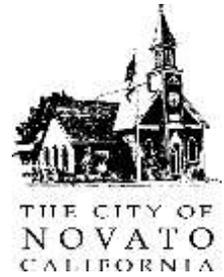


Agenda Item 2



PLANNING COMMISSION STAFF REPORT

MEETING

DATE: September 18, 2017

STAFF: Steve Marshall, Planning Manager
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SUBJECT: **POINTE MARIN CC&R AMENDMENTS
CEQA EXEMPT; SECTION 15061(b)(3)
P2016-003; PLANNING RESEARCH**

REQUESTED ACTION

Consider consenting to specific amendments to the covenants, conditions, and restrictions applicable to Pointe Marin, a single-family residential development of 342-units.

EXECUTIVE SUMMARY

Pointe Marin is a single-family residential development approved by the Novato City Council in April 2001. Pointe Marin was required to create and record covenants, conditions, and restrictions (CC&Rs) addressing the maintenance of common areas (e.g., private parks) and associated improvements (e.g., landscaping, irrigation, retaining walls, etc.). The City's authority to require CC&Rs rests in Novato Municipal Code Section 5-13 (link below).

https://library.municode.com/ca/novato/codes/code_of_ordinances?nodeId=CHVDEST_5-13DEUNINCOARCOCOPLSU

In 2002 CC&Rs were recorded by the developers of Pointe Marin. The CC&Rs included the minimum provisions required by the subdivision tentative map approved by the City Council, as well as other limitations and restrictions addressed to the use and maintenance of private residences in the neighborhood. The CC&Rs, while not administered by the City of Novato ("City"), contain specific sections that require City consent to amend. In this instance, the Pointe Marin CC&Rs designate the Planning Commission as the review authority for requests to rescind or amend specific clauses as outlined in CC&R clause 11.3 (renumbered to 11.7).

The Board of Directors ("Board") of the Pointe Marin Association ("Association"), the homeowner's association for Pointe Marin, has prepared a comprehensive revision of the Pointe Marin CC&Rs. The proposed amendments are intended to conform the CC&Rs to reflect current changes in the laws governing common interest developments and eliminate references to the original developer of the project. Several of the amendments involve sections of the CC&Rs that are subject to review and approval by the Planning Commission. Accordingly, the Board is seeking

the Planning Commission's consent to amend the sections of the CC&Rs to which the City is a party of interest.

The Board is also requesting Section 11.3 (11.7) of the CC&Rs be amended to designate the Community Development Director as the review authority for future amendments instead of the Planning Commission. This particular amendment is desired by the Association to streamline future requests for revisions by addressing such matters at an administrative level rather than through a public hearing process.

Staff and the City Attorney have reviewed the proposed amendments affecting sections of the CC&Rs to which the City is a third-party beneficiary. Staff and the City Attorney determined the amendments to these specific sections do not impair the City's interests in the ongoing management and maintenance of various improvements and activities at Pointe Marin as outlined in clause 11.3 (11.7) of the CC&Rs.

Staff and the City Attorney cannot support the proposed change to replace the Planning Commission with the Community Development Director since Novato Municipal Code Section 5-13 specifically lists the Planning Commission as the review authority. To change the CC&Rs in this manner would require first amending Section 5-13 to reference a different review authority. Staff believes that such a change may be desirable since the management and maintenance of common interest developments are not land use matters traditionally within the purview of the Planning Commission. Staff may bring forward an amendment to Section 5-13 for consideration in the future. Given this circumstance, staff recommends the following revision to Section 11.3 (11.7) of the CC&Rs:

“...may not be rescinded or amended without the prior written consent of the City's Planning Commission or an alternative review authority as may be specified in Novato Municipal Code Section 5-13.”

The suggested change would account for any future amendment of Municipal Code Section 5-13 and eliminate the need for any additional modification of clause 11.3 (11.7) of the CC&Rs. If no future amendment is made to the Municipal Code then the Planning Commission would continue to be the review authority for changes to the CC&Rs for Pointe Marin.

PROJECT DESCRIPTION

Background

CC&Rs are a common form of private-governance intended to provide uniform standards for residential and, sometimes, commercial developments. CC&Rs are frequently required by a local agency (city/county) when approving a subdivision map involving a development with common interest (shared by all owners in the development) features such as private parks and shared infrastructure (e.g., drainage systems, private streets, etc.). However, most CC&Rs include provisions addressing a broader range of issues related to the maintenance and appearance of privately owned property within a given development, including trash disposal, paint colors,

landscaping, vehicle parking, and so on. CC&Rs are maintained and enforced by a homeowner's association via a board of directors elected by the members of the association.

CC&Rs are not the same as and need not be consistent with zoning regulations established by a local agency. Therefore, CC&Rs are not regularly enforced by a public agency. However, CC&Rs are often establish a public agency as a third-party beneficiary with the right, but not the obligation, to enforce some or all of the provisions of the CC&Rs. In addition, it is common for CC&Rs to contain a clause listing specific sections that are subject to agency review when proposed to be amended or rescinded.

The City requires all common interest developments to create and record CC&Rs as stipulated in Section 5-13 of the Novato Municipal Code. In particular, Section 5-13 provides direction on the content of CC&Rs, including requirements for professional management and provisions for ongoing management and maintenance of common areas. Section 5-13 establishes the Planning Commission as the review authority for subsequent changes to the maintenance and management provisions required by the Section.

Pointe Marin CC&R Amendments

The Board is proposing a comprehensive revision of the Pointe Marin CC&R's, including sections to which the City is a third-party beneficiary. The attached resolution contains Exhibit A, which describes the changes proposed by the Board. Exhibit A identifies new text in red and rescinded text shown by ~~strikeout~~.

The various clauses of the CC&Rs have been renumbered in Exhibit A. The following table lists the sections subject to the right of review and consent by the Planning Commission as outlined in Section 11.3 (11.7) of the CC&Rs. Reference is provided to the existing and proposed clause number, clause title, and page number. The Planning Commission does not have any authority over the other sections of the CC&Rs to be amended. Accordingly, the Planning Commission does not need to review any other clauses of the CC&Rs other than those listed in the table below.

Current Clause No.	Revised Clause No.	Section Title	Page No.
2.10	2.2	Reservation of Rights	p. 8
2.11	2.4	Dedication	p. 10
5.7	Article III	Authority of the Association	p. 12
5.8	3.8	Manager	p. 14
2.16	3.12	Pointe Marin Maintenance District	p. 20
4.3	5.1	Association Responsibilities – Common Area	p. 27
4.1	5.2(d)	Fences and Perimeter Walls	p. 29
4.2	5.2(f)	Landscaping	p. 30
4.2	5.2(g)	Pest Control	p. 30
4.4	6.2(f)	Cooperation & Access	p. 32

3.4	6.6	Vehicles	p. 34
3.4	6.7	Garages	p. 35
4.5	6.13	Trash Disposal	p. 36
3.15	10.5(b)	Non-Waiver	p. 56
11.3	11.7	Rights of the City of Novato	p. 58
13.16	11.8	City's Enforcement Rights & Remedies	p. 62
N/A	Exhibit A	Fuel Modification Plan	p. 66

Of the revisions noted above, the modification to clause 11.3 (11.7) would removing the Planning Commission as the review authority for revisions to the clauses listed in the table above. Instead, the Association is proposing to establish the Community Development Director as the consenting authority with legal guidance by the City Attorney.

NEED FOR PLANNING COMMISSION ACTION

The Planning Commission must consent to proposed changes to specific sections of the CC&Rs as outlined above pursuant to clause 11.3 (11.7) of the CC&Rs.

ENVIRONMENTAL ASSESSMENT

The proposed amendments to the CC&Rs are not subject to the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3). According to this Section, as a general rule, CEQA applies only to projects having the potential for causing a significant negative physical effect on the environment. However, where it can be seen with certainty that there is no possibility that the activity in question may have a significant negative effect on the environment, the activity is not subject to CEQA. The requested amendments to the CC&Rs being considered by the Planning Commission, if approved, would not cause any physical changes to the environment and could not therefore cause a significant effect on the environment.

STAFF ANALYSIS

The Novato General Plan and Municipal Code do not provide specific policies, procedures, or findings to guide the Planning Commission's review of the proposed amendments to the CC&Rs. Given this circumstance, the Planning Commission should review the proposed changes from a practical perspective to determine whether the City's interests in the ongoing management and maintenance of common areas at Pointe Marin are adequately maintained by the proposed revisions.

Revisions Generally

The proposed revisions are extensive and cannot be effectively summarized in this report. The revisions are best understood by reviewing the actual text of the amended CC&Rs as presented in Exhibit A of the attached draft resolution.

Staff, the City Attorney's office, and Board have spent considerable time reviewing and modifying the proposed amendments to the CC&Rs to ensure the interests of the City are represented in the draft document being presented to the Planning Commission. The City's interests in this case are to ensure:

- a) that maintenance and funding responsibilities are clearly identified amongst private property owners, the Association, and the Pointe Marin Maintenance District;
- b) the Association can be assigned maintenance and funding responsibility for all common ownership properties, including infrastructure improvements and landscaping located thereon should the Pointe Marin Maintenance District cease to maintain such parcels;
- c) the Association retains appropriate rights of access to private properties should maintenance, repair, or improvement of common areas require such access;
- d) the Association properly monitors and manages vehicle parking and trash disposal;
- e) the Association's failure to enforce the CC&Rs does not constitute a waiver to undertake enforcement at a later time; and
- f) the City retains the right, without obligation, to enforce the CC&Rs if the Association fails to perform its duties.

Staff and the City Attorney's office consider the draft CC&R amendments presented in Exhibit A to maintain the City's interests at Pointe Marin.

Review Authority Amendment

As noted earlier, the Board is requesting to modify CC&R clause 11.3 (11.7) to replace the Planning Commission with the Community Development Director as the consenting authority for future CC&R amendments. The Board views the proposed change as streamlining the review process for CC&R amendments since assigning responsibility to the Community Development Director would eliminate the need to conduct a public hearing, including all of the commensurate time and costs associated with staff preparation of agenda materials and meeting attendance.

In this instance, staff cannot support this proposed revision since Section 5-13 of the Novato Municipal Code explicitly lists the Planning Commission as the review authority for amendments to the maintenance and management provisions required by this section of the Municipal Code. To change the CC&Rs in this manner would require first amending Section 5-13 to reference a different review authority. Staff believes that such a change may be desirable since the management and maintenance of common interest developments are not land use matters traditionally within the purview of the Planning Commission. Staff may bring forward an amendment to Section 5-13 for consideration in the future. Given this circumstance, staff recommends the following revision to Section 11.3 (11.7) of the CC&Rs:

“...may not be rescinded or amended without the prior written consent of the City's Planning Commission or an alternative review authority as may be specified in Novato Municipal Code Section 5-13.”

The suggested change would account for any future amendment of Municipal Code Section 5-13 and eliminate the need for any further modification of clause 11.3 (11.7) of the CC&Rs. If no future amendment is made to the Municipal Code then the Planning Commission would continue to be the review authority for changes to the CC&Rs.

Notice & Correspondence

The Planning Commission's review of the proposed CC&R amendments is subject to notice given by posting the agenda item 72-hours in advance of the Commission's hearing. In this instance, staff not only posted the agenda as required by law, but also mailed a courtesy notice to all property owners in Pointe Marin ten (2) days in advance of the Planning Commission's hearing.

Staff received two emails regarding the proposed revisions to the CC&Rs. Both emails are attached for reference. The writers' claim the Board failed to adequately advise members of the Association of the pending changes to the CC&Rs and raised a question of whether the Board has the authority to submit an application to the City. As such, there is opposition to the changes and a request to postpone the Planning Commission's hearing.

Staff is of the position the City is not responsible for confirming whether the Board is fulfilling its own mandated processes, including notice to association members and matters of authority to represent the Association. These are matters between the members of the Association and Board.

In this instance, the Planning Commission will limit its review to the specific items listed in CC&R clause 11.3 (11.7). If the Planning Commission consents to the amendments, staff understands the Board must still conduct its own meeting procedures to adopt and then record the proposed revisions. This subsequent meeting process would be the appropriate time for members of the Association to inquire about the Board's method of notice and authorities.

COMMISSION ALTERNATIVES

1. Adopt the attached resolution consenting to the CC&R amendments proposed by the Board as recommended to be amended by staff.
2. Adopt the attached resolution with amendments consenting to the CC&R amendments proposed by the Board as recommended to be amended by staff.
3. Do not adopt the attached resolution and deny the requested amendments.
4. Continue the item and provide direction to staff.

RECOMMENDATION

Adopt the attached resolution consenting to the CC&R amendments proposed by the Board as recommended to be amended by staff.

FURTHER ACTION

No further action will be taken on the proposed CC&R amendments unless an appeal of the Planning Commission's decision is filed with the City Clerk within 10-days of the Commission action.

ATTACHMENTS

1. Draft Resolution & Exhibit A – draft CC&R Amendments
2. Correspondence

PLANNING COMMISSION RESOLUTION

RESOLUTION NO. _____

RESOLUTION OF THE NOVATO PLANNING COMMISSION
CONSENTING TO PROPOSED AMENDMENTS TO THE POINTE
MARIN COVENANTS, CONDITIONS, AND RESTRICTIONS (CC&Rs)
AFFECTING THE THIRD PARTY INTERESTS OF THE CITY OF
NOVATO

WHEREAS, the City of Novato ("City") received an application from Board of Directors of the Pointe Marin Association ("Applicant") to amend the covenants, conditions, and restriction (CC&Rs) recorded for Pointe Marin, a residential neighborhood of 342 homes;

WHEREAS, the CC&Rs list the City as a third-party beneficiary with the right, but not the obligation, to enforce the CC&Rs;

WHEREAS, the existing CC&Rs contain clause 11.3, which stipulates the Planning Commission must consent to any proposal to rescind and/or modify specific clauses of the CC&Rs;

WHEREAS, the Applicant desires to conform the CC&Rs to reflect recent changes in the laws governing common interest developments and eliminate references to the original developer of Pointe Marin;

WHEREAS, the Applicant is also requesting the Planning Commission consider establishing the Director of Community Development as the review authority for future amendments to the CC&Rs;

WHEREAS, the proposed amendments to the CC&Rs are not subject to the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3);

WHEREAS, the Planning Commission held a public meeting on September 18, 2017, and considered all oral and written comments on the proposed amendments to the CC&Rs; and

WHEREAS, public notices describing the Planning Commission's public meeting on the proposed CC&R amendments mailed to all property owners in Pointe Marin on September 7, 2017 and an agenda posted 72-hours in advance of the Commission's hearing on the matter.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission hereby finds and resolves as follows:

Section 1. Recitals

The foregoing recitals are true and correct and are incorporated into the decision herein.

Section 2. Record

The Record of Proceedings ("Record") upon which the Planning Commission bases its decision includes, but is not limited to: (1) the staff report, City files and records and other documents prepared for and/or submitted to the City relating to the proposed CC&R amendments (2) the evidence, facts, findings and other determinations set forth in this resolution, (4) all designs, plans, studies, data and correspondence held by the City in connection with the Pointe Marin neighborhood, (5) all documentary and oral evidence received at the Planning Commission's public meeting or submitted to the City prior thereto (6) all other matters of common knowledge to the Planning Commission including, but not limited to, City, state, and federal laws, policies, rules, regulations, reports, records and projections related to the management of residential developments within the City and its surrounding areas.

The location and custodian of the records is the Novato Community Development Department, 922 Machin Avenue, Novato, California, 94945.

Section 3. CEQA Finding

The proposed amendments to the CC&Rs are not subject to the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3). According to this Section, as a general rule, CEQA applies only to projects having the potential for causing a significant negative physical effect on the environment. However, where it can be seen with certainty that there is no possibility the activity in question may have a significant negative effect on the environment, the activity is not subject to CEQA. The requested amendments to the CC&Rs being considered by the Planning Commission, if approved, would not cause any physical changes to the environment and could not therefore cause a significant effect on the environment.

Section 4. CC&R Amendment Findings

The Planning Commission hereby makes the following findings with respect to the CC&R amendments at issue herein based on the evidence contained in the Record hereby incorporated by reference:

1. The proposed CC&R amendments maintain the City's interests in the ongoing maintenance and management of commonly held private property within the Pointe Marin neighborhood and the continued funding, maintenance, repair, and replacement of improvements serving the residential development. Specifically, the amended CC&R's continue to ensure:
 - a) that maintenance and funding responsibilities are clearly identified amongst private property owners, the Applicant, and the Pointe Marin Maintenance District;
 - b) the Applicant can be assigned maintenance and funding responsibility for all common ownership properties, including infrastructure improvements and landscaping located thereon should the Pointe Marin Maintenance District cease to maintain such parcels;

- c) the Applicant retains appropriate rights of access to private properties should maintenance, repair, or improvement of common areas require such access;
 - d) the Applicant properly monitors and manages vehicle parking and trash disposal;
 - e) the Applicant's failure to enforce the CC&Rs does not constitute a waiver to undertake enforcement at a later time; and
 - f) the City retains the right, without obligation, to enforce the CC&Rs if the Applicant fails to perform its duties.
2. The Applicant's proposed revision to designate the Community Development Director as review authority for future changes to the CC&Rs cannot be accepted since Novato Municipal Code Section 5-13 specifically lists the Planning Commission as the review authority for amendments to CC&Rs required by said section. To change the CC&Rs in this manner would require first amending Section 5-13 to reference a different review authority. Such a change may be desirable since the management and maintenance of common interest developments are not land use matters traditionally within the purview of the Planning Commission, but is an item for future consideration.

As an alternative the Applicant's proposed revision, the Planning Commission supports modifying clause 11.3 to recognize the potential for a future change to the review authority for CC&Rs as outlined below:

“...may not be rescinded or amended without the prior written consent of the City's Planning Commission or an alternative review authority as may be specified in Novato Municipal Code Section 5-13.”

The suggested change would account for any future amendment of Municipal Code Section 5-13 and eliminate the need for any additional modification of clause 11.3 (11.7) of the CC&Rs. If no future amendment is made to the Municipal Code then the Planning Commission would continue to be the review authority for changes to the CC&Rs for Pointe Marin.

Section 5. ACTION

NOW, THEREFORE, BE IT FURTHER RESOLVED, the Planning Commission hereby consents to the proposed revisions to the CC&R clauses identified in Section 11.3 (renumbered to 11.7) as presented in Exhibit A attached hereto and incorporated herein by reference with the following change:

“...may not be rescinded or amended without the prior written consent of the City's Planning Commission or an alternative review authority as may be specified in Novato Municipal Code Section 5-13.”

Passed and adopted at a regular meeting of the Planning Commission of the City of Novato held on the _____ day of _____, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

* * * * *

I HEREBY CERTIFY that the foregoing is a full, true and correct copy of the resolution which was adopted by the Planning Commission, City of Novato, County of Marin, State of California, on the _____ day of _____.

Chairman

Exhibit A

**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
POINTE MARIN ASSOCIATION
(As Restated in 2017)**

- I Definitions
- II Property Rights
- III Duties & Powers
- IV Assessments
- V Maintenance, Repair & Replacement
- VI Use Restrictions
- VII Insurance
- VIII Damage, Destruction and Condemnation
- IX Architectural Control
- X Enforcement
- XI General Provisions

- Ex A Fuel Modification Plan
- Ex B Mortgagee Protections

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**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
POINTE MARIN ASSOCIATION
(As Restated in 2017)**

This Declaration of Covenants, Conditions and Restrictions of the POINTE MARIN ASSOCIATION. ("**Declaration**" or "CC&Rs") is a revised version of the original and now superseded Declaration entitled "POINTE MARIN DECLARATION OF RESTRICTIONS (CC&Rs)" which was recorded in the office of the Marin County Recorder on October 17, 2002 as Document No. 2002-092068, and as may have been subsequently amended (hereinafter "Former Declaration").

~~THIS DECLARATION OF RESTRICTIONS (CC&Rs) is executed by CENTEX HOMES, a Nevada general partnership, and SHEA HOMES LIMITED PARTNERSHIP, a California limited partnership (the "Declarant") with reference to the following facts:~~

~~A. Declarant is constructing a residential development in multiple phases located on certain real property in Novato, California.~~

RECITALS

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

Lots 1 through 186, and Parcel D, as shown on the subdivision map entitled "Map of Pointe Marin Phase One" recorded on December 28, 2001, in Book 2001 of Maps at page 238, Marin County, California; and

Lots 188 through 237, inclusive, and Parcel L shown on the subdivision map entitled "Map of Pointe Marin Phase Two" filed for record on August 4, 2003 in Book 2003 of Maps at Page 179 in the records of Marin County, California; ~~(the "Phase Two Map")~~ and

Lots 238 through 343, inclusive, and Parcel P shown on the subdivision map entitled "Map of Pointe Marin Phase Three" filed for record on August 4, 2003 in Book 2003 of Maps at Page 180 in the records of Marin County, California ~~(the "Phase Three Map")~~.

2. The Property. There are 342 homes in Pointe Marin which is a Planned Development within the meaning of the provisions of the California **Davis-Stirling Act**. Attached as **Exhibit A** is a site map generally depicting the **Property**. It is included for convenient reference and not as part of any legal description.

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

~~B. Declarant desires to impose certain restrictions on the lots in the development that will benefit and bind each lot, and each owner and successive owner thereto, as covenants running~~

~~with the land and equitable servitudes, to grant and describe certain easements that will be appurtenant to the lots and/or in favor of the homeowners association, and to establish a planned development within the meaning of Civil Code section 1351(k).~~

~~C. The restrictions, rights and duties described herein will benefit and bind the lots in Phase 1 on the recordation of this Declaration and each subsequent Phase on the recordation of a declaration of annexation annexing that phase into the development.~~

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

~~DECLARANT DECLARES AS FOLLOWS:~~

ARTICLE I DEFINITIONS

~~Unless the context indicates otherwise, The following terms, when shown in bold type throughout this Declaration, shall have the following definitions meanings:~~

Section 1.1 "Articles" means the **Articles** of Incorporation of the Pointe Marin Association, as amended from time to time.

