The **Board** shall impose terms and conditions as are appropriate and beneficial to the **Association**. The terms may include recordation in the chain of title. Additionally, the **Owner** must accept the burden of management and maintenance of such **Common Area** and the **Board** may include the obligation to add the **Association** as an additional insured on **Owner's** liability insurance. A written record must be kept by the **Owner** and any successor

of all such licenses and approvals. If no such record is available, there shall be a presumption that no such license was granted.

Section 2.5. No Partition. There shall be no partition of the **Common Area** or any part, nor shall any **Person** acquiring an interest in the **Property**, or any part, seek any judicial partition, provided, however, that if any **Lot** is owned by two or more co-tenants as tenants-in-common or as joint tenants, nothing in this **Declaration** shall be deemed to prevent a judicial partition as between co-tenants.

ARTICLE III **AUTHORITY OF THE ASSOCIATION**

The **Board** shall have the power and authority to conduct the business of the **Association**, except as may be limited by the **Governing Documents** or the law. Where appropriate or necessary, the **Board**, in its sound discretion and for the benefit of all **Owners**, shall generally enforce the provisions of the **Governing Documents** in the manner it deems most appropriate. In addition to those powers and duties set forth in the **Bylaws** or elsewhere in this **Declaration**, the **Board** shall also have the following duties and powers:

Section 3.1. Utilities: The **Association** shall procure and pay for water, sewage, garbage, electrical, gas, cable and other necessary utility service for the **Common Area** and (to the extent not separately metered, sub-metered or charged) for the **Lots**. The **Association** may procure or otherwise facilitate communications improvements such as communication, media, internet, wireless communication, satellite or cable services and, if appropriate, allocate the charges equitably. The **Association** may grant licenses or easements across the **Common Area** to permit the installation and maintenance of cable, telephone, internet or other similar lines communication lines, equipment and/or service by private companies.

Section 3.2. Common Area Services: The **Association** shall procure and pay for gardening and landscaping services, as well as maintaining, and cleaning the **Common Area**. If economically feasible, the **Board** may install and/or maintain alternative landscaping water sources such as gray water or a well.

Section 3.3 User Fees. The **Association** shall have the power to impose and collect reasonable fees for the use of **Common Area** recreational facilities by **Owners** and residents. Deposits and/or fees may also be imposed for **Common Area** use for special uses such as debris boxes and bulk moving containers.

Section 3.4 Professional Services: The **Association** may, as deemed prudent by the **Board**, procure and pay for professional services, including management, reserve, engineering, legal and accounting.

Section 3.5. Taxes: The **Association** shall pay all taxes and assessments, if any, levied or assessed separately against the **Common Area**.

Section 3.6 Discharge of Liens. The **Association** shall pay, bond around or otherwise cause the discharge of any lien or encumbrance, including taxes and mechanics liens, levied against the **Common Area**. The **Association** shall, however, levy a Reimbursement **Assessment** if such a cost is incurred related to any **Lot**.

Section 3.7 Hazardous Materials. If the **Association** learns of the presence of any material, substance or organism in the **Common Area** or a **Lot** (in an area for which the **Association** is responsible) and which is deemed by any governmental agency to be actually or potentially hazardous, the **Board** may, at its discretion, make written findings as to the circumstances and the need to take certain action and establish and implement appropriate policy and actions as are in the best interests of the **Association**. This shall include the power to take action and implement corrective measures similar to those set forth in [Article V](#) under "[Pest Control and Wood Destroying Organisms](#)."

Section 3.8 Other Obligations of the Board. The **Association** shall procure and pay for any other goods, materials, supplies, labor, services, painting, maintenance, repairs, structural alterations, Improvements, insurance, taxes or assessments which the **Board** is authorized to secure or pay for pursuant this **Declaration** or by law, or which is reasonably necessary in the discretion of the **Board** for the convenient and appropriate operation of the Property.

Section 3.9 Manager: The **Board** may delegate the daily management duties to a manager or management company who is subject to the direction and control of the **Board**. This includes the authority to hire, as an employee or independent contractor, an "on-site" manager.

Section 3.10 Rules:

3.10(a) Rule and Policy Making Power. Subject to the provisions set forth in the **Davis-Stirling Act**, including **Member** review, the **Board** may propose, enact, adopt and/or amend rules and/or policies of general application to the **Owners** relating to the use of any part of the **Property** by the **Owners** and other **Persons**, including renters and guests. Such subjects may include provisions regarding parking, commercial vehicles, recreational vehicle and trailer parking, storage, recycling, trash and garbage disposal, use of recreational facilities, laundry, pets, signs, holiday decorations and displays, garage sales, estate sales, open houses, rental or lease of **Lots**, and/or activities which might adversely affect the **Property** or its appearance or might offend, inconvenience, annoy or endanger the **Owners** or residents. The **Board** may adopt policies to address any omission, ambiguity or conflict in the provisions of the **Declaration**. The discretionary rules shall not, however, be in conflict or materially inconsistent with any applicable provision of the **Articles, Bylaws** or **Declaration**. In the event of any such conflict in a discretionary rule, the provision contained in the **Declaration, Bylaws** or **Articles** shall be deemed to prevail.

3.10(b) Breach of Rules and/or Policies. Any breach of the rules and/or policies shall give rise to the rights and remedies set forth in [Article XI](#).

Section 3.11. Variances. The **Board** may, upon unanimous approval of all five (5) Directors, allow reasonable variances and adjustments of this **Declaration**, in order to overcome difficulties

and prevent unnecessary hardships in the application of these provisions. However, such variances shall only be granted which conform to the intent and purposes of this **Declaration**. Further, in every instance such variance or adjustment will not be materially detrimental or injurious to any other Owner's property or **Improvements** within the **Property**. The **Board** may, in its sole discretion, impose limitations on any variance granted, including terms, conditions and duration. Where notice of a request for a variance has been given to **Owners** potentially affected, and an **Owner** fails to object (according to the terms of the notice), that **Owner** shall be barred from later contesting the decision of the **Association**. A written record must be kept by the **Owner** and any successor of all such requests, proceedings and approvals. If no such record is available, there shall be a presumption that this section does not apply to any issue or dispute.

ARTICLE IV **ASSESSMENTS**

Section 4.1. Assessments Generally. Each **Owner**, by acceptance of a deed or other ownership interest, has and continues to covenant and agree to pay **Assessments** to the **Association**, together with interest, late charges, costs, and legal fees, which shall be a charge on the **Lots** and may become a continuing lien upon the **Lot** against which each such **Assessment** is made. Each such **Assessment** and related charges shall also be a joint and several personal obligation of each **Person** who holds an ownership interest in such property at the time when the **Assessment** becomes due and payable. All delinquent **Assessments** shall be subject to the provisions of [Section 4.3](#) below.

4.1(a) Regular Assessments. The **Board** shall establish for each fiscal year an Annual **Assessment** amount to be allocated equally among all **Lots** and (unless otherwise provided) due and payable as twelve (12) equal Regular **Assessments**. If no budget is established, the prior year budget shall apply. Regular **Assessments** shall be due and payable on the first day of each month and be delinquent if not received by the **Association** by the 15th day of the month.

4.1(b) Special Assessments. Special **Assessments** shall be allocated in the same manner as Regular **Assessments**.

4.1(b)(1) Special **Assessments** may be levied for the purpose of defraying, in whole or in part, actual or estimated revenue shortfalls or such other purposes as the **Board** deems appropriate, subject to the **Assessment** level increase provisions of [Section 4.2](#) below.

4.1(b)(2) Special **Assessments** may be approved, but implemented over months or more than one (1) year. However, each such increment approved at a point in time shall be levied, due and payable, independent of all other increments. Special **Assessments** shall be due as set forth in the Notice of Levy of Special Assessment (see [Section 4.2\(c\)](#) below).

4.1(c) Extraordinary Expense Assessments. Where the **Board** determines an emergency situation exists as defined by statute, the **Board** may levy an Extraordinary Expense

Assessment, but only in accordance with Civil Code [§5610](#) or any superseding provision of the California Civil Code which addresses **Assessments** necessary for extraordinary expenses.

4.1(d) **Reimbursement Assessments.**

4.1(d)(1) Definition. A Reimbursement **Assessment** is a charge against any **Owner** (and/or tenant) and the **Owner's Lot**. It may be levied by the **Board** under the following circumstances:

4.1(d)(1)(i) where there is a violation of the **Governing Documents** or other misconduct by any **Owner**, or the tenants, guests, agents, employees, licensees, or invitees of an **Owner**.

4.1(d)(1)(ii) when a condition created or caused by an **Owner** or **Owner's** predecessor in interest has required or will require the **Association** to spend money (including incurring attorneys fees or other costs).

4.1(d)(1)(iii) under any of the following circumstances:

(1) if a fine or penalty has been imposed by a third party against the **Association** (for example, a government fine as a result of actions by **Owner**);

(2) if an **Owner** or tenant has caused any increase in the Association insurance premiums ; or

(3) by mutual agreement between an **Owner** and the **Association**.

4.1(d)(2) Implementation. Unless otherwise agreed between **Owner** and **Association**, prior to levying a Reimbursement **Assessment**, the **Association** must provide the individual with due process pursuant to [Article XI, Section 11.4](#).

4.1(d)(3) Collection. A Reimbursement **Assessment** shall be due and payable to the **Association** when levied or at such later time as may be set. If a Reimbursement **Assessment** is levied and paid before all or any portion of the costs have been incurred by the **Association** and the amount paid exceeds the costs actually incurred, the **Association** shall promptly refund the excess to the **Owner**. If actual costs exceed the amount levied but not yet paid, the **Association** shall notify the **Owner** of the additional amount due and the **Owner** shall reimburse the **Association** within 30 days. When a Reimbursement **Assessment** is levied, it may be asserted and/or collected in the same manner as regular **Assessments**, including a lien. Note however that non-judicial foreclosure only applies if it is to repair damage to **Common Area** or other "out-of-pocket" costs. Non-judicial foreclosure cannot be used to collect a penalty/fine.

Section 4.2. Assessment Level Increases.

4.2(a) Approval of Board of Directors. The **Board** may impose a regular **Assessment** up to and including a twenty percent (20%) increase over the aggregate regular **Assessment** levied in the **Association's** preceding fiscal year. In order to exercise this discretionary power

to increase regular **Assessments**, the **Association** must have complied with Civil Code [§5300](#). The **Board** may impose special **Assessments** which in the aggregate do not exceed five percent (5%) of the budgeted gross expenses of the **Association** for that fiscal year. The **Board** also has the power to levy an Extraordinary Expense **Assessment** pursuant to [Section 4.1\(c\)](#).

4.2(b) Approval of the Owners. **Assessments** may be increased above the amounts set forth in [Section 4.2\(a\)](#) above, only with the approval of a majority of a quorum of **Owners**. For purposes of this section, a quorum means more than fifty percent (50+%) of the **Voting Power** of the **Association**. (Based on 48 **Lots**, this would require participation by the **Voting Power** of at least 25 **Lots** and the approval by a majority of those participating in the vote.)

4.2(c) Notice. The **Association** shall provide notice to **Owners** of any special **Assessments** or increase in the regular **Assessment**, not less than thirty (30) days nor more than sixty (60) days prior to the **Assessment** becoming due. Such written notice may be delivered to **Owners** by **Individual Notice**.

Section 4.3. Enforcement of Assessments.

4.3(a) Delinquency. The **Association** shall adopt and distribute a collection policy which shall provide for the enforcement of **Assessments**, including the provisions set forth below. If an **Assessment** is delinquent, the **Association** may require payment of all of the following:

4.3(a)(1) reasonable costs incurred in collecting the delinquent **Assessment**, including reasonable attorney's fees;

4.3(a)(2) a late charge not exceeding ten percent (10%) of the delinquent **Assessment**, or Ten Dollars (\$10), whichever is greater;

4.3(a)(3) interest on all sums imposed (including the delinquent **Assessment**, reasonable fees and costs of collection, and reasonable attorney's fees) at an annual interest rate not to exceed twelve percent (12%), commencing thirty (30) days after the **Assessment** becomes due.

4.3(b) Returned Checks and Other Charges. An **Owner** who issues a check to the **Association** which is returned for any reason shall pay a reasonable charge set by the **Association** for processing such check. If the check cannot be negotiated, payment shall be demanded in accordance with California Civil Code [§1719](#), which is entitled "Treble Damages for Failure to Pay Amount of Dishonored Check." Additionally, **Owners** shall reimburse the **Association** for any insufficient funds or other costs incurred in Automated Clearing House (ACH) transactions.

4.3(c) Acceleration of Assessment. If any **Assessment** is delinquent for a period of more than sixty (60) days or an **Owner** is delinquent three (3) or more times for any duration within a twelve month period, the **Association** may declare the entire balance of the annual

Assessment amount (plus any other outstanding **Assessment**) immediately due and payable in full, together with any other delinquent amounts. Upon acceleration, interest and a late charge on the full accelerated balance will accrue.

4.3(d) Lien. The amount of a delinquent **Assessment**, plus any costs of collection, late charges and interest, shall be a lien on the **Owner's Lot** from and after the time the **Association** causes to be recorded with the Marin County Recorder a Notice of Delinquent **Assessment**. This lien includes all additional charges and sums which become due and payable after the date of recordation of the Notice of Delinquent **Assessment**. Except for the transfer of a **Lot** by foreclosure proceeding, the sale or transfer of a **Lot** shall not affect such a lien. An **Association** lien shall survive the sale or transfer of a **Lot**, except in the event of a foreclosure by a senior interest.

