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FOUNTAINGROVE II EAST,
FOUNTAINGROVE II WEST
AND THE SUMMIT
OPEN SPACE MAINTENANCE DECLARATION

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EXHIBITS

EXHIBIT "A" Legal Description of Annexable Real Property Owned by Dividend Fountaingrove Partners
EXHIBIT "B" Legal Description of Annexable Real Property Owned by Fountaingrove Development Company LLC
EXHIBIT "C" Legal Description of Annexable Real Property Owned by Debra Investment Corporation

FOUNTAINGROVE II EAST,
FOUNTAINGROVE II WEST
AND THE SUMMIT
OPEN SPACE MAINTENANCE DECLARATION

THIS OPEN SPACE MAINTENANCE DECLARATION is executed by FOUNTAINGROVE VIEW PARTNERS L.P., formerly known as DIVIDEND FOUNTAINGROVE PARTNERS, a California limited partnership ("DFP"), FOUNTAINGROVE DEVELOPMENT COMPANY, LLC, a Delaware limited liability company ("FDC"), DEBRA INVESTMENT CORPORATION, a California corporation ("DIC") (FDC, DFP and DIC are sometimes hereinafter individually referred to as a "Co-Declarant" and collectively as the "Declarant"), DAVID D. BROWN and LYDIA A. BROWN, husband and wife (collectively "Brown") and WATT RESIDENTIAL PARTNERS, a California general partnership ("WRP") with reference to the following facts:

- A. Declarant is developing a residential development known collectively as "Fountaingrove II" on approximately 583 acres. Fountaingrove II consists of three separate portions of real property known as Fountaingrove II - West, Fountaingrove II - East and The Summit at Fountaingrove, which are owned respectively by DFP, FDC and DIC. Brown and WRP are merchant builders (as hereinafter defined) who have purchased portions of the real property comprising Fountaingrove II - East from FDC. The development will be constructed in phases. It is anticipated that the development, if and when completed as presently contemplated, will contain approximately 593 residential units. The first phase consists of forty-three (43) residential lots and is located on the real property described on (i) the subdivision map entitled "Fountaingrove II - East, Unit 4" filed in the records of Sonoma County, California, in Book 542 of Maps at pages 27 through 31, which real property is owned by WRP; the second phase consists of twenty-two (22) residential lots and is located on the real property described on (ii) the subdivision map entitled "Fountaingrove II - East, Unit 5" filed in the records of Sonoma County, California, in Book 542 of Maps at pages 32 through 35, which real property is owned by WRP; the third phase consists of five (5) residential lots and is located on the real property described on (iii) the subdivision map entitled "Fountaingrove II - East, Unit 1" filed in the records of Sonoma County, California, in Book 527 of Maps at pages 22 through 25, which real property is owned by Brown.
- B. As a part of the approval process for the development, Declarant is required to establish a property owners' association to own and/or maintain certain open space, buffer and landscape areas within and for the benefit of owners residing within the development.
- C. The purpose of this Declaration is to describe the association's rights and duties with respect to the maintenance of the open space, buffer and certain in-tract landscape areas and to impose certain obligations and restrictions on the residential lots in the development regarding membership in the association on the owners of residential lots and the obligation to pay a prorated share of the assessments levied by the association on the owners of residential lots to fund its maintenance obligations. The restrictions and obligations will benefit and bind each lot and owner and successive owner thereto as covenants running with the land and equitable servitudes pursuant to a common plan of development and pursuant to the authority of Civil Code section 1354.

DECLARANT DECLARES AS FOLLOWS:

ARTICLE 1 - Definitions

Unless the context indicates otherwise, the following terms shall have the following definitions:

- 1.1 Articles. The Articles of Incorporation of the Association and any amendments thereto.
- 1.2 Association. Fountaingrove II Open Space Maintenance Association, a California nonprofit mutual benefit corporation.
- 1.3 Association Property. Any additional property subsequently annexed into the Development, as described in Article 11, that is owned and/or maintained by the Association in accordance herewith or in accordance with requirements of the City of Santa Rosa. Association Property includes property owned by the Association (e.g., common open space lots within the Development as shown on the final recorded maps therefor), that portion of any Residential Lot subject to an Open Space Easement (as hereinafter defined) or an easement in favor of the Association for maintenance purposes, and any real property owned by the City or any other governmental entity which is required to be maintained by the Association pursuant to any entitlement, approval or permit applicable to the Development.
- 1.4 Board. The Board of Directors of the Association.
- 1.5 Bylaws. The Bylaws of the Association and any amendments thereto.
- 1.6 Declarant. Fountaingrove View Partners, L.P., formerly known as Dividend Fountaingrove Partners, a California limited partnership, Fountaingrove Development Company, LLC, a Delaware limited liability company, and Debra Investment Corporation, a California corporation, (each individually referred to herein as "Co-Declarant"), and any successor or assign that assumes in writing the rights and duties of a "Co-Declarant" hereunder. Unless the context indicates otherwise, the term "Declarant" shall refer collectively to the foregoing entities.
- 1.7 Declaration. This Fountaingrove II Open Space Maintenance Declaration and any amendments or corrections thereto.
- 1.8 Development. The residential development that is constructed on the Property and made subject to this Declaration by annexation in accordance with Article 11 herein, including the Residential Lots and Association Property, and all Improvements thereon.
- 1.9 Governing Documents. This Declaration, the Articles of Incorporation, and the Bylaws of the Association.
- 1.10 Improvements. Any fixtures affixed to any Association Property within the meaning of Civil Code section 660.
- 1.11 Kleinfelder Report. The Geologic Investigation and Geotechnical Analysis Report prepared by Kleinfelder, Inc., dated January 19, 1994, as Job No. 41-2134-02. Declarant shall provide the Association with a copy of the report.
- 1.12 Lot or Residential Lot. Lots 1-43 of Fountaingrove II - East, Unit 4, Lots 1-22 of Fountaingrove II - East, Unit 5 and Lots 1-5 of Fountaingrove II - East, Unit 1 as shown on the Maps and any additional residential lots that are subsequently annexed into the Development as described in Article 11.
- 1.13 Map or Maps. The subdivision map entitled "Fountaingrove II - East, Unit 1" filed for record in Sonoma County, California, in Book 527 of Maps at pages 22 through 25, the subdivision map entitled