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

Section 1.3. "Association" means the Pointe Marin Association, a California nonprofit mutual benefit corporation, its successors and assigns.

Section 1.4. "Benefitted Property Interest" is synonymous with the legal term "dominant tenement" or "dominant estate." For example, the property holding the usage of an easement is the dominant tenement.

Section 1.5. "Board" or "Board of Directors" means the governing body of the **Association**.

Section 1.6. "Burdened Property Interest" is synonymous with the legal term "servient tenement" or "servient estate." For example, the property giving usage (such as an easement) is the servient tenement.

Section 1.7. "Bylaws" means the **Bylaws** of the **Association**, as may be amended from time to time.

~~1.5 City. The City of Novato, California.~~

~~1.6 Committee. The Architectural Committee described in Article 7.~~

~~1.7 Common Area. The common area lots or parcels conveyed to the Association as described in Section 2.13. There are no common area lots or parcels in Phase 1.~~

Section 1.8. "Common Area" means all of the real property and **Improvements** thereon owned by the **Association**, including mutual or reciprocal easement rights, for the common use and enjoyment of the **Owners** and more particularly described as follows:

Parcel D as shown on the subdivision map entitled "Map of Pointe Marin Phase One" recorded on December 28, 2001, in Book 2001 of Maps at page 238, Marin County, California;

Parcel L as shown on the subdivision map entitled "Map of Pointe Marin Phase Two" filed for record on August 4, 2003 in Book 2003 of Maps at Page 179 in the records of Marin County, California.

Parcel P as shown on the subdivision map entitled "Map of Pointe Marin Phase Three" filed for record on August 4, 2003 in Book 2003 of Maps at Page 180 in the records of Marin County, California.

Section 1.9. "Davis-Stirling Common Interest Development Act" means that set of statutes governing Common Interest Developments which starts with California Civil Code §4000 and is also referred to as the **Davis-Stirling Act** or the **Act**.

~~1.8 Declarant. Centex Homes, a Nevada general partnership ("Centex"), or any successor or assign of Centex's interest in any Lot subject to this Declaration or any lot that may be annexed into the Development and to whom Centex has assigned in writing all or a portion of the rights and duties of the Declarant hereunder; and Shea Homes Limited Partnership, a California limited partnership ("Shea"), or any successor or assign of Shea's interest in any Lot subject to this Declaration or any lot that may be annexed into the Development and to whom Shea has assigned in writing all or a portion of the rights and duties of the Declarant hereunder. There may be more than two Declarants.~~

Section 1.10. "Declaration" means this restated **Declaration** and any further revisions or amendments. The term **Declaration** is interchangeable with the term "Covenants, Conditions and Restrictions" or "CC&Rs".

Section 1.11. "Eligible Holder" means any **Institutional Mortgagee** who has delivered a written request to the **Association** to deliver a written notice to it of any or all of the events specified in **Exhibit B, Section B.7 - Notices to Eligible Holders**. Such request shall contain the contact information of the **Eligible Holder** as well as identification of the mortgaged **Lot**.

Section 1.12. "First Mortgage" means a **Mortgage** that has priority over all other **Mortgages**.

Section 1.13. "First Mortgagee" means the beneficiary under a **First Mortgage**.

Section 1.14. “General Notice” means delivery of documents and/or information to an **Owner** by **Individual Notice**, inclusion in a billing statement or newsletter, or posting the printed document in a prominent place at the **Property** designated for such notices.

Section 1.15. “Governing Documents” means collectively this **Declaration**, the **Bylaws**, **Articles**, rules, and any policies or guidelines approved and adopted by the **Board**, and any amendments to such documents.

Section 1.16. “Improvements” means everything constructed, installed or planted on property subject to this **Declaration**, including without limitation, buildings, streets, fences, walls, retaining walls, paving, sidewalks, trails, paths, pipes, wires, utility lines, grading, drainage systems, landscaping, irrigation systems and other works of **Improvement** as defined in Section §8050(b) of the California Civil Code, excluding only those **Improvements** which are dedicated to the public or a public or quasi-public entity or utility company, and accepted for maintenance by the public, such entity or utility company.

Section 1.17. “Individual Notice” means transmittal of notices, documents, or other communications to an **Owner** via first class mail, or via email, facsimile, or other electronic means, provided that the **Owner** has agreed in writing to that method of delivery. The **Owner** shall be responsible for maintaining his or her current addresses - mail and email (if applicable) - with the **Association**. The **Association** may, but shall not be required to, provide an undelivered communication by some other means. If a document is delivered by mail, delivery is deemed to be complete on deposit into the United States mail. If a document is delivered by electronic means, delivery is complete at the time of transmission. If a document or information is required to be “in writing”, then the information provided must be in an electronic record capable of retention by the receiving **Owner** (i.e., able to be printed and/or stored).

Section 1.18. “Institutional Mortgagee” means (a) a **First Mortgagee** that is a bank, a savings and loan association, mortgage company, or other entity or institution chartered under or regulated by any federal and/or state law; or (b) an insurer or governmental guarantor of a **First Mortgage** including but not limited to the Federal Housing Authority and the Veterans Administration.

Section 1.19. “Lot” means any plot of land, whether improved or unimproved, shown on the recorded subdivision **Map** of the **Property**, with the exception of the **Common Area**. Each **Lot** specifically includes any and all **Improvements** on it, including the **Residence** itself.

~~1.14 Lot or Residential Lot. Lots 36 through 49, 136, 15-7 and 160 through 164 as shown on the Map and Improvements thereon, and any additional residential lots that may be subsequently annexed into the Development as described in Article 14 and any improvements thereon.~~

Section 1.20. “Map” means the subdivision **Maps** identified in **Recitals**, Section 1, above.

Section 1.21. “Member” means every **Person** holding a membership in the **Association** and is synonymous with the term **Owner**.

Section 1.22. "Mortgage" means a Deed of Trust, as well as a recorded **Mortgage** interest.

Section 1.23. "Mortgagee" means a beneficiary (such as a bank) under a **Mortgage** and/or Deed of Trust.

Section 1.24. "Occupant" means an **Owner**, resident, guest, invitee, tenant, lessee, sublessee, or other **Person** in possession of a **Lot**.

Section 1.25. "Owner" means the owner of record in the chain of title, whether one or more **Persons** or entities, having a recorded fee simple title to or undivided fee interest in any **Lot**. This includes contract purchasers, but excludes **Persons** having any interest merely as security for the performance of an obligation. If title is in the name of a Trust, each Trustee is an **Owner**. If title is not held by a natural person or Trustee, the **Board** may adopt a policy defining "**Owner**" for purposes of use, residency and Director qualifications.

Section 1.26. "Person" means a natural person, corporation, partnership, trustee or legal entity. This term includes any **Owner**, **Member**, a family member, tenant, resident, guest or invitee.

~~1.10 Development. The residential development that is constructed on the Property and made subject to this Declaration, including the Residential Lots, the Common Area, and all Improvements thereon.~~

~~1.21 Property. The land and Improvements shown on the Map.~~

Section 1.27. "Property" means all of the real property and **Improvements** of the Pointe Marin Association and includes all **Lots** and **Common Area**.

Section 1.28. "Residence" means a dwelling structure used for human habitation on a **Lot**.

~~1.22 Rules. Rules or regulations adopted by the Board from time to time pursuant to the authority of Section 6.6(ii).~~

Section 1.29. "Voting Power" means **Owners** representing all 342 **Lots**.

ARTICLE II

PROPERTY RIGHTS Easements and Restrictions

~~2.1 Type of Development. This Development is a planned development within the meaning of Civil Code section 1351(k). Phase 1 shall consist of 22 Residential Lots. If all the subsequent phases are annexed into the Development as described in Article 14, the Development may consist of three Common Area Lots and 344 Residential Lots and all Improvements thereon. No Declarant has any obligation to annex any subsequent phase into the Development.~~

~~2.2 Property Rights. Each Owner shall own a fee title interest in a Residential Lot and shall be a Member of the Association. The Association shall own the fee title interest in the Common Area.~~

Section 2.1. Easements.

2.1(a) ~~2.3~~ **Good Neighbor Fences.** As part of the original construction of the Development **Property**, Declarant constructed ~~there are~~ fences on or about the common boundary line between two adjoining **Lots** that are ~~to be~~ shared by the adjoining **Lot Owners**. The adjoining **Owners** shall jointly share the maintenance and repair of the fence, ~~as more fully described in Article V~~. The cost of the maintenance and repair shall be allocated equally between the **Lots** unless the circumstances warrant a different allocation for a fair and equitable allocation of such costs. Each **Lot** as dominant tenement ~~the benefitted property interest~~ shall have an easement over the adjoining **Lot** as servient tenement ~~the burdened property interest~~ for access to that portion of the ~~servient tenement the burdened property interest~~ as may be reasonably necessary to maintain, repair or replace the fence. Any dispute between the adjoining **Lot Owners** regarding the need for maintenance or repair, the quality or type of maintenance or repair, the allocation of costs, or any related issues shall be resolved in accordance with the provisions of Sections 12.3 and 12.4 in that order. **Section 10.1(a)(2)** (Owner-to-Owner Disputes: Mediation/Arbitration).

2.1(b) ~~2.4~~ **Shared Driveways.** Certain **Lots** within the Development **Property** share a driveway for ingress-coming and egress-going to the adjoining public streets. The **Owners** of **Lots** that share a driveway shall jointly share the maintenance and repair of the driveway **Improvements**, ~~as more fully described in Article V~~. Each **Lot** as dominant tenement ~~the benefitted property interest~~ shall have an easement over the portion of any other **Lot** that contains the driveway **Improvements** as servient tenement ~~the burdened property interest~~ for access to that portion of ~~servient tenement the burdened property interest~~ as may be reasonably necessary to maintain, repair or replace the driveway **Improvements**. Any dispute between the adjoining **Lot Owners** regarding the need for maintenance or repair, the quality or type of maintenance or repair, the party responsible for the maintenance or repair, the allocation of costs, or any related issues shall be resolved in accordance with the provisions of Sections 12.3 and 12.4 in that order. **Section 10.1(a)(2)** (Owner-to-Owner Disputes: Mediation/Arbitration).

2.1(c) ~~2.13~~ **Conveyance of Common Area Easements.** The Common Area in each phase shall be conveyed to the Association on or before the date the Declarant owning **Lots** in that phase first conveys title to a **Lot** in that phase. The Common Area as servient tenement ~~the burdened property interest~~ is subject to the rights reserved in Section 2.10 and to an easement in favor of each **Lot** as dominant tenement ~~the benefitted property interest~~ for ingress-coming and egress-going over the private streets and walkways situated on ~~servient tenement the burdened property interest~~, for support from any **Common Area** land adjacent to any **Improvements** on any **Lot**, and for access to and use of (including the right to install, maintain, repair or replace) any utility lines, cables, wires, pipes, meters or other equipment installed within, on or over ~~servient tenement the burdened property interest~~ in order to provide utility or related service to dominant tenement ~~the benefitted property interest~~, including water, electricity, telephone, gas, cable television, fiber optic cable, and sanitary sewer or storm drainage lines and equipment, and for access to and use of the Common Area by a Declarant and its subcontractors and agents to construct, maintain and sell the **Lots** and all related **Improvements**

in the subsequent phases. The rights retained by a Declarant and its subcontractors and agents include the right to restrict access to any portion of the Common Area that is undergoing construction or development activity 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 Common Area as a staging or storage areas 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. The **Board** may adopt Rules regulating the use of the **Common Area** provided such Rules do not interfere with the exercise of the foregoing easement rights and are consistent with the restrictions contained in this **Declaration**. On the conveyance of any Common Area to the Association, Declarant automatically reserves the easements and rights over that Common Area described in this Article 2 in favor of the Lots subject to the Declaration. If a Lot is not subject to the Declaration at the time of the conveyance, the reserved easements and rights shall become effective as of the date the Lot is annexed into the Development as described in Article 14.

2.1(d) 2.5-Drainage Easement. Each **Lot** and the **Common Area** as servient tenement ~~the burdened property interests~~ are subject to an easement in favor of each other **Lot** and the **Common Area** as dominant tenement ~~the benefitted property interest~~ for: (i) the retention, maintenance, repair or replacement of any storm drainage system installed on servient tenement ~~the burdened property interest~~ as a part of the original construction of the Development **Property**; and (ii) the flow of surface and subsurface waters through and over any drainage system and/or drainage patterns established as a part of the original construction of the Development **Property**.

2.1(e) 2.6-Encroachment Easement. Each **Lot** and the **Common Area** as dominant tenement ~~the benefitted property interest~~ has an easement over any adjoining **Lot** or **Common Area** as servient tenement ~~the burdened property interest~~ for the purpose of accommodating any encroachment due to roof overhangs, eaves, windows, porches, staircases or other structural **Improvements** resulting from the original construction of the **Improvements**, settlement or shifting of structures, and any encroachment easements granted in accordance with **Section 2.3** 2.14. The extent of the encroachment easement shall be the location of the encroaching structure as originally constructed by a Declarant. If a structure on any **Lot** is partially or totally destroyed, the structure may be repaired or rebuilt in accordance with the original plans, including the replacement of any encroaching **Improvement**.

2.1(f) 2.7-Maintenance and Repair Easement. Each **Lot** as servient tenement ~~the burdened property interest~~ is subject to an easement in favor of each other **Lot** as dominant tenement ~~the benefitted property interest~~ for purposes of providing the agents of the **Association** such access as may be necessary to perform the **Association's** maintenance and repair duties as described in Section 4.3: **Article V**.

2.1(g) 2.8-Other Easements. Each **Lot** and the **Common Area** are subject to such other easement(s), rights-of-way, or dedications as may be granted or reserved on the **Map**, any deed to the **Lot** or **Common Area**, or any other appropriate public record.

2.1(h) 2.9—Appurtenant Easements. Each easement described herein in this Declaration is an easement that is appurtenant ~~linked to dominant tenement~~ **the benefitted property interest**, and any transfer of ~~dominant tenement~~ **the benefitted property interest** automatically transfers the easement appurtenant thereto **linked to it** regardless of whether the instrument of transfer describes the easement.

2.1(i) 3.13—Flood Control Easements Restrictions. Portions of Ignacio Creek are situated within the flood control easement that encumbers **Lots** 5, 6, 15, 16 and 28 as shown on the **Map** and such lots that are described in a declaration of annexation. No **Improvements**, including, but not limited to, patio or deck **Improvements**, may be Installed or maintained within the flood control easement area at anytime.

2.1(j) 2.16 [Second Amendment]—Monument Easement. Declarant grants an easement to The **Association** **has an easement** in favor of the Common Area as ~~dominant tenement~~ **the benefitted property interest** over a portion of **Lot** 287 shown on the Phase Three **Map** as the ~~servient tenement~~ **the burdened property interest** for the installation, retention, inspection, maintenance, repair and/or replacement of the monument installed within **Lot** 287. The location of the easement shall be shown on the grant deed from Declarant to the first purchaser of **Lot** 287 or on another appropriately recorded document. The easement includes access rights from the abutting public right-of-way to the monument to inspect, maintain, repair or replace the monument. The **Association** shall maintain and repair the monument.

2.1(k) Arroyo San Jose Creek. ~~[First & Second Amendments]~~ The Arroyo San Jose Creek traverses certain **Lots** in the Development **Property, including Lots** 195 through 198, 225 through 232 and 234 through 237 shown on the Phase Two Map and **Lots** 238 and 239 and 263 through 270, 274 and 333 through 338 shown on the Phase Three Map. The creek areas are subject to flood control and conservation easements in favor of the City of Novato as shown on the Phase Two Map and the Phase Three Map. No **Improvements** of any nature shall be constructed within these easement areas. No **Owner** shall dump any landscape cuttings or other debris or trash within the easement areas. The **Association** shall be responsible for the periodical removal of any landscape cuttings or other debris within the easement areas.

~~13.7—Reservation or Grant of Easements. Any easements referred to in this Declaration shall be deemed reserved or granted, or both reserved and granted, by reference to this Declaration in any deed to any Lot.~~

Section 2.2. 2.10—Reservation of Rights. Notwithstanding any property rights, including easements, ~~granted or reserved herein~~, each **Lot** and the **Common Area**, as the case may be, are subject to each of the following:

(i) ~~the right of a Declarant or its agents to enter on any portion of the Development to construct the Improvements that Declarant intends to construct on the Property, to advertise and sell Lots in the Development, to make repairs, and to correct any construction problems thereon, provided that such entry does not unreasonably interfere with the use or occupancy of~~

any occupied Lot unless authorized by its Owner, which authorization shall not be unreasonably withheld:

2.2(a) (ii) ~~the right of the Association's agents to enter any Lot, after proper notice and hearing, to cure any violation or breach of this Declaration or the Bylaws or the Rules, the Governing Documents provided that at least 30 days' prior written notice of such violation or breach (except in the cases of emergency) has been given to the Owner and provided that within the 30-day period such Owner has not acted to cure such violation or breach. In the case of an emergency, the right of the Association to enter a Lot shall be immediate.~~

2.2(b) (iii) ~~the right of the Association's agents to enter any Lot to perform its obligations and duties under this Declaration, including the obligations and the duties with respect to maintenance or repair of any Improvement or landscaping located on the Lot;~~

2.2(c) (iv) ~~the rights reserved in Sections 2.11 [Authority over CA], 2.13 [Conveyance of CA], and 13.11 [Reserved Rights of Declarant]; and Section 5.6 [Powers of HOA]. (v) the right of the Association to adopt and enforce Rules as described in Section 3.9~~ 5.6.

Section 2.3. 2.11—Authority Over Common Area. ~~The Board or Declarant (as long as Declarant owns 25% or more of the Lots in the Development) shall have~~ **has** the power and the right in the name of the **Association** and all of the **Owners** as their attorney-in-fact, to grant, convey or otherwise transfer to any **Owner** or any other **Person** fee title, easements, leasehold estates, exclusive use easements or rights, licenses, lot-line adjustments, rights-of-way and/or dedications in, on, over or under the **Common Area** or other property interests, in order to:

2.3(b) (i) ~~construct, erect, operate, maintain or replace lines, cables, wires, conduits or other devices for electricity, cable television, internet services, fiber optics, telecommunication equipment, 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;~~

2.3(c) (ii) ~~accommodate any encroachment that in the sole discretion of the Board or Declarant does not unreasonably interfere with the use and enjoyment of the Common Area;~~ or

2.3(d) (iii) ~~accomplish any other purpose that in the sole discretion of the Board or Declarant is in the interest of the Association and its Members~~ **Owners** and does not unreasonably interfere with the use and enjoyment of the **Common Area**.

~~The Association cannot defease the Common Areas without the prior written consent of Director of Community Development of the City of Novato with the approval of the City Attorney.~~

Each **Owner**, in accepting a deed to a **Lot**, expressly consents to such action and authorizes and appoints the **Association** and ~~Declarant (as long as Declarant owns 25% or more of the Lots in the Development)~~ 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~~ **in this section** to the

contrary, in no event shall the ~~Board or Declarant~~ take any action authorized hereunder that would permanently and unreasonably interfere with the use, occupancy and enjoyment by any **Owner** of his or her **Lot** without the prior written consent of that **Owner**.

Section 2.4. Dedication: ~~[2.11]~~ Furthermore, the conveyance of fee title to any portion of the Common Area as authorized in this Section 2.11 (other than conveyances made as a part of lot-line adjustments) shall require the consent of a majority of the total voting power of the Association other than Declarant. **The Association, as the agent of all Owners, shall have the power to dedicate any of the Common Area to an appropriate public authority, provided that any such dedication shall have the approval of at least a majority of a quorum of the Voting Power. Any such dedication is also subject to acceptance by the City of Novato or other public authority.**

Section 2.5. 2.12—Delegation of Use Rights. An **Owner's** family members and guests and any such other **Persons** as may be permitted by the Rules may use and enjoy any **Common Area Improvements**. All such use shall be subject to restrictions contained in this Declaration and the Rules ~~the~~ **Governing Documents**. If an **Owner** has rented his or her **Lot**, the **Owner**, members of the **Owner's** family and the **Owner's** guests shall not be entitled to use any **Common Area**. Such rights may be enjoyed by the tenant or the tenant's family members and guests except in connection with the **Owner's** rights and duties as a landlord.

~~2.14—Phasing. The property that may be annexed into the Development as a part of a subsequent phase is described in Exhibit A attached hereto (which includes Exhibit A-1). Each Declarant reserves the right to determine the number of phases, the number of lots in a phase, and the building types in a phase. No Declarant makes any representation or warranty that any subsequent phase will be annexed into the Development and has no obligation to annex any subsequent phase into the Development. The restrictions, rights and duties described herein shall benefit and bind Phase 1 on recordation of this Declaration and each subsequent phase on the recordation of a declaration of annexation annexing that phase into the Development as described in Article 14.~~

~~2.15—Construction Activity. Each Owner acknowledges that: (i) the construction of the Development may occur over an extended period of time; (ii) the quiet use and enjoyment of the Owner's Lot may be disturbed as a result of the noise, dust, vibrations and other effects of construction activities; and (iii) the disturbance may continue until the completion of the construction of the Development.~~

Section 2.6. No Partition. There shall be no partition of the **Common Area** or any part, nor shall any **Person** acquiring an interest in the **Property**, or any part, seek any judicial partition, provided, however, that if any **Lot** is owned by two or more co-tenants as tenants-in-common or as joint tenants, nothing in this **Declaration** shall be deemed to prevent a judicial partition as between co-tenants.