4.3(e) Non-judicial Foreclosure. The **Association** has the power to conduct non-judicial foreclosure in order to collect delinquent **Assessments**. Each **Owner** hereby appoints as trustee the person designated by the **Association** as "trustee" in the Notice of Delinquent **Assessment**, or such substitute trustee as is designated pursuant to Civil Code §2924a. Additionally, such **Owner** empowers such trustee to enforce the lien and to foreclose the lien by the private power of sale provided in Civil Code [§5675](#), or by judicial foreclosure. Each **Owner** further grants to the trustee the power and authority to sell the **Lot** of any defaulting **Owner** to the highest bidder to satisfy such lien. Note that a fine (i.e., a penalty unrelated to reimbursement of costs) may be the subject of a lien and/or judicial foreclosure, but cannot be the basis for a non-judicial foreclosure.

4.3(f) Other Recourse.

4.3(f)(1) The **Association** may bring an action at law against the **Owner** personally obligated to pay the delinquent **Assessments**, and/or foreclose its lien against the **Owner's Lot** (whether by judicial or non-judicial foreclosure).

4.3(f)(2) Further, the **Association** may exercise any and all legal rights it may also have to cause the collection of delinquent **Assessments**. The **Association**, acting on behalf of the **Owners**, shall have the power to bid for the **Lot** at the foreclosure sale and to acquire and hold, lease, **Mortgage** and/or convey the **Lot**.

4.3(f)(3) In the event an **Owner** is sixty (60) or more days delinquent, any tenant during that period who continues to rent the **Lot** shall become jointly and severally liable for all Regular, Special, Reimbursement and Extraordinary Expense **Assessments** (up to the maximum of the tenant's obligation under the lease). If the tenant makes such payment to the **Association**, the **Owner** hereby acknowledges that such payment shall be deemed a credit or offset against rents otherwise due from tenant to **Owner**. Tenants' obligation to the **Association** shall not exceed the amounts due under tenants' lease or tenancy.

4.3(f)(4) Any debt of a *former Owner* may be the subject of an assignment, sale or other transfer to a third party debt collector.

Section 4.4. Grantee Liability.

4.4(a) Voluntary Conveyance. Where an **Owner** voluntarily conveys part or all of that **Owner's** interest in a **Lot**, the **Person** acquiring the interest takes subject to all **Assessments** and charges (delinquent or not) outstanding against the **Lot** at the time of the conveyance. Upon written request of an **Owner**, the **Association** shall provide a true statement in writing from an authorized representative of the **Association** as to any **Assessments** and/or other charges levied upon the **Owner's Lot** which are unpaid on the date of the statement. The statement shall also include true information on late charges, interest, and costs of collection which, as of the date of the statement, are or may be made a lien upon the **Owner's Lot**.

4.4(b) Conveyance by Foreclosure. In the event of a foreclosure of a first **Mortgage** by trustee sale, unless otherwise provided by law, the **Person** acquiring title, and his or her successors and assignees, shall not be liable for **Assessments** chargeable to such **Lot** which became due and payable prior to the acquisition of title by such acquirer. In lieu of a foreclosure by Trustee Sale, a first **Mortgage** holder, with the consent of the **Association**, can accept a deed in lieu of foreclosure that relieves it of some or all of the delinquency that occurred prior to the deed in lieu of foreclosure.

4.4(c) Priorities. When a Notice of Delinquent Assessment has been recorded, such **Assessment** shall constitute a lien on the **Lot** prior and superior to all other liens except (1) all taxes, bonds, and other governmental levies which by law would be superior thereto, and (2) the lien or charge of any **Mortgage** of record made in good faith, for value, and recorded prior to the **Association's** lien. Any foreclosure shall not relieve such **Lot** from liability for the pro rata share of the annual or other **Assessment** that would otherwise be payable after the foreclosure.

4.4(d) Termination and Commencement of Assessment Obligations. This section addresses personal liability only.

4.4(d)(1) Even though there is an annual **Assessment** amount, when ownership changes occur:

- the transferring-**Owner** shall be personally liable for the regular monthly **Assessments** which are due and payable up to the time of transfer, and
- the receiving-**Owner** shall be personally liable for the regular monthly **Assessments** which are due and payable after acquisition of any form of ownership interest.

4.4(d)(2) In the event monthly payment of Regular **Assessments** has been accelerated under **CC&R Section 4.3(c)**, upon change in title, the personal liability of both parties shall be prorated, as if the acceleration did not occur. Therefore, each party shall be personally liable for amounts due and payable only during the time when his or her ownership interest is held.

4.4(d)(3) Special or Reimbursement **Assessments** may be subject to terms or conditions specified by the **Board**.

4.4(d(4)) Except as otherwise provided in [Section 4.4\(b\)](#), a lien, and the **Association's** right to lien, survives a voluntary conveyance of a **Lot**.

Section 4.5. No Waiver or Offset. No **Owner** may exempt himself or herself from personal liability or release his or her **Lot** from liens and charges by waiver of any **Owner** rights or by abandonment or non-use of any **Lot**. Each **Owner**, to the extent permitted by law, waives the benefit of any homestead or exemption law of California in effect at the time that any **Assessment** or installment hereof becomes delinquent or any lien is imposed. As provided for by law, **Owners** cannot use any homestead or other exemption to avoid the obligation to pay **Assessments** (see generally *Lien Exception to Homestead Right* - Code of Civil Procedure §[703.010\(b\)](#)). No offsets or deductions against any **Assessment** shall be permitted for any reason, including, without limitation, any claim that the **Association** is not properly discharging its duties.

ARTICLE V

RESPONSIBILITIES FOR MAINTENANCE, REPAIR AND REPLACEMENT

Section 5.1. Association Responsibilities - Common Area. The **Association** shall control and pay for the maintenance, repair and replacement of all **Common Area Improvements** including landscaping, lighting, walkways, sloped drainage facilities, drainage ditch, water lines and streets, driveways, retaining walls, open space areas, and storm drains.

Section 5.2. Responsibilities for Maintenance, Repair and Replacement - Owners' Lots. Hartzell is a Planned Development wherein each **Owner** actually owns a **Lot** and all **Improvements** on the **Lot**, including the **Residence**. **Owners** are responsible for all maintenance, repair, and replacement of **Improvements** on their respective **Lots** unless specifically assigned to the **Association** by this **Declaration**. As to those components for which an **Owner** is responsible for maintenance, repair and/or replacement, any work or change which would alter the exterior appearance from the original construction or configuration must be approved in advance by the **Association** pursuant to the provisions of [Article X](#) of this **Declaration**.

The following sets forth **Association** and **Owner** responsibilities for certain components and systems.

5.2(a) Building Exteriors.

5.2(a)(1) Walls and Trim. The **Association** shall be responsible for maintenance, repair and replacement of building exterior siding, trim and other surface materials. This includes painting (including color selection) the exterior walls and trim which are part of the dwellings and which are directly exposed to the weather. The **Association** shall also be responsible for maintenance, repair and replacement of the weatherproof envelope, including building paper, window and door frames (except for swing door thresholds) and flashing, or other flashing beneath painted surfaces. This responsibility shall also include such ancillary components as are visible from the outside including such items as metal flashing and vents.

5.2(a)(2) Other Exterior Components. The **Association's** responsibility shall not include such components as framing of the walls, slabs, foundations, crawl spaces or changes and additions not a part of the original construction. It shall not include such features as: patios, doors (except for painting), window and door hardware, screens, window and sliding glass door glass, skylights, or other similar components.

5.2(a)(3) Windows and Exterior Fixtures. The **Owner** shall be responsible for the maintenance, repair and replacement of windows (including the double pane glass insert (if any)), sliding glass doors (including pans), skylights, exterior light fixtures, outdoor electrical plugs, and other similar components. Replacement windows, window screens, sliding glass doors, screen doors and exterior lights must be approved in advance by the **Association** and/or must conform to **Association** standards.

5.2(a)(4) Exterior and Garage Doors. The **Association** shall be responsible for painting all exterior doors. The **Owner** shall be responsible for the maintenance, repair and replacement of the exterior doors (including thresholds) and garage doors for his or her **Residence**. Replacement doors must be approved in advance by the **Association** and/or must conform to **Association** standards. The **Owner** shall be responsible for the maintenance, repair and replacement of all garage door hardware, including any electric garage door opening device installed within the **Owner's** garage space.

5.2(a)(5) Off Schedule Work. The **Association** shall have no responsibility to pay for or reimburse any **Owner** for painting, staining or any other exterior work which the **Owner** requests or undertakes at a time different from the **Association's** overall maintenance plan or schedule. This provision applies even if such work has received **Association** approval and/or is exposed during an **Owner** alteration.

5.2(a)(6) Crawl Spaces. **Owners** are responsible for crawl space systems and components, including, for example, ventilation, fans and drainage.

5.2(b) Roofing.

5.2(b)(1) The **Association** is responsible for the maintenance, repair and replacement of the outermost roofing materials, including shingles, and paper as well as sheet metal flashing and caps.

5.2(b)(2) Each **Lot Owner** is responsible for roof components below the outermost layer (including plywood, trusses, beams, rafters, ventilation, ceilings and fixtures) of such **Owner's** home.

5.2(b)(3) The **Association** shall maintain, repair and replace gutters and downspouts. The **Association** may, but shall not be required to, perform periodic cleaning of the gutters. Otherwise, **Owners** should periodically inspect their gutters and clean as necessary. Each **Lot Owner** shall be responsible for disposal of downspout water at grade level, the maintenance, repair and replacement of foundation drains (if any) and sub-area ventilation.

5.2(c) Fireplaces, Flues and Caps.

5.2(c)(1) The **Association** shall be responsible for the painting of those chimney flue and cap components that are outside of the building itself. The **Association** shall be responsible for the replacement of chimney caps where replacement is necessary for aesthetic reasons.

5.2(c)(2) The **Owner** shall be responsible for all other fireplace components and the cleaning of the chimney flue as necessary.

5.2(d) Patios and Decks.

5.2(d)(1) Patios. The **Owner** shall be responsible for the maintenance, repair and replacement of all patio components including slabs and landscaping. This applies to all patio slabs serving any particular **Residence** regardless of location. The **Owner** is responsible for properly addressing patio drainage.

5.2(d)(2) Decks. The **Owner** is responsible for all aspects of maintenance, repair and replacement of deck, railings, support structures and attachments to the building.

5.2(e) Walkways, Driveways and Streets.

5.2(e)(1) Walkways. The **Owner** shall be responsible for all aspects of maintenance, repair and replacement of front walkways including railings .

5.2(e)(2) Driveways. Regardless of location, the **Association** shall be responsible for the repair and/or replacement of the concrete slab portion of all driveways. For those driveways which are supported by framing, the **Owners** are responsible to maintain, repair and replace the structural components (framing, supports and transition joints) of the driveway, as well as any related railings. The **Owners** and **Association** will have to coordinate their respective responsibilities to accomplish the work. Alternatively, the **Association** may use a Reimbursement **Assessment** to coordinate and control such structural work by agreement with the **Owner**.

5.2(e)(3) Streets. Periodically the **Association** must perform maintenance of street surfaces (i.e., sealant, coatings or other asphalt work). The **Association** shall have the power to immediately tow any vehicle that has not been moved out of the work area as directed by prior written notice sent to all **Owners** and/or residents.

5.2(f) Fences.

5.2(f)(1) Where original fences, and partition walls divide individual **Lots** from the **Common Area**, the **Association** and **Owner** shall share the cost of maintenance, repair and replacement of the shared fence, including painting or staining. The **Association** may implement any necessary work, control it and collect the **Owner's** share in the same manner as a Reimbursement **Assessment** pursuant to [Article IV, Section 4.1\(d\)](#). Where **Owners**

have added fences (such as, for example, deer fencing at the rear of some **Lots**), the **Owner** is solely responsible for all aspects of maintenance, repair and replacement of such fence.

5.2(f)(2) Adjacent **Owners** shall be equally responsible for the maintenance, repair and replacement of fences, exterior privacy walls, railings, or other shared components. In the event of a dispute between **Owners** arising out of the shared usage, maintenance, repair or replacement, the matter shall be addressed as provided for in [Article XI, Section 11.3\(c\)\(2\)](#), "Owner-to-Owner Disputes: Mediation/Arbitration."

5.2(f)(3) The **Owner** shall be responsible for the maintenance, repair and replacement of all hardware on gates.

5.2(g) Retaining Walls. The **Association** shall be responsible for all aspects of maintenance, repair and replacement of retaining walls located on the **Property**. The only exceptions are those wooden retaining walls which are three feet (3') or less in height and are located within the fenced yard of a **Lot** which retaining walls are the responsibility of the **Lot Owner(s)**. Where such retaining walls may cross from fenced yard area of the **Lot** past the fence and into **Common Area**, the **Owner** is responsible for that portion in his or her yard, and the **Association** is responsible for that portion in **Common Area**.

5.2(h) Matters Affecting Contiguous Residences. While the **Residences** at Hartzell are townhouse-style homes, from a structural and fire separation standpoint, and in some instances, pest control, the contiguous residences act as one building. Therefore, some maintenance, repair and/or replacement (not addressed in [Article IX](#) entitled "Damage and Destruction"), may require a coordinated effort by all **Owners** in the building. Examples of matters affecting contiguous **Residences** may include wood destroying pests and organisms, seismic upgrades and/or other deficiencies or damage that may similarly affect or compromise the entire building. If all **Owners** within the building agree and all work considered is consistent with the **Association's** architectural control provisions, the **Owners** may undertake, at their own expense, whatever work they deem appropriate. If all **Owners** do not agree on the need for the maintenance, repair, replacement, upgrade and/or reconstruction of some component that may affect the entire building, then the following provisions apply:

5.2(h)(1) Reasonable access for inspection and/or testing shall be provided.

5.2(h)(2) Upon the request of one or more **Owners** in the affected building, the **Association** may conduct a vote of all affected **Owners** seeking their approval or disapproval of the proposed maintenance, repair, replacement, upgrade and/or reconstruction work. If such a vote is conducted, approval by a majority of affected **Owners** shall bind all such affected **Owners**.