"Fountaingrove II - East, Unit 4" filed in the records of Sonoma County, California on October 11, 1995 in Book 542 of Maps at pages 27 through 31, the subdivision map entitled "Fountaingrove II - East, Unit 5" filed in the records of Sonoma County, California on October 11, 1995 in Book 542 of Maps at pages 32 through 35 and any additional recorded final maps that describe any Residential Lots or Association Property that may be subsequently annexed into the Development as described in Article 11.

1.14 Member. A member of the Association.

1.15 Merchant Builder. Any Person who has acquired from Declarant any portion of the Property (including any portion of the property that subsequently is annexed into the Development) for the purpose of improving such Property with residences and related Improvements thereon for resale to the general public. Except with respect to voting rights as provided in this Declaration, a Merchant Builder shall be deemed to be an Owner of all Lots and/or Condominiums it owns and shall be subject to all of the rights and obligations of an Owner as provided for in this Declaration, the Articles, and the Bylaws, provided, however, that the term "Merchant Builder" shall not mean or refer to Declarant, its successors or assigns. Brown and WRP each shall be deemed a "Merchant Builder" under the Declaration.

1.16 Mortgage. A recorded mortgage or deed of trust against a Lot in the Development.

1.17 Mortgagee. A mortgagee under a Mortgage or a beneficiary under a deed of trust recorded against a Lot in the Development.

1.18 Open Space Management Plan. The open space management plan contained in the Fountaingrove II Design Program and any amendments thereto. A copy of the Fountaingrove II Design Program is on file with the Community Development Department of the City of Santa Rosa.

1.19 Owner. The record title owner or owners of a Lot in the Development and including Declarant and any Merchant Builder that owns a Lot.

1.20 Person. Any natural person, partnership, corporation or other legal entity.

1.21 Property. The land shown on the Maps, together with all Improvements thereon and any additional land, as is more particularly described in Exhibit(s) "A," "B," and/or "C," together with all Improvements thereon, that may be subsequently annexed into the Development in accordance with the provisions of Article 11.

1.22 Rules. Rules or regulations adopted by the Association from time to time pursuant to the authority of Section 4.6(ii).

ARTICLE 2 - Property Rights and Easements

2.1 Type of Development. This Development is a planned development within the meaning of Civil Code section 1351(k) and shall be developed in multiple phases. If all anticipated phases are developed and annexed, the Development will contain a maximum of 593 Residential Lots. Completion of the Development is anticipated to take a number of years. Declarant has no obligation to annex any additional property into the Development and makes no representation or warranty that the Development will be completed as anticipated or, if completed, will contain 593 Residential Lots. If the Development is ultimately completed with fewer than 593 Residential Lots and the anticipated number of open space parcels owned and/or maintained by the Association remains substantially unchanged, the cost of

maintaining the Association Property will be borne by fewer Lots than originally anticipated; and therefore the cost of maintenance per Lot may increase.

2.2 Property Rights. Each Owner shall own a Residential Lot(s) and shall be a Member of the Association. The Association shall own certain portions of the Association Property. In addition, portions of certain Residential Lots may be subject to easements in favor of the Association for maintenance purposes.

2.3 Authority Over Association Property. The Board or Declarant (as long as Declarant owns twenty-five percent (25%) or more of the Lots in the Development, including Lots that may be annexed into the Development as described in Article 11) shall have the power and the right in the name of the Association and all of the Owners to grant, convey or otherwise transfer to any Owner or any other Person fee title, easements, exclusive use easements or rights, rights-of-way and/or dedications in, on, over or under all or any portion of any Association Property (other than the common space lots and Open Space Easement areas defined and described in the Open Space Management Plan) owned by the Association in order to: (i) construct, erect, operate, maintain or replace lines, cables, wires, conduits or other devices for electricity, cable television, power, telephone and other purposes, public sewers, storm water drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes and any similar public or quasi-public Improvements or facilities; (ii) accommodate any encroachment or boundary line adjustment that in the sole discretion of Declarant or the Board does not unreasonably interfere with the use and enjoyment by the Members of the Association Property; (iii) satisfy conditions or requirements imposed by any governmental entity; or (iv) accomplish any other purpose that in the sole discretion of Declarant or the Board is in the best interest of the Association and its Members and does not unreasonably interfere with the use and enjoyment by the Members of the Association Property. Each Owner, in accepting a deed to a Lot, expressly consents to such action and, to the extent necessary or advisable, authorizes and appoints the Association and Declarant (as long as Declarant owns twenty-five percent (25%) or more of the Lots in the Development, including any Lots that subsequently may be annexed into the Development as described in Article 11) as attorney-in-fact of such Owner to execute and deliver all documents and interests to accomplish the action, including but not limited to, grant deeds, easements, subdivision maps, and lot-line adjustments.

