

ATTACHMENT

Attached is the document you (or someone on your behalf) requested. As required by Section 12956.1(b) of the Government Code, please take note of the following:

“IF THIS DOCUMENT CONTAINS ANY RESTRICTION BASED ON RACE, COLOR, RELIGION, SEX, FAMILIAL STATUS, MARITAL STATUS, DISABILITY, NATIONAL ORIGIN, OR ANCESTRY, THAT RESTRICTION VIOLATES STATE AND FEDERAL FAIR HOUSING LAWS AND IS VOID, AND MAY BE REMOVED PURSUANT TO SECTION 12956.1 OF THE GOVERNMENT CODE. LAWFUL RESTRICTIONS UNDER STATE AND FEDERAL LAW ON THE AGE OF OCCUPANTS IN SENIOR HOUSING OR HOUSING FOR OLDER PERSONS SHALL NOT BE CONSTRUED AS RESTRICTIONS BASED ON FAMILIAL STATUS.”



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FIRST AMERICAN TITLE COMPANY

WHEN RECORDED, MAIL TO:

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Irvine, CA 92614

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GARY L. ORSO
County Recorder
RIVERSIDE COUNTY CALIFORNIA

(Space Above for Recorder's Use)

DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS
AND RESERVATION OF EASEMENTS
FOR
RANCHO BAHAMAS

002-2903

First American Title Company has recorded this instrument by request as an accommodation only and has not examined it for regularity and sufficiency or as to its effect upon the title to any real property that may be described herein.

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DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS

AND RESERVATION OF EASEMENTS

FOR

RANCHO BAHAMAS

THIS DECLARATION is made by (a) RANCHO BAHAMAS 8, LLC a California limited liability company and RANCHO BAHAMAS 15, LLC, a California limited liability company (collectively, the "*Declarant*") and (b) BERNARD J. HAMRY, a widower, as to an undivided 50% interest, and THOMAS E. TAYLOR, a married man, as his sole and separate property, as to an undivided 50% interest (collectively, the "*Parcel D Owner*"). The capitalized terms used in the Preamble are defined in Article I.

P R E A M B L E:

A. Declarant is the owner of real property located in the City of Temecula, Riverside County, California, described as set forth on *Exhibit G*.

B. The Parcel D Owner is the owner of real property located in the City of Temecula, Riverside County, California, described as Parcel D of Lot Line Adjustment No. PA04-0320, as more particularly described on *Exhibit G*.

C. Declarant and the Parcel D Owner intend to create a "planned development," as defined in Section 1351(k) of the California Civil Code, to create a "subdivision" as defined in Section 11000 of the California Business and Professions Code, and to impose mutually beneficial restrictions under a general plan for subdividing, maintaining, improving and selling the Lots in the Properties for the benefit of all the Lots pursuant to the Davis-Stirling Common Interest Development Act.

D. The Properties are to be held, conveyed, encumbered, leased, used and improved subject to covenants, conditions, restrictions and easements in this Declaration, all of which are in furtherance of a plan for subdividing, maintaining, improving and selling the Lots in the Properties. All provisions of this Declaration are imposed as equitable servitudes on the Properties. All covenants, conditions, restrictions and easements in this Declaration shall run with and burden the Properties, and be binding on and for the benefit of all of the Properties and all Persons acquiring any interest in the Properties.

ARTICLE I
DEFINITIONS AND INTERPRETATION

1.1 DEFINITIONS. Unless otherwise expressly provided, the following words and phrases when used in this Declaration have the following meanings.

1.1.1 Annual Assessment. Annual Assessment means a charge against the Owners and their Lots representing their share of the Common Expenses. The Annual Assessment is a regular assessment as described in California Civil Code Section 1366.

1.1.2 **Articles.** Articles means the Articles of Incorporation of the Association currently in effect. A copy of the Articles is attached as *Exhibit A*.

1.1.3 **Assessment.** Assessment means any Annual Assessment, Capital Improvement Assessment, Reconstruction Assessment and Special Assessment.

1.1.4 **Association.** Association means Rancho Bahamas Community Association, a California nonprofit corporation (formed pursuant to the California Nonprofit Mutual Benefit Corporation Law), and its successors-in-interest. The Association is an "association" as defined in Section 1351(a) of the California Civil Code.

1.1.5 **Association Maintenance Area.** Association Maintenance Area means those Improvements in residential Lots or other real property which are not owned in fee by the Association but which are designated for maintenance by the Association.

(a) **Generally.** The Association Maintenance Areas in the Properties include the following:

(i) The structural integrity, cap and exterior surface (facing away from the residential Lot) and all tubular steel or wrought iron components of those portions of the Community Walls that are constructed on the residential Lots;

(ii) Landscaping, consisting of softscape and irrigation equipment located on the front yards of the Lots;

(iii) Exterior painted or finished surfaces of the Residences, including building walls, roofs, and outer finished surfaces of garage doors;

(iv) Structural integrity of the Residences;

(v) Gutters and downspouts of the Residences; and

(vi) Catch basins and area drains in the rear yards (as applicable).

(b) **As Designated in Supplemental Declarations.** Declarant may designate additional Association Maintenance Areas in a Supplemental Declaration.

1.1.6 **Association Maintenance Funds.** Association Maintenance Funds means the accounts created for Association receipts and disbursements pursuant to Article VII.

1.1.7 **Board or Board of Directors.** Board or Board of Directors means the Association's Board of Directors.

1.1.8 **Budget.** Budget means a written, itemized estimate of the Association's income and Common Expenses prepared pursuant to the Bylaws.

1.1.9 **Bylaws.** Bylaws means the Bylaws of the Association as currently in effect. A copy of the Bylaws as initially adopted by the Board is attached as *Exhibit B*.

1.1.10 **Capital Improvement Assessment.** Capital Improvement Assessment means a charge against the Owners and their Lots representing their share of the Association's cost for installing or constructing capital Improvements on the Common Area. Capital Improvements Assessments shall be levied in the same proportion as Annual Assessments. Capital Improvement Assessments are special assessments as described in California Civil Code Section 1366.

1.1.11 **City.** City means the City of Temecula, California, and its various departments, divisions, employees and representatives.

1.1.12 **Close of Escrow.** Close of Escrow means the date on which a deed is Recorded conveying a Lot pursuant to a transaction requiring the issuance of a Final Subdivision Public Report by the DRE.

1.1.13 **Common Area.** Common Area means real or personal property owned in fee by the Association and therefore made subject to the restrictions on Common Area established in this Declaration. Any references in this Declaration to Common Area are references to the Common Area as a whole and to portions thereof. The Common Area is "common area" as defined in Section 1351(b) of the California Civil Code. The Common Area located in the Properties consists of Parcel D of Lot Line Adjustment No. PA04-0320.

1.1.14 **Common Expenses.** Common Expenses means those expenses for which the Association is responsible under this Declaration. Common Expenses include the actual and estimated costs of and reserves for maintaining, managing and operating the Common Property (including amounts incurred for maintenance imposed on the Association by this Declaration), including:

(a) Common Area and Improvements thereon, including clustered mailboxes, address identification signs, landscaped and irrigated areas, portions of the Community Wall, maintenance of the detention basin on Parcel D (including mitigation and monitoring activities required by the U.S. Army Corps of Engineers and the California Department of Fish and Game, charges for reading and billing submetered utilities to individual Residences (as applicable), private streets, walls, fences, drainage facilities, storm drains (including replacement of filter fabric in accordance with City requirements), catch basins, the seventy-two (72)-inch storm drain, sidewalks, parkways, street lights (except for components that are maintained by Southern California Edison or its successor), street trees, curbs, gutters, drive approaches and landscaping, and gardening and other services benefiting the Common Area;

(b) The Association Maintenance Areas, including the cost of gardening and irrigation water and maintenance of landscaping, and the repair and replacement of portions of the Community Wall that are designated Association Maintenance Areas.

(c) The cost of all utilities and mechanical and electrical equipment serving the Common Property, utilities which serve individual Lots but which are subject to a common meter, and collection and removal of trash from dumpsters in Common Area (as applicable);

(d) The costs and fees attributable to managing and administering the Association, compensating the Manager, accountants, attorneys and employees, all insurance covering the Properties and the Directors, officers and agents of the Association, and bonding the members of the Board;

(e) Unpaid Special Assessments, Reconstruction Assessments and Capital Improvement Assessments;

(f) Taxes paid by the Association;

(g) Amounts paid by the Association for discharge of any lien or encumbrance levied against the Properties, and

(h) All other expenses incurred by the Association for the Properties, for the common benefit of the Owners.

1.1.15 Common Property. Common Property means the Common Area and Association Maintenance Areas. Any references to the Common Property are references to the Common Property as a whole and to portions thereof.

1.1.16 Community Wall. Community Wall means any sound wall, retaining wall, or fence in the Properties (a) that is constructed on a tract boundary; or (b) that separates a Lot from Common Area or public property; or (c) that is constructed entirely within Common Area, or (d) that is designated as a Community Wall by Declarant in this Declaration or in a Supplemental Declaration. Party Walls are not Community Walls. Community Walls in the Properties are Association Maintenance Areas.

1.1.17 County. County means Riverside County, California, and its various departments, divisions, employees and representatives.

1.1.18 Declarant. Declarant means Rancho Bahamas 8, LLC, a California limited liability company and Rancho Bahamas 15, LLC, a California limited liability company their successors and any Person to which they shall have assigned any of their rights by an express written assignment. As used in this Section, "successor" means a Person who acquires Declarant or substantially all of Declarant's assets by sale, merger, reverse merger, consolidation, sale of stock or assets, operation of law or otherwise. Declarant shall determine in its sole discretion the time, place and manner in which it discharges its obligations and exercises the rights reserved to it under this Declaration. Declarant is a "builder" as described in California Civil Code Section 1375.

1.1.19 Declaration. Declaration means this instrument as currently in effect.

1.1.20 Design Guidelines. Design Guidelines mean the rules or guidelines setting forth procedures and standards for submission of plans for Design Review Committee approval.

1.1.21 Design Review Committee or Committee. Design Review Committee or Committee means the Design Review Committee created in accordance with Article V.

1.1.22 **DRE.** DRE means the California Department of Real Estate and any department or agency of the California state government which succeeds to the DRE's functions.

1.1.23 **Family.** Family means natural individuals, related or not, who live as a single household in a Residence.

1.1.24 **Fannie Mae.** Fannie Mae means the Federal National Mortgage Association, a government-sponsored private corporation established pursuant to Title VIII of the Housing and Urban Development Act of 1968 and its successors.

1.1.25 **FHA.** FHA means the Federal Housing Administration of the United States Department of Housing and Urban Development and its successors.

1.1.26 **Fiscal Year.** Fiscal Year means the fiscal accounting and reporting period of the Association.

1.1.27 **Freddie Mac.** Freddie Mac means the Federal Home Loan Mortgage Corporation created by Title II of the Emergency Home Finance Act of 1970 and its successors.

1.1.28 **Ginnie Mae.** Ginnie Mae means the Government National Mortgage Association administered by the United States Department of Housing and Urban Development and its successors.

1.1.29 **Improvement.** Improvement means any structure and any appurtenance thereto. The Design Review Committee may identify additional items that are Improvements.

1.1.30 **Include, Including.** Whether capitalized or not, include and including means "includes without limitation" and "including without limitation," respectively.

1.1.31 **Lot.** Lot means any residential Lot or parcel of land shown on any Recorded subdivision map, Recorded Lot Line Adjustment or Recorded parcel map of the Properties, except the Common Area owned in fee simple by the Association.

1.1.32 **Maintain, Maintenance.** Whether capitalized or not, maintain and maintenance mean "maintain, repair and replace" and "maintenance, repair and replacement," respectively; provided however, that maintain or maintenance shall not include repair and replace(ment) where the context or specific language of this Declaration provides another meaning.

1.1.33 **Maintenance Guidelines.** Maintenance Guidelines means any current written guidelines, setting forth procedures and standards for the maintenance and operation of Common Property or the Lots. Maintenance Guidelines may be provided by Declarant, by the Association, or by any governmental agency. Maintenance Guidelines include any maintenance manual initially prepared at Declarant's direction and containing recommended frequency of inspections and maintenance activities for components of the Common Property or pertaining to a Residence or Lot.

1.1.34 **Manager.** Manager means the Person retained by the Association to perform management functions of the Association as limited by the Restrictions and the terms of the agreement between the Association and the Person.

1.1.35 **Membership.** Membership means the voting and other rights, privileges, and duties established in the Restrictions for members of the Association.

1.1.36 **Mortgage.** Mortgage means any Recorded document, including a deed of trust, by which a Lot, Lots, or Common Area is hypothecated to secure performance of an obligation.

1.1.37 **Mortgagee.** Mortgagee means a Person to whom a Mortgage is made, or the assignee of the Mortgagee's rights under the Mortgage by a recorded instrument. For purposes of this Declaration, the term Mortgagee shall include a beneficiary under a deed of trust.

1.1.38 **Mortgagor.** Mortgagor means a person who has mortgaged his property. For purposes of this Declaration, the term Mortgagor shall include a trustor under a deed of trust.

1.1.39 **Notice and Hearing.** Notice and Hearing means written notice and a hearing before the Board as provided in the Bylaws.

1.1.40 **Operating Fund.** Operating Fund means that portion of the Common Expenses allocated for the daily operation of the Association.

1.1.41 **Owner.** Owner means the Person or Persons, including Declarant, holding fee simple interest to a Lot. Each Owner has a Membership in the Association. The term "*Owner*" includes sellers under executory contracts of sale but excludes Mortgagees. The term "*Owner*" may be expanded in a Supplemental Declaration to include other Persons.

1.1.42 **Party Wall.** Party Wall means any wall or fence that separates adjacent Lots.

1.1.43 **Person.** Person means a natural individual or any legal entity recognized under California law. When the word "*person*" is not capitalized, the word refers only to natural persons.

1.1.44 **Properties.** Properties means all of the real property described in Paragraphs A and B of the Preamble of this Declaration. The Properties are a "common interest development" and a "planned development" as defined in Sections 1351(c) and 1351(k) of the California Civil Code. Any references in this Declaration to the Properties are references to the Properties as a whole and to portions thereof.

1.1.45 **Reconstruction Assessment.** Reconstruction Assessment means a charge against the Owners and their Lots representing their share of the Association's cost to reconstruct any Improvements on the Common Area. Such charge shall be levied among all Owners and their Lots in the same proportions as Annual Assessments. Reconstruction Assessments are "special assessments" as described in California Civil Code Section 1366.

1.1.46 **Record or File.** Record or File means, with respect to any document, the entry of such document in official records of the County Recorder.

1.1.47 **Reserve Fund.** Reserve Fund means that portion of the Common Expenses allocated (a) for the future repair and replacement of, or additions to, structural elements, mechanical equipment and other major components of Association-maintained Improvements, and (b) amounts necessary to cover the deductibles under all insurance policies maintained by the Association.

1.1.48 **Residence.** Residence the dwelling unit constructed on a Lot, excluding the garage area, which is designed and intended for use and occupancy as a residence by a single Family.

1.1.49 **Restrictions.** Restrictions means this Declaration, the Articles, Bylaws, Design Guidelines, Rules and Regulations and Supplemental Declarations.

1.1.50 **Right to Repair Law.** Right to Repair Law means Division 2, Part 2, Title 7 (commencing with Section 895) of the California Civil Code.

1.1.51 **Rules and Regulations.** Rules and Regulations means the current rules and regulations for the Properties.

1.1.52 **Special Assessment.** Special Assessment means a charge against an Owner and his Lot representing a reasonable fine or penalty, including reimbursement costs, as provided for in this Declaration.

1.1.53 **Supplemental Declaration.** Supplemental Declaration means an instrument Recorded by Declarant against all or a portion of the Properties in order to supplement, modify, or clarify conditions, covenants, restrictions or easements established under this Declaration. A Supplemental Declaration may affect one or more Lots and Common Area. Declarant may Record a Supplemental Declaration so long as Declarant owns all of the real property to be encumbered by the Supplemental Declaration. A Supplemental Declaration may modify this Declaration as it applies to the property encumbered by the Supplemental Declaration.

1.1.54 **Telecommunications Facilities.** Telecommunications Facilities means Improvements constructed in the Properties, including cables, conduits, ducts, vaults, connecting hardware, wires, poles, transmitters, towers, antennae and other devices now existing or that may be developed in the future to provide Telecommunication Services to the Properties.

1.1.55 **Telecommunications Services.** Telecommunications Services means the reception, distribution or transmission of video, audio, data, telephony, all related vertical services, and any other similar services now existing or that may be developed in the future. Declarant may expand this definition in any Supplemental Declaration.

1.1.56 **VA.** VA means the Department of Veterans Affairs of the United States of America and any department or agency of the United States government which succeeds to the VA's function of issuing guarantees of notes secured by Mortgages on residential real estate.

1.2 INTERPRETATION.

1.2.1 **General Rules.** This Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for subdividing, maintaining, improving and selling the Properties. As used in this Declaration, the singular includes the plural and the plural the singular. The masculine, feminine and neuter each includes the other, unless the context dictates otherwise.

1.2.2 **Articles, Sections and Exhibits.** The Article and Section headings are inserted for convenience only and may not be considered in resolving questions of interpretation or construction. Unless otherwise indicated, any references in this Declaration to articles, sections or exhibits are to Articles, Sections and Exhibits of this Declaration. *Exhibits D and F* attached to this Declaration are incorporated in this Declaration by this reference. The locations and dimensions of any Improvements depicted on the Exhibits attached hereto are approximate only and the as-built location and dimension of any such Improvements shall control.

1.2.3 **Priorities and Inconsistencies.** If there are conflicts or inconsistencies between this Declaration and the Articles, Bylaws, Rules and Regulations, or a Supplemental Declaration, then the provisions of this Declaration shall prevail.

1.2.4 **Severability.** The provisions of this Declaration are independent and severable. A determination of invalidity, partial invalidity or unenforceability of any one (1) provision of this Declaration by a court of competent jurisdiction does not affect the validity or enforceability of any other provisions of this Declaration.

1.2.5 **Statutory References.** All references made in this Declaration to statutes are to those statutes as currently in effect or to subsequently enacted replacement statutes.

ARTICLE II RESIDENCE AND USE RESTRICTIONS

The Properties shall be held, used and enjoyed subject to the following restrictions and subject to the exemptions of Declarant set forth in the Restrictions.

2.1 **SINGLE FAMILY RESIDENCE.** The Residence shall be used as a dwelling for a single Family and for no other purpose. Subject to any Owner occupancy requirements that may be separately imposed by Declarant, an Owner may rent his Lot to a single Family provided that the Lot is rented pursuant to a lease or rental agreement which is (a) in writing, and (b) subject to the provisions of this Declaration. The Common Property, including parking spaces and other amenities contemplated as a part of the Properties, will not be leased by Declarant to the Owners or the Association. Owners may also rent Lots to Declarant for use as sales offices, model homes and parking areas. Any failure by a tenant of a Lot to comply with the provisions of this Declaration constitutes a default under the lease or rental agreement.

2.2 BUSINESS AND COMMERCIAL ACTIVITIES.

2.2.1 **Generally.** No Owner or other occupant of the Properties may undertake any activity on any Lot or on any portion of the Common Area for business or

commercial purposes including manufacturing, mercantile, storage, vending, auctions, transient occupancy (such as vacation rental, hotel, or time-share), vehicle or equipment repair, or other non-residential purposes. Such activities are prohibited whether they are engaged in full- or part-time, whether they are for-profit or non-profit, and whether they are licensed or unlicensed.

2.2.2 **Exceptions.** This Section shall not be interpreted to prohibit any of the following:

(a) The hiring of employees or contractors to provide maintenance, construction or repair of any Improvement consistent with this Declaration or any Supplemental Declaration;

(b) Exercise by Declarant of any rights reserved to it under Article XV;

(c) The operation of small home-based service businesses that comply with all of the following:

(i) The operator of the business lives in the Residence on a permanent, full-time basis;

(ii) When conducted in the Properties, business activities take place solely inside the Residence;

(iii) Visits by clientele or suppliers are limited to regular business hours and clientele and suppliers park their vehicles only in the driveway or garage of the Lot;

(iv) The activity complies with all laws, regulations and ordinances applicable to the Properties, including zoning, health and licensing requirements;

(v) The activity otherwise complies with the Declaration and is consistent with the residential character of the Properties;

(vi) The operator of the business posts no signage anywhere in the Properties;

(vii) Other than visits by clientele or suppliers, there is no visible evidence in the Properties of the activity;

(viii) The activity does not generate noise or odors that are apparent outside the Residence; and

(ix) The business does not increase the Association's liability or casualty insurance obligation or premium.

(d) The provision of in-home health care or assisted-living services to any resident of the Properties; or

(e) The provision of family home child care services as defined in California Health and Safety Code Section 1597.40, et seq. so long as such services comply with all applicable zoning requirements and state law. Provided, however, that the Association has the power to limit or prohibit use of recreational facilities in the Common Area by clientele of the business.

2.3 **NUISANCES.** Noxious or offensive activities are prohibited in the Properties and on any public street abutting or visible from the Properties. The Board is entitled to determine if any device, noise, odor, or activity constitutes a nuisance.

2.3.1 **Nuisance Devices.** Nuisance devices may not be kept or operated in the Properties or on any public street abutting the Properties, or exposed to the view of other Lots or Common Area. Nuisance devices include the following:

(a) All horns, whistles, bells or other sound devices (except security devices used exclusively to protect the security of a Residence or a vehicle and its contents)

(b) Noisy or smoky vehicles, power equipment (excluding lawn mowers and other equipment used in connection with ordinary landscape maintenance), and Prohibited Vehicles (defined below);

(c) Devices that create or emit loud noises or noxious odors;

(d) Construction or demolition waste containers (except as permitted in writing by the Committee);

(e) Devices that unreasonably interfere with television or radio reception to a Lot;

(f) Plants or seeds infected with noxious insects or plant diseases;

(g) The presence of any other thing in the Properties which may (i) increase the rate of insurance in the Properties, (ii) result in cancellation of the insurance, (iii) obstruct or interfere with the rights of other Owners or the Association, (iv) violate any law or provisions of this Declaration or the Rules and Regulations, or (v) constitute a nuisance or other threat to health or safety under applicable law or ordinance.

