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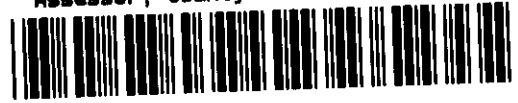
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Page 1 of 133

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DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS AND RESERVATION
OF EASEMENTS FOR
RIO VISTA VILLAGE

THIS DECLARATION INCLUDES A WAIVER OF THE RIGHT TO A JURY TRIAL AND THE USE OF AN ALTERNATE DISPUTE RESOLUTION PROCESS IN THE EVENT OF DISPUTES (INCLUDING CONSTRUCTION DEFECT DISPUTES) BETWEEN THE DECLARANT AND/OR MERCHANT BUILDERS AND THE ASSOCIATION AND/OR OWNERS.

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

TABLE OF CONTENTS

OF

DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS

AND RESERVATION OF EASEMENTS

FOR

RIO VISTA VILLAGE

<u>DESCRIPTION</u>	<u>PAGE NO.</u>
ARTICLE I DEFINITIONS	2
1.1. Annexable Area.	2
1.2. Apartment Area.	2
1.3. Architectural Committee.	2
1.4. Architectural Committee Rules.	2
1.5. Articles.	2
1.6. Assessment Unit.	2
1.7. Association.	2
1.8. Beneficiary	3
1.9. Board or Board of Directors.	3
1.10. Budget.	3
1.11. Bylaws.	3
1.12. Capital Improvement Assessment.	3
1.13. City.	3
1.14. Close of Escrow.	3
1.15. Common Area.	3
1.16. Common Assessment.	3
1.17. Common Expenses.	4
1.18. Condominium.	4
1.19. Condominium Project.	4
1.20. Cost Center.	4
1.21. County.	5
1.22. Declarant.	5
1.23. Declarant's Delegate.	5
1.24. Declaration.	5
1.25. Dedicated Maintenance Property.	5



++TABLE OF CONTENTS (Continued)

<u>DESCRIPTION</u>	<u>PAGE NO.</u>
1.26. Deed of Trust.	5
1.27. Delegate.	5
1.28. Delegate District.	5
1.29. DRE.	6
1.30. Family.	6
1.31. FHA.	6
1.32. FHLMC.	6
1.33. First Subdivision.	6
1.34. FNMA.	6
1.35. GNMA.	6
1.36. Improvement.	6
1.37. Local Governmental Agency.	6
1.38. Lot.	7
1.39. Maintenance Funds.	7
1.40. Maintenance Guidelines.	7
1.41. Maintenance Property.	7
1.42. Maintenance Property Wall.	7
1.43. Manager.	8
1.44. Member.	8
1.45. Merchant Builder.	8
1.46. Mortgage.	8
1.47. Mortgagee/Mortgagor.	8
1.48. Notice and Hearing.	8
1.49. Owner.	8
1.50. Person.	8
1.51. Phase of Development.	9
1.52. Planned Development.	9
1.53. Project Association.	9
1.54. Project Declaration.	9
1.55. Properties.	9
1.56. Public Property.	9
1.57. Public Report.	9
1.58. Reconstruction Assessment.	10
1.59. Record, Filed, Recordation.	10
1.60. Reserves.	10
1.61. Residence.	10
1.62. Residential Area.	10
1.63. Restrictions.	10
1.64. Rules and Regulations.	10



++TABLE OF CONTENTS (Continued)

<u>DESCRIPTION</u>	<u>PAGE NO.</u>
1.65. Special Assessment.	10
1.66. Supplemental Declaration.	10
1.67. VA.	11
1.68. Village Club Agreement	11
 ARTICLE II DEVELOPMENT; LAND CLASSIFICATIONS; ANNEXATION	 11
2.1. Interpretation of Declarations.	11
2.2. Land Classifications.	11
2.3. Annexation of Annexable Area.	12
 ARTICLE III MAINTENANCE PROPERTY; USES AND RESTRICTIONS	 14
3.1. Owners' Rights of Enjoyment.	14
3.2. Delegation of Use.	16
3.3. Parking and Traffic Control.	16
3.4. Easements for Vehicular Traffic.	16
3.5. Waiver of Use.	16
3.6. Title to the Maintenance Property.	17
3.7. Taxes.	19
3.8. Master Communications Systems Service Easement.	19
3.9. Maintenance Property Wall Easements.	19
3.10. Declarant Easements.	20
3.11. Regular Inspection.	20
 ARTICLE IV ASSOCIATION	 21
4.1. Organization.	21
4.2. Membership.	22
4.3. Delegate Districts.	24
4.4. Delegates.	24
4.5. Voting By Delegates.	25
 ARTICLE V FUNCTIONS OF ASSOCIATION	 29
5.1. Permitted Functions.	29
5.2. Powers and Duties.	29
5.3. Rules and Regulations.	32
5.4. Prohibited Activities.	32
 ARTICLE VI FUNDS AND ASSESSMENTS	 33
6.1. Obligation.	33
6.2. Maintenance Funds.	33



++TABLE OF CONTENTS (Continued)

<u>DESCRIPTION</u>	<u>PAGE NO.</u>
6.3. Disbursements.	34
6.4. Maintenance Property Damage or Neglect.	34
6.5. Common Assessments.	35
6.6. Commencement of Common Assessments.	36
6.7. Limitations on Common Assessment Increases.	37
6.8. Capital Improvement Assessments.	39
6.9. Exempt Property.	40
6.10. Remedies of the Association.	40
6.11. Notice of Lien.	41
6.12. Foreclosure Sale.	41
6.13. Curing of Default.	41
6.14. Cumulative Remedies.	41
6.15. Mortgage Protection-Liens.	42
6.16. Priority of Assessment Lien.	42
ARTICLE VII RESIDENTIAL AREA USE RESTRICTIONS	42
7.1. Residential Use.	42
7.2. Improvements.	43
7.3. Landscaping.	44
7.4. Parking and Vehicular Restrictions.	44
7.5. Antennae.	47
7.6. Insurance Rates.	47
7.7. No Further Subdivision.	48
7.8. Signs.	48
7.9. Animals.	48
7.10. Nuisances.	49
7.11. Exterior Maintenance and Repair.	49
7.12. Drainage.	50
7.13. Water and Sewer Systems.	50
7.14. No Hazardous Activities.	50
7.15. Unsightly Articles.	50
7.16. Temporary Prefabricated Structures/Dumpsters.	51
7.17. No Mining or Drilling.	51
7.18. Improvements and Alterations.	51
7.19. Solar Heating Systems.	51
7.20. Views.	52
7.21. Rights of Handicapped.	52
7.22. Party Walls.	52
7.23. Damage to Residences-Reconstruction.	52



++TABLE OF CONTENTS (Continued)

<u>DESCRIPTION</u>	<u>PAGE NO.</u>
ARTICLE VIII RESIDENTIAL AREA ARCHITECTURAL CONTROL	53
8.1. Members of Architectural Committee.	53
8.2. Rights of Appointment.	53
8.3. Review of Construction Activities.	54
8.4. Applications.	55
8.5. Meetings of the Architectural Committee.	56
8.6. No Waiver of Future Approvals.	56
8.7. Compensation of Members.	57
8.8. Correction of Defects.	57
8.9. Scope of Review.	58
8.10. Variances.	58
8.11. Pre-Approvals.	58
8.12. Appeals.	58
 ARTICLE IX DESTRUCTION OR CONDEMNATION OF MAINTENANCE	
PROPERTY	59
9.1. Damages by Owners or Project Associations.	59
9.2. Repair of Damages.	59
9.3. Condemnation.	59
9.4. Notice to Owners and Listed Mortgagees.	60
 ARTICLE X DECLARANT AND MERCHANT BUILDER EXEMPTION	60
10.1. Interest of Declarant.	60
10.2. Exemptions	61
10.3. Easement Relocation.	62
10.4. Conversion of Apartment Area.	62
 ARTICLE XI INSURANCE	63
11.1. Casualty Insurance.	63
11.2. Insurance Obligations of Owners.	63
11.3. Waiver of Subrogation.	63
11.4. Liability and Other Insurance.	64
11.5. Notice of Expiration Requirements.	65
 ARTICLE XII MISCELLANEOUS	65
12.1. Term and Termination.	65
12.2. Amendments.	65
12.3. Mortgagee Protection-General.	67



++TABLE OF CONTENTS (Continued)

<u>DESCRIPTION</u>	<u>PAGE NO.</u>
12.4. Notices.	68
12.5. Enforcement and Non-Waiver.	68
12.6. Interpretation.	71
12.7. Reservation of Easements.	71
12.8. No Public Right of Dedication.	72
12.9. Incorporation of Restrictions.	72
12.10. No Representations or Warranties.	72
12.11. Standard of Care, Nonliability.	72
12.12. Enforcement of Certain Bonded Obligations.	74
12.13. Priorities and Inconsistencies.	74
12.14. Dispute Resolution.	75
 SUBORDINATION	 81
 EXHIBIT "A" - DESCRIPTION OF RESIDENTIAL AREA IN FIRST SUBDIVISION	
 EXHIBIT "B" - DESCRIPTION OF MAINTENANCE PROPERTY IN FIRST SUBDIVISION	
 EXHIBIT "C" - DESCRIPTION OF ANNEXABLE AREA	
 EXHIBIT "D" - ARTICLES OF INCORPORATION OF ASSOCIATION	
 EXHIBIT "E" - BYLAWS OF ASSOCIATION	



**DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS AND RESERVATION
OF EASEMENTS
FOR
RIO VISTA VILLAGE**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND RESERVATION OF EASEMENTS ("**Declaration**") is made by RIO VISTA LAND COMPANY, L.P., a Texas limited partnership ("**Declarant**") and D.R. HORTON LOS ANGELES HOLDING COMPANY, INC., a California corporation ("**Initial Merchant Builder**"). Except as otherwise specified herein, the capitalized words and phrases used in this Declaration shall have the meanings specified in Article I hereof.

P R E A M B L E:

- A. Initial Merchant Builder is or will be the owner and developer of certain real property (exclusive of public rights-of-way) in the City of Cathedral City, County of Riverside, State of California, more particularly described in *Exhibit "A"* and *Exhibit "B"* attached hereto and incorporated herein, which property constitutes the First Subdivision.
- B. All of the Properties will be developed with certain common objectives, and Owners of Lots or Condominiums will have certain common interests. The Residential Area and the Apartment Area, if any, will be developed with objectives designed to preserve the value of and to benefit all the property within the Properties, even though the Residential Area and the Apartment Area, if any, are of slightly different character. The common development plan imposes reciprocal burdens and benefits on all of the Properties, such that each portion and the entirety of the Properties are both burdened by the provisions of this Declaration for the benefit of each other portion of the Properties, and benefitted by the burdens imposed on each other portion of the Properties.
- C. Declarant and Initial Merchant Builder have deemed it desirable to create a "master planned community" (as defined in Section 2792.32 of Title 10 of the California Code of Regulations) which is also a common interest development pursuant to the Davis-Stirling Common Interest Development Act, including the Association formed under the Nonprofit Mutual Benefit Corporation Law of the State of California, to which shall be delegated and assigned the powers and functions of (1) owning, maintaining and administering the Maintenance Property for the use of its Members and authorized guests, (2) administering and enforcing the Restrictions, and (3) collecting and disbursing the assessments and charges hereinafter created.
- D. Declarant and Initial Merchant Builder hereby declare that all of the Properties shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved



subject to the easements, restrictions, covenants, conditions and equitable servitudes contained in this Declaration, all of which are for the purpose of preserving and protecting the value, attractiveness and desirability of the Properties, in furtherance of a comprehensive plan for the protection, maintenance, subdivision, improvement and sale of the Properties, or any portion thereof. The covenants, conditions, restrictions, reservations, easements, equitable servitudes, liens and charges set forth herein shall (1) run with the Properties; (2) be binding upon all persons having any right, title or interest in the Properties, or any part thereof, their heirs, successive owners and assigns; (3) inure to the benefit of every portion of the Properties and any interest therein; (4) inure to the benefit of and be binding upon Declarant, the Merchant Builders, and their successive owners and each Owner and his or her respective successors-in-interest; and (5) may be enforced by Declarant, any Merchant Builder, any Owner or the Association.

ARTICLE I DEFINITIONS

Unless otherwise expressly provided, the following words and phrases when used in this Declaration shall have the meanings hereinafter specified.

1.1. **Annexable Area.** Annexable Area means the real property described in *Exhibit "C,"* all or any portion of which property may be made subject to this Declaration pursuant to the provisions of Article II hereof.

1.2. **Apartment Area.** Apartment Area means all of the real property so classified from time to time in a Supplemental Declaration, as provided in Article II hereof, which is developed or designated for development with Improvements suitable for multi-Family apartment use. Except as otherwise expressly provided in the Supplemental Declaration annexing an Apartment Area to the Properties, all Apartment Areas in the Properties are exempt from (i) the provisions of Article VII, Residential Area Use Restrictions, and (ii) except as provided in Section 8.3.2, the provisions of Article VIII, Residential Area Architectural Control.

1.3. **Architectural Committee.** Architectural Committee means the architectural and landscaping committee created pursuant to Article VIII hereof.

1.4. **Architectural Committee Rules.** Architectural Committee Rules means the Architectural Committee design standards, procedures, rules and guidelines which may be adopted by the Board pursuant to this Declaration, as amended.

1.5. **Articles.** Articles means the Articles of Incorporation of the Association, as amended. A copy of the Articles is attached hereto as *Exhibit "D."*

1.6. **Assessment Unit.** Assessment Unit means the arithmetical value allocated to each Lot and Condominium pursuant to Section 6.5.1 hereof, for purposes of calculating the share of Common Expense attributable to such Lot or Condominium.



1.7. **Association.** Association means Rio Vista Village Community Association, a California nonprofit corporation (formed pursuant to the Nonprofit Mutual Benefit Corporation Law), its successors and assigns. The Association is an "Association" as defined in Section 1351(a) of the California Civil Code.

1.8. **Beneficiary.** Beneficiary means a Mortgagee under a Mortgage or a beneficiary under a deed of trust, as the case may be, and the assignees of such Mortgagee or beneficiary.

1.9. **Board or Board of Directors.** Board or Board of Directors means the Association Board of Directors elected in accordance with the Association Bylaws and this Declaration.

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

1.11. **Bylaws.** Bylaws means the Association's Bylaws adopted or to be adopted by the Board initially in the form of *Exhibit "E"* attached hereto, as amended.

1.12. **Capital Improvement Assessment.** Capital Improvement Assessment means a charge against the Owners and their Lots and Condominiums, representing the Association's costs to install or construct any Improvements on any portion of the Maintenance Property.

1.13. **City.** City means the City of Cathedral City, in the County of Riverside, State of California, and its various departments, divisions, employees and representatives.

1.14. **Close of Escrow.** Close of Escrow means the date on which a deed or other such instrument is Recorded conveying a Lot or Condominium in the Properties pursuant to a transaction for which a Public Report is required, with the exception of (i) deeds between Declarant and (a) any successor to the rights of Declarant hereunder or (b) any Merchant Builder, or (ii) deeds between Merchant Builders.

1.15. **Common Area.** Common Area means that area within a particular Planned Development or Condominium Project within the Properties which is owned or maintained for the primary benefit of the Owners within such Planned Development or Condominium Project within the Properties.

1.16. **Common Assessment.** Common Assessment means the annual or supplemental charge against each Owner and his Lot or Condominium, representing a portion of the ordinary Common Expenses for maintaining, improving, repairing, replacing, managing and operating the Maintenance Property, which charge shall be levied among all Owners and their respective Lots and Condominiums, as provided herein. Common Assessments shall include all late payment penalties, interest charges, attorneys' fees or other costs incurred by the Association in its efforts to collect all assessments (other than Special Assessments) authorized pursuant to this Declaration.



1.17. **Common Expenses.** Common Expenses means, subject to Article VI, the actual and estimated costs of: maintaining, managing, operating, repairing and replacing the Maintenance Property; use fees and other costs incurred by the Association under the Village Club Agreement; unpaid Special Assessments, Reconstruction Assessments and Capital Improvement Assessments, including those costs not paid by the Owner responsible for payment; managing and administering the Association including, but not limited to, compensation paid by the Association to Managers, accountants, attorneys and other consultants and employees; all utilities, gardening, and other services benefitting the Maintenance Property; street sweeping and cleaning in excess of that provided by the City; management and maintenance of internet website(s) and related facilities, fire, casualty and liability insurance, worker's compensation insurance, and other insurance covering the Maintenance Property; maintenance of clustered mailboxes and the structures therefor; bonding the Association Directors, officers, agents, employees and Manager; taxes paid by the Association; amounts paid by the Association for discharge of any lien or encumbrance levied against the Maintenance Property, or portions thereof, including, without limitation, real property taxes or assessments, if any, levied against the Maintenance Property; all Reserves; and all other items incurred by the Association pursuant to this Declaration.

1.18. **Condominium.** Condominium means a condominium as defined in Section 783 of the California Civil Code, or any similar California statute hereafter enacted. For purposes of this Declaration, the term "**Condominium**" shall include a Residence or other area of space which is appurtenant to one (1) or more ownership interests in a "**community apartment**" or "**stock cooperative**" project (as such terms are defined below in the definition of Condominium Project). The airspace element of any Condominium is referred to herein as the "**Condominium Unit.**"

1.19. **Condominium Project.** Condominium Project means a "condominium project" as defined in Section 1351(f) of the California Civil Code, or any similar California statute hereafter enacted, and all property designated in the Project Declaration or Supplemental Declaration for such Condominium Project as additional "phases of development" if such Condominium Project is developed in phased increments. For purposes of this Declaration, the term "**Condominium Project**" also includes "community apartment" and "stock cooperative" projects as respectively defined in Sections 1351(d) and 1351(m) of the California Civil Code or any similar California statutes hereafter enacted.

1.20. **Cost Center.** Cost Center means one or more Improvements or maintenance areas located on a portion or portions of the Maintenance Property, the maintenance or use of which Improvements or maintenance areas is fully or partially restricted to Owners of certain Lots or Condominiums as specified in one or more Supplemental Declarations, and where the expenses of operating, maintaining and replacing such Improvements or maintenance areas are borne solely or disproportionately by such specified Owners. There are no Cost Centers established in connection with the First Subdivision. Cost Centers may be designated in connection with future Phases of Development annexed to the Properties.



1.21. **County.** County means the County of Riverside, in the State of California, and its various departments, divisions, employees and representatives.

1.22. **Declarant.** Declarant means RIO VISTA LAND COMPANY, L.P., a Texas limited partnership, its successors, and any other Person to which it assigns any of its rights hereunder by an express written and Recorded assignment. Any such assignment may include only specific rights of the Declarant hereunder and may be subject to such conditions and limitations as Declarant may impose in its sole and absolute discretion. As used in this Section, “*successor*” means any Person who acquires Declarant or substantially all of its assets, or who merges with Declarant by sale, merger, reverse merger, consolidations, sale of stock or assets, operation of law or otherwise. Declarant is a builder described in California Civil Code Section 1375.

1.23. **Declarant’s Delegate.** Declarant’s Delegate means the Delegate appointed by Declarant to represent Declarant and all Merchant Builders and to cast the Class A and Class B votes of the Declarant and all Merchant Builders.

1.24. **Declaration.** Declaration means this Declaration of Covenants, Conditions and Restrictions and Reservation of Easements, as amended.

1.25. **Dedicated Maintenance Property.** Dedicated Maintenance Property means any portion of the Maintenance Property which is subject to an unaccepted offer of dedication to a Local Governmental Agency for public access, use or maintenance. Dedicated Maintenance Property may include parks, trails, other recreational or open space amenities, landscaping areas or other Improvements. Dedicated Maintenance Property specifically excludes Public Property which is the maintenance responsibility of the Association. Dedicated Maintenance Property shall be maintained and used by the Association and the Owners in the same manner as all other Maintenance Property until the offer of dedication is accepted, whereupon (i) the Dedicated Maintenance Property shall be maintained by the accepting Local Governmental Agency and shall be available for use by the general public, and (ii) the Dedicated Maintenance Property shall no longer constitute a part of the Maintenance Property.

1.26. **Deed of Trust.** Deed of Trust means a Mortgage as further defined herein.

1.27. **Delegate.** Delegate means (i) Declarant’s Delegate, and (ii) a natural Person appointed to represent all of the Members (exclusive of Declarant and the Merchant Builders) within a Delegate District to vote on their behalf, as further provided in this Declaration and in the Bylaws. All provisions of this Declaration and the Bylaws pertaining to the appointment, removal, qualification or action of Delegates shall be equally applicable to all alternate Delegates.

1.28. **Delegate District.** Delegate District means a geographical area in the Properties in which a single Delegate represents the collective voting power of all Members (other than



Declarant and the Merchant Builders who shall be represented by Declarant's Delegate) owning Lots and Condominiums within such geographical area.

1.29. **DRE.** DRE means the California Department of Real Estate, or such other successor governmental agency of the State of California which administers the sale of subdivided lands pursuant to Sections 11000 et seq., of the California Business and Professions Code, or any similar California statute hereafter enacted.

1.30. **Family.** Family means (i) a group of natural Persons related to each other by blood or legally related to each other by marriage or adoption, or (ii) a group of natural Persons not all so related who maintain a single common household in a Residence.

1.31. **FHA.** FHA means the Federal Housing Administration of the United States Department of Housing and Urban Development and any department or agency of the United States government which succeeds to the FHA's function of insuring notes secured by Mortgages on residential real estate.

1.32. **FHLMC.** FHLMC means the Federal Home Loan Mortgage Corporation created by Title II of the Emergency Home Finance Act of 1970, and its successors.

1.33. **First Subdivision.** First Subdivision means the real property described in *Exhibit "A"* and *Exhibit "B"* to this Declaration. The First Subdivision is hereby designated as a portion of Delegate District No. 1.

1.34. **FNMA.** FNMA 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.

1.35. **GNMA.** GNMA means the Government National Mortgage Association administered by the United States Department of Housing and Urban Development, and its successors.

1.36. **Improvement.** Improvement means all structures, landscaping and appurtenances thereto, including but not limited to buildings, outbuildings, walkways, clustered mailbox structures, sprinkler pipes, irrigation systems, storm drainage systems, garages, recreational facilities, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, hedges, windbreaks, plantings, planted trees and shrubs, fire breaks, poles, antennae, signs, exterior air conditioning and water softener fixtures or equipment.

1.37. **Local Governmental Agency.** Local Governmental Agency means the City and any other local or municipal governmental entity or agency including, without limitation, special assessment district, maintenance district, community facilities district or utility district.



1.38. **Lot.** Lot means any lot or parcel of land shown upon any Recorded subdivision map or Recorded parcel map of any portion of the Properties (as such lot or parcel may be modified by any Recorded lot line adjustment), together with the Improvements, if any, thereon, but excepting any Common Area, the Maintenance Property and any Condominium in a Condominium Project.

1.39. **Maintenance Funds.** Maintenance Funds means the accounts created for Association receipts and disbursements pursuant to Article VI hereof.

1.40. **Maintenance Guidelines.** Maintenance Guidelines means the guidelines for the ordinary and necessary maintenance, repair, replacement and preservation of the Maintenance Property Improvements. Among other things, the Maintenance Guidelines specify suggested maintenance levels, recommended intervals for regularly scheduled maintenance items, and the scope of required maintenance practices and procedures.

1.41. **Maintenance Property.** Maintenance Property means all the real and personal property and Improvements which are owned in fee simple at any time by the Association, or over which the Association has an easement or encroachment permit for the use, care or maintenance thereof, for the common benefit, use and enjoyment of Owners, as further provided in Article III of this Declaration. The Maintenance Property includes (for maintenance purposes but not necessarily fee ownership) without limitation and as applicable (i) all walls, parkways, sidewalks, median strips, slopes, berms, parks, landscaping, fuel modification zones, drainage retention areas for flood and water control, parkway areas, sand mitigation features (blowsand impounded areas and soil stabilization), recreational facilities, and irrigation and drainage systems in public property or public rights-of-way in or near the Properties designated for maintenance by the Association pursuant to this Declaration or any Supplemental Declaration, any agreement between a Local Governmental Agency and Declarant, a Merchant Builder or the Association, or on any Recorded subdivision or parcel map of the Properties, the maintenance of which is not the responsibility of a state, local or municipal governmental agency or entity, or a Project Association pursuant to a Project Declaration, (ii) the Maintenance Property Walls as hereafter defined, (iii) Public Property, and (iv) areas adjacent to the Properties over which the Association is granted a maintenance easement. Title to all or any portion of the Maintenance Property may be subject to a prior dedication to a Local Governmental Agency.

1.42. **Maintenance Property Wall.** Maintenance Property Wall means any wall or fence which (i) separates a Lot or Common Area from the immediately adjacent Maintenance Property or Public Property, regardless of whether such wall or fence is (a) located on the common property line separating the Maintenance Property or Public Property from the adjacent Lot or Common Area, or (b) located wholly or partially within the Maintenance Property, Public Property, Lot or Common Area immediately adjacent to such common property line, or (ii) is otherwise designated as an Maintenance Property Wall in any Supplemental Declaration. Notwithstanding the foregoing, the term Maintenance Property Wall does not include (1) any wall or fence which is the maintenance responsibility of a Project Association or a Local Governmental Agency or (2) unless otherwise provided in a Supplemental Declaration, walls or



fences that separate a Lot from alleys. Maintenance Property Wall designations pursuant to this Declaration and any Supplemental Declaration, automatically include any Maintenance Property Wall described in (i) above, in the applicable Phase of Development regardless of whether such Maintenance Property Wall is specifically described herein or in the applicable Supplemental Declaration.

1.43. **Manager.** Manager means the Person, firm or agent employed as an independent contractor by the Association to perform functions of the Association, as limited by the Restrictions and the terms of the agreement between the Association and such Person.

1.44. **Member.** Member means every Person holding a Membership in the Association. Membership means the voting and other rights and privileges of Members as provided in the Restrictions, together with the correlative duties and obligations contained therein.

1.45. **Merchant Builder.** Merchant Builder means a Person who acquires a portion of the Properties for the purpose of (i) developing such portion for resale to the general public; or (ii) in the case of an Apartment Area for developing such area for sale, lease, short or long term occupancy, provided, however, that the term "**Merchant Builder**" shall not mean Declarant but shall include the Initial Merchant Builder.

1.46. **Mortgage.** Mortgage means any mortgage or deed of trust or other conveyance of a Lot, Condominium or other portion of the Properties to secure the performance of an obligation, which will be reconveyed upon the completion of such performance. The term "**Deed of Trust**" or "**Trust Deed**" is synonymous with the term "**Mortgage.**"

1.47. **Mortgagee/Mortgagor.** Mortgagee means a Person to whom a Mortgage is made and includes the beneficiary of a Deed of Trust. Mortgagor means a Person who mortgages his or its property to another (*i.e.*, the maker of a Mortgage), and includes the Trustor of a Deed of Trust. The term "**Trustor**" is synonymous with the term "**Mortgagor,**" and the term "**Beneficiary**" is synonymous with the term "**Mortgagee.**"

1.48. **Notice and Hearing.** Notice and Hearing means written notice and a hearing before the Board or the Architectural Committee, as applicable, as further provided in the Bylaws.

1.49. **Owner.** Owner means the Person or Persons, including Declarant and Merchant Builders, holding a fee simple or long-term ground leasehold interest of Record to a Lot or a Condominium. The term "**Owner**" includes a seller under an executory contract of sale, but excludes Mortgagees. For purposes of this Declaration, a "**long-term ground leasehold interest**" means a leasehold interest having a term of ten (10) or more years.

1.50. **Person.** Person means a natural individual, a corporation, partnership or any other entity with the legal right to hold title to real property.



1.51. **Phase of Development.** Phase of Development means (i) the First Subdivision, (ii) any portion of the Properties covered by a Supplemental Declaration for which a Public Report has been issued by the DRE, unless otherwise defined in such Supplemental Declaration, (iii) any portion of the Properties designated as a Phase of Development in a Recorded Supplemental Declaration (including all amendments thereto) governing such property, and (iv) if no Public Report is issued and there is no Phase of Development designation in the Supplemental Declaration for a portion of the Properties, then all of the real property annexed pursuant to that Supplemental Declaration shall be a Phase of Development.

1.52. **Planned Development.** Planned Development means an area of the Properties (other than a multi-Family apartment project in an Apartment Area or Condominium Project) developed as an integrated increment of this overall planned community, whether or not the increment is developed in phases. For purposes of this Declaration, a Planned Development may or may not qualify as a "planned development" as defined in Section 1351(k) of the California Civil Code, or any similar California statute hereinafter enacted.

1.53. **Project Association.** Project Association means any California nonprofit corporation or unincorporated Association, or its successor, established in connection with a Project Declaration, the membership of which is composed of Owners of Lots or Condominiums within a Condominium Project, Planned Development or other portion of the Properties.

1.54. **Project Declaration.** Project Declaration means any declaration of covenants, conditions and restrictions, or similar document, which affects solely a Condominium Project or Planned Development or other specified portion of the Properties.

1.55. **Properties.** Properties means the First Subdivision, together with such portions of the Annexable Area which are annexed to the property which is subject to this Declaration pursuant to Article II hereof. The Properties are classified as a "common interest development" as defined in Section 1351(c) of the California Civil Code.

1.56. **Public Property.** Public Property means those areas and facilities including, without limitation, all walls, median strips, slopes, berms, landscaping, streets, parks, alleys, sidewalks and irrigation and drainage systems on public property which are owned by or dedicated to the City or any other Local Governmental Agency and designated for maintenance by the Association pursuant to this Declaration, any Supplemental Declaration, subdivision condition of approval, Recorded map or other agreement. The Public Property including, without limitation, park, streets and landscape facilities thereon shall at all times (other than scheduled maintenance) be available for use by the general public.

1.57. **Public Report.** Public Report means a Final Subdivision Public Report issued by DRE in compliance with Sections 11000 *et seq.* of the California Business and Professions Code, or any similar California statute hereafter enacted.



1.58. **Reconstruction Assessment.** Reconstruction Assessment means a charge against each Owner and his Lot or Condominium, representing a portion of the Association's cost to reconstruct any Improvements on the Maintenance Property, pursuant to the provisions of this Declaration.

1.59. **Record, Filed, Recordation.** Record, Filed or Recordation means, with respect to any document, the recordation or filing of such document in the Office of the Riverside County Recorder.

1.60. **Reserves.** Reserves means those Common Expenses for which Association funds are set aside pursuant to Article VI of this Declaration and Section 1365.5 of the California Civil Code for funding the periodic painting, maintaining, repairing and replacing of the major components of the Maintenance Property which would not reasonably be expected to recur on an annual or less frequent basis, such amounts to be determined annually by the Board pursuant to maintenance cost guidelines established in accordance with prudent property management practices generally applied for "common interest developments" (as defined in Section 1351(c) of the California Civil Code) throughout the County.

1.61. **Residence.** Residence means a dwelling intended for use and occupancy by a single Family and located on or within a Lot or a Condominium Project or within an apartment building within an Apartment Area.

1.62. **Residential Area.** Residential Area means (i) all of the real property which is so classified in this Declaration or a Supplemental Declaration. The Residential Area is intended to be developed as single-Family Lots or Condominiums.

1.63. **Restrictions.** Restrictions means this Declaration, the Supplemental Declarations, the Articles, the Bylaws, the Architectural Committee Rules, the Rules and Regulations and the Maintenance Guidelines.

1.64. **Rules and Regulations.** Rules and Regulations means the Rules and Regulations adopted by the Board as provided herein.

1.65. **Special Assessment.** Special Assessment means a charge against a particular Owner or a particular Project Association, directly attributable to or reimbursable by such Owner or Project Association, equal to the cost incurred by the Association for corrective action performed pursuant to the Restrictions, or levied by the Board as a reasonable fine or penalty for noncompliance with the Restrictions, plus interest and other charges on such Special Assessment as provided for in this Declaration.

1.66. **Supplemental Declaration.** Supplemental Declaration means any declaration of covenants, conditions and restrictions and reservation of easements or similar document adding real property to the Properties or supplementing this Declaration which may be Recorded pursuant to Article II of this Declaration.



1.67. **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 VA's function of issuing guarantees of notes secured by Mortgages on residential real estate.

1.68. **Village Club Agreement.** Village Club Agreement means the Use and Maintenance Agreement and Grant of Nonexclusive Easements between Declarant and the Association Recorded concurrently with this Declaration.

ARTICLE II DEVELOPMENT; LAND CLASSIFICATIONS; ANNEXATION

2.1. **Interpretation of Declarations.** As each Phase of development of the Annexable Area is developed, Declarant or Declarant and a Merchant Builder may, with respect thereto, Record one (1) or more Project Declarations and/or Supplemental Declarations which incorporate this Declaration by reference, which shall designate the Delegate District(s) Cost Centers, if any, and use classifications for the affected areas, and which may supplement this Declaration with such additional covenants, conditions, restrictions and land uses as Declarant may deem appropriate for the real property being annexed thereby ("**Annexed Territory**"). The provisions of any Supplemental or Project Declaration may impose such additional or more restrictive conditions, covenants, restrictions, land uses and limitations as Declarant or a Merchant Builder may deem advisable, taking into account the particular requirements of each Phase of Development; and any such conditions shall not be deemed to constitute a conflict with the provisions of this Declaration to the extent they can reasonably be interpreted to be consistent. If there is any conflict between any Supplemental Declaration and the Declaration, the provisions of the Supplemental Declaration shall control with respect to the Annexed Territory described in such Supplemental Declaration, although such documents shall be construed to be consistent with one another to the extent possible. If there is any conflict between any Project Declaration and the provisions of the Declaration or applicable Supplemental Declaration, this Declaration and applicable Supplemental Declaration shall control, although such documents shall be construed to be consistent with one another to the extent possible. A Project Declaration may, but need not, provide for the establishment of a Project Association, to be comprised of Owners of Lots in a Planned Development or Condominiums in a Condominium Project.

2.2. **Land Classifications.** The Properties, including each portion of Annexed Territory described in a Supplemental Declaration, shall be designated according to one or more of the following land classifications:

2.2.1. **Residential Area.** The portion of the First Subdivision described in *Exhibit "A"* is classified as Residential Area.

2.2.2. **Maintenance Property.** The portion of the First Subdivision, if any, described in *Exhibit "B"* is classified as Maintenance Property. Maintenance Property



designations pursuant to this Declaration and any Supplemental Declaration automatically include any Maintenance Property Wall in the applicable Phase of Development, regardless of whether such Maintenance Property Wall is specifically described in *Exhibit "B"* or the applicable Supplemental Declaration.

2.2.3. **Common Area.** There is no Common Area in the First Subdivision.

2.2.4. **Apartment Area.** There is no Apartment Area in the First Subdivision.

2.3. **Annexation of Annexable Area.**

2.3.1. **Timing.** Declarant and Merchant Builders may, but shall not be required to, at any time or from time to time, add to the Properties covered by this Declaration all or any portion of the Annexable Area by Recording a Supplemental Declaration with respect to the Annexed Territory covered thereby. Annexable Area may be added to the Properties without limitation as to time and without the approval of the Owners, Delegates, or Association. Any proposed addition to the Properties of real property not located in the Annexable Area ("*Other Area*") shall require the approval of Delegates representing at least two thirds (2/3) of the voting power of the Association.

2.3.2. **Declaration Coverage.** Upon Recording a Supplemental Declaration covering any portion of the Annexable Area, the covenants, conditions and restrictions contained in this Declaration shall apply to the Annexed Territory in the same manner as if it were originally covered by this Declaration and originally constituted a portion of the Properties, subject to the provisions of the applicable Supplemental Declaration; and thereafter the rights, privileges, duties and liabilities of the Declarant with respect to the Annexed Territory shall be the same as with respect to the First Subdivision and the rights, obligations, privileges, duties and liabilities of the Owners, lessees and occupants of Lots and Condominiums within the Annexed Territory shall be the same as in the case of the Lots or Condominiums originally affected by this Declaration, subject to the provisions of the applicable Supplemental Declaration.

2.3.3. **Supplemental Declaration Content.** The Supplemental Declaration annexing real property to the Properties shall contain at least the following provisions:

(i) **Declaration Reference.** A reference to this Declaration, which reference shall state the date of Recordation hereof and the Instrument number or other relevant Recording data of the County Recorder's office;

(ii) **Extension of Comprehensive Plan.** A statement that the provisions of this Declaration shall apply to the Annexed Territory as set forth therein;

(iii) **Description.** A description of the Annexed Territory, including any Maintenance Property; and



(iv) **Land Classifications.** The land classifications of the Annexed Territory.

2.3.4. **Approval of Annexations.** Each Supplemental Declaration shall be signed by Declarant and by each Record owner of the Annexed Territory. For any annexation of Other Area, each Supplemental Declaration must be signed by the Record owner of the Annexed Territory and by an officer of the Association, certifying that the approval of the requisite percentage of Delegates has been obtained.

