



REAL ESTATE TRANSFER DISCLOSURE STATEMENT
(CALIFORNIA CIVIL CODE §1102, ET SEQ.)
(C.A.R. Form TDS, Revised 6/24)

☐ This property is a duplex, triplex or fourplex. A TDS is required for all units. This TDS is for ALL units (or ☐ only unit(s) ____).
THIS DISCLOSURE STATEMENT CONCERNS THE REAL PROPERTY SITUATED IN THE CITY OF Oakland, **COUNTY OF** Alameda, **STATE OF** CALIFORNIA,
DESCRIBED AS 123 Ironwood, Oakland, CA, 94605.

THIS STATEMENT IS A DISCLOSURE OF THE CONDITION OF THE ABOVE DESCRIBED PROPERTY IN COMPLIANCE WITH § 1102 OF THE CIVIL CODE AS OF (DATE) 07/30/2026. IT IS NOT A WARRANTY OF ANY KIND BY THE SELLER(S) OR ANY AGENT(S) REPRESENTING ANY PRINCIPAL(S) IN THIS TRANSACTION, AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR WARRANTIES THE PRINCIPAL(S) MAY WISH TO OBTAIN.

I. COORDINATION WITH OTHER DISCLOSURE FORMS

This Real Estate Transfer Disclosure Statement is made pursuant to § 1102 of the Civil Code. Other statutes require disclosures, depending upon the details of the particular real estate transaction (for example: special study zone and purchase-money liens on residential property).

Substituted Disclosures: The following disclosures and other disclosures required by law, including the Natural Hazard Disclosure Report/Statement that may include airport annoyances, earthquake, fire, flood, or special assessment information, have or will be made in connection with this real estate transfer, and are intended to satisfy the disclosure obligations on this form, where the subject matter is the same:

- ☒ Inspection reports completed pursuant to the contract of sale or receipt for deposit.
☒ Additional inspection reports or disclosures: _____
Seller may have obtained a limited number of third-party inspections that will be supplied to Buyer at buyers request if available.
☒ No substituted disclosures for this transfer.

II. SELLER'S INFORMATION

The Seller discloses the following information with the knowledge that even though this is not a warranty, prospective Buyers may rely on this information in deciding whether and on what terms to purchase the subject property. Seller hereby authorizes any agent(s) representing any principal(s) in this transaction to provide a copy of this statement to any person or entity in connection with any actual or anticipated sale of the property.

THE FOLLOWING ARE REPRESENTATIONS MADE BY THE SELLER(S) AND ARE NOT THE REPRESENTATIONS OF THE AGENT(S), IF ANY. THIS INFORMATION IS A DISCLOSURE AND IS NOT INTENDED TO BE PART OF ANY CONTRACT BETWEEN THE BUYER AND SELLER.

Seller ☐ **is** ☒ **is not** occupying the property.

A. The subject property has the items checked below:*

- | | | |
|---|--|--|
| ☒ Range | ☐ Wall/Window Air Conditioning | ☐ Pool: |
| ☐ Oven | ☒ Sprinklers | ☐ Child Resistant Barrier |
| ☒ Microwave | ☒ Public Sewer System | ☐ Pool/Spa Heater: |
| ☒ Dishwasher | ☐ Septic Tank | ☐ Gas ☐ Solar ☐ Electric |
| ☐ Trash Compactor | ☐ Sump Pump | ☒ Water Heater: |
| ☐ Garbage Disposal | ☐ Water Softener | ☒ Gas ☐ Solar ☐ Electric |
| ☒ Washer/Dryer Hookups | ☐ Patio/Decking | ☒ Water Supply: |
| ☐ Rain Gutters | ☐ Built-in Barbecue | ☒ City ☐ Well |
| ☐ Burglar Alarms | ☐ Gazebo | ☐ Private Utility or |
| ☒ Carbon Monoxide Device(s) | ☐ Security Gate(s) | ☐ Other East Bay Mud _____ |
| ☒ Smoke Detector(s) | ☒ Garage: | ☒ Gas Supply: |
| ☒ Fire Alarm | ☒ Attached ☐ Not Attached | ☒ Utility ☐ Bottled (Tank) |
| ☐ TV Antenna | ☐ Carport | ☐ Window Screens |
| ☐ Satellite Dish | ☐ Automatic Garage Door Opener(s) | ☐ Window Security Bars |
| ☐ Intercom | ☒ Number Remote Controls _____ | ☐ Quick Release Mechanism on |
| ☒ Central Heating | ☐ Sauna | ☐ Bedroom Windows |
| ☒ Central Air Conditioning | ☐ Hot Tub/Spa: | ☐ Water-Conserving Plumbing Fixtures |
| ☐ Evaporator Cooler(s) | ☐ Locking Safety Cover | |
| Exhaust Fan(s) in <u>Unknown</u> | 220 Volt Wiring in _____ | Fireplace(s) in <u>gas</u> |
| ☒ Gas Starter _____ | ☒ Roof(s): Type: <u>Tile</u> | Age: <u>49</u> (approx.) |
| ☐ Other: _____ | | |

Are there, to the best of your (Seller's) knowledge, any of the above that are not in operating condition? ☐ Yes/☒ No. If yes, then describe. (Attach additional sheets if necessary): _____
List of items in the home may not be complete. Any items remaining in home at time of sale will be left.

Seller has never occupied this property. Seller encourages Buyer to have their own inspections performed and verify all information relating to this property.
(*see note on page 2)

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Seller's Initials BB / _____

Buyer's Initials _____ / _____



REAL ESTATE TRANSFER DISCLOSURE STATEMENT (TDS PAGE 1 OF 3)

Opendoor Brokerage, Inc. | Opendoor Brokerage, LLC, 410. N Scottsdale Rd, Ste. #1600 Tempe AZ 85281

Phone:

Fax:

New Forms

Produced with Lone Wolf Transactions (zipForm Edition) 717 N Harwood St, Suite 2200, Dallas, TX 75201 www.lwolf.com

B. Are you (Seller) aware of any significant defects/malfunctions in any of the following? ☒ Yes ☐ No. If yes, check appropriate space(s) below.

☐ Interior Walls ☐ Ceilings ☐ Floors ☐ Exterior Walls ☐ Insulation ☒ Roof(s) ☐ Windows ☐ Doors ☐ Foundation ☐ Slab(s)
☐ Driveways ☐ Sidewalks ☐ Walls/Fences ☐ Electrical Systems ☐ Plumbing/Sewers/Septics ☐ Other Structural Components
 (Describe: _____)

If any of the above is checked, explain. (Attach additional sheets if necessary.): _____

Prior Ownership: roof tiles replaced in 2018, roof age 47 years. Per work orders: Junction box covered with a blank plate. Seller has never occupied this property. Seller encourages Buyer to have their own inspections performed and verify all information relating to this property where applicable as noted.

*Installation of a listed appliance, device, or amenity is not a precondition of sale or transfer of the dwelling. The carbon monoxide device, garage door opener, or child-resistant pool barrier may not be in compliance with the safety standards relating to, respectively, carbon monoxide device standards of Chapter 8 (commencing with § 13260) of Part 2 of Division 12 of, automatic reversing device standards of Chapter 12.5 (commencing with § 19890) of Part 3 of Division 13 of, or the pool safety standards of Article 2.5 (commencing with § 115920) of Chapter 5 of Part 10 of Division 104 of, the Health and Safety Code. Window security bars may not have quick-release mechanisms in compliance with the 1995 edition of the California Building Standards Code. § 1101.4 of the Civil Code requires all single-family residences built on or before January 1, 1994, to be equipped with water-conserving plumbing fixtures after January 1, 2017. Additionally, on and after January 1, 2014, a single-family residence built on or before January 1, 1994, that is altered or improved is required to be equipped with water-conserving plumbing fixtures as a condition of final approval. Fixtures in this dwelling may not comply with § 1101.4 of the Civil Code.

C. Are you (Seller) aware of any of the following:

1. Substances, materials, or products which may be an environmental hazard such as, but not limited to, asbestos, formaldehyde, radon gas, lead-based paint, mold, fuel or chemical storage tanks, and contaminated soil or water on the subject property ☐ Yes ☒ No
 2. Features of the property shared in common with adjoining landowners, such as walls, fences, and driveways, whose use or responsibility for maintenance may have an effect on the subject property ☐ Yes ☒ No
 3. Any encroachments, easements or similar matters that may affect your interest in the subject property ☐ Yes ☒ No
 4. Room additions, structural modifications, or other alterations or repairs made without necessary permits. ☐ Yes ☒ No
 5. Room additions, structural modifications, or other alterations or repairs not in compliance with building codes ☐ Yes ☒ No
- (Note to C4 and C5: If transferor acquired the property within 18 months of accepting an offer to sell it, transferor shall make additional disclosures regarding the room additions, structural modifications, or other alterations or repairs on a Seller Property Questionnaire (C.A.R. Form SPQ).)
6. Fill (compacted or otherwise) on the property or any portion thereof ☐ Yes ☒ No
 7. Any settling from any cause, or slippage, sliding, or other soil problems ☐ Yes ☒ No
 8. Flooding, drainage or grading problems ☐ Yes ☒ No
 9. Major damage to the property or any of the structures from fire, earthquake, floods, or landslides ☐ Yes ☒ No
 10. Any zoning violations, nonconforming uses, violations of "setback" requirements ☐ Yes ☒ No
 11. Neighborhood noise problems or other nuisances ☐ Yes ☒ No
 12. CC&R's or other deed restrictions or obligations ☒ Yes ☐ No
 13. Homeowners' Association which has any authority over the subject property ☒ Yes ☐ No
 14. Any "common area" (facilities such as pools, tennis courts, walkways, or other areas co-owned in undivided interest with others) ☒ Yes ☐ No
 15. Any notices of abatement or citations against the property ☐ Yes ☒ No
 16. Any lawsuits by or against the Seller threatening to or affecting this real property, claims for damages by the Seller pursuant to § 910 or 914 threatening to or affecting this real property, claims for breach of warranty pursuant to § 900 threatening to or affecting this real property, or claims for breach of an enhanced protection agreement pursuant to § 903 threatening to or affecting this real property, including any lawsuits or claims for damages pursuant to § 910 or 914 alleging a defect or deficiency in this real property or "common areas" (facilities such as pools, tennis courts, walkways, or other areas co-owned in undivided interest with others) ☐ Yes ☒ No

If the answer to any of these is yes, explain. (Attach additional sheets if necessary.): _____

Prior Ownership: Bathroom remodel in 2014, Permits obtained. 12. HOA Name: Sequoyah Heights Home Owners' Association, Phone Number: 925-743-3080, Main Fee: \$768.00 paid monthly. HOA Demand and CC&Rs attached.

Seller has never occupied this property. Seller encourages Buyer to have their own inspections performed and verify all information relating to this property.

- D. 1. The Seller certifies that the property, as of the close of escrow, will be in compliance with § 13113.8 of the Health and Safety Code by having operable smoke detector(s) which are approved, listed, and installed in accordance with the State Fire Marshal's regulations and applicable local standards.
2. The Seller certifies that the property, as of the close of escrow, will be in compliance with § 19211 of the Health and Safety Code by having the water heater tank(s) braced, anchored, or strapped in place in accordance with applicable law.

Seller certifies that the information herein is true and correct to the best of the Seller's knowledge as of the date signed by the Seller.

Seller Brad Bonney Authorized Signer on Behalf of Opendoor Property Trust I Date 07/30/2026

Seller _____ Date _____



III. AGENT'S INSPECTION DISCLOSURE

(To be completed only if the Seller is represented by an agent in this transaction.)

THE UNDERSIGNED, BASED ON THE ABOVE INQUIRY OF THE SELLER(S) AS TO THE CONDITION OF THE PROPERTY AND BASED ON A REASONABLY COMPETENT AND DILIGENT VISUAL INSPECTION OF THE ACCESSIBLE AREAS OF THE PROPERTY IN CONJUNCTION WITH THAT INQUIRY, STATES THE FOLLOWING:

- ☒ See attached Agent Visual Inspection Disclosure (AVID Form)
☐ Agent notes no items for disclosure.
☐ Agent notes the following items: _____

Agent (Broker Representing Seller) Opendoor Brokerage Inc.
(Please Print)

By Lisa Soltez
(Associate Licensee or Broker Signature)

Date 07/30/2026

IV. AGENT'S INSPECTION DISCLOSURE

(To be completed only if the agent who has obtained the offer is other than the agent above.)

THE UNDERSIGNED, BASED ON A REASONABLY COMPETENT AND DILIGENT VISUAL INSPECTION OF THE ACCESSIBLE AREAS OF THE PROPERTY, STATES THE FOLLOWING:

- ☐ See attached Agent Visual Inspection Disclosure (AVID Form)
☐ Agent notes no items for disclosure.
☐ Agent notes the following items: _____

Agent (Broker Obtaining the Offer) _____
(Please Print)

By _____
(Associate Licensee or Broker Signature)

Date _____

V. BUYER(S) AND SELLER(S) MAY WISH TO OBTAIN PROFESSIONAL ADVICE AND/OR INSPECTIONS OF THE PROPERTY AND TO PROVIDE FOR APPROPRIATE PROVISIONS IN A CONTRACT BETWEEN BUYER AND SELLER(S) WITH RESPECT TO ANY ADVICE/INSPECTIONS/DEFECTS.

I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS STATEMENT.

Seller Brad Bonney Date 07/30/2026 Buyer _____ Date _____
Authorized Signer on Behalf of

Seller _____ Opendoor Property Trust Date _____ Buyer _____ Date _____

Agent (Broker Representing Seller) Opendoor Brokerage Inc.
(Please Print)

By Lisa Soltez
(Associate Licensee or Broker Signature)

Date 07/30/2026

Agent (Broker Obtaining the Offer) _____
(Please Print)

By _____
(Associate Licensee or Broker Signature)

Date _____

§ 1102.3 OF THE CIVIL CODE PROVIDES A BUYER WITH THE RIGHT TO RESCIND A PURCHASE CONTRACT FOR AT LEAST THREE DAYS AFTER THE DELIVERY OF THIS DISCLOSURE IF DELIVERY OCCURS AFTER THE SIGNING OF AN OFFER TO PURCHASE. IF YOU WISH TO RESCIND THE CONTRACT, YOU MUST ACT WITHIN THE PRESCRIBED PERIOD.

A REAL ESTATE BROKER IS QUALIFIED TO ADVISE ON REAL ESTATE. IF YOU DESIRE LEGAL ADVICE, CONSULT YOUR ATTORNEY.

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REAL ESTATE TRANSFER DISCLOSURE STATEMENT (TDS PAGE 3 OF 3)

Produced with Lone Wolf Transactions (zipForm Edition) 717 N Harwood St, Suite 2200, Dallas, TX 75201 www.lwolf.com

New Forms





SELLER PROPERTY QUESTIONNAIRE

(C.A.R. Form SPQ, Revised 6/26)

This form is not a substitute for the Real Estate Transfer Disclosure Statement (TDS). It is used by the Seller to provide additional information when a TDS is completed. If Seller is exempt from completing a TDS, Seller should either complete an Exempt Seller Disclosure (C.A.R. Form ESD) or use this SPQ form instead:

NOTE TO SELLER: YOU ARE STRONGLY ADVISED TO CAREFULLY REVIEW THE DISCLOSURE INFORMATION ADVISORY (C.A.R. Form DIA) BEFORE YOU COMPLETE THIS SELLER PROPERTY QUESTIONNAIRE. ALL SELLERS OF CALIFORNIA REAL PROPERTY ARE REQUIRED TO PROVIDE VARIOUS DISCLOSURES, WHETHER BY CONTRACT, STATUTE, OR CASE LAW. MANY DISCLOSURES MUST BE MADE WITHIN CERTAIN TIME LIMITS. TIMELY AND THOROUGH DISCLOSURES HELP TO REDUCE DISPUTES AND FACILITATE A SMOOTH SALES TRANSACTION.

Seller makes the following disclosures with regard to the real property or manufactured home described as 123 Ironwood, Oakland, CA, 94605, Assessor's Parcel No. 48-6436-53, situated in Oakland, County of Alameda California ("Property").

☐ This property is a duplex, triplex, fourplex, or otherwise has additional dwelling units. A SPQ is required for all units. This SPQ is for ALL units (or ☐ only unit(s) _____).

1. **Disclosure Limitation:** The following are representations made by the Seller and are not the representations of the Agent(s), if any. This disclosure statement is not a warranty of any kind by the Seller or any agents(s) and is not a substitute for any inspections or warranties the principal(s) may wish to obtain. This disclosure is not intended to be part of the contract between Buyer and Seller. Unless otherwise specified in writing, Broker and any real estate licensee or other person working with or through Broker, has not verified information provided by Seller. A real estate broker is qualified to advise on real estate transactions. If Seller or Buyer desires legal advice, they should consult an attorney.

2. **Note to Seller, PURPOSE:** To tell the Buyer about known material or significant items affecting the value or desirability of the Property and help to eliminate misunderstandings about the condition of the Property.

- Answer based on actual knowledge and recollection at this time.
- Something that you do not consider material or significant may be perceived differently by a Buyer.
- Think about what you would want to know if you were buying the Property today.
- Read the questions carefully and take your time.
- If you do not understand how to answer a question, or what to disclose or how to make a disclosure in response to a question, whether on this form or a TDS, you should consult a real estate attorney in California of your choosing. A broker cannot answer the questions for you or advise you on the legal sufficiency of any answers or disclosures you provide.

3. **Note to Buyer, PURPOSE:** To give you more information about known material or significant items affecting the value or desirability of the Property and help to eliminate misunderstandings about the condition of the Property.

- Something that may be material or significant to you may not be perceived the same way by the Seller.
- If something is important to you, be sure to put your concerns and questions in writing (C.A.R. Form BMI).
- Sellers can only disclose what they actually know. Seller may not know about all material or significant items.
- Seller's disclosures are not a substitute for your own investigations, personal judgments, or common sense.

4. **SELLER AWARENESS:** For each statement below, answer the question "Are you (Seller) aware..." by checking either "Yes" or "No."

- A "Yes" answer is appropriate no matter how long ago the item being asked about happened or was documented unless otherwise specified.
- Explain any "Yes" answers in the space provided or attach additional comments and check **paragraph 19B** is checked and attach additional comments.

5. **DOCUMENTS:** Documents include any reports, inspections, disclosures, warranties, maintenance recommendations, estimates, studies, surveys, or other documents that pertain to:

- (i) the condition or repair of the Property;
- (ii) any improvement on this Property;
- (iii) easements, encroachments, or boundary disputes affecting the Property.

These documents include, but are not limited to, any document:

- (i) prepared in the past or present;
- (ii) provided during any previous transaction or from a previous owner;
- (iii) indicating the condition or proposing recommendations, whether or not Seller acted upon them; and
- (iv) whether or not it was provided to the Seller.

- A. Are you (Seller) aware of any Documents regarding the Property that were prepared before your ownership, whether in your possession or in the possession of others? ☐ Yes ☒ No
- B. Are you (Seller) aware of any Documents regarding the Property that were prepared for you during your ownership, whether in your possession or in the possession of others? ☒ Yes ☐ No
- C. Are you (Seller) aware of any Documents regarding the Property that were provided by others during your ownership (such as Documents obtained by potential buyers)? ☒ Yes ☐ No

Note: If yes to any, provide any such documents in your possession to Buyer. Receipt for Reports (C.A.R. Form RFR) may be used to list such documents and explanation can be given to provide context.

If Yes to any, provide explanation: Seller is a corporate entity. Documents in Seller's possession during ownership include work orders, inspection reports, renovation scopes, and third-party assessments. Seller will provide available details upon request.

6. **STATUTORILY OR CONTRACTUALLY REQUIRED OR RELATED:** **ARE YOU (SELLER) AWARE OF...**

- A. Within the last 3 years, the death of an occupant of the Property upon the Property ☐ Yes ☒ No
(Note to Seller: The manner of death may be a material fact to the Buyer, and should be disclosed, except for a death by HIV/AIDS.)
- B. An Order from a government health official identifying the Property as being contaminated by methamphetamine. (If yes, attach a copy of the Order.) ☐ Yes ☒ No



Property Address: 123 Ironwood, Oakland, CA, 94605

If this Property is a duplex, triplex, fourplex, or otherwise has additional dwelling units this SPQ is for unit # _____.

- C. The release of an illegal controlled substance on or beneath the Property ☐ Yes ☒ No
- D. Whether the Property is located in, or adjacent to, an "industrial use" zone ☐ Yes ☒ No
(In general, a zone or district allowing manufacturing, commercial or airport uses.)
- E. Whether the Property is affected by a nuisance created by an "industrial use" zone ☐ Yes ☒ No
- F. Whether the Property is located within 1 mile of a former federal or state ordnance location (In general, an area once used for military training purposes that may contain potentially explosive munitions.) ☐ Yes ☒ No
- G. Whether the Property is (i) a condominium or (ii) located in a planned unit development or (iii) other common interest subdivision (see **paragraph 14** for more disclosures)..... ☒ Yes ☐ No
- H. Insurance claims affecting the Property within the past 5 years ☐ Yes ☒ No
- I. Matters affecting title of the Property ☐ Yes ☒ No
- J. Plumbing fixtures on the Property that are non-compliant plumbing fixtures as defined by Civil Code § 1101.3 ☐ Yes ☒ No
- K. Any inspection reports on any exterior balconies, stairways, or other "Elevated Elements" on buildings with 3 or more units on the Property prepared within the last 6 years, or 9 years for condominiums ☐ Yes ☒ No
(See C.A.R. Form WBSA for more information)
- L. Material facts or defects affecting the Property not otherwise disclosed to Buyer ☐ Yes ☒ No

If Yes to any, provide explanation: _____

HOA Name: Sequoyah Heights Home Owners' Association, Main Fee: \$768 paid monthly. Please see attached for HOA-related expenses provided to the Seller at the time the Seller purchased this property. Buyer is encouraged to contact the HOA for current information. Seller has never occupied this property. Seller encourages Buyer to have their own inspections performed and verify all information relating to this property where applicable as noted.

7. REPAIRS AND ALTERATIONS:

ARE YOU (SELLER) AWARE OF...

- A. Any alterations, modifications, replacements, improvements, remodeling, or material repairs on the Property (including those resulting from Home Warranty claims) ☒ Yes ☐ No
- B. Any alterations, modifications, replacements, improvements, remodeling, or material repairs to the Property done for the purpose of energy or water efficiency improvement or renewable energy? ☐ Yes ☒ No
- C. Ongoing or recurring maintenance on the Property (for example, drain or sewer clean-out, tree or pest control service) ☐ Yes ☒ No
- D. Any part of the Property being painted within the past 12 months ☐ Yes ☒ No
- E. Whether the Property was built before 1978 (if No, leave (1) and (2) blank)..... ☒ Yes ☐ No
(1) If yes, whether any renovations (i.e., sanding, cutting, demolition) of lead-based paint surfaces started or completed (if No, leave (2) blank) ☒ Yes ☐ No
(2) If yes to (1), whether such renovations were done in compliance with the Environmental Protection Agency Lead-Based Paint Renovation Rule ☐ Yes ☒ No
- F. Whether you acquired the property within 18 months of accepting an offer to sell it..... ☒ Yes ☐ No
If yes, have any room additions, structural modifications, or other alterations or repairs (collectively "Improvements") been performed by a contractor while you have owned the Property?..... ☒ Yes ☐ No

Note 1: If yes to F(1), Seller shall provide in the Explanation below: (i) a list of such Improvements and (ii) the name and contact information for each contractor who performed services of \$1,000 or more.

Note 2: If yes to F(1), Seller shall provide in the Explanation below (i) a list of those Improvements for which Seller has obtained permits, and Seller shall attach copies of those permits to this SPQ, and (ii) for those Improvements for which Seller does not have a permit, Seller shall include a statement identifying those Improvements stating that Seller was not provided permits by the third party making the Improvement, and providing the contact information for such third parties from whom the Buyer may obtain those permits.

If Yes to any, provide explanation: _____

A. Prior Ownership: bathroom remodel performed under prior ownership (2014). F. Per work order, junction box covered with a blank plate. Seller has never occupied this property. Seller encourages

Buyer to have their own inspections performed and verify all information relating to this property where applicable as noted.

8. STRUCTURAL, SYSTEMS AND APPLIANCES:

ARE YOU (SELLER) AWARE OF...

- A. Defects in any of the following (including past defects that have been repaired): heating, air conditioning, electrical, plumbing (including the presence of polybutylene pipes), water, sewer, waste disposal or septic system, sump pumps, well, roof, gutters, chimney, fireplace, foundation, crawl space, attic, soil, grading, drainage, retaining walls, interior or exterior doors, windows, walls, ceilings, floors, or appliances ☒ Yes ☐ No
- B. The existence of a solar power system (if yes, Seller to provide C.A.R. Form SOLAR)..... ☐ Yes ☒ No
- C. The existence of a septic system, well, or propane tank (if yes, Seller to provide C.A.R. Form SWPI-Q)..... ☐ Yes ☒ No
- D. The leasing of any of the following on or serving the Property: water softener system, water purifier system, or alarm system ☐ Yes ☒ No
- E. Whether any structure on the Property other than the main improvement is used as a dwelling ☐ Yes ☒ No
(1) If Yes to E, whether there are separate utilities and meters for the dwelling..... ☐ Yes ☒ No
(2) If Yes to E, whether the dwelling received a permit or other government approval as an Accessory Dwelling Unit (ADU) ☒ Yes ☐ No

If Yes to any, provide explanation: _____

A) Prior Ownership: roof tiles replaced in 2018, roof age 47 years. E(2) Prior Ownership: Bathroom remodel in 2014, Permits obtained. Seller has never occupied this

property. Seller encourages Buyer to have their own inspections performed and verify all information relating to this property where applicable as noted.

9. DISASTER RELIEF, INSURANCE OR CIVIL SETTLEMENT:

ARE YOU (SELLER) AWARE OF...

- A. Financial relief or assistance, insurance or settlement, sought or received, from any federal, state, local or private agency, insurer or private party, by past or present owners of the Property, due to any actual or alleged damage to the Property arising from a flood, earthquake, fire, other disaster, or occurrence or defect, whether or not any money received was actually used to make repairs ☐ Yes ☒ No
If yes, was federal flood disaster assistance conditioned upon obtaining and maintaining flood insurance on the Property ☐ Yes ☒ No
(NOTE: If the assistance was conditioned upon maintaining flood insurance, Buyer is informed that federal law, 42 USC 5154a requires Buyer to maintain such insurance on the Property, and if such insurance is not maintained, and the Property is damaged by a flood disaster, Buyer may be required to reimburse the federal government for the disaster relief provided.)



Property Address: 123 Ironwood, Oakland, CA, 94605

If this Property is a duplex, triplex, fourplex, or otherwise has additional dwelling units this SPQ is for unit # _____.

- B.** Receiving domestic water storage tank assistance pursuant to § 13194 of the Water Code or whether the real property ever received such assistance and the real property currently still has the domestic storage tank..... ☐ Yes ☒ No
- If yes, the following disclosure is made: (1) This property has a domestic water storage tank provided by a county, community water system, local public agency, or nonprofit organization, pursuant to § 13194 of the Water Code. (2) The domestic water storage tank was made available to households that had a private water well that had gone dry, or had been destroyed due to drought, wildfire, other natural disasters, or was otherwise nonfunctioning. (3) The domestic water storage tank provided pursuant to § 13194 of the Water Code might not convey with the real property. (4) Due to the water well issues that led to this property obtaining assistance pursuant to § 13194 of the Water Code, the buyer is advised to have an inspection of the water well and to have a professional evaluate the availability of water to the property to ensure it suits the purposes for which the buyer is purchasing the property.

If Yes to any, provide explanation: _____

10. WATER-RELATED AND MOLD ISSUES:

ARE YOU (SELLER) AWARE OF...

- A.** Water intrusion, whether past or present, into any part of any physical structure on the Property; leaks from or in any appliance, pipe, slab or roof; standing water, drainage, flooding, underground water, moisture, water-related soil settling or slippage, on or affecting the Property ☒ Yes ☐ No
- B.** Any problem with or infestation of mold, mildew, fungus, or spores, past or present, on or affecting the Property.. ☐ Yes ☒ No
- C.** Rivers, streams, flood channels, underground springs, high watertable, floods, or tides, on or affecting the Property or neighborhood ☐ Yes ☒ No

If Yes to any, provide explanation: _____

A. Prior Ownership: roof tiles replaced in 2018. Seller has never occupied this property. Seller encourages Buyer to have their own inspections performed and verify all information relating to this property where applicable as noted.

11. PETS, ANIMALS, AND PESTS:

ARE YOU (SELLER) AWARE OF...

- A.** Past or present pets on or in the Property ☐ Yes ☒ No
- B.** Past or present problems with livestock, wildlife, insects, or pests on or in the Property ☐ Yes ☒ No
- C.** Past or present odors, urine, feces, discoloration, stains, spots or damage in the Property, due to any of the above ☐ Yes ☒ No
- D.** Past or present treatment or eradication of pests or odors, or repair of damage due to any of the above ☐ Yes ☒ No
- If so, when and by whom _____

If Yes to any, provide explanation: _____

12. BOUNDARIES, ACCESS, AND PROPERTY USE BY OTHERS:

ARE YOU (SELLER) AWARE OF...

- A.** Surveys, easements, encroachments or boundary disputes ☐ Yes ☒ No
- B.** Use or access to the Property, or any part of it, by anyone other than you, with or without permission, for any purpose, including but not limited to, using or maintaining roads, driveways, or other forms of ingress or egress or other travel or drainage..... ☐ Yes ☒ No
- C.** Use of any neighboring property by you ☐ Yes ☒ No

If Yes to any, provide explanation: _____

13. LANDSCAPING, POOL AND SPA:

ARE YOU (SELLER) AWARE OF...

- A.** Diseases or infestations affecting trees, plants, or vegetation on or near the Property ☐ Yes ☒ No
- B.** Operational sprinklers on the Property ☒ Yes ☐ No
- (1) If yes, are they ☐ automatic or ☐ manually operated.
- (2) If yes, are there any areas with trees, plants, or vegetation not covered by the sprinkler system. ☐ Yes ☒ No
- C.** A pool heater on the Property ☐ Yes ☒ No
- If yes, is it operational? ☐ Yes ☒ No
- D.** A spa heater on the Property ☐ Yes ☒ No
- If yes, is it operational? ☐ Yes ☒ No
- E.** Past or present defects, leaks, cracks, repairs, or other problems with the sprinklers, pool, spa, waterfall, pond, stream, drainage, or other water-related decor including any ancillary equipment, including pumps, filters, heaters and cleaning systems, even if repaired ☐ Yes ☒ No

If Yes to any, provide explanation: _____

14. CONDOMINIUMS, COMMON INTEREST DEVELOPMENTS AND OTHER SUBDIVISIONS (AND ANY OTHER PROPERTIES FOR WHICH ANY PARAGRAPH A-F APPLIES): (IF APPLICABLE)

ARE YOU (SELLER) AWARE OF...

- A.** Property being: (i) a condominium; (ii) being located in a planned unit development or; (iii) being located in a common interest subdivision..... ☒ Yes ☐ No
- B.** Any Homeowners' Association (HOA) which has any authority over the subject property..... ☒ Yes ☐ No
- C.** Any "common area" (facilities such as pools, fitness centers, walkways, conference rooms, or other areas co-owned in undivided interest with others) ☐ Yes ☒ No
- D.** CC&R's or other deed restrictions or obligations ☒ Yes ☐ No
- E.** Any pending or proposed dues increases, special assessments, rules changes, insurance availability issues, or litigation by or against or fines or violations issued by a Homeowner Association or Architectural Committee affecting the Property ☐ Yes ☒ No
- F.** CC&R's or other deed restrictions or obligations or any HOA Committee that has authority over improvements made on or to the Property ☒ Yes ☐ No

SPQ REVISED 6/26 (PAGE 3 OF 5)

Buyer's Initials _____ / _____

Seller's Initials BB / _____

SELLER PROPERTY QUESTIONNAIRE (SPQ PAGE 3 OF 5)

Produced with Lone Wolf Transactions (zipForm Edition) 717 N Harwood St, Suite 2200, Dallas, TX 75201 www.lwolf.com



Property Address: 123 Ironwood, Oakland, CA, 94605

If this Property is a duplex, triplex, fourplex, or otherwise has additional dwelling units this SPQ is for unit # _____.

- (1) If Yes to F, any improvements made on or to the Property inconsistent with any declaration of restrictions or HOA Committee requirement ☐ Yes ☒ No
- (2) If Yes to F, any improvements made on or to the Property without the required approval of an HOA Committee ☐ Yes ☒ No

If Yes to any, provide explanation: _____

B) Property is part of HOA

E) Contact HOA for specific guidelines and requirements

Seller has never occupied this property. Seller encourages Buyer to have their own inspections performed and verify all information relating to this property where applicable as noted.

15. TITLE, OWNERSHIP, LIENS, AND LEGAL CLAIMS:

ARE YOU (SELLER) AWARE OF...

- A. Other than the Seller signing this form, any other person or entity with an ownership interest ☒ Yes ☐ No
- B. Leases, options, or claims affecting or relating to title or use of the Property ☐ Yes ☒ No
- C. Past, present, pending or threatened lawsuits, settlements, mediations, arbitrations, tax liens, mechanics' liens, notice of default, bankruptcy or other court filings, or government hearings affecting or relating to the Property, Homeowner Association, or neighborhood ☐ Yes ☒ No
- D. Features of the property shared in common with adjoining landowners, such as walls, fences and driveways, whose use or responsibility for maintenance may have an effect on the subject property ☐ Yes ☒ No
- E. Any encroachments, easements, boundary disputes, or similar matters that may affect your interest in the subject property, whether in writing or not ☐ Yes ☒ No
- F. Any private transfer fees, triggered by a sale of the Property, in favor of private parties, charitable organizations, interest-based groups, or any other person or entity. ☒ Yes ☐ No
- G. Any PACE lien (such as HERO or SCEIP) or other lien on your Property securing a loan to pay for an alteration, modification, replacement, improvement, remodel, or material repair of the Property ☐ Yes ☒ No
- H. The cost of any alteration, modification, replacement, improvement, remodel, or material repair of the Property being paid by an assessment on the Property tax bill ☐ Yes ☒ No

If Yes to any, provide explanation: _____

16. NEIGHBORS/NEIGHBORHOOD:

ARE YOU (SELLER) AWARE OF...

- A. Neighborhood noise, nuisance, or other problems from sources such as, but not limited to, the following: Neighbors, traffic, parking congestion, airplanes, trains, light rail, subway, trucks, freeways, buses, schools, parks, refuse storage or landfill processing, agricultural operations, business, odor, recreational facilities, restaurants, entertainment complexes or facilities, parades, sporting events, fairs, neighborhood parties, litter, construction, air conditioning equipment, air compressors, generators, pool equipment or appliances, underground gas pipelines, cell phone towers, high voltage transmission lines, or wildlife ☐ Yes ☒ No
- B. Any past or present disputes or issues with a neighbor which might impact the use, development and enjoyment of the Property ☐ Yes ☒ No

If Yes to any, provide explanation: _____

17. GOVERNMENTAL:

ARE YOU (SELLER) AWARE OF...

- A. Ongoing or contemplated eminent domain, condemnation, annexation or change in zoning or general plan that applies to or could affect the Property ☐ Yes ☒ No
- B. Existence or pendency of any rent control, occupancy restrictions, improvement restrictions, or retrofit requirements that apply to or could affect the Property ☐ Yes ☒ No
- C. Existing or contemplated building or use moratoria that apply to or could affect the Property ☐ Yes ☒ No
- D. Any state or local requirements or restrictions relating to the future replacement of existing gas-powered appliances that are being transferred with the property. Gas-powered appliances include, but are not limited to, appliances fueled by natural gas or liquid propane ☐ Yes ☒ No
- E. Current or proposed bonds, assessments, or fees that do not appear on the Property tax bill that apply to or could affect the Property ☐ Yes ☒ No
- F. Proposed construction, reconfiguration, or closure of nearby Government facilities or amenities such as schools, parks, roadways, and traffic signals ☐ Yes ☒ No
- G. Existing or proposed Government requirements affecting the Property (i) that tall grass, brush or other vegetation be cleared; (ii) that restrict tree (or other landscaping) planting, removal, or cutting or (iii) that flammable materials be removed ☐ Yes ☒ No
- H. Any protected habitat for plants, trees, animals, or insects that apply to or could affect the Property ☐ Yes ☒ No
- I. Whether the Property is historically designated or falls within an existing or proposed Historic District ☐ Yes ☒ No
- J. Any water surcharges or penalties being imposed by a public or private water supplier, agency or utility; or restrictions or prohibitions on wells or other ground water supplies ☐ Yes ☒ No
- K. Any differences between the name of the city in the postal/mailling address and the city which has jurisdiction over the property ☐ Yes ☒ No

If Yes to any, provide explanation: _____

18. OTHER:

ARE YOU (SELLER) AWARE OF...

- A. Any occupant of the Property smoking or vaping any substance on or in the Property, whether past or present ☐ Yes ☒ No
- B. Any residue, which may be indicated by smell or test results, from smoking tobacco or nicotine products, which includes the use of an electronic cigarette or vape device ☐ Yes ☒ No
- C. Any use of the Property for, or any alterations, modifications, improvements, remodeling or material change to the Property due to, cannabis cultivation or growth ☐ Yes ☒ No
- D. Whether the Property was originally constructed as a Manufactured or Mobile home ☐ Yes ☒ No



Property Address: 123 Ironwood, Oakland, CA, 94605

If this Property is a duplex, triplex, fourplex, or otherwise has additional dwelling units this SPQ is for unit # _____.