Notwithstanding anything herein to the contrary, Declarant may not require the Association to convey fee title to any portion of the Association Property without the consent of Members holding a majority of the total voting power of the Association.

2.4 Conveyance of Association Property. The Association Property to be owned by the Association in each phase of the Development shall be conveyed to the Association free of all liens and encumbrances on or before the date the Declarant first conveys title to a Lot in that phase to a third-party purchaser. The Association Property owned by the Association, as the servient tenement, is subject to the rights reserved in Section 2.3 and to an easement granted and reserved in favor of each Lot, as the dominant tenement, and to Declarant, with the right to grant such easements to owners of Lots for pedestrian ingress and egress over the paths and trails situated on the servient tenement, if any, and for access to and use of any part of the servient tenement by Declarant, public or private utility providers, their subcontractors and agents to install, maintain, repair, relocate or replace any utility lines, cables, wires, pipes, meters, landscaping, paths, fences, or other equipment or Improvements installed within, on or over the servient tenement that is consistent with the development plans approved by the City of Santa Rosa, including, but not limited to, the zoning on the Association Property, the conditions of any applicable conditional use permit granted by the City of Santa Rosa, and the terms and provisions of the Open Space Management Plan. The easement rights which are to be reserved and retained by Declarant in favor of Declarant (which rights may be assigned to public or private utility providers and their subcontractors and agents without the consent of any other Person) over the Association Property following conveyance of a portion thereof to the Association include the right to temporarily restrict access to any portion of the Association Property, for safety or other reasons, by the construction of

fences or other barriers, or by the adoption of such other measures that restrict access to authorized personnel only, and the right to use portions of the Association Property as a staging or storage area for materials and equipment to be used in connection with the construction of improvements within the Development and to restrict access thereto by means of a fence or otherwise during that period during which construction is continuing on any portion of the Development.

The Association may adopt Rules regulating the use of the Association Property, provided such Rules do not unreasonably interfere with the exercise of the foregoing easement rights and are consistent with the restrictions contained in this Declaration, the zoning on the Association Property, the conditions of any applicable conditional use permit and/or the Open Space Management Plan.

2.5 Open Space Easement. All or portions of the Association Property and the Lots may be subject to an open space easement (as described in the Open Space Management Plan, the zoning on the Property, and the conditions of any applicable conditional use permit) recorded pursuant to the Open Space Easement Act of 1974 (the "Open Space Easement") contained in Government Code sections 51070 through 51095. The easement(s), if established, will be contained in deeds or other appropriate instruments that shall be recorded in the records of Sonoma County, California.

ARTICLE 3 - Association's Maintenance Obligations

3.1 Association's Maintenance Responsibilities. The Association shall maintain the landscaping and Improvements within the Association Property. Maintenance shall be in accordance with the Open Space Management Plan, the zoning on the Property and the conditions of any applicable conditional use permit, and in accordance with any implementing guidelines adopted by the Board, as amended from time to time. In addition, the Association shall maintain annually the slope indicator casings on the property recommended in the Kleinfelder Report if, and when, this property is annexed into the Development.

The Association's maintenance responsibilities over any Association Property that is part of a subsequent phase will not commence until the phase has been annexed as described in Section 11.1 and assessments have commenced against the Lots in that phase as described in Section 5.7.

3.2 Inspection and Maintenance Guidelines. The Board shall adopt inspection and maintenance guidelines for the periodic inspection and maintenance of all Improvements and landscaping that the Association is required to maintain in accordance with the Open Space Management Plan, the zoning on the Property, and the conditions of any applicable conditional use permit, including but not limited to, drainage improvements, hillside areas, paths, fences, landscaping, and the irrigation system.

The Board periodically, and at least once every two (2) years, shall review and update the inspection and maintenance guidelines.

The Board shall take all appropriate steps to implement and comply with the inspection and maintenance guidelines.

ARTICLE 4 - The Association

4.1 Formation of the Association. The Association is a nonprofit mutual benefit corporation formed under the laws of the State of California. The Association shall commence operations no later than the date that assessments commence. Pending the commencement of the Association's operations, Declarant shall perform the duties and shall have the rights of the Association as described herein.

4.2 Governing Body. The governing body of the Association shall be the Board. It shall be the responsibility of the Board to ensure that the Association exercises its rights and performs its duties as described within the Declaration, the Articles, the Bylaws and any amendments thereto.