2.3.2 **Nuisance Activities.** Nuisance activities may not be undertaken in the Properties or on any public street abutting the Properties, or exposed to the view of other Lots or Common Area without the Board's prior written approval. Nuisance activities include the following:

(a) Hanging, drying or airing clothing, fabrics or unsightly articles in any place that is visible from other Lots, Common Area or public streets;

(b) The creation of unreasonable levels of noise from parties, recorded music, radios, television or related devices, or live music performance;

(c) Repair or maintenance of vehicles or mechanical equipment, except in a closed garage or rear yard screened from view by other Lots or Common Area;

(d) Outdoor fires, except in barbecue grills and fire pits designed and used in such a manner that they do not create a fire hazard;

(e) Outdoor storage of bulk materials or waste materials except in temporary storage areas designated by the Committee.

(f) Any activity which may (i) increase the rate of insurance in the Properties, (ii) result in cancellation of the insurance, (iii) obstruct or interfere with the rights of other Owners, (iv) violate any law or provisions of this Declaration or the Rules and Regulations, or (v) constitute a nuisance or other threat to health or safety under applicable law or ordinance.

This Section shall not be interpreted to prohibit the provision of in-home health care or assisted-living services to any resident of the Properties, or the provision of family home child care services as defined in California Health and Safety Code Section 1597.44, so long as such services comply with all applicable zoning requirements and state law.

2.4 **SIGNS.** Subject to Civil Code Sections 712, 713 and 1353.6, no sign, advertising device or other display of any kind shall be displayed in the Properties or on any public street in or abutting the Properties except for the following signs:

2.4.1 entry monuments, community identification signs, and traffic or parking control signs maintained by the Association;

2.4.2 for each Lot, one (1) nameplate or address identification sign which complies with Design Review Committee rules;

2.4.3 for each Lot, one (1) sign advising of the existence of security services protecting a Lot which complies with Design Review Committee rules;

2.4.4 for each Lot, one (1) sign advertising the Lot for sale or lease that complies with the following requirements:

(a) the sign is not larger than eighteen (18) inches by thirty (30) inches in size;

(b) the sign is attached to the ground by a conventional, single vertical stake which does not exceed two (2) inches by three (3) inches in diameter (i.e., posts, pillars, frames or similar arrangements are prohibited);

(c) the top of the sign is not more than three (3) feet in height above the ground level;

(d) the sign is of a color and style and location authorized by the Design Review Committee; and

2.4.5 other signs or displays authorized by the Design Review Committee.

2.5 PARKING AND VEHICULAR RESTRICTIONS.

2.5.1 **Definitions.** The following definitions shall apply to parking and vehicular restrictions set forth in this Declaration:

2.5.2 **Authorized Vehicle.** An "*Authorized Vehicle*" is an automobile, a passenger van designed to accommodate ten (10) or fewer people, a motorcycle, or a pickup truck having a manufacturer's rating or payload capacity of one (1) ton or less. The Association has the power to identify additional vehicles as Authorized Vehicles in the Rules and Regulations in order to adapt this restriction to other types of vehicles that are not listed above.

2.5.3 **Prohibited Vehicles.** The following vehicles are "*Prohibited Vehicles:*" (a) large commercial-type vehicles (e.g., stakebed trucks, tank trucks, dump trucks, step vans, and concrete trucks), (b) buses, limousines or vans designed to accommodate more than ten (10) people, (c) inoperable vehicles or parts of vehicles, (d) aircraft, (e) any vehicle or vehicular equipment deemed a nuisance by the Association, and (f) any other vehicle not classified as an Authorized Vehicle. If a vehicle qualifies as both an Authorized Vehicle and a Prohibited Vehicle, then the vehicle is presumed to be a Prohibited Vehicle, unless the vehicle is expressly authorized in writing by the Association. The Association has the power to identify additional vehicles as Prohibited Vehicles in the Rules and Regulations to adapt this restriction to other types of vehicles that are not listed above.

2.5.4 **Parking Restrictions.**

(a) *Alleys.* No vehicle of any kind may be parked in any alley, except for brief periods during loading or unloading. When present in the alley, vehicles must be parked or moved so that they do not interfere with normal use of the alley by other Owners or visitors.

(b) *Streets and Driveways.* If an Authorized Vehicle will not fit in a garage it may be parked in the driveway or street, provided that the vehicle does not encroach onto the sidewalk or other public or private right-of-way.

(c) *Prohibited Vehicles.* No Prohibited Vehicle may be parked, stored or kept in the Properties except for brief periods during loading, unloading, or emergency repairs. However, a resident may park a Prohibited Vehicle in the garage so long as the garage is kept closed and the presence of the Prohibited Vehicle does not prevent any Authorized Vehicle from being parked in the garage or driveway at the same time.

(d) *Garage Parking.* Each Owner shall at all times ensure that the garage accommodates at least the number of Authorized Vehicles for which it was originally constructed by Declarant. The garages shall be used for parking of vehicles and storage of personal property only. No garage may be used for any living, recreational, or other purpose. Garage doors must be kept closed except as necessary for entry or exit of vehicles or persons.

2.5.5 **Repair, Maintenance and Restoration.** No Person may repair, maintain or restore any vehicle in the Properties, unless such work is conducted in the garage with the garage door closed. However, no Person may carry on in any portion of the Properties any vehicle repair, maintenance or restoration business.

2.5.6 **Enforcement.** The Board has the right and power to enforce all parking and vehicle use regulations applicable to the Properties, including the removal of violating vehicles from alleys, streets and other portions of the Properties in accordance with California Vehicle Code Section 22658.2 or other applicable laws. The City may, but is not required to, enforce such restrictions, rules and regulations, in addition to applicable laws and ordinances.

2.5.7 **Regulation and Restriction by Board.** The Board has the power to: (a) establish additional rules and regulations concerning parking in the Common Area, including designating "parking," "guest parking," and "no parking" areas; (b) prohibit any vehicle repair, maintenance or restoration activity in the Properties if it determines in its sole discretion that such activity is a nuisance; and (c) promulgate rules and regulations concerning vehicles and parking in the Properties as it deems necessary and desirable.

2.5.8 **Guest Parking.** Owners and other residents of the Properties are prohibited from parking in any area designated as "*Guest Parking*" by the Association except for temporary purposes, not to exceed thirty (30) minutes in any twenty-four (24) hour period.

2.5.9 **Parking Spaces.** Street parking spaces (collectively, "*Parking Spaces*") are for temporary, short-term use by residents and invitees of residents only. Parking Spaces are unreserved and unassigned, and they are available on a strict first-come-first-served basis. However, the spaces shall not be used for long-term parking or permanent storage of any vehicle or other personal property. The Board may, but is not required to, impose additional restrictions on Parking Spaces.

2.6 **ANIMAL REGULATIONS.** Up to two (2) domestic dogs, cats, birds or other customary household pets, may be kept in each Residence; provided that they are not kept, bred or maintained for commercial purposes, or in unreasonable quantities. Small household pets such as fish and caged birds may be kept in reasonable numbers so long as there is no external evidence of their presence in the Properties. Animals belonging to Owners, tenants, residents or guests in the Properties must be kept in the Residence; provided however, when outdoors, animals must be kept under the control of a Person capable of controlling the animal either on a leash or other appropriate restraint. Furthermore, each Owner shall be absolutely liable to each and all remaining Owners, their families, tenants, residents and guests for damages or injuries caused by any animals brought or kept in the Properties by an Owner, by members of the Owner's Family, or by the Owner's guests, tenants or invitees. Each Owner shall immediately remove any excrement or clean other unsanitary conditions caused by such Owner's animals on any portion of the Properties.

2.7 **ANTENNA RESTRICTIONS.** No Person may install on the exterior of any Residence, rooftops, balcony railings or in a yard any antenna or over-the-air receiving device except for an "*Authorized Antenna*." An Authorized Antenna is (a) an antenna designed to receive direct broadcast satellite service, including direct-to-home satellite service, that is one (1) meter or less in diameter, (b) an antenna designed to receive video programming service, including multichannel multipoint distribution service, instructional television fixed service, and local multipoint distribution service, and is one (1) meter or less in diameter or diagonal measurement, (c) an antenna designed to receive television broadcast signals, or (d) an antenna used to receive and transmit fixed wireless signals. An Authorized Antenna may be mounted on

a mast to reach the height needed to receive an acceptable quality signal, subject to local governmental agency permitting requirements for safety purposes.

2.7.1 Restrictions on Installation. The Committee may adopt reasonable restrictions on installation and use of an Authorized Antenna as part of its Design Guidelines in order to minimize visibility of the Authorized Antenna from other Lots. Such restrictions may designate one (1) or more preferred installation locations, or require camouflage such as paint (subject to the antenna manufacturer's recommendations) or screening vegetation or other Improvements. However, no restriction imposed by the Committee may (a) unreasonably delay or prevent the installation, maintenance or use of an Authorized Antenna, (b) unreasonably increase the cost of the installation, maintenance or use of an Authorized Antenna, or (c) preclude acceptable quality reception.

2.7.2 Prohibitions on Installation. The Committee may prohibit the installation of an Authorized Antenna in a particular location if, in the Committee's opinion, the installation, location or maintenance of such Authorized Antenna unreasonably affects the safety of the Owners or any other Person, or for any other safety-related reason established by the Committee. The Committee may also prohibit an Owner from installing an Authorized Antenna on any real property which such Owner does not own or is not entitled to exclusively use or control under the Restrictions. The Committee also has the power to prohibit or restrict the installation of any antenna or other over-the-air receiving device that does not meet the definition of an Authorized Antenna as set forth above.

2.7.3 Review after Installation. The Committee may review the location and installation of an Authorized Antenna after it is installed. After its review, the Committee may require that the Authorized Antenna be moved to a preferred location (if one has been designated) for safety reasons or to comply with reasonable restrictions subject to this Section and applicable law.

2.7.4 Restatement of Applicable Law. This Section is intended to be a restatement of the authority granted to the Committee under the law. All amendments, modifications, restatements and interpretations of the law applicable to the installation, use or maintenance of an antenna or over-the-air receiving device shall be interpreted to amend, modify, restate or interpret this Section.

2.8 TRASH. Trash must be disposed of in accordance with the Rules and Regulations for the Properties.

2.9 IMPROVEMENTS.

2.9.1 Outdoors. No Person, other than Declarant or the Association, may construct or install any of the following without the prior written consent of the Design Review Committee: (a) balcony, patio or deck covers, accessory structures such as sheds, wiring, air conditioning equipment, water softeners, other machines and other similar Improvements, (b) Improvements protruding through the walls or roofs of buildings, and (c) other exterior additions or alterations to any Lot. Outdoor patio or lounge furniture, plants and barbecue equipment may be kept pursuant to the Rules and Regulations. No permanent athletic equipment such as

basketball standards or hoops may be installed on any Lot or Residence. Portable athletic equipment must be removed from view from other Lots when not in use.

2.9.2 Installation of Rear Yard Landscaping. Each Owner shall complete the installation of landscaping on the rear yard of the Lot in accordance with a plan approved by the Design Review Committee no later than six (6) months after the Close of Escrow. Each Owner shall obtain all permits necessary and shall comply with all requirements of the City. Decks and gazebos may be constructed on the flat surface portion of the rear yard only, and not in the slope portion of the rear yard.

2.9.3 Indoors. No Owner or other resident of the Properties may apply paint, foil or other reflective material to any window in the Residence. Pending installation of permanent window coverings, Owners may cover windows with white sheets up to six (6) months following the Close of Escrow. Nothing may be done in any Lot or in, on or to the Common Property which may impair the structural integrity of any building in the Properties or which structurally alters any such building except as otherwise expressly provided in this Declaration. No Owner may pierce or otherwise modify any wall separating attached Residences.

2.9.4 Noise Mitigation in Attached Residences. No Owner may take any actions that may interfere with structural noise mitigation Improvements installed in the Residences by Declarant. Owners are further prohibited from (a) puncturing, piercing or otherwise altering any walls shared with another Residence, if any, (b) installing any sound system, stereo speakers or other entertainment system in any walls or ceiling of an attached Residence, and (c) installing any tile or other hard surface flooring on the upper levels of an attached Residence without the prior written approval of the Design Review Committee. Declarant may have installed noise mitigating floor materials in upper floors or wall Improvements in walls shared with an adjoining Residence. No Owner shall replace any Declarant-installed noise mitigation Improvements unless the replacement offers the same or substantially similar noise mitigation as the Improvements originally installed by Declarant. Prior to installation, the Owner shall present the Design Review Committee with written evidence that the proposed flooring or wall material is the same or substantially similar to the material installed by Declarant.

2.9.5 No Liability. Neither the Declarant nor the Association shall be liable or responsible for any damage that results from Improvements installed, constructed or modified by or at the direction of an Owner. Owners are advised to consult and use qualified consultants and contractors when installing, constructing or modifying Improvements on the Owner's Lot.

2.10 MECHANICS' LIENS. No Owner may cause or permit any mechanic's lien to be filed against the Common Property or another Owner's Lot for labor or materials alleged to have been furnished or delivered for such Owner and any Owner who permits a mechanics' lien to be so filed shall cause the lien to be discharged within five (5) days after notice to the Owner from the Board. If the Owner fails to remove such mechanic's lien, the Board may discharge the lien and levy a Special Assessment against the violating Owner's Lot to recover the cost of discharge.

2.11 **FURTHER SUBDIVISION.** Except as otherwise provided in this Declaration, no Owner may physically or legally subdivide his Lot in any manner, including dividing such Owner's Lot into time-share estates or time-share uses. This provision does not limit the right of an Owner to (a) rent or lease his entire Lot by a written lease or rental agreement subject to this Declaration, (b) sell such Owner's Lot, or (c) transfer or sell any Lot to more than one (1) Person to be held by them as tenants-in-common, joint tenants, tenants by the entirety or as community property. Any failure by the tenant of the Lot to comply with the Restrictions constitutes a default under the lease or rental agreement.

2.12 **DRAINAGE.** No one may interfere with or alter the established drainage pattern over any Lot unless an adequate alternative provision is made for proper drainage with the Board's prior written approval. For the purpose of this Section, "established" drainage means, the drainage which (a) exists at the time of the first Close of Escrow, or (b) is shown in any plan approved by the Board. Established drainage includes drainage from the Lots onto the Common Property and from the Common Property onto the Lots.

Each Owner, by accepting a grant deed to his Lot, acknowledges and understands that in connection with the development of the Properties, Declarant may have installed one (1) or more "sub-drains" beneath the surface of such Owner's Lot. The sub-drains and all appurtenant improvements constructed or installed by Declarant ("*Drainage Improvements*"), if any, provide for subterranean drainage of water from and to various portions of the Properties. Drainage Improvements, if any, shall not be modified, removed or blocked without first making alternative drainage arrangements approved by the Board.

2.13 **WATER SUPPLY SYSTEM.** No individual water supply, sewage disposal or water softener system is permitted on any Lot unless such system is designed, located, constructed and equipped in accordance with the requirements, standards and recommendations of any water district having jurisdiction, the City, the Design Review Committee and all other applicable governmental authorities with jurisdiction.

2.14 **VIEW OBSTRUCTIONS.** Each Owner acknowledges that (a) there are no protected views in the Properties, and no Lot is assured the existence or unobstructed continuation of any particular view, and (b) any construction, landscaping (including the growth of landscaping) or other installation of Improvements by Declarant or other Owners may impair the view from any Lot, and each Owner hereby consents to such view impairment.

2.15 **SOLAR ENERGY SYSTEMS.** Each Owner may install a solar energy system on his Lot which serves his Residence so long as (a) the design and location of the solar energy system meet the requirements of all applicable governmental ordinances, and (b) the design and location receive the prior written approval of the Design Review Committee.

2.16 **RIGHTS OF DISABLED.** Subject to Article VIII, each Owner may modify his Residence and the route over the Lot leading to the front door of his Residence, at his sole expense to facilitate access to his Residence by persons who are blind, visually impaired, deaf or physically disabled, or to alter conditions which could be hazardous to such persons, in accordance with California Civil Code Section 1360 or any other applicable law.

2.17 **TEMPORARY BUILDINGS.** No outbuilding, tent, shack, shed or other temporary building or Improvement may be placed upon any portion of the Properties either temporarily or permanently, without the prior written consent of the Design Review Committee. No garage, carport, trailer, camper, motor home, recreation vehicle or other vehicle may be used as a residence in the Properties, either temporarily or permanently.

2.18 **COMMON PROPERTY.** The Common Property may not be altered without the Board's prior written consent.

2.19 **DRILLING.** No oil drilling, oil, gas or mineral development operations, oil refining, geothermal exploration or development, quarrying or mining operations of any kind may be conducted on the Properties, nor are oil wells, tanks, tunnels or mineral excavations or shafts permitted upon the surface of any Lot or within five hundred (500) feet below the surface of the Properties. No derrick or other structure designed for use in boring for water, oil, geothermal heat or natural gas may be erected, maintained or permitted on any Lot.

2.20 **POLLUTANT CONTROL.** The Properties are subject to the provisions of the federal Clean Water Act by application of its municipal component known as the National Pollutant Discharge Elimination System ("**NPDES**"). NPDES is implemented by the State of California (through its statewide general NPDES permits), the County (through its Municipal Storm Water Permit) and the City (through its Standard Urban Storm Water Mitigation Plan), each of which impose procedures known as best management practices ("**BMPs**") for the handling and discharge of runoff from the Properties into storm drains and waterways. BMPs govern activities on the Properties before, during, and after construction. The Association and the Owners shall comply with any NPDES requirements and post-construction BMPs that may apply to the Properties.

ARTICLE III DISCLOSURES

Because much of the information included in this Article (a) was obtained from other sources (e.g., governmental and other public agencies and public records) and (b) is subject to change for reasons beyond the control of Declarant, the Parcel D Owner and the Association, the Declarant, the Parcel D Owner and the Association do not guarantee the accuracy or completeness of any of the information in this Article. Further, neither Declarant, the Parcel D Owner nor the Association is obligated to advise any Person of any changes affecting the disclosures in this Article. Persons should make their own inquiries or investigations to determine the current status of the matters addressed in this Article.

3.1 **NO REPRESENTATIONS OR WARRANTIES.** No representations or warranties, express or implied, have been given by Declarant, the Parcel D Owner, the Association or their agents in connection with the Properties, its physical condition, zoning, compliance with law, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation of the Properties as a planned unit development, except as expressly provided in this Declaration, as submitted by Declarant to the DRE, provided by Declarant to the first Owner of each Lot.

3.2 **EFFECT OF EXPANSIVE SOIL.** The soil in the Properties may be composed of materials that have "expansive" characteristics. Owners should perform soils testing, use special construction techniques and take precautions when constructing new Improvements or modifying existing Improvements because the soil expands when it is wet and can cause Improvements to lift and crack. Owners should consider the following information and recommendations before making or modifying any Improvements:

3.2.1 **Concrete and Masonry Improvements.** Special attention is required in designing and constructing concrete and masonry Improvements such as masonry walls and planters, concrete slabs, pools, patios, sidewalks, spas and decking. For example, steel reinforcing bars may be required in lieu of steel mesh in concrete patio slabs. Block walls may require extra horizontal and vertical steel reinforcing bars. Pools and spas located at the top or bottom of a slope or on expansive soils may require special design and construction methodology.

3.2.2 **Drainage and Irrigation.** Owners must use adequate drainage and irrigation control. Drainage devices installed in the Properties by Declarant should not be altered in any manner that will redirect or obstruct drainage through these devices. The construction or modification of Improvements should not result in ponding of water. Drainage devices, including, concrete ditches, area drain lines and gutter should be carefully designed and installed with professional assistance and then maintenance in an unobstructed condition. Drainage devices installed by Declarant designed to serve more than one (1) Lot or the Common Property should not be altered in a manner that will redirect or obstruct the drainage through these drainage devices. The landscape irrigation system should be designed, constructed, and operated to prevent excessive saturation of soils. Water must drain away from the Residence footings and other Improvements. Obstructions such as walls should not be constructed across swales unless adequate replacement drainage Improvements have been installed or created. Planters should be lined with an impervious surface and should contain outlets to drain excess water.

3.2.3 **Slope Creep.** While horizontal and vertical movement (often described as "*slope creep*") is generally minor in nature and does not always occur, it may affect Improvements such as pools, spas, patios, walls, slabs, planters, decking and the like. Slope creep can cause pools, spas and walls to tilt and crack and may cause cracking or lifting in brickwork or concrete in a manner that will allow these Improvements to function yet not meet the Owner's cosmetic expectations. Professional soils and structural engineers should be retained to design and construct such Improvements to mitigate the effects of slope creep and to ensure compliance with special rules for such Improvements that are required under the Uniform Building Code or other applicable regulations. If possible, Improvements should not be constructed within ten (10) feet of the edge, top or toe of a slope. Even with professional assistance, minor lifting and cracking can occur.

3.3 **GRADING.** The grading design in the Properties should not be altered to redirect surface water flow toward the Lots or onto adjacent property, or to trap water so that it ponds or floods. Grading modifications are subject to law, approval by the Board, and the terms of any Recorded drainage easements.