- E. Whether the Property is tenant occupied ☐ Yes ☒ No
If Yes, do you have photographs from the beginning of the tenancy (if in your possession, provide along with any other move-in reports created at the beginning of the tenancy)..... ☐ Yes ☒ No
- F. Whether the Property was previously tenant occupied even if vacant now ☐ Yes ☒ No
If yes, disclose if you know the method or manner of how the tenancy ended. _____
If Yes to any, provide explanation: _____

19. MATERIAL FACTS:

- A. Any past or present known material facts or other significant items affecting the value or desirability of the Property not otherwise disclosed to Buyer ☐ Yes ☒ No
- B. ☐ (IF CHECKED) **ADDITIONAL COMMENTS:** The attached addendum contains an explanation or additional comments in response to specific questions answered "yes" above. Refer to line and question number in explanation.
If Yes to any, provide explanation: _____

Seller represents that Seller has provided the answers and, if any, explanations and comments on this form and any attached addenda and that such information is true and correct to the best of Seller's knowledge as of the date signed by Seller. Seller acknowledges (i) Seller's obligation to disclose information requested by this form is independent from any duty of disclosure that a real estate licensee may have in this transaction; and (ii) nothing that any such real estate licensee does or says to Seller relieves Seller from Seller's own duty of disclosure.

Seller	<u>Brad Bonney</u>	Authorized Signer on Behalf of	Date <u>07/30/2026</u>
Seller	_____	Opendoor Property Trust I	Date _____

By signing below, Buyer acknowledges that Buyer has read, understands and has received a copy of this Seller Property Questionnaire form.

Buyer	_____	Date	_____
Buyer	_____	Date	_____

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SPQ REVISED 6/26 (PAGE 5 OF 5)

SELLER PROPERTY QUESTIONNAIRE (SPQ PAGE 5 OF 5)

Produced with Lone Wolf Transactions (zipForm Edition) 717 N Harwood St, Suite 2200, Dallas, TX 75201 www.lwolf.com



Required Statement of Fees - Demand (Required Civil Code Sec. 4525)**Sequoyah Heights Home Owners' Association****Common Interest Management Services****Property Information:**

123 Ironwood

Oakland, CA 94605-4610

Seller: T [REDACTED]

Colberg Trust

Buyer: OPENDOOR PROPERTY TRUST I, a Delaware

Requestor:

OS National

Processing Team

678-282-2342

Estimated Closing Date: 07-16-2026

General Information

This information is good through	07-31-2026
Is this account in collections?	No
The regular assessment is paid through:	07-31-2026
The regular assessment is next due:	08-01-2026
What day of the month are regular assessments due?	1st
How many days after the due date is the regular assessment considered delinquent?	15
The penalty for delinquent assessments is:	10%

Specific Fees Due To Sequoyah Heights Home Owners' Association**Assessment Data:**

Assessment (Frequency: Monthly)	\$768.00
Are there any current special assessments or governing body approved special assessments, against units within the association? If yes, a comment is provided.	No
Is there any change in the association's current regular and special assessments and fees which have been approved by the board, but have not become due and payable as of the date disclosure is provided pursuant to this subdivision? If yes, please comment	See Comments
Comments: All changes to the Associations regular assessments are disclosed in the Annual Budget Packet and Reserve Study as of the date of those reports. For information related to potential special assessments, please refer to the Seller.	
Owner's current balance due (you may total the owners balance due using the breakdown below):	\$0.00

General Association Information

Are there any violations against this unit?

Comments: Inspection results will be emailed directly by the inspector. The inspection report will also be attached to this approved order upon availability.

Is the association or the developer (if the project has not been turned over to the homeowners association) involved in any current or pending litigation? If yes, a comment is required. (Do not include neighbor disputes or rights of quiet enjoyment, litigation where the claim amount is known and the insurance carrier will provide defense and coverage, or where the HOA is named as a plaintiff in a foreclosure action or to collect past due assessments).

No

Is there a restriction in the governing documents limiting the occupancy, residency, or use of a separate interest on the basis of age in a manner different from that provided in California Civil Code Section 51.3? If yes, please comment.

No



Required Statement of Fees - Demand (Required Civil Code Sec. 4525)

Sequoyah Heights Home Owners' Association

Common Interest Management Services

Property Information:

123 Ironwood

Oakland, CA 94605-4610

Seller: T [REDACTED]

Colberg Trust

Buyer: OPENDOOR PROPERTY TRUST I, a Delaware

Requestor:

OS National

Processing Team

678-282-2342

Estimated Closing Date: 07-16-2026

Is there a provision in the governing documents that prohibits the rental or leasing of any of the separate interests in the common interest development to a renter, lessee or tenant? If yes, please comment

No

Does a preliminary list of defects exist pursuant to Section 6000 of the Davis Stirling Act? If yes, please comment and provide the list.

No

Does a Settlement Notice regarding common area defects exist pursuant to Section 6100 of the Davis Stirling Act? If yes, please comment and provide the list.

No

Insurance Information

Insurance broker's or agent's company name:

Socher Insurance
Agency

Comments: Please reach out to insurance carrier directly for Master Policy and all insurance related requests and inquiries.

Identify the insurance agent's name:

EOI Direct

Insurance agent's phone number:

877-317-9300

Insurance agent's fax number:

877-317-9305

Insurance agent's email address:

n/a

Comments: Please reach out to insurance carrier directly for Master Policy and all insurance related requests and inquiries.

Carl Leoncio

***Jennifer Jensen, Escrow Administrator**

Date: 07-10-2026

Common Interest Management Services

Phone: 925-743-3080



Required Statement of Fees - Demand (Required Civil Code Sec. 4525)

Sequoyah Heights Home Owners' Association

Common Interest Management Services

Property Information:

123 Ironwood

Oakland, CA 94605-4610

Seller: T [REDACTED]

Colberg Trust

Buyer: OPENDOOR PROPERTY TRUST I, a Delaware

Requestor:

OS National

Processing Team

678-282-2342

Estimated Closing Date: 07-16-2026

Comments:

Fees are not refundable if the escrow is canceled for any reason. The amount owed per this demand is valid until the good through date only. Please request a demand update via HomeWiseDocs.com prior to closing to ensure you have the most up to date information on any delinquencies, new assessments, changes in assessments or Special Assessments.

A Compliance Inspection is required by the Architectural Committee for all sales prior to the close of escrow. You will be notified if there are any violations that must be addressed prior to the close of escrow.

Please include an email address for the buyer with the closing documents.



Required Statement of Fees - Demand (Required Civil Code Sec. 4525)

Sequoyah Heights Home Owners' Association

Common Interest Management Services

Property Information:

123 Ironwood

Oakland, CA 94605-4610

Seller: T [REDACTED]

Colberg Trust

Buyer: OPENDOOR PROPERTY TRUST I, a Delaware

Requestor:

OS National

Processing Team

678-282-2342

Estimated Closing Date: 07-16-2026

Fee Summary**Amounts Prepaid**

Convenience Fee	\$9.95
Closing Statement of Fees, Association Documents and Minutes (Required Civil Code Sec. 4525)	\$630.00
Annual Board Meeting Minutes (Non Required Civil Code Sec. 4525)	\$62.00
Total	\$701.95

Fees Due to Common Interest Management Services

Transfer Fee	\$532.00
Total	\$532.00

Fees Due to Sequoyah Heights Home Owners' Association

Prepaid Assessments	\$1,536.00
Total	\$1,536.00



Required Statement of Fees - Demand (Required Civil Code Sec. 4525)

Sequoyah Heights Home Owners' Association

Common Interest Management Services

Property Information:

123 Ironwood

Oakland, CA 94605-4610

Seller: T [REDACTED]

Colberg Trust

Buyer: OPENDOOR PROPERTY TRUST I, a Delaware

Requestor:

OS National

Processing Team

678-282-2342

Estimated Closing Date: 07-16-2026

PLEASE RETURN THIS FORM WITH YOUR CHECK AND CERTIFIED COPIES OF THE CLOSING DISCLOSURE FORM (FORMERLY THE HUD-1 FORM) AND THE GRANT OR WARRANTY DEED. PLEASE INDICATE CONFIRMATION NUMBER MD5J26DBV ON THE CHECK TO ENSURE PAYMENT IS CREDITED PROPERLY. **NOTE: PLEASE DO NOT FOLD CLOSING DOCUMENTS WHEN MAILING.

Fees Due to Common Interest Management Services

Transfer Fee \$532.00

Total \$532.00

Fees Due to Sequoyah Heights Home Owners' Association

Prepaid Assessments \$1,536.00

Total \$1,536.00

Include this confirmation number MD5J26DBV on the check for \$532.00 payable to and send to the address below.

Common Interest Management Services

12647 Alcosta Blvd, Suite 275

San Ramon, CA 94583

Include this confirmation number MD5J26DBV on the check for \$1,536.00 payable to and send to the address below.

Sequoyah Heights Home Owners' Association

12647 Alcosta Blvd, Suite 275

San Ramon, CA 94583



Required Statement of Fees - Demand (Required Civil Code Sec. 4525)

Sequoyah Heights Home Owners' Association

Common Interest Management Services

Property Information:

123 Ironwood

Oakland, CA 94605-4610

Seller: T

Buyer: OPENDOOR PROPERTY TRUST I, a Delaware

Requestor:

OS National

Processing Team

3097 Satellite Blvd, Suite 500

Duluth, GA 30096

678-282-2342

souprocessing@osnational.com

Closing Information

File/Escrow Number: CA110766

Estimated Close Date: 07-16-2026

HomeWiseDocs Confirmation #: MD5J26DBV

Sales Price: \$580,000.00

Closing Date:

Is buyer occupant? No

Status Information

Date of Order: 06-29-2026

Board Approval Date:

Order Completion Date: 07-10-2026

Date Paid: 06-30-2026

Order Retrieved Date:

Inspection Date:

Community Manager Information

Company: Common Interest Management

Completed By: *Jennifer Jensen

Primary Contact: *Jennifer Jensen

Address:

12647 Alcosta Blvd, Suite 275

San Ramon, CA 94583

Phone: 925-743-3080

Fax: 925-743-3084

Email: escrow@commoninterest.com



**The following notice is pursuant to California Government Code
Section 12956.1(b)(1))**

Notice

If this document contains any restriction based on age, race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, genetic information, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.2 of the Government Code by submitting a “Restrictive Covenant Modification” form, together with a copy of the attached document with the unlawful provision redacted to the county recorder’s office. The “Restrictive Covenant Modification” form can be obtained from the county recorder’s office and may be available on its internet website. The form may also be available from the party that provided you with this document. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.

Restrictive Covenant Modification

Under current state law, including AB1466 effective January 1, 2022, homeowners can request to modify property documents that contain unlawful discriminatory covenants. Government Code Section 12956.2 allows a person who holds an ownership interest of record in property that the person believes is the subject of an unlawfully restrictive covenant to record a Restrictive Covenant Modification document to have the illegal language stricken. Unlawful restrictions include those restrictions based on race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, veteran or military status, national origin, source of income as defined in Government Code Section 12955 subdivision (p), ancestry, or genetic information.

To Record a Restrictive Covenant Modification, you must:

- Complete a Restrictive Covenant Modification Form; this must be signed in front of a notary public.
- Attach a copy of the original document containing the unlawful restrictive language with the unlawful language stricken.
- Submit the completed document to the County Recorder.

This document requires the following:

1. Name(s) of current owner(s)
2. Identification of document page number and language in violation
3. Recording reference of document with unlawful restrictive covenant
4. Copy of referenced document attached complete with unlawful restrictive language stricken out
5. Signature(s) of owner(s)
6. Signature(s) acknowledged
7. Approval by County Counsel provided to County Recorder

Upon receipt, the Recorder's office will submit the document to County Counsel who will determine whether the original document contains any unlawful restrictions, as defined in Government Code Section 12956.2 subdivision (b). Only those determined to be in violation of the law will be recorded and those that are not, will be returned to the submitter unrecorded.

Please note that the County Recorder is not liable for modification not authorized by law. This is the sole responsibility of the holder of ownership interest who caused the modified recordation per Government Code Section 12956.2 subdivision (f).

Pursuant to the requirements of AB1466, and no later than July 1, 2022, the Assessor-County Clerk-Recorder will post an implementation plan outlining our strategy to identify records with discriminatory restrictions.

Recording Requested By

When recorded mail document to

Above Space for Recorder's Use Only

RESTRICTIVE COVENANT MODIFICATION

I (We) _____ have an ownership interest of record in the property located at _____ that is covered by the document described below.

The following referenced document contains a restrictive covenant based on race, color, religion, sex, familial status, marital status, disability, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry that violates state and federal fair housing laws and that restriction is void. Pursuant to Section 12956.2 of the Government Code, this document is being recorded solely for the purpose of eliminating that restrictive

covenant as shown on page(s) _____ of the document recorded on _____ (date)

In book _____ and page _____, or Document No. _____ of the Official records of the County of _____, State of California.

The document referenced above was originally indexed in the following manner _____

_____ and this document shall be indexed in like manner pursuant to Section 12956.2 (e).

The effective date of the terms and conditions of this modification document shall be the same as the effective date of the original document referenced above.

Dated _____



Printed Name(s)

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 _____ }

On _____ before me, _____, a Notary Public, personally appeared _____ 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 signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

107749

II- 55.45

RE: 4779 IM: 1

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE
PLANNED UNIT DEVELOPMENT
SEQUOYAH HEIGHTS

A. DAME CONSTRUCTION CO., INC., a California corporation, and BAY-O-VISTA REALTY CO., a California corporation, together doing business as DAME/FEDERIGHI, (hereinafter called "Declarant") is the owner of all that certain real property located in the County of Alameda, State of California, commonly known as SEQUOYAH HEIGHTS, Oakland, California, and more particularly described in Exhibit A. attached hereto and incorporated herein by this reference;

B. SEQUOYAH HEIGHTS is being developed by Declarant as a Planned Development in accordance with the applicable laws of the State of California;

C. Declarant intends to impose upon the SEQUOYAH HEIGHTS property mutually beneficial restrictions under a general plan of improvement for the benefit of the property and the owners thereof;

D. Declarant intends to develop SEQUOYAH HEIGHTS in phases, the first of which phases is more particularly described in Exhibit B, attached hereto and by this reference incorporated herein, which property is herein called the Subject Property.

NOW, THEREFORE, Declarant hereby declares that the Subject Property is held and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the following limitations, restrictions, covenants and conditions, all of which are declared and agreed to be in furtherance of a plan for the subdivision, improvement, and sale of said property and are established and agreed upon for the purpose of enhancing and perfecting the value, desirability and attractiveness of the real property and every part thereof. All of the limitations, covenants, restrictions and conditions shall run with the real property

and shall be binding on all parties having or acquiring any right, title or interest therein or any part thereof, and shall be for the benefit of each owner of any portion of said real property or any interest therein, and shall inure to the benefit of and be binding upon each successor in interest of the owners thereof. Each and all of the said limitations, easements, uses, obligations, covenants, conditions, and restrictions shall be deemed to be, and shall be construed as equitable servitudes, enforceable by any of the owners of any of the individual units against any other owner, tenant, or occupant of the property, or any portion thereof.

1. DEFINITIONS.

Unless the context clearly indicates a different meaning therefor, the terms used herein shall have the meanings given to them in the deed, the Planned Development Map and as hereinafter defined as follows:

1.1 "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for the Planned Unit Development of SEQUOYAH HEIGHTS.

1.2 "Subject Property" shall mean and refer to that certain real property described in Exhibit B attached hereto, and all other real property which may become subject to this Declaration, including the Common Area.

1.3 "Common Area" shall mean and refer to Lots 176, 179, 181, 182 and 183 as shown on the

map of the Subject Property and intended to be devoted to the common use and enjoyment of the owners of the Subject Property, and otherwise to other than exclusively residential use. Common Area shall include all facilities, and improvements located within the Common Area, including drives, stairs, walks, parking areas, sewers, electrical, water, gas and telephone services, storage and equipment areas of enclosures, open spaces, planted and landscaped areas, swimming pool, club house, and attendant

facilities and equipment and all other improvements which may be placed upon or located in the Common Area.

1.4 "Association" shall mean and refer to the SEQUOYAH HEIGHTS HOME OWNERS' ASSOCIATION, its successors and assigns, incorporated as a non-profit corporation under the laws of the State of California, to own, manage and operate the facilities in the Common Area.

1.5 "Declarant" shall mean and refer to DAME CONSTRUCTION CO., INC., and BAY-O-VISTA REALTY CO., together doing business as DAME/FEDERIGHI, their successors and assigns if such successors or assigns should acquire more than one undeveloped lot from the declarant for the purpose of development.

1.6 "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot which is a part of the Subject Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

1.7 "Lot" shall mean and refer to any plot of land shown upon any recorded planned development or subdivision map of the Subject Property with the exception of the Common Area.

1.8 "House" shall mean and refer to any portion of a building designed and intended for use and occupancy as a single family residence, whether attached to or detached from any other house.

1.9 "Mortgage" shall mean a deed of trust as well as a mortgage;

1.10 "Mortgagee" shall mean a beneficiary under or holder of a deed of trust as well as a mortgagee;

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

1.12 "Maintenance" shall mean the exercise of reasonable care to keep buildings, roads, recreational facilities, landscaping,

lighting, and other related improvements and fixtures in a condition comparable to their original condition, normal wear and tear expected. Maintenance of landscaping shall further mean the exercise of generally accepted garden management practices necessary to promote a healthy, weedfree environment for optimum plant growth.

2. MEMBERSHIP IN ASSOCIATION AND VOTING RIGHTS.

2.1 Every owner of a lot which is subject to assessment shall be a member of the Association; provided that any person who holds such interest merely as security for the performance of any obligation shall not be a member. Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment.

2.2 The Association shall have two classes of voting membership:

CLASS A - Class A members shall be all owners with the exception of the declarant and shall be entitled to one vote for each house and lot owned. When more than one person holds an interest in any house and lot, all such persons shall be members. The vote for such lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any lot.

CLASS B. The Class B members shall be the Declarant who shall be entitled to three (3) votes for each lot owned in all phases of the planned unit development known as SEQUOYAH HEIGHTS, which have been made part of the Subject Property. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) when the total votes outstanding in the Class A membership equals the total votes outstanding in the Class B membership;
- (b) upon the second anniversary of the issuance of the most recent public report issued by the California Department of Real Estate for a phase of the project, SEQUOYAH HEIGHTS; or
- (c) Upon the fourth anniversary of the original issuance of the subdivision final public report for the first phase of this project.

2.3 Any vote may be cast by an owner in person or by proxy. All proxies shall be in writing, dated and signed by the owners and filed with the Board of Directors before commencement of any meeting. No proxy shall extend beyond a period of eleven (11) months, and every proxy shall automatically cease upon sale by the owners of his or their lot.

2.4 Regular meetings of members of the Association shall be held not less frequently than once each calendar year at a time and place prescribed by the Bylaws. The first meeting of the Association, whether a regular or special meeting, shall be held within 45 days after the closing of the sale of the SEQUOYAH HEIGHTS interest which represents the 51st percentile interest authorized for sale under the first public report for SEQUOYAH HEIGHTS, but in no event shall the meeting be held later than six months after the closing of the sale of the first subdivision interest.

2.5 Meetings of Association members shall be held within SEQUOYAH HEIGHTS or at a meeting place in Alameda County as close thereto as possible.

2.6 A special meeting of the members of the Association shall be promptly called by the Board upon:

- (a) the vote for such a meeting by a majority of a quorum of the Board;
- (b) receipt of a written request therefor signed by members representing not less than 25% of the total voting power of the Association or by members representing

not less than 15% of the voting power residing in the C-43.

A members.

2.7 Written notice of regular and special meetings shall be given to members by the Board by mail. Except in emergency situations, at least 10 days notice of any meeting shall be provided. The notice shall specify the place, day and hour of the meeting and, in the case of a special meeting, the nature of the business to be undertaken.

2.8 (a) A quorum for the transaction of business at a meeting of members of the Association through presence in person or by proxy shall be 50% of the total voting power of the Association.

(b) In the absence of a quorum at a member's meeting a majority of those present in person or by proxy may adjourn the meeting to another time, but may not transact any other business. An adjournment for lack of a quorum shall be to a date not less than five days and not more than thirty days from the original meeting date. The quorum for such a meeting may be set by the persons present at the adjourned meeting, but it shall not be less than 25% of the total voting power of the Association.

2.9 The first election of the Board shall be conducted at the first meeting of the Association. All positions on the Board shall be filled at that election.

2.10 (a) Cumulative voting in the election members shall be prescribed for all elections in which more than two positions on the Board are to be filled. Voting for the Board shall be by secret written ballot.

(b) Unless the entire Board is removed from office by the vote of Association members, an individual Board member shall not be removed prior to the expiration of his term of office if the number of votes cast against his removal is greater than the quotient arrived at by dividing the total number of votes that may be cast under cumulative voting procedures by a divider equal to 1 plus the authorized number of Board members.

2.11 (a) At least one representative of the Board

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shall be elected solely by the votes of the Class A members.

(b) A Board member who has been elected to office solely by the votes of the Class A members may be removed from office prior to the expiration of his term of office only by the vote of at least a simple majority of the voting power residing in the Class A members.

2.12 At the first annual meeting the members shall elect three directors for a term ending at the first annual meeting thereafter, three directors for a term ending at the second annual meeting thereafter, and three directors for a term ending at the third annual meeting thereafter; and at each annual meeting thereafter the members shall elect three directors for a term of three years. Cumulative voting is permitted for the election of all directors.

3. MAINTENANCE; ASSESSMENTS.

3.1 The declarant, for each lot owned within the subject property hereb, covenants and each owner of any lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

(a) Annual assessments or charges; and (b) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the lot and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

3.2 The Board, for the benefit of the Subject Property and the owners, shall enforce the provisions hereof

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and shall acquire and shall pay for out of the maintenance assessments herein provided for, the following:

(a) Water, sewer, garbage, electrical, telephone, gas, and other necessary utility services for the Common Area, and to the extent not separately metered or charged, for the lots and Common Area subject to exclusive easements;

(b) A policy or policies of fire insurance with extended coverage endorsement, vandalism and malicious mischief endorsement. Said fire insurance shall be for the full insurable replacement value of the Common Area. The Board may obtain such other fire and casualty insurance as the Board shall determine gives substantially equal or greater protection to the owners, and their mortgagees, as their respective interest may appear. Said policy or policies shall provide for a separate loss payable endorsement in favor of the mortgagee or mortgagees of each house and lot if any;

(c) A policy or policies insuring the Board, the owners, and any manager appointed as hereinafter provided, against any liability to the public or to the owners (of lots and of the Common area), and their invitees, or tenants, incident to the ownership and/or use of the Subject Property, and including the personal liability exposure of the owners. Limits Liability under such insurance shall not be less than Five Hundred Thousand Dollars (\$500,000.00) for any one person injured, One Million Dollars (\$1,000,000.00) for any one accident and Fifty Thousand Dollars (\$50,000.00) for property damage for each occurrence (such limits and coverage to be reviewed at least annually by the Board and increased in its discretion). Said policy or policies shall be issued on a comprehensive liability basis and shall be cross-liability endorsed so that the rights of named insureds under the policy or policies shall not be prejudiced as represents his, her or their action against another named insured;

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(d) Workmen's Compensation Insurance to the extent necessary to comply with any applicable laws;

(c) The services of a person or firm to manage its affairs (herein called "the Manager") to the extent deemed advisable by the Board as well as such other personnel as the Board shall determine shall be necessary or proper for the performance of its functions or operation of the Subject Property, whether such personnel are employed directly by the Board or are furnished by the Manager;

(f) Legal and accounting services necessary or proper in the operation of the Subject Property or the enforcement of this Declaration;

(g) If the Board deems it advisable, a fidelity bond naming the Manager, and such other persons as may be designated by the Board as principals and the owners as obligees, for the first year in an amount at least equal to the estimated cash requirement for that year as determined by the Board, and for each year thereafter in an amount at least equal to the total sum collected through the maintenance fund during the preceding year;

(h) Exterior painting, maintenance, repair and all landscaping of the Common Area, painting, maintenance and repair of the furnishings and equipment for the Common Area as the Board shall determine are necessary and proper, the Board shall have the exclusive right and duty to acquire the same except as expressly otherwise provided herein;

(i) Maintenance and repair of streets, sidewalks, storm drains, sanitary sewers, driveways and walkways lying within the Common Area;

(j) In addition to maintenance of the Common Areas, the Association shall provide the following exterior maintenance upon each house and lot: painting, repairing, replacement and care of and for roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, and other exterior improvements, excepting, however, landscaping and maintenance of the fenced rear yard areas for the houses, which shall be the responsibility of the respective owners.

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Such exterior maintenance shall not include repair, replacement or maintenance of glass surfaces. If the need for any such maintenance or repair is caused through the willful or negligent act of the owner or his family, guests, invitees or lessees; then, subject to the provisions of Article 17 hereof, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which the lot of such owner is subject and shall be treated as though a monthly or a special assessment as the Board in its sole discretion shall determine.

(k) Any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, insurance, taxes, or assessments which the Board is required to secure or pay for pursuant to the terms of this Declaration or by law or which in its opinion shall be necessary or proper for the operation of the Common Area or for the enforcement of this Declaration;

(l) Any amount necessary to discharge any lien or encumbrance levied against the entire property or any part thereof which may in the opinion of the Board constitute a lien against the Common Area, rather than merely against the interests therein of particular owners, provided that where one or more owners are responsible for the existence of such lien, shall be jointly and severally liable for the cost of discharge and any costs incurred by the Board by reason of said lien or liens shall be specially assessed to said owners;

(m) Maintenance and repair of any House (except as otherwise provided herein) if such maintenance or repair is reasonably necessary in the opinion of the Board to protect the Common Area or preserve the appearance and value of the Subject Property, and the owner or owners of said houses have failed or refused to perform said maintenance or repair; then, subject to the provisions of Article 17 hereof, the Board shall levy a special assessment against the house and lot of such owner or owners for the cost of said maintenance or repair.

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(n) To the extent not assessed to or paid directly by the owners, the Association shall pay all real and personal property taxes and assessments levied upon any portion of the Common Area or other property owned by the Association.

3.3 The Board's powers hereinabove enumerated shall be limited in that the Board shall have no authority to acquire and pay for out of the maintenance fund capital additions and improvements (other than for purposes of replacing portions of the Common Area, subject to all the provisions of these Restrictions). Furthermore, the Board may not, without the vote or written assent of a majority of the Class A members:

(a) Impose a regular annual assessment per lot which is more than 20% greater than the regular assessment for the immediately preceding fiscal year; or

(b) In any fiscal year, levy special assessments to defray the costs of any action or undertaking on behalf of the Association which in the aggregate exceed 5% of the budgeted gross expenses of the Association for that fiscal year.

3.4 Water, gas, electrical, cable television and telephone service for each home and lot shall be paid for by the owner thereof.

3.5 Board Powers, Exclusive. The Board shall have the exclusive right and obligation to contract for all goods, services, and insurance, payment for which is to be made from the maintenance fund except as expressly otherwise provided herein. No service contract shall be for a longer period than one (1) year, unless approved by a majority of the owners.

3.6 Within thirty (30) days prior to the beginning of each calendar year the Board shall estimate the net charges to be paid during such year (including a reasonable provision for contingencies and replacements and less any expected income and any unallocated surplus from the prior year's fund.) Such estimated cash requirement shall be assessed to the owner of

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each lot equally. Declarant shall be liable for payment of any assessment against Lots owned by Declarant, subject to the provisions hereof. If said sum estimated proves inadequate for any reason, including nonpayment of any owner's assessment, the Board may at any time levy a further assessment, which shall be assessed in like proportions, unless otherwise provided herein. Assessments made pursuant to this paragraph shall be paid to the Board in equal monthly installments on or before the first day of each month during such year, or in such other reasonable manner as the Board shall designate.

3.7 The rights, duties and functions of the Board set forth in this paragraph may be exercised by Declarant for the period ending thirty (30) days after the election of the first Board hereunder, at the option of the first elected Board.

3.8 All funds collected hereunder shall be expended for the purposes designated herein.

4. SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS.

In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the common area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of 51% of the votes of all of the Class A members and 51% of all of the Class B members, if any. Such votes shall be cast in person or by proxy at a meeting duly called for this purpose as provided herein.

5. NOTICE AND QUORUM FOR MEETING FOR ASSESSMENTS.

Written notice of any meeting of the members of the Association at which an assessment is to be made shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast 50% of

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all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement and the required quorum at the subsequent meeting shall be half of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following preceding meeting.

6. UNIFORM ASSESSMENTS.

Annual and special assessments shall be fixed at a uniform rate for all lots in the Subject Property and shall be collected on a monthly basis.

7. DATE OF COMMENCEMENT OF ANNUAL ASSESSMENTS: DUE DATES.

The annual assessments provided for herein shall commence as to all lots in the Subject Property on the first day of the month following the recordation of the deed for the sale of the first lot in the Subject Property. Until the commencement of assessments, Declarant shall maintain the improvements on the Common Area in good condition and repair at its own expense. Declarant and its successor in interest, if any -- is an owner subject to the payment of regular and special assessments against lots which it owns provided, however, that Declarant and any other owner of a lot which does not include a structural improvement for human occupancy shall be exempt from the payment of that portion of any assessment which is for the purpose of defraying expenses and reserves directly attributable to the existence and the use of the structural improvement, as indicated by the items shown by an asterisk on the attached Exhibit "A". The exemption shall include the below listed items as shown on Exhibit "A".

- 7.1 Roof replacement;
- 7.2 Exterior maintenance;
- 7.3 Walkway and carport lighting;
- 7.4 Refuse disposal;
- 7.5 Cable television; and
- 7.6 Domestic water supplied to living units.

Such exemption from the payment of assessments shall be in

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effect only until a notice of completion of the structural improvement has been recorded or until 120 days after the issuance of a building permit for the structural improvement, whichever first occurs.

8. DEFAULT IN PAYMENT OF ASSESSMENTS.

8.1 Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of nine percent (9%) per annum, plus reasonable attorneys' fees, shall be a lien on the house and lot owned by the owner. The Association may bring an action at law against the owner personally obligated to pay the same, or foreclose the lien against the House and Lot. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his lot. Each of the Lot owners hereby grants and appoints the Board as trustee to enforce such lien and to foreclose such lien by private power

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of sale, as provided in Title XIV, Chapter 2, Article I, of the Civil Code of the State of California, and the authority and power to sell the house and lot of such defaulting owner, or any part thereof, to satisfy said lien, for lawful money of the United States to the highest bidder. Such lien and the right to foreclose the same shall be in addition to and not in substitution for all other rights and remedies which the owner and the Board may have to enforce the provisions hereof.

8.2 A certificate executed and acknowledged by a majority of the Board stating the indebtedness secured by the lien upon any lot created hereunder shall be conclusive upon the owners as to the amount of such indebtedness on the date of the certificate, in favor of all persons who rely thereon in good faith, and such certificate shall be furnished to any owner upon request at a reasonable fee, not to exceed Fifteen Dollars (\$15.00).

9. MORTGAGE PROTECTION. Notwithstanding any provision to the contrary herein contained:

9.1 The liens created hereunder upon any house and lot shall be subject and subordinate to, and shall not affect the rights of the holder of the indebtedness secured by any recorded first mortgage (meaning a mortgage with first priority over other mortgages) upon such interest made in good faith and for value; provided, however, that after the foreclosure of any such mortgage a lien may be again created pursuant to Paragraph 8 hereof on the interest of the purchaser at such foreclosure sale to secure all assessments, whether regular or special, assessed hereunder to such purchaser as an owner after the date of such foreclosure sale, which said lien, if any claimed, shall have the same effect and be enforced in the same manner as provided herein;

9.2 No amendment of this paragraph shall affect the rights of the holder of any such mortgage recorded prior to recordation of such amendment who does not join in the execution thereof;

9.3 By subordination agreement executed by a majority of the Board, the benefits of 9.1 and 9.2 above may be extended to mortgages not otherwise entitled thereto.

10. PROPERTY RIGHTS OF OWNERS AND ASSOCIATION.

10.1 Declarant hereby covenants and declares that all areas designated Common Area as hereinbefore defined shall be conveyed to the Association prior to the conveyance of any lot in the Subject Property by a grant deed free and clear of all liens and encumbrances except the lien of current taxes and easements and restrictions of record and legal highways or rights of way.

10.2 Every owner and member of the Association shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every lot, subject to the following provision:

(a) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;

(b) The right of the Association to suspend the voting rights and right of use of the recreational facilities by an owner for any period during which assessment against his lot remains unpaid;

(c) 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 purposes subject to such

conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of members agreeing to such dedication or transfer has been recorded; provided, that during the development and construction of the planned unit development of the Subject Property declarant may dedicate easements for utilities and other purposes as are consistent with the development of the Subject Property and in conformity with the final plans for the development on file with the City of Oakland or any city-approved modifications thereof.

10.3 Any owner or member of the Association may delegate in accordance with the by-laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

10.4 Easements for installation and maintenance of utilities, drainage facilities, and cable television system, are reserved as shown on the recorded map of SEQUOYAH HEIGHTS. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities or which may change the direction or flow or drainage channels in the easements or which may obstruct or retard the flow of water, through drainage channels in the easements. The easement area of each lot and all improvements in it shall be maintained continuously by the owner of the lot, except for those improvements for which a public authority or utility is responsible. The easement portions of the Common Area and all improvements in it shall be maintained continuously by the Association, except for those improvements for which a public authority or utility is responsible.

10.5 The Board or its agents may enter upon any lot or exterior of any house of roof thereof when necessary in

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connection with any maintenance, landscaping or construction for which the Board is responsible. Such entry shall be made with as little inconvenience to the owners as practicable, and any damage caused thereby shall be repaired by the Board at the expense of the maintenance fund.

10.6 There shall be no judicial partition of the Subject Property or any part thereof, nor shall Declarant or any person acquiring any interest in the Subject Property or any part thereof seek any such judicial partition, until the happening of the conditions set forth in Paragraph 13 hereof; provided, however, that if any house and lot shall be owned by two or more co-tenants as tenants-in-common or as joint tenants, nothing herein contained shall be deemed to prevent a judicial partition as between such co-tenants.

11. USE OF THE SUBJECT PROPERTY. The houses, lots and Common Area shall be occupied and used as follows:

11.1 Each house and lot shall be used for residential purposes by the owner, his lessees, or guests, and for no commercial, business, or other purpose; provided, however, that Declarant may use any of the units owned by Declarant at any time as sales models.

11.2 The Common Area, and all structures and improvements located in the Common Area, shall be used exclusively for recreational purposes, and shall not be used for residential or commercial purposes, except as an incident to the recreational use.

11.3 There shall be no obstruction of the Common Area. Nothing shall be stored in the Common Area without the prior consent of the Board except in designated parking spaces and

storage areas as designed on the Plan;

11.4 Nothing shall be done or kept in any house or lot or in the Common Area which will increase the rate of insurance on the Common Area or any part of the Subject Property without the prior written consent of the Board. No owner shall permit anything to be done or kept in his house or lot or in the Common Area which will result in the cancellation of insurance on any house or any part of the Common Area, or which would be in violation of any law; no waste will be committed in the Common Area. No gasoline, kerosene, cleaning solvents or other flammable liquid shall be stored in the Common Area or houses, provided, however, that reasonable amounts in metal containers may be stored in storage areas as designated by the Board.

11.5 No sign of any kind shall be displayed to the public view on or from any House or Lot or the Common Area, without the prior consent of the Board; provided, however, that nothing herein shall be deemed to prohibit the display of signs of customary and reasonable dimensions advertising any House for sale; and provided further, that Declarant shall have the right to maintain nonmoving signs in connection with the operation of its model units and the conduct of selling activities in connection therewith;

11.6 No animals, livestock or poultry or a dog shall be raised, bred, or kept in any house or lot or in the Common Area, except one "fixed" cat, and/or one dog weighing less than twenty-five (25) pounds, and/or two (2) pet birds, and/or per fish, may be kept in each house subject to the rules and regulations adopted by the Board; the Board may, subject to the provisions of Article 17 hereof, order removal of any such pet which creates excessive noise.

11.7 No noxious or offensive activity shall be carried on in any house or lot or in the Common Area, nor shall anything be done therein which may be or become an annoyance or nuisance to the other owners;

11.8 Nothing shall be altered or constructed in or removed from the Common except upon the written consent of the Board; provided, however, that without such consent, owners may make such alterations of Common Area as do not adversely affect the structural integrity of any building or improvements or alter the exterior appearance of any part thereof, such permitted alterations to include, without limitation, interior remodeling of houses and combining contiguous houses for use as a single residence;

11.9 There shall be no violation of rules for the use of the Common Area adopted by the Board and furnished in writing to the owners, and the Board is authorized to adopt such rules;

11.10 Parking spaces shall be used solely for parking and storage of noncommercial passenger motor vehicles, except as otherwise permitted by the Board, and no such area shall be used for major repair, construction or reconstruction of any vehicle, boat or any other item or thing;

11.11 None of the rights and obligations of the owners created herein, or by the Planned Unit Development shall be altered in any way by encroachments due to settlement or shifting of structures or any other cause. There shall be valid easements for the maintenance of said encroachments as long as they shall exist; provided, however, that in no event shall a valid easement for encroachment be created in favor of an owner or owners if said encroachment occurred due to the willful conduct of said owner or owners after conveyance of that house and lot by Declarant;

11.12 No basketball standards or other devices used for sports shall be maintained on any house.

11.13 No lot or common area shall be used or maintained as a dumping ground for rubbish. Trash, garbage, or other waste

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shall not be kept except in a clean and sanitary condition in a nonconspicuous place.

11.14 Except as shown on the final planned unit development as approved by the City of Oakland for the Subject Property, or any city-approved modification thereof:

(a) No masts, towers, poles or antennas, including but not limited to antennas used for amateur radios, television, FM radio or AM radio, shall be erected or maintained upon any lot or house or other structure erected thereon; and

(b) No fence, wall or hedge higher than six (6) feet shall be erected or maintained on any lot.