4.3 Membership. Each Owner of the fee interest in a Lot automatically shall be a Member of the Association. If there is more than one (1) fee title Owner of a Lot, each Owner shall be a Member. The holder of a security interest in a Lot shall not be a Member of the Association except and until that holder obtains both the legal and equitable interest in the Lot. If any Owner executes an installment contract of sale for the sale of that Owner's Lot, the purchaser shall become the Member if the contract is recorded in the public records and if the Association is notified in writing of the contract; and the Owner no longer shall be a Member. If the purchaser's rights are terminated under the contract without transfer of title to the purchaser, the Board, upon receipt of satisfactory evidence of the termination of the purchaser's rights, shall reinstate the Owner as the Member; and the purchaser shall no longer be a Member.

Membership shall be appurtenant to the Lot and may not be separated therefrom. Any transfer of an Owner's fee interest in a Lot (other than a security interest), by operation of law or otherwise, automatically transfers the membership to the Owner's successor in interest. No Owner may resign or revoke his or her membership for any reason.

4.4 Membership Classes and Voting Rights. The Association shall have the following three (3) classes of voting memberships:

(i) Class A. Class A Owners are all Owners except the Declarant or Merchant Builders. Class A Owners shall be entitled to one (1) vote for each Lot in which he or she owns an interest. If more than one (1) Owner owns an interest in a Lot, only one (1) vote may be cast with respect to that Lot.

(ii) Class B. The Class B Owner shall be the Declarant, who shall be entitled to three (3) votes for each Lot owned by the Declarant and the Merchant Builders. Class B membership shall cease and be irreversibly converted to Class A on the first to occur of the following:

(a) On the fourth (4th) anniversary of the first conveyance of a Lot in the most recent phase of the Development; or

(b) On the tenth (10th) anniversary of the first conveyance of a Lot in the first phase of the Development if Declarant has sold seventy-five percent (75%) of the five hundred ninety-three (593) Lots at such time or, if not, the twelfth (12th) anniversary of the first conveyance of a Lot in the first (1st) phase in the Development.

(iii) Class C. The Class C Owner shall be Fountaingrove Development Company, LLC, a Delaware limited liability company, who shall be entitled to vote as a Class C Owner as long as Declarant or any Merchant Builder owns any Lots in the Development. Upon annexation of any or all of the property described in Exhibit A, Dividend Fountaingrove Partners, a California limited partnership, and Fountaingrove Development Company, LLC, a Delaware limited liability company, shall each be Class C Owners with equal rights hereunder. The Class C Owner shall be entitled to elect a majority of the Members of the Board of Directors. With the exception of the election of directors hereunder, the Class C membership shall not be considered part of the voting power of the Association. The Class C membership shall terminate upon the last to occur of the following events:

(a) On the fourth (4th) anniversary of the first (1st) conveyance of a Lot in the most recent phase of the Development; or

(b) On the sixth (6th) anniversary of the first (1st) conveyance of a Lot in the first (1st) phase of the Development if Declarant has sold seventy-five percent (75%) of the five hundred ninety-three (593) Lots at such time or, if not, the, eight (8th) anniversary of the first (1st) conveyance of a Lot in the first (1st) phase in the Development.

As long as Classes A and B exist, any action by the Association that requires approval by the Owners shall require approval by the designated percentage of voting power in each class, except the action described in Section 4.11 of this Declaration. Voting rights shall vest at the time that assessments are levied against the Owner's Lot. Except as otherwise provided in this Declaration, the Articles or the Bylaws, and subject to the provisions of Section 4.11, all matters requiring the approval of the Owners shall be approved if: (i) approved at a duly-called regular or special meeting at which a quorum was present, either in person or by proxy, by Owners holding the majority of the total voting power of all Owners present, either in person or by proxy; (ii) approved by written ballot pursuant to the requirements of Corporations Code section 7513; or (iii) approved by unanimous written consent of all the Owners. If the vote or written consent of each Class of membership is required, any requirement that the vote of the Declarant be excluded is not applicable except as provided in Section 4.11.

Each Declarant shall have the sole and exclusive right to exercise all votes attributable to portions of the Property owned by any Merchant Builder that purchased all or any portion of the Property (including property that subsequently may be annexed into the Development) from that Declarant. Each Merchant Builder, by acceptance of a deed to any Property within the Development (including any property that may be annexed into the Development), irrevocably grants to the Declarant that conveyed the Property to the Merchant Builder a proxy to exercise the Merchant Builder's voting power. The proxy, with respect to each Residential Lot to which it relates, shall terminate, as to such Residential Lot, on the first to occur of the following: (i) the Merchant Builder conveys the Residential Lot to any Person who is not a Merchant Builder; (ii) the Merchant Builder and Declarant execute a written termination agreement; or (iii) the tenth (10th) anniversary of the date the Residential Lot is conveyed from the Declarant to the Merchant Builder.

4.5 Joint Ownership Votes. The vote that is attributed to each Lot may not be cast on a fractional basis. If the Lot has more than one (1) Owner and the Owners are unable to agree as to how the vote shall be cast, the vote shall be forfeited on the matter in question. Any vote cast by an Owner for any Lot is presumed conclusively to be the vote cast by all the Owners of that Lot. If more than one (1) Owner casts a vote attributed to a Lot on any matter on which only one (1) vote could be cast for that Lot, the votes cast by such Owners shall be counted as one (1) vote if the votes are the same; if the votes are different, the vote cast by such Owners shall not be counted and shall be forfeited.