3.4 **ELECTRIC POWER LINES.** Underground or overhead electric transmission and distribution lines and transformers are located in and around the Properties. Power lines and

transformers produce extremely low-frequency electromagnetic fields ("*ELF-EMF*") when operating. For some time, there has been speculation in the scientific community about health risks associated with living near ELF-EMF sources. In 1992, the United States Congress authorized the Electric and Magnetic Fields Research and Public Information Dissemination Program ("*EMF-RAPID Program*") to perform research on these issues and to analyze the existing scientific evidence in order to clarify the potential for health risks from exposure to ELF-EMF. In May of 1999, the National Institute of Environmental Health Sciences ("*NIEHS*") issued a report to Congress summarizing its review of scientific data from over three hundred (300) studies on ELF-EMF health risks. The ELF-EMF studies consist of both epidemiological studies (studies of exposure in human populations) and controlled laboratory experiments on animal and cell models. While some epidemiological studies suggested some link between certain health effects and exposure to ELF-EMF, the laboratory experiments did not support such a link. According to the NIEHS report, the scientific evidence shows no clear pattern of health hazards from ELF-EMF exposure, and the NIEHS report did not find evidence of any link sufficient to recommend widespread changes in the design or use of electrical transmission equipment. However, because the evidence does not clearly rule out any effect, NIEHS advocated continuing inexpensive and safe reductions in exposure to ELF-EMF and endorsed current utility practices regarding design and siting of new transmission and distribution lines. Further information on this subject is available from the website of the California Department of Health Services, Electric and Magnetic Fields Program <http://www.dhs.cahwnet.gov/ehib/emf/>, or on the EMF Hotline at (510) 622-4430. Additional information on ELF-EMF and copies of the NIEHS report are available from the EMF-RAPID website at <http://www.niehs.nih.gov/enfrapid/home/>.

3.5 OFFERS OF DEDICATION. Portions of the Common Area are subject to irrevocable offers of dedication as shown on the Recorded tract maps for the Properties. The City may accept the offer of dedication and assume responsibility for maintaining these portions of the Common Area at any time. If accepted by the City at a later time, the level of maintenance provided by the City may not be the same as that provided by the Association.

3.6 PROPERTY LINES. The boundaries of each Lot in the Properties and the Common Area owned in fee simple by the Association are delineated on subdivision (tract) maps, lot line adjustments or parcel maps that are public records and are available at the County Recorder's office.

3.7 SPECIAL TAX ASSESSMENT OR MELLO-ROOS COMMUNITY FACILITIES DISTRICTS. The Properties lie within the boundaries of special tax assessment districts and Mello-Roos Community Facilities Districts which require the levy of a special tax for repayment of bonds issued for the purpose of paying the cost of services or capital improvements. The amount of the special tax and any other information pertaining to any such district can be obtained from the County Assessor's office.

3.8 NATURAL HAZARD ZONE DISCLOSURES.

3.8.1 Earthquakes. California is subject to a wide range of earthquake activity. California has many known faults as well as yet undiscovered faults. Declarant has been advised that the Properties are not located within an Earthquake Fault Zone as defined by California Public Resources Code Section 2621.9. Owner must evaluate the potential for future

seismic activity that might seriously damage an Owner's Lot. Although the Properties are not located in an Earthquake Fault Zone, a major earthquake, which some have predicted will occur in our lifetimes, could cause very serious damage to Residences, located even many miles from the epicenter of the earthquake. A more moderate earthquake occurring on a more minor fault, or on an undiscovered fault, could also cause substantial damage.

Declarant makes no representations or warranties as to the degree of earthquake risk within the Properties. Please read *"The Homeowner's Guide to Earthquake Safety,"* and consult with the City, other public agencies, and appropriate experts to evaluate the potential risk.

3.8.2 Seismic Hazard Zone. Many portions of Southern California are subject to risks associated with seismic activity or "earthquakes." Declarant has been informed that the State of California has not yet produced any seismic hazard maps for the area of the Properties. Thus, no information is currently available concerning whether the Properties will eventually be shown within a Seismic Hazard Zone. A Seismic Hazard Zone is defined in the Seismic Hazards Mapping Act (California Public Resources Code Section 2690 et seq.), and shown on maps that are released by the California Department of Conservation, Division of Mines and Geology. Copies of these maps will be on file with the City after they are released. There are two (2) types of Seismic Hazard Zones: a landslide zone and a liquefaction zone. "Liquefaction" is the process by which water-saturated soils become unstable under heavy shaking and thereby jeopardize foundations and other structures. For more information concerning seismic activity and risks, read "The Homeowner's Guide to Earthquake Safety."

3.8.3 Compliance with Civil Code Section 1103 et seq. In addition to the foregoing natural hazard disclosures, Seller has provided or will provide Buyer with the Natural Hazard Disclosure Statement in compliance with Article 1.7, commencing at Section 1103 of the California Civil Code.

3.9 INTERSTATE 15. Interstate 15 is located approximately less than one (1) mile to the west of the Properties. Interstate 15 is a major north/south thoroughfare. Owners in the Properties may notice increased traffic, noise, vibrations and dust resulting from the public's normal use of Interstate 15.

3.10 THE PROMENADE IN TEMECULA. The Promenade in Temecula ("*Promenade*") is located approximately less than one mile to the northeast of the Properties. The Promenade is a major shopping center with one hundred ten (110) stores, including several large department stores, specialty stores and food court. Owners in the Properties may notice increased traffic and noise in and around the Properties. Owners may also notice glare from night lighting of the Promenade parking lot.

3.11 STORM DRAIN DETENTION BASINS. Parcel D of Lot Line Adjustment No. PA04-0320 is improved with a storm drain detention basin. The Association is required to maintain the detention basin, subject to the supervision and requirements of the U.S. Army Corps of Engineers and the California Department of Fish and Game. The detention basin is intended to collect storm water and other surface runoff from the Properties. The detention basin is a water hazard. During periods of storm flow, water levels in the detention basin may rise rapidly. Residents are advised to keep children and pets away from the detention basin at all times.

Except for Association maintenance personnel or representatives of governmental agencies, no Person may enter the detention basin for any purpose.

3.12 **CHANGE IN PLANS.** Declarant has the right to develop the Properties with Improvements that may be different in design, size, character, style and price.

3.13 **ADDITIONAL PROVISIONS.** There may be provisions of various laws, including the Davis-Stirling Common Interest Development Act codified at Sections 1350 et seq. of the California Civil Code and the federal Fair Housing Act codified at Title 42 United States Code, Section 3601 et seq., which may supplement or override the Restrictions. Declarant makes no representations or warranties regarding the future enforceability of any portion of the Restrictions.

ARTICLE IV THE ASSOCIATION

4.1 **GENERAL DUTIES AND POWERS.** The Association has the duties and powers listed in the Restrictions and also has the general and implied powers of a nonprofit mutual benefit corporation, generally to do all things that a corporation organized under the laws of the State of California may lawfully do which are necessary or proper in operating for the general welfare of the Owners, subject only to the limits on the exercise of such powers listed in the Restrictions. Unless otherwise indicated in the Articles, Bylaws, this Declaration, or the Supplemental Declarations, the powers of the Association may be exercised by the Board.

4.2 **SPECIFIC DUTIES AND POWERS.** In addition to its general powers and duties, the Association has the following specific powers and duties.

4.2.1 **Common Property.** The power and duty to accept, maintain and manage the Common Property in accordance with the Restrictions. The Association may install or remove capital Improvements on the Common Property. The Association may reconstruct, replace or refinish any Improvement on the Common Property.

4.2.2 **Utilities.** The power and duty to obtain, for the benefit of the Properties, all commonly metered water, gas and electric services, and the power, but not the duty, to provide for trash collection and cable or master television service.

4.2.3 **Granting Rights.** The power to grant exclusive or nonexclusive easements, licenses, rights of way or fee interests in the Common Area owned in fee simple by the Association, to the extent any such grant is reasonably required (a) for Improvements to serve the Properties, (b) for purposes of conformity with the as-built location of Improvements installed or authorized by Declarant or the Association, (c) in connection with any lawful lot line adjustment, or (d) for other purposes consistent with the intended use of the Properties. This power includes the right to create and convey easements for one or more Owners over portions of the Common Area. The Association may deannex any portion of the Properties from the encumbrance of the Declaration in connection with any lawful lot line adjustment.

4.2.4 **Employ Personnel.** The power to employ Persons necessary for the effective operation and maintenance of the Common Property, including legal, management and accounting services.

4.2.5 **Insurance.** The power and duty to keep insurance for the Common Area in accordance with this Declaration.

4.2.6 **Sewers and Storm Drains.** The power and duty to maintain any private sewer systems, private storm drains, or private drainage facilities in the Common Area in accordance with the Restrictions.

4.2.7 **Maintenance Guidelines.** The power and duty to (a) operate, maintain and inspect the Common Property and its various components in conformity with any Maintenance Guidelines and any maintenance manual, and (b) review any maintenance manual for necessary or appropriate revisions no less than annually after the Board has prepared the Budget.

4.2.8 **Rules and Regulations.** The power but not the duty to establish, amend, restate, delete, and create exceptions to, the Rules and Regulations.

(a) **Standards for Enforceability.** To be valid and enforceable, a Rule must satisfy all the following requirements:

- (i) The Rule must be in writing;
- (ii) The Rule is within the authority of the Board conferred by law or by this Declaration, the Articles or the Bylaws;
- (iii) The Rule is not inconsistent with governing law, this Declaration, the Articles, or the Bylaws;
- (iv) The Rule is adopted, amended or repealed in good faith and in substantial compliance with the requirements of Article 4 of Title 6 of Part 4 of Division 2 of the California Civil Code;
- (v) The Rule is reasonable; and
- (vi) The Rule complies with the requirements of California Civil Code Section 1357.110 (as amended from time to time).

(b) **Areas of Regulation.** The Rules and Regulations may concern use of the Properties, signs, parking restriction, minimum standards of property maintenance, and any other matter under the Association's jurisdiction; however, the Rules and Regulations are enforceable only to the extent they are consistent with the Articles, Bylaws, Declaration, any Supplemental Declarations and any Notices of Addition.

(c) **Limits on Regulation.** The Rules and Regulations must apply uniformly to all Owners. The rights of Owners to display in or on their Residences religious, holiday and political signs, symbols and decorations of the kinds normally displayed in single family residential neighborhoods shall not be abridged. However, the Association may adopt time, place and manner restrictions for such displays if they are visible outside the Residence. No modification to the Rules and Regulations may require an Owner to dispose of personal property that was in compliance with all rules previously in force; however, this exemption shall

apply only during the period of such Owner's ownership of the Lot and it shall not apply to: (i) subsequent Owners who take title to a Lot after the modification is adopted; or (ii) clarifications to the Rules and Regulations.

(d) *Procedure for Adoption, Amendment and Repeal.* Rules or procedures concerning (i) the use of Common Property, (ii) the use of a Lot, including any aesthetic standards or Design Guidelines that affect Lots, (iii) member discipline, including any schedule of monetary penalties for violation of the Restrictions, (iv) any procedure for the imposition of penalties, (v) any standards for delinquent assessment payment plans, and (vi) any procedures adopted by the Association for resolution of assessment disputes (each, a "*Covered Rule*") may only be adopted, amended or repealed in accordance with the following procedure:

(i) The Board must provide written notice ("*Notice*") of a proposed change in a Covered Rule to the members at least thirty (30) days before making the change, except for an Emergency Rule Change (defined below). The Notice must include the text of the proposed change and a description of the purpose and effect of the proposed change (Notice is not required if the Board determines that an immediate change is required to address an imminent threat to public health or safety, or an imminent risk of substantial economic loss to the Association);

(ii) The decision on a proposed change shall be made at a Board meeting after consideration of comments made by the members of the Association;

(iii) The Board shall deliver Notice of the adopted change to every member of the Association within fifteen (15) days of adoption. If the change was an Emergency Rule Change, the notice shall include the text of the Emergency Rule Change, and the date on which the Emergency Rule Change expires;

(iv) If the Board determines that an immediate Rule change is required to address an imminent threat to public health or safety, or an imminent risk of substantial economic loss to the Association, it may make the change on an emergency basis ("*Emergency Rule Change*") and no Notice will be required. An Emergency Rule Change is effective for one hundred-twenty (120) days, unless the adopted change provides for a shorter effective period. Any change that is adopted as an Emergency Rule Change may not be re-adopted under authority of this subpart.

(v) A Notice required by this Section 4.2.8(d) is subject to California Civil Code Section 1350.7.

(vi) A Rule change made pursuant to this Section 4.2.8(d) may be reversed as provided in California Civil Code Section 1357.140.

The foregoing procedure does not apply to Rules that do not meet the definition of Covered Rules above, nor to decisions of the Board regarding maintenance of Common Property, a decision on a specific matter that is not intended to apply generally, a decision setting the amount of a Monthly Assessment or a Special Assessment, a Rule change that is required by law if the Board has no discretion as to the substantive effect of the changes, or issuance of a document that merely repeats existing law or the governing documents

4.2.9 **Borrowings.** The power, but not the duty, to borrow money for purposes authorized by the Articles, Bylaws, Declaration, or any Supplemental Declarations, and to use the Common Area owned in fee simple by the Association as security for the borrowing.

4.2.10 **Contracts.** The power, but not the duty, to enter into contracts. This includes contracts with Owners or other Persons to provide services or to maintain Improvements in the Properties and elsewhere which the Association is not otherwise required to provide or maintain by this Declaration.

4.2.11 **Telecommunications Contract.** Notwithstanding anything in the Restrictions to the contrary, the Board shall have the power to enter into, accept an assignment of, or otherwise cause the Association to comply with the terms and provisions of an exclusive telecommunications services contract ("**Telecommunications Contract**") with a telecommunications service provider ("**Service Provider**"), pursuant to which the Service Provider shall serve as the exclusive provider of Telecommunications Services to each Lot in the Properties. The Board shall only enter into, accept an assignment of, or otherwise cause the Association to comply with the terms and provisions of the Telecommunications Contract if the Board determines, in its sole discretion, that such action is in the best interests of the Association. Although not exhaustive, the Board shall consider the following factors in making such a determination:

(a) **Initial Term and Extensions.** The initial term of the Telecommunications Contract should not exceed five (5) years, and, if the Telecommunications Contract provides for automatic extensions, the length of each such extension should also not exceed five (5) years.

(b) **Termination.** The Telecommunications Contract should provide that: (i) at least six (6) months prior to the expiration of either the initial or any extended term of the Telecommunications Contract, the entire Membership of the Association may, without cause, by a sixty percent (60%) vote, prevent any automatic extension that the Telecommunications Contract may provide for, and thereby allow the Telecommunications Contract to expire, and (ii) at any time, the Board may terminate the Telecommunications Contract if, in the sole discretion of the Board, the Service Provider fails to provide quality, state-of-the-art Telecommunications Services.

(c) **Fees.** Whether the monthly fee charged to the Association by the Service Provider for the provision of the Telecommunications Services to all of the Lots represents a discount from the comparable retail fees charged by the Service Provider in the general geographic area in which the Properties are located, and, if so, the amount of such discount.

(d) **Installation of Telecommunications Facilities.** Whether the Service Provider is solely responsible for the installation, and the cost thereof, of all of the Telecommunications Facilities necessary to provide Telecommunications Services to each Lot.

(e) **Removal of Telecommunications Facilities.** Whether the Service Provider has the right to remove the Telecommunications Facilities upon expiration or termination of the Telecommunications Contract.

4.2.12 Indemnification.

(a) *For Association Representatives.* To the fullest extent authorized by law, the Association has the power and duty to indemnify Board members, Association officers, Design Review Committee members, and all other Association committee members for all damages, pay all expenses incurred, and satisfy any judgment or fine levied as a result of any action or threatened action brought because of performance of an act or omission within what such person reasonably believed to be the scope of the Person's Association duties ("*Official Act*"). Board members, Association officers, Design Review Committee members, and all other Association committee members are deemed to be agents of the Association when they are performing Official Acts for purposes of obtaining indemnification from the Association pursuant to this Section. The entitlement to indemnification under this Declaration inures to the benefit of the estate, executor, administrator and heirs of any person entitled to such indemnification.

(b) *For Other Agents of the Association.* To the fullest extent authorized by law, the Association has the power, but not the duty, to indemnify any other Person acting as an agent of the Association for damages incurred, pay expenses incurred, and satisfy any judgment or fine levied as a result of any action or threatened action because of an Official Act.

(c) *Provided by Contract.* The Association also has the power, but not the duty, to contract with any Person to provide indemnification in addition to any indemnification authorized by law on such terms and subject to such conditions as the Association may impose.

4.2.13 **Vehicle Restrictions.** The power granted in Section 2.5 to identify Authorized Vehicles or Prohibited Vehicles and to modify the restrictions on vehicles.

4.2.14 **Landscaping.** The Board has the power, but not the duty, to grant Owners revocable licenses that allow Owners to replace and/or add landscaping Improvements to any portion of the Common Area, subject to the prior written approval of the Board, any reasonable restrictions or conditions the Board may impose, and the right of the Board to revoke such license, remove the Improvements and charge the Owner for the cost of such removal.

4.2.15 Prohibited Functions.

(a) *Property Manager.* The Association shall not hire any employees, furnish offices or other facilities, or use any Common Area for an "*on-site*" Manager. The Association Manager shall at all times be a professional manager employed as an independent contractor or agent working at its own place of business.

(b) *Off-site Nuisances.* The Association shall not use any Association funds or resources to abate any annoyance or nuisance emanating from outside the physical boundaries of the Properties.

(c) *Political Activities.* The Association shall not conduct, sponsor, participate in or expend funds or resources toward any activity, campaign or event, including any social or political campaign, event or activity which does not directly and exclusively pertain to

the authorized activities of the Association. Furthermore, the Association shall not participate in federal, state or local activities or activities intended to influence a governmental action affecting areas outside the Properties (e.g. endorsement or support of legislative or administrative actions by a local governmental authority), nor shall it support or campaign for or against candidates for elected or appointed office or ballot proposals. There shall be no amendment of this Section so long as Declarant owns any portions of the Properties.

4.2.16 **Standing to Resolve Disputes.** The Association shall have standing to institute, defend, settle or intervene in litigation, alternative dispute resolution or administrative proceedings (each, an "*Action*") in its own name as the real party in interest and without joining the Owners, in matters pertaining to (a) damage to the Common Area, (b) damage to portions of the Lots which the Association is obligated to maintain or repair, and (c) damage to portions of the Lots which arises out of, or is integrally related to, damage to the Common Area or portions of the Lots that the Association is obligated to maintain or repair (each, a "*Claim*"). However, the Association shall not have standing to institute, defend, settle or intervene in any Action in any matter pertaining only to an individual Lot and not included in subsections (b) and (c) above.

Upon commencement of an Action by the Association pertaining to any Claim described in subsections (a), (b) or (c) above, the Association's standing shall be exclusive, and during the pendency of such Action, the Owners shall be barred from commencing a new Action or maintaining a pending Action on the same Claim. The Association's exercise of exclusive standing as to an Action on a particular Claim shall not be deemed to give rise to any affirmative obligation on the part of the Association to maintain, settle or dismiss the Action, except in the Association's sole discretion, and subject to Section 12.4.

4.3 STANDARD OF CARE, NONLIABILITY.

4.3.1 Scope of Powers and Standard of Care.

(a) *General Scope of Powers.* Rights and powers conferred on the Board, the Design Review Committee or other committees or representatives of the Association by the Restrictions are not duties, obligations or disabilities charged upon those Persons unless the rights and powers are explicitly identified as including duties or obligations in the Restrictions or law. Unless a duty to act is imposed on the Board, the Design Review Committee or other committees or representatives of the Association by the Restrictions or law, the Board, the Design Review Committee and the committees have the right to decide to act or not act. Any decision not to act is not a waiver of the right to act in the future.

(b) *Business Affairs.* This Section 4.3.1(b) applies to Board member actions in connection with management, personnel, maintenance and operations, insurance, contracts and finances, and Design Review Committee member actions. Each Board member shall perform the duties of a Board member in good faith, in a manner the Board member believes to be in the best interests of the Association and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances. When performing his duties, a Board member is entitled to rely on information, opinions, reports or statements, including financial data prepared or presented by:

(i) One (1) or more officers or employees of the Association whom the Board member believes to be reliable and competent in the matters presented;

(ii) Counsel, independent accountants or other Persons as to matters which the Board member believes to be within such Person's professional or expert competence; or

(iii) A committee of the Board upon which the Board member does not serve, as to matters under its designated authority, which committee the Board member believes to merit confidence, so long as, in any such case, the Board member acts in good faith, after reasonable inquiry when the need therefor is indicated by the circumstances and without knowledge that would cause such reliance to be unwarranted.

This Section 4.3.1(b) is intended to be a restatement of the business judgment rule established in applicable law as it applies to the Association. All modifications and interpretations of the business judgment rule applicable to the Association shall be interpreted to modify and interpret this Section 4.3.1(b).

(c) *Association Governance.* This Section 4.3 applies to Board actions and Design Review Committee decisions in connection with interpretation and enforcement of the Restrictions, architectural and landscaping control, regulation of uses within the Properties, rule making and oversight of committees. Actions taken or decisions made in connection with these matters shall be reasonable, fair and nondiscriminatory.

4.3.2 Nonliability.

(a) *General Rule.* No Person is liable to any other Person (other than the Association or a party claiming in the name of the Association) for injuries or damage resulting from such Person's Official Acts, except to the extent that such injuries or damage result from the Person's willful or malicious misconduct. No Person is liable to the Association (or to any party claiming in the name of the Association) for injuries or damage resulting from such Person's Official Acts, except to the extent that such injuries or damage result from such Person's negligence or willful or malicious misconduct. The Association is not liable for damage to property in the Properties unless caused by the negligence of the Association, the Board, the Association's officers, the Manager or the Manager's staff.