2.3.5. **Phasing; Amendments.** A Supplemental Declaration may cover one (1) or more Phases of Development, as designated in such Supplemental Declaration. A Supplemental Declaration which specifies that the Annexed Territory shall comprise a single Phase of Development may be amended prior to the commencement of Common Assessments within the Annexed Territory by an amendment to such Supplemental Declaration executed by all parties required to sign the Supplemental Declaration and thereafter Recorded, which amendment (i) specifies that the Annexed Territory shall comprise more than one (1) Phase of Development and identifies each such Phase of Development within the Annexed Territory, and (ii) identifies which portions of the Maintenance Property, if any, described in the previously Recorded Supplemental Declaration are to be included in each such designated Phase of Development.

2.3.6. **Deannexation and Amendment.**

(i) **By Declarant.** Declarant may unilaterally amend a Supplemental Declaration or delete all or a portion of a Phase of Development from coverage of this Declaration and the jurisdiction of the Association, so long as Declarant is the Owner of all of such Phase of Development (other than Public Property and Dedicated Maintenance Property), and provided that (1) a Notice of Deletion of Territory or an amendment to the Supplemental Declaration, as applicable, is Recorded in the same manner as the applicable Supplemental Declaration was Recorded, (2) no Class A or Class B Association vote has been exercised with respect to any portion of such Phase of Development, (3) Common Assessments have not yet commenced with respect to any portion of such Phase of Development, (4) there has been no Close of Escrow for the sale of any Lot or Condominium in such Phase of Development, (5) the Association has not made any expenditures or incurred any obligations with respect to any portion of such Phase of Development, and (6) if such Phase of Development consists of area as to which VA or FHA has issued a "project approval" (*i.e.* has agreed to guarantee or insure loans secured by Mortgages on Lots or Condominiums located in such phase of Development), VA, FHA or both, as applicable, have approved such deannexation or amendment. Notwithstanding the foregoing, Declarant may also unilaterally amend a Supplemental Declaration as provided in Section 12.2.1 hereof.

(ii) **By Merchant Builder.** Merchant Builders may amend a Supplemental Declaration or delete all or any portion of a Phase of Development from coverage of this Declaration and the jurisdiction of the Association, so long as such Merchant Builders or



Declarant and such Merchant Builders together are the Owners of all of such Phase of Development (with the exception of Public Property and Dedicated Maintenance Property) and provided further, that all requirements of items (1) through (5) set forth in Section 2.3.6(i) above have been satisfied, and Declarant has consented in writing to such amendment or deletion by executing the appropriate Notice of Deletion of Territory or amendment to the Supplemental Declaration, as applicable.

ARTICLE III MAINTENANCE PROPERTY; USES AND RESTRICTIONS

3.1. **Owners' Rights of Enjoyment.** Every Owner and, to the extent permitted by such Owner pursuant to the Restrictions, such Owner's Family, guests, invitees, lessees, and contract purchasers who reside in such Owner's Lot or Condominium, shall have a right of ingress and egress and of enjoyment in, to and over the Maintenance Property which shall be appurtenant to and shall pass with title to every Lot and Condominium, subject to the Association's right to exercise exclusive jurisdiction over and control of the Maintenance Property (other than Public Property) and the following provisions:

3.1.1. **Additional Maintenance Property.** The right of Declarant or any Merchant Builder to designate additional Maintenance Property pursuant to the terms of Article II hereof.

3.1.2. **Rules and Regulations.** The Association's right to establish reasonable Rules and Regulations pertaining to the use of the Maintenance Property and any recreational and other facilities located thereon, including, but not limited to, the right and obligation of the Association to enforce all parking restrictions for parking areas within the Maintenance Property as set forth in Section 3.3 below.

3.1.3. **Guests.** The Association's right to reasonably limit the number of guests of Owners using the Maintenance Property and any facilities thereon. The Rules and Regulations may specify a maximum number of guests which an Owner may admit to the Maintenance Property recreational facilities at one time without first obtaining the Association's prior written authorization. The Rules and Regulations may also require a deposit or other arrangements before Owners may use the Maintenance Property facilities for such large groups of guests.

3.1.4. **Fees.** The Association's right to charge reasonable admission and other fees for the use of any facilities situated upon the Maintenance Property.

3.1.5. **Borrowings.** The Association's right in accordance with the Articles, Bylaws and this Declaration, with the approval of Delegates representing at least sixty-seven percent (67%) of the Association voting power, to borrow money for the purpose of improving, repairing or adding to the Maintenance Property and facilities and, to mortgage, pledge, deed in



trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred pursuant to this subsection.

3.1.6. Suspension of Rights. The Association's right to suspend the Membership rights and other rights and easements of any Owner (and of the Persons deriving such rights and easements from such Owner) to use the Maintenance Property and the facilities and Improvements located thereon, for any period during which any assessment against such Owner's Lot or Condominium remains unpaid and delinquent; and for a period not to exceed thirty (30) days for any noncontinuing infraction of the Rules and Regulations of the Association as more fully provided in the Bylaws. Any suspension of Membership rights or right to use any Maintenance Property facilities (i) shall be made only by the Board, after Notice and Hearing, and (ii) shall not limit or preclude pedestrian or vehicular access to such Owner's Lot or Condominium.

3.1.7. Maintenance Property Transfers. The Association's rights set forth in Section 5.2.4 of this Declaration and Declarant's rights set forth in Article X hereof.

3.1.8. Use By Declarant and Merchant Builders. The right of Declarant and Merchant Builders (and their employees, sales agents, prospective purchasers, customers and representatives) to enter upon the Maintenance Property, for the benefit of Declarant or the Merchant Builders or the Annexable Area or any combination thereof, to complete the construction of any landscaping or other Improvement to be installed thereon, as well as the right to nonexclusive use of the Maintenance Property and the facilities thereof, without charge, for sales, display, access, ingress, egress, exhibition and occasional special events for promotional purposes, which right Declarant hereby reserves; provided, however, that such use rights shall terminate on the earlier of (i) the expiration of twenty (20) years after the first Close of Escrow for a Lot or Condominium in the Properties, or (ii) the date on which neither Declarant nor any Merchant Builder owns a Lot or Condominium in the Properties and all of the Annexable Area has been annexed to the Properties. Such use shall not unreasonably interfere with the rights of enjoyment of the other Owners as provided herein.

3.1.9. Reconstruction of Improvements. The Association's right (by action of the Board) to reconstruct, replace or refinish any Improvement or portion thereof upon the Maintenance Property, in accordance with the Maintenance Guidelines, the Architectural Committee Rules and the original design, finish or standard of construction of such Improvement or of the other Improvements within any Phase of Development, as the case may be; or, if not in accordance with the Maintenance Guidelines, the Architectural Committee Rules and the original design, finish or standard of construction, only with the approval of Delegates representing at least sixty-seven percent (67%) of the Association voting power, and then subject to Section 12.3 hereof.

3.1.10. Maintenance. The Association's right to maintain and repair the Maintenance Property, including without limitation the right to plant or remove trees, shrubs, flowers, ground cover and other vegetation upon any portion of the Maintenance Property, and to



replace any such vegetation or other landscaping Improvements which have been damaged or destroyed.

3.1.11. **Restricted Areas.** The Association's right, acting through the Board, to reasonably restrict access to slopes and other sensitive landscaped areas, maintenance facilities, open space areas and similar areas of the Maintenance Property. A Supplemental Declaration may designate exclusive use areas within the Maintenance Property for the exclusive use or maintenance by one or more Owners (such as yards or common driveway areas). The Association shall have exclusive control over all of the Maintenance Property except for Public Property and any exclusive use or maintenance area designated in a Supplemental Declaration or created by the Association pursuant to Section 5.2.4 below.

3.2. **Delegation of Use.** The Owner of a Lot or Condominium may delegate, in accordance with the Restrictions, the Owner's right of enjoyment of the Maintenance Property and facilities to the Owner's Family members, tenants, or contract purchasers who occupy the Owner's Lot or Condominium, subject to reasonable regulation by the Board. An Owner who does not reside in his Residence and who has delegated his right of enjoyment of the Maintenance Property to a tenant or contract purchaser who occupies the Residence shall not be entitled to the use and enjoyment of any recreational facilities located on the Maintenance Property during the term of such delegation. Each Apartment Area Owner may delegate its right of enjoyment in and to the Maintenance Property to tenants and such tenants may further delegate such rights of enjoyment to the members of the tenants' Family and the tenants' bona fide guests (subject to the Restrictions).

3.3. **Parking and Traffic Control.** Temporary guest or recreational parking is permitted within the Maintenance Property only within spaces and areas clearly marked for such purpose. The Association, through the Board, is empowered to establish "parking" and restricted "guest parking" and "no parking" areas within the Maintenance Property in accordance with Section 22658 and Section 22658.2 of the California Vehicle Code, or any similar statute hereafter enacted, as well as to enforce these parking limitations through its officers and agents by all means lawful for such enforcement on public streets, including the removal of any violating vehicle. The Board is also authorized and empowered to request that the City or other applicable agency enforce the California Vehicle Code on any private streets within the Properties, if any, including the Common Area and any Maintenance Property private streets, pursuant to applicable ordinances and provisions of the California Vehicle Code permitting governmental enforcement thereof.

3.4. **Easements for Vehicular Traffic.** In addition to the general easements for use of the Maintenance Property reserved herein, Declarant hereby reserves to itself, to all future Owners within the Properties, and to every Owner and their respective agents, employees, guests, tenants, invitees and successors nonexclusive easements appurtenant to each Lot and Condominium in the Properties for vehicular and pedestrian traffic over any and all private streets and walkways, if any, within the Maintenance Property, subject to the parking provisions



set forth in Section 3.3 above. Declarant, on behalf of itself and all Merchant Builders, reserves the right to grant similar easements to owners of property in the Annexable Area.

3.5. **Waiver of Use.** No Owner may exempt himself from personal liability for assessments duly levied by the Association, nor release his Lot, Condominium or other property in the Properties from the liens and charges hereof, by waiver of the use and enjoyment of the Maintenance Property or any facilities thereon or by abandonment of his Lot, Condominium or any other property in the Properties.

3.6. **Title to the Maintenance Property.**

3.6.1. **Transfer.** As each Phase of Development is developed by Declarant or a Merchant Builder, Declarant and such Merchant Builder, as applicable, will convey or cause to be conveyed to the Association, in fee simple or by easement, the Maintenance Property (excluding Public Property) in such Phase of Development designated by Declarant in its sole discretion, free and clear of any and all monetary encumbrances and liens (other than nondelinquent taxes and assessments), subject to reservations, easements, covenants, and conditions then of record, including those set forth in this Declaration, or as contained in the deed conveying such Maintenance Property. Within each Phase of Development, such conveyance shall be completed (i) for Residential Areas, before the first Close of Escrow for a Lot or Condominium in such Phase of Development, and (ii) for an Apartment Area Phase of Development, before the first occupancy of an apartment Residence within such Phase of Development thereof; except that notwithstanding the foregoing, no such conveyance shall be required before the last day of the month during which such Apartment Area Phase of Development becomes subject to this Declaration. No Owner or Project Association shall interfere with the exercise by the Association of its rights hereunder or its easement for maintenance over Maintenance Property which is owned in fee by such Owner or Project Association.

3.6.2. **Commencement of Maintenance.** Notwithstanding any conveyance of Maintenance Property to the Association, the Association's responsibility to maintain the Maintenance Property located in any Phase of Development shall begin on the commencement of Common Assessments in such Phase of Development; except that, if such Phase of Development consists of only Maintenance Property, the Association's maintenance responsibility therefor shall commence on the first day of the month immediately following the month in which the deed is Recorded conveying such property to the Association. The same Maintenance Property ("**Multi-Phased Maintenance Property**") may be designated for Association ownership in connection with several different Phases of Development (the "**Alternative Phases**"). Maintenance of Multi-Phased Maintenance Property, if any, shall commence on the earliest date that maintenance begins in any of the Alternative Phases in which such Multi-Phased Maintenance Property is designated for Association ownership. If annexed Maintenance Property is inadvertently not conveyed to the Association, the Association shall nonetheless be responsible for the maintenance of same upon the first Close of Escrow for the sale of a Lot or Condominium in the Phase of Development in which such Maintenance Property is located and



shall indemnify, defend and hold Declarant harmless in connection therewith. Prior to the commencement of the Association's maintenance responsibility, such maintenance shall be the responsibility of Declarant or the Merchant Builder, as applicable, depending on whether such Phase of Development is being developed by Declarant or a Merchant Builder. Notwithstanding the foregoing, if the contractors or subcontractors of Declarant or a Merchant Builder are contractually obligated to maintain the landscaping or other Improvements on the Maintenance Property, the Association shall not interfere with the performance of such warranty or other contractual maintenance obligations. Such maintenance performed by the contractors or subcontractors of Declarant or Merchant Builders shall not postpone the commencement of Common Assessments pursuant to this Declaration nor entitle an Owner to claim any offset or reduction in the amount of such assessments. If the Dedicated Maintenance Property or any other portion of the Maintenance Property is dedicated to and accepted for maintenance by a Local Governmental Agency, then the Association may but need not maintain the area if the Local Governmental Agency either fails to maintain the area or elects to cease maintaining the area.

3.6.3. Character of Maintenance Property Improvements. The nature, design, quantity, quality and all other attributes of the Maintenance Property, and the facilities and amenities thereon, shall be determined in Declarant's sole and absolute discretion. The Association shall be unconditionally obligated to accept title to and maintenance responsibility for the Maintenance Property when such title and maintenance responsibility is tendered by Declarant alone or together with a Merchant Builder as provided in Section 3.6.2. If a dispute arises between the Association and Declarant or any Merchant Builder in connection with the nature, design, quantity, quality or other attributes of the Maintenance Property, the completion thereof, the state of title thereto or the acceptance of title or maintenance responsibility therefor (a "***Maintenance Property Dispute***"), then the Association shall be obligated to accept title to and assume maintenance responsibility for such Maintenance Property and the Improvements and facilities thereon pending resolution of such Maintenance Property Dispute in accordance with Section 12.14.

3.6.4. Maintenance of Public Property. Maintenance of the Public Property by the Association is a condition to the City's approval of development of the Properties. The Public Property shall be maintained by the Association in strict accordance with maintenance guidelines established by the City as they may be amended from time to time. Such maintenance guidelines may include schedules for maintenance and graffiti removal. In performing maintenance of the Public Property, the Board of Directors shall periodically request from the City the most current versions of maintenance guidelines and comply with same. If the Association fails to maintain the Public Property as provided herein, the City shall have the right, but not the obligation, to give the Association written notice of such failure setting forth the deficiencies in maintenance and repair, and requesting that the same be cured within thirty (30) calendar days after giving such notice. If the Association fails to cure such deficiencies within such thirty (30) day period, the City shall be entitled to enter the Public Property and other portions of the Properties to perform such work and shall be entitled to reimbursement from the Association and owners as provided in Section 3.6.5 below.



3.6.5. Special Assessments Levied by City. If the City performs maintenance of the Public Property as described above, the City shall submit a written invoice to the Association for all costs incurred by the City to perform such maintenance. Such invoice shall be due and payable by the Association within twenty (20) days after receipt by the Association. If the Association shall fail to pay such invoice in full within the period specified, payment shall be deemed delinquent and shall be subject to a late charge in an amount equal to six percent (6%) of the amount of the invoice. In addition, any such overdue amount shall accrue interest at the rate of ten percent (10%) per annum from the date due until paid. If such amount is not paid, the City may pursue collection from the Association by means of any remedies available at law or in equity or the City may level a special assessment against all owners of Residences in the Properties for an equal pro rata share of such costs any late charge or interest. The special assessment shall include all costs of collection including, without limitation, attorneys' fees. Such special assessment shall constitute a lien on each Residence against which such special assessment is levied and shall be enforceable by the City in the same manner specified herein for the enforcement of delinquent common assessments including, without limitation, the foreclosure thereof in accordance with this Declaration and all other applicable provisions of the law regarding the foreclosure of similar liens. Each Owner by the acceptance of a deed to a Residence, acknowledges and conveys to the City the right and power to levy such special assessment to impose the foregoing liens on all respective Residences and to pursue all legal and other remedies available to the Association including the foreclosure of the liens against the individual Residences in collecting such special assessment.

3.7. Taxes. Each Owner shall execute such instruments and take such action as may reasonably be specified by the Association to obtain separate real estate tax assessment of his Lot or Condominium. If, in the Association's opinion, any taxes or assessments constitute a lien on the Maintenance Property, or any part thereof, they may be paid by the Association and each Owner shall be obligated to pay or to reimburse the Association for, as the case may be, the taxes and assessments assessed by the County Assessor or other taxing authority against the Maintenance Property and attributable to his own Lot or Condominium and interest in the Maintenance Property.

3.8. Master Communications Systems Service Easement. All of the Properties are subject to nonexclusive easements of access, ingress, and egress, for purposes of installing, operating, maintaining, repairing, inspecting, removing and replacing the community antenna television system and other communication service lines, facilities, and equipment, for the benefit of Declarant and its subsidiaries, transferees, successors and assigns, as reserved and granted by reservations and conveyances of record and the provisions hereof. Such easements are freely transferable by Declarant to any other individual or entity and their successive owners for the purpose of providing a community antenna television system and/or communication services to the Properties, any portion thereof, and adjoining property. All such community antenna television and communication lines, facilities and equipment shall remain the property of Declarant, its subsidiaries, successors, transferees and assigns, and transfer of all or any portion of the Properties does not imply the transfer of any such community antenna television and



communication easements or the lines, facilities or equipment located thereon. Exercise of the easements reserved in this Section shall not unreasonably interfere with the reasonable use and enjoyment of the Properties.

3.9. Maintenance Property Wall Easements. Declarant reserves the benefit of the Association (a) an easement over those portions of the Lots, Condominiums and Common Areas located within three (3) feet of the common property line separating the Maintenance Property from such Lots, Condominiums and Common Area for the purpose of accommodating footings and other structural components, if any, of the Maintenance Property Wall located on or immediately adjacent to such common property a boundary line, including any encroachments thereof onto to the Lots, Condominiums and Common Area; and (b) an easement of access, ingress and regress over the Lots, Condominiums and Common Areas reasonably necessary for the maintenance, repair and replacement of Maintenance Property Walls and related Improvements.

3.10. Declarant Easements. Declarant hereby reserves to itself together with the right to transfer same easements of access, ingress and egress over all Maintenance Property, Lots, Common Area and Condominiums for installation and maintenance of utilities and drainage facilities shown on a Subdivision Map or Maps for the Properties and for construction, installation, operation, replacement, repair and maintenance of all utility and service lines, systems and other devices and Improvements which may be reasonably necessary for the development and marketing of Residences within the Properties and Annexable Area, including, but limited to, water, sewer, gas, telephone, electrical, television and storm drain and water lines (collectively the "**Facilities**"). Each Owner by accepting a deed to a Residence expressly consents to the foregoing easements and rights of way and authorizes and appoints Declarant (so long as Declarant owns all or any portion of the Properties or Annexable Area) as attorney-in-fact of such Owner to execute any and all instruments particularly describing, locating, granting or transferring such easements or rights of way. Within the location of the Facilities' easements and rights of way, no Improvement shall be planted or placed which may interfere with the use, maintenance or operation of the Facilities or which may be in violation any ordinance or law of any applicable governmental authority. Declarant also reserves the right to grant easements over the Maintenance Property, or any portion thereof for exclusive use by any Owner or Owners of a contiguous Lot or Condominium for which Close of Escrow has already occurred, as a yard, recreational, gardening or landscape area. Any such easement will be conveyed by the Declarant prior to conveying the last Lot or Condominium in the Properties or any portion of the Annexable Area. Such conveyance must be approved in advance by the Board of Directors of the Association.

3.11. Regular Inspection.

3.11.1. Duty to Inspect. It shall be the duty of the Board to have the Maintenance Property inspected at least once every year.



3.11.2. Purpose of Inspection. The purpose of the inspection shall be to (i) determine whether the Maintenance Property is being maintained adequately in accordance with the Maintenance Guidelines and such other prudent maintenance practices appropriate for Improvements such as those comprising the Maintenance Property, (ii) identify the condition of the Maintenance Property and any Improvements thereon including the existence of any hazards, defects or graffiti, and the need for performing additional maintenance, refurbishment, replacement, or repair, and (iii) recommend preventive actions (such as root pruning and tree removal) which may be taken to reduce potential maintenance costs to be incurred in the future.

3.11.3. Scope of Inspection. All of the Maintenance Property and Improvements thereon including, but not limited to, all structures, gates, walls, walkways, irrigation systems, landscaping, and drainage devices thereon shall be inspected.

3.11.4. Experts and Consultants. The Board may employ such experts and consultants as are necessary to perform the inspection and make the report required by this Section.

3.11.5. Report to Owners. The Board shall have a report of the results of the inspection of the Maintenance Property required by this section prepared. The report shall be furnished to Owners within the time set forth for furnishing Owners with the Budget. The report shall include at least the following:

- (i) a description of the condition of the Maintenance Property, including a list of items inspected, and the status of maintenance, repair and need for replacement of all such items;
- (ii) a description of all maintenance, repair and replacement planned for the ensuing fiscal year and included in the Budget;
- (iii) if any maintenance, repair or replacement is to be deferred, the reason for such deferral;
- (iv) a summary of all reports of inspections performed by any expert or consultant employed by the Board to perform inspections;
- (v) a report of the status of compliance with the maintenance, replacement and repair needs set forth in the inspection report for preceding years; and
- (vi) such other matters as the Board deems appropriate.



ARTICLE IV ASSOCIATION

4.1. **Organization.** The Association is organized as a California corporation under the Nonprofit Mutual Benefit Corporation Law. The Association is charged with the duties and vested with the powers prescribed by law, subject to the limitations and provisions of the Articles, Bylaws, and this Declaration. Neither the Articles nor Bylaws shall, for any reason, be amended or otherwise changed so as to be inconsistent with this Declaration. If there is any ambiguity in any provision of the Articles or Bylaws, then such provision shall be construed, to the extent possible, so as to be consistent with the provisions of this Declaration. Nothing in this Declaration shall prevent the creation, pursuant to Project Declarations, of Project Associations to assess, regulate, maintain or manage the portions of the Properties subject to such Project Declarations, or to own or control portions thereof for the common use or benefit of the Owners of Lots or Condominiums in those portions of the Properties subject to such Project Declarations.

4.2. **Membership.** Members of the Association are Declarant, for so long as Declarant is entitled to cast a Class C vote pursuant to this Section, and each Owner (including Declarant and any Merchant Builder) of one (1) or more Residential Area or Apartment Area Lots or Condominiums in the Properties. Membership in the Association is subject to the Restrictions. Excepting the Class C Membership, all Memberships in the Association held by Owners are appurtenant to the Lot or Condominium owned by each Owner, and ownership of a Lot or Condominium is the sole qualification for an Owner's Membership in the Association.

4.2.1. **Classes of Membership.** The Association shall have three (3) classes of voting Membership as follows:

(i) **Class A.** The Class A Members are all Owners, except Declarant and Merchant Builders shall not be Class A Members for so long as there exists a Class B Membership. Class A Members are assigned one (1) vote for each Assessment Unit assigned pursuant to Article VI to a Lot or Condominium which is both subject to assessments and owned by such Member. All votes cast by the Class A Members within a Delegate District shall be carried by the Delegate representing such Members to a meeting of the Delegates, and shall be cast by the Delegates on behalf of the Class A Members in accordance with Section 4.5.1 concerning Voting Proposals to Delegates.

(ii) **Class B.** The Class B Members are Declarant and the Merchant Builders. The Class B Members are assigned three (3) votes for each Assessment Unit assigned pursuant to Article VI to a Lot or Condominium which is both subject to assessment and owned by such Member. Votes of the Class B Members shall be exercised by Declarant's Delegate on behalf of the Class B Members. The Class B Membership shall be converted to Class A Membership on the date ("**Class B Termination Date**") which is the earlier to occur of the following events:



(A) The Close of Escrow for the sale of One Thousand Twenty-Two (1,022) Lots and Condominiums in the overall development composed of the Properties and Annexable Area.

(B) The fifth (5th) anniversary of the first Close of Escrow in the Phase of Development for which a Final Subdivision Public Report was most recently issued by the DRE.

(C) The twenty-fifth (25th) anniversary of the first Close of Escrow for the sale of a Lot or Condominium in the Properties.

(iii) **Class C.** The Class C Member shall be Declarant irrespective of whether Declarant is or is not an Owner. The Class C Membership shall not be considered a part of the voting power of the Association and Declarant is not entitled to exercise any Class C vote except for the purpose of electing those members of the Board which the Class C Membership is entitled to elect hereunder. The Class C Member is entitled to solely elect 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:

(A) The Close of Escrow for the sale of One Thousand Twenty-Two (1,022) Lots and Condominiums in the overall development composed of the Properties and Annexable Area.

(B) The fifth (5th) anniversary of the first Close of Escrow in the Phase of Development for which a Final Subdivision Public Report was most recently issued by the DRE.

(C) The twenty-fifth (25th) anniversary of the first Close of Escrow for the sale of a Lot or Condominium in the Properties.

4.2.2. Transfer of Membership. An Owner's Association Membership shall not be assigned, transferred, pledged or alienated in any way, except upon the transfer of title to the Owner's appurtenant Lot or Condominium, and then only to the purchaser or Mortgagee of such Lot or Condominium. Declarant's Class C Membership may not be transferred except to a successor to all or a part of Declarant's rights under this Declaration. Any attempt to make a prohibited Membership transfer is void and will not be reflected on the books of the Association. Membership in the Association is in addition to membership in any Project Association responsible for operating the Planned Development or Condominium Project in which the Owner's Lot or Condominium is located. Notwithstanding the foregoing, a Member who has sold his Lot or Condominium to a contract purchaser under an installment land sale contract may delegate his membership rights to the contract purchaser. Such delegation shall be in writing and must be delivered to the Board before such contract purchaser may exercise Membership privileges. However, the contract seller remains liable for all charges and assessments attributable to his Lot or Condominium until fee title to the Lot or Condominium is transferred.



If the Owner of any Lot or Condominium fails or refuses to transfer the Membership (registered in his name) to the purchaser of such Owner's Lot or Condominium upon transfer of fee title thereto, the Board of Directors may record the transfer on the Association's books. The Association may levy a reasonable transfer fee against new Owners and their Lots and Condominiums (which fee shall be added to the Common Assessments chargeable to such new Owners) to reimburse the Association for the administrative costs of transferring the Memberships to the new Owners on the Association's records.

4.2.3. Suspension of Membership Rights. The Board may suspend the Membership rights of any Member, including the right to vote at any meeting of the Members, for any period during which any Common Assessment, Capital Improvement Assessment or Reconstruction Assessment against such Member and the Lot or Condominium owned by such Member is delinquent. Any such suspension for nonpayment of any assessment shall not constitute a waiver or discharge of the Member's obligation to pay the assessments provided for herein.

4.3. Delegate Districts. The First Subdivision comprises a portion of Delegate District No. 1. As Annexable Area is added to the Properties the Delegate Districts within the Annexed Territory shall be established by Declarant in the respective Supplemental Declarations for the Annexed Territory.

4.4. Delegates.

4.4.1. Appointment. Delegates shall be appointed as follows:

(i) **Project Associations.** Where all of the Residences subject to a Project Declaration also comprise all of the Residences in a Delegate District, the President, Vice President, the Secretary or the Treasurer (in that order of priority) of the Project Association created pursuant to that Project Declaration shall be the Delegate and alternate Delegates for that Delegate District ("**Project Association Delegate**").

(ii) **Non-Project Association Area.** In all Delegate Districts other than those described in Subsection 4.4.1(i) above, the Delegate (and alternate Delegate) representing each such Delegate District ("**Non-Project Association Delegate**") shall be appointed and removed by the Board of Directors of the Association or by a committee appointed by the Board for the purpose of appointing Delegates ("**Delegate Committee**").

(iii) **Declarant's Delegate.** Declarant is entitled to appoint one (1) Delegate ("**Declarant's Delegate**") to represent Declarant and the Merchant Builders at all meetings of the Association and to cast all of the Class A and Class B votes which Declarant and the Merchant Builders are entitled to cast pursuant to this Declaration and the Bylaws. At any time in its sole discretion, Declarant may change the Person which it has appointed to serve as Declarant's Delegate and may also designate an alternate Declarant's Delegate to act in such



capacity when Declarant's Delegate is absent or otherwise unable to act. Declarant must give written notice to the Board before any such appointment or change in appointment is effective.

4.4.2. Qualification. Delegates must be (i) an authorized agent or employee of Declarant or a Merchant Builder, or (ii) a Member of the Association who resides in the Properties. If the Member is a corporation, partnership, or other entity, then, subject to the preceding sentence, the authorized agent of such entity shall be eligible to serve as a Delegate. Delegates must act personally at a meeting of the Delegates of the Association or by written ballot, and may not act by proxy. If a Delegate is not present at a meeting of the Delegates, then the alternate for such absent Delegate may attend the meeting and exercise all rights, powers and votes to which the absent Delegate would be entitled. If the previously absent Delegate arrives prior to the adjournment of a meeting, the alternate is no longer entitled to act in the place of such Delegate; provided that such relinquishment of authority by the alternate does not invalidate any matter previously voted or acted upon by the alternate in his or her temporary capacity as Delegate.

4.4.3. Term; Vacancies; Removal. The term of office of each Project Association Delegate shall be coincident with such Delegate's term of office as an officer of the Project Association. The term of each Non-Project Association Delegate shall expire each year on the date which is ninety (90) days prior to the date of the annual meeting of Delegates. Each Delegate shall hold office until a successor has been appointed pursuant to Section 4.4.1 or until the Delegate's death, resignation, removal or judicial adjudication of mental incompetence. Delegates may serve consecutive terms (whether as a Delegate, alternate Delegate, or any combination thereof). The office of a Delegate shall be deemed vacant upon the death, resignation, removal or judicial adjudication of mental incompetence of the Delegate, or upon the Delegate's failure to satisfy all of the qualifications of Delegate as specified above. Delegate vacancies occurring for any reason other than expiration of a Delegate's term shall first be filled by the alternate Delegate, and if there is no alternate Delegate, then by the Board or the Delegate Committee, if any. Subject to the eligibility and vacancy provisions herein, each such person shall serve the remainder of the unexpired term of office of the predecessor Delegate, or until a successor is appointed as provided above. An officer of a Project Association serving as a Delegate shall be deemed removed concurrently with his or her removal as an officer of the Project Association. Delegates appointed by the Board of Directors or the Delegate Committee may be removed by action of the Board or the Delegate Committee.

4.5. Voting By Delegates. Except as otherwise provided below, each Delegate shall exercise the voting power of all of the Members in such Delegate District other than Declarant and the Merchant Builders. Declarant's Delegate shall exercise all of the Class A and Class B voting power of Declarant and the Merchant Builders. All votes represented by Declarant's Delegate shall be cast in the manner directed by Declarant. Any Class C vote shall be cast by Declarant.

4.5.1. Voting Proposals. All voting rights shall be subject to the Restrictions. Whenever a matter which the Restrictions requires to be approved by the vote of the Delegates



(***Voting Proposal***) is to be submitted to the Delegates for approval, the Voting Proposal shall first be submitted to a vote of the Members in each Delegate District as provided below. Delegates may not exercise any discretion whatsoever when casting the voting power represented by the Delegates. The Delegates are merely vote carriers. Accordingly, when voting on a Voting Proposal, each Delegate shall cast all of the votes which he or she represents “for” or “against” such Voting Proposal (or for individual candidates in the case of the election of Directors) as follows:

(i) **Instructed Votes.** Those votes (***Instructed Votes***) actually cast, whether in person, by proxy or written ballot, shall be cast by the Delegate in the same manner as such votes were actually cast; and

(ii) **Absentee Votes.** Votes attributable to Lots or Condominiums in the Delegate District who have not been cast on such Voting Proposal (***Absentee Votes***) shall be cast “for” and “against” such Voting Proposal (or for individual candidates in the case of the election of Directors) in the same proportions as the Instructed Votes for that Delegate District were cast.

4.5.2. **Specified Actions.** Except as provided in Sections 4.4.1(iii) and 12.12 of this Declaration and Section 4.8 of the Bylaws, as long as there exists a Class B Membership, all Voting Proposals which the Restrictions require to be approved by the vote of Delegates representing a majority or greater percentage of the total voting power of the Association (***Specified Actions***) shall require the approval of Delegates casting the specified percentage of the voting power of both the Class A and the Class B Membership. Except as provided in Section 12.12 of this Declaration and Section 4.8 of the Bylaws, upon termination of the Class B Membership all Specified Actions shall require the approval of (1) the specified percentage of the voting power of all Delegates, and (2) such specified percentage of the voting power of the Delegates exclusive of votes attributable to Declarant and all Merchant Builders. The term Specified Action as used herein specifically excludes matters requiring a mere majority vote of a quorum of Delegates as defined in the Bylaws.

4.5.3. **Meetings of Delegate District Members.** Voting Proposals shall be submitted to a vote of the Members as follows:

(i) **Notice; Record Date.** It is the duty of the Secretary of the Association to call a meeting of the Members in each Delegate District to vote upon each Voting Proposal. Written notice of the meeting shall be sent to each Member of record and to each first Mortgagee of a Lot or Condominium which has filed a written request for notice with the Secretary, at least thirty (30) but not more than sixty (60) days prior to such meeting. The mailing of notice, postage prepaid, in the manner provided in this Section, shall be considered notice served two (2) business days after said notice has been deposited in a regular depository of the United States mail. The Board of Directors may fix a date as a record date for the determination of the Members entitled to notice of any meeting of Delegate District Members. The record date so fixed shall be not less than thirty (30) nor more than sixty (60) days prior to



the date of the meeting. If the Board does not fix a record date for notice to Delegate District Members, the record date for notice shall be the close of business on the fifth (5th) business day preceding the day on which notice is given. In addition, the Board may fix a date in the future as a record date for the determination of the Members entitled to vote at any meeting of Delegate District Members. The record date so fixed shall be not more than sixty (60) days prior to the date of the meeting. If the Board does not fix a record date for determining Members entitled to vote, Members on the day of the Delegate District meeting who are otherwise eligible to vote are entitled to vote at the meeting. Written notice of meetings shall state the place, date and time of the meeting and those Voting Proposals which are to be presented for action by the Delegate District Members. In the case of Voting Proposals for the election of Directors, the notice to Members (1) must set forth procedures for nominating candidates for the Board, (2) must specify that cumulative voting procedures shall be followed for all elections of Directors where more than one (1) vacancy is being filled, and (3) may but need not specify a date for closing nominations of candidates, which date shall be identical for all Delegate Districts and not more than thirty (30) days prior to the date of the meeting. There shall be no nominations of candidates from the floor of the meetings of Members in the Delegate Districts. Prior to commencing the meeting of Members within a Delegate District, the Secretary of the Association shall furnish each Delegate and the Delegate District Membership meeting with a list of all Members whose names have been placed in nomination for election to the Board.

(ii) **Special Meetings.** A special meeting of the Members in a Delegate District may be called by written request (1) by a Merchant Builder for such Delegate District, for so long as the Merchant Builder (if any) is a Class B Member, (2) by Declarant, for so long as Declarant is a Class B or Class C Member, (3) by the Delegate representing such Delegate District, or (4) by the Members in the Delegate District having not less than five percent (5%) of the total voting power within such Delegate District. To be effective, such written request must be delivered to the President, a Vice President, the Secretary or the Manager of the Association. The Board shall then cause ten (10) days notice to be given to Members in such Delegate District that a meeting will be held at a time and place fixed by the Board not less than ten (10) days, nor more than forty-five (45) days after receipt of the written request. Notice of special meetings shall specify the general nature of the business to be undertaken and that no other business may be transacted.

(iii) **Proxies.** Every Member entitled to attend, vote at or exercise consents with respect to any meeting of the Members in any Delegate District may do so either in person, or by a representative, known as a proxy, duly authorized by an instrument in writing, filed with the Board prior to the meeting of which it is applicable. Any proxy may be revoked at any time by written notice to the Board or by attendance in person by such Member at the meeting for which the proxy was given. However, no proxy is valid after the expiration of eleven (11) months from the date of the proxy, unless otherwise provided in the proxy, except that the maximum term of any proxy shall be three (3) years from the date of execution. Such powers of designation and revocation may be exercised by the guardian of a Member's estate or by his conservator, or in the case of a minor having no guardian, by the parent having custody of such minor, or during the administration of any such Member's estate, by his executor or



administrator where the latter's interest in the Member's Lot or Condominium is subject to administration in his estate. Any form of proxy provided by the Association shall afford an opportunity therein to specify a choice between approval and disapproval of each Voting Proposal or group of related Voting Proposals intended, at the time the proxy is distributed, to be acted upon at the meeting for which the proxy is solicited, and shall provide, subject to reasonable specified conditions, that where the person solicited specifies a choice with respect to any such matter, the vote shall be cast in accordance with such specification.