ARTICLE 5—~~The Association~~

~~5.1—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.~~

~~5.2 — 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.~~

~~5.3 — Membership. Each Owner of a fee title interest in a Lot automatically shall be a Member of the Association. If there is more than one 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 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.~~

~~5.4 — Membership Classes and Voting Rights. The Association shall have the following two classes of voting memberships:~~

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

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

~~(a) — the second anniversary of the first conveyance of a Lot in the most recent phase of the Development; or~~

~~(b) — the fourth anniversary of the first conveyance of a Lot in the first phase~~

~~Voting rights shall vest at the time that assessments are levied against the Owner's Lot.~~

~~Except as set forth below, all matters requiring the approval of the Members shall be approved if: (i) approved by a majority of the votes cast either in person or by proxy at a duly held regular or special meeting at which a quorum was present, (ii) approved by a majority of the written ballots cast in compliance with the requirements of Corporations Code section 7513 or any successor statute thereto; or (iii) approved by unanimous written consent of all the Members. Notwithstanding the foregoing, approval by the Members shall be subject to each of the following:~~

~~(1) — Two Membership Classes. As long as two classes of voting membership exist, any action by the Association that requires approval by the Members shall require approval by the members of each class.~~

~~(2) — Single Membership Class/Declarant-Owned Lots. If one class of voting membership exists and a Declarant owns any Lots, any action by the Association that requires approval by the Members shall require approval by the Members including that Declarant's vote(s) and approval by the Members excluding that Declarant's votes.~~

~~(3) — Greater Than a Majority. It, under the terms of this Declaration, a particular action requires approval by more than a majority, the action shall be approved by the Members only if the required percentage of votes approves the action.~~

~~(4) — Completion Bond Voting Requirements. Votes of a Declarant shall be excluded as provided in Section 5.12 of this Declaration.~~

~~(5) — Amendments. Member approval requirements for any amendments to the Declaration, Bylaws or Articles shall comply with the amendment requirements set forth in the applicable document.~~

~~(6) — Legal Requirements. If the voting requirements and/or procedures conflict with any applicable statutory requirements, the statutory requirements shall control.~~

~~5.5 — 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 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 Owner casts a vote attributed to a Lot on any matter on which only one vote could be cast for that Lot, the votes cast by such Owners shall be counted as one 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.~~

ARTICLE III

AUTHORITY OF THE ASSOCIATION

~~5.6 — 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. 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:~~

~~5.7 — 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 accept title and/or maintenance responsibilities as described in Section 2.16, manage the Common Area, perform~~

~~the maintenance as described in Section 4.3, prepare and distribute financial statements, reports and copies of Governing Documents as described in Section 5.11, enforce bonded obligations as described in Section 5.12, levy and collect assessments as described in Article 6, prepare when required the reserve studies described in Section 6.3 and annually review and implement adjustments as required, and procure, maintain and review the insurance as described in Article 8. 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.~~

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

~~5.10 Utility Service to the Common Area. The Association shall acquire, provide and pay for water, sewer, garbage disposal, refuse and rubbish collection, electrical, telephone, gas and other necessary utility services for the Common Area.~~

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

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

Section 3.3 Professional Services: The **Association** may, as deemed prudent by the **Board**, procure and pay for professional services, including management, reserve, legal and accounting.

~~5.9 Taxes and Assessments. The Association shall pay all real and personal property taxes and assessments and all other taxes levied against the Association, the Common Area 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.~~

Section 3.4. Taxes: The **Association** shall pay all taxes and assessments, if any, levied or assessed separately against the **Common Area**.

Section 3.5 Discharge of Liens. The **Association** shall pay, bond around or otherwise cause the discharge of any lien or encumbrance, including taxes and mechanics liens, levied against the

Common Area. The **Association** shall, however, levy a Reimbursement **Assessment** if such a cost is incurred related to any **Lot**.

Section 3.6 Hazardous Materials. If the **Association** learns of the presence of any material, substance or organism in the **Common Area** or a **Lot** which is deemed by any governmental agency to be actually or potentially hazardous, the **Board** may, at its discretion, make written findings as to the circumstances and the need to take certain action and establish and implement appropriate policy and actions as are in the best interests of the **Association**. This shall include the power to take action and implement corrective measures similar to those set forth in **Article V, Section 5.2(i)**.

Section 3.7 Other Obligations of the Board. The **Association** shall procure and pay for any other goods, materials, supplies, labor, services, painting, maintenance, repairs, structural alterations, **Improvements**, insurance, taxes or assessments which the **Board** is authorized to secure or pay for pursuant this **Declaration** or by law, or which is reasonably necessary in the discretion of the **Board** for the convenient and appropriate operation of the **Property**.

~~(v) — Delegating Duties: Except as may be limited by the Bylaws, the Board may delegate any of the Association's powers and duties to its employees, committees or agents, including a professional management agent~~

~~5.8 — Professional Management. The Association shall engage professional management to assist the Association for a minimum of two years immediately following the commencement of the Association's operations. The Board, in its discretion, may elect to retain professional management beyond the minimum two-year period.~~

Section 3.8 Manager: The **Board** may delegate the daily management duties to a manager or management company who is subject to the direction and control of the **Board**.

~~(vi) — Implementing Special Fees: The Board may implement special fees to reimburse the Association for special costs incurred as a result of actions taken by Owners.~~

~~(i) — Levying Assessments: 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 6 of this Declaration.~~

~~(ii) — Adopting Rules: The Board may adopt, amend and repeal Rules as it considers appropriate. The Rules shall regulate the use and enjoyment of the Common Area, the use of any commonly-metered utilities that are paid by the Association, and such other matters as are authorized herein. A copy of the Rules as adopted, amended or repealed shall be mailed or otherwise delivered to each Owner; and a copy shall be posted in a conspicuous place within the Development if an appropriate space is available for such posting. If any provision of this Declaration, the Articles or the Bylaws is inconsistent with or materially alters any Rules, the Declaration, the Articles or the Bylaws shall control to the extent of any such inconsistency. Any Rules adopted by the Board shall apply to all Owners or occupants in a uniform and nondiscriminatory manner. The Board may adopt a Rule as the result of an act or omission of any Owner or occupant or their family members or guests or a Rule that does not directly affect all Owners or occupants in the same manner as long as the Rule applies to all Owners or occupants.~~

Section 3.9 Rules:

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

3.9(b) Breach of Rules and/or Policies. Any breach of the rules and/or policies shall give rise to the rights and remedies set forth in **Article X**.

~~(iii) — Borrowing Money: The Board may borrow money to meet any anticipated or unanticipated cost of the Association and, subject to the provisions of Section 5.13(v) and may mortgage, encumber or pledge Association assets (including, but not limited to, assessments) as security for such borrowing.~~

Section 3.11. Variances. The **Board** may, upon unanimous approval of all three (3) Directors, allow reasonable variances and adjustments of this **Declaration** in order to overcome difficulties and prevent unnecessary hardships in the application of these provisions. However, such variances shall only be granted which conform to the intent and purposes of this **Declaration**. Further, in every instance such variance or adjustment will not be materially detrimental or injurious to any other **Owner's** property or **Improvements** within the **Property**. Additionally, before any such variance is granted, **Owner** shall present to the **Board** evidence of City approval of the variance or City confirmation that City approval is not required. No such approved variance shall preempt City authority as otherwise provided in this **Declaration**. The **Board** may, in its sole discretion, impose limitations on any variance granted, including terms, conditions and duration. Where notice of a request for a variance has been given to **Owners** potentially affected, and an **Owner** fails to object (according to the terms of the notice), that **Owner** shall be barred from later contesting the decision of the **Association**. A written record must be kept by the **Owner** and any successor of all such requests, proceedings and approvals. If no such record is available, there shall be a presumption that this section does not apply to any issue or dispute.

~~5.11 Reporting Requirements. The Association shall prepare and distribute the following:~~

- ~~(i) — a pro-forma operating budget for, each fiscal year shall be distributed not less than 45 days nor more than 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 6.3, 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 (collectively the "Major Components")~~

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

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

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

~~c. — If applicable, the amount of funds received from either a compensatory damage award or settlement to the Association from any Person for injuries to property, real or personal arising out of any construction or design defects and the expenditure or disposition of funds, including the amounts expended for the direct and indirect costs of repair of construction or design defects. These amounts shall be reported at the end of the fiscal year for which the study is prepared as separate line items under cash reserves pursuant to Section~~

~~5.11(i)(b)(2)b. In lieu of complying with the foregoing requirements, if the Association is obligated to issue a review of its financial statement pursuant to Section 5.11(ii) below, the Association may include in the review a statement containing all of the information required by this Section 5.11(i)(b)(2)c;~~

~~(3) — the percentage that the amount in Section 5.11(i)(b)(2)b is to the amount in Section 5.11(i)(b)(2)a;~~

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

~~(d) — a general statement addressing the procedures used for the calculation and establishment of 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, 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 the 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 days of the receipt of the request;~~

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

~~(iii) — a statement of the Association's policies and practices in enforcing its remedies 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 who has requested a copy within 60 days prior to the beginning of each fiscal year;~~

~~(iv) — copies of this Declaration, the Articles, Bylaws, Rules, and a statement regarding delinquent assessments as described in Section 6.12 shall be provided any Owner within ten 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 preparing¹ and reproducing the material; and~~

~~(v) — a summary of the provisions of Civil Code section 1354 which specifically references the section and includes the following:~~

~~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 5.11 (i) is distributed or in the manner set forth in Corporations Code section 5016:~~

~~(vi) — a summary of the Association's property, general liability, and earthquake and flood policies, if any, (individually and collectively referred as the "Policy" or "Policies") shall be distributed to the Members within 60 days preceding the beginning of the Association's fiscal year. The summary shall include the following information on the Policies:~~

~~(a) — the name of the insurer;~~

~~(b) — the type of insurance;~~

~~(c) — the Policy limits of the insurance; and~~

~~(d) — the amount of deductibles, if any.~~

~~The Association, as soon as reasonably practical shall notify its Members by first class mail if any of the Policies have been cancelled and not immediately renewed or restored or if there is a significant change such as a reduction in coverage or limits or an increase in the deductible for any Policy. If the Association receives any notice of non-renewal of a Policy, the Association immediately shall notify its Members if replacement coverage will not be in effect by the date the existing coverage will lapse.~~

~~To the extent that the information required to be disclosed as described in this Section 5.11(vi) is specified in the insurance policy declaration page, the Association may meet its disclosure obligations by making copies of that page and distributing copies to all its Members. The summary required in this Section 5.11(vi) shall contain, in at least 10-point boldface type, the following statement:~~

~~This summary of the Association's policies of insurance provides only certain information as required by subdivision (e) of section 1365 of the Civil Code and should not be considered a substitute for the complete policy terms and conditions contained in the actual policies of insurance. Any Association member, upon request and reasonable notice, may review the Association's insurance policies and, upon request and payment of reasonable duplication charges, obtain copies of those policies. Although the Association maintains the policies of insurance specified in this summary, the Association's policies of insurance may not cover your property, including personal property, or real property improvements to or around your dwelling, or personal injuries or other losses that occur within or around your dwelling. Even if a loss is covered, you may nevertheless be responsible for paying all or a portion of any deductible that applies. Association members should consult with their individual insurance brokers or agent for appropriate additional coverage.~~

~~5.12 Enforcement of Bonded Obligations. If the Association is the obligee under a bond or other arrangement ("Bond") to secure performance of the commitment of a Declarant or a successor or assign to complete the Common Area 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 and vote on the question of action by the Association to enforce the obligations under the Bond with respect to any Improvement for which a notice of completion has not been filed by the later of: (i) 60 days after the completion date specified for that Improvement in the "planned construction statement" appended to the Bond; or (ii) 30 days after the expiration of any written extension given by the Association. If the Board fails to consider and 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 representing not less than 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 35 days nor more than 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 a Declarant's obligation to complete the Common Area 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 desirable 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 Common Area Improvements as described in the "planned construction statement". Any dispute between a Declarant and the Association regarding the release of the Bond shall be resolved in accordance with the Bond escrow instructions or, if these instructions are not operative for any reason, in accordance with the procedures of Article 12.~~

~~5.13 Limitations on Authority of the Board. The Board shall not take any of the following actions except with the consent, by vote at a meeting of the Association or by written ballot without a meeting pursuant to Corporations Code section 7513 or any successive statute thereto, of a simple majority of the Members other than Declarant constituting a quorum of more than 50% of the voting power of the Association residing in Members other than Declarant:~~

- ~~(i) incur aggregate expenditures for capital Improvements to the Common Area in any fiscal year in excess of 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 5% of the budgeted gross expenses of the Association for that fiscal year;~~
- ~~(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 Common Area or the Association for a term longer than one year with the following exceptions:
 - ~~(a) a management contract, the terms of which have been approved by the Federal Housing Administration or Veterans Administration;~~~~

~~(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;~~

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

~~(d) — lease agreements for laundry room fixtures and equipment not to exceed five years' duration, provided a Declarant does not have a direct or indirect ownership interest at 10% or more in any lessor under such agreements;~~

~~(e) — agreements for cable television services and equipment or satellite dish television services and equipment not exceeding five years in duration, provided the supplier is not an entity in which a Declarant has a direct or indirect ownership interest of 10% or more;~~

~~(f) — agreements for sale or lease of burglar alarm and fire alarm equipment, installation and services not exceeding five years' duration, provided that the supplier or suppliers are not entities in which a Declarant has a direct or indirect ownership interest of 10% or more; and~~

~~(g) — a contract for a term not to exceed three years that is terminable by the Association after no longer than one year without cause, penalty or other obligation upon 90 days written notice of termination to the other party; or 5.6(iii).~~

~~-~~

~~(v) — borrow money secured by any Association assets as authorized under Section~~

~~-~~

~~5.14 Notice of Significant Legal Proceedings. — Notwithstanding anything herein to the contrary, the Board shall not institute any significant legal proceeding, including any arbitration or judicial reference proceeding, against any Person without providing the Members of the Association with at least 30 days' prior written notice of the Association's intention to institute legal proceedings. The notice shall describe the purpose of the proceeding, the parties to the proceeding, the anticipated cost to the Association (including attorneys' fees) in processing the proceeding, the source of funds to process the proceedings (reserves or special or regular assessments), and suggested information that should be disclosed to third parties, such as prospective purchasers and lenders, while the proceeding is being prosecuted. For purposes herein, 'significant legal proceeding' shall mean any legal proceeding in which it reasonably could be anticipated that any of the following events could occur —~~

~~(i) — the levy of a special assessment to fund all or any portion of the proceeding;~~

~~(ii) — the expenditure of funds from the Association's reserves in connection with the proceeding in an amount in excess of 5% of the then current reserves;~~

~~(iii) — the amount of the claim is in excess of \$25,000; or~~

~~(iv) — the action could have a material adverse effect on the ability to sell and/or refinance the Lots within the Development during the period the proceeding is being prosecuted.~~

~~If the proposed legal proceeding is against a Declarant or other developer for alleged damage to the Common Area, alleged damage to the separate interests that the Association is obligated to maintain or repair, or alleged damage to the separate interests that arises out of, or is integrally related to, damage to the Common Area or separate interests that the Association is obligated to maintain or repair, the notice also shall specify each of the following (unless not required by reason of Civil Code section 1375(g)(1)(E) or 1375(g)(2)(D)) as amended from time to time:~~

~~(v) — that a meeting will take place to discuss problems that may lead to the filing of a civil action and the time and place of the meeting; and~~

~~(vi) — the options, including civil actions that are available to address the problems. Notwithstanding the foregoing, the notice shall not be required to commence and pursue any~~

action to collect delinquent assessments as described in Section 6.10 or to enforce any Common Area completion bond as described in Section 5.12. Furthermore, if the Board in good faith determines that there is insufficient time to provide prior notice to the Members as required herein prior to the expiration of any applicable statute of limitations or prior to the loss of any other significant right of the Association, the Board may take the necessary steps to commence the proceeding to preserve the rights of the Association, provided that as soon as reasonably practical thereafter, and not later than 30 days following the commencement of the proceeding; the Board shall provide the Members with notice as required herein.

Section 3.12. 2.16 [incl First Amendment] Pointe Marin Maintenance District. Declarant Intends to form ~~There is~~ a landscape and lighting district, community facility district, or other form of ~~an~~ assessment district (the "Maintenance District") ~~which was formed~~ to own and/or maintain certain property and **Improvements** within the Development **Property**, including parkways along Ygnacio Blvd., perimeter walls, and a pedestrian access area (the "Maintenance Properties"). ~~The Maintenance Properties are Parcels A, B, C, E, M & Q on the Phase One Map, and Parcels F, G, H, J, K & M on the Phase Two Map, and Parcels N & O on the Phase Three Map.~~ If the Maintenance District is formed, Legal title to certain ~~thes~~ Maintenance Properties is expected to be ~~was~~ conveyed either to the Maintenance District or to the City. ~~Exhibit B~~ attached hereto describes the Maintenance Properties and maintenance requirements. All of the **Lots** in the Development **Property**, including the Lots that may be annexed into the Development as described in Article 14 will be ~~are~~ within the Maintenance District. ~~The Board may, but is not required to, interface with the District to promote the best interests of the Members of Pointe Marin.~~

3.12(a) Funding.

3.12(a)(1) The cost for maintaining and repairing the Maintenance Properties, including, but not limited to, administrative, management, utilities and landscaping costs, ~~shall be funded through assessments levied against each Lot in the Maintenance District. These assessments will be due and payable at the same time as the real property taxes levied by the County of Marin against each Lot. These assessments are not included within the Assessments levied by the Association and are to be paid in addition to the Assessments levied by the Association.~~ ~~are collected by the Maintenance District from each Lot in the Property at least twice a year at the same time that real property taxes are due the County of Marin.~~

3.12(a)(2) If for any reason the Maintenance District is not formed or is formed but ceases to own and/or maintain any of the Maintenance Properties in accordance with the maintenance requirements, Declarant shall convey title to the Maintenance Properties to the Association and/or transfer. ~~then the Association shall assume maintenance obligations over any Improvements that would have been maintained by the Maintenance District or that the Maintenance District ceases to maintain. to the Association;~~ ~~The City may also transfer ownership of the Maintenance Properties, or any of them, to the Association;~~ and the Association shall accept title and shall assume the maintenance

responsibilities over the Maintenance Properties so transferred. In addition, if the Maintenance District is formed but not all of the Maintenance Properties and/or maintenance obligations are transferred or assumed by the Maintenance District, Declarant shall convey title to the Maintenance Properties not transferred to the District to the Association and/or transfer maintenance obligations over any Improvements not assumed by the District to the Association; and the Association shall accept title and shall assume the maintenance responsibilities over the Maintenance Properties so transferred. **Prior to any transfer of ownership of the Maintenance Properties, or any of them, such transfer shall first be presented to the Novato City Council at a noticed meeting thereof. Transfer of the ownership of the Maintenance Properties, or any of them, shall require the approval of the Novato City Council, in accordance with California law. Adjustments, if any, of the Maintenance District tax shall be considered in accordance with California law.**

~~[[First Amendment] EXHIBIT B - Maintenance District Ownership and Maintenance Obligations~~
 Set forth below is a description of the property that is expected to be owned and/or maintained by the Maintenance District described in Section 2.16 and a description of the maintenance requirements. As set forth in Section 2.16, if the Maintenance District is not formed, the Association shall assume the ownership and/or maintenance obligations over these properties and Improvements:

3.12(b) It is the **Association's** understanding that the Maintenance District has maintenance responsibilities for the Maintenance Properties. Some of these obligations may overlap with **Owner** and/or **Association** responsibilities. See, for example, **Section 5.1**, and **Section 5.2(d)(2)**. Also see **Section 7.1(c)**. Maintenance shall be performed as follows:

3.12(b)(1) Parkways. ~~Parcels B, C and Q described in Section 1.15 are the parkways shown on the Map. Additional parkways may be identified on the subdivision maps(s) for lots that will be annexed into the Development in later phases. The landscaping and irrigation system within the parkways - identified as Parcels B, C, and Q on the Phase One Map, and Parcel F on the Phase Two Map - shall be maintained in good condition and repair and in a healthy and weed-free condition. Maintenance shall include regular fertilization, mowing, irrigation, pruning and other customary prudent landscaping practices. The monuments within the parkways shall be maintained by the Association as described in Section 4.3. 5.1. [Exhibit B-1, Second Amendment] Parkway. The parkway situated within Parcel F shown on the Phase Two Map. The landscaping and irrigation system within the parkway shall be maintained in good condition and repair and in a healthy and weed-free condition. Maintenance shall include regular fertilization, mowing, irrigation, pruning and other customary prudent landscaping practices. The monuments within the parkway shall be maintained by the Association as described in Section 4.3.~~

3.12(b)(2) Perimeter Walls. The perimeter walls for the **Lots** shown on the **Map** are located along the southerly boundary lines of **Lots** 28, 29, 30, 35, 38 (the wall extends along the easterly boundary line of **Lot** 38 as well), 39, 44, 45, 50, 51, 56, 57, 62, 63 and 68 **shown on the Phase One Map, Lot 188 and Parcel F shown on the Phase Two Map and on or about the common boundary between Lots 290, 291, 295, 315, 316, 318, 319, 320 and 321 and Ignacio Boulevard shown on the Phase Three Map.** The perimeter

walls also include any perimeter walls installed on or about the common boundary lines between Lots 288 and 290 shown on the Phase Three Map. Additional perimeter walls may be described in a declaration of annexation annexing additional properties into the Development. The walls shall be maintained in good condition and repair. Maintenance shall include repainting on an as-needed basis and graffiti removal in accordance with the City's graffiti ordinance. ~~[Exhibit B-1, Second Amendment]~~ Perimeter Walls. The perimeter walls on or about the common boundary between Lot 188 and Parcel F shown on the Phase Two Map and on or about the common boundary between Lots 290, 291, 295, 315, 316, 318, 319, 320 and 321 and Ignacio Boulevard shown on the Phase Three Map. The perimeter walls also include any perimeter walls installed on or about the common boundary lines between Lots 288 and 290 shown on the Phase Three Map. The perimeter walls shall be maintained in good condition and repair. Maintenance shall include painting on an as-needed basis and graffiti removal in accordance with the City's graffiti ordinance.