11.15 All landscaping shall be installed and maintained solely as shown on the Planned Unit Development for the Subject Property as approved by the City of Oakland, or any city approved modification thereof;

11.16 No boats, campers or house trailers shall be stored in such a manner as to be visible from the street, and shall be kept in garages only;

11.17 All facilities in the Common Area, shall be used only in conformance with the written rules adopted by the Board, upon payment of the fees or deposits required by such rules. The Board is authorized to impose fines of up to Fifty and No/100 Dollars (\$50.00) each for violations of its rules, after notice and a hearing before the Board.

11.18 Each owner shall be responsible for compliance with the provisions hereof by his guests and lessees.

12. OWNERS' OBLIGATIONS TO REPAIR.

Except for those portions which the Board is required to maintain and repair hereunder each owner shall, at his sole cost and expense, maintain and repair his house and lot, keeping the same in good condition.

13. DAMAGE AND DESTRUCTION.

If any of the Common Area is damaged by fire or other casualty

all insurance proceeds shall be used to rebuild or repair such improvements in accordance with the original plans and specifications therefor.

13.1 If the cost of repairing or rebuilding does not exceed the amount of available insurance proceeds by more than Ten Thousand and No/100 Dollars (\$10,000.00) such insurance proceeds shall be paid to the insurance trustee designated in the same manner as set forth in subparagraph 13.2(a). The Board shall thereupon contract to repair or rebuild the damaged portions of the Common Area, in accordance with the original plans and specifications therefor and the funds held in the insurance trust fund shall be used for this purpose. If the insurance proceeds are insufficient to pay all of the costs of repairing or rebuilding, the Board shall levy a special assessment equally on all owners, to make up any deficiency.

13.2 If subparagraph 13.1 is inapplicable, then:

(a) All insurance proceeds shall be paid to a bank or trust company designated by the Board to be held for the benefit of the owners and their mortgagees as their respective interests may appear. The Board is authorized to enter on behalf of the owners into such agreement, consistent with these Restrictions, with such insurance trustee, relating to its powers, duties and compensation, as the Board may approve.

(b) The Board shall obtain firm bids (including an obligation to obtain a performance bond) from two or more responsible contractors to rebuild the improvements on the Common Area in accordance with its original plans and specifications and shall, as soon as possible thereafter, call a special meeting of the owners to consider such bids. If the Board fails to do so within sixty (60) days after the casualty

occurs, any owner may obtain such bids, and call and conduct such meeting as herein provided (failure to call such meeting, or to repair such casualty damage, within twelve (12) months from the date such damage occurred shall be deemed for all purposes a decision not to rebuild said building). At such meeting, the owners may by sixty-six and two-thirds percent ($66 \frac{2}{3}\%$) vote elect to reject all of such bids and thus not to rebuild. Failure to reject all bids shall authorize the Board to accept the unrejected bid it considers most favorable;

(c) If a bid is to be accepted, the Board shall levy a special assessment, equally apportioned for each lot, to make up any deficiency between the total insurance proceeds and the contract price for such repair or rebuilding, and such assessment and all insurance proceeds, whether or not subject to liens of mortgagees, shall be paid to said insurance trustee to be used for such rebuilding. If any owner shall fail to pay the special assessment within thirty (30) days after the levy thereof, the Board shall make up the deficiency by payment from the maintenance fund. Upon payment, the Board shall let the contract to the successful bidder;

(d) Upon an election not to rebuild, the Board, as soon as reasonably possible and as agent for the owners, shall sell the entire Common Area, in its then condition, free from the effect of this Declaration, which shall terminate upon such sale, on terms satisfactory to the Board. The net proceeds, and all funds held by said insurance trustee, shall thereupon be distributed to the owners in proportion to the interest of each owner in the Common Area, and to the mortgagees of the interest of the owners, as their interests may appear;

13.3 Within sixty (60) days after any such damage occurs, the Board, or if they do not, an owner, the insurer, the insurance trustee, or any mortgagee of any owner, shall record a sworn declaration stating that such damage has occurred, describing it, identifying the building suffering such damage, the name of any insurer against whom claim is made, and the name of any insurance trustee, reciting that the sworn declaration is recorded pursuant to this paragraph of these restrictions, and that a copy of such sworn declaration has been served pursuant to the provisions of Paragraph 5 hereof on the owners;

13.4 If the owners decide not to rebuild, either by calling a meeting and rejecting all bids presented or by failing to call such a meeting and failing to repair such damage within twelve (12) months after the damage occurs, then the Board, or if they do not, any owner or mortgagee of any owner, shall record a sworn declaration setting forth such decision and reciting that under the provisions of this Declaration the prohibition against judicial partition provided for in Paragraph 10.6 hereof has terminated and that judicial partition of the project may be obtained pursuant to section 752b(4) of the Code of Civil Procedure of the State of California. Upon final judgment of a court of competent jurisdiction freeing such partition, these Restrictions shall terminate;

13.5 The provisions of this paragraph cannot be amended without the written consent of seventy-five percent (75%) of the Class A members.

14. ALTERATIONS, ADDITIONS, AND IMPROVEMENTS OF COMMON AREA.

There shall be no structural alterations, capital additions to or capital improvements of the Common Area without the prior approval of owners holding a majority of the votes of each class of membership.

15. PROPERTY BUDGETS AND FINANCIAL RECORDS.

15.1 Financial statements for the Association shall be regularly prepared and copies shall be distributed to each member as follows:

(a) A pro forma operating statement (budget) for each fiscal year shall be distributed not less than 60 days before the beginning of the fiscal year.

(b) A balance sheet -- as of an accounting date which is the last day of the month closest in time to six months from the date of closing of the first sale of an interest in the subdivision -- and an operating statement for the period from the date of the first closing to the said accounting date, shall be distributed within 60 days after the accounting date. This operating statement shall include a schedule of assessments received and receivable identified by the number of the subdivision interest and the name of the entity assessed.

(c) A balance sheet as of the last day of the Association's fiscal year and an operating statement for said fiscal year shall be distributed within 90 days after the close of the fiscal year.

15.2 An external audit by an independent public accountant shall be required for fiscal year financial statements (other than budgets) for any fiscal year in which the income to the Association exceeds \$75,000.00.

15.3 The membership register, books of account and minutes of meetings of the members, of the governing body and of committees of the governing body of the Association shall be made available for inspection and copying by any member of the Association -- or by inspection and copying by any member of the Association -- or by his duly appointed representative -- at any reasonable time and for a purpose reasonably related to his interest as a member, at the office of the Association or at such other place within the subdivision as the Board shall prescribe.

(a) Notice to be given to the custodian of the records by the member desiring to make the inspection.

(b) Hours and days of the week when such an inspection may be made.

(c) Payment of the cost of reproducing copies of documents requested by a member.

15.5 Every director shall have the absolute right at any reasonable time to inspect all books, records and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make extracts and copies of documents.

16. ADJOINING PROPERTY OWNERS -- PARTY WALLS; EASEMENTS.

16.1 It is contemplated that houses will be arranged and attached in groups of two (2) or more per single structure, and that there will be common walls between adjoining houses within each such structure. Each house will be constructed on an individual lot with the property line dividing that lot from the adjoining lot upon which adjoining houses within the same structure are situated, running between and through the common walls, common footings, common foundation, common insulation and common roof joinder. In order to alert each owner his responsibilities to owners of adjoining houses within same structure, and to assure such owners of adjoining houses of their respective rights and privileges, and following conditions and covenants in this Article 16 are hereby adopted and established.

16.2 Each wall which is built as a part of the original construction of the houses upon the Subject Property and placed between two houses upon the Subject Property and placed between two houses within one structure and each fence which is built as part of such original construction and placed between two immediately adjacent lots, shall constitute a party wall.

and to the extent not inconsistent with the provisions of this Article 16, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

16.3 The cost of reasonable repair and maintenance of such a party wall shall be shared by the owners who make use of the wall in proportion to such use.

16.4 If such a party wall is destroyed or damaged by fire or other casualty, any owner who has used such party wall may restore it, and if other owners thereafter make use of such party wall, they shall contribute to the cost of restoration thereof in proportion to such use, without prejudice, however, to the right of the restoring owner and such other owners, or any thereof, to enforce a larger contribution from any owner or owners making use of such party wall whose negligent or willful acts or omissions occasioned such damage or destruction.

16.5 Notwithstanding any other provision of this Article 16, an owner who by his negligent or willful acts causes such party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

17. ENFORCEMENT.

The Association, or any owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. Notwithstanding anything herein to the contrary.

17.1 The Association may not cause a forfeiture or abridgement of an owner's rights to the full use and enjoyment of his individually owned interest on account of a failure by the owner to comply with provisions of the governing instruments or of duly enacted rules of operation for common areas and facilities except where the loss or forfeiture is the result of the

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judgment of a court or a decision arising out of arbitration or on account of a foreclosure or sale under a power of sale for failure of the owner to pay assessments levied by the Association; provided, further,

17.2 The Board may impose monetary penalties, temporary suspensions of an owner's rights as a member of the Association or other appropriate discipline for failure to comply with the governing instruments provided that the accused is given at least 30 days' written notice and the opportunity to be heard by the Board with respect to the alleged violations before a decision to impose discipline is reached.

18. SEVERABILITY.

Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other

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provisions which shall remain in full force and effect.

19. RIGHTS OF FIRST MORTGAGEES.

Notwithstanding contrary or conflicting provisions contained in other articles of this declaration.

19.1 The first mortgagee of any House and Lot may, by written notice to the Association, request written notice of any default by the mortgagor of such house and lot in the performance of such mortgagor's obligations under this declaration within thirty (30) days. Such request shall state the name and mailing address of the mortgagee, the name of the mortgagor, the date of recording of the mortgage and the official records book and page number, file number or other reference identifying such recording, and the residential lot number of the Planned Unit Development of the Subject Property encumbered by said mortgage; and such request shall also contain a reference to this Article 19, of the declaration of covenants, conditions and restrictions for said Planned Unit Development. Each notice of default given pursuant to such request may be sent by regular mail, postage prepaid, addressed to the mortgagee at the address stated in such request. Following the elapse of two (2) years from the date of receipt of the written request last given by any mortgagee pursuant to this Article 19, the Association shall have no further duty to notify such mortgagee of mortgagor defaults.

19.2 Any first mortgagee who comes into possession of or title to a house and lot pursuant to the remedies provided for in the mortgage, or foreclosure of the mortgage, shall be exempt from any existing right of first refusal of any party as to the purchase of such house and lot from the mortgagor thereof.

19.3 Any first mortgagee who obtains title to a house and lot pursuant to

foreclosure of the mortgage shall be liable for all assessments as they accrue on and after the date said mortgagee acquires title. Successors in interest are otherwise liable for delinquent assessments, whether or not a lien has been filed.

19.4 Unless at least seventy-five percent (75%) of the first mortgagees (based on one (1) vote for each mortgage) of lots within the Subject Property have given their prior written approval, the Association shall not be entitled to:

(a) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer real estate or improvements thereon which are owned, directly or indirectly, by Association for the benefit of the lots in the Subject Property;

(the granting of easements for public utilities or for other public purposes consistent with the intended use of the Subject Property shall not be deemed a transfer within the meaning of this clause);

(b) change the method of determining the obligations, assessments, dues or other charges which may be levied against an owner;

(c) by act or omission change, waive or abandon any scheme or regulation, or enforcements thereof, pertaining to the architectural design or the exterior appearance of houses, the maintenance of party walls or common fences and walkways, or the upkeep of lawns and plantings in the Subject Property;

(d) fail to maintain fire and extended coverage on insurable common area on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost);

(e) use hazard insurance proceeds for losses to any common area for other than the repair, replacement or reconstruction of such improvements.

19.5 First mortgagees shall have the right to examine the books and records of the Association, upon reasonable advance

request in writing.

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19.6 Nothing herein or in the Articles of Incorporation of the Association or any other instrument relating to the Subject Property gives any owner of any house or lot or other party priority over any rights of first mortgagees pursuant to their mortgages, in the case of a distribution to such lot owners of insurance proceeds or condemnation awards for losses to or taking of common property in the Subject Property.

19.7 Association assessments shall include an adequate reserve fund for maintenance, repairs and replacement of those elements of the Common Area that must be replaced on a periodic basis, and shall be payable in regular installments rather than by special assessments.

19.8 The terms "mortgage", "mortgagor", and "mortgagee" as used in this Article shall include, respectively a deed of trust and the trustor and beneficiary thereunder.

20. INTERPRETATION.

The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of a Planned Unit Development. Failure to enforce any provision hereof shall not

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constitute a waiver of the right to enforce said provisions or any other provision hereof.

21. AMENDMENT.

Except as otherwise provided herein, the provisions of this Declaration may be amended by an instrument in writing signed and acknowledged by record owners holding seventy-five percent (75%) of the total vote hereunder, which amendment shall be effective upon recordation in the office of the Recorder of the County of Alameda.

22. RULES FOR COMMON AREA.

The Board may, from time to time, propose such rules as it deems necessary for the management and control of the common area, which rules shall become effective and binding upon all owners of a house and lot after adoption by sixty (60%) percent of the owners at a meeting called for that purpose or by the written assent of the same number of owners at a meeting called for that purpose or by the written assent of the same number of owners appended to a copy of such proposed house rules. A copy of house rules so adopted shall be furnished to each owner, and each owner, his family, guests, employees, invitees, licensees, or tenants, shall comply with such rules. In the event of breach of any such rules by an owner, his family, guests, employees, invitees, licensees, or tenants, the Board for and on behalf of all other owners may take such steps, legal or otherwise, as may be deemed appropriate to enforce compliance with such rule or rules.

23. PURCHASES FOR COMMON AREA.

At any regular or special meeting of the members or owners, the Board may be authorized to purchase furniture or fixtures for use in or on the common area, provided that if the cost of said furniture or fixtures will be in excess of FIVE HUNDRED DOLLARS (\$500.00), the authorization for such purchase must

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be by the affirmative vote of at least sixty percent (60%) of the owners of each class of membership, whether or not present at the meeting. The cost of any such furniture or fixtures, purchase of which is so authorized, shall be paid from the Association funds, and the Board may levy a special assessment to cover said cost, which shall be shared equally by the owners.

24. TERM.

These covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of thirty-five years from the date these covenants are recorded, after which time said covenants shall be automatically extended for successive periods of 10 years unless an instrument signed by a majority of the then owners of the lots has been recorded, agreeing to change said covenants, in whole or in part.

25. ADDITIONS TO PROPERTY SUBJECT TO THIS DECLARATION.

Real property located in the County of Alameda, State of California, in addition to the Subject Property may be made subject to this Declaration in any or all of the following circumstances:

25.1 Upon prior written approval by two-thirds of the then existing members of each voting class of the Association and as provided in this Declaration, the owner of any property who is desirous of subjecting it to the scheme of this Declaration (and thereby to the jurisdiction of the Association) may file of record in the Office of the County Recorder of the County of Alameda, State of California, a Supplementary Declaration of Covenants and Restrictions, which filing shall, upon the date thereof, extend the scheme of the covenants and restrictions of this Declaration (and the jurisdiction of the Association) to such property. Such Supplementary Declaration may contain such complementary additions and modifications of the covenants and restrictions

11- 55546 RE-4779 IN-34
contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties, as are not inconsistent with the scheme of this Declaration, and as are given such prior written approval. In no event, however, shall such Supplementary Declaration revoke, or otherwise modify or add to this Declaration of any provisions hereof as the same applies to the Subject Property or any Supplementary Declaration of provision thereof which applies to other real property subjected to this Declaration in the manner provided in this Article 25 and at a time previous to filing of the Supplementary Declaration.

25.2 Upon the prior written approval by two-thirds of the then existing voting members of each class of the Association, upon a merger or consolidation of the Association with another association, as provided in this Declaration of the Association, its properties, rights and obligations shall thereby be transferred to such other surviving association or to the consolidated association, or alternatively, the properties, rights and obligations of such other association shall by such merger be transferred to and added to the properties, rights and obligations of the Association as the surviving corporation pursuant to such merger. The surviving or consolidated association may administer the covenants and restrictions, and exercise the rights of the Association, established by this Declaration as to the Subject Property (and such other real property subjected to this Declaration in the manner provided in this Article 25 and prior to such merger or consolidation), together with the covenants, restrictions and rights established upon and as to any other properties, as one scheme. Except as otherwise provided in this Declaration, no such merger or consolidation shall effect any revocation of, addition to or other modification of this Declaration, or any provision thereof.

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25.3 If within 10 years of the date of incorporation of the Association, the Declarant should develop additional lands within the areas described in the Planned Unit Development in the City of Oakland known as SEQUOYAH HEIGHTS, shown in the Official Records of Alameda County at ~~Book 43 Page 52-62~~ FEELAG 4, 1977, such additional lands may be annexed to the Subject Property without the assent of the Class A members, by a Supplementary Declaration executed and recorded by the Declarant alone. In no event, however, shall such Supplementary Declaration revoke, add to or otherwise modify this Declaration or any provision hereof as the same applies to the Subject Property or any Supplementary Declaration or provision thereof which applies to other real property and at a time previous to filing of the Supplementary Declaration. Assessments shall commence for annexed property upon the recordation of the Supplementary Declaration by which the lots in the phase shall become subject to these restrictions. The real property subject to annexation shall be as shown on a copy of the aforesaid map, attached hereto as Exhibit "B", and by this reference incorporated herein. It is anticipated that the property shall be developed, and annexation accomplished in phases as follows:

- | | |
|---|--|
| Phase I
(property initially
subject to this
declaration) | Lots 1 through 8 and 10: 20
through 60 equalling 49 ts.
Common area in Phase I - s
176, 179, 181, 182, 183. |
| Phase II | Lots 9 through 19, 61 through
72 and 90 through 107 equalling
47 units. Common area in Phase
II - Lots 178 and 184. |
| Phase III | Lots 79 through 89 and 123 through
144 equalling 33 units. Common
area in Phase III - Lots 177, 180,
186, and 189. |
| Phase IV | Lots 108 through 122 and 145
through 174 equalling 45 units.
Common area in Phase IV - Lots
175, 185, 187 and 188. |

Each annexation shall be effected prior to the third anniversary of the original issuance of the most recently issued subdivision public report for a phase of the development as issued by the California Department of Real Estate.

26. LIMITATION OF RESTRICTIONS ON DECLARANT.

Declarant is undertaking the work of constructing houses and lots and incidental improvements upon the Subject Property. The Completion of that work and the sale, rental and other disposition of said houses and lots is essential to the establishment and welfare of the Subject Property as a residential community. In order that Declarant may complete said work, sell, lease, or otherwise dispose of each and all of the houses, and lots upon the Subject Property, and establish the Subject Property as a fully occupied, residential community as rapidly as possible, until sale, rental, or other disposition of lots is completed, Declarant and its contractors, sub-contractors, and representatives shall have the right for a period of not to exceed five (5) years after the recordation hereof to enter upon the Subject Property or any portion thereof, including those lots as is reasonable and necessary which have been conveyed to the individual lot owners, as is reasonable, necessary or advisable for any common driveway purposes, for drainage and encroachment purposes and for ingress to and egress from the common areas for the purpose of completing improvements thereon or for the performance of necessary repair work and for entry onto adjacent property in connection with the development of additional phases of the overall project. Any exercise of this easement right shall be after prior notice to a lot owner, and Declarant and/or successors shall be obligated to repair any damage done to an individual lot and/or the common area in the exercise of this easement right.

27. ARCHITECTURAL CONTROL.

27.1 No building shall be erected, placed or altered on any lot until the construction plans and specifications and a plan showing the location of the structure have been approved by the Architectural Control Committee as to quality of workmanship and materials, harmony of external design with existing structures, and as to location with respect to topography and finish grade elevation. Approval shall be as provided in Paragraph 27.3 hereof. All fencing will be erected in accordance with the required specifications of the City of Oakland.

27.2 The Architectural Control Committee is composed of:

<u>NAME</u>	<u>ADDRESS</u>
Carl D. Damé	2070 San Ramon Blvd. San Ramon, California
Douglas T. Federighi	1051 MacArthur Blvd. San Leandro, California
Irving Loubé	1805 Harrison Street Oakland, California

A majority of the committee may designate a representative to act for it. Neither the members of the committee, nor its designated representative shall be entitled to any compensation for service performed pursuant to these covenants.

27.3 The Declarant may appoint all replacements to this committee until the first anniversary of the issuance of a public report for the subdivision. The Declarant shall have the power to appoint a majority of the members of the Committee until 90% of all the subdivision interests in the overall development have been sold or until the fifth anniversary of the issuance of the final public report for the first phase of

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the subdivision, whichever first occurs.

27.4 After one year from the date of the sale of the first subdivision interest, the Board shall have the power to appoint one member of the Architectural Control Committee until 90% of all of the subdivision interests in the overall development have been sold or until the fifth anniversary date of the issuance of the final public report for the first phase of the subdivision, whichever first occurs. Thereafter the Board shall have the power to appoint all of the members of the Architectural Control Committee.

27.5 Members appointed to the Architectural Control Committee by the Board shall be from the membership of the Association. Members appointed to the Committee by the Declarant need not be members of the Association.

27.6 The committee's approval or disapproval as required in these covenants shall be in writing. If the committee or its designated representative fails to approve or disapprove within 30 days after plans and specifications have been submitted to it, or in any event, if no suit to enjoin the construction has been commenced prior to the completion thereof, approval will not be required and the related covenants shall be deemed to have been fully complied with.

IN WITNESS WHEREOF, DAME CONSTRUCTION CO., INC., corporation, and BAY-O-VISTA REALTY CO., a corporation, have executed this Declaration this 25TH day of MARCH, 1977.

BAY-O-VISTA REALTY, CO.

DAME CONSTRUCTION CO., INC.

BY

[Signature]

BY

[Signature]

BY

BY

RECORDED at REQUEST OF
FOUNDERS TITLE CO.

At 2:30 P.M.

MAR 25 1977

OFFICIAL RECORDS OF
ALAMEDA COUNTY, CALIFORNIA
RENE C. DAVIDSON
COUNTY RECORDER

50200

II- 55546

EXHIBIT A

Lots 1 through 189, inclusive in Tract No. 3747, recorded February 4, 1977, in Book 93, at Pages 52 through 62, Alameda County records.

EXHIBIT B

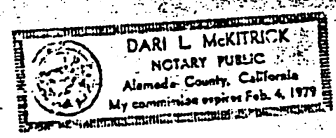
Lots 1 through 61, inclusive and common area lots 176, 178, 179, 181, 182, 183, and 184 in Tract No. 3747, recorded February 4, 1977, in Book 93, at pages 52 through 62, Alameda County records.

RE 4779 IM 40

State of California
County of Alameda

71- 55546

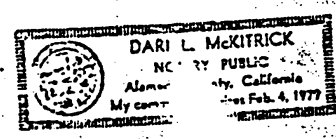
On this 25th day of March 1977, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Carl D. Dame, known to me to be the President of Dame Construction Co., Inc. who executed the within instrument and being known to me to be one of the joint venturers, and acknowledged to me that he executed the within instrument both on the behalf of said corporation and on behalf of said corporation as a joint venturer of said joint venture.



[Signature]

State of California
County of Alameda

On this 25th day of March 1977, before me, the undersigned, personally appeared Douglas Federighi, known to me to be the President of Bay-O-Vista Realty Co., who executed the within instrument and being known to me to be one of the joint venturers, and acknowledged to me that he executed the within instrument both on behalf of said corporation and on behalf of said corporation as a joint venturer of said joint venture.



[Signature]

RE 4779 IN 41

CONSENT 11-55546

The California-Sansome Corporation, a California Corporation
as Trustee and The Bank of California, National Association, A National
Banking Association
as beneficiary under the Deed of Trust made by
Dame-Federighi, A Joint Venture

dated _____ recorded February 25, 1976 in Reel 4269
at Image 570 Recorder's Series No. 76-27823, Official
Records Alameda County, hereby consents to the execution of the foregoing
declaration.

The California-Sansome Corporation, A California Corporation
As Trustee

BY: Donald W. Stillke, V.P.
BY: James M. Guff, Assistant Secretary

The Bank of California, National Association, A National Banking
Association
As Beneficiary

By: Donald W. Stillke, V.P.
By: James M. Guff, Assistant Manager

STATE OF CALIFORNIA

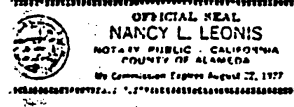
CORPORATION ACKNOWLEDGEMENT

County of Alameda

11-55546

On this 25th day of March in the year one thousand nine hundred and eighty seven

before me, the undersigned, a Notary Public in and for
said County and State, residing therein duly commissioned and sworn, personally appeared
Donald W. Stillke



known to me to be the Vice President
of the corporation described in and that executed the within instruments, and also known to me
to be the person who executed the within instrument on behalf of the corporation therein named,
and he acknowledged to me that such corporation executed the same, pursuant to its by-
laws or a resolution of its board of directors.
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day
and year in this Certificate first above written.

Notary Public in and for said County and State
My Commission Expires Aug. 27, 1977

STATE OF CALIFORNIA CORPORATION ACKNOWLEDGEMENT
County of Alameda ss. 11- 55516 RE: 4719 IM- 42
On this 25th day of March in the year one thousand nine hundred and Seventy Seven
before me the undersigned a Notary Public in and for
said County and State, residing therein duly commissioned and sworn, personally appeared
James M. Griffin
known to me to be the Assistant Manager
of the corporation described in and that executed the within instrument, and also known to me
to be the person who executed the within instrument on behalf of the corporation therein named,
and he acknowledged to me that such corporation executed the same, pursuant to its by-
laws or a resolution of its board of directors.
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day
and year in this Certificate first above written.
Notary Public in and for said County and State
My Commission Expires _____

OFFICIAL SEAL
NANCY L. LEONIS
NOTARY PUBLIC - CALIFORNIA
COUNTY OF ALAMEDA
My Commission Expires August 22, 1977

FORM C.A. - SAM HOPKINS LEGAL FORMS PRINTING SERVICE, 2328 FRUITVALE AVE., OAKLAND 1, CALIFORNIA

STATE OF CALIFORNIA CORPORATION ACKNOWLEDGEMENT
County of Alameda ss. 11- 55516
On this 25th day of March in the year one thousand nine hundred and Seventy Seven
before me the undersigned a Notary Public in and for
said County and State, residing therein duly commissioned and sworn, personally appeared
Donald W. Stillke
known to me to be the Vice President
of the corporation described in and that executed the within instrument, and also known to me
to be the person who executed the within instrument on behalf of the corporation therein named,
and he acknowledged to me that such corporation executed the same, pursuant to its by-
laws or a resolution of its board of directors.
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day
and year in this Certificate first above written.
Notary Public in and for said County and State
My Commission Expires Aug. 22, 1977

OFFICIAL SEAL
NANCY L. LEONIS
NOTARY PUBLIC - CALIFORNIA
COUNTY OF ALAMEDA
My Commission Expires August 22, 1977

FORM C.A. - SAM HOPKINS LEGAL FORMS PRINTING SERVICE, 2328 FRUITVALE AVE., OAKLAND 1, CALIFORNIA

STATE OF CALIFORNIA CORPORATION ACKNOWLEDGEMENT
County of Alameda ss. 11- 55516
On this 25th day of March in the year one thousand nine hundred and Seventy Seven
before me the undersigned a Notary Public in and for
said County and State, residing therein duly commissioned and sworn, personally appeared
James M. Griffin
known to me to be the Assistant Secretary
of the corporation described in and that executed the within instrument, and also known to me
to be the person who executed the within instrument on behalf of the corporation therein named,
and he acknowledged to me that such corporation executed the same, pursuant to its by-
laws or a resolution of its board of directors.
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day
and year in this Certificate first above written.
Notary Public in and for said County and State
My Commission Expires _____

OFFICIAL SEAL
NANCY L. LEONIS
NOTARY PUBLIC - CALIFORNIA
COUNTY OF ALAMEDA
My Commission Expires August 22, 1977

FORM C.A. - SAM HOPKINS LEGAL FORMS PRINTING SERVICE, 2328 FRUITVALE AVE., OAKLAND 1, CALIFORNIA

RE 4779 IN 43

CONSENT

11-55546

The California - Sansome Corporation, a California Corporation
as Trustee and The Bank of California, National Association, A National
Banking Association
as beneficiary under the Deed of Trust made by

Dame-Federighi, A Joint Venture

dated _____ recorded February 23, 1977 in Reel 4731
at Image 555 Recorder's Series No. 77-33184, Official

Records Alameda County, hereby consents to the execution of the foregoing
declaration.

The California-Sansome Corporation, A California Corporation

As Trustee

BY: Donald W. Stillke, V.P.

BY: James M. Giff, Assistant Secretary

The Bank of California, National Association, a National Banking
Association

As Beneficiary

By: Donald W. Stillke, V.P.

By: James M. Giff, Assistant Manager

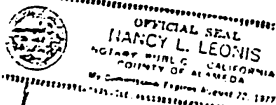
STATE OF CALIFORNIA

County of Alameda
On this 25th day of March

CORPORATION ACKNOWLEDGEMENT
11-55546

before me, the undersigned in the year one thousand nine hundred and seventy seven
said County and State, residing therein duly commissioned and sworn, personally appeared
James M. Giff, a Notary Public in and for

known to me to be the Assistant Manager
of the corporation described in and that executed the within instrument, and also known to me
to be the person who executed the within instrument on behalf of the corporation therein named,
and he acknowledged to me that such corporation executed the same, pursuant to its by-
laws or a resolution of its board of directors.
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day
and year in this Certificate first above written.



My Commission Expires Aug 22, 1977
Notary Public in and for said County and State

STATE OF CALIFORNIA

CORPORATION ACKNOWLEDGEMENT

County of AlamedaOn this 25th day of March

11- 55546

RE 4779 14- 44

before me, the undersigned, a Notary Public in and for said County and State, residing therein duly commissioned and sworn, personally appeared

known to me to be the Vice President of the corporation described in and that executed the within instruments, and also known to me to be the person who executed the within instrument on behalf of the corporation therein named, and he acknowledged to me that such corporation executed the same, pursuant to its by-laws or a resolution of its board of directors.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this Certificate first above written.

Notary Public in and for said County and State

My Commission Expires Aug 22, 1977

FORM S.A. - SAN HOPKINS LEGAL FORMS PRINTING SERVICE, 3338 FRUITVALE AVE., OAKLAND 1, CALIFORNIA

STATE OF CALIFORNIA

CORPORATION ACKNOWLEDGEMENT

County of AlamedaOn this 25th day of March

11- 55546

before me, the undersigned, a Notary Public in and for said County and State, residing therein duly commissioned and sworn, personally appeared

known to me to be the Assistant Secretary of the corporation described in and that executed the within instruments, and also known to me to be the person who executed the within instrument on behalf of the corporation therein named, and he acknowledged to me that such corporation executed the same, pursuant to its by-laws or a resolution of its board of directors.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this Certificate first above written.

Notary Public in and for said County and State

My Commission Expires Aug 22, 1977

FORM S.A. - SAN HOPKINS LEGAL FORMS PRINTING SERVICE, 3338 FRUITVALE AVE., OAKLAND 1, CALIFORNIA

STATE OF CALIFORNIA

CORPORATION ACKNOWLEDGEMENT

County of AlamedaOn this 25th day of March

11- 55546

before me, the undersigned, a Notary Public in and for said County and State, residing therein duly commissioned and sworn, personally appeared

known to me to be the Vice President of the corporation described in and that executed the within instruments, and also known to me to be the person who executed the within instrument on behalf of the corporation therein named, and he acknowledged to me that such corporation executed the same, pursuant to its by-laws or a resolution of its board of directors.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this Certificate first above written.

Notary Public in and for said County and State

My Commission Expires Aug 22, 1977

FORM S.A. - SAN HOPKINS LEGAL FORMS PRINTING SERVICE, 3338 FRUITVALE AVE., OAKLAND 1, CALIFORNIA

Recorded in Official Records, Alameda County
Patrick O'Connell, Clerk-Recorder

10.00

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Recording Requested by:

SEQUOYAH HEIGHTS HOMEOWNERS' ASSOCIATION

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and when recorded - Mail to:

SEQUOYAH HEIGHTS HOMEOWNERS' ASSOCIATION

c/o Barry Consulting & Association Management, Inc.

P.O. Box 555, San Ramon, CA 94583

Telephone (510) 838-1811

SUPPLEMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
TRACT 3747, SEQUOYAH HEIGHTS

The undersigned, SEQUOYAH HEIGHTS HOMEOWNERS' ASSOCIATION, a California non-profit corporation, hereby notifies all persons that it is names as the Homeowners' Association pursuant to that certain Declaration of Covenants, Conditions and Restrictions, Tract 3747, SEQUOYAH HEIGHTS, executed by Dame' Construction Co., Inc. a California Corporation and Bay-O-Vista Realty Co., a corporation.

On March 25, 1977 as Series No: 77-55546, Reel 4779, Image 1, in the office of the Recorder of Alameda County, State of California and covering all units in the following subdivision:

Tract 3747 recorded March 25, 1977, reel. 4779, Image 1; as shown in the Official Records of Alameda County at Map Book 93, pages 52-62, inclusive, recorded February 4, 1977; as amended on May 12, 1977, Series 77-91378, Reel No. 4855, Image 735, Alameda County Official Records.

That all persons are hereby further notified that communications with the said SEQUOYAH HEIGHTS HOMEOWNERS' ASSOCIATION may be made by contacting its duly appointed managing agent as follows:

SEQUOYAH HEIGHTS HOMEOWNERS' ASSOCIATION

c/o Barry Consulting & Association Mgt., Inc.

2092 Omega Road, Suite J

P.O. Box 555, San Ramon, CA 94583

(510) 838-1811

with respect to all matters set forth in said Covenants, Conditions and Restrictions for which the Association is responsible, including but not limited to, Association records and status of Assessment dues.

Executed this 26th day of April, 1995, by,

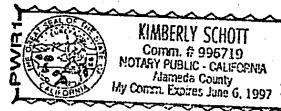
SEQUOYAH HEIGHTS HOMEOWNERS' ASSOCIATION

a California non-profit Corporation

by

Title:

Kimberly E. Schott
President



End of Document

95121765

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of CALIFORNIA
 County of ALAMEDA
 On APRIL 28, 1995 before me, KIMBERLY SCHOTT
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")
 personally appeared ROSEMARY MURPHY
Name(s) of Signer(s)

☐ personally known to me - OR - ☒ 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.



WITNESS my hand and official seal.

Kimberly Schott
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer
 Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer Is Representing: _____

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer
 Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer Is Representing: _____

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

SEQUOYAH HEIGHTS
HOME OWNERS' ASSOCIATION
c/o WALSH PROPERTY MANAGEMENT
P.O. Box 2657
Castro Valley, CA 94546
510/888-8955

Recorded in Official Records of Alameda Co.
Patrick O'Connell, Clerk-Recorder

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**AMENDED DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF
SEQUOYAH HEIGHTS HOME OWNERS' ASSOCIATION
(As Amended in 1997)**

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**AMENDED DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF
SEQUOYAH HEIGHTS HOME OWNERS' ASSOCIATION
(As Amended in 1997)**

This AMENDED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF SEQUOYAH HEIGHTS HOME OWNERS' ASSOCIATION ("Declaration" or "CC&R's") is an amended version of the original Declaration entitled "Declaration of Covenants, Conditions and Restrictions For the Planned Unit Development- Sequoyah Heights" recorded on March 25, 1977 as Document No. 77-55546 in the Official Records of Alameda County, California ("Former Declaration" or "Former CC&R's").

RECITALS

A. Legal Description. This Declaration governs all of the real property and improvements thereon located in the City of Oakland, County of Alameda, State of California, and described as follows:

Lots 1 through 174, inclusive and common area lots 175-189, inclusive, in Tract No. 3747, recorded February 4, 1977, in Book 93, at pages 52 through 62, Alameda County records or as otherwise annexed or reflected in the subdivision documents.

B. The Project. The real property described above is a planned unit development consisting of 174 homes developed in four phases. These homes are a planned development within the meaning of the provisions of the Davis-Stirling Common Interest Development Act (California *Civil Code* sections 1350, et seq.)

C. This Amended Declaration. The Association has determined that its Former Declaration, filed in 1977, is outdated, fails to reflect the provisions of the Davis-Stirling Common Interest Development Act and fails to well address certain manners and methods by which the Owners and Association govern these homes. Therefore, in 1997, the Association and its Members have caused this Declaration to supersede the Former Declaration in accordance with the procedures for amendment set forth therein and pursuant to *Civil Code* section 1356. Those sections which address the security interests of mortgage holders and substantial destruction of the Subject Property have not been significantly amended and have been restated herein. This Amended Declaration of Covenants, Conditions and Restrictions of Sequoyah Heights Home Owners' Association is for the purpose of enhancing and protecting the value, desirability and attractiveness of the Subject Property (as defined herein).

D. Applicability of Restrictions. Pursuant to the Former Declaration and California *Civil Code* sections 1353, 1354, 1355, and 1356, the Association hereby declares and affirms that the Subject Property and all improvements thereon are subject to the provisions of this Declaration. The Subject Property Shall be held, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the covenants, conditions and restrictions stated in this Declaration. All of the limitations, easements, uses, obligations, covenants, conditions and restrictions stated in this Declaration Shall continue to run with the Subject Property and Shall continue to inure to the benefit of and be binding on all Owners and all other parties having or acquiring any right, title or interest in any part of the Subject Property.

ARTICLE I DEFINITIONS

For purposes of this Declaration, the terms used Shall have the following meanings:

1.1 "Association" means and refers to the SEQUOYAH HEIGHTS HOME OWNERS' ASSOCIATION, a California nonprofit mutual benefit corporation, its successors and assigns, the members of which Shall be the Owners of Lots within the Subject Property.

1.2 "Board" or "Board of Directors" means the governing body of the Association.

1.3 "Common Area" means and refers to all of the real property, together with any improvements thereto, owned by the Association for the common use and enjoyment of the Owners and is described as follows:

Lots 175 through 189, inclusive, in Tract No. 3747, recorded February 4, 1977, in Book 93, at pages 52-62, Alameda County Records.