4.6 Powers of the Association. The Association shall have all the powers of a nonprofit mutual benefit corporation organized under the general nonprofit mutual benefit corporation laws of California, subject only to such limitations on the exercise of these powers as are set forth in the Articles, Bylaws and this Declaration and the zoning and the Association Property, the conditions of any applicable conditional use permit, and the terms and conditions of the Open Space Management Plan. The Association shall have the power to do any lawful thing that may be authorized, required or permitted to be done by the Association under this Declaration, the Articles and the Bylaws and to do and perform any act that may be necessary or proper for or incidental to the exercise of any of the express powers of the Association, including without limitation, each of the following:

(i) The Board shall establish, fix and levy assessments against the Lots and collect and enforce payment of such assessments in accordance with the provisions of Article 5 of this Declaration.

(ii) The Board may adopt, amend and repeal Rules as it considers appropriate, provided any such Rules shall be consistent with the general scheme of this Declaration. The Rules shall regulate the use and enjoyment of the Association Property and such other matters as are authorized herein. If any provision of this Declaration, the Articles or the Bylaws is inconsistent with or materially conflicts with any Rule, the Declaration, the Articles or the Bylaws shall control to the extent of any such inconsistency.

(iii) The Association may borrow money to meet any anticipated or unanticipated cost of the Association and, subject to the provisions of Section 4.12(v), may mortgage, encumber or pledge Association assets (including, but not limited to, assessments) as security for such borrowing.

(iv) In addition to any other enforcement rights described in this Declaration and the Bylaws or as may be authorized by law, subject to any restrictions on the Association's enforcement rights, including any due process requirements imposed by this Declaration, the Bylaws or by law, the Board may take any of the following actions against any Person or entity whose act or failure to act violates or threatens to violate any provisions of this Declaration, the Bylaws or Rules: (a) impose monetary penalties, including late charges and interest; (b) suspend voting rights in the Association; (c) suspend use privileges over any Association Property within the Development; and (d) commence any legal or equitable action for damages, injunctive relief or both. The determination of whether to impose any of the foregoing sanctions shall be within the sole discretion of the Board. Any legal action may be brought in the name of the Association on its own behalf and on behalf of any Owner who consents; and, except as otherwise provided herein, the prevailing party in such action shall be entitled to recover costs and reasonable attorneys' fees. The Board, in its sole discretion, may resolve or settle any dispute, including any legal action in which the Association is a party, under such terms and conditions as it considers appropriate.

Under no circumstances may the Association cause a forfeiture or abridgement of an Owner's right to the full use and enjoyment of the Owner's Lot on account of the failure of the Owner to comply with the provisions of the Declaration, Articles, Bylaws or Rules, except by judgment of a court or decision of an arbitrator or on account of a foreclosure or sale under power of sale for failure of the Owner to pay assessments duly levied by the Association.

Before the Board imposes any monetary penalties (other than late fees on delinquent assessments) or suspension of membership rights or Association Property use privileges against any Member for failure to comply with the Declaration, these Bylaws or the Rules, the Board must act in good faith and satisfy each of the following requirements:

(a) The Member must be given fifteen (15) calendar days' prior notice of the discipline to be imposed and the reasons for the imposition of the discipline. Notice may be given by any method reasonably calculated to give actual notice. If the notice is given by mail, it must be sent by first-class or registered mail to the last address of the Member as shown on the Association's records.

(b) The Member must be given an opportunity to be heard, orally or in writing, by the Board, not less than five (5) calendar days before the effective date of the imposition of the discipline. The Member shall have the opportunity to present witnesses on the Member's behalf and to cross-examine any witnesses that may testify against the Member.

(v) The Association may delegate any of its powers and duties to its employees, committees or agents, including a professional management agent, provided the Association may not delegate the authority to convey Association Property, borrow money, adopt Rules, levy assessments, impose penalties, or institute legal action.

4.7 Duties of the Association. In addition to the duties described in the Articles or Bylaws, or elsewhere in this Declaration, the Association shall have the duty to manage the Association Property, perform the maintenance as described in Section 3.1, prepare, periodically update, and comply with the maintenance and inspection guidelines described in Section 3.2, prepare and distribute financial statements, reports and copies of Governing Documents as described in Section 4.10, enforce bonded obligations as described in Section 4.11, levy and collect assessments as described in Article 5, prepare, when required, the reserve studies described in Section 5.3 and annually review and implement adjustments as required, and procure and maintain the insurance as described in Article 6. The Association shall perform such other acts as may be reasonably necessary to exercise its powers to perform its duties under any of the provisions of this Declaration, the Articles, Bylaws, Rules or Board resolutions.

4.8 Taxes and Assessments. The Association shall pay all real and personal property taxes and assessments and all other taxes levied against the Association, the Association Property or the personal property owned by the Association. Such taxes and assessments may be contested or compromised by the Association, provided that they are paid or that a bond insuring payment is posted before the sale or the disposition of any Property to satisfy the payment of such taxes.

4.9 Utility Service to the Association Property. The Association may acquire, provide and pay for any utility services that the Board, in its sole discretion, considers necessary or advisable for the Association Property.