3.12(b)(3) Pedestrian Access. The pedestrian access parcel is Parcel A shown on the Phase One Map and described in Section 1.15. The pedestrian access Improvements shall be maintained in good condition and repair.

ARTICLE ~~6~~ IV **ASSESSMENTS**

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

4.1(a) Regular Assessments. The Board shall establish for each fiscal year an Annual Assessment amount to be allocated equally among all Lots and (unless otherwise provided) due and payable as twelve (12) equal Regular Assessments. Such regular Assessments shall be due and payable on the first day of each month and be delinquent if not received by the Association by the 15th day of the month.

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

4.1(b)(1) Special Assessments may be levied for the purpose of defraying, in whole or in part, actual or estimated revenue shortfalls or such other purposes as the Board deems appropriate, subject to the Assessment level increase provisions of Section 4.2 below. Special Assessments shall be due as set forth in the Notice of Levy of Special Assessment (see Section 4.2(c) below).

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

4.1(c) Extraordinary Expense Assessments. Where the **Board** determines an emergency situation exists as defined by statute, the **Board** may levy an Extraordinary Expense **Assessment**, but only in accordance with Civil Code §5610 or any superseding provision of the California Civil Code which addresses **Assessments** necessary for extraordinary expenses.

4.1(d) Reimbursement Assessments.

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

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

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

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

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

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

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

4.1(c)(2) Implementation. Unless otherwise agreed between **Owner** and **Association**, prior to levying a Reimbursement **Assessment**, the **Association** must provide the individual with due process pursuant to Article X, Section 10.4.

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

Section 4.2. Assessment Level Increases.

4.2(a) Approval of Board of Directors. The **Board** may impose a regular **Assessment** up to and including a twenty percent (20%) increase over the aggregate regular **Assessment** levied in the **Association's** preceding fiscal year. In order to exercise this discretionary power to increase regular **Assessments**, the **Association** must have complied with Civil Code §5300. The **Board** may impose special **Assessments** which in the aggregate do not exceed five percent (5%) of the budgeted gross expenses of the **Association** for that fiscal year. The **Board** also has the power to levy an Extraordinary Expense **Assessment** pursuant to **Section 4.1(c)**.

4.2(b) Approval of the Owners. **Assessments** may be increased above the amounts set forth in **Section 4.2(a)** above, only with the approval of a majority of a quorum of **Owners**. For purposes of this section, a quorum means more than fifty percent (50+%) of the **Voting Power** of the **Association**. (Based on 342 **Lots**, this would require participation by the **Voting Power** of at least 172 **Lots** and the approval by a majority of those participating in the vote.)

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

Section 4.3. Enforcement of Assessments.

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

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

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

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

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

Association for any insufficient funds or other costs incurred in Automated Clearing House (ACH) transactions.

4.3(c) Acceleration of Assessment. If any **Assessment** is delinquent for a period of more than sixty (60) days or an **Owner** is delinquent three (3) or more times for any duration within a twelve month period, the **Association** may declare the entire balance of the annual **Assessment** amount (plus any other outstanding **Assessment**) immediately due and payable in full, together with any other delinquent amounts. Upon acceleration, interest and a late charge on the full accelerated balance will accrue.

4.3(d) Lien. The amount of a delinquent **Assessment**, plus any costs of collection, late charges and interest, shall be a lien on the **Owner's Lot** from and after the time the **Association** causes to be recorded with the Marin County Recorder a Notice of Delinquent **Assessment**. This lien includes all additional charges and sums which become due and payable after the date of recordation of the Notice of Delinquent **Assessment**. An **Association** lien shall survive the sale or transfer of a **Lot**, except in the event of a foreclosure by a senior interest.

4.3(e) Non-judicial Foreclosure. The **Association** has the power to conduct non-judicial foreclosure in order to collect delinquent **Assessments**. Each **Owner** hereby appoints as trustee the person designated by the **Association** as "trustee" in the Notice of Delinquent **Assessment**, or such substitute trustee as is designated pursuant to Civil Code §2934(a). Additionally, such **Owner** empowers such trustee to enforce the lien and to foreclose the lien by the private power of sale provided in Civil Code §5675, or by judicial foreclosure. Each **Owner** further grants to the trustee the power and authority to sell the **Lot** of any defaulting **Owner** to the highest bidder to satisfy such lien. Note that a fine (i.e., a penalty unrelated to reimbursement of costs) may be the subject of a lien and/or judicial foreclosure, but cannot be the basis for a non-judicial foreclosure.

4.3(f) Other Recourse.

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

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

4.3(f)(3) In the event an **Owner** is sixty (60) or more days delinquent, any tenant during that period who continues to rent the **Lot** shall become jointly and severally liable for all Regular, Special, Reimbursement and Extraordinary Expense **Assessments**(up to the maximum of the tenant's obligation under the lease). If the tenant makes such payment to the **Association**, the **Owner** hereby acknowledges that such payment shall be deemed a

credit or offset against rents otherwise due from tenant to **Owner**. Tenants' obligation to the **Association** shall not exceed the amounts due under tenants' lease or tenancy.

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

Section 4.4. Grantee Liability.

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

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

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

Section 4.5. Termination and Commencement of Assessment Obligations. This section addresses personal liability only.

4.5(a) Even though there is an annual **Assessment** amount, when ownership changes occur:

4.5(a)(1) the transferring-**Owner** shall be personally liable for the regular monthly **Assessments** which are due and payable up to the time of transfer, and

4.5(a)(2) the receiving-**Owner** shall be personally liable for the regular monthly **Assessments** which are due and payable after acquisition of any form of ownership interest.

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

4.5(c) Special or Reimbursement **Assessments** may be subject to terms or conditions specified by the **Board**.

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

Section 4.6. No Waiver or Offset. No **Owner** may exempt himself or herself from personal liability or release his or her **Lot** from liens and charges by waiver of any **Owner** rights or by abandonment or non-use of any **Lot**. As provided for by law, **Owners** cannot use any homestead or other exemption to avoid the obligation to pay **Assessments** (see generally *Lien Exception to Homestead Right* - Code of Civil Procedure Section 703.010(b)). No offsets or deductions against any **Assessment** shall be permitted for any reason, including, without limitation, any claim that the **Association** is not properly discharging its duties.

ARTICLE V

ARTICLE 4 - Maintenance and Repair Obligations

RESPONSIBILITIES FOR MAINTENANCE, REPAIR AND REPLACEMENT

Section 5.1. 4.3 — **Association's Maintenance Responsibilities.** As provided in the 2002 **Declaration**, the **Association** shall maintain the **Common Area** and all **Improvements** and landscaping thereon, including, but not limited to, irrigation systems, lighting fixtures and utilities serving the **Common Area**, storm-drainage systems, and sanitary sewer systems not maintained by a government agency or public or private utility company. In addition, the **Association** shall maintain the monuments located within the parkways described in Exhibit B **Section 3.12(b)(1)** and such additional monuments as may be described in any declaration of annexation or other recorded document. As described in Section 2.16 and — If the Maintenance District is not formed, or if formed ceases for any reason to perform the maintenance obligations, set forth in **Section 3.12(b)**, and if, pursuant to **Section 3.12(a)(2)**, the City Council so directs, the **Association** shall perform the ~~those~~ maintenance obligations, including, the maintenance that would have been performed by the District within the fuel modification areas pursuant to the requirements of the Fuel Modification Plan.

~~4.1 — Owner's Maintenance Obligations.~~ Each **Owner** shall maintain his or her **Lot** and all **Improvements** thereon in good condition and repair at all times. ~~Shared Improvements, including good neighbor fences and shared driveways, shall be maintained and repaired as described in Sections 2.3 and 2.4. If any Owner fails to maintain his or her Lot as required herein, the Association, after notice and hearing as described in the Bylaws, shall take appropriate steps to compel compliance; and, without limiting any appropriate remedy, the Association may, but is not~~

obligated to, enter the Lot and perform the necessary maintenance and repair. The Association may levy a reimbursement assessment against the Lot in the manner described in Section 6.5.

Section 5.2. Responsibilities for Maintenance, Repair and Replacement - Owners' Lots.

Pointe Marin is a Planned Development wherein each **Owner** actually owns a **Lot** and all **Improvements** on the **Lot**, including the **Residence**. **Owners** are responsible for all maintenance, repair, and replacement of **Improvements** on their respective **Lots** unless otherwise identified as being the responsibility of the **Association**, such as by easement. As to those components for which an **Owner** is responsible for maintenance, repair and/or replacement, any work or change which would significantly alter the exterior appearance from the original construction or configuration must be approved in advance by the **Association** pursuant to the provisions of **Article IX** of this **Declaration**. The **Owner** shall at all times keep and properly maintain the **Lot** and all **Improvements**, including:

5.2(a) Building Exteriors. The **Owner** shall maintain the exterior of his or her **Residence**, structures, screening walls, enclosures, and other similar **Improvements** in a clean and slightly condition and in a good state of repair. Painted surfaces must be periodically repainted so as to maintain a well-kept appearance.

5.2(b) Drainage. ~~{2.5}~~ Unless maintained by the **Association**, each **Owner** shall maintain and repair that portion of the drainage system located on the **Owner's Lot**. Each **Owner** shall at all times keep the drainage system and any intake drains, catch basins or area basins free and clear of debris at all times, and no **Owner** shall take any action that would in any manner interfere with the operation of the system. No **Owner** shall alter the grading on any **Residential Lot** without the prior consent of the Architectural Committee. **Each Lot Owner** shall be responsible for disposal of downspout water at grade level. The **Association** will maintain **Common Area** drainage facilities that may cross an **Owner's Lot**.

5.2(c) Driveways and Sidewalks.

5.2(c)(1) Individual Driveways. A driveway is an **Improvement** of the **Lot**, and as such, the **Owner** is responsible for maintenance, repair and/or replacement of the driveway.

5.2(c)(2) Shared Driveways. For those shared driveways (**Section 2.1(b)**), the adjoining **Owners** are responsible for the maintenance and repair of the driveway ~~{2.4}~~ including the pavement, roadbed, sub-base, any shared sewer lines, and any storm drainage **Improvements** within the driveway. Utility **Improvements**, including the separate sewer laterals to the individual **Lots**, within the driveway are not part of the driveway **Improvements** and are to be maintained and repaired by the **Owner(s)** of the **Lot(s)** served by the utility **Improvements**. The cost of the maintenance and repair of the **shared** driveway **Improvements** shall be allocated equally among the **Lots** using the driveway unless the circumstances warrant a different allocation for a fair and equitable allocation of such costs.

~~4-2.7 Shared Driveway Disputes.~~ Any disputes between or among **Owners** of **Lots** subject to the provisions of **Section 2.4** shall be resolved in accordance with the provisions of **Sections 12.3 and 12.4** in that order. In the event of a dispute among **Owners** arising out of the shared usage, maintenance, repair or replacement of the driveways, the matter shall be

addressed as provided for in **Article X, Section 10.3(c)(2)**, “Owner-to-Owner Disputes: Mediation/Arbitration.” Some of the driveways are situated on **Lots** that do not use the driveway for access to the garage on that **Lot**. The **Owners** of these **Lots** shall have no obligation to participate in the maintenance or repair of the shared driveway **Improvements**.

5.2(c)(3) Sidewalks. **Owners** are responsible for all maintenance and repairs, including damage caused by tree roots, needed to keep the walking surface of sidewalks abutting their **Lots** in a safe condition, pursuant to the City’s Municipal Code (See Novato Ordinance No. 15-2.46 or a successor ordinance.)

5.2(d) Fences and Perimeter Walls.

5.2(d)(1) Fences

5.2(d)(1)(i) ~~[4.1]~~ All fences on a Residential **Lot**, including fences located on a common boundary between the **Owner's Lot** and the **Common Area**, shall be maintained by the **Owner**. The maintenance shall comply with the property maintenance standards set forth in Chapter 19.31 of the City's Municipal Code or any successor ordinance thereto.

5.2(d)(1)(ii) Adjacent **Owners** shall be equally responsible for the maintenance, repair and replacement of fences, exterior privacy walls, railings or other shared components. In the event of a dispute between **Owners** arising out of the shared usage, maintenance, repair or replacement, the matter shall be addressed as provided for in **Article X, Section 10.3(c)(2)**, “Owner-to-Owner Disputes: Mediation/Arbitration.”

5.2(d)(2) Perimeter Walls. ~~[4.1]~~ Certain of the perimeter walls to be maintained by the Maintenance District or the **Association** as described in Sections 2.16 and 4.3 and ~~Exhibit B~~ are situated on Residential **Lots**. The **Owner** of any Residential **Lot** shall be responsible, at that **Owner's** cost, for the periodic repainting and graffiti removal of and from the side of the wall facing into the **Owner's Lot**. The Maintenance District (or the **Association**) shall be responsible for structural repairs to the wall, and the periodic repainting and graffiti removal of and from the side of the wall facing away from the Residential **Lot**. Pursuant to **Section 3.12(a)(2)**, if maintained by the Maintenance District, the City Council may assign the responsibility to the **Association**.

5.2(d)(3) ~~3.15~~ Fence Gate Restriction. No gates shall be installed in any back yard fence or perimeter fence on any **Lot**.

5.2(e) Service and Utility Lines. The **Owner** (or appropriate sanitary service district, utility company, or other entity (not **Association**)) shall be responsible for the maintenance, repair and replacement of all service, utility lines and storm drains serving the **Owner's Residence and Lot**.

5.2(f) Landscaping. ~~4.2 — Owner's Landscaping Obligations and Fuel Management Requirements.~~ Unless installed by a Declarant, the Residential Lot Owner shall install, plant and complete the permanent landscaping and irrigation system within any unenclosed portions of the Owner's Lot within six months after the close of escrow for the sale of the Residential Lot from the Declarant. Installation of the landscaping and irrigation systems shall be subject to: (i) the prior approval of the Architectural Committee and (ii) issuance of a required grading permit by the City, which shall strictly enforce its grading requirements and restrictions. **Each Owner is responsible to install and maintain all landscaping located on the Lot and all landscaping in the adjacent public street right-of-way between the sidewalk and the back of the curb.** Each Owner shall maintain the landscaping ~~on the Owner's Lot~~ in a healthy and weed-free condition. The Owner immediately shall remove and replace any dying or dead vegetation ~~on the Owner's Lot~~. Maintenance shall include regular fertilization, mowing, irrigation, pruning, elimination of pests or diseases, and other customary prudent landscaping practices. All lawns shall be kept neatly mown and trees neatly trimmed and pruned at all times. ~~If the Owner fails to properly maintain the landscaping on the Owner's Lot, the Association shall take appropriate steps to compel compliance; and, without limiting any appropriate remedy, the Association may enter the Lot and perform the maintenance under the procedures described in Section 4.1 and shall have the same remedies as described in Section 4.1.~~ **Some but not all Lots are also governed by the City of Novato's Fuel Modification Plan. The affected Lots & plan are described in Exhibit A, Those Lots listed in Exhibit A must comply with the Fuel Modification requirements.**

~~[4.1] Each Owner shall have the Improvements on the Owner's Lot periodically inspected for wood-destroying pests or organisms and, if necessary, immediately shall take appropriate corrective action therefor.~~

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

Section 5.3. Failure to Maintain.

~~4.6 — Reimbursement and Indemnification. If the Association incurs any maintenance or repair costs because of the willful or negligent act or omission of any Owner or occupant or their family members, guests, agents or pets, the Association shall charge the cost to the Owner of the Lot responsible for the costs and may levy a reimbursement assessment as described in Section 6.5. The Owner immediately shall pay the charge or reimbursement assessment to the Association, together with interest thereon at the rate of 12% per annum, but not in excess of the maximum rate authorized by law. If the Owner disputes the charge, the Owner shall be entitled to notice and a hearing as provided in Section 5.6(1v). The Association shall not charge the Owner to the extent that the cost is met through insurance maintained by the Association. Any deductible amount shall be paid by the Owner. Furthermore, the Owner shall defend, indemnify and hold the Association harmless from any claim, demand, liability or cost, including attorneys' fees arising from such damage, except to the extent the demand, claim, cost or liability is covered by insurance maintained by the Association. The Owner shall pay the amount of any deductible.~~

5.3(a) Common Area. If the Board reasonably determines that the need for maintenance, repair or replacement of any Common Area component (or component for which the

Association is responsible) is caused by an **Owner**, **Owner's** predecessor, or the **Owner's** family, guests, tenants, invitees, lessees, or pets, or emanates from an **Owner's Lot**, then the **Association** may levy a Reimbursement **Assessment** against the **Owner** and/or the **Owner's Lot**.

5.3(b) Lot and Dwelling. If the **Board** reasonably finds a **Lot** or dwelling exterior, including landscaping, diseased tree(s) and/or weeds, requires maintenance, repair or replacement of any component or condition for which the **Owner** is responsible, the **Board** shall direct the **Owner** to perform the work. If the **Owner** fails or refuses to do so within a reasonable period of time, the **Association** shall utilize the provisions of **Article X** entitled *Enforcement of Governing Documents*. In extreme cases, such as, for example, serious weed abatement or securing an uninhabited building, the **Association** may cause the work to be performed and levy a Reimbursement **Assessment**. The **Association** may also utilize the provisions of **Section 9.7(c)** entitled "*Association Options for Abating Continuing Nuisances*."

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

5.3(d) Other Options. These enforcement options shall be in addition to those provided for in **Article X**.

ARTICLE 3 VI **USE RESTRICTIONS**

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

Section 6.1. Use of Lots. No **Lot** shall be occupied and used except for residential purposes by the **Owners**, their family members, their tenants and/or social guests.

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

~~3.12 — Compliance with Law. No Owner shall permit anything to be done or kept in his or her Lot that violates any law, ordinance, statute, rule or regulation of any local, county, state or federal agency. Nothing shall be done or kept in any Lot that might increase the rate of or cause the cancellation of any insurance maintained by the Association.~~

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

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

6.2(c) Nothing shall be done to or in the **Common Area** which has an adverse effect on its enjoyment, use, value, condition or appearance. **Owners** shall be liable for their own acts, as well as jointly and severally liable for the acts of family members, tenants, pets, guests and invitees. Any damage or destruction to the **Common Area** or other areas the **Association** maintains may result in a Reimbursement **Assessment** being levied against the **Owner**, and/or tenant responsible for such damage or destruction and the **Owner's Lot**.

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

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

6.2(f) ~~4.4 Cooperation and Access.~~ Each **Owner** and **Occupant** shall fully cooperate with the agents of the **Association** in the performance of the **Association's** maintenance and repair obligations described in ~~Section 4.3~~ **Article V** above. Such cooperation shall include, but is not limited to, immediate notification to the **Board** or its managing agent of any maintenance or repair problems for which the **Association** is responsible and access to the **Owner's** or **Occupant's Lot** as may be necessary to inspect and, if appropriate, to perform any necessary maintenance or repairs.

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

~~3.7 Signs. Subject to the provisions of Section 13.11, no sign of any kind shall be displayed from any Lot that is visible from the Common Area or any other Lot except the following:~~

- ~~(i) any sign not exceeding 2'2 feet by 2'2 feet advertising the Lot for sale or for rent, provided that no more than one such sign is used and the sign is situated on the Lot that is to be sold or rented; or~~
- ~~(ii) any sign approved by the Board either on an individual basis or pursuant to Rules adopted by the Board.~~

Section 6.3. Signs and Flags. No signs, posters, flags or banners are permitted except as provided for by law or approved by the **Board**. All permitted displays shall comply with any applicable City ordinances and shall not be permitted to become a visual blight or nuisance, such as through weather-related or other deterioration. Commercial signs are not permitted, with the exception of one "For Sale" or "For Rent" sign per **Lot**. A small alarm service sign shall not be deemed commercial in this context. The **Board** may adopt reasonable rules or policies on the overall subject, including the type, appearance and size of permitted signs. Enforcement shall be

limited to instances in which such action does not violate any law or regulation governing the display of signs, posters, flags or banners.

~~3.5 Animals. Normal and customary household animals may be maintained within the Development in compliance with all local ordinances and the following conditions: (i) no animal shall be maintained for any commercial purposes; (ii) the use of the Common Area by animals shall be subject to such regulations as may be adopted by the Board; (iii) the owner of the animal immediately shall clean up after his or her animal; and (iv) the Owner shall be responsible for any damage to any Common Area caused by any animal maintained within the Owner's Lot.~~

~~The Board, after notice and a hearing, may require the permanent removal from the Development of any animal that the Board, in its discretion, determines is a nuisance, a danger to the health or safety of any occupant, or otherwise interferes with the quiet use and enjoyment of occupants of any Lot. The Board may find that an animal is a nuisance if the animal or the animal's owner continue to violate the Rules regulating animals after receipt of a demand from the Board to comply with the Rules.~~

Section 6.4. Animals. No animals, livestock, poultry or exotic pets of any kind shall be raised, bred, or kept in any **Lot** or the **Common Area**, except that dogs, cats, or other common household pets may be kept in **Lots**, subject to the rules and regulations adopted by the **Board**. Such rules may include limitations on type, size and/or numbers of animals which may be kept. The rules may also include breed and other restrictions or prohibitions. After notice and opportunity to be heard has been provided by the **Board**, the **Board** may order the removal of any pet which, in the **Board's** sole discretion, causes excessive noise or otherwise creates a nuisance. Any animal which displays threatening behavior or attacks a person or other pet may be immediately barred from the **Common Area** until a hearing can be conducted. The owner of any pet shall immediately remove and properly dispose of such pet's defecation occurring anywhere in the **Property**. If the **Board** finds a pattern of pet-related violations, it may, in conjunction with the due process provisions of **Article X, Section 10.4**, prohibit the maintenance of any pets by a particular resident.