5.2(h)(3) In the event of a dispute arising out of this subsection and among affected **Owners**, all affected **Owners** shall attempt to resolve any dispute pursuant to the ADR provisions set forth in [Article XI, Section 11.3\(c\)\(2\)](#), "Owner-to-Owner Disputes: Mediation/Arbitration."

5.2(i) Service and Utility Lines.

5.2(i)(1) The **Owner** (or appropriate utility company) is responsible for the maintenance, repair and replacement of all utility lines (including water supply, gas, electric and sewer), wherever located, and serving only the **Owner's Residence and Lot**. This also includes all water supply lines on the **Owner's** side of the meter.

5.2(i)(2) The **Association**, at its discretion, has the authority to control the maintenance, repair and replacement of service, sewer and utility lines that will impact any area controlled by the **Association**. If any such work is undertaken, the **Association** may levy a Reimbursement **Assessment** on the **Owner(s)** benefitted by the work. Alternatively, the **Association** may delegate the work and cost to the **Owner(s)**. The **Association** shall not be liable for any damage caused by waste/sewer backup or overflow unless it can be shown that the **Association** acted with gross negligence.

5.2(j) Landscaping.

5.2(j)(1) Common Area. The **Association** shall maintain, replace and otherwise control the trees, shrubs, grass, and other landscaping, as well as the landscape irrigation systems, on the **Common Area**.

5.2(j)(2) Unfenced Area of the Lot. The **Association** shall maintain the landscaping (including the trees, shrubs, and grass) on the unfenced area in the front or side of each **Lot**. With regard to trees, the **Association's** maintenance responsibilities are limited to services above ground, such as pruning, fertilizing, irrigating, etc. The **Association** is not responsible for the cost of irrigation water unless separately metered to the **Association**. The **Association** shall not be responsible for roots, damage caused by roots or other below grade conditions on or adjacent to an **Owner's Lot**. The **Association** will consider an **Owner's** request to remove the tree from the unfenced area at the **Lot**. In the event an **Owner** reports and documents a below grade problem caused by roots, the **Association** may remove the tree or take other measures to address the problem. In the alternative, if a tree in this area is causing damage (for example due to roots interfering with utility or sewer lines, or concrete walkways or driveways), and the **Owner** does not want the tree to be removed, the **Association** may require the **Owner** to execute and record a hold harmless agreement, to run with title to the **Lot**, with respect to future tree maintenance, root damage and other related costs. If the **Owner** so requests, the **Association** has the power to delegate landscaping responsibility in this unfenced area to the **Owner** and impose reasonable conditions, including recordation of any such agreement with title (thereby binding all future **Owners** of that **Lot**.) Any cost to transition back to **Association** responsibility shall be borne by the **Owner**.

5.2(j)(3) Fenced Area of the Lot. The **Owner** shall maintain, replace and otherwise control all landscaping within the fenced patio area and/or rear yard of the **Owner's Lot**. All such **Owner** landscaping shall be maintained in such a way so as not to interfere with the

Association's maintenance of the building exteriors and fences. The **Owner** is also responsible for proper drainage of water in patios and fenced areas.

5.2(j)(4) Guidelines. The **Board** may adopt guidelines, rules, and procedures regulating the placement and type of trees, shrubbery and other vegetation permitted on or adjacent to **Owners' Lots**. addressing problems related to vines and plants which climb or block access to walls and fences, trees (including roots and branches) and other vegetation that extend across **Lot** lines or other areas of responsibility.

5.2(kj) Pest Control and Wood Destroying Organisms.

5.2(k)(4) The **Owner** shall be responsible to abate any nuisance caused by the presence of vermin, rodents, bats, wasps, mice, ants, mosquitos, pests, insects or infestations on the **Owner's Lot**.

5.2(k)(5) Each **Owner** is responsible for the repair and maintenance of that **Owner's Residence** and **Lot** as may be occasioned by the presence of wood-destroying organisms. This includes such problems as beetles, termites and decay (also known as dryrot or fungus). **Owners** shall maintain proper moisture control and ventilation of crawlspaces. Stacks of firewood shall have sufficient clearance from structures so as not to foster spreading of insects to the building or fence.

5.2(k)(6) At the discretion of the **Board**, the **Association** may assume responsibility to coordinate and cause repair and maintenance where such work must be performed on more than one **Lot**. If the **Association** exercises the right to such control, it may include reasonable notice of the need to temporarily vacate the **Residence** and/or as otherwise provided in Civil Code [§4785](#).

5.2(k)(7) The **Association** may cause the temporary, summary removal of any **Occupant** of a **Residence** for such periods and at such times as may be necessary for prompt, effective treatment of wood-destroying pests or organisms. The costs of any such temporary relocation during the repair and maintenance shall be borne by the **Owner** of the separate interest affected.

5.2(k)(8) The cost of alleviating the pest problem and any reconstruction shall be the responsibility of those **Owners** affected. In the event the **Association** advances costs for such maintenance and/or repair or enforcement of this section, it may seek reimbursement in the same manner as collection of delinquent **Assessments**.

Section 5.3. Extraordinary Repairs.

5.3(a) Interior Damage. The **Association** shall not be liable for any damage to the framing or any interior water-related, sewage, or other damage to the **Lots** (including personal property) unless it can be shown there was gross negligence in the maintenance, repair or replacement of those components for which the **Association** is responsible. Further, the **Association** shall not be liable for any loss of use.

5.3(b) No Loss of Use. The **Association** is not responsible for any costs or expenses relating to temporary relocation or loss of use of **Lots** during any **Association** maintenance, repair and/or replacement of any facet of the **Lots**, regardless of the reason for such work.

Section 5.4. Failure to Maintain.

5.4(a) Common Area. If the **Board** reasonably determines that the need for maintenance, repair or replacement of any **Common Area** component (or component for which the **Association** is responsible) is caused by an **Owner**, **Owner's** predecessor, or the **Owner's** family, guests, tenants, invitees, lessees, or pets, or emanates from an **Owner's Lot**, then the **Association** may levy a Reimbursement **Assessment** against the **Owner** and/or the **Owner's Lot**.

5.4(b) Lot and Dwelling. If the **Board** reasonably determines that a **Lot** or dwelling requires maintenance, repair or replacement of any component or condition for which the **Owner** is responsible, the **Board** may direct the **Owner** to perform the work. If the **Owner** fails or refuses to do so within a reasonable period of time, the **Association** may utilize the provisions of [Article XII](#) entitled *Enforcement of Governing Documents*, and cause the work to be performed and levy a Reimbursement **Assessment**. The **Association** may also utilize the provisions of [Section 10.7\(c\)](#) entitled "*Association Options for Abating Continuing Nuisances.*"

5.4(c) Access for Repairs. The **Board**, its agents or its contractors may enter onto any **Lot** or access the exterior of any **Residence** or roof when necessary in connection with inspection and/or any exterior maintenance, repair, landscaping, construction or easement for which the **Association** is responsible. Such entry shall be made with as little inconvenience to the **Occupants** as is practical. Whenever possible, at least twenty-four (24) hours notice will be given to the resident.

5.3(d) Entry by Owners for Repairs. Each **Owner** shall have the right to enter upon the grounds (but not within the premises) of any adjacent **Owner** to make repairs to his or her property, but only to the extent such entry is reasonably necessary to make repairs to the entering **Owners** own property, and provided that such entry shall be made with as little inconvenience to the **Owner** as practicable and upon reasonable notice.

5.4(d) Continuing Nuisance. Failure of an **Owner** to perform any maintenance, repair or replacement for which he or she is responsible, and which is determined by the **Board** to be necessary, shall be deemed a continuing nuisance.

5.4(e) Other Options. These enforcement options shall be in addition to those provided for in [Article XI](#).

Section 5.5. Right of the City to Repair. In the event the **Owners** fail to maintain the exterior portions of the **Common Area** such that any health or safety hazard or nuisance exists or is created within the **Property**, the City of San Rafael, by and through its duly authorized officers and employees, shall have the right to enter upon the **Property** and to commence and complete such

work as is necessary to maintain said exterior portions of the **Common Area**. The City of San Rafael shall not be required, however, to take any affirmative action, and any action undertaken by the City of San Rafael shall be that which, in its sole discretion, it deems reasonable to protect the public health, safety, and general welfare, and to enforce its regulations and ordinances and other laws. The City may enter and repair only if, after giving the **Owners** written notice of the **Owners'** failure to maintain the premises, the **Owners** do not commence correction of such conditions in no more than thirty (30) days from delivery of the notice and proceed diligently to completion. The **Owners** shall pay all expenses incurred by the City of San Rafael within thirty (30) days of written demand. Upon failure by the **Owners** to pay within said thirty (30) days, the City of San Rafael shall have the right to impose a lien for the proportionate share of such costs against each **Lot** in the **Property**. The provisions of this paragraph shall not be amended without the express written consent of the City of San Rafael.

ARTICLE VI **USE RESTRICTIONS**

The **Property** shall be occupied and used as follows:

Section 6.1. Use of Lots. No **Lot** shall be occupied and used except for residential purposes by the **Owners**, their family members, their tenants and/or social guests. Nothing shall be done in any **Lot** which will impair the structural integrity of any building in the **Property** or which would structurally alter any such building or decrease the effectiveness of fire safety systems. Requests for architectural changes are addressed in [Article XI](#).

Section 6.2. Use of Common Area. Use of the **Common Area** is subject to **Association** rules and restrictions adopted by the **Board**. Use of the **Common Area** is further subject to the following:

6.2(a) No **Owner** shall take any action or permit anything to be done or kept in the **Common Area** which will result in the increase in rates, decrease in coverage, non-renewal or cancellation of insurance on any **Lot** or **Common Area**, or which would be in violation of any law. To the fullest extent permitted by law, if the nature of use of any **Lot** causes an increase in the rate of insurance procured by the **Association**, the **Board** may levy a Reimbursement **Assessment** for the additional amount. The **Board** may make such a determination based on facts reviewed in a duly noticed hearing.

6.2(b) There shall be no obstruction of the **Common Area**. Nothing shall be stored in the **Common Area** without the prior consent of the **Board**, and/or in accordance with written guidelines adopted by the **Board** or in designated storage areas.

6.2(c) Nothing shall be done to or in the **Common Area** which has an adverse effect on its enjoyment, use, value, condition or appearance. **Owners** shall be liable for their own acts, as well as jointly and severally liable for the acts of family members, tenants, pets, guests and invitees. Any damage or destruction to the **Common Area** or other areas the **Association**

maintains may result in a Reimbursement **Assessment** being levied against the **Owner**, and/or tenant responsible for such damage or destruction and the **Owner's Lot**.

6.2(d) Nothing shall be altered, constructed or removed from the **Common Area**, except with the written consent of the **Board**.

6.2(e) There shall be no violation of the rules and regulations relating to the use of the **Common Area**.

6.2(f) In order to properly maintain components which are the **Association's** responsibility, it is important that the **Board** have notice of any problems. **Owners** are encouraged to report to the **Association** any problem observed in the condition of the area of **Association** responsibility, particularly on or adjacent to their respective **Lots**. Failure to do so may reduce the **Association's** financial responsibility for making later repairs on any **Lot**.

6.2(g) Each **Person** shall comply with all of the requirements of all governmental authorities, federal, state and local, and all laws, ordinances, rules and regulations applicable to the **Property**. Violation of any such law is also a violation of this **Declaration**.

Section 6.3. Air Conditioning Units. Installation or replacement of an air conditioner shall be subject to **Association** approval. The **Association** has the right to adopt policies regarding the location, type and use of air conditioners to minimize the aesthetic impact and any operation which may negatively affect neighbors.

Section 6.4. Animals.

6.4(a) No animals, livestock, poultry or exotic pets of any kind shall be raised, bred, or kept in any **Lot** or the **Common Area**, except that no more than two (2) dogs, cats, birds, or other common household pets may be kept in **Lots**, unless prohibited by the **Board**, provided that they are not kept, bred, or maintained for any commercial purposes, and that they are kept under reasonable control at all times. subject to the rules and regulations adopted by the **Board**. Such rules may include limitations on type and/or size of animals which may be kept. The rules may also include breed and other restrictions or prohibitions.

6.4(b) No dog is permitted on the **Common Area** except while being held on a leash. The owner of any pet shall promptly remove and properly dispose of such pet's defecation occurring anywhere in the **Property**.

6.4(c) After notice and opportunity to be heard has been provided by the **Board**, the **Board** may order the removal of any pet which, in the **Board's** sole discretion, causes excessive noise or otherwise creates a nuisance. Any animal which displays threatening behavior or attacks a person or other pet may be immediately barred from the **Common Area** until a hearing can be conducted. If the **Board** finds a pattern of pet-related violations, it may, in conjunction with the due process provisions of [Article XI, Section 11.4](#), prohibit the maintenance of any pets by a particular resident.

6.4(d) Feeding of wildlife is prohibited. This includes bird feeders, with the exception of hummingbird feeders. Residents must keep all food items, whether outside or in garages, properly stored to avoid attracting rodents or other wildlife.

Section 6.5. Clotheslines. No exterior clotheslines may be erected or maintained on any **Lot** except in back yards and in a manner which is not visible from the **Common Areas** (i.e., not above the fence line).

Section 6.6. Exterior Lighting. Exterior lighting must be in accordance with Association standards. Addition of or alteration to exterior lighting shall be addressed as an Architectural Alteration (see [Article X](#)).

Section 6.7. Exterior Fires. There shall be no exterior fires except barbecue fires contained within receptacles designed for such purposes, or commercially manufactured outside heaters. The **Board** may pass rules regulating or restricting the use of outdoor grills, barbecues, outdoor gas heaters, fire pits or similar gas, wood or charcoal burning devices on decks or adjacent to buildings. Any such use must be consistent with applicable Fire Code provisions.