(b) *Nonliability of Volunteer Board Members and Officers.* A volunteer Board member or volunteer Association officer shall not be personally liable to any Person who suffers injury, including bodily injury, emotional distress, wrongful death or property damage or loss as a result of the tortious act or omission of the volunteer officer or Board member if all applicable conditions specified in Section 1365.7 of the California Civil Code are met.

(c) *Nonliability of Owners.* Pursuant to California Civil Code Section 1365.9, no Owner shall be liable for any cause of action in tort which can be brought against the Owner solely because of the Owner's undivided interest in the Common Area so long as the Association keeps one (1) or more policies of insurance which include coverage for general liability of the Association in the amount required by California Civil Code Section 1365.9 and that insurance is in effect for the cause of action being brought.

4.4 MEMBERSHIP.

4.4.1 **Generally.** Every Owner shall automatically acquire a Membership in the Association and retain the Membership until such Owner's Lot ownership ceases, at which time such Owner's Membership shall automatically cease. Ownership of a Lot is the sole qualification for Membership. Memberships are not assignable except to the Person to whom title to the Lot is transferred, and every Membership is appurtenant to and may not be separated from the fee ownership of the Lot. The rights, duties, privileges and obligations of all Owners are as provided in the Restrictions.

4.4.2 **Transfer.** The Membership of any Owner may not be transferred, pledged or alienated in any way, except on the transfer or encumbrance of such Owner's Lot, and then only to the transferee or Mortgagee of the Owner's Lot. A prohibited transfer is void and will not be reflected in the records of the Association. Any Owner who has sold his Lot to a contract purchaser under an agreement to purchase may delegate the Owner's Membership rights to the contract purchaser. The delegation must be in writing and must be delivered to the Association before the contract purchaser may vote. The contract seller shall remain liable for all Assessments attributable to the contract seller's Lot which accrue before title to the Lot is transferred. If the contract seller fails or refuses to delegate his Membership rights to the contract purchaser before the Close of Escrow, the Association may record the transfer to the contract purchaser in the Association's records. However, no contract purchaser will be entitled to vote at Association meetings during the term of a purchase contract without satisfactory evidence of the delegation of the contract seller's Membership rights to the contract purchaser. The Association may levy a reasonable transfer fee against a new Owner and such Owner's Lot (which fee shall be paid through escrow or added to the Annual Assessment chargeable to such new Owner) to reimburse the Association for the administrative cost of transferring the Membership to the new Owner on the Association's records. Such fee may not exceed the Association's actual cost involved in changing its records.

4.4.3 **Classes of Membership.** The Association classes of voting Membership are as follows:

(a) **Class A.** Class A members are all Owners except Declarant for so long as a Class B Membership exists. Class A members are entitled to one (1) vote for each Lot owned by such Class A members which is subject to Assessment. Declarant shall become a Class A member on conversion of Declarant's Class B Membership as provided below. The vote for each Lot shall be exercised in accordance with Section 4.5.1, but no more than one (1) Class A vote may be cast for any Lot.

(b) **Class B.** The Class B member is Declarant. The Class B member is entitled to three (3) votes for each Lot owned by Declarant which is subject to Assessment. The Class B Membership shall convert to Class A Membership on the earlier to occur of the following events:

(i) The date of the seventeenth (17th) Close of Escrow in the Properties; or

(ii) The fourth (4th) anniversary of the first Close of Escrow in the Properties.

(c) **Class C Board Appointment Right.** Declarant shall have a Class C Board appointment right (whether or not Declarant is an Owner). The Class C Board appointment right shall not be considered a part of the voting power of the Association. The Class C Board appointment right entitles Declarant to select a majority of the members of the Board of Directors until the Class C Termination Date. The "**Class C Termination Date**" shall be the earlier to occur of the following events:

(i) The date of the seventeenth (17th) Close of Escrow in the Properties;

(ii) The fourth (4th) anniversary of the first Close of Escrow in the Properties for which a Final Subdivision Public Report was most recently issued by the DRE; or

(d) The tenth (10th) anniversary of the first Close of Escrow for the sale of a Lot in the Properties.

4.5 VOTING RIGHTS.

4.5.1 **Limits Generally.** All voting rights are subject to the Restrictions. Except as provided in Sections 4.5.2 and 12.3 of this Declaration and Section 4.8 of the Bylaws, as long as there is a Class B Membership, any provision of the Restrictions which expressly requires the vote or written consent of a specified percentage (instead of a majority of a quorum) of the Association's voting power before action may be undertaken shall require the approval of such specified percentage of the voting power of both the Class A and the Class B Memberships. Except as provided in Section 12.3 of this Declaration and Section 4.8 of the Bylaws, on termination of the Class B Membership, any provision of the Restrictions which expressly requires the vote or written consent of Owners representing a specified percentage (instead of a majority of a quorum) of the Association's voting power before action may be undertaken shall then require the vote or written consent of Owners representing such specified percentage of both (a) the Association's total Class A voting power, and (b) the Association's Class A voting power represented by Owners other than Declarant.

4.5.2 **Vote to Initiate Construction Defect Claim.** Commencing on the date of the first annual meeting of Owners, Declarant relinquishes control over the Association's ability to decide whether to initiate a construction defect claim under the Right to Repair Law (a "**Defect Claim**"). This means that Declarant, current employees and agents of Declarant, Board members who are appointed by Declarant, Board members elected by a majority of votes cast by Declarant, and all other Persons whose vote or written consent is inconsistent with the intent of the preceding sentence, are prohibited from participating and voting in any decision of the Association or Owners to initiate a Defect Claim.

4.5.3 **Joint Ownership.** When more than one (1) Person holds an interest in any Lot ("co-owners"), each co-owner may attend any Association meeting, but only one (1) co-owner shall be entitled to exercise the single vote to which the Lot is entitled. Co-owners owning the majority interests in a Lot may designate in writing one (1) of their number to vote.

Fractional votes shall not be allowed and the vote for each Lot shall be exercised, if at all, as a unit. Where no voting co-owner is designated or if the designation is revoked, the vote for the Lot shall be exercised as the co-owners owning the majority interests in the Lot agree. Unless the Association receives a written objection in advance from a co-owner, it shall be conclusively presumed that the voting co-owner is acting with his co-owners' consent. No vote may be cast for any Lot if the co-owners present in person or by proxy owning the majority interests in such Lot fail to agree to the vote or other action. The nonvoting co-owner or co-owners are jointly and severally responsible for all obligations imposed on the jointly-owned Lot and are entitled to all other benefits of ownership. All agreements and determinations lawfully made by the Association in accordance with the voting percentages established in the Restrictions are binding on all Owners and their successors in interest.

4.6 REPAIR AND MAINTENANCE.

4.6.1 **Maintenance Standards.** The Association shall maintain everything it is obligated to maintain in a clean, sanitary and attractive condition reasonably consistent with the level of maintenance reflected in the most current Budget, and in conformity with any Maintenance Guidelines. Unless specifically provided in any Maintenance Guidelines, the Board shall determine, in its sole discretion, the level and frequency of maintenance of the Common Property and Improvements thereon. Each Owner shall maintain everything the Owner is obligated to maintain in a clean, sanitary and attractive condition and in conformity with any maintenance recommendations.

4.6.2 By Owners.

(a) **The Lot.** Each Owner shall maintain, at his sole expense, all of his Lot, and the Residence and all other Improvements on the Owner's Lot in a clean, sanitary and attractive condition as set forth in *Exhibit D-1*. Each Owner shall be responsible for the cost of collection and removal of household trash. However, Owners shall not maintain those portions of the Lot or Improvements thereon that are defined as Association Maintenance Areas in this Declaration. Each Owner shall pay when due all charges for any utility service separately metered to his Lot.

(b) **Party Walls.** To the extent not inconsistent with the provisions of this Section, the general rules of law regarding Party Walls and liability for property damage due to negligence or willful acts or omissions shall apply.

(i) **Sharing of Repair and Maintenance.** The cost of reasonable repair and maintenance of a Party Wall shall be shared equally by the Owners of the Lots connected by such Party Wall. However, each Owner shall be solely responsible for repainting the side of any Party Wall facing his Lot.

(ii) **Destruction by Fire or Other Casualty.** Unless covered by a blanket insurance policy maintained by the Association under Section 8.1, if a Party Wall is destroyed or damaged by fire or other casualty, any Owner whose Lot is affected thereby may restore it, and the Owner of the other Lot affected thereby shall contribute equally to the cost of restoration thereof, without prejudice. However, such an Owner may call for a larger

contribution from the other under any rule of law regarding liability for negligent or willful acts or omissions.

(iii) Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes a Party Wall to be exposed to the elements, to deteriorate, or to require repair or replacement shall bear the whole cost of furnishing the necessary protection against such elements or the necessary repairs or replacement.

(iv) Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article is appurtenant to the land and passes to such Owner's successors in title.

(c) *Other Responsibilities.*

(i) Area Drains and Catch Basins. Each Owner shall maintain the area drains and catch basins located in the rear yard of the Owner's Lot.

(ii) Sewer Lateral. Each Owner whose Lot utilizes a sewer system lateral is responsible for the maintenance and repair of the portion of the lateral lying in the boundaries of the Lot.

(iii) Community Wall. The Owner of any Lot that is partially or completely enclosed by a portion of the Community Wall (whether constructed on the Lot or adjacent to the Lot) is responsible for maintaining only the surface of the Community Wall that faces the Owner's Residence. However, Owners shall not be responsible for maintenance of any glass or tubular steel portions of the Community Wall.

4.6.3 *By Association.*

(a) *Commencement of Obligations*. The Association's obligation to maintain the Common Area commences on the date Annual Assessments commence on Lots in the Properties. The Association's obligation to maintain Association Maintenance Areas commences when Annual Assessments commence on residential Lots, unless the terms of the reservation or grant of easement for such Association Maintenance Areas provides otherwise. Until the Association is responsible for maintaining the Common Property, Declarant shall maintain the Common Property.

(b) *Maintenance Items*. The Association shall be responsible for all maintenance not provided by the Owners pursuant to Section 4.6.2 above. Portions of the Residences to be maintained by the Association are set forth in *Exhibit D-2*. The Association shall repair and pay for all centrally metered utilities and mechanical and electrical equipment serving the Common Property; pay all charges for utilities which serve individual Lots but which are subject to a common meter; shall maintain all Common Property, including all walks, private driveways and other means of ingress and egress in the Properties; and if determined by the Board to be economically feasible, adopt an inspection and prevention program for the prevention and eradication of infestation by wood-destroying pests and organisms in the Properties.

(c) *The Community Wall.* The Association is responsible for maintaining (a) all glass or tubular steel portions of the Community Wall, (b) its cap and structural integrity, and (c) the surfaces that do not face the Lot on which it is constructed. At the Association's option any wrought iron or glass portion of the Community Wall may be replaced with other materials so long as the Association determines that the view through the replacement materials is as good or better than the view through the wrought iron or glass.

(d) *Replacement of Certain Landscaping.* If the Association removes or damages any landscaping Improvements on an Owner's Lot while maintaining the Community Wall, the Association is not responsible for replacing the landscaping Improvements.

(e) *Termite Eradication.* If the Association adopts an inspection and preventive program for the prevention and eradication of infestation by wood-destroying pests and organisms, the Association, on no less than fifteen (15) nor more than thirty (30) days' notice, may require each Owner and to the occupants of the Owner's Residence to vacate such Residence to accommodate the Association's efforts to eradicate such infestation. The notice must state the reason for the temporary relocation, the date and time of the beginning of treatment, the anticipated date and time of termination of treatment, and that the occupants will be responsible for their own accommodations during the temporary relocation. Any damage caused to a Residence by such entry by the Association or by any person authorized by the Association shall be repaired by the Association as a Common Expense. All costs involved in operating the inspection and preventive program as well as repairing and replacing the Common Property and Improvements thereon when the need for such maintenance, repair or replacement is the result of wood-destroying pests or organisms are a Common Expense.

(f) *Additional Items.* The Association shall also be responsible for maintaining any Improvements a majority of the voting power of the Association designates for maintenance by the Association. Such property shall be deemed to be Common Property and subject to the Restrictions applicable to the Common Property.

(g) *Charges to Owners.* All costs of maintenance for the Properties shall be paid for as Common Expenses out of the Association Maintenance Funds as provided in this Declaration.

(h) *Changes to Exteriors of Residences.* The Association will repaint building exteriors in accordance with its regular maintenance obligations under Section 4.6.3(b). If the Committee determines that the painting on the exterior of the Residence is not in disrepair but an Owner still desires to repaint his or her Residence, the Committee may, in its discretion, allow repainting so long as the finish and color is the same or substantially equivalent to that originally used by Declarant. No Owner-initiated change shall be approved if it increases the cost of or adversely affects normal Association maintenance of building exteriors. The decision of the Committee shall be final and binding on the Owner who is electing to repaint his or her Residence. If the Committee approves repainting outside the normal course of building maintenance, the cost of repainting a Residence shall be solely borne by the Owner(s) of the affected Residence(s).

4.6.4 **Inspections.** The Board shall require strict compliance with all provisions of this Declaration and shall periodically cause a compliance inspection of the Properties to be conducted by the Design Review Committee to report any violations thereof. The Board shall also cause condition inspections of the Common Property and all Improvements thereon to be conducted in conformity with the applicable Maintenance Guidelines, and in the absence of inspection frequency recommendations in any applicable Maintenance Guidelines at least once every three (3) years, in conjunction with the inspection required for the reserve study to be conducted pursuant to Section 2.10 of the Bylaws, to (a) determine whether the Common Property is being maintained adequately in accordance with the standards of maintenance established in Section 4.6.1, (b) identify the condition of the Common Property and any Improvements thereon, including the existence of any hazards or defects, and the need for performing additional maintenance, refurbishment, replacement, or repair, and (c) recommend preventive actions which may be taken to reduce potential maintenance costs to be incurred in the future. The Board shall, during its meetings, regularly determine whether the recommended inspections and maintenance activities set forth in any applicable Maintenance Guidelines have been followed and, if not followed, what corrective steps need to be taken to assure proper inspections and maintenance of the Common Property. The Board shall keep a record of such determinations in the Board's minutes. The Board shall keep Declarant fully informed of the Board's activities under this Section 4.6.4. The Board shall employ, consistent with reasonable cost management, such experts, contractors and consultants as are necessary to perform the inspections and make the reports required by this Section.

The Board shall prepare a report of the results of each of the inspections required by this Section. Reports shall be furnished to Owners within the time set for furnishing the Budget to the Owners. The report of a condition inspection must include at least the following:

- (a) a description of the condition of the Common Property, including a list of items inspected, and the status of maintenance, repair and need for replacement of all such items;
- (b) a description of all maintenance planned for the ensuing Fiscal Year and included in the Budget;
- (c) if any maintenance is to be deferred, the reason for such deferral;
- (d) a summary of all reports of inspections performed by any expert, contractor or consultant employed by the Association to perform inspections since the Board's last condition inspection report;
- (e) a report of the status of compliance with the maintenance needs identified in the inspection report for preceding years and identified in any applicable Maintenance Guidelines; and
- (f) such other matters as the Board considers appropriate.

For a period of ten (10) years after the date of the last Close of Escrow in the Properties, the Board shall also furnish to Declarant (a) the report of each condition inspection performed for the Board, whenever such inspection is performed and for whatever portion of the Common Property that is inspected, within thirty (30) days after the completion of such inspection, and

(b) the most recent condition inspection report prepared for any portion of the Common Property, within ten (10) days after the Association's receipt of a written request therefor from Declarant.

4.6.5 **Damage by Owners.** Each Owner is liable to the Association for any damage to the Common Area caused by the act of an Owner, his Family, guests, tenants or invitees. The Association may, after Notice and Hearing, (a) determine whether any claim shall be made on the Association's insurance, and (b) levy a Special Assessment equal to the cost of repairing the damage or any deductible paid and the increase, if any, in insurance premiums directly attributable to the damage caused by such Owner or the person for whom such Owner may be liable as described in this Declaration. If a Lot is jointly owned, the liability of its Owners is joint and several, except to the extent that the Association has previously contracted in writing with the joint owners to the contrary. After Notice and Hearing, the cost of correcting the damage shall be a Special Assessment against such Owner.

ARTICLE V DESIGN REVIEW COMMITTEE

5.1 **MEMBERS OF COMMITTEE.** The Design Review Committee shall be composed of three (3) members. The initial members of the Design Review Committee shall be representatives of Declarant until one (1) year after the original issuance of the Final Subdivision Public Report ("*Public Report*") for the Properties ("*First Anniversary*"). After the First Anniversary, the Board may appoint and remove one (1) member of the Design Review Committee, and Declarant may, but is not obligated to, appoint and remove a majority of the members of the Design Review Committee and fill any vacancy of such majority, until the earlier to occur of (a) Close of Escrow for the sale of ninety percent (90%) of all the Lots in the Properties, or (b) the fifth (5th) anniversary of the original issuance of the Public Report for the Properties, after which the Board may appoint and remove all members of the Design Review Committee. Design Review Committee members appointed by the Board must be Owners, but Design Review Committee members appointed by Declarant need not be Owners. Board members may serve as Design Review Committee members.

5.2 **POWERS AND DUTIES.**

5.2.1 **General Powers and Duties.** The Design Review Committee shall consider and act upon all plans and specifications submitted for its approval, including inspection of work in progress to assure conformity with approved plans, and shall perform such other duties as the Board assigns to it.

5.2.2 **Issuance of Standards.** The Design Review Committee shall issue and update its Design Guidelines. The Design Guidelines may require a fee to accompany each application for approval, and may identify additional factors which the Design Review Committee will consider in reviewing submissions. The Design Review Committee may provide that fees it imposes be uniform, or that fees be determined in any other reasonable manner. The Design Review Committee may require such detail in plans and specifications submitted for its review as it deems proper, including landscape plans, floor plans, site plans, drainage plans, elevation drawings and descriptions or samples of exterior materials and colors.

5.2.3 **Retaining Consultants.** The Design Review Committee has the power, but not the duty, to retain Persons to advise its members in connection with decisions; however, the Design Review Committee does not have the power to delegate its decision-making power, except in accordance with Section 5.4.

5.3 REVIEW OF PLANS AND SPECIFICATIONS.

5.3.1 **Improvements Requiring Approval.** No construction, installation or alteration of an Improvement, including landscaping, in the Properties may be commenced until plans and specifications showing the nature, kind, shape, height, width, color, materials and location of the Improvement (an "*Application*") have been submitted to and approved in writing by the Design Review Committee. However, any Improvement may be repainted without Design Review Committee approval so long as the Improvement is repainted the identical color with which it was originally painted by Declarant or the color last approved by the Committee. The provisions of this Article apply to construction, installation and alteration of solar energy systems, as defined in Section 801.5 of the California Civil Code, subject to the provisions of California Civil Code Section 714, the City Building Code, zoning regulations, and other laws.

5.3.2 **Application Procedure.** Until changed by the Board, the address for the submission of the Application is the Association's principal office. The form of Application used by the Design Review Committee may include spaces allowing "Adjacent Owners" to sign or initial the Application confirming that they have been notified of the application. The Design Review Committee may establish a definition of "Adjacent Owners" in its Design Guidelines. Applications will be complete and may be approved or disapproved by the Design Review Committee even if all of the Adjacent Owners do not initial the applications so long as the Owner submitting the Application ("*Applicant*") certifies that the Applicant has made a reasonable attempt to ask the Adjacent Owners to sign the Application. The requirement that the Applicant attempt to obtain the signatures of Adjacent Owners is intended only to provide notice of the pending Application to the Adjacent Owners. It does not create in the Adjacent Owners any power to approve or disapprove the Application by signing or withholding a signature. Only the Committee may approve or disapprove an Application.

The Design Review Committee may reject the Application if it determines that the Applicant's plans and specifications or any other portion thereof are incomplete. The Design Review Committee shall transmit its decision and the reasons therefor to the Applicant at the address listed in the Application within forty-five (45) days after the Design Review Committee receives all required materials. Any Application submitted shall be deemed approved unless the Design Review Committee transmits written disapproval or a request for additional information or materials to the Applicant within forty-five (45) days after the date the Design Review Committee receives all required materials.

5.3.3 **Standard for Approval.** The Design Review Committee shall approve Applications submitted for its approval only if it determines that (a) installation, construction or alterations of the Improvements in the locations proposed will not be detrimental to the appearance of the surrounding area of the Properties as a whole, (b) the appearance of any structure affected by the proposed Improvements will be in harmony with the surrounding structures, (c) installation, construction or alteration of the proposed Improvements will not detract from the beauty, wholesomeness and attractiveness of the Properties or the enjoyment

thereof by the Owners, (d) maintenance of the proposed Improvements will not become a burden on the Association, and (e) the proposed Improvements are consistent with this Declaration. The Design Review Committee may, but is not required to, consider the impact of views from other Residences or Lots along with other factors including reasonable privacy right claims, passage of light and air, beneficial shading and other factors in reviewing, approving or disapproving any proposed landscaping, construction or other Improvements. However, neither the Declarant nor the Association warrants that any views in the Properties are protected. No Residence or Lot is guaranteed the existence or unobstructed continuation of any particular view.

5.3.4 Conditions of Approval. The Design Review Committee may condition its approval of an Application for any Improvement on any one or more of the following: (a) the Applicant's agreement to furnish the Association with security acceptable to the Association against any mechanic's lien or other encumbrance which may be Recorded against the Common Area or another Owner's Lot as a result of such work; (b) such changes to the Application as the Design Review Committee considers appropriate; (c) the Applicant's agreement to grant to the Association or other Owners such easements as are made reasonably necessary by the existence of the Improvement; (d) the Applicant's agreement to install water, gas, electrical or other utility meters to measure any increased utility consumption; (e) the Applicant's agreement to reimburse the Association for the cost of maintaining the Improvement (should the Association agree to accept maintenance responsibility for the Improvement as built); or (f) the Applicant's agreement to complete the proposed work within a stated period of time.