~~Section 3.3~~ **6.5. Nuisance.** No noxious or offensive activity shall be conducted carried on in any **Lot** or in the **Common Area**, nor shall anything be done which may be or become an annoyance or that constitutes a nuisance or unreasonably interferes with the use or quiet enjoyment of the occupants of any other **Lot** to the other residents. Without limiting the foregoing, no **Owner** shall permit noise, including, but not limited to barking dogs, the operation of excessive noisy air conditioners, amplified sound systems, motor vehicles or power tools, to emanate from an **Owner's Lot** or from activities within the **Common Area**, which would unreasonably disturb any other **Owner's** or tenant's enjoyment of his or her **Lot** or the **Common Area**. Nuisance may include, for example, tobacco smoke, outside cultivation of marijuana, a visual blight, loud, noxious, odorous, destructive or offensive activity or anything which causes significant embarrassment, disturbance or annoyance to others. Some activity at inappropriate times may constitute a nuisance. Because a nuisance is largely subjective, the **Association** is not obligated to become involved in such disputes except as follows: If the nuisance is such that it disturbs more than one household, the **Association** shall take appropriate action to abate the nuisance if the affected **Occupants** request in writing that action be taken by the **Board**. The **Board** has discretion as to what action is appropriate to the nuisance. If the nuisance is such that it only disturbs a single

household, then the disturbance is not sufficient to require intervention by the **Association** and the two parties shall resolve their dispute by Alternative Dispute Resolution as provided for in **Section 10.3(c)(2)**. The **Association** has the authority to elaborate with examples and pass rules addressing such activity.

Section 6.6. Vehicles.

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

~~3.4 Vehicle and Garage Restrictions.~~ No mobile home, camper or recreational vehicle, boat, truck (other than pickup trucks that do not exceed three-quarter ton) or similar equipment shall be parked at anytime within the Development (including on any public rights-of-way) except trucks parked on a temporary basis for purposes of loading or unloading.

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

6.6(c) Other Limitations.

6.6(c)(1) ~~[3.4]~~ Lot Owners **Occupants** shall park their vehicles in garages, so that parking on the street or driveway apron of the **Lot** is available primarily for temporary and guest parking.

6.6(c)(2) ~~[3.4]~~ Garage doors shall be kept in a closed position except when the door is open to permit the entry or exit of vehicles or to provide ventilation to individuals working in the garage area.

6.6(c)(3) ~~3.10 Automobile Maintenance.~~ There shall be no maintenance (other than vehicle washing and cleanup), or repairs performed on any automobile or restorations of any motor vehicle, boat, trailer, or other vehicle upon any portion of the **Property**, except wholly within an enclosed garage. or except for any Emergency repairs that are may be performed, but only to the extent necessary in order to remove the vehicle to a proper repair facility.

6.6(c)(4) No vehicle which emits extraordinary levels of exhaust pollution or noise, as determined by the **Board**, shall be operated within the **Property**.

6.6(c)(5) Vehicles must display a current registration and be operable. Vehicles parked outside must be maintained in such a condition that they do not create a visual nuisance.

Section 6.7. Garages. ~~[3.4]~~ Except as expressly described in plans filed with and approved by the City, no **Owner** or other **Person** or entity shall convert any **two (2) car** garage space to a family room, living room, bedroom or other such room which would normally be considered living area for the ~~Owner~~ **Occupant**, or storage, recreational use or any other use if such conversion would in any manner prevent the parking of at least two vehicles within the garage or the ~~ingress or egress~~ **coming and going** of vehicles to and from at least two parking spaces in the garage. The foregoing shall not prohibit the placement of a washer, dryer, freezer or other such appliance or personal property in a garage as long as such placement does not in any manner prevent the parking of two vehicles in the garage at all times.

~~3.6~~ **Television or Radio Equipment.** No television, video or radio poles, antennae, satellite dishes, cables or other transmission and/or reception fixtures or personal property (individually and collectively the "Antenna Equipment") shall be installed or maintained on any Lot except as follows:

- ~~(i)~~ Antenna Equipment that is one meter or less in length or diameter or diagonal measurement, provided that the location, color and screening requirements shall be in accordance with any guidelines imposed by the Architectural Committee, which guidelines shall comply with applicable State and federal laws regulating restrictions on Antenna Equipment; and
- ~~(ii)~~ Antenna Equipment not covered under subparagraph (i) above, the installation of which is approved in advance by the Architectural Committee in accordance with the procedures described in Article 7.

~~Nothing herein shall be construed to restrict in any manner Declarant's or the Board's right to authorize a cable television franchisee or other provider of similar services to provide cable television, satellite dish, radio or other similar services to the Development.~~

Section 6.8. Dishes and Antennae. The **Board** may adopt reasonable guidelines and rules regulating the installation of antennae and satellite or other receiving dishes. Any such provisions must conform to applicable law. If a satellite dish is not operational or is abandoned, the **Association** may require that it be removed for aesthetic reasons.

~~Section 3.8~~ **6.9. Clothesline.** No exterior clothesline shall be erected or maintained on any **Lot**; and there shall be no exterior drying or laundering of clothes on any balcony, patio, porch or other outside area of any **Lot that is visible from any street, driveway, Common Area or other Lot.**

~~Section 3.9~~ **6.10. Window Coverings.** The interior surfaces of all windows shall be covered with normal and customary window coverings such as curtains, drapes, shutters or blinds. The exterior side of window coverings shall be white or off-white unless approved otherwise in writing by the Architectural Committee.

Section 6.11. Exterior Wiring. No telephone, cable television or other wiring shall be routed along the building exterior in a manner that is visible from the street, other **Lots** or **Common Area**. Exterior wiring shall be concealed or, if approved by the **Association**, painted to match the color of the building.

~~3.1 Residential Use. Each Lot shall be used for residential purposes only; and no part of the Development shall be used or caused, allowed or authorized to be used in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending or other nonresidential purpose. Notwithstanding the foregoing, Owners or occupants of the Lots may use a room or rooms in the residence as an office, provided that the primary use of the Lot is as a residence, no advertising or signage is used in any manner in connection with the office use, no customers, clients or patients enter the Lot on any regular basis, and the use is in compliance with all local ordinances. The Board shall have the authority to adopt additional Rules regarding the use of offices within the Development in order to maintain the residential characteristics of the Development. The use of Lots by Declarant or its designees as models and sales and construction offices for purposes of developing, improving and selling the Lots in the Development shall not be a violation of this restriction, provided that such use shall terminate no later than three years after the date of recordation of this Declaration or any declaration of annexation annexing property in any additional phase into this Development, whichever occurs later.~~

Section 6.12. Restriction on Businesses. No trade or business shall be conducted on or from any Lot, except for professional, or administrative-type work, provided there is no external evidence and, if the Board adopts a related policy, it is conducted in accordance with that policy. In no event shall a business be conducted which will (a) have a measurable negative impact on neighbors, (b) increase vehicle or foot traffic within the Project or to the Lot, (c) cause any damage to the Common Area, (d) adversely affect or increase the cost of Association insurance, or (e) interfere with the primary use of the Lot as a Residence. The City of Novato Home Occupation Ordinance shall apply and, in the event of overlap or conflict, the more restrictive shall be applied.

~~4.5 Trash Removal. Each Lot Owner shall be responsible for the removal of all the trash and refuse from that Owner's Lot. Each Owner shall engage a trash removal service for the periodic removal from the Owner's Lot unless the Board approves some other arrangement in writing. All trash or refuse shall be kept only in sanitary containers, which containers shall be kept in the areas designated for such except on trash collection day if curbside service is provided.~~

Section 6.13. Trash Disposal. All garbage and recycling shall be placed and kept in covered containers. Except on collection days, these containers should not be visible from neighboring properties, and should be returned promptly after collection.

Section 6.14. Sports Fixtures. ~~[from Rules & Regs]~~ No basketball standards, hoops or backboards or other fixed sports apparatus shall be attached to the front of any Residence or erected in the front yard. The Association may pass rules regarding use and storage of portable sports apparatuses. Regulation may include time of year, frequency and/or hours of use.

Section 6.15. Exterior Lighting. Addition of or alteration to exterior lighting which may impact neighbors shall be addressed as an Architectural Alteration (see Article IX).

Section 6.16. Smoking Prohibited in Common Area. Cigarette, cigar, pipe and/or other smoking is prohibited in all Common Area. Additionally, the Association may prohibit smoking in any area that adversely affects other residents.

Section 6.17. Air Conditioning Units. Installation or replacement of an air conditioner shall be subject to **Association** approval. The **Association** has the right to adopt policies regarding the location, type and use of air conditioners to minimize the aesthetic impact and any operation which may negatively affect neighbors.

Section 6.18. Solar Energy Systems. The **Board** may, but is not required to, permit installation of solar equipment on **Common Area**. The **Board** may also impose reasonable restrictions or adopt reasonable guidelines addressing the installation of solar energy systems on **Lots** by **Owners**. Such guidelines must conform to applicable law.

~~3.2 Renting. The Owner may rent his or her Lot, provided each of the following conditions is satisfied:~~

Section 6.19. Rental or Lease of Lots. It is the intent of this section to protect, enhance and maintain the residential atmosphere which exists within the **Property** and to avoid occupancy of **Residences** for short periods of time or by an unreasonable number of individuals. No "timeshare" arrangements are permitted, whether by way of rental, lease or sale. No **Owner** is permitted to lease his or her **Lot** to a **Person** or company who would then sublet to others for transient or short term use. No less than the entire **Residence** shall be rented or leased except that an **Owner** who remains a full-time resident can have a roommate. Accordingly, an **Owner** shall be entitled to rent, lease, or permit use of his or her **Lot** if:

~~(i) the agreement must be in writing;~~

~~(ii) the rental agreement must contain a provision that the rental agreement is subject to this Declaration, the Bylaws and the Rules and that any violation of any of the foregoing shall be a default under the rental agreement; and~~

6.19(a) There is a written rental or lease agreement specifying that (1) the tenant(s) shall be subject to all provisions of the **Governing Documents**, (2) a failure to comply with any provision of the **Governing Documents** shall constitute a breach of the agreement, (3) all tenants are subject to disciplinary action or other actions by the **Association** to enforce the **Governing Documents**, and (4) identifies all residents. The **Owner** shall provide the **Association** with a copy of the lease agreement upon request. Dollar amounts and extraneous information may be redacted.

6.19(b) The initial period of the rental or lease is not less than six (6) months. However, seller lease-backs up to ninety (90) days are permitted;

6.19(c) The **Owner** provides any tenant or lessee with current copies of all the **Governing Documents**. The **Owner** shall also provide copies of any subsequent changes or additions. The **Association** may require evidence that the tenant or lessee has received copies of all **Governing Documents**. If such evidence is requested and is not timely provided, the **Association** may unilaterally provide such copies and charge the **Owner** a Reimbursement **Assessment**;

~~Any rental agreement shall be subject to this Declaration; the Bylaws and the Rules; and any breach of any of the foregoing shall constitute a breach by the Owner and also a default under~~

~~the rental agreement, regardless of whether it so provides in the rental agreement. If any tenant breaches any restriction contained in this Declaration, the Bylaws or the Rules, the Owner, on demand from the Association, immediately shall take such steps as may be necessary to correct the breach, including, if necessary, eviction of the tenant.~~

6.19(d) The **Owner** and the tenant or lessee shall be jointly and severally liable at all times for compliance by the tenant, lessee or other **Occupants** of the **Lot** with the **Governing Documents** during the tenant's or lessee's occupancy and use of the **Lot**;

6.19(e) The **Owner** shall be responsible for any damage caused by the tenant, lessee, guest and/or other **Occupant** at the **Property**;

~~(iii) before commencement of the rental agreement, the Owner shall provide the Association with the names of the tenants and each family member and the address and telephone number of the Owner. Any Owner that rents his or her Lot shall keep the Association informed at all times of the Owner's address and telephone number.~~

6.19(f) The **Owner** shall notify the **Association** of the name and emails, as well as day and evening telephone numbers for each tenant or lessee and any other **Occupants** within ten (10) days of the change in occupancy.

Section 6.20. Owners and Occupants May Not Direct Association Employees, Agents or Vendors. The **Board's** authority with respect to the **Common Area** is exclusive. No **Person** shall confront, criticize, intimidate, or direct any employee, agent or vendor of the **Association**. Communications on such subjects shall be in writing to the **Board**. If there is a pattern of inappropriate communications to the **Board**, the **Board** may limit the type and timing of communications and/or take other appropriate measures.

Section 6.21. Illegal Acts. Any illegal act or condition shall also constitute a breach of the **Governing Documents** and may, at the option of the **Association**, be enforced as such.

Section 6.22. City Ordinances. For any use restrictions which may apply to the **Property** as set forth in the **Governing Documents**, there may also be City ordinances or State law which apply. In the event of overlap or conflict between the two, the more restrictive shall be applied.

ARTICLE -8 VII INSURANCE

Section 7.1. Types of Insurance.

~~8.2 Association Property Insurance. The Association, in the sole discretion of the Board, may obtain and maintain a property insurance policy on the Common Area Improvements and Association personal property in such amounts and containing such terms and conditions as the Board from time to time may select.~~

7.1(a) Fire and Hazard Insurance. The **Association** shall not be obligated to procure and maintain fire and hazard insurance unless it has an insurable interest in qualifying **Common Area Improvements**. The **Association** may also insure any property owned by the

Association, whether real or personal, against loss or damage, with the **Association** as owner and beneficiary for such insurance. It shall include a waiver of subrogation as to **Owner(s)**.

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

~~8.1 — Liability Insurance. The Association shall obtain and maintain a commercial general liability insurance policy insuring the Association, any manager, Declarant, the Association's directors and officers, and the Owners and occupants of the Residential Lots and their respective family members against any liability incident to: (i) the ownership or use of the Common Area or any other Association owned or maintained real or personal property; and (ii) the performance or nonperformance of any of the Association's duties under this Declaration. The policy shall include, if obtainable, a cross liability or severability of interest endorsement insuring each insured against the liability to each other. The limits of such insurance shall not be less than \$1,000,000 covering all claims for death, personal injury and property damage arising out of a single occurrence. Such insurance shall include coverage against water damage liability, liability for non-owned and hired automobiles, liability for property of others, and other liability or risk customarily covered with respect to projects similar in construction, location and use and shall require at least 30 days' written notice to the Association before the policy can be cancelled or substantially modified unless the policy is being replaced with a policy of equivalent coverage. The policy shall be primary and noncontributing with any other liability policy covering the same liability.~~

7.1(c) Liability Insurance. The **Association** shall procure and maintain a comprehensive public liability policy insuring the **Association**, its agents, and the **Owners** against liability incident to the ownership or use of the **Common Area** or any other **Association**-owned or maintained real or personal property. The amount of general liability insurance that the **Association** shall carry at all times shall not be less than the minimum amounts specified by California Civil Code §§5800 and 5805. In the event that the **Association** performs any work on **Improvements** that encroach on City property, such work shall only be performed subject to an appropriate City permit and appropriate insurance endorsements in favor of the City as required by such permit. (See also **Section 3.12**)

~~8.8 — Other Insurance. In addition to the policies described in Sections 8.1 and 8.2, the Association may obtain and maintain the following insurance:~~

- ~~(i) Workers Compensation Insurance to the extent required by law;~~
- ~~(ii) fidelity bonds or insurance covering officers, directors and employees who have access to any Association funds;~~
- ~~(iii) flood insurance on Common Area Improvements if the Development is located in an area designated by an appropriate governmental agency as a special flood hazard area and the Improvements are of the nature on which property insurance is normally maintained;~~
- ~~(iv) officers and directors liability insurance; and~~
- ~~(v) such other insurance as the Board in its discretion considers necessary or advisable.~~

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

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

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

~~8.3 — Cancellation. All of the policies of insurance maintained by the Association shall contain a provision that such policy or policies shall not be cancelled or terminated, or expired by their terms, or not renewed without 60 days' prior written notice to the Board, the Owners and their respective first Mortgagees (provided that such Owners or Mortgagees have filed written requests with the carrier for such notice) and every other Person in interest who shall have requested such notice of the insurer.~~

~~8.4 — 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 8 in any manner that the Board, in its discretion, considers to be in the best interests of the Association. If the Board elects to materially reduce the coverage from the coverage required in this Article 8, the Board shall make all reasonable efforts to notify the Members of the reduction in coverage and the reasons therefor at least 30 days prior to the effective date of the reduction.~~

~~The Board is authorized to negotiate and agree on the value and extent of any loss under any policy carried by the Association, including, but not limited to, the right and authority to compromise and settle any claim or enforce any claim by legal action or otherwise and to execute releases in favor of any insurer.~~

~~8.5 — Periodic Insurance Review. The Board periodically (and not less than once every three years) shall review the Association's insurance policies and make such adjustments to the policies' terms and conditions as the Board considers to be in the best interests of the Association. If applicable, the review shall include an appraisal by a qualified appraiser of the current replacement costs of all covered property under the Association's property insurance policy unless the Board is satisfied that the current dollar limit of the property insurance policy, coupled with the amount of actual reserves on hand, is equal to or greater than the current replacement costs.~~

~~8.6 — Insurance Trustee. All property insurance proceeds payable to the Association under any property insurance policy procured by the Association as described in Section 8.2, subject to the rights of Mortgagees under Article 10, may be paid to a trustee as designated by the Board to be held and expended for the benefit of the Owners and Mortgagees as their respective interests shall appear. The trustee shall be a commercial bank or other financial institution with trust~~

powers in the county in which the Development is located that agrees in writing to accept such trust. If repair or reconstruction is authorized, the Association will have the duty to contract for such work as provided for in this Declaration.

Section 7.2. Coverage Not Available. If any insurance policy or endorsement required by this section is not available, or is not economically feasible, then the **Association** shall obtain alternate insurance which provides, as nearly as reasonably possible, such coverage.

~~8.7 Individual Property Insurance Policies. Each Owner shall obtain and maintain, at the Owner's expense, a property insurance policy which provides in the minimum coverage against losses caused by fire and all other hazards normally covered under a "special form" policy or its equivalent in an amount not less than 90% of the replacement cost of the insurable Improvements on the Lot. The policy shall contain the following endorsements or their equivalents: agreed amount, inflation guard, ordinance or law, and replacement cost. The policy shall provide liability coverage in such amounts and for such acts or omissions as are normally and customarily included in homeowners property insurance policies of the types required herein. The Board from time to time may require each Owner to provide a certificate from the Owner's insurer certifying that the required insurance has been procured and is in full force and effect.~~

Section 7.3. Members Insure Their Own Residences. The **Association** does not insure the individual **Lots** or any **Improvements** on the **Lot**. Every **Member** shall procure and continuously maintain adequate insurance. All insurance procured by **Owners** must include a waiver of subrogation against the **Association**.

~~[8.4] Each Owner, by acceptance of a deed to a Lot, irrevocably appoints the Association or the Insurance Trustee, described in Section 8.6, as that Owner's attorney-in-fact for purposes of procuring, negotiating, accepting, compromising, releasing, settling, distributing and taking other related actions in connection with any insurance policy maintained by the Association and any losses or claims related thereto and agrees to be bound by the actions so taken as if the Owner had personally taken the action.~~

Section 7.4. Adjustment of Losses. The **Board** is appointed attorney-in-fact by each **Owner** to negotiate and agree on the value and extent of any loss under any policy carried by the **Association** pursuant to **Section 7.1**. The **Board** is granted full right and authority to compromise and settle any claims or enforce any claim by legal action or otherwise and to execute releases in favor of any insured.

Section 7.5. Association Insurance Deductible. The **Board** has discretion to determine the size of the deductible and allocation of responsibility to pay the deductible for any insurance claim on insurance procured by the **Association**.