Section 6.8. Exterior Wiring. No telephone, cable television or other wiring shall be routed along the building exterior in a manner that is visible from the **Common Area**. Exterior wiring shall be concealed or, if approved by the **Association**, painted to match the color of the building.

Section 6.9. Garages. No area of any residential structure which is intended to be used primarily for the parking of passenger vehicles shall be converted to use as a living area. Garages may only be used for parking of vehicles and/or storage which will not interfere with parking of vehicles. Garage doors are to remain closed when the garage is not in use.

Section 6.10. Hillside. The hillside behind the **Residences** on upper Summerhill Way is **Common Area**. Access to and use of this area is restricted as follows:

6.10(a) There is no hiking, biking, dog-walking or other recreational use permitted on the hillside.

6.10(b) Owners are not permitted to encroach on the hillside with placement or storage of plants or other personal property.

Section 6.11. Hot Tubs and Spas. If an **Owner** has an exterior hot tub or spa, that **Owner** shall be responsible for the equipment including proper drainage of water. No exterior hot tubs or spas may be installed after passage of this **Declaration** without prior written **Board** approval.

Section 6.12. Illegal Acts. Any illegal act or condition shall also constitute a breach of the **Governing Documents** and may, at the option of the **Association**, be enforced as such.

Section 6.13. Local Ordinances. For any use restrictions which may apply to the **Property** as set forth in the **Governing Documents**, there may also be City ordinances or State law which

apply. In the event of overlap or conflict between the two, the more restrictive shall be applied. Regardless, the **Association** may defer to the City to enforce ordinances or other laws.

Section 6.14. Nuisance. No noxious or offensive activity shall be carried on in any **Lot** or in the **Common Area**, nor shall anything be done which may be or become an annoyance or nuisance to the other residents. Without limiting the foregoing, no **Owner** shall permit noise, including, but not limited to barking dogs, the operation of excessively noisy air conditioners, amplified sound systems, motor vehicles or power tools, to emanate from an **Owner's Lot** or from activities within the **Common Area**, which would unreasonably disturb any other **Owner's** or tenant's enjoyment of his or her **Lot** or the **Common Area**. Nuisance may include, for example, tobacco smoke, outside cultivation of marijuana, a visual blight, loud, noxious, odorous, destructive or offensive activity or anything which causes significant embarrassment, disturbance or annoyance to others. Some activity at inappropriate times may constitute a nuisance. Because a nuisance is largely subjective, the **Association** is not obligated to become involved in such disputes except as follows: If the nuisance is such that it disturbs more than one household, the **Association** shall take appropriate action to abate the nuisance if the affected **Occupants** request in writing that action be taken by the **Board**. The **Board** has discretion as to what action is appropriate to the nuisance. If the nuisance is such that it only disturbs a single household, then the disturbance may not be sufficient to require intervention by the **Association** and the two parties shall resolve their dispute by Alternative Dispute Resolution as provided for in [Section 11.3\(c\)\(2\)](#). The **Association** has the authority to elaborate with examples and pass rules addressing such activity.

Section 6.15. Owners or Other Occupants May Not Direct Association Employees, Agents or Vendors. The **Board's** authority with respect to the **Common Area** is exclusive. No **Person** shall confront, criticize, intimidate, or direct any employee, agent of vendor of the **Association**. Communications on such subjects shall be in writing to the **Board**. If there is a pattern of inappropriate communications to the **Board**, the **Board** may limit the type and timing of communications and/or take other appropriate measures.

Section 6.16. Parking and Vehicles.

6.16(a) Rules. In order to promote vehicle safety and enhance the appearance and atmosphere of Hartzell, **Owners** shall park, store or keep vehicles in accordance with rules adopted by the **Association**, which may be amended from time to time. These rules may include provisions such as parking, vehicle types, auto alarms, etc.

6.16(b) Vehicle Type Restrictions. No **Person** shall park, store or keep any large commercial type vehicle, bus, any recreational vehicle (camper unit, motor home, trailer, boat trailer, mobile home or other similar vehicle), boats, commercial equipment, or any vehicle other than a private passenger vehicle on the exterior areas of the **Property**. The only exceptions are campers, boats or other recreational vehicles which may be parked on or near a **Lot** for no longer than a 48 hour period in any seven (7) days for the purpose of loading and unloading or cleaning. Pick-up trucks and camper trucks and sport utility vehicles up to and including three-quarter (3/4) ton rated, when used for everyday-type transportation (and not used for commercial purposes), are permitted. The **Board** may adopt rules to further refine or supplement this section.

6.16(c) Other Limitations.

6.16(c)(1) Parking is permitted in designated areas only.

6.16(c)(2) Guest parking spaces shall not be used for vehicle storage. Vehicles or other property parked continuously on **Common Area** for a period of seventy-two (72) hours or longer may be ticketed and are subject to towing at the **Owner's** expense.

6.16(c)(3) Due to the limited number of **Common Area** parking spaces, each **Occupant** must first utilize his or her garage and/or driveway for parking so as to avoid frequent or continual parking of that resident's vehicles in **Common Area** parking spaces.

6.16(c)(4) There shall be no repairs or restorations of any motor vehicle, boat, trailer, or other vehicle upon any portion of the **Property**, including the carports /garages. Emergency repairs may be performed, but only to the extent necessary to enable prompt movement to a proper repair facility.

6.16(c)(5) No vehicle which emits extraordinary levels of exhaust pollution or noise, as determined by the **Board**, shall be operated within the **Property**.

6.16(c)(6) Vehicles must display a current registration and be operable. Vehicles parked outside must be maintained in such a condition that they do not create a visual nuisance, or leak fluid onto **Common Area** parking spaces.

6.16(d) Towing. The **Association** may cause any vehicle parked on **Common Area** in violation of the **Governing Documents** to be towed, subject to the provisions of California Vehicle Code [§22658](#).

Section 6.17. Patios. Unless there is prior written approval from the **Board**, no building, storage shed, equipment, recreational facility or any other structure shall be erected or maintained within the patio or deck area of any **Lot** at a height which exceeds six (6) feet.

Section 6.18. Restriction on Businesses. No trade or business shall be conducted on or from any **Lot**, except for professional, or administrative-type work, provided there is no external evidence and, if the **Board** adopts a related policy, it is conducted in accordance with that policy. In no event shall a business be conducted which will (a) have a measurable negative impact on neighbors, (b) increase vehicle or foot traffic within the **Project** or to the **Lot**, (c) cause any damage to the **Common Area**, (d) adversely affect or increase the cost of **Association** insurance, or (e) interfere with the primary use of the **Lot** as a **Residence**. The City of San Rafael Home Occupation Ordinance shall apply and, in the event of overlap or conflict, the more restrictive shall be applied.

Section 6.19. Satellite Dishes and Antennae. An **Owner** may install any outdoor dish, antenna or similar device provided that it is not visible from any street or from the ground surfaces of the **Common Area** and does not increase the maintenance costs of the **Association**. Any other location must be approved by the **Board** in advance of installation. If a satellite dish is not

operational or is abandoned, it shall be removed immediately. All satellite dish installations are subject to the terms and conditions set forth in the **Association's** Satellite Dish Policy.

Section 6.20. Signs and Flags. No signs, posters, flags or banners are permitted except as provided for by law or approved by the **Board**. All permitted displays shall comply with any applicable City ordinances and shall not be permitted to become a visual blight or nuisance, such as through weather-related or other deterioration. Permitted displays may not be installed in a manner that damages **Common Area** or increases the exterior maintenance costs for the **Association** and/or other **Owners**. For example, displays may not be held in place with bolts, nails or other attachments which will cause leaks or promote decay. **Owners** are responsible for any increased maintenance costs and/or damage which occurs as a result of the display. Commercial signs are not permitted, with the exception of one "For Sale" or "For Rent" sign per **Lot**. A small alarm service sign shall not be deemed commercial in this context. The **Board** may adopt reasonable rules or policies on the overall subject, including the type, appearance, size and location of permitted signs. Enforcement shall be limited to instances in which such action does not violate any law or regulation governing the display of signs, posters, flags or banners.

Section 6.21. Smoking Prohibited. Cigarette, cigar, pipe and/or other smoking is prohibited anywhere on the **Property**. Additionally, the **Association** may prohibit smoking in any area that adversely affects other residents. (See Generally City of San Rafael Ordinance No. 1908.)

Section 6.22. Solar Energy Systems. The **Board** may, but is not required to, permit installation of solar equipment on **Common Area**. The **Board** may also impose reasonable restrictions or adopt reasonable guidelines addressing the installation of solar energy systems on **Lots** by **Owners**. Such guidelines must conform to applicable law, and can include, among other things, provisions addressing maintenance, repair and replacement of affected building components, and requiring installers to indemnify or reimburse the **Association** or **Owners** for loss or damage caused by installation, maintenance or use of the solar energy system.

Section 6.23. Sound Devices. No exterior horns, bells, speakers, or other sound devices, except security devices used exclusively to protect the **Lots**, shall be placed or used in the **Common Areas** or exteriors of the **Lots**.

Section 6.24. Sports Fixtures. No basketball standards, hoops or backboards or other fixed sports apparatus shall be attached to the front of any **Residence**. Portable basketball standards are permitted but must be properly stored out of sight when not actively in use. The **Association** may pass specific rules regarding use and storage of the standard. Regulation may include time of year, frequency and/or hours of use.

Section 6.25. Trash Disposal. All garbage and recycling shall be placed and kept in covered containers. Except on collection days, these containers should not be visible from neighboring properties or the **Common Area**, and should be returned promptly after collection.

ARTICLE VII

SALE OR LEASE OF LOTS

Section 7.1. Owner Occupancy Before Rental or Lease of Lot.

7.1(a) Objectives. A general objective of the **Governing Documents** is to protect, enhance and maintain the residential atmosphere which exists within the **Property** and to avoid occupancies and use for short periods of time or by an unreasonable number of individuals. It is also the goal of the **Association** to assure that there is a pool of Resident **Owners** to serve as volunteers in performing necessary **Association** functions and to achieve or maintain a favorable percentage of **Owner** occupied homes in order to facilitate favorable financing terms by lenders who factor in such data to loan approvals and terms.

7.1(b) Definitions. For purposes of this **Section 7.1** the following terms and definitions apply:

7.1(b)(1) "Owner" means an **Owner** as defined in **Section 1.13** with the following additional qualifier: **Owner** shall also mean a **Person** with at least a one-third ($\frac{1}{3}$) ownership interest which is recorded in the chain of title of the **Lot**. If title is held by a corporation, or other entity, that entity shall designate an employee or other affiliated **Person** who shall be the designated "**Owner**" resident. Such **Owner** resident shall be equally responsible with the entity **Owner** for **Governing Document** compliance. If title is held by a trustee, the trustee must be the resident unless the **Board** approves otherwise.

7.1(b)(2) "Rent" or "Lease" are synonymous terms and include an **Owner** grant of use with or without consideration.

7.1(b)(3) "Residency" means use as a primary or secondary residence and includes the presence of all of the contents appropriate to ongoing occupancy by **Owner**.

7.1(c) New Owner Residency Required. An **Owner** shall be entitled to rent or lease his or her **Lot** only if after acquiring ownership, **Owner** has established **Residency** for a minimum of twelve (12) continuous months.

7.1(d) Limited Exceptions. The **Residency** requirement shall not apply:

7.1(d)(1) to **Owners** of record on or before May 4, 2012;

7.1(d)(2) when title is changed but equitable ownership and possession remains the same (for example, as with a trust, joint tenancy or tenancy-in-common);

7.1(d)(3) to first **Mortgagees** that take title by foreclosure or a deed in lieu of foreclosure and that continue to hold title;

7.1(d)(4) when an **Owner** is already of record but acquires a greater interest in the property by, for example, divorce, inheritance or joint tenancy; or

7.1(d)(5) **Owners** who take title by certain transfers as provided for in Civil Code §4740(c), including those that are not taxable events or in which seller disclosures are not required because they are not conventional sales.

7.1(e) Evidence of Owner Residency. The **Board** may require evidence of **Owner Residency**. Residency may be as a primary residence or secondary residence. **Owner** may be required to produce documentation evidencing **Residency**. Documents required to be produced may include, for example, utility bills, homeowner exemption on real property tax bill, voter registration, driver's license, vehicle registration, utility bill, bank statement and a sworn declaration. (Personal or extraneous information may be redacted.)

7.1(f) Evidence of Civil Code Section 4740 Exempt Transfer. The **Board** may, if applicable, require evidence that a transfer meets the exemption requirements of Civil Code §4740.

7.1(g) Hardship Exceptions. In the event of a hardship posed by this **Section 7.1(c)** (*New Owner Residency Requirement*), an **Owner** or representative of an **Owner** may apply to the **Board** for relief. The **Board** is authorized to consider special and compelling circumstances including unforeseen personal, economic or employment hardships. The **Board** is authorized to grant relief of up to one (1) year. Beyond one year, any additional extension must be the subject of an updated request and shall not exceed one (1) additional year. It shall be the burden of **Owner** or **Owner's** representative to document any relief granted and retain copies of **Association** records affording such relief. Failure to later produce such copies upon request by the **Association** shall create a presumption that no exception was granted.

7.1(h) No Time Share, Transient or Partial Use. No "Time-Share" arrangements are permitted whether by way of rental, lease, designated user, or sale. Further, no **Owner** is permitted to lease his or her **Lot** to a **Person** or company who would then sublet to others for transient or short-term use. (This includes uses related to companies such as AirBnB or VRBO.)

7.1(i) Rental of Entire Lot. No **Owner** shall rent or lease less than the entire **Lot**. No rooming house or similar operation is permitted. A full-time **Resident Owner** can, however, have a roommate, provided there is a written rental agreement for such occupancy and the roommate has use of the kitchen and other common living areas. Roommates are not permitted with a secondary residence.