The Design Review Committee has the right to require a reasonable security deposit with each Application. The security deposit will be applied to the cost of repairing damage to Common Area as a result of the Application. The amount of the security deposit shall be specified in the Design Guidelines. The security deposit may be increased or decreased from time to time at the discretion of the Design Review Committee. The Committee may also require the Applicant, prior to commencing work, to deposit with the Association adequate funds to repair or restore any Common Property that may be damaged by the Applicant or the Applicant's contractors. The Committee will determine the actual amount of the deposit in each case, but the amount shall be at least enough to cover the cost of repairing or restoring damage that is reasonably foreseeable to the Committee. The deposit shall be refundable to the extent the Committee finds that the work of Improvement is complete, and that the Common Property was not damaged or was restored at least to the condition it was in prior to the commencement of work.

The Design Review Committee may also require submission of additional plans and specifications or other information before approving or disapproving material submitted. The Applicant shall meet any review or permit requirements of the City and/or County before making any construction, installation or alterations permitted under this Declaration.

5.3.5 Matters Outside Scope of Approval. The Design Review Committee's approval or disapproval of each Application shall be based solely on the aesthetic considerations listed in this Article. Approval of any Application does not constitute a finding by the Design Review Committee that the Application or any portion of the Application (a) incorporates good engineering practices, (b) complies with applicable law, ordinance, code, or regulation, including zoning laws and building and safety codes, (c) complies with the requirements of any public utility, or (d) is permissible under the terms of any easement, license,

permit, mortgage, deed of trust, or other recorded or unrecorded instrument (other than the Restrictions) that affects the land.

5.3.6 Exculpation of Committee. By submitting an Application, each Applicant is deemed to agree that neither the Design Review Committee, nor the members thereof, nor Declarant, nor their respective agents, employees, attorneys or consultants shall be liable to any Person for:

(a) any defect in any Improvement constructed by or on behalf of the Applicant pursuant to an approved Application;

(b) any loss, damage, or injury to Persons or property arising out of or in any way connected with work performed by or on behalf of the Applicant pursuant to an approved Application; or

(c) any loss, damage, or injury to Persons or property arising out of or in any way connected with the performance of the Design Review Committee's duties hereunder, unless due to willful misconduct or gross negligence.

5.4 MEETINGS AND ACTIONS OF THE DESIGN REVIEW COMMITTEE. The Design Review Committee shall meet as necessary to perform its duties. The Design Review Committee may, by resolution unanimously adopted in writing, designate a Design Review Committee Representative (who may, but need not, be one of its members) to take any action or perform any duties for and on behalf of the Design Review Committee except the granting of variances. In the absence of such designation, the vote or written consent of a majority of the Design Review Committee constitutes an act of the Design Review Committee. All approvals issued by the Design Review Committee must be in writing. Verbal approvals issued by the Design Review Committee, any individual Design Review Committee member or any other representative of the Association are not valid, are not binding on the Association and may not be relied on by any Person. If within six (6) months of issuance of the approval, an Owner either does not commence work pursuant to approved plans or obtain an extension of time to commence work, the approval shall be automatically revoked and a new approval must be obtained before work can be commenced.

5.5 NO WAIVER OF FUTURE APPROVALS. The Design Review Committee's approval of any proposals, plans and specifications or drawings for any work done or proposed in connection with any matter requiring the Design Review Committee's approval does not waive the right to withhold approval of any similar proposals, plans and specifications, drawings or matters subsequently or additionally submitted for approval.

5.6 COMPENSATION OF MEMBERS. The Design Review Committee's members shall receive no compensation for services rendered, other than reimbursement for expenses incurred by them in performing their duties.

5.7 INSPECTION OF WORK. The Design Review Committee or its duly authorized representative may inspect any work for which approval of plans is required under this Article ("*Work*"). The right to inspect includes the right to require any Owner to take such action as may be necessary to remedy any noncompliance with the Design Review Committee-approved plans for the Work or with the requirements of this Declaration ("*Noncompliance*").

5.7.1 **Time Limit.** The Design Review Committee's right to inspect the Work and notify the responsible Owner of any Noncompliance shall terminate sixty (60) days after the Work is completed and the Design Review Committee receives written notice on a form provided by the Committee from the Owner that the Work is completed. If the Design Review Committee fails to send a notice of Noncompliance to an Owner before this time limit expires, the Work shall be deemed to comply with the approved plans. If an Owner fails to complete Work within one (1) year from the date the approval for the Work is issued, then a Noncompliance is deemed to exist and the Association has the right, but not the obligation, to pursue the remedies listed in this Section.

5.7.2 **Remedy for Noncompliance.** If an Owner fails to remedy any Noncompliance within sixty (60) days after the date of notice from the Design Review Committee, the Design Review Committee shall notify the Board in writing of such failure. After Notice and Hearing, the Board shall determine whether there is Noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If a Noncompliance exists, the Owner shall remedy or remove the same within a period of not more than forty-five (45) days after the date that notice of the Board ruling is given to the Owner. If the Owner does not comply with the Board ruling within that period, the Association may record a Notice of Noncompliance (if allowed by law), correct the Noncompliance and charge the Owner for the Association's costs, or commence an action for damages or injunctive relief, as appropriate, to remedy the Noncompliance.

5.8 **VARIANCES.** The Design Review Committee may authorize variances from compliance with any of the architectural provisions of this Declaration or the Design Guidelines including restrictions on height, size, floor area or placement of structures, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental consideration require. Such variances must be evidenced in writing, must be signed by a majority of the Design Review Committee, and become effective on Recordation. After Declarant's right to appoint a majority of the Design Review Committee's members expires, the Board must approve any variance recommended by the Design Review Committee before any such variance becomes effective. If variances are granted, no violation of the covenants, conditions and restrictions in this Declaration shall be deemed to have occurred with respect to the matter for which the variances were granted. The granting of a variance does not waive any of the provisions of this Declaration for any purpose except as to the particular property and particular provision of this Declaration covered by the variance, nor does it affect the Owner's obligation to comply with all laws affecting the use of his Lot. The Committee's written variance shall be Recorded against the Applicant's Lot in the Official Records of the County. The cost of Recording the variance shall be borne solely by the Applicant.

5.9 **NON-CONFORMITY.** In the event an Improvement that requires the approval of the Architectural Committee is (a) commenced or completed without prior written approval by the Committee, or (b) an Improvement is not completed within the time limit established by the Committee in its approval, or (c) an Improvement is not completed in substantial conformance with the approved plans and specifications, then the Committee shall deliver a written notice of nonconformity or noncompletion to the violating Owner and the Architectural Committee shall be entitled to take appropriate action in law or in equity to correct the violation

5.10 **PRE-APPROVALS.** The Design Review Committee may authorize pre-approval of specified types of construction activities if, in the exercise of the Design Review Committee's judgment, such preapproval is appropriate in carrying out the purposes of the Restrictions.

5.11 **APPEALS.** So long as Declarant has the right to appoint and remove a majority of the Design Review Committee's members, the Design Review Committee's decisions are final. There is no appeal to the Board. After Declarant's right to appoint a majority of the Design Review Committee's members expires, the Board may adopt policies and procedures for the appeal of Design Review Committee decisions to the Board by the Applicant (and no other persons). The Board has no obligation to adopt or implement any appeal procedures. In the absence of Board adoption of appeal procedures, all Design Review Committee decisions are final.

ARTICLE VI PROPERTY EASEMENTS AND RIGHTS

6.1 EASEMENTS.

6.1.1 **Maintenance and Repair.** Declarant reserves for the benefit of the Association and all Association agents, officers and employees, nonexclusive easements over the Common Property as necessary to fulfill the obligations and perform the duties of the Association.

6.1.2 **Utility Easements.** Declarant reserves easements to install and maintain utilities over the Common Area for the benefit of the Owners and their Lots. Declarant reserves the right to grant additional easements and rights-of-way throughout the Properties to utility companies and public agencies as it deems necessary for the proper development and disposal of the Properties. Such right of Declarant shall expire on the Close of Escrow for the sale of the last Lot in the Properties.

6.1.3 **Encroachments.** Declarant reserves, for its benefit and for the benefit of all Owners and their Lots, a reciprocal easement appurtenant to each Lot over the other Lots and the Common Area to accommodate (a) any existing encroachment of any wall or any other Improvement installed by Declarant or approved by the Design Review Committee, and (b) shifting, movement or natural settling of the Residences or other Improvements. Use of the easements may not unreasonably interfere with each Owner's use and enjoyment of the burdened Residences.

6.1.4 **Completion of Improvements.** Declarant reserves the right and easement to enter the Properties to complete any Improvement which Declarant considers desirable to implement Declarant's development plan.

6.1.5 **Owners' Easements in Common Area.** Declarant reserves, for the benefit of every Owner, and each Owner's Family, tenants and invitees, nonexclusive easements for pedestrian and vehicular access (all as applicable) over the Common Area in the Properties as reasonably necessary for the use and enjoyment of each Lot in the Properties. This easement is appurtenant to and passes with title to every Lot in the Properties.

6.1.6 **Community Wall Easements.** Declarant reserves for the benefit of the Association the following easements:

(a) An easement over all Lots abutting a tract boundary or Common Area, consisting of a three (3) foot wide strip of land bounded by the tract boundary or the property line separating the Lot from the Common Area (as applicable), to accommodate the footings and other structural components of any Community Wall located on or immediately adjacent to such property line, including any encroachments thereof onto the Lot; and

(b) An easement for access over such Lots as reasonably necessary for maintaining the Community Walls and related Improvements.

6.1.7 **Private Street Access Easements.** Declarant reserves for the benefit of the Owners and each Owner's Family, invitees and tenants, nonexclusive easements for pedestrian access and vehicular access and parking (as applicable), over the private street Improvements constructed in the Common Area.

6.1.8 **Shared Walkway Easements.** Declarant reserves for the benefit of every Owner, and each Owner's Family, tenants and invitees, reciprocal nonexclusive easements over the shared walkway area on the adjacent Lot, as needed for pedestrian access.

6.1.9 **Drainage Easements.** Declarant reserves, for the benefit of the Properties, the Owners and the Association, reciprocal nonexclusive easements for drainage of water over, across and on the Properties.

6.1.10 **Easements for Maintenance of Association Maintenance Areas.** Declarant reserves, for the benefit of the Association, the following nonexclusive easements over each Lot in the Properties as necessary for access and maintenance of Association Maintenance Areas described herein or in a Supplemental Declaration. No owner may interfere with the Association's exercise of its rights under the easements reserved in this Section.

6.1.11 **Subdrain Easements.** Declarant hereby reserves, for the benefit of the Properties, the Association, and each Owner in the Properties, nonexclusive easements for placement, maintenance, operation and repair of a subterranean drain line, area drains and related Improvements (collectively, the "*Subdrain System*"), over, under, along, and through a portion of the rear yards ("*Subdrain Easement Area*"), lying along the rear property lines of Parcels H through U, inclusive (each, a "*Subdrain Lot*" and collectively, the "*Subdrain Lots*"). The approximate location of the Subdrain Easement Area is depicted on *Exhibit G*. The actual location of the Subdrain Easement Area shall be defined by the as-built location of the Subdrain System on each of the Subdrain Lots.

(a) **Covenants and Restrictions on Subdrain Lots.** By accepting a deed to a Subdrain Lot, each Owner of an Subdrain Lot acknowledges, understands and agrees as follows:

(i) The Subdrain System constructed on each Subdrain Lot collects and transports water from adjacent property lying outside the Properties, from adjoining Lots, and from the Common Area, and it is part of the established drainage for the Properties. The Subdrain System is therefore a portion of the "Drainage Improvements" installed by

Declarant, as described in Section 2.12 of this Declaration. No Owner or other Person may interfere with or alter the established drainage pattern over any Lot or any Drainage Improvements constructed on a Lot by Declarant unless an adequate alternative provision is made for proper drainage, and the Board and the City or other applicable governmental agencies have given their prior written approvals to such change;

(ii) No Owner or other Person may modify, remove or block any portion of the Subdrain System, nor construct any permanent Improvements (except for landscaping and irrigation equipment) in the Subdrain Easement Area;

(iii) Each Owner of a Subdrain Lot shall be solely responsible for repairing all damage to the Subdrain System that is caused by such Owner, or such Owner's family, tenants, contractors or invitees. The repair shall be performed immediately upon discovery of the damage, shall include materials that are the same or substantially similar to those materials used by Declarant in the original construction of the Subdrain System, and such repair shall be adequate to restore the Subdrain System to full operation as originally intended by Declarant, subject to prior approval by the Board and applicable governmental authorities;

(iv) Each Owner of a Subdrain Lot shall at his sole expense maintain the Subdrain System constructed on such Owner's Lot, and shall ensure that the flow of water through the Subdrain System remains free and unobstructed at all times;

(v) If an Owner of a Subdrain Lot fails to remove obstructions or to repair damage to the Subdrain System on such Owner's Lot, then the Owner shall be in default under these covenants and any other Owner of an Affected Lot may, upon forty-eight (48) hours prior notice (except in emergency), enter the defaulting Owner's Lot as reasonably necessary to maintain or repair the Subdrain System at the expense of the Defaulting Owner; and

(vi) The Association shall have the right, but not the obligation, to enter the defaulting Owner's Lot upon forty-eight (48) hours prior notice (except in emergency), to enforce these covenants and restrictions and to perform necessary maintenance and repair of the Subdrain System at the expense of the defaulting Owner. The Association shall have the right to levy a Special Assessment against the defaulting Owner to reimburse the cost of such maintenance and repair.

6.1.12 Telecommunications Easement. Declarant reserves blanket easements (collectively, "*Telecommunications Easements*") over the Properties for access and for purposes of constructing, installing, locating, altering, operating, maintaining, inspecting, upgrading, removing and enhancing Telecommunications Facilities (collectively, "*Telecommunications Purposes*") for the benefit of Declarant. Such easements are freely transferable by Declarant to any other Person and their successors and assigns. No one, except for Declarant and Declarant's transferees, may use the Properties for Telecommunications Purposes. All Telecommunications Facilities shall be owned, leased or licensed by Declarant, as determined by Declarant, in its sole discretion and business judgment. Transfer of the Properties does not imply transfer of any Telecommunications Easements or Telecommunications Facilities. The holders of the Telecommunications Easements may not exercise the rights reserved hereunder in any manner which will unreasonably interfere with the reasonable use and

enjoyment of the Properties by any Owner. If the exercise of any Telecommunications Easement results in damage to the Properties, then the easement holder who caused the damage shall, within a reasonable period of time, repair such damage. If Declarant has not conveyed the Telecommunications Easements to another Person before the last Close of Escrow in the Properties, then Declarant grants the Telecommunications Easements to the Association effective as of the last Close of Escrow in the Properties.

6.2 RIGHT TO GRANT EASEMENTS. Declarant reserves easements over the Common Area owned in fee simple by the Association for the exclusive use by an Owner or Owners of contiguous property as a yard, recreational, gardening, and landscaping area. Any such easement may be conveyed by the Declarant before the last Close of Escrow for sale of a Lot in the Properties. Such conveyance must be approved by the Board, which approval must not be unreasonably withheld. The purpose of the easement, the portion of the Common Area affected, the Lot to which the easement is appurtenant, and any restrictions on use of the easement area shall be identified in a Recorded grant of easement.

6.3 DELEGATION OF USE. Any Owner may delegate his right to use the Common Area owned in fee simple by the Association in writing to his tenants, contract purchasers or subtenants who reside in such Owner's Residence, subject to regulation by the Board.

6.4 RIGHT OF ENTRY.

6.4.1 Association. The Association has the right to enter the Lots to inspect the Properties, and may take whatever corrective action it determines to be necessary or proper. Entry onto any Lot under this Subsection may be made after at least three (3) days' advance written notice to the Owner of the Lot except for emergency situations, which shall not require notice. Nothing in this Subsection limits the right of an Owner to exclusive occupancy and control over the portion of his Lot that is not Common Property. Any damage to a Residence or Lot caused by entry under this Subsection shall be repaired by the Association.

6.4.2 Declarant. The Declarant has the right to enter the Lots and the Common Area (a) to comply with requirements for the recordation of subdivision maps or lot line adjustments in the Properties, (b) for repair of Improvements in accordance with the provisions of the Right to Repair Law, (c) to accommodate grading or construction activities, and (d) to comply with requirements of applicable governmental agencies. Declarant shall provide the applicable Owner reasonable notice before such entry, except for emergency situations, which shall not require notice. Any damage to the Properties that is caused by entry under this Subsection shall be repaired by the Declarant. Unless otherwise specified in the initial grant deed of a Lot from the Declarant, this right of entry shall automatically expire twelve (12) years from the last Close of Escrow in the Properties.

6.4.3 Owners. Each Owner shall permit other Owners, and their representatives, to enter his Lot to perform installations, alterations or repairs to the mechanical or electrical services to a Lot if (a) requests for entry are made in advance, (b) entry is made at a time reasonably convenient to the Owner whose Lot is to be entered; and (c) the entered Lot is left in substantially the same condition as existed immediately preceding such entry. Any damage to the Lot caused by entry under this Subsection shall be repaired by the entering Owner.

**ARTICLE VII
ASSOCIATION MAINTENANCE FUNDS AND ASSESSMENTS**

7.1 PERSONAL OBLIGATION TO PAY ASSESSMENTS. Each Owner shall pay to the Association all Assessments established and collected pursuant to this Declaration. The Association shall not levy or collect any Assessment that exceeds the amount necessary for the purpose for which it is levied. All Assessments, together with late payment penalties, interest, costs, and reasonable attorney fees for the collection thereof, are a charge and a continuing lien on the Lot against which such Assessment is made. Each Assessment, together with late payment penalties, interest, costs and reasonable attorney fees, is also the personal obligation of the Person who was the Owner of the Lot when the Assessment accrued. The personal obligation for delinquent Assessments may not pass to any new Owner ("*Purchaser*") unless expressly assumed by the Purchaser or unless the Purchaser has actual or constructive knowledge of such delinquent Assessments, whether by virtue of the Recordation of a Notice of Delinquent Assessment or receipt from the Association of a certificate pursuant to Section 1368(a)(4) of the California Civil Code.

7.2 ASSOCIATION MAINTENANCE FUNDS. The Association shall establish no fewer than two (2) separate Association Maintenance Fund accounts into which shall be deposited all money paid to the Association and from which disbursements shall be made, as provided in this Declaration. The Association Maintenance Funds may be established as trust accounts at a banking or savings institution and shall include: (a) an Operating Fund for current Common Expenses, (b) an adequate Reserve Fund for the portion of Common Expenses allocated to (i) reserves for Improvements which the Board does not expect to perform on an annual or more frequent basis, and (ii) payment of deductible amounts for insurance policies which the Association obtains, and (c) any other funds which the Association may establish.

7.3 PURPOSE OF ASSESSMENTS. The Assessments shall be used exclusively to (a) promote the Owners' welfare, (b) operate, improve and maintain the Common Property, and (c) discharge any other Association obligations under this Declaration. All amounts deposited into the Association Maintenance Funds must be used solely for the common benefit of all Owners for purposes authorized by this Declaration. Disbursements from the Operating Fund generally shall be made by the Association to discharge Association responsibilities which cannot be discharged by disbursements from the Reserve Fund. However, if the Board determines that the Operating Fund contains excess funds, the Board may transfer the excess funds to any other Association Maintenance Fund. Disbursements from the Reserve Fund shall be made by the Association only for the purposes specified in this Article and in Section 1365.5(c) of the California Civil Code.

7.4 WAIVER OF USE. No Owner may exempt himself from personal liability for Assessments duly levied by the Association, nor release such Owner's Lot from the liens and charges thereof, by waiving use and enjoyment of the Common Property or by abandoning such Owner's Lot.

7.5 LIMITS ON ANNUAL ASSESSMENT INCREASES.

7.5.1 Maximum Authorized Annual Assessment For Initial Year of Operations. During the Fiscal Year in which Annual Assessments commence, the Board may

levy an Annual Assessment per Lot in an amount which exceeds one hundred twenty percent (120%) of the amount of Annual Assessments disclosed for the Properties in the most current Budget filed with and approved by the DRE only if the Board first obtains the approval of Owners casting a majority of votes at a meeting or election of the Association in which more than fifty percent (50%) of the Lots are represented ("*Increase Election*"). This Section does not limit Annual Assessment increases necessary for addressing an "Emergency Situation" as defined in Section 7.5.4.

7.5.2 Maximum Authorized Annual Assessment For Subsequent Fiscal Years. During the Fiscal Years following the Fiscal Year in which Annual Assessments commence, the Board may levy Annual Assessments which exceed the Annual Assessments for the immediately preceding Fiscal Year only as follows:

(a) If the increase in Annual Assessments is less than or equal to twenty percent (20%) of the Annual Assessments for the immediately preceding Fiscal Year, then the Board must either (i) have distributed the Budget for the current Fiscal Year in accordance with Section 1365(a) of the California Civil Code, or (ii) obtain the approval of Owners casting a majority of votes in an Increase Election; or

(b) If the increase in Annual Assessments is greater than twenty percent (20%) of the Annual Assessments for the immediately preceding Fiscal Year, then the Board must obtain the approval of Owners casting a majority of votes in an Increase Election.

This Section does not limit Annual Assessment increases necessary for addressing an "Emergency Situation" as defined in Section 7.5.4.

7.5.3 Supplemental Annual Assessments. If the Board determines that the Association's essential functions may be properly funded by an Annual Assessment in an amount less than the maximum authorized Annual Assessment described above, it may levy such lesser Annual Assessment. If the Board determines that the estimate of total charges for the current year is or will become inadequate to meet all Common Expenses, it shall immediately determine the approximate amount of the inadequacy. Subject to the limits described in Sections 7.5.1, 7.5.2 and 7.5.4, the Board may levy a supplemental Annual Assessment reflecting a revision of the total charges to be assessed against each Lot.