ARTICLE 9-VIII

DAMAGE, DESTRUCTION AND CONDEMNATION

~~9.1 Repair or Reconstruction. If an Improvement on any Lot is damaged or destroyed by fire or other casualty, the Owner of such Lot shall repair or reconstruct the Improvement in accordance with the original as-built plans and specifications subject to such modifications as may be approved by the Architectural Committee or as required by law. If any Common Area~~

~~Improvement is damaged or destroyed by fire or other casualty: the Association shall repair or reconstruct the Improvement substantially in accordance with the original as-built plans and specifications subject to such modifications as required by law. Notwithstanding the foregoing but subject to the provisions of Section 9.3, the Association will not be required to reconstruct or restore the damaged or destroyed Common Area Improvement if there are not available insurance proceeds and reserves sufficient to pay for at least 85% of the costs of such repairs or reconstruction and three-fourths of the total voting power of the Association's residing Members and their first lenders vote against such repair or reconstruction.~~

~~9.2 — Reconstruction Contract. If the Common Area Improvements are to be rebuilt or restored, the Board shall solicit and obtain bids from at least two reputable contractors to repair and reconstruct the Common Area Improvements in accordance with the original plans and specifications, subject to such changes as may be approved by the Architectural Committee or required by law and shall award the repair and reconstruction work to the lowest qualified bidder unless the Board in its reasonable judgment elects to select a higher bidder. The Association shall have the authority to enter into a written contract with the contractor or contractors for the repair and reconstruction, and the insurance proceeds held by the Association or insurance trustee shall be disbursed to the contractor according to the terms of the contract. It shall be the obligation of the Association to take all steps necessary to ensure the commencement and completion of authorized rebuilding at the earliest possible date.~~

~~9.3 — Minor Repair and Reconstruction and Deductibles. The Association shall have the duty to repair and reconstruct Common Area Improvements within the Development without the requirement of any consent of the Owners and irrespective of the amount of available insurance proceeds in all cases of partial destruction when the estimated cost of repair or reconstruction does not exceed \$20,000, which amount shall be increased 3% per annum on a compounded basis commencing on the anniversary date of the recordation of the Declaration and each anniversary date thereafter. The Association may levy a special assessment for the cost of repairing and reconstructing Improvements to the extent insurance proceeds are unavailable pursuant to the procedures described in Article 6.~~

~~9.4 — Completion of Repair or Reconstruction. The repair or reconstruction of any Improvement, including a residence, shall commence no later than 90 days after the date of such damage or destruction and shall be completed no later than 180 days subject to extensions because of delays that are beyond the control of the party responsible for making the repairs. The party responsible for making the repairs immediately shall take such steps as may be reasonably required to secure any hazardous condition resulting from the damage or destruction and to screen any unsightly views.~~

~~9.5 — Election Not to Rebuild. If any Common Area Improvement is not repaired or reconstructed in accordance with the foregoing, any Association's obligation to maintain, repair or insure the Improvements shall terminate and all available insurance proceeds will be disbursed to the Association unless Members holding a majority of the total voting power elect to have the proceeds disbursed to the Owners, in which case the proceeds shall be disbursed equally among all the Lots, subject to the rights of the Owners' respective Mortgagees, after first applying the proceeds to the cost of mitigating hazardous conditions on the Property, screening the area from unsightly views, and complying with all the applicable requirements of governmental agencies.~~

Section 8.1. Destruction of Common Area. If any portion of the **Common Area** is damaged by an insured casualty, all insurance proceeds shall be segregated and used to restore such **Improvements**. If the insurance proceeds are insufficient to pay all of the costs of restoration, the **Board** shall levy a special **Assessment** equally on all **Owners** to make up any deficiency. This shall be without prejudice to recovery of those amounts due to the liability of others.

Section 8.2. Destruction of a Lot. Subject to the decision of the **Board**, and to the provisions of this Article, each **Owner** shall have the obligation to rebuild and restore the **Residence** and other **Improvements** on his or her **Lot** damaged or destroyed by fire or other casualty substantially to their appearance and condition immediately prior to the casualty loss, or as otherwise approved by the **Board**.

~~9.6—~~ Condemnation. If any action for condemnation of all or any portion of the Common Area is proposed or threatened by any governmental agency having the right of eminent domain, then, after approval by vote or written consent of Members holding at least 51% of the total voting power of the Association and with the consent of the first Mortgagees as may be required herein, the Common Area or a portion of it may be sold and conveyed to the condemning authority by the Association. In addition, the Association, acting as the attorney-in-fact of all the Owners under an irrevocable power of attorney, which each Owner by accepting a deed or a Lot in the Development grants to the Board, and which shall be coupled with the interest of all other Owners, may abandon any easements that the Owners retain over that portion of the Common Area that is sold. Proceeds of any such sale shall be allocated equally among the Lots and distributed to each Owner and their Mortgagees as their respective interests may appear. If the Common Area or any portion of it is not sold but is instead taken, the award shall be apportioned among the Owners and their respective Mortgagees by the terms of the judgment of condemnation; and if not so apportioned, then the award shall be allocated equally among the Lots and distributed to each Owner and their Mortgagees as their respective interests may appear. Notwithstanding anything herein to the contrary, the Board may elect to retain all or any portion of any condemnation proceeds with the Association's funds in lieu of distribution.

Section 8.3. Condemnation. If at any time all or any portion of any **Common Areas**, or any interest therein, is taken for any public or quasi-public use, under any statute, by right of eminent domain, or by private purchase in lieu of eminent domain, the entire compensation or award in condemnation, to the extent such award is not apportioned among the **Owners** by court judgment, shall be paid to the **Association** and shall be used in the manner determined by the **Board**, provided that such use shall not be inconsistent with the purposes of the **Association**. The **Association** shall represent the interests of all **Owners** in any proceedings relating to such condemnation to the extent such **Owners** have any interest in the **Common Area**.

ARTICLE 7 IX

ARCHITECTURAL REVIEW

~~3.11—~~ Alterations, Modifications or Additions. There shall be no alterations, modifications or additions made to any Lot or any Improvement thereon except in compliance with the provisions of Article 7.

~~3.14 — Uniform Boundary Fencing. All boundary fencing shall comply with the design guidelines for boundary fencing approved by the City.~~

~~7.2 — Approval Requirements. None of the following actions shall take place anywhere within the Development without the prior written approval of the Committee:~~

~~(i) — any construction, installation, addition, repair (including exterior painting), replacement, alteration or removal of any building, outbuilding, structure, exterior wall, windows, exterior doors, exterior stairs, fence, sign, garage, trash enclosure, storage area, berms, utilities, fixtures (gas, electricity, telephone, water, or otherwise) or other Improvements visible from any other Lot or Common Area;~~

~~(ii) — any planting or landscaping (including the removal of any tree);~~

~~(iii) — any grading, excavation or site preparation; or~~

~~(iv) — any placement or storage of building materials or temporary structures (including trailers, tents, mobile homes, offices or vehicles).~~

~~7.9 — Governmental Approval. Before commencement of any alteration or Improvement approved by the Committee, the Owner shall comply with all the appropriate governmental laws and regulations. Approval by the Committee does not satisfy the appropriate approvals that may be required from any governmental entity with appropriate jurisdiction.~~

Section 9.1. Architectural Approval. Prior to undertaking any exterior addition, change or other alteration, such as to a building, fence, wall, garage, trash enclosure, outbuilding, storage area, patio cover or other structure or making any change in the appearance of any structure or significant change to a landscape plan located upon any **Lot**, the **Owner** shall obtain prior written approval of the **Association**. The **Association** may require plans and specifications showing the nature, kind, color, shape, height, materials and location of the change as to harmony of external design and location in relation to surrounding structures and topography. Any alteration in drainage patterns must be shown. Proposed alterations may also require building department and/or design approval by the City. City approval does not assure **Association** approval, which may use more restrictive considerations. Notwithstanding anything herein to the contrary, any **Owner** may repaint the exteriors of any **Improvements** on the **Owner's Lot** in the same colors, remove and replace any siding or roofing materials with the same material and in the same color, and remove and replace vegetation of the same or substantially similar type as originally constructed or Installed by Declarant or as previously approved by the Committee. In addition, any **Owner** may repaint the interior of the **Owner's Residence** in any color the **Owner** desires or remodel the interior, provided the remodeling does not in any manner alter the exterior appearance of the building.

~~7.1 — Architectural Committee. An Architectural Committee may be established by Declarant or by the Board. The Committee shall consist of three members. Declarant may appoint all of the original members of the Committee and all replacements until the first anniversary of the issuance of the original final subdivision public report for the Development. Declarant's appointees need not be Members of the Association. Declarant shall have the right to appoint a majority of the members of the Committee until 90% of all the Lots in the Development have been sold or until the fifth anniversary of the issuance of the final public report for the first phase of the Development, whichever occurs first. On the first anniversary date of the issuance of the original public report for the first phase of the Development, the Board shall have the power to appoint one member to the Committee until 90% of the Lots of the Development have been sold or until the fifth anniversary date of the issuance of the final public report for the first phase of the Development, whichever first occurs. Thereafter, the Board shall have the power to appoint all of the members of the Committee.~~

~~The Board appointees shall be Members of the Association. The term of the members shall be as designated by Declarant or by the Board. If a member is removed from the Committee for any reason, the person appointing the member immediately shall appoint a replacement for the balance of the removed member's term. Until a replacement is named, the remaining members of the Committee shall have full authority to act on behalf of the Committee. No member of the Committee shall be entitled to any compensation for serving as a member, provided that member shall be entitled to be reimbursed by the Committee for any expenses incurred by the member in performing its duties, provided the member received prior authorization for the incurrence of the expense. All actions of the Committee shall be governed by a majority vote of the members. The Committee shall meet at such times and places as it shall designate. Meetings of the Committee shall be open to all Members of the Association.~~

~~7.8 Board's Authority. If for any reason the Committee is not established or not active, the Board shall perform the duties and shall have the rights of the Committee as described in this Article 7. Notwithstanding anything herein to the contrary, modifications, changes or additions to any Common Area Improvements authorized by the Board shall not require approval from the Committee.~~

Section 9.2. Architectural Committee. The Architectural Committee, if any, shall be composed of a Director and two (2) **Owners** appointed by the **Board**. If a decision on an application has been rendered by the Architectural Committee, there is a right of appeal to the **Board**. The determination of the **Board** is final. Members of the Architectural Committee shall not receive any compensation for services rendered. The **Board** may approve reimbursement to Architectural Committee members for reasonable out-of-pocket expenses incurred by them in connection with the performance of any Architectural Committee functions. The **Board** shall always maintain the ultimate authority to overrule the Architectural Committee. If there is no committee, the **Board** shall function in this role.

~~7.3 Architectural Rules. The Committee, from time to time, may adopt, amend and repeal rules and regulations to be known as "Architectural Rules". Pending adoption of the Architectural Rules, the provisions of this Section 7.3 shall control the actions of the Committee and shall bind all Owners. The Architectural Rules shall interpret and implement the provisions of this Article 7 and shall contain the following mandatory elements and such other elements as the Committee considers necessary or advisable:~~

Section 9.3. Architectural Procedures/Guidelines. Subject to the provisions in the **Davis Stirling Act**, the **Board** shall adopt rules to be used to address architectural alterations. ~~{7.4}~~ The Committee may adopt guidelines regarding **are to address** the type, location, quality, size, height and other matters relating to any **Improvements** or landscaping to be constructed or installed on the **Lots** and may **shall** establish a procedure for reviewing all plans and specifications submitted to it for prior approval. ~~The Architectural Committee~~ and shall be responsible for periodic review and **recommending** modification of the guidelines. The guidelines shall comply with the use restrictions described in ~~Article 3~~ **this Declaration** and with the design guidelines for boundary fencing approved by the City. Factors that shall be considered in approving proposed plans and specifications shall include without limitation: (i) conformity and harmony of external design with other **Lots** in the Development; (ii) effect of the proposed location on neighboring **Lots**; (iii) relation of the topography, grade and finished ground elevation to that of adjoining **Lots**; (iv) proper facing of elevations with respect to nearby streets and adjoining **Lots**; (v) overall conformity with

the general purpose of the Development **Property** and the restrictions in this **Declaration**; and (vi) the guidelines.

Section 9.4. (i) **Application Requirements.** The Architectural Rules **guidelines** shall set forth the necessary documents to be submitted by the applicant. Unless otherwise waived in writing by the Committee, or an authorized representative thereof, the application shall include plans and specifications prepared by an architect or a licensed building designer which adequately describe the proposed work and shall include the following to the extent applicable to the proposed work: plot layout; location of all existing and proposed **Improvements**; setbacks from **Lot** lines of all existing and proposed **Improvements**; proposed drainage; exterior designs; roofing and siding materials; elevations of all **Improvements**; floor plans; location of all heating or cooling equipment; decking; screening devices; bearing walls and retaining walls; materials and colors; landscaping plans; construction schedule; and such other information as the Committee shall reasonably require. Landscaping plans shall include a complete and professionally prepared plan including the name, location and sizes of all proposed trees, sodding, shrubbery, lawn areas, hardscape and irrigation system. The plans shall identify any trees scheduled for removal and describe the plans for replanting trees and vegetation. If the proposed work does not merit extensive plans and specifications, the Committee may, but shall not be obligated to, waive or modify any of the above requirements upon receipt of a written request from the applicant to do so.

~~An application shall not be considered a "complete application" for purposes of Section 7.4 until the Committee has received all the required documents. After the submission of an application, the applicant may request in writing from the Committee confirmation that the application is complete. The initial confirmation request may be made no sooner than seven calendar days after the initial application has been received by the Committee. If the Committee fails to respond within 30 days of receipt of the request, the application shall be considered complete for purposes of Section 7.4 only. The foregoing does not preclude the Committee from requesting additional documentation unless the application has been deemed approved pursuant to the provisions of Section 7.4. If a timely request for additional documentation is received, this documentation or the failure to receive the documentation can be considered by the Committee in rendering its decision on the proposed work.~~

~~The application, any request for confirmation of a complete application, any additional documents requested by the Committee, and any other notices or documents given to the Committee under the provisions of this Article 7 shall be considered received by the Committee in accordance with the "receipt" procedures described in the Architectural Rules or, if there are no such procedures, on the date of personal delivery to the Association's manager, the President of the Association, or the Chair of the Committee or, if mailed, on the date receipt is acknowledged on the return receipt when mailed certified mail, return receipt requested, addressed to the President of the Association or Chair of the Committee and mailed to the principal office of the Association.~~

(ii) ~~Application Fee.~~ The Architectural Rules may require that the application be accompanied by a reasonable application fee to pay for any out-of-pocket costs incurred by the Committee in reviewing any plans and specifications. This fee may include the cost of retaining outside

~~consultants for purposes of assisting the Committee in reviewing the plans and specifications. If, during the review process, the Committee determines that additional fees will be necessary to cover additional out-of-pocket costs, the Committee may require the applicant to advance any additional fees before the review can be completed. The proposed work can be denied for the sole reason that the applicant has failed to pay the required fees.~~

~~(iii) Guidelines and Variances. The Architectural Rules may Include guidelines for any proposed work that are not inconsistent with any use restriction contained in this Declaration. The guidelines can apply to structures and/or landscaping. The guidelines may set forth specific standards regarding color, height, quality, setbacks, materials, size and such other standards as the Committee may adopt from time to time that are consistent with the approval conditions described in Section 7.4. The Committee, from time to time and upon request from the applicant, may grant variances from any guidelines established by the Committee. Under no circumstances shall the Committee have any authority to grant any variance that would result in violation of any use restrictions contained in this Declaration.~~

~~(iv) Hearings (Optional). If the Committee, in its sole discretion, elects to conduct a hearing on an application, reasonable notice of the time, place and proposed agenda for the Committee's hearing shall be distributed prior to the date of a hearing to any applicant whose application is scheduled to be heard. The applicant shall be entitled to appear at the hearing, shall be entitled to be heard on the matter, and may be accompanied by the applicant's architect, engineer and/or contractor. Notice also shall be given to such adjoining or nearby Lot Owners that the Committee reasonably believes could be affected by the proposed work. These Owners shall be entitled to attend the hearing and given reasonable opportunity to present their views on the proposed work.~~

~~(v) Preliminary Approval Procedures. The Committee may adopt procedures for preliminary approval. This would enable applicants who are proposing to make Improvements an opportunity to obtain guidance and comments from the Committee prior to the expenditure of substantial sums on completed plans and specifications. Preliminary approval shall be granted if the Committee, in its sole discretion, determines that it would approve final plans as described in Section 7.4. Pending or denying preliminary approval, the Committee may give the applicant such directions or recommendations concerning the form and substance of the final application for approval as it may deem proper or desirable for guidance of the applicant. Any preliminary approval granted by the Committee shall be effective for a period of 90 days from the date of issuance or such longer period as, in the Committee's discretion, may be granted. During this period, any application for final approval that presents complete plans and specifications for the proposed Improvements, consistent with the provisions of preliminary approval and otherwise acceptable under the terms of this Declaration and the Architectural Rules, shall be approved by the Committee. In no event shall any preliminary approval of a proposed Improvement constitute final approval authorizing construction of the Improvement. The purpose of the preliminary review procedure is to give the applicant a measure of security in proceeding with the proposed Improvement, committing funds thereto. Final approval shall be based on a complete submittal conforming to the requirements of this Section 7.3.~~

~~7.4 Basis for Approval. The Committee shall not approve the application unless the Committee, in its sole discretion, finds all of the following conditions have been satisfied:~~

- ~~(f) the applicant has complied with the application procedures described in Section 7.3 and any additional procedures adopted by the Committee;~~
- ~~(ii) the proposed work is in compliance with the use restrictions contained in the Declaration, the Architectural Rules, and, unless a variance is granted, any guidelines established by the Committee under Section 7.3(iii) in effect at the time the application was submitted to the Committee;~~
- ~~(iii) the proposed work is in compliance with all governmental laws and ordinances (the Committee shall have no duty to independently confirm such compliance);~~
- ~~(iv) if the proposed work involves any exterior modifications or additions, the work is in harmony with the external design of other structures and/or landscaping within the Development and is consistent with the architectural and aesthetic standards prevailing within the Development and with the overall general plan and scheme of the Development; and~~
- ~~(v) if the residence immediately abuts the wall of an adjoining residence, the proposed work will not unreasonably increase the sound transmissions, resonances or reverberations to the other residence.~~

~~The Committee shall be entitled to determine that the proposed work is unacceptable even if the same or similar work previously had been approved for another Lot as long as the Committee finds that reasonable factors exist to distinguish this application from the approved work. The Committee shall be entitled to make subjective judgments and to consider the aesthetics of a proposal when the proposed work will result in Improvements and/or landscaping that can be seen from any other Lot, Common Area, or public right-of-way as long as the Committee acts in good faith and not arbitrarily or capriciously.~~

~~In approving any proposed work, the Committee may grant conditional approval on the adoption of modifications to the proposed work that in the Committee's judgment are necessary to bring the proposed work into compliance with the approval conditions contained in this Section 7.4. In addition, the Committee may impose reasonable construction restrictions, such as construction hours, dust controls, noise abatement measures, and such other conditions as the Committee may reasonably require, to minimize the interference with the quiet use and enjoyment of the surrounding residences during the course of construction.~~

~~In reviewing and approving plans, the Committee shall comply with the restrictions contained in Article 3 and with all federal, State and local laws regulating the rights of handicapped persons.~~

~~7.5 — Completion of Work. On receipt of approval, the Owner shall commence the work as soon as reasonably practicable and shall diligently pursue the completion of the work. If the work is not commenced within 90 days after receipt of approval or completed within 180 days or such later date as the Committee shall approve in writing, the approval automatically shall be deemed revoked and no further work shall be done without again obtaining the written approval of the Committee as described herein. The work shall be done in strict compliance with the approved plans except for minor non-material changes' as may be necessary during the course of construction.~~

~~If the Committee fails to approve or disapprove any application or fails to request additional information within 60 days of receipt of either the complete application or any advance payments required by the Committee, whichever shall occur later, the application shall be deemed~~

~~approved unless a written extension is executed by the Person submitting the application and by the Committee.~~

Section 9.5. Deemed Approval of Alteration on Lot. The Committee shall approve, disapprove or request additional information on all applications by an **Owner** for an alteration on an **Owner's Lot** within sixty (60) days of a complete written submission. In the event that the Architectural Committee fails to act upon any application for approval, if the applicant wants to pursue the request, the applicant may deliver a written demand for action to the Chairperson of the Committee and to the President of the **Association**. The demand shall recite the date upon which the documents were submitted and shall demand that the **Association** either approve or disapprove the application. If the **Association** fails to request additional information, approve or disapprove the application within fifteen (15) days of the date of service of the demand, approval shall be deemed granted. Nevertheless, no such "deemed approval" shall limit the right any other **Owner** may have under this **Declaration** or otherwise with respect to the proposed alteration. The burden shall be on the applicant to establish that the Committee did receive the completed application and/or advance payments and to establish the date of receipt.

Section 9.6. Non-Waiver. It is acknowledged that over time, Directors change, aesthetic standards change, conditions vary, experience with materials and configurations broadens, and community preferences change. Given that standards may evolve over time, it is acknowledged that past approvals are no assurance of current or future approvals for similar alterations. This evolution of standards does not make the exercise of discretion arbitrary or selective. It is the goal of the **Association** to maintain consistency in aesthetic decisions within a reasonable time period. However, approval of any application or alteration shall not be deemed a waiver of any right to deny or approve any similar application or alteration.

~~7.6— Non-liability. The Association, the Committee, Declarant, or the other Lot Owners, or their respective successors or assigns, shall not be liable to any Person submitting plans to the Committee for approval or to any other Lot Owners or occupants by reason of any act or omission arising out of or in connection with the approval or disapproval of any plans or specifications. Approval shall not constitute any warranty or representation by the Committee or its members that the plans satisfy any applicable governmental law, ordinance or regulation or that any Improvement constructed in accordance with the plan shall be fit for the use for which it was intended and safe for use and occupancy. Applicants shall make their own independent verifications of the foregoing and shall not rely on the Committee or its members in any manner in this regard.~~

Section 9.7. Liability. The **Board**, Directors and/or the Architectural Committee shall not be liable to the **Association** or any **Owner** for any damage, loss or prejudice suffered or claimed on account of (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective, or (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications.

~~7.7— Enforcement. If any Owner or occupant violates the provisions of this Article 7, any Declarant or the Association, in addition to any other remedy available at law or equity, may bring an action to compel compliance, including an action for a court order mandating the removal of any Improvement or other property constructed or installed in violation of the provisions of this~~

~~Article 7. In such action, the prevailing party shall be entitled to recover costs and reasonable attorneys' fees.~~

Section 9.8. Architectural Enforcement.

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

9.8(b) Hearing and Determination. Prior to taking any disciplinary action against an **Owner** for an apparent architectural violation, the **Association** shall provide the **Owner** with due process pursuant to **Article X, Section 10.4**. If the **Board** finds that there is no valid reason for the continuing noncompliance, the violation shall be deemed a continuing nuisance, and the **Board** may require the **Owner** to remedy or remove the unapproved architectural alteration.