7.1(j) No Vacant Lots. An **Owner** must either establish **Residency** or qualify the residence as a rental in accordance with the provisions set forth in these **CC&Rs**. No **Owner** shall leave his or her **Lot** vacant (uninhabited and unfurnished) for more than two (2) consecutive months unless approved in writing by the **Board**.

7.1(k) Owner Liability for Tenants. The **Owner** and the tenant shall be jointly and severally liable at all times for compliance by the tenant or other residents or guests with the

Governing Documents during the tenant's occupancy and use of the **Lot**; this includes the cost to repair damage caused to **Association** property.

7.1(l) Tenant/Rental Offset. In the event an **Owner** is sixty (60) or more days delinquent in the payment of **Association Assessments**, any tenant during that period who continues to rent the **Lot** shall become jointly and severally liable for all new Regular, Special, and Reimbursement **Assessments** as they come due (up to the maximum of tenant's obligation under the lease). If the tenant makes such payment to the **Association**, the **Owner** hereby acknowledges that such payment shall be deemed a credit or offset against rents otherwise due from tenant to **Owner**.

7.1(m) Tenant Identification. The **Owner** shall provide written notice to the **Association** of the name, day and evening telephone numbers and email address for each tenant and any other residents within ten (10) days of the change in occupancy. The notice shall include a statement of the lease term and the total number of residents. The **Owner** shall provide the **Association** with a copy of the lease agreement. Dollar amounts and extraneous information may be redacted.

7.1(n) Tenant Insurance. The tenant shall maintain tenant liability insurance. Such insurance is often referred to as HO-4 insurance. Upon request by the **Owner** or **Association**, the tenant shall show evidence of such insurance.

7.1(o) Violation and Enforcement. If an **Owner** violates any of the terms of this Article, the **Owner** shall be subject to the disciplinary procedures set forth in the **Governing Documents**, including, after notice and hearing, imposition of fines, penalties and/or legal action.

7.1(p) Notice to Potential New Owners. **Owners** selling or otherwise transferring their **Lots** shall disclose to potential new owners the existence of the **Owner Residency** requirement.

7.1(q) Other Provisions. In addition to the foregoing, all rentals shall be subject to the following:

7.1(q)(1) Written Lease. There must be a written rental or lease agreement specifying that (1) the tenant(s) shall be subject to all provisions of the **Governing Documents**, (2) a failure to comply with any provision of the **Governing Documents** shall constitute a breach of the agreement, and (3) all tenants are subject to disciplinary action or other actions by the **Association** to enforce the **Governing Documents**;

7.1(q)(2) Minimum Lease Term. The initial period of a rental or lease is not less than twelve (12) months. Thereafter, tenancy under any lease or sublease shall be not less than thirty (30) days;

7.1(q)(3) Governing Documents to Tenant. The **Owner** shall provide any tenant or lessee with current copies of all the **Governing Documents**. The **Owner** shall also provide copies of any subsequent changes or additions. The **Association** may require evidence that

the tenant or lessee has received copies of all **Governing Documents**. If such evidence is requested and is not timely provided, the **Association** may unilaterally provide such copies and charge the **Owner** a Reimbursement **Assessment**;

7.1(q)(4) Use of Facilities. The **Owner** shall forego the use of the recreational facilities during the time that the **Owner's Lot** is occupied by a tenant or lessee;

7.1(r) Policy. The **Board** may adopt rules or policies to further implement or to reconcile the provisions of this section.

Section 7.2. Sale of Lots - Obligations of Selling Owners. **Owners** shall be subject to the following:

7.2(a) Owner's Duty to Notify Association of Contract Purchasers. Each **Owner** shall notify the **Association** of the names of any contract purchaser of the **Owner's Lot**.

7.2(b) Contract Purchasers. A contract seller of a **Lot** must delegate his or her voting rights as an **Owner**, as well as his or her right to use or enjoy the **Common Area**, to the purchaser in possession of the property. However, the contract seller shall remain jointly and severally liable for any default in the payment of **Assessments** by the contract purchaser until title to the property sold has been transferred to the purchaser and recorded.

7.2(c) Documents and Information Relating to Sale. Prior to the transfer of title to a **Lot**, the transferring **Owner** shall provide the prospective new owner with a copy of the **Governing Documents** and such other documents and information as are required by California Civil Code [§4525](#). Such documents may be delivered by **Individual Notice**.

Section 7.3. Notice of Acquisition. A purchaser or other **Person** acquiring an ownership interest to a **Lot** shall notify the **Association** not more than ten (10) days after the date of acquisition and provide (a) the name(s) of all **Persons** with an ownership interest as listed on the recorded title transfer documents, (b) a mailing address for the **Owner(s)**, (c) day and evening telephone numbers, (d) email address, and (e) the effective date of acquisition of each ownership interest.

Section 7.4. Acceptance of Lot Conditions. When acquiring a **Lot**, the new **Owner** accepts responsibility for alterations and conditions created by a predecessor, which may include unresolved architectural violations, creation of defective conditions or failure to perform proper maintenance, repair or replacement of components in and around the **Lot** and adjoining or adjacent **Common Area**. It is important that prospective purchasers examine all **Improvements** and conditions on **Lots** and **Common Area** in and around the **Lot**.

ARTICLE VIII **INSURANCE**

Section 8.1. Types of Insurance.

8.1(a) Fire and Hazard Insurance. The **Association** shall procure and maintain fire and hazard insurance with extended coverage for the full replacement value of insurable **Improvements** in the **Common Area** and **Lot** (which includes the **Residence**). The **Association** may also insure any property owned by the **Association**, whether real or personal, against loss or damage, with the **Association** as owner and beneficiary for such insurance. It shall include a waiver of subrogation as to **Owner(s)**.

8.1(b) Additional Endorsements. To the extent not included in the basic policy coverage, the **Association** may procure the following additional coverage: demolition, retaining walls, fences and appurtenant structures, foundations, building code mandated upgrades, inflation guard coverage, "agreed amount" endorsement, replacement cost endorsement, and primary coverage endorsement.

8.1(c) Liability Insurance. The **Association** shall procure and maintain a comprehensive public liability policy insuring the **Association**, its agents, and the **Owners** against liability incident to the ownership or use of the **Common Area** or any other **Association**-owned or maintained real or personal property. The amount of general liability insurance that the **Association** shall carry at all times shall not be less than the minimum amounts specified by California Civil Code [§5800](#) and [§5805](#).

8.1(d) Fidelity Bonds. The **Association** shall procure and maintain fidelity bonds or insurance covering Officers, Directors, and employees who have access to any **Association** funds.

8.1(e) Director and Officer Liability Insurance. The **Association** shall procure and maintain Director and Officer liability insurance in an amount which is no less than the minimum amounts specified by California Civil Code [§5800](#).

8.1(f) Other Insurance. The **Association** shall procure and maintain Worker's Compensation insurance to the extent necessary to comply with applicable laws, or any greater amount as the **Board** deems necessary, and any other insurance deemed necessary or appropriate by the **Board**.

Section 8.2. Coverage Not Available. If any insurance policy or endorsement required by this section is not available, or is not economically feasible, then the **Association** shall obtain alternate insurance which provides, as nearly as reasonably possible, such coverage.

Section 8.3. Owner Required Insurance.

8.3(a) Every **Owner** shall procure and continuously maintain adequate personal insurance coverage (first-party insurance) to insure his or her personal property, loss of use and/or any Upgraded **Improvement** / risks not covered by the **Association's** master policy. Additionally, every **Owner** and **Occupant** shall also carry Comprehensive Personal Liability insurance (this type of insurance is often referred to as an HO-6 policy for resident **Owners** and HO-4 for non-**Owner** residents). Each **Owner**, including non-resident **Owners**, should consult with his or her insurance agent as to the most appropriate insurance. Insurance maintained by an **Owner** must contain a waiver of subrogation rights by the insurer as to the **Association** and other **Owners**.

8.3(b) No **Owner** can separately insure the **Owner's Residence** against loss by fire or other casualty to the extent that such coverage would conflict with and cause diminution in the **Association's** policy. If an **Owner's** policy violates this provision, any diminution in insurance proceeds will be chargeable to the **Owner** and, after notice and hearing, may be collected in the same manner as a Reimbursement **Assessment**.

8.3(c) **Owners** who rent their **Lots** to tenants shall require the tenants to carry insurance (often referred to as an HO-4 policy) and such policy must contain a waiver of subrogation with respect to the **Association**.

8.3(d) Insurance procured by the **Association** does not cover many perils and liabilities individual **Owners** and **Occupants** may incur. For example, if an **Owner** caused a fire which also damaged an Adjacent **Residence**, the **Association's** master policy will not pay for living expenses during repairs and will not pay for or defend the **Owner** against the neighbor's claim for damage to the neighbor's property and living expenses during repair. It is very important that each **Owner** consult with his or her insurance professional in procuring or maintaining appropriate levels of the insurance required above. The subject of loss assessment coverage generally and loss assessment coverage for earthquake damage should also be addressed.

8.3(e) In the event the **Association** fire and hazard insurance may not cover the loss or the loss is below the Master Policy deductible and an **Owner** or **Occupant** is insured for any loss to the **Lot**, the **Association** shall be entitled to require the **Owner** and/or **Occupant** to claim any loss under such **Owner's/resident's** policy of insurance.

8.3(f) The **Board** may adopt policies further addressing **Owner** required insurance. The **Association** may, but shall not be required to, request evidence of **Owners'** or residents' compliance with this section. The **Association** shall have no liability for failure to procure evidence of compliance, nor to cause **Owners** or **Occupants** to procure such insurance.

Section 8.4. 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** pursuant to [Section 8.1](#). 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.

Section 8.5. Association Insurance Deductible. The **Board** has discretion to determine the size of the deductible and allocation of responsibility to pay the deductible for any insurance claim. In the event a deductible policy has not been adopted by the **Board**, or the **Board** does not, in its discretion, allocate the deductible in a different manner, the **Owner** of the **Lot** where the cause or damage originated shall be responsible for payment of the deductible on fire or other losses. Responsibility for earthquake deductibles is addressed in [Section 8.6\(d\)](#) below. In the event the **Association** advances the cost of a deductible for which the **Owner** is responsible, such amount may be levied against the **Owner** as a Reimbursement **Assessment**.

Section 8.6. Earthquake Insurance.

8.6(a) The **Association** may, but shall not be required to, obtain earthquake insurance. The **Association**, Directors and/or manager shall not incur any liability for the failure to obtain or maintain earthquake insurance or a seismic reserve account. The **Board** may periodically submit to the **Owners** the question of whether or not to obtain earthquake insurance, which may be submitted in the form of a vote to increase **Assessments** to cover such cost.

8.6(b) Whether or not a master policy is in place, **Owners** are urged to consult with their insurance professionals on the subject of individual earthquake insurance, including related loss **Assessment** coverage.

8.6(c) After consultation with the **Association's** certified public accountant and/or counsel, at its discretion, the **Board** may establish and maintain a seismic reserve fund (to fund structural upgrades, etc) which shall be accounted for in a manner similar to other reserve accounts.

8.6(d) The cost of any **Common Area** deductible(s) shall be borne equally by all **Owners** and/or paid from any earthquake seismic fund. The cost of the deductible applicable to any particular **Residence** shall be borne by the **Owner** of that **Lot**. If the deductible is calculated per row of **Residences** with **Party Walls**, then the deductible shall be shared equally by all **Owners** in that row/building.

ARTICLE IX DAMAGE AND DESTRUCTION

Section 9.1. Destruction of Common Area. If any portion of the **Common Area** is damaged by an insured casualty, all insurance proceeds shall be segregated and used to restore such **Improvements**. If the insurance proceeds are insufficient to pay all of the costs of repairing and rebuilding restoration, the **Board** shall levy a special **Assessment** equally on all **Owners** to make up any deficiency.

Section 9.2. Destruction of a Lot. Subject to the decision of the **Board**, and to the provisions of this Article, each **Owner** shall have the obligation to rebuild and restore the **Residence** and other **Improvements** on his or her **Lot** damaged or destroyed by fire or other casualty substantially to their appearance and condition immediately prior to the casualty loss, or as otherwise approved by the **Board**. To the extent that there are insurance proceeds available, the **Association** may

administer the reconstruction of any **Residence**. If the **Association** opts to administer the reconstruction, the **Owner** shall fully cooperate. In the alternative, and to the extent that there are insurance proceeds available, the **Association** may delegate responsibility for rebuilding and restoring the **Residence** to the particular **Lot Owner**. If there are no insurance proceeds or there is a significant shortfall in repair funds, the affected **Owner** shall have responsibility to make up the shortfall.

Section 9.3. Owner's Failure to Proceed; Reimbursement Assessment. Should the **Owner** fail to commence, contribute toward or complete reconstruction as required under **Section 9.2** above, the **Board** may, after proper notice and hearing, levy a Reimbursement **Assessment** against the **Owner** of the **Lot** upon which the casualty has occurred equal to the difference between the actual cost of repairing or rebuilding and the amount of any available insurance proceeds, which said sum may be secured by a lien as provided in **Article IV** above. The **Board** may advance the amount of the special Reimbursement **Assessment** from **Association** general funds, reserves, or borrowing if the **Board** determines that the **Residence(s)**, as so rebuilt and restored, will furnish adequate security for the repayment of said advances by operation of the **Assessment** lien. The **Board**, as agent for the **Owner(s)**, may then contract for the repair or reconstruction of the **Residence(s)**, paying the cost of such work from the amounts so advanced and from insurance proceeds, if any.