7.5.4 Emergency Situations. For purposes of Sections 7.5.1, 7.5.2 and 7.5.4, an "Emergency Situation" is any one of the following:

(a) An extraordinary expense required by an order of a court;

(b) An extraordinary expense necessary to maintain the portion of the Properties for which the Association is responsible where a threat to personal safety on the Properties is discovered; and

(c) An extraordinary expense necessary to maintain the portion of the Properties for which the Association is responsible that could not have been reasonably foreseen by the Board when preparing the Budget. Before imposing or collecting an Assessment pursuant to this subsection (c), the Board shall adopt a resolution containing written findings regarding the necessity of the extraordinary expense involved and why the expense was not or

could not have been reasonably foreseen in the budgeting process. The resolution shall be distributed to the Owners with the notice of the assessment.

7.6 ANNUAL ASSESSMENTS.

7.6.1 **Commencement of Annual Assessments.** Annual Assessments shall commence on all Lots on the first day of the first calendar month following the first Close of Escrow in the Properties. Annual Assessments for fractions of a month shall be prorated. Declarant shall pay its full pro rata share of the Annual Assessments on all unsold Lots for which Annual Assessments have commenced. The Board shall fix the amount of the Annual Assessment against each Lot at least thirty (30) days in advance of each Annual Assessment period. However, unless otherwise established by the Board, the initial Annual Assessments shall be assessed in accordance with the most recent Budget on file with and approved by the DRE. Written notice of any change in the amount of any Annual Assessment, Capital Improvement Assessment or Reconstruction Assessment shall be sent via first-class mail to every Owner subject thereto not less than thirty (30) nor more than sixty (60) days before the increased Assessment becomes due.

7.6.2 **Apportionment of Annual Assessments.** All Annual Assessments shall be assessed uniformly and equally against the Owners and their Lots based on the number of Lots owned by each Owner. The Board may determine that funds in the Operating Fund at the end of the Fiscal Year be retained and used to reduce the following Fiscal Year's Annual Assessments. On dissolution of the Association incident to the abandonment or termination of the Properties as a planned development, any amounts remaining in any of the Association Maintenance Funds shall be distributed to or for the benefit of the Owners in the same proportions as such money was collected from the Owners.

(a) **Payment of Annual Assessments.** Each Owner shall pay Annual Assessments in installments at such frequency, in such amounts and by such methods as are established by the Board. If the Association incurs additional expenses because of a payment method selected by an Owner, the Association shall charge the additional expenses to the Owner. Each installment of Annual Assessments may be paid to the Association in one (1) check or in separate checks as payments attributable to specified Association Maintenance Funds. If any payment of an Annual Assessment installment (a) is less than the amount assessed and (b) does not specify the Association Maintenance Fund or Funds into which it should be deposited, then the amount received shall be credited in order of priority first to the Operating Fund, until that portion of the Annual Assessment has been satisfied, and second to the Reserve Fund.

7.7 **CAPITAL IMPROVEMENT ASSESSMENTS.** The Board may levy, in any Fiscal Year, a Capital Improvement Assessment or Reconstruction Assessment to defray, in whole or in part, the cost of any construction, repair or replacement of a capital Improvement or such other addition to the Common Property. No Capital Improvement Assessments in any Fiscal Year which, if added to the Capital Improvement Assessments already levied during such Fiscal Year, exceed five percent (5%) of the Association's Budgeted gross expenses for such Fiscal Year, may be levied without the vote or written consent of Owners casting a majority of votes at an Increase Election. The Board may levy, in any Fiscal Year, a Capital Improvement Assessment applicable to that Fiscal Year which exceeds five percent (5%) of the Association's

Budgeted gross expenses for such Fiscal Year if such increase is necessary for addressing an Emergency Situation as defined in Section 7.5.4.

ARTICLE VIII INSURANCE

8.1 DUTY TO OBTAIN INSURANCE; TYPES. The Association shall obtain and keep in effect at all times the following insurance coverages:

8.1.1 Public Liability. Adequate public liability insurance (including coverage for medical payments), with limits acceptable to Fannie Mae and as required by Section 1365.9 of the California Civil Code, insuring against liability for bodily injury, death and property damage arising from the activities of the Association and the Owners on the Common Property.

8.1.2 Fire and Casualty Insurance. Fire and casualty insurance with extended coverage, without deduction for depreciation, in an amount as near as possible to the full replacement value of all insurable Improvements on the Common Property. The casualty insurance shall not include earthquake coverage unless the Board is directed to obtain earthquake coverage by a majority of the Association's voting power.

8.1.3 Fidelity Insurance. Fidelity insurance coverage for any Person handling funds of the Association, whether or not such persons are compensated for their services, in an amount not less than the estimated maximum of funds, including reserve funds, in the custody of the Person during the term of the insurance. The aggregate amount of the fidelity insurance coverage may not be less than the sum equal to one-fourth (1/4) of the Annual Assessments on all Lots in the Properties, plus reserve funds.

8.1.4 Insurance Required by Fannie Mae, Ginnie Mae and Freddie Mac. Casualty, flood, liability and fidelity insurance meeting the insurance requirements for planned unit developments established by Fannie Mae, Ginnie Mae and Freddie Mac, so long as any of these entities is a Mortgagee or Owner of a Lot in the Properties, except to the extent such coverage is not reasonably available or has been waived in writing by the entity requiring the insurance coverage.

8.1.5 Other Insurance. Such other insurance insuring other risks customarily insured by associations managing planned unit developments similar in construction, location and use. Such additional insurance may include general liability insurance and director's and officer's errors and omissions insurance in the minimum amounts established in Section 1365.9 of the California Civil Code.

8.1.6 Beneficiaries. The Association's insurance shall be kept for the benefit of the Association, the Owners and the Mortgagees, as their interests may appear as named insureds, subject, however, to loss payment requirements established in this Declaration.

8.2 WAIVER OF CLAIM AGAINST ASSOCIATION. All policies of insurance kept by or for the benefit of the Association and the Owners must provide that the Association and the Owners waive and release all claims against one another, the Board and Declarant, to the

extent of the insurance proceeds available, whether or not the insurable damage or injury is caused by the negligence or breach of any agreement by any of the Persons.

8.3 RIGHT AND DUTY OF OWNERS TO INSURE. Each Owner is responsible for insuring his personal property and all other property and Improvements on his Lot for which the Association has not purchased insurance in accordance with Section 8.1. Nothing in this Declaration precludes any Owner from carrying any public liability insurance he considers desirable; however, Owners' policies may not adversely affect or diminish any coverage under any of the Association's insurance policies. Duplicate copies of Owners' insurance policies shall be deposited with the Association on request. If any loss intended to be covered by the Association's insurance occurs and the proceeds payable are reduced due to insurance carried by any Owner, such Owner shall assign the proceeds of the Owner's insurance to the Association, to the extent of such reduction, for application to the same purposes as the reduced proceeds are to be applied.

8.4 NOTICE OF EXPIRATION REQUIREMENTS. If available, each of the Association's insurance policies must contain a provision that the policy may not be canceled, terminated, materially modified or allowed to expire by its terms, without at least ten (10) days' prior written notice to the Board and Declarant, and to each Owner and Mortgagee, insurer and guarantor of a first Mortgage who has filed a written request with the carrier for such notice and every other Person in interest who requests such notice of the insurer. In addition, fidelity insurance shall provide that it may not be canceled or substantially modified without at least ten (10) days' prior written notice to any insurance trustee named pursuant to Section 8.5 and to each Fannie Mae servicer who has filed a written request with the carrier for such notice.

8.5 TRUSTEE FOR POLICIES. The Association is trustee of the interests of all named insureds under the Association's insurance policies. Unless an insurance policy provides for a different procedure for filing claims, all claims must be sent to the insurance carrier or agent by certified mail and be clearly identified as a claim. The Association shall keep a record of all claims made. All insurance proceeds under any Association insurance policies must be paid to the Board as trustees. The Board has the authority to negotiate loss settlements with insurance carriers, with participation, to the extent the Board desires, of first Mortgagees who have filed written requests within ten (10) days of receipt of notice of any damage or destruction as provided in Section 9.3. The Board is authorized to make a settlement with any insurer for less than full coverage for any damage, so long as the Board acts in accordance with the standard of care established in this Declaration. Any two (2) officers of the Association may sign a loss claim form and release form in connection with the settlement of a loss claim, and such signatures are binding on all the named insureds. A representative chosen by the Board may be named as an insured, including a trustee with whom the Association may enter into an insurance trust agreement and any successor to such trustee, who shall have exclusive authority to negotiate losses under any insurance policy and to perform such other functions necessary to accomplish this purpose.

8.6 ACTIONS AS TRUSTEE. Except as otherwise specifically provided in this Declaration, the Board has the exclusive right to bind the Association and the Owners to all matters affecting insurance carried by the Association, the settlement of a loss claim, and the surrender, cancellation and modification of all such insurance. Duplicate originals or certificates of all policies of fire and casualty insurance kept by the Association and of all renewals thereof,

together with proof of payment of premiums, shall be delivered by the Association to all Owners and Mortgagees who requested them in writing.

8.7 ANNUAL INSURANCE REVIEW. The Board shall review the Association's insurance policies at least annually to determine the amount of the casualty and fire insurance referred to in Section 8.1. If economically feasible, the Board shall obtain a current appraisal of the full replacement value of the Improvements on the Common Property, without deduction for depreciation, from a qualified independent insurance appraiser, before each such annual review.

8.8 REQUIRED WAIVER. All of the Association's insurance policies insuring against physical damage must provide, if reasonably possible, for waiver of:

8.8.1 Subrogation of claims against the Owners and tenants of the Owners;

8.8.2 Any defense based on coinsurance;

8.8.3 Any right of setoff, counterclaim, apportionment, proration or contribution due to other insurance not carried by the Association;

8.8.4 Any invalidity, other adverse effect or defense due to any breach of warranty or condition caused by the Association, any Owner or any tenant of any Owner, or arising from any act or omission of any named insured or the respective agents, contractors and employees of any insured;

8.8.5 Any right of the insurer to repair, rebuild or replace, and, if the Improvement is not repaired, rebuilt or replaced following loss, any right to pay under the insurance an amount less than the replacement value of the Improvements insured;

8.8.6 Notice of the assignment of any Owner of his interest in the insurance by virtue of a conveyance of any Lot;

8.8.7 Any right to require any assignment of any Mortgage to the insurer;

8.8.8 Any denial of an Owner's claim because of negligent acts by the Association or other Owners; and

8.8.9 Prejudice of the insurance by any acts or omissions of Owners that are not under the Association's control.

ARTICLE IX DESTRUCTION OF IMPROVEMENTS

9.1 RESTORATION OF THE PROPERTIES. Except as otherwise authorized by the Owners, if any portion of the Properties which the Association is responsible for maintaining is destroyed, the Association shall restore the same to its former condition as promptly as practical. The Association shall use the proceeds of its insurance for reconstruction or repair of the Properties unless otherwise authorized in this Declaration or by the Owners. The Board shall commence such reconstruction promptly. The Properties shall be reconstructed or rebuilt substantially in accordance with the original construction plans if they are available, unless

changes recommended by the Design Review Committee have been approved by the Owners. If the insurance proceeds amount to at least ninety-five percent (95%) of the estimated cost of restoration and repair, the Board shall levy a Reconstruction Assessment to provide the additional funds necessary for such reconstruction. If the insurance proceeds amount to less than ninety-five percent (95%) of the estimated cost of restoration and repair, the Board may levy a Reconstruction Assessment and proceed with the restoration and repair only if both of the following conditions ("*Conditions to Reconstruction*") have been satisfied: (a) the levy of a Reconstruction Assessment to pay the costs of restoration and repair of the Properties is approved by the Owners, and (b) within one (1) year after the date on which the destruction occurred, the Board Records a certificate of the resolution authorizing the restoration and repair ("*Reconstruction Certificate*"). If either of the Conditions to Reconstruction does not occur following a destruction for which insurance proceeds available for restoration and repair are less than ninety-five percent (95%) of the estimated cost of restoration and repair, then the Board shall deposit the funds in the Operating Fund.

9.2 **INTERIOR DAMAGE.** With the exception of any casualty or damage covered by insurance kept by the Association, restoration and repair of any damage to the interior of any individual Residence, including all fixtures, cabinets and improvements therein, together with restoration and repair of all interior paint, wall coverings and floor coverings, must be made by and at the individual expense of the Owner of the Residence so damaged. If a determination to rebuild the Properties after partial or total destruction is made, as provided in this Article, such interior repair and restoration shall be completed as promptly as practical and in a lawful and workmanlike manner, in accordance with plans approved by the Design Review Committee as provided in this Declaration.

9.3 **NOTICE TO OWNERS AND LISTED MORTGAGEES.** The Board, immediately on having knowledge of any damage or destruction affecting a material portion of the Common Area owned in fee simple by the Association, shall promptly notify all Owners and Mortgagees, insurers and guarantors of first Mortgages on Lots in the Properties who have filed a written request for such notice with the Board.

ARTICLE X EMINENT DOMAIN

The term "taking" as used in this Article means inverse condemnation by exercise of the power of eminent domain or by sale under threat of the exercise of the power of eminent domain. The Board shall represent the Owners in any proceedings, negotiations, settlements, or agreements regarding takings. All takings proceeds shall be payable to the Association for the benefit of the Owners and their Mortgagees, and shall be distributed to such Owners and Mortgagees as provided in this Article.

10.1 **CONDEMNATION OF COMMON AREA.** If there is a taking of the Common Area owned in fee simple by the Association, then the award in condemnation shall be paid to the Association and shall be deposited in the Operating Fund.

10.2 **CONDEMNATION OF LOTS.** If there is a taking of a Lot, the award in condemnation shall be paid to the Owner of the Lot; however, such award shall first be applied to the balance then due on any Mortgages encumbering such Owner's Lot, in order of priority.

10.3 **NOTICE TO OWNERS AND MORTGAGEES.** The Board, on learning of any condemnation proceeding affecting a material portion of the Common Area, or any threat thereof, shall promptly notify all Owners and those Mortgagees, insurers and guarantors of Mortgages on Lots in the Properties who have filed a written request for such notice with the Association.

ARTICLE XI RIGHTS OF MORTGAGEES

11.1 **GENERAL PROTECTIONS.** No amendment or violation of this Declaration defeats or renders invalid the rights of the Mortgagee under any Mortgage encumbering one (1) or more Lots made in good faith and for value, provided that after the foreclosure of any such Mortgage, the foreclosed Lot(s) will remain subject to this Declaration. For purposes of this Declaration, "first Mortgage" means a Mortgage with first priority over other Mortgages or Deeds of Trust on a Lot, and "first Mortgagee" means the Mortgagee of a first Mortgage. For purposes of any provisions of the Restrictions which require the vote or approval of a specified percentage of first Mortgagees, such vote or approval is determined based on one (1) vote for each Lot encumbered by each such first Mortgage.

11.2 **ADDITIONAL RIGHTS.** In order to induce the VA, FHA Freddie Mac, Ginnie Mae and Fannie Mae to participate in the financing of the sale of Lots, the following provisions are added hereto (and to the extent these added provisions conflict with any other provisions of the Restrictions, these added provisions control):

11.2.1 **Notices.** Each Mortgagee, insurer and guarantor of a Mortgage encumbering one (1) or more Lots, upon filing a written request for notification with the Board, is entitled to written notification from the Association of: (a) any condemnation or casualty loss which affects either a material portion of the Properties or the Lot(s) securing the respective first Mortgage; (b) any delinquency of sixty (60) days or more in the performance of any obligation under the Restrictions, including the payment of Assessments or charges owed by the Owner(s) of the Lot(s) securing the Mortgage, which notice each Owner hereby consents to and authorizes; and (c) a lapse, cancellation, or material modification of any policy of insurance or fidelity bond kept by the Association.

11.2.2 **Right of First Refusal.** Each Owner who obtains title to a Lot (including a first Mortgagee who obtains title to a Lot pursuant to (a) the remedies provided in such Mortgage, (b) foreclosure of the Mortgage, or (c) deed or assignment in lieu of foreclosure), is exempt from any "right of first refusal" created or purported to be created by the Restrictions.

11.2.3 **Unpaid Assessments.** If the first Mortgagee of a Lot obtains fee title to the Lot either by foreclosure or by any other remedy provided under the Mortgage, then the Mortgagee shall take title to the Lot free and clear of any claims for unpaid Assessments or charges against the Lot to the extent the Assessments or charges accrued before the date on which the Mortgagee acquired title to the Lot.

11.2.4 **Association Records.** All Mortgagees, insurers and guarantors of first Mortgages, on written request to the Association, shall have the right to:

- (a) examine current copies of the Association's books, records and financial statements and the Restrictions during normal business hours;
- (b) receive written notice of all meetings of Owners; and
- (c) designate in writing a representative who shall be authorized to attend all meetings of Owners.

11.2.5 **Payment of Taxes.** First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Area property and may pay any overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for Common Area, and the Association shall immediately reimburse first Mortgagees who made such payments.

11.2.6 **Contracts.** The Board may enter into such contracts or agreements on behalf of the Association as are required in order to satisfy the guidelines of the VA, FHA, Freddie Mac, Ginnie Mae, Fannie Mae or any similar entity, so as to allow for the purchase, insurance or guaranty, as the case may be, by such entities of first Mortgages encumbering Lots improved with Residences. Each Owner hereby agrees that it will benefit the Association and the Owners, as a class of potential Mortgage borrowers and potential sellers of their Lots, if such agencies approve the Properties as a qualifying subdivision under their respective policies, rules and regulations. Each Owner hereby authorizes his Mortgagees to furnish information to the Board concerning the status of any Mortgage encumbering a Lot.

ARTICLE XII ENFORCEMENT

12.1 **ENFORCEMENT OF RESTRICTIONS.** All violations of the Restrictions, other than those described in Sections 12.2 through 12.4 or regulated by Civil Code Section 1375, shall be resolved as follows:

12.1.1 **Violations Identified by the Association.** If the Board or the Design Review Committee determines that there is a violation of the Restrictions, other than nonpayment of any Assessment, then the Board shall give written notice to the responsible Owner identifying (a) the condition or violation complained of, and (b) the length of time the Owner has to remedy the violation including, if appropriate, the length of time the Owner has to submit plans to the Design Review Committee and the length of time the Owner has to complete the work proposed in the plans submitted to the Design Review Committee. If an Owner does not perform corrective action within the allotted time, the Board, after Notice and Hearing, may remedy such condition or violation complained of, and the cost thereof shall be charged to the Owner as a Special Assessment. If the violation involves nonpayment of any Assessment, then the Board may collect such delinquent Assessment pursuant to the procedures established in Section 12.2.

12.1.2 **Violations Identified by an Owner.** If an Owner alleges that another Person is violating the Restrictions (other than nonpayment of any Assessment), the complaining Owner must first submit the matter to the Board for Notice and Hearing before the complaining Owner may resort to alternative dispute resolution, as required by Section 1354 of the California Civil Code, or litigation for relief.

12.1.3 Legal Proceedings. Failure to comply with any of the terms of the Restrictions by any Person is grounds for relief which may include an action to recover damages, injunctive relief, foreclosure of any lien, or any combination thereof; however, the procedures established in Section 1354 of the California Civil Code and in Sections 12.1.1 and 12.1.2 must first be followed, if they apply.

12.1.4 Additional Remedies. After Notice and Hearing, the Board may impose any of the remedies provided for in the Bylaws. The Board may adopt a schedule of reasonable fines or penalties which, in its reasonable discretion, the Board may assess against a Person for the failure of such Person to comply with the Restrictions. Such fines or penalties may only be assessed after Notice and Hearing. After Notice and Hearing, the Board may direct the officers of the Association to Record a notice of noncompliance (if allowed by law) against a Lot owned by any Owner who has violated any provision of this Declaration. The notice shall include a legal description of the Lot and shall specify the provision of this Declaration that was violated, the violation committed, and the steps required to remedy the noncompliance. Once the noncompliance is remedied or the noncomplying Owner has taken such other steps as reasonably required by the Board, the Board shall direct the officers of the Association to Record a notice that the noncompliance has been remedied.

12.1.5 No Waiver. Failure to enforce any provision of this Declaration does not waive the right to enforce that provision, or any other provision of this Declaration.

12.1.6 Right to Enforce. The Board, the Association, the Declarant and any Owner may enforce the Restrictions as described in this Article, subject to Section 1354 of the California Civil Code. Each Owner has a right of action against the Association for the Association's failure to comply with the Restrictions. Each remedy provided for in this Declaration is cumulative and not exclusive or exhaustive.

12.1.7 Limit on Expenditures. The Association may not incur litigation expenses, including attorneys' fees, or borrow money to fund litigation, where the Association initiates legal proceedings or is joined as a plaintiff in legal proceedings, unless the Association first obtains the consent of the Owners (excluding the voting power of any Owner who would be a defendant in such proceedings) and, if applicable, complies with the requirements of Section 1354 of the California Civil Code. Such approval is not necessary if the legal proceedings are initiated (a) to enforce the use restrictions contained in Article II, (b) to enforce the architectural and landscaping control provisions contained in Article V, (c) to collect any unpaid Assessments levied pursuant to the Restrictions, (d) for a claim, other than a Defect Claim (defined in Section 4.5.2) the total value of which is less than Five Hundred Thousand Dollars (\$500,000), or (e) as a cross-complaint in litigation to which the Association is already a party. If the Association decides to use or transfer Reserve Funds or borrow funds to pay for any litigation, the Association must notify the Owners of the decision by mail. Such notice shall provide an explanation of why the litigation is being initiated or defended, why Operating Funds cannot be used, how and when the Reserve Funds will be replaced or the loan will be repaid, and a proposed budget for the litigation. The notice must state that the Owners have a right to review an accounting for the litigation which will be available at the Association's office. The accounting shall be updated monthly. If the Association action to incur litigation expenses or borrow money to fund litigation concerns a Defect Claim, then the voting requirements of both Sections 4.5.2 and 12.1.7 must be met.