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

Section 9.9. Architectural Agreement. The **Association** shall have the right to condition its approval of an alteration on the execution and recordation of an Architectural Agreement entered into between the **Association** and an **Owner**. Such an Agreement may memorialize the conditions under which an architectural variance or alteration was approved, and the rights and responsibilities of the **Association**, the **Owner**, and future **Owners** of the **Lot**. After recordation, the **Association** shall provide the **Owner** with a copy of any such recorded Agreement. Unless otherwise provided in such an Agreement, the following shall apply: (a) **Owner** will indemnify, hold harmless and defend the **Association**, Directors, and Management Company from any claim arising from or related to the approval of the work and the work itself; (b) **Owners** will be responsible to maintain, repair and replace all aspects of the installation and/or to reimburse the **Association** for such costs, (c) **Owner** agrees to maintain homeowner property damage and liability insurance and such other insurance as is required by the **Association**; and (d) all of **Owners'** successors will also be bound by these obligations.

~~7.10 — Declarant Exemption. Declarant, or its successor or assign, shall not be subject to the approval requirements of this Article 7 in connection with the construction or alteration of any Improvement within the Development or the installation of any landscaping, provided that this exemption shall expire on the third anniversary date of the recordation of the declaration of annexation annexing the last phase into the Development.~~

ARTICLE X

ENFORCEMENT OF GOVERNING DOCUMENTS

~~[5.6] (iv) Imposing Disciplinary Action: In addition to any other enforcement rights described in this Declaration and the Bylaws or as may be authorized by law and subject to the due process requirements imposed by this Declaration, the Bylaws or by law, the Board may take any of the following actions against any Person 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; and (c) commence any legal or equitable action for damages, injunctive relief or both. Subject to the provisions of Section 13.9, 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 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.~~

~~(4) No Forfeiture: 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.~~

~~(5) Assessment Charges: The provisions of this Section 5.6(iv) do not apply to charges imposed against a Member for reasonable late payment penalties or charges to reimburse the Association for loss of interest and for costs reasonably incurred (including attorneys' fees) in collecting delinquent assessments.~~

~~13.9 Enforcement Rights and Remedies. The covenants, restrictions, rights and duties contained in this Declaration constitute covenants running with the land and equitable servitudes that benefit and bind each Lot in the Development, each Owner, and each successive Owner thereto, and may be enforced by the Association or any Owner in any legal or equitable action pursuant to the procedures described herein.~~

~~Each Owner acknowledges and agrees that if any Person breaches any of the restrictions contained herein, money damages may not be adequate compensation. As a result, each Owner agrees that in the event of a breach, the non-breaching party, in addition to any other remedy available at law or equity, shall be entitled to equitable relief, including, but not limited to, an order compelling the breaching party to perform an act which the party is required to perform under this Declaration or which is necessary to bring the breaching party or the breaching party's Lot into compliance with restrictions contained herein or prohibiting the breaching party from performing any act that violates the restrictions.~~

~~Notwithstanding anything herein to the contrary, the Association shall have the exclusive right to levy assessments and to take appropriate action to enforce delinquent assessments, including imposition of an assessment lien and the foreclosure of the lien. Furthermore, the Association shall have the primary responsibility for enforcing the restrictions contained in Article 2. If any Owner or occupant desires the Association to take any enforcement action, the Owner or occupant shall notify the Association in writing of the alleged violation. On receipt, the Board shall review the matter and shall determine what action, if any, to take. Neither the Board nor the~~

~~Association or any director, officer or agent thereof shall be liable if the Board in the exercise of its judgment elects not to take any action. To the extent applicable, the Board shall comply with the due process requirements described in this Declaration. If within 90 days after receipt of the notice the Board has failed to take any corrective action and the alleged violation has not been cured and is continuing, any Owner may bring an action on the Owner's behalf for appropriate legal and/or equitable relief. In such action, the Owner shall bear his or her own costs and attorneys' fees, provided that the prevailing party in such action shall be entitled to recovery of such costs and fees.~~

Section 10.1. Violation. A violation of the **Governing Documents** shall be defined as a single act or omission occurring over an uninterrupted period of time. Further, any violation of the **Governing Documents** shall be deemed a nuisance. Any activity or condition which constitutes a public or private nuisance shall also be deemed a violation. If the detrimental effect of a violation continues for additional days, discipline imposed by the **Association** may include one component for the violation and, according to the **Association's** discretion, a per diem component for so long as the detrimental effect continues. Similar violations over an extended length of time may justify cumulative imposition of disciplinary measures. The **Association** shall take reasonable and prompt action to mitigate, repair or avoid the continuing damaging effects of a violation or nuisance occurring within the **Common Area** at the cost of the responsible party.

Section 10.2. Jurisdiction. The **Association** shall have jurisdiction over any **Person** on the **Property** or with rights in the **Property** and any real and/or personal property in Pointe Marin. This jurisdictional authority shall be subject to the terms, conditions and safeguards provided in the **Governing Documents**. The **Owner** shall be liable for compliance by tenants, lessees, other residents, guests or invitees (including the guests or invitees of tenants or lessees).

Section 10.3. Enforcement Options. In the event of a breach or violation of any of the **Governing Documents** by any **Person**, the **Board**, for and on behalf of all other **Owners**, may enforce compliance with the **Governing Documents** through the use of such remedies as are deemed appropriate by the **Board** and available in law or in equity, including, but not limited to, the following:

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

~~(a) If the Board adopts a policy imposing monetary penalties, including any fee on any Member for a violation of the governing documents or the Rules, including any monetary penalty relating to the activity of a guest or invitee of a Member, the Board shall adopt and distribute to each Member, by personal delivery or first-class mail, a schedule of the monetary penalties that may be assessed. The Board may change the schedule from time to time and shall distribute a notice of such changes to the Members in the same manner as the schedule of penalties.~~

10.3(b) Fines. A fine is a penalty and unrelated to any reimbursement or other cost incurred. The **Association** may implement a schedule of reasonable fines and penalties for particular offenses that are common or recurring in nature and for which a uniform fine schedule is appropriate (such as illegally parked vehicles or failure to properly maintain landscaping). If such a fine policy and schedule is adopted by the **Association**, the **Association** shall distribute

it to each **Owner**, as part of the Annual Policy Statement. The **Board** may levy a reasonable fine in accordance with the **Association's** fine policy and schedule and/or in the range specified in any Notice of Hearing. A fine, while enforceable by lien and/or judicial foreclosure, shall not be the subject of non-judicial foreclosure. The **Association** may file a lien to preserve its rights to later file a judicial foreclosure action. In imposing any fine, the **Association**, in its sole discretion, may choose to suspend some or all of the fine for a period of time pending compliance with a directive of the **Association**.

~~[13.9] Prior to the commencement of any civil action against the Association or any Owner, the Association or the Owner bringing the civil action shall comply with the requirements of Civil Code section 1354 to the extent applicable.~~

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

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

10.3(c)(1)(i) Internal Dispute Resolution Procedure (IDR). In the event of a dispute between an **Owner** and the **Association**, prior to filing legal action, the parties shall "meet and confer" in an effort to resolve the dispute pursuant to the provisions of Civil Code §§5900-5920 or an Internal Dispute Resolution procedure otherwise adopted by the **Board**. The **Association** participants may be the manager, one or more Directors, or other designated representative(s) of the **Board**. IDR is optional to the **Owner**, but required for the **Association** if the **Owner** requests it. Attorneys or other representatives are not permitted to attend unless agreed to in writing by all parties.

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

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

10.3(d) Legal Action. Preserving status quo in the Pointe Marin neighborhood is an important goal of this **Declaration**. This goal includes the preservation of aesthetics and the quiet enjoyment of Each **Residence**. With the exception of nonpayment of any **Assessment**,

the recovery of dollar damages for any violation of the **Governing Documents** is an insufficient remedy. Enforcement of the **Governing Documents** against any **Owner** or **Occupant** may be undertaken by appropriate legal proceedings instituted by any **Owner**, the **Association**, or both. No action shall be filed by an **Owner** or the **Association** unless or until there is compliance with the Alternative Dispute Resolution provisions of the **Davis-Stirling Act**. Legal proceedings may include the following:

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

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

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

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

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

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

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

10.3(f) Imposition of Reimbursement Assessment. The **Association** may levy a Reimbursement **Assessment** as provided for in **Section 4.1(d)** of this **Declaration**.

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

(b) ~~— The imposition of any disciplinary action, including, but not limited to, the imposition of monetary penalties or the suspension of use and/or voting privileges except as otherwise noted herein, shall be subject to the following procedures and requirements:~~

(1) ~~— Notice of Hearing: Prior to the time the Board meets to consider or impose discipline upon a Member, the Board shall notify the Member, by either personal delivery or first-class mail, at least 15 days prior to the meeting. The notice shall contain, at a minimum, the date, time and place of the meeting, the nature of the alleged violation for which the Member may be disciplined, and a statement that the Member has a right to attend and may address the Board at the meeting.~~

(2) ~~— Hearing: If requested by the Member, the Board shall conduct the disciplinary proceeding in executive session. The Member, the Member's legal counsel, and the Association's legal counsel shall be entitled to attend the executive session meeting. The Board may interview witnesses and other interested parties in executive session.~~

(3) ~~— Notice of Action Taken: If the Board elects to impose discipline on the Member, the Board shall notify the Member of the disciplinary action within ten days following the election to impose the disciplinary action.~~

Section 10.4. Implementation. Prior to taking disciplinary action against an **Owner**, the **Association** must provide the **Owner** with due process as set forth in this **Section 10.4.**

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

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

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

Section 10.5. Miscellaneous.

~~13.3 Cumulative Remedies. Each remedy provided for in this Declaration shall be cumulative and nonexclusive. Failure to exercise any remedy provided for in this Declaration shall not, under any circumstances, be construed as a waiver of the remedy.~~

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

~~13.15 No Enforcement Waiver. Failure to enforce a restriction in the past in and of itself shall not constitute a defense to any action brought against any Owner for violation of any restriction contained herein. Each Owner, by acceptance of a deed to a Lot in the Development, acknowledges that the enforcement of these restrictions may vary as a result of different Owners, Boards or Architectural Committees, changing conditions, or other reasons and agrees that the failure of any Owner, Board or Committee to enforce any particular restriction, even if such failure is for an extended period of time, shall not in any manner restrict or estop the right of any Owner, Board or Committee to enforce these restrictions at any future time.~~

10.5(b) Non-Waiver. The failure of any **Owner**, the **Board**, any **Committee**, or the **Association** or its officers or agents to enforce any of the covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights-of-way, liens, charges or equitable servitudes contained in this **Declaration** shall not constitute a waiver of the right to enforce the same thereafter, nor shall such failure result in or impose any liability upon the **Association** or the **Board**, or any of its officers or agents.

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

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

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

~~13.13 Attorneys' Fees..Except as provided in Article 12, in the event of any litigation or alternative dispute resolution procedure regarding the rights or obligations of the Association or any Person subject to this Declaration, the prevailing party in such proceeding, in the discretion of the judge or decision-maker, shall be entitled to recover costs, including reasonable attorneys' fees:~~

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

ARTICLE ~~13~~ XI

Miscellaneous **GENERAL PROVISIONS**

~~13.1 Headings. The headings used in this Declaration are for convenience only and are not to be used to interpret the meaning of any of the provisions of this Declaration.~~

~~13.4 Discrimination. No Owner shall execute or cause to be recorded any instrument that imposes a restriction on the sale, leasing or occupancy of the Owner's Lot on the basis of race, sex, marital status, national ancestry, color or religion.~~

~~13.2 Severability. The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any provision or provisions or any portion thereof shall not invalidate any other provision or any portion of the provision found invalid or unenforceable.~~

Section 11.1. Severability. Should any provision in this **Declaration** be void or become invalid or unenforceable in law or in equity by judgment or court order, the remaining provisions shall be and remain in full force and effect.

Section 11.2. Interpretation. The provisions of this **Declaration** and the other **Governing Documents** shall be liberally construed to effectuate its purpose of perpetuating a uniform plan for the operation of a Planned Development.

~~13.5 Access to Books. Any Owner, at any reasonable time and upon reasonable notice to the Board or manager and at the Owner's expense, may cause an audit or inspection to be made of the books and financial records of the Association.~~

~~13.10 Term. The term of this Declaration shall be for a period of 50 years from the date on which this Declaration is recorded in the records of the county in which the Development is located. After that time, this Declaration and each of its restrictions and covenants and other provisions automatically shall be extended for successive ten-year periods unless this Declaration is rescinded by the written consent of Owners holding a majority of the total voting power of the Association. The rescission shall be effective on recordation of a notice of rescission in the records of the county in which the Development is located.~~

Section 11.3. Term of Declaration. The provisions of this **Declaration** shall continue and be effective until January 1, 2052, after which date this **Declaration** shall be automatically extended for successive periods of ten (10) years, until it is terminated by the **Owners** in accordance with the law and the approval of the City. This **Declaration** may be amended as provided below.

ARTICLE 11 - Amendments

~~11.1 Amendment Before Close of First Sale. Before the close of the first sale of a Lot in the Development to a purchaser other than Declarant or an entity controlled by Declarant, this Declaration may be amended in any respect or rescinded by Declarant by recording an instrument amending or rescinding the Declaration. Before the close of the first sale of a Lot in a second or subsequent phase of the Development to a purchaser other than Declarant or entity controlled by Declarant, any declaration of annexation recorded pursuant to Article 14 with respect to such phase may be amended in any respect or rescinded by the Declarant annexing the property by recording an instrument amending the declaration of annexation or rescinding the declaration of annexation. If the declaration of annexation is rescinded, the phase shall be de-annexed from the Development and no longer subject to the Declaration. The amending or rescinding instrument shall make appropriate reference to this Declaration and its amendments and shall be acknowledged and recorded in the county in which the Development is located. For purposes herein, a Person is considered controlled by a Declarant if the Declarant holds 50% or more of the capital and profit interests if a partnership or limited liability company, 50% or more of the voting shares if a corporation, and 50% or more of the beneficial interests if a trust.~~

~~11.2 Amendment After Close of First Sale. After the close of the first sale of a Lot in the Development to a purchaser other than to a Declarant or any entity controlled by a Declarant, this Declaration may be amended or revoked in any respect with the vote or written consent of the holders of not less than 51% of the voting rights of each class of Owners or, if a single class of Owners is then in effect, by the vote or written consent of not less than 51% of all votes and 51% of all votes excluding Declarant. If any provision of this Declaration requires a greater or lesser percentage of the voting rights of any class of Owners in order to take affirmative or negative action under such provision, the same percentage of such class or classes of Owners shall be required to amend or revoke such provision. Also, if the consent or approval of any governmental authority, Mortgagee or other person, firm, agency or entity is required under this Declaration with respect to any amendment or revocation of any provision of this Declaration, no such amendment or revocation shall become effective unless such consent or approval is obtained. Notwithstanding anything herein to the contrary, any provision in this Declaration conferring rights or benefits on Declarant may not be amended or rescinded without the prior written consent of Declarant except as expressly authorized by Civil Code section 1355.5 and in Section 11.4. The amendment is effective when it has been approved by the appropriate percentage of Owners as required herein, the approval has been certified in a writing executed and acknowledged by the officer designated in the Declaration or by the Association for that purpose (or, if no one has been designated, the President of the Association), and the amendment and certification have been recorded in the county in which the Development is located.~~

Section 11.4. Amendment. This Declaration may be amended by approval of Owners holding fifty-one percent (51%) of the total votes. (See also Section 11.7 below regarding City approval to amend certain sections.) (Based on 342 Lots, this is 175 votes.) Said amendment shall be effective upon recordation in the Office of the County Recorder of the County of Marin. Notice of approval shall be given to all Owners but, at the Board's discretion, need not include the full document previously submitted and voted upon.

Section 11.5. Document Hierarchy. To the extent of any conflict between the Governing Documents and the law, the law shall prevail. To the extent of any conflict between the Articles and the Declaration, the Declaration shall prevail. To the extent of any conflict between the Bylaws and the Articles or Declaration, the Articles or Declaration shall prevail. To the extent of any conflict between the operating rules and the Bylaws, Articles or Declaration, the Bylaws, Articles or Declaration shall prevail.

Section 11.6. Owner Responsibility. Each Owner shall be liable to the Association for any damage to the Common Area or areas which the Association must maintain, repair or replace caused, directly or indirectly, by the Owner or his or her family, guests, invitees or tenants (including but not limited to negligence, or willful misconduct, or otherwise), and each Owner shall protect, defend, hold harmless and indemnify the Association and Directors from any third party claim arising out of such conduct.

Section ~~4.3~~ 11.7. Rights of the City of Novato. Notwithstanding anything herein to the contrary, Sections ~~2.10~~ 2.2 [Reservation of Rights], Section ~~2.11~~ 2.4 [Dedication], ~~3.16~~ 5.7 Article III [Authority of the Association], Section ~~5.8~~; 3.8 [Manager], Section ~~2.16~~ 3.12, [Pointe Marin Maintenance District], Section ~~4.3~~, 5.1 [Association Responsibilities - Common Area], Section ~~4.1~~,

~~5.2(d) [Fences and Perimeter Walls], Section 4.2; 5.2(f) [Landscaping], Section 5.2(g) [Pest Control], Section 4.4, 6.2(f) [Cooperation & Access], Section 3.4, 6.6 [Vehicles], Section 6.7 [Garages], Section 4.5, 6.13 [Trash Disposal], Section 3.15; 10.5(b) [Non Waiver], and a rescission under Section 11.1, Amendment before Close of First Sale, this Section 11.3 11.7 [Rights of the City of Novato], Section 13.16; 11.8 [City's Enforcement Rights & Remedies], Exhibit A [Fuel Modification Plan] and/ or Exhibit B to the Former Declaration [Fuel Modification Plan] may not be rescinded or amended without the prior written consent of the City's Planning Commission Director of Community Development of the City of Novato with the approval of the City Attorney.~~

~~11.4 — Rights of Declarant. Notwithstanding anything herein to the contrary, until the 15th anniversary of the recordation of this Declaration in the records of Marin County, any provision herein conferring rights on a Declarant, including, but not limited to, the provisions of Sections 1.8; 2.10(l); 2.16; 3.1; 5.14; 7.1; 7.10; this Section 11.4, Article 12, Section 13.11, and Section 14.1 and may not be rescinded or amended without the prior written consent of that Declarant.~~

ARTICLE 12 - Declarant Disputes

~~12.1 Dispute Resolution Procedure (Declarant Disputes). Any claim, dispute or other controversy between the Association and/or any Owner(s) and a Declarant or any director, officer, shareholder, partner, employee or agent of the Declarant (collectively the "Declarant" for purposes of this Article 12) relating to this Declaration, the use or condition of any Lot, or Common Area, and/or the design, specifications, surveying, grading, construction, installation and/or operation of any Improvements or landscaping located thereon (individually and collectively the "Claim") shall be subject to the procedures set forth in Sections 12.2, 12.3 and 12.4, in that order. Any and all communications by and between the parties, whether written or oral, which are delivered by the parties or their attorneys or other representatives in an effort to settle the Claim shall be considered communications undertaken in the course of effecting a settlement or compromise and as such shall not be admissible as the admission on the part of any party or any representative or agent of that party to be utilized for any such purpose in any action or proceeding.~~

~~—Declarant, the Association and each Owner covenant that each shall forbear from commencing any litigation without complying with the procedures described in Sections 12.2, 12.3 and 12.4. If any party breaches the foregoing covenant, the other party may obtain an appropriate order compelling the breaching party to comply with the procedures described in Sections 12.2, 12.3 and 12.4. Notwithstanding the foregoing, any party may file a lawsuit and take such other action as may be necessary in order to toll the running of any applicable statute of limitations, provided that the party immediately shall stay any further proceedings under the legal action and shall comply with the provisions of Sections 12.2, 12.3 and 12.4. Notwithstanding any other provision herein to the contrary, in any Claim between the Owner and the Declarant, each party shall bear its own attorneys' fees and costs. The provisions of this Article 12 shall not apply to any action taken by the Association to enforce delinquent assessments, which shall be governed by Section 6.10.~~

~~—Nothing herein, including any repairs or remedial work, shall be considered to reduce or extend any applicable statute of limitations or statute of repose without the prior written approval of the Person entitled to rely on the statute of limitations or statute of repose.~~

~~12.2 — Notice, Right to Inspect, and Right to Corrective Action. — Any Person with a Claim against the Declarant shall notify the Declarant in writing of the Claim, which writing shall describe the nature of the Claim and the proposed remedy (the "Claim Notice"). Within a reasonable period after receipt of the Claim Notice, which period shall not exceed 60 days, the Declarant and the claimant shall meet at a mutually-acceptable place within the Development to discuss the Claim. At such meeting or at such other mutually-agreeable time, Declarant and Declarant's representatives shall have full access to the Property that is subject to the Claim for the purposes of inspecting the Property. The parties shall negotiate in good faith in an attempt to resolve the Claim. — If the Declarant elects to take any corrective action, Declarant and Declarant's representatives and agents shall be provided full access to the Development to take and complete corrective action.~~

~~— If the Claim is subject to the provisions of Civil Code section 1375 or any successor statute thereto, compliance with the procedures of Civil Code section 1375!(b), (c), (d) and (e) shall satisfy the requirements of this Section 12.2.~~

~~12.3 — Mediation. If the parties cannot resolve the Claim pursuant to the procedures described in Section 12.2 above, the Claim shall be submitted to mediation pursuant to the mediation procedures adopted by the JAMS or any successor thereto or to any other entity offering mediation services that is acceptable to the parties. No person shall serve as a mediator in any Claim who has any financial or personal interest in the result of the mediation, except by the written consent of all parties. — Prior to accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or prevent a prompt commencement of the mediation process.~~