Common Area includes all facilities, and improvements located within the Common Area, including drives, stairs, walks, curbs, gutters, parking areas, storm drains, electrical, water, gas and telephone services, storage and equipment areas of enclosures, open spaces, planted and landscaped areas, swimming pool, club house, and attendant facilities and equipment and all other improvements which May be placed upon or located in the Common Area.

1.4 "Declaration" means and refers to this Amended Declaration of Covenants, Conditions and Restrictions of SEQUOYAH HEIGHTS HOME OWNERS' ASSOCIATION, as such Declaration May, from time to time, be amended.

1.5 "Governing Documents" means these CC&Rs, Bylaws, Articles, Rules and Regulations, Architectural Standards and any formal policies adopted by the Board.

1.6 "House" means and refers to any portion of a building designed and intended for use and occupancy as a single family residence, and enclosed garage, whether attached to or detached from any other House.

1.7 "Lot" means and refers to any plot of land shown upon any recorded planned development or subdivision map of the Subject Property with the exception of the Common Area. Each Lot specifically includes any and all improvements thereon.

1.8 "Maintenance" means the exercise of reasonable care to keep buildings, roads, recreational facilities, landscaping, lighting, and other related improvements and fixtures in a condition comparable to their original condition, normal wear and tear excepted. Maintenance of landscaping Shall further mean the exercise of generally accepted garden management practices.

1.9 "May" indicates discretion or choice.

1.10 "Member" means every Owner of a Lot, provided that any person who holds such interest merely as security for the performance of any obligation Shall not be a Member. Membership Shall be appurtenant to and May not be separated from ownership of any Lot.

1.11 "Mortgage" means a deed of trust as well as a Mortgage.

1.12 "Mortgagee" means a beneficiary under or holder of a deed of trust as well as a Mortgagee.

1.13 "Owner" means and refers to the record Owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Subject Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

1.14 "Party Wall" means any wall, which is physically attached to two residential dwelling structures principally situated upon adjacent Lots and which is located substantially parallel to and 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 common footings, common foundation, common insulation and that point where the roofs join or abut neighboring roofs.

1.15 "Party Wall Fence" means any fence situated upon and separating two individually owned Lots.

1.16 "Shall" means imperative, mandatory or imposing an absolute duty.

1.17 "Subject Property" means and refers to the real property hereinbefore described, and such additions thereto as May hereafter be brought within the jurisdiction of the Association.

ARTICLE II POWERS AND DUTIES OF THE BOARD

In addition to those powers and duties set forth in the Bylaws, the Board, for the benefit of the Lots and the Owners, Shall enforce the provisions of the Governing Documents, Shall exercise its discretion where so provided, and Shall perform duties herein imposed, including:

2.1 Water and Other Utilities. Acquire, provide and/or pay for out of the assessment fund, water, sewer, garbage, electrical, telephone, gas, and other necessary utility services for the Common Area, and to the extent not separately metered or charged, for the Lots and Common Area subject to exclusive easements.

2.2 Insurance. Maintain such policies of insurance as are required by this Declaration (see Article III entitled *Insurance*) and such additional policy or policies as the Board of Directors deems necessary or desirable in protecting the interests of the Association and its Members.

2.3 Personnel. The Board Shall have the authority to employ a person or firm to manage its affairs (herein called "the Manager") to the extent deemed advisable by the Board as well as such other personnel as the Board Shall determine Shall be necessary or proper for the performance of its functions or operation of the Subject Property, whether such personnel are employed directly by the Board or are furnished by the Manager.

2.4 Legal and Accounting. The Board Shall have authority to retain legal and accounting services necessary or proper in the operation of the Subject Property or the enforcement of this Declaration.

2.5 Other Obligations of the Board. The Board May acquire and pay for any other materials, supplies, furniture, labor, services, Maintenance, repairs, structural alterations, insurance, taxes, or assessments which the Board is required to secure or pay for pursuant to the terms of this Declaration or by law or which in its opinion Shall be necessary or proper for the operation of the Common Area or for the enforcement of this Declaration, provided that if any such materials, supplies, furniture, labor, services, Maintenance, repairs, structural alterations, insurance, taxes, or assessments are provided for particular Lots, the cost thereof Shall be a Reimbursement Assessment against the Owner of each of such Lots.

2.6 Liens. The Board May pay any amount necessary to discharge any lien or encumbrance levied against the entire property or any part thereof which May in the opinion of the Board constitute a lien against the Common Area, rather than merely against the interests therein of particular Owners, provided that where one or more Owners are responsible for the existence of such lien, they Shall be jointly and severally liable for the cost of discharging it and any costs incurred by the Board by reason of said lien or liens Shall be a Reimbursement Assessment against said Owners and their Lots;

2.7 Taxes. To the extent not assessed to or paid directly by the Owners, the Association Shall pay all real and personal property taxes and assessments levied upon any portion of the Common Area or other property owned by the Association.

2.8 Rules and Policies.

(a) **Rulemaking and Policy Making Power.** The Board May, from time to time and subject to the provisions of this Declaration and the Bylaws, propose, enact and amend Rules and/or policies of general application to the Members and their families, guests and tenants. Such Rules and/or policies May concern, but need not be limited to, matters pertaining to use of the Common Areas, the posting of signs, regulation of landscaping which May obstruct views and any other subject or matter within the jurisdiction of the Association as provided in the Governing Documents.

Notwithstanding the foregoing grant of authority, the Rules and/or policies Shall not be inconsistent with or materially alter any provision of, or the rights, preferences and privileges of Members as set forth in the Articles, Bylaws or Declaration. In the event of any material conflict between any Rule or policy and any provision of the other Governing Documents, the provision contained in the other Governing Document Shall be deemed to prevail.

(b) **Distribution of Rules and Policies.** A copy of the Rules and/or policies as they May from time to time be adopted Shall be mailed or otherwise delivered to Members, and a current copy thereof Shall be maintained in the Association's corporate records. The Association Shall not be obligated to send more than one copy per Lot.

(c) **Amendment of Rules and Policies.** The Rules and/or policies May be amended from time to time by majority vote of the Board. Amendments to the Rules and/or policies Shall be distributed to the Owners either by mail or posted in a conspicuous place within the Common Area. Any duly adopted amendment to the Rules

and/or policies **Shall** become effective immediately from the date of adoption thereof by the **Board**, or at such later date as the **Board** May deem appropriate under the circumstances following adoption of such amendment. All amendments **Shall** be posted in a prominent place within the **Common Area** on or before the effective date thereof and copies thereof **Shall** be made available to the **Members** at the **Association's** principal office.

(d) **Breach of Rules, Policies or Restrictions.** Any breach of the Rules, policies or other **Governing Documents** **Shall** give rise to the rights and remedies set forth in Article XII hereof.

2.9 **Board Powers, Exclusive.** The **Board** **Shall** have the exclusive right and obligation to contract for all goods, services, and insurance, payment for which is to be made from the assessment fund except as expressly otherwise provided herein. No service contract **Shall** be for a longer period than one (1) year, unless the **Board** can terminate the contract without cause or not more than sixty (60) day notice or unless approved by a majority of the **Owners** (88).

ARTICLE III INSURANCE

3.1 **Types of Insurance Coverage.** The **Association** **Shall** purchase, obtain and maintain, with the premiums therefor being paid out of the assessment funds, the following types of insurance, if and to the extent such insurance, with the coverages described below, is available at a reasonable premium cost from an insurer licensed by the State of California:

(a) **Fire and Extended Coverage Policy.** A policy or policies of fire insurance with extended coverage endorsement, vandalism and malicious mischief endorsement. Said fire insurance **Shall** be for the full insurable replacement value of (i) improvements in the **Common Area** and (ii) for each dwelling located on each **Lot**. The **Board** May obtain such other fire, casualty and/or earthquake insurance as the **Board** **Shall** determine gives substantially equal or greater protection to the **Owners**, and their **Mortgagees**, as their respective interest **May** appear. Said policy or policies **Shall** provide for a separate loss payable endorsement in favor of **Mortgages** or **Mortgagees** of each **House** and **Lot** if any.

(b) **Liability Insurance.** A policy or policies insuring the **Association**, **Board** and any manager appointed as hereinafter provided, against any liability to the public or to the **Owners**, and their invitees, or tenants, incident to the Ownership and/or use of the **Subject Property**, in a combined personal injury and property damage coverage of not less than \$1,000,000 for each occurrence. Such limits and coverage **Shall** be reviewed at least annually by the **Board** and increased in its discretion. Said policy or policies **Shall** be issued on a comprehensive liability basis and **Shall** be cross-liability endorsed so that the rights of named insureds under the policy or policies **Shall** not be prejudiced as represents his, her or their action against another named insured.

(c) **Directors and Officers Liability Insurance.** Insurance covering **Directors**, officers, committee members and volunteers acting under the direction of the **Board** from errors and omissions.

(d) **Additional Insurance and Bonds.** Worker's Compensation insurance to the extent necessary to comply with any applicable laws. If the **Board** deems it advisable, a fidelity bond naming the Manager, and such other persons as **May** be designated by the Board as principals and the **Owners** as obligees, in such amounts as the **Board** **May** deem appropriate.

3.2 **Owner Fire and Casualty Insurance.**

(a) Each **Owner** **Shall** be responsible for insuring his or her personal property against loss and obtaining personal liability insurance. In addition, any improvements made by an **Owner** within his or her **Lot** **May** be separately insured by the **Owner**, but the insurance is to be limited to the type and nature of coverage commonly known as "tenant's improvements." All such insurance that is individually carried must contain a waiver of subrogation rights by the carrier as to the **Association**, and any institutional first **Mortgagee** of such **Lot**. Every **Owner** is urged to carry personal liability and personal property damage insurance.

(b) Except as provided in this Section, no **Owner** can separately insure the **House** or other improvements on his or her **Lot** or any part of it against loss by fire or other casualty covered by the **Association's** blanket insurance carried under this Article III, Section 3.1(a). If any **Owner** violates this provision, any diminution in insurance proceeds otherwise payable pursuant to the provisions of Section 3.1(a) that results from the existence of such other insurance will be chargeable to the **Owner** who acquired such other insurance, and the **Owner** will be liable to the **Association** to the extent of any diminution.

3.3 **Overlapping Coverage.** To the extent there **May** be overlap in any applicable coverage, the **Association's** Manager **May** be authorized and/or directed by the **Board** to coordinate all aspects of the claim.

3.4 **Claims Administration.** All potential claims **Shall** be reported to the Manager and/or **Board**. **Owners** are not authorized to make claims directly to the **Association's** insurer. The **Association** **May** levy, as a Reimbursement Assessment, all administrative costs incurred as a result of any such unauthorized communications.

3.5 **Deductible.** The **Association** **Shall** pay any deductible, through whatever means are available in the **Governing Documents** or by law, arising from a casualty or other loss arising from or related to the **Common Area**. The **Lot Owner** who has suffered a casualty or other loss to the **Owner's** **Lot** or other property **Shall** pay any related deductible, provided, however, that in the event the **Association** obtains earthquake insurance on behalf of the **Owners** and their **Lots**, the **Association** **Shall** pay any earthquake insurance deductible arising from a loss arising from or related to the **Owner's** **Lot** or other property for which there is earthquake insurance coverage.

Except as otherwise provided in this Section 3.5 with regard to earthquake insurance, the **Association** shall not be liable to pay any deductible on a casualty or other loss related to any **Lot**, **Owner** and/or personal property unless the **Association's** misconduct caused the loss. If the **Association** advances the amount of any deductible, it **May** seek reimbursement from the responsible **Owner** as a Reimbursement Assessment.

ARTICLE IV ASSESSMENTS

Each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay to the Association assessments, together with interest, late charges, costs, and reasonable attorneys' fees, which shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment and charge shall also be a joint and several personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his or her successors in title unless expressly assumed by them.

4.1 Regular Assessments. The Board of Directors shall establish for each fiscal year an annual assessment to be levied equally among all Lots and payable in twelve (12) equal monthly increments. Unless otherwise specified by the Board, such monthly payments shall be due on the first day of each month. Each monthly increment shall be delinquent if not received by the Association fifteen (15) days after it becomes due.

4.2 Special Assessments.

(a) **Non-Emergency.** Special assessments may be levied for the purpose of defraying, in whole or in part, actual or estimated revenue shortfalls in the budget adopted by the Board for the fiscal year, or such other purpose as the Board deems appropriate.

(b) **Emergency.** In the event of an emergency situation as provided for in Civil Code section 1366, a special assessment may be levied according to that statute notwithstanding any other limitation contained herein. For purposes of this Section, an emergency situation is any one of the following: (i) an extraordinary expense required by an order of a court, (ii) an extraordinary expense necessary to repair or maintain the Subject Property or any part thereof for which the Association is responsible where a threat to personal safety on the Subject Property is discovered, (iii) an extraordinary expense necessary to repair or maintain the Subject Property or any part thereof for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the pro forma operating budget. However, prior to the imposition or collection of an emergency special assessment under this Section, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to the Owners with the notice of assessment.

4.3 Reimbursement Assessments.

(a) **Definition.** A Reimbursement Assessment is a charge against any Owner (and/or tenant) and the Owner's Lot where a failure to comply with the Governing Documents by any Owner, or the lessees, guests, servants, employees, licensees, or invitees of an Owner has (1) necessitated an expenditure of monies by the Association as a result of a violation of any Governing Document, (2) resulted in the imposition of a fine or penalty, or (3) caused any increase in the premiums for Association insurance.

(b) **Determination.** If the Association finds a Reimbursement Assessment May be appropriate, before levying it, the Association must provide notice to the individual and provide an opportunity (of at least 10 calendar days), for individual response in writing or in person to the Board or Board designated hearing body. After due consideration, the Board or Board designated hearing body May decide whether or not to levy the Reimbursement Assessment. This notice and hearing procedure May be simultaneous with the provisions of Article XII hereof.

(c) **Collection.** A Reimbursement Assessment Shall be due and payable to the Association when levied. A Reimbursement Assessment May be collected in the same manner as regular assessments, except that as to fines and penalties only, which are subject to Association lien rights but not the power of non-judicial foreclosure.

4.4 Assessment Level Increases. The Board May not impose a regular assessment that is more than 20% greater than the regular assessment for the Association's preceding fiscal year or impose special assessments which in the aggregate exceed 5% of the budgeted gross expenses of the Association for that fiscal year without the approval of the Owners, constituting a quorum, casting a majority of the votes at a meeting, election or balloting of the Association. A prerequisite to Board discretion to increase regular assessments up to 20% is compliance with Civil Code section 1365(a) (and any revisions), the substance of which is set forth in Exhibit A hereto, at Section 1(a). For purposes of this Section, quorum means more than 50% of the Owners (88) of the Association. This Section does not limit assessment increases necessary for emergency situations or as otherwise expressly permitted by law. Unless voted upon and approved by the Owners, the Association Shall provide notice by first-class mail to Owners of any increase in the regular or special assessments of the Association not less than 30 nor more than 60 days prior to the increased assessment becoming due.

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 thereof by waiver of the use and enjoyment of any Lot, Common Area or facilities maintained or services provided by the Association 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 any assessment or installment hereof becomes delinquent or any lien is imposed (see generally *Lien Exception to Homestead Right - Code of Civil Procedure* section 703.010(b)). No deductions or offsets against any assessment Shall be permitted for any reason, including, without limitation, any claim that the Association is not properly discharging its duties.

4.6 Grantee Liability.

(a) **Voluntary Conveyance.** Where an Owner voluntarily conveys part or all of that Owner's interest in a Lot, the person or entity acquiring the interest takes subject to all assessments and charges (delinquent or not) outstanding against the Lot at the time of the conveyance. Both parties are jointly and severally liable for the full amount. Upon request of a prospective purchaser, 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. The Association's recourse for such amounts to the date of the statement and against the Lot or the purchaser Shall be limited to the amount so specified.

(b) **Conveyance by Foreclosure.** Where the Mortgagee of the first Mortgage of record or other purchaser of a Lot obtains title as a result of foreclosure of any such first Mortgage, the person acquiring title, his or her successors and assignees, Shall not be liable for the assessments by the Association chargeable to such Lot which became due prior to the acquisition of title to such Lot by such acquirer.

(c) **Priorities.** When a notice of delinquent assessment has been recorded, such assessment Shall constitute a lien on each respective Lot prior and superior to all other liens except (i) all taxes, bonds, assessments and other levies which by law would be superior thereto, and (ii) the lien or charge of any first Mortgage of record made in good faith and for value. However, such subordination Shall apply only to the decree of foreclosure of any such first Mortgage or pursuant to a power of sale in such first Mortgage. Such 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.

ARTICLE V ENFORCEMENT OF ASSESSMENTS

5.1 Delinquency. Unless otherwise set by the Board, regular and special assessments levied pursuant to this Declaration are delinquent fifteen (15) days after they become due. If an assessment is delinquent, the Association May recover all of the following: (i) reasonable costs incurred in collecting the delinquent assessment, including reasonable attorneys' fees, (ii) a late charge not exceeding 10 percent of the delinquent assessment or ten dollars (\$10), whichever is greater, (iii) interest on all sums imposed in accordance with this Section, including the delinquent assessment, reasonable costs of collection, and late charges, at an annual percentage rate not to exceed 12 percent interest, commencing 30 days after the assessment becomes due. If monthly installments of the regular assessment are delinquent for a period of more than sixty (60) days or three (3) or more times for any duration within the year for which the annual assessment is levied, the Association, at its sole option, May declare the entire balance of the annual assessment immediately due and payable in full, together with the other delinquent amounts. Late charges and interest Shall not accrue on the accelerated assessment amount unless or until each installment would otherwise become due.

5.2 Lien. There is a present lien with power of sale against each Lot to secure payment of all assessments (except that the power of non-judicial foreclosure does not go to fines) levied against the Lot pursuant to this Declaration, all additional charges and sums which become due and payable in accordance with this Declaration after the date of recordation of a notice of delinquent assessment. Except for the transfer of a Lot pursuant to a foreclosure proceeding, the sale or transfer of a Lot Shall not affect such a lien. Any such Association assessment lien Shall be superior to any secured interest not a first Mortgage and which is recorded after the filing of this Declaration.

5.3 Nonjudicial Foreclosure. The Association Shall have power to conduct nonjudicial foreclosure in order to collect delinquent assessments. Each Owner hereby appoints the person or entity designated by the Association as "trustee" in the Notice, or such substitute trustee as a designated pursuant to California Civil Code section 2934(a), as trustee, and such Owner empowers such trustee to enforce the lien and to foreclose the lien by the private power of sale provided in section 1367(d) of the California Civil Code, as the statute May be revised, amended, or altered from time to time, or by judicial foreclosure. Each Owner further grants

to the trustee the power and authority to sell the Lot and House of any defaulting Owner to the highest bidder to satisfy such lien.

5.4 Other Recourse. The Association May bring an action at law against the Owner personally obligated to pay the delinquent assessments, or foreclosure (whether by judicial or non-judicial foreclosure) its lien against the Owner's Lot. 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 convey the same.

ARTICLE VI MORTGAGE PROTECTION

Notwithstanding any provision to the contrary herein contained.

6.1 First Mortgage Priority. The liens created hereunder upon any House and Lot Shall be subject and subordinate to, and Shall not affect the rights of the holder of the indebtedness secured by any recorded first Mortgage (meaning a Mortgage with first priority over other Mortgages) upon such interest made in good faith and for value; provided, however, that after the foreclosure of any such Mortgage a lien May be again created pursuant to Article V, Section 5.2 hereof on the interest of the purchaser at such foreclosure sale to secure all assessments, whether regular or special, assessed hereunder to such purchaser as an Owner after the date of such foreclosure sale, which said lien, if any claimed, Shall have the same effect and be enforced in the same manner as provided herein.

6.2 Prior Mortgage. No amendment of this paragraph Shall affect the rights of the holder of any such Mortgage recorded prior to recordation of such amendment who does not join in the execution thereof.

6.3 Subordination Agreement. By subordination agreement executed by a majority of the Board, the benefits of 6.1 and 6.2 above May be extended to Mortgages not otherwise entitled thereto.

ARTICLE VII PROPERTY RIGHTS OF OWNERS AND ASSOCIATION

7.1 Common Area Rights. Every Owner and Member of the Association Shall have a right and easement of enjoyment in and to the Common Area which Shall be appurtenant to and Shall pass with the title to every Lot, subject to the following provisions:

(a) The right of the Association, which right is hereby created, to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;

(b) The right of the Association, which right is hereby created, to discipline Members (including suspension of voting rights and right to use of the recreational facilities) in accordance with Article XII hereof entitled Enforcement of Governing Documents;

(c) The right of the Association, which right is hereby created, 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 appropriate; provided that no such dedication or transfer **Shall** be effective unless an instrument reflecting approval by two-thirds (2/3) (116) of the Members agreeing to such dedication or transfer has been recorded.

7.2 Delegation of Use. Any Owner or Member of the Association **May** delegate in accordance with the Bylaws, 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.

7.3 Easements. Easements for installation and **Maintenance** of utilities, drainage facilities, and cable television system, are reserved as shown on the recorded map of SEQUOYAH HEIGHTS. Within these easements, no structure, planting or other material **Shall** be placed or permitted to remain which **May** damage or interfere with the installation and **Maintenance** of utilities or which **May** change the direction or flow or drainage channels in the easements or which **May** obstruct or retard the flow of water, through drainage channels in the easements.

7.4 Judicial Partitions. There **Shall** be no judicial partitions of the **Subject Property** or any part thereof, nor **Shall** any person acquiring any interest in the **Subject Property** or any part thereof seek any such judicial partition, until the happening of the conditions set forth in Article XI hereof, provided, however, that if any **House** and **Lot** **Shall** be owned by two or more co-tenants as tenants-in-common or as joint tenants, nothing herein contained **Shall** be deemed to prevent a judicial partition as between such co-tenants.

ARTICLE VIII USE OF THE SUBJECT PROPERTY

The **Houses**, **Lots** and **Common Area** **Shall** be occupied and used as follows:

8.1 Residential Use. Each **House** and **Lot** **Shall** be used for residential purposes by the Owner, his or her lessees, or guests, and for no commercial, business, or other purpose.

8.2 Recreational Use. The **Common Area**, and all structures and improvements located in the **Common Area**, **Shall** be used exclusively for recreational purposes, and **Shall** not be used for residential or commercial purposes, except as an incident to the recreational use.

8.3 Common Area Obstruction/Damage. There **Shall** be no obstruction of the **Common Area**. Nothing **Shall** be stored in the **Common Area** without the prior consent of the Board. The Owner of each **Lot** **Shall** be liable to the Association for all damage to the **Common Area** or improvements thereon caused by such Owner or any occupant of his or her **Lot** or his or her guests, except for that portion of such damage, if any, fully covered by insurance.

8.4 Insurance Risk. Nothing **Shall** be done or kept in any **House** or **Lot** or in the **Common Area** which will increase the rate of insurance on the **Common Area** or any part of the **Subject Property** without the prior written consent of the Board. No Owner **Shall** permit anything to be done or kept in his or her **House** or **Lot** or in the **Common Area** which will result in the cancellation of insurance on any **House** or any part of the **Common Area**, or which would be in violation of any law; no waste will be committed in the **Common Area**. No gasoline, kerosene, cleaning solvents or other flammable liquid **Shall** be stored in the **Common**

Area or Houses, provided, however, that reasonable amounts in metal containers **May** be stored in storage areas as designated by the **Board**.

8.5 Signs. No sign of any kind **Shall** be displayed to the public or neighbors' view on or from any **House** or **Lot** or the **Common Area**, without the prior consent of the **Board**; provided, however, that nothing herein **Shall** be deemed to prohibit the display of one sign of customary and reasonable dimensions located on the **Owner's Lot** and advertising the **House** for sale or rent, subject to the control of the **Board** regarding placement, size and content.

8.6 Pets. An **Owner** **May** keep two (2) dogs or two (2) cats within his **Lot**. Each **Owner** **May** also maintain a reasonable number of small caged animals, birds or fish. The **Board** **Shall** specifically have the right to prohibit the maintenance of any animal which, after Notice and opportunity for hearing, is found to be a nuisance to other **Owners**.

8.7 Nuisance. No noxious or offensive activity **Shall** be carried on in any **House** or **Lot** or in the **Common Area**, nor **Shall** anything be done therein which **May** be or become an annoyance or nuisance to the other residents.

8.8 Parking and Vehicle Restrictions. The following parking and vehicle restrictions **Shall** apply within the **Subject Property**:

(a) Unless otherwise permitted by the **Association**, no motor vehicle **Shall** be parked or left on any street or on any property subject to this Declaration other than within a garage or parking space.

(b) Parallel parking is not allowed on the 24 foot wide streets (Turtle Creek, Chimney Rock and Heritage) and the cul de sac areas of Turtle Creek, Graeagle, Mission Hills and Chimney Rock. On all other streets, parallel parking is to be along curbed areas only.

(c) Except as otherwise provided in subparagraph (f) below, only the following vehicle ("authorized vehicles") **Shall** be permitted to be parked by any **Owner** or resident in the **Common Area**: standard passenger vehicles, including passenger vans, bronco or blazer type trucks, and trucks which do not exceed 3/4 tons in gross weight. Vehicles must be properly registered and operable. Boats, trailers, campers, recreational vehicles, vehicles having more than 4 wheels, commercial vehicles and trucks in excess of 3/4 tons are not "authorized vehicles" and **Shall** only be permitted in the **Common Area** as provided in subparagraph (f) below.

(d) Designated marked guest parking in the **Common Areas** are to remain open for use by guests only and are not to be used by **Owners** or other residents, either permanently or temporarily, for the parking of their authorized vehicles or the storage of boats, trailers or similar items of personal property. A person **Shall** not be considered a "guest" if he or she is a regular overnight visitor of a resident.

(e) No motor vehicles **Shall** be constructed, reconstructed or repaired in the **Common Area** and no dilapidated or inoperable vehicle, including vehicles without wheel(s) or an engine, **Shall** be stored on the **Common Area**; provided, however, that the provisions of this Section **Shall** not apply to emergency vehicle repairs.

(f) No campers, boats, trailers, recreational vehicles, commercial vehicles and trucks in excess of 3/4 tons are to be parked in the **Common Area**, except for periods not to exceed twenty-four (24) hours for the purpose of loading and unloading. Parking by commercial vehicles for the purpose of making deliveries or service calls **Shall** be permitted in accordance with the rules adopted by the **Association**.

(g) The **Association** **Shall** have the authority to tow, at the owner's expense, any vehicle parked or stored in violation of the **Governing Documents** or which violates any police or fire safety ordinance, city or state vehicle and/or parking ordinances. The **Board** **Shall** have the authority to promulgate further reasonable rules and restrictions of uniform application regarding parking and vehicles in the **Common Area** as **May** be deemed prudent and appropriate. Any violation of this Section **Shall** be deemed a violation of the Declaration.

(h) Residents **Shall** operate their motor vehicles on the property in a manner so as not to disturb the quiet enjoyment of the other residents.

8.9 Garages. Garages **Shall** only be used for parking of vehicles and other storage which will not interfere with parking of vehicles.

8.10 Encroachment of Rights. None of the rights and obligations of the **Owners** created herein, or by the Planned Unit Development **Shall** be altered in any way by encroachments due to settlement or shifting of structures or any other cause. There **Shall** be valid easements for the **Maintenance** of said encroachments so long as they **Shall** exist; provided, however, that in no event **Shall** a valid easement for encroachment be created in favor of an **Owner** or **Owners** if said encroachment occurred due to the willful conduct of said **Owner** or **Owners**.

8.11 Sports Equipment. No basketball standards or other devices used for sports **Shall** be affixed to any **House**.

8.12 Garbage and Refuse Disposal. All rubbish, trash and garbage **Shall** be regularly removed from the **Lots**, and **Shall** not be allowed to accumulate thereon. Trash, garbage and other wastes **Shall** not be kept except in sanitary containers, and all equipment for the storage or disposal of such waste materials **Shall** be kept in a clean, orderly, and sanitary condition. All equipment, garbage cans, wood piles, or other storage piles **Shall** be kept clean and concealed from the view of other **Lots**, the **Common Area**, and any street. No rubbish, trash or garbage **Shall** be left in the **Common Area**.

8.13 Landscaping. Except as shown on the final planned unit development as approved by the City of Oakland for the **Subject Property**, or any city-approved modification thereof;

(a) No tree, shrubbery or other obstruction of any kind **Shall** be planted, erected or maintained on any **Lot** in such a manner as to unreasonably obstruct or interfere with the view from the residence on any other **Lot**. The question of unreasonableness **Shall** be determined by the **Board**. Such determination **Shall** be final and **Shall** be binding upon every **Lot Owner**. The **Board** **Shall** have the power to adopt policies regulating landscaping which **May** obstruct views. The **Board** **Shall** also be empowered to force the cutting, pruning or trimming of trees and shrubs in order to preserve the view from the residence of other **Lots** in the **Subject Property**.

(b) Masts, towers, poles or antennas, including but not limited to antennas used for amateur radios, television, FM radio or AM radio, Shall not be erected or maintained upon any Lot or House or other structure erected thereon without Board approval.

(c) No fence, wall or hedge higher than six (6) feet Shall be erected or maintained on any Lot.

8.14 Vehicle Storage. No boats, recreational vehicles or trailers of any kind Shall be stored in such a manner as to be visible from the street, and Shall be kept in garages only.

8.15 Guest Compliance. Each Owner Shall be responsible for compliance with the provisions hereof by his or her guests and lessees.

ARTICLE IX

RESPONSIBILITIES FOR MAINTENANCE, REPAIR AND REPLACEMENT

9.1 Association Responsibilities - Common Area.

(a) The Association Shall control and pay for the Maintenance, repair and replacement of all Common Area improvements including, but not limited to, landscaping, streets, sidewalks, storm drains, driveways and walkways.

(b) The Board Shall have authority to expend (in any given month) up to five percent (5%) of the aggregate regular assessments (levied in the month the expenditure is authorized) for new Common Area improvements. This Shall not restrict expenditures for repair, replacement or non-substantial upgrade of existing Common Area improvements. The Board May expend additional amounts for Common Area improvements only upon an affirmative vote of Owners holding a majority (88) of the total voting power.

9.2 Association and Owner Responsibilities for Maintenance, Repair and Replacement - Owners' Lots. Sequoyah Heights is a planned development wherein the Owners actually own their Lots and the buildings on them. It is unlike a condominium in that the Owners are responsible for all Maintenance, repair and replacement of components unless specifically assigned to the Association. As to those components for which an Owner May be responsible for Maintenance, repair and/or replacement, and which are visible from any other Lot, residence, Common Area or public area, any work which would alter the appearance from the original construction or configuration must be approved in advance by the Association.

The following sets forth Association and Owner responsibilities for the components as follows: (a) Walls and Trim, (b) Roofing, (c) Fireplace Flues and Caps, (d) Decks, Patios, Walkways and Driveways, (e) Fences, (f) Party Walls, (g) Easements, and (h) Landscaping. It also addresses responsibility for damages caused by wood destroying organisms and pests. Any component not addressed herein May be the subject of a policy adopted by the Board.

(a) Exterior Walls and Trim.

(i) **Painting.** The Association Shall be responsible for the painting (or staining) of the exterior walls and trim which are part of the dwellings and garages and which are directly exposed to the weather. This Shall include such ancillary components as are visible from the outside including such items as

gutters, downspouts and vents. It **Shall** also include reasonable preparation of the existing surfaces, including caulking.

(ii) **Exteriors.** The Association **Shall** be responsible for the **Maintenance**, repair and replacement of the exterior surfaces (siding and stucco) and trim of the buildings. The Association **Shall** be further responsible for the integrity of the waterproofing systems such as building paper, window flashings or other flashings below painted surfaces, and caulking.

(iii) **Windows.** The Owner **Shall** be responsible for the **Maintenance**, repair and replacement of windows, metal window casings, sliding glass doors, sliding glass door frames, light fixtures, outdoor electrical outlets and other similar components.

(iv) **Doors.** The Association **Shall** be responsible for the painting, **Maintenance**, repair and replacement of utility doors and for the painting of garage doors and exterior doors of the dwellings. The Owner **Shall** be responsible for all other aspects of **Maintenance**, repair and replacement of garage doors and exterior doors of the dwellings, including but not necessarily limited to the frames and the integral wood members thereof. The Owners **Shall** also be responsible for the **Maintenance**, repair and replacement of any automatic garage door openers and related mechanisms.

(v) **No Reimbursement.** The Association **Shall** have no responsibility to pay for or reimburse any Owner for any painting, staining or caulking or other exterior work which the Owner requests or undertakes at any time different from the Association's overall **Maintenance** plan or schedule.

(b) **Roofing.** The Association **Shall** be responsible for the **Maintenance**, repair and replacement of roof covers, gutters and downspouts. "Roof covers" shall mean the exterior surface layers of the roofing systems covering the dwellings and garages, as they may be replaced from time to time, including but not limited to shakes, shingles, ceramic, concrete and asphalt tile, tar and gravel surfacing, flashing, scuppers, exterior barge rafters, and building paper and felt or other secondary waterproofing systems. The Association is not responsible for **Maintenance**, repair or replacement of the plywood and/or spaced sheathing, beams and rafters, and other supporting structural systems upon which the exterior surface coverings are attached. Except as **May** be covered by insurance, the Association **Shall** not be liable for leak damage to interiors unless it is negligent or otherwise breaches its obligation to schedule and perform foreseeable exterior **Maintenance**.

(c) **Fireplace Flues and Caps.** The Owner **Shall** be responsible for the **Maintenance**, repair and replacement of the spark arrester and chimney cap components. The Owner is also responsible to clean the chimney flue as necessary.

(d) **Decks, Patios, Walkways and Driveways.**

(i) **Decks.** The Owner **Shall** be responsible for the **Maintenance**, repair and replacement of all deck components, including paint, stains, coatings, substrate, joists, structural elements and flashings (except as provided below).

(ii) **Deck Railings.** At homes where the developer built the original decks, the rear deck railings (in their original configuration) run along the Lot line abutting the Common Area in a manner similar to a perimeter fence (defined below). Commencing January 1, 1996, the Association Shall maintain, repair and replace these deck railings.

(iii) **Patios.** The Owner Shall be responsible for the Maintenance, repair and replacement of all patio components including slabs and landscaping.

(iv) **Walkways & Driveways.** The Association Shall be responsible for all aspects of Maintenance, repair and replacement of front walkways and driveways, including divider strips and expansion joints (except as to Owner neglect).

(e) **Fences.**

(i) **Perimeter Fences (Owner to Association).** Where perimeter fences divide individual Lots from Common Area, the Association performs Maintenance, repair and replacement, including painting or staining. The Association Shall implement and control the work.

(ii) **Party Wall Fences (Owner to Owner).** Adjacent Owners Shall be equally responsible for the Maintenance, repair and replacement of fences, exterior privacy walls, railings or other components along with shared Lot line. The Association Shall be responsible for painting or staining Party Wall Fences.

(iii) **Other Fences/Gates.** Owners Shall be responsible for Maintenance, repair and replacement of iron security fences and gates, as well as any other fences and gates installed by Owner.

(f) **Party Walls.**

(i) **Interests of Owners.** The Owners collectively, and each such Owner individually, Shall have a vested interest in the continued existence of the system of Party Walls which are built as a part of the original construction on the Subject Property in accordance with the plans approved by the City of Oakland. Each Party Wall or portion thereof Shall be owned by the Owner of the Lot on which such wall or portion thereof is located, subject to the rights of the other Owners set forth herein. The Party Walls Shall include common footings, common foundation, common insulation and that point where the roofs join or abut neighboring roofs. In order to alert each Owner to his or her responsibilities to Owners of adjoining houses within the same structure, and to assure such Owners of adjoining houses of their respective rights and privileges, the following conditions and covenants are hereby adopted and established.

(ii) **General Rules.** Each of the adjoining Owners Shall assume the burdens and obligations provided herein, and the Lots of such Owners Shall be subject to an easement for such portion of a Party Wall as is located thereon and Shall be entitled to the rights and benefits of the Party Wall, as set forth in this Declaration. To the extent not inconsistent herewith, the general rules of law regarding Party Walls and liability for property damage due to negligence or

willful acts or omissions **Shall** be applicable thereto. (See generally *Civil Code* section 841).

(iii) **Maintenance and Decoration.** Subject to the provisions of this Declaration regarding the duty of the Association to maintain exterior surfaces of residential improvements upon the Lots, each Owner **Shall** maintain in a good state of repair the side of each Party Wall facing his or her Lot and **Shall** do nothing, without the written approval of the adjoining Owner and the Architectural Control Committee, which **May** alter, modify, damage, impair or tend to alter, damage or impair the structural integrity of any Party Wall. Each Lot Owner **May** decorate and landscape the side of the Party Wall facing his or her Lot. 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 feet of any Party Wall which **May** impede or interfere with any necessary Maintenance, repairs or restoration of the Party Wall.

(iv) **Damage to Party Wall.** In the event that any Party Wall is damaged or destroyed through the act of an adjoining Owner, or his or her tenants, occupants, guests, invitees, agents or family members (whether or not such act is negligent or otherwise culpable), so as to deprive the other adjoining Owner of the full use and enjoyment of such wall, then the responsible Owner **Shall** forthwith rebuild and repair the same in as good a condition as formerly existed, without cost to the adjoining Owner. Subject to the provisions of this Declaration regarding the duty of the Association, if such Party Wall is damaged or destroyed by some cause (including ordinary wear and deterioration from lapse of time) other than the act of one of the adjoining Owners, his or her tenants, occupants, guests, invitees, agents or family members, each Owner whose Lot adjoins such wall **Shall** forthwith rebuild and repair the same as to good a condition as formerly existed, at their joint and equal expense.