12.2 NONPAYMENT OF ASSESSMENTS.

12.2.1 **Delinquency.** Assessments are delinquent if not paid within fifteen (15) days after the due date established by the Association. Assessments not paid within thirty (30) days after the due date, plus all reasonable costs of collection (including attorneys' fees) and late charges bear interest at the maximum rate permitted by law commencing thirty (30) days after the due date until paid. The Association may also require the delinquent Owner to pay a late charge in accordance with California Civil Code Section 1366(d)(2). The Association need not accept any tender of a partial payment of an Assessment and all costs and attorneys' fees attributable thereto. Acceptance of any such tender does not waive the Association's right to demand and receive full payment.

12.2.2 Creation and Release of Lien.

(a) **Priority of Lien.** All liens levied in accordance with this Declaration shall be prior and superior to (i) any declaration of homestead Recorded after the Recordation of this Declaration, and (ii) all other liens, except (1) all taxes, bonds, Assessments and other levies which, by law, would be superior thereto, and (2) the lien or charge of any first Mortgage of Record (meaning any Recorded Mortgage with first priority or seniority over other Mortgages) made in good faith and for value and Recorded before the date on which the "Notice of Delinquent Assessment" (described in this Section) against the assessed Lot was Recorded.

(b) **Prerequisite to Creating Lien.** Before the Association may place a lien on a Owner's Lot to collect a past due Assessment, the Association shall send written notice ("**Notice of Intent to Lien**"), at least thirty (30) days prior to recording of such lien, to the Owner by certified mail which contains the following information: (i) the fee and penalty procedure of the Association, (ii) an itemized statement of the charges owed by the Owner, including the principal owed, any late charges, any interest, the method of calculation, and any attorneys' fees, (iii) the collection practices used by the Association, (iv) a statement that the Association may recover reasonable costs of collecting past due Assessments, (v) a statement that the Owner has the right to inspect the Association's records, pursuant to California Corporations Code Section 8333, (vi) the following statement in 14-point boldface type or all capital letters: "IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST IS PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT ACTION," (vii) a statement that the Owner shall not be liable to pay the charges, interest and costs of collection if it is determined the Assessment was paid on time to the Association, and (viii) a statement that the Owner has the right to request a meeting with the Board, as provided by California Civil Code Section 1367.1(c) and Section 12.2.2(d) below.

(c) **Dispute by Owner.** An Owner may dispute the Notice of Intent to Lien by submitting to the Board a written explanation of the reasons for the Owner's dispute. The Board shall respond in writing to the Owner within fifteen (15) days of the date of the postmark of the explanation, if the explanation is mailed within fifteen (15) days of the postmark of the Notice of Intent to Lien.

(d) **Owner's Right to Request Meeting.** An Owner may submit a written request to meet with the Board to discuss a payment plan for the debt noticed in

Section 12.2.2(b) above. The Association shall provide the Owner with the standards for payment plans, if any exist. The Board shall meet with the Owner in executive session within forty-five (45) days of the postmark of the request, if the request is mailed within fifteen (15) days of the date of the postmark of the Notice of Intent to Lien, unless there is no regularly scheduled Board meeting within that period, in which case the Board may designate a committee of one or more members to meet with the Owner.

(e) *Notice of Delinquent Assessment.* The lien becomes effective on Recordation by the Board or its authorized agent of a Notice of Delinquent Assessment ("*Notice of Delinquent Assessment*") securing the payment of any Assessment or installment thereof levied by the Association against any Lot Owner, as provided in Section 1367 or 1367.1 of the California Civil Code. The Notice of Delinquent Assessment must identify (i) the amount of the Assessment and other authorized charges and interest, including the cost of preparing and Recording the Notice of Delinquent Assessment, (ii) the amount of collection costs incurred, including reasonable attorneys' fees, (iii) a sufficient description of the Lot that has been assessed, (iv) the Association's name and address, (v) the name of the Owner of the Lot that has been assessed, and (vi) if the lien is to be enforced by nonjudicial foreclosure, the name and address of the trustee authorized by the Association to enforce the lien by sale. The Notice of Delinquent Assessment must be signed by an authorized Association officer or agent and must be mailed in the manner required by Section 2924b of the California Civil Code to the Owner of record of the Lot no later than ten (10) calendar days after Recordation. The lien relates only to the individual Lot against which the Assessment was levied and not to the Properties as a whole.

(f) *Exceptions.* Assessments described in Section 1367(e) of the California Civil Code and Section 2792.26(c) of the California Code of Regulations may not become a lien against an Owner's Lot enforceable by the sale of the Lot under Sections 2924, 2924(b) and 2924(c) of the California Civil Code.

(g) *Release of Lien.* Within twenty-one (21) days of payment of the full amount claimed in the Notice of Delinquent Assessment, or other satisfaction thereof, the Board shall cause to be Recorded a Notice of Satisfaction and Release of Lien ("*Notice of Release*") stating the satisfaction and release of the amount claimed. The Association shall provide the Owner with a copy of the Notice of Release or any other notice that the full amount claimed in the Notice of Delinquent Assessment has been satisfied. The Board may require the Owner to pay a reasonable charge for preparing and Recording the Notice of Release. Any purchaser or encumbrancer who has acted in good faith and extended value may rely on the Notice of Release as conclusive evidence of the full satisfaction of the sums identified as owed in the Notice of Delinquent Assessment.

12.2.3 **Enforcement of Liens.** The Board shall enforce the collection of amounts due under this Declaration by one (1) or more of the alternative means of relief afforded by this Declaration. The lien on a Lot may be enforced by foreclosure and sale of the Lot after failure of the Owner to pay any Assessment, or installment thereof, as provided in this Declaration. The sale shall be conducted in accordance with the provisions of the California Civil Code applicable to the exercise of powers of sale in Mortgages, or in any manner permitted by law. The Association (or any Owner if the Association refuses to act) may sue to foreclose the lien if (a) at least thirty (30) days have elapsed since the date on which the Notice of Delinquent Assessment was Recorded and (b) at least ten (10) days have elapsed since a copy of

the Notice of Delinquent Assessment was mailed to the Owner affected thereby. The Association may bid on the Lot at foreclosure sale, and acquire and hold, lease, mortgage and convey the same. On completion of the foreclosure sale, the Association or the purchaser at the sale may file suit to secure occupancy of the defaulting Owner's Lot, and the defaulting Owner shall be required to pay the reasonable rental value for the Lot during any period of continued occupancy by the defaulting Owner or any persons claiming under the defaulting Owner. A suit to recover a money judgment for unpaid Assessments may be brought without foreclosing or waiving any lien securing the same, but this provision or any suit to recover a money judgment does not affirm the adequacy of money damages. Any recovery resulting from a suit at law or in equity initiated pursuant to this Section may include reasonable attorneys' fees as fixed by the court.

12.2.4 Priority of Assessment Lien. Mortgages Recorded before a Notice of Delinquent Assessment have lien priority over the Notice of Delinquent Assessment. Sale or transfer of any Lot does not affect the Assessment lien, except that the sale or transfer of any Lot pursuant to judicial or nonjudicial foreclosure of a first Mortgage extinguishes the lien of such Assessments as to payments which became due before such sale or transfer. No sale or transfer relieves such Lot from liens for any Assessments thereafter becoming due. No Person who obtains title to a Lot pursuant to a judicial or nonjudicial foreclosure of the first Mortgage is liable for the share of the Common Expenses or Assessments chargeable to such Lot which became due before the acquisition of title to the Lot by such Person. Such unpaid share of Common Expenses or Assessments is a Common Expense collectible from all Owners including such Person. The Association may take such action as is necessary to make any Assessment lien subordinate to the interests of the Department of Veterans Affairs of the State of California under its Cal-Vet loan contracts as if the Cal-Vet loan contracts were first Mortgages of record.

12.2.5 Alternative Dispute Resolution. An Owner may dispute the Assessments imposed by the Association if such Owner pays in full (a) the amount of the Assessment in dispute, (b) any late charges, (c) any interest, and (d) all reasonable fees and costs associated with preparing and filing a Notice of Delinquent Assessment (including mailing costs and reasonable attorneys' fees not to exceed the maximum amount allowed by law), and states by written notice that such amount is paid under protest, and the written notice is mailed by certified mail not more than thirty (30) days after Recording the Notice of Delinquent Assessment. On receipt of the written notice, the Association shall inform the Owner in writing that the dispute may be resolved through alternative dispute resolution as established in Civil Code Section 1354. The right of any Owner to use alternative dispute resolution under this Section may not be exercised more than two (2) times in any single calendar year, and not more than three (3) times within any five (5) calendar years unless the Owner and the Association mutually agree to use alternative dispute resolution when this limit is exceeded. An Owner may request and be awarded through alternative dispute resolution reasonable interest to be paid by the Association in the total amount paid under items (a) through (d) above, if it is determined that the Assessment levied by the Association was not correctly levied.

12.2.6 Receivers. In addition to the foreclosure and other remedies granted to the Association in this Declaration, each Owner, by acceptance of a deed to such Owner's Lot, conveys to the Association all of such Owner's right, title and interest in all rents, issues and profits derived from and appurtenant to such Lot, subject to the right of the Association to collect and apply such rents, issues and profits to any delinquent Assessments owed by such Owner,

reserving to the Owner the right, before any default by the Owner in the payment of Assessments, to collect and retain such rents, issues and profits as they may become due and payable. On any such default, the Association may, on the expiration of thirty (30) days following delivery to the Owner of the "Notice of Delinquent Assessment" described in this Declaration, either in person, by agent or by receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness secured by the lien described in this Declaration, (a) enter in or on and take possession of the Lot or any part thereof, (b) in the Association's name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and (c) apply the same, less allowable expenses of operation, to any delinquencies of the Owner, and in such order as the Association may determine. The entering upon and taking possession of the Lot, the collection of rents, issues and profits and the application thereof, shall not cure or waive any default or notice of default under this Declaration or invalidate any act done pursuant to such notice.

12.3 ENFORCEMENT OF BONDED OBLIGATIONS. If (a) the Common Property Improvements are not completed before issuance of a Final Subdivision Public Report for the Properties by the DRE, and (b) the Association is obligee under a bond or other arrangement ("**Bond**") required by the DRE to secure performance of Declarant's commitment to complete such Improvements, then the following provisions of this Section will be applicable:

12.3.1 Consideration by the Board. The Board shall consider and vote on the question of action by the Association to enforce the obligations under the Bond with respect to any such Improvement for which a Notice of Completion has not been filed within sixty (60) days after the completion date specified for that Improvement in the Planned Construction Statement appended to the Bond. If the Association has given an extension in writing for the completion of any Common Property Improvement, then the Board shall be directed to consider and vote on the aforesaid question if a Notice of Completion has not been filed within thirty (30) days after the expiration of the extension.

12.3.2 Consideration by the Owners. A special meeting of Owners for the purpose of voting to override a decision by the Board not to initiate action to enforce the obligations under the Bond or on the Board's failure to consider and vote on the question shall be held no fewer than thirty-five (35) nor more than forty-five (45) days after the Board receives a petition for such a meeting signed by Owners representing five percent (5%) of the Association's total voting power. A vote of a majority of the Association's voting power (excluding Declarant) to take action to enforce the obligations under the Bond shall be deemed to be the decision of the Association, and the Board shall thereafter implement such decision by initiating and pursuing appropriate action in the Association's name.

12.4 DISPUTES WITH DECLARANT PARTIES. Any dispute between the Association or any Owners, on the one hand, and the Declarant, or any director, officer, partner, shareholder, member, employee, representative, contractor, subcontractor, design professional or agent of the Declarant (each, a "**Declarant Party**," and collectively the "**Declarant Parties**"), on the other hand, which dispute:

(a) Either arises under this Declaration or otherwise relates to the Properties (including disputes regarding latent or patent construction defects); and

(b) Involves neither Common Area completion bonds, nor the collection of delinquent Assessments from Declarant; and

(c) Concerns an amount in controversy that is greater than Five Thousand Dollars (\$5,000),

shall be a "*Dispute*" for purposes of this Section 12.4. All Disputes shall be resolved in accordance with the following alternative dispute resolution procedures:

12.4.1 **Notice.** Any Person with a Dispute shall give written notice of the Dispute by personal or mail service as authorized by Code of Civil Procedure Sections 415.10, 415.20, 415.21, 415.30 or 415.40 to the party to whom the Dispute is directed ("*Respondent*") describing the nature of the Dispute and any proposed remedy (the "*Dispute Notice*").

12.4.2 **Right to Inspect and Correct.** Commencing on the date the Dispute Notice is delivered to the Respondent and continuing until the Dispute is resolved, the Respondent and its representatives have the right to (a) meet with the party alleging the Dispute at a reasonable time and place to discuss the Dispute, (b) enter the Properties to inspect any areas that are subject to the Dispute, and (c) conduct inspections and testing (including destructive or invasive testing) in a manner deemed appropriate by the Respondent. If Respondent elects to take any corrective action, Respondent and its representatives shall be provided full access to the Properties to take and complete the corrective action. Respondent is not obligated to take any corrective action. Respondent, with the consent of Declarant, has the right to select the corrective action Respondent believes is appropriate. The right to inspect and correct granted in this Section is in addition to the rights granted in California Civil Code Section 1375 (the "*Calderon Act*"). The procedures established in the Calderon Act may be implemented before, during or after the procedure in this Section is implemented.

12.4.3 **Mediation.** If the Dispute is not resolved within ninety (90) days after the Respondent receives the Dispute Notice, any party may submit the Dispute to mediation by delivering a request for mediation ("*Mediation Notice*") in the same manner as allowed for delivery of the Dispute Notice. The Dispute shall be mediated pursuant to (a) the American Arbitration Association ("*AAA*") mediation procedures in existence when the Dispute Notice is delivered, as modified by this Section, or (b) the mediation procedures of any successor to the AAA in existence when the Dispute Notice is delivered, as modified by this Section, or (c) mediation procedures approved by the parties of any entity offering mediation services that are acceptable to the parties to the Dispute (each, a "*Party*" and collectively, the "*Parties*"). Except as provided in Section 12.4.4, no Person shall commence litigation regarding a Dispute without complying with this Section 12.4.2.

(a) **Selection of Mediator.** The mediator shall be selected within sixty (60) days from delivery of the Mediation Notice. The mediator shall be selected by mutual agreement of the Parties. If the Parties cannot agree on a mediator, the mediator shall be selected by the entity providing the mediation service. No Person shall serve as a mediator in any Dispute in which the Person has any financial or personal interest in the result of the mediation, except by the written consent of all Parties. Before accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or to prevent a prompt commencement of the mediation process.

(b) *Position Letter; Pre-Mediation Conference.* No later than sixty (60) days after selection of the mediator, each party to the Dispute shall submit a letter ("*Position Statement*") containing (i) a description of the Party's position concerning the issues that need to be resolved, (ii) a detailed description of the defects allegedly at issue, and (iii) a suggested plan of repair, remediation or correction. The mediator may schedule a pre-mediation conference. All Parties shall attend unless otherwise mutually agreed. The mediation shall be commenced within twenty (20) days after submittal of all Position Statements and shall be concluded within fifteen (15) days after the mediation began unless either (A) the mediator extends the mediation period, or (B) the Parties mutually agree to extend the mediation period. The mediation shall be held in the County or another place mutually acceptable to the parties.

(c) *Conduct of Mediation.* The mediator has discretion to conduct the mediation in the manner in which the mediator believes is most appropriate to achieve the goal of settling the Dispute. The mediator is authorized to conduct joint and separate meetings with the Parties and to make oral and written recommendations for settlement. The mediator may also obtain expert advice concerning technical aspects of the Dispute, provided the Parties assume the expenses of obtaining such advice. The mediator shall not have the authority to impose a settlement on the Parties.

(d) *Application of Evidence Code.* The provisions of California Evidence Code Sections 1115 through 1128 shall be applicable to the mediation process. Use and disclosure of statements, evidence and communications offered or made in the course of the mediation shall be governed by these sections, including the sections which preclude use of material in future proceedings and the sections which provide for confidentiality of material.

(e) *Parties Permitted at Mediation.* Persons other than the Parties, their liability insurers, Declarant, attorneys for the Parties and the mediator may attend mediation sessions only with the permission of the Parties and the consent of the mediator. Declarant has the right to attend the mediation session even if Declarant is not one of the Parties.

(f) *Record.* There shall be no stenographic, video or audio record of the mediation process.

(g) *Expenses.* Each Party shall bear its own attorneys' fees and costs incurred in connection with the mediation. All other expenses of the mediation including the fees charged by the mediator and the cost of any proof or expert advice requested by the mediator shall be borne equally by each of Declarant and the Declarant Parties to whom the Dispute is directed, unless the Parties agree otherwise. This provision does not modify any provision of a contract between Declarant and any Declarant Party requiring indemnification or establishing a different allocation of costs between the Declarant and the Declarant Party.

12.4.4 **Judicial Reference.** If a Dispute remains unresolved after the mediation required by Section 12.4.2 is completed, any of the Parties may file a lawsuit, provided that the Association must obtain the vote or written consent of Owners other than Declarant who represent not less than sixty-seven percent (67%) of the Association's voting power (excluding the voting power of Declarant) prior to filing a lawsuit in a Dispute with Declarant or a Declarant Party. All lawsuits regarding Disputes must be resolved by general judicial reference pursuant to California Code of Civil Procedure Sections 638 and 641 through

645.1, as modified by this Section 12.4.3. The Parties shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the judicial reference proceeding. No Party shall be required to participate in the judicial reference proceeding if all Parties against whom such Party would have necessary or permissive cross-claims or counterclaims will not or cannot be joined in the judicial reference proceeding. The general referee shall have the authority to try all issues of fact and law and to report a statement of decision to the court. The referee shall be the only trier of fact and law in the reference proceeding, and shall have no authority to further refer any issues of fact or law to any other Person unless all parties to the judicial reference proceeding consent, or the referee determines that a conflict of interest or similar situation has arisen which would make it inappropriate for the referee to act as the trier of fact or law concerning an issue or matter. In the second alternative, an alternative judicial referee shall be selected in accordance with Section 12.4.3(b) solely for resolving or rendering a decision concerning the issue or matter involved in the conflict.

(a) *Place.* The proceedings shall be heard in the County.

(b) *Referee.* The referee shall be a retired judge who served on the Superior Court of the State of California in the County with substantial experience in the type of matter in dispute and without any relationship to the Parties or interest in the Properties, unless the Parties agree otherwise. The parties to the judicial reference proceeding shall meet to select the referee no later than thirty (30) days after service of the initial complaint on all defendants named in the complaint. Any dispute regarding the selection of the referee shall be resolved by the court in which the complaint is filed.

(c) *Commencement and Timing of Proceeding.* The referee shall commence the proceeding at the earliest convenient date and shall conduct the proceeding without undue delay.

(d) *Pre-hearing Conferences.* The referee may require pre-hearing conferences.

(e) *Discovery.* The parties to the judicial reference proceeding shall be entitled only to limited discovery, consisting of the exchange of the following: (i) witness lists, (ii) expert witness designations, (iii) expert witness reports, (iv) exhibits, (v) reports of testing or inspections, and (vi) briefs. Any other discovery authorized in the California Code of Civil Procedure shall be permitted by the referee upon a showing of good cause or based on the consent of all parties to the judicial reference proceeding.

(f) *Motions.* The referee shall have the power to hear and dispose of motions, including motions relating to discovery, provisional remedies, demurrers, motions to dismiss, motions for judgment on the pleadings and summary judgment and/or adjudication motions, in the same manner as a trial court judge. The referee shall also have the power to adjudicate summarily issues of fact or law including the availability of remedies whether or not the issue adjudicated could dispose of an entire cause of action or defense.

(g) *Record.* A stenographic record of the hearing shall be made which shall remain confidential except as may be necessary for post-hearing motions and any appeals.

(h) *Statement of Decision.* The referee's statement of decision shall contain an explanation of the factual and legal basis for the decision pursuant to California Code of Civil Procedure Section 632. The decision of the referee shall stand as the decision of the court, and upon filing of the statement of decision with the clerk of the court, judgment may be entered thereon in the same manner as if the Dispute had been tried by the court.

(i) *Remedies.* The referee may grant all legal and equitable remedies and award damages in the judicial reference proceeding.

(j) *Post-hearing Motions.* The referee may rule on all post-hearing motions in the same manner as a trial judge.

(k) *Appeals.* The decision of the referee shall be subject to appeal in the same manner as if the Dispute had been tried by the court.

(l) *Expenses.* Each Party shall bear its own attorneys' fees and costs incurred in connection with the judicial reference proceeding. All other fees and costs incurred in connection with the judicial reference proceeding, including the cost of the stenographic record, shall be advanced equally by each of Declarant and the Declarant Parties to whom the Dispute is directed. However, the referee shall have the power to reallocate such fees and costs among the Parties in the referee's final ruling. This provision does not modify any provision of a contract between Declarant and any Declarant Party requiring indemnification or establishing a different allocation of costs between the Declarant and the Declarant Party.

12.4.5 **Statutes of Limitation.** Nothing in this Section 12.4 shall be considered to toll, stay, reduce or extend any applicable statute of limitations; provided, however, that Declarant, the Declarant Parties, the Association and any Owner may commence a legal action which in the good faith determination of that Person is necessary to preserve that Person's rights under any applicable statute of limitations so long as no further steps in processing the action are taken except those authorized in this Section 12.4.