Section 9.4. Board Discretion. There is no practical way to anticipate the particular circumstances of every catastrophic event and the best course of action to make appropriate repairs. In dealing with such an event, failure to technically comply with the requirements of this Article shall not invalidate the decisions and actions of the **Board** so long as the Directors have made their decisions in a manner consistent with the following: **Board** decisions have been made in good faith and in the best interest of all **Owners** and the **Property**; the **Board** has worked with and relied on the opinions and recommendations of professionals or others with expertise in the subject matter; and the overall objectives of the **Board's** efforts have been to minimize further damage to the **Property**, to restore habitability of the homes and to protect the value of the **Property**, including the secured interests of **Mortgagees**.

Section 9.4. Condemnation.

9.4(a) Lot. In the event of any taking by eminent domain of any **Lot** within the **Properties**, the **Owner** of such **Lot** shall be entitled to receive the award for such taking, after all **Mortgages** and liens on the **Lot** have been satisfied or otherwise discharged, including any portion of such award as may have been received as a result of the loss of membership in the **Association** or the loss of taking of easements over property of the **Association**. After acceptance thereof, if the **Owner** shall vacate his or her **Lot** as a result of such taking, the **Owner** and his or her **Mortgagees** shall be divested of membership in the **Association** and all interest in the **Properties** of the **Association**.

9.4(b) Common Area. In the event of any taking by eminent domain, in whole or in part, of the **Common Area** or any other property of the **Association**, the **Association** itself shall receive the entire award for such taking, unless the taking results in the loss of easement rights

of ingress and egress or parking rights for one or more of the **Lots**, in which event the award shall be apportioned among the **Owners** of such **Lots** and **Association**. In such event, the **Association** shall direct the negotiations and shall propose the method of division of the proceeds of condemnation, where such rights are not valued separately by the condemning authority or by the court. In the event any **Lot Owner** disagrees with the proposed allocation, he or she may have the matter submitted to arbitration under the rules of the American Arbitration Association.

ARTICLE X

ARCHITECTURAL CONTROL

Section 10.1. Architectural Approval. Prior to undertaking any additions and/or modifications to the exterior of any **Residence**, the **Owner** shall obtain prior written approval of the **Association**. Examples of additions or modifications include, but are not limited to, painting the exterior, changing the roofing material, constructing, installing, or altering the exterior of the **Residence** and/or exterior and visible components such as spas, patio covers, patio slabs, decks, gazebos, stairs, screening walls or fences, balcony covers, shades, awnings, screen doors, exterior doors, skylights, solar heating panels, air conditioning, exterior lighting, or significant change to a landscape plan located upon any **Lot**. Cutting of gypsum board also requires prior written approval to assure preservation of structural, fire and acoustical systems of the building containing the **Party Wall Residences**. The **Association** may require plans and specifications showing the nature, kind, color, shape, height, materials and location of the change as to harmony of external design and location in relation to surrounding structures and topography. Any alteration in drainage patterns must be shown. Proposed alterations may also require building department and/or design approval by the City. City approval does not assure **Association** approval, which may use more restrictive considerations.

Section 10.2. Architectural Review / Committee. The **Board** will review all architectural applications and matters unless it appoints an Architectural Committee. The Architectural Committee, if any, shall be composed of three (3) **Owners** appointed by the **Board**. At least one Committee member shall be a Director. If a decision on an application has been rendered by the Architectural Committee, there is a right of appeal to the **Board**. The determination of the **Board** is final. Members of the Architectural Committee shall not receive any compensation for services rendered. The **Board** may approve reimbursement to Architectural Committee members for reasonable out-of-pocket expenses incurred by them in connection with the performance of any Architectural Committee functions. The **Board** shall always maintain the ultimate authority to overrule the Architectural Committee

Section 10.3. Architectural Procedures/Guidelines. Subject to the provisions in the **Davis Stirling Act**, the **Board** shall adopt rules to be used to address architectural alterations.

Section 10.4. Deemed Approval of Alteration on Lot. The Board (or Committee) shall approve, disapprove or request additional information on all applications by an **Owner** for an alteration on an **Owner's Lot** within forty-five (45) days of a complete written submission. In the event that the Board (or Architectural Committee) fails to act upon any application for approval, if

the applicant wants to pursue the request, the applicant may deliver a written demand for action to the President of the **Association**. The demand shall recite the date upon which the documents were submitted and shall demand that the **Association** either approve or disapprove the application. If the **Association** fails to request additional information, approve or disapprove the application within fifteen (15) days of the date of service of the demand, approval shall be deemed granted. Nevertheless, no such “deemed approval” shall limit the right any other **Owner** may have under this **Declaration** or otherwise with respect to the proposed alteration.

Section 10.5. Non-Waiver. It is acknowledged that over time, Directors change, aesthetic standards change, conditions vary, experience with materials and configurations broadens, and community preferences change. Given that standards may evolve over time, it is acknowledged that past approvals are no assurance of current or future approvals for similar alterations. This evolution of standards does not make the exercise of discretion arbitrary or selective. It is the goal of the **Association** to maintain consistency in aesthetic decisions within a reasonable time period. However, approval of any application or alteration shall not be deemed a waiver of any right to deny or approve any similar application or alteration.

Section 10.6. Liability. The **Board**, Directors and/or the Architectural Committee shall not be liable to the **Association** or any **Owner** for any damage, loss or prejudice suffered or claimed on account of (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective, or (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications.

Section 10.7. Architectural Enforcement.

10.7(a) Notice of Noncompliance. If the **Board** has determined that an **Owner** is not in compliance with the architectural procedures, standards or conditions of approval, then the **Board** may send notice of such noncompliance to the **Owner**. The notice of noncompliance shall include a specific description of the architectural violation, as well as a proposed remedy and/or course of action. For purposes of this section, noncompliance includes, but is not limited to, failure to obtain **Association** approval, failure to follow the approved plan (including any conditions), failure to comply with architectural guidelines, and/or failure to properly maintain **Improvements**.

10.7(b) Hearing and Determination. Prior to taking any disciplinary action against an **Owner** for an apparent architectural violation, the **Association** shall provide the **Owner** with due process pursuant to [Article XI, Section 11.4](#). If the **Board** finds that there is no valid reason for the continuing noncompliance, the violation shall be deemed a continuing nuisance, and the **Board** may require the **Owner** to remedy or remove the unapproved architectural alteration.

10.7(c) Association Options for Abating Continuing Nuisances. If the **Owner** does not comply with the **Board's** ruling within any period specified or within any extension of such period as the **Board**, in its discretion, may grant, the **Board** may utilize the general enforcement provisions of this **Declaration**, including removal of the Noncomplying **Improvement** or remedying the noncompliance. The costs of any such action(s) shall be levied against the **Owner** as a Reimbursement **Assessment**.

Section 10.8. Architectural Agreement. The **Association** shall have the right to condition its approval of an alteration on the execution and recordation of an Architectural Agreement entered into between the **Association** and an **Owner**. Such an Agreement may memorialize the conditions under which an architectural variance or alteration was approved, and the rights and responsibilities of the **Association**, the **Owner**, and future **Owners** of the **Lot**. After recordation, the **Association** shall provide the **Owner** with a copy of any such recorded Agreement. Unless otherwise provided in such an Agreement, the following shall apply: (a) **Owner** will indemnify, hold harmless and defend the **Association**, Directors, and Management Company from any claim arising from or related to the approval of the work and the work itself; (b) **Owners** will be responsible to maintain, repair and replace all aspects of the installation and/or to reimburse the **Association** for such costs, (c) **Owner** shall be responsible for any increased maintenance costs and/or damage which occurs as a result of the alteration; (d) consent to occupy any **Common Area** intrusion is granted as a "license" which may be revoked by the **Association** for failure to maintain, repair and/or replace any facet of the alteration or failure to comply with the conditions of approval; (e) **Owner** agrees to maintain homeowner property damage and liability insurance and such other insurance as is required by the **Association**; and (f) all of **Owners'** successors will also be bound by these obligations.

ARTICLE XI

ENFORCEMENT OF GOVERNING DOCUMENTS

Section 11.1. Violation. A violation of the **Governing Documents** shall be defined as a single act or omission occurring over an uninterrupted period of time. Further, any violation of the **Governing Documents** shall be deemed a nuisance. Any activity or condition which constitutes a public or private nuisance shall also be deemed a violation. If the detrimental effect of a violation continues for additional days, discipline imposed by the **Association** may include one component for the violation and, according to the **Association's** discretion, a per diem component for so long as the detrimental effect continues. Similar violations over an extended length of time may justify cumulative imposition of disciplinary measures. The **Association** shall take reasonable and prompt action to mitigate, repair or avoid the continuing damaging effects of a violation or nuisance occurring within the **Common Area** at the cost of the responsible party.

Section 11.2. Jurisdiction. The **Association** shall have jurisdiction over any **Person** on the **Property** or with rights in the **Property** and any real and/or personal property in Hartzell. This jurisdictional authority shall be subject to the terms, conditions and safeguards provided in the **Governing Documents**. The **Owner** shall be liable for **Governing Document** violations by tenants, lessees, other residents, guests or invitees (including the guests or invitees of tenants or lessees).

Section 11.3. Enforcement Options. In the event of a breach or violation of any of the **Governing Documents** by any **Person**, the **Board**, for and on behalf of all other **Owners**, may enforce compliance with the **Governing Documents** 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 following:

11.3(a) Suspension of Rights. The **Board** may suspend the voting rights of an **Owner** or the right to use **Common Area** facilities. Suspension of voting rights shall not affect the numerical total of "**Voting Power**."

11.3(b) Fines. A fine is a penalty and unrelated to any reimbursement or other cost incurred. The **Association** 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 (such as illegally parked vehicles). If such a fine policy and schedule is adopted by the **Association**, the **Association** shall distribute it to each **Owner**, as part of the Annual Policy Statement. The **Board** may levy a reasonable fine in accordance with the **Association's** fine policy and schedule and/or in the range specified in any Notice of Hearing. A fine, while enforceable by lien and/or judicial foreclosure, shall not be the subject of non-judicial foreclosure. The **Association** may file a lien to preserve its rights to later file a judicial foreclosure action. In imposing any fine, the **Association**, in its sole discretion, may choose to suspend some or all of the fine for a period of time pending compliance with a directive of the **Association**.

11.3(c) Alternative Dispute Resolution (ADR). In the event of a dispute arising out of the **Governing Documents**, there are several dispute resolution tools available to **Owners** and the **Association**. With the exception of a Small Claims suit, some form of Alternative Dispute Resolution (ADR), pursuant to the **Davis-Stirling Act** or such other form of ADR as may be agreed upon, must be attempted before filing a legal action.

11.3(c)(1) Owner and Association Disputes.

11.3(c)(1)(i) Internal Dispute Resolution Procedure (IDR). In the event of a dispute between an **Owner** and the **Association**, prior to filing legal action, the parties shall "meet and confer" in an effort to resolve the dispute pursuant to the provisions of Civil Code [§5900](#)-§5920 or an Internal Dispute Resolution procedure otherwise adopted by the **Board**. The **Association** participants may be the manager, one or more Directors, or other designated representative(s) of the **Board**. IDR is optional to the **Owner**, but required for the **Association** if the **Owner** requests it.

11.3(c)(1)(ii) Mediation. In the event of a dispute between an **Owner** and the **Association**, the parties shall attempt to resolve such dispute by mediation before any formal action is filed or initiated. The cost of the mediator shall be borne equally.

11.3(c)(2) Owner-to-Owner Disputes: Mediation/Arbitration. In the event of a dispute between **Owners**, affected **Owners** shall attempt to resolve any dispute by mediation. The cost shall be borne equally. If the parties cannot agree on a mediator to provide this service, the Association can recommend and/or facilitate the use of an Alternative Dispute Resolution provider. In the alternative, any party can request the president of the Marin County Bar Association to identify a local low cost mediation service provider and such designation shall be binding. If mediation fails and the dispute continues, the parties shall proceed with binding

arbitration administered by the American Arbitration Association and in accordance with the applicable procedures established by that organization.

11.3(d) Legal Action. Preserving status quo in the Hartzell neighborhood is an important goal of this **Declaration**. This goal includes the preservation of aesthetics and the quiet enjoyment of each **Residence**. With the exception of nonpayment of any **Assessment**, the recovery of dollar damages for any violation of the **Governing Documents** is an insufficient remedy. Enforcement of the **Governing Documents** against any **Owner** or Occupant may be undertaken by appropriate legal proceedings instituted by any **Owner**, the **Association**, or both. No action shall be filed by an **Owner** or the **Association** unless or until there is compliance with the Alternative Dispute Resolution provisions of the **Davis-Stirling Act**. Legal proceedings may include the following:

11.3(d)(1) an action for mandatory injunction (a court order or judgment which requires someone to do something);

11.3(d)(2) an action for prohibitory injunction (in which the court prohibits specified behavior);

11.3(d)(3) an action for declaratory relief (such as interpretation of any provision of the **Governing Documents**); and/or

11.3(d)(4) a claim for damages, including prospective costs and costs actually incurred in obtaining compliance.

11.3(e) Self Help. The **Association** shall have the right to enter any **Lot** to gain compliance with the **Governing Documents**, including but not limited to the following:

11.3(e)(1) Maintenance, Repair and Replacement. If the **Association** reasonably finds a **Lot** requires maintenance, repair, replacement or restoration of any component or condition for which the **Owner** is responsible, the **Board** may direct the **Owner** to perform the work. If the **Owner** fails or refuses to do so and the condition negatively affects the neighborhood safety, aesthetics, value or quiet enjoyment of other properties, then the **Association** may, after notice to the **Owner**, utilize these provisions, and cause the work to be performed. This may include, for example, fire hazard/weed abatement or necessary drainage work. The **Association** shall have the authority to enter a **Lot** for such purpose. The **Association** may collect the cost by adding it to the **Assessment** for that **Lot** and collecting it in the same manner as a Reimbursement **Assessment**.

11.3(e)(2) Removal of Nuisance. The **Association** shall have authority to enter a **Lot** to cause the removal of a nuisance from the **Property**. This power does not relieve the **Association** of its duty to comply with the due process and notice requirements of the **Governing Documents** unless there is immediate peril to persons or property.