(v) **Easement for Repair of Party Walls.** There is specifically reserved an easement upon each Lot adjoining a Party Wall, as the servient tenement, for the benefit of the adjoining Lot on which portions of the Party Wall are located, as the dominant tenement, to perform such work, during daylight hours and following notification of not less than 24 hours (except in the event of an emergency), as **May** be necessary or desirable in connection with the repair or restoration of the Party Wall and the Maintenance, repair or restoration of the residential dwelling of which it is a part, and an easement for ingress and egress to perform such work **Shall** also be reserved.

(vi) **Alterations.** No additions, alterations, repairs or restoration to any Party Walls **Shall** be commenced, erected or maintained 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 Control Committee and by any Owner having a direct interest in the Party Wall.

(vii) **Right to Contribution Runs with Land.** The right of any Owner to contribution from other Owners under this Section **Shall** be appurtenant to the land of such Owner and **Shall** pass to the Owner's successors in title.

(viii) **Arbitration.** In the event of any dispute arising concerning the Party Wall and/or Lot line, such dispute Shall be resolved by binding arbitration. In the event the Owners cannot otherwise agree, each party Shall choose one arbitrator, and such arbitrators Shall together choose one additional neutral arbitrator, and the decision of a majority of the arbitrators Shall be final and binding upon the Owners affected by the dispute. Such a decision May be the basis of a judgment under the laws of the State of California pertaining to judgments obtained upon arbitration awards.

(g) **Easements.** The easement area of each Lot and all improvements in it Shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility is responsible. The easement portions of the Common Area and all improvements in it Shall be maintained continuously by the Association, except for those improvements for which a public authority or utility is responsible.

(h) **Landscaping.**

(i) The Association Shall maintain, replace and otherwise control the trees, shrubs, grass and other landscaping in and around the front portions of the individual Lots. Upon request of an Owner, the Association May delegate responsibility to that Owner for trees (and roots) and/or other landscaping in this area of the Owner's Lot. Where there is any delegating to an Owner, the Association May require a written agreement to be recorded with title and binding Owner and Owner's successors.

(ii) The Owner Shall maintain, replace and otherwise control all landscaping of the fenced rear yard areas. The Owner Shall be responsible to keep all vegetation on the yard side clear of the wrought iron type fencing. Further, as a condition of painting Party Wall Fences, the Association Shall require Owners to remove all vegetation or other obstructions away from the fences.

(iii) The Association May exercise control over any landscaping (in the Common Area or on any Lot) which would interfere with any Maintenance for which the Association is responsible.

(iv) The Board May adopt guidelines, rules and procedures to address trees (including roots and branches) and other vegetation that extend across Lot lines or other areas of responsibility.

(i) **Wood Destroying Organisms and Pests.**

(i) Each Owner is responsible for the repair and Maintenance of that Owner's House and Lot as May be occasioned by the presence of wood-destroying pests or organisms.

(ii) At the discretion of the Board of Directors, 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 **House**, and/or as otherwise provided in *Civil Code* section 1364.

(iii) 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.

(iv) The costs of temporary relocation during the repair and **Maintenance** of the areas within the responsibility of the **Association** Shall be borne by the **Owner** of the separate interest affected. The cost of alleviating the pest problem and any reconstruction Shall be the responsibility of those 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.

9.3 **Enforcement.**

(a) **Common Area.** If the need for any **Maintenance**, repair or replacement of any **Common Area** is caused through the willful or negligent act of an **Owner** or his or her family, guests, invitees or lessees; then the **Association** May cause the work to be performed and upon determination of responsibility May collect the cost in the same manner as a Reimbursement Assessment pursuant to Article IV, Section 4.3.

(b) **Lot and House.** If the **Board** reasonably finds a **Lot** or **House** 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 and if the **Owner** fails or refuses to do so, the **Association** May utilize the provisions of Article XII hereof entitled *Enforcement of Governing Documents*, and cause the work to be performed and collect the cost in the same manner as a Reimbursement Assessment pursuant to Article IV, Section 4.3. So long as the deficient condition exists, it Shall be deemed a continuing nuisance.

(c) **Entry for Repairs.** The **Board** or its agents May enter upon any **Lot** or exterior of any **House** or roof thereof when necessary in connection with any **Maintenance**, landscaping, construction or easement for which the **Association** is responsible. Such entry Shall be made with as little inconvenience to the residents as practicable, and any damage caused thereby Shall be repaired by the **Association**. Whenever possible, at least 24 hours notice will be given to the resident. If the **Owner** or resident is responsible for creating emergency circumstances, and access is not provided by a resident, the **Owner** Shall reimburse the **Association** for locksmith fees or other costs to access and/or secure the premises.

ARTICLE X **ARCHITECTURAL PROVISIONS**

10.1 **Architectural Control Committee.**

(a) The Architectural Control Committee is composed of those **Association** Members appointed by the **Board of Directors**. A majority of the committee May designate a representative to act for it. Neither the members of the Committee, nor its

designated representative **Shall** be entitled to any compensation for service performed pursuant to these covenants.

(b) **Members** appointed to the Architectural Control Committee by the **Board** **Shall** be from the membership of the **Association** and/or the **Board of Directors**. In the event no Committee members are appointed, the **Board** **Shall** act as the Committee. The **Association** **Shall** act through the **Board** or Committee.

(c) If the Committee and/or **Board** members have acted in good faith on the basis of such information possessed by them, they **Shall** not be liable to the **Association** or to any **Owner** for any damage, loss or prejudice suffered or claimed due to: (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective; (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications; or (c) the execution and filing of any estoppel certificate, whether or not the facts therein are correct.

(d) If a Committee is utilized, the Committee will make its recommendation to the **Board of Directors**. The **Board of Directors** will approve the application, or deny for cause, or deny if more facts are needed in the opinion of the **Board** in order to make a decision.

10.2 Architectural Standards. The **Association**, from time to time and in its sole discretion, **May** adopt (or ratify Architectural Control Committee recommendations regarding) architectural rules, regulations and guidelines ("Architectural Standards"). Before being adopted, **Members** **Shall** be notified of proposed changes. The Architectural Standards **Shall** interpret and implement the provisions of this **Declaration** by setting forth the standards and procedures for architectural review and guidelines for architectural design, color schemes, exterior finishes and materials and similar features which **May** be used in the project; provided, however, that the Architectural Standards **Shall** not be in derogation of the minimum standards established by this **Declaration**. The Architectural Standards **May** include other personal property additions which are visible from any other **Lot** or public area.

10.3 Architectural Alterations.

(a) **Permitted Alterations.** Interior remodeling of **Houses** and combining contiguous **Houses** for use as a single residence **Shall** be permitted, provided that the alterations do not impair the structural integrity of the **House** and that the **Owner** complies with all laws and ordinances regarding alterations and remodeling.

(b) **Approval Required.** No other alterations by **Owners** **Shall** be permitted except as authorized by the **Association** pursuant to the Architectural Standards or separate application.

(c) **Application Process.** Any **Owner** who wants to perform any alteration or addition for which approval is required **Shall** notify the **Association** in writing of the nature of the proposed work and **Shall** furnish such information as **May** be required by the Architectural Standards or reasonably requested by the **Association**.

(d) **Basis for Approval of Improvements.** The **Association** **May** approve the proposal only if it finds that (i) the plans and specifications conform to the Architectural Standards in effect at the time the proposal was submitted and (ii) the proposed alteration

or addition will be consistent with the standards of the **Subject Property** and the provisions of this **Declaration** as to quality of workmanship and materials, and harmony of external design with existing structures. Reasonable requirements such as obtaining permits, use of licensed design professionals, and/or use of licensed contractors **May** be imposed by the **Association**. Additionally, the **Association May** require approval by, or the non-opposition of, neighbors. As a condition of approval, the **Association May** require an agreement to be recorded with title, binding the current and future **Owners** as to responsibility for **Maintenance**, repair and replacement of the alteration or addition.

(e) **Form of Approvals and Denials.** The **Association's** approval or disapproval as required in these covenants **Shall** be in writing. If the **Association** fails to respond within 60 days after plans and specifications have been submitted to it, or in any event, if no Notice of Architectural Violation has been filed and/or no suit to enjoin the construction has been commenced prior to the completion thereof, approval will not be required and the related covenants **Shall** be deemed to have been fully complied with, provided that the improvements are (1) consistent with any published existing **Association Architectural Standards** and (2) limited to alterations to individually owned **Lots**.

(f) **Waiver.** Approval of any plans, drawings or specifications for any work proposed, or for any other matter requiring approval **Shall** not be deemed to constitute a waiver of any right to deny approval of any similar plan, drawing, specification or matter subsequently submitted for approval.

(g) **Proceeding with Work.** Upon approval of the **Association**, the **Owner** **Shall** diligently proceed with the commencement and completion of all work so approved. Work must be commenced within six (6) months from the date of the approval. If the **Owner** fails to comply with the provisions of this Section, the approval given **Shall** be deemed revoked unless the **Association** extends the time for commencement. Any request for an extension **Shall** be in writing. No extension **Shall** be granted unless the **Association** finds that there has been no change in the circumstances under which the original approval was granted.

(h) **Failure to Complete Work.** Completion of the work approved must occur in the twelve (12) month period following the approval of the work **unless** the **Association** determines that completion is impossible or would result in great hardship to the **Owner** due to strikes, fires, national emergencies, natural calamities or other supervening forces beyond the control of the **Owner** or his or her agents.

(i) **Determination of Compliance.** Any work performed, whether or not the **Owner** obtained proper approvals, **May** be inspected and a determination of compliance **May** be made as follows:

(i) Upon the completion of any work performed by an **Owner** for which approval was required, the **Owner** **Shall** give written notice of completion to the **Association**. If the **Owner** fails to give the notice of completion of work performed for which approval was required, the **Association** **May** proceed upon its own motion.

(ii) Within sixty (60) days after receipt of the notice of completion or after the **Association** determines to proceed on its own motion, the **Association**

May inspect the work performed and determine whether it was performed in substantial compliance with the approval granted. If the Association finds that the work was not performed in substantial compliance with the approval granted or if the Association finds that the approval required was not obtained, the Association Shall notify that Owner in writing of the non-compliance. The notice Shall specify the particulars of non-compliance and Shall require the Owner to remedy the non-compliance.

(j) **Estoppel Certificate.** Within forty-five (45) days after written demand is delivered to the Association by any Owner, and upon payment to the Association of a reasonable fee (as fixed from time to time by the Association), the Association Shall record an estoppel certificate certifying that as of the date thereof, either: (a) the work completed complies with this Declaration or (b) the work completed does not comply. In the latter situation, the certificate Shall also identify the particulars of the non-compliance. Any successor in interest of the Owner Shall be entitled to rely on the certificate with respect to the matters set forth. The certificate Shall also be conclusive as between the Association and all Owners and such persons deriving any interest through any of them.

10.4 **Architectural Enforcement.**

(a) **Notice and Opportunity for Hearing.** If the Association has determined that an Owner has not constructed an improvement consistent with the specifications of the approval granted or has failed to obtain approval, and if the Owner fails to remedy such non-compliance in accordance with the provisions of the notice of non-compliance, then after the expiration of thirty (30) days from the date of such notification, the Association Shall offer an opportunity for hearing to consider the Owner's continuing non-compliance and place the affirmative burden on the Owner to request a hearing upon such reasonable terms as the Association May impose.

(b) **Determination.** At the hearing or when the matter is otherwise addressed by the Association, if the Association finds that there is no valid reason for the continuing non-compliance, the violation Shall be deemed a continuing nuisance. The Association Shall then require the Owner to remedy or remove the same within a period of not more than forty-five (45) days from the date of the Association's determination.

(c) **Association Options for Continuing Nuisance.** If the Owner does not comply with the Association's ruling within such period or within any extension of such period as the Association, in its discretion, May grant, the Association May (i) remove the non-complying improvement, (ii) remedy the non-compliance, or (iii) record a Notice of Architectural Violation against the property which Shall also be conclusive as to all Owners and any successors in interest. The costs of any such action(s) Shall be assessed against the Owner as a Reimbursement Assessment (see Article IV, Section 4.3). These powers of enforcement Shall be in addition to the general enforcement provisions of this Declaration.

**ARTICLE XI
DAMAGE AND DESTRUCTION**

11.1 Common Area Damage. If any of the Common Area is damaged by fire or other casualty, all insurance proceeds **Shall** be used to rebuild or repair such improvements in accordance with the original plans and specifications therefor.

(a) **Cost of Repair; Insured Amounts.** If the cost of repairing or rebuilding does not exceed the amount of available insurance proceeds by more than Ten Thousand and No/100 Dollars (\$10,000.00) such insurance proceeds **Shall** be paid to the insurance trustee designated in the same manner as set forth in subparagraph 11.1(b)(i). The **Board** **Shall** thereupon contract to repair or rebuild the damaged portions of the **Common Area**, in accordance with the original plans and specifications therefor and the funds held in the insurance trust **Shall** be used for this purpose. If the insurance proceeds are insufficient to pay all of the costs of repairing or rebuilding, the **Board** **Shall** levy a special assessment equally on all **Owners**, to make up any deficiency.

(b) **Cost of Repair; Exceeding Insurance Amounts.** If subparagraph 11.1(a) is inapplicable, then:

(i) All insurance proceeds **Shall** be paid to a bank or trust company designated by the **Board** to be held for the benefit of the **Owners** and their **Mortgagees** as their respective interests **May** appear. The **Board** is authorized to enter on behalf of the **Owners** into such agreement, consistent with these **Restrictions**, with such insurance trustee, relating to its powers, duties and compensation, as the **Board** **May** approve.

(ii) The **Board** **Shall** obtain firm bids (including an obligation to obtain a performance bond) from two or more responsible contractors to rebuild the improvements on the **Common Area** in accordance with its original plans and specifications and **Shall**, as soon as possible thereafter, call a special meeting of the **Owners** to consider such bids. If the **Board** fails to do so within sixty (60) days after the casualty occurs, any **Owner** **May** obtain such bids, and call and conduct such meeting as herein provided (failure to call such meeting, or to repair such casualty damage, within twelve (12) months from the date such damage occurred **Shall** be deemed for all purposes a decision not to rebuild said building). At such meeting, the **Owners** **May** be sixty-six and two-thirds percent (66 2/3 %) (116) vote elect to reject all of such bids and thus not to rebuild. Failure to reject all bids **Shall** authorize the **Board** to accept the unrejected bid it considers most favorable;

(iii) If a bid is to be accepted, the **Board** **Shall** levy a special assessment, equally apportioned for each **Lot**, to make up any deficiency between the total insurance proceeds and the contract price for such repair or rebuilding, and such assessment and all insurance proceeds, whether or not subject to liens or **Mortgagees**, **Shall** be paid to said insurance trustee to be used for such rebuilding. If any **Owner** **Shall** fail to pay the special assessment within thirty (30) days after the levy thereof, the **Board** **Shall** make up the deficiency by payment from the **Maintenance** fund. Upon payment, the **Board** **Shall** let the contract to the successful bidder;

(iv) Upon an election not to rebuild, the Board, as soon as reasonably possible and as agent for the Owners, Shall sell the entire Common Area, in its then condition, free from the effect of this Declaration, which Shall terminate upon such sale, on terms satisfactory to the Board. The net proceeds, and all funds held by said insurance trustee, Shall thereupon be distributed to the Owners in proportion to the interest of each Owner in the Common Area, and to the Mortgagees of the interest of the Owners, as their interests May appear;

(c) **Damage Declaration.** Within sixty (60) days after any such damage occurs (as described in Section 11.1(b)), the Board, or if they do not, an Owner, the insurer, the insurance trustee, or any Mortgagee of any Owner, Shall record a sworn Declaration stating that such damage has occurred, describing it, identifying the building suffering such damage, the name of any insurer against whom claim is made, and the name of any insurance trustee, reciting that the sworn Declaration is recorded pursuant to this paragraph of these restrictions, and that a copy of such sworn Declaration has been served on the Owners;

(d) **Declaration Not to Rebuild.** If the Owners decide not to rebuild, either by calling a meeting and rejecting all bids presented or by failing to call such a meeting and failing to repair such damage within twelve (12) months after the damage occurs, then the Board, or if they do not, any Owner or Mortgagee of any Owner, Shall record a sworn Declaration setting forth such decision and reciting that under the provisions of this Declaration the prohibition against judicial partition provided for in Paragraph 7.4 hereof has terminated and that judicial partition of the project May be obtained pursuant to applicable law. Upon final judgment of a court of competent jurisdiction decreeing such partition, these Restrictions Shall terminate;

(e) **Majority Vote.** The provisions of this paragraph cannot be amended without the written consent of seventy-five percent (75%) (131) of the membership.

11.2 Residences Affected by Damage and Destruction - Duty to Rebuild. Subject to the decision of the Board of Directors of the Association, 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. To the extent that there are insurance proceeds available, the Association May administer the reconstruction of any residence. If the Association so opts, 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 Owner Shall have responsibility to make up the shortfall.

11.3 Owner's Failure to Proceed: Special Assessment. Should the Owners fail to commence or complete reconstruction as required under Section 11.2 above, the Board of Directors of the Association May levy a special assessment against the Owners of the Lots 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 shall be secured by the lien provided in Article V above. The Board of Directors May advance the amount of the special assessment from Association general funds or reserves if the Board determines that the residence, as so rebuilt and restored, will furnish adequate security for the repayment of said advances by operation of the assessment lien. The Board of Directors, as

agent for the Owners, Shall thereupon contract for the repair or reconstruction of the residences, paying the cost of such work from the amounts so advanced and from insurance proceeds, if any.

ARTICLE XII ENFORCEMENT OF GOVERNING DOCUMENTS

12.1 Violation.

(a) **Definition.** A violation of the **Governing Documents** Shall be defined as a single act or omission occurring on a single day. 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 on different days **Shall** 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.

(b) **Forum.** The **Board** **May** exercise control directly or delegate control to the Tribunal Committee or other hearing body. If delegated, there **Shall** be a right of appeal to the **Board**. If the **Board** is the threshold forum, there **Shall** be no further right of appeal.

12.2 Jurisdiction. The Association **Shall** have jurisdiction to cause conformance with the provisions of the **Governing Documents** over (a) any person on the **Subject Property** or any other person with rights in the property located on or at the **Subject Property**, including ownership, leasehold or other interests, and (b) any real and/or personal property. Said jurisdictional authority **Shall** be subject to the terms, conditions and safeguards provided herein.

12.3 Enforcement Options. In the event of a breach or violation of any of the **Governing Documents** by a **Member** or the **Member's** guests, lessees, employees, invitees, or licensees, the **Board**, for and on behalf of all other **Members** **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:

(a) **Suspension of Rights.** The **Board** **May** suspend voting rights or the right to use recreational Common facilities.

(b) **Fines.** The **Board** **May** levy a reasonable fine. Any such fine **May** be collected in the same manner as a Reimbursement Assessment, including the power to lien, except that any such lien **May** not be enforced by non-judicial foreclosure. The **Board** **May** implement schedules 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 to each **Member**, by personal delivery or first-class mail, the schedule of fines that **May** be assessed for certain violations. In imposing any fine, the Association, at 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.

(c) **Alternative Dispute Resolution (ADR).** In the event of a dispute between Owners (or residents), the parties Shall comply with the mandatory ADR provisions of *Civil Code* section 1354 or such other form of ADR as May be agreed upon.

(d) **Legal Action.** Except for the nonpayment of any Assessment, it is hereby expressly declared and agreed that the remedy at law to recover damages for the breach, default or violation of any of the covenants, conditions, restrictions, limitations, reservations, grants of easements, rights-of-way, liens, charges or equitable servitudes contained in this Declaration are inadequate and that the failure of any Member or user of any Lot, or any portion of the Common Area, to comply with any provision of this Declaration or any Rule, regulation, decision or resolution of the Board of Directors or Bylaws or Articles of Incorporation of the Association, all as May be amended from time to time, May be enjoined by appropriate legal proceedings instituted by any Member, the Association, its officers or Board of Directors, or by their respective successors in interest. Such legal proceedings May include, but not be limited to, the following:

- (i) An action for mandatory or prohibitory injunction,
- (ii) An action for declaratory relief, and/or
- (iii) A claim for damages, including prospective costs and costs actually incurred in obtaining compliance.

No action Shall be filed unless or until there is compliance with the Alternative Dispute Resolution provisions required by *Civil Code* section 1354.

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

(i) **Maintenance, Repair and Replacement.** If the Association reasonably finds a Lot or House 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 and if the Owner fails or refuses to do so, the Association May utilize the provisions set forth herein, and cause the work to be performed and collect the cost by adding it to the assessment for that Lot and collecting it in the same manner as a Reimbursement Assessment.

(ii) **Removal of Nuisance.** Subject to the provisions herein, the Association Shall have authority to enter upon a Lot (except for the interior of the House itself) to cause the removal of a nuisance from the Subject Property.

(f) **Imposition of Reimbursement Assessment.** The Association May levy a Reimbursement Assessment as provided for in Article IV, Section 4.3 hereof.

12.4 Implementation. Association, as referred to in this Section, Shall refer to the Board, the Tribunal Committee or such other committee established by the Board.

(a) **Notice and Opportunity for Hearing.** If a Member, tenant or lessee appears to be in violation of any provision of the Governing Documents, including but

not limited to the Rules, and the provisions of any of the **Governing Documents** require that notice and opportunity for hearing be provided, the **Association May**, at its sole option, set an affirmative date for a hearing to be held. In the event the **Association** decides a hearing **Shall** be conducted, written notice **Shall** be given at least ten (10) days prior to the date set for the hearing. Such notice **Shall** be given in accordance with Article XV, Section 15.8 *Notices* hereof. The delivery of a notice in the manner provided in this Section **Shall** be considered notice served and received. In the alternative, the **Association May** offer an opportunity for hearing and place the affirmative burden on the charged party to request a hearing upon such reasonable terms as the **Association May** impose.

(b) **Contents of Notice.** The contents of the notice **Shall** include the nature of the alleged violation, whether a hearing will be held or must be requested, and the nature of the sanctions that **May** be imposed at the **Association's** discretion. If the **Member's**, tenant's or lessee's failure to correct a violation has or will result in the expenditure of funds by the **Association** to correct the violation, the notice **Shall** also state that the **Association May** vote to levy a Reimbursement Assessment if the **Association** finds that a violation has occurred.

(c) **Emergency Powers.** Under circumstances involving conduct that constitutes (1) an immediate and unreasonable infringement of, or threat to, the safety or quiet enjoyment of neighboring **Owners**, (2) a traffic or fire hazard, (3) a threat of material damage to, or destruction of, the **Common Area**, or (4) a violation of the **Governing Documents** that is of such a nature that there is no material question regarding the identity of the violator or whether a violation has occurred (such as parking violations), the **Board of Directors**, or its duly authorized agents, **May** undertake immediate corrective or disciplinary action and, upon request of the offending party (which request must be received by the **Association**, in writing, within five days following the **Association's** disciplinary action), conduct a hearing as soon thereafter as reasonably possible, but in no event no more than 15 days after the disciplinary action is imposed or 15 days following receipt of the party's request for a hearing, whichever is later. Under such circumstances, any fine imposed pursuant to an established fine schedule **Shall** be due and payable only upon expiration of the 15-day notice period.

(d) **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.

(e) **Owner Standing.** If the **Association** declines to take action in any instance, any **Owner Shall** have such rights of enforcement as exist by virtue of section 1354 of the California *Civil Code* or otherwise by law.

(f) **Due Process Generally.**

(i) **Findings of Fact and Determination.** During the hearing, after the hearing or when the matter is otherwise addressed by the **Association**, the **Association Shall** make findings of fact and if a violation is held to have been committed, the **Association May** levy sanctions and a Reimbursement Assessment and take such other action as it deems appropriate. If any sanction is imposed, the findings **Shall** also include notice of right to appeal to the **Board**.

(ii) **Right to Appeal.** If the enforcement procedure has been implemented by the Tribunal Committee or other committee, there **Shall** be a right of appeal to the **Board of Directors**. The **Board** May adopt procedures for appeals which generally comport with the provisions of Section 12.4(a) herein. The determination of the **Board of Directors** **Shall** be final.

12.5 **Miscellaneous.**

(a) **Cumulative Remedies.** The respective rights and remedies provided by this Declaration or by law **Shall** be cumulative, and the exercise of any one or more of such rights or remedies **Shall** not preclude or affect the exercise, at the same time 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 **Member** or others to perform or observe any provision of this Declaration.

(b) **Non-Waiver.** The failure of any **Member**, the **Board of Directors**, 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.

(c) **Rules re: Disciplinary Proceedings.** The **Board**, or an appropriate committee appointed by the **Board**, **Shall** be entitled to adopt Rules and/or policies that further the efficient conducting of disciplinary proceeding. Such Rules and/or policies **Shall** form a part of the **Association Governing Documents**.

(d) **Recording with Title.** In addition to any other enforcement options the **Association** May have, in the event of a violation, the **Association** May cause to be filed with title to the offending **Lot**, a Notice of Violation which **Shall** constitute notice to and be binding on all ownership interests of the **Lot** and their successors in interest of a continuing nuisance and/or that the property is security for payment of damages and/or Reimbursement Assessments.

(e) **Noncompliance with Procedure.** Failure by the **Association** to technically comply with the procedures set forth herein, or any Rules or policies adopted, **Shall** not be fatal to the process so long as it can be determined that there is no prejudice to the person who has been charged with a violation. Appearance at a hearing **Shall** constitute a waiver of any defect in notice.

(f) **Fees and Costs of Enforcement.** In any legal action to enforce the **Governing Documents**, the prevailing party **Shall** be awarded reasonable attorneys fees, costs and other charges incurred.

ARTICLE XIII **RIGHTS OF FIRST MORTGAGEES**

Notwithstanding contrary or conflicting provisions contained in other articles of this Declaration:

13.1 Notice of Default. The first Mortgagee of any House and Lot May, by written notice to the Association, request written notice of any default by the Mortgagor of such House and Lot in the performance of such mortgagor's obligations under this Declaration within thirty (30) days. Such request Shall state the name and mailing address of the Mortgagee, the name of the mortgagor, the date of recording of the Mortgage and the official records book and page number, file number or other reference identifying such recording, and the residential Lot number of the Planned Unit Development of the Subject Property encumbered by said Mortgage; and such request Shall also contain a reference to this Article XIII, of the Declaration of Covenants, Conditions and Restrictions for said Planned Unit Development. Each notice of default given pursuant to such request May be sent by regular mail, postage prepaid, addressed to the Mortgagee at the address stated in such request. Following the elapse of two (2) years from the date of receipt of the written request last given by a Mortgagee pursuant to this Article XIII, the Association Shall have no further duty to notify such Mortgagee of Mortgagor defaults.

13.2 Right of First Refusal. Any first Mortgagee who comes into possession of or title to a House and Lot pursuant to the remedies provided for in the Mortgage, or foreclosure of the Mortgage, Shall be exempt from any existing right of first refusal of any party as to the purchase of such House and Lot from the mortgagor thereof.

13.3 Assessment Liability. Any first Mortgagee who obtains title to a House and Lot pursuant to foreclosure of the Mortgage Shall be liable for all assessments as they accrue on and after the date said Mortgagee acquires title. Successors in interest are otherwise liable for delinquent assessments, whether or not a lien as been filed.

13.4 Majority Vote. Unless at least seventy-five percent (75%) (131) of the first Mortgagees (based on one (1) vote for each Mortgage) of Lots within the Subject Property have given their prior written approval, the Association Shall not be entitled to:

(a) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer real estate or improvements thereon which are owned, directly or indirectly, by Association for the benefits of the Lots in the Subject Property;

(the granting of easements for public utilities or for other public purposes consistent with the intended use of the Subject Property Shall not be deemed a transfer within the meaning of this clause);

(b) change the method of determining the obligations, assessments, dues or other charges which May be levied against an Owner;

(c) by act or omission change, waive or abandon any scheme or regulation, or enforcement thereof, pertaining to the architectural design or the exterior appearance of Houses, the Maintenance of Party Walls or perimeter fences and driveways, or the upkeep of lawns and plantings in the Subject Property;

(d) fail to maintain fire and extended coverage on insurable Common Area on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost);

(e) use hazard insurance proceeds for losses to any Common Area for other than the repair, replacement or reconstruction of such improvements.

13.5 Inspection of Records. First Mortgagees Shall have the right to examine the books and records of the Association, upon reasonable advance request in writing.

13.6 First Mortgage Priority. Nothing herein or in the Articles of Incorporation of the Association or any other instrument relating to the Subject Property gives any Owner of any House or Lot or other party priority over any rights of first Mortgagees pursuant to their Mortgages, in the case of a distribution to such Lot Owners of insurance proceeds or condemnation awards for losses to or taking of common property in the Subject Property.

13.7 Reserve Fund. Association assessments Shall include an adequate reserve fund for Maintenance, repairs and replacement of those elements of the Common Area that must be replaced on a periodic basis, and Shall be payable as provided herein.

13.8 Definition. The terms "Mortgage", "mortgagor", and "Mortgagee" as used in this Article Shall include, respectively a deed of trust and the trustor and beneficiary thereunder.

ARTICLE XIV SALE OR LEASE OF HOUSE

14.1 Sale or Lease of Houses. It is the intent of this Section to protect, enhance and maintain the single family residential atmosphere which exists within the Subject Property and to avoid occupancy of residences for short periods of time or by an unreasonable number of individuals. Accordingly an Owner Shall be entitled to rent or lease his or her House if:

(a) There is a written rental or lease agreement specifying that (i) the tenant Shall be subject to all provisions of the Governing Documents, (ii) a failure to comply with any provision of the Governing Documents Shall constitute a default under the agreement, and (iii) all tenants are subject to disciplinary action or other actions by the Association to enforce the Governing Documents;

(b) The period of the rental or lease is not less than ninety (90) days;

(c) The Owner provides any tenant or lessee with a current copy of all the Governing Documents and Shall at all times be responsible for compliance by the tenant or lessee with the Governing Documents during the tenant's or lessee's occupancy and use of the Lot.

14.2 Obligations of Owners. Owners of Lots Shall be subject to the following:

(a) **Owner's Duty to Notify Association of Tenant and Contract Purchasers.** Each Owner Shall notify the Secretary of the Association or the Association's Manager, of the names of any contract purchaser or tenant of the Owner's House and Lot.

(b) **Contract Purchasers.** A contract seller of a Lot must delegate his or her voting rights as a Member of the Association and his or her right to use or enjoy the Common Area to any contract purchaser in possession of the property. Notwithstanding the foregoing, the contract seller Shall remain 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.

(c) **Notification Regarding Governing Documents.** The Owner Shall, as soon as practicable before transfer of title to a Lot, provide the following to the prospective purchaser: (i) a copy of the **Governing Documents**, (ii) a copy of the most recent financial statement distributed pursuant to section 1365 of the *California Civil Code*, (iii) a true statement in writing as to the amount of any assessments, late charges, interest and costs levied upon the Owner's interest in the common interest development which are unpaid on the date of the statement.

14.3 Pest Control/Contractor Reports. No pest control or other contractor Shall be permitted to conduct destructive testing of any kind or nature on any area the Association is required to maintain, repair or replace without the prior written approval of the Board. Owners in possession of pest control or contractor reports who request Maintenance or repairs to be performed by the Association to any area specified in such report Shall submit to the Association copies of any such report, bid and/or estimate. The Board Shall have discretion to respond in an appropriate fashion.

14.4 Notice of Acquisition. A purchaser or other person or entity acquiring an ownership interest to a House Shall notify the Association's manager not more than ten (10) days after the date of acquisition and provide (i) the name(s) of all persons or entities with an ownership interest as listed on the recorded title transfer documents, (ii) a mailing address for the Owner(s), (iii) day and evening telephone number and (iv) the effective date of acquisition of each ownership interest.

14.5 Termination and Commencement of Obligations. Notwithstanding that an annual assessment has been levied or a special assessment is payable in installments, when ownership changes occur:

- (a) the transferor-Owner Shall be personally liable for the pro rata share of all annual and other assessments which became payable up to the time of transfer, and
- (b) the receiving-Owner Shall be responsible personally for the pro rata share reflecting payments actually payable after acquisition of the ownership interest.

In the event payment of an annual or other assessment has been accelerated under CC&R § 5.2, upon change in title, the personal liability of both parties Shall nonetheless be prorated. Therefore, neither Shall be personally liable for amounts due and payable during a time when no ownership interest is held.

ARTICLE XV GENERAL PROVISIONS

15.1 Headings. The headings used in this Declaration are for convenience only and are not to be used in interpreting the meaning of any of the provisions of this Declaration, or otherwise.

15.2 Severability. The provisions of this Declaration Shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion thereof Shall not affect the validity or enforceability of any other provisions hereof.

15.3 Cumulative Remedies. Each remedy provided for in this Declaration Shall be cumulative and not exclusive. Failure to exercise any remedy provided for in this Declaration Shall not, under any circumstances, be construed as a waiver thereof.

15.4 Violations as Nuisance. Every act or omission in violation of the provisions of this Declaration Shall constitute a nuisance and, in addition to all other remedies herein set forth, May be abated or enjoyed by any Owner, any member of the Board, the Manager, or the Association.

15.5 Financial Documents. Any Owner May, at any reasonable time and upon reasonable notice to the Board or Manager at his or her own expense, cause an audit or inspection to be made of the books and financial records of the Association. In accordance with the requirements of the Davis-Stirling Common Interest Development Act, the Association Shall comply with the provisions set forth in Exhibit A attached hereto and incorporated herewith. The Treasurer Shall be responsible for annually reviewing the provisions of the Davis-Stirling Act and making recommendations to the Board of any changes in financial procedures and reporting that May be required of new or amended sections thereof involving financial matters. The Board May annually amend Exhibit A hereto to conform to the current provisions of the Davis-Stirling Common Interest Development Act.

15.6 Interpretation. The provisions of this Declaration Shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of a Planned Unit Development. Failure to enforce any provision hereof Shall not constitute a waiver of the right to enforce said provision thereafter.

15.7 Amendment. Except as otherwise provided herein, the provisions of this Declaration May be amended by an instrument in writing reflecting approval by record Owners holding two-thirds (116) of the total vote hereunder, which amendment Shall be effective upon recordation in the office of the Recorder of the County of Alameda.

15.8 Notices. Any notice permitted or required to be delivered as provided herein May be delivered either personally or by mail. If delivery is made by mail, it Shall be deemed to have been delivered forty-eight (48) hours after a copy of the same has been deposited in the United States mail, postage prepaid addressed to each Member at the address given by the Member to the Board for the purpose of service of such notice or to the Lot of the Member if no address has been given. Such address May be changed from time to time by notice in writing to the Board.

15.9 Completed Litigation. The Association was the plaintiff in a representative action against parties involved in the development, design and construction of the Subject Properties. The repairs were substantially completed in 1989 and the Association has no ongoing or future responsibilities for the repairs and other areas for which the Owners are responsible under this Declaration.

15.10 Term of Declaration. This Declaration Shall affect and run with the land and Shall exist and be binding upon all parties and persons claiming under it until January 1, 2004, after which time the same Shall be extended for successive periods of ten (10) years, unless an

instrument amending the **Declaration** in whole or in part has been approved by the appropriate percentage of the voting power of **Members** and has been recorded in the Official Records of Alameda County, California.

IN WITNESS WHEREOF, we, the President and Secretary of SEQUOYAH HEIGHTS HOME OWNERS' ASSOCIATION, declare that the foregoing Amended Declaration of Covenants, Conditions and Restrictions (As Amended in 1997), is hereby affirmed, approved and adopted pursuant to Order of the Superior Court of California, County of Alameda County, California (Case No. 761328-7), dated and filed November 27, 1996, a copy of which is attached hereto as Exhibit "B," granting a Petition to Reduce Required Voting Percentage, which Amended Declaration of Covenants, Conditions and Restrictions (As Amended in 1997) shall be recorded with the County Recorder of Alameda County, California, by means of the signatures of the President and Secretary of SEQUOYAH HEIGHTS HOME OWNERS' ASSOCIATION.

DATED: 3/12/97

SEQUOYAH HEIGHTS HOME
OWNERS' ASSOCIATION

Loy H. Lasmussen
President

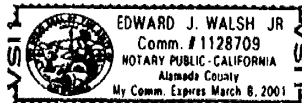
Roberta Bodine
Secretary

CERTIFICATE OF ACKNOWLEDGEMENT

STATE OF CALIFORNIA)
) ss.
COUNTY OF)

On 3-12-97, before me, EDWARD J WALSH JR, personally appeared Roberta Bodine, personally known to me (or 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.

WITNESS my hand and official seal.



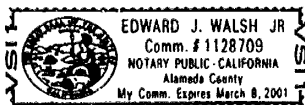
Signature [Handwritten Signature] (Seal)

CERTIFICATE OF ACKNOWLEDGEMENT

STATE OF CALIFORNIA)
) ss.
COUNTY OF)

On 3-12-97, before me, EDWARD J. WALSH, JR., personally appeared
Roy H. Rasmussen, personally known to me (~~or 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.

WITNESS my hand and official seal.



Signature [Handwritten Signature] (Seal)

EXHIBIT "A"

(Civil Code, section 1365(a))

class mail, postage prepaid, at the most current address shown on the books of the association.

(e) For purposes of this section, "occupant" means an owner, resident, guest, invitee, tenant, lessee, sublessee, or other person in possession on the separate interest.

(f) Notwithstanding the provisions of the declaration, the owner of a separate interest is entitled to reasonable access to the common areas for the purpose of maintaining the internal and external telephone wiring made part of the exclusive use common areas of a separate interest pursuant to paragraph (2) of subdivision (1) of Section 1351. The access shall be subject to the consent of the association, whose approval shall not be unreasonably withheld, and which may include the association's approval of telephone wiring upon the exterior of the common areas, and other conditions as the association determines reasonable. (Added by Stats 1985, c. 874, § 14. Amended by Stats 1987, c. 357, § 2; Stats 1987, c. 1151, § 1.)