4.10 Reporting Requirements. The Association shall prepare and distribute to the Members the following:

(i) A pro forma operating budget for each fiscal year shall be distributed not less than forty-five (45) days nor more than sixty (60) days before the beginning of the fiscal year consisting of at least the following:

(a) estimated revenue and expenses on an accrual basis,

(b) a summary of the Association's reserves based on the most recent reserves review or study conducted pursuant to Section 5.3, which shall be printed in bold type and shall include the following:

(1) the current estimated replacement cost, estimated remaining life and estimated useful life of each major component which the Association is obligated to maintain with a useful life of more than one year and less than 30 years and replacement cost in excess of \$1000 (collectively the "Major Components");

(2) as of the end of the fiscal year for which the study was prepared:

a. the current estimate of the amount of cash reserves necessary to repair, replace, restore or maintain the Major Components; and

b. the current amount of accumulated cash reserves actually set aside to repair, replace, restore or maintain the Major Components; and

(3) the percentage that the amount in subparagraph (2)b is to the amount in subparagraph (2)a;

(c) a statement as to whether the Board has determined or anticipates that the levy of one (1) or more special assessments will be required to repair, replace or restore any Major Component or to provide adequate reserves therefor;

(d) a general statement addressing the procedures used for the calculation establishing those reserves to defray the future repair, replacement or additions to the Major Components; and

(e) a statement describing the Members' rights to obtain copies of the minutes of meetings of the Board of Directors, including a description of how and where these minutes may be obtained.

In lieu of the distribution of the pro forma operating budget, the Board may elect to distribute a summary of said budget to all its Members with a written notice in at least 10-point bold type on the front page of the summary that the budget is available at the Association's business office or another suitable location within the boundaries of the Development and that copies will be provided on request and at the expense of the Association. If any Member requests a copy of the pro forma operating budget to be mailed to the Member, the Association shall provide the copy to the Member by first-class United States mail at the expense of the Association, which copy shall be mailed within five (5) days of the receipt of the request.

(ii) A balance sheet rendered as of an accounting date that is the last day of the month closest in time to six months from the date of closing of the first sale of a Lot (the "Accounting Date"), and an operating statement for the period commencing with the date of the closing of the first sale and ending on the Accounting Date. The operating statement shall include a schedule of assessments, received or receivable, identified by the Lot number and the name of the Owner assessed. Copies of the balance sheet and operating statement shall be distributed to each Owner and any Mortgagee that has requested a copy within sixty (60) days after the Accounting Date.

(iii) An annual report consisting of a balance sheet rendered as of the last day of the fiscal year, an operating statement for the fiscal year, and a statement of change in its financial position for the fiscal year. A copy of the annual report shall be distributed to each Owner and any Mortgagee that has requested a copy within one-hundred twenty (120) days after the close of the fiscal year. In any fiscal year in which the gross income of the Association exceeds Seventy-five Thousand Dollars (\$75,000), a copy of the review of the annual report prepared by a licensee of the California State Board of Accountancy in accordance with generally-accepted accounting principles shall be distributed with the annual report. If the annual report is not reviewed by an independent accountant, the report shall be accompanied by the certificate of an authorized officer of the Association that the report was prepared from the books and records of the Association without independent audit or review.

(iv) A statement of the Association's policies and practices in enforcing its rules against Owners for delinquent regular or special assessments, including the recording and foreclosing of liens against a delinquent Owner's Lot. A copy of this statement shall be distributed to each Owner and any Mortgagee that has requested a copy within sixty (60) days prior to the beginning of each fiscal year.

(v) Copies of this Declaration, the Articles, Bylaws, Association Rules and a statement regarding delinquent assessments as described in Section 5.11 shall be provided any Owner within ten (10) days of the mailing or delivery of a written request. The Board may impose a fee to provide these materials but not to exceed the Association's reasonable costs in preparing and reproducing the material.

(vi) A summary of the provisions of Civil Code section 1354 which specifically references said section and which includes the following language shall be provided annually to the Members:

Failure by any member of the Association to comply with the pre-filing requirements of section 1354 of the Civil Code may result in the loss of your rights to sue the association or another member of the association regarding enforcement of the governing documents.

The summary shall be provided either at the time the pro forma budget described in Section 4.10(f) is distributed or in the manner set forth in Corporations Code section 5016.

The provisions of this Section 4.10 are intended to comply with the requirements of Civil Code sections 1354(i) and 1365. If these Civil Code sections are amended or repealed in any manner, the provisions of this Section 4.10 shall be amended or repealed in the same manner.

4.11 Enforcement of Bonded Obligations. If the Association is the obligee under a bond or other arrangement ("Bond") to secure performance of the commitment of the Declarant, or a successor or assign, to complete the applicable Association Property Improvements not completed at the time the California Commissioner of Real Estate issued a final subdivision report for the latest phase of the Development, the Board will consider a vote on the question of action by the Association to enforce the obligations under the Bond with respect to any applicable Improvement for which a notice of completion has not been filed by the later of: (i) sixty (60) days after the completion date specified for that Improvement in the "planned construction statement" appended to the Bond; or (ii) thirty (30) days after the expiration of any written extension given by the Association. If the Board fails to consider a vote on the action to enforce the obligations under the Bond, or if the Board decides not to initiate action to enforce the obligations under the Bond, then on receipt of a petition signed by Owners other than Declarant representing not less than five percent (5%) of the total voting power of the Association, the Board shall call a special meeting of Owners for the purpose of voting to override the decision of the Board not to initiate action or to compel the Board to take action to enforce the obligations under the Bond. The Board shall give written notice of the meeting to all Owners entitled to vote in the manner provided in this Declaration or in the Bylaws for notices of special meetings of Owners. The meeting shall be held not less than thirty-five (35) days nor more than forty-five (45) days after receipt of the petition. At the meeting, the vote in person or by proxy by a majority of the Owners entitled to vote (other than Declarant) in favor of taking action to enforce the obligations under the Bond shall be considered the decision of the Association; and the Board shall implement this decision by initiating and pursuing appropriate action in the name of the Association.