11.3(f) Imposition of Reimbursement Assessment. The **Association** may levy a Reimbursement **Assessment** as provided for in [Section 4.1\(d\)](#) of this **Declaration**.

11.3(g) Referral to Governmental Agency. The **Association**, in its sole discretion, may refer any enforcement action to the appropriate governmental agency with jurisdiction, such as the police department, fire department, health department or other proper agency.

Section 11.4. Implementation. Prior to taking disciplinary action against an **Owner**, the **Association** must provide the **Owner** with due process as set forth in this **Section 11.4**.

11.4(a) Notices. Notices and requests must be in writing and may be delivered to **Owners** by personal delivery or **Individual Notice**. Notices from the **Association** shall include at a minimum, the date and time for the meeting at which the **Board** will consider disciplinary action, a brief description of the action or inaction constituting the alleged violation, and a statement that the **Owner** has a right to attend the meeting and may address the **Board**.

11.4(b) Meeting re: Compliance. The **Association** will notify an **Owner** in writing at least ten (10) days prior to any meeting at which the **Board** is seeking compliance from an **Owner** (including via the levying of fines). The **Owner** may request that the issue be considered in Executive Session.

11.4(c) Notice of Hearing Results. If the **Board** imposes discipline on an **Owner**, determines that the **Owner** is in violation of the **Governing Documents**, the **Association** will provide written notice of the outcome of the hearing to the **Owner** within fifteen (15) days following the action.

Section 11.5. Miscellaneous.

11.5(a) Cumulative Remedies. The respective rights and remedies provided by this **Declaration** or by law shall be cumulative. The exercise of any right(s) or remedy(ies) shall not affect the exercise, at the same or at different times, of any other rights or remedies for the same or any different default or breach or for the same or any different failure of any **Owner** or others to perform or observe any provision of this **Declaration**.

11.5(b) Non-Waiver. The failure of any **Owner**, the **Board**, any Committee, or the **Association** or its officers or agents to enforce any of the covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights-of-way, liens, charges or equitable servitudes contained in 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.

11.5(c) Rules re: Disciplinary Proceedings. The **Association** shall be entitled to adopt rules and/or policies that further the efficient conducting of disciplinary proceedings. Such rules and/or policies shall form a part of the **Governing Documents**.

11.5(d) Noncompliance with Procedure. Failure by the **Association** to technically comply with these procedures, or any rules or policies adopted, shall not be fatal to the process so long as there is no significant prejudice to the **Person** who has been charged with a violation. Appearance at a hearing shall constitute a waiver of any defect in notice.

11.5(e) Owner Standing. Any **Owner** shall also have such rights of enforcement as exist by virtue of Civil Code [§5975](#) (including direct enforcement of this **Declaration**) or otherwise by law.

11.5(f) Fees and Costs of Enforcement. The **Association** shall be entitled to its actual legal fees and costs incurred in the enforcement of the **Governing Documents**, and other costs and may levy the same as a Reimbursement **Assessment**. (Recovery of fees and costs related to delinquent **Assessments** are addressed in [Article IV](#).)

11.5(g) Foreclosed Lot. Any former **Owner** who loses title by foreclosure but remains in possession shall be bound by the **Governing Documents** during such possession.

ARTICLE XII **PARTY WALLS**

Section 12.1. Interests of Owners. The **Owners** collectively and individually have a vested interest in the continued existence of the system of **Party Walls**. Each **Party Wall** (or portion) shall be owned by the **Owner** of the **Lot** on which such wall or portion is located, subject to the rights of the other **Owners** set forth herein below. In order to alert each **Owner** to his or her responsibilities to **Owners** of adjoining houses, and to assure neighboring **Owners** of their respective **Party Wall** rights and privileges, the following conditions and covenants apply:

Section 12.2. General Rules. Each adjoining **Owner** shall assume the burdens and obligations provided in this Article. All **Lots** with **Party Wall** configurations, are subject to an easement (see [Section 12.5](#) below), and are entitled to the rights and benefits of the **Party Wall**, as set forth in this **Declaration**. In the event a **Party Wall** issue is not addressed in this **Declaration**, the provisions of Civil Code Section 841 may provide additional authority the **Board** may adopt a policy to address the subject.

Section 12.3. Maintenance and Decoration. If a portion of the neighbor's **Party Wall** is configured as an exterior property line wall, the **Association** will maintain the exterior wall in the same manner as others for which it is responsible. Each **Owner** shall maintain in good state of repair that portion of any **Party Wall** which is a part of the residential dwelling structure located upon the **Lot** of such **Owner** and shall do nothing, without the written approval of the adjoining **Owner** and the **Board** which may alter, modify, damage, impair or tend to alter, damage or impair, the structural integrity of any **Party Wall**. Responsibility for any damage or extraordinary maintenance caused by an **Owner** alteration shall be that of such **Owner** (and his or her successors). Except as required for authorized construction or repairs, no nails, screws, bolts or other objects more than three (3) inches in length shall be driven into any **Party Wall**, nor shall any structure or vegetation be erected or maintained within four (4) feet of any **Party Wall** which may impede or interfere with any necessary maintenance, repairs or restorations of the **Party Wall**.

Section 12.4. Damage to Party Walls. In the event that any **Party Wall** is damaged or destroyed by the adjoining **Owner** (or otherwise from that side of the wall), then that **Owner** is

responsible to promptly restore the **Party Wall**. If the damage to the **Party Wall** is the result of ordinary wear and deterioration, the **Owners** of the adjoining wall shall be equally responsible to restore the wall and, unless otherwise agreed to, share the control and cost of such work.

Section 12.5. Weatherproofing. An **Owner** who by his or her act or omission causes an interior **Party Wall** to be exposed to the elements shall bear the whole cost of furnishing the necessary protection and restoration against such elements.

Section 12.6. Easement for Repair of Party Walls. Each **Owner** has an obligation to provide reasonable access to the other so that the **Party Wall** can be properly maintained and/or repaired.

Section 12.7. Alterations. No additions, alterations, repairs or restorations to any **Party Wall** shall be performed until the plans and specifications showing the nature, kind, shape, height, materials, location and approximate cost of the same shall have been approved in writing by the Architectural Committee and notice provided to any **Owner** having a direct interest in the **Party Wall**.

Section 12.8. Sound Transmission. No **Residence** shall be altered in any manner that would increase sound transmissions, resonances, or reverberations to any Neighboring **Residence**, including but not limited to the modification or penetration of any **Party Wall**. **Owners** shall not rigidly attach any source of sound or vibration to **Party Walls**. This includes all audio speakers, including monitor and flat screens that may have built-in speakers.

Section 12.9. Right to Contribution Runs With Land. The right of any **Owner** to contribution from other neighboring **Owners** under this Article shall be linked (appurtenant) to the land and shall pass to the **Owner's** successors in title.

Section 12.10. Arbitration. In the event of any dispute arising between **Owners** and concerning a **Party Wall**, and/or **Lot** line, the parties shall utilize the Mediation/Arbitration provisions described in [Article XI, Section 11.3\(c\)\(2\)](#).

ARTICLE XIII

GENERAL PROVISIONS

Section 13.1. Severability. Should any provision in this **Declaration** be void or become invalid or unenforceable in law or in equity by judgment or court order, the remaining provisions shall be and remain in full force and effect.

Section 13.2. Interpretation. The provisions of this **Declaration** and the other **Governing Documents** shall be liberally construed to effectuate its purpose of perpetuating a uniform plan for the operation of a Planned Development.

Section 13.3. Term of Declaration. The provisions of this **Declaration** shall continue and be effective until January 1, 2025, after which date this **Declaration** shall be automatically extended

for successive periods of ten (10) years, until it is terminated by the **Owners** in accordance with the law. This **Declaration** may be amended as provided below.

Section 13.4. Amendment. This **Declaration** may be amended by an instrument in writing reflecting approval of **Owners** holding sixty percent (60%) of the total votes. (Based on 48 **Lots**, this is 29 votes.) Said amendment shall be effective upon recordation in the Office of the County Recorder of the County of Marin. Notice of approval shall be given to all **Owners** but, at the **Board's** discretion, need not include the full document previously submitted and voted upon.

Section 13.5. Document Hierarchy. To the extent of any conflict between the **Governing Documents** and the law, the law shall prevail. To the extent of any conflict between the **Articles** and the **Declaration**, the **Declaration** shall prevail. To the extent of any conflict between the **Bylaws** and the **Articles** or **Declaration**, the **Articles** or **Declaration** shall prevail. To the extent of any conflict between the operating rules and the **Bylaws, Articles** or **Declaration**, the **Bylaws, Articles** or **Declaration** shall prevail.

Section 13.6. Owner Responsibility. Each **Owner** shall be liable to the **Association** for any damage to the **Common Area** or areas which the **Association** must maintain, repair or replace caused, directly or indirectly, by the **Owner** or his or her family, guests, invitees or tenants (including but not limited to negligence, or willful misconduct, or otherwise), and each **Owner** shall protect, defend, hold harmless and indemnify the **Association** and Directors from any third party claim arising out of such conduct and damage.

Section 13.7. Safety and Security. Each **Owner** and resident is responsible for his or her own safety and the security of his or her **Lot** and personal property. The **Association** may, but shall not be obligated to, maintain or support certain activities or equipment within the **Property** designed to enhance safety and security within the **Property**. However, neither the **Association** nor its Directors shall in any way be liable for any loss or damage by reason of failure to provide security or ineffectiveness of security measures undertaken.

Section 13.8. Davis-Stirling Act.

13.8(a) Correction of Numbering. If the **Governing Documents** include a reference to a provision of the **Davis-Stirling Act** that has been changed or added, the **Board** may amend the **Governing Documents**, solely to correct the cross-reference, by adopting a **Board** resolution that shows the correction. **Owner** approval is not required in order to adopt a resolution pursuant to this authority. A **Declaration** that is corrected under this section may be restated in corrected form and recorded, provided that a copy of the **Board** resolution authorizing the corrections is recorded along with the restated **Declaration**.

13.8(b) Updating of Preempted Content or Other Statutory Reference in CC&Rs. In addition to the authority in **Section 13.8(a)**, the **Board** shall have authority to update these **CC&Rs** if or when changes in any statutory law preempt the content set forth in these **CC&Rs**. Unless provided for in **Section 13.8(a)**, before the **Board** can approve such an update, the **Board** must have confirmation from counsel of the nature of the statutory preemption and must

provide **Owners** with at least thirty (30) day notice of the proposed change. The **Board** may then approve revision of these **CC&Rs** to conform to change(s) in the law. A **Declaration** that is updated under this section may be restated and recorded, provided that a copy of the **Board** resolution authorizing the updates is recorded along with the restated **Declaration**.

Section 13.9. Mortgagees.

13.9(a) Included as part of this **Declaration** is **Exhibit B** which addresses **Mortgagee** Provisions. As the **Mortgage** industry (i.e., FHA, FNMA, etc) often revises its requirements with regard to common interest developments, the **Association** may reasonably facilitate cooperation with lenders so that **Owners** can procure competitive loans. Therefore, the **Board** has the discretion, without a vote of the **Members**, to revise and update **Exhibit B** solely for the purpose of conforming the **Association's Mortgagee** provisions to current industry minimums or more.

13.9(b) Those **Mortgagees** holding a secured interest in a **Lot** prior to the recordation of this **Declaration** shall have the option of utilizing the rights in the Former Declaration or this **Declaration** (see **Exhibit B**).

Section 13.10. Transition Provisions.

13.10(a) Generally. In order to facilitate the transition from the provisions contained under the Former Declarations to those contained in these **Governing Documents**, the **Board** shall have the authority, in its sole discretion, to grandfather certain activities within, uses of, or conditions on the **Property** typically for a period not to exceed 12 months following the date of recordation of this **Declaration**. The granting of any such grandfathered activity, use or condition shall be in writing and made a part of the **Association's** and **Owner's** records. The primary responsibility of maintaining such documentation of all requests, proceedings and approvals is that of the **Owner** and any successor. If no such record is available, there shall be a presumption that this section does not apply to any issue or dispute.

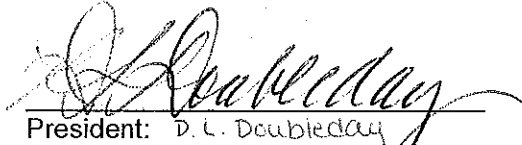
13.10(b) Systems and Components. In order to facilitate the change from the Former Declaration in responsibility for maintenance, repair or replacement of any system (which might include, for example, fences and retaining walls), the following protocol will apply: Should an **Owner** determine that such system or component requires work, it is the responsibility of the **Owner** to report the condition to the **Association** within six (6) months following recordation of this **Declaration**. The **Association** may assume a greater share than otherwise provided in this **Declaration** in order to facilitate system or component transition of responsibility and to alleviate any inequity related to the change to these **CC&Rs**. For the control of the work, see generally, **Article V**.

CERTIFICATE OF AMENDMENT

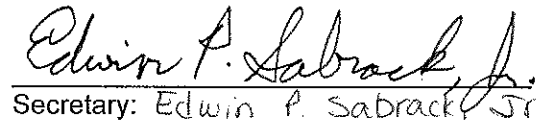
The **Association** desired to make substantial changes to the **Declaration** pursuant to the amendment provisions of Civil Code §4270, and on November 4, 2016 the **Owners** voted and approved the language of said changes.

This Amended Declaration of Covenants, Conditions and Restrictions supersedes the Former Declaration.

The undersigned declare, under penalty of perjury, under the laws of the State of California, that the matters set forth in this Amendment are true and correct of their own knowledge. Executed at San Rafael, California on NOVEMBER 9, 2016.