~~— Each party shall submit a brief memorandum setting forth its position with regard to the issues that need to be resolved within ten days of the selection of the mediator or within such time frame established by the mediator. The mediator shall have the right to schedule a pre-mediation conference, and all parties shall attend unless otherwise agreed. The mediation shall be commenced within ten days following the submittal of the memoranda and shall be concluded within 15 days from the commencement of the mediation unless the parties mutually agree to extend the mediation period. The mediation shall be held in the county in which the Development is located or such other place as is mutually acceptable by the parties.~~

~~— The mediator has discretion to conduct the mediation in the manner in which the mediator believes is most appropriate for reaching a settlement of the Claim. The mediator is authorized to conduct joint and separate meetings with the parties and to make oral and written recommendations for settlement. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the Claim, provided the parties agree and assume the expenses of obtaining such advice.~~

~~The mediator does not have the authority to impose a settlement on the parties;~~

~~— The mediation shall be subject to the provisions of Evidence Code sections 1115 through 1128, or any successor statutes thereto, except as the parties may agree otherwise in writing or orally in accordance with the requirements of Evidence Code section 1118.~~

~~— Persons other than the parties, the representatives and the mediator may attend mediation sessions only with the permission of the parties and the consent of the mediator. Confidential information disclosed to a mediator by the parties or by witnesses in the course of the mediation shall not be divulged by the mediator. All records, reports, or other documents received by the mediator while serving in such capacity shall be confidential. There shall be no stenographic record of the mediation process.~~

~~—Each party shall bear their own mediation expenses provided that the mediation administrative fee and the mediator's fee shall be borne equally by the parties unless they agree otherwise.~~

~~12.4 Arbitration. If the parties cannot resolve the claim pursuant to the procedures described in Section 12.3, either party, at anytime after the termination of the procedures described in Section 12.3, may commence appropriate legal action in any court of competent jurisdiction to resolve the Claim unless the parties elect in writing to resolve the Claim through binding arbitration under the American Arbitration Association or any other arbitration provider mutually acceptable to the parties. Participation in binding arbitration is voluntary, and no party shall be compelled to participate in binding arbitration unless the party has signed an agreement to participate. If the Claim is submitted to binding arbitration, the following rules and procedures shall apply in all cases unless the parties agree otherwise in writing:~~

- ~~(i) the proceedings shall be heard in Marin County, California;~~
- ~~(ii) the arbitration costs and fees, including any initiation fee, shall be borne as determined by the arbitrator;~~
- ~~(iii) the arbitrator shall be appointed within 60 days of the administrator's receipt of a written request to arbitrate the dispute. In selecting the arbitrator, the provisions of section 1297.121 of the Code of Civil Procedure shall apply. The arbitrator may be challenged for any of the grounds listed therein or in section 1297.124 of the Code of Civil Procedure;~~
- ~~(iv) the parties shall have a right to discovery to the extent authorized under Code of Civil Procedures section 1283.05;~~
- ~~(v) the arbitration shall be conducted in accordance with the commercial arbitration rules and procedures of the American Arbitration Association;~~
- ~~(vi) at the written request of either party, a stenographic record of the hearing shall be made, provided that the record shall remain confidential except as may be necessary for post-hearing motions and any appeals (the requesting party shall pay the stenographic fees, which shall be included as court costs);~~
- ~~(vii) the arbitrator's statement of decision shall contain findings of fact and conclusions of law to the extent applicable, and the arbitrator's decision shall be rendered within 30 days of the conclusion of the hearing;~~
- ~~(viii) the arbitrator in his or her discretion may award costs and/or attorneys' fees to the party that the arbitrator determines was the prevailing party; and~~
- ~~(ix) the arbitrator may award all recognized remedies available in law or equity;~~
- ~~(X) the arbitrator's decision shall be final and binding on the parties unless corrected or vacated under the grounds authorized in Code of Civil Procedure sections 1286.2 or 1286.6.~~

~~—The arbitrator's decision may be enforced in any court of competent jurisdiction.~~

~~12.5 Necessary and Appropriate Parties. Notwithstanding anything to the contrary in Sections 12.3 or 12.4, if any party determines in good faith that not all necessary and appropriate parties, including, but not limited to, contractors, subcontractors, design professionals, and/or material suppliers, will participate in the procedures described in Sections 12.3 and/or 12.4 in order to accomplish a complete and final resolution of the Claim, this party shall notify the other party or parties in writing identifying the parties that will not participate; and thereafter all parties to the Claim shall be released from any obligation to participate in the procedures described in Sections 12.3 and 12.4, and any party may file a lawsuit in any court of appropriate jurisdiction to resolve the Claim.~~

~~12.6 . Civil Code Section 1375. If the Claim is subject to the provisions of Civil Code section 1375 or any successor statute thereto, compliance with the procedures of Civil Code section 1375 shall satisfy the requirements of Sections 12.2 and 12.3.~~

~~13.11 **Reserved Rights of Declarant.** Declarant is recording this Declaration as part of the construction of a residential development. No covenant or restriction contained herein shall be applied in any manner that would unreasonably interfere with a Declarant's rights to complete the construction of the Improvements and to sell the Improvements. The rights retained by each Declarant during the construction and sales period include, but are not limited to, the right to:~~

- ~~(i) maintain construction equipment, personnel and materials on the Property;~~
- ~~(ii) use such portions of the Property as may be necessary or advisable to complete the construction or sales;~~
- ~~(iii) maintain construction and/or sales offices on the Property and appropriate parking to accommodate the foregoing;~~
- ~~(iv) maintain sale signs or other appropriate advertisements on the Property;~~
- ~~(v) maintain model homes for viewing by prospective purchasers; and~~
- ~~(vi) allow prospective purchasers access to the Property to inspect any Common Area or any model homes.~~

~~13.12 **Assignment by Declarant.** A Declarant may assign all or any portion of its rights and delegate all of its duties or any portion of its duties to any other Person via a written assignment; and from and after the date of such assignment and/or delegation, the assigning Declarant shall have no further rights and/or duties hereunder with respect to the rights assigned and duties delegated. Any successor or assign of the rights and duties of a Declarant thereafter shall be entitled to exercise all the rights of that Declarant so assigned and shall be obligated to perform all that Declarant's duties so delegated, provided such successor or assign shall not be liable in any manner for any act or omission committed or omitted by that Declarant before the date the successor or assign succeeded to the rights of that Declarant hereunder.~~

~~13.14 **Notices.** Any notice permitted or required by this Declaration, the Articles, Bylaws or Rules shall be considered received on the date the notice is personally delivered to the recipient or 48 hours after the notice is deposited in the United States mail, first-class, registered or certified, postage prepaid and addressed to the recipient at the address that the recipient has provided the Association for receipt of notice or, if no such address was provided, at the recipient's Lot address in the Development.~~

Section 13.16—11.8. City's Enforcement Rights and Remedies. If the **Association** breaches any of its duties, including specifically, but not limited to, its duties to perform the maintenance as described in **Section 4.3 Article V** and to enforce the restrictions in **Article 3-VI**, the City, at its election and without any obligation to do so, may bring any action in any court of competent jurisdiction for such legal and/or equitable relief as may be appropriate to cure the breach. In such action, the prevailing party shall be entitled to recover costs and reasonable attorneys' fees. The City also, at its election and without any obligation to do so, may send a written notice to the **Association** or to one or more members of the **Board** or to one or more members of the Architectural Committee mandating that the **Association** take appropriate remedial and/or enforcement action to cure any breaches of the **Association's** duties under **Section 4.3 5.1** or

to take appropriate steps to enforce the use restrictions in Article 3-VI or the architectural review requirements of Article 7 IX.

ARTICLE 14 - Annexation

~~14.1 Automatic Annexation. The real property described in Exhibit A or any portion of it may be annexed at anytime into the Development in one or more phases and made subject to this Declaration at the written election of the Declarant that owns the real property (or by the successors in title to such real property). Each Declarant reserves the right to determine the number of phases, the number of lots in a phase, and the building types in a phase. No Declarant makes any representations or warranty that any subsequent phase will be annexed into the Development and has no obligation to annex any subsequent phase into the Development. Each election shall be made by the recording of a declaration of annexation. The declaration of annexation shall describe the real property to be annexed and shall state that it is being executed pursuant to the terms of this Declaration for the purpose of annexing the property described in the declaration of annexation into the Development and to subject the property to the terms of this Declaration. Any declaration of annexation recorded in accordance with the terms of this section shall be conclusively presumed valid in favor of all Persons who relied on it in good faith. In recording the declaration of annexation in accordance with the provisions of this Declaration, the real property described in the declaration of annexation shall be a part of the Development and subject to the provisions of this Declaration and to the rights and powers of the Association pursuant to the terms of this Declaration, the Articles and the Bylaws; and thereafter all Owners of Lots constituting a portion of the annexed real property shall automatically be Members of the Association with voting rights commencing on the date regular assessments commence. Regular and special assessments with respect to the annexed property shall commence at the time and to the extent described in Section 6.7.~~

~~—Each Declarant expressly reserves for the benefit of all property that may from time to time be covered by this Declaration reciprocal easements of use, enjoyment, access, ingress and egress over the private streets, walkways and recreational areas in that phase for use by Declarant, its successors, purchasers and all Owners of Lots, their guests, tenants and invitees for reasonably necessary to the use and enjoyment of all the Lots in the Development. The declaration of annexation may contain complementary additions, amendments and modifications to this Declaration necessary to reflect the different character, if any, of the real property being annexed which are not inconsistent with the general scheme of this Declaration or which are required by any institutional Mortgagee as defined in Section 10.1 to make Lots in the Development eligible for mortgage, purchase, guarantee or insurance.~~

~~—If the annexed property has been rented for at least one year before the closing of the first Lot in the annexed phase, the Declarant annexing the property shall pay the Association appropriate amounts for reserves for replacement or deferred maintenance of Common Area Improvements or other Improvements that the Association is required to maintain in the annexed phase.~~

~~14.2 Annexation by Approval. Except for the automatic annexation provision contained in Section 14.1, no additional real property shall be annexed into the Development without the approval of Members holding two-thirds of the total voting power of the Association other than Declarant.~~

Section 11.9. Foreclosed Lot. Any former **Owner** who loses title by foreclosure but remains in possession shall be bound by the **Governing Documents** during such possession.

Section 11.10. Documents and Information Relating to Sale. Prior to the transfer of title to a **Lot**, the transferring **Owner** shall provide the prospective new owner with a copy of the **Governing Documents** and such other documents and information as are required by California Civil Code §4525. Such documents may be delivered by **Individual Notice**.

~~13.6 Notification of Sale. No later than five days after the closing of the sale of any Lot, the new Owner shall notify the Association of such sale. Such notification shall be in writing and shall set forth the name and address of the new Owner and the date of sale.~~

Section 11.11. Notice of Acquisition. A purchaser or other **Person** acquiring an ownership interest to a **Lot** shall notify the **Association** not more than ten (10) days after the date of acquisition and provide (a) the name(s) of all **Persons** with an ownership interest as listed on the recorded title transfer documents, (b) a mailing address for the **Owner(s)**, (c) day and evening telephone numbers, (d) email address, and (e) the effective date of acquisition of each ownership interest.

Section 11.12. Davis-Stirling Act.

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

11.12(b) Updating of Preempted Content or Other Statutory Reference in CC&Rs. In addition to the authority in **Section 11.12(a)**, the **Board** shall have authority to update these **CC&Rs** if or when changes in any statutory law preempt the content set forth in these **CC&Rs**. Unless provided for in **Section 11.12(a)**, before the **Board** can approve such an update, the **Board** must have confirmation from counsel of the nature of the statutory preemption and must provide **Members** with at least thirty (30) day notice of the proposed change. The **Board** may then approve revision of these **CC&Rs** to conform to change(s) in the law. A **Declaration** that is updated under this section may be restated and recorded, provided that a copy of the **Board** resolution authorizing the updates is recorded along with the restated **Declaration**.

~~13.8 Incorporation of Exhibits. All exhibits referred to herein and attached to this Declaration are incorporated herein by reference as fully set forth herein.~~

Section 11.13. Mortgagee Rights Exhibit. Included as part of this **Declaration** is **Exhibit B** which addresses **Mortgagee** Provisions. As the **Mortgage** industry (i.e., FHA, FNMA, etc) often revises its requirements with regard to common interest developments, it is the **Association's** desire to reasonably facilitate cooperation with lenders so that **Owners** can procure competitive loans. Therefore, the **Board** has the discretion, without a vote of the **Members**, to revise and

update **Exhibit B** solely for the purpose of conforming the **Association's Mortgage** provisions to current industry minimums or more.

CERTIFICATE OF AMENDMENT

The **Association** desired to make substantial changes to the **Declaration** pursuant to the amendment provisions of Civil Code §4270, and on _____, 20____ the **Owners** voted and approved the language of said changes.

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

The undersigned declare, under penalty of perjury, under the laws of the State of California, that the matters set forth in this Amendment are true and correct of their own knowledge. Executed at _____, California on _____, 20____.

President:

Secretary:

2017 PM City MRL 9.wpd
dlr: 7/19/17

(Notary Certificate(s) Attached)

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

**EXHIBIT A
FUEL MODIFICATION PLAN**

~~—1.11 [Second Amendment]~~ All references to the “Fuel Modification Plan” mean the Pointe Marin Novato California Vegetation Management and Fuel Modification Plan, dated January 27, 2003, a copy of which is attached to this ~~Second Amendment~~ as Exhibit B to the Former Declaration (recorded in the office of the Marin County Recorder on October 17, 2002 as Document No. 2002-092068) or as otherwise updated by the City of Novato.

Each **Lot Owner** shall take the necessary steps to comply with the **Fuel Modification Plan** ~~described in Section 1.14~~, including restricting the plant material within 30 feet of any residential structures to the plants identified in the Fire Resistant Plant List contained in the **Fuel Modification Plan** and complying with the management and maintenance procedures described in the **Fuel Modification Plan**. ~~[First & Second Amendments]~~ Fuel modification areas are situated on portions of **Lots** 78, 79, 80, 81, 165, 166, 167, 168, 169, 178, 179, 180, 181, 182, 183, 184, 185 and 186, **as well as** on portions of **Lots** 188 through 193, 199, 203 through 206 and 220 through 224 shown on the Phase Two Map and **Lots** 248, 249, 253 through 257, 279 through 296, 304 through 308, 323 through 325, 329 through 336 and 341 through 345 shown on the Phase Three Map. The area on each **Lot** consists of a buffer zone that is 30 to 50 feet wide as measured from the rear or side of the residential structure situated on the **Lot**. ~~to a depth of 30 feet~~ The buffer zone also extends along the easterly side of the residential structure on **Lot** 169 to a depth of 30 feet. The fuel modification area within each **Lot** is shown in the maps set forth in Appendix F to the **Fuel Modification Plan**. Each **Lot Owner** shall maintain that portion of the fuel modification area situated within the **Owner's Lot** and the **Association** shall maintain any portion that extends beyond the rear or side boundary of the **Owner's Lot**. The fuel modification areas shall be maintained in accordance with the maintenance requirements set forth in the **Fuel Modification Plan** ~~described in Section 1.14~~.

EXHIBIT B
Article 10
RIGHTS OF MORTGAGEE

~~Section 10.1 Lender Definitions. Unless the context indicates otherwise, the following terms as used in this Article 10 shall have the definitions contained in this Section. An "institutional" Mortgagee is a first Mortgagee that is: (i) a federally or state chartered or licensed bank or savings and loan association; a mortgage company or other entity chartered or licensed under federal or state laws whose principal business is lending money on the security of real property or investing in such loans; (iii) an insurance company; (iv) a federal or state agency or instrumentality including, without limitation, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation; or (v) an insurer or governmental guarantor of a first Mortgagee including the Federal Housing Authority and the Veterans Administration. A "first Mortgage" or "first Mortgagee" is one having a priority as to all other Mortgages or holders of Mortgages encumbering the same Lot or other portions of the Development~~

Section B.1. Conformance to Mortgagee Requirements. By unanimous approval of the sitting **Directors**, the **Board** may amend the terms of this **Exhibit B** to comply with **CC&R** requirements set by the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Corporation or any successor institution(s) serving the same or similar function. The **Board** is also authorized to take any action or shall adopt any resolution required by any **Mortgagee** to conform the **Declaration** or the **Property** to the requirements of any of these entities or agencies.

Section B.2. ~~10.2 Encumbrance.~~ **Mortgages Permitted.** Any **Owner** may encumber his or her **Lot** with a **one or more Mortgage or Mortgages**.

Section B.3. ~~10.4 Subordination.~~ Any **Assessment** lien established under the provisions of this **Declaration** is expressly made subject to and subordinate to the rights of any **Mortgage** that encumbers all or any portion of the **Development Property** or any **Lot** made in good faith and for value and recorded before the recordation of a notice of delinquent **Assessment**. No **Assessment** lien shall in any way defeat, invalidate or impair the obligation or priority of such **Mortgage** unless the **Mortgagee** expressly subordinates in writing its interest to such lien. If any **Lot** is encumbered by a **Mortgage** made in good faith and for value, the foreclosure of any **Assessment** lien cannot operate to affect or impair the lien of any **Mortgage** recorded prior to the recordation of the notice of delinquent **Assessment**. Upon the foreclosure of any prior-recorded **Mortgage**, any lien for delinquent **Assessment** shall be subordinate to the **Mortgage** lien; and the purchaser at the foreclosure sale shall take title free of the **Assessment** lien. By taking title, the purchaser shall be obligated to pay only **Assessments** or other charges that were not delinquent at the time the purchaser acquired title or that were levied by the **Association** on or after the date the purchaser acquired title to the **Lot**. Any subsequently levied **Assessments** or other charges may include previously-unpaid **Assessments**, provided all **Owners**, including the purchaser and its successors and assigns, are required to pay their proportionate share of such unpaid **Assessments**.

Section B.4. ~~10.3 Rights of Institutional Mortgagees.~~ Any **Institutional Mortgagee** who obtains title to a **Lot** pursuant to the remedies provided in the first **Mortgage**, including judicial

foreclosure or nonjudicial foreclosure under a power of sale (but excluding voluntary conveyance to the first **Mortgagee**), shall take the **Lot** free of any obligation to pay any **Assessments** that were delinquent as of the date the **Institutional Mortgagee** acquired title to the **Lot**, including any interest, penalties or late charges in connection therewith. The **Institutional Mortgagee** as **Owner** of the **Lot** shall be obligated to pay any **Assessments** that were not delinquent as of the date the **Institutional Mortgagee** took title to the **Lot** and all future **Assessments** levied against the **Lot** as long as the **Institutional Mortgagee** remains in title, including any Special **Assessments** levied by the **Association** to raise operating or reserve funds needed because of uncollected delinquent **Assessments**, as long as the Special **Assessment** is allocated among all the **Lots** as provided in ~~Section 6.9.~~ **Article IV.**

Section B.5. ~~40.5~~ **Breaches.** No breach of any provision of this **Declaration** shall invalidate the lien of any **Mortgage** made in good faith or for value; but all of the covenants, conditions and restrictions shall be binding on any **Owner** whose title is derived through foreclosure sale, trustee sale or otherwise.

Section B.6. Mortgagee Response. In the event that a holder of a **Mortgage** or Deed of Trust acquires such interest after recordation of this **Declaration** and has a right to participate in or vote on any change in this **Declaration**, any **Board**-recommended change shall be deemed approved if or when an eligible party fails to return such vote within sixty (60) days after the **Association** sends notice of the proposal by certified or registered mail with a return receipt requested and by first-class mail.

Terri Brown

From: Catherine Rucker <catherinerucker@me.com>
Sent: Sunday, September 10, 2017 6:00 PM
To: Steve Marshall
Subject: Pointe Marin CC&R Amendments P2016-033
Attachments: 8.8.17 Board Meeting Agenda.pdf; 8.8.17 EXEC - Agenda.pdf

Importance: High

Mr. Marshall,

I live within Pointe Marin, and I would like to speak with you about the proposed amendments to CC&R section 11.3.

In addition, I am attaching a copy of the August 8, 2017 Pointe Marin Board of Directors' Meeting. The agenda only listed: "Governing Documents - Update," and it did not state that the Board was considering amendments to CC&R section 11.3. In addition, the Pointe Marin Board of Directors did not send a mailing to all of the homeowners about the proposed amendments to CC&R section 11.3. The lack of detailed information in the agenda, and the failure to mail a copy of the proposed amendments to all of the homeowners were acts of bad faith. As a result, the Pointe Marin Board of Directors did not have the authority to apply to the Novato Planning Commission in order to hold a hearing about amending CC&R section 11.3, which is scheduled to take place on September 18th.

Yes, I realize that I was notified about the hearing - because I received the official notice in the blue postcard from the City of Novato in the US Mail. In my opinion, the hearing should be cancelled, and the Pointe Marin Board of Directors should start over from the beginning - because they did not provide proper notice to all of the homeowners.

Please call me to discuss.

Catherine Rucker
CA Bar#: 309559
cell: 415-246-6647

Begin forwarded message:

From: Dao Sisouvanh <dsisouvanh@hill-co.com>
Subject: Pointe Marin Association - Board Mtg Agenda (8/8/17)
Date: August 3, 2017 at 10:24:34 AM PDT
Cc: Kimberly Greene <kgreene@hill-co.com>

Dear Pointe Marin Homeowners:

Please find attached the Board Meeting Agenda scheduled for Tuesday, August 8, 2017 at 6:30 p.m. at the Hamilton Art Center, 2nd Floor Conference Room in Novato. All Homeowners are invited to attend.

Also, attached is a notice of closed Executive Session of the Board of Directors that will also be held on Tuesday, August 8, 2017 at 6:30 p.m. Only Board members can attend this meeting.

Dao Sisouvanh

Hill & Co. Property Management

Tel: 415.614.5300

Fax: 415.202.1655