Upon satisfaction of the Declarant's obligation to complete the Association Property Improvements, the Board shall acknowledge in writing that it approves the release of the Bond and shall execute any other documents or instruments as may be necessary or advisable to effect the release of the Bond. The Board shall not condition its approval to release the Bond on the satisfaction of any condition other than the completion of the Association Property Improvements as described on the "planned construction statement." Any dispute between the Declarant and the Association regarding the completion of the Association Property shall be submitted to binding arbitration by the American Arbitration Association or any successor thereto for resolution in accordance with its commercial rules; and the prevailing party shall be entitled to recover costs, including reasonable attorneys' fees.

4.12 Limitations on Authority of the Board. The Board shall not take any of the following actions without the vote or written consent of Owners holding fifty-one percent (51%) of the voting rights of each class of Owners if two (2) classes exist; or, if only one (1) class exists, fifty-one percent (51%) of the voting rights of all Owners and fifty-one percent (51%) of the voting rights of all Owners other than Declarant:

(i) Incur aggregate expenditures for capital improvements to the Association Property in any fiscal year in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year;

(ii) Sell, during any fiscal year, property of the Association having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year, provided, however, that Association Property comprised of the common open space lots as shown on any Map within the Property or which is subject to an Open Space Easement shall not be sold or otherwise conveyed without the prior written approval of the City of Santa Rosa, which consent shall not be unreasonably withheld;

(iii) Pay compensation to members of the Board or to officers of the Association for services performed in the conduct of the Association's business, provided that the Board may reimburse a member or officer for expenses incurred in carrying on the business of the Association;

(iv) Enter into a contract with a third Person to furnish goods or services for the Association Property or the Association for a term longer than one (1) year with the following exceptions:

(a) A management contract, the terms of which have been approved by the Federal Housing Administration or Veterans Administration to the extent required;

(b) A contract with a public utility company if the rates charged for the materials or services are regulated by the Public Utilities Commission, provided the term does not exceed the shortest term for which the supplier will contract at the regulated rate; and

(c) Prepaid casualty or liability insurance policies not to exceed three (3) years' duration, provided the policy permits for short rate cancellation by the insured; or

(v) Borrow money secured by any Association assets as authorized under Section 4.6(iii).

ARTICLE 5 - Assessments

5.1 Obligations to Pay Assessments. The Owner of each Lot is obligated to pay any assessments levied against that Owner's Lot on or before the due date of the assessment. If there is more than one (1) Owner of the Lot, the obligation is joint and several. Each Owner, on acceptance of title to a Lot, automatically personally assumes the obligation to pay any assessments against the Owner's Lot (including, but not limited to, that portion of the annual regular assessment not yet due and payable) and agrees to allow the Association to enforce any assessment lien established hereunder by nonjudicial proceedings under the power of sale or by any other means authorized by law. The Owner shall be liable for the full assessment levied against that Owner's Lot regardless of the Owner's possession or use of the Lot, the Association Property or any services rendered by the Association. The Owner shall have no right or power to commit or omit any act, such as waiving the right to use the Association Property, in an attempt to eliminate or reduce the assessments against that Owner's Lot. An assessment shall be both a personal obligation of the Owners of the Lot against which the assessment is levied and, on the recordation of a notice of delinquent assessment, a lien against the Lot. Any Owner that transfers a Lot shall remain personally liable for any unpaid assessments that accrued on or before the date of the transfer. No Owner shall be personally liable for any defaults of the Owner's predecessor in interest in the payment of any assessment that has accrued prior to the Owner taking title to the property unless that Owner expressly assumes the obligation to cure the delinquent assessments. Notwithstanding the foregoing, any Owner that takes title to a Lot on which a lien for a delinquent assessment has been established will take title subject to the lien and the Association's enforcement remedies as a result thereof unless the Owner takes title under a foreclosure action or trustee sale resulting from a foreclosure

or exercise of a power of sale under a Mortgage, deed of trust, or other lien recorded before the recordation of the notice of delinquent assessment.

5.2 Annual Regular Assessment. Not more than ninety (90) days nor less than sixty (60) days before the beginning of each fiscal year of the Association, the Board shall meet for the purpose of establishing the annual regular assessment for the forthcoming fiscal year. At such meeting, the Board shall review the preliminary, pro forma operating budget prepared in accordance with the provisions of Section 4.10(i), any written comments received from Members and Mortgagees, and such other related information that has been made available to the Board. After making any adjustments that the Board considers appropriate and subject to such Member approval as may be required by Section 5.6, the Board will establish an annual regular assessment for the forthcoming fiscal year. Each annual regular assessment shall include a portion for reserves as described in Section 5.3.