§ 1365. Documents prepared and distributed by associations

Unless the governing documents impose more stringent standards, the association shall prepare and distribute to all its members the following documents:

(a) A pro forma operating budget, which shall include all of the following:

(1) The estimated revenue and expenses on an accrual basis.

(2) A summary of the association's reserves based upon the most recent review or study conducted pursuant to Section 1365.5, which shall be printed in bold type and include all of the following:

(A) The current estimated replacement cost, estimated remaining life, and estimated useful life of each major component.

(B) As of the end of the fiscal year for which the study is prepared:

(i) The current estimate of the amount of cash reserves necessary to repair, replace, restore, or maintain the major components.

(ii) The current amount of accumulated cash reserves actually set aside to repair, replace, restore, or maintain major components.

(C) The percentage that the amount determined for purposes of clause (ii) of subparagraph (B) is of the amount determined for purposes of clause (i) of subparagraph (B).

(3) A statement as to whether the board of directors of the association has determined or anticipates that the levy of one or more special assessments will be required to repair, replace, or restore any major component or to provide adequate reserves therefor.

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

additions to those major components that the association is obligated to maintain.

The summary of the association's reserves disclosed pursuant to paragraph (2) shall not be admissible in evidence to show improper financial management of an association, provided that other relevant and competent evidence of the financial condition of the association is not made inadmissible by this provision.

A copy of the operating budget shall be annually distributed not less than 45 days nor more than 60 days prior to the beginning of the association's fiscal year.

(b) A review of the financial statement of the association shall be prepared in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy for any fiscal year in which the gross income to the association exceeds seventy-five thousand dollars (\$75,000). A copy of the review of the financial statement shall be distributed within 120 days after the close of each fiscal year.

(c) In lieu of the distribution of the pro forma operating budget required by subdivision (a), the board of directors may elect to distribute a summary of the pro forma operating budget to all its members with a written notice that the pro forma operating budget is available at the business office of the association or at another suitable location within the boundaries of the development and that copies will be provided upon request and at the expense of the association. If any member requests that a copy of the pro forma operating budget required by subdivision (a) be mailed to the member, the association shall provide the copy to the member by first-class United States mail at the expense of the association and delivered within five days. The written notice that is distributed to each of the association members shall be in at least 10-point boldface type on the front page of the summary of the budget.

(d) A statement describing the association's policies and practices in enforcing lien rights or other legal remedies for default in payment of its assessments against its members shall be annually delivered to the members during the 60-day period immediately preceding the beginning of the association's fiscal year.

(e)(1) A summary of the association's property, general liability * * *, and earthquake and flood insurance policies, which shall be distributed within 60 days preceding the beginning of the association's fiscal year, that includes all of the following information about each policy:

(A) The name of the insurer.

(B) The type of insurance.

(C) The policy limits of the insurance.

(D) The amount of deductibles, if any.

* * *

(2) The association shall, as soon as reasonably practical, notify its members by first-class mail if any of the policies described in paragraph (1) have lapsed.

EXHIBIT A

been canceled, and are not immediately renewed, restored, or replaced, or if there is a significant change, such as a reduction in coverage or limits or an increase in the deductible, for any of those policies. If the association receives any notice of . . . nonrenewal of a policy . . . described in paragraph (1), the association shall immediately notify its members . . . if replacement coverage will not be in effect by the date the existing coverage will lapse.

(3) To the extent that any of the information required to be disclosed pursuant to . . . paragraph (1) is specified in the insurance policy declaration page, the association may meet . . . its obligation to disclose that information by making copies of that page and distributing it to all of its members.

(4) The summary distributed pursuant to paragraph (1) shall contain, in at least 10-point boldface type, the following statement: "This summary of the association's policies of insurance provides only certain information, as required by subdivision (e) of Section 1365 of the Civil Code, and should not be considered a substitute for the complete policy terms and conditions contained in the actual policies of insurance. Any association member may, upon request and provision of reasonable notice, review the association's insurance policies and, upon request and payment of reasonable duplication charges, obtain copies of those policies. Although the association maintains the policies of insurance specified in this summary, the association's policies of insurance may not cover your property, including personal property or, real property improvements to or around your dwelling, or personal injuries or other losses that occur within or around your dwelling. Even if a loss is covered, you may nevertheless be responsible for paying all or a portion of any deductible that applies. Association members should consult with their individual insurance broker or agent for appropriate additional coverage." (Added by Stats.1985, c. 874, § 14. Amended by Stats.1988, c. 1388, § 1; Stats.1988, c. 1409, § 3; Stats.1990, c. 716 (A.B.2438), § 1; Stats.1991, c. 412 (A.B.623), § 1; Stats.1995, c. 199 (S.B.300), § 1; Stats.1996, c. 396 (S.B.1525), § 1.)

§ 1365.5. Board of directors; duties

(a) Unless the governing documents impose more stringent standards, the board of directors of the association shall do all of the following:

(1) Review a current reconciliation of the association's operating accounts on at least a quarterly basis.

(2) Review a current reconciliation of the association's reserve accounts on at least a quarterly basis.

(3) Review, on at least a quarterly basis, the current year's actual reserve revenues and expenses compared to the current year's budget.

(4) Review the latest account statements prepared by the financial institutions where the association has its operating and reserve accounts.

(5) Review an income and expense statement for the association's operating and reserve accounts on at least a quarterly basis.

(b) The signatures of at least two persons, who shall be members of the association's board of directors, or one officer who is not a member of the board of directors and a member of the board of directors, shall be required for the withdrawal of moneys from the association's reserve accounts.

(c)(1) The board of directors shall not expend funds designated as reserve funds for any purpose other than the repair, restoration, replacement, or maintenance of, or litigation involving the repair, restoration, replacement, or maintenance of, major components which the association is obligated to repair, restore, replace, or maintain and for which the reserve fund was established.

(2) However, the board may authorize the temporary transfer of money from a reserve fund to the association's general operating fund to meet short-term cash-flow requirements or other expenses, provided the board has made a written finding, recorded in the board's minutes, explaining the reasons that the transfer is needed, and describing when and how the money will be repaid to the reserve fund. The transferred funds shall be restored to the reserve fund within one year of the date of the initial transfer, except that the board may, upon making a finding supported by documentation that a temporary delay would be in the best interests of the common interest development, temporarily delay the restoration. The board shall exercise prudent fiscal management in . . . maintaining the integrity of the reserve account, and shall, if necessary, levy a special assessment to recover the full amount of the expended funds within the time limits required by this section. This special assessment is subject to the limitation imposed by Section 1366. The board may, at its discretion, extend the date the payment on the special assessment is due. Any extension shall not prevent the board from pursuing any legal remedy to enforce the collection of an unpaid special assessment.

(d) When the decision is made to use reserve funds or to temporarily transfer money from the reserve fund to pay for litigation, the association shall notify the members of the association of that decision in the next available mailing to all members pursuant to Section 5016 of the Corporations Code, and of the availability of an accounting of those expenses. Unless the governing documents impose more stringent standards, the association shall make an accounting of expenses related to the litigation on at least a quarterly basis. The accounting shall be made available for inspection by members of the association at the association's office.

(e) At least once every three years the board of directors shall cause to be conducted a reasonably competent and diligent visual inspection of the accessible areas of the major components which the association is obligated to repair, replace, restore, or maintain as part of a study of the reserve account requirements of

EXHIBIT A

EXHIBIT "B"

ENDORSED
FILED
ALAMEDA COUNTY

NOV 27 1996

RONALD G. OVERHOLT, Exec. Off./Clerk
By Ed Cranston

Steven S. Weil, Esq., State Bar No. 95564
Marilyn J. Stewart, Esq., State Bar No. 170031
BERDING & WEIL
3240 Stone Valley Road West
Alamo, CA 94507
Telephone: 510/838-2090
Fax No.: 510/820-5592

Attorneys for Petitioner

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

In the Matter of
SEQUOYAH HEIGHTS HOME
OWNERS' ASSOCIATION, a
California nonprofit mutual
benefit corporation,

Petitioner

No.: 761328-7

ORDER GRANTING PETITION
TO REDUCE REQUIRED
VOTING PERCENTAGE
(CC §1356 and
Corp. Code §7515)

Date: November 27, 1996
Time: 9:00
Dept: 81

Petitioner Sequoyah Heights Home Owners' Association's Petition to Reduce the Required Voting Percentage to approve the amendment of the Association's Declaration of Covenants, Conditions and Restrictions under *Civil Code* section 1356 and *Corporations Code* section 7515 came on regularly for hearing on November 27, 1996 in Department 81 of the above-titled Court at 9:00 a.m.. Petitioner appeared by and through its counsel, Marilyn J. Stewart, of Berding & Weil.

The Court, having considered the Petition, the Declarations filed herein, the briefs submitted by the parties, the records on file herein, and the oral and documentary evidence adduced at the hearings in this matter, finds:

1. The allegations of Petitioner's Petition to Reduce Required Voting Percentage to be true and accurate.

2. Petitioner gave at least 15 days' written notice of the hearing to all Association members and to all others entitled to such notice.

3. The balloting on the proposed Amended Declaration was conducted in accordance with all applicable provisions of the governing documents.

4. Petitioner made a reasonably diligent effort to permit all eligible members to vote on the Amended Declaration.

5. Owners with more than fifty percent (50%) of the votes voted in favor of approving the Amended Declaration and Amended Articles of Incorporation.

6. Petitioner's Amended Declaration is reasonable.

7. The granting of the within Petition is not improper for any reason stated in California *Civil Code* section 1356(e).

Good cause appearing,

IT IS ORDERED that:

1. Petitioner's Petition to Reduce the Required Voting Percentage for approval of the Amended Declaration of Covenants, Conditions, and Restrictions of Sequoyah Heights Home Owners' Association is granted.

2. Any objections that may have been filed with respect to the Petition are overruled.

3. The Amended Declaration shall not be effective until recorded in the Official Records of Alameda County, together with a copy of this order. Within 60 days after its recordation, Petitioner shall mail a copy of the Amended Declaration to each member of the Association, together with a statement that the Amended Declaration has been recorded. On such recordation, the Amended Declaration shall have the same force and effect as if it had been adopted in compliance with every requirement for amendment imposed by the governing documents of the SEQUOYAH HEIGHTS HOME OWNERS' ASSOCIATION common interest development.

DATED: NOV 27 1996

SANDRA MARGULIES

Judge of the Superior Court

EXHIBIT B

RECORDING REQUESTED BY:

Sequoyah Heights Home Owners' Assn.

AND WHEN RECORDED, RETURN TO:

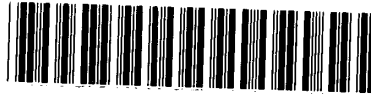
Sequoyah Heights Home Owners' Assn.
c/o Walsh Property Management Inc.
P.O. Box 2657
Castro Valley, CA 94546



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OFFICIAL RECORDS OF ALAMEDA COUNTY
MELISSA WILK
RECORDING FEE: 237.00



47 PGS

Space Above This Line for Recorder's Use

B23

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B29

RESTATED DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
of
SEQUOYAH HEIGHTS HOME OWNERS' ASSOCIATION

TITLE OF DOCUMENT

THIS PAGE ADDED TO PROVIDE ADEQUATE SPACE FOR RECORDING INFORMATION
(Govt. Code §27361.6)
(Additional recording fee applies)

RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
of
SEQUOYAH HEIGHTS HOME OWNERS' ASSOCIATION

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**RESTATED DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
of
SEQUOYAH HEIGHTS HOME OWNERS' ASSOCIATION**

This Restated Declaration supersedes the Declaration of Covenants, Conditions and Restrictions and any amendments.

RECITALS

1. SEQUOYAH HEIGHTS HOME OWNERS' ASSOCIATION (hereinafter referred to as "the Association") is a common interest development and it governs, as provided in the previously recorded declaration identified in the paragraph immediately below, the following Property (hereinafter referred to as "SEQUOYAH HEIGHTS" or "the Property") in the City of Oakland, County of Alameda, State of California, which is described as:

LOTS 1 THROUGH 174, INCLUSIVE AND COMMON AREA LOTS 175-189, INCLUSIVE, IN TRACT NO. 3747, RECORDED FEBRUARY 4, 1977, IN BOOK 93, AT PAGES 52 THROUGH 62, ALAMEDA COUNTY RECORDS OR AS OTHERWISE ANNEXED OR REFLECTED IN THE SUBDIVISION DOCUMENTS.

2. A previous version of the Declaration of Covenants, Conditions and Restrictions was recorded in the Official Records of the Recorder for the County of Alameda, State of California, on April 8, 1997 as Document No. 97090798.

3. Ownership of each Lot (as defined below) within SEQUOYAH HEIGHTS shall consist of a fee simple interest, with a coincident membership in the Association, which Association owns the fee simple interest in the Common Area.

4. As Restated herein, these covenants, conditions and restrictions ("CC&R's") shall run with the land (the Property) and be binding on all parties having or acquiring any right, title or interest in any portion of SEQUOYAH HEIGHTS and shall be for the benefit of all Owners and the Association.

**ARTICLE I
DEFINITIONS**

1.01 Act. "Act" means The Davis-Stirling Common Interest Development Act (commencing with Civil Code §§ 4000 to 6100), as amended from time to time.

1.02 Articles. "Articles" means the Articles of Incorporation of the Association, including any amendments.

1.03 Association. "Association" means "SEQUOYAH HEIGHTS HOME OWNERS' ASSOCIATION", a California nonprofit mutual benefit corporation, its successors and assigns.

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

1.05 Bylaws. "Bylaws" means the Restated Bylaws of the Association, including any amendments or restatements.

1.06 Common Area. "Common Area" means all property owned by the Association for the common use and enjoyment of the Owners. It shall mean Lots 175 through 189,

inclusive in Tract No. 3747, recorded February 4, 1977, in Book 93, at pages 52-62, Alameda County records. "Common Area" also includes all facilities, and improvements located within the Common Area, including drives, stairs, walks, curbs, gutters, parking areas, storm drains, electrical, water, gas and telephone services, storage and equipment areas of enclosures, open spaces, planted and landscaped areas, swimming pool, club house, and attendant facilities and equipment and all other improvements which may be placed upon or located in the Common Area.

1.07 Declaration. "Declaration" means this Restated Declaration and any amendments. The term Declaration is interchangeable with the term "Restated Covenants, Conditions and Restrictions" or "Restated CC&R's".

1.08 Disaster. "Disaster" means any earthquake, fire, or other casualty, regardless of whether insured or uninsured, that damages two or more units, the repair or reconstruction of which cannot reasonably be accomplished without the cooperation and coordination of the Owners of two or more of the affected units. The determination that an event is a Disaster shall not depend upon the existence of an actual failure of cooperation and coordination.

1.09 Governing Documents. "Governing Documents" means this Restated Declaration, the Restated Bylaws, the Articles of Incorporation, Operating Rules and Regulations, Resolutions, Architectural Standards, and any policies adopted by the Association, and any amendments to such documents.

1.10 House. "House" means any portion of a building located in SEQUOYAH HEIGHTS, designed and intended for use and occupancy as a single family residence, and enclosed garage, whether attached to or detached from any other House.

1.11 Lot. "Lot" means each residential Lot as shown on the Map, including any and all improvements thereon. The Common Area lots and any area dedicated to and accepted by a governmental entity is not included within the term "Lot".

1.12 Map. "Map" means the map of the Property (defined below), which map was filed in the Office of the County Recorder of Alameda County, California on February 4, 1977 in Book 93 of Maps at pages 52 through 62 (the "Map").

1.13 Member. "Member" means a Member of the Association. Every Owner is a Member of the Association.

1.14 Member in Good Standing. "Member in good standing" means a Member who is not in violation of the Governing Documents and is current on assessments, fees and fines.

1.15 Mortgage. "Mortgage" means a mortgage or deed of trust.

1.16 Mortgagee. "Mortgagee" means the holder of the beneficial interest in any mortgage.

1.17 Notice and Opportunity for Hearing. "Notice and opportunity for hearing" means giving at least fifteen (15) days prior notice of a proposed action and the reasons, and an opportunity to be heard by the Association, orally or in writing, not less than five (5) days before the effective date of the proposed action.

1.18 Owner. "Owner" means the record Owner, whether one or more persons or entities, of a fee simple title to any Lot and the contract vendee under a recorded contract of sale. "Owner" shall not include any person or entity which holds an interest in a Lot merely as security for the performance of an obligation or as a tenant.

1.19 Party Wall. "Party Wall" means any wall, which is physically attached to two residential dwelling structures principally situated upon adjacent Lots and which is located substantially parallel to and 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 common footings, common foundation, common insulation and that point where the roofs join or abut neighboring roofs.

1.20 Party Wall Fence. "Party Wall Fence" means any fence situated upon and separating two individually owned Lots.

1.21 Property. "Property" means the real property identified in the legal description in the Recitals, Paragraph 1.

1.22 Rules and Regulations. "Rules and Regulations" means reasonable and nondiscriminatory rules and regulations as may be adopted from time to time by the Association, provided notice of such rules and regulations has been given to Owners in accordance with the requirements of this Restated Declaration and current law.

1.23 Sequoia Heights Home Owners' Association. "Sequoia Heights Home Owners' Association" means a California nonprofit mutual benefit corporation incorporated under that name, and its successors and assigns. It may also be referred to herein as the "Association".

1.24 Total Voting Power of the Association. "Total voting power of the Association" means the total of one hundred seventy-four (174) votes allocated to the Members.

1.25 Voting Power. "Voting power" means those Members who are eligible to vote for the election of Directors or with respect to any other matter, issue, or proposal properly presented to the Members for approval at any time a determination of voting rights is made. To be a part of the voting power, a Member must be in good standing.

ARTICLE II DESCRIPTION OF PROJECT

2.01 Property Subject to Declaration. All of the real property described on the Map is hereby declared to be subject to these Restated CC&R's.

2.02 Easements. Every owner shall have a right and easement of access and enjoyment in and to the Common Area and of access to the various dedicated streets adjacent to the Property, which right and easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

A. The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area.

B. The right of the Association to adopt reasonable rules and regulations governing the use, maintenance and administration of the Common Area or for the health, comfort, safety and general welfare of persons using the Common Area.

C. The right of the Association to suspend the voting rights and right to use of the recreational facilities by an Owner for any period during which any assessment against his or her Lot remains unpaid; or for any infraction of its Governing Documents after hearing by the Board of Directors of the Association.

D. 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 Members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of Members agreeing to such dedication or transfer has been recorded.

2.03 Delegation of Use. Any owner may delegate, in accordance with the Restated

Bylaws, his or her right of enjoyment to the Common Area and facilities to the following persons provided they reside on the Owner's Lot: members of his or her family, his or her tenant, or contract purchasers.

2.04 Encroachment Easements. Each Lot as the dominant tenement shall have an easement over adjoining Lots and Common Area as the servient tenements for the purpose of accommodating any encroachment due to foundations, exterior wall, windows, roof overhang and fences or walls which are built in accordance with the original design plans and specifications, or due to engineering errors, errors or adjustments in original construction, settlement or shifting of the building, or similar causes. There shall be valid easements for the maintenance of said encroachments as long as they shall exist, and the rights and obligations of 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 or Owners if said encroachment occurred due to the intentional conduct of said Owner or Owners other than adjustments in the original construction. In the event a structure is partially or totally destroyed, and then repaired or rebuilt, the owners of each adjoining Lot agree that minor encroachments over adjoining Lots and Common Area shall be permitted and that there shall be valid easements for the maintenance of said encroachments so long as they shall exist. In the event that an error in engineering, design or construction results in an encroachment of a building into the Common Area, or into or onto an adjoining Lot, or into a required setback area, a correcting modification may be made in the subdivision map. Said modification shall be in the form of a certificate of correction and shall be executed by the original engineer and by the city engineer. The Association shall also execute the certificate of correction. The Board of Directors may, by vote or written approval of a majority of the directors, authorize the execution of the certificate of correction.

2.05 Other Easements. Easements for installation and maintenance of utilities and drainage facilities are shown on the Map. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may damage, interfere, or change the direction or flow of drainage facilities in the easements, or which may obstruct or retard the flow of water through drainage facilities in the easements. Said easements shall at all times be open and accessible to public and quasi-public utility corporations, and other persons erecting, constructing or servicing such utilities and quasi-utilities, all of whom shall have the right of ingress and egress and the right and privilege of doing whatever may be necessary to carry out any of the purposes for which said easements are and may hereafter be reserved.

2.06 Rights of Entry and Use. The Lots and Common Area shall be subject to the following rights of entry and use:

A. The right of Association or its agents to enter any Lot to cure any violation of the Governing Documents, provided that the owner has received notice and hearing as required by the Bylaws (except in the case of an emergency) and the Owner has failed to cure the violation or to take steps necessary to cure the violation within thirty (30) days after the finding of a violation by the Association;

B. The access rights of the Association to maintain, repair or replace improvements or property located in the Common Area;

C. The right of the Association or its agents to enter any Lot to perform maintenance or replacement as required by this Declaration.

2.07 Partition of Common Area. There shall be no subdivision or partition of the Common Area, nor shall any Owner seek any partition or subdivision.

ARTICLE III **PROPERTY RIGHTS**

3.01 Common Area. The Common Area shall be owned by the Association.

3.02 Severance. No Owner shall have the right to and no Owner shall sever his or her Lot from his or her Membership in the Association. Any sale, conveyance, encumbrance, hypothecation or other action in violation of this prohibition shall be void. Each Owner shall have the right to mortgage or encumber his or her Lot. No Owner shall have the right or authority to mortgage or otherwise encumber in any manner whatsoever any part of SEQUOYAH HEIGHTS' Common Area, nor shall any Owner have any right to judicial partition of Common Area property.

3.03 Common Area Easements. Each Owner shall have a nonexclusive easement in common with all other Owners over, in, to and throughout the Common Area for the purposes of use and enjoyment of the Common Area and ingress to and egress from his or her Lot. Each Owner shall have a nonexclusive easement in common with all other Owners over, in, to and throughout the Common Area for support and repair of his or her Lot.

3.04 Restrictions. Each Owner's interest in the Common Area and easements, whether exclusive use or nonexclusive, shall be appurtenant to and pass with the title to his or her Lot and shall be subject to the rights and restrictions, if any, of:

A. Any recorded easements;

B. The right of the Association to adopt rules and regulations pertaining to the use and enjoyment of the Common Area;

C. The right of the Association to control use of and to charge reasonable admission and other fees for the use of any unassigned parking and recreational facility situated on the Common Area and to assign, from time to time, exclusive rights to use of such unassigned parking and storage spaces;

D. The right of the Association, after notice and opportunity for hearing by the Association, to suspend the right of an Owner to use any recreational facilities on the Common Area (1) for any period during which any assessment against the Owner's Lot or any monetary penalty or fine imposed against an Owner remains unpaid; and (2) for a period not to exceed thirty (30) days for any infraction of the Rules and Regulations or any violation of or failure to comply with the provisions of the Governing Documents; and

E. The right of the Association to grant easements as provided in this Restated Declaration.

3.05 Delegation. Any Owner may delegate his or her rights of use and enjoyment of the Common Area to the Members of his or her family or household residing in the Owner's Lot, his or her guests and invitees while he or she is residing in his or her Lot, and his or her tenants or contract purchasers who reside on the Lot, subject, however, to reasonable restrictions imposed by the Governing Documents. No delegation of rights of use and enjoyment or rental of a Lot shall release an Owner from his or her obligations, including, without limitation, the obligation to pay regular and special assessments.

3.06 Encroachment. If any portion of the Common Area encroaches on any Lot or if any portion of a Lot encroaches on the Common Area, as the Common Area and the Lots are shown on the Map, whether such encroachment exists by reason of original construction or repair, restoration, reconstruction, shifting, settlement, or movement, there shall be an easement for such encroachment and for the maintenance of it in favor of the Common Area or Lot involved, to the extent of such encroachment for as long as it remains; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful conduct of said Owner or Owners.

3.07 Rules and Regulations. The Association shall have the right to adopt reasonable and nondiscriminatory rules and regulations governing the use and enjoyment of the Common Area. All rules and regulations and their application must be consistent with the Governing Documents and not in conflict with current law.

A. The Board of Directors shall provide written notice of a proposed rule change to the Owners at least thirty (30) days before making the rule change. The notice shall include the text of the proposed rule change. A decision on a proposed rule change shall be made at a meeting of the Board of Directors, after consideration of any comments made by Association Members.

B. As soon as possible after making a rule change, but not more than fifteen (15) days after making the rule change, the Board of Directors shall deliver notice of the rule change to every Owner. If the rule change was an emergency rule change, the notice shall include the text of the rule change, and the date that the rule change expires.

C. If the Board of Directors determines that an immediate rule change is required to address an imminent threat to public health or safety, or an imminent risk of substantial economic loss to the Association, it may make an emergency rule change with a stated expiration date.

3.08 Right to Enter.

A. The Association and its agents, employees and contractors shall have the right to enter any Lot, after reasonable notice, in connection with any work or thing required or permitted to be performed or done by the Association pursuant to the Governing Documents, or to inspect for or cure any violation of the Governing Documents, including any emergency or necessary repairs which the Owner has failed to perform. In the event there is any emergency threatening injury to person or Property, or reasonable cause to believe there is such an emergency, this right of entry shall be immediate and may be exercised without notice and whether or not the Owner is present. Any entry shall be made with as little inconvenience to the Owner as possible. If the Owner or resident is responsible for creating emergency circumstances, and access is not provided by a resident, the Owner shall reimburse the Association for locksmith fees or other costs to access and/or secure the premises. Owner(s) shall be responsible for all Association costs incurred due to failure to cooperate and/or provide reasonable access to Owner's Lot. Entry to cure any violation of the Governing Documents shall, except in an emergency, be subject to the requirements of Section 2.06(A) of this declaration.

B. The Association may enter a Lot, during a sale, to inspect for violations of the Governing Documents.

3.09 Partition. There shall be no partition of the Common Area or any Lot, unless ordered by a Court.

3.10 Utilities. Whenever a utility is installed on the Property, the Owner of the Lot

which it services shall have the right to enter upon that Property to service, repair and/or install utility services. In the event of a dispute between Owners concerning the right to enter and/or pay for the repair, service or installation, the dispute shall be submitted to the Board for final determination.

ARTICLE IV **ASSOCIATION MEMBERSHIP AND VOTING RIGHTS**

4.01 Ownership and Management of Common Area. The Association shall manage the Common Area in accordance with the Governing Documents and current law.

4.02 Membership. Every owner of a Lot within SEQUOYAH HEIGHTS is a Member of the Association. To be a Member of the Association, there must be a recorded deed showing ownership and title. Upon the sale, conveyance or transfer of a Member's interest, the Member's membership shall automatically transfer to the new Member.

4.03 Member Voting Rights. Each Member who owns a Lot shall be entitled to one (1) vote. When more than one person owns an interest in a Lot, a vote cast by a single Member shall be deemed the authorized vote for that Lot. If conflicting votes are cast, no vote shall be counted except a single vote shall be counted for purposes of a quorum (when a quorum is required).

ARTICLE V **POWERS AND DUTIES OF THE ASSOCIATION**

5.01 Duties. In addition to the duties enumerated in its Governing Documents and current law without limitation, the Association shall perform the following duties:

A. **Powers Generally.** The Association shall have the responsibility of managing and maintaining the Common Area and discharging the duties and responsibilities imposed on the Association by the Governing Documents. In the discharge of such responsibilities and duties, the Association shall have all of the powers of a non-profit mutual benefit corporation organized under the laws of the State of California in the ownership and management of its properties and the discharge of its responsibilities for the benefit of its Members, subject only to such limitations concerning the exercise of such powers as are set forth in the Governing Documents and current law. The Association shall have the power to do and perform any and all acts which may be necessary or proper for, or incidental to, the exercise of any of the express powers of the Association for the peace, health, comfort, safety or general welfare of the Owners;

B. **Association as Attorney-in-Fact for Owners.** (1) The Association is irrevocably appointed as the attorney-in-fact for the Owners of each and every Lot to manage, control and deal with any interest that such Owners may hold in the Common Area so as to permit the Association to fulfill all of its duties and obligations and to exercise all of its rights; (2) to the extent that any Owner may hold any interest in any insurance policy held by the Association with respect to the Property or any part thereof or in any proceeds from any such policy, the Association is irrevocably appointed as the attorney-in-fact for the Owners of each and every Lot to deal with and handle such insurance and insurance proceeds, and to negotiate and settle claims under such insurance. The acceptance by any person or entity of any interest in any Lot shall constitute an appointment of the Association as the Owner's attorney-in-fact;

C. **Assessments.** The Association shall fix, levy, collect, and enforce assessments;

D. **Budget; Unbudgeted Expenditures.** The Association shall prepare an annual budget and all financial documents as required by law; and any expenditure that is not in the annual budget and that exceeds twenty-five percent (25%) of the Association's total

monthly regular assessments must first be approved by a majority of the full membership of the Board.

E. Disclosures. The Association shall annually distribute all disclosures, policies, and procedures as required by law;

F. Discharge of Liens. The Association shall discharge by payment, if necessary, any lien against the Common Area, and charge the cost to the Member or Members responsible for the existence of the lien after notice and a hearing, as provided in the Governing Documents;

G. Enforcement. The Association shall enforce the Governing Documents to protect the interests of the Association and its Members;

H. Insurance. The Association shall maintain such policy or policies of insurance as are required by the Governing Documents or in the discretion of the Board of Directors are necessary to protect the interests of the Association and its members;

I. Maintenance. The Association shall maintain, repair replace, restore, operate and manage the Common Area (and all facilities, improvements, utilities and landscaping thereon) and such other parts of the Property for which maintenance responsibility is assigned to the Association under Article VI, below.;

J. Payment of Expenses. The Association shall pay all expenses and obligations incurred by the Association in the conduct of its business including, without limitation, all licenses, taxes, or governmental charges levied or imposed against the Property of the Association;

K. Taxes. The Association shall pay all real and personal property taxes and assessments levied upon any portion of the Common Area or other property owned by the Association;

L. Utilities. The Association shall pay for any utility services it finds necessary or desirable for the Common Area, such as cable television, water, sewage, garbage, electrical, gas, janitorial and window cleaning service, telephone, and other utility services; and

M. Compliance. Comply with current law.

5.02 Powers. In addition to the powers enumerated in its Governing Documents and without limitation, the Association shall have the following powers:

A. Access. For the purpose of performing construction, maintenance, or emergency repair for the benefit of the Common Area or an Owner or Owners, the Association and its agents or employees shall have the right, after reasonable notice (not less than twenty-four (24) hours except in emergencies) to the Owner, to enter any Lot or to enter any portion of the Common Area at reasonable hours. Such entry shall be made with as little inconvenience to the Owner as possible, and any damage caused by the Association or its agents or employees shall be repaired by the Association.

B. Acquisition and Disposition of Property. The Association shall have the power to acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, or otherwise dispose of real or personal Property in connection with the affairs of the Association. Any transfer of Common Area shall be approved by the Members, by a majority of the Members voting, provided that a quorum is established, unless otherwise restricted by current law.

C. Adoption of Rules. The Board of the Association may adopt reasonable rules and procedures not inconsistent with this Restated Declaration relating to the use of the Common Area and all facilities, and the conduct of Owners and their families, tenants and guests with respect to the Property and other Owners; notice of proposed rule changes shall be given as required by current law.

D. Appointment of Trustee. The Association, or the Board acting on behalf of the Association, has the power to appoint or designate a trustee to enforce assessment liens by sale as provided in this Declaration

E. Assessments, Liens and Fines. The Association shall have the power to levy and collect assessments in accordance with the Governing Documents and current law. The Association may impose fines or take disciplinary action against any Owner for failure to pay assessments or for violation of any provision of the Governing Documents. Penalties may include but are not limited to: fines, temporary suspension of voting rights, or other appropriate discipline, provided the Member is given notice and a hearing as provided in the Governing Documents, prior to the imposition of any fine or disciplinary action.

F. Contracts. The Association shall have the power to contract for goods and/or services for the Common Area, and interests of the Association, subject to the limitations of the Governing Documents.

G. Delegation. The Association, through the Board, shall have the power to delegate its authority and powers to committees (consisting only of Members, lessees residing in Houses, and/or contract purchasers residing in Houses), officers, or employees of the Association, or to a manager employed by the Association, provided that the Board shall not delegate its responsibility:

1) To make expenditures for capital additions or improvements chargeable against the reserve funds;

2) To conduct hearings concerning compliance by an Owner or his tenant, lessee, guest, or invitee with the Governing Documents;

3) To make a decision to levy monetary fines, impose special assessments against individual Lots, temporarily suspend an Owner's rights as a Member of the Association, or otherwise impose discipline;

4) To make a decision to levy regular or special assessments; or

5) To make a decision to bring suit, record a claim of lien, or institute foreclosure proceedings for default in payment of assessments.

H. Easements. The Association shall have the authority, after a sixty-seven percent (67%) affirmative vote by Members, to grant easements in addition to those shown on the map where necessary for utilities, cable television, a community satellite dish, sewer facilities, water, electricity, gas, telephone, television service, cables, lines, and computer services over the Common Area to serve the common and open space areas and the Lots, unless otherwise restricted by current law.

I. Enforcement. The Association shall have the authority to enforce the Governing Documents and shall comply with current law concerning dispute resolution.

J. Inspection of Association Books and Records. Any Owner, or that Owner's duly appointed representative, shall have access to the Association's Membership register, books of account, and minutes (except executive session minutes), from any meeting of

the Owners, the Board, or any committee of the Board in order to inspect and copy such records for any purpose reasonably related to his or her interest as an Owner. Access shall be at any reasonable time at the office of the Association or such other place within the Property as the Board prescribes. The Board shall establish rules regarding the notice the Owner must give to the custodian of the records to obtain access, the hours and days of the week when the records may be inspected and copied, and the charges imposed by the Association for copying records requested by the Owner. Any Member of the Board may at any reasonable time inspect, copy, or make extracts of any books, records, and documents of the Association and inspect the physical properties owned or controlled by the Association.

K. Limitation on Liability of Officers and Directors. No director, officer, committee Member, employee, or other agent of the Association, shall be liable to any Owner or any other party, including the Association, for any damage, loss, or prejudice suffered or claimed on account of any act, omission, error, or negligence of any such person if such person has acted in good faith and in a manner such person reasonably believed to be in the best interests of the Association.

L. Loans. The Association shall have the power to borrow money only with the assent (by vote or written consent) of two-thirds of the total voting power of the Association, to mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal Property as security for money borrowed or debts incurred.

M. Manager. The Association shall have the authority to employ a manager or other persons and to contract with independent contractors or managing agents to perform all or any portion of the duties and responsibilities of the Association, except for the responsibility to levy fines, impose discipline, hold hearings, file suit, record or foreclose liens, or make capital expenditures; provided that any contract with a firm or person appointed as a manager or managing agent shall not exceed a one (1) year term, and shall provide for the right of the Association to terminate the same upon sixty (60) days' written notice.

N. Other Powers. In addition to the powers contained herein, the Association may exercise the powers granted to a nonprofit mutual benefit corporation under California Corporations Code § 7140.

ARTICLE VI MAINTENANCE, REPAIR, AND REPLACEMENT

6.01 Association Responsibilities - Common Area. The Association shall control and pay for the maintenance, repair and replacement of all Common Area improvements including, but not limited to, landscaping, streets, sidewalks, storm drains, driveways and walkways.

6.02 Association and Owner Responsibilities for Maintenance, Repair and Replacement - Owners' Lots. SEQUOYAH HEIGHTS is a planned development wherein the Owners actually own their Lots and the buildings on them. It is unlike a condominium in that the Owners are responsible for all maintenance, repair and replacement of components unless specifically assigned to the Association. As to those components for which an Owner may be responsible for maintenance, repair and/or replacement, and which are visible from any other Lot, residence, Common Area or public area, any work which would alter the appearance from the original construction or configuration must be approved in advance by the Association.

The following sets forth Association and Owner responsibilities for the components as follows: (a) Walls and Trim, (b) Roofing, (c) Fireplace Flues and Caps, (d) Decks, Patios, Walkways and Driveways, (e) Fences, (f) Party Walls, (g) Easements, and (h) Landscaping. It also addresses responsibility for damages caused by wood destroying organisms and pests. Any component not addressed herein May be the subject of a policy adopted by the Board.

A. Exterior Walls and Trim.

1) Painting. The Association shall be responsible for the painting (or staining) of the exterior walls and trim which are part of the dwellings and garages and which are directly exposed to the weather. This shall include such ancillary components as are visible from the outside including such items as gutters, downspouts and vents. It shall also include reasonable preparation of the existing surfaces, including caulking.

2) Exteriors. The Association shall be responsible for the maintenance, repair and replacement of the exterior surfaces (siding and stucco) and trim of the buildings. The Association shall be further responsible for the integrity of the waterproofing systems such as building paper, window flashings or other flashings below painted surfaces, and caulking.

3) Windows. The Owner shall be responsible for the maintenance, repair and replacement of windows, metal window casings, sliding glass doors, sliding glass door frames, light fixtures, outdoor electrical outlets and other similar components.

4) Doors. The Association Shall be responsible for the painting, maintenance, repair and replacement of utility doors and for the painting of garage doors and exterior doors of the dwellings. The Owner shall be responsible for all other aspects of maintenance, repair and replacement of garage doors and exterior doors of the dwellings, including but not necessarily limited to the frames and the integral wood members thereof. The Owners shall also be responsible for the maintenance, repair and replacement of any automatic garage door openers and related mechanisms.

5) No Reimbursement. The Association shall have no responsibility to pay for or reimburse any Owner for any painting, staining or caulking or other exterior work which the Owner requests or undertakes at any time different from the Association's overall maintenance plan or schedule.

B. Roofing. The Association shall be responsible for the maintenance, repair and replacement of roof covers, gutters and downspouts. "Roof covers" shall mean the exterior surface layers of the roofing systems covering the dwellings and garages, as they may be replaced from time to time, including but not limited to shakes, shingles, ceramic, concrete and asphalt tile, tar and gravel surfacing, flashing, scuppers, exterior barge rafters, and building paper and felt or other secondary waterproofing systems. The Association is not responsible for maintenance, repair or replacement of the plywood and/or spaced sheathing, beams and rafters, and other supporting structural systems upon which the exterior surface coverings are attached. Except as may be covered by insurance, the Association Shall not be liable for leak damage to interiors

unless it is negligent or otherwise breaches its obligation to schedule and perform foreseeable exterior maintenance.

C. Fireplace Flues and Caps. The Owner shall be responsible for the maintenance, repair and replacement of the spark arrester and chimney cap components. The Owner is also responsible to clean the chimney flue as necessary.

D. Decks, Patios, Walkways and Driveways.

1) Decks. The Owner shall be responsible for the maintenance, repair and replacement of all deck components, including paint, stains, coatings, substrate, joists, structural elements and flashings (except as provided below).

2) Deck Railings. At homes where the developer built the original decks, the rear deck railings (in their original configuration) run along the Lot line abutting the Common Area in a manner similar to a perimeter fence (defined below). Commencing January 1, 1996, the Association shall maintain, repair and replace these deck railings.

3) Patios. The Owner Shall be responsible for the maintenance, repair and replacement of all patio components including slabs and landscaping.

4) Walkways & Driveways. The Association shall be responsible for all aspects of maintenance, repair and replacement of front walkways and driveways, including divider strips and expansion joints (except as to Owner neglect).

5) Fences.

(i) Perimeter Fences (Owner to Association). Where perimeter fences divide individual Lots from Common Area, the Association performs maintenance, repair and replacement, including painting or staining. The Association shall implement and control the work.

(ii) Party Wall Fences (Owner to Owner). Adjacent Owners shall be equally responsible for the maintenance, repair and replacement of fences, exterior privacy walls, railings or other components along with shared Lot line. The Association shall be responsible for painting or staining Party Wall Fences.

(iii) Other Fences/Gates. Owners shall be responsible for maintenance, repair and replacement of iron security fences and gates, as well as any other fences and gates installed by Owner.

6) Party Walls.

(i) Interests of Owners. The Owners collectively, and each such Owner individually, shall have a vested interest in the continued existence of the system of Party Walls which are built as a part of the original construction on the Subject Property in accordance with the plans approved by the City of Oakland. Each Party Wall or portion thereof shall be owned by the Owner of the Lot on which such wall or portion thereof is located, subject to the rights of the other Owners set forth herein. The Party Walls shall

include common footings, common foundation, common insulation and that point where the roofs join or abut neighboring roofs. In order to alert each Owner to his or her responsibilities to Owners of adjoining houses within the same structure, and to assure such Owners of adjoining houses of their respective rights and privileges, the following conditions and covenants are hereby adopted and established.

(ii) General Rules. Each of the adjoining Owners shall assume the burdens and obligations provided herein, and the Lots of such Owners shall be subject to an easement for such portion of a Party Wall as is located thereon and shall be entitled to the rights and benefits of the Party Wall, as set forth in this Declaration. To the extent not inconsistent herewith, the general rules of law regarding Party Walls and liability for property damage due to negligence or willful acts or omissions shall be applicable thereto. (See generally Civil Code § 841).

(iii) Maintenance and Decoration. Subject to the provisions of this Declaration regarding the duty of the Association to maintain exterior surfaces of residential improvements upon the Lots, each Owner shall maintain in a good state of repair the side of each Party Wall facing his or her Lot and shall do nothing, without the written approval of the adjoining Owner and the Architectural Control Committee, which May alter, modify, damage, impair or tend to alter, damage or impair the structural integrity of any Party Wall. Each Lot Owner May decorate and landscape the side of the Party Wall facing his or her Lot. 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 feet of any Party Wall which May impede or interfere with any necessary maintenance, repairs or restoration of the Party Wall.

(iv) Damage to Party Wall. In the event that any Party Wall is damaged or destroyed through the act of an adjoining Owner, or his or her tenants, occupants, guests, invitees, agents or family members (whether or not such act is negligent or otherwise culpable), so as to deprive the other adjoining Owner of the full use and enjoyment of such wall, then the responsible Owner shall forthwith rebuild and repair the same in as good a condition as formerly existed, without cost to the adjoining Owner. Subject to the provisions of this Declaration regarding the duty of the Association, if such Party Wall is damaged or destroyed by some cause (including ordinary wear and deterioration from lapse of time) other than the act of one of the adjoining Owners, his or her tenants, occupants, guests, invitees, agents or family members, each Owner whose Lot adjoins such wall shall forthwith rebuild and repair the same as to good a condition as formerly existed, at their joint and equal expense.

(v) Easement for Repair of Party Walls. There is specifically reserved an easement upon each Lot adjoining a Party Wall, as the servient tenement, for the benefit of the adjoining Lot on which portions of the Party Wall are located, as the dominant tenement, to perform such work, during daylight hours and following notification of not less than 24 hours (except in the event of an emergency), as May be necessary or desirable in connection with the repair or restoration of the Party Wall and the maintenance, repair or restoration of the residential dwelling of which it is a part, and an easement for ingress and egress to perform such work shall also be reserved.

(vi) Alterations. No additions, alterations, repairs or restoration to any Party Walls shall be commenced, erected or maintained 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 Control Committee and by any Owner having a direct interest in the Party Wall.

(vii) Right to Contribution Runs with Land. The right of any Owner to contribution from other Owners under this section shall be appurtenant to the land of such Owner and shall pass to the Owner's successors in title.

(viii) Arbitration. In the event of any dispute arising concerning the Party Wall and/or Lot line, such dispute shall be resolved by binding arbitration. In the event the Owners cannot otherwise agree, each party shall choose one arbitrator, and such arbitrators shall together choose one additional neutral arbitrator, and the decision of a majority of the arbitrators shall be final and binding upon the Owners affected by the dispute. Such a decision may be the basis of a judgment under the laws of the State of California pertaining to judgments obtained upon arbitration awards.

7. Easements. Except as otherwise stated in this Article, the easement area of each Lot and all improvements in it shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility is responsible. The easement portions of the Common Area and all improvements in it shall be maintained continuously by the Association, except for those improvements for which a public authority or utility is responsible.

8. Landscaping.

(i) The Association shall maintain, replace and otherwise control the trees, shrubs, grass and other landscaping in and around the front portions of the individual Lots. Upon request of an Owner, the Association may delegate responsibility to that Owner for trees (and roots) and/or other landscaping in this area of the Owner's Lot. Where there is any delegating to an Owner, the Association may require a written agreement to be recorded with title and binding Owner and Owner's successors.

(ii) The Owner shall maintain, replace and otherwise control all landscaping of the fenced rear yard areas. The Owner shall be responsible to keep all vegetation on the yard side clear of the wrought iron type fencing. Further, as a condition of painting Party Wall Fences, the Association shall require Owners to remove all vegetation or other obstructions away from the fences.

(iii) The Association may exercise control over any landscaping (in the Common Area or on any Lot) which would interfere with any maintenance for which the Association is responsible.

(iv) The Board may adopt guidelines, rules and procedures to address trees (including roots and branches) and other vegetation that extend across Lot lines or other areas of responsibility.

9. Wood Destroying Organisms and Pests.

(i) Each Owner is responsible for the repair and maintenance of that Owner's House and Lot as may be occasioned by the presence of wood-destroying pests or organisms.

(ii) At the discretion of the Board of Directors, 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 House, and/or as otherwise provided in Civil Code § 1364.

(iii) 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.

(iv) The costs of temporary relocation during the repair and maintenance of the areas within the responsibility of the Association shall be borne by the Owner of the separate interest affected. The cost of alleviating the pest problem and any reconstruction shall be the responsibility of those 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.

6.03 Enforcement.

A. Common Area. If the need for any maintenance, repair or replacement of any Common Area is caused through the willful or negligent act of an Owner or his or her family, guests, invitees or lessees; then the Association may cause the work to be performed and upon determination of responsibility may collect the cost in the same manner as a Reimbursement Assessment pursuant to Article VII, Section 7.10.

B. Lot and House. If the Board reasonably finds a Lot or House 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 and if the Owner fails or refuses to do so, the Association may utilize the provisions of Article XV, Section 15.07 and cause the work to be performed and collect the cost in the same manner as a Reimbursement Assessment pursuant to Article VII, Section 7.10. So long as the deficient condition exists, it shall be deemed a continuing nuisance.

C. Entry for Repairs. The Board or its agents may enter upon any Lot or exterior of any House or roof thereof when necessary in connection with any maintenance, landscaping, construction or easement for which the Association is responsible. Such entry shall be made with as little inconvenience to the residents as practicable, and any damage caused thereby shall be repaired by the Association. Whenever possible, at least 24-hours notice will be given to the resident. If the Owner or resident is responsible for creating emergency circumstances, and access is not provided by a resident, the Owner

shall reimburse the Association for locksmith fees or other costs to access and/or secure the premises.

ARTICLE VII

COVENANTS FOR ASSESSMENTS

7.01 Covenant to Pay Assessments; Lien. Every Owner of any Lot by acceptance of a deed, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association such regular assessments or charges, and special assessments or charges, as may be levied by the Association pursuant to the provisions of the Governing Documents. The amount of any such regular, special, reimbursement or repair assessment plus any other charges, such as interest, late charges, collection costs and costs (including attorneys' fees), shall be and become a lien upon the Lot, according to the Governing Documents and current law. The lien may be enforced by sale of the Lot by the Association, its attorney or other person authorized by the Association to make the sale, after failure of the Owner to pay such an assessment in accordance with its terms. Such sale to be conducted in accordance with the provisions of current law, applicable to the exercise of powers of sale in mortgages and deeds of trust or in any other manner permitted by law. The Association shall have power to purchase the Lot at a foreclosure sale and to hold, lease, mortgage and convey the same.

7.02 Personal Obligation.

A. **Personal Obligation.** Each assessment or installment thereof, together with any late charge, interest, collection costs and reasonable attorneys' fees, shall be the personal obligation of each person or entity, other than any mortgagee, who held an ownership interest in the Lot at the time such assessment or installment thereof became due. If more than one person or entity held an ownership interest in the Lot at such time, the personal obligation to pay such assessment or installment shall be both joint and several. No Owner may exempt himself from payment of assessments, or installments, by waiver of the use or non-use of recreational facilities on the Common Area or of any other portion of the Common Area or by abandonment or leasing of his or her Lot.

B. **Termination and Commencement of Obligations.** Upon a change of ownership, the obligation to pay assessments shall be paid pro-rata by each individual/entity according to the dates of ownership.

7.03 Use of Assessments. Regular or annual assessments paid shall be used to pay for operation, maintenance, preservation, enhancement, repair and improvement of the Common Area and the portions of Lots or Houses for which the Association bears the responsibility of maintenance, repair, or replacement, other purposes reasonably related to the foregoing, and to promote the recreation, health, safety and welfare of the Owners. In addition, such assessments shall be used to pay the cost of administration of the affairs of the Association, including payment of applicable taxes, and for the preservation of the Association's existence, to the extent properly allocable to the performance and exercise of the Association's duties and powers under the Governing Documents.

7.04 Reserve Funds. The Association shall establish and maintain reserves in accordance with standard accounting practices and procedures for replacements and maintenance of Common Area and the portions of Lots or Houses for which the Association bears the responsibility of maintenance, repair, or replacement. Each budget adopted by the Association shall provide for reserve funds. Funds deposited in reserve for a particular purpose shall be held for that purpose and shall not be expended for any other purpose without the affirmative vote or written consent of all Members, except that if the Association determines that funds held in reserve for a particular purpose exceed an amount reasonably required for that purpose, then, without the vote or written consent of

Members, the excess may be allocated to any other reserve fund established by the budget of the Association. The Association shall abide by current law when establishing and maintaining its reserves.

A. At least once every three years, the Board shall cause to be conducted a competent and diligent visual inspection of the accessible areas of the major components which the Association is obligated to repair, replace, restore, or maintain, to help determine the reserve account requirements of the Association. The Board shall review this study, or cause it to be reviewed, annually and shall consider and implement necessary adjustments to the Board's analysis of the reserve account requirements as a result of that review.

B. This study shall comply with the minimum standards as established by current law.

C. An annual summary of the Association's reserves and required disclosures shall be distributed pursuant to current law.

7.05 Division of Assessments. All assessments shall be levied equally among all of the Lots, except for assessments levied against a Member for the cost of bringing his/her Lot into compliance with the Governing Documents or except as otherwise stated in this Declaration.

7.06 Assessment Level Increases. The Board may not impose a regular assessment that is more than 20% greater than the regular assessment for the Association's preceding fiscal year or impose special assessments which in aggregate exceed 5% of the budgeted gross expenses of the Association for that fiscal year without the approval of the Owners, constituting a quorum, casting a majority of the votes at a meeting, election or balloting of the Association. A prerequisite to Board discretion to increase regular assessments up to 20% is compliance with current law. For purposes of this Section, quorum means more than 50% of the Owners (88) of the Association. This Section does not limit assessment increases necessary for emergency situations or as otherwise expressly permitted by law. As used in the preceding sentence, the term "emergency situations" includes, but is not limited to, a need to fund the costs of repairs or reconstruction resulting from a Disaster. Unless voted upon and approved by the Owners, the Association shall provide notice by first-class mail to Owners of any increase in the regular or special assessments of the Association not less than 30 nor more than 60 days prior to the increased assessment becoming due.

7.07 Regular Assessments. Regular annual assessments shall be payable in equal monthly installments on the first day of each month or at such other time as the Association may fix. The Association shall fix the amount and due date of the annual assessment on a yearly basis at least thirty (30) days in advance of each assessment year. The regular annual assessment may be increased by an amount not in excess of twenty percent (20%) of the regular annual assessment for the preceding assessment year without the vote or written consent of a majority of the votes of the Members. Written notice of the regular annual assessment shall be sent to every Owner pursuant to law. If the Association fails to so fix the regular annual assessment, the assessment applicable for the previous assessment year shall remain in effect until the Association shall fix a new regular annual assessment.

7.08 Special Assessments.

A. **Non-Emergency.** In addition to the regular annual assessments, upon the vote or written consent of a majority of the Members, the Association may levy, in any assessment year, a special assessment against all Owners for the purpose of defraying in whole or in part the cost of any construction or for any reserve contribution, for the reconstruction, repair or replacement of capital improvements and related fixtures and personal Property on or comprising a part of the Common Area or on or part of the

portions of Lots or Houses for which the Association bears the responsibility of maintenance, repair, or replacement, provided, however, no such vote or written consent shall be required for special assessments which in the aggregate do not exceed five percent (5%) of the budgeted gross expenses of the Association for that assessment year.

B. **Emergency.** In the event of an emergency, an emergency special assessment may be levied, notwithstanding any other limitation, by the Board of Directors to address the emergency situation as defined by current law or if no law exists to define an emergency, the following shall apply:

- 1) An extraordinary expense required by an order of court;
- 2) An extraordinary expense necessary to repair or maintain the common interest development or any part of it for which the Association is responsible where a threat to personal safety on the property is discovered; and
- 3) An extraordinary expense necessary to repair or maintain the common interest development or any part of it for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the annual budget report. However, prior to the imposition or collection of an assessment under this subdivision, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to the members with the notice of assessment.

C. **Disaster Recovery.** For purposes of the immediately preceding subsection B, the term "emergency" includes, but is not limited to, a need to fund the costs of repairs or reconstruction resulting from a Disaster.

7.09 Returned Checks. A Member who writes a check or transfers funds electronically to the Association which are returned for any reason shall pay a reasonable charge set by the Association for processing such check or charge.

7.10 Assessment as Remedy. After notice and opportunity for hearing, the Board of Directors, without the vote or written consent of Members, may levy a reimbursement or repair assessment against a Member:

A. As a remedy to reimburse the Association for costs (including attorneys' fees) incurred in bringing the Member into compliance with the provisions of the Governing Documents or to reimburse the Association for any loss, damage or expense suffered by the Association as a result of misconduct or other action by any Member, including guests, invitees, and tenants which violates any provision of law or the Governing Documents; or

B. As a fine for infraction of the Governing Documents. Any fine levied against an Owner or a Lot under any provision of the Governing Documents shall constitute a lien against the subject Lot or Owner's Lot, having priority and enforceable in the same manner as an assessment lien.

7.11 Revised Assessments. If at any time during the course of any year the Association shall deem the amount of the regular annual assessment to be inadequate or over adequate by reason of a revision of its estimate of either expenses or income, or otherwise, the Association shall have the right, at a regular or special meeting, to revise the regular annual assessment for the balance of the assessment year. Any such revised assessment shall become effective on the first day of the next month following the date of adoption.

7.12 Delinquent Assessments. Any assessment not paid within fifteen (15) days after the due date or period as established in the Governing Documents shall be delinquent.

There shall accrue with each delinquent assessment a late charge or such other reasonable amount as may be provided in the Governing Documents, to cover administrative expenses, and delinquent assessments shall bear interest thirty (30) days after the due date and shall accrue until paid at twelve percent (12%) per annum. The collection of delinquent assessments shall comply with current law. The Association may bring legal action against the Owner personally obligated to pay a delinquent assessment and/or foreclose the delinquent assessment lien against his or her Lot. In any action to enforce payment of an assessment, the Association shall be entitled to recover interest, late charges, collection costs, costs and reasonable attorneys' fees. While the debt remains delinquent and unpaid, the Association, after notice and hearing, may suspend a Member's right to use the recreational facilities and the right to vote.

7.13 Consequences of Non-Payment. All actions taken by the Board must comply with current law. Failure to pay delinquent assessments may result in a lien recorded against an Owner's property, which can contain language allowing for the lien to encompass future amounts due. Foreclosure is another option, which can be either judicial or nonjudicial foreclosure.

7.14 Transfer of Lot by Sale or Foreclosure. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale of any Lot pursuant to mortgage foreclosure of a first mortgage shall extinguish the lien of such assessments (including attorney's fees, late charges, or interest levied in connection therewith) as to payments which became due prior to such sale or transfer, except for assessment liens recorded prior to the mortgage. No sale or transfer shall relieve such Lot from liability for any assessment thereafter becoming due or from the lien thereof.

A. Where the mortgagee of a first mortgage of record or other purchaser of a Lot obtains title to the same as a result of foreclosure of any such first mortgage, such acquirer of title, his or her successor and assigns, shall not be liable for the assessment by the Association chargeable to such Lot which became due prior to the acquisition of title to such Lot by such acquirer, except for assessment liens recorded prior to the mortgage. No amendment to the preceding sentence may be made without the consent of the owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated, and the consent of the first mortgage holders holding first mortgages on Lots comprising fifty-one percent (51%) of the Lots subject to first mortgages. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the Lot owners including such acquirer, his or her successors or assigns.

B. In any transfer of a Lot, a grantor shall remain liable to the Association for all unpaid assessments against the Lot up to the date of the transfer. The grantee shall be entitled to a statement from the Association dated as of the date of the transfer, setting forth the amount of the unpaid assessment against the grantor due the Association, and the Lot so transferred shall not be subject to a lien for the unpaid assessment in excess of the amount set forth in the statement, provided, however, the grantee shall be liable for any such assessments that become due after the date of the transfer.

7.15 Assessment Lien Priority. The lien of any assessment under this Declaration shall be superior to all other liens except (i) all taxes, bonds, assessments and other levies which by law would be superior thereto, and (ii) to the extent specified in the immediately preceding Section 7.14, the lien or charge of any first Mortgage of record made in good faith and for value.

ARTICLE VIII
USE RESTRICTIONS

8.01 Antennas and Other Additions to the Common Area. Except as may be permitted by the Governing Documents and current law, no Owner shall construct, install, erect or maintain any telecommunications, television or radio pole or antenna, flag pole, clothesline, canopy, awning, wiring, insulation, air conditioning equipment, fence, ornamental screen, screen door, sunshade, wall, plant or other improvements, fixtures, structures, machinery or equipment in or on the Common Area without the prior written consent of the Association. Any such construction or installation shall comply with reasonable rules established by the Association, and with the understanding and acknowledgment that the Association incurs no liability for damage (including interruption of services) caused by building or other maintenance for which the Association has responsibility.

8.02 Common Area or All of Property. All use of the Property is subject to the Governing Documents, including use by the Owners and their tenants, guests, and invitees. Each Owner is responsible and liable for any use of any part of the Property made by such Owner or by his or her tenants, guests or invitees.

A. Nothing shall be done or kept anywhere on the Property which will increase the premium under any insurance policy maintained or paid for by the Association without the prior written consent of the Board. No Owner shall permit anything to be done or kept anywhere on the Property which will result in any decrease in coverage under or cancellation of any insurance policy maintained or paid for by the Association, or which would be in violation of any law.

B. There shall be no obstruction of the Common Area. Nothing shall be stored in the Common Area without the prior written consent of the Board, in accordance with guidelines adopted by the Board. Except for reasonable amounts kept for normal household use, no gasoline, kerosene, cleaning solvents or other flammable liquids shall be stored in the Common Area or in any Lot.

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 for those of family members, tenants, guests and invitees. Any damage or destruction to the Common Area may be cause for a Reimbursement Assessment against the tenant, lessee, Owner and his or her Lot.

D. Nothing shall be altered or constructed in or removed from the Common Area, except upon the written consent of the Board. Owners are prohibited from painting any part of the Common Area.

E. The Association may require deposits and/or user fees for the private use of the Common Area, such as Association recreational facilities or clubhouse.

8.03 Lots.

A. Residential Use. All Lots shall be used as residences and for no other purpose, and (except for uses permitted by law), no Owner shall use or cause or permit the Common Area or his or her Lot to be used for any business, commercial, manufacturing use or purpose, or for any other nonresidential use or purpose, except as stated in Section 8.04.B, immediately below.

B. **Business/Work Use.** Owners or tenants may use a small area in the residence for office purposes, provided that the primary use of the Lot is as a residence, and provided no advertising or sign is used in any manner in connection with the office, and no customers, clients, or other non-residents enter the Lot on any regular basis. There shall be no external evidence of a Lot's business. 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 SEQUOYAH HEIGHTS or to the Lot, (c) cause any damage to the Common Area, or (d) adversely affect or increase the cost of Association insurance. The Association shall have the authority to adopt Rules regarding the use of Lots as offices in order to maintain the residential character of the development.

C. **Governmental Compliance.** Each Member shall comply with the requirements of governmental authorities, federal, state and local, and all laws, ordinances, rules and regulations applicable to his or her Lot.

8.04 Garbage and Refuse Disposal. All rubbish, trash and garbage shall be regularly removed from the Property, and shall not be allowed to accumulate. Trash, garbage and other waste shall be kept in sanitary containers. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. All equipment, garbage cans, woodpiles or storage piles shall be kept screened and concealed from view of any other Lot, street, or Common Area. Garbage/trash/recycling containers shall be removed from the Common Area on the same day as their contents are picked up. No rubbish, trash or garbage shall be left in the Common Area.

8.05 Garages. Garages shall only be used for parking of vehicles and other storage which will not interfere with parking of vehicles

8.06 Hazardous Materials. If the Association learns of the presence of any material or substance in the Common Area or any Lot which is deemed by any governmental agency to be 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 interest of the Association.

8.07 Landscaping. Except as shown on the final planned unit development as approved by the City of Oakland or any city approved modification thereof;

A. No tree, shrubbery or other obstruction of any kind shall be planted, erected or maintained on any Lot in such a manner as to unreasonably obstruct or interfere with the view from the residence on any other Lot. The question of unreasonableness shall be determined by the Board. Such determination shall be final and shall be binding upon every lot Owner. The Board shall have the power to adopt policies regulating landscaping which may obstruct views. The Board shall also be empowered to force the cutting, pruning or trimming of trees and shrubs in order to preserve the views from other Lots in the Subject Property.

B. No fence, wall or hedge higher than six (6) feet shall be erected or maintained on any lot.

8.08 Liability of Owners for Damage to Common Area. The Owner of each Lot shall be liable to the Association for all damages to the Common Area caused by the Owner or any tenants, guests or invitees of his or her Lot. Liability shall be established only after notice and a hearing.

8.09 Nuisance or Unlawful Activity. No unlawful or illegal activity, noises, uses, modifications, alterations and/or improvements shall take place on any Lot or in any other part of the Property. Nothing shall be done within the Property that is noxious, or offensive, an annoyance, inconvenience, embarrassment, disturbance, or an obvious attempt to circumvent the Governing Documents, or that interferes with the quiet enjoyment of occupants of Lots. No walkways, inside or outside parking areas or streets shall be obstructed in any manner which would interfere with their use for ingress and egress for normal use or in the event of fire, earthquake or other emergency.

8.10 Overloading. No machinery, apparatus, appliance or equipment shall be located within any Lot or the Common Area which in any manner structurally overloads the Common Area or another Lot, or in any manner vibrates, shakes or otherwise damages a Lot or the Common Area.

8.11 Parking. All vehicles shall be parked in designated parking areas or garages only. No boat, trailer, recreational vehicle (camper, motor home, trailer, boat trailer, mobile home or similar vehicle), dump truck, flatbed, oil or gas truck, or large commercial vehicle shall be parked or left on any part of the Property.

A. No boat, truck, trailer, camper, recreational vehicle or tent shall be used as a living or dwelling area within the Property. No repairs to or maintenance of any automobile or other vehicle shall be made or performed on any driveway or parking space within the Property, except in the case of emergency and except as may be permitted by the Governing Documents.

B. No vehicle storage is allowed. The Association has the authority to tag and/or have vehicles parked continuously for a period of seven (7) days or longer towed at the Owner's expense. Residents should notify the management company if extended absence is anticipated.

C. There shall be no repairs or restorations of any motor vehicle, boat, trailer or other vehicle upon any portion of the Property. Emergency repairs may be performed, but only to the extent necessary to enable movement to a proper repair facility.

D. No vehicle which emits extraordinary levels of exhaust pollution or noise, as determined by the Board, shall be operated within the Property.

E. Vehicles must display a current registration and be operable. No dilapidated or abandoned vehicles shall be allowed on the Property.

F. Vehicles displaying "For Sale" signs may not be parked on the Property.

G. Parallel parking is not allowed on 24 foot wide streets (Turtle Creek, Chimney Rock, and Heritage) and the cul de sac areas of Turtle Creek, Graeagle, Mission Hills, and Chimney Rock). On all other streets, parallel parking is to be along curbed areas only.

H. Designated marked guest parking in the Common Areas are to remain open for use by guests only and are not to be used by Owners or other residents, either permanently or temporarily, for the parking of their authorized vehicles or the storage of boats, trailers, or similar items of personal property. A person shall not be considered a "guest" if he or she is a regular overnight visitor of a resident.

I. The Association shall have the authority to tow, at the owner's expense, any vehicle parked or stored in violation of the Governing Documents or which violates any police or fire safety ordinance, city or state vehicle, and/or parking ordinances. The Board

shall have the authority to promulgate further reasonable rules and restrictions of uniform application regarding parking and vehicles in the Common Area as may be deemed prudent and appropriate. Any violation of this Section shall be deemed a violation of the Declaration.

J. Residents shall operate their motor vehicles on the property in a manner so as not to disturb the quiet enjoyment of the other residents.

8.12 Pets. No animals shall be raised, bred or kept on any Lot or elsewhere within the Property, except that no more than two (2) domestic animals (dogs, cats, or one of each) may be kept as household pets within any Lot. An Owner may also maintain a reasonable number of small caged animals, birds or fish. In no event shall animals be kept, bred or raised for commercial purposes and no animal shall be allowed if such animal constitutes an unreasonable annoyance, inconvenience or nuisance to any other Owner. Dogs are to be kept on a leash at all times when on or in the Common Area. Any unleashed pet found within the Common Area may be removed to a pound or animal shelter at the animal owner's expense. Owners of pets shall clean up after them. No exotic pets are allowed, such as snakes, lizards, wild animals or animals that are not regular household pets.

A. If the Association receives any complaint that an animal constitutes an annoyance, inconvenience or nuisance, the Association shall afford the Owner of such animal, notice and opportunity for hearing, and if the Association finds that such animal constitutes an annoyance, inconvenience or nuisance, the Association may require that such animal be removed from the Property.

B. The Association may adopt rules and regulations concerning animals which are more restrictive than the provisions of this Restated Declaration, including rules requiring that all animals be confined or kept on a leash when outdoors and that animals be restricted to designated areas within the Common Area. The Association may adopt a rule prohibiting certain pets, except that such rule shall not apply to animals being kept on the Property at the time such rule is adopted. In any event, the Association at any time may require that any animal found to be an annoyance, inconvenience or nuisance be removed.

C. All pets rules and regulations and their application shall comply with current law.

8.13 Roof. No person shall walk on any roof without the prior written consent of the Board or the Association's property manager.

8.14 Shopping Carts. No shopping carts shall be allowed on the Common Area.

8.15 Signs. No sign or billboard of any kind (including but not limited to commercial or political signs) shall be displayed to the public view on or from any Lot, except for:

A. Signs approved by the Association;

B. Such signs as may be required for legal proceedings or notices;

C. Signs advertising Lots "for sale" or "for rent" which signs shall be of customary and reasonable dimensions and of a professional type and dignified appearance; and

D. Noncommercial signs, posters, flags or banners otherwise permitted by Cal. Civil Code § 4710 or any successor statute, except under no circumstances may a noncommercial sign or poster exceed 9 square feet in size or a noncommercial flag or banner exceed 15 square feet in size.

8.16 Storage. There shall be no storage of any items, including, but not limited to, garbage or trash, tools, and bicycle parts, in or upon a Lot, except in an enclosed area not visible to the public. Exceptions to this are: bicycles and ordinary patio furniture.

8.17 Towing. The Association may cause any vehicle parked on Common Area in violation of the Governing Documents to be towed.

8.18 Trees. Owners may not remove, without the written consent of the Association, any tree, plant, or other landscaping in any part of the Property for which the Association has landscaping rights or responsibility. Trees may be removed by the Association from such parts of the Property at any time, except as prohibited by law. There are no guaranteed views or shade, except as otherwise set forth in this Declaration.

8.19 Compliance by Tenants, Guests, and Invitees. Each Owner shall be responsible for compliance with the provisions of this Article by that Owner's tenants, guests, and invitees.

ARTICLE IX **SALE OR LEASE OF HOUSE**

9.01 Rent or Lease of Houses. It is the intent of this Section to protect, enhance and maintain the single family residential atmosphere which exists within the Property and to avoid occupancy of residences for short periods of time or by an unreasonable number of individuals. Accordingly, an Owner shall be entitled to rent or lease his or her House if:

A. There is a written rental or lease agreement specifying that (i) the tenant shall be subject to all provisions of the Governing Documents, (ii) a failure to comply with any provision of the Governing Documents shall constitute a default under the agreement, and (iii) all tenants are subject to disciplinary action or other actions by the Association to enforce the Governing Documents;

B. The period of the rental or lease is not less than ninety (90) days;

C. The Owner provides any tenant or lessee with a current copy of all the Governing Documents and shall at all times be responsible for compliance by the tenant or lessee with the Governing Documents during the tenant's or lessee's occupancy and use of the Lot.

9.02 Obligations of Owners. Owners of Lots shall be subject to the following:

A. Owner's Duty to Notify Association of Tenant and Contract Purchasers. Each Owner shall notify the Secretary of the Association or the Association's manager, of the names of any contract purchaser or tenant of the Owner's House and Lot.

B. Contract Purchasers. A contract seller of a Lot must delegate his or her voting rights as a Member of the Association and his or her right to use or enjoy the Common Area to any contract purchaser in possession of the property. Notwithstanding the foregoing, the contract seller shall remain 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.

C. Notification Regarding Governing Documents. The Owner shall, as soon as practicable before transfer of title to a Lot, provide the following to the prospective purchaser: (i) a copy of the Governing Documents, and (ii) all documents required by current law.

9.03 Pest Control/Contractor Records. No pest control or other contractor shall be permitted to conduct destructive testing of any kind or nature on any area the Association

is required to maintain, repair or replace without the prior written approval of the Board. Owners in possession of pest control or contractor reports who request maintenance or repairs to be performed by the Association to any area specified in such report shall submit to the Association copies of any such report, bid and/or estimate. The Board shall have discretion to respond in an appropriate fashion.

9.04 Notice of Acquisition. A purchaser or other person or entity acquiring an ownership interest to a House shall notify the Association's manager not more than ten (10) days after the date of acquisition and provide (i) the name(s) of all persons or entities with an ownership interest as listed on the recorded title transfer documents, (ii) a mailing address for the Owner(s), (iii) day and evening telephone number and (iv) the effective date of acquisition of each ownership interest.

9.05 Termination and Commencement of Obligations. If an annual assessment has been levied or a special assessment is payable in installments, when ownership changes occur:

A. The transferor-Owner shall be liable for the pro rata share of all annual and other assessments which were payable up to the time of transfer, and

B. The receiving-Owner shall be responsible for the pro rata share of payments payable after acquisition of the ownership interest.

ARTICLE X

ARCHITECTURAL CONTROL

10.01 Architectural Approval. Except as otherwise stated in this Article, no fence, wall, obstruction, pool, spa, outside or exterior wiring, screen, patio, patio cover, tent, awning, carport, carport cover, improvement or structure of any kind shall be commenced, installed, erected, painted, repainted or maintained upon the Property, nor shall any alteration or improvement of any kind be made until the same has been approved in writing by the Board, or by an Architectural Control Committee appointed by the Board.

A. Plans and specifications showing the nature, kind, shape, color, size, materials and location of such improvements, alterations, etc., shall be submitted to the Board or the Architectural Control Committee for approval as to the quality of workmanship and design and harmony of external design with existing structures, and as to location.

B. No alterations shall be made which impair the integrity of structural, fire or acoustical components of the building. The Owner must comply with all laws and ordinances regarding alterations and remodeling. If a building permit is required for any interior work, the Owner is required to provide a copy to the Association.

C. There shall be no significant and/or structural modifications of the Common Area or the individual Lot without the prior written approval of the Association. In addition, a copy of professionally drawn plans may be required to be submitted to the Association before approval of changes is given. The Board may exercise control directly or utilize an Architectural Control Committee to accomplish this regulation.

D. No permission or approval shall be required to paint the interior of a Lot.

10.02 Architectural Control Committee. The Architectural Control Committee, if any, shall consist of Members appointed by the Board, which can include Board Members. A majority of the Architectural Control Committee may designate a representative to act for it. If no committee is appointed, the Board shall assume this function. If a decision on an application has been rendered by the Architectural Control Committee, there shall be a right

of appeal to the Board. The determination of the Board shall be final. Members of the Architectural Control Committee shall not receive any compensation for services rendered. All Architectural Control Committee Members shall be entitled to reimbursement for reasonable expenses incurred by them in connection with the performance of any Architectural Control Committee functions.

10.03 Architectural Standards. The Association, from time to time and in its sole discretion, may adopt (or ratify Architectural Control Committee recommendations regarding) architectural rules, regulations and guidelines ("Architectural Standards"). Before being adopted, Members shall be notified of the proposed changes. The Architectural Standards shall interpret and implement the provisions of this Declaration by setting forth the standards and procedures for architectural review and guidelines for architectural design, color schemes, exterior finishes and materials and similar features which may be used in the project; provided, however, that the Architectural Standards shall not be in derogation of the minimum standards established by this Declaration. The Architectural Standards may include other personal property additions which are visible from any other Lot or public area.

10.04 Architectural Alterations.

A. Permitted Alterations. Interior remodeling of Houses and combining contiguous houses for use as a single residence shall be permitted, provided that the alterations do not impair the structural integrity of the house and that the Owner complies with all laws and ordinances regarding alterations and remodeling.

B. Approval Required. No other alterations by Owners shall be permitted except as authorized by the Association pursuant to the Architectural Standards or separate application.

C. Application Process. Any Owner who wants to perform any alteration or addition for which approval is required shall notify the Association in writing of the nature of the proposed work and shall furnish such information as may be required by the Architectural Standards or reasonably requested by the Association.

D. Basis for Approval of Improvements. The Association may approve the proposal only if it finds that (i) the plans and specifications conform to the Architectural Standards in effect at the time the proposal was submitted and (ii) the proposed alteration or addition will be consistent with the standards of the Subject Property and the provisions of this Declaration as to quality of workmanship and materials, and harmony of external design and existing structures. Reasonable requirements such as obtaining permits, use of licensed design professionals, and/or use of licensed contractors may be imposed by the Association. Additionally, the Association may require approval by, or the non-opposition of, neighbors. As a condition of approval, the Association may require an agreement to be recorded with title, binding the current and future Owners as to responsibility for maintenance, repair and replacement of the alteration or addition.

E. Waiver. Approval of any plans, drawings or specifications for any work proposed, or for any other matter requiring approval shall not be deemed to constitute a waiver of any right to deny approval of any similar plan, drawing, specification or matter subsequently submitted for approval.

F. Proceeding With Work. Upon approval of the Association, the Owner shall diligently proceed with the commencement and completion of all work so approved. Work must be commenced within six (6) months from the date of approval. If the Owner fails to comply with the provisions of this Section, the approval given shall be deemed revoked unless the Association extends the time for commencement. Any request for an

extension shall be in writing. No extension shall be granted unless the Association finds that there has been no change in the circumstances under which the original approval was granted.

G. Failure to Complete Work. Completion of the work approved must occur in the twelve (12) month period following the approval of the work unless the Association determines that completion is impossible or would result in great hardship to the Owner due to strikes, fires, national emergencies, natural calamities or other supervening forces beyond the control of the Owner or his or her agents.

H. Determination of Compliance. Any work performed, whether or not the Owner obtained proper approvals, may be inspected and a determination of compliance may be made as follows:

1) Upon the completion of any work performed by an Owner for which approval was required, the Owner shall give written notice of completion to the Association. If the Owner fails to give the notice of completion of work performed for which approval was required, the Association may proceed upon its own motion.

2) Within sixty (60) days after receipt of the notice of completion or after the Association determines to proceed on its own motion, the Association may inspect the work performed and determine whether it was performed in substantial compliance with the approval granted. If the Association finds that the work was not performed in substantial compliance with the approval granted or if the Association finds that the approval required was not obtained, the Association shall notify that Owner in writing of the non-compliance. The notice shall specify the particulars of non-compliance and shall require the Owner to remedy the non-compliance.

I. Estoppel Certificate. Within forty-five (45) days after written demand is delivered to the Association by any Owner, and upon payment to the Association of a reasonable fee (as fixed from time to time by the Association), the Association shall record an estoppel certificate certifying that as of the date thereof, either (a) the work completed complies with this Declaration or (b) the work completed does not comply. In the latter situation, the certificate shall also identify the particulars of the non-compliance. Any successor in interest of the Owner shall be entitled to rely on the certificate with respect to the matters set forth. The certificate shall also be conclusive as between the Association and all Owners and such persons deriving any interest through any of them.

10.05 Architectural Enforcement.

A. Notice and Opportunity for Hearing. If the Association has determined that an Owner has not constructed an improvement consistent with the specifications of the approval granted or has failed to obtain approval, and if the Owner fails to remedy such non-compliance in accordance with the provisions of the notice of non-compliance, then after the expiration of thirty (30) days from the date of such notification, the Association shall offer an opportunity for hearing to consider the Owner's continuing non-compliance and place the affirmative burden on the Owner to request a hearing upon such reasonable terms as the Association may impose.

B. Determination. At the hearing or when the matter is otherwise addressed by the Association, if the Association finds that there is no valid reason for the continuing non-compliance, the violation shall be deemed a continuing nuisance. The Association shall then require the Owner to remedy or remove the same within a period of not more than forty-five (45) days from the date of the Association's determination.

C. Association Options for Continuing Nuisance. If the Owner does not comply

with the Association's ruling within such period or within any extension of such period as the Association, in its discretion, may grant, the Association may (i) remove the non-complying improvement, (ii) remedy the non-compliance, (iii) record a Notice of Architectural Violation against the property which shall also be conclusive as to all Owners and any successors in interest. The costs of any such action(s) shall be assessed against the Owner as a Reimbursement Assessment. These powers of enforcement shall be in addition to the general enforcement provisions of this declaration.

10.06 Non-Waiver. Approval of any application or alteration shall not be deemed a waiver of any right to deny approval of any similar application or alteration.

10.07 Liability. Neither the Board nor the Architectural Control Committee shall be liable to the Association or any Owner for any damage, loss or prejudice suffered or claimed on account of a (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.

10.08 Notice of Record. The Association shall have the right to record with title to a Lot an Architectural Notice to convey to any prospective or future Owner, the status of (i) an architectural variance, or (ii) an architectural agreement which may alter Owner and Association responsibilities from those otherwise provided in this Restated Declaration. The Association shall provide the Owner with a copy of any such recorded Notice.

ARTICLE XI **INSURANCE**

11.01 Duty to Maintain Insurance. The Association shall have the duty and the authority to maintain Property insurance on the Common Area in an amount not less than the full insurable value thereof (if reasonably available) including betterments and improvements, and liability insurance with limits in amounts reasonably adequate to protect the Association and the Owners in the event of property damage, personal injury or death occurring in or about the development. All endorsements shall be obtained after consultation with an insurance expert.

A. The Board shall have the authority to settle or enforce on behalf of the Association and on behalf of the Owners, by legal action or otherwise, any claim arising under any insurance carried by the Association. The Association, in its discretion, shall determine if any other insurance is necessary and to obtain such.

B. Each Owner is responsible to maintain a homeowner's insurance policy with loss and liability coverage generally available to owners of properties similar to those in SEQUOYAH HEIGHTS.

C. All policies of insurance carried by the Association or the Owners shall include a waiver of subrogation if such waiver is reasonably available, unless otherwise provided in the Governing Documents.

11.02 Types of Insurance. The Association shall procure and maintain the following types of insurance:

A. **Fire and Hazard Insurance.** Fire and hazard insurance with extended coverage for the full replacement value of all improvements in the Common Area and of each House located on each Lot. The Association shall also insure any Property, whether real or personal, owned by the Association, against loss or damage, with the Association as the owner and beneficiary for such insurance.

B. Additional Endorsements. To the extent not included in the basic policy coverage, the Association may procure the following additional coverage: demolition, foundations, building code mandated upgrades, retaining walls, fences and appurtenant structures.

C. Liability Insurance. Liability insurance to protect against any liability to the public or to any Owner or any Owner's invitees or tenants, incident to the ownership, use, maintenance, repair, or replacement of any portion of the Property. The limits of such insurance shall not be less than Two Million Dollars (\$2,000,000) covering all claims for death, personal injury and property damage arising out of a single occurrence. The liability insurance shall identify as separately protected insureds (to the extent such protection is available, and with the limitations, exceptions, and exclusions from coverage commonly imposed by insurers) the Association, the Members, the Board, and the manager employed by the Association.

D. Director and Officer Insurance. Insurance covering Directors, Officers, committee Members and volunteers acting under the direction of the Board from errors and omissions.

E. Fidelity Bond. A fidelity bond covering officers, Directors and employees in an amount to be determined by the Board.

F. Other Insurance. Worker's compensation insurance shall at all times be carried to the extent necessary to comply with applicable laws, and any other insurance deemed necessary to comply with applicable laws and/or deemed necessary by the Board.

11.03 Provisions and Limitations. Terms of insurance coverage do not always coincide with defined areas of Owner and Association ownership, or responsibilities to maintain, repair or replace. Notice is hereby given to any insurer issuing policies in accordance with CC&R requirements that the Association's fire and hazard insurance shall be construed to provide the maximum coverage possible for all improvements to the Property. Should there be a conflict or inconsistency between the coverage provided in the policy and that required by the CC&R's, the more comprehensive of the two shall be applied.

11.04 Coverage Not Available. If any required insurance policy or endorsement as required above is not available, or is economically unfeasible, then the Association shall obtain alternate insurance which provides, as nearly as possible, such coverage.

11.05 Additional Insurance by Owner. The Association is not obligated to procure liability insurance for any individual Owner or resident. Every Owner and resident is encouraged to insure his or her Lot and personal property against loss. Additionally, every Owner and resident is encouraged to carry Comprehensive Personal Liability Insurance. Insurance procured by the Association does not cover many perils and liabilities individual Owners and residents may incur. Owners are further encouraged to consult with their insurance professionals to maintain loss assessment coverage generally and loss assessment coverage for earthquake damage. All insurance that is individually carried must contain a waiver of subrogation rights by the carrier as to the Association.

11.06 Earthquake Insurance.

A. The Association shall maintain a policy of earthquake insurance with coverage limits and deductibles appropriate in light of anticipated costs of reconstruction after a major earthquake. The policy in effect for the policy year, 2016-2017, shall be deemed to have met that standard at the time it commenced. The Association may depart from the foregoing requirement only upon a vote of Members, to be initiated by the Board, and to

be held after at least three weeks' notice to the Members. There shall be no quorum requirement and only a majority of those voting shall be needed to approve either the elimination of earthquake insurance coverage or its reduction to a level that does not meet the foregoing standard. If earthquake insurance coverage is eliminated, the Board, by a majority of those voting, may resume coverage at any time. The Board may, at any time, by a majority of those voting, increase earthquake insurance coverage. After a vote of Members to eliminate earthquake insurance or reduce it below the foregoing standard, the Board may at any time, by a majority of those voting, reinstate the foregoing standard, after which a Member vote, in the foregoing manner, shall again be required to depart from the standard.

B. After consultation with the Association's certified public accountant and/or counsel, at its discretion and/or in conjunction with a vote of the Members, the Board may establish and maintain an earthquake reserve fund to pay for repairs or reconstruction of Common Area improvements, which fund shall be accounted for in the same manner as other reserve accounts. Such fund may be in conjunction with or in lieu of earthquake insurance. The fund may also be used for upgrading structural components.

C. The cost of deductible(s) and/or under insurance for an earthquake loss to Common Area property shall be born equally by all Owners and/or paid from any earthquake reserve fund.

11.07 Association Insurance Deductible. The Association shall pay the deductible on fire or other losses related to the Common Area. The Owner shall pay for all losses within insurance deductibles for damage to that Owner's House or Lot, unless the damage is the result of the Association's misconduct, in which case the Association shall be responsible for the deductible amount(s) applicable to such damage.

11.08 Claims. The Association shall make all claims against any of the insurance carried by the Association. An Owner shall not make a claim on the Association's insurance. Failure to adhere to this restriction shall result in a hearing before the Board to determine the monetary penalty.

11.09 Proceeds of Insurance. The proceeds of property insurance carried by the Association shall be used for repair, replacement or reconstruction to the extent necessary.

ARTICLE XII DAMAGE AND DESTRUCTION

12.01 Minor Damage and Major Damage Defined. Damage or destruction to the Common Area where the estimated cost of repair, restoration or reconstruction does not exceed Fifty Thousand Dollars (\$50,000) is referred to in this Restated Declaration as "minor damage." Damage or destruction to the Common Area where the estimated cost of repair, restoration or reconstruction exceeds Fifty Thousand Dollars (\$50,000.00) is referred to in this Restated Declaration as "major damage."

12.02 Damage to Lots. Restoration and repair of damage to any Lot and any fixtures or personal property contained shall be made by and at the expense of the Lot Owner, except to the extent such damage may be covered and compensated by the Association's insurance. Restore shall mean repairing, rebuilding or reconstruction of damage to substantially the same condition and appearance as prior to the casualty. Restoration and repair shall be in accordance with the original plans and specifications, modified as required by current building code requirements.

12.03 Lot Owner's Failure to Proceed; Special Assessment. Should the Owners fail to commence or complete reconstruction as required above, the Board of Directors of the

Association may levy a special assessment against the Owners of the Lots 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. The Board of Directors may advance the amount of the special assessment from Association general funds or reserves if the Board determines that the residence, as so rebuilt and restored, will furnish adequate security for the repayment of said advances by operation of the assessment lien. The Board of Directors, as agent for the Owners, shall contract for the repair or reconstruction of the residences.

12.04 Minor Damage. If minor damage occurs, the Association shall promptly contract for the repair, restoration or reconstruction of the Common Area improvements which have been damaged or destroyed. The difference, if any, between the insurance proceeds and the cost of such repair, restoration and reconstruction may be recovered by one or more special assessments levied by the Association against all Owners.

12.05 Major Damage. In the event of any major damage to or destruction of any portion of the Common Area by fire or other casualty:

A. The Association shall cause to be prepared plans and specifications for the repair, restoration or reconstruction of the Common Area so damaged or destroyed, and the Association shall obtain firm bids from two (2) or more licensed general contractors for the repair, restoration or reconstruction of the Common Area;

B. The Association shall repair, restore, or reconstruct the Common Area improvements which have been damaged or destroyed, unless at least two-thirds of the Total Voting Power of the Association agree by vote or written consent that such repair, restoration or reconstruction shall not take place. The Association may not, by such vote, decide to repair, restore, or reconstruct less than all of the damaged or destroyed Common Area if this results in the effective denial to any Owner of the use and enjoyment of that Owner's House.

C. Unless the Common Area shall not be repaired, restored or reconstructed, the Association shall promptly contract for and complete such repair, restoration and reconstruction in accordance with plans and specifications approved by the Association. The difference, if any, between the insurance proceeds and the total cost of repair, restoration and reconstruction shall be recovered by a special assessment levied by the Association against all Owners.

ARTICLE XII-A

DAMAGE AND DESTRUCTION TO HOUSES CAUSED BY A "DISASTER" AND ALLOCATION OF RESULTING INSURANCE PROCEEDS

12A.01 Precedence of This Article. This Article governs the recovery of the Association and Owners from the effects of a Disaster and, in the event of a Disaster, this Article shall take precedence over any conflicting provisions that may exist elsewhere in this Declaration.

12A.02 Responsibility for Repair and/or Reconstruction. Whenever a House and/or Lot has sustained damage as a result of a Disaster, it is the fundamental responsibility and obligation of each Owner to perform all repairs and reconstruction of that Owner's House and Lot to restore them to at least their original condition. This responsibility and obligation of the Owner extend even to those portions of each House and Lot which, though not Common Area, are maintained by the Association in accordance with its obligations under this Declaration in the absence of a Disaster.

12A.03 Association's Authority to Repair and Reconstruct. As a result of the impracticality of obtaining from two or more Owners of Houses in a building the degree of cooperation and coordination necessary to repair and reconstruct after major damage to their Houses, the Owners, in the event of a "Disaster", delegate to the Association the authority to arrange and control construction activities, and the Association may choose to exercise such authority and pay the expenses from its insurance proceeds and special assessments levied upon the damaged units.

A. Repair and Reconstruction of Owner Improvements. The above delegation of authority does not apply to Owner upgrades, improvements, and fixtures of the type that are generally not covered by casualty insurance available to homeowner's associations, except to the extent that: (a) the Association believes that by taking control, it can avoid duplication of construction costs; and (b) the Owner has deposited with the Association funds to be held in trust, in an amount that the Association determines to be sufficient to pay for a given upgrade, improvement, or fixture.

B. Association's Right to Refrain from Exercising Authority to Repair or Reconstruct Certain Houses or Lots. If the Association exercises the authority to arrange and control construction activities for repair and reconstruction after a Disaster, it may not be compelled to repair or reconstruct a particular House or Lot in circumstances where it would be required to raise funds from sources other than insurance proceeds or special assessments against such Lot, thereby conferring a windfall upon the Owner or mortgagee of such Lot. Such windfall shall be deemed to exist in the case of a mortgagee that fails or refuses to commit all proceeds from the Association's insurance policies to repairs and reconstruction, or interferes with such commitment. Such windfall shall also be deemed to exist in the case of a mortgagee that has foreclosed its lien upon a Lot and become its Owner, where such mortgagee or its successor fails or refuses to consent to be bound by all assessments imposed to fund reconstruction, regardless of whether imposed before or after the foreclosure. This provision shall not be construed so as to obligate a mortgagee or its successor to pay any assessment imposed prior to the mortgagee's foreclosure; it shall be construed only to relieve the Association from any possible obligation to arrange and control construction with respect to a Lot as to which it has been deprived of the assessment proceeds expected or required to conduct such activities. In any circumstances in which the Association, pursuant to this paragraph, declines to exercise the authority to arrange and control construction with respect to a particular Lot, it may either (1) completely refrain from arranging and controlling such construction, while proceeding to arrange and control construction on neighboring Lots; or (2) if the absence of the Association's arrangement and control of construction on such particular Lot would interfere in any way with efficient and economical repairs and reconstruction on any neighboring Lot(s), the Association may, at its option, arrange and control partial repairs and reconstruction on such particular Lot, to the minimum extent it deems necessary to provide support and protection to the construction on any neighboring Lot(s) and to obtain from the City of Oakland building permits and certificates of occupancy for neighboring Houses that are being completely repaired or reconstructed.

12A.04 Refusal by or Failure of Association to Exercise Authority to Repair and Reconstruct.

A. Refusal by Association. The Association may expressly decline to exercise its delegated authority to control repairs and reconstruction resulting from a given Disaster, in which case the Owners within each building affected by the Disaster shall be required to cooperate with each other and accomplish repairs and reconstruction on their own. The Owners would then be entitled to the same portions of the Association's insurance proceeds that would be allocated to them if the Association were controlling the repairs and reconstruction, itself. To the extent that the insurance proceeds are not sufficient, the Association may, at the request of a majority of the Owners within a building, levy special assessments upon the Owners in the building and upon their Lots. The proceeds of any such assessments shall be held by the Association in trust, to pay for repairs and reconstruction of the building for which the assessments were levied. The amounts of the special assessments shall be determined according to the same formula, set forth below, that applies when the Association is controlling the repairs and reconstruction, itself.

B. Failure of Association. In the event that either:

1) at a time six months or more after a Disaster, Owners of a majority of Houses in a building have asked in writing that the Owners of the building assume control over repairs and reconstruction necessitated by the Disaster, and, at the time the Association receives notice of such written request, it has not yet expressly exercised its authority to assume control over such repairs and reconstruction; or

2) the Association has failed, one year after a Disaster, to make progress that is reasonable under existing conditions towards repair and reconstruction of a given building, and Owners of a majority of Houses in that building have elected in writing to revoke the delegation of authority to the Association to control repairs and reconstruction;

then, the Owners of Houses within such building shall, in place of the Association, assume control over repairs and reconstruction necessitated by the Disaster, and shall be required to cooperate with each other and accomplish repairs and reconstruction on their own, under all of the same terms applicable when the Association expressly declines to exercise its delegated authority, as set forth in paragraph A, immediately above.

12A.05 Allocation of Insurance Proceeds and Special Assessments. In the event of a Disaster, allocation of insurance proceeds, if any, and the determination of special assessments against individual Owners and Lots to cover deductibles and uninsured and under-insured damage shall be made in accordance with this Section. It is the intent of these provisions to equalize, to the extent practically and legally possible, the special assessments levied against the Houses within a given building to raise funds for the repair and reconstruction of such Houses.

A. Allocation of Insurance Proceeds. The following rules govern the allocation of proceeds received under insurance policies held by the Association to cover casualty losses to Houses. In the event that a Disaster results in recoveries under two or more types of casualty insurance (e.g. earthquake and fire policies) held by the Association, then

the rules shall be applied separately to the proceeds received from each type of policy. For each type of policy, the intent is, to the maximum extent possible, to equalize the amount of each House's damage (of the type insured) that is not being paid for by the Association's insurance. An illustration of a sample application of these rules is attached hereto as Exhibit "A". The rules for allocation of casualty insurance proceeds of a given type, for a given building, received as a result of a Disaster, are as follows:

1) First, the Association's insurance proceeds for the building are to be applied to that House in the building which has suffered the most expensive damage (determined by cost of repair and/or reconstruction), until that damage is paid down to a level that is equal to the damage to the House which has suffered the second most expensive damage in the building. Then, the Association's insurance proceeds are to be applied equally to the two most damaged units, until the damage to each has been paid down to a level that is equal to the damage to the House which has suffered the third most expensive damage in the building. Then, the Association's insurance proceeds are to be applied equally to the three most damaged units, until the damage to each has been paid down to a level that is equal to the damage to the House which has suffered the fourth most expensive damage in the building. This process is to be continued as far as possible until the Association's insurance proceeds are exhausted.

2) In the event that two or more Houses are equally damaged (as may occur when identical units need to be completely reconstructed), then, at the appropriate step in the allocation process described in the immediately preceding paragraph, the step shall be applied equally and simultaneously to all equally damaged Houses (and then the words "second", "third", etc. shall be understood to mean "third", "fourth", etc., or whatever is appropriate in light of the number of tied Houses and the step in the formula in which the tie occurs; and the numbers "two", "three", etc. shall be similarly adjusted as needed).

3) In performing the insurance allocation, as described above, the Association shall not apply any of its insurance proceeds to any type of damage that is not covered by the insurance that yielded the proceeds. Thus, in determining the cost of the damage to each House, the Association must disregard damage to Owner improvements if such improvements are not covered by the Association's insurance, and must disregard earthquake damage when allocating fire insurance proceeds for a fire that resulted from the earthquake.

B. Assessment of Owners and Lots. If the Association is exercising its delegated authority to control repairs and reconstruction, then, after allocation of all available insurance proceeds, as set forth above, the Association shall assess each Owner (and the Owner's Lot) for the damage to that Owner's House that is not being paid for by the Association's insurance. The assessments may be imposed before actual construction, in order to fund the construction. If construction is more expensive than anticipated at the time the assessments are first levied, then, using the new cost figures and any additional insurance proceeds from the Association's applicable policy, the entire allocation will be recalculated and the assessments revised. When all the repairs and reconstruction for a Disaster has been completed, the Association shall perform a final accounting to adjust

and correct all allocations of insurance proceeds and all assessments. No cause of action against the Association for an improper allocation or assessment shall accrue until the final accounting has been completed or six months after substantial completion of all reconstruction for the Disaster, whichever occurs first.

C. Absence of Insurance. In the event that, with respect to a Disaster, there are no funds available from the Association's insurance policies, and the Association is exercising its delegated authority to control repairs and reconstruction, then all costs of repair or reconstruction of a House will be financed by assessments against the Owner of the House and against the Lot on which it stands.

D. Allocation of Reconstruction Costs. If it is most practical and economical to reconstruct an entire building or two or more Houses within it, then, regardless of the actual distribution of physical damage, each House to be completely reconstructed shall be deemed to have been entirely destroyed, when applying this Section 12A.05 to the allocation of insurance proceeds and assessments, notwithstanding any contrary provisions of the preceding subsections A, B, and C of this Section.

E. Allocation of Insurance Proceeds Between Buildings When Overall Policy Limits are Exceeded. When a casualty insurance policy states an overall limit that is not applicable to individual residential buildings, but serves to limit the total payments that may be made for damages to all of the residential buildings, then if that limit has been exceeded, insurance proceeds shall be allocated among the different residential buildings and any other structures or property included within the limit, in proportion to the proceeds that would have been received for each building, structure, or other property, in the absence of the overall limit.

F. Loss of Insurance Benefits Caused by an Owner. If an Owner's conduct results in a loss or denial of benefits under the Association's insurance coverage, or where a condition of a specific House or Lot, attributable to the action or inaction of an Owner, interferes with such insurance benefits, the allocation of insurance proceeds to such Owner's property shall be reduced by the amount of lost insurance attributable to that Owner. Any allocation of insurance proceeds that is withheld from an Owner or House pursuant to this provision shall be reallocated to the other Houses in the building, using the formula stated above for allocation of insurance proceeds within a building in the event of a Disaster.

G. Loss Assessment Insurance Held by Owners. The proceeds of any loss assessment coverage held by any Owner are hereby assigned to the Association. Each Owner shall sign such reasonable documentation as may be requested by the Association to document the assignment to it of the proceeds of loss assessment insurance. The Association, upon receipt of any loss assessment insurance proceeds shall credit it to the assessment for which the insurance payment has been made. Each Owner shall provide the Association, at its request, the name of each insurance company issuing a homeowner's or earthquake insurance policy to the Owner with respect to any House or Lot, the policy number(s), and copies of the declarations sheets for each such insurance policy.

H. Disputes over the Implementation of this Article. It is of paramount importance that no dispute between Owners or between one or more Owners and the Association be allowed to impede the recovery from a Disaster pursuant to this Article. Therefore, all decisions made by the Association pursuant to this Article or in the negotiation of settlements with insurers shall be binding upon all Owners unless found by a court to be arbitrary and unreasonable. No such decision may be contested until the earlier of (1) the completion of a final accounting by the Association to adjust and correct allocations of insurance proceeds and assessments; or (2) six months after substantial completion of all reconstruction for the Disaster. Owners shall not allow their disputes among themselves or with the Association to interfere in any way with the progress in reconstruction in SEQUOYAH HEIGHTS after a Disaster. After the date on which Owners may begin contesting Association decisions, they and the Association shall first attempt dispute resolution in accordance with the Association's procedures and applicable law. Such dispute resolution procedures may be commenced and conducted in any particular case prior to such date only if, in the reasonable judgment of the Association, the dispute resolution process in that case will not interfere with the reconstruction effort. Notwithstanding the resort to dispute resolution procedures, the reconstruction shall continue on the basis of existing decisions of the Association, subject to reasonable and equitable adjustments consistent with this Declaration and the outcome of the dispute resolution process.

ARTICLE XIII **EMINENT DOMAIN**

13.01 Eminent Domain. The Association shall have authority to defend, settle, and receive proceeds of any eminent domain lawsuit concerning any Common Area property. If all or any portion of the Common Area is taken by action in eminent domain ("taking"), the Association shall give written notice to all Owners and mortgagees. Any condemnation award attributable to the Common Area shall belong to the Association, but shall be spent, used, or distributed by the Association in a manner that fairly and equitably takes into consideration any disproportionate effect of the condemnation upon the use or value of particular Lots.

13.02 Repair, Restoration, Reconstruction. If only a portion of the Common Area is taken, the Association shall promptly contract for the repair, restoration or reconstruction of the Common Area, to the extent such repair, restoration and reconstruction is reasonably necessary. If the cost of repair, restoration and reconstruction of the Common Area exceeds the amounts awarded by the court for such purposes, the difference shall be recovered by a special assessment levied against all Owners who's Lots have not been taken. The amount of any such special assessment payable by each Owner shall be equitably assessed.

ARTICLE XIV **MORTGAGEE PROTECTION**

14.01 First Mortgage Priority. The liens created hereunder upon any House and Lot shall be subject to and subordinate to, and shall not affect the rights of the holder of the indebtedness secured by any recorded first mortgage (meaning a mortgage with first priority over other mortgages) upon such interest made in good faith and for value; provided, however, that after the foreclosure of any such mortgage, a lien may be again created pursuant to Article V, Section 5.2 hereof on the interest of the purchaser at such foreclosure sale to secure all assessments, whether regular or special, assessed

hereunder to such purchaser as an Owner after the date of such foreclosure sale, which said lien, if any claimed, shall have the same effect and be enforced in the same manner as provided herein.

14.02 Prior Mortgage. No amendment of this Article shall affect the rights of the holder of any such mortgage recorded prior to recordation of such amendment who does not join in the execution thereof.

14.03 Subordination Agreement. By subordination agreement executed by a majority of the Board, benefits of 14.01 and 14.02 above may be extended to mortgages not otherwise entitled thereto.

14.04 Condemnation Awards. No provisions of the Governing Documents shall give an Owner priority over any rights of mortgagees pursuant to their mortgages in the case of a distribution to Owners of condemnation awards or settlements.

ARTICLE XV MISCELLANEOUS PROVISIONS

15.01 Power to Settle Claims. The Association shall have the power and authority to compromise, settle, release and otherwise adjust claims, demands, causes of action and liabilities in favor of the Association and the Owners, on behalf of the Association and Owners, as the case may be, provided any such claim, demand, cause of action or liability arises out of or relates to a condition or defect common to all or a majority of the Lots, or to the development, design, construction, condition, repair or maintenance of or damage or injury to or defect in the Common Area or part thereof, and the Association shall have the right and the power to make and receive all payment or other consideration necessary. For such purposes, the Association shall be, and hereby is, irrevocably appointed attorney-in-fact to act on behalf of all Owners upon such terms and conditions and for such consideration as may be approved by a majority of the Association.

15.02 Independence of Provisions. The provisions of this Restated Declaration shall be deemed independent and severable. Invalidity or partial invalidation of any provision of this Restated Declaration by judgment or court order shall not affect any other provision of this Restated Declaration, and the remaining provisions shall remain in full force and effect.

15.03 Notices.

A. Notice to Association:

1) If a document is to be delivered to the Association, it shall be delivered to the person designated in the annual policy statement, or if no person has been designated, then the document shall be delivered to the President or Secretary of the Association.

2) A document may be delivered by any of the following:

- (i) by e-mail, facsimile or other electronic means if the Association has assented to that method of delivery.
- (ii) by personal delivery, if the Association has assented to that method of delivery.
- (iii) by first-class mail, postage prepaid, registered or certified mail, express mail, or overnight delivery by an express delivery service.

B. Individual Notice: A document may be delivered by any of the following:

- 1) by first-class mail, postage prepaid, registered or certified mail, express mail, or overnight delivery by an express delivery service. The document shall be addressed to the recipient at the address last shown on the books of the Association.
- 2) by e-mail, facsimile, or other electronic means if the recipient has assented in writing to that method of delivery.
- 3) by personal delivery.
- 4) if a Member has requested delivery of notices to a secondary address, for financial and reserve documents and annual policy statements, the Association shall deliver an additional copy of those notices to the secondary address.

C. General Notice: A document may be delivered by one or more of the following methods:

- 1) by first-class mail, postage prepaid, registered or certified mail, express mail, or overnight delivery by an express service courier. The document shall be addressed to the recipient at the address last shown on the books of the Association.
- 2) by mail, facsimile or other electronic means to any recipient that has assented to that method of delivery of general notices.
- 3) inclusion in a billing statement, newsletter, or other document that is delivered by one of the methods provided above in C.1 and C.2.

D. Time and Proof of Delivery:

- 1) if a document is delivered by mail, delivery is deemed to be complete on deposit into the United States mail.
- 2) if a document is delivered by electronic means, delivery is complete at the time of transmission.

15.04 Headings. The headings used in this Restated Declaration are for convenience and reference only and the words contained therein shall not be held to expand, modify, or aid in the interpretation, construction, or meaning of this Restated Declaration.

15.05 Liberal Construction. The provisions of these Restated CC&R's and the Governing Documents shall be liberally construed to effectuate the operation of the Association.

15.06 No Waiver. Failure to enforce any provision of the Governing Documents shall not be considered a waiver of the right to enforce any provision in the future.

15.07 Enforcement. The failure of an Owner or the Association to comply with the Governing Documents shall give an Owner or the Association the right to commence internal dispute resolution, alternative dispute resolution, or to initiate a lawsuit for damages or injunctive relief or both. Any Owner who has failed to comply with the Governing Documents shall pay the Association all of its costs incurred as a result of such failure, including, but not limited to, attorney fees, alternative dispute resolution fees, expert and/or consultant fees and costs. All remedies provided in the Governing Documents shall be cumulative and in addition to any other remedies available at law or in equity. The Association shall disclose its Dispute Resolution Procedures as required by

law. All enforcement of the Governing Documents shall be made according to the law in effect at the time of enforcement.

15.08 Violations as Nuisance. Every act or omission in violation of the provisions of this Declaration, except a violation of a monetary obligation only, shall constitute a nuisance and, in addition to all other remedies herein set forth, may be enjoined or ordered abated by a court at the request of any Owner, any member of the Board, the manager of the Association, or the Association.

15.09 Successors and Assigns. The Governing Documents shall inure to the benefit and be binding upon the successors, assigns, heirs, personal representatives, grantees, and lessees of all Owners of the Property.

15.10 Conflicts.

A. If there is a conflict between the Governing Documents and the law; the law shall prevail.

B. If there is a conflict between the Articles of Incorporation and the Restated Declaration; the Restated Declaration shall prevail.

C. If there is a conflict between the Restated Bylaws and the Articles of Incorporation or the Restated Declaration; the Articles of Incorporation or the Restated Declaration shall prevail.

D. If there is a conflict between the Operating Rules and the Restated Bylaws, Articles of Incorporation or Restated Declaration; the Restated Bylaws, Articles of Incorporation or Restated Declaration shall prevail.

15.11 Variances. The Board may, upon unanimous approval of all Directors, allow reasonable variances and adjustments of the Governing Documents in order to overcome difficulties and prevent unnecessary hardships on the application of the Governing Documents. However, such variances shall only be granted which conform to the intent and purposes of the Governing Documents. The Board may, in its sole discretion, impose limitations on any variance granted, including terms, conditions and duration. Notice of a request for a variance must be given to Members potentially affected. Any Member who has been given notice and fails to object (according to the terms of the notice), shall be barred from later contesting the decision of the Association. A written record must be kept of all such requests and proceedings.

15.12 Davis-Stirling Common Interest Development Act. Given that the statutory law applicable to homeowner associations is frequently amended by the legislature, and given the Association's desire to keep the provisions of the Restated Declaration not in conflict with applicable statutory law, the Association may find it useful to update the mandatory requirements of Davis-Stirling that are included in this Restated Declaration by unanimous vote of the Directors. The Association may periodically update the provisions of this Restated Declaration to reflect changes in the Davis-Stirling Common Interest Development Act which would otherwise be in conflict with and would preempt these provisions. Any such updated provisions shall be (1) recorded in the Official Records of Alameda County and cross-reference this Restated Declaration and (2) distributed to all Owners.

15.13 Provision of Municipal Services. To assure the County, City or local districts of access to maintain and repair their services and facilities and for the provisions of police and fire protection, the Association shall keep all access ways, roadways and appurtenances thereto on the subdivided property unobstructed and in a state of good condition and repair consistent with the standard of said roadways and appurtenances

upon original installation. All such repairs shall be made at the expense of the Association. If the County, City or other district is prevented from access to provide its services by an obstruction, such obstruction may be removed without any liability on the part of the County, City or other district.

ARTICLE XVI **AMENDMENTS**

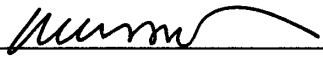
16.01 Amendments. Any amendment of this Restated Declaration shall require the vote or written consent of a majority of the total Voting Power of the Association; provided, however, that the percentage of the votes necessary to amend a specific provision of this Restated Declaration shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that provision.

CERTIFICATE OF AMENDMENT

The Association desired to restate the CC&R's and on SEP 9, 2019 voted and approved the language of the restatement of this Restated CC&R's by the required two thirds vote of the total voting power of the Association

The undersigned declare under penalty of perjury under the laws of the State of California that the matters set forth in this Restated Declaration of Covenants, Conditions and Restrictions are true and correct of their own knowledge. Executed at 21 MOUNTAIN VALLEY, OAKLAND, California on SEP 9, 2019.

SEQUOYAH HEIGHTS HOME OWNERS'
ASSOCIATION

By: 
KATHLEEN KIRKISH, President

By: 
Robin Willis-Adams, Secretary

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 ALAMEDA

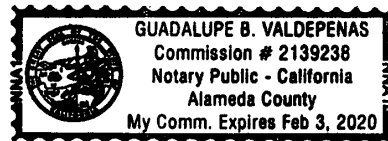
On OCTOBER 21, 2019, before me, GUADALUPE B. VALDEPENAS, NOTARY PUBLIC,
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature Guadalupe B. Valdepenas



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 ALAMEDA

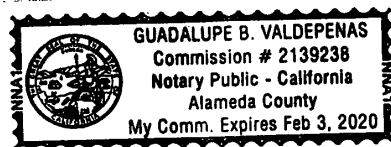
On OCTOBER 21, 2019, before me, GUADALUPE B. VALDEPENAS, NOTARY PUBLIC,
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature Guadalupe B. Valdepenas



EXAMPLE OF ALLOCATION OF ASSOCIATION'S EARTHQUAKE INSURANCE PROCEEDS RECEIVED FOR SPECIFIC BUILDING

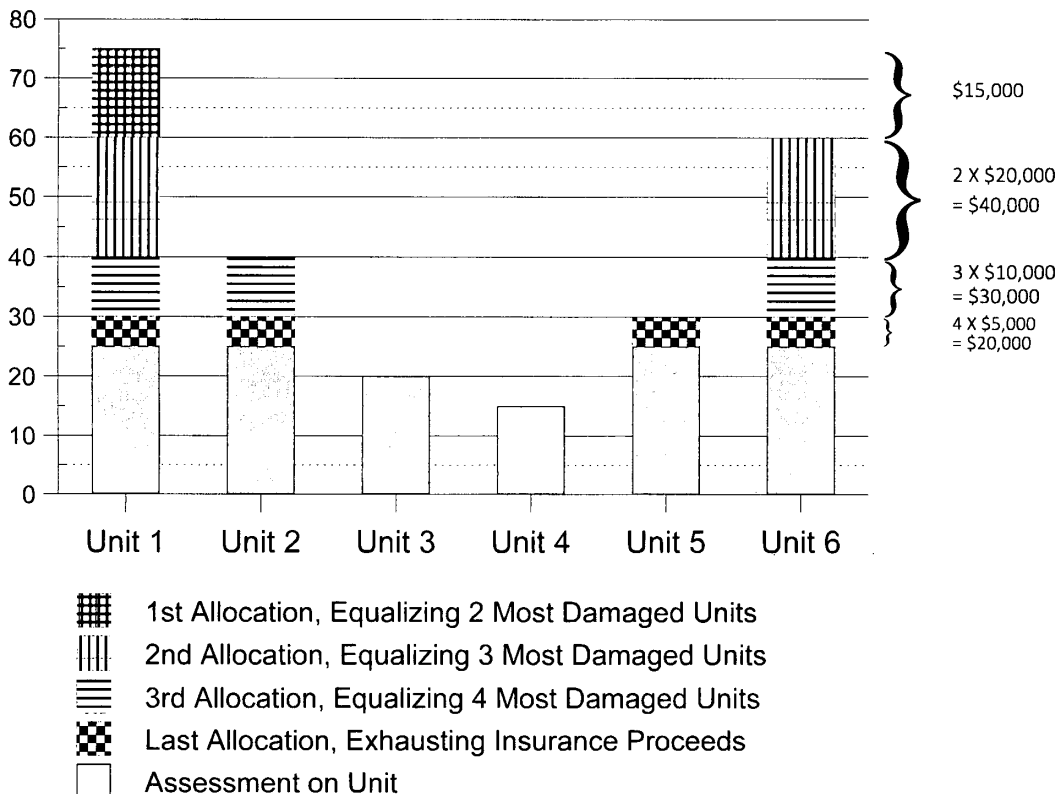
TOP OF EACH BAR IN GRAPH SHOWS TOTAL DAMAGE SUSTAINED BY A UNIT (I.E. AN INDIVIDUAL HOUSE WITHIN BUILDING) IN THOUSANDS OF DOLLARS.

TOTAL DAMAGE SUSTAINED BY BUILDING IS \$240,000.

BUILDING DEDUCTIBLE UNDER EARTHQUAKE INSURANCE POLICY IS \$135,000, WHICH IS 10% OF ESTIMATED REPLACEMENT COST OF ENTIRE BUILDING.

PAYMENT FOR THIS BUILDING FROM THE ASSOCIATION'S EARTHQUAKE INSURANCE POLICY IS \$105,000.

THE \$135,000 IN DAMAGE NOT COVERED BY ASSOCIATION'S EARTHQUAKE INSURANCE POLICY MUST BE PAID FOR BY ASSESSMENTS AGAINST THE INDIVIDUAL UNITS IN THE BUILDING. INDIVIDUAL INSURANCE IS AVAILABLE TO COVER THESE ASSESSMENTS.



Note: the numbers in this example are based upon the earthquake insurance policy in effect from April 11, 2015 through April 10, 2016. Replacement costs and deductibles have since changed.

EXHIBIT "A"