(iv) **Chair; Voting Rights.** An Association officer or a representative of the Manager shall chair the Delegate District meeting and the chairperson shall designate a secretary to transcribe minutes of the meeting. Voting by Members at Delegate District meetings shall be by secret written ballot. With the exception of the Declarant's Class C vote, the right to vote in any Delegate District may not be separated from the ownership of the Lot or Condominium to which it is appurtenant, except that any Member may give a revocable proxy in the manner described above, or may assign his voting rights to a contract purchaser, a lessee, employee or tenant actually occupying his Lot or Condominium or to the Mortgagee of the Lot or Condominium for the term of the lease or Mortgage. The transfer or conveyance of a Lot or Condominium to a new Owner or Owners automatically transfers the appurtenant vote to the new Owner, subject to (1) any record date established as provided above, and (2) any outstanding assignment of the right to vote to a contract purchaser, lessee or Mortgagee as provided herein. If there is more than one (1) record Owner of any Lot or Condominium, any and all of such Owners may attend any meeting of the Members, but the vote attributable to the Lot or Condominium so owned shall not be increased by reason thereof. Co-Owners owning the majority interest in a Lot or Condominium may designate in writing one (1) of their number to vote. Fractional votes shall not be allowed, and the vote for each Lot or Condominium shall be exercised, if at all, as a unit. Where no voting co-Owner is designated, or if the designation has been revoked, the vote for the Lot or Condominium shall be exercised as the co-Owners owning the majority interests in the Lot or Condominium mutually agree. However, no vote shall be cast for any Lot or Condominium if a majority of the co-Owners present in person or by proxy cannot agree to said vote or other action. Unless the Board receives a written objection in advance from a co-Owner, it shall be conclusively presumed that the voting co-Owner is acting with the consent of all other co-Owners.

(v) **Action by Written Ballot.** Any Voting Proposal which may be acted upon at a meeting of the Delegate District Members may be voted upon without a meeting by written ballot. Ballots shall be solicited in the same manner as provided herein for the giving of notice of meetings of Members. Ballot solicitations shall also specify (1) the voting power represented by Delegates necessary to meet the Delegate quorum requirements, (2) the percentage of approvals necessary to approve the action, (3) the procedures for casting Instructed and Absentee Votes by the Delegates as provided herein, and (4) the time by which ballots must be received in order to be counted. The form of written ballot shall afford an opportunity to specify a choice between approval and disapproval of each Voting Proposal and shall provide that, where the Member specifies a choice, the vote shall be cast in accordance therewith.



4.5.4. **Voting Reports.** In order to verify compliance with the foregoing voting requirements, each ballot cast by a Delegate shall contain such Delegate's certification of the following information: (i) the total number of Class A and/or Class B votes represented by such Delegate; (ii) the total number of Class A and/or Class B "**Instructed Votes**" represented by the Delegate which are cast "for" and "against" the Voting Proposal (or for individual candidates in the case of the election of Directors); and (iii) the total number of "**Absentee Votes**" to be cast by such Delegate "for" and "against" the Voting Proposal (or for individual candidates in the case of the election of Directors). The inspector of election shall tabulate the total number of Class A and Class B votes cast by all Delegates in each of the foregoing categories in order to determine whether the necessary approvals have been obtained. It will be conclusively presumed for purposes of all Association business that Declarant's Delegate and each Delegate casting votes on behalf of the Owners of Lots or Condominiums in his Delegate District has acted with the authority and consent of Declarant and all such Owners. All agreements and determinations lawfully made by the Association in accordance with the voting procedures established herein and in the Bylaws are deemed to be binding upon all Members, Owners and their respective successors and assigns.

ARTICLE V FUNCTIONS OF ASSOCIATION

5.1. **Permitted Functions.** The Association is formed exclusively for those social welfare purposes and activities which are specifically and directly related to (i) equipping, maintaining, operating and utilizing the Maintenance Property, including the social, recreational and other Improvements thereon, (ii) collecting assessments to finance the maintenance and utilization of the Maintenance Property, and (iii) administering and enforcing the Restrictions (collectively, the "**Permitted Functions**"). Notwithstanding the foregoing, Permitted Functions do *not* include those activities prohibited by Section 5.4 below. The funds and resources of the Association shall be utilized solely and exclusively for the direct costs of Permitted Functions. Nothing in this Subsection 5.1 shall be deemed to preclude the use of the Maintenance Property Facilities by Declarant or the Merchant Builders for promotional special events and other purposes as authorized by Section 3.1.8.

5.2. **Powers and Duties.** The Association has all of the powers of a California Nonprofit Mutual Benefit Corporation, subject only to such limitations upon the exercise of such powers as are expressly set forth in the Restrictions. Subject to the Restrictions, the Association has the power to perform any and all lawful acts which may be necessary or proper for or incidental to the exercise of any of the express powers of the Association. Subject to the foregoing provisions, the Association, acting through the Board, has:

5.2.1. **Assessments.** The power and duty to levy assessments on the Owners of Lots or Condominiums in Phases of Development in which assessments have commenced and to collect and enforce payment of such assessments in accordance with the provisions of Article VI hereof.



5.2.2. Repair and Maintenance. The power and duty to accept title to and to paint, plant, maintain and repair in a neat and attractive condition, all Maintenance Property and all private streets, trails and drives, open space, slopes, private drainage facilities, streetscape architecture, landscaping, utilities, recreational facilities, Maintenance Property Walls, fences or other Improvements thereon, in a safe, sanitary and attractive condition and in good order and repair, and to pay for utilities, gardening and other necessary services for the Maintenance Property including, without limitation, street sweeping in excess of that provided by the City. Subject to the Restrictions, all of the foregoing obligations of the Association shall be discharged when and in such manner as the Board determines in its judgment to be appropriate, provided that the Association shall (i) comply with the Maintenance Guidelines, and (ii) conform with the requirements of any agreements entered into between Declarant or any Merchant Builder and a Local Governmental Agency pertaining to the Properties including, without limitation, any agreements providing for maintenance of Public Property by the Association.

(i) **Exclusions from Maintenance.** Notwithstanding the immediately preceding Subsection, the Association shall have no responsibility to provide the services referred to in this Subsection with respect to (a) any Dedicated Maintenance Property which is accepted by a Local Governmental Agency for maintenance, (b) any other Improvement (including without limitation parkway areas, median strips, trails and sidewalks) which is accepted for maintenance by any state or Local Governmental Agency, (c) any Improvement which is the maintenance responsibility of any Project Association pursuant to a Project Declaration, or (d) except as otherwise provided in any Supplemental Declaration the exposed surface (including stucco repairs and painting but excluding wrought iron or glass), of any wall or fence which immediately adjoins and faces any Lot, Condominium or Common Area, regardless of whether such wall is (1) located on the common property line separating the Maintenance Property or Public Property from the Lot, Condominium or Common Area, or (2) located wholly or partially within the Maintenance Property, Public Property, Lot or Common Area immediately adjacent to such common property line. Such responsibility shall be that of the applicable agency, entity, or adjacent Owner or Project Association.

(ii) **Modifications by Owners and Project Associations.** No Owner or Project Association shall place or install any sign or other Improvement or alter or remove the Improvements on the Maintenance Property (including, without limitation, any Maintenance Property Wall adjacent to a Lot, Condominium or Common Area) unless such placement, installation or alteration is first approved in writing by the Board. No Owner or Project Association shall affix any object, vegetation or device to any Maintenance Property Wall, pierce the stucco surface or otherwise expose the interior portion of an Maintenance Property Wall to the elements or install landscaping, irrigation systems or other Improvements on the Owner's Lot or the Common Area in such proximity or manner so as to undermine or otherwise impair the structural integrity of any Maintenance Property Wall or impair the weather resistant finish thereon. If any Owner or Project Association allows any object, vegetation or device to be attached to any Maintenance Property Wall and it becomes necessary for the Association to perform maintenance on such Maintenance Property Wall, the Association shall be entitled to require the Owner to remove such object, vegetation or device prior to performing such



maintenance and if such object, vegetation or device is not so removed, the Association shall be entitled to remove same and the Association shall have no liability for any loss or damage to such object, vegetation or device in connection with the removal thereof and the completion by the Association of maintenance of the Maintenance Property Wall. There shall be no building construction over any portion of the Maintenance Property over which an open space, scenic or public resource easement has been dedicated to the City.

5.2.3. Utility Services. The power and duty to obtain for the benefit of the Maintenance Property, commonly metered water, gas, electric or other utility services necessary for the maintenance of the Maintenance Property. The Association shall also be responsible for maintenance, repair and replacement of any private fire hydrant system located on the Maintenance Property.

5.2.4. Easements and Rights-of-Way. The power but not the duty to grant and convey to any Person easements, licenses or rights-of-way in, on, over or under the Maintenance Property and fee title to parcels or strips of land which comprise a portion of the Maintenance Property, for purposes consistent with the terms of this Declaration, including without limitation easements for (i) roads, streets, walks, trails, driveways, parkways, landscaping, park areas, open space areas and slope areas; (ii) overhead or underground lines, cables, wires, conduits, or other devices for the transmission of power or signals for lighting, heating, television, telephone and other similar purposes; (iii) sewers, storm water drains, retention basins and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes, (iv) exclusive easements or fee title to Owners for backyard, sideyard, and front yard purposes so long as the Board makes a finding that the use and maintenance of such area is more appropriately placed with the Owner than the Association; and (v) any similar Improvements, facilities or uses not inconsistent with the use of such property pursuant to this Declaration.

5.2.5. Manager. Subject to Section 5.4, the power and duty to contract with a professional Manager for the Association. Except as otherwise approved by the DRE and as otherwise provided in this Declaration, any such management agreement, or any agreement providing for services by Declarant to the Association, shall be for a term not in excess of one (1) year (renewable by agreement of the parties for successive one (1) year periods), and any such agreement shall be terminable by the Association, acting through the Board, at any time without cause or the payment of a penalty or termination fee upon not more than ninety (90) days' written notice.

5.2.6. Rights of Entry and Enforcement. The power but not the duty, after Notice and Hearing, to enter any Lot or Common Area without being liable to any Owner or Project Association, except for physical damage caused by such entry, for the purpose of enforcing by peaceful means the provisions of this Declaration, or for the purpose of maintaining or repairing any such Lot or Common Area if for any reason whatsoever the responsible Owner or Project Association fails to maintain and repair any such area as required by the Restrictions; provided that no items of construction on any such Lot or Common Area may be altered or demolished except pursuant to judicial proceedings. The cost of any enforcement action or any



maintenance and repair completed in compliance with these provisions is the responsibility of the Owner or Project Association and may be assessed against the responsible Owner or Project Association, as a Special Assessment. The responsible Owner or Project Association shall pay promptly all amounts due for such work, and the costs and expenses of collection. Any physical damage caused by entry upon any Lot or Common Area shall be repaired by the entering party. The Association may also commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of the Restrictions and to enforce, by mandatory injunctions or otherwise, all of the provisions of the Restrictions. If an action is brought by the Association, the prevailing party is entitled to recover reasonable attorneys' fees.

5.2.7. Legal and Accounting Services. Subject to Section 5.2.10, the power but not the duty, if deemed appropriate by the Board, to retain and pay for legal and accounting services necessary or proper in operating the Maintenance Property, enforcing the Restrictions, and performing any of the other Association duties or rights.

5.2.8. Contracts. Except as otherwise approved by the DRE or as provided in this Declaration or a Supplemental Declaration, neither Declarant nor any of its agents shall enter any contract which would bind the Association or the Board for a period in excess of one (1) year.

5.2.9. Audit. The power and duty to permit any Owner, who may be accompanied by an accountant or other consultant, at said Owner's sole expense to audit or inspect the Association's books and records; provided that such audit or inspection is made during normal business hours and without unnecessary interference with the operations of the Manager or the Association.

5.2.10. Litigation. Except as otherwise provided in this Declaration, the power but not the duty to initiate, defend, settle or intervene in mediation, arbitration, judicial or administrative proceedings on behalf of the Association in matters pertaining to (i) the application or enforcement of the Restrictions and (ii) damage to the Maintenance Property. Any recovery by the Association with respect to any damage to or defect in the Maintenance Property shall be utilized solely for the purpose of paying for the costs of obtaining the recovery and for correcting such Maintenance Property damage or defect.

5.2.11. Release Security. The power and duty to release security and exonerate bonds posted by Declarant to secure obligations to the Association immediately upon satisfaction of the obligations giving rise to such security.

5.3. Rules and Regulations. The Board may adopt such Rules and Regulations as it deems proper for the use, occupancy and maintenance of the Properties. To be effective, a copy of the Rules and Regulations, as adopted, amended or repealed, must be posted in a conspicuous place in the Maintenance Property or must be mailed or otherwise delivered to each Owner. When mailed, delivered or posted, the Rules and Regulations shall have the same force and effect as if they were set forth herein; provided, however, that the Rules and Regulations shall be



enforceable only to the extent that they are consistent with this Declaration, any applicable Supplemental Declaration, the Articles and the Bylaws, and may not be used to amend any of such documents.

5.4. **Prohibited Activities.** Notwithstanding any other provisions of this Declaration or the other Restrictions, the Association is expressly prohibited from undertaking or performing any of the following activities, or expending or otherwise utilizing Association funds or resources therefor, and the following activities shall not constitute Permitted Functions of the Association:

5.4.1. **Offsite Nuisances.** The Association shall not use any assessments or expend Association funds or resources to abate any annoyance or nuisance emanating from outside the physical boundaries of Phases of Development in which Common Assessments have commenced.

5.4.2. **Political Activities.** The Association shall not (i) participate in Federal, State and local political activities or activities intended to influence a governmental action affecting areas outside the boundaries of the Properties (e.g., endorsement or support of (1) legislative or administrative actions by a Local Governmental Agency which affect persons or property outside the Properties, (2) candidates for elected or appointed office, and (3) ballot proposals) or (ii) conduct, sponsor, participate in or expend funds or resources on any activity, campaign or event, including without limitation any social or political campaign, event or activity, which does not directly and exclusively pertain to a Permitted Function.

ARTICLE VI FUNDS AND ASSESSMENTS

6.1. **Obligation.** Declarant and any Merchant Builder, for each Lot or Condominium owned by Declarant or such Merchant Builder which is subject to assessment, hereby covenants and every other Owner of any Lot or Condominium, by acceptance of a deed or other conveyance therefor, whether or not it shall be so expressed in such deed or such other instrument, is deemed to covenant to pay to the Association (i) annual Common Assessments for Common Expenses, (ii) Capital Improvement Assessments, (iii) Special Assessments, and (iv) Reconstruction Assessments; such assessments to be established and collected as hereinafter provided. All assessments other than Special Assessments, together with interest, costs, and reasonable attorneys' fees for the collection thereof, shall be a charge on the land and shall be a continuing lien upon the Lot or Condominium against which such assessment is made (provided that Special Assessments liens cannot be enforced under Sections 2924, 2924(b) and 2924(c) of the California Civil Code). The personal obligation of assessments shall not pass to the successors-in-title to any Owner, unless expressly assumed by them.

6.2. **Maintenance Funds.** The Board shall Budget, establish and maintain at least the following separate accounts (the "**Maintenance Funds**") into which shall be deposited all



monies paid to the Association, and from which disbursements shall be made, as provided herein, in the Association's performance of its functions under the Restrictions:

6.2.1. General Operating Fund. A General Operating Fund for current expenses of the Association, exclusive of current expenses attributable to the Improvements and maintenance responsibilities included within the Cost Centers, if any.

6.2.2. General Reserve Fund. An adequate General Reserve Fund for the deposit of Reserves attributable to Improvements within the Maintenance Property, exclusive of Reserves attributable to Improvements included in the Cost Centers, if any.

6.2.3. Cost Center Operating Fund. A Cost Center Operating Fund for current expenses of each Cost Center, if any, which has been completed and is subject to maintenance by the Association.

6.2.4. Cost Center Reserve Fund. An adequate Cost Center Reserve Fund for the deposit of Reserves attributable to each Cost Center, if any, which has been completed and is subject to maintenance by the Association.

6.2.5. Miscellaneous Maintenance Funds. Any other Maintenance Funds which the Board of Directors may deem necessary.

6.3. Disbursements. All amounts deposited into the Maintenance Funds must be used solely for the purposes authorized by the Restrictions, as amended. The Board is authorized to transfer interest and other earnings on the General Reserve Fund and Cost Center Reserve Fund into the respective Operating Fund in order to satisfy income taxes payable by the Association attributable to such interest and earnings. The signatures of either two (2) Directors of the Association or one (1) Director and one (1) officer of the Association who is not also a Director of the Association shall be required for the withdrawal of money from the Association's Reserve funds. Disbursements from the particular Maintenance Funds shall be limited to specific purposes as follows:

6.3.1. Cost Center Reserves. Disbursements from each Cost Center Reserve Fund shall be made solely for the purpose of funding Reserve expenditures attributable to the Cost Center for which the fund was created.

6.3.2. Cost Center Operations. Disbursements from each Cost Center Operating Fund shall be made solely for the purpose of funding the current operating Common Expenses of the Cost Center for which the fund was created.

6.3.3. General Reserves. Disbursements from the General Reserve Fund shall be made solely for the purpose of funding those Reserve expenditures which are not Budgeted to a Cost Center.



6.3.4. **General Operations.** Disbursements from the General Operating Fund shall be made for such purposes as are necessary for the discharge of the Association's responsibilities under the Restrictions, for the common benefit of all Owners, other than those purposes specified in Subsections 6.3.1 through 6.3.3 above. Nothing contained herein shall preclude the establishment of additional Maintenance Funds by the Association earmarked for specified purposes authorized by the Restrictions. The Association shall not impose or collect an assessment, penalty or fee which exceeds the amount necessary for the purpose or purposes for which it is levied. If the Association decides to use or transfer Reserve funds to pay for litigation, the Association must notify its Members of the decision in the next available mailing to the Members. 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, and a proposed budget for the litigation. The notice must state that the Members have a right to review an accounting for the litigation as provided in Section 1365.5 of the California Civil Code which will be available at the Association's office. The accounting shall be updated monthly.

6.4. **Maintenance Property Damage or Neglect.** If any maintenance, repair or replacement of the Maintenance Property (including, without limitation, damage to any Maintenance Property Wall or parkway adjacent to a Lot, Condominium or Common Area) is necessitated in the sole judgment of the Board as a result of the willful or negligent act or neglect of a Project Association, its members, guests or invitees, or an Owner, such Owner's family, guests, or invitees, such maintenance, repairs or replacements shall be performed at the expense of such Project Association or Owner, after Notice and Hearing, and a Special Assessment therefor shall be levied against such Project Association or Owner; provided, however, that the liability of an individual Project Association or Owner for such damage to the Maintenance Property shall not be absolute, but shall only be that for which the Project Association or Owner is legally responsible under California law. The foregoing shall include, without limitation, any settlement damage to any Maintenance Property Wall and wall footings adjoining a Lot, Condominium or Common Area caused by any excavation, construction or excess irrigation occurring on such adjacent Lot, Condominium or Common Area.

6.5. **Common Assessments.** Each annual Common Assessment shall constitute an aggregate of separate assessments for each of the Maintenance Funds, reflecting an itemization of the amounts assessed and attributable to prospective deposits into the General Operating and Reserve Funds, the Cost Center Operating and Reserve Funds, and any other Maintenance Fund established by the Association. Sums sufficient to pay Common Expenses shall be assessed as Common Assessments against the Owners of Lots and Condominiums as follows:

6.5.1. **Assessment Units.** The Association Common Expenses shall be allocated among the Owners and their respective Lots or Condominiums for which Common Assessments have commenced based upon the number of Assessment Units chargeable to each such Lot or Condominium. Assessment Units are allocated as follows:



(i) **Residential Area.** Each Residential Area single-Family Lot and Condominium, and the Owner thereof, shall be allocated one (1) Assessment Unit.

(ii) **Apartment Area.** Each Apartment Area Lot developed as a multi-Family project for rental apartments, and the Owner thereof, shall be allocated one (1) Assessment Unit for every two (2) apartment unit Residences or fractions thereof located on such Apartment Area Lot for which the City or other appropriate Local Governmental Agency has issued a certificate of occupancy or other comparable final authorization permitting occupancy of such apartment Residences.

6.5.2. General Assessment Component. The Common Expenses of the Association exclusive of Common Expenses Budgeted to the Cost Centers ("**General Assessment Component**") shall be allocated among all of the Residential Area and Apartment Area Lots and Condominiums and the Owners thereof based on the number of Assessment Units allocable to each Owner. The proportionate share of the General Assessment Component of Common Expenses chargeable to each Residential Area and Apartment Area Lot and Condominium and the Owner(s) thereof shall be a fraction, the numerator of which is the number of Assessment Units allocated to such Lot or Condominium, and the denominator of which is the total number of all Assessment Units allocated to all Residential Area and Apartment Area Lots and Condominiums in the Properties which are subject to assessment.

6.5.3. Cost Center Assessment Component. That portion of the Common Expenses of the Association comprising Cost Center Operating and Reserve Funds Budgeted to any particular Cost Center ("**Cost Center Assessment Component**") shall be assessed equally to the Owners of Lots and Condominiums designated in this Declaration or a Supplemental Declaration as Lots and Condominiums to which the exclusive or disproportionate maintenance of such Cost Center has been allocated. The Supplemental Declaration covering a Lot or Condominium subject to a Cost Center Assessment Component shall: (i) Identify the Cost Center, if existing, or describe the Cost Center if proposed; (ii) Identify the Lots and Condominiums covered by the Supplemental Declaration which are entitled to use the facilities of the Cost Center or which are obligated to bear the exclusive or disproportionate maintenance of such Cost Center and which shall be obligated to pay the Cost Center Assessment Component attributable to such Cost Center; and (iii) Specify the Common Expenses comprising the Cost Center Assessment Component attributable to such Cost Center. Unless otherwise provided in such Supplemental Declaration, the proportionate share of the Cost Center Assessment Component of Common Expenses chargeable to each Lot and Condominium located in such Cost Center and the Owners thereof shall be a fraction, the numerator of which is the number of Assessment Units allocated to the Lot or Condominium in the Cost Center owned by each Owner, and the denominator of which is the total number of all Assessment Units allocated to Lots and Condominiums located in such Cost Center.

Common Assessments shall be levied against the Owners of Lots and Condominiums in the first Phase of Development in which Common Assessments commence in the amounts as set forth in the Association Budget on file with the DRE. Thereafter, as Common



Assessments commence with respect to each Phase of Development, the Common Assessments shall be adjusted, subject to the provisions of Section 6.7 below, in accordance with the combined Budget of the Association approved by the Board from time to time, and subject to the limitations imposed by the maximum range of Common Assessments disclosed in all previous Public Reports for the Properties.

6.6. Commencement of Common Assessments.

6.6.1. Commencement Date. Common Assessments shall commence as to each Lot or Condominium in any later Residential Area Phase of Development requiring the issuance of a Public Report by the DRE (or any combined Residential/Apartment Area Phase of Development) on the first day of the first month following the month in which the first Close of Escrow occurs for the sale of a Lot or Condominium in such Phase of Development, as applicable. Common Assessments shall commence as to each Apartment building in an Apartment Area Phase of Development which has been annexed to the Properties on the first day of the first month following the month in which the first residential occupancy of any portion of such Apartment building occurs; provided that in no event shall Common Assessments commence with respect to any Apartment Area Phase of Development until Common Assessments have commenced on a Residential Area Lot or Condominium in the Properties. Notwithstanding the foregoing, if the first occupancy of an Apartment building in an Apartment Area Phase of Development occurs prior to the date upon which such Phase of Development becomes subject to this Declaration, Common Assessments shall commence as to such Apartment building on the first day of the first month following the month in which such Phase of Development becomes subject to this Declaration. The first annual Common Assessment shall be adjusted according to the number of months remaining in the fiscal year established pursuant to the Bylaws.

6.6.2. Payment Procedure. Subject to Section 6.7.4, the Board shall fix the amount of the annual Common Assessment to be levied against each Lot or Condominium at least thirty (30) days in advance of each Common Assessment period. However, unless otherwise established by the Board, the initial annual Common Assessment shall be levied in accordance with the most recent Budget on file with and approved by the DRE. Written notice of any increase in the amount of the annual Common Assessment or any Capital Improvement or Reconstruction Assessment shall be sent by first class mail to every Owner subject thereto, not less than thirty (30) nor more than sixty (60) days prior to the increased assessment becoming due. All installments of Common Assessments shall be collected in advance on a regular basis by the Board, at such frequency and on such due dates as the Board determines from time to time in its sole and absolute discretion. Each installment of a Common Assessment shall be paid to the Association in one (1) check, money order or electronic transfer if made available by the Association. If any payment of a Common Assessment installment is less than the amount assessed, the payment received by the Association from that Owner shall be credited in order of priority first to the General Operating Fund until that portion of the Common Assessment has been satisfied, then to any applicable Cost Center Operating Fund until that portion of the Common Assessment has been satisfied, then to the General Reserve Fund until that portion of



the Common Assessment has been satisfied, then to any applicable Cost Center Reserve Fund until that portion of the Common Assessment has been satisfied, then to any other Maintenance Funds established by the Association.

6.6.3. **Excess Funds.** During the term of any subsidy agreement between Declarant and the Association approved by the DRE ("*Subsidy Agreement*"), and during any period of time that the amount of the Common Assessments invoiced to the Owners is stabilized at a level amount pursuant to Section 6.7.4 below, all excess funds remaining in the Maintenance Funds over and above the amounts used for the operation and payment of Common Expenses of the Properties (including Reserves) shall be used by the Association to fund future Maintenance Fund deficits. After the termination of any Subsidy Agreement and any program of stabilized Common Assessment payments pursuant to Section 6.7.4, the Board of Directors may determine that excess funds remaining in the Operating Funds, over and above the amounts used for the operation of the Properties, may be used to reduce the following year's Common Assessment attributable to such Maintenance Funds.

6.6.4. **Exemption.** Subject to the provisions of any Subsidy Agreement, notwithstanding any other provision of this Declaration, until (i) a notice of completion (if applicable) of a Maintenance Property Improvement has been Recorded, (ii) such Maintenance Property Improvement has been placed into use, or (iii) the completion date for such Maintenance Property Improvement specified in the Planned Construction Statement on file with the DRE with respect to such Maintenance Property Improvement, whichever occurs first, the Common Assessment shall not include expenses and Reserves directly attributable to the existence and use of such Maintenance Property Improvement.

6.7. **Limitations on Common Assessment Increases.** Subject to Section 6.7.4 below, the Board shall not levy, for any fiscal year, an annual Common Assessment which exceeds the "*Maximum Authorized Common Assessment*" as determined pursuant to Sections 6.7.1 and 6.7.2 below, unless first approved by the vote of Delegates representing at least (i) in the case of an increase in the General Assessment Component, a majority of votes at a meeting or written ballot of Delegates in which more than fifty percent (50%) of the total voting power of the Association is represented, and (ii) in the case of an increase in a Cost Center Assessment Component, a majority of votes at a meeting or written ballot of the Delegates for the Cost Center generating such Cost Center Assessment Component at which more than fifty percent (50%) of the total voting power attributable to such Cost Center is represented.

6.7.1. **Maximum Authorized Common Assessment for Initial Year of Operations.** Until the first day of the fiscal year immediately following the fiscal year in which Common Assessments commence, the Maximum Authorized Common Assessment per Lot or Condominium is one hundred twenty percent (120%) of the amount of Common Assessments disclosed in the Approved Budget of the Association filed with the DRE at the time Common Assessments commence. The provisions of this Subsection shall be applied separately to the General Assessment Component and the Cost Center Assessment Component, if any, of the Common Assessment. Notwithstanding the foregoing, this Section does not limit Common



Assessment increases authorized pursuant to Section 6.7.4 below, or necessary to address an Emergency Situation as defined in Section 6.7.5 below.

6.7.2. Maximum Authorized Assessment for Subsequent Fiscal Years.

Beginning with the fiscal year immediately following the fiscal year in which Common Assessments commence, the Maximum Authorized Common Assessment in any fiscal year is one hundred twenty percent (120%) of the level of Common Assessments levied in the immediately preceding fiscal year; provided that distribution of the Budget for the current fiscal year in accordance with Section 1365(a) of the California Civil Code or other applicable law is a prerequisite to any increase in the Maximum Authorized Common Assessment for such fiscal year pursuant to this Subsection. The provisions of this Subsection shall be applied separately to the General Assessment Component and the Cost Center Assessment Component, if any, of the Common Assessment. Notwithstanding the foregoing, this Section does not limit Common Assessment increases authorized pursuant to Section 6.7.4 below, or necessary to address an Emergency Situation as defined in Section 6.7.5 below.

6.7.3. Supplemental Common Assessments. If the Board determines that the important and essential functions of the Association may be properly funded by an annual Common Assessment less than the Maximum Authorized Common Assessment, it may levy such lesser Common Assessment. If the Board levies a Common Assessment in an amount less than the Maximum Authorized Common Assessment for any fiscal year and thereafter, during such fiscal year, determines that the important and essential functions of the Association cannot be funded by such lesser Common Assessment, the Board may levy one (1) or more supplemental Common Assessments up to the Maximum Authorized Common Assessment.

6.7.4. Automatic Assessment Increases. Notwithstanding any other provisions of this Declaration, upon the annexation of additional Phases of Development pursuant to Article II hereof, the Common Assessments shall be automatically increased by the amount, if any, necessary to maintain the Maintenance Property located within such additional Phases of Development in accordance with the standards prescribed by the then current DRE Operating Cost Manual or, if the Operating Cost Manual is no longer maintained by the DRE, pursuant to standards prescribed by comparable maintenance cost guidelines prepared in accordance with prudent property management practices for "common interest developments" (as defined in Section 1351(c) of the California Civil Code) consistently applied throughout the geographic region in which the Properties are located. However, such increase shall occur only if the amount of such increase does not result in the levy of a Common Assessment which exceeds the highest Common Assessment disclosed in all previously issued Public Reports for the Properties. If annexation of Maintenance Property results in an increase in the Common Assessment which is permissible under the requirements of the preceding sentence, then the Association shall be obligated to collect such increased Common Assessment and accept title to and assume the maintenance responsibility for such Maintenance Property. However, to minimize the need for frequent adjustments in the amount of the Common Assessments during the development of the Properties, the Board may stabilize the amount of the Common Assessments invoiced to the Owners at a level amount calculated to defray the Common Expenses of the Association during



the time that Common Assessments are fluctuating due to the periodic annexation of Lots, Condominiums and Maintenance Property. By accepting title to a Lot or Condominium in the Properties, each Owner consents to the Common Assessment increases specified in this Section.

6.7.5. **Emergency Situations.** For purposes of Sections 6.7.1, 6.7.2 and 6.8, an “*Emergency Situation*” is any of the following:

(i) **Court Ordered Items.** An extraordinary expense required by an order of a court;

(ii) **Safety Items.** An extraordinary expense necessary to repair or maintain the Maintenance Property or any portion thereof for which the Association is responsible when a threat to the safety of Persons within the Properties is discovered; and

(iii) **Reasonably Unforeseen Items.** An extraordinary expense necessary to repair or maintain the Maintenance Property or any portion thereof for which the Association is responsible that could not have been reasonably foreseen by the Board when preparing the Budget. Prior to the imposition or collection of an assessment pursuant to this Subsection (iii), the Board must pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process. The resolution shall be distributed to the Members with the notice of the assessment.

6.8. **Capital Improvement Assessments.** The Board may levy, in any fiscal year, a Capital Improvement Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a Capital Improvement upon the Maintenance Property, including fixtures and personal property related thereto; provided that all proposed Capital Improvement Assessments shall require the vote of Delegates representing at least a majority of votes at a meeting or written ballot of Delegates in which is represented more than fifty percent (50%) of the total voting power attributable to Members subject to such Capital Improvement Assessment. Notwithstanding the foregoing, the Board may levy in any fiscal year a Capital Improvement Assessment applicable to that fiscal year without the vote of the Delegates if such Capital Improvement Assessment is necessary for addressing an Emergency Situation as defined in Section 6.7.5. All Capital Improvement Assessments must be levied against all Lots and Condominiums in the same manner and in the same proportions as Common Assessments are levied, and they shall be collected in the manner and frequency determined by the Board.

6.9. **Exempt Property.** The following property subject to this Declaration shall be exempt from the assessments herein: those portions of the Properties dedicated in fee and accepted by a public body, agency or authority; the Maintenance Property owned in fee by the Association; and all Common Area owned in fee by any Project Association.



6.10. **Remedies of the Association.** Any installment of a Common Assessment, Capital Improvement Assessment, Special Assessment, or Reconstruction Assessment not paid within thirty (30) days after the due date shall bear interest from the due date of such installment at a rate determined by the Board, but in no event more than the then maximum nonusurious rate permitted by law. Additionally, the Board may levy a late charge in accordance with California Civil Code Section 1366 or any successive law or ordinance in addition to the interest charged as described above to compensate the Association for increased bookkeeping, billing and other administrative costs. No such late charge on any delinquent installment of an assessment shall exceed the maximum amount allowable by law. If any installment of an assessment is not paid within thirty (30) days after it is due, the Association may bring an action at law against the Owner(s) personally obligated to pay the same, or, with respect to Common Assessments, Capital Improvement Assessments, Special Assessments (except as provided below) and Reconstruction Assessments, foreclose the lien against the Lot or Condominium. Special Assessments shall not be enforced by power of sale under Sections 2924, 2924(b) or 2924(c) of the California Civil Code (but may be enforced by judicial foreclosure). No Owner may escape liability for the assessments provided for herein by relinquishment of the Membership, or by nonuse of the Maintenance Property or abandonment of the Lot or Condominium. In addition to the foreclosure and other remedies granted the Association herein, each Owner, by acceptance of a deed to such Owner's Lot or Condominium, hereby 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 or Condominium, subject to the right, power and authority 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, prior to any default by the Owner in the payment of assessments, to collect and retain such right, prior to 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. Upon any such default the Association may, upon the expiration of thirty (30) days following delivery to the Owner of the "**Notice of Assessment**" described herein, 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 herein, (i) enter in or upon and take possession of the Lot or Condominium or any part thereof, (ii) in the Association's name sue for or otherwise collect such rents, issues and profits, including those part due and unpaid, and (iii) apply the same, less allowable expenses of operation, to any delinquencies of the Owner hereunder, and in such order as the Association may determine. The entering upon and taking possession of the Lot or Condominium, the collection of rents, issues and profits and the application thereof, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

6.11. **Notice of Lien.** No action may be brought to enforce any assessment lien herein, unless at least thirty (30) days have expired following the date a Notice of Lien is deposited in the United States mail, certified or registered, postage prepaid, to the Owner of the Lot or Condominium, and a copy thereof has been Recorded by the Association. The Notice of Lien shall be in such form and shall contain such information required by Section 1367(b) of the California Civil Code, or any similar California Statute hereafter enacted, and must be signed and acknowledged by an officer of the Association or such other Person expressly authorized by the



Board to sign Notices of Liens, and such lien shall be prior to any declaration of homestead Recorded after the date on which this Declaration is Recorded. The lien shall continue until fully paid or otherwise satisfied.

6.12. **Foreclosure Sale.** With the exception of Special Assessments liens (which may only be foreclosed judicially), a sale to foreclose the assessment lien may be conducted by the trustee designated in the Notice of Lien (or any successor trustee substituted therefor) in accordance with the provisions of Section 2924, 2924a, 2924b, 2924c and 2924f of the California Civil Code, or in accordance with any similar statute hereafter enacted applicable to the exercise of powers of sale in Deeds of Trust, or in any other manner permitted by law. The Association, through duly authorized agents, may bid on the Lot or Condominium, at foreclosure sale, and may acquire and hold, lease, mortgage, and convey the same. Upon completion of the foreclosure sale, the Association or the purchaser at the sale may file suit to secure occupancy of the Lot or Condominium, and the defaulting Owner shall be required to pay the reasonable rental value of the Lot or Condominium during any period of continued occupancy by the defaulting Owner or any persons claiming under the defaulting Owner.

6.13. **Curing of Default.** Upon the timely curing of any default for which the Association filed a Notice of Lien, the Association shall Record an appropriate Release of Lien, upon payment by the defaulting Owner of a reasonable fee to be determined by the Board to cover the cost of preparing and Recording such release. A certificate, executed and acknowledged by any officer of the Association, or such other person expressly authorized by the Board, stating the indebtedness secured by the liens upon any Lot or Condominium created hereunder, shall be conclusive upon the Association and the Owners as to the amount of such indebtedness as of the date of the certificate in favor of all persons who rely thereon in good faith. Such certificate shall be furnished to any Owner upon request at a reasonable fee, to be determined by the Board.

6.14. **Cumulative Remedies.** The assessment lien and the rights of foreclosure and sale thereunder are in addition to and not in substitution for all other rights and remedies which the Association and its assigns may have against any delinquent Owner or delinquent Project Association hereunder and by law, including a suit to recover a money judgment for unpaid assessments, as above provided.

6.15. **Mortgage Protection-Liens.** Subject to Section 6.16 below, no lien created under this Article VI, nor any breach of this Declaration, nor the enforcement of any provision hereof or of any Supplemental Declaration hereto defeats or renders invalid the rights of the Beneficiary under any Recorded Deed of Trust upon a Lot or Condominium, made in good faith and for value. After a Beneficiary or other Person obtains title to a Lot or Condominium by judicial foreclosure or by means of the powers set forth in such Deed of Trust, the Lot or Condominium shall remain subject to the Restrictions and the payment of all installments of assessments and other obligations, accruing after the date the Beneficiary or other Person obtains title.



6.16. **Priority of Assessment Lien.** Mortgages Recorded before a Notice of Lien have lien priority over the Notice of Lien. The sale or transfer (including any “deed in lieu” of foreclosure) of any Lot or Condominium does not affect the assessment lien; except that the sale or transfer of any Lot or Condominium pursuant to judicial or nonjudicial foreclosure of a first Mortgage Recorded prior to a Notice of Lien extinguishes the lien of such assessment as to payments which became due prior to such foreclosure sale or transfer. No sale or transfer relieves such Lot or Condominium from lien rights for any assessments thereafter becoming due. No Person who obtains title to a Lot or Condominium through judicial or nonjudicial foreclosure of the first Mortgage is liable for the share of the Common Expenses or assessments chargeable to such Lot or Condominium which became due prior to the acquisition of title to such Lot or Condominium by such Person. Such unpaid share of Common Expenses and assessments is a Common Expense collectible from all of the Lots and Condominiums, including the Lot or Condominium belonging to such Person.

ARTICLE VII RESIDENTIAL AREA USE RESTRICTIONS

Subject to the exemptions of Declarant and Merchant Builder in this Declaration, the Residential Area shall be held, used and enjoyed subject to the following restrictions. Supplemental Declarations may establish supplementary or more restrictive use restrictions for the Annexed Territory the Supplemental Declaration encumbers so long as the restrictions are consistent with the scheme of government that is established in this Declaration and any Supplemental Declaration. Supplemental Declarations may add use restrictions or replace the use restrictions contained in this Article for the Annexed Territory such Supplemental Declaration encumbers. The Apartment Area is exempt from the provisions of this Article VII.

7.1. **Residential Use.** All Lots and Condominiums shall be improved and used solely for single-family residential use. This provision does not preclude any Owner in the Properties from renting or leasing all of his Lot or Condominium by means of a written lease or rental agreement subject to the Restrictions. No Lot or Condominium may ever be used in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storage, vending, or other such nonresidential purposes; except Declarant and Merchant Builders, their successors and assigns, may use any portion of the Properties owned by them for model home sites and display and sales offices during the construction and sales period, in accordance with Article X hereof. The provisions of this Section 7.1 do not preclude professional or similar occupations without external evidence thereof, provided that all of the following conditions are fulfilled: (i) such activities are conducted in conformance with all applicable governmental ordinances; (ii) the patrons or clientele of such activities do not visit the Properties or park their vehicles within the Properties in connection with such activities; (iii) the existence or operation of such activities is not apparent or detectable by sight, smell, sound or other means from outside of the boundaries of the Lot or Condominium where it is being conducted; (iv) such activity does not increase the liability or casualty insurance obligation or premium of the Association or any Project Association; and (v) such activities are consistent with the residential character of the Properties and conform to the provisions of the Restrictions.



7.2. Improvements.

7.2.1. Single Family Residence. No Lot may be improved except with one (1) Residence designed to accommodate no more than a Family and its domestic servants and occasional guests, plus a garage, fencing, landscaping and other Improvements as are necessary or customarily incident to a Family Residence.

7.2.2. Maximum Building Height. No portion of the construction on any Lot (exclusive of chimneys, vent stacks or other normal protuberances which in the sole opinion of the Architectural Committee, are of normal height and distribution) shall exceed the maximum height allowed by the City. Rooftop mechanical equipment shall not be permitted within the Properties, however, solar equipment or other energy savings devices shall be permitted with City Planning Department approval.

7.2.3. Setbacks. Except as otherwise provided in a Supplemental Declaration, grant deed or instrument recorded by Declarant and/or Merchant Builder and with the exception of Improvements constructed by Declarant or a Merchant Builder, set back requirements for all Improvements and construction on Lots shall be the more restrictive of those required by the City or Architectural Committee Guidelines.

7.2.4. Garages. Garages shall be capable of accommodating at least two (2) automobiles.

7.2.5. Exterior Facilities. With the exception of those constructed by Declarant or Merchant Builder, no sports facility, including, without limitation, basketball backboards shall be installed unless in accordance with the applicable Architectural Committee Guidelines. With the exception of those constructed by Declarant or Merchant Builder, no patio covering, wiring or air conditioning, water softener or other device shall be installed in the exterior of the Residence or allowed to protrude through the walls or roof of a Residence unless the prior written approval of the Architectural Committee is obtained.

7.2.6. Utilities. Unless otherwise approved in writing by the City, all utility services serving the Property shall be installed and maintained underground.

7.2.7. Fences. With the exception of those constructed by Declarant or a Merchant Builder, no fence, wall, hedge or other dividing device may be erected, painted, altered or maintained on any Lot or Common Area which borders or is visible from any public or private street, any of the Maintenance Property, or any other Lot, or Common Area, unless such fence or wall is first approved in writing by the Architectural Committee. With the exception of alterations or modifications by Declarant or a Merchant Builder, all alterations or modifications of the fences or walls of any type require the prior written approval of the Architectural Committee.



7.2.8. **Variations.** The Architectural Committee shall be entitled to grant variations from the Restrictions in this Subsection only in hardship cases where, due to the configuration or topography of a Lot, compliance with the foregoing restrictions would be impossible or impractical.

7.3. **Landscaping.** Within one hundred eighty (180) days after the Close of Escrow for the sale of a Lot or Condominium, the Owner must install and must thereafter maintain (except for any landscaping to be maintained by the Association or a Project Association, if applicable) plants, shrubs, trees, and any other appropriate landscaping Improvements, pursuant to plans and specifications approved by the Architectural Committee, on all yard areas that are on, within or appurtenant to the Lot or Condominium. Each Owner must properly maintain and periodically replace when necessary all trees, plants, grass, vegetation and other landscaping Improvements located on such Owner's Lot which are not the maintenance responsibility of a Project Association or the Association. No plants or seeds infected with insects or plant diseases may be brought upon, grown or permitted to exist upon any part of the Properties. Subject to Article X, the Board may adopt, amend or supplement the Architectural Committee Rules to regulate landscaping permitted and required in the Properties. If an Owner fails to install and maintain landscaping in conformance with the Architectural Committee Rules, or allows his Lot or landscaping to deteriorate to a dangerous, unsafe, unsightly or unattractive condition, the Board, upon thirty (30) days' prior written notice to such Owner, may seek any remedies at law or in equity which it may have and, after Notice and Hearing, may correct such condition and enter upon such Owner's property for the purpose of doing so, and such Owner shall promptly reimburse the Association for the cost thereof. Such cost shall be a Special Assessment enforceable in the manner as set forth in this Declaration.

7.4. **Parking and Vehicular Restrictions.** The following restrictions are not applicable to those portions of the Properties, if any, that are Common Area streets or parking area maintained by a Project Association unless otherwise provided in the Supplemental Declaration annexing same.

7.4.1. **Authorized Vehicles.** The following vehicles are "**Authorized Vehicles**": standard passenger vehicles, including without limitation automobiles, passenger vans designed to accommodate ten (10) or fewer people, motorcycles and pick-up trucks having a manufacturer's rating or payload capacity of three-quarter (3/4) ton or less. Authorized Vehicles may be parked in any portion of the Properties intended for parking of motorized vehicles, subject to the Restrictions. No Owner may park any vehicle in a manner so that the Association determines that the vehicle unreasonably extends beyond the boundaries of a parking space or into streets or sidewalks within the Properties. The Association has the power to identify additional vehicles as Authorized Vehicles to adapt this restriction to new types of vehicles produced by manufacturers.

7.4.2. **Prohibited Vehicles.** The following vehicles are Prohibited Vehicles: (i) recreational vehicles (e.g., motorhomes, travel trailers, camper vans, boats, etc.), (ii) commercial-type vehicles (e.g., stakebed trucks, tank trucks, dump trucks, step vans, concrete



trucks, limousines etc.), (iii) buses or vans designed to accommodate more than ten (10) people, (iv) vehicles having more than two (2) axles, (v) trailers, inoperable vehicles or parts of vehicles, (vi) aircraft, (vii) any vehicle with a width in excess of eighty-four (84) inches; (viii) other similar vehicles, or (ix) any vehicle or vehicular equipment deemed a nuisance by the Board. Prohibited Vehicles may not be parked, stored or kept on any public or private street within, adjacent to or visible from the Properties, any other Maintenance Property parking area or any driveways, unless either (a) they are owned and used by the Association or a Project Association in connection with management or maintenance of a part of the Properties, or (b) they are parked for brief periods for loading, unloading, deliveries or as may otherwise be defined in the Rules and Regulations. 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 classified as an Authorized Vehicle in writing by the Board. Prohibited Vehicles may be parked (1) within an Owner's fully enclosed garage with the door closed, or (2) on Lots in areas completely screened from the view of other Owners so long as their presence on the Properties does not otherwise violate the provisions of the Restrictions. The Association has the power to identify additional vehicles as Prohibited Vehicles in the Rules and Regulations to adapt this restriction to new types of vehicles produced by manufacturers.

7.4.3. General Restrictions. All vehicles owned or operated by or within the control of an Owner or a resident of an Owner's Lot or Condominium and kept within the Properties must be parked in the assigned parking space or garage of that Owner to the extent of the space available; provided that each Owner shall ensure that any such parking space or garage accommodates at least the number of Authorized Vehicles for which it was originally constructed by Declarant or a Merchant Builder. Garages or other parking areas must be used only for parking vehicles, and may not be used for storage, living, recreational, business or other purposes. Driveways may not be used for parking purposes if the Owner's garage is not being utilized to the maximum designed capacity for the parking of vehicles, or if to do so obstructs free traffic flow, constitutes a nuisance, violates the Rules and Regulations, or otherwise creates a safety hazard. Garage doors shall be kept closed at all times, except as reasonably required for ingress to and egress from the interiors of the garages. No repairs or restorations of any motor vehicle, boat, trailer, aircraft or other vehicle or equipment may be conducted upon any street (public or private), any portion of any Maintenance Property, Common Area, Lot or Condominium, except wholly within an enclosed garage; provided, however, that such activity within an enclosed garage may not be undertaken as a business, and provided further that such activity may be prohibited entirely if it is determined by the Board to be a nuisance. The Board may determine, in its discretion, whether there is noncompliance with the parking and vehicular restrictions contained herein. The Board in its discretion may approve temporary variances from the provisions of this Section 7.4.3. Any such variance (i) shall be authorized only in connection with Construction Activities (as defined in Section 8.3 hereof) approved by the Architectural Committee, (ii) must be evidenced in writing signed by an authorized representative of the Association, and (iii) must specify the limited period of time for which the variance is effective. These restrictions do not permit any activity which would be contrary to any ordinance of the City or other applicable Local Governmental Agency including without limitation the parking of



vehicles on those portions of private streets prohibited by the City or applicable local governmental agency.

7.4.4. Parking Regulations. The Board may establish additional regulations regarding any parking areas not assigned to individual Lots or Condominiums, including without limitation designating “parking,” “guest parking,” and “no parking” areas thereon, setting time limits for parking vehicles in the Maintenance Property parking areas, and requiring registration of vehicles or use of parking permits; and may enforce all parking and vehicle use regulations applicable to the Properties, including removing violating vehicles from the Properties pursuant to California Vehicle Code Section 22658.2 or other applicable ordinances or statutes. If the Board fails to enforce any of the parking or vehicle use regulations, the City may enforce such regulations in accordance with applicable laws and ordinances. If the City fails to enforce any of its parking ordinances on public streets within or abutting the Properties, the Association has the power but not the duty to enforce such ordinances against Owners and residents of the Properties.

7.4.5. Common Driveways. Certain groups of Lots in the Residential Area of the Properties (“*Driveway Group*”) may share a common access driveway (“*Common Driveway*”), which provides access only to the Driveway Group. Any Common Driveways and the applicable Driveway Groups will be shown or designated in a Supplemental Declaration. Each Common Driveway is part of the Maintenance Property and will be owned and/or maintained by the Association. The Owners of Lots in a Driveway Group shall each have semi-exclusive easements for vehicular and pedestrian access, ingress and egress over the Common Driveway serving such Driveway Group, subject to Association access for maintenance of adjacent Maintenance Property. No other Owners or residents of the Properties may use such Common Driveway, which is hereby designated to be for the exclusive use of the Owners of the Driveway Group, as contemplated by Section 1351(i) of the California Civil Code. There shall be no parking on the Common Driveways. Provided, however, that the foregoing shall not preclude the (a) temporary obstruction approved by the Association in connection with maintenance of the Common Driveway and maintenance of utility and drainage lines located beneath the Common Driveway, and (b) parking of service and similar vehicles on Common Driveways if (i) parking space is not available in the driveway located on the Lot within the Driveway Group being serviced by such vehicles; (ii) such parking is for temporary service purposes not to exceed the amount of time necessary to complete the service, but in no event longer than eight (8) consecutive hours; and (iii) no vehicle shall be parked so as to unreasonably obstruct vehicular access to other Lots within the Driveway Group.

7.5. Antennae. Owners are prohibited from installing any antennae on the exterior of a Residence for any purpose, except for an “*Authorized Antenna*,” which may be installed so long as the proposed location for such installation is reviewed by the Architectural Committee before installation to ensure that the visibility of the Authorized Antenna is minimized with respect to other Owners. The Architectural Committee may require that the location of the Authorized Antenna be moved so long as such review by the Architectural Committee does not (a) unreasonably delay or prevent installation, maintenance or use of an Authorized Antenna, (b)



unreasonably increase the cost of installation, maintenance or use of an Authorized Antenna, or (c) preclude acceptable quality reception.

An "**Authorized Antenna**" means (i) an antenna designed to receive direct broadcast satellite service, including direct-to-home satellite service, that is one meter or less in diameter, (ii) 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 meter or less in diameter or diagonal measurement, (iii) an antenna designed to receive television broadcast signals, and (iv) a mast supporting an antenna described in items (i), (ii), and (iii) above.

The Association may adopt additional restrictions on installation or use of an Authorized Antenna on an Owner's Residence as a part of the Association's Rules and Regulations so long as such restrictions do not (1) unreasonably delay or prevent installation, maintenance or use of an Authorized Antenna, (2) unreasonably increase the cost of installation maintenance or use of an Authorized Antenna, or (3) preclude acceptable quality reception. The Association may prohibit the installation of an Authorized Antenna if the installation, location or maintenance of such Authorized Antenna unreasonably affects the safety of managers, agents or employees of the Association and other Owners, or for any other safety related reason established by the Association.

The Association may also (A) prohibit an Owner from installing an Authorized Antenna on property which such Owner does not own or is not entitled to exclusively use or control under the Restrictions, or (B) allow an Owner to install an antenna other than an Authorized Antenna subject to the architectural standards and review by the Architectural Committee.

This Section is intended to be a restatement of the authority granted to the Association under the law. All amendments, modifications, restatements and interpretations of the law applicable to the installation, use or maintenance of an antenna shall be interpreted to amend, modify, restate or interpret this Section.

7.6. Insurance Rates. Nothing shall be done or kept in the Properties which will increase the rate of insurance on any Lot, Condominium, Common Area, Maintenance Property or other portion of the Properties without the approval of the Board, nor shall anything be done or kept in the Properties which would result in the cancellation of insurance on any Lot, Condominium, Common Area, Maintenance Property or other portion of the Properties or which would be in violation of any law.

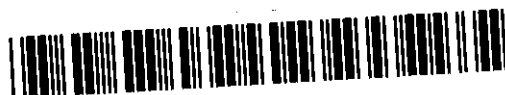
7.7. No Further Subdivision. Except as expressly authorized in a Supplemental Declaration, no Common Area, Lot or Condominium may be further subdivided (including division into time-share estates or time-share uses) without the prior written approval of the Board. Nothing in this Section shall be deemed to prevent an Owner from, or require the approval of the Board for: (a) selling a Lot or Condominium; or (b) transferring or selling any Lot or Condominium 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; or (c) leasing or renting all of such Owner's Lot or Condominium, provided that any such lease or rental is subject to the Restrictions. In addition to the other remedies of the Association in this Declaration, each Owner, by acceptance of a deed to such Owner's Lot or Condominium, hereby assigns to the Association, on a non-exclusive basis, such Owner's right to terminate any lease or occupancy agreement affecting such Owner's Lot or Condominium and to evict the tenant or occupant thereunder if such tenant or occupant violates the Restrictions.

7.8. **Signs.** No sign, poster, billboard, balloon advertising device or other display of any kind ("**Displays**") may be displayed within the Properties except (i) such Displays (regardless of size, configuration or content) as may be used by Declarant or a Merchant Builder in connection with the development of the Properties and the sale, lease or other disposition of Lots and Condominiums, (ii) entry monuments and similar community identification signs maintained by the Association and the Project Associations, (iii) subject to Architectural Committee Rules governing the location, size, materials and other such criteria, one (1) nameplate or similar Owner name identification, and a reasonable number of signs advising of the existence of security services protecting a Lot or Condominium; and (iv) one (1) sign which may be displayed on each Lot or from each Condominium advertising the Lot or Condominium for sale or lease; provided that such for sale or lease signs (a) may not be larger than eighteen inches (18") by thirty inches (30") in size; (b) may not be attached to the ground by means other than a conventional single vertical stake which may not exceed two inches (2") by three inches (3") in diameter (i.e., posts, pillars, frames or similar arrangements are prohibited); (c) may not extend more than three feet (3') above ground level; and (d) shall be of such colors and styles as are approved by the Architectural Committee.

7.9. **Animals.** No animals, fowl, reptiles, poultry, fish or insects of any kind ("**animals**") may be raised, bred or kept on any Lot, Condominium or Common Area within the Properties, except that a reasonable number of birds, fish, dogs, cats or other customary household pets may be kept on a Lot or Condominium; provided that they are not kept, bred or maintained for any commercial purpose, nor in unreasonable quantities nor in violation of any applicable local ordinance or any other provision of the Restrictions, and such limitations as may be set forth in the Rules and Regulations. As used in this Declaration "**unreasonable quantities**" ordinarily means more than two (2) household pets per Residence; provided, however, that the Board of Directors may determine that a reasonable number in any instance is more or less. The Association, acting through the Board of Directors, may prohibit maintenance of any animal which constitutes, in the opinion of the Board, a nuisance to other Owners of Lots or Condominiums in the Properties. Animals belonging to Owners, occupants or their licensees, tenants or invitees within the Properties must be kept within an enclosure or an enclosed yard or on a leash or other restraint being held by a person capable of controlling the animal. Furthermore, to the extent permitted by law, each Owner shall be liable to each and all remaining Owners, their families, guests, tenants and invitees, for any unreasonable noise or damage to person or property caused by any animals brought or kept upon the Properties by an Owner or by members of his Family, his tenants or his guests. It shall be the absolute duty and responsibility of each Owner to clean up after such animals which have used any portion of the Properties.



7.10. **Nuisances.** No rubbish or debris of any kind may be placed or permitted to accumulate anywhere within the Properties, and no odor may be permitted to arise therefrom so as to render the Properties or any portion thereof unsanitary, unsightly, or offensive from any public or private street or from any other Lot or Condominium in the vicinity thereof or to its occupants. No noise or other nuisance shall be permitted to exist upon or emanate from any portion of the Maintenance Property or any portion of a Lot, Condominium or Common Area within the Properties so as to be offensive or detrimental to any other Lot, Condominium or Common Area in the Properties or to its occupants. Without limiting the generality of any of the foregoing provisions, no horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes and commercially designed and reasonably used exterior speakers), live bands, noisy, unsightly, unusually painted or smoky vehicles, aircraft, large noisy power equipment or tools, unlicensed off-road motor vehicles, transmissions which may unreasonably interfere with television or radio reception within the Properties, or other items which may unreasonably disturb other Owners or their tenants may be located, used or placed on any portion of the Properties without the prior written approval of the Architectural Committee. No vehicles may be operated upon any portion of the Maintenance Property or Common Area not improved as a street or parking area without the prior written approval of the Architectural Committee, which approval may be withheld for any reason whatsoever. Alarm devices used exclusively to protect the security and contents of a vehicle, Lot, Condominium or Common Area, are permitted, provided that such devices do not produce annoying sounds or conditions as a result of frequently occurring false alarms.

7.11. **Exterior Maintenance and Repair.** No Improvement shall be permitted to fall into disrepair, and each such Improvement must at all times be kept in good condition and repair. It is the responsibility of the applicable Owner or Project Association to maintain and repair (including painting and stucco repairs) the surface of any Maintenance Property Wall which faces the Lot, Condominium or Common Area (excluding wrought iron or glass surfaces which shall be maintained by the Association), regardless of whether such Maintenance Property Wall is (i) located on the common property line separating the Maintenance Property or Public Property from the Lot, Condominium or Common Area, or (ii) wholly or partially within the Maintenance Property, Public Property, Lot or Common Area immediately adjacent to such common property line. Such maintenance obligations shall include without limitation the obligation to paint, stucco patch and otherwise protect and preserve such Maintenance Property Wall surface from exposure to and deterioration by the elements. Owners shall be responsible for maintenance, repair and replacement of the individual mailboxes, however, the Association shall be responsible for maintenance of mailbox stands and structures not maintained by a Project Association. If any Owner or Project Association permits any Improvement which is solely or partially the maintenance responsibility of such Owner or Project Association to fall into disrepair so as to create a dangerous, unsafe, unsightly or unattractive condition, the Board, after consulting with the Architectural Committee, and after affording the responsible Owner or Project Association Notice and Hearing, may, but need not, enter upon the affected Lot, Condominium, or Common Area for the purpose of correcting such condition, and the responsible Owner or Project Association shall promptly reimburse the Association for the cost



thereof. Such cost shall be a Special Assessment enforceable in the manner set forth in this Declaration, and the Owner of the offending Lot or Condominium or the Project Association which owns or maintains the Common Area, as applicable, shall be personally liable for all costs and expenses incurred by the Association in taking such corrective acts, plus all costs incurred in collecting the amounts due. Each Owner or Project Association, as applicable, shall pay all amounts due for such work within ten (10) days after receipt of written demand therefor.

7.12. **Drainage.** No one may alter or interfere with the rain gutters, downspouts, or drainage systems originally installed by Declarant or the Merchant Builders, or alter or interfere with the established drainage pattern over any Lot, Condominium or Common Area, unless an adequate alternative provision is made for proper drainage. For the purpose hereof, **"established"** drainage means the drainage pattern and drainage Improvements which exist at the time the Lot, Condominium or Common Area, as the case may be, is conveyed to the Owner or Project Association by Declarant or a Merchant Builder. There shall be no violation of the drainage requirements of the City or other applicable Local Governmental Agency, notwithstanding any approval by the Architectural Committee. 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 or more "subdrains" beneath the surface of such Owner's Lot. The subdrains 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. To ensure adequate drainage within the Properties, it is essential that the Drainage Improvements, if any, not be modified, removed or blocked without having first made alternative drainage arrangements. Therefore, any damage or injury resulting from or arising in connection with the alteration, modification, removal or replacement of any Drainage Improvements on a Lot shall be the responsibility of the Owner of such Lot.

7.13. **Water and Sewer Systems.** No individual water supply system, water softener system or sewage disposal system is permitted on any Lot, Condominium or Common Area unless such system is designed, located, constructed and equipped in accordance with the requirements, standards, and recommendations of the applicable water or sewer district and any applicable governmental health authority having jurisdiction.

7.14. **No Hazardous Activities.** No activities may be conducted, nor may any Improvements be constructed, anywhere in the Properties which are or might be unsafe or hazardous to any Person, Lot, Condominium, Common Area or Maintenance Property in the Properties.

7.15. **Unsightly Articles.** No unsightly articles, including clotheslines and trash dumpsters, are permitted to remain on any portion of the Properties so as to be visible from any public or private street or from any other Lot, Condominium, Common Area or Maintenance Property. Without limiting the generality of the foregoing, at all times refuse, garbage and trash must be kept in covered, sanitary containers designed for such purpose and located within trash receptacle areas designated by the Board or in garages (**"Trash Areas"**). Trash containers may be removed from Trash Areas only when set out for a reasonable period of time (not to exceed



twelve (12) hours before and after scheduled trash collection hours). No exterior fires whatsoever are permitted within the Properties, except barbecue fires contained within receptacles commercially designed therefor, fire pits in enclosed areas designed so that they do not create a fire hazard, and other fires specifically authorized in writing by the Association, all of which are also subject to applicable ordinances and fire regulations.

7.16. Temporary Prefabricated Structures/Dumpsters. Unless approved in writing by the Board, and then only in connection with Construction Activities approved by the Architectural Committee, no tent, shack, trailer or any temporary building, Improvement or structure, or prefabricated building or structure may be placed upon any portion of the Properties. No trash dumpsters are allowed in any driveway or other exposed areas, or any street (public or private) within the Properties for more than four (4) consecutive calendar days, unless first approved in writing by the Architectural Committee in connection with Architectural Committee approved Construction Activities, and then subject to such conditions and requirements as may be specified by the Architectural Committee.

7.17. No Mining or 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 upon the Properties, nor are oil, water or other wells, tanks, tunnels, mineral or geothermal excavations or shafts permitted upon or within five hundred feet (500') of the surface of any portion of the Properties.

7.18. Improvements and Alterations. No excavation, construction, painting, alteration or erection of any projection which in any way alters the exterior appearance of any Lot, Condominium or Common Area from any public or private street, or from any other Lot, Condominium or Common Area (other than minor repairs or rebuilding pursuant to Section 7.11) is permitted without the prior approval of the Architectural Committee pursuant to Article VIII hereof. All Improvements and alterations are subject to the setback, sideyard and other requirements of the County or other Local Governmental Agency, notwithstanding any approval by the Architectural Committee. No walls, fences, spas, play equipment, sheds, light posts, pilasters higher than three (3) feet, glass block, or boulders are allowed in the yards visible from the following streets: Grass Valley, Forest Glen, Spring Valley, and Meadow Valley. The existing low wall at the back of the sidewalk must remain as built by Merchant Builder. Changes to the wall, such as, but not limited to, plastering the surface, painting the surface, or adding elements on top of the wall, are not permitted. Gates, arbors, trellises, gazebos, planters, and fountains must be set back a minimum of five (5) feet clear from the back face of the low wall.

7.19. Solar Heating Systems. Solar heating systems may be installed on individual Lots, Condominiums or Common Areas, provided that such heating systems comply with all applicable governmental requirements and regulations and have been approved by the Architectural Committee based on reasonable architectural review standards consistent with applicable law.



7.20. **Views.** There are no views in the Properties which are protected to any extent by this Declaration, and no Owner who becomes subject to the terms hereof shall thereby obtain any view rights whatsoever. Notwithstanding any other provision of any Project Declaration, each Owner and each Project Association, by accepting a deed to a Lot, Condominium or any Common Area, acknowledges that any construction or installation by Declarant or a Merchant Builder or by other Owners following Architectural Committee approval as provided in Article VIII hereof may impair the view of such Owner or of the members of such Project Association, and each Owner and each Project Association on behalf of its members hereby consent to such impairment.

7.21. **Rights of Handicapped.** Subject to the provisions of Article VIII hereof, each Owner may modify his Lot or Condominium, at his sole cost and expense, in order to facilitate access to the Residence by persons who are blind, visually handicapped, deaf or physically disabled, or to alter conditions which could be hazardous to such persons, in accordance with Section 1360 of the California Civil Code or other applicable law or ordinance.

7.22. **Party Walls.** Each wall or fence which is placed on the dividing line between the Lots or Condominiums (but not the structural wall of a Residence) is a "**Party Wall,**" and, 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 apply thereto.

7.22.1. **Sharing of Repair and Maintenance.** Unless otherwise provided in a Project Declaration, the cost of reasonable repair and maintenance of a Party Wall shall be shared equally by the Owners of the Lots or Condominiums connected by such Party Wall. However, each Owner shall be solely responsible for repainting the side of any Party Wall facing his Lot or Condominium.

7.22.2. **Destruction by Fire or Other Casualty.** If a Party Wall is destroyed or damaged by fire or other casualty, any Owner whose Lot or Condominium is affected thereby may restore it, and the Owner of the other Lot or Condominium which is affected thereby shall contribute equally to the cost of restoration thereof without prejudice, however, to the right of any such Owner to call for a larger contribution from the other under any rule of law regarding liability for negligent or willful acts or omissions.

7.22.3. **Right to Contribution Runs With Land.** The right of any Owner to contribution from any other Owner under this Section 7.22 is appurtenant to the land and passes to such Owner's successors in title.

7.23. **Damage to Residences-Reconstruction.** If all or any portion of any Lot or Residence is damaged or destroyed by fire or other casualty, the Owner of such Lot or Residence shall rebuild, repair or reconstruct the Lot or Residence in a manner which will restore them substantially to their appearance and condition immediately prior to the casualty or as otherwise approved by the Architectural Review Committee. The Owner of any damaged Lot or Residence



and the Architectural Review Committee shall proceed with all due diligence, and the Owner shall cause reconstruction to commence within six (6) months after the damage occurs and to be completed within twelve (12) months after damage occurs, unless prevented by causes beyond such Owner's reasonable control. A transferee of the Lot which is damaged or upon which is located a damaged Residence shall commence and complete reconstruction in the respective periods which would have remained for the performance of such obligations if the Owner of the Lot at the time of the damage still held title to the Lot. However, no such transferee may be required to commence or complete such reconstruction in less than thirty (30) days from the date such transferee acquired title to the Lot.

ARTICLE VIII RESIDENTIAL AREA ARCHITECTURAL CONTROL

8.1. **Members of Architectural Committee.** The Architectural and Landscaping Committee, sometimes referred to in this Declaration as the "*Architectural Committee*", shall consist of three (3) members; provided, however, that such number may be changed by resolution of the Board of Directors so long as the Architectural Committee never consists of greater than five (5) nor fewer than three (3) members. Members of the Architectural Committee may be removed at any time without cause by the Person appointing such member as provided herein. Unless changed by resolution of the Board, the address of the Architectural Committee for all purposes, including the submission of plans for approval, is the principal office of the Association as designated by the Board pursuant to the Bylaws. Declarant may, in a Supplemental Declaration, create a separate architectural committee ("*Separate Committee*") from the area annexed to the Properties through such Supplemental Declaration ("*Separate Area*"). The Separate Committee shall have sole architectural control pursuant to this Article VIII over the Separate Area and the Architectural Committee shall have no control or jurisdiction over Construction Activities (as defined below) or otherwise over the Separate Area. If a Separate Committee is created, the provisions of this Article VIII shall apply to the Separate Committee which shall be deemed the "*Architectural Committee*" for all purposes hereunder regarding the Separate Area. However, members of the Separate Committee appointed pursuant to Subsection 8.2.2 below, shall be solely Owners of Residences in the Separate Area.

8.2. **Rights of Appointment.**

8.2.1. **By Declarant.** Declarant may appoint and remove a majority of the members of the Architectural Committee, which appointees need not be Members of the Association, until the earlier to occur of (i) the date on which Close of Escrow has occurred for the sale of One Thousand Two Hundred Twenty-Six (1,226) Lots and Condominiums in the Properties, or (ii) the fifth (5th) anniversary of the first Close of Escrow for the sale of a Lot or Condominium in the Phase of Development for which a Public Report was most recently issued by the DRE, or (iii) the date on which neither Declarant nor any Merchant Builder owns a Lot or Condominium in the Properties or Annexable Area.



8.2.2. **By the Board.** The Board may appoint and remove those members of the Architectural Committee which Declarant is not authorized to appoint until such time as Declarant's rights of appointment shall have expired, and thereafter the Board may appoint and remove all members of the Architectural Committee. Architectural Committee members appointed by the Board must be Members of the Association at all times during their service on the Architectural Committee, and shall serve for a term of one (1) year or until their respective successors are appointed.

8.2.3. **Notice of Appointment.** Whenever an Architectural Committee member is appointed or removed while both Declarant and the Board have rights of appointment, written notice of such appointment or removal must be given by the appointing party to the other party.

8.3. **Review of Construction Activities.** Subject to Article X of this Declaration, no construction, development, painting, alteration, grading, addition, installation, landscaping or modification thereof, excavation, modification, decoration, redecoration or reconstruction of an Improvement in the Residential Area of Properties (including the Common Area therein) or the Maintenance Property, or any other activity within the jurisdiction of the Architectural Committee pursuant to this Declaration (collectively "**Construction Activities**") may be commenced or maintained until the plans and specifications therefor showing the nature, design, kind, shape, height, width, color, materials, location and other aspects of the same have been submitted to the Architectural Committee and approved in writing by the Architectural Committee. Construction Activities include the construction, installation, alteration and modification 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 and other applicable governmental laws, ordinances and regulations. Except as provided in Section 8.3.2 below, the provisions of this Article VIII shall not apply to the Apartment Area.

8.3.1. **Architectural Committee Rules.** Subject to Section 10.1.5, the Board may adopt, supplement and amend Architectural Committee Rules which impose design and materials standards, submittal procedures, review criteria and other factors to be considered and followed by the Architectural Committee and the Owners in connection with Construction Activities.

8.3.2. **Exemptions/Declarant Approval.** Notwithstanding any other provision of the Restrictions, Declarant, Apartment Area Owners and Merchant Builders need not seek Architectural Committee approval with respect to their construction or development activities, including without limitation any activity which would be classified as a "**Construction Activity**." However, Merchant Builders and Apartment Area Owners must obtain Declarant's written approval of all construction and development activities as if such activities were "**Construction Activities**" hereunder and Declarant were the "**Architectural Committee**." The Declarant's approval rights in the preceding sentence are in addition to and shall not effect any other rights of Declarant under other written agreements between Declarant and Merchant Builders and Apartment Area Owners.



8.4. Applications. The Person submitting plans and specifications to the Architectural Committee ("**Applicant**") must obtain a dated, written receipt for such plans and specifications and furnish the Architectural Committee with the address to which further communications from the Architectural Committee are to be directed. The Architectural Committee may further require that all plans and specifications first be approved by any Project Association or Project Association architectural committee having jurisdiction. Conditions and requirements imposed by the Architectural Committee supersede all conflicting conditions or requirements which may be imposed by a Project Association or a Project Association architectural committee. The Architectural Committee's determination of the existence of a conflict or discrepancy between the conditions or requirements imposed by the Architectural Committee and those imposed by a Project Association or a Project Association architectural committee are binding and conclusive upon the Project Association, the Project Association architectural committee, and the Applicant. The Architectural Committee Rules may set forth procedures for the submission of plans for approval, require a fee to accompany each application for approval (or request for a certificate stating that Architectural Committee approval is not required), or establish additional factors which the Architectural Committee will take into consideration in reviewing submissions. The Architectural Committee Rules may provide that the amount of any Architectural Committee fee shall be uniform, or that it may be determined in any other reasonable manner, such as based upon the cost of the construction, alterations or installations contemplated or the reasonable cost of architectural or other professional fees incurred by the Association in reviewing plans.

8.4.1. Criteria. The Architectural Committee shall consider and act upon all plans and specifications submitted for its approval under this Declaration and perform such other duties as are specified in this Declaration, including the inspection of construction in progress to assure its conformance with the plans approved by the Architectural Committee. The Architectural Committee may approve plans and specifications submitted for its approval only if it determines that (i) the Construction Activity is in conformance with the Architectural Committee Rules, (ii) the Construction Activity in the locations indicated will not be detrimental to the appearance of the surrounding area or the Properties as a whole, (iii) the appearance of any structure affected thereby will be in harmony with the surrounding structures, (iv) the Construction Activity and the product thereof will not detract from the beauty, wholesomeness and attractiveness of the Maintenance Property and the Common Area or the enjoyment thereof by the Members, and (v) the upkeep and maintenance thereof will not become a burden on the Association.

8.4.2. Conditions. The Architectural Committee may condition its approval of plans and specifications for any Improvement upon any of the following: (i) the Applicant's furnishing the Association with a bond or other security acceptable to the Architectural Committee in an amount reasonably sufficient to (a) assure the completion of such Improvement or the availability of funds adequate to remedy any nuisance or unsightly conditions occurring as a result of the partial completion of such Improvement, and (b) to protect the Association and the other Owners against mechanic's liens or other encumbrances which may be Recorded against their respective interests in the Properties or damage to the Maintenance Property as a result of



such work, (ii) such changes therein as it deems appropriate, (iii) the grant of appropriate easements to the Association for the maintenance of the Improvement and access to all Maintenance Property, (iv) the Applicant's agreement to reimburse the Association for the cost of maintaining the Improvement, (v) the Applicant's agreement to complete the proposed work within a stated period of time, or (vi) all of the foregoing, and may require submission of additional plans and specifications or other information prior to approving or disapproving materials submitted.

8.4.3. Review Period. The Architectural Committee may require such detail in plans and specifications submitted for its review as it deems proper, including without limitation, site plans, lighting plans, landscaping plans, elevation drawings and descriptions or samples of exterior materials and colors. Until the Architectural Committee receives all required plans and specifications (and any Project Association approval if required as a prerequisite to plan consideration), the Architectural Committee may postpone review of any plan submitted for approval or determination of exemption. The Architectural Committee shall transmit its decision and the reasons therefore or a request for further information to the Applicant at the address furnished by the Applicant, within thirty (30) days after the date of the receipt issued by the Architectural Committee for materials submitted to the Architectural Committee. Subject to appeal procedures which may be adopted by the Board as provided in Section 8.12, any application or request for certificate of exemption submitted pursuant to this Section shall be deemed approved, unless the Architectural Committee transmits written disapproval or a request for additional information or materials to the Applicant within thirty (30) days after the date of receipt by the Architectural Committee of the Applicant's submitted materials.

8.5. Meetings of the Architectural Committee. The Architectural Committee shall meet as necessary to perform its duties hereunder. The Architectural Committee may, by a unanimously adopted written resolution, designate one or more Architectural Committee Representative(s) (who may, but need not, be one of its members) to take any action or perform any duties for and on behalf of the Architectural Committee, except the recommending of variances for Board approval pursuant to Section 8.10. In the absence of such designation, the vote or written consent of a majority of the members of the Architectural Committee constitutes an act of the Architectural Committee. Subject to the prior approval of the Board, the Architectural Committee may engage architects, landscape architects, designers, planners and such similar professionals and consultants and appoint such subcommittees as the Architectural Committee deems appropriate to assist the Architectural Committee and the Architectural Committee Representative in the evaluation of plans, specifications and other items submitted for Architectural Committee approval pursuant to the Declaration.

8.6. No Waiver of Future Approvals. Architectural Committee approval of any proposals or plans and specifications or drawings for any Construction Activity done or proposed or in connection with any other matter requiring Architectural Committee approval does not waive any right to withhold approval of any similar proposals, plans and specifications, drawings or matters subsequently or additionally submitted for approval or consent.



8.7. **Compensation of Members.** The Architectural Committee members shall receive no compensation for services rendered, other than reimbursement by the Association for expenses incurred by them in performing their duties. The foregoing shall not preclude payment of compensation approved by the Board to architects or similar professionals engaged to assist the Architectural Committee or the Architectural Committee Representative or to perform the function of the Architectural Committee Representative pursuant to Section 8.5 above.

8.8. **Correction of Defects.** Inspection of work and correction of defects therein shall proceed as follows:

8.8.1. **Notice of Completion.** The Architectural Committee or its duly appointed representative may at any time inspect any Improvement or Construction Activity for which approval of plans is required under this Article. The Architectural Committee's right of inspection of Improvements for which plans have been submitted and approved shall terminate sixty (60) days after the work of Improvement has been completed and the Architectural Committee has received written notice of such completion. The Architectural Committee's rights of inspection shall not terminate pursuant to this paragraph if plans for the work of Improvement have not previously been submitted to and approved (or determined exempt) in writing by the Architectural Committee. If the Architectural Committee finds that an Improvement was done without obtaining written approval of the plans therefor or was not done in substantial compliance with the plans approved by the Architectural Committee, it shall notify the Owner in writing of failure to comply with this Article VIII, specifying the particulars of noncompliance. The Architectural Committee may require the Owner to take such action as may be necessary to remedy a noncompliance.

8.8.2. **Noncompliance.** If the Owner fails to remedy the noncompliance within sixty (60) days from the date the Architectural Committee's notice of noncompliance is deemed received by the Owner, the Architectural Committee shall notify the Board in writing of such failure. Upon Notice and Hearing, the Board shall determine whether there is a noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If a noncompliance exists, the Owner must remedy or remove the same within a period of not more than forty-five (45) days from 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 Board may Record a notice of noncompliance and may commence a lawsuit for damages or injunctive relief, as appropriate, to remedy the noncompliance.

8.8.3. **Compliance.** If the Architectural Committee fails to notify the Applicant of any noncompliance with previously submitted and approved plans within sixty (60) days after receipt of written notice of completion from the Applicant, the Construction Activity shall be deemed to be in accordance with such approved plans.

8.8.4. **Prosecution of Work.** The Architectural Committee approval for any particular Construction Activity expires and the plans and specifications therefor must be resubmitted for Architectural Committee approval pursuant to this Article VIII if substantial



work pursuant to the approved plans and specifications is not commenced within six (6) months of the Architectural Committee's approval of such Construction Activity. All Construction Activities shall be performed as promptly and diligently as possible and, unless an earlier completion date is specified in this Declaration, the Architectural Committee approval, must be completed within one (1) year after the date on which the work commenced.

8.9. **Scope of Review.** The Architectural Committee shall review and approve or disapprove all plans submitted to it for any proposed Construction Activity solely on the basis of the considerations set forth in this Declaration. The Architectural Committee is not responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any plan or design from the standpoint of structural safety or conformance with building codes or other governmental requirements. The Architectural Committee may consider reasonable privacy right claims as factors in reviewing, approving or disapproving any proposed Construction Activities. However, Declarant and the Merchant Builders do not warrant any protected views within the Properties and no Lot, Residence or Common Area is guaranteed the existence or unobstructed continuation of any particular view.

8.10. **Variances.** The Architectural Committee may recommend variances from compliance with any of the architectural provisions of this Declaration or any Supplemental Declaration, including, without limitation, restrictions upon height, size, floor area or placement of structures, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations may require. Such variances must be approved by the Board, evidenced in writing, and signed by at least two (2) officers of the Association certifying such Board approval, and are effective upon Recordation. No violation of the covenants, conditions and restrictions contained in this Declaration or any Supplemental Declaration shall exist with respect to any Construction Activity for which a variance is granted. The granting of such a variance does not waive any of the terms and provisions of this Declaration or of any Supplemental Declaration for any purpose except as to the particular property and particular provision hereof covered by the variance, nor does it affect the Owner's obligation to comply with all governmental laws and regulations.

8.11. **Pre-Approvals.** Subject to Section 10.1.5, the Board may authorize the pre-approval of certain specified types or classes of Construction Activities in the Architectural Committee Rules if, in the exercise of the Board's judgment, pre-approval of such types or classes of Improvements is appropriate in carrying out the purposes of this Declaration.

8.12. **Appeals.** For so long as Declarant has the right to appoint and remove a majority of the Architectural Committee members, the Architectural Committee's decisions are final, and there is no appeal to the Board. When Declarant is no longer entitled to appoint and remove a majority of the Architectural Committee's members, the Board may adopt polices and procedures for the appeal of Architectural Committee decisions to the Board. The Board has no obligation to adopt or implement any appeal procedures, and in the absence of Board adoption of appeal procedures, all Architectural Committee decisions are final.



**ARTICLE IX
DESTRUCTION OR CONDEMNATION
OF MAINTENANCE PROPERTY**

Damage to, destruction or condemnation of all or any portion of the Maintenance Property shall be handled in the following manner:

9.1. **Damages by Owners or Project Associations.** To the extent permitted by law, each Owner and Project Association is liable to the Association for any damage to the Maintenance Property not fully reimbursed to the Association by insurance (including any insurance policy deductible amounts) if the damage is sustained because of the negligence, neglect, willful misconduct or unauthorized or improper installation or maintenance of any Improvement by the Project Association, its members, guests or invitees, or the Owner, his Family, guests, tenants or invitees, or any other Persons deriving their right and easement of use and enjoyment of the Maintenance Property from the Project Association, the Owner, or their respective Family and guests, both minor and adult. However, the Association, acting through the Board, may determine whether any claim will be made upon the insurance maintained by the Association, and after Notice and Hearing the Association may levy a Special Assessment equal to the increase, if any, in insurance premiums directly attributable to the damage caused by the Owner or the Person for whom the Owner may be liable as described above. In the case of joint ownership of a Lot or Condominium, the liability of the 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, to the extent not reimbursed to the Association by insurance, shall be a Special Assessment.

9.2. **Repair of Damages.** If Maintenance Property Improvements which are the maintenance responsibility of the Association are damaged by fire or other casualty, any insurance proceeds payable by reason thereof shall be paid to the Association, which thereupon shall contract for the repair or replacement of all the Maintenance Property Improvements so damaged. The Association shall levy a Reconstruction Assessment on Owners to satisfy any deficiency between insurance proceeds and the actual cost of repair or replacement in the same manner and proportion that Common Assessments are levied against and collected from Owners (for example, Owners located in a Cost Center will pay their proportionate share of any Reconstruction Assessment attributable to their Cost Center Improvements, and Owners not located in such Cost Center are exempt from such Reconstruction Assessment). Any restoration or repair of the Maintenance Property Improvements after damage due to an insurable hazard will be performed substantially in accordance with the original plans and specifications unless other action is approved by holders of fifty-one percent (51%) of the first Mortgages on Lots and Condominiums subject to Common Assessments for the maintenance of such Maintenance Property.

9.3. **Condemnation.** If all or any portion of the Maintenance Property, or any interest therein, is taken by right of eminent domain or by private purchase in lieu of eminent domain, the award in condemnation shall be paid to the Association and deposited in the appropriate



Operating Fund. No Member (other than a Person on whose Lot an Maintenance Property easement affected by a condemnation may be located) may participate as a party, or otherwise, in any proceedings relating to such condemnation. The Association has the exclusive right to participate in such proceedings and shall, in its name alone, represent the interests of all Members.

9.4. **Notice to Owners and Listed Mortgagees.** The Board of Directors immediately upon learning of any taking by eminent domain of any Maintenance Property, or any threat thereof, shall promptly notify all Owners whose Lots and Condominiums are subject to Common Assessments for the maintenance of such Maintenance Property, and all Record holders of first Mortgages on such Owners' Lots and Condominiums. The Board, immediately upon learning of any damage or destruction affecting a material portion of the Maintenance Property, shall promptly notify all Owners whose Lots and Condominiums are subject to Common Assessments for the maintenance of such Maintenance Property, and all holders, insurers, and guarantors of first Mortgages on Lots or Condominiums who have filed a written request for such notice.

ARTICLE X DECLARANT AND MERCHANT BUILDER EXEMPTION

10.1. **Interest of Declarant.** The First Subdivision is a portion of a larger parcel of land which Declarant is developing into a master planned community. Declarant in cooperation with the City, has created a comprehensive plan for the development of the Properties which includes modern master-planning objectives which have been formulated for the common good and preservation of property values within the community. Each Owner of a Lot or Condominium which is part of the Properties acknowledges by acceptance of a deed or other conveyance therefor, whether or not it shall be so expressed in any such deed or other instrument, that Declarant has a substantial interest in assuring compliance with and enforcement of, the covenants, conditions, restrictions and reservations contained in this Declaration and any amendments thereto and any Supplemental Declarations Recorded pursuant to this Declaration. Commencing on the date on which Declarant no longer has an elected or appointed representative on the Board, and continuing until the date on which Declarant no longer owns a Lot or Condominium in the Properties or any portion of the Annexable Area, 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. Notwithstanding any other provisions of the Restrictions, until the earlier to occur of (i) annexation of all of the Annexable Area and the commencement of Assessment in all Phases, or (ii) the twenty-fifth (25th) anniversary of the first Close of Escrow in the Properties, the following actions, before being undertaken by the Delegates, the Members or the Association, must first be approved in writing by Declarant.

10.1.1. **Specified Approvals.** Any amendment or action requiring the approval of Declarant pursuant to this Declaration, including without limitation all amendments and actions



specified in Section 12.2.2, and any amendment or action requiring the approval of first Mortgagees pursuant to this Declaration, including without limitation all amendments and actions specified in Sections 12.2.3 and 12.3. The Association must provide Declarant with all notices and other documents to which a Beneficiary is entitled pursuant to this Declaration, and Declarant shall be furnished such notices and other documents without the necessity of a written request.

10.1.2. Annexation. The annexation to the Properties of Other Area (not Annexable Area) pursuant to Section 2.3;

10.1.3. Capital Improvement Assessments. The levy of a Capital Improvement Assessment for the construction of new facilities not originally included in the Maintenance Property;

10.1.4. Service/Maintenance Reductions. Subject to Section 6.7 regarding limitations on yearly Common Assessment increases, any significant reduction of Maintenance Property maintenance or other services or entering into contracts for maintenance or other goods and services benefitting the Association or the Maintenance Property at contract rates which are fifteen percent (15%) or more below the reasonable cost for such maintenance, goods or services as determined pursuant to the cost guidelines described in Section 6.7.4;

10.1.5. Architectural Committee Rules. The adoption of and any supplement or amendment to the Architectural Committee Rules, including any pre-approval authorization pursuant to Section 8.11; or

10.1.6. Maintenance Guidelines. Any supplement to or amendment of the Maintenance Guidelines.

10.1.7. Other Amendments. Any other amendments that would materially alter or affect the rights or exemptions of Declarant hereunder.

10.2. Exemptions. Nothing in the Restrictions limits and no Owner, Project Association or the Association will interfere with the right of Declarant and Merchant Builders, either directly or through their respective agents and representatives, to subdivide, resubdivide, sell, resell, rent or reread any portion of the Properties, or the right of Declarant or a Merchant Builder to complete excavation, grading, construction of Improvements or other development activities to and on any portion of the Properties owned by Declarant or a Merchant Builder, as applicable, or to alter the foregoing and the construction plans and designs, or to construct such additional Improvements as Declarant or a Merchant Builder deems advisable in the course of developing the Properties so long as any Lot or Condominium in the Properties or any portion of the Annexable Area is owned by Declarant or a Merchant Builder. These rights include, but are not limited to, carrying on by Declarant, the Merchant Builders and their respective agents and representatives of such grading work as may be approved by the City or other Local Governmental Agency having jurisdiction, and erecting, constructing and maintaining on the



Properties such structures, signs and displays reasonably necessary for the conduct of the business of completing the work and disposing of the Properties and the Annexable Area by sale, lease or otherwise. Each Owner, by accepting a deed to a Lot or Condominium, acknowledges that any construction or installation by Declarant or a Merchant Builder may impair the view of such Owner, and each Owner consents to such impairment.

This Declaration does not limit the right of Declarant or a Merchant Builder, at any time prior to acquisition of title to a Lot or Condominium by a purchaser from Declarant or a Merchant Builder, to establish on that Lot or Condominium, as the case may be, additional licenses, easements, reservations and rights-of-way to itself, to utility companies, or to others as reasonably necessary to the proper development and disposal of the Properties and Annexable Area provided, however, if VA or FHA has issued a "**project approval**" (as described in Section 2.3.6(i) hereof) with regard to any Condominium Project or Planned Development in the Properties which is to be subject to any of the actions described herein, then FHA, VA or both shall have the right to approve any such grants as provided herein. Prospective purchasers, Declarant and Merchant Builders may use any and all portions of the Maintenance Property for access to the sales and leasing facilities of Declarant and Merchant Builders. Declarant and Merchant Builders may use any structures or vehicles owned, respectively, by Declarant or Merchant Builders in the Properties as model home complexes, or real estate sales or leasing offices; provided that such uses within the Properties shall terminate on the twenty-fifth (25th) anniversary of the first Close of Escrow for the sale of a Lot or Condominium on the Properties pursuant to a transaction requiring the issuance of a Public Report, at which time Declarant and Merchant Builders shall restore their respective structures to their previous appearance. Any exemption of Merchant Builders pursuant to this Section 10.2 shall not apply to any Declarant architectural approvals which are required of Merchant Builders or Apartment Area Owners pursuant to Section 8.3. All or any portion of the rights of Declarant or a Merchant Builder, as applicable, hereunder and elsewhere in these Restrictions may be assigned by Declarant or such Merchant Builder, as applicable, to any successor in interest to any portion of Declarant's or Merchant Builder's interest in any portion of the Properties or the Annexable Area (including, without limitation, to any Merchant Builder) by an express Recorded written assignment which specifies the rights of Declarant or such Merchant Builder so assigned. Notwithstanding any other provision of this Declaration, for so long as Declarant owns any portion of the Properties or the Annexable Area, Declarant's prior written approval is required before any amendment to this Article X is effective.

10.3. Easement Relocation. Maintenance Property comprising easements over real property the fee title to which has not been made subject to the Declaration ("**Interim Easement Area**") may be relocated, modified or terminated by Declarant to accommodate the final plan of development for the future Phase of Development in which the Interim Easement Area is located. Such relocation, modification or termination shall be set forth in the Recorded instrument annexing fee title to the Interim Easement Area to the Declaration. Notwithstanding the foregoing, no such relocation, modification or termination shall prevent access to any Lot or Condominium.



10.4. **Conversion of Apartment Area.** The Owner of an Apartment Area Lot or Lots, in its sole discretion, may convert all or any portion of its Apartment Area to a Planned Development or Condominium Project or projects, as applicable, pursuant to then applicable laws. In such event, effective upon the first day of the first month immediately following the month in which the first Close of Escrow for the sale of a Lot or Condominium in each Phase of Development of such converted Apartment Area, such Phase of Development shall be deemed Residential Area; the Owners of Lots or Condominiums in such Phase of Development of converted Apartment Area shall all be "**Owners**" as defined in this Declaration; such Lots or Condominiums shall be assessed in the same manner as other Residential Area Lots and Condominiums; the Owners of such Lots or Condominiums shall have the same voting rights as other Owners of the same class of Members; and such Lots and Condominiums, and the Owners thereof, shall be subject to all of the provisions of this Declaration in the same manner as the other Lots, Condominiums and Owners in the Residential Area. The conversion of Apartment Area pursuant to this Section 10.4 does not require the approval of the Delegates, the Association or the Members, nor require modifications to existing Apartment Area Improvements in order to conform them with the Restrictions otherwise applicable to the Residential Areas.

ARTICLE XI INSURANCE

11.1. **Casualty Insurance.** The Board shall obtain and maintain fire and casualty insurance with extended coverage for loss or damage to all insurable Improvements installed by Declarant, any Merchant Builder or by the Association on the Maintenance Property for the full replacement cost thereof without deduction for depreciation or coinsurance, and may obtain insurance against such other hazards and casualties as the Association may deem desirable. The Association may also insure any other real or personal property it owns against loss or damage by fire and such other hazards as the Association may deem desirable, with the Association as the owner and beneficiary of such insurance. The policies insuring the Maintenance Property must be written in the name of, and the proceeds thereof must be payable to the Association. Unless the applicable insurance policy provides for a different procedure for the filing of claims, all claims made under such policy must be sent to the insurance carrier or agent, as applicable, by certified mail and be clearly identified as a claim. The Association shall keep a record of all claims made. The Association shall use insurance proceeds to repair or replace the property for which the insurance was carried. Premiums for all insurance carried by the Association are a Common Expense.

11.2. **Insurance Obligations of Owners.** Each Owner is responsible for insuring his personal property and all other property and Improvements within his Lot or Condominium as required by this Declaration, the applicable Supplemental Declaration or applicable Project Declaration. Such policies shall not adversely affect or diminish any liability under any insurance obtained by or on behalf of the Association, and duplicate copies of such other policies shall be deposited with the Board upon the Board's request. If any loss intended to be covered by insurance carried by or on behalf of the Association occurs and the proceeds payable thereunder are reduced due to insurance carried by any Owner, such Owner shall assign the



proceeds of such insurance to the Association, to the extent of such reduction, for application by the Board to the same purposes as the reduced proceeds are to be applied.

11.3. Waiver of Subrogation. All policies of physical damage insurance the Association maintains must provide, if reasonably possible, for waiver of: (i) any defense based on coinsurance; (ii) any right of setoff, counterclaim, apportionment, proration or contribution due to other insurance not carried by the Association; (iii) 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; (iv) any rights of the insurer to repair, rebuild or replace, and, if any 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; (v) notice of the assignment of any Owner of its interest in the insurance by virtue of a conveyance of any Lot; (vi) any denial of an Owner's claim because of negligent acts by the Association or other Owners; or (vii) prejudice of the insurance by any acts or omissions of Owners that are not under the Association's control. As to each policy of insurance the Association maintains which will not be voided or impaired thereby, the Association hereby waives and releases all claims against the Board, the Owners, the Association Manager, Declarant, the Merchant Builders and the agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence or breach of any agreement by such Persons, but only to the extent that insurance proceeds are received in compensation for such loss.

11.4. Liability and Other Insurance. The Association shall obtain comprehensive public liability insurance, including medical payments and malicious mischief, in such limits as it deems desirable with such minimum limits as are set forth in Section 1365.9 of the California Civil Code, insuring against liability for bodily injury, death and property damage arising from the Association's activities or with respect to property the Association maintains or is required to maintain including, if obtainable, a cross-liability endorsement insuring each insured against liability to each other insured. The Association may also obtain Worker's Compensation insurance and other liability insurance as it may deem desirable, insuring each Owner, the Association, Board and Association Manager, against liability in connection with the Maintenance Property, the premiums for which are a Common Expense. The Board shall review all insurance policies at least annually and adjust the limits in its discretion. The Board may also obtain such errors and omissions insurance, indemnity bonds, fidelity insurance and other insurance as it deems advisable, insuring the Board, the Association's officers and the Association Manager against any liability for any act or omission in carrying out their obligations hereunder, or resulting from their membership on the Board or on any committee thereof. However, fidelity insurance coverage which names the Association as an obligee must be obtained by or on behalf of the Association for any Person handling Association funds, including, but not limited to, Association officers, directors, employees and agents and Association Manager employees, 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 Association's or Association Manager's custody during the term of each bond. The aggregate



amount of such bonds may not be less than one-fourth (1/4) of the Common Assessments on all Lots and Condominiums in the Properties, plus reserve funds. In addition, the Association shall continuously maintain in effect such casualty, flood and liability insurance and fidelity insurance coverage meeting the requirements for planned unit developments established by FNMA, GNMA and FHLMC, so long as any of them is a Mortgagee or an Owner of a Residence in the Properties, except to the extent such coverage is not reasonably available or has been waived in writing by FNMA, GNMA and FHLMC, as applicable.

11.5. Notice of Expiration Requirements. If available, each insurance policy the Association maintains must contain a provision that said policy may not be canceled, terminated, materially modified or allowed to expire by its terms, without ten (10) to thirty (30) days' prior written notice to the Board, Declarant, and to each Owner and Beneficiary, 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.

ARTICLE XII MISCELLANEOUS

12.1. Term and Termination. This Declaration continues in full force until a Declaration of Termination satisfying the requirements of an amendment to this Declaration as set forth in Section 12.2 of this Article is Recorded.

12.2. Amendments.

12.2.1. By Declarant. Prior to the first Close of Escrow for the sale of a Lot or Condominium to a member of the public pursuant to a transaction requiring the issuance of a Public Report, this Declaration may be amended or terminated by Recording a written instrument signed by Declarant setting forth such amendment or termination. Notwithstanding any other provisions of this Declaration, for so long as Declarant owns any portion of the Properties or the Annexable Area, Declarant may unilaterally amend this Declaration (i) to conform this Declaration to the requirements of VA, FHA, DRE, FNMA, GNMA, FHLMC, the County, City or any other governmental agency or entity then in effect, (ii) to correct typographical or inadvertent error or omission, and (iii) to update or supplement the disclosures contained in this Declaration, by Recording a written instrument signed solely by Declarant.

12.2.2. By Delegates. The provisions of this Declaration (all of which may not be amended without the written consent of Declarant until the fifteenth (15th) anniversary of the first Close of Escrow in the Properties), may be amended by Recording an instrument, signed and acknowledged by Declarant (for those amendments which must be approved by Declarant) and two (2) officers of the Association, setting forth the amendment and certifying that such amendment has been approved by Delegates representing sixty-seven percent (67%) of the voting power of the Association and the requisite percentage of holders and insurers of first Mortgages, in the case of those amendments which this Declaration requires to be approved by first Mortgagees. Amendments shall be effective upon Recordation.



12.2.3. Approval of First Mortgagees. Notwithstanding the foregoing, any of the following amendments, to be effective, must be approved by fifty-one percent (51%) of the first Mortgagees who have requested the Association to notify them of proposed action requiring the consent of a specified percentage of first Mortgagees, based upon one (1) vote for each Assessment Unit allocated to a Lot or Condominium pledged as security for the respective first Mortgage:

(i) **Rights of Lenders.** Any amendment which affects or purports to affect the validity or priority of encumbrances or the rights or protections granted to Beneficiaries, insurers and guarantors of first Mortgages as provided in Articles II, VI, IX, X, XI, and XII hereof.

(ii) **Lien Priority.** Any amendment which would necessitate a Mortgagee after it has acquired a Lot or Condominium through foreclosure to pay more than its proportionate share of any unpaid assessment or assessments accruing after such foreclosure.

(iii) **Forfeitures and Taxes.** Any amendment which would or could result in (a) an encumbrance being canceled by forfeiture, or (b) an individual Lot or Condominium not being separately assessed for tax purposes.

(iv) **Insurance and Condemnation.** Any amendment relating to the insurance provisions as set out in Article XI hereof, or to the application of insurance proceeds as set out in Article XI hereof, or to the disposition of any money received in any taking under condemnation proceedings.

(v) **Termination and Subdivision.** Any amendment which would or could result in termination or abandonment of the Properties or partition or subdivision of a Lot or Condominium, in any manner inconsistent with the provisions of this Declaration; provided that termination of the legal status of the Properties as a common interest development for reasons other than substantial destruction or condemnation of the Properties must be approved by the institutional Record holders of sixty-seven percent (67%) of the first Mortgages at the time of such amendment.

Any approval by a holder, insurer or guarantor of a first Mortgage required under this Section 12.2.3, or required pursuant to any other provisions of the Restrictions, must either be given in writing, or is deemed given if, within thirty (30) days after receipt of written notice of the proposed action sent via registered or certified mail, return receipt requested, the holder, insurer or guarantor does not submit a written response to the notice.

12.2.4. Veto by City. The City shall have the power to veto any proposed amendment or termination of this Declaration, which affects any provision required by the conditions of approval to development of the Properties imposed by the City including, without limitation, the use and maintenance of the Public Property. No amendment or written agreement



purporting to terminate or modify such provisions of this Declaration shall take effect until thirty (30) calendar days following delivery by mail, return receipt requested, of written notice thereof, to the City Director of Planning and Community Development, with a copy thereof to the City Attorney, and if no veto is exercised by the City Planning Director within thirty (30) calendar days after the receipt of such notice, such amendment or termination shall thereafter become effective.

12.2.5. Certification. A certificate, signed and sworn to by two (2) officers of the Association that Delegates representing sixty-seven percent (67%) of the Lots and Condominiums have voted for any amendment adopted as provided above, when Recorded, shall be conclusive evidence of that fact. The certificate reflecting any termination or amendment which requires the consent of any of the record holders, guarantors or insurers of first Mortgages shall include a certification that the requisite approval of the City, and such holders, guarantors or insurers of first Mortgages has been obtained or waived. The certificate reflecting any termination or amendment requiring Declarant's consent shall be signed and acknowledged by Declarant. The Association shall maintain in its files the record of all such votes and Mortgagee consent solicitations and disapprovals for a period of at least four (4) years.

12.3. Mortgagee Protection-General. Notwithstanding any other provision of this Declaration, no amendment or violation of this Declaration will defeat or render invalid the rights of the Beneficiary under any Deed of Trust made in good faith and for value, and Recorded prior to the Recordation of such amendment (or a Notice of Lien Recorded pursuant to Section 6.11). After the foreclosure of any such Deed of Trust such Lot or Condominium remains subject to this Declaration, as amended. Notwithstanding any and all provisions of this Declaration to the contrary, in order to induce FHLMC, GNMA, FNMA, VA and FHA to participate in the financing of Lots and Condominiums within the Properties, the following provisions are added hereto (and to the extent these added provisions, pertaining to the rights of Mortgagees, FHLMC, FNMA, GNMA, VA and FHA, conflict with any other provisions of this Declaration or any other of the Restrictions, these added restrictions shall control):

12.3.1. Notice of Default. Each Beneficiary, insurer and guarantor of a first Mortgage encumbering any Lot or Condominium, upon filing a written request for notification with the Board, is entitled to written notification from the Association of (i) any condemnation or casualty loss which affects either a material portion of the Properties or the Lot or Condominium securing the respective first Mortgage; (ii) any delinquency of sixty (60) days or more in the performance by the Owner of such Lot or Condominium of any obligation arising pursuant to this Declaration, including without limitation the payment of assessments or charges owed by the Owner of the Lot or Condominium securing the respective first Mortgage, which notice each Owner hereby consents to and authorizes; (iii) a lapse, cancellation, or material modification of any policy of insurance or fidelity bond maintained by the Association; and (iv) any proposed action of the Association which requires consent by a specified percentage of first Mortgagees.

12.3.2. First Refusal Exemption. Every Owner, including every first Mortgagee of a Mortgage encumbering any Lot or Condominium, which obtains title to such Lot or



Condominium pursuant to the remedies provided in such Mortgage, or pursuant to foreclosure of the Mortgage, or by deed (or assignment) in lieu of foreclosure, is exempt from any "right of first refusal."

12.3.3. Lien Priority. Each first Mortgagee of a Mortgage encumbering any Lot or Condominium and Recorded prior to a Notice of Lien which obtains title to such Lot or Condominium pursuant to judicial foreclosure or the powers provided in such Mortgage takes title to such Lot or Condominium free and clear of any claims for unpaid assessments or charges against such Lot or Condominium which accrued prior to the time such Mortgagee acquires title to such Lot or Condominium in accordance with Section 6.16.

12.3.4. Books and Records. All Beneficiaries, insurers and guarantors of first Mortgages on Lots or Condominiums, upon written request to the Association, may examine current copies of the Association 's books, records and financial statements and the Restrictions during normal business hours, and may require the Association to submit an annual audited financial statement for the preceding fiscal year without expense to the entity requesting the statement within one hundred twenty (120) days of the end of the fiscal year.

12.3.5. Mortgagee Notices. All Beneficiaries, insurers and guarantors of first Mortgages of Lots or Condominiums who have filed a written request with the Association shall be given (i) thirty (30) days' written notice prior to the effective date of any proposed, material amendment to this Declaration or the Articles or Bylaws, and prior to the effective date of any termination of an agreement for professional management of the Properties following a decision of the Owners to assume self-management of the Properties; (ii) written notice of all meetings of the Delegates and Delegate District Members and the right to designate in writing a representative who shall be authorized to attend all such meetings; and (iii) immediate written notice as soon as the Board receives notice or otherwise learns of any damage to the Maintenance Property whenever the cost of reconstruction exceeds Ten Thousand Dollars (\$10,000), and as soon as the Board receives notice or otherwise learns of any condemnation or eminent domain proceedings or other proposed acquisition, with respect to any portion of the Properties.

12.3.6. Maintenance Property 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 Maintenance Property and may pay any overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such property, and first Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

12.4. Notices. Any notice permitted or required to be delivered as provided herein shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered two (2) business days after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to any Person at the address given by such Person to the Association for the purpose of service of such notice, or to the Residence (or principal place of business in the case of a Project Association) of such Person if



no address has been given to the Association. Such address may be changed from time to time by notice in writing to the Association.

12.5. Enforcement and Non-Waiver.

12.5.1. Right of Enforcement. Subject to Sections 1354 and 1375 of the California Civil Code and Sections 12.5.8, 12.5.10 and 12.14 below, the Association, the successors-in-interest of the Association, any Owner, Project Association, Declarant and Merchant Builders (so long as Declarant or a Merchant Builder owns a Lot or Condominium in the Properties or is entitled to add Annexable Area to the Properties), may enforce any of the provisions of the Restrictions against any portion of the Properties which is in noncompliance, and against each Owner, the Association, any Project Association, or any other Person responsible for the noncompliance. Such right shall include proceedings for damages, as well as proceedings to enjoin any violation of the Restrictions. The City shall be entitled but not obligated to enforce all provisions of this Declaration required by the City as conditions to approval of development of the Properties.

12.5.2. Project Declaration Enforcement. Subject to Sections 1354 of the California Civil Code and Sections 5.2.10, 12.5.8, 12.5.10 and 12.14 below, the Association may commence and maintain actions and proceedings to restrain and enjoin any breach or threatened breach of the provisions of any applicable Project Declaration and to enforce, by mandatory injunctions or otherwise, all of the provisions of any applicable Project Declaration.

12.5.3. Violations are Nuisance. Every act or omission whereby any provision of the Restrictions is violated in whole or in part is declared a nuisance and every remedy allowed by law or equity against a nuisance, either public or private, is applicable against every such violation and may be exercised as provided in Section 12.5.1 above.

12.5.4. Violation of Law. Any violation of any state, municipal or local law, ordinance or regulation pertaining to the ownership, occupation or use of any of the Properties is a violation of the Restrictions and subject to all of the enforcement procedures set forth in the Restrictions.

12.5.5. Remedies Cumulative. Each remedy provided by the Restrictions is cumulative and not exclusive. The Association may, without waiving the right to enforce its lien against the Lot or Condominium, bring a suit at law to enforce each assessment obligation.

12.5.6. No Waiver. Failure to enforce any provision of the Restrictions does not waive the right to enforce that provision, or any other provision thereof.

12.5.7. Special Assessment. If any Owner, his Family, guests, licensees, tenants or invitees, or any Project Association violates the Restrictions, the Board may, after Notice and Hearing and in addition to the other remedies available, impose a reasonable Special Assessment upon such Owner or Project Association for each violation and may as further provided in the



Bylaws, suspend or condition such Owner's right (and the right of his Family, guests, licensees, tenants and invitees) to use any portion of the Maintenance Property (other than streets and driveways providing access to such Owner's Lot or Condominium). Any such suspension or conditional suspension shall be for a period of not more than thirty (30) days for any noncontinuing infraction, but in the case of a continuing infraction (including nonpayment of any delinquent assessment) may be imposed for so long as the violation continues. The Board may also adopt a schedule of reasonable fines or penalties which, in its reasonable discretion, it may assess against an Owner or Project Association for failure of the Project Association or Owner, his Family or a resident of or visitor to his Lot or Condominium, to comply with any provision of the Restrictions, other than Article VI hereof. Such fines or penalties may only be assessed by the Board after Notice and Hearing.

12.5.8. Alternative Dispute Resolution of Assessment Disputes. Disputes between an Owner and the Association regarding the assessments imposed by the Association may be submitted to alternative dispute resolution in accordance with Civil Code Section 1354 if such Owner pays in full (i) the amount of the assessment in dispute, (ii) any late charges, (iii) any interest, and (iv) all fees and costs associated with the preparation and filing of a Notice of Delinquent Assessment (including mailing costs and 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 from the Recording of a Notice of Delinquent Assessment. Upon receipt of such written notice, the Association shall inform the Owner in writing that the dispute may be resolved through alternative dispute resolution as set forth in Civil Code Section 1354. The right of any Owner to utilize alternative dispute resolution under this Section may not be exercised more than two times in any single calendar year, and not more than three times within any five (5) calendar years. Nothing within this Section shall preclude any Owner and the Association, upon mutual agreement, from entering into alternative dispute resolution in excess of the limits set forth herein. 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 (i) through (iv) above, if it is determined that the assessment levied by the Association was not correctly levied.

12.5.9. Notice of Noncompliance. After Notice and Hearing, the Board may direct the officers of the Association to Record a Notice of Noncompliance against a Residence owned by any Member of the Association who has violated any provision of this Declaration. The notice shall include a legal description of the Residence 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.

12.5.10. Limitation on Expenditures. The Association may not incur litigation expenses, including without limitation 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 approval of sixty-seven percent (67%) of the



voting power of the Association (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 (i) to enforce the use restrictions contained in Article VII, (ii) to enforce the architectural and landscaping control provisions contained in Article VIII, (iii) to collect any unpaid assessments levied pursuant to this Declaration, (iv) for a claim, the total value of which is less than five hundred thousand dollars (\$500,000), or (v) 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, 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 Members 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.

12.6. Interpretation.

12.6.1. Restrictions Construed Together. The Restrictions shall be liberally construed to effectuate the fundamental concepts of the Properties as set forth in the Preamble to this Declaration. The Restrictions shall be interpreted so as to be consistent with applicable laws and regulations, including ordinances and regulations of the County and other applicable governmental entities. The Restrictions shall be construed and governed by the laws of the State of California.

12.6.2. Restrictions Severable. Notwithstanding the provisions of Section 12.6.1, each of the provisions of the Restrictions is independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

12.6.3. Singular Includes Plural. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall each include the masculine, feminine and neuter.

12.6.4. Captions. All captions and titles in this Declaration are solely for convenience of reference and do not affect that which is set forth in any of the provisions hereof.

12.6.5. Time Periods. Except as otherwise expressly provided herein, any reference in this Declaration to time for performance of obligations or to elapsed time means consecutive calendar days, months, or years, as applicable.

12.7. Reservation of Easements. Declarant and the Merchant Builders hereby reserve for the benefit of all of the Properties reciprocal easements for access, ingress and egress for all Owners to and from their respective Lots and Condominiums; for installation and repair of utility services; for encroachments of Improvements constructed by Declarant and Merchant Builders or authorized by the Architectural Committee over the Maintenance Property, Condominiums and



Lots; for drainage of water over, across and upon adjacent Lots, Common Areas and Maintenance Property resulting from the normal use of adjoining Lots, Common Areas or Maintenance Property; for necessary maintenance and repair of any Improvement constructed by Declarant or a Merchant Builder; easements as may be shown on any Recorded subdivision map or Recorded parcel map of any portion of the Properties; and for such other purposes specified in this Declaration. Such easements may be used by Declarant and the Merchant Builders, their successors, invitees and purchasers, the Association, and all Owners, their guests, tenants and invitees, residing on or temporarily visiting the Properties, for pedestrian walkways, vehicular access and such other purposes specified herein or reasonably necessary for the use, maintenance and enjoyment of a Lot, Condominium, Common Areas or the Maintenance Property. Declarant hereby reserves easements for the installation and maintenance of master antenna or master cable television antenna service, as provided in Section 3.8.

12.8. No Public Right of 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.

12.9. Incorporation of Restrictions. Every person who owns, occupies or acquires any right, title, estate or interest in or to any Lot or Condominium or other portion of the Properties agrees to every limitation, restriction, easement, reservation, condition and covenant contained herein, whether or not any reference to this Declaration is contained in the instrument by which such person acquired an interest in the Properties.

12.10. No Representations or Warranties. No representations or warranties of any kind, express or implied, have been given or made by Declarant or its agents or employees in connection with the Properties or any portion of the Properties, or any Improvement thereon, its physical conditions, zoning, compliance with applicable laws, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof, except as specifically and expressly set forth in this Declaration and except as may be filed from time to time with the DRE or with any other governmental authority.

12.11. Standard of Care, Nonliability.

12.11.1. Scope of Powers and Standard of Care.

(i) General Scope of Powers. Rights and powers conferred on the Board, the Delegates, the Architectural 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, obligations or disabilities in the Restrictions or in applicable law. Unless a duty to act is imposed on the Board, Delegates, Architectural Review Committee or other Committees or representatives of the Association by the Restrictions or applicable law, the Board, Delegate and the committees have the right to decide to act or not act. Any decision to not act is not a waiver of the right to act in the future.



(ii) **Business Affairs.** This Subsection 12.11.1(ii) applies to Board member actions in connection with management, personnel, maintenance and operations, insurance, contracts and finances and Architectural Review Committee member actions. Each Board member shall perform the duties of a Board member in good faith, in a manner such 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 statements and other financial data, in each case prepared or presented by:

- (1) One or more officers or employees of the Association whom the Board member believes to be reliable and competent in the matters presented;
- (2) 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
- (3) A Committee of the Board upon which the Board member does not serve, as to matters within its designated authority, which committee the director believes to merit confidence, so long as, in any such case, the director 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.
- (4) This Subsection 12.11.1(ii) is intended to be a restatement of the business judgement rule established in applicable law as it applies to the Association. All amendments, modifications, restatements and interpretations of the business judgment rule applicable to the Association shall be interpreted to amend, modify, restate or interpret this Subsection 12.11.1(ii).

(iii) **Association Governance.** This Subsection 12.11.1(iii) applies to Board actions, Architectural Review Committee decisions and Covenant 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.



12.11.2. **Nonliability.**

(i) **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 acts or omissions when the acts or omissions are within what the Person reasonably believed to be the scope of the Person's Association duties ("**Official Acts**"), except to the extent that 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 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 Delegates, the Association's officers, the Manager or the Manager's staff.

(ii) **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 without limitation 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 of the applicable conditions specified in Section 1365.7 of the California Civil Code, as modified, amended, or replaced, are met.

12.12. **Enforcement of Certain Bonded Obligations.** If (i) the Maintenance Property Improvements located on any Phase of Development of the Properties are not completed by the developer (Merchant Builder or Declarant, as the case may be) of such Phase of Development of the Properties (herein the "**Developer**"), prior to the issuance of a Final Subdivision Public Report for that Phase of Development by the DRE, and (ii) the Association is obligee under a bond, letter of credit or other arrangement ("**Bond**") required by the DRE to secure performance of the Developer's commitment to complete the Improvements, the following provisions of this Section will be applicable:

12.12.1. **Board Action.** The Board shall consider and vote on the question of Association action 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 Maintenance Property Improvement, the Board shall 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.

12.12.2. **Delegate Action.** A special meeting of Delegates, 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) days nor more than forty-five (45) days after receipt by the Board of a petition for such a meeting signed by not less than two (2) Delegates representing in the



aggregate not less than five percent (5%) of the Association total voting power. A vote of Delegates representing a majority of the Association voting power, disregarding any votes attributable to Lots or Condominiums owned by the Developer, to take action to enforce the obligations under the Bond shall be deemed the Association's decision, and the Board must thereafter implement this decision by initiating and pursuing appropriate action in the Association's name.

12.13. Priorities and Inconsistencies. If there are conflicts or inconsistencies between this Declaration and either the Articles of Incorporation or the Bylaws of the Association, the terms and provisions of this Declaration shall prevail. In addition, if there are any conflicts or inconsistencies between this Declaration or any of the Restrictions, and any documentation executed by a Merchant Builder and Declarant in connection with the sale of any property in the Properties to the Merchant Builder (collectively "**Development Documents**"), as between Merchant Builder and Declarant, the terms and provisions of the Development Documents shall control.

12.14. Dispute Resolution. All Project disputes between or among (i) the Association; (ii) any Project Association, (iii) any Owner(s), and/or (iv) the "**Declarant Parties**" (as defined herein) which arise out of, or relate to, the Restrictions or which relate to the Properties, shall be resolved as provided in this Section. For purposes of this Section, the "**Declarant Parties**" shall mean and refer to the Declarant, the Merchant Builders, and their respective shareholders, directors, officers, employees, contractors, subcontractors, consultants, representatives and agents. Notwithstanding the foregoing, this Section is not intended and shall not apply to any disputes solely between or among the Declarant and any of the other Declarant Parties.

(a) **Construction Defect Disputes.** Prior to the commencement of any legal action by the Association, any Project Association or any Owner(s) against a Merchant Builder, the Declarant or Declarant Party based upon a claim for defects in the design or construction of any Residence, Maintenance Property or Improvements thereon, the Association, Project Association or Owner must first comply with the requirements of Civil Code Section 1375 (notwithstanding the fact that Section 1375 does not apply to Owners by its terms). If the parties are unable to resolve their dispute in accordance with the procedures established under Civil Code Section 1375, the dispute shall be resolved in accordance with subsection (c) below and the Parties shall each be responsible for their own attorneys' fees.

(b) **Other Disputes.** Any other disputes arising under this Declaration or otherwise between the Association, any Project Association, any Owner, a Merchant Builder and the Declarant or a Declarant Party (except for action taken by the Maintenance Association against Declarant for delinquent assessments, and any action involving any Maintenance Property completion bonds) (excluding disputes between Declarant and any Merchant Builder) shall be resolved in accordance with subsection (c) below. The dispute resolution procedure in subsection (c) as it applies solely to the dispute under this subsection (b) shall be deemed to satisfy the alternative dispute requirements of Civil Code Section 1354, as applicable.



(c) **Judicial Reference.** Any unresolved disputes under subsections (a) and (b) above, shall be submitted to general judicial reference pursuant to California Code of Civil Procedure Sections 638(1) and 641-645 or any successor statutes thereto. The parties shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the judicial reference proceeding. The parties shall share equally in the fees and costs of the referee (unless the Declarant and/or a Merchant Builder (s) is a party or parties in which case the Declarant and/or Merchant Builder(s) shall in equal proportions advance the fees and costs of the referee, but such fees and costs shall actually be borne as ordered by the referee upon completion of the reference procedure), unless the referee orders otherwise but shall each be responsible for their own attorneys' fees.

The general referee shall have the authority to try all issues, whether of fact or law, and to report a statement of decision to the court. The parties shall use the procedures adopted by Judicial Arbitration and Mediation Services ("**JAMS**") for judicial reference and selection of a referee (or any other entity offering judicial reference dispute resolution procedures as may be mutually acceptable to the parties), provided that the following rules and procedures shall apply in all cases unless the parties agree otherwise:

- (1) The proceedings shall be heard in the county in which the Properties are located;
- (2) The referee must be a retired judge or a licensed attorney with substantial experience in relevant real estate matters;
- (3) Any dispute regarding the selection of the referee shall be resolved by JAMS or the entity providing the reference services, or, if no entity is involved, by the court with appropriate jurisdiction;
- (4) The referee may require one or more pre-hearing conferences;
- (5) The parties shall be entitled to discovery, and the referee shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge;
- (6) A stenographic record of the trial shall be made, provided that the record shall remain confidential except as may be necessary for post-hearing motions and any appeals;
- (7) The referee's statement of decision shall contain findings of fact and conclusions of law to the extent applicable; and
- (8) The referee shall have the authority to rule on all post-hearing motions in the same manner as a trial judge.



The statement of decision of the referee upon all of the issues considered by the referee is binding upon the parties, and upon filing of the statement of decision with the clerk of the court, or with the judge where there is no clerk, judgment may be entered thereon. The decision of the referee shall be appealable as if rendered by the court. This provision shall in no way be construed to limit any valid cause of action which may be brought by any of the parties. By acceptance of a deed or other conveyance of any Lot or Condominium, the Owners are to have acknowledged and accepted that they are waiving their right to a jury trial.

[signature page follows]



Declarant has executed this Declaration as of the date set forth below.

Dated: July 25, 2002 "DECLARANT"

RIO VISTA LAND COMPANY, L.P., a Texas limited partnership

By: BURNETT DEVELOPMENT CORPORATION, a California corporation
Its: General Partner

By: C. Burnett

Its: President

By: _____

Its: _____

[SIGNATURES ON THE FOLLOWING PAGE]



**[SIGNATURES TO
DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS AND RESERVATION
OF EASEMENTS FOR RIO VISTA VILLAGE]**

“INITIAL MERCHANT BUILDER”

D.R. HORTON LOS ANGELES HOLDING
COMPANY, INC., a California corporation

By: _____

(STEPHEN H. FITZPATRICK

Its: *VICE PRESIDENT*

By: _____

Its: _____

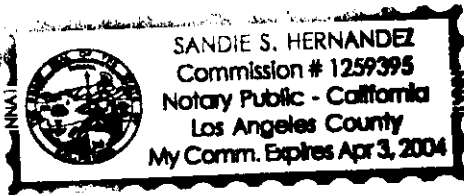
[NOTARIES ON FOLLOWING PAGES]



STATE OF CALIFORNIA)
COUNTY OF Los Angeles) ss.

On 7/05/02, 2002, before me, Sandie S Hernandez
personally appeared Stephen H. Fitzpatrick
personally known to me (~~or proved to me on the basis of satisfactory evidence~~) to be the
person(s) whose name(s) (is) (~~are~~) subscribed to the within instrument and acknowledged to me
that (he) (~~she~~) (~~they~~) executed the same in (his) (~~her~~) (~~their~~) authorized capacity(ies), and that by
(his) (~~her~~) (~~their~~) signature(s) on the instrument the person(s), or the entity upon behalf of which
the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



Sandie S Hernandez
Notary Public in and for said State

(SEAL)



SUBORDINATION

The undersigned, as Beneficiary of the beneficial interest in and under that certain Deed of Trust dated June 27, 2002, and recorded on July 9, 2002, in the Official Records of Riverside County, California, as Instrument No. 2002-375133, which Deed of Trust is between Rio Vista Land Co., LP, as Trustor, First American Title Company, as Trustee, and Vestin Mortgage Inc., as Beneficiary, hereby expressly subordinates such Deed of Trust and its beneficial interests thereunder to the foregoing Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Rio Vista Village ("Declaration"), to any Supplemental Declaration recorded pursuant to the provisions of Article II of the Declaration ("Notice"), and to all easements to be conveyed to the Association in accordance with the Declaration or any Notice. By executing this Subordination, the undersigned agrees that should the undersigned acquire title to all or any portion of the Properties by foreclosure (whether judicial or nonjudicial), deed-in-lieu of foreclosure or any other remedy in or relating to the Deed of Trust, the undersigned will acquire title subject to the provisions of the Declaration and any applicable Notice, which shall remain in full force and effect.

Dated: August 22, 2002.

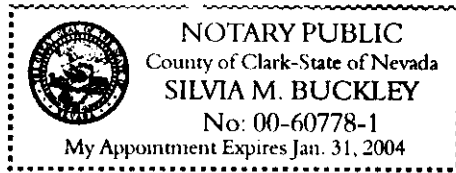
Vestin Mortgage, Inc.
a Nevada corporation
By: Daniel B. Stubbs
Its: Vice President
By: _____
Its: _____



STATE OF CALIFORNIA NEVADA
COUNTY OF CLARK) ss.
)

On August 22, 2002, before me, Silvia M. Buckley,
personally appeared Daniel B. Stubbs and _____,
personally known to me (or proved to me on the basis of satisfactory evidence) to be the
person(s) whose name(s) (is) (are) subscribed to the within instrument and acknowledged to me
that (he) (she) (they) executed the same in (his) (her) (their) authorized capacity(ies), and that by
(his) (her) (their) signature(s) on the instrument the person(s), or the entity upon behalf of which
the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



Silvia M. Buckley
Notary Public in and for said State

(SEAL)



EXHIBIT "A"

**DESCRIPTION OF RESIDENTIAL AREA
IN FIRST SUBDIVISION**

All that certain real property located in the City of Cathedral City, County of Riverside, State of California, described as follows:

Lots 218 to 237 , inclusive, of Tract 28639-1, as shown on a Subdivision Map recorded in Book 300, at Pages 53 *et seq.*, of Maps, in the Office of the Riverside County Recorder.



EXHIBIT "B"

**DESCRIPTION OF MAINTENANCE PROPERTY
IN FIRST SUBDIVISION**

All that certain real property located in the City of Cathedral City, County of Riverside, State of California, as described as follows:

The Association has a right of access, ingress and egress, for use, maintenance, repair, replacement and other purposes, over those portions of the following:

All of Lot 264 and that portion of Lot FF of Tract 28639-1, as shown on a Subdivision Map recorded in Book 300, at Pages 53 *et seq.*, of Maps in the Office of the Riverside County Recorder and designated as "Maintenance Property" on the Drawings attached hereto. Such areas are Public Property as defined in this Declaration



2002-482548
08/29/2002 08:06A
93 of 133

EXHIBIT "B" CONTINUED

DRAWINGS DEPICTING MAINTENANCE PROPERTY EASEMENTS



2002-482548
08/29/2002 08:00A
94 of 133

JRS\30216-0003\321997.5
Exh. B Maint Prop Easements 1/13/02

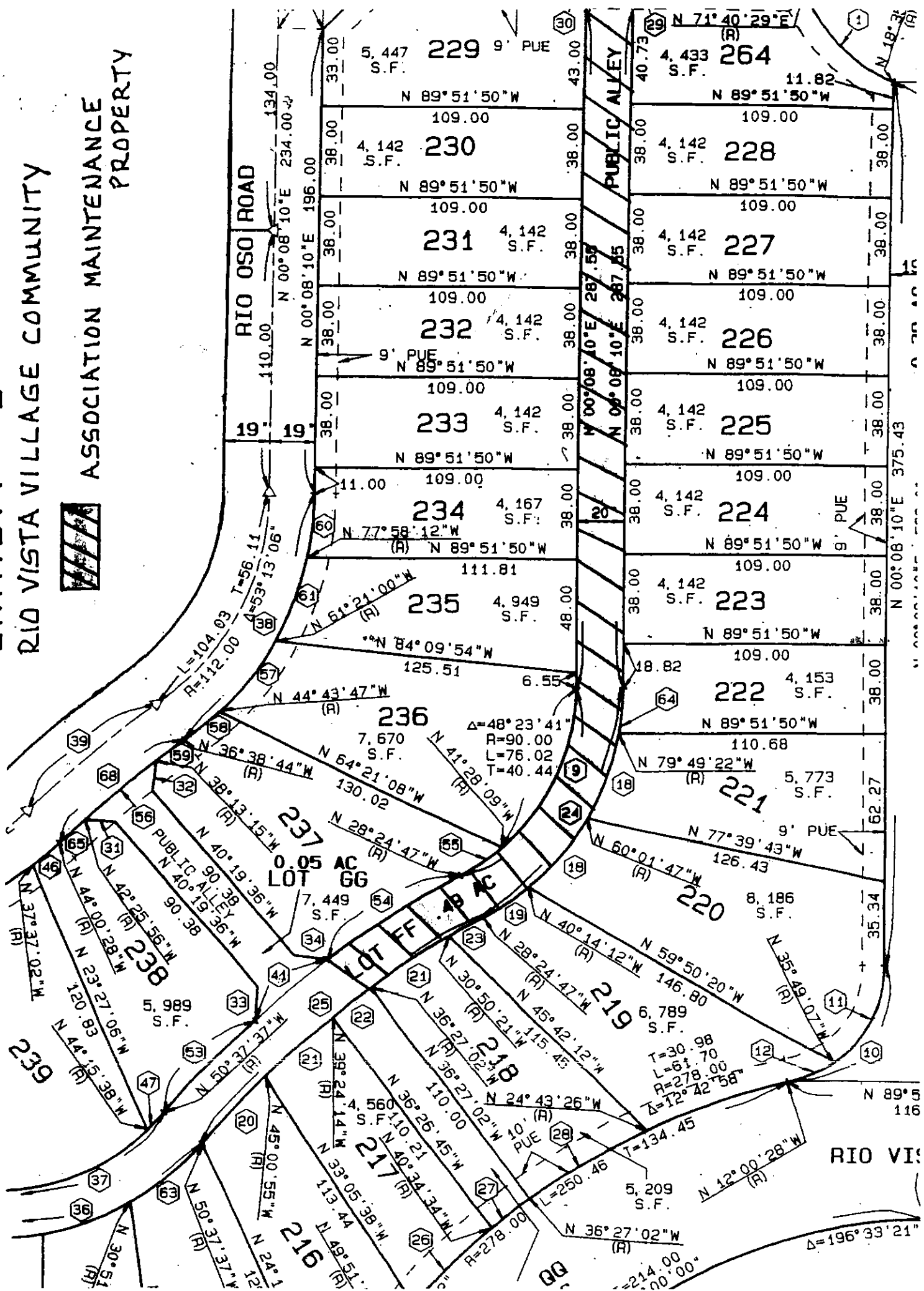


EXHIBIT "B"

RIO VISTA VILLAGE COMMUNITY



ASSOCIATION MAINTENANCE
PROPERTY



RIO VISTA

EXHIBIT "C"

DESCRIPTION OF ANNEXABLE AREA

All that certain real property located in the City of Cathedral City, Riverside County, California, described as follows:

Tract 28639-1, as shown on a Subdivision Map recorded in Book 300, at Pages 53_ *et seq.*, of Maps in the Office of the Riverside County Recorder excepting Phase 1 therefrom; and the Property depicted on the attached drawing as "Additional Annexable Area."



2002-482548
08/29/2002 08:00A
96 of 133

EXHIBIT "D"

ARTICLES OF INCORPORATION OF ASSOCIATION



2002-482548
08/29/2002 08:00A
98 of 133

JRS\30216-0003\321997.5
Exh. D Articles of Incorporation 1/13/02



SECRETARY OF STATE

I, *BILL JONES*, Secretary of State of the State of California, hereby certify:

That the attached transcript of 2 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



JUN 28 2002

Bill Jones

Secretary of State



JUN 20 2002

BILL JONES, Secretary of State

ARTICLES OF INCORPORATION
OF
RIO VISTA VILLAGE COMMUNITY ASSOCIATION

ONE: The name of this corporation ("*Corporation*") is RIO VISTA VILLAGE COMMUNITY ASSOCIATION.

TWO: This corporation is a nonprofit mutual benefit corporation organized under the Nonprofit Mutual Benefit Corporation Law. The purpose of this corporation is to engage in any lawful act or activity for which a corporation may be organized under such law.

THREE: The Corporation's initial agent for service of process is Lynn Burnett, whose business address is Burnett Development Corporation, 1300 Bristol Street North, Suite 200, Newport Beach, CA 92660.

FOUR: The Corporation shall have and exercise any and all powers, rights and privileges which a corporation organized under the Nonprofit Mutual Benefit Corporation Law may now or hereafter have or exercise, provided that the Corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the specific purpose of the Corporation, which is to operate a homeowners association within the meaning of Section 23701t of the California Revenue and Taxation Code and Section 528 of the Internal Revenue Code and to manage a common interest development under the Davis-Stirling Common Interest Development Act. The Corporation does not have a corporate office. The common interest development is near the intersection of Verona Road and Landau Boulevard, Cathedral City, California 92234-0000.

FIVE: The classes of Membership and the voting and other rights and privileges of Members shall be as set forth in the Bylaws. So long as there are two classes of Membership, amendment of these Articles of Incorporation shall require the assent (by vote or written consent) of (i) a bare majority of the Board of Directors of the Corporation, and (ii) Members representing a bare majority of the voting power of each class of Members. After conversion of the Class B Membership to Class A Membership, amendment of these Articles of Incorporation shall require the assent (by vote or written consent) of (i) a bare majority of the Board of Directors of the Corporation, (ii) a bare majority of the total voting power of the Members, and (iii) Members representing a bare majority of the voting power of the Members other than the Subdivider of the Project ("*Declarant*").

SIX: The Corporation has no managing agent.



The undersigned, who is the incorporator of the Corporation, has executed these Articles of Incorporation on June 12th, 2002.

RIO VISTA VILLAGE LAND COMPANY, L.P.,
a Texas limited partnership

By: BURNETT DEVELOPMENT
CORPORATION, a California corporation
Its: General Partner

By: CBurnett
Its: Pres.



EXHIBIT "E"
BYLAWS OF ASSOCIATION

JRS\30216-0003\321997.5
Exh. E Bylaws 1/13/02



2002-482548
08/29/2002 08:00A
102 of 133

EXHIBIT "D"

ARTICLES OF INCORPORATION OF ASSOCIATION



2002-482548
08/29/2002 08:00
103 of 133

JRS\30216-0003\321997.5
Exh. D Articles of Incorporation 1/13/02

JUN 20 2002

**ARTICLES OF INCORPORATION
OF
RIO VISTA VILLAGE COMMUNITY ASSOCIATION**

BILL JONES, Secretary of State

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TWO: This corporation is a nonprofit mutual benefit corporation organized under the Nonprofit Mutual Benefit Corporation Law. The purpose of this corporation is to engage in any lawful act or activity for which a corporation may be organized under such law.

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By: C. Burnett

Its: Pres.



EXHIBIT "E"

BYLAWS OF ASSOCIATION



2002-482548
08/29/2002 08:00A
106 of 133

JRS\30216-0003\321997.5
Exh. E Bylaws 1/13/02

BYLAWS
OF
RIO VISTA VILLAGE COMMUNITY ASSOCIATION

30216\0003\321999.2
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2002-482548
08/29/2002 08:00A
107 of 133

TABLE OF CONTENTS
FOR
BYLAWS OF
RIO VISTA VILLAGE COMMUNITY ASSOCIATION

<u>DESCRIPTION</u>	<u>PAGE NO.</u>
1. Plan of Ownership	1
1.1. Name	1
1.2. Application.	1
1.3. Definitions.	1
2. Voting by Association Membership.	1
2.1. Voting.	1
2.2. Quorum.	2
2.3. Approval by Delegates.	2
3. Administration.	2
3.1. Association Responsibilities.	2
3.2. Place of Meetings of Delegates.	2
3.3. Annual Meetings of Delegates.	2
3.4. Special Meetings of Delegates.	3
3.5. Notice of Meetings.	3
3.6. Adjourned Meetings.	4
3.7. Order of Business.	4
3.8. Action By Written Ballot.	4
3.9. Minutes, Presumption of Notice.	5
3.10. Inspector of Elections	5
4. Board of Directors.	5
4.1. Number and Qualification.	5
4.2. Powers and Duties.	6
4.3. Special Powers and Duties.	6
4.4. Management Agent.	9
4.5. Books, Audit.	9
4.6. Election and Term of Office.	11
4.7. Vacancies.	13
4.8. Removal of Directors.	13
4.9. Organization Meeting.	14
4.10. Regular Meetings.	14
4.11. Special Meetings of Board.	14
4.12. Waiver of Notice.	15



TABLE OF CONTENTS (Continued)

<u>DESCRIPTION</u>	<u>PAGE NO.</u>
4.13. Action Without Meeting; Telephone Meetings.	15
4.14. Quorum and Adjournment.	15
4.15. Fidelity Bonds.	16
4.16. Committees.	16
5. Officers.	16
5.1. Designation.	16
5.2. Election of Officers.	16
5.3. Removal of Officers.	16
5.4. Compensation.	17
5.5. President.	17
5.6. Vice President.	17
5.7. Secretary.	17
5.8. Treasurer.	17
6. Obligations of Members.	18
6.1. Assessments.	18
6.2. Maintenance and Repair.	18
7. Amendments to Bylaws.	18
7.1. Vote of Delegates.	18
7.2. Additional Consents.	19
8. Mortgagees.	19
8.1. Notice to Association.	19
8.2. Notice of Unpaid Assessments.	19
9. Conflicting Provisions.	19
10. Indemnification of Directors and Officers.	20
11. Miscellaneous.	20
11.1. Checks, Drafts and Documents.	20
11.2. Execution of Documents.	20
11.3. Association Documents.	20
11.4. Fiscal Year.	21
12. Notice and Hearing Procedure.	21
12.1. Suspension of Privileges.	21
12.2. Written Complaint.	22
12.3. Notice of Hearing.	23
12.4. Hearing.	23
<u>CERTIFICATE OF SECRETARY</u>	24



BYLAWS
OF
RIO VISTA VILLAGE COMMUNITY ASSOCIATION

ARTICLE I

1. **Plan of Ownership.**

1.1. **Name.** The name of the corporation is RIO VISTA VILLAGE COMMUNITY ASSOCIATION, hereinafter referred to as the "Association." The principal office of the Association shall be located in the County of Riverside, State of California.

1.2. **Application.** The provisions of these Bylaws are applicable to the master planned community Properties described in that certain Declaration of Covenants, Conditions, Restrictions and Reservation of Easements for Rio Vista Village (the "Declaration"), located in the City of Cathedral City, County of Riverside, State of California. All present and future Owners and their tenants, future tenants, employees, and any other person who might use the facilities of the Properties in any manner, are subject to the regulations set forth in these Bylaws and in the Declaration Recorded or to be Recorded in the Official Records of Riverside County and applicable to the Properties. The mere acquisition or rental of any Lot or Condominium in the Properties or the mere act of occupancy of any Lot or Condominium signifies that these Bylaws are accepted, ratified, and will be complied with.

1.3. **Definitions.** Unless otherwise expressly provided herein, the capitalized terms in these Bylaws have the same meanings as are given to such terms in the Declaration.

ARTICLE II

2. **Voting by Association Membership.**

2.1. **Voting.** Delegates shall act on behalf of Declarant, the Merchant Builders and all other Members of the Association as set forth in Article IV of the Declaration. The Classes of voting Memberships, the number of votes (i.e., voting power) held or represented by each Delegate, the manner in which Delegates are appointed, and the manner in which each Delegate shall cast votes exercisable by the Delegate on behalf of the Members are set forth in the Declaration, and the provisions of the Declaration governing all such matters (including, without limitation, Declarant's right to appoint the Declarant's Delegate and the special approval procedures for Voting Proposals and Specified Actions pursuant to Sections 4.4.1(iii), 4.5.1 and 4.5.2 of the Declaration) are specifically incorporated herein by reference.



2.2. **Quorum.** The presence in person of Delegates representing at least twenty-five percent (25%) of the voting power of the Association constitutes a quorum of the Membership; provided that, if any action to be taken at any meeting of Delegates requires only the approval of Members in a particular Cost Center, then the presence in person of the Delegates representing at least twenty-five percent (25%) of the voting power of the Members in such Cost Center constitutes a quorum of the Membership for purposes of said approval. The Delegates present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Delegates to leave less than a quorum, if any action taken (other than adjournment) is approved by at least a majority of Delegates required to constitute a quorum (or such greater percentage of Delegates as may be required by the Restrictions for any specific action). Delegates must act personally at a meeting of the Delegates of the Association or by written ballot, and may not act by proxy.

2.3. **Approval by Delegates.** If a quorum is present, the affirmative vote of the majority of the voting power represented at the meeting, entitled to vote and voting on any matter, is the act of the Delegates, unless the vote of a greater number or voting by classes is required by the Restrictions or applicable law. If, however, a meeting is actually attended by Delegates representing less than one-third (1/3) of the voting power of the Association, notwithstanding the presence of a quorum, no matter may be voted upon except such matters notice of the of the general nature of which was given pursuant to Section 3.5 hereof. As used in the Restrictions, reference to a specified percentage "of Delegates" shall mean the specified percentage of the voting power of the Membership in the Association which such Delegates represent.

ARTICLE III

3. **Administration.**

3.1. **Association Responsibilities.** In accordance with the Declaration, the Association is responsible for administering, maintaining and repairing the Maintenance Property, approving the annual Budget for the Properties, establishing and collecting all assessments applicable to the Properties authorized pursuant to the Declaration, and supervising the overall architectural control of the Residential Areas of the Properties.

3.2. **Place of Meetings of Delegates.** Meetings of the Delegates shall be held on the Properties or such other suitable place in Riverside County, as proximate thereto as practical and convenient to the Delegates, as designated by the Board.

3.3. **Annual Meetings of Delegates.** The first annual meeting of Delegates shall be held within six (6) months after the first Close of Escrow for the sale of a Lot or Condominium in the Properties. Thereafter, the annual meetings shall be held on or about the anniversary date of the first annual meeting. Each first Mortgagee may designate a representative



to attend all annual meetings. The annual meetings of the Delegates shall be open to attendance by all Members and Mortgagee representatives to the extent of the permissible capacity of the meeting room.

3.4. Special Meetings of Delegates. The President shall call a special meeting of the Delegates, as directed by resolution of a majority of a quorum of the Board, or upon receipt of a petition signed by at least two (2) Delegates representing in the aggregate not less than five percent (5%) of the Association's total voting power. The Secretary shall give notice of any special meeting within twenty (20) days after adoption of such resolution or receipt of such petition. The notice must state the time and place of such meeting and the general nature of the business to be transacted thereat. The special meeting must be held not less than thirty-five (35) days nor more than ninety (90) days after adoption of such resolution or receipt of such petition. No business may be transacted at a special meeting except as stated in the notice. Each first Mortgagee may designate a representative to attend all special meetings. The special meetings of the Delegates are open to attendance by all Members and by Mortgagee representatives to the extent of the permissible capacity of the meeting room.

3.5. Notice of Meetings. The Secretary must send a notice of each annual or special meeting to each Delegate of record, to the Class C Member (if Directors are to be elected at such meeting), and to each first Mortgagee who has filed a written request for notice with the Secretary, by personal delivery or by first-class mail, at least ten (10) but not more than thirty (30) days prior to such meeting. The notice must specify those Voting Proposals which are to be presented for action by the Delegates, as well as the day, hour and place where the meeting is to be held, and may set forth time limits for speakers and procedures for the meeting. The notice of any meeting of Delegates may be included with the notice of the Voting Proposal furnished to the Delegate District Members pursuant to Section 4.5.3(i) of the Declaration and, in the case of meetings at which Directors are to be elected (i) must set forth the procedures for nominating candidates for the Board, and (ii) must specify that cumulative voting procedures must be followed for the election of Directors where more than one (1) vacancy is being filled. Nominations of candidates for the Board from the floor of the meeting of Delegates are not permitted. Prior to commencing the meeting of Members within a Delegate District pursuant to Section 4.5.3 of the Declaration, the Secretary of the Association shall furnish the chairman of the Delegate District Membership meeting with a list of all Persons whose names have been placed in nomination for election to the Board. The notice of a meeting of Delegates shall be considered served two (2) business days after such notice has been deposited in a regular depository of the United States mail postage prepaid or (b) immediately if sent by facsimile (with electronic confirmation of transmittal) or other means of telecommunication such as through the Internet and any Website maintained by the Master Association). Such notice shall be deemed served upon any Delegate upon posting in a conspicuous place on the Maintenance Property if no address has been furnished the Secretary.



Notwithstanding any other provision of these Bylaws, approval by the Delegates of any of the following Voting Proposals, other than by unanimous approval of Delegates representing all of the voting power of the Association, is not valid unless the general nature of the Voting Proposal was stated in the notice to the Delegates (and the notice to Members given pursuant to Section 4.5.3(i) of the Declaration): (a) removing a Director without cause; (b) filling vacancies on the Board; (c) approving a contract or transaction between the Association and one or more Directors, or between the Association and any entity in which a Director has a material financial interest; (d) amending the Articles; or (e) electing to wind up and dissolve the Association.

3.6. **Adjourned Meetings.** If any meeting of Delegates cannot be organized because a quorum is not present, Delegates representing a majority of the voting power who are present may adjourn the meeting to a time not less than five (5) days nor more than thirty (30) days from the time the original meeting was called. Such an adjourned meeting may be held without the notice required by Section 3.5 if notice thereof is given by announcement at the meeting at which such adjournment is taken.

3.7. **Order of Business.** Meetings of Members must be conducted in accordance with a recognized system of parliamentary procedure or such parliamentary procedures as the Association may adopt. The order of business at all Delegate meetings is as follows: (a) appointment of inspector of election; (b) roll call to determine the voting power represented at the meeting; (c) proof of notice of meeting or waiver of notice; (d) reading of minutes of preceding meeting; (e) reports of officers; (f) reports of committees; (g) election of Directors (at annual meetings or special meetings held for such purpose); (h) unfinished business; and (i) new business. Meetings of Delegates shall be chaired by one of the officers of the Association, in order of their authority.

3.8. **Action By Written Ballot.** Any action which may be taken at a meeting of the Delegates (except for election of Directors) may be taken without a meeting by written ballot of the Delegates. Ballots must be solicited in the same manner as provided in Section 3.5 for the giving of notice of meetings of Delegates. Such solicitations must specify (a) the number of responses needed to meet the quorum requirements, (b) the percentage of approvals necessary to approve the action, (c) the time by which ballots must be received in order to be counted, and (d) that in order to be effective, the ballot must contain the Delegate's certification of the information required pursuant to Section 4.5.4 of the Declaration. The form of written ballot must (i) afford an opportunity to specify the number of Instructed Votes cast for "approval" and "disapproval" of each matter, (ii) provide that the Instructed Votes shall be cast in accordance therewith, (iii) contain spaces for the Delegate's certification of the information required pursuant to Section 4.5.4 of the Declaration, and (iv) provide that the Absentee Votes represented by such Delegate must be cast in the manner specified in Subsection 4.5.1(ii) of the Declaration. A matter shall be approved by written ballot upon receipt within the time period specified in the solicitation of both (A) a number of ballots which equals or exceeds the quorum which would be



required if the action were taken at a meeting, and (B) a number of approvals which exceeds or equals the number of votes which would be required for approval if the action were taken at a meeting.

3.9. **Minutes, Presumption of Notice.** Minutes or a similar record of the proceedings of meetings of Delegates, when signed by the President or Secretary, are presumed truthfully to evidence the matters set forth therein. A recitation in the minutes of any such meeting that notice of the meeting was properly given is prima facie evidence that such notice was given.

3.10. **Inspector of Elections.** Prior to any Members meeting, the Board may appoint inspectors of election for that meeting. There shall be at least three (3) inspectors of election. The decision, act or certification of a majority shall be effective as the decision, act or certification of all. Any report or certificate of the inspectors of election is prima facie evidence of the matters stated therein. Inspectors of election do not have to be Owners. If the Board does not appoint inspectors of election or if an inspector fails to appear at a meeting, the chairman of the Member's meeting may appoint the inspector of election. If the chairman fails to appoint the inspectors of election, then any Delegate may request that inspectors of election be appointed. If a Delegate makes such a request, then the inspectors of election shall be elected by Delegates representing a majority of the Members. In case of an action to be taken by the Members by written ballot, the Board may also appoint inspectors of election to count the ballots.

The inspector of election shall determine the number of Memberships outstanding, the voting power of each, the number of Members represented at the meeting, the existence of a quorum, and the authenticity, validity and effect of proxies, receive votes, ballots or consents, hear and determine all challenges and questions in any way arising in connection with the right to vote, count and tabulate all votes or consents, determine when the polls shall close, determine the results and do such acts as may be proper to conduct the election or vote with fairness to all Members. The inspectors of election shall perform their duties impartially, in good faith, to the best of their ability and as expeditiously as is practical.

ARTICLE IV

4. **Board of Directors.**

4.1. **Number and Qualification.** The property, business and affairs of the Association shall be governed by a Board of Directors which initially consists of three (3) persons. The authorized number of Directors may be increased to five (5) or seven (7) when the Board adopts a resolution approving an increase in the authorized number of Directors. An increase in the authorized number of Directors provided for in the immediately preceding sentence is effective as of the annual meeting of Delegates immediately following the date on which the resolution is adopted by the Board. Any other change in the authorized number of



Directors requires an adopted amendment to the Bylaws. All Directors, except for those appointed and serving as first Directors, must either be (i) an Owner of a Lot or Condominium in the Properties, or (ii) an agent of Declarant or an agent of a Merchant Builder for so long as Declarant or a Merchant Builder owns a Lot or Condominium in the Properties or any portion of the Annexable Area. Directors may not receive any salary or compensation for their services as Directors, unless such compensation is first approved by the vote of Delegates representing at least a majority of the Association voting power; provided that (a) nothing in these Bylaws precludes any Director from serving the Association in some other capacity and receiving compensation therefor, and (b) any Director may be reimbursed for actual expenses incurred in performance of Association duties.

4.2. **Powers and Duties.** Subject to the limitations in the Declaration and these Bylaws, the Board has the powers and duties necessary to administer the Association's affairs and may do all acts and things not by law, the Declaration or these Bylaws prohibited to the Association or directed to be exercised and done exclusively by the Members acting through the Delegates. Subject to the provisions of Section 4.4, the Board may not enter into any contract with a third person wherein the third person will furnish goods or services for the Maintenance Property or to the Association for a term in excess of one (1) year, without the vote of Delegates representing a majority of the Association voting power, except for (a) a contract with a public utility company for a term that does not exceed the shortest term for which the public utility company will contract at the regulated rate, if the rates charged for the materials or services are regulated by the California Public Utilities Commission; (b) a management contract the terms of which conform to Section 4.4 hereof; (c) prepaid casualty or liability insurance policies of not more than three (3) years' duration, provided that the policies permit short-term cancellation by the Association; (d) a contract approved by the DRE for a term approved by the DRE; (e) a contract for a term not to exceed three (3) years that is terminable by the Association after no longer than one year without cause or penalty or other obligation upon ninety (90) days written notice of termination to the other party; or (f) a management contract with a term not to exceed three (3) years, the terms of which have been approved by the VA or FHA.

4.3. **Special Powers and Duties.** Without prejudice to the general powers and duties and such powers and duties as are set forth in the Declaration, the Board has the following powers and duties:

4.3.1. **Officers and Agents.** The power and duty to select, appoint, and remove all Association officers, agents, and employees; to prescribe such powers and duties for them as may be consistent with law and the Restrictions; and to fix their compensation (where compensation is permitted) and require from them security for faithful service when deemed advisable by the Board.

4.3.2. **Business Affairs.** The power and duty to conduct, manage and control the Association affairs and business, and to make and enforce such Rules and



Regulations therefor consistent with law and the Restrictions as the Board deems necessary or advisable.

4.3.3. Principal Office/Corporate Seal. The power but not the duty to change the principal office for the transaction of the Association's business from one location to another within Riverside County; to designate any place within such County for the holding of any annual or special meeting or meetings of Delegates consistent with the provisions of Section 3.2 hereof; and to adopt and use a corporate seal and to alter the form of such seal from time to time, as the Board, in its sole judgment, deems best, provided that such seal shall at all times comply with the provisions of law.

4.3.4. Borrowings. With the approval of Delegates representing at least sixty-seven percent (67%) of the Association voting power, the power but not the duty to borrow money and incur indebtedness for the Association's purposes, and to cause to be executed and delivered therefor, in the Association's name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecations and other evidences of debt and securities therefor.

4.3.5. Assessments. The power and duty to fix and levy Common Assessments, Special Assessments, and Reconstruction Assessments as provided in the Declaration; to fix and levy in any fiscal year Capital Improvement Assessments applicable to that year only for capital improvements to the Maintenance Property; to determine and fix the due date for the payment of such assessments; provided, however, that such assessments shall be fixed and levied only to provide for the payment of Common Expenses and for the payment of any and all obligations in relation thereto, or in performing or causing to be performed any of the purposes of the Association for the general benefit and welfare of its Members, in accordance with the provisions of the Declaration. Subject to any limitations imposed by the Declaration and these Bylaws, the Board shall have the power and duty to incur any and all such expenditures for any of the foregoing purposes and to provide or cause to be provided Reserves for repairs and replacements of the Maintenance Property. The funds collected by the Board from the Owners for replacement Reserves and for capital Improvements are at all times held in trust for the Members. Disbursements from such trust Reserve Funds may only be made in accordance with the provisions of the Declaration. The Board shall fix all Common Assessments, Reconstruction Assessments, Special Assessments and Capital Improvement Assessments in accordance with the provisions of the Declaration. If a Member fails to pay such assessments before delinquency, the Board may enforce the payment of such delinquent assessments as provided in the Declaration.

4.3.6. Enforcement. The power and duty to enforce the provisions of the Restrictions and any Association agreements.

4.3.7. Insurance. The power and duty to contract and pay for insurance insuring the Members, the Association, any Manager, the Board, the members of the Architectural Committee, and other interested parties, in accordance with the provisions of the



Declaration, covering and protecting against such damages or injuries as the Board deems advisable (which may include without limitation, medical expenses of persons injured on the Maintenance Property). The Board shall review, not less frequently than annually, all insurance policies and bonds obtained by the Board on the Association's behalf.

4.3.8. **Services.** The power and duty to contract and pay for maintenance, legal, accounting, gardening, common utilities, materials and supplies, and services relating to the Maintenance Property and, subject to limitations contained in the Declaration, to employ personnel necessary to operate the Properties, including legal and accounting services, and to contract for and pay for Improvements on the Maintenance Property.

4.3.9. **Utility Easements.** The power but not the duty to grant or quitclaim easements, licenses or rights-of-way in, on, or over the Maintenance Property for purposes consistent with the intended use of the Properties as a master planned community.

4.3.10. **Rules and Regulations.** The power and duty to adopt such Rules and Regulations as the Board deems necessary for managing the Properties, which Rules and Regulations are effective and binding after (i) they are adopted by a majority of the entire Board, and (ii) they are either (A) posted in a conspicuous place in the Maintenance Property, or (B) sent to the Members by first class U.S. mail. Such Rules and Regulations may concern, without limitation, use of the Maintenance Property, signs, parking restrictions, minimum standards of property maintenance consistent with the Restrictions, and any other matter within the Association's jurisdiction as specified in the Restrictions; provided that such Rules and Regulations are enforceable only to the extent that they are consistent with the Restrictions.

4.3.11. **Corporate Records.** The power and duty to keep, or cause to be kept, a complete record of all Association acts and corporate affairs and to present a statement thereof to the Delegates at the annual meeting of the Delegates and at any other time that such statement is requested by at least two (2) Delegates representing in the aggregate not less than ten percent (10%) of the Members who are entitled to vote.

4.3.12. **Sale of Maintenance Property.** Subject to the Declaration, the power but not the duty to sell Association property, provided, however, that the prior vote of Delegates representing at least a majority of the Association's voting power must be obtained to sell during any fiscal year property of the Association having an aggregate fair market value greater than five percent (5%) of the Association's Budgeted gross expenses for that fiscal year.

4.3.13. **Governing Documents.** The power and duty to make available to any prospective purchaser of a Lot or Condominium, any Owner of a Lot or Condominium, any first Mortgagee, and each holder, insurer and guarantor of a first Mortgage on any Lot or Condominium, current copies of the Restrictions and all other books, records and financial



statements of the Association. The Association may charge a fee for providing such documents, but in no event shall the fee exceed the reasonable cost to reproduce the requested documents.

4.3.14. Subsidy Agreements. The power but not the duty to negotiate and enter into subsidy agreements or other arrangements with Declarant and Merchant Builders pursuant to which Declarant or such Merchant Builders may subsidize a portion of the Common Expenses in exchange for the Association's assumption of the obligation to repair and maintain additional real property and Improvements which it would not be able to so maintain at current Budget levels absent such a subsidy. Any such subsidy agreements or other arrangements must be approved by the DRE and, if Declarant or a Merchant Builder has obtained an FHA or VA "project approval" (as defined in Section 2.3.6 of the Declaration) then by VA, FHA or both, as applicable.

4.3.15. Delegation of Powers. The power but not the duty to delegate its powers according to law and to adopt these Bylaws.

4.4. Management Agent. The Board shall employ for the Association a Manager at a compensation established by the Board to perform such duties and services as the Board authorizes, including, without limitation, the duties listed in Sections 4.2 and 4.3.

4.5. Books, Audit. The Board shall distribute the following financial information to all Members (and to any Beneficiary, insurer and guarantor of a first Mortgage upon request), regardless of the number of Members or the amount of assets of the Association:

4.5.1. Budget. A pro forma operating Budget for each fiscal year consisting of at least the following information must be distributed not less than forty-five (45) nor more than sixty (60) days prior to the beginning of the Fiscal Year:

(i) **Revenue and Expenses.** The estimated revenue and Common Expenses computed on an accrual basis, and allocated among the various Maintenance Funds specified in the Declaration.

(ii) **Reserves.** A summary of the Association's Reserves based upon the most recent review or study conducted pursuant to Section 1365.5 of the California Civil Code or any other applicable statute, as amended, which must be printed in bold type and include all of the following:

(a) The current estimated replacement cost, estimated remaining life, and estimated useful life of each major component for which the Association is responsible.



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

(1) The current estimate of the amount of cash Reserves necessary to repair, replace, restore, or maintain the major components for which the Association is responsible ("Estimated Reserves").

(2) The current amount of accumulated cash Reserves actually set aside to repair, replace, restore or maintain the major components for which the Association is responsible ("Actual Reserves").

(c) The percentage that the Actual Reserves is of the Estimated Reserves.

(iii) **Anticipated Assessment Statement.** A statement as to whether the Board has determined or anticipated that the levy of one (1) or more Capital Improvement or Reconstruction Assessments will be required to repair, replace, or restore any major component for which the Association is responsible or to provide adequate Reserves therefor.

(iv) **Reserve Fund Calculations.** A general statement setting forth the procedures used by the Board in the calculation and establishment of the Reserve Funds to defray the costs of repair and replacement of, or additions to, major components of the Maintenance Property and facilities for which the Association is responsible.

The Board also may distribute a summary of the Budget in lieu of the Budget itself, so long as the Board complies with the provisions of Section 1365(c) of the California Civil Code, as amended. The Board must cause a study of the "Reserve account requirements" of the Properties, to be conducted in accordance with Section 1365.5 of the California Civil Code.

4.5.2. Balance Sheet. A balance sheet as of an accounting date which is the last day of the month closest in time to six (6) months from the date on which Common Assessments first commenced, and an operating statement for the period from the date on which Common Assessments commenced to such accounting date, must be distributed within sixty (60) days after the accounting date. Such operating statement must include a schedule of assessments received and receivable identified by the number of the Lot or Condominium and the name of the Owner assessed.

4.5.3. Annual Report. A report consisting of the following ("Annual Report") must be distributed within one hundred twenty (120) days after the close of the fiscal year: (a) a balance sheet as of the end of the fiscal year; (b) an operating (income) statement for the fiscal year; (c) a statement of changes in financial position for the fiscal year; (d) any



information required to be reported under Section 1365.9(c) of the California Civil Code and Section 8322 of the California Corporations Code; (e) for any fiscal year in which Association gross income exceeds Seventy-Five Thousand Dollars (\$75,000.00), a copy of a review of the annual report prepared in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy; and (f) a statement of the place where the names and addresses of the Members are located.

If the Annual Report is not prepared by an independent accountant, it must be accompanied by the certificate of an authorized Association officer certifying that the statement was prepared from the books and records of the Association without independent audit or review.

4.5.4. Enforcement Policies. In addition to financial statements, the Board shall annually distribute within sixty (60) days prior to the beginning of the fiscal year a statement of the Association's policies and practices in enforcing its remedies against Members for defaults in the payment of Common, Capital Improvement, Reconstruction and Special Assessments, including the Recording and foreclosing of liens against Members' Lots and Condominiums.

4.5.5. Quarterly Reviews. The Board shall do the following on at least a quarterly basis: (a) cause to be completed and review a current reconciliation of the Association's operating and Reserve accounts, (b) review the Actual Reserves and expenses compared to the Budget for the then current Fiscal Year, (c) review the income and expense statement for the Association's operating and Reserve accounts, and (d) review the most current account statements prepared by the financial institutions where the Association maintains its operating accounts and Reserve.

4.6. Election and Term of Office.

4.6.1. Election of Directors. At the first meeting of the Delegates, and thereafter at each annual meeting of the Delegates coinciding with the expiration of a Director's term of office or at which a vacancy on the Board exists, the Delegates and the Class C Members shall elect new Directors as provided in the Restrictions, and all vacant positions on the Board shall be filled at that election. If an annual meeting is not held or the Board is not elected thereat, the Board may be elected at any special meeting of the Delegates held for that purpose. Each Director shall hold office until his successor has been elected or until his death, resignation, removal or judicial adjudication of mental incompetence.

4.6.2. Term of Office.

(i) **Concurrent/Staggered Terms.** For so long as there are only three (3) authorized Directors, the terms of office of all Directors shall be concurrent. If the



authorized number of Directors is expanded pursuant to Section 4.1, the terms of the Directors shall become staggered on a three-two (3-2) or on a three-four (3-4) basis, as applicable.

(ii) **Term Period.** Except as otherwise provided in this subsection in connection with the filling of vacancies resulting from the expansion of the number of authorized Directors pursuant to Section 4.1, the term of office of each Director elected or appointed to fill a vacancy created by the expiration of the term of office of the respective past Director shall be for two (2) years. The term of office of each Director elected or appointed to fill a vacancy created by the resignation, death or removal of his predecessor shall be the balance of the unserved term of his predecessor. Any person serving as a Director may be reelected or reappointed, and there is no limit on the number of terms during which he or she may serve. If the authorized number of Directors is expanded pursuant to Section 4.1, the initial terms of office of the Directors elected to fill the new positions so created shall exceed by one (1) year the then unexpired terms of the three Directors whose terms expire simultaneously, unless vacancies resulting from expiration of the terms of such three (3) Directors are being concurrently filled, in which case the entire Board shall be elected as follows:

(a) The terms of office of the majority of Directors appointed by the Class C Member (or if there is no Class C Member, the majority of Directors receiving the highest number of votes) shall be three (3) years, and

(b) The terms of office of the balance of the Directors receiving the next highest number of votes shall be two (2) years.

(iii) **Cumulative Voting.** With the exception of vacancies filled by the Class C Member, cumulative voting must be used in the election of Directors where more than one (1) vacancy is being filled. In the case of cumulative voting for Directors, each Delegate shall cast a total number of votes equal to the Delegate's share of the voting power as set forth in the Declaration, multiplied by the number of Directors to be elected by vote of Delegates representing the Class A and Class B Members, and each Delegate shall divide his or her votes among the candidates in accordance with Section 4.5.1 of the Declaration.

4.6.3. Election by Non-Declarant Owners. Notwithstanding the foregoing, whenever (a) notice is given for an election of Directors, and (b) upon such date Declarant and Merchant Builders are entitled to exercise a majority of the voting power of the Association, and (c) upon such date the Delegates representing Members other than Declarant and any Merchant Builders do not have a sufficient percentage of the Association voting power to elect a number of Directors representing at least twenty percent (20%) (though not less than one (1)) of the entire Board through the foregoing cumulative voting procedure, then such notice must also provide for the following special election procedure.



(i) **Minimum Number.** Election of Directors will be first apportioned to Members other than Declarant and any Merchant Builders until the aggregate number of Directors on the Board elected by Delegates casting votes attributable to Members other than Declarant and any Merchant Builders represents at least twenty percent (20%) (though not less than one (1)) of the entire Board (i.e., the Delegates must ensure that at least one (1) Director is an Owner not connected directly or indirectly with Declarant or any Merchant Builder ("Nonaffiliated Owner") for so long as a majority of the voting power of the Association is attributable to Lots or Condominiums owned by Declarant and Merchant Builders).

(ii) **Procedure.** Any Nonaffiliated Owner otherwise eligible to serve on the Board is an eligible candidate for the special election upon receipt by the Secretary of a declaration of candidacy, signed by the candidate, at any time prior to the election. The Nonaffiliated Owner(s) receiving the greatest number of votes cast by the Delegates representing Members other than Declarant or any Merchant Builders shall be elected to the Board. The remaining members of the Board will be elected through the customary voting procedure outlined above.

4.7. **Vacancies.** A vacancy in the office of Director is deemed to exist in case of a Director's death, resignation, removal, judicial adjudication of mental incompetence or failure to satisfy all of the qualifications of a Director as specified in the Restrictions, or in case the Delegates fail to elect the full number of authorized Directors at any meeting at which such election is to take place. Until filled by the Delegates or the Class C Member, as applicable, vacancies on the Board caused by any reason other than the removal of a Director by a vote of the Delegates may be filled by a vote of the majority of the remaining Directors, even though they may constitute less than a quorum; provided that until termination of the Class C Membership, a vacancy in the office of a Director who was appointed by the Class C Member shall be filled only by an appointee of the Class C Member. Subject to applicable eligibility requirements, each person elected to fill a vacancy pursuant to this Subsection shall be a Director until a successor is elected at the next annual meeting of the Delegates, or at a special meeting of the Delegates called for that purpose.

4.8. **Removal of Directors.** At any regular or special meeting of the Delegates duly called, any individual Directors or the entire Board may be removed prior to the expiration of their terms of office with or without cause as follows: (a) for so long as fewer than fifty (50) Lots and Condominiums are included within the Properties, by the vote of Delegates representing a majority of the total Association voting power (including votes attributable to Declarant and Merchant Builders), and (b) once fifty (50) or more Lots and Condominiums are included within the Properties, by the vote of Delegates representing a majority of a quorum of the Delegates. However, if the entire Board is not removed as a group pursuant to a single vote, no individual Director may be removed if the number of votes cast against his removal would be sufficient to elect such Director if voted cumulatively at an election at which the same total number of votes were cast and the entire number of Directors authorized at the time of the Director's most recent



election were then being elected. Any Director whose removal has been proposed must be given an opportunity to present or cause to be presented a position statement at the Delegate District Membership meetings at which the Voting Proposal for removal of such Director is considered pursuant to Section 4.5.3 of the Declaration. If any or all of the Directors are so removed at a meeting, new Directors may be elected at the same meeting if the election of Directors to fill such vacancies was included as a part of the same Voting Proposal for the removal of such Directors. Notwithstanding any other provision of this Section, (a) any Director who has been elected to office solely by the votes of Delegates representing Members other than Declarant and Merchant Builders pursuant to Section 4.6.3 may be removed from office prior to the expiration of the term of office only by the vote of Delegates representing a simple majority of the voting power residing in Members other than Declarant and any Merchant Builders and, in the event of such removal, such Director's successor shall be elected in the same manner as such Director, pursuant to the provisions of Section 4.6.3; and (b) until termination of the Class C Membership, any Director who has been appointed by the Class C Member may be removed from office and the vacancy filled only by the Class C Member.

4.9. Organization Meeting. The first regular meeting of a newly constituted Board shall be held at such time and place determined by that Board, for the purpose of organization, election of officers and the transaction of other business. Notice of the first meeting shall be given in the same manner as notice of other regular meetings.

4.10. Regular Meetings. Regular meetings of the Board must be open to the Members, to the extent of the permissible capacity of the meeting room, and may be held at such time and place within the Properties (or as proximate thereto as possible) as determined by a resolution adopted by a majority of a quorum of the Directors; provided that such meetings shall be held no less frequently than quarterly. Members in attendance who are not Directors may not participate in any deliberation or discussion, unless expressly authorized by the vote of a majority of a quorum of the Directors. Notice of the time and place of regular Board meetings must be given to each Director, in the manner provided in Section 4.11 below, at least four (4) calendar days prior to the date named for such meeting, and shall be posted at a prominent place or places within the Maintenance Property. If served by mail, each such notice (including notices of special meetings) shall be sent, postage prepaid, to the address reflected on the records of the Association, and shall be deemed given, if not actually received earlier, at 5:00 o'clock P.M. on the second calendar day after it is deposited in a regular depository of the United States mail as provided herein. Whenever any Director is absent from any regular or special meeting of the Board, an entry in the minutes to the effect that notice was given is conclusive and incontrovertible evidence that due notice of such meeting was given to such Director, as required by law and as provided herein.

4.11. Special Meetings of Board. Special meetings of the Board must be open to all Members, to the extent of the permissible capacity of the meeting room; provided that Members who are not Directors may not participate in any deliberations or discussions at such



special meetings, unless expressly so authorized by a vote of a majority of a quorum of the Board. Special meetings may be called by the President or by any two (2) Directors. At least four (4) calendar days notice shall be given to each Director, personally or by telephone, including a voice messaging system or other system or technology designed to record and communicate messages, telegraph, facsimile, electronic mail, or other electronic means. The notice must state the time, place and purpose of the meeting, and shall be posted at a prominent place or places within the Maintenance Property.

4.12. Waiver of Notice. Before or at any meeting of the Board, any Director may, in writing, waive personal notice of such meeting and such waiver is equivalent to the giving of such notice. Attendance by a Director at any meeting of the Board is a waiver of notice to him of the time and place thereof. If all the Directors are present at any meeting of the Board, no notice to Directors is required and any business may be transacted at such meeting. The transactions of any Board meeting, however called and noticed or wherever held, are as valid as though had at a meeting duly held after regular call and notice, if (a) a quorum is present, (b) notice to the Members of such meeting was posted as provided in Section 4.10, and (c) either before or after the meeting, each of the absent Directors signs such a written waiver of notice, a consent to holding such meeting, or an approval of the minutes thereof. The Secretary shall file all such waivers, consents and approvals with the Association records or made them a part of the minutes of the meeting.

4.13. Action Without Meeting; Telephone Meetings. The Board may act without a meeting, if all Directors individually or collectively consent in writing to such action. Such written consent or consents must be filed with the minutes of the proceedings of the Board. Such action by written consent has the same effect as a unanimous vote of such Directors. Any meeting, regular or special, may be held by conference telephone or any other communication equipment, so long as it is consistent with the California Corporations Code. Within three (3) days after any action taken by written consent or telephone meeting, an explanation of such action must be either (i) posted by the Board in a prominent place or places on the Maintenance Property, or (ii) communicated to the Members by another means the Board determines to be appropriate.

4.14. Quorum and Adjournment. Except as otherwise expressly provided herein, at all meetings of the Board a majority of the Directors constitutes a quorum for the transaction of business, and the acts of a majority of the Directors present at a meeting at which a quorum is present are the acts of the Board. If at any meeting of the Board there is less than a quorum present, the majority of those present may adjourn the meeting to another time. At any such adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice if a quorum is present. The Board may, with the approval of a majority of the Directors at a meeting at which a quorum has been established, adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved, matters



relating to the formation of contracts with third parties, and orders of business of a similar nature. The nature of any and all business to be considered in executive session must first be announced in open session and must be generally noted in the minutes of the Board. In any matter relating to the discipline of a Member, the Board must meet in executive session if requested by that Member, and the Member may attend the executive session.

4.15. **Fidelity Bonds.** The Board shall require that all officers and employees and the Manager of the Association handling or responsible for Association funds furnish adequate fidelity bonds as further provided in the Declaration. The premiums on such bonds shall be paid by the Association.

4.16. **Committees.** The Board may, by resolution, designate such advisory and other committees as it desires, and may establish the purposes and powers of each such committee created. The resolution designating and establishing the committee must provide for the appointment of a chairperson and its members, must state the purposes of the committee and must provide for reports, termination and other administrative matters the Board deems appropriate.

ARTICLE V

5. **Officers.**

5.1. **Designation.** The Association's principal officers are a President, a Vice President, a Secretary and a Treasurer, all elected by the Board. The Board may appoint an Assistant Treasurer and an Assistant Secretary, and such other officers as it determines to be necessary. Officers other than the President need not be Directors. One Person may hold more than one office.

5.2. **Election of Officers.** The Board shall annually elect the Association's officers at the new Board's organization meeting. Each officer shall hold his office at the pleasure of the Board, until he resigns or is removed or otherwise disqualified to serve or his successor is elected and qualified to serve.

5.3. **Removal of Officers.** Upon an affirmative vote of a majority of the entire Board, any officer may be removed, either with or without cause, and his successor elected at any regular meeting of the Board or at any special meeting of the Board called for such purpose. Any officer may resign at any time by giving written notice to the Board or to the President or Secretary. Any such resignation is effective on the date of receipt of such notice or at any later time specified therein. Unless otherwise specified in the notice, acceptance of the resignation by the Board is not necessary to make it effective.



5.4. **Compensation.** Officers, agents, and employees shall receive such reasonable compensation for their services as authorized or ratified by the Board; provided that: (a) no officer may receive any compensation for services performed in the conduct of the Association's business unless such compensation is first approved by the vote of Delegates representing at least a majority of the Association voting power; and (b) nothing in these Bylaws precludes any officer from serving the Association in some other capacity and receiving compensation therefor; and (c) any officer may be reimbursed for actual expenses incurred in the performance of Association duties. Appointment of any officer, agent, or employee does not of itself create contractual or other rights of compensation for services performed by such officer, agent, or employee. Notwithstanding the foregoing, no officer, employee or director of Declarant or a Merchant Builder or any affiliate of Declarant or a Merchant Builder may receive any compensation.

5.5. **President.** The President is the chief executive officer of the Association and shall (a) preside at all Delegate and Board meetings, (b) shall have all of the general powers and duties which are usually vested in the office of the President of a corporation, and (c) subject to the control of the Board, have general supervision, direction and control of the Association's business and shall have such other powers and duties as may be prescribed by the Board or these Bylaws.

5.6. **Vice President.** The Vice President shall take the President's place and perform the President's duties whenever the President is absent, disabled or unable to act. If the President and the Vice President are unable to act, the Board shall appoint some other member of the Board to do so on an interim basis. The Vice President shall also perform such other duties as imposed by the Board or these Bylaws.

5.7. **Secretary.** The Secretary shall (a) keep the minutes of all meetings of the Board and the minutes of all meetings of the Association at the Association's principal office or at such other place as the Board may order, (b) keep the Association's seal in safe custody, (c) keep such books and papers as the Board may direct, (d) perform all of the duties incident to the office of Secretary, (e) give, or cause to be given, notices of meetings of the Members, the Delegates and the Board required by the Restrictions or by law to be given, and (f) perform such other duties as may be prescribed by the Board or these Bylaws.

5.8. **Treasurer.** The Treasurer is the Association's chief financial officer and is responsible for Association funds and securities. The Treasurer shall (a) keep, or cause to be kept, full and accurate accounts, tax records and business transactions of the Association, including accounts of all assets, liabilities, receipts and disbursements in books belonging to the Association (b) be responsible for the deposit of all monies and other valuable effects in the name and to the credit of the Association in such depositories as the Board designates, (c) disburse the Association's funds as ordered by the Board, in accordance with the Declaration, (d) render to the President and Directors, upon request, an account of all transactions as Treasurer



and of the Association's financial condition, and (e) have such other powers and perform such other duties prescribed by the Board and these Bylaws.

ARTICLE VI

6. Obligations of Members.

6.1. **Assessments.** All Members must pay, in accordance with the Declaration, all assessments imposed by the Association, to meet all Common Expenses. All delinquent assessments shall be enforced, collected or foreclosed in the manner provided in the Declaration.

6.2. Maintenance and Repair.

6.2.1. **Members' Obligations.** Every Member must perform promptly, at his or her sole cost, all maintenance and repair work on the Member's Lot or Condominium, as required by the Declaration and any applicable Project Declaration. As further provided in the Declaration, and subject to the exemption of Declarant and the Merchant Builders, all plans for Construction Activities on the Residential Area of the Properties must receive the prior written consent of the Architectural Committee. The Architectural Committee shall adhere to the Architectural Committee Rules when granting such approvals, in accordance with the Declaration.

6.2.2. **Damages by Members.** As further provided in the Declaration, each Member shall reimburse the Association for any expenditures incurred in repairing or replacing any portion of the Maintenance Property or other properties owned or controlled by the Association, which are damaged through such Member's willful misconduct or negligence. Such expenditures shall include all court costs and reasonable attorneys' fees incurred in enforcing any provision of the Restrictions.

ARTICLE VII

7. Amendments to Bylaws.

7.1. **Vote of Delegates.** These Bylaws may be amended by the vote of Delegates representing at least fifty-one percent (51%) of the Association voting power; provided that the specified percentage of the Delegates necessary to amend a specific Section or provision of these Bylaws shall not be less than the percentage of affirmative votes prescribed for action to be taken under that Section or provision. Notwithstanding the foregoing, these Bylaws may be amended by a majority of the entire Board, at any time prior to the first Close of Escrow for the sale of a Lot or Condominium to a purchaser from Declarant or a Merchant Builder pursuant to a transaction requiring issuance of a Final Subdivision Public Report by the DRE. If Declarant or a Merchant Builder have obtained a VA or FHA "project approval" (as defined in Section 2.3.6



of the Declaration), then so long as Declarant and any Merchant Builders have effective voting control of the Association any amendment to these Bylaws must also be approved by VA, FHA or both, as applicable.

7.2. **Additional Consents.** Article II, Sections 3.1, 4.1, 4.2, 4.3, 4.4, 4.6, 4.7, 4.8 and Article VII of these Bylaws may not be amended without the written consent of Declarant until the later to occur of (i) the expiration of Declarant's right to add Annexable Area to the Properties without the vote of the Delegates pursuant to Article II of the Declaration, or (ii) the date on which neither Declarant nor Merchant Builders own a Lot or Condominium in the Properties. Before any material amendment to these Bylaws affecting matters delineated in Sections 9.2, 9.3, 12.2.3 or 12.3 of the Declaration is effective, such amendment must be approved by the same percentage of Beneficiaries of first Mortgages as specified in the Declaration section which would be affected by such amendment, and this sentence may not be amended without such prior written approval. Notwithstanding the foregoing, if a first Mortgagee who receives a written request from the Board to approve a proposed amendment or amendments to the Bylaws does not deliver a negative response to the Board within thirty (30) days of the mailing of such request by the Board, such first Mortgagee shall be deemed to have approved the proposed amendment or amendments.

ARTICLE VIII

8. **Mortgagees.**

8.1. **Notice to Association.** Upon request, every Member who Mortgages a Lot or Condominium shall notify the Association through the Manager, or through the Secretary if there is no Manager, of the name and address of the Member's Mortgagee. Upon request, Members shall notify the Association of the release or discharge of any such Mortgage.

8.2. **Notice of Unpaid Assessments.** The Association shall, at the request of a Mortgagee, report any unpaid assessments due from the Owner of such Lot or Condominium in accordance with the provisions of the Declaration.

ARTICLE IX

9. **Conflicting Provisions.** If any of these Bylaws conflict with any laws of the State of California, such conflicting Bylaws shall be void upon final court determination to such effect, but all other Bylaws shall remain in full force. In case of any conflict between the Articles and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.



ARTICLE X

10. **Indemnification of Directors and Officers.** The Board may authorize the Association to pay expenses incurred by, or to satisfy a judgment or fine rendered or levied against, any present or former Association Director, officer, committee member, employee or agent as provided in the Declaration.

ARTICLE XI

11. **Miscellaneous.**

11.1. **Checks, Drafts and Documents.** All checks, drafts or other orders for payments of money, notes or other evidences of indebtedness, issued in the name of or payable to the Association, must be signed or endorsed by the President and Treasurer of the Association, or by such person or persons and in such manner as the Board designates by resolution, subject to the provisions of Section 6.3 of the Declaration.

11.2. **Execution of Documents.** The Board may authorize any officer or agent to enter into any contract or execute any instrument in the name and on behalf of the Association, and such authority may be general or confined to specific instances. Unless so authorized by the Board, no officer, agent, committee member or employee may bind the Association by any contract or engagement or pledge its credit or render it liable for any purpose or in any amount.

11.3. **Association Documents.** In addition to the rights afforded by the Declaration to Beneficiaries, insurers and guarantors of first Mortgages with regard to inspection of the Association's management documents, the Association shall maintain at its principal office (or at such other place within the Properties as the Board may prescribe) the Restrictions and the Association's books of account; minutes of meetings of Members, Delegates, the Board and Board committees; and the Membership Register (collectively, the "Association Documents"), each of which shall be made available for inspection and copying by any Member or the Member's duly appointed representative for a purpose reasonably related to the Member's interest as a Member.

11.3.1. **Access Rules.** The Board shall establish reasonable rules regarding (a) notice to be given to the custodian of the Association Documents by the Person desiring to make the inspection, (b) hours and days of the week when such an inspection may be made, and (c) payment of the cost of copying any of the requested Association Documents; provided that every Director shall have the absolute right at any reasonable time to inspect all Association Documents and the physical properties owned or controlled by the Association, which right shall include the right to make extracts and copies of documents.



11.3.2. **Minutes.** The minutes, minutes that are proposed for adoption and are marked to indicate draft status, or a summary of the minutes of any meeting of the Board (other than an executive session) must be available to Members within thirty (30) days of the meeting. The minutes, proposed minutes or summary minutes must be distributed to any Member upon request and upon reimbursement of the Association's costs in making that distribution. Members must be notified in writing, at the time that the Budget required in Section 4.5.1 hereof is distributed or at the time of any general mailing to the entire Association membership, of their right to have copies of the minutes of meetings of the Board and how and where those minutes may be obtained.

11.3.3. **Copies/Statements.** Notwithstanding any contrary Board rules, no later than ten (10) days after the Association receives written request from any Member, the Association must provide to that Member a copy of each of the documents listed in California Civil Code Section 1568(a) requested by the Member. The Association may charge a fee for this service not exceeding the Association's reasonable cost to prepare and reproduce the requested documents.

11.4. **Fiscal Year.** The Board shall determine the Association's fiscal year. The fiscal year is subject to change as the Board determines.

ARTICLE XII

12. **Notice and Hearing Procedure.**

12.1. **Suspension of Privileges.** If an alleged violation of the Restrictions occurs, and after written notice of such alleged violation is delivered personally or mailed to the responsible Owner, Project Association, or any agent of the responsible Owner or Project Association alleged to be in default ("respondent") in the manner herein provided, by first-class mail or by certified mail return receipt requested, or both, the Board may, after affording the respondent an opportunity for an appropriate hearing as hereinafter provided, and upon an affirmative vote of a majority of the Board or a majority of the Members of any committee of the Board constituted to conduct such hearings ("Hearing Committee"), take any one (1) or more of the following actions:

- (a) Levy a Special Assessment as provided in the Declaration;
- (b) Suspend or condition the right of the respondent and persons claiming through the respondent to use any recreational facilities the Association owns, operates or maintains;
- (c) Suspend the respondent's voting privileges as a Member, as provided in the Declaration;



(d) If permitted by law, Record a notice of noncompliance encumbering the Respondent's Lot, Condominium or Common Area; or

(e) Enter upon the Respondent's Lot, Condominium or Common Area to correct the violation of the Restrictions, as further provided in the Declaration.

Any such suspension may not be for a period of more than thirty (30) days for any noncontinuing infraction, but in the case of a continuing infraction (including nonpayment of any assessment after the same becomes delinquent) may be imposed for so long as the violation continues. Suspension of Membership privileges does not relieve the respondent's obligation to pay all assessments levied by the Association or to otherwise comply with the Restrictions. The Board's failure to enforce the Restrictions does not waive the right to enforce the same thereafter. The remedies set forth above and otherwise provided by these Bylaws are cumulative and not exclusive. However, any individual Member or Project Association must exhaust all available internal Association remedies prescribed by the Restrictions, before that Member or Project Association may resort to a court of law for relief with respect to any alleged violation of the Restrictions by another Member or Project Association. The foregoing limitation pertaining to exhausting internal remedies does not apply to the Board or to any Member or Project Association where the complaint alleges nonpayment of Association assessments.

12.2. **Written Complaint.** A hearing to determine whether a right or privilege of the respondent under the Declaration or these Bylaws should be suspended or conditioned, or whether a Special Assessment should be levied, may be initiated by any Member, any Project Association or by any officer or member of the Board by filing a "Complaint" (as hereafter defined) with the President or other presiding member of the Board. A "Complaint" is a written statement of charges which describes in ordinary and concise language the acts or omissions with which the respondent is charged and a reference to the specific provisions of the Restrictions which the respondent is alleged to have violated. A copy of the Complaint must be delivered to the respondent in accordance with the notice procedures set forth in the Declaration, together with a completed statement substantially in the following form:

"Unless a written request for a hearing signed by or on behalf of the person named as respondent in the accompanying Complaint is delivered or mailed to the Board of Directors within fifteen (15) days after the Complaint, the Board of Directors may proceed upon the Complaint without a hearing, and you will have thus waived your right to a hearing. The request for a hearing may be made by delivering (as evidenced by a dated receipt signed by the Association's agent) or mailing (by certified mail, return receipt requested) the enclosed form entitled 'Notice of Defense' to the Board of Directors at the following address:

_____. ***You may, but need not, be represented by counsel at any or all stages of these proceedings.*** If you desire the names and addresses of witnesses or an opportunity to inspect any relevant writings or items on file in connection with



this matter in the possession, custody or control of the Board of Directors, you may contact _____.”

The respondent is entitled to a hearing on the merits of the matter if the Notice of Defense is timely filed with the Board. The respondent may file a separate statement by way of mitigation, even if he does not file a Notice of Defense.

12.3. Notice of Hearing. The Board shall serve a notice of hearing, as provided herein, on all parties at least ten (10) days prior to the hearing, if a hearing is requested by the respondent. The Board or Hearing Committee shall conduct the hearing no sooner than thirty (30) days after the Complaint is mailed or delivered to the respondent as provided in Section 12.2 above. The notice to the respondent must be in substantially the following form but may include other information:

“You are hereby notified that a hearing will be held before the Board of Directors of Rio Vista Village Community Association (“Association”), or a Hearing Committee appointed by the Board of Directors for the purpose of conducting such hearings. The hearing will be held at _____ on _____, _____, at _____ .m., upon the charges made in the Complaint served upon you. You may be present at the hearing, may but need not be represented by counsel, may present any relevant evidence, and you will be given full opportunity to examine all witnesses testifying against you. You are entitled to request the attendance of witnesses and the inspection, and production of books, documents or other items by applying to the Board of Directors at least two (2) business days prior to the hearing date.”

12.4. Hearing. The Board or the Hearing Committee shall conduct the hearing, in executive session pursuant to the notice described in Section 12.3 above. Prior to the effectiveness of any sanction hereunder, proof of notice and the invitation to be heard must be placed in the minutes of the meeting. Such proof is adequate if a copy of the notice together with a statement of the date and manner of delivery and the identity of the Person giving the notice is entered in the minutes. The notice requirement is satisfied if the respondent appears at the meeting. The minutes of the meeting must contain a written statement of the results of the hearing and the sanction, if any, imposed. No action against the respondent arising from the alleged violation may take effect sooner than five (5) days after the hearing.

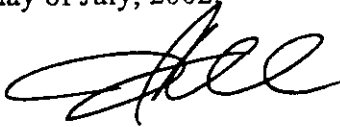


CERTIFICATE OF SECRETARY

I, the undersigned, do hereby certify that:

1. I am the duly elected and acting Secretary of RIO VISTA VILLAGE COMMUNITY ASSOCIATION, a California nonprofit corporation ("Association"); and
2. The foregoing Bylaws comprising twenty-four (24) pages including this page constitute the Bylaws of the Association duly adopted by written consent of the Board of Directors of the Association effective as of July 15, 2002.

IN WITNESS WHEREOF, I have hereunto subscribed my hand and affixed the seal of the Association this 25 day of July, 2002.



Jason Lee Secretary

[SEAL]



ORANGE COAST TITLE CO.

RECORDING REQUESTED BY:

ORANGE COAST TITLE COMPANY

WHEN RECORDED, MAIL TO:

JACKSON, DeMARCO &
PECKENPAUGH (SLT)
2815 Townsgate Road, Suite 200
Westlake Village, California 91361

DOC # 2003-850746

10/28/2003 08:00A Fee:31.00

Page 1 of 9

Recorded in Official Records

County of Riverside

Gary L. Orso

Assessor, County Clerk & Recorder



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(31)



RV 28639-99

**SUPPLEMENTAL DECLARATION
OF
COVENANTS, CONDITIONS, RESTRICTIONS
AND RESERVATION OF EASEMENTS FOR
RIO VISTA VILLAGE
DELEGATE DISTRICT NO. 1A
(Lots 17-28, 45-56, 61-64 & 281 Tract 28639-1)**

**SUPPLEMENTAL DECLARATION
OF
COVENANTS, CONDITIONS, RESTRICTIONS
AND RESERVATION OF EASEMENTS
FOR
RIO VISTA VILLAGE
DELEGATE DISTRICT NO. 1A
(Lots 17-28, 45-56, 61-64 & 281, Tract 28639-1)**

THIS SUPPLEMENTAL DECLARATION ("Supplemental Declaration") is made by ASHBROOK GDCI CATHEDRAL CITY, L.P., a Delaware limited partnership ("Merchant Builder"), and RIO VISTA LAND COMPANY, L.P., a Texas limited partnership ("Declarant").

P R E A M B L E:

A. On August 29, 2003, Declarant recorded a Declaration of Covenants, Conditions, Restrictions and Reservation of Easements for Rio Vista Village ("Master Declaration"), as Instrument No. 2003-482548, in the Official records of Riverside County, California ("Official Records"). The Master Declaration, as amended from time to time, is binding on all Owners of residential Lots and Condominiums in the planned development known as Rio Vista Village ("Properties").

B. Merchant Builder is the owner of certain real property ("Added Territory") in the County of Riverside, California, described as follows:

Lots 17 to 28, inclusive, Lots 45 to 56, inclusive, Lots 61 to 64, inclusive, of Tract No. 28639-1, as shown on a Subdivision Map, Filed in Book 300, Pages 53 to 66, inclusive, of Maps, in the Office of the Riverside County Recorder.

C. The Added Territory is part of the Annexable Area as defined in the Master Declaration.

D. Pursuant to Article II of the Master Declaration, Declarant and Merchant Builder now desire to add the Added Territory to the property already subject to the Master Declaration as a Phase of Development of the Properties.

THEREFORE, DECLARANT AND MERCHANT BUILDER HEREBY
DECLARE AS FOLLOWS:



2003-850746
10/28/2003 08:00A
2 of 9

1. Annexation of Added Territory. The Added Territory is annexed to and made a part of the real property already subject to the Master Declaration, as a Phase of Development of the Properties. This Supplemental Declaration constitutes a Supplemental Declaration annexing real property to the Properties as described in Section 2.3 of the Master Declaration.

2. Membership in Association. Each Owner of one or more residential Lots in the Added Territory shall automatically become a member of Rio Vista Village Community Association ("Association"), a California nonprofit mutual benefit corporation, as provided in the Master Declaration.

3. Assessment Obligations. The rights and obligations of all Owners of residential Lots located in the Added Territory with respect to payment of assessments are set forth in the Master Declaration. The Assessments to be paid to the Master Association shall commence as to all Lots in the Added Territory on the first day of the first calendar month following the first Close of Escrow for the sale of a Lot in the Added Territory, as provided in the Master Declaration.

4. Voting Rights. As provided in the Master Declaration, the entitlement to vote shall commence as to all residential Lots within the Added Territory on the first day of the first calendar month following the first Close of Escrow for the sale of a residential Lot in the Added Territory.

5. Delegate District. The Added Territory is part of Delegate District No. 1-A, as provided in the Master Declaration.

6. Land Classifications.

(a) Residential Lots. Lots 17 to 28, inclusive, Lots 45 to 56, inclusive, and Lots 61 to 64, inclusive, of said Tract No. 28639-1 are hereby designated to be residential Lots, as defined in the Master Declaration.

(b) Maintenance Property. Lot 281 of said Tract No. 28639-1 is the Maintenance Property in the Added Territory, and will be conveyed to the Association prior to the first close of escrow for the sale of a residential Lot in the Added Territory.

7. Maintenance Obligations. The maintenance obligations of the Association, the Owners, and Declarant are described in the Master Declaration. The Association shall assume its maintenance obligations with respect to the Added Territory upon the commencement of Common Assessments in the Added Territory.

8. Marketing Name. The Phase shall be marketed under the name "Los Portales," unless and until changed by Merchant Builder. Merchant Builder shall notify the DRE of any change in the name of the Phase under which it is marketed by Merchant Builder.



9. Miscellaneous. The provisions of this Supplemental Declaration shall run with all of the Added Territory and the Properties, shall be binding upon all persons having or acquiring any interest in the Added Territory or the Properties, or any part thereof, shall inure to the benefit of and burden every portion of the Added Territory and the Properties, and any interest therein, and shall inure to the benefit of, be binding upon, and may be enforced by any Owner, Declarant, each successor in interest of Declarant, Merchant Builder, each successor in interest of Merchant Builder, the Association, and their successive owners and assigns. Except as otherwise provided herein, the terms in this Supplemental Declaration shall have the same meanings as are given such terms by the Master Declaration. Except as otherwise expressly provided herein, all of the provisions of the Master Declaration are hereby incorporated by reference as if fully set forth herein.

This Supplemental Declaration has been executed on OCTOBER 17, 2003, to be effective as of the date of its Recordation.

DECLARANT:

RIO VISTA LAND COMPANY, L.P., a Texas limited partnership

By: BURNETT DEVELOPMENT CORPORATION, a California corporation, its general partner

By: C. C. Cunnell

Name and Title: President

MERCHANT BUILDER:

ASHBROOK GDCI CATHEDRAL CITY, L.P., a Delaware limited partnership

By: ASHBROOK CATHEDRAL CITY GP, L.P., a California limited partnership, its general partner

By: ASHBROOK CATHEDRAL CITY MANAGEMENT, LLC, a California limited liability company, its general partner

By: ASHBROOK DEVELOPMENT COMPANY, INC., a California corporation, its member

By: Richard L. Crook
Richard L. Crook, President

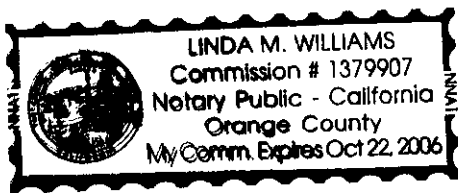


2003-850746
10/28/2003 08:00A
4 of 9

STATE OF CALIFORNIA)
) ss.
COUNTY OF ORANGE)

On OCT. 17, 2003, before me, the undersigned, a Notary Public in and for said State, personally appeared C. L. BURNETT, 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~~^{his} executed the same in ~~her~~^{his} authorized capacity, and that by ~~her~~^{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.



Linda M. Williams
Notary Public in and for said State

(SEAL)

STATE OF CALIFORNIA)
) ss.
COUNTY OF San Diego)

On Oct. 22, 2003, before me, the undersigned, a Notary Public in and for said State, personally appeared Richard L. Crook, 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~~^{his} executed the same in ~~her~~^{his} authorized capacity, and that by ~~her~~^{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.



Traci L. Hanson
Notary Public in and for said State

(SEAL)



Recorder
P.O. Box 751
Riverside, CA 92502-0751
(909) 486-7000

<http://riverside.asrelkrec.com>

GARY L. ORSO
COUNTY OF RIVERSIDE
ASSESSOR-COUNTY CLERK-RECORDER

NOTARY CLARITY

Under the provisions of Government Code 27361.7, I certify under penalty of perjury that the notary seal on the document to which this statement is attached reads as follows:

Name of Notary: LINDA M. WILLIAMS

Commission #: 1379907

Place of Execution: ORANGE COUNTY

Date Commission Expires: 10/22/2006

Date: 10/26/03

Signature: Saran Pallow



2003-850746
10/28/2003 08:00A
6 of 9

Recorder
P.O. Box 751
Riverside, CA 92502-0751
(909) 486-7000

<http://riverside.asrelkrec.com>

GARY L. ORSO
COUNTY OF RIVERSIDE
ASSESSOR-COUNTY CLERK-RECORDER

NOTARY CLARITY

Under the provisions of Government Code 27361.7, I certify under penalty of perjury that the notary seal on the document to which this statement is attached reads as follows:

Name of Notary: TRACI L. HANSON

Commission #: 1285775

Place of Execution: SAN DIEGO COUNTY

Date Commission Expires: 11/30/2004

Date: 10/26/03

Signature: Sarah Pallow



2003-850746
10/28/2003 08:00A
7 of 9

SUBORDINATION

The undersigned, as Beneficiary of the beneficial interest in and under that certain Deed of Trust dated March 10, 2003, and recorded on March 13, 2003, as Instrument No. 2003-177029, in the Official Records of Riverside County, California (the "Deed of Trust"), which Deed of Trust is by and between Ashbrook GDCI Cathedral City, L.P., a Delaware limited partnership, as Trustor, and Vineyard Bank, as Trustee, and Vineyard Bank, as Beneficiary, expressly subordinates said Deed of Trust and its beneficial interest thereunder to the foregoing Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Rio Vista Village, as amended or restated ("Declaration"), to any Supplemental Declaration of Covenants, Conditions, Restrictions and Reservation of Easements for Rio Vista Village recorded pursuant to the provisions of the Declaration, as amended or restated ("Supplemental Declaration"), and to all easements to be conveyed to the Association in accordance with the Declaration and any Supplemental Declaration. By executing this Subordination, the undersigned agrees that should the undersigned acquire title to all or any portion of the Properties by foreclosure (whether judicial or nonjudicial), deed-in-lieu of foreclosure or any other remedy in or relating to the Deed of Trust, the undersigned will acquire title subject to the provisions of the Declaration and any applicable Supplemental Declaration, which shall remain in full force and effect.

Dated: 10-20, 03

VINEYARD BANK

By: [Signature] Sean Johnson

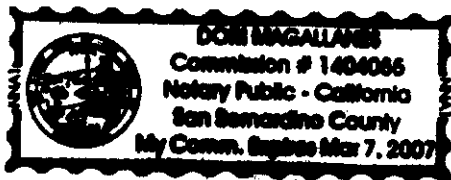
Its: Senior Vice President

STATE OF CALIFORNIA)
) ss.
COUNTY OF Riverside)

On 10-20-03 ^{3pm} 2003, before me, the undersigned, a Notary Public in and for said State, personally appeared Sean Johnson and

[Signature], personally known to me or proved to me on the basis of satisfactory evidence to be the person^{is} who executed the within instrument, and acknowledged to me that ~~they~~^{he} executed the same in ~~their~~^{his} authorized capacities and that by ~~their~~^{his} signature~~s~~ on the instrument the person^{is}, or the entity upon behalf of which the person^{is} acted, executed the instrument.

WITNESS my hand and official seal.



[Signature]
Signature of Notary Public



Recorder
P.O. Box 751
Riverside, CA 92502-0751
(909) 486-7000

<http://riverside.asrelkrec.com>

GARY L. ORSO
COUNTY OF RIVERSIDE
ASSESSOR-COUNTY CLERK-RECORDER

NOTARY CLARITY

Under the provisions of Government Code 27361.7, I certify under penalty of perjury that the notary seal on the document to which this statement is attached reads as follows:

Name of Notary: DORI MAGALLANES

Commission #: 1404055

Place of Execution: SAN BERNARDINO COUNTY

Date Commission Expires: 03/07/2007

Date: 10-26-03

Signature: Sarah Pallow



2003-850746
10/28/2003 08:00A
9 of 9

RECORDING REQUESTED BY:

ORANGE COAST TITLE COMPANY

WHEN RECORDED MAIL TO:

JACKSON, DEMARCO & PECKENPAUGH
2815 TOWNSGATE ROAD, SUITE 200
WESTLAKE VILLAGE, CA 91361

DOC # 2003-993456

12/19/2003 08:00A Fee:43.00

Page 1 of 13

Recorded in Official Records

County of Riverside

Gary L. Orso

Assessor, County Clerk & Recorder



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43

**SUPPLEMENTAL DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTION
FOR RIO VISTA VILLAGE DELEGAGE DISTRICT 1A**

(Title of Document)



THIS SUPPLEMENTAL IS BEING RE-RECORDED TO CORRECT THE RECORDING INFORMATION OF THE DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND RESERVATION OF EASEMENTS REFERRED TO ON PAGE 1

TITLE ORDER NO

RV-28639-99

ORANGE COAST TITLE CO.

RECORDING REQUESTED BY:

ORANGE COAST TITLE COMPANY

WHEN RECORDED, MAIL TO:

JACKSON, DeMARCO &
PECKENPAUGH (SLT)
2815 Townsgate Road, Suite 200
Westlake Village, California 91361

DOC # 2003-850746
10/28/2003 08:00A Fee:31.00

Page 1 of 9
Recorded in Official Records
County of Riverside
Gary L. Orso
Assessor, County Clerk & Recorder



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31



RV 28639-99

**SUPPLEMENTAL DECLARATION
OF
COVENANTS, CONDITIONS, RESTRICTIONS
AND RESERVATION OF EASEMENTS FOR
RIO VISTA VILLAGE
DELEGATE DISTRICT NO. 1A
(Lots 17-28, 45-56, 61-64 & 281 Tract 28639-1)**

**SUPPLEMENTAL DECLARATION
OF
COVENANTS, CONDITIONS, RESTRICTIONS
AND RESERVATION OF EASEMENTS
FOR
RIO VISTA VILLAGE
DELEGATE DISTRICT NO. 1A
(Lots 17-28, 45-56, 61-64 & 281, Tract 28639-1)**

THIS SUPPLEMENTAL DECLARATION ("Supplemental Declaration") is made by ASHBROOK GDCI CATHEDRAL CITY, L.P., a Delaware limited partnership ("Merchant Builder"), and RIO VISTA LAND COMPANY, L.P., a Texas limited partnership ("Declarant").

P R E A M B L E:

2002

A. On August 29, ~~2003~~, Declarant recorded a Declaration of Covenants, Conditions, Restrictions and Reservation of Easements for Rio Vista Village ("Master Declaration"), as Instrument No. 2002-**482548**, in the Official records of Riverside County, California ("Official Records"). The Master Declaration, as amended from time to time, is binding on all Owners of residential Lots and Condominiums in the planned development known as Rio Vista Village ("Properties").

B. Merchant Builder is the owner of certain real property ("Added Territory") in the County of Riverside, California, described as follows:

Lots 17 to 28, inclusive, Lots 45 to 56, inclusive, Lots 61 to 64, inclusive, of Tract No. 28639-1, as shown on a Subdivision Map, Filed in Book 300, Pages 53 to 66, inclusive, of Maps, in the Office of the Riverside County Recorder.

C. The Added Territory is part of the Annexable Area as defined in the Master Declaration.

D. Pursuant to Article II of the Master Declaration, Declarant and Merchant Builder now desire to add the Added Territory to the property already subject to the Master Declaration as a Phase of Development of the Properties.

THEREFORE, DECLARANT AND MERCHANT BUILDER HEREBY
DECLARE AS FOLLOWS:



2003-850746
10/28/2003 08:00A
2 of 9

1. Annexation of Added Territory. The Added Territory is annexed to and made a part of the real property already subject to the Master Declaration, as a Phase of Development of the Properties. This Supplemental Declaration constitutes a Supplemental Declaration annexing real property to the Properties as described in Section 2.3 of the Master Declaration.

2. Membership in Association. Each Owner of one or more residential Lots in the Added Territory shall automatically become a member of Rio Vista Village Community Association ("Association"), a California nonprofit mutual benefit corporation, as provided in the Master Declaration.

3. Assessment Obligations. The rights and obligations of all Owners of residential Lots located in the Added Territory with respect to payment of assessments are set forth in the Master Declaration. The Assessments to be paid to the Master Association shall commence as to all Lots in the Added Territory on the first day of the first calendar month following the first Close of Escrow for the sale of a Lot in the Added Territory, as provided in the Master Declaration.

4. Voting Rights. As provided in the Master Declaration, the entitlement to vote shall commence as to all residential Lots within the Added Territory on the first day of the first calendar month following the first Close of Escrow for the sale of a residential Lot in the Added Territory.

5. Delegate District. The Added Territory is part of Delegate District No. 1-A, as provided in the Master Declaration.

6. Land Classifications.

(a) Residential Lots. Lots 17 to 28, inclusive, Lots 45 to 56, inclusive, and Lots 61 to 64, inclusive, of said Tract No. 28639-1 are hereby designated to be residential Lots, as defined in the Master Declaration.

(b) Maintenance Property. Lot 281 of said Tract No. 28639-1 is the Maintenance Property in the Added Territory, and will be conveyed to the Association prior to the first close of escrow for the sale of a residential Lot in the Added Territory.

7. Maintenance Obligations. The maintenance obligations of the Association, the Owners, and Declarant are described in the Master Declaration. The Association shall assume its maintenance obligations with respect to the Added Territory upon the commencement of Common Assessments in the Added Territory.

8. Marketing Name. The Phase shall be marketed under the name "Los Portales," unless and until changed by Merchant Builder. Merchant Builder shall notify the DRE of any change in the name of the Phase under which it is marketed by Merchant Builder.



9. Miscellaneous. The provisions of this Supplemental Declaration shall run with all of the Added Territory and the Properties, shall be binding upon all persons having or acquiring any interest in the Added Territory or the Properties, or any part thereof, shall inure to the benefit of and burden every portion of the Added Territory and the Properties, and any interest therein, and shall inure to the benefit of, be binding upon, and may be enforced by any Owner, Declarant, each successor in interest of Declarant, Merchant Builder, each successor in interest of Merchant Builder, the Association, and their successive owners and assigns. Except as otherwise provided herein, the terms in this Supplemental Declaration shall have the same meanings as are given such terms by the Master Declaration. Except as otherwise expressly provided herein, all of the provisions of the Master Declaration are hereby incorporated by reference as if fully set forth herein.

This Supplemental Declaration has been executed on OCTOBER 17, 2003, to be effective as of the date of its Recordation.

DECLARANT:

RIO VISTA LAND COMPANY, L.P., a Texas limited partnership

By: BURNETT DEVELOPMENT CORPORATION, a California corporation, its general partner

By: C. Burnett C. Burnett
12/10/03
Name and Title: President

MERCHANT BUILDER:

ASHBROOK GDCI CATHEDRAL CITY, L.P., a Delaware limited partnership

By: ASHBROOK CATHEDRAL CITY GP, L.P., a California limited partnership, its general partner

By: ASHBROOK CATHEDRAL CITY MANAGEMENT, LLC, a California limited liability company, its general partner

By: ASHBROOK DEVELOPMENT COMPANY, INC., a California corporation, its member

Richard L. Crook By: Richard L. Crook
12-4-03
Richard L. Crook, President

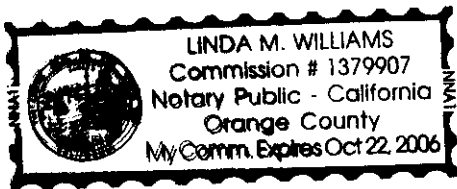


2003-850746
10/28/2003 08:00A
4 of 9

STATE OF CALIFORNIA)
)
COUNTY OF ORANGE) ss.

On OCT. 17, 2003, before me, the undersigned, a Notary Public in and for said State, personally appeared C. L. BURNETT, 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 ~~she~~^{his} executed the same in ~~her~~^{his} authorized capacity, and that by ~~her~~^{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.



Linda M. Williams
Notary Public in and for said State

(SEAL)

STATE OF CALIFORNIA)
)
COUNTY OF San Diego) ss.

On Oct. 22, 2003, before me, the undersigned, a Notary Public in and for said State, personally appeared Richard L. Crook, 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 ~~she~~^{his} executed the same in ~~her~~^{his} authorized capacity, and that by ~~her~~^{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.



Traci L. Hanson
Notary Public in and for said State

(SEAL)



Recorder
P.O. Box 751
Riverside, CA 92502-0751
(909) 486-7000

<http://riverside.asrelkrec.com>

GARY L. ORSO
COUNTY OF RIVERSIDE
ASSESSOR-COUNTY CLERK-RECORDER

NOTARY CLARITY

Under the provisions of Government Code 27361.7, I certify under penalty of perjury that the notary seal on the document to which this statement is attached reads as follows:

Name of Notary: LINDA M. WILLIAMS

Commission #: 1379907

Place of Execution: ORANGE COUNTY

Date Commission Expires: 10/22/2006

Date:

10/26/03

Signature:

Sarah Pallow



2003-850746
10/28/2003 08:00A
6 of 9

Recorder
P.O. Box 751
Riverside, CA 92502-0751
(909) 486-7000

<http://riverside.asrelkrec.com>

GARY L. ORSO
COUNTY OF RIVERSIDE
ASSESSOR-COUNTY CLERK-RECORDER

NOTARY CLARITY

Under the provisions of Government Code 27361.7, I certify under penalty of perjury that the notary seal on the document to which this statement is attached reads as follows:

Name of Notary: TRACI L. HANSON

Commission #: 1285775

Place of Execution: SAN DIEGO COUNTY

Date Commission Expires: 11/30/2004

Date: _____

10/26/03

Signature: _____

Sarah Pallow



2003-050746
10/20/2003 08:00A
7 of 8

SUBORDINATION

The undersigned, as Beneficiary of the beneficial interest in and under that certain Deed of Trust dated March 10, 2003, and recorded on March 13, 2003, as Instrument No. 2003-177029, in the Official Records of Riverside County, California (the "Deed of Trust"), which Deed of Trust is by and between Ashbrook GDCI Cathedral City, L.P., a Delaware limited partnership, as Trustor, and Vineyard Bank, as Trustee, and Vineyard Bank, as Beneficiary, expressly subordinates said Deed of Trust and its beneficial interest thereunder to the foregoing Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Rio Vista Village, as amended or restated ("Declaration"), to any Supplemental Declaration of Covenants, Conditions, Restrictions and Reservation of Easements for Rio Vista Village recorded pursuant to the provisions of the Declaration, as amended or restated ("Supplemental Declaration"), and to all easements to be conveyed to the Association in accordance with the Declaration and any Supplemental Declaration. By executing this Subordination, the undersigned agrees that should the undersigned acquire title to all or any portion of the Properties by foreclosure (whether judicial or nonjudicial), deed-in-lieu of foreclosure or any other remedy in or relating to the Deed of Trust, the undersigned will acquire title subject to the provisions of the Declaration and any applicable Supplemental Declaration, which shall remain in full force and effect.

Dated: 10-20, 03

VINEYARD BANK

By: [Signature] Sean Johnson

Its: Senior Vice President

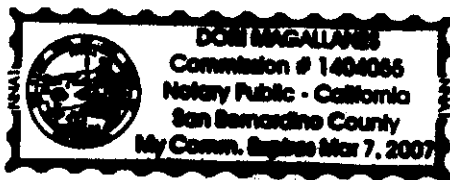
[Signature] 12/8/05

STATE OF CALIFORNIA)
) ss.
COUNTY OF Riverside)

On 10-20-03, 2003, before me, the undersigned, a Notary Public in and for said State, personally appeared Sean Johnson and

[Signature], personally known to me or proved to me on the basis of satisfactory evidence to be the person~~s~~ who executed the within instrument, and acknowledged to me that ~~they~~ executed the same in ~~their~~ authorized capacities and that by ~~their~~ signatures on the instrument the person~~s~~, or the entity upon behalf of which the person~~s~~ acted, executed the instrument.

WITNESS my hand and official seal.



[Signature]
Signature of Notary Public



Recorder
P.O. Box 751
Riverside, CA 92502-0751
(909) 486-7000

<http://riverside.asrelkrec.com>

GARY L. ORSO
COUNTY OF RIVERSIDE
ASSESSOR-COUNTY CLERK-RECORDER

NOTARY CLARITY

Under the provisions of Government Code 27361.7, I certify under penalty of perjury that the notary seal on the document to which this statement is attached reads as follows:

Name of Notary: DORI MAGALLANES

Commission #: 1404055

Place of Execution: SAN BERNARDINO COUNTY

Date Commission Expires: 03/07/2007

Date: 10-26-03

Signature: Sarah Pallow



2003-850746
10/28/2003 09:00A
3 of 9

ACKNOWLEDGEMENT - GENERIC

STATE OF CALIFORNIA

COUNTY OF ORANGE) ss

On DEC. 10, 2003 before me, LINDA M. WILLIAMS,
(Notary Name and Title)

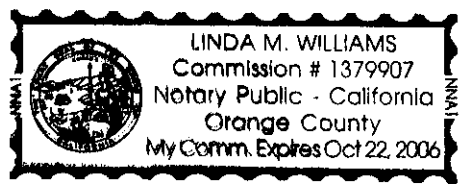
NOTARY PUBLIC,

personally appeared C. L. BURNETT

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument, and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Linda M. Williams
Signature



(This area for official notary seal)

THIS FORM FURNISHED COURTESY OF ORANGE COAST TITLE COMPANIES

ACKNOWLEDGEMENT - GENERIC

STATE OF CALIFORNIA

COUNTY OF San Diego

} ss

On 12-4-03 before me, Traci L. Hanson,
(Notary Name and Title)

Notary Public

personally appeared Richard L. Crook

personally known to me (~~or proved to me on the basis of satisfactory evidence~~) to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument, and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(~~ies~~), and that by his/~~her/their~~ signature(~~s~~) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Traci L. Hanson
Signature



(This area for official notary seal)

THIS FORM FURNISHED COURTESY OF ORANGE COAST TITLE COMPANIES

ACKNOWLEDGEMENT - GENERIC

STATE OF CALIFORNIA

COUNTY OF Riverside

) ss

On 12-8-03 before me, DORI MAGALLANES, Notary
(Notary Name and Title)

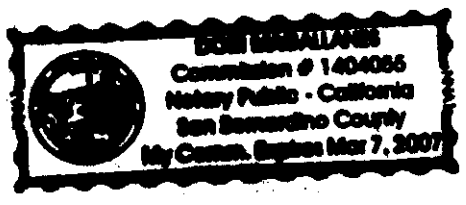
Public

personally appeared Sean Johnson

~~personally known to me~~ (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument, and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Dori Magallanes
Signature



(This area for official notary seal)

THIS FORM FURNISHED COURTESY OF ORANGE COAST TITLE COMPANIES

RECORDING REQUESTED BY:

FIDELITY NATIONAL TITLE COMPANY

9722975-50

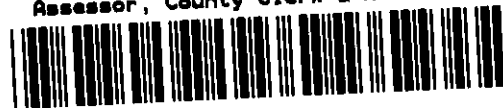
WHEN RECORDED MAIL TO:

Ashbrook GDCI Cathedral City, L.P.
5140 Avenida Encinas
Carlsbad, CA 92008
Attention: Mr. Tim McGowan

DOC # 2003-056055

01/24/2003 08:00A Fee:89.00
Page 1 of 15 Doc T Tax Paid
Recorded in Official Records
County of Riverside

Gary L. Orso
Assessor, County Clerk & Recorder



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T.R.A. 019

MAIL TAX STATEMENTS TO:

Ashbrook GDCI Cathedral City, L.P.
5140 Avenida Encinas
Carlsbad, CA 92008
Attention: Mr. Tim McGowan

Documentary Transfer Tax shown on separate statement pursuant to California Revenue and Taxation Code Section 11932.

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GRANT DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, RIO VISTA LAND COMPANY, L.P., a Texas limited partnership ("**Grantor**"), hereby grants ASHBROOK GDCI CATHEDRAL CITY, L.P., a Delaware limited partnership ("**Grantee**"), the following described real property ("**Property**") in the City of Cathedral City, County of Riverside ("**County**"), State of California, described on **Exhibit "1"** hereto.

EXCEPTING AND RESERVING UNTO GRANTOR, its successors and assigns together with the right to grant and transfer all or a portion of the same, as follows:

A. All oil, oil rights, minerals, mineral rights, natural gas rights and other hydrocarbons by whatsoever name known, geothermal steam and all products derived from any of the foregoing, that may be within or under the Property, together with the perpetual right of drilling, mining, exploring and operating therefor and storing in and removing the same from said Property or any other land, including the right to whipstock or directionally drill and mine from lands other than the Property, oil or gas wells, tunnels and shafts into, through or across the

subsurface of the Property, and to bottom such whipstocked or directionally drilled wells, tunnels and shafts under and beneath or beyond the exterior limits thereof, and to redrill, retunnel, equip, maintain, repair, deepen and operate any such wells or mines without, however, the right to drill, mine, store, explore or operate through the surface or the upper 500 feet of the subsurface of the Property.

B. The right to place on, under or across the Property, transmission lines and other facilities for a community antenna television system and thereafter to own and convey such lines and facilities, and the right to enter upon the Property to service, maintain, repair, reconstruct and replace said lines and facilities.

C. Any and all water, water rights or interests therein appurtenant or relating to the Property or owned or used by Grantor in connection with or with respect to the Property (no matter how acquired by Grantor), whether such water rights shall be riparian, overlying, appropriative, littoral, percolating, prescriptive, adjudicated, statutory or contractual, together with the right and power to explore, drill, redrill, remove and store the same from or in the Property or to divert or otherwise utilize such water, rights or interests on any other property owned or leased by Grantor; but without, however any right to enter upon the surface of the Property in the exercise of such rights.

D. Nonexclusive easements in gross on, over and under the Property for the construction, installation and maintenance of electric, gas, telephone, water, sewer and drainage facilities, provided that the construction and installation of such facilities shall not unreasonably interfere with Grantee's development of the Property.

E. Nonexclusive easements in gross on, over and under the Property for construction, equipment storage, rights-of-way or other purposes as described and shown on *Exhibit "2"* attached hereto and by this reference made a part hereof.

F. Permanent, nonexclusive easements in gross on, over and under that portion of the Property to be improved with landscaping and related improvements to be maintained by a homeowners association ("*Landscape Property*").

G. Permanent, nonexclusive easements in gross on, over and under all private and public streets, roads and walkways in the Property for the purpose of (i) vehicular and pedestrian ingress and egress to all portions of the adjacent property owned by Grantor or its successors ("*Adjacent Property*") and (ii) the construction, installation (including the right to connect to existing facilities), maintenance and use of electric, gas, cable, telephone, water, sewer, drainage and other utility facilities serving the Adjacent Property; provided, however, that the construction, installation and maintenance of such facilities shall not unreasonably interfere with Grantee's development or use of the Property.

With respect to the matters described in B, D, E and G, above, Grantor (i) will use commercially reasonable efforts to install the utilities within streets and/or other utility easement areas as shown on the final subdivision map for the Property, (ii) not install other facilities/improvements



under building pads or other permanent structures on the Property; and (iii) will use the easements and reservations reserved hereby so as not to interfere unreasonably with Grantee's ownership, possession and use of the Property.

Except as such easements have been conveyed to a utility company or other public or quasi-public entity, the easements in favor of Grantor described in Paragraph B, D and E above shall automatically terminate and be of no further force or effect as to any portion of the Property upon the conveyance thereof to a buyer or other transferee who is entitled to receive by reason of such conveyance a Subdivision Public Report pursuant to California Business and Professions Code Section 11018.2 or any similar statute hereafter in effect, or upon conveyance to an association whose members consist in whole or in part of such buyers or other transferees.

SUBJECT TO:

1. **Taxes and Assessments.** General and special real property taxes and assessments and supplemental assessments, if any, for the current fiscal year.
2. **Development Declaration.** That certain Declaration of Development Covenants, Conditions and Restrictions recorded concurrently herewith, and any amendments thereto, and the covenants, conditions, restrictions, rights, reservations, benefits and burdens therein contained, each and all of which are hereby expressly incorporated herein by this reference.
3. **Intentionally Omitted.**
4. **Other Restrictions.** All other covenants, conditions, restrictions, reservations, rights, rights-of-way, dedications, offers of dedication and easements of record or apparent.
5. **Landscape Property CC&R's.** The following covenants, conditions, rights and restrictions (collectively, the "CC&R's"), which shall remain in full force and effect from the date of recordation of this instrument for the specific periods indicated below, unless terminated or modified as hereinafter provided.

5.1. **Use of the Landscape Property.** For a period of 10 years from the date of recordation of this instrument, the Landscape Property shall be used only as landscaped areas and shall be continually planted and otherwise landscaped in good condition and appearance, free of all weeds, debris and rubbish, if more restrictive, in accordance with landscape guidelines prepared or to be prepared by Grantor, a copy of which has been or will be delivered to Grantee and will be available at Grantor's address specified in Section 7 below. The Landscape Property may be used only as set forth above and shall not be developed, used, operated or maintained for any other purpose whatsoever for a period of 10 years from the date of recordation of this instrument.

5.2. **Landscape Maintenance.** Grantee shall provide continuous maintenance for all of the landscaping and other improvements on the Landscape Property in such manner and at such intervals as shall be required at all times to maintain the Landscape Property in the condition intended in accordance with the foregoing Section. Grantee shall provide, maintain and repair



sprinklers and other landscape maintenance, equipment and facilities as necessary to so maintain the Landscape Property and improvements thereon in a good and attractive condition. Grantee shall also maintain all flood protection berms and slopes on the Landscape Property in good condition and repair. If a homeowners association is formed to hold title to all or a portion of the Landscape Property to such association, the association shall maintain all of the Landscape Property pursuant to the terms hereof except those portions which have been or are subsequently accepted for maintenance and are then being maintained by a landscape maintenance district, other governmental agency, or another homeowners' association, notwithstanding the fact that such association may not own all of the Landscape Property.

6. General Purpose and Constructive Notice.

6.1. **Purpose of CC&R's.** Grantor is the owner and developer of a large and unique landholding in the County of which the Property is a part, and Grantor is engaged in master-planning this landholding. Among the distinguishing characteristics of this master-planning is the clear delineation of use areas throughout the landholding so as to ensure both harmonious growth and development and the maximization of the value of Grantor's remaining land. In addition to these general concerns, the Landscape Property will be highly visible along major accessways to certain of Grantor's commercial and residential master-planned developments, as well as along the accessways to the residential community developed on the Property by Grantee. Accordingly, Grantor is concerned that the use of the Landscaped Property be clearly restricted to landscaping and that the ongoing maintenance of the Landscape Property be tightly controlled. Grantor, Grantee and the purchasers of residences on the Property will all benefit materially from such master-planning and from the ongoing maintenance of the Landscape Property for landscape purposes only.

6.2. **Covenants Run with Property.** The CC&R's are hereby declared and agreed to be part of a general plan for the purpose of assuring the enhancement and protection of the value, desirability and attractiveness of the Property described in *Exhibit "3"* hereto (herein referred to as the "*Benefitted Property*"). The CC&R's set forth in Subsections 5.1 and 5.2 above shall run with the Landscape Property and be binding upon and burden Grantee and all persons having or acquiring any right, title or interest in the Landscaped Property (during their ownership of such interest), or any part thereof, and their successors and assigns.

Subject to the following provisions of this Section, the CC&R's shall inure to the benefit of the Benefitted Property and the owners of the Benefitted Property and their successors and assigns, and the Benefitted Property shall be deemed the dominant tenement for purposes of the CC&R's. In the event that any portion of the Benefitted Property is conveyed by Grantor to a third party (each parcel of the Benefitted Property so transferred is hereinafter referred to as a "*Transferred Parcel*"), the CC&R's shall cease to benefit the Transferred Parcel unless the deed conveying the Transferred Parcel from Grantor to the transferee or a separate recorded document executed by Grantor expressly assigns to the transferee the benefits of the CC&R's which run with the Transferred Parcel by specific reference to this Grant Deed (general references to appurtenances or rights related to the acquired land will not suffice). Any owner of any Transferred Parcel who has been so assigned the ongoing benefit of the CC&R's hereunder is referred to herein as a "Successor." Any merger of Grantor with or into another entity or any acquisition of all or a portion of the stock or equity of Grantor by a third



party will not be deemed a transfer of the Benefitted Property triggering the applicability of this Section. Every person or entity who now or hereafter owns or acquires any right, title or interest in or to any portion of the Property or any improvements thereon is and shall be conclusively deemed to have consented and agreed to every covenant, condition and restriction contained herein, whether or not any reference to this instrument is contained in the instrument by which such person