If the Board for any reason fails to take the appropriate steps to establish the annual regular assessment for the next fiscal year, the annual regular assessment for the preceding fiscal year shall continue in effect subject to the Board's right at any time during the next fiscal year to adjust the assessment pursuant to the procedures described herein.

5.3 Reserves and Reserves Study. Each annual regular assessment shall include a portion for reserves in such amount as the Board in its discretion considers appropriate to meet the cost of the future repair, replacement or additions to the drainage improvements, slope indicator casings, fences, irrigation systems and other improvements maintained by the Association with a useful life of more than one year and less than 30 years and a replacement cost in excess of \$1000 (the "Major Components"). Reserve funds shall be deposited in a separate account and the signatures of at least two (2) persons who shall either be members of the Board or one (1) officer who is not a member of the Board and a member of the Board shall be required to withdraw monies from the reserve account. Reserve funds may not be expended for any purpose other than the repair, restoration, replacement, or maintenance of, or litigation involving the repair, restoration, replacement, or maintenance of, Major Components which the Association is obligated to repair, restore, replace or maintain and for which the reserve fund was established.

Notwithstanding the foregoing, the Board may authorize the temporary transfer of money from a reserve fund to the Association's general operating fund to meet short-term cash-flow requirements or other expenses, provided the Board has made a written finding, recorded in the Board's minutes, explaining the reasons that the transfer is needed and describing when and how the money will be repaid to the reserve fund. The transferred funds shall be restored to the reserve fund within one (1) year of the date of the initial transfer, provided that the Board, on the making of a finding supported by documentation that a temporary delay is in the best interest of the Development, may delay temporarily the restoration until the time which the Board reasonably determines to be necessary. The Board shall exercise prudent fiscal management in delaying restoration of these funds and in restoring the expended funds to the reserve account, and, if necessary, shall levy a special assessment to recover the full amount of the expended funds within the time limits required herein. This special assessment is subject to the limitations imposed by Civil Code section 1366 unless the special assessment is to pay for legal costs associated with litigation involving the repair, restoration, replacement, or maintenance of Major Components which the Association is obligated to repair, restore, replace or maintain. The Board, at its discretion, may extend the due date of the special assessment. Any extension shall not prevent the Board from pursuing any legal remedy to enforce the collection of an unpaid special assessment.

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

expenses. The Association shall make an accounting of expenses related to the litigation on a monthly basis and shall make such accounting available for inspection by Members at the Association's office.

At least once every three (3) years, the Board shall cause a study of the reserve account requirements to be conducted if the current replacement value of the Major Components which the Association is obligated to repair, replace, restore, or maintain is equal to or greater than one-half (1/2) of the gross budget of the Association for any fiscal year. The Board shall review this study annually and shall consider and implement necessary adjustments to the Board's analysis of the reserve account requirements as a result of that review.

The study shall, at a minimum, include:

(i) identification of the Major Components which the Association is obligated to repair, replace, restore, or maintain which, as of the date of the study, have a remaining useful life of less than thirty (30) years;

(ii) identification of the probable remaining useful life of the Major Components identified in subparagraph (i) as of the date of the study;

(iii) an estimate of the cost of repair, replacement, restoration, or maintenance of the Major Components identified in subparagraph (i) during and at the end of its useful life; and

(iv) an estimate of the total annual contribution necessary to defray the cost to repair, replace, restore, or maintain the Major Components during and at the end of its useful life after subtracting total reserve funds as of the date of the study.

As used herein, "reserve accounts" means moneys that the Board has identified for use to defray the future repair or replacement of, or additions to, those Major Components which the Association is obligated to maintain; and "reserve account requirements" means the estimated funds which the Board has determined are required to be available at a specified point in time to repair, replace, or restore those Major Components which the Association is obligated to maintain.

The provisions of this Section 5.3 are intended to comply with the requirements of Civil Code sections 1365.5(c), (d) and (e). If these Civil Code sections are amended or rescinded in any manner, the provisions of this Section 5.3 automatically shall be amended or rescinded in the same manner.

5.4 Special Assessments. Subject to the restrictions described in Section 5.6, the Board may levy a special assessment if the Board in its discretion determines that the Association's available funds are or will become inadequate to meet the estimated expenses of the Association, including, but not limited to, expenses resulting from inadequate reserves, unanticipated delinquencies, costs of construction, unexpected repairs or replacements of capital improvements, inadequate insurance proceeds, or other unanticipated expenses. The Board may levy the entire special assessment immediately, or levy it in installments over a period the Board considers appropriate.

5.5 Reimbursement Assessments. The Board shall have the authority to levy reimbursement assessments against one (1) or more Lot Owners to reimburse the Association for any costs incurred by the Association as the result of any act or omission of any Owner or occupant of any Lot or their family members, guests or agents. The levy shall not include any portion that is paid by any insurer under a policy maintained by the Association. Payment of the deductible amount shall be the responsibility of the Owner. In addition to reimbursing the Association for costs necessary to repair any Association Property or other property that is maintained by the Association, the Association may seek reimbursement for any costs incurred by the Association, including attorneys' fees, to bring the Owner or occupant or the Owner's Lot into compliance with this Declaration, the Articles, Bylaws or Rules. A reimbursement