12.4.6 **Agreement to Dispute Resolution; Waivers of Jury Trial.** DECLARANT, THE ASSOCIATION AND EACH OWNER AGREE TO USE THE PROCEDURES ESTABLISHED IN THIS SECTION 12.4 TO RESOLVE ALL DISPUTES AND WAIVE THEIR RIGHTS TO RESOLVE DISPUTES IN ANY OTHER MANNER. DECLARANT, THE ASSOCIATION AND EACH OWNER ACKNOWLEDGE THAT BY AGREEING TO RESOLVE ALL DISPUTES AS PROVIDED IN THIS SECTION 12.4, THEY ARE GIVING UP THEIR RIGHT TO HAVE DISPUTES TRIED BEFORE A JURY PURSUANT TO THE FEDERAL ARBITRATION ACT. THIS SECTION 12.4 MAY NOT BE AMENDED WITHOUT DECLARANT'S PRIOR WRITTEN CONSENT.

12.4.7 **Civil Code Section 1354.** Section 12.4 governs only the resolution of Disputes with Declarant Parties and shall not affect the subject matter of such Disputes. Unless the subject matter of a Dispute expressly involves enforcement of the Restrictions, such Dispute shall not be governed by the provisions of California Civil Code Section 1354, or any successor statute. Enforcement of Section 12.4 shall not entitle the prevailing party in any Dispute with a Declarant Party to recover attorney's fees or costs.

12.5 **NO ENHANCED PROTECTION AGREEMENT.** No language contained in this Declaration or any Supplemental Declaration shall constitute, or be interpreted to constitute, an "enhanced protection agreement", as defined in Section 901 of the California Civil Code.

ARTICLE XIII DURATION AND AMENDMENT

13.1 **DURATION.** This Declaration shall continue in full force unless a declaration of termination satisfying the requirements of an amendment to this Declaration established in Section 13.2 is Recorded.

13.2 **TERMINATION AND AMENDMENT.**

13.2.1 **Amendment Approval.** Notice of the subject matter of a proposed amendment to this Declaration in reasonably detailed form must be included in the notice of any Association meeting or election at which a proposed amendment is to be considered. To be effective, a proposed amendment (other than an Amendment described in Section 13.2.7) must be adopted by the vote, in person or by proxy, or written consent of Owners representing not less than (a) sixty-seven percent (67%) of the voting power of each Class of the Association and (b) sixty-seven percent (67%) of the Association's voting power represented by Owners other than Declarant, provided that the specified percentage of the Association's voting power necessary to amend a specific provision of this Declaration may not be less than the percentage of affirmative votes prescribed for action to be taken under the provision that is the subject of the proposed amendment.

13.2.2 **Mortgagee Consent.** In addition to the consents required by Section 13.2.1, the Mortgagees of fifty-one percent (51%) of the first Mortgages on all the Lots in the Properties who have requested the Association notify them of proposed action requiring the consent of a specified percentage of first Mortgagees must approve any amendment to this Declaration and any Supplemental Declaration which is of a material nature, as follows:

(a) Any amendment which affects or purports to affect the validity or priority of Mortgages or the rights or protection granted to Mortgagees, insurers or guarantors of first Mortgages.

(b) Any amendment which would require a Mortgagee after it has acquired a Lot through foreclosure to pay more than its proportionate share of any unpaid Assessment or Assessments accruing before such foreclosure.

(c) Any amendment which would or could result in a Mortgage being canceled by forfeiture, or in a Lot not being separately assessed for tax purposes.

(d) Any amendment relating to (i) the insurance provisions in Article VIII, (ii) the application of insurance proceeds in Article IX, or (iii) the disposition of any money received in any taking under condemnation proceedings.

(e) Any amendment which would restrict an Owner's right to sell or transfer his or her Lot.

(f) Any amendment which would subject any Owner to a right of first refusal or other such restriction, if such Lot is proposed to be transferred.

13.2.3 Amendment of Defect Claims Provisions. Neither this Section 13.2.3 nor Sections 1.1.33, 4.2.7, 4.5, 4.6.1, 4.6.4, 12.1.7, 12.4 or 12.5, may be amended without the vote or approval by written ballot of at least (a) ninety percent (90%) of the voting power of the Members of the Association other than Declarant, and (b) at least ninety percent (90%) of the Mortgagees.

13.2.4 Termination Approval. Termination of this Declaration requires approval of the Owners as provided in Section 13.2.1.

13.2.5 Notice to Mortgagees. Each Mortgagee of a first Mortgage on a Lot in the Properties which receives proper written notice of a proposed amendment or termination of this Declaration or any Supplemental Declaration with a return receipt requested is deemed to have approved the amendment or termination if the Mortgagee fails to submit a response to the notice within thirty (30) days after the Mortgagee receives the notice.

13.2.6 Certificate. A copy of each amendment must be certified by at least two (2) Association officers. The amendment becomes effective when a Certificate of Amendment is Recorded. The certificate, signed and sworn to by two (2) Association officers that the requisite number of Owners and Mortgagees have approved the amendment, when Recorded, is conclusive evidence of that fact. The Association shall keep in its files for at least four (4) years the record of all such approvals. The certificate reflecting any termination or amendment which requires the written consent of any of the Mortgagees of first Mortgages must include a certification that the requisite approval of such first Mortgagees was obtained.

13.2.7 Unilateral Amendment by Declarant. Notwithstanding any other provisions of this Section, at any time prior to the first Close of Escrow, Declarant may unilaterally amend or terminate this Declaration by Recording a written instrument which effects the amendment or termination and is signed and acknowledged by Declarant. Notwithstanding any other provisions of this Section, Declarant (for so long as Declarant owns any portion of the Properties) may unilaterally amend this Declaration by Recording a written instrument signed by Declarant in order to (i) conform this Declaration to applicable law, (ii) conform this Declaration to the requirements of VA, FHA, DRE, Fannie Mae, Ginnie Mae, Freddie Mac, the City, or the County, (iii) correct typographical errors, (iv) amend, replace or substitute any Exhibit for any purpose to the extent that the Exhibit affects portions of the Properties that have not yet been conveyed to the Association or for which there has been no Close of Escrow, as applicable, (v) amend, replace or substitute any Exhibit to correct typographical or engineering errors or to conform to as-built conditions, or (vi) include any Exhibit that was inadvertently omitted from the Declaration or Supplemental Declaration at the time of recording. Except as provided in California Civil Code Section 1355.5, this Section 13.2.7 may not be amended except with Declarant's and Parcel D Owner's written consent.

13.2.8 Amendment by the Board. Notwithstanding any other provisions of this Section, the Board may amend this Declaration by Recording a written instrument signed by two officers of the Association certifying that the Board approved the amendment in order to (i) conform this Declaration to applicable law, (ii) correct typographical errors, and (iii) change any

Exhibit to this Declaration or portion of an Exhibit to conform to as-built conditions. So long as Declarant or Parcel D Owner owns any portion of the Properties, the Board must obtain Declarant's or Parcel D Owner's written consent to any amendment the Board approves pursuant to this Section. Except as provided in California Civil Code Section 1355.5, this Section 13.2.8 may not be amended except with Declarant's and Parcel D Owner's written consent.

ARTICLE XIV GENERAL PROVISIONS

14.1 MERGERS OR CONSOLIDATIONS. In a merger or consolidation of the Association with another association, the Properties, rights and obligations of the Association may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer and enforce the covenants, conditions and restrictions established by this Declaration governing the Properties, together with the covenants and restrictions established on any other property, as one (1) plan.

14.2 NO PUBLIC RIGHT OR DEDICATION. Nothing in this Declaration is a gift or dedication of all or any part of the Properties to the public, or for any public use.

14.3 NOTICES. Except as otherwise provided in this Declaration, notice to be given to an Owner must be in writing and may be delivered personally to the Owner. Personal delivery of such notice to one (1) or more co-Owners, or any general partner of a partnership owning a Lot, constitutes delivery to all Owners. Personal delivery of such notice to any officer or agent for the service of process on a corporation or limited liability company constitutes delivery to the corporation or limited liability company. Such notice may also be delivered by regular United States mail, postage prepaid, addressed to the Owner at the most recent address furnished by such Owner to the Association or, if no such address has been furnished, to the street address of such Owner's Lot. Such notice is deemed delivered three (3) business days after the time of such mailing, except for notice of a meeting of Owners or of the Board, in which case the notice provisions of the Bylaws control. Any notice to be given to the Association may be delivered personally to any member of the Board, or sent by United States mail, postage prepaid, addressed to the Association at such address as may be fixed and circulated to all Owners.

14.4 CONSTRUCTIVE NOTICE AND ACCEPTANCE. Every Person who owns, occupies or acquires any right, title, estate or interest in or to any Lot or other portion of the Properties consents and agrees to every limit, restriction, easement, reservation, condition and covenant contained in this Declaration, whether or not any reference to these restrictions is in the instrument by which such Person acquired an interest in the Properties.

ARTICLE XV DECLARANT'S RIGHTS AND RESERVATIONS

If there is a conflict between any other portion of the Restrictions and this Article, this Article shall control.

15.1 CONSTRUCTION RIGHTS. Declarant has the right to (a) subdivide or resubdivide the Properties, (b) complete or modify Improvements to and on the Common Area or any portion of the Properties owned or leased solely or partially by Declarant, (c) alter Improvements and Declarant's construction plans and designs, (d) modify Declarant's development plan for the Properties, including reshaping the Lots and Common Area, and constructing Residences of larger or smaller sizes, values, and of different types, and (e) construct such additional Improvements as Declarant considers advisable in the course of development of the Properties so long as any Lot in the Properties remains unsold. Declarant may temporarily erect barriers, close off and restrict access to portions of the Common Area as reasonably necessary to allow Declarant to exercise the rights reserved in this Section so long as an Owner's access to his or her Lot is not eliminated.

15.2 SALES AND MARKETING RIGHTS. Declarant's rights under this Declaration include the right to install and maintain such structures, displays, signs, billboards, flags and sales offices as may be reasonably necessary to conduct Declarant's business of completing construction and disposing of the Lots by sale, resale, lease or otherwise. Declarant may use any Lots in the Properties as model home complexes, real estate sales offices or leasing offices.

15.3 CREATING ADDITIONAL EASEMENTS. At any time before acquisition of title to a Lot in the Properties by a purchaser from Declarant, Declarant has the right to establish on that Lot additional licenses, easements, reservations and rights-of-way to itself, to utility companies, or to others as Declarant determines are reasonably necessary to the Properties' proper development and disposal.

15.4 ARCHITECTURAL RIGHTS. Declarant and any Person to whom Declarant may assign all or a portion of its exemption under this Declaration need not seek or obtain Design Review Committee approval of any Improvements constructed anywhere on the Properties by Declarant or such Person. Declarant may exclude portions of the Properties from jurisdiction of the Design Review Committee in a Supplemental Declaration. Declarant, may, at its option, establish an additional design review committee for any area exempted from the jurisdiction of the Design Review Committee.

15.5 USE RESTRICTION EXEMPTION. Declarant and any Person to whom Declarant may assign all or a portion of its exemption under this Declaration is exempt from the restrictions established in Article II.

15.6 ASSIGNMENT OF RIGHTS. Declarant may assign its rights under the Restrictions to any successor in interest to any portion of Declarant's interest in the Properties by a Recorded written assignment.

15.7 EXERCISE OF RIGHTS. Each Owner grants an irrevocable, special power of attorney to Declarant to execute and Record all documents and maps necessary to allow Declarant to exercise its rights under this Article.

15.8 USE OF PROPERTIES. Declarant and its prospective purchasers of Lots are entitled to the nonexclusive use of the Common Area owned in fee simple by the Association without further cost for access, ingress, egress, use or enjoyment, to (a) show the Properties to

prospective purchasers, (b) dispose of the Properties as provided in this Declaration, and (c) develop and sell the Properties. Declarant and prospective purchasers are also entitled to the nonexclusive use of any portions of the Properties which are private streets, drives and walkways for ingress, egress and accommodating vehicular and pedestrian traffic to and from the Properties. The use of the Common Area by Declarant may not unreasonably interfere with the use thereof by the other Owners.

15.9 PARTICIPATION IN ASSOCIATION. The Association shall provide Declarant with written notice of the transfer of any Lot and all notices and other documents to which a Mortgagee is entitled pursuant to this Declaration, provided that Declarant shall be provided such notices and other documents without making written request therefor. Commencing on the date on which Declarant no longer has an elected representative on the Board, and continuing until the later to occur of the date on which Declarant (a) no longer owns a Lot in the Properties or (b) cannot unilaterally annex property to the Properties, the Association shall provide Declarant with written notice of all meetings of the Board as if Declarant were an Owner and Declarant shall be entitled to have a representative present at all such Board meetings ("*Declarant's Representative*"). The Declarant's Representative shall be present in an advisory capacity only and shall not be a Board member or have any right to vote on matters coming before the Board.

15.10 DECLARANT APPROVAL OF ACTIONS.

15.10.1 General Rights. Until Declarant no longer owns a portion of the Properties, Declarant's prior written approval is required for any amendment to the Restrictions which would impair or diminish Declarant's right to complete the Properties or sell or lease dwellings therein.

15.10.2 Limit on Actions. Until Declarant no longer owns any Lots in the Properties, the following actions, before being undertaken by the Association, must first be approved in writing by Declarant:

- (a) Any amendment or action requiring the approval of first Mortgagees;
- (b) The levy of a Capital Improvement Assessment for the construction of new facilities not constructed on the Common Area by Declarant;
- (c) Any significant reduction of Association maintenance or other services; or
- (d) Any modification or termination of any provision of the Restrictions benefiting Declarant.

15.11 MARKETING NAME. The Properties shall be marketed under the general name "Rancho Bahamas." Declarant may change the marketing name of the Properties or designate a different marketing name at any time in Declarant's sole discretion. Declarant shall notify the DRE of any change in or addition to the marketing name or names of the Properties.

**ARTICLE XVI
CITY REQUIRED PROVISIONS**

16.1 RIGHT OF CITY TO COMPEL PERFORMANCE. The City, after making due demand and giving reasonable notice, may enter the Properties and perform, at the Owner's sole expense, any maintenance required thereon by the Declaration or the City ordinance. In the event that there are any breaches of any of the provisions set forth in the Declaration and/or any violations of City codes, regulations, and/or ordinances, or if any portion of the Common Area, including but not limited to, the private streets, landscaped open areas, and recreational improvements and facilities shall not be preserved and maintained in the City's opinion in a safe condition and in a state of good repair and aesthetically pleasing appearance, or in the event that any or all of any part of the real property taxes, irrigation taxes or other taxes or assessments imposed by any public entity, including the City, shall remain unpaid and in default more than three (3) months after the due date thereof, the City may, after giving notice as described below, cause (i) the necessary work of maintenance or repair to be accomplished or the unpaid tax or assessment, together with all penalties or interest thereon, to be paid, and (ii) the costs thereof to be assessed against each Owner of a Lot subject to this Declaration.

16.1.1 Notice Requirements. The notice that is referred to above shall be in writing and mailed to all Owners whose names and addresses appear on the then current roll of members of the Association or whose names appear as Owners of record with the Office of the Riverside County Recorder. The City shall also cause at least one copy of such notice to be posted in a conspicuous place within the Properties and shall also cause one copy of such notice to be mailed to the Association at the Properties.

Said notice shall specify the action required to be done and shall state that if such work is not commenced within ten (10) days after receipt of such notice and diligently and without interruption prosecuted to completion, the City may cause such action or work to be done, in which case the cost and expense of such action or work, including incidental expenses, filing fees, title company charges, miscellaneous foreclosure charges, and reasonable attorneys' fees incurred by the City, will be added to the cost of such work.

16.1.2 Payment of Costs to City. Following the completion of such work or payment of such sums by the City, the City shall determine the total cost of such work or payment, including incidental costs, title company charges, foreclosure costs, and reasonable attorneys' fees and shall deliver to the Association a written statement setting forth such costs and the total thereof. The Board shall levy a special assessment under Section 7.5.4 of the Declaration for the purpose of payment of such costs if entitled to do so within legal limitations. If not so entitled, the Association shall put the matter to the Membership for approval pursuant to California legal requirements within forty-five (45) days of the City's request.

In the event the Association shall fail to levy such special assessment, the City may petition the court for an order that a special assessment be levied under the terms of Article VII of this Declaration and thereafter take such action as is permitted under this Declaration to compel payment, establish a lien on each such Lot, and prosecute foreclosure thereof for failure to pay such special assessment. In the event the Association shall levy such special assessment, but thereafter fail to remit to the City the funds necessary to satisfy such costs within thirty (30) days following the Association's levy, the City may cause a lien to be

created against each such Lot and thereafter prosecute foreclosure of such lien to satisfy such special assessment. It is intended that the City shall be deemed an interest holder under this Declaration and thereby act as the Association or any Owner with respect to establishing a special assessment, any lien attendant thereto, and pursuing the remedies permitted in connection therewith.

Costs incurred by the City in exercising any of its rights under this Article may be added to the cost of the work described above, and then charged to each Owner of a Lot proportionately.

16.1.3 **Amendment Requires City Consent.** No amendment, modification or revocation of this Declaration or any part hereof may be had without the express written consent of the City, which consent must be recorded in the official records of the County.

16.2 REVIEW AND APPROVAL BY CITY.

16.2.1 **Review by City.** The Conditions of Approval for Tract No. 25055 (the "*Conditions of Approval*") requires the City to review and approve this Declaration. The Association acknowledges that the City has reviewed this Declaration and that its review is limited to a determination of whether this Declaration properly implements the requirements of the Conditions of Approval for the Properties. The City's consent to this Declaration does not contain or imply any approval of the appropriateness or legality of the other provisions of this Declaration, including without limitation, the use restrictions, private easements and encroachments, private maintenance requirements, architecture and landscape controls, assessments procedures, assessment enforcement, resolution of disputes or procedural matters.

16.2.2 **Conflict.** In the event of a conflict between the Conditions of Approval or the land use entitlements issued by the City for the Properties or federal, state or local laws, ordinances and regulations, on the one hand, and the provisions of this Declaration, on the other hand, the provisions of the Conditions of Approval and federal, state or local laws, ordinances, and regulations shall prevail, notwithstanding the language of this Declaration.

[Signatures on Following Page]

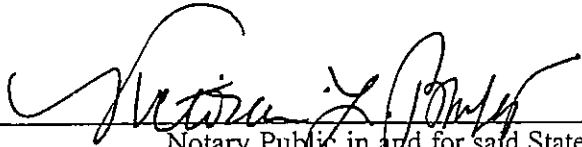
EXHIBIT A

ARTICLES OF INCORPORATION OF THE ASSOCIATION

STATE OF CALIFORNIA)
)
COUNTY OF ORANGE) ss.

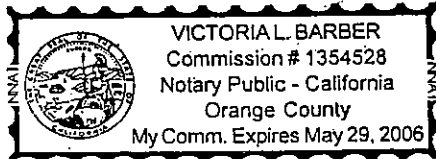
On 8-3-2004, before me, Victoria L. Barber,
personally appeared BERNARD J. HAMRY, ~~personally known to me~~ (or proved to me on the
basis of satisfactory evidence) to be the person whose name is subscribed to the within
instrument and acknowledged to me that he executed the same in his authorized capacity, and
that by his signature on the instrument the person, or the entity upon behalf of which the person
acted, executed the instrument.

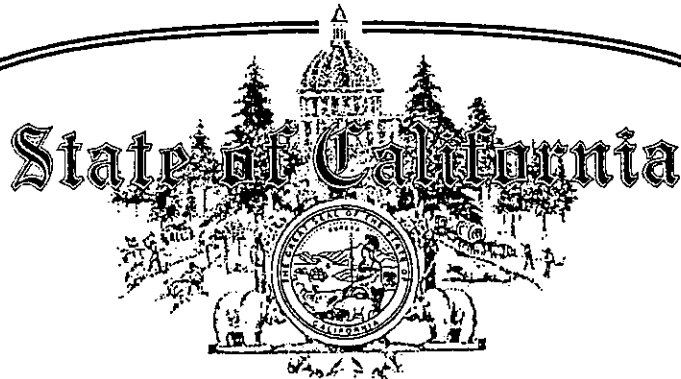
WITNESS my hand and official seal.



Notary Public in and for said State

(SEAL)





SECRETARY OF STATE

I, *Kevin Shelley*, Secretary of State of the State of California, hereby certify:

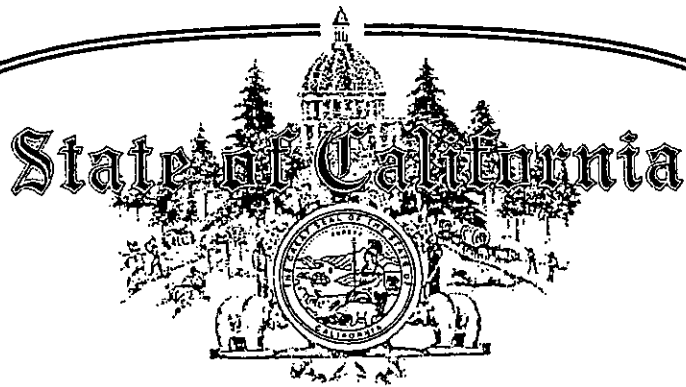
That the attached transcript of 1 page(s) has been compared with the record on file in this office, of which it purports to be a copy, and that it is full, true and correct.

IN WITNESS WHEREOF, I execute this certificate and affix the Great Seal of the State of California this day of

NOV 26 2003



Kevin Shelley
Secretary of State



SECRETARY OF STATE

I, *Kevin Shelley*, Secretary of State of the State of California, hereby certify:

That the attached transcript of 1 page(s) has been compared with the record on file in this office, of which it purports to be a copy, and that it is full, true and correct.

IN WITNESS WHEREOF, I execute this certificate and affix the Great Seal of the State of California this day of

NOV 26 2003



Kevin Shelley
Secretary of State