President: D. L. Doubleday
THE HARTZELL HOMEOWNERS
ASSOCIATION, INC.



Secretary: Edwin P. Sabrack, Jr.
THE HARTZELL HOMEOWNERS
ASSOCIATION, INC.

2016 Hartzell CCRs v6.wpd
dlr: 11/7/16

(Notary Certificate(s) Attached)

Glenn H. Youngling, PLC
1108 Irwin Street, San Rafael, California 94901
(415) 454-1090

ALL-PURPOSE ACKNOWLEDGMENT

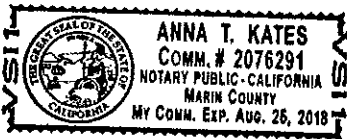
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this Certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }
County of Marin } SS.

On November 9, 2016, before me, Anna T. Kates, Notary Public,
DATE

personally appeared D.L. Doubleday, 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.

Anna T. Kates

NOTARY'S SIGNATURE

PLACE NOTARY SEAL IN ABOVE SPACE

OPTIONAL INFORMATION

The information below is optional. However, it may prove valuable and could prevent fraudulent attachment of this form to an unauthorized document.

CAPACITY CLAIMED BY SIGNER (PRINCIPAL)

- INDIVIDUAL
- CORPORATE OFFICER _____ TITLE(S)
- PARTNER(S)
- ATTORNEY-IN-FACT
- GUARDIAN/CONSERVATOR
- SUBSCRIBING WITNESS
- OTHER: _____

DESCRIPTION OF ATTACHED DOCUMENT

TITLE OR TYPE OF DOCUMENT

NUMBER OF PAGES

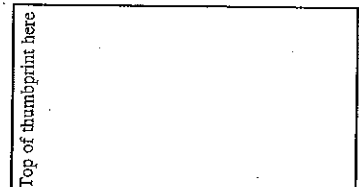
DATE OF DOCUMENT

SIGNER (PRINCIPAL) IS REPRESENTING:

NAME OF PERSON(S) OR ENTITY(IES)

RIGHT
THUMBPRINT
OF
SIGNER

OTHER



ALL-PURPOSE ACKNOWLEDGMENT

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 Marin } SS.

On November 9, 2016, before me, Anna T. Kates, Notary Public,
DATE

personally appeared Edwin P. Sabrack, Jr, 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.

Anna T. Kates

NOTARY'S SIGNATURE

PLACE NOTARY SEAL IN ABOVE SPACE

OPTIONAL INFORMATION

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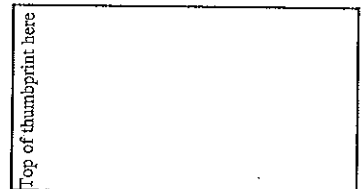
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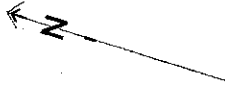
SIGNER (PRINCIPAL) IS REPRESENTING:

NAME OF PERSON(S) OR ENTITY(IES)

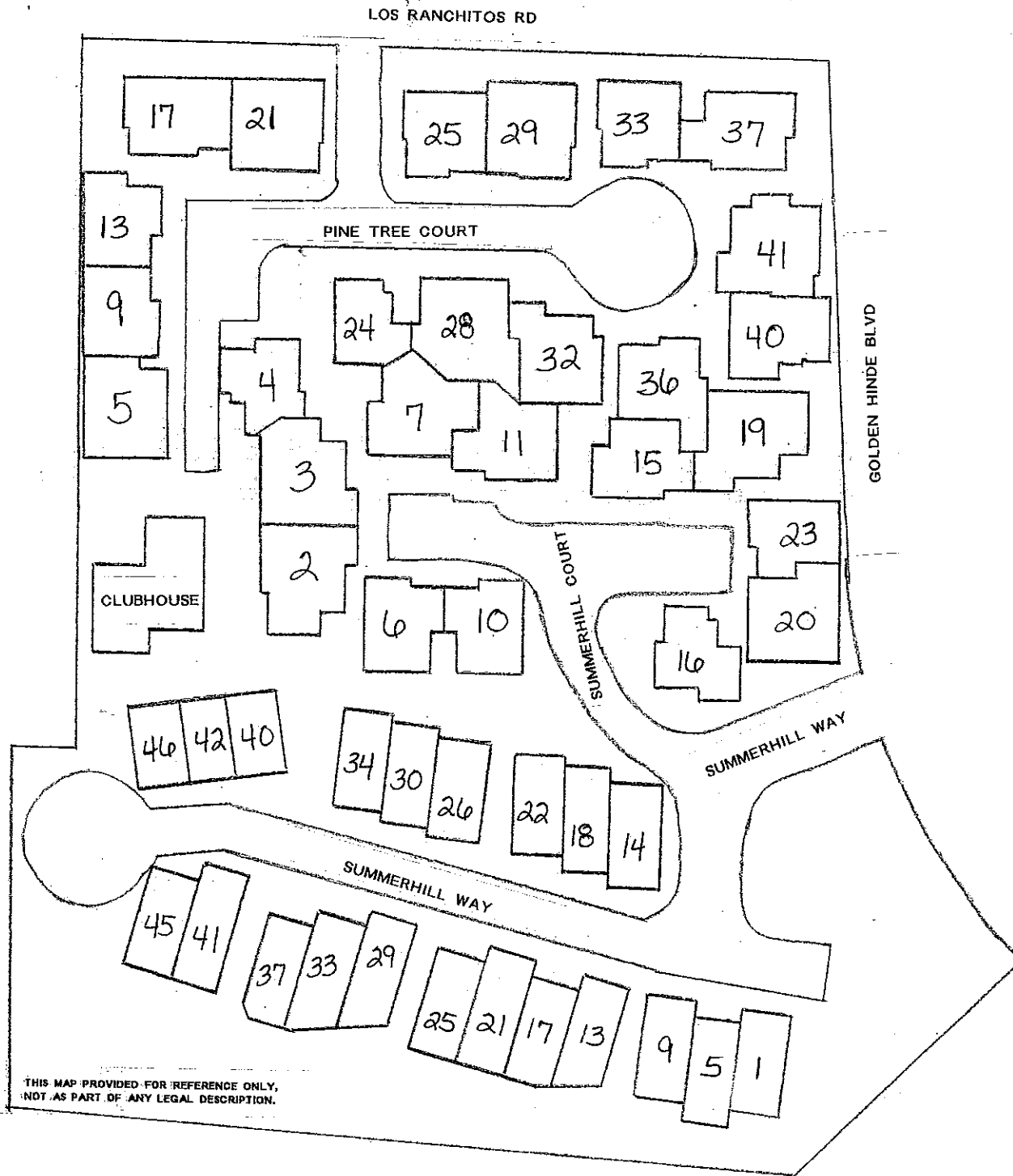
RIGHT
THUMBPRINT
OF
SIGNER

OTHER





HARTZELL HOMEOWNERS ASSOCIATION, INC.



THIS MAP PROVIDED FOR REFERENCE ONLY,
NOT AS PART OF ANY LEGAL DESCRIPTION.

EXHIBIT B

RIGHTS OF MORTGAGEES

Section B.1. Conflict. Notwithstanding any contrary provision contained elsewhere in the **Governing Documents**, the provisions of this **Exhibit B** shall control with respect to the rights and obligations of **Institutional Mortgagees** specified herein.

Section B.2. Mortgages Permitted. Any **Owner** may encumber his or her **Lot** with a **Mortgage**.

Section B.3. Conformance to Mortgagee Requirements. It is intended that the **Declaration** generally meet requirements necessary to purchase, guarantee, insure, or subsidize any **Mortgage** of a **Lot** in the **Property** by the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Corporation or any successor institution(s) serving the same or similar function. By unanimous approval of the sitting **Directors**, the **Board** may amend the terms of this **Exhibit B** to comply with such requirements. The **Board** is also authorized to take any action or adopt any resolution required by any **Mortgagee** to conform the **Declaration** or the **Property** to the requirements of any of these entities or agencies.

Section B.4. Subordination of Assessment Lien. **Assessment** liens shall be subordinate to the lien of **First Mortgages** to the extent provided in **Section 4.4(c)** ("Priorities") of the **Declaration**. Upon foreclosure of any **First Mortgage** on a **Lot**, any lien for **Assessments** which became due prior to such foreclosure shall be extinguished; provided however, that after such foreclosure there shall be a lien on the interest of the purchaser at the foreclosure sale to secure all **Assessments** charged to such **Lot** after the date of such foreclosure sale, which lien shall have the same effect and shall be enforced in the same manner as provided in this **Declaration**.

Section B.5. Liability for Unpaid Assessments. Any **Institutional Mortgagee** who obtains title to a **Lot** pursuant to the remedies provided in the **First Mortgage** (except upon a voluntary conveyance to the **Institutional Mortgagee**) or by foreclosure shall take the property free of any claims for unpaid **Assessments** against the **Lot** which accrue prior to the acquisition of title to the **Lot** by the **Institutional Mortgagee**, except claims for a pro rata allocation of such **Assessments** or additional charges to all **Lots** including the mortgaged **Lot**, and, except for **Assessment** liens recorded prior to the **Mortgage**.

Section B.6. Management Contracts; Professional Management. Any agreement for professional management of the **Property** shall be for a term not to exceed one (1) year. Any such agreement shall provide that the agreement may be terminated by either party without cause and without payment of a termination fee upon not more than sixty (60) days written notice.

Section B.7. Notices to Eligible Holders. Upon written request, including the name and address of the **Eligible Holder** and the address or **Lot** number of the **Lot** on which it holds a **First Mortgage**, an **Eligible Holder** is entitled to timely written notice of:

B.7(a) Any condemnation loss or casualty loss which affects either a material portion of the **Property** or of the **Lot** on which the **Eligible Holder** holds a **First Mortgage**;

B.7(b) Any delinquency in the payment of **Assessments** or charges owed by the **Owner** of a **Lot** which is subject to a **First Mortgage** held by the **Eligible Holder** if the delinquency is not cured within sixty (60) days after its due date;

B.7(c) Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the **Association**;

B.7(d) Any default by an **Owner-mortgagor** of a **Lot** in the performance of his or her obligations under the **Declaration** or the **Bylaws** which is not cured within sixty (60) days.

Section B.8. Inspection of Books and Records. Upon request, any **First Mortgagee** shall be entitled to inspect the books, records, and financial statements of the **Association** and the **Governing Documents** and any amendments thereto during normal business hours or under other reasonable circumstances.

Section B.9. Mortgagees' Right to Pay Taxes and Insurance Premiums. **Institutional Mortgagees** of individual **Lots** may, jointly or separately, pay taxes or other charges which are in default and which may or have become a charge against the **Common Area**, or secure new hazard insurance coverage on the lapse of a policy for such **Common Area**. **Institutional Mortgagees** making such payments shall be owed immediate reimbursement therefor from the **Association**.

Section B.10. Mortgagees' Rights to Insurance Proceeds or Condemnation Awards. No **Owner** or other party shall have priority over any right of **Institutional Lenders** in case of a distribution to **Owners** of insurance proceeds or condemnation awards for losses to or taking of a **Lot**.

Section B.11. Mortgagee Consent for Termination of Property. Any election to terminate the legal status of the **Property** as a Planned Development shall require:

B.11(a) The approval of sixty-seven percent (67%) of the **Eligible Holders**, based on one (1) vote for each **First Mortgage** owned, if the decision to terminate the legal status is a result of substantial destruction or a substantial taking in condemnation of the **Property**; or

B.11(b) The approval of sixty-seven percent (67%) of the **Voting Power** of the **Association** and sixty-seven percent (67%) of the **Eligible Holders**, based on one (1) vote for each **First Mortgage** owned, if the election to terminate the Project is for a reason other than that stated in **Section B.11(a)**, above.

Section B.12. Other Actions Requiring Mortgagee Consent. Except as provided by statute in the case of condemnation or substantial loss to **Lots**, unless sixty-seven percent (67%) of the **Institutional Mortgagees**, based on one (1) vote for each **First Mortgage** owned, or sixty percent (60%) of the **Owners** have given their prior written approval, the **Association** shall not be entitled to:

B.12(a) Make a material change to the **Declaration**;

B.12(b) By act or omission abandon, partition, subdivide, encumber, sell, or transfer any real property or **Improvements** owned by the **Association** for the benefit of the **Lots** and the

Owners. The granting of easements for public utilities, communications systems, or for other purposes consistent with public purposes or the intended use of the **Property** by the **Association** and the **Owners** shall not be deemed a transfer within the meaning of this **Section B.12(a)**;

B.12(c) By act or omission waive or abandon any scheme of regulations or enforcement thereof pertaining to architectural design or general exterior appearance of the **Lots**, the exterior maintenance of the **Lots**, or the upkeep of landscaping in the **Property**;

B.12(d) Fail to maintain fire and extended coverage insurance as provided in **Section 8.1(a)** of the **Declaration**.

Section B.13. Mortgage Protection. A breach of any of provisions in the **Declaration** shall not defeat or render invalid the lien of any **First Mortgage** made in good faith and for value as to any **Lot**; provided, however, that all of the **Governing Documents** shall be binding upon and effective against any **Owner** whose title is derived through foreclosure, trustee's sale or otherwise.

Section B.14. Rental Exemption. Notwithstanding any other provisions in the **Declaration**, first **Mortgagees** which take title by foreclosure or a deed in lieu of foreclosure and which continue to hold title shall be exempt from any restriction related to minimum lease period.

Section B.15. Mortgagee Response. In the event that a holder of a **Mortgage** or Deed of Trust acquires such interest after recordation of this **Declaration** and has a right to participate in or vote on any change in this **Declaration** or any other action, any **Board**-recommended change or any other action shall be deemed approved if or when an eligible party fails to return such vote within sixty (60) days after the **Association** sends notice of the proposal by certified or registered mail with a return receipt requested and by first-class mail.