

COVENANTS,
CONDITIONS AND
RESTRICTIONS



HERITAGE PARK



HERITAGE PARK
OWNERS ASSOCIATION

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Second Amended and Restated Declaration of Covenants, Conditions
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**SECOND AMENDED AND RESTATED
DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR HERITAGE PARK**

This Second Amended and Restated Declaration of Covenants, Conditions and Restrictions is made by Heritage Park Owners Association, effective June 2009.

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RECITALS

- A. The Community Association is an "association" as that term is defined in California Civil Code Section 1351(a), which has been created to manage the common interest development located in the County of Sacramento, California, commonly known as "Heritage Park", and more particularly described in Exhibit "A" (hereinafter the "Development").

- B. The original developers of the Development, U.S. Home Corporation, a Delaware corporation, Lennar Renaissance Inc., a California corporation, and Lennar Sales Corporation, a California corporation (hereinafter collectively the "Declarant"), executed a document entitled "Declaration of Covenants, Conditions and Restrictions for Heritage Park", recorded on March 21, 2003, in the Official Records of Sacramento County, California in Book 2003-0321, Page 1877, and re-Recorded in said Official Records on June 5, 2003 in Book 030605, Page 2366 (the "Initial Heritage Park Declaration").

- C. Declarant subsequently Recorded an instrument entitled "First Amended and Restated Declaration of Covenants, Conditions and Restrictions for Heritage Park" on June 19, 2003 in the Official Records of Sacramento County, California in Book 030619, Page 2342 (the "First Restated Declaration"). This action was taken pursuant to Section 18.01 of the Initial Heritage Park Declaration.

- D. Declarations of annexation, which added property to the original real property which was first subject to the First Restated Declaration, thus subjecting such added real property to the First Restated Declaration, were Recorded in the Official Records of Sacramento County, California (hereinafter collectively the "Declarations of Annexation"). The Declarations of Annexation include, without limitation, those documents listed on attached Exhibit "B".

- E. The Development is additionally subject to the covenants and restrictions imposed by that certain instrument entitled "Declaration of Covenants, Conditions and Restrictions" executed by and between Natomas Estates, LLC, a California limited liability company, Lennar Winncrest, LLC, a Delaware limited liability company, and Templeton Development Corporation, a Nevada corporation, Recorded on May 3, 2003 in Book 20030503, Page 1777 (hereinafter the "Templeton Declaration").

- F. The First Restated Declaration, by its own terms and by the terms of the Declarations of Annexation and Templeton Declaration, establish certain limitations, easements, covenants, restrictions, and conditions which run with and are binding upon all parties having or acquiring any right, title, or

interest in the real property comprising the Development.

- G. This Second Amended and Restated Declaration restricts the occupancy of Residences within Heritage Park to Qualifying Residents, Qualified Permanent Residents, and Permitted Health Care Residents as those terms are defined in Sections 1.35, 1.34 and 1.33 below. By restricting occupancy to persons who come within one of these three defined groups, Heritage Park qualifies as a Senior Citizen Housing Development under Section 51.3 of the California Civil Code. By adhering to the occupancy age restrictions, Heritage Park also satisfies the requirements for housing of older persons under the terms and conditions of the federal Fair Housing Act Amendments of 1988 and the Housing for Older Persons Act of 1995 and applicable regulations thereunder.
- H. The Heritage Park Owners Association, a California nonprofit mutual benefit corporation (the "Community Association"), exists for the benefit of all Owners. The Community Association shall have the powers and duties described in, or imposed by, the Governing Documents, which include the following principal purposes: (i) to acquire, operate, manage and maintain the Community Association's Common Areas and Common Facilities (ii) to maintain certain landscape medians and corridors along certain private streets within Heritage Park, all as more particularly described herein; (iii) to pay all Community Association Common Expenses; and (iv) as the agent and representative of the Owners, to administer and enforce all provisions and covenants of this Declaration and the Community Rules.
- I. Fifty-one percent (51%) of the total voting power of the Community Association desire to consolidate, amend, restate and supersede the First Restated Declaration and Declarations of Annexation into a single document.

NOW, THEREFORE, it is hereby declared as follows:

- 1. The First Restated Declaration, all amendments thereto, and the Declarations of Annexation, are hereby amended, restated and superseded in their entirety to read as set forth in this Second Amended and Restated Declaration of Covenants, Conditions and Restrictions for Heritage Park.
- 2. The Templeton Declaration, as described in Recital "E", is not included in this Second Amendment and Restatement and continues to exist as a separate governing document for the real property comprising the Development.
- 3. All of the real property comprising the Development constitutes a "planned development", as that term is defined in California Civil Code section 1351(k).
- 4. All of the real property comprising the Development is held and owned

and shall be held, owned, managed, conveyed, hypothecated, encumbered, leased, used, occupied, and improved subject to the following covenants, conditions and restrictions, all of which are declared and agreed to be in furtherance of a plan and purpose of protecting, preserving, and enhancing the value, desirability, and attractiveness of the Development and every part thereof, and of fostering the development, management, improvement, enjoyment and sale of the real property comprising the Development and any part thereof.

5. All of the covenants, conditions, and restrictions set forth in this Declaration shall constitute enforceable equitable servitudes as provided in California Civil Code section 1354, shall constitute covenants that shall run with the real property comprising the Development, and shall be binding upon and insure to the benefit of each Owner of any portion of such real property or any interest therein and their heirs, successors, and assigns.

ARTICLE I. Definitions

Section 1.01. "Articles"

means the Articles of Incorporation of the Community Association, which are filed in the Office of the California Secretary of State, as such Articles may be amended from time to time.

Section 1.02. "Assessment"

means any Regular, Special or Special Individual Assessment made or assessed by the Community Association against an Owner and his or her Lot in accordance with the provisions of Article IV, below. As more particularly described in Section 4.02(b), below, for some Owners, the Regular Assessment may include a General Assessment Component and a Cost Center Assessment Component.

Section 1.03. "Board of Directors" or "Board"

means the Board of Directors of the Community Association.

Section 1.04. "Bylaws"

means the Bylaws of the Community Association, as such Bylaws may be amended from time to time.

Section 1.05. "City"

means the incorporated municipal City of Sacramento, State of California, and its various departments, divisions, employees and representatives.

Section 1.06. "Clubhouse"

means the Clubhouse located on Lot "G" as shown on the Subdivision Map for the Development, the property upon which it is located and the improvements thereon. The Clubhouse is part of the Common Area and is a Common Facility, as defined herein.

Section 1.07. "Clubhouse Revenue"

means all revenues derived from operation and maintenance of the Clubhouse and Fireside Room including, without limitation, Special Use Fees charged by the Community Association for the special use of the Clubhouse and Fireside Room as provided herein.

Section 1.08. "Common Area"

Means all real property owned, controlled or maintained by the Community Association for the common use and enjoyment of the Owners, as more particularly described in Exhibit C. Unless the context clearly indicates a contrary intent, any reference herein to the "Common Areas" shall also include any Common Facilities located thereon.

Section 1.09. "Common Expense"

means any use of Common Funds authorized by Article IV, below, and Article IX of the Bylaws and includes, without limitation: (a) all expenses or charges incurred by or on behalf of the Community Association for the management, maintenance, administration, insurance, operation, repairs, additions, alterations or reconstruction of the Common Area and Common Facilities, any portions of the Lots that the Community Association is obligated to maintain or repair as a Cost Center, and the landscape corridors, medians and sidewalks adjacent to certain private streets in the Development (as more particularly described in Article VII, below); (b) all expenses or charges reasonably incurred to procure insurance for the protection of the Community Association and its Board of Directors; (c) any amounts reasonably necessary for reserves for maintenance, repair and replacement of the Common Areas and Common Facilities and any portions of any Lots that the Community Association is obligated to maintain, repair, or replace as a Cost Center, (d) any amounts reasonably necessary for nonpayment of any Assessments; (e) costs incurred with respect to the provision of telecommunications services to Lots pursuant to Section 3.07(c), below, and (f) the use of such funds to defray the costs and expenses incurred by the Community Association in the performance of its functions or in the proper discharge of the responsibilities of the Board as provided in the Governing Documents.

Section 1.10. "Common Facilities"

means the facilities, landscaping and improvements located on or within the Common Areas and owned by the Community Association. Without limiting the foregoing, the Common Facilities include: (i) the Clubhouse, (ii) the Recreation Facilities, (iii) the Fireside Room, (iv) parking areas within any of the Common Area parcels, (v) the entrance areas and entrance monumentation of the Development, (vi) any gates at the entrances to private streets in the Development, the pedestrian gates to access the public open space corridor along Elkhorn Boulevard, gates in the Development providing access to the public parks within the Development, and the gate in Lot "T" of Village 15, (vii) the private parks and parklets located within the Development, (viii) the pedestrian/bicycle/motorized cart paths within the Development (and any access gates along those paths), (ix) the promenade areas within the Development along Heritage Park Lane, Aspen Valley Lane and Mill Valley Circle (North and South), and (x) in areas adjacent to private streets in the Development, the landscaping, trees, shrubs, sidewalks, benches, promenade and private park landscape irrigation systems, wires, conduits, (excluding wires or conduit owned by third parties), as well as all other real and personal property conveyed to the Community Association or owned or maintained by the Community Association for the use, enjoyment or benefit of the Members of the Heritage Park community.

Section 1.11. "Community Association"

means the Heritage Park Owners Association, a California nonprofit mutual benefit corporation, its successors and assigns. The Community Association is an "association" as defined in California Civil Code section 1351(a).

Section 1.12. "Community Rules"

means the rules, regulations and policies adopted by the Board of Directors, pursuant to Section 3.08, below, as the same may be in effect from time to time. Once the Design Review Committee is a committee whose members are all appointed by the Community Association's Board of Directors (see Section 5.03(a)), below) the Community Rules shall also include the Design Guidelines.

Section 1.13. "Cost Center"

means a designation assigned by the Community Association to a portion of Heritage Park (and to the Owners of Lots located therein) for the purpose of expense accounting and assessment, all as more particularly provided in Sections 4.01(e) and 4.02(b)(ii), below. A Cost Center may be created when the Community Association is maintaining property or Common Facilities located within the designated Cost Center area and the use and enjoyment of those which are fully or partially restricted to Owners of the Lots within the Cost Center. For instance, if the Community Association is given responsibility for front yard maintenance of Lots or the maintenance of roofs or exterior building surfaces of particular Residences, a Cost Center could be established applicable to those Lots and Residences to fund the expense of those services.

Section 1.14. "County"

means the County of Sacramento, State of California, and its various departments, divisions, employees and representatives.

Section 1.15. "Declaration"

means this instrument, as it may be amended from time to time.

Section 1.16. "Design Guidelines"

means the Design Guidelines and procedural rules of the Design Review Committee, adopted pursuant to Section 5.07, below.

Section 1.17. "Design Review Committee"

means the committee created in accordance with Article V, below.

Section 1.18. "Development"

is synonymous with "Heritage Park," as defined below.

Section 1.19. "Eligible Holder"

shall mean any Institutional Holder, or an insurer or guarantor of the loan held by the Institutional Holder, who has provided the Community Association with a written request stating the name and address of such Holder and the address and legal description of the particular Lot encumbered.

Section 1.20. "Fireside Room"

means the building, approximately 1600 square feet in size on Parcel 13. The Fireside Room is part of the common area and is a common facility as defined herein.

Section 1.21. "Governing Documents"

is a collective term that means and refers to this Declaration and to the Articles, the Bylaws, Community Rules, and Policies and Procedures.

Section 1.22. "Heritage Park"

means and refers to all lands (Lots, streets and Common Areas) and improvements that are now or hereafter subjected to the covenants, conditions, restrictions, easements and equitable servitudes created or imposed by this Declaration. At times herein, Heritage Park is referred to in this Declaration as the "Development".

Section 1.23. "Improvement"

as used herein includes, without limitation any improvement or project undertaken or contemplated by an Owner within any portion of Heritage Park involving the construction, installation, alteration or remodeling of any Residence, structures, storm drainage systems, plans to alter any natural drainage course, garages, out buildings, walls, retaining walls, fences, swimming pools, landscaping, landscape structures, patio awnings, solar equipment, spas, antennas, television satellite reception equipment, utility lines or any other structure of any kind. Improvement projects are subject to design review and approval pursuant to Article V, below. As used herein, "Improvement" does not include any work or project that is completely confined to the interior of a Residence unless the project will materially change the use of the Residence or portion thereof, such as by converting a garage into a living or work area.

Section 1.24. "Institutional Holder"

means any beneficiary of a deed of trust or mortgagee of a mortgage which encumbers a Lot and which is a bank, savings and loan Community Association, mortgage company, or any other entity chartered under federal or state laws, any corporation or insurance company, or any federal or state agency.

Section 1.25. "Lot"

means any parcel of real property designated by a number on any Subdivision Map and intended for residential use, excluding the Common Area and any open space parcel that may be designated as a Lot on a Subdivision Map. When appropriate within the context of this Declaration, the term "Lot" shall also include the Residence and other Improvements constructed or to be constructed on a Lot.

Section 1.26. "Maintenance Manual"

refers to the manual which may be prepared by the Community Association specifying obligations for maintenance of the Common Area and Common

Facilities by the Community Association. "Maintenance Manual" shall also refer to any amendments or supplements to any Maintenance Manual that the Community Association may adopt.

Section 1.27. "Majority of a Quorum"

means the vote of a majority of the votes cast at a meeting or by written or secret ballot when the number of Members attending the meeting or the number of members casting ballots equals or exceeds the quorum requirement for Member action, as specified by the Bylaws or otherwise by statute.

Section 1.28. "Member"

means every person or entity who holds a membership in the Community Association and whose rights as a Member are not suspended as a result of disciplinary action imposed in accordance with Section 13.06, below.

Section 1.29. "Mortgage"

means any security device encumbering all or any portion of the Development, including any deed of trust. "Mortgagee" shall refer to a beneficiary under a deed of trust as well as to a mortgagee in the conventional sense.

Section 1.30. "Owner"

means any person, firm, corporation or other entity which owns a fee simple interest in any Lot.

Section 1.31. "Owner of Record"

means any person, firm, corporation or other entity in which title to a Lot is vested as shown by the official records of the Office of the County Recorder.

Section 1.32. "Party Wall"

means a wall or fence situated on a boundary line separating two or more Lots or a Lot and any portion of the Common Area.

Section 1.33. "Permitted Health Care Resident"

means a person hired to provide live-in, long-term, or terminal health care to a Qualifying Resident or a family member of the Qualifying Resident providing that care. In accordance with Civil Code section 51.3(B)(7), the care provided must be substantial in nature and must provide either assistance with necessary daily activities or medical treatment, or both. In accordance with Civil Code section 51.3(i), the term "for compensation" shall include the provision of food and lodging to the Permitted Health Care Resident in exchange for care.

Section 1.34. "Policies and Procedures"

is a collective term that means the group of documents approved by the Board to serve as a reference for the Board, Owners and management staff to help in the consistent application of all other Governing Documents that relate to the operation of the association.

Section 1.35. "Qualified Permanent Resident"

as defined in California Civil Code sections 51.3(b)(2) and (b)(3) (as such sections may be amended from time to time) means a person described in any of the following subparagraphs (a), (b) or (c):

- (a) A person who was residing with the Qualifying Resident prior to the death, hospitalization, or other prolonged absence of, the Qualifying Resident and who was forty-five (45) years of age or older;
- (b) A person who was residing with the Qualifying Resident prior to the death, hospitalization, or other prolonged absence of, or the dissolution of marriage with, the Qualifying Resident and who was a spouse or a co-habitant of the Qualifying Resident. "Co-habitants" are two persons who live together as husband and wife, or persons who are domestic partners within the meaning of Section 297 of the California Family Code.
- (c) A person who was residing with the Qualifying Resident prior to the death, hospitalization, or other prolonged absence of, the Qualifying Resident and who was the person providing primary physical or economic support to the Qualifying Resident; or
- (d) A person who is a permanently mentally disabled person or person with a disabling illness or injury who is also a child or grandchild of the Qualifying Resident, or Qualified Permanent Resident (as defined in subsection (a), above), who needs to live with the Qualifying Resident or Qualified Permanent Resident because of the disabling condition, illness or injury. A "disabling injury or illness" for purposes of this definition means a physical or mental impairment that substantially limits one or more of the major life activities of the individual, as that term is defined in Civil Code section 54(b) and Government Code section 12926. For any person who would otherwise qualify as a Qualified Permanent Resident under this subparagraph, the Board of Directors may take action to prohibit or terminate that person's occupancy of a Residence within the Development in accordance with the procedures set forth in Section 2.03(b), below.

Section 1.36. "Qualifying Resident"

means a person fifty-five (55) years of age or older who intends to reside in his or her Residence in the Development as a primary residence on a permanent basis.

Section 1.37. "Record" and "Recordation"

means, with respect to any document, the recordation or filing of such document in the Office of the County Recorder.

Section 1.38. "Recreational Facilities"

means all real property (including the improvements thereon) and personal property owned by the Community Association for the common recreational use

and enjoyment of the Members, including the Clubhouse and Fireside Room, any private parks and parklets, and the improvements within park areas.

Section 1.39. "Regular Assessment"

means an Assessment levied against an Owner and his or her Lot in accordance with Section 4.02, below.

Section 1.40. "Resident"

means:

- (a) an Owner of a Lot actually residing thereon and/or therein (in accordance with the restrictions imposed by section 2.03, below);
- (b) any person who has executed a contract to purchase any Lot who is actually residing thereon and/or therein (i.e., renting until his/her Residence is completed), regardless of whether the contract is recorded, and each tenant or lessee of a Lot who is actually residing thereon and/or therein; and
- (c) members of the immediate family, or other Qualifying Residents or Qualified Permanent Residents of each Owner and of each buyer and tenant referred to in subparagraph (b) actually living in the same household in Heritage Park with such Owner or such buyer or tenant; and
- (d) in accordance with the laws and regulations relating to developments which are intended to provide housing for older persons, at least eighty percent (80%) of the occupied Residences within Heritage Park must be occupied by at least one Qualifying Resident.

Section 1.41. "Reserves"

means those Common Expenses for which Community Association funds are set aside pursuant to Article IV, below, and California Civil Code section 1365.5 for funding the periodic painting, maintenance, repair and replacement of the major components of the Common Areas and those portions of any Lot or Residence which the Community Association is obligated to maintain, repair and/or replace which would not reasonably be expected to recur on an annual or less frequent basis. The amounts required to properly fund Reserves shall be determined annually by the Board in accordance with the standards prescribed by maintenance cost guidelines prepared in accordance with California Civil Code sections 1365(a) and 1365.5(e), or comparable successor statutes, and prudent property management practices generally applied in "common interest developments" (as that term is defined in California Civil Code section 1351(c)) in the geographic region in which the Heritage Park common interest development is located.

Section 1.42. "Residence"

means a private, single-family dwelling constructed on any Lot and shall also include any half-plex unit constructed within Heritage Park.

Section 1.43. "Single Family"

means a group of one or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than three (3) persons not all so related, who maintain a common household in a Residence.

Section 1.44. "Special Assessment"

means an Assessment levied against an Owner and his or her Lot in accordance with Section 4.03, below.

Section 1.45. "Special Individual Assessment"

means an Assessment levied against an Owner and his or her Lot in accordance with Section 4.04, below.

Section 1.46. "Special Use Fees"

means fees charged by the Community Association for the use of the Clubhouse or any portion thereof or any other Recreational Facility situated upon the Common Areas.

Section 1.47. "Subdivision Map"

means any map Recorded for any portion of Heritage Park.

Section 1.48. "Supplemental Declaration"

means any declaration (as defined in California Civil Code section 1351(h)) that may be Recorded which supplements this Declaration. The term includes a Declaration of Annexation which adds property to Heritage Park or which supplements this Declaration.

Section 1.49. "Templeton Declaration"

Means that certain Declaration of Covenants, Conditions and Restrictions that is more particularly described in Recital "E", above.

Section 1.50. "Visible From Neighboring Property"

means, with respect to any given object, that the object is visible to a six-foot tall person standing at the finished floor elevation (or in the case of streets or open space the finished grade thereof) of the neighboring property, whether a Lot, street or Common Area.

Section 1.51. "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 part of the Voting Power, a Member must be in good standing, as defined in the Bylaws and/or the Community Rules.

ARTICLE II. Creation of a Planned Development

Section 2.01. General Declaration Creating Senior Citizen Housing.

All of the real property constituting Heritage Park is and shall be subject to this Declaration and any applicable recorded Supplemental Declaration, with the exception of any properties that are dedicated to the public, to a governmental entity for public purposes, or to any quasi-public entity or public utility (which properties shall not be subject to this Declaration while owned by the public or the governmental entity), although restrictions imposed in this Declaration upon the Owners and Residents concerning the use and maintenance of such properties and public areas shall, at all times, apply to the Owners and Residents.

Heritage Park is a senior citizen housing development that is intended to qualify as "housing for older persons" exempt from the age restriction prohibitions contained in the Fair Housing Amendments Act of 1988 (the "Act") and as a Senior Citizen Housing Development under Section 51.3 of the California Civil Code (the "Civil Code"). In order to satisfy the requirements of the Act and the Civil Code, the Community Association shall:

- (a) use its best efforts to provide significant facilities and services specifically designed to meet the physical or social needs of persons fifty-five (55) years of age or older; and
- (b) publish and adhere to policies and procedures which demonstrate intent by the Community Association to provide housing for persons fifty-five (55) years of age or older.

The requirements contained in this section are intended to comply with the exemption requirements under the Act, the Civil Code, and the regulations issued thereunder. If the Act, the Civil Code, or the regulations are amended, modified or repealed, the provisions of this Section 2.01, above, and Section 2.03, below, automatically shall be amended or modified, in the same manner by action of the Board of Directors of the Community Association without the necessity of further Member approval. Once approved by the Board, any such amendment shall be Recorded in the Official Records of Sacramento County, California in accordance with Civil Code section 1355(a).

Section 2.02. Purpose of Declaration

This Declaration and any Supplemental Declarations that are subsequently Recorded with respect to any portion of Heritage Park are declared and agreed to be in furtherance of a general plan for the subdivision, improvement and sale of Heritage Park as an active adult community and a common interest development and are established for the purpose of enhancing, perfecting and

maintaining the value, desirability and attractiveness of Heritage Park. This Declaration shall run with all Lots and Common Areas within Heritage Park for all purposes and shall be binding upon and inure to the benefit of the Community Association, all Owners and Residents and their successors in interest.

Section 2.03. Statement of Restrictions On Occupancy Rights

(a) **Imposition of Age Restrictions, Generally.** Each Residence within Heritage Park, if occupied, must be occupied by at least one (1) Qualifying Resident, as defined in Section 1.36, above. All other persons occupying a Residence in the Development shall be either Qualified Permanent Residents (as defined in Section 1.36, above) or a Permitted Health Care Resident (as defined in Section 1.33, above), or a guest (of any age) of a Qualifying Resident or of a Qualified Permanent Resident so long as the guest's residency does not exceed a total of sixty (60) days in any calendar year. This Section and its subparagraphs are intended to comply with California Civil Code section 51.3, the Fair Housing Act Amendments of 1988 and the Housing for Older Persons Act of 1995, as they may be amended from time-to-time.

(b) **Termination of Right Of Occupancy for Qualifying Permanent Residents Under Certain Circumstances.** Except as otherwise provided in the next succeeding paragraph of this subparagraph, upon the death or dissolution of marriage, or upon hospitalization, or other prolonged absence of the Qualifying Resident, any Qualified Permanent Resident shall be entitled to continue his/her occupancy, residency or use of the Residence. This right shall not apply to a Permitted Health Care Resident whose rights of continued occupancy shall be determined in accordance with subparagraph (c), below.

If a person is a "Qualified Permanent Resident" by virtue of being a disabled person or a person with a disabling illness or injury who is a child or grandchild of the Qualifying Resident and the disabling condition ends, the Owner of the Residence or the Community Association Board of Directors may require the formerly disabled resident to cease residing in the Development upon receipt of six (6) months written notice; provided, however, that the Owner or the Board of Directors may allow the person to remain a resident for up to one year after the disabling condition ends. In addition, the Owner of the Residence or the Board of Directors may take action to prohibit or terminate occupancy by a person who is a Qualified Permanent Resident on account of a disability or disabling illness or injury if the Owner or the Board of Directors, based on credible and objective evidence, finds that the person is likely to pose a significant threat to the health or safety of others that cannot be ameliorated by means of a reasonable accommodation; provided, however, that the action to prohibit or terminate the occupancy of the disabled Qualified Permanent Resident may only be taken after doing both of the following:

- (i) Providing reasonable notice to and an opportunity to be heard for the disabled person whose occupancy is being challenged, and reasonable notice to the co-resident parent or grandparent of that person; and
 - (ii) Giving due consideration to the relevant, credible, and objective information provided in the hearing. The evidence shall be taken and held in a confidential manner, pursuant to a closed session by the Owner of the Residence or the Board of Directors, as the case may be, in order to preserve the privacy of the affected person. Any Qualified Permanent Resident who is the subject of such a hearing shall be entitled to have present at the hearing an attorney or other person authorized by the Qualified Permanent Resident to speak on their behalf or to assist them in the matter.
- (c) Continued Occupancy of a Residence by a Permitted Health Care Resident In the Absence of a Qualifying Resident. A Permitted Health Care Resident shall be permitted to continue his or her occupancy, residency, or use of the Residence as a permitted resident in the absence of the Qualifying Resident only if both of the following are applicable:
- (i) The Qualifying Resident became absent from the Residence due to hospitalization or other necessary medical treatment and expects to return to his or her Residence within ninety (90) days from the date that the absence began; and
 - (ii) The absent Qualifying Resident or an authorized person acting for the absent Qualifying Resident submits a written request to the Owner or the Board of Directors stating that the Qualifying Resident desires that the Permitted Health Care Resident be allowed to remain in order to be present when the Qualifying Resident returns to reside in the Development. Furthermore, upon written request of the Qualifying Resident or an authorized person acting for the absent Qualifying Resident, the Owner or the Board of Directors shall have the discretion to allow a Permitted Health Care Resident to remain as an occupant for a time period longer than ninety (90) days from the date that the Qualifying Resident's absence began, if it appears that the Qualifying Resident will return to reside at the Residence within the Development within a period of time not to exceed an additional ninety (90) days.

Section 2.04. Authority to Approve Boundary Line Adjustments

At any time within eight (8) years from the date that the first Lot is conveyed to an Owner, the boundaries of any Lot or Common Area may be altered by a lot line adjustment or other change reflected on a subsequently Recorded Record of

Survey, Parcel Map, or Subdivision Map, provided that the altered boundaries are approved by the Community Association and all Owners of the property involved in the boundary adjustment. In the event a boundary line adjustment involves Common Area of the Community Association, the Board shall be authorized to grant approval on behalf of the Community Association. Any such alteration shall be effective upon Recordation of the Record of Survey, Parcel Map, or Subdivision Map. Upon such Recordation, the boundaries of the altered Lot or Common Area shall be altered for purposes of this Declaration to conform to the boundaries as shown on the Record of Survey, Parcel Map, or Subdivision Map.

Section 2.05. Rights of Owners in Common Areas

The interest of each Lot Owner in and to the use and benefit of the Common Area and the Common Facilities shall be appurtenant to the Lot owned by the Owner and shall not be sold, conveyed or otherwise transferred by the Owner separately from the ownership interest in the Lot. Any sale, transfer or conveyance of such Lot shall transfer the appurtenant right to use and enjoy the Common Area and Common Facilities. There shall be no judicial partition of the Common Area or any part thereof, and each Owner, whether by deed, gift, devise, or operation of law for his or her own benefit and for the benefit of all other Owners specifically waives and abandons all rights, interest and causes of action for a judicial partition of any ownership interest in the Common Area and does further covenant that no action for judicial partition shall be instituted, prosecuted or reduced to judgment. The rights of all Owners in the Common Area shall be further subject to the requirements and restrictions set forth in Section 2.06, below.

Section 2.06. Owners' Nonexclusive Easements of Enjoyment

Every Owner shall have a nonexclusive right and easement of enjoyment in and to the Common Area, including ingress and egress to and from his or her Lot, which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) **Right of Community Association to Regulate Common Area Uses.** The Community Association has the right to limit the number of guests of Members who may use any recreational Common Facilities situated upon the Common Area or to impose Special Use Fees for use of the Clubhouse or other Recreational Facilities. Notwithstanding the foregoing and so long as an Owner is current in the payment of all Assessments and other charges owing to the Community Association, for each Lot owned, the Owner shall receive up to two (2) membership cards for each Owner of the Residence who is either a Qualifying Resident or a Qualified Permanent Resident. In addition, the Community Rules may provide for the issuance of Recreational Facilities use privilege cards for use by other persons residing at an Owner's Residence in accordance with the

occupancy restrictions imposed by Section 2.03(a), above. The Board of Directors may impose a reasonable fee or charge for any additional Recreational Facilities use privilege card or cards issued to such Owner or Resident. In addition, the Board may at any time adopt a limit on the number of cards that may be issued for each Lot or on guest privilege cards, but no such action shall affect previously issued cards. To be eligible to use the Recreational Facilities of Heritage Park, a Resident must be (i) a Qualifying Resident, (ii) a Qualified Permanent Resident; (iii) a Permitted Health Care Resident who is accompanying a Qualifying Resident, or (iv) a guest who is using the Clubhouse in accordance with the Community Rules.

- (b) Right of Community Association to Adopt Community Rules. The Community Association has the right to adopt Community Rules as provided in Section 3.08, below, regulating the use and enjoyment of Heritage Park for the benefit and well-being of the Owners in common, and, in the event of the breach of such rules or any provision of any Governing Document by any Owner or tenant, to initiate disciplinary action against the violating Owner or tenant in accordance with Section 13.06, below. Such action may include the levying of fines and/or the temporary suspension of the voting rights and/or the right to use the Common Facilities, other than roads, by any Owner and the Owner's tenants and guests.
- (c) Right to Incur Indebtedness. The Community Association, in accordance with its Articles and Bylaws, has the right to borrow money for the purpose of improving the Common Area and Common Facilities. Member approval of the borrowing shall be required whenever the funding to amortize the obligation will be an assessment for which Member approval is required pursuant to either Section 4.02(b) or Section 4.03(b), below.
- (d) Rights of Dedication. The Community Association has the right to dedicate, release, alienate, transfer, or assign an interest in 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 Board of Directors. Notwithstanding the foregoing authority, no dedication shall be permitted that impairs the ingress and egress to any Lot.
- (e) Rights of Easement Holders. All easements affecting the Common Area which are described in Article IX, below.
- (f) Right of Community Association to Grant Concessions. The Community Association has the right to grant concessions for dining facilities, snack bars, professional services and other commercial activities relating to the use and enjoyment of the Recreation Center by the Members, provided any such contract shall be subject to the restrictions on the Community

Association's authority to enter into contracts described elsewhere in this Declaration and in the Bylaws.

- (g) Right to Close Facilities During Maintenance or Renovation. The Community Association has the right to close or limit the use of the Common Areas and/or Common Facilities, or portions thereof to access to and use by the Members, while maintaining and repairing such Facilities.

Section 2.07. Delegation of Use

- (a) Delegation of Use, Generally. Any Owner may delegate, in accordance with the Community Rules, his or her right to use and enjoy the Common Areas and Recreational Facilities to a Qualifying Resident who is a tenant of the Owner, a Qualified Permanent Resident or Permitted Health Care Resident residing in an Owner's Residence, and to contract purchasers of a Lot and Residence so long as the contract purchaser is a Qualifying Resident.

Except as provided in this paragraph, during the period of any lease or rental of a Residence or during the period when a Residence is subject to an executory contract of sale, neither the Owner nor his or her family or other parties claiming use rights through Owner, shall be entitled to use the Community Association's Recreational Facilities during the period of delegation, unless the Owner-lessor is a Qualifying Resident or Qualified Permanent Resident who is contemporaneously residing in another Residence within Heritage Park. Owner-lessors who are not contemporaneously residing in another Residence within Heritage Park shall surrender their Recreational Facilities cards to the Community Association for the period of delegation, and any issuance of replacement cards to Qualifying Resident tenants or contract purchasers will be conditioned upon such surrender. Nothing in this paragraph shall preclude the Community Association from issuing temporary user cards to new purchasers of Residences who are Qualifying Residents who are in the process of selling another residence and who have not yet moved to their new Residence within Heritage Park.

Guests of an Owner may use the Common Areas and Recreational Facilities only in accordance with the Community Association's Rules and Regulations which may, among other things: (i) limit the number of guests; (ii) include a reasonable fee or charge for such use by guests; (iii) require that Owners accompany guests to the facilities and remain with guests under 19 years old at the facilities; and (iv) restrict the times during guests may use certain facilities.

Nothing herein shall be interpreted as permitting transfer to tenants or contract purchasers of an Owner's voting rights, which shall not be delegated.

- (b) **Requirements That Must Be Observed In All Residential Leases.** The following specific limitations shall apply to all leases or tenancies of a Residence within Heritage Park: (i) no Residence may be leased or rented for a period of less than ninety (90) days; (ii) the lease or rental must be to a Single Family; (iii) the rental shall apply to not less than an entire Residence including its appurtenant rights (except voting rights in the Community Association which may not be transferred to a tenant or lessee); and (iv) any rental shall be evidenced by a written lease or rental agreement which shall provide that the tenancy is subject to the terms of the Governing Documents and that any failure of the tenant to comply with the terms of any Governing Document relating to residential leases, property use restrictions or the use and enjoyment of any portion of the Common Areas and Common Facilities shall constitute a default under the lease or rental agreement and shall entitle the Owner to terminate the tenancy upon thirty (30) days' written notice. The Owner-lessor's right to terminate a lease or rental agreement on account of the tenant's violation of the Governing Documents shall in no way restrict the right of the Community Association or any Owner to enforce the Governing Documents in accordance with Article XIII, below, when the Owner's tenant is violating the Governing Documents.
- (c) **Discipline of Lessees.** Subject to the notice and due process requirements of subparagraph (d) below, in the event that any tenant or lessee fails to honor the provisions of any Governing Document, the Community Association shall be entitled to take such corrective action as it deems necessary or appropriate under the circumstances in order to preserve the quiet enjoyment of other Owners and residents within Heritage Park. Without limiting the foregoing, the Community Association's actions in response to a tenant's violation of the Governing Documents may include: (i) suspension of the tenant's privileges to use the Community Association's Recreational Facilities, or (ii) the imposition of fines and penalties against the Owner-lessor of the Residence in accordance with the Community Association's duly approved fine schedule.
- (d) **Due Process Requirements for Disciplinary Action.** Except for circumstances in which immediate corrective action is necessary to prevent damage or destruction to any portion of Heritage Park or to preserve the rights of quiet enjoyment of other Owners, the Community Association shall have no right to initiate disciplinary action against an Owner-lessor (or the Owner's lessee or tenant) on account of the misconduct of the Owner's lessee or tenant unless and until the following conditions have been satisfied: (i) the Owner has received written notice from the Board, the Community Association's property manager or an authorized committee of the Board detailing the nature of the

lessee's/tenant's alleged infraction or misconduct and advising the Owner of his or her right to a hearing on the matter in the event the Owner believes that remedial or disciplinary action is unwarranted or unnecessary; (ii) the Owner has been given a reasonable opportunity to take corrective action on a voluntary basis or to appear at a hearing, if one is requested by the Owner, and (iii) the Owner has failed to prevent or correct the tenant's objectionable actions or misconduct. Any hearing requested hereunder shall be conducted in accordance with Section 13.06, below.

Section 2.08. Obligations of Owners

Owners of Lots within Heritage Park shall be subject to the following:

- (a) **Owner's Duty to Notify Community Association of Tenants and Contract Purchasers.** Each Owner shall notify the secretary of the Community Association or the Community Association's property manager, if any, of the names of any contract purchaser or tenant residing in the Owner's Lot. Each Owner, contract purchaser or tenant shall also notify the secretary of the Community Association of the names of all persons to whom such Owner, contract purchaser or tenant who will be residing in the subject Residence and the relationship that each such person bears to the Owner, contract purchaser or tenant.
- (b) **Contract Purchasers.** A contract seller of a Lot must delegate his or her voting rights as a Member of the Community Association and his or her right to use and enjoy the Common Area and Common Facilities 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 subject Lot has been transferred to the purchaser.
- (c) **Notification Regarding Governing Documents.**
 - (i) As more particularly provided in California Civil Code section 1368, as soon as practicable before transfer of title or the execution of a real property sales contract with respect to any Lot, the Owner thereof must give the prospective purchaser:
 - (A) a copy of the Governing Documents;
 - (B) a statement that the age restriction is only enforceable to the extent permitted by California Civil Code section 51.3 and a statement specifying the applicable provisions of California Civil Code section 51.3;

- (C) a copy of the most recent documents distributed by the Community Association pursuant to California Civil Code section 1365;
 - (D) a true statement in writing from an authorized representative of the Community Association as to: (1) the amount of any unpaid Assessments, together with information relating to late charges, attorneys' fees, interest, and costs of collection which, as of the date the statement is issued, are or may become a lien on the Lot being sold ("delinquency statement"); (2) the amount of the Community Association's current Regular and Special Assessments and fees; and (3) any monetary fines or penalties levied upon the Owner's interest and unpaid on the date of the statement;
 - (E) a copy or summary of any notice previously sent to the Owner pursuant to Civil Code section 1363(h), that sets forth any alleged violations of the governing documents that remain unresolved at the time of the request;
 - (F) a copy of the preliminary list of defects provided to each Member of the Community Association pursuant to California Civil Code section 1375, unless the Community and the builder subsequently enter into a settlement agreement or otherwise resolve the matter and the Community Association complies with California Civil Code section 1375.1;
 - (G) a copy of the latest information provided for in California Civil Code section 1375.1; and
 - (H) a statement disclosing any change in the Community 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 the information is provided.
- (ii) Within ten (10) days of the mailing or delivery of a request for the information described in subparagraph (c)(i), above, the Community Association shall provide the Owner with copies of the requested items. The Community Association shall be entitled to impose a fee for providing the requested items equal to (but not more than) the reasonable cost of preparing and reproducing the requested items.

- (d) **Obligation to Provide Subsequent Purchasers with Information Relating to Repair Rights and Obligations and Residence Maintenance Standards.** Civil Code section 912 requires home builders to provide their initial home buyers with certain documents enumerated in that Code section, including (i) copies of all maintenance and preventative maintenance recommendations that pertain to the Residence; (ii) copies of all manufactured products maintenance, preventative maintenance, and limited warranty information relating to components of the Residence; (iii) copies of the builder's limited contractual warranties; (iv) a written copy of Civil Code sections 895 et seq.; and (v) other documents provided by the builder to the initial home buyer with the original sale of the Residence. Civil Code section 912(h) obligates the Owner to provide these documents to subsequent purchasers of the Residence.
- (e) **Obligation of Owners to Follow' Maintenance Obligations and Schedules.** All Owners are obligated by Section 907 of the California Civil Code to follow maintenance recommendations and schedules, including the maintenance recommendations and schedules for manufactured products and appliances provided with the Residence by any product manufacturer, as well as all commonly accepted maintenance practices (collectively, "Maintenance Recommendations"). Furthermore, in accordance with Civil Code section 945.5, failure to follow the Maintenance Recommendations may reduce or preclude Owner's right to recover damages relating to such Owner's property, which could have been prevented or mitigated had the Maintenance Recommendations been followed.
- (f) **Payment of Assessments and Compliance with Rules.** Each Owner shall pay, when due, each Regular, Special and Special Individual Assessment levied against the Owner and his or her Lot and shall observe, comply with and abide by any and all rules and regulations set forth in, or promulgated by the Community Association pursuant to, any Governing Document for the purpose of protecting the interests of all Owners or protecting the Common Area and Common Facilities.
- (g) **Discharge of Assessment Liens.** Each Owner shall promptly discharge any Assessment lien that may hereafter become a charge against his or her Lot.
- (h) **Joint Ownership of Lots.** In the event of joint ownership of any Lot, the obligations and liabilities of the multiple Owners under the Governing Documents shall be joint and several. Without limiting the foregoing, this subparagraph shall apply to all obligations, duties and responsibilities of Owners as set forth in this Declaration, including, without limitation, the payment of all Assessments.

ARTICLE III. Heritage Park Owners Association

Section 3.01. Formation

The Heritage Park Owners Association is a California nonprofit mutual benefit corporation. The Community Association shall be charged with the duties and invested with the powers set forth in the Governing Documents, including, but not limited to, the ownership, control, maintenance and repair of the Common Area and Common Facilities.

Section 3.02. Board of Directors and Officers

With the exception of those matters requiring approval of Members under the Governing Documents or California law, the affairs of the Community Association shall be conducted and all corporate powers shall be exercised by the Board of Directors and such officers as the Board may elect or appoint. Except as otherwise provided in the Governing Documents or California law, all matters requiring the approval of Members shall be deemed approved if approved by a Majority of a Quorum of the Members.

Section 3.03. Membership

- (a) **Qualifications.** Each Owner of a Lot shall be a Member of the Community Association. An Owner shall hold one membership in the Community Association for each Lot that is owned. Sole or joint ownership of a Lot shall be the sole qualification for membership in the Community Association. Each Owner shall remain a Member of the Community Association until his or her ownership of, or ownership interest in, all Lots in Heritage Park ceases, at which time the Owner's membership in the Community Association shall automatically cease. Persons or entities who hold an interest in a Lot merely as security for performance of an obligation are not Members.
- (b) **Members' Rights and Duties.** Membership in the Community Association shall give rise to the rights, duties, and obligations set forth in the Governing Documents and any amendments thereto.

Section 3.04. Membership Voting

- (a) **Commencement of Voting Rights.** Voting rights attributable to the ownership of Lots shall not vest until Assessments against those Lots have been levied by the Community Association. See Section 4.02(e), below.
- (b) **Voting Rights of Members.**
 - (i) No change in the ownership of a Lot shall empower the new Owner(s) of the Lot to exercise the voting rights of the Membership

that is appurtenant to the Lot until the Community Association has received written notice of such change. Each Lot owned by a Member is entitled to one vote regardless of the number of persons who appear as Owners of Record with respect to each such Lot. If any Member casts a vote representing a certain Membership, it will be deemed that he or she was acting with the authority and consent of all other Owners of the Lot to which the Membership is appurtenant unless objection thereto is made at the time the vote is cast. In the event more than one vote is cast for a particular Membership, none of the said votes shall be counted and all said votes shall be deemed void.

- (ii) Any mortgagee who acquires title to a Lot pursuant to a judgment of foreclosure or a trustee sale shall automatically become entitled to exercise all voting rights which the Owner of said Lot would otherwise have had.
 - (iii) In the event an Owner has leased or rented his or her Lot, the Owner shall retain the right to vote as a Member of the Community Association. The right to vote is not transferable or assignable except with the sale or conveyance of the Lot.
- (d) Suspension of Voting Rights. Voting rights may be temporarily suspended under those circumstances described in Section 13.06, below.

Section 3.05. Assessments

The Community Association shall have the power to establish, fix and levy Assessments against the Owners of Lots within Heritage Park and to enforce payment of such Assessments, as more particularly provided in Article IV, below. Any Assessments levied by the Community Association against its Members shall be levied in accordance with, and pursuant to, the provisions of this Declaration.

Section 3.06. Transfer of Memberships

Membership in the Community Association shall not be transferred, encumbered, pledged or alienated in any way, except upon the sale of the Lot to which it is appurtenant, and then, only to the purchaser. In the case of a sale, the membership appurtenant to the transferred Lot shall pass automatically to the purchaser upon the Recordation of a deed evidencing the transfer of title. In the case of an encumbrance recorded with respect to any Lot, the Mortgagee shall not possess any membership rights until the Mortgagee becomes an Owner by foreclosure or acceptance of a deed in lieu thereof. Tenants who are delegated rights of use pursuant to the rental or lease of a Residence (see Section 2.07, above) do not thereby become Members, although the tenant and his or her family and guests shall at all times be subject to the property use restrictions and

enforcement/disciplinary provisions of the Governing Documents. If any Owner fails or refuses to transfer the membership registered in his or her name to the purchaser of his or her Lot, the Community Association shall have the right to record the transfer upon its books and thereupon any other membership outstanding in the name of the seller shall be null and void.

Section 3.07. Powers and Authority of the Community Association

(a) **Powers, Generally.** The Community Association shall have the responsibility of owning, managing and maintaining the Common Areas and Common Facilities and discharging the other duties and responsibilities imposed on the Community Association by the Governing Documents. In the discharge of such responsibilities and duties, the Community Association shall have all of the powers of a nonprofit 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 hereunder for the benefit of its Members, subject only to such limitations upon the exercise of such powers as are expressly set forth in the Governing Documents. The Community Association shall have the power to do any and all lawful things which may be authorized, required or permitted to be done under and by virtue of the Governing Documents, and to do and perform any and all acts which may be necessary or proper for, or incidental to, the exercise of any of the express powers of the Community Association for the peace, health, comfort, safety or general welfare of the Owners. The specific powers of the Community Association and the limitations thereon are set forth in Article IX of the Bylaws.

(b) **Community Association's Limited Right of Entry.**

(i) **Right of Entry, Generally.** Without limiting the foregoing description of powers, but in addition thereto, the Community Association and its agents shall have the right and power to enter any Lot to perform the Community Association's obligations under this Declaration, including: (A) exterior maintenance or obligations with respect to front yard landscaping and/or exterior maintenance of individual Residences to the extent provided in Section 7.01 below; (B) obligations to enforce the design review and approval requirements, or land use restrictions of Article V, below; (C) any obligations with respect to construction, maintenance and repair of adjacent Common Facilities; or (D) to make necessary repairs that an Owner has failed to perform which, if left undone, will pose a threat to, or cause an unreasonable interference with, any portion of Heritage Park or the Owners in common.

- (ii) Limitations on Exercise of Right. The Community Association's right of entry pursuant to this subparagraph shall be subject to the following:
- (A) The right of entry may be exercised immediately and without prior notice to the Owner or resident in case of an emergency originating in or threatening the Lot where entry is required or any adjoining Lots or Common Area. The Community Association's work may be performed under such circumstances whether or not the Owner or Resident is present.
 - (B) In all non-emergency situations involving routine repair and/or maintenance activities, the Community Association, or its agents, shall furnish the Owner or other Qualifying Resident of the Residence with at least twenty-four (24) hours prior written notice of its intent to enter the Lot, specifying the purpose and scheduled time of such entry, and shall make every reasonable effort to perform its work and schedule its entry in a manner that respects the privacy of the persons residing in the Residence on the Lot.
 - (C) In all non-emergency situations involving access by the Community Association for purposes of enforcing the Governing Documents against an Owner or Resident who is in default, the Community Association's entry shall be subject to observance of the notice and hearing requirements imposed by Section 13.06, below.
 - (D) In no event shall the Community Association's right of entry hereunder be construed to permit the Community Association or its agents to enter any Residence without the express permission of the Owner or Resident.
- (c) Multi-Channel Video Services. The Community Association has the right and power, but not the obligation, to enter into a contract to obtain bulk standard, basic cable television service for each Residence in the Development.

Section 3.08. Community Rules

- (a) Rule Making Power. Subject to the requirements set forth in paragraph (c) below, the Board may, from time to time and subject to the provisions of this Declaration, propose, enact and amend rules and regulations of

general application to the Owners ("Community Rules"). The Community Rules may concern, but need not be limited to:

- (i) matters pertaining to use of the Common Area and Common Facilities;
- (ii) architectural control and the rules of the Architectural Committee under Article V, below
- (iii) regulation of pet ownership, parking, signs, collection and disposal of refuse and other matters subject to regulation and restriction under Article VIII, below;
- (iv) collection of delinquent Assessments in accordance with Section 4.10, below;
- (v) minimum standards of maintenance of landscaping or other Improvements on any Lot;
- (vi) the conduct of disciplinary proceedings in accordance with Section 13.06, below, and
- (vii) any other subject or matter within the jurisdiction of the Community Association as provided in the Governing Documents.

Notwithstanding the foregoing grant of authority, the Community Rules shall not be inconsistent with or materially alter any provision of the Governing Documents or the rights, preferences and privileges of the Owners thereunder. In the event of any material conflict between any Community Rule and the provisions of any other Governing Document, the conflicting provisions contained in the other Governing Document shall prevail.

- (b) Distribution of Rules. A copy of the Community Rules, as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner. A copy of the Community Rules shall also be available and open for inspection by any Owner or Resident during normal business hours at the principal office of the Community Association.
- (c) Adoption and Amendment of Rules.
 - (i) Civil Code section 1357.100 and 1357.130 defines certain rules that can be adopted, amended or repealed by the Board of Directors only after providing written notice of a proposed Rule Change to the Members at least thirty (30) days before making a

Rule Change. The notice must include the text of the proposed Rule Change and a description of the purpose and effect of the proposed Rule Change. This notice requirement applies only to rules that relate to one or more of the following subjects:

- (A) Use of the Common Area or of an exclusive use common area;
 - (B) Use of a separate interest, including any aesthetic or architectural standards that govern alteration of a separate interest;
 - (C) Member discipline, including any schedule of monetary penalties for violation of the Governing Documents and any procedure for the imposition of penalties;
 - (D) Any standards for delinquent assessment payment plans;
 - (E) Any procedures adopted by the Community Association for resolution of disputes;
 - (F) Any procedures for reviewing and approving or disapproving a proposed physical change to a Member's separate interest or to the Common Area; and
 - (G) Procedures for elections.
- (ii) Notice is not required under Civil Code section 1357.130 if the Board determines that an immediate Rule Change is necessary to address an imminent threat to public health or safety or imminent risk of substantial economic loss to the Community Association.
 - (iii) A decision on a proposed Rule Change shall be made at a meeting of the Board, after consideration of any Member comments.
 - (iv) As soon as possible after making a Rule Change, but not more than fifteen (15) days after making the Rule Change, the Board shall deliver notice of the rule change to every Community Association Member. If the Rule Change was an emergency Rule Change, as provided below in subparagraph (v), the notice shall include the text of the Rule Change, a description of the purpose and effect of the Rule Change, and the date that the Rule Change expires.
 - (v) If the Board determinates that an immediate Rule Change is required to address an imminent threat to public health or safety, or

imminent risk of substantial economic loss to the Community Association, it may make an emergency Rule Change. In such cases, the notice specified in subparagraph (i) above shall not be required. An emergency Rule Change is effective for one hundred and twenty (120) days, unless the Rule Change provides for a shorter effective period. A Rule Change made pursuant to this subparagraph may not be readopted pursuant to this subparagraph.

- (vi) Members may call for a special meeting of the Members to reverse a Rule Change adopted by the Board, provided that the written request is delivered within thirty (30) days after the Members are notified of the Rule Change. The Rule Change may be reversed by the affirmative vote of the majority of the votes represented and voting at a duly held meeting at which a quorum is present (which affirmative votes also constitute a majority of the required quorum). In lieu of calling a special meeting, the Board may utilize a written ballot. As soon as possible after the close of voting, but not more than fifteen (15) days after the close of voting, the Board shall provide notice of the results of the Member vote held pursuant to this subparagraph to every Member. This subparagraph does not apply to an emergency Rule Change.
- (vii) A Rule Change reversed by the Members may not be readopted for a period of 1 (one) year after the date of the meeting reversing the Rule Change. Nothing in this subparagraph precludes the Board from adopting a different Community Rule on the same subject as the Rule Change that has been reversed.
- (d) Any duly adopted Community Rule or rule amendment shall become effective immediately following the date of adoption thereof by the Board, or at such later date as the Board may deem appropriate. Any duly adopted rule or Community Rule amendment shall be distributed to the Owners by mail.

Section 3.09. Breach of Community Rules or Restriction

Any breach of any Community Rule or of any other Governing Document provision shall give rise to the rights and remedies set forth in Article XIII, below.

Section 3.10. Limitation on Directors and Officers Liability

- (a) **Claims Regarding Breach of Duty.** No director or officer of the Community Association (collectively and individually referred to as the "Released Party") shall be personally liable to any of the Members, or to any other person, for any error or omission in the discharge of his or her duties and responsibilities or for his or her failure to provide any service required

under the Governing Documents; provided that such Released Party has, upon the basis of such information as he or she possessed, acted in good faith, in a manner that such person believes to be in the best interests of the Community Association and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

Without limiting the generality of the foregoing, this standard of care and limitation of liability shall extend to such matters as the establishment of the Community Association's annual financial budget, the funding of Community Association capital replacement and reserve accounts, repair and maintenance of Common Areas and Common Facilities and enforcement of the Governing Documents.

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

- (i) The Board member or officer owns no more than two Lots;
- (ii) The act or omission was performed within the scope of the volunteer Board member's or officer's Community Association duties;
- (iii) The act or omission was performed in good faith;
- (iv) The act or omission was not willful, wanton, or grossly negligent;
- (v) The Community Association maintained and had in effect at the time the act or omission occurred and at the time a claim is made general liability insurance with coverage of at least One Million Dollars (\$1,000,000).

The payment of actual expenses incurred by a Board member or officer in the execution of such person's Community Association duties to, or on behalf of, the Community Association shall not affect such person's status as a volunteer Board member or officer for the purposes of this Section. The provisions of this subparagraph (b) are intended to reflect the protections accorded to volunteer directors and officers of Community Associations pursuant to California Civil Code section 1365.7. In the event said Civil Code section is amended or superseded by another, similar provision of the California statutes, this subparagraph (b) shall be

deemed amended, without the necessity of further Member approval, to correspond to the amended or successor Civil Code provision.

- (c) Absence of Responsibility by Community Association to Resolve Traffic/Noise Issues On Public Thoroughfares. Adjacent to Heritage Park, there are many public streets and thoroughfares either existing or contemplated in the Specific Plan. As the various development and other improvements of the Specific Plan and surrounding areas are created it is anticipated that the volume of traffic and noise associated with vehicles will increase. It shall not be the responsibility of the Community Association to provide mitigation for such consequences of planned growth and development, such as the construction of perimeter walls, the planting of landscaping, etc.

ARTICLE IV. Assessments

Section 4.01. Assessments, Generally

- (a) **Covenant to Pay Assessments.** Each Owner of a Lot within Heritage Park by acceptance of a deed therefore (whether or not it shall be so expressed in such deed), covenants and agrees to pay to the Community Association: (i) Regular Assessments; (ii) Special Assessments; and (iii) Special Individual Assessments. Each such Assessment shall be established and collected from Owners as hereinafter provided.

- (b) **Extent of Owner's Personal Obligation for Assessments.** All Assessments, together with late charges, interest, and reasonable costs (including reasonable attorneys' fees) for the collection thereof, shall be a debt and a personal obligation of the person who is the Owner of the Lot at the time the Assessment is levied. Each Owner who acquires title to a Lot (whether by conventional conveyance, at a judicial sale, trustee's sale or otherwise) shall be personally liable only for Assessments attributable to the Lot which become due and payable after the date that the person acquires title. Accordingly, when a person acquires title to a Lot, he or she shall not be personally liable for delinquent Assessments of prior Owners of the Lot, unless the new Owner expressly assumes the personal liability. However, if the acquired Lot is conveyed subject to a valid lien for delinquent Assessments (and related costs of collection), the Community Association may continue to exercise its foreclosure remedies against the Lot, regardless of the change of ownership, and/or the Community Association may pursue its collection remedies against the prior Owner, individually.

- (c) **Creation of Assessment Lien.** All Assessments, together with late charges, interest, and reasonable costs (including reasonable attorneys' fees) for the collection thereof, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which such Assessment is made. Any lien for unpaid Assessments created pursuant to the provisions of this Article may be subject to foreclosure as provided in Section 4.10(a) (ii), below.

- (d) **No Avoidance of Assessment Obligations.** No Owner may exempt himself/herself or the Owner's Lot from liability or charge for the Owner's share of any Assessment (including, without limitation, the charges for cable television service) made against the Owner or his or her share of any Regular or Special Assessment made against the Owner's Lot, by waiving or relinquishing, or offering to waive or relinquish, the Owner's right to use and enjoy all or any portion of the Common Area or Common Facilities or by the abandonment or non-use of the Owner's Lot.

- (e) **Designation of Cost Centers.** The Community Association shall have the power and authority to designate Lots and Common Areas within any portion of Heritage Park as Cost Centers for purposes of expense accounting and equitable allocation of Regular Assessments, in accordance with Section 4.02(b) below. A Cost Center is likely to be designated by the Community Association when one of the following occurs: (a) the maintenance or use of a particular Improvement or maintenance area within the designated Cost Center is fully or partially restricted to Owners of Lots (located within the area designated as a "Cost Center"), or (b) when certain Owners of Lots within a designated Cost Center are receiving services from the Community Association that are in addition to, or significantly greater than, the services provided to other Owners or residents. Ordinarily, a Cost Center shall be established whenever it is reasonable to anticipate that any Owner or group of Owners will derive as much as ten percent (10%) or more than Owners in general in the value of a common service(s) supplied by the Community Association. If any Cost Centers are established, the funds raised as a Cost Center assessment Component shall be maintained by the Community Association separately from the Community Association's Regular Assessment funds and shall be used solely to defray the expenses for which the Cost Center was established.

Cost Centers designated by the Community Association shall (i) identify the Lots comprising the Cost Center; (ii) identify the Common Facilities, maintenance areas or other services that will exclusively or disproportionately benefit the Owners of said Lots; (iii) provide for the allocation of Common Expenses attributable to the identified Common Facilities or services to Owners of Lots with the Cost Center as a Cost Center Assessment Component of their Regular Assessment; and (iv) if necessary, provide an easement in favor of the Community Association for purposes of ingress, egress and maintenance to undertake the work or service for which the Cost Center is established.

- (f) **Improper Assessment.** The Community Association shall not impose or collect an Assessment, penalty or fee which exceeds the costs for which it is levied.

Section 4.02. Regular Assessments

- (a) **Preparation of Annual Budget; Establishment of Regular Assessments.** Not less than thirty (30) days nor more than ninety (90) days prior to the beginning of the Community Association's fiscal year, the Board shall determine the estimated Common Expenses of the Community Association for that fiscal year by preparing and distributing to all Members a pro forma operating budget satisfying the requirements of Section 12.05 of the Bylaws. The budget shall consist of: (i) a base budget presenting the financial information required by Civil Code Section 1365(a)

with respect to the General Assessment Component of the Community Association's Common Expenses and (ii) if any Cost Centers have been established, a separate Cost Center budget presenting the financial information required by Civil Code Section 1365(a) that is pertinent to the Cost Center. The base budget shall be applicable to all Lots and the Cost Center budget shall be applicable only to Lots that are subject to assessment for the cost of operating, maintaining, repairing and/or replacing the improvements or maintenance areas that gave rise to creation of the Cost Center.

Subject to the Member approval requirements for certain Assessment increases, as specified in subparagraph (c) of this section, the estimated Common Expenses reflected in the Community Association's budget shall be assessed against all Owners as the Regular Assessment for that fiscal year. If the Board fails to distribute the budget for any fiscal year within the time period specified in the first sentence of this subparagraph (a), the Board shall not be permitted to increase Regular Assessments for that fiscal year unless the Board first obtains the approval of the requisite percentage of the Members in accordance with Section 4.08, below.

(b) Components of the Regular Assessment; Cost Centers.

- (i) General Assessment Component. The Common Expenses of the Community Association exclusive of Common Expenses budgeted to any Cost Center (the "General Assessment Component") shall be allocated among and charged to all the Owners according to the allocation formula set forth in subparagraph (e). The General Assessment Component shall take into account the amount of contributions to be made pursuant to any Maintenance Contribution Agreement (Section 7.04, below).
- (ii) Cost Center Assessment Component. If any Cost Centers are established, the expenses of operating, maintaining and replacing the included improvements or maintenance areas (including, without limitation, an adequate reserve fund for the maintenance, repairs and replacement of the Cost Center capital components, if any) shall be borne solely by the Owners within the designated Cost Center ("Cost Center Assessment Component").

Unless otherwise provided in a Supplemental Declaration, the Cost Center Assessment Component shall be allocated equally among all Lots located within the Cost Center. The Cost Center Assessment Component shall take into account the amount of contributions to be made pursuant to any Maintenance Contribution Agreements (Section 7.04, below) which pertain to expense items identified as part of the Cost Center.

- (c) **Establishment of Regular Assessment; Member Approval Requirements for Certain Assessment Increases.** Unless Member approval is required as a prerequisite to the imposition of an increase in the annual Regular Assessment as stated in this subparagraph, the total Common Expenses estimated in the Community Association's budget (less projected income from sources other than Assessments) shall become the aggregate Regular Assessment for the next succeeding fiscal year. Pursuant to California Civil Code section 1366(b), except as otherwise provided by law, the Community Association shall not increase the Regular Assessment for any fiscal year above the amount of the Regular Assessment for the preceding fiscal year by more than the maximum amount permitted by law (the "Maximum Authorized Regular Assessment") without the affirmative vote or written consent of a majority of Owners voting on such increase in the Regular Assessment, provided that a quorum is established. For purposes of the preceding sentence, a quorum shall mean more than fifty percent (50%) of the Owners of the Community Association, notwithstanding any lower quorum requirements which may be set forth in the Bylaws. The membership vote shall be conducted in accordance with California Civil Code section 1363.03 or, if applicable, Chapter 5 (commencing with section 7510) of Part 3, Division 2, of Title 1 of the California Corporations Code and California Corporations Code section 7613.

The Member approval requirement shall be applied separately to the General Assessment Component and the Cost Center Assessment Component, if any, of the Regular Assessment so that if an increase of more than the Maximum Authorized Regular Assessment affects only a particular Cost Center, the required approval shall be of Members whose Lots are located within the Cost Center and are therefore subject to the Cost Center Assessment Component.

- (d) **Commencement Date for Regular Assessments.** Each Lot within Heritage Park is subject to its share of the established Regular Assessment commencing the first day of the first month in which the close of Escrow occurs.
- (e) **Allocation of Regular Assessment.** The total estimated Common Expenses, determined in accordance with subparagraph (a), above (other than Common Expenses designated as a Cost Center Assessment Component), shall be allocated among, assessed against, and charged to each Owner according to the ratio of the number of Lots in Heritage Park owned by the assessed Owner to the total number of Lots that are subject to Assessment so that each Lot bears an equal share of the total Regular Assessment. Cost Center Assessments shall be allocated among, assessed against, and charged to each Owner of a Lot in the Cost Center

according to the ratio of the number of Lots in the Cost Center owned by the assessed Owner to the total number of Lots within the Cost Center that are subject to the Cost Center Assessment so that each such Lot bears an equal share of the total Cost Center Assessment Component.

- (f) **Assessment Roll.** That portion of the estimated Common Expenses assessed against and charged to each Owner shall be set forth and recorded in an Assessment roll which shall be maintained and available with the records of the Community Association and shall be open for inspection at all reasonable times by each Owner or his or her authorized representative for any purpose reasonably related to the Owner's interest as an Owner or as a Member of the Community Association. The Assessment roll shall show, for each Lot, the name and address of the Owner of Record, all Regular, Special and Special Individual Assessments levied against each Owner and his or her Lot, and the amount of such Assessments which have been paid or remain unpaid. The delinquency statement required by Section 2.08(c)(i)(D), above, shall be conclusive upon the Community Association and the Owner of such Lot as to the amount of such indebtedness appearing on the Community Association's Assessment roll as of the date of such statement, in favor of all persons who rely thereon in good faith.
- (g) **Mailing Notice of Assessment.** No less than thirty (30) days nor more than sixty (60) days prior to an increase in Regular or Special Assessment becoming due, the Board of Directors shall mail to each Owner at the street address of the Owner's Lot, or at such other address as the Owner may from time to time designate in writing to the Community Association, a statement of the amount of the Regular or Special Assessment.
- (h) **Failure to Make Estimate.** If, for any reason, the Board of Directors fails to make an estimate of the Common Expenses for any fiscal year, then the Regular Assessment made for the preceding fiscal year, together with any Special Assessment made pursuant to Section 4.03(a)(i), below, for that year, shall be assessed against each Owner and his or her Lot on account of the then current fiscal year, and installment payments (as hereinafter provided) based upon such automatic Assessment shall be payable on the regular payment dates established by the Board.
- (i) **Installment Payment.** The Regular Assessment made against each Owner shall be due and payable in advance to the Community Association in equal monthly installments on the first day of each month or on such other date or dates as may be established from time to time by the Community Association's Board of Directors. Installments of Regular Assessments shall be delinquent if not paid within fifteen (15) days of the due date as established by the Board.

Section 4.03. Special Assessments

- (a) **Purposes for Which Special Assessments May Be Levied.** Subject to the membership approval requirements set forth in subparagraph (b), below, the Board of Directors shall have the authority to levy Special Assessments against the Owners and their Lots for the following purposes:
- (i) **Regular Assessment Insufficient in Amount.** If, at any time, the Regular Assessment for any fiscal year is insufficient in amount due to extraordinary expenses not contemplated in the budget prepared for said fiscal year, then the Board of Directors shall levy and collect a Special Assessment, applicable to the remainder of such year only, for the purpose of defraying, in whole or in part, any deficit which the Community Association may incur in the performance of its duties and the discharge of its obligations hereunder.
 - (ii) **Capital Improvements.** The Board may also levy Special Assessments for additional capital Improvements within the Common Area (i.e., Improvements not in existence on the date of this Declaration that are unrelated to repairs for damage to, or destruction of, the existing Common Facilities). The Special Assessment power conferred hereunder is not intended to diminish the Board's obligation to plan and budget for normal maintenance, and replacement repair of the Common Area or existing Common Facilities through Regular Assessments (including the funding of reasonable reserves) and to maintain adequate insurance on the Common Area and existing Common Facilities in accordance with Article IX, below.
- (b) **Special Assessments Requiring Membership Approval.** Except in the case of an emergency situation as defined in California Civil Code section 1366, in any fiscal year the Board may not levy Special Assessments if (i) it failed to distribute a pro forma operating budget for the fiscal year in which the Special Assessments are being levied or (ii) in the aggregate, the Special Assessments exceed five percent (5%) of the budgeted gross expenses of the Community Association for that fiscal year, except upon the affirmative vote or written consent of a majority of the Members voting on any such Special Assessment, provided that a quorum is established. For purposes of the preceding sentence, a quorum shall mean more than fifty percent (50%) of the Members of the Community Association, notwithstanding any lower quorum requirement which may be set forth in the Bylaws. The membership vote shall be conducted in accordance with California Civil Code section 1363.03 or, if applicable, Chapter 5 (commencing with section 7510) of Part 3, Division 2, of Title 1 of the

California Corporations Code and California Corporations Code section 7613.

- (c) **Allocation and Payment of Special Assessments.** When levied by the Board or approved by the Members as provided above, the Special Assessment shall be divided among, assessed against and charged to each Owner and his or her Lot in the same manner prescribed for the allocation of Regular Assessments pursuant to Section 4.02(b), above. The Special Assessment so levied shall be recorded on the Community Association's Assessment roll and notice thereof shall be mailed to each Owner.

Special Assessments for purposes described in subparagraph (a)(i) of this Section 4.03, above, shall be due as a separate debt of the Owner and a lien against his or her Lot, and shall be payable to the Community Association in equal monthly installments during the remainder of the then current fiscal year. Special Assessments for purposes described in subparagraph (a)(ii) of this Section 4.03 shall be due as a separate debt of the Owner and a lien against his or her Lot, and shall be payable in full to the Community Association within thirty (30) days after the mailing of such notice or within such extended period as the Board shall determine to be appropriate under the circumstances giving rise to the Special Assessment.

Section 4.04. Special Individual Assessments

- (a) **Circumstances Giving Rise to Special Individual Assessments.** In addition to the Special Assessments levied against all Owners in accordance with Section 4.03, above, the Board of Directors may impose Special Individual Assessments against an Owner in any of the circumstances described in subparagraphs (i) through (iii) below; provided, however, that no Special Individual Assessments may be imposed against an Owner pursuant to this Section 4.04 until the Owner has been afforded the notice and hearing rights to which the Owner is entitled pursuant to Section 13.06, below, and, if appropriate, has been given a reasonable opportunity to comply voluntarily with the Governing Documents. Subject to the foregoing, the acts and circumstances giving rise to liability for Special Individual Assessments include the following:

- (i) **Damage to Common Area or Common Facilities.** In the event that any damage to, or destruction of, any portion of the Common Area or the Common Facilities, or any portions of the Lots which the Community Association is obligated to repair and maintain, is caused by the willful misconduct or negligent act or omission of any Owner, any member of his or her family, or any of his or her tenants, guests, servants, employees, licensees or invitees, the

Board shall cause the same to be repaired or replaced, and all costs and expenses incurred in connection therewith (to the extent not compensated by insurance proceeds) shall be assessed and charged solely to and against such Owner as a Special Individual Assessment.

(ii) Expenses Incurred in Gaining Owner Compliance. In the event that the Community Association incurs any costs or expenses to: (A) accomplish the payment of delinquent Assessments; (B) perform any repair, maintenance or replacement to any portion of Heritage Park that the Owner is responsible to maintain under the Governing Documents but has failed to undertake or complete in a timely fashion; or (C) otherwise bring the Owner and/or his or her Lot into compliance with any provision of the Governing Documents, the amount incurred by the Community Association (including reasonable fines and penalties duly imposed hereunder, title company fees, accounting fees, court costs and reasonable attorneys' fees) shall be assessed and charged solely to and against such Owner as a Special Individual Assessment.

(iii) Required Maintenance on Lots. If any Lot is maintained so as to become a nuisance, fire or safety hazard for any reason, the Community Association shall have the right to enter said Lot, correct the condition and recover the cost of such action through imposition of a Special Individual Assessment against the offending Owner. Any entry on the property of any Owner by the Community Association shall be effected in accordance with Section 3.07(b), above.

(b) Levy of Special Individual Assessment and Payment. Once a Special Individual Assessment has been levied against an Owner for any reason described, and subject to the conditions imposed, in subparagraph (a) of this section, such Special Individual Assessment shall be recorded on the Community Association's Assessment roll and notice thereof shall be mailed to the affected Owner. The Special Individual Assessment shall thereafter be due as a separate debt of the Owner payable in full to the Community Association within thirty (30) days after the mailing of notice of the Assessment. As more particularly provided in Section 4.10, below, only certain Special Individual Assessments may be collected through the use of non-judicial foreclosure.

(c) Limitations on Special Individual Assessments. Special Individual Assessments imposed as a disciplinary measure for failure of a Member to comply with the Governing documents shall not be recoverable through use of non-judicial foreclosure. The Community Association may, however, secure the debt by Recording a lien and may seek to recover the

debt through other methods as permitted by law. Special Individual Assessments levied for any other purpose shall be subject to imposition of a lien and enforceable through foreclosure or sale under a power of sale for failure of an Owner to pay such Assessment, all as more particularly provided in Section 4.10, below.

Section 4.05. Assessments to Address Emergency Situations

The requirement of a membership vote to approve a Regular Assessment or Special Assessment shall not apply to Assessments necessary to address emergency situations. For purposes of this section, an emergency situation is any of the following:

- (a) An extraordinary expense required by an order of a court.
- (b) An extraordinary expense necessary to repair or maintain the Common Areas or Common Facilities or any portion of the Lots which the Community Association is obligated to maintain where a threat to personal safety is discovered.
- (c) An extraordinary expense necessary to repair or maintain the Common Areas or Common Facilities or any portion of the Lots which the Community Association is obligated to maintain that could not have been reasonably foreseen by the Board in preparing and distributing the pro forma operating budget pursuant to Section 4.02(a), above; provided, however, that prior to the imposition or collection of an assessment under this subparagraph, 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. The Board's resolution shall be distributed to the Members together with the notice of assessment.

Section 4.06. Purpose and Reasonableness of Assessments

Each Assessment made in accordance with the provisions of this Declaration is hereby declared and agreed to be for use exclusively: (a) to promote the recreation, health, safety and welfare of individuals residing within Heritage Park; (b) to promote the enjoyment and use of the roads and Common Facilities of Heritage Park by the Owners and their families, tenants, invitees, licensees, guests and employees; and (c) to provide for the repair, maintenance, replacement and protection of the Common Area and Common Facilities and those portions of the Lots, if any, which the Community Association is obligated to maintain.

Each and every Assessment levied hereunder is further declared and agreed to be a reasonable Assessment, and to constitute a separate, distinct and personal obligation of the Owner of the Lot against which the Assessment is imposed that

shall be binding on the Owner's heirs, successors and assigns; provided, however, that the personal obligation of each Owner for delinquent Assessments shall not pass to the Owner's successors in title unless expressly assumed by them. Subject to California law limiting the right of the Community Association to use non-judicial foreclosure as a remedy for collecting specific Special Individual Assessments, the Community Association shall be entitled to collect delinquent Assessments through lien and foreclosure, as more particularly provided in Section 4.10, below.

Section 4.07. Exemption of Certain Portions of Heritage Park

The following real property subject to this Declaration shall, unless devoted to the use as a residential dwelling, be exempt from the Assessments and the lien thereof provided herein:

- (a) Any portion of Heritage Park dedicated and accepted by a local public authority;
- (b) The Common Area and Common Facilities; and
- (c) Any Lot owned by the Community Association.

Section 4.08. Notice and Procedure for Member Approval

In the event that Member approval is required in connection with any increase or imposition of Assessments pursuant to Sections 4.02 and 4.03, above, the affirmative vote or written consent of a majority of Members voting on any such increase, provided that a quorum is established, must approve the increase. For purposes of the preceding sentence, a quorum shall mean more than fifty percent (50%) of the Members of the Community Association, notwithstanding any lower quorum requirement which may be set forth in the Bylaws..

Section 4.09. Maintenance of Assessment Funds

- (a) Deposit of Community Association. All sums received or collected by the Community Association from Assessments, (together with any interest or late charges thereon), Clubhouse Revenue and Special Use Fees shall be promptly deposited in one or more insured checking, savings or money market accounts in a bank or savings and loan Community Association selected by the Board of Directors. In addition, the Board shall be entitled to make prudent investment of reserve funds in insured certificates of deposit, money market funds or similar investments consistent with the investment standards normally observed by trustees. The Board and such officers or agents of the Community Association as the Board shall designate shall have exclusive control of said account(s) and investments and shall be responsible to the Owners for the maintenance at all times of accurate records thereof. The withdrawal of funds from Community Association accounts shall be subject to the minimum signature

requirements imposed by California Civil Code section 1365.5 and Section 12.02 of the Bylaws. Any interest received on Community Association deposits shall be credited proportionately to the balances of the various Assessment fund accounts maintained on the books of the Community Association as provided in subparagraph (c), below.

- (b) **Expenditure of Assessment Funds.** Except as provided below, the proceeds of each Assessment shall be used only for the purpose for which such Assessment was made, and such funds shall be received and held in trust by the Community Association for such purpose. Notwithstanding the foregoing, the Board, in its discretion, may make appropriate adjustments among the various line items in the Board's approved general operating budget if the Board determines that it is prudent and in the best interest of the Community Association and its Members to make such adjustments. If the proceeds of any Special Assessment exceed the requirement of which such Assessment was levied, such surplus may, in the Board's discretion, be: (i) returned proportionately to the contributors thereof; (ii) reallocated among the Community Association's reserve accounts if any such account is, in the Board's opinion, underfunded; or (iii) credited proportionately on account of the Owners' future Regular Assessment obligations.
- (c) **Separate Accounts; Commingling of Funds.** To preclude a multiplicity of bank accounts, the proceeds of all Assessments may be commingled in one or more accounts and need not be deposited in separate accounts so long as the separate accounting records described herein are maintained. For purposes of accounting, but without requiring any physical segregation of assets, the Community Association shall keep a separate accounting of all funds received by it in payment of each Assessment and of all disbursements made therefrom; provided, however, that receipts and disbursements of Special Assessments made pursuant to Section 4.03(a)(i), above, shall be accounted for together with the receipts and disbursements of Regular Assessments, and a separate accounting shall be maintained for each capital Improvement for which reserve funds for replacement are allocated. Notwithstanding the foregoing, if Assessment funds are collected from some Members to the exclusion of the membership, as a whole, as a Cost Center Assessment Component (see Sections 4.01(e) and 4.02(b)(ii), above), those funds shall be maintained separate and apart from the Community Association's general funds and shall be applied solely to defray the costs and expenses for which the Cost Center was established.

Unless the Community Association is exempt from federal or state taxes, all sums allocated to capital replacement funds shall be accounted for as contributions to the capital of the Community Association and as trust funds segregated from the regular income of the Community Association

or in any other manner authorized by law or regulations of the Internal Revenue Service and the California Franchise Tax Board that will prevent such funds from being taxed as income of the Community Association.

- (d) **Maintenance and Use of Reserve Funds.** The Board 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 Community Association is obligated to repair, restore, replace, or maintain and for which the reserve fund was established. However, in accordance with Civil Code section 1365.5, or comparable successor statute, the Board may authorize the temporary transfer of money from a reserve fund to the Community Association's general operating fund to meet short-term cash-flow requirements or other expenses, if the Board has provided written notice of the intent to consider such a transfer in a notice of meeting, which shall be as specified in Civil Code section 1363.05. Such notice shall include the reasons the transfer is needed, some of the options for repayment, and whether a Special Assessment may be considered. If the Board authorizes the transfer, the Board shall make a written finding, recorded in the Board's minutes, explaining the reasons that the transfer is needed, and describing when and how the money will be repaid to the reserve fund.

The transferred funds shall be restored to the reserve fund within one (1) year of the date of the initial transfer, except that the Board may, upon making a finding supported by documentation that a temporary delay would be in the best interests of Heritage Park, temporarily delay the restoration. The Board shall exercise prudent fiscal management in delaying restoration of these funds and in restoring the expended funds to the reserve 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 subparagraph. This Special Assessment is subject to the Member approval requirements of California Civil Code section 1366 and Section 4.03(b), above, if the aggregate amount of the Special Assessment exceeds five percent (5%) of the budgeted gross expenses of the Community Association for the year in which the Special Assessment is imposed. 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.

When the decision is made to use reserve funds or to temporarily transfer money from the reserve fund to pay for litigation, the Community Association shall notify the Members of that decision in the next available mailing to all Members pursuant to California Corporations Code section 5016, and of the availability of an accounting of those expenses.

The Community 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 at the Community Association's principal office.

Section 4.10. Collection of Assessments; Enforcement of Liens

- (a) The Community Association may elect to pursue one or both of the following remedies in the event of a delinquent Assessment:
- (i) **Personal Obligation.** To the extent permitted by law, the Community Association may bring a legal action directly against the Owner for breach of the Owner's personal obligation to pay the Assessment and in such action shall be entitled to recover the delinquent Assessment or Assessments, accompanying late charges, interest, costs and reasonable attorneys' fees. Commencement of a legal action shall not constitute a waiver of any lien rights as described in subparagraph (ii), below.
 - (ii) **Assessment Lien.** The Community Association may impose a lien against the Owner's Lot for the amount of the delinquent assessment or assessments, plus any late charges, reasonable fees and costs of collection (including reasonable attorneys fees) and interest by complying with California Civil Code sections 1367.1 and 1367.4, or comparable successor statutes.
- (b) Each Owner does hereby appoint the Community Association as trustee to enforce and to foreclose any lien which is established pursuant to the terms of this Declaration, by private power of sale, as provided in Division III, Part 4, Title 14, Chapter 2, Article 1, of the California Civil Code, and does further grant to the Board of Directors, on behalf of the Community Association, the authority and power to sell the Lot of such Owner in the event of any default in payment of any Assessments levied against such Lot, for lawful money of the United States, to the highest bidder, to satisfy such lien, except as prohibited by law. The Community Association or any Owner may purchase the Lot at the sale.

Section 4.11. Transfer of Lot by Sale or Foreclosure

The following rules shall govern the right of the Community Association to enforce its Assessment collection remedies following the sale or foreclosure of a Lot:

- (a) Except as provided in subparagraph (b), below, the sale or transfer of any Lot shall not affect any Assessment lien which has been duly Recorded against the Lot prior to the sale or transfer, and the Community

Association can continue to foreclose its lien in spite of the change in ownership.

- (b) The Community Association's Assessment lien shall be extinguished as to all delinquent sums, late charges, interest and costs of collection incurred prior to the sale or transfer of a Lot pursuant to a foreclosure or exercise of a power of sale by the holder of a prior encumbrance (but not pursuant to a deed-in-lieu of foreclosure). A "prior encumbrance" means any first Mortgage or other Mortgage or lien Recorded against the Lot at any time prior to Recordation of the Community Association's Assessment lien (see Section 4.12, below).
- (c) No sale or transfer of a Lot as the result of foreclosure, exercise of a power of sale, or otherwise, shall relieve the new Owner of such Lot (whether it be the former beneficiary of the first Mortgage or other prior encumbrance or a third party acquiring an interest in the Lot) from liability for any Assessments which thereafter become due with respect to the Lot or from the lien thereof.
- (d) Any Assessments, late charges, interest and associated costs of collection which are lost as a result of a sale or transfer of a Lot covered by subparagraph (b), above, shall be deemed to be a Common Expense collectible from the Owners of all of the Lots, including the person who acquires the Lot and his or her successors and assigns.
- (e) No sale or transfer of a Lot as the result of foreclosure, exercise of a power of sale, or otherwise, shall affect the Community Association's right to maintain an action against the foreclosed previous Owner personally to collect the delinquent Assessments, late charges, interest and associated costs of collection incurred prior to and/or in connection with the sale or transfer.

Section 4.12. Priorities

When a Notice of Delinquent Assessment has been Recorded, such notice shall constitute a lien on the Lot prior and superior to all other liens except: (a) all taxes, bonds, assessments and other levies which, by law, would be superior thereto; and (b) the lien or charge of any first Mortgage of record (meaning any Recorded Mortgage with first priority over other Mortgages) made in good faith and for value; provided, however, that such subordination shall apply only to the Assessments which have become due and payable prior to the transfer of such property pursuant to the exercise of a power of sale or a judicial foreclosure involving a default under such first Mortgage or other prior encumbrance.

Section 4.13. Unallocated Taxes

In the event that any taxes are assessed against the Common Area, or the personal property of the Community Association, rather than being assessed to the Lots, such taxes shall be included in the Regular Assessments imposed pursuant to Section 4.02, above, and, if necessary, a Special Assessment may be levied against the Lots pursuant to Section 4.03, above, in an amount equal to such taxes to be paid in two (2) installments, thirty (30) days prior to the due date of each tax installment.

ARTICLE V. Architectural Approval of Improvement Projects

Section 5.01. Establishment

The Community Association shall establish a Design Review Committee consisting of not less than three (3) or more than five (5) persons.

Section 5.02. Purpose of Design Review

- (a) **Requirement of Design Review and Approval, Generally.** The purpose of the Design Review Committee is to review all proposed additions of or alterations to Improvements (including, without limitation, landscaping) on developed Lots and other areas of Heritage Park to determine whether such additions are consistent with the provisions of this Declaration, the Rules and Regulations and the Design Guidelines and are otherwise beneficial to the enhancement of Heritage Park. The Design Review Committee's scope of authority shall include: (a) approval of the Lot landscape plans, requests for new construction (other than the original construction as set forth above) or alterations to existing structures; (b) proposing amendments to the Design Guidelines for consideration and possible adoption by the Board in accordance with Section 5.07, below. The term "Improvement" is defined in Section 1.23, above.
- (b) **Modifications to Approved Plans Must Also Be Approved.** Once a proposed work of Improvement has been duly approved by the Design Review Committee, no material modifications shall be made in the approved plans and specifications therefore and no subsequent alteration, relocation, addition or modification shall be made to the work of Improvement, as approved, without a separate submittal to, and review and approval by, the Committee. If the proposed modification will have, or is likely to have, a material affect on other aspects or components of the work, the Committee, in its discretion, may order the Owner and his or her contractors and agents to cease working not only on the modified component of the Improvement, but also on any other affected component.

In the event that it comes to the knowledge and attention of the Community Association, its Design Review Committee, or the agents or employees of either that a work of Improvement, or any modification thereof, is proceeding without proper approval, the Community Association shall be entitled to exercise the enforcement remedies specified in Section 5.09, below, including, without limitation, ordering an immediate cessation and abatement of all aspects of the work of Improvement by "red tagging" the project until such time as proper Design Review Committee review and approval is obtained.

Section 5.03. Composition of the Design Review Committee

- (a) **Composition of the Committee, Generally.** The Committee shall be a committee of the Community Association and all members of the Committee shall be appointed by the Board of Directors.
- (b) **Qualifications for Appointment.** All persons appointed to the Design Review Committee by the Board of Directors of the Community Association must be Members in good standing who are Residents of Heritage Park.
- (c) **Terms of Office of Committee Members.** Unless the Community Association implements a system of staggered terms for Committee members, all members of the Design Review Committee shall serve for one year terms, subject to the right of the Board to reappoint incumbent Committee members to consecutive terms of office. The Committee members shall appoint one Committee member as chairperson. All members shall serve until the expiration of the term for which they were appointed or until they resign or are replaced.
- (d) **No Compensation for Services; Reimbursement of Expenses.** Neither the members of the Design Review Committee nor its designated representatives shall be entitled to any compensation for services performed pursuant hereto. The Committee members shall be entitled to reimbursement for reasonable out-of-pocket expenses incurred by them in the performance of any Design Review Committee functions. Requests for reimbursement shall be supported by adequate documentation and shall be submitted to, and approved by, the Board of Directors. Nothing herein shall limit the right of the Community Association from retaining the services of a person or persons as employees or independent contractors (including an architect and/or engineer) with responsibility for assisting the Committee in such matters as: (i) the day-to-day administration of the process of design review and approval, (ii) the intake and review of plans and specifications, (iii) communications with plan applicants, (iv) making recommendations to the Committee with respect to the approval, denial or modification of submitted plans and specifications, and (v) communications with Owners and contractors during the course of construction.

Section 5.04. Design Review Committee Procedures

The procedures governing the operation of the Design Review Committee, including the right of an Owner or Resident to appeal a decision to the Board, shall be described in the Design Guidelines (see Section 5.07, below).

Section 5.05. Basis for Approval of Improvements

When a proposed Improvement is submitted to the Design Review Committee for review, the Committee shall grant the requested approval only if the Committee, in its sole discretion, makes the following findings regarding the proposed project:

- (a) The Owner's plans and specifications conform to this Declaration and to the Design Guidelines in effect at the time such plans are submitted to the Committee;
- (b) The Improvement will be in harmony with the external design of other structures and/or landscaping within Heritage Park;
- (c) The Improvement, as a result of its appearance, location or anticipated use, will not interfere with the reasonable enjoyment of any other Owner of his or her property; and
- (d) The proposed Improvement(s), if approved, will otherwise be consistent with the architectural and aesthetic standards prevailing within Heritage Park and with the overall plan and scheme of development within Heritage Park.

While it is recognized that the Design Review Committee's determination will, of necessity, be subjective to some degree, the members of the Committee shall act reasonably and in good faith and shall consider such factors as the quality of workmanship and materials proposed for the Improvement project, the harmony of its exterior design, finished materials and color with that of other existing structures, and the proposed location of the Improvement in relation to the existing topography, finished grade elevations, roads, Common Areas and other existing structures.

The approval by the Design Review Committee of any plans, drawings or specifications for any work of Improvement done or proposed, or for any other matter requiring the approval of the Design Review Committee under this Declaration, or any waiver thereof, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification or matter subsequently submitted for approval by the same or some other Owner. Factors which may cause the Committee to reject a proposal previously approved at another site within Heritage Park include (but are not limited to): (i) poor drainage, (ii) unique topography on the proposed site, (iii) visibility from roads, Common Areas or neighboring Lots or parcels, (iv) proximity to other Residences or Common Facilities, (v) changes in the Design Guidelines, and/or (vi) prior adverse experience with the proposed Improvement or disapproved component(s) or design thereof. Accordingly, the Committee shall be entitled to determine that a proposed Improvement or component thereof is unacceptable when proposed on a particular Lot, even if the same or a similar

Improvement/component has previously been approved for use at another location if in the Development.

In approving a request for construction of an Improvement, the Design Review Committee may condition approval upon the adoption of modifications in the plans and specifications or observance of restrictions as to location, noise abatement or similar mitigating conditions.

Section 5.06. Time Limits for Approval or Rejection

Within thirty (30) days after submission of complete plans and specifications satisfying the requirements of the Design Guidelines, the Design Review Committee shall return one set of such plans to the applicant, with either written notice of approval or disapproval or with written suggestions of changes required or recommended for approval. If written suggestions of changes required for approval accompany the returned set of plans, the applicant may implement such changes to the plans and resubmit plans incorporating such changes for approval to the Committee within such time as the parties may agree. So long as the resubmitted plans comply in all material respects with the requested changes, the plans shall be deemed approved without further action of the Committee (other than a review by the Committee to confirm that the requested changes have been properly made). Otherwise the Committee shall have thirty (30) days to review any resubmitted plans. Pursuant to Civil Code section 1378, any denial of a proposed plan shall include: (i) an explanation as to why the plan was denied and (ii) a description of the procedure for Board review of the denial as set forth in a Policy and Procedure approved by the Board. If no written notice of approval or disapproval is received by the applicant within thirty (30) days after the Owner's plans and specifications (or revisions thereto) are submitted to the Committee, the plans shall be deemed to have been approved as submitted. The Owner shall have the burden of establishing the date of receipt of the proposed plan by evidence in the form of either a copy of such request for approval date-stamped by the Community Association or by a return receipt provided by the U. S. Postal service acknowledging that such request for approval was delivered to the Community Association.

Section 5.07. Design Guidelines

In addition to the minimum construction standards and design review and approval procedures contained herein, Design Guidelines can be adopted to interpret and implement the provisions of this Article V and Article VI (minimum construction standards). The Board, upon recommendation from the Design Review Committee may, from time to time, adopt, amend and repeal the Design Guidelines. The Design Guidelines may include and address such matters as the following:

- (a) **Review Procedures.** The procedures for Design Review Committee review and approval of Owner submittals of proposed Improvement

projects (including, without limitation, minimum requirements for plans, specifications and other requirements for submitting a complete application for project approval).

- (b) **Guidelines for Particular Projects or Approved Colors.** Guidelines for the construction of Improvements, including, without limitation, architectural design, placement on Lots, color schemes, exterior finishes and materials, pre-approved plans and specifications for commonly recurring minor projects such as trash enclosures, yard landscaping and fencing improvements. Guidelines can also address other features of typical improvement projects which are recommended or required for use. Without limitation, such Guidelines may include charts of approved colors.
- (c) **Identification of Projects Eligible for Expedited Review.** The Guidelines can identify categories of Improvement projects or components of the plan review and approval process which can be administered by the Community Association staff or other designee of the Committee without the need for direct involvement by the Committee in order to expedite the processing of applications for approval. In the event that the Committee determines that certain project approvals or plan processing requirements can appropriately be administered by the Community Association staff or other Committee designee, such delegation and the scope thereof shall be specified in the Guidelines.
- (d) **Variances Procedures.** The criteria and procedures for requesting variances from any property use restrictions or minimum construction standards that would otherwise apply to the proposed Improvement under the Governing Documents (see Section 5.10, below).
- (e) **Construction Site Maintenance.** Minimum requirements for the maintenance, supervision and restoration of construction sites by Owners and their contractors. Without limiting the foregoing, the Guidelines may specifically regulate the activities of contractors and subcontractors (including, without limitation, hours of permitted construction activity), who shall be deemed to be the Owner's agents for purposes of rules enforcement and compliance matters.
- (f) **Landscape Requirements; Site Restoration.** Minimum requirements for the landscaping of areas of the Lot that are disturbed by construction activity, which require particular landscape Improvements or which encourage minimal use of landscape irrigation in order to control drainage, limit runoff, avoid erosion and/or to otherwise enhance the appearance of the Lot.
- (g) **Fees.** Any requirements for the payment of inspection/plan processing fees and deposits to the Committee to assure the Owner's/contractor's

proper and timely performance in accordance with the approved plans and specifications and the application, use and/or refund of such fees and deposits.

- (h) **Time for Completion of Projects.** Uniform and reasonable time limitations for completion of approved Improvement projects or other duly noted compliance matters. Said rules may also include procedures to request an extension of the usual completion time in order to avoid hardship or to accommodate other factors beyond the Owner's reasonable control which have interrupted the progress of the Improvement project.

Design Guidelines shall be effective when they are adopted by the Committee. Notwithstanding the foregoing, the Design Guidelines shall implement the provisions of this Declaration in a reasonable, uniform and nondiscriminatory manner and no Design Guideline shall be in derogation of the minimum standards required by this Declaration. In the event of any conflict between the Design Guidelines and this Declaration, the provisions of the Declaration shall prevail.

Section 5.08. Fees for Plan Review; Deposits

As stated above, the Design Guidelines may include a reasonable processing fee to defray the costs of the Community Association in considering any requests for approvals submitted to it, which fee shall be paid at the time the request for approval is submitted. Requirements for reasonable deposits to assure the completion of Improvements in accordance with approved plans may also be required. Upon proper completion of Improvements in accordance with approved plans, any deposits shall be refunded to the Owner or other person who tendered the deposit without interest.

Section 5.09. Enforcement of Design Review Requirements

- (a) **Stop Work Orders.** In addition to other enforcement remedies set forth in this Declaration, the Design Review Committee shall have the authority to order an abatement ("red tag") of any construction, alteration or other matter for which approval is required, to the extent that it has not been approved by the Committee or if it does not conform to the plans and specifications submitted to and approved by the Committee. If an Improvement project is red tagged, the Owner and his or her contractor shall cease all construction activity until such time as the issue giving rise to the red tag order is resolved. The red tag notice shall clearly state the reasons why the abatement has been ordered.
- (b) **No Waiver.** No work for which approval is required shall be deemed to be approved simply because it has been completed without a complaint, notice of violation, or commencement of a suit to enjoin such work.

- (c) **Effect of Failure to Remedy Noncompliance.** If the Owner fails to remedy any noticed noncompliance within thirty (30) days from the date of such notification, or if the Owner feels that the project has been red tagged without justification, the Committee shall notify the Board in writing of such failure. The Board shall then set a date on which a hearing before the Board shall be held regarding the alleged noncompliance. The hearing shall be conducted in accordance with Section 13.06, below.
- (d) **Attorneys' Fees and Costs.** If any legal proceeding is initiated to enforce any of the provisions hereof, the prevailing party shall be entitled to recover reasonable attorneys' fees in addition to the costs of such proceeding.

Section 5.10. Variances

The Design Review Committee, in its sole discretion, shall be entitled to allow reasonable variances in any procedures specified in this Article or any minimum construction standards specified in Article VI, below, to overcome practical difficulties, avoid unnecessary expense or prevent unnecessary hardships. Any grant of a variance shall be supported by a resolution of the Committee containing findings as to why the variance is justified under the circumstances presented. The Committee's resolution may also contain conditions which the applicant must honor if the variance is to remain in effect. The Design Guidelines may contain additional procedures and/or criteria relating to requests for approval of variances.

Section 5.11. Compliance Certificate

Within thirty (30) days after written demand is delivered to the Design Review Committee by any Owner, the Design Review Committee shall provide the requesting Owner with a certificate, executed by any two of its members, certifying (with respect to any Lot owned by the applicant Owner) that as of the date thereof, either:

- (a) all Improvements made and other work completed by said Owner comply with this Declaration; or
- (b) such Improvements or work do not so comply, in which event the certificate shall also identify the noncomplying Improvements or work and set forth with particularity the basis of such noncompliance.

Any purchaser from the Owner, or from anyone deriving any interest in said Lot through the Owner, shall be entitled to rely on the Committee's compliance certificate with respect to the matters therein set forth, such matters being conclusive as between the Community Association, the Committee, all Owners and any persons deriving any interest through them.

Section 5.12. Non-liability for Approval of Plans

Design Review Committee approval of plans shall not constitute a representation, warranty or guarantee, whether expressed or implied, that such plans and specifications comply with good engineering design or with zoning or building ordinances, or other governmental regulations or restrictions. By approving such plans and specifications, neither the Design Review Committee, the members thereof, nor the Members of the Board assume any liability or responsibility therefor, or for any defect in the Improvement constructed from such plans or specifications. Neither the Design Review Committee, any member thereof, the Community Association, nor the Board shall be liable to any Member, Owner, occupant, or other person or entity for any damage, loss, or prejudice suffered or claimed on account of: (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective; or (b) the construction or performance of any work, whether or not pursuant to the approved plans, drawings, and specifications.

Section 5.13. Delegation of Authority

The Design Review Committee may delegate its plan review responsibilities to one or more members of the Design Review Committee or a sub-committee comprised of Residents. The Committee may revoke the delegation of authority at any time, but any plans and specifications which were approved prior to the termination shall be deemed approved.

Section 5.14. Compliance With Governmental Regulations

Review and approval by the Design Review Committee of any proposals, plans or other submittals pertaining to Improvements shall in no way be deemed to constitute satisfaction of, or compliance with, any building permit process or any other governmental requirements, the responsibility for which shall lie solely with the Lot Owner who desires to construct, install, or modify the Improvement.

Section 5.15. Community Association Funding for Design Review Costs

It is anticipated that the Design Review Committee will require secretarial and administrative assistance, and that the Committee will incur out-of-pocket expenses in the performance of its responsibilities. The Community Association shall provide the Committee with reasonably required secretarial and administrative assistance, or, at the option of the Board, shall reimburse the Committee therefor, and shall reimburse the Committee for out-of-pocket expenses incurred by the Committee in the performance of its responsibilities. The Committee shall remit to the Community Association all plan review and/or site inspection fees, if any, collected by the Committee.

ARTICLE VI. Minimum Construction Standards

Unless a variance is requested from, and granted by, the Design Review Committee in accordance with Section 5.10, above, Improvements constructed on any Lot shall conform to the following minimum construction standards:

Section 6.01. Installation of Landscape Improvements

An Owner shall, within ninety (90) days after the closing of the purchase of his/her Lot, substantially complete all landscaping of his/her Lot. The Design Review Committee may allow extensions of such period to account for weather conditions and seasonal constraints on landscape installation. In the event an Owner does not complete his/her landscaping within such ninety (90) day period (or in the event an extension is granted, prior to the expiration of such extension period), the Community Association shall be authorized to install landscaping (under a standard plan if the Owner has not obtained approval of a plan or if landscaping under the approved plan would be more costly) and charge such costs to Owner as Reimbursement Assessment. The Design Guidelines can also impose limitations on the height of trees and other landscaping installed by Owners in yard areas, so as to avoid excessive shade, the obstruction of views, limb overhang, and other interferences with the quiet enjoyment by neighbors of their property.

Section 6.02. Utility Installations

No lines, wires or cables for the communication or transmission of electrical current or power, including telephone, television, data transmissions, and radio signals, shall be erected, placed or maintained anywhere in or upon any Lot unless the same shall be contained in underground conduits (including cable drawn through a conduit or pre-manufactured cable in duct) or cable concealed in, under or on buildings, cabinets or other structures approved by the Design Review Committee. No provision of this Declaration shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of any Improvements approved by the Design Review Committee.

Section 6.03. Swimming Pools

In the event an Owner of a Lot constructs a swimming pool, spa, pond, or other man-made body of water on the Lot, such Owner must comply with any local ordinances governing the construction of fences or other pool enclosures and obtain Design Review Committee approval. The Design Review Committee shall review the location and screening of pool cleaning pumps and apparatus. In areas without solid walls or fencing in rear yards of Lots, pool equipment shall be screened with either landscaping or approved screening material if the equipment is visible from other Lots. Screening material shall not extend more than six inches above the top of the equipment.

Reasonable efforts shall be made to locate pool equipment on a Lot so as to minimize adverse noise impacts on neighboring Owners or residents, however, other factors such as the need to locate the equipment in reasonable proximity to the pool can also be considered. It is recognized that all pool and spa equipment produces some noise, as does use of the pool by residents and guests. Accordingly, noise associated with the use or operation of a swimming pool is not a basis, in and of itself, for denying approval to a pool improvement project. The Design Review Committee may grant waivers of the wall height requirements to the limited extent necessary to comply with minimum legal requirements for pool fence enclosures under applicable law.

Section 6.04. Walls and Fences

No solid walls or fences greater than two feet in height from the finished floor elevation shall be erected on any Lot. If such a two-foot wall is constructed, up to an additional four feet of standard wrought iron bar or similar open fencing material may be installed on top of the two-foot solid wall. Fencing and walls must also comply with City ordinances and are an Improvement project that requires Design Review Committee approval.

Approved wall and fence materials and specifications may be described in Design Guidelines adopted by the Board and consistent with the requirements of The City of Sacramento.

No chain link or similar material shall be used on any Lot. The provisions of Article V, above, must be followed in order for any Owner or Resident to construct a wall or fence on any Lot.

Section 6.05. Temporary Structures

No recreational vehicle, trailer, mobile home, camper, tent, shack, used structures, structures of a temporary character, or other outbuildings shall be used on any Lot at any time as a Residence.

Section 6.06. Solar Systems

Subject to limitations imposed by including but not limited to Civil Code section 714, the Design Review Committee shall be entitled to adopt, as part of the Design Guidelines, reasonable regulations regarding the installation of solar systems.

Section 6.07. Exterior Lighting and Fixtures

Fluorescent, mercury vapor, sodium, or amber vapor lights, or standard outdoor lights of the type used for security must be enclosed in a manner that directs the light in a specific area without causing a visual impairment to passing motorist or a nuisance to neighboring Residences. The issue of whether a nuisance exists shall be determined by the Design Review Committee in its sole discretion.

Section 6.08. Antennas, Aerials and Satellite Dishes

Each Residence includes fiber optics cable infrastructure and wiring suitable for efficient internet use. No alteration to or modification of such fiber optics cable system shall be permitted without prior consent of the Board of Directors.

No outside mast, tower, pole, antenna or satellite dish shall be erected, constructed or maintained within the Heritage Park except (i) those erected, constructed or maintained by the Community Association, (ii) those expressly approved by the Design Review Committee, and (iii) those specifically permitted by law. With respect to those masts, towers, poles, antennae and satellite dishes specifically permitted by law, the Community Association shall have the authority to regulate their installation and maintenance to the greatest extent permitted by law. The Owner of each Lot shall be responsible for the repair and maintenance of any mast, tower, pole, antenna or satellite installed by him or her within Heritage Park and shall indemnify and reimburse the Association for any costs and expenses resulting from damage to the Common Area and Common Facilities incurred by the Association to repair the same. Antennas or satellite dishes with a diameter or diagonal measurement not greater than one meter which are designed to receive direct broadcast satellite services, video programming services via multi-point distribution services, or television broadcast signals (collectively "Authorized Antenna") may be erected, placed or installed on a Lot, subject to the review and approval of the Design Review Committee and any additional restrictions on installation or use imposed by the Board, provided that the application of such restrictions, do not (a) unreasonably delay or prevent installation, maintenance or use of an Authorized Antenna, (b) unreasonably increase the cost of installation, maintenance or use of an Authorized Antenna, or (c) preclude reception of an acceptable quality signal.

The Board may prohibit the installation of an Authorized Antenna if the installation, location or maintenance of such Authorized Antenna unreasonably affects the safety of managers, agents or employees of the Community Association and other Owners, or for any other safety related reason established by the Board. The Board may also prohibit the installation of an Authorized Antenna on property to which an Owner does not hold fee title or is not entitled to exclusively use under this Declaration or a Supplemental Declaration.

An "Authorized Antenna" means an antenna that is (a) designated to receive direct broadcast satellite service, including direct-to-home satellite service and that is one meter or less in diameter, and, (b) that is designed to receive video programming service, including multi-channel multipoint distribution service, instructional television fixed service, and local multipoint distribution service, and that is one meter or less in diameter, or (c) an antenna that is designed to receive television broadcast signals. Each Owner may maintain individual radio or television antennae systems if located entirely within such Owner's dwelling and if such system is not visible from other Lots or Common Areas, and provided that

such system does not interfere with radio and television reception of other Owners within Heritage Park.

Section 6.09. Interference with Drainage

There shall be no interference with the rain gutters, down spouts, or drainage systems, or any other interference with the established drainage pattern over any Lot or Common Areas, unless an adequate alternative provision is made for proper drainage. Any submittal for initial Improvements on a Lot or for additional Improvements which may affect drainage, shall include a drainage plan. Drainage plans shall conform to all applicable State laws or local ordinances pertaining to drainage. For purposes of this section, "established" drainage is defined as the drainage pattern and drainage Improvements which exist at the time the Lot or parcel is conveyed to an Owner. There shall be no violation of the drainage requirements of the City of Sacramento or the County of Sacramento, notwithstanding any approval of the Design Review Committee. If any Owner or his or her contractor, alters established drainage courses to the detriment of neighboring Owners, neither the Community Association nor the Design Review Committee shall have any liability therefore. Instead, the responsibility to initiate appropriate corrective or remedial action and to properly engineer any alterations in established drainage courses will rest solely with the Owner who has altered the drainage course.

Section 6.10. Patio Enclosures and Other Rear Yard Projects

No non-enclosed structures such as gazebos, patio improvements, play structures, or screening material shall be placed, assembled, constructed or otherwise maintained on any Lot except as may be approved by the Design Review Committee. If a patio enclosure or structural project in a patio area or expansion of the patio surface is sought by an Owner, upon receipt of the Owner's application for architectural approval, the Design Review Committee shall notify the immediately adjacent Owners of the application, however the decision of whether to approve or deny the project shall remain in the sole discretion of the Committee. The Design Guidelines may provide for a streamlined design review and approval process if certain design review parameters are met for certain types of non-enclosed structures.

ARTICLE VII. Maintenance Responsibilities

Section 7.01. Community Association Maintenance Responsibilities

- (a) **Community Association Common Area Maintenance Obligations, Generally.** The Community Association shall be solely responsible for all maintenance, repair, upkeep and replacement within the Common Area and the Common Facilities. No person other than the Community Association or its duly authorized agents shall construct, reconstruct, refinish, alter or maintain any improvement upon, or shall create any excavation or fill or change the natural or existing drainage of any portion of the Common Area. In addition, no person shall remove any tree, shrub or other vegetation from, or plant any tree, shrub, or other vegetation upon the Common Area without express approval of the Community Association.

The Board shall manage the Common Areas and the Common Facilities in a manner consistent with the Governing Documents and use a reasonably high standard of care in providing for the repair, management and maintenance of the Common Area and Common Facilities so that the Heritage Park development will reflect and maintain a high pride of ownership. The Board shall be the sole judge as to the appropriate maintenance of all Common Areas, Front Yard Areas (as defined in subparagraph (c) of this Section 7.01 and other properties maintained by the Community Association pursuant to this Declaration.

Notwithstanding the foregoing, the Community Association shall have no responsibility to provide the services referred to in this subparagraph to:

- (i) any Improvement which is accepted for maintenance by any state, local or municipal governmental agency or entity, or
- (ii) the exposed surface of any Common Area fence or wall which immediately adjoins and faces any Lot, regardless of whether such fence is located on the common property line separating the Common Area from the Lot or wholly or partially within the Common Areas immediately adjacent to such common property line.

Such maintenance shall be the responsibility of the Lot Owner.

- (b) **Common Area Maintenance by Governmental Agency/Entity.** If a portion of the Common Area is dedicated to and accepted for maintenance by the City or some other governmental agency, then the Community Association may, in the Board's discretion, maintain the area if the City or the agency

fails to maintain the area to a standard acceptable to the Community Association, or elects to abandon further maintenance of the area.

- (c) Maintenance of Front Yard Areas of Lots. The Community Association shall maintain Front Yards Areas of all Residential Lots in Heritage Park. For purposes of this subparagraph, the "Front Yard Area" shall mean and refer to that portion of each Lot that is generally visible from any street within Heritage Park and would commonly be referred to as a front or side yard. Front Yard Areas shall not include those portions of a Lot that are covered by structural improvements or which are enclosed for the private use of any owner. The precise area of each Lot which constitutes Front Yard Area shall be determined by the actual location of the residence and the side yard fence improvements constructed on the Lot. So long as the Community Association applies uniform maintenance standards for Front Yard Areas that result in those Areas having a neat and attractive appearance, the level of maintenance and the selection of plant materials shall be in the sole discretion of the Community Association and its management and maintenance personnel. Generally, in pursuing its duties hereunder, the Community Association should retain the landscape appearance and plant selection originally implemented in the Development.

The Community Association shall have an easement in and across every Front Yard Area within Heritage Park for the purpose of planting, replanting, watering, cutting, removing and otherwise caring for the landscaping in the Front Yard Area of each Lot. Unless there has been prior written approval by the Design Review Committee, no Owner shall make or permit any alteration of the Front Yard Area of his or her Lot and shall, specifically, refrain from creating any excavation or fill, any change in the drainage of the Front Yard Area, or destroy or remove any tree, shrub or other vegetation, or plant any tree, shrub or other vegetation, upon or within the Front Yard Area. Notwithstanding the foregoing, the Design Guidelines can permit Owners to install annual flowers in existing plant areas to provide additional color to the Front Yard Area, so long as maintenance of the additional flowers and/or shrubbery does not require any alteration in the water time and frequency program implemented by the Community Association and its landscape contractors. The Community Association's obligations hereunder shall also include maintenance, repair and eventual replacement of any water lines and sprinklers servicing the Front Yard Areas of Lots.

- (d) Exterior Painting of Attached Residences. Solely with respect to those Residences that share a common wall and roof with an adjacent Residence, the Community Association shall be responsible for painting the exterior walls of the attached Residences, including any trim board. The Community Association shall not be responsible, however, for

repairing or replacing any components of the exterior walls or roofs of Residences, unless the need for repair is occasioned by the negligent acts or omissions of the Community Association and/or its contractors.

- (e) **Association Maintenance Manual.** If the Community Association has an Association Maintenance Manual applicable to the repair and maintenance of Association Common Areas and Common Facilities, the Community Association shall be obligated to comply with all of the maintenance obligations, recommendations and schedules set forth in that Manual. However, the Board of Directors shall be authorized, from time to time, to make appropriate revisions to the Community Association's Maintenance Manual based on the Board's review thereof in order to update the Community Association Maintenance Manual to reflect current industry maintenance practices and recommendations, so long as such changes do not reduce the useful life or functionality items to which the Maintenance Manual pertains.

Section 7.02. Owner Maintenance Responsibilities

- (a) **Maintenance of Lots and Residences, Generally.** Except as otherwise specifically provided in Section 7.01, above, each Owner shall be responsible for the maintenance and repair of his or her Residence and Lot. Without limiting the generality of the foregoing, and except as may be provided in any applicable Supplemental Declarations referred to above, each Owner's repair and maintenance obligations shall extend to and include:
- (i) Except as provided with respect to Community Association exterior painting obligations with respect to attached or paired Residences (Section 7.01(d)) painting, repairing, replacing and caring for roofs, fences, exterior building surfaces, exterior glass surfaces, exterior doors, and to maintaining all yard areas not expressly required to be maintained by the Community Association;
 - (ii) Except for yard areas expressly required to be maintained by the Community Association (see Section 7.01(c) above), maintenance of rear yard areas in a neat and attractive condition, including (as appropriate given the Owner's landscape plan) weekly mowing, trimming, edging of lawns and other ground cover, removal of dead or dying plants and weeds and watering at intervals necessary to keep grass, shrubs and trees in an attractive condition;
 - (iii) Maintenance of drainage facilities, except that maintenance of drainage from private streets shall be the responsibility of the Community Association;

- (iv) Maintenance of the surface of any perimeter wall that faces the Owner's Lot (see Section 7.05(d), below); and
 - (v) Lots adjacent to promenade areas (as defined in Section 1.10 above) have been improved so that water lines servicing such Lots also provide irrigation water to landscaping in the promenade areas. No Owner of a Lot adjacent to a promenade area shall interfere with the water lines servicing the promenade areas.
- (b) Maintenance of Landscaping in Neighborhoods Without Maintenance Provided by the Community Association. All landscaping installed must be in accordance with the Heritage Park Design Guidelines as adopted by the Board. Certain plantings will be prohibited as defined by the Design Guidelines and as may be further prohibited by local governmental regulations. Approved landscaping after installation will be maintained as required to provide a neat and attractive appearance. If the landscaping plan as submitted and approved includes lawn turf which is visible from neighboring property, the Owner covenants to maintain the lawn or turf area by properly watering, cutting and trimming the turf. Owners shall be responsible for removal of dead bushes, trees, flowers, plants and shrubs and removal of grass clippings, trash and debris.

Section 7.03. Recovery of Costs of Certain Repairs and Maintenance

- (a) Community Association Maintenance Caused by Owner Negligence. If the need for maintenance or repair, which would otherwise be the Community Association's responsibility hereunder is caused through the willful or negligent acts of an Owner, his or her family, guests, tenants, or invitees, and is not covered or paid for by Community Association insurance policies or any liability insurance maintained by the responsible Owner, the cost of such maintenance or repairs shall be subject to recovery by the Community Association through the imposition of a Special Individual Assessment against the offending Owner in accordance with Section 4.04, above.
- (b) Owner Defaults in Maintenance Responsibilities. If an Owner (or a Resident leasing from an Owner) maintains, or fails to maintain his/her Lot, so that it presents a public or private nuisance, or substantially detracts from the appearance or quality of the surrounding property, or in the event any portion of his/her Lot is being maintained in a manner which violates this Declaration, the Design Guidelines or the Community Rules, the Board may by Resolution make a finding to such effect, specifying the particular condition or conditions which exist, and give notice to the offending Owner that unless corrective action is taken within fifteen (15) days, the Board may cause such action to be taken at said Owner's cost. If at the expiration of said fifteen (15) day period of time the requisite

corrective action, including entry to the Owner's Lot to perform the maintenance work (see Section 3.07(b), above) has not been taken, the Board shall be authorized and empowered to cause such action to be taken and the cost thereof shall be a Special Individual Assessment (see Section 4.04, above). In the event the Community Association undertakes corrective action, the Community Association shall not be liable for damage, loss, personal injury or property damage caused by such action.

Section 7.04. Cooperative Maintenance Obligations

- (a) **Cooperation Among Community Association and Owners, Generally.** To the extent necessary or desirable to accomplish the Community Association's maintenance obligations hereunder, individual Owners shall cooperate with the Community Association and its agents and maintenance personnel in the prosecution of their respective maintenance activities.
- (b) **Execution of Maintenance Agreements.** The Community Association may enter into Maintenance Agreements (for periods not to exceed one year) with the City of Sacramento or other local government agencies in order to achieve economies of scale or to efficiently and cost-effectively share maintenance equipment, maintenance personnel, or contractors and other resources and to discharge responsibilities imposed on the Community Association by this Declaration or any Governing documents. In the case of any such Maintenance Agreements between the Community Association and any party who is liable for the payments of Assessments, the Agreement may provide for the provision of services to the Community Association and to the Common Areas in exchange for a temporary suspension or reduction of Regular Assessments.

Section 7.05. Shared Responsibilities With Respect to Party Walls

Each wall or fence that is built as a part of the original construction of some Residences within Heritage Park such that the wall and roof of the Residence or the fence is placed along the property line dividing two adjacent Lots (Residences sharing walls and roofs are referred to herein as attached or paired Residences) shall constitute a party wall. The rights and duties of Owners with respect to party walls, retaining walls or fences between Lots and between an Owner and the Community Association with respect to party walls between a Lot and Common Area shall be as follows:

- (a) The Owners of contiguous Residential Lots or Residences who have a party wall, retaining wall or fence along their common boundary line shall both equally have the right to use such wall provided that such use by one Owner does not interfere with the use and enjoyment of same by the other Owner.

- (b) In the event that any party wall is damaged or destroyed through the act of an Owner or any of his/her tenants, agents, guests, or members of his/her family (whether or not such act is negligent or otherwise culpable), it shall be the obligation of such Owner to rebuild and repair the party wall without cost to the Owner of the adjoining Lot. Any dispute over an Owner's liability for such damage shall be resolved as provided in subparagraph (f) below, but any liability imposed on an Owner hereunder shall not prevent the Owner from seeking reimbursement therefore from the persons causing such damage.
- (c) In the event any party wall is destroyed or damaged (including deterioration from ordinary wear and tear, lapse of time or act of God), other than by the act of an adjoining Owner, his/her tenants, agents, guests or family members, it shall be the obligation of all Owners whose Lots adjoin such party wall to rebuild and repair such wall at their joint expense, such expense to be allocated among the Owners in accordance with the frontage of their Lots on the party wall.
- (d) Any walls located along or adjacent to a Lot boundary line which separates the Lot from the perimeter of the Heritage Park development or along the perimeter Lot line of Heritage Park (i.e., a wall constructed along or adjacent to a Lot line or Lot lines and adjacent Common Area parcels or an adjacent interior street within the development) shall be maintained as follows:
- (i) the Owner of the adjacent Lot shall be responsible for maintenance of the interior surface of the perimeter wall in a clean and attractive appearance that is substantially the same as the wall's original appearance; and
 - (ii) in all other respects, the perimeter wall shall be repaired, maintained and replaced by the Community Association. In no event shall an Owner affix any trellises, personal property or plant materials to a perimeter wall adjacent to the Owner's Lot and any painting of the interior surface of a perimeter wall shall require the prior approval of the Design Review Committee.
- (e) Notwithstanding anything to the contrary herein contained, there shall be no impairment of the structural integrity of any party wall without the prior consent of all Owners of any interest therein, whether by way of easement or in fee.
- (f) In the event of a dispute between Owners with respect to the construction, repair or rebuilding of a party wall or with respect to any other matter in connection therewith, then upon written request of one of such Owners

addressed to the Community Association the matter shall be submitted to arbitration under such rules as may from time to time be adopted by the Community Association.

- (g) The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the Owner's Lot and shall pass to and be binding upon such Owner's heirs, assigns and successors in title.
- (h) Owners of attached or paired Residences shall have the easement rights stated in Section 9.03, below.

Section 7.06. Drainage Structures, Ditches and Swales

- (a) All drainage structures, culverts and canals improved by the Community Association for the major collection of storm runoff and any natural drainage courses within Common Areas shall be maintained regularly by the Community Association.
- (b) Except as provided in subparagraph (a), above, each Owner shall keep drainage courses, ditches and swales on his or her Lot free and clear of all obstructions, and shall, in cooperation with contiguous property Owners (including the Community Association), maintain all such drainage ditches, swales and culverts common to their Lots in good order.
- (c) No Owner or resident shall alter or obstruct a natural drainage course, or materially add to the natural water volume of said drainage course without making adequate provisions with respect to neighboring Lots and Common Areas. Any such alterations, obstructions, or additions to water volume shall be considered a work of Improvement that is subject to prior review and approval by the Design Review Committee. Any Owner or Resident who changes the existing grading or drainage shall be strictly liable for all costs and expenses of repairing such changes, and any costs, liabilities, damages or causes of action arising out of such changes.

ARTICLE VIII. Permitted Uses of Property and Use Restrictions

Notwithstanding the possible consent of immediate neighbors to alternate standards, the following covenants, conditions, restrictions and reservations of easements and rights shall apply to all Lots, Common Areas, the Owners, and all Residents:

Section 8.01. Other Restrictions Regarding Lots and Residences

In addition to the occupancy restrictions set forth in Section 2.03, above, the following additional restrictions are applicable to Lots within the Development.

- (a) **Single Family Residential Use.** All Lots within Heritage Park which are zoned for residential use shall be used solely for the construction of Residences whose occupancy and use shall be restricted to single family residential use in accordance with the limitations on occupancy imposed by Section 2.03, above. In no event shall a Residence be occupied by more individuals than permitted by applicable law, zoning or other local governmental regulation.
- (b) **Compliance With Minimum Construction Standards.** All Residences and related structures erected on any Lot shall conform to the minimum construction standards set forth in Article VI, above, and in the Design Guidelines unless a variance has been granted by the Design Review Committee in accordance with Section 5.10, above.
- (c) **Conveyance In Fee Simple.** Each Lot shall be conveyed as a separately designated and legally described fee simple estate, subject to this Declaration.
- (d) **Maintenance of Lots.** All Lots and the Residences and other Improvements erected or placed thereon (including, without limitation, landscaping) shall at all times be maintained in such a manner as to prevent their becoming unsightly. The vegetation and landscaping on any Lot shall be planted or maintained by the Owner or resident in such a manner as to reduce the risk of fire, prevent or retard shifting or erosion of soils, encourage the growth of indigenous ground cover and to cause the proper diversion of water into streets and natural drainage channels.

Section 8.02. Use of the Common Areas and the Common Facilities

The Common Areas and Common Facilities shall be used for those service and recreational purposes planned and intended by the Community Association. Use and enjoyment of the Common Areas and Common Facilities shall always be subject to the covenants, restrictions and rules imposed by or promulgated pursuant to the Governing Documents.

Section 8.03. Household Pets

The following restrictions regarding the care and maintenance of pets within the Development shall be observed by each Owner and Resident:

- (a) **Reasonable Number of Common Household Pets.** A reasonable number of common household pets may be kept on each Lot so long as the same are not kept, bred or maintained for commercial purposes. No other animals, livestock, or poultry of any kind shall be kept, bred or raised on any Lot or in any Residence. Upon the written request of any Member, the Board of Directors shall conclusively determine, in its sole and absolute discretion, whether, for the purposes of this section, a particular animal, bird, fowl, poultry, reptile or livestock is a generally recognized house or yard pet, whether such a pet is a nuisance, or whether the number of animals or birds on any such property is reasonable.
- (b) **Pet Facilities.** Unless approved by the Design Review Committee, which may use general guidelines adopted by the Board, no structures for the care, housing or confinement of any pet on any Lot shall be maintained so as to be Visible From Neighboring Property.
- (c) **Control of Pets Within Common Area.** No pets shall be permitted upon Common Areas except as controlled on a leash or similar device held by its owner or his or her agent.
- (d) **No Tethering.** No household pet shall be left chained or otherwise tethered in front of a Lot or in the Common Area. Pet owners shall be responsible for the prompt removal and disposal of pet wastes deposited by their pets in the Initial Covered Property.
- (e) **Responsibility of Pet Owners.** The pet owners shall be solely responsible for the conduct of their pets. The Community Association, its Board, officers, employees and agents shall have no liability (whether by virtue of this Declaration or otherwise) to any Owners, their family members, guests, invitees, tenants or any other persons for any damage or injury to persons or property caused by any pet.
- (f) **Additional Pet Rules and Regulations.** The Board of Directors shall have the right to establish and enforce additional rules and regulations defining in a uniform and nondiscriminatory manner, what constitutes a "reasonable number" of pets depending on their size, disposition and/or maintenance requirements and imposing standards for the reasonable control and keeping of household pets to ensure that the same do not interfere with the quiet and peaceful enjoyment of other Owners and Residents of Heritage Park.

Section 8.04. Temporary Occupancy and Temporary Buildings

No trailer, basement of any incomplete building, tent, shack, garage or barn, and no temporary buildings or structures of any kind, shall be used at any time for a residence, either temporary or permanent. Temporary buildings or structures used during the construction of improvements on any property shall be removed promptly after the completion of construction.

Section 8.05. Separate Buildings and Outside Storage

Except as set forth for pet structures in Section 8.03(b), above, no separate enclosed buildings or structures, storage buildings or sheds, whether prefabricated, metal or of any other construction whatsoever, whether permanent or temporary, shall be placed, assembled, constructed or otherwise maintained on any Lot in such manner as to be visible from neighboring property, unless a variance is granted by the Design Review Committee.

Except as provided for herein, or in any Supplemental Declaration, no furniture, fixtures, appliances, or other goods and chattels not in active use shall be stored in any building or open area or on any Lot in such manner that such material is visible from neighboring property, provided, however, that in areas with open fencing firewood may be stored in side yards in a landscape-screened area as approved by the Design Review Committee.

Section 8.06. Noxious Activities

No illegal, noxious or offensive activities shall be carried out or conducted upon any Lot or Common Area nor shall anything be done within any portion of Heritage Park which is or could become an unreasonable annoyance or nuisance to neighboring property Owners. Without limiting the foregoing:

- (a) **Noise Activities.** No Owner shall permit noise, including, but not limited to barking dogs, the operation of sound amplifier systems, television systems, horns, whistles, firecrackers, bells or other sound devices, except security devices used exclusively for security purposes or power tools, to emanate from an Owner's Lot or from activities within the Common Area, which would unreasonably disturb any other Owner's or tenant's enjoyment of his or her Lot or the Common Area. Normal construction activities in connection with the building of improvements on a Lot when it becomes necessary on a short-term basis for renovation or maintenance shall not be considered a nuisance or otherwise prohibited by this Declaration. The Board in its sole discretion shall have the right to determine the existence of any nuisance and to set time, place and manner restrictions as to noise activities.
- (b) **Trash and Debris.** No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot and no odors (excepting manure when used as a lawn fertilizer) shall be permitted to

arise or emit therefrom, so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other property (including Common Area) in the vicinity thereof or to the occupants of such other property. .

- (c) Outdoor Lighting. No lighting will be permitted which causes unreasonable glare to neighboring Owners, neighborhoods or the Common Area; provided, however, the Community Association may maintain lighting on, in or around tennis courts, parking lots, the Clubhouse, the Fireside Room, at entrance gates, and other portions of the Common Areas, and other areas where such lighting is necessary or appropriate for the use and enjoyment of the community or for health and safety reasons.
- (d) Exterior Fires. No open fires shall be lighted or permitted within Heritage Park, except for (i) fires in a contained outdoor fireplace or barbecue unit while attended and in use for cooking purposes (provided that such fireplace or unit is not located so as to direct an unreasonable amount of smoke onto a neighbor's property); or (ii) fires within a safe and well-designed interior fireplace.
- (e) Diseases and Insects. No Owner shall permit any thing or condition to exist upon any Lot which shall induce, breed or harbor infectious plant diseases or noxious insects.

Section 8.07. Trash Containers and Collection

No garbage or trash shall be placed or kept on any Lot, except in covered containers of a type, size and style which are in accordance with City of Sacramento requirements. In no event shall such trash containers be maintained on any Lot so as to be Visible From Neighboring Property, unless the containers are being made available for collection. No outdoor incinerators shall be kept or maintained on any Lot.

Section 8.08. Clothes Drying Facilities

Outside clotheslines or other outside facilities for drying or airing clothes shall not be erected, placed or maintained on any Lot so as to be Visible From Neighboring Property.

Section 8.09. Machinery and Equipment

No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot except:

- (a) such machinery or equipment as is usual and customary in connection with the use, maintenance or construction (during the period of construction) of a building, appurtenant structures, or other improvements;

- (b) that which the Community Association may require for the operation and maintenance of Heritage Park;
- (c) that used in connection with any business permitted under a Supplemental Declaration; or
- (d) any machinery used by a Resident in a hobby, provided such use does not interfere with neighboring Residents and is otherwise in compliance with the applicable provisions of this Declaration.

Section 8.10. Signs

No signs of any kind shall be displayed to the public view from any portion of the Development except that this restriction shall not apply to:

- (a) signs required by legal proceedings;
- (b) signs which by law cannot be prohibited;
- (c) a single sign of customary and reasonable dimension and design, complying with the Rules and reasonably located on a Lot advertising the Lot for sale or rent;
- (d) a single identification sign which has been approved by the Design Review Committee located on a Lot identifying the number or address of the Lot and/or the name of the Owner of the Lot;
- (e) signs approved by the Board located at or near any entrance to the Development identifying the Development;
- (f) signs required for traffic control and regulation of streets or open areas within the Development; and
- (g) such other signs as the Board, in its discretion, may approve.

The Board may adopt time, place and manner restrictions on signs including restrictions on the size and number of signs and the duration and location of their posting to the maximum extent permitted by law.

All signs must be in compliance with Civil Code section 1353.6.

Section 8.11. Further Subdivision, Conditions and Rezoning

No Lot shall be further subdivided or separated into smaller Lots by any Owner, and no portion less than all of any such Lot, nor any easement or other interest therein, shall be conveyed or transferred by any Owner, without the prior written

ARTICLE IX. Easements

Section 9.01. Common Area Maintenance Easements

The Community Association shall have an easement in and to that portion of any Lot or Parcel which adjoins the Common Area for the limited purpose of access to and maintenance of the adjoining Common Area. The Community Association shall have easements for access over such portions of Lots as are reasonably necessary for the Community Association to maintain the Common Areas, and no Owner shall interfere with the use of such easements by the Community Association or its agents or employees. The Community Association shall have easements for access over such portions of each Lot as are reasonably necessary for the Community Association to maintain drainage facilities to be maintained by the Owner, should the Owner fail to do so (which maintenance shall be at the sole cost and expense of the Owner), and to maintain drainage facilities which shall be maintained by the Community Association. No Owner shall interfere with the use of such easements by the Community Association or its agents or employees.

Section 9.02. Utility Easements

There is hereby created a blanket easement in favor of the Community Association or any utility or service company providing service to such Lot, upon, across, over and under each Lot and Common Area for ingress to, egress from, and the installation, replacing, repairing and maintaining of, all utility and service lines and systems including, but not limited to, water, sewers, gas, telephones, electricity, television cable or communication lines and systems, etc.

Pursuant to this easement, a providing utility or service company may install and maintain facilities and equipment on the property and affix and maintain wires, circuits and conduits on, in and under the roofs and exterior walls of buildings on the Lots and other portions of Heritage Park. Notwithstanding anything to the contrary contained in this subsection, no sewers, electrical lines, water lines, or other utilities, service or cable television lines may be installed or relocated on any Lot or Common Area except as approved by the Owner and the Design Review Committee.

Section 9.03. Maintenance of Walls and Fences, and Easement

If a wall or fence on any Lot which serves as a perimeter wall for any portion of Heritage Park, or to separate the Lot from the Common Area, an easement in perpetuity is granted by such Lot Owner to the Community Association for the construction and location of such wall or fence on the Lot, and the maintenance required for such wall or fence from time-to-time. An easement is reserved and granted in favor of the Community Association, upon, over and across each Lot adjacent to any boundaries of Common Area for reasonable ingress, egress,

installation, replacement, maintenance, and repair of any wall, fence or other improvement which the Community Association may construct or cause to be constructed on or near any Common Area boundary.

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

Section 9.04. Drainage Easements

There is hereby created a blanket easement upon, across, over and under Lots and the Common Area for drainage of surface water, whether such water originates from surface streets, drainage basins, retention areas, neighboring Lots or Common Area.

Section 9.05. Master Telecommunications Easement

The Community Association reserves blanket easements ("Telecommunications Easements") over Heritage Park for access and for purposes of constructing, installing, locating, altering, operating, maintaining, inspecting, upgrading, removing and enhancing a cable television system, telecommunication service lines, facilities, and equipment, for the benefit of the Community Association, the Owners, and their respective successors and assigns. The Community Association has the right, but not the obligation, to use the Telecommunications Easements for the purposes described in the preceding sentence.

The exercise of Telecommunications Easements shall not unreasonably interfere with reasonable use and enjoyment of Heritage Park by the Owners of Lots in the Development.

Section 9.06. Easements and Rights-of-Way in Common Areas

The Community Association shall have the power, but not the duty, to grant and convey to any person easements, licenses or rights-of-way in, on, over or under the Common Area and fee title to parcels or strips of land which comprise a

portion of the Common Areas with a value based on 1998 dollars of Five Thousand Dollars (\$5000) or less, for purposes consistent with the terms of this Declaration, including without limitation constructing, installing, erecting, operating, maintaining or conducting thereon, therein and thereunder:

- (a) roads, streets, walks, trails, driveways, parkways, landscaping, park areas, open space areas and slope areas;
- (b) overhead or underground lines, cables, wires, conduits, or other devices for the transmission of power or signals for lighting, heating, television, telephone and other similar purposes;
- (c) sewers, storm water drains or retention basins and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes; and
- (d) any similar Improvements, facilities or uses not inconsistent with the use of such property pursuant to this Declaration.

Pursuant to the authority granted herein, the Community Association may grant easements or designate exclusive use common areas (as defined in Civil Code section 1351(i)) in order to permit Owners to care, maintain and landscape portions of Common Areas adjacent to the Owner's Lot consisting of slope areas, drainage areas or other areas not to exceed 1500 square feet in size that the Board determines to be unsuitable for general use and enjoyment by the Members, as a whole.

Section 9.07. Easements Deemed Created

All conveyances of Lots hereafter made shall be construed to grant and reserve the easements contained in this Article IX, even though no specific reference to such easements or to this Article IX appears in the instrument of such conveyance.

ARTICLE X. Insurance

Section 10.01. Insurance on Common Property

The Community Association shall maintain the following types of insurance, to the extent that such insurance is reasonably available, considering the availability, cost, and risk coverage provided by such insurance:

- (a) **Casualty Insurance.** A policy of all risk property insurance covering all real property insurable improvements and personal property owned by the Community Association located on Common Area, with a "Replacement Cost Endorsement" providing that any claim shall be settled on a full replacement cost basis without deduction for depreciation. Such insurance as maintained by the Community Association pursuant to this subsection shall afford protection against such other risks as shall customarily be covered with respect to projects similar in construction, location, and use including, but not limited to, earthquake coverage and flood coverage.

- (b) **General Liability Insurance.** A policy of commercial general liability insurance insuring the Community Association in an amount not less than Five Million Dollars (\$5,000,000) covering bodily injury, including death of persons, personal injury, and property damage liability arising out of a single occurrence, and such other risks as shall customarily be covered with respect to projects similar in construction, location, and use.

- (c) **Flood Insurance.** If the Common Area or any portion thereof is located within an area identified by the Federal Emergency Management Agency ("FEMA") as having special flood hazards, and flood insurance coverage on improvements on the Common Area has been made available under the National Flood Insurance Program, then such a policy of flood insurance on the Common Area located therein in an amount at least equal to the lesser of:
 - (i) the maximum coverage available under the National Flood Insurance Program for all buildings and other insurable property located within a designated flood hazard area; or

 - (ii) one hundred percent (100%) of current replacement cost of all buildings and other insurable property located within a designated flood hazard area. To the extent Common Area improvements are located in an area designed by FEMA as having special flood hazards, but the area has been modified through the land development process in a manner such that it is no longer located in such a FEMA area, but the FEMA maps have not been updated to reflect such development modification, then the insurance

requirements of this Section 10.01(c) may, with respect to such improvements, be waived.

Section 10.02. Other Insurance

- (a) **Director's and Officer's Liability Insurance.** To the extent such insurance is reasonably obtainable, the Community Association shall maintain individual liability insurance for its directors and officers providing coverage for negligent acts or omissions in their official capacities. The minimum coverage of such insurance shall be at least One Million Dollars (\$1,000,000).
- (b) **Additional Insurance and Bonds.** To the extent such insurance is reasonably obtainable, the Community Association may also purchase with common funds such additional insurance and bonds as it may, from time to time, determine to be necessary or desirable, including, without limiting the generality of this section, demolition insurance, flood insurance, and workers' compensation insurance. A policy or bond providing adequate fidelity coverage to protect against dishonest acts on the part of Officers, Directors, trustees, and employees and agents (including chartered club officers) of the Community Association and all others who handle or are responsible for handling funds of the Community Association. Such fidelity coverage or bonds shall name the Community Association as an additional insured or as an obligee and shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression. The Board shall purchase and maintain such insurance on personal property owned by the Community Association and any other insurance that it deems necessary or desirable.

Section 10.03. Policy Terms

All policies of insurance shall contain waivers of subrogation and waivers of any defense based on invalidity arising from any acts of a Member of the Community Association, shall provide that the policies may not be canceled or substantially diminished or reduced in coverage without at least thirty (30) days prior written notice to the insured, as well as to any first mortgagee having previously requested such information in writing. Duplicate originals of all policies and renewals thereof, together with proof of payment of premiums, shall be delivered to any Eligible Holder upon written request.

Section 10.04. Insurance to Be Maintained by Owners

The Community Association shall have the right, but not the obligation, to make arrangements with the owners of Lots within any Cost Center to obtain a master policy of fire and casualty insurance for all Residences located in such Cost Center. In that event, the premiums for such master policy shall be assessed equally against Owners in such Cost Center as part of Regular Assessments.

Except to the extent that the Community Association elects to obtain such a master policy of fire and casualty insurance, each Owner of a Lot shall be responsible for obtaining his/her own policy of fire and casualty insurance with respect to such Lot. Further, in any event, each Owner shall be responsible for obtaining his/her own insurance to cover: (i) furnishings, fixtures and personal property within such Owner's Residence; and, (ii) such Owner's personal liability for committing negligent or tortious acts while within Heritage Park.

Section 10.05. Notice of Loss to Eligible Holders

In the event that there shall be any damage to or destruction of the Common Area which shall be in excess of One Hundred Thousand Dollars (\$100,000), then timely written notice of any such damage or destruction shall be given by the Community Association to Eligible Holders who request such a notice in writing.

Section 10.06. Annual Review and Disclosure

The Board shall review the adequacy of all insurance, including the amount of liability coverage and the amount of property damage coverage, at least once every year. At least once every three years, the review shall include a replacement cost appraisal of all insurable Common Area Improvements without respect to depreciation. The Board shall adjust the policies to provide the amounts and types of coverage and protection that are customarily carried by prudent owners' associations operating in similar common interest developments in the greater Sacramento region. In accordance with California Civil Code section 1365(f), annually the Community Association shall distribute to its Members a summary of the Community Association's property, general liability, earthquake and flood insurance (if any). Such distribution shall be made not less than thirty (30) days nor more than ninety (90) days prior to the beginning of the Community Association's fiscal year.

Section 10.07. Board's Authority to Revise Insurance Coverage

The Board shall have the power and right to deviate from the insurance requirements contained in this Article X in any manner that the Board, in its reasonable business discretion, considers to be in the best interests of the Community Association. If the Board elects to materially reduce the coverage from the coverage required in this Article X, the Board shall make all reasonable efforts to notify the Members of the reduction in coverage and the reasons therefore at least (30) days prior to the effective date of the reduction. The Community Association, and its directors and officers, shall have no liability to any Owner or Mortgagee if, after a good faith effort, the Community Association is unable to obtain any insurance required hereunder because the insurance is no longer available; or, if available, the insurance can be obtained only at a cost that the Board, in its sole discretion, determines is unreasonable under the

circumstances; or the Members fail to approve any assessment increase needed to fund the insurance premiums.

ARTICLE XI. Damage or Destruction

Section 11.01. Common Facilities: Bids and Insurance Availability

In the event any Common Facilities are ever damaged or destroyed, then, and in such event, as soon as practicable thereafter the Board of Directors shall:

- (a) obtain bids from at least two reputable, licensed contractors, which bids shall set forth in detail the work required to repair, reconstruct and restore the damaged or destroyed portions of the Common Facilities to substantially the same condition as they existed prior to the damage and the itemized price asked for such work; and
- (b) determine that amount of all insurance proceeds available to the Community Association for the purpose of effecting such repair, reconstruction and restoration.

Section 11.02. Common Facilities; Sufficient Insurance Proceeds

Subject to the provisions of Section 11.01, above, if, in the event of damage to or destruction of any portion of any Common Facility, the insurance proceeds available to the Community Association are sufficient to cover the costs of repair, reconstruction and restoration, then the Community Association may cause such facilities to be repaired, reconstructed and restored to substantially the same condition in which they existed prior to the loss; provided, however, that in the event of a total destruction of any Common Facility, the Community Association shall not be obligated to restore the facility to its prior appearance and condition if the Board's opinion, architectural or design modifications to the facilities will result in providing the Members with an improved facility available for substantially the same use and enjoyment as the destroyed facility.

Section 11.03. Common Facilities; Insufficient Insurance Proceeds

In the event that any Common Facility is totally or substantially damaged or destroyed or, if, in the event of damage to or destruction of only a portion of the Common Facilities, the insurance proceeds, capital replacement reserves and funds, if any, offered or contributed to the Community Association from any other source for the repair, replacement or major reconstruction of the damaged or destroyed facility are insufficient in an amount exceeding the dollar amount that the Board can raise without prior Member approval (see Sections 4.02 and 4.03, above), then the issue of whether repair or replacement of the Common Facility should be funded by a Special Assessment shall be presented to the Members for approval in accordance with Section 4.08, above. If such Assessment is approved, the Community Association shall levy such Special Assessment and proceed to make such repairs or reconstruction. If the Special Assessment is not approved, the insurance proceeds may, after first being used to clear and landscape damaged areas, be applied in accordance with the wishes of the

Membership upon the approval of Members and Eligible Holders as set forth in Article XIV, below, except that the proceeds shall not be distributed to the Owners, unless made jointly payable to Owners and the first Mortgagees, if any, of their respective Lots.

The solicitation materials distributed to the Members in connection with any such vote shall include sufficient replacement cost and bid information to enable the Members to make an informed decision and the issue shall be presented on the ballot with the following alternatives:

- (a) to repair, reconstruct and restore the damaged or destroyed Common Facilities and specially assess all Owners for such additional funds as may be needed for such purpose (with the amount of the Special Assessment stated); or
- (b) in the alternative, not to repair, reconstruct or restore the damaged or destroyed Common Facilities but rather to utilize the insurance proceeds available for such reconstruction, together with any other sums otherwise available to the Community Association for such purpose, to demolish and remove the damaged or destroyed Improvements from the Common Area and to level and landscape the sites thereof and apply any balance of such proceeds and/or funds as the Members holding such voting power and their first mortgagees may determine.

Section 11.04. Damage or Destruction of Residences

- (a) **Obligation to Rebuild.** If all or any portion of any Residence is damaged or destroyed by fire or other casualty, it shall be the duty of the Owner of said Residence to rebuild, repair or reconstruct said Residence in a manner which will restore it substantially to its appearance and condition immediately prior to the casualty.
- (b) **Design Review Committee Approval.** Any Owner whose Residence or other structural improvements have been damaged or destroyed shall apply to the Design Review Committee for approval of plans for the reconstruction, rebuilding, or repair of the damaged or destroyed Residence or structure. Application for such approval shall be made in writing together with full and complete plans, specifications, working drawing and elevations showing the proposed reconstruction and the end result thereof. The Design Review Committee shall grant such approval only if the design proposed by the Owner satisfies the requirements for approval set forth in Section 5.05, above.
- (c) **Time Limitation for Reconstruction or Removal.** The Owner or Owners of any damaged Residence(s) and the Design Review Committee shall be obligated to proceed with all due diligence hereunder to remove damaged structures (or portions thereof), prepare and process reconstruction plans

and specifications and complete the repair and restoration work. At a minimum, whenever Owners are required to prepare and submit repair or reconstruction plans to the Design Review Committee, said submittal shall be made within sixty (60) days following the event and reconstruction shall commence within forty-five (45) days following receipt of approval from the Committee. Reconstruction shall be completed within six (6) months following receipt of Committee approval. For good cause (including, without limitation, delays caused by inclement weather or the processing of insurance claims) the Design Review Committee may waive or extend any of the deadlines imposed by this subparagraph.

ARTICLE XII. Eminent Domain

Section 12.01. Definition of Taking

The term "taking" as used in this Article shall mean condemnation by eminent domain, or by sale under threat thereof, of all or part of the Common Area.

Section 12.02. Representation by Community Association

In the event of a taking, the Community Association shall represent all of the Members in an action to recover all awards, subject to the right of all Institutional Holders who have requested the right to join the Community Association in the proceedings. The Community Association is designated as the sole representative of the Members in all aspects of condemnation proceedings.

Section 12.03. Award for Common Area

In the event of a taking of all or any part of the Common Area, the Community Association shall distribute the award from the taking authority after deducting therefrom fees and expenses related to the condemnation proceeding including, without limitation, fees for attorneys and appraisers and court costs. In the event that the taking is by judgment of condemnation and said judgment apportions the award among the Owners and their respective Institutional Holders, the Community Association shall distribute the amount remaining after such deductions on the allocation basis set forth in the judgment. In the event that the taking is by sale under threat of condemnation, or if the judgment of condemnation fails to apportion the award, the Community Association shall distribute the award among the Owners and Institutional Holders on a pro rata basis, with each Owner and Institutional Holder receiving an equal share of such award for each Lot owned by such Owner within Heritage Park. Unless otherwise agreed to by the Institutional Holders, all amounts payable to an Owner shall be paid to the Institutional Holder.

Section 12.04. Inverse Condemnation

The Community Association is authorized to bring an action in inverse condemnation. In such event, the provisions of this Article shall apply with equal force.

Section 12.05. Notice to Members

The Community Association, immediately upon having knowledge of any taking or threat thereof, shall promptly notify all Members.

ARTICLE XIII. Breach and Default

Section 13.01. Remedy at Law Inadequate

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, rights-of-way, liens, charges or equitable servitudes contained in this Declaration are inadequate and that the failure of any Owner, tenant, occupant or user of any Lot, or any portion of the Common Area or Common Facilities, to comply with any provision of the Governing Documents may be enjoined by appropriate legal proceedings instituted by any Owner, the Community Association, its officers or Board of Directors, or by their respective successors in interest.

Section 13.02. Nuisance

Without limiting the generality of the foregoing Section 13.01, the result of every act or omission whereby any covenant contained in this Declaration is violated in whole or in part is hereby declared to be a nuisance, and every remedy against nuisance, either public or private, shall be applicable against every such act or omission.

Section 13.03. Costs and Attorneys' Fees

In any action brought because of any alleged breach or default of any Owner or other party hereto under this Declaration, the court may award to the prevailing party in such action such attorneys' fees and other costs as it may deem just and reasonable.

Section 13.04. Cumulative Remedies

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

Section 13.05. Failure Not a Waiver

The failure of any Owner, the Board of Directors, the Community Association or its officers or agents to enforce any of the covenants, conditions, restrictions, limitations, reservations, grants or 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 Community Association or the Board, or any of its officers or agents.

Section 13.06. Rights and Remedies of the Community Association

- (a) **Rights, Generally.** Except as otherwise provided in Section 13.07, in the event of a breach or violation of any Community Rule or of any of the restrictions contained in any Governing Document by an Owner, his or her family, or the Owner's guests, employees, invitees, licensees, or tenants, the Board, for and on behalf of all other Owners, may enforce the obligations of each Owner to obey such Rules, covenants, or restrictions through the use of such remedies as are deemed appropriate by the Board and available in law or in equity, including but not limited to the hiring of legal counsel, the imposition of fines and monetary penalties, the pursuit of legal action, or the suspension of the Owner's right to use recreation Common Facilities or suspension of the Owner's voting rights as a Member of the Community Association; provided, however, the Community Association's right to undertake disciplinary action against any of its Members shall be subject to the procedures set forth in this Section.

The decision of whether it is appropriate or necessary for the Community Association to take enforcement or disciplinary action in any particular instance shall be within the sole discretion of the Community Association's Board or its duly authorized enforcement committee. If the Community Association declines to initiate action in any instance, any Owner shall have such rights of enforcement as may be available to the Owner pursuant to California Civil Code section 1354 or otherwise by law.

- (b) **Schedule of Fines.** The Board may implement a schedule of reasonable fines and penalties for particular offenses that are common or recurring in nature and for which a uniform fine schedule is appropriate (such as fines for late payment of Assessments or illegally parked vehicles parked in violation of the Governing Documents, or violations of the architectural approval requirements and procedures of Article V of this Declaration). Once imposed, a fine or penalty may be collected as a Special Individual Assessment, subject to the limitation on the use of non-judicial foreclosure remedies as provided by law. In accordance with California Civil Code section 1363(g), any schedule of fines or monetary penalties adopted by the Community Association shall be distributed to each Member by personal delivery or first-class mail at the time the schedule is first adopted and thereafter whenever the schedule is changed.
- (c) **Definition of "Violation".** A violation of the Governing Documents shall be defined as a single act or omission occurring on a single day. If the detrimental effect of a violation continues for additional days, discipline imposed by the Board may include one component for the violation and, according to the Board'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 Community Association shall take reasonable and prompt action to repair or avoid the continuing damaging effects of a violation or nuisance occurring within the Common Area at the cost of the responsible Owner.

(d) Limitations of Disciplinary Rights.

- (i) Generally. The Community Association shall have no power to cause a forfeiture or abridgment of an Owner's right to the full use and enjoyment of his or her Lot or Residence due to the failure by the Owner (or his or her family members, tenants, guests or invitees) to comply with any provision of the Governing Documents or of any duly enacted Community Rule except where the loss or forfeiture is the result of the judgment of a court of competent jurisdiction, a decision arising out of arbitration or a foreclosure or sale under a power of sale for failure of the Owner to pay Assessments levied by the Community Association, or where the loss or forfeiture is limited to a temporary suspension of an Owner's rights as a Member of the Community Association or the imposition of monetary penalties for failure to pay Assessments or otherwise comply with any Governing Documents so long as the Community Association's actions satisfy the due process requirements of subparagraph (iii), below.
- (ii) Monetary Penalties. Monetary penalties imposed by the Community Association for failure of a Member to comply with the Governing Documents may not be characterized nor treated as an Assessment which may become a lien against the Member's Lot enforceable by a sale of the Lot in non-judicial foreclosure; provided, however, that this limitation on the Community Association's lien rights shall not apply to charges imposed against an Owner consisting of reasonable late payment penalties to reimburse the Community Association for the loss of interest and for costs reasonably incurred (including attorneys' fees) in the Community Association's efforts to collect delinquent Assessments.
- (iii) Hearings and Summary Enforcement Rights. No penalty or temporary suspension of rights shall be imposed pursuant to this Article unless the Member alleged to be in violation is given at least ten (10) days prior notice of the Board's intention to impose a penalty or discipline the Member (see subparagraph (iv), below). Notwithstanding the foregoing, under circumstances involving conduct that constitutes: (A) an immediate and unreasonable infringement of, or threat to, the safety or quiet enjoyment of neighboring Owners; (B) a traffic or fire hazard; or (C) a threat of

material damage to, or destruction of, the Common Area or Common Facilities the Board of Directors, or its duly authorized agents, may undertake immediate corrective or disciplinary action., Upon request of the offending Owner (which request must be received by the Community Association, in writing, within five (5) days following the Community Association's disciplinary action), or on its own initiative, the Board may conduct a hearing on the matter that requires immediate corrective or disciplinary action. If the Community Association acts on its own initiative to schedule a hearing, notice of the date, time and location of the hearing shall accompany the notice of disciplinary action. If the accused Owner desires a hearing, a written request for said hearing shall be delivered to the Community Association no later than five (5) days following the date when the fine is levied or other enforcement action is initiated. All notices and hearing schedules and procedures shall comply with Civil Code section 1363(h) and subparagraph (iv), below.

- (iv) Conduct of Hearings and Notice. Disciplinary hearings may be before the Board of Directors or a duly appointed Covenants Committee. Hearings shall be scheduled at a date which is at least ten (10) days following the date that notice of the hearing is given to the Owner. The notice shall be given by either first-class mail or by personal delivery and shall set forth the date, time and location of the hearing, a general description of the alleged violation and a statement that the Owner has a right to attend the hearing and address the Board or its duly designated Covenants Committee.

If the Board, either acting on its own or on recommendations from its Covenants Committee, imposes discipline on a Member, it shall provide the Member with a written notification of the action taken, within fifteen (15) days following the Community Association's action. That notice shall be given either by personal delivery or by first-class mail. In no event shall the effective date of any disciplinary action commence sooner than five (5) days following conclusion of the hearing unless: (i) the hearing merely affirms summary disciplinary action initiated pursuant to the immediately preceding paragraph; or (ii) earlier commencement is necessary to preserve the quiet enjoyment of other residents or to prevent further damage to, or destruction of, the Development or any portion thereof.

- (v) Rules and Procedures. The Board, or an appropriate committee appointed by the Board to conduct and administer disciplinary hearings and related proceedings, shall be entitled to adopt rules that further elaborate and refine the procedures for conducting

disciplinary proceedings. Such rules, when approved and adopted by the Board, shall become a part of the Community Rules.

- (vi) **Appointment of a Covenants Committee.** Acting pursuant to Section 10.01 of the Bylaws, the Board of Directors may, but shall not be obligated to, establish a Covenants Committee to hear and make recommendations on cases involving alleged violations of the Governing Documents. If no committee is established, the Board shall perform this function. The Covenants Committee shall review written complaints from Lot Owners, the Community Association's property manager, or the Design Review Committee (for violations other than those relating to specific Improvement projects, which shall remain within the jurisdiction of the Design Review Committee) of alleged violations of the Governing Documents or Community Rules, and, when determined appropriate, conduct hearings and make recommendations to the Board regarding the alleged violation(s).

Upon concluding a disciplinary hearing, the Covenants Committee shall submit its recommendations to the Board for review. The Board shall have the discretion to affirm, modify or reject the recommendations of the Covenants Committee.

This subparagraph shall only apply if the Board of Directors establishes a Covenants Committee.

- (vii) **Court Actions.** Court actions to enforce the Governing Documents may only be initiated on behalf of the Community Association by resolution of the Board. Prior to the filing of any court action seeking declaratory or injunctive relief to interpret or enforce the Governing Documents (including either such action coupled with a claim for monetary damages not in excess of Five Thousand Dollars (\$5,000)), the Community Association shall first comply with the provisions of California Civil Code section 1369.510 et seq. relating to alternative dispute resolution. The Community Association's notice and hearing procedures shall be drafted to satisfy these statutory requirements.

Section 13.07. Assessment Collection Actions

The notice and hearing procedures set forth in Section 13.06 shall not apply to any actions by the Community Association or its duly authorized agents to collect delinquent assessments. Assessment collections shall be subject to Section 4.10, above, and any other notice, hearing and/or dispute resolution requirements or procedures as may be specifically applicable by law to Association assessment collection efforts.

ARTICLE XIV. Rights of Institutional Holders of Mortgages

The following provisions are for the benefit of Institutional Holders, Insurers and Guarantors of first mortgages on Lots within Heritage Park and shall apply notwithstanding any provision to the contrary set forth elsewhere in the Governing Documents. These provisions apply only to "Eligible Holders" defined as any Institutional Holder, Insurer or Guarantor of a first Mortgage who provides written request to the Community Association, stating the name and address of such Holder, Insurer or Guarantor and the address or legal description of the particular Lot encumbered (thus becoming an "Eligible Holder").

Section 14.01. Dissolution

The consent of one hundred percent (100%) of the voting power of the Community Association and the approval of the Eligible Holders of first encumbrances on Lots to which at least sixty-seven percent (67%) of the votes of Members owning Lots subject to such encumbrances pertain, shall be required to terminate the Community Association.

Section 14.02. Priority of Mortgage Lien

No breach of the covenants, conditions or restrictions contained in this Declaration, nor the enforcement of any lien provisions created herein, shall affect, impair, defeat or render invalid the lien of any first Mortgage made in good faith and for value, but all of the covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title to a Lot is derived through foreclosure, trustee's sale or otherwise.

ARTICLE XV. Notices

Section 15.01. Mailing Addresses

Any communication or notice of any kind permitted or required herein shall be in writing and may be served, as an alternative to personal service, by mailing the same as follows:

- (a) **If to any Owner:** To the street address of his or her Lot or to such other address as he or she may from time to time designate in writing to the Community Association for purposes of notice.
- (b) **If to the Community Association:** Heritage Park Owners Association, at the principal office of the Community Association (or to such other address as the Community Association may from time to time designate in writing to the Owners).

Section 15.02. Personal Service Upon Co-Owners and Others

Personal service of a notice or demand to one of the co-Owners of any Lot, to any general partner of a partnership which is the Owner of Record of the Lot, or to any officer or agent for service of process of a corporation which is the Owner of Record of the Lot, shall be deemed delivered to all such co-Owners, to such partnership, or to such corporation, as the case may be.

Section 15.03. Deposit in United States Mails

All notices and demands served by mail shall be by first-class or certified mail, with postage prepaid, and shall be deemed delivered four (4) days after deposit in the United States mail in the County.

ARTICLE XVI. Amendment of Declaration and Termination

Section 16.01. Amendment

This Declaration may be amended or revoked in any respect upon compliance with the following provisions:

- (a) **Member Approval Requirements.** Any amendment shall be approved by the vote or assent by ballot of the holders of not less than fifty-one percent (51%) of the Voting Power of Members.

Notwithstanding the foregoing, the percentage of the voting power necessary to amend a specific clause or provision of this Declaration shall not be less than the percentage of affirmative votes prescribed for action to be taken under that clause.

- (b) **Additional Approval to Dissolve Corporation.**

- (i) **Eligible Holders Approval.** Eligible Holders approval shall be required to terminate the Community Association described in Section 14.01, above.

- (ii) **Approval of Templeton Development Corporation.** Certain provisions have been included in this Declaration to reflect requirements imposed on the development of Heritage Park by the Templeton Declaration. Accordingly those provisions may only be amended or deleted with the prior written approval of Templeton Development Corporation or its successors in interest to the Templeton Property (as defined in the Templeton Declaration) for so long as the Templeton Declaration remains in effect. Those provisions are as follows: 1.35, 1.36, 2.01, 2.03 (to the extent that section relates to age restrictions on occupancy), 2.07(a), and 8.01.

- (c) **Right of Amendment of Requested by Governmental Mortgage Agency or Federally Chartered Lending Institutions.** Anything in this Article to the contrary notwithstanding, the Community Association reserves the right to amend all or any part of this Declaration to such an extent and with such language as may be requested by Governmental Mortgage Agencies which require such an amendment as a condition precedent to such agency's approval of this Declaration, or by any federally chartered lending institution as a condition precedent to lending funds upon the security of any Lot(s) or Parcel(s) or any portions thereof. Any such amendment shall be effectuated by the recordation, by the Community Association, of a Certificate of Amendment duly signed by or on behalf of the authorized agents, or authorized officers of the Community Association, as applicable, with their signatures acknowledged, specifying the Governmental Mortgage Agency, or the federally chartered lending

institution requesting the amendment and setting forth the amendatory language requested by such agency or institution. Recordation of such a Certificate shall be deemed conclusive proof of the agency's or institution's request for such an amendment, and such Certificate, when recorded, shall be binding upon all of Heritage Park and all persons having an interest therein.

- (d) **Right of Amendment if Requested by City of Sacramento.** Anything in this Article to the contrary notwithstanding, the Community Association reserves the right to amend this Declaration to such an extent and with such language as may be requested by the City of Sacramento to reflect a modification of the Development Agreement which requires a conforming amendment to this Declaration. Any such amendment shall be evidenced by the Community Association's Recordation of a Certificate of Amendment duly signed by or on behalf of the authorized agents, or authorized officers of the Community Association, as applicable, with their signatures acknowledged, specifying the City of Sacramento requested the amendment and setting forth the amendatory language requested by the City. Recordation of such a Certificate of Amendment shall be deemed conclusive proof of the City's request for such an amendment, and such Certificate, when recorded, shall be binding upon all of Heritage Park and all persons having an interest therein.

Section 16.02. Effective Date of Amendment

The amendment will be effective upon the Recording of a Certificate of Amendment, duly executed and certified by the President and Secretary of the Community Association setting forth in full the amendment so approved and that the approval requirements of subsections (a) or (b), above have been duly met. If the consent or approval of any governmental authority, Mortgagee, or other entity is required under this Declaration to amend or revoke any provision of this Declaration, no such amendment or revocation shall become effective unless such consent or approval is obtained. For the purposes of recording such instrument, the President and Secretary of the Community Association are hereby granted an irrevocable power of attorney to act for and on behalf of each and every Owner in certifying, executing and recording said amendment with the Office of the County Recorder.

Section 16.03. Reliance on Amendments

Any amendments made in accordance with the terms of this Declaration shall be presumed valid by anyone relying on them in good faith.

Section 16.04. Termination

This Declaration may be terminated at any time if one hundred (100%) of the votes cast by Members shall be cast in favor of termination at an election held for such purpose, subject to the approval of the City of Sacramento. Anything in the

foregoing to the contrary notwithstanding, no vote to terminate this Declaration shall be effective unless and until the written consent to such termination has been obtained, within a period from six (6) months prior to such vote, from Eligible Holders pursuant to the provisions of Article XIV, above. If the necessary votes and consents are obtained, the Board shall cause to be recorded with the County Recorder of Sacramento County, California, a Certificate of Termination, duly signed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Community Association, with their signatures acknowledged. Thereupon these covenants shall have no further force and effect, and the Community Association shall be dissolved pursuant to the terms set forth in its Articles.

ARTICLE XVII. General Provisions

Section 17.01. Term

The covenants, conditions, restrictions, limitations, reservations, grants of easement, rights, rights-of-way, liens, charges and equitable servitudes contained in this Declaration shall run with, and shall benefit and burden the Lots and the Common Area as herein provided, and shall inure to the benefit of and be binding upon the Owners, the Community Association, its Board of Directors, and its officers and agents, and their respective successors in interest, for the term of sixty (60) years from the date of the recording of this Declaration. After the expiration of the initial term, the same shall be automatically extended for successive periods of ten (10) years each unless, within six (6) months prior to the expiration of the initial sixty (60)-year term or any such ten (10)-year extension period, a written instrument, approved by Owners entitled to vote and holding at least a majority of the voting power of the Community Association terminating the effectiveness of this Declaration, is Recorded.

Section 17.02. Construction

- (a) **Restrictions Construed Together.** All of the covenants, conditions and restrictions of this Declaration shall be liberally construed together to promote and effectuate the fundamental concepts of the Development as set forth in the Recitals of the Declaration. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce that provision in a subsequent application or any other provision hereof.
- (b) **Restrictions Severable.** Notwithstanding the provisions of subparagraph (a) above, the covenants, conditions and restrictions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision.
- (c) **Singular Includes Plural.** The singular shall include the plural and the plural the singular unless the context requires the contrary, and the masculine, feminine or neuter shall each include the masculine, feminine and neuter, as the context requires.
- (d) **Captions.** All captions or titles used in this Declaration are intended solely for convenience of reference and shall not affect the interpretation or application of that which is set forth in any of the terms or provisions of the Declaration.
- (e) **Exhibits.** All exhibits referred to herein are deemed to be incorporated herein by reference, whether or not actually attached.

- (f) References to the Community Association. Any reference in this Declaration to the Community Association shall include any successors or assignees of such entities' rights and powers hereunder .
- (g) References to Statutes and Regulations. This Declaration contains many references to California and federal statutes and/or regulations applicable to the Development, the Community Association and the Owners of Lots in the Development that are in effect as of the date that this Declaration is Recorded in the Official Records of Sacramento County, California. In the event that any statute or other law or regulation is subsequently amended in a way that renders the corresponding provision of this Declaration to be inconsistent or in conflict with the amended or revised statute or regulation, the provision of this Declaration shall be deemed to be automatically amended or rescinded to conform to the revised statutory or regulatory provision and the Board of Directors shall be authorized and empowered to execute, acknowledge and Record an amendment reflecting that change in this Declaration without necessity of further Member approval, so long as the necessity for the change is confirmed in a legal opinion provided to the Community Association's Board of Directors by its legal counsel.

Section 17.03. Rule Against Perpetuities

If any interest purported to be created by this Declaration is challenged under the Rule against Perpetuities or any related rule of law, the interest shall be construed as becoming void and of no effect as of the end of the applicable period of perpetuities computed from the date when the period of perpetuities starts to run on the challenged interest; the "lives in being" for computing the period of perpetuities shall be: (a) those which would be used in determining the validity of the challenged interest; plus (b) those of the issue of the Board who are living at the time the period of perpetuities starts to run on the challenged interest.

Section 17.04. Change of Circumstances

No change of conditions or circumstances shall operate to extinguish, terminate or modify any of the provisions of this Declaration.

Section 17.05. References to the Covenants in Deeds

Deeds to and instruments affecting any Lot may contain the covenants set forth in this Declaration or may incorporate this Declaration by reference; but regardless of whether any such reference is made in any deed or instrument, this Declaration shall run with the land, and be binding upon the grantee-Owner or other person claiming through any instrument and his/her heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF, Members of the Heritage Park Owners Association, holding at least fifty-one percent (51%) of the Community Association's voting power, hereby affirm, approve, and adopt this Second Amended and Restated Declaration of Covenants, Conditions and Restrictions for Heritage Park pursuant to Article XVIII of the First Restated Declaration and California Civil Code Section 1355(a), by means of the signatures of the President and the Secretary of the Association, which Declaration shall be Recorded.

DATED: _____, 2009

Heritage Park Owners Association, a
California nonprofit mutual benefit
corporation.

_____, President

_____, Secretary

EXHIBIT "A"
HERITAGE PARK LEGAL DESCRIPTION OF THE
DEVELOPMENT

Village 1:

Lots 1 through 62 inclusive and Lot A as shown on that certain map entitled "Final Map of Heritage at Natomas Park Village 1," filed in the office of the County Recorder of Sacramento County, California on July 23, 2002, in Book 300 of Maps, at Page 3.

Village 1B:

Lots 1 through 85 inclusive, Lot A, and Lot B as shown on that certain map entitled "Final Map of Heritage at Natomas Park Village 1B," filed in the office of the County Recorder of Sacramento County, California on July 23, 2002, in Book 300 of Maps, at Page 4.

Village 2:

Lots 1 through 83 inclusive, Lot A, Lot B, Lot C, Lot D, Lot E, and Lot F as shown on that certain map entitled "Final Map of Heritage at Natomas Park Village 2," filed in the office of the County Recorder of Sacramento County, California on July 23, 2002, in Book 300 of Maps, at Page 2.

Village 4:

Lots 1 through 81 inclusive, Lot A, and Lot B as shown on that certain map entitled "Final Map of Heritage at Natomas Park Village 4," filed in the office of the County Recorder of Sacramento County, California on July 23, 2002, in Book 300 of Maps, at Page 1.

Village 5:

Lots 1 through 53 inclusive and Lot A as shown on that certain map entitled "Final Map of Heritage at Natomas Park Village 5," filed in the office of the County Recorder of Sacramento County, California on August 29, 2002, in Book 302 of Maps, at Page 4.

Village 17:

Lots 1 through 57 inclusive, Lot A and Lot B as shown on that certain map entitled "Final Map of Heritage at Natomas Park Village 17," filed in the office of the County Recorder of Sacramento County, California on July 23, 2002, in Book 300 of Maps, at Page 5.

Village 18:

Lots 1 through 93 inclusive, Lot A, Lot B, Lot C, Lot D, Lot E, Lot F, Lot G, Lot H, Lot I, Lot K, and Lot L as shown on that certain map entitled "Final Map of

Heritage at Natomas Park Village 18," filed in the office of the County Recorder of Sacramento County, California on November 20, 2002, in Book 307 of Maps, at Page 1.

Village 2B:

Lots 1 through 58 inclusive, Lot A, and Lot B as shown on that certain map entitled "Final Map of Heritage at Natomas Park Village 2B," filed in the office of the County Recorder of Sacramento County, California on December 11, 2002, in Book 309 of Maps, at Page 1.

Village 3:

Lot 13, Lots 25 through 27 inclusive, Lot A, Lot B, Lot C, Lot D, Lot E, Lot F, Lot G, and Lot H as shown on that certain map entitled "Final Map of Heritage at Natomas Park Village 3," filed in the office of the County Recorder of Sacramento County, California on May 23, 2002, in Book 297 of Maps.

Village 6:

Lots 1 through 80 inclusive, Lot A, Lot B, Lot C and Lot D as shown on that certain map entitled "Final Map of Heritage at Natomas Park Village 6," filed in the office of the County Recorder of Sacramento County, California on May 9, 2003, in Book 311 of Maps, at Page 4.

Village 9:

Lots 1 through 49 inclusive and Lot A as shown on that certain map entitled "Final Map of Heritage at Natomas Park Village 9" filed in the office of the County Recorder of Sacramento County, California on February 21, 2003, in Book 311 of Maps, at Page 8.

Village 15:

Lots 1 through 91 inclusive, Lot A, Lot B, Lot C, and Lot D as shown on that certain map entitled "Final Map of Heritage at Natomas Park Village 15," filed in the office of the County Recorder of Sacramento County, California on May 9, 2003, in Book 315 of Maps, at Page 3.

Village 16:

Lots 1 through 15 inclusive, Lot A, Lot B, and Lot C, as shown on that certain map entitled "Final Map of Heritage at Natomas Park Village 16," filed in the office of the County Recorder of Sacramento County, California on May 9, 2003, in Book 315 of Maps, at Page 5.

Village 19:

Parcels 15 through 17 inclusive as shown on that certain map entitled "Master Parcel Map of Natomas Park," filed in the office of the County Recorder of

Sacramento County, California on February 27, 2002 in Book 164 of Parcel Maps, at Page 8, and upon recordation to be shown as Lots 1 through 131 inclusive, Lot A, Lot B, Lot C, Lot D, and Lot E as shown on that proposed map entitled "Final Map of Heritage at Natomas Park Village 19," to be filed in the office of the County Recorder of Sacramento County, California.

Common Facility:

Parcel 13 as shown on that certain map entitled "Master Parcel Map of Natomas Park," filed in the office of the County Recorder of Sacramento County, California on February 27, 2002 in Book 164 of Parcel Maps, at Page 8

EXHIBIT "B"
DECLARATIONS OF ANNEXATION

"Declaration of Annexation for Phase 2 of Heritage Park", recorded on March 25, 2004 in the Official Records of Sacramento County, California in Book 20040325, at Page 1305.

EXHIBIT "C"
LEGAL DESCRIPTION OF THE
COMMON AREA

Village 1:

Lot A as shown on that certain map entitled "Final Map of Heritage at Natomas Park Village 1," filed in the office of the County Recorder of Sacramento County, California on July 23, 2002, in Book 300 of Maps, at Page 3.

Village 1B:

Lot A and Lot B as shown on that certain map entitled "Final Map of Heritage at Natomas Park Village 1B," filed in the office of the County Recorder of Sacramento County, California on July 23, 2002, in Book 300 of Maps, at Page 4.

Village 2:

Lot A, Lot B, Lot C, Lot D, Lot E, and Lot F as shown on that certain map entitled "Final Map of Heritage at Natomas Park Village 2," filed in the office of the County Recorder of Sacramento County, California on July 23, 2002, in Book 300 of Maps, at Page 2.

Village 2B:

Lot A, and Lot B as shown on that certain map entitled "Final Map of Heritage at Natomas Park Village 2B," filed in the office of the County Recorder of Sacramento County, California on December 11, 2002, in Book 309 of Maps, at Page 1.

Village 3:

Lot A, Lot B, Lot C, Lot D, Lot E, Lot F, Lot G, and Lot H as shown on that certain map entitled "Final Map of Heritage at Natomas Park Village 3," filed in the office of the County Recorder of Sacramento County, California on May 23, 2002, in Book 297 of Maps, at Page 6.

Village 4:

Lot A, and Lot B as shown on that certain map entitled "Final Map of Heritage at Natomas Park Village 4," filed in the office of the County Recorder of Sacramento County, California on July 23, 2002, in Book 300 of Maps, at Page 1.

Village 5:

Lot A as shown on that certain map entitled "Final Map of Heritage at Natomas Park Village 5," filed in the office of the County Recorder of Sacramento County, California on August 29, 2002, in Book 302 of Maps, at Page 4.

Village 6:

A portion of Parcel 4 as shown on that certain map entitled "Master Parcel Map of Natomas Park," filed in the office of the County Recorder of Sacramento County, California on February 27, 2002 in Book 164 of Parcel Maps, at Page 8, and upon recordation to be shown as Lot A, Lot B, Lot C and Lot D as shown on that certain map entitled "Final Map of Heritage at Natomas Park Village 6," filed in the office of the County Recorder of Sacramento County, California on May 9, 2003, in Book 311 of Maps, at Page 4.

Village 9:

A portion of Parcel 7 as shown on that certain map entitled "Master Parcel Map of Natomas Park," filed in the office of the County Recorder of Sacramento County, California on February 27, 2002 in Book 164 of Parcel Maps, at Page 8, and upon recordation to be shown as Lot A as shown on that certain map entitled "Final Map of Heritage at Natomas Park Village 9" filed in the office of the County Recorder of Sacramento County, California on February 21, 2003, in Book 311 of Maps, at Page 8.

Village 15:

A portion of Parcel 24 as shown on that certain map entitled "Master Parcel Map of Natomas Park," filed in the office of the County Recorder of Sacramento County, California on February 27, 2002 in Book 164 of Parcel Maps, at Page 8, and upon recordation to be shown as Lot A, Lot B, Lot C, and Lot D as shown on that certain map entitled "Final Map of Heritage at Natomas Park Village 15," filed in the office of the County Recorder of Sacramento County, California on May 9, 2003, in Book 315 of Maps, at Page 3.

Village 16:

Parcel 23 and a portion of Parcel 24 as shown on that certain map entitled "Master Parcel Map of Natomas Park," filed in the office of the County Recorder of Sacramento County, California on February 27, 2002 in Book 164 of Parcel Maps, at Page 8, and upon recordation to be shown as Lot A, Lot B, and Lot C, as shown on that certain map entitled "Final Map of Heritage at Natomas Park Village 16," filed in the office of the County Recorder of Sacramento County, California on May 9, 2003, in Book 315 of Maps, at Page 5.

Village 17:

Lot A and Lot B as shown on that certain map entitled "Final Map of Heritage at Natomas Park Village 17," filed in the office of the County Recorder of Sacramento County, California on July 23, 2002, in Book 300 of Maps, at Page 5.

Village 18:

Lot A, Lot B, Lot C, Lot D, Lot E, Lot F, Lot G, Lot H, Lot I, Lot K, and Lot L as shown on that certain map entitled "Final Map of Heritage at Natomas Park Village 18," filed in the office of the County Recorder of Sacramento County, California on November 20, 2002, in Book 307 of Maps, at Page 1.

Village 19:

Portions of Parcels 15 through 17 inclusive as shown on that certain map entitled "Master Parcel Map of Natomas Park, " filed in the office of the County Recorder of Sacramento County, California on February 27, 2002 in Book 164 of Parcel Maps, at Page 8, and upon recordation to be shown as Lot A, Lot B, Lot C, Lot D, and Lot E as shown on that proposed map entitled "Final Map of Heritage at Natomas Park Village 19," to be filed in the office of the County Recorder of Sacramento County, California.

Common Facility:

Parcel 13 as shown on that certain map entitled "Master Parcel Map of Natomas Park," filed in the office of the County Recorder of Sacramento County, California on February 27, 2002 in Book 164 of Parcel Maps, at Page 8.

**RECORDING REQUESTED BY, AND
WHEN RECORDED, MAIL TO:**

**BAYDALINE & JACOBSEN LLP
Attn: Jennifer M. Jacobsen, Esq.
895 University Avenue Sacramento, California 95825**

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(Space Above For Recorder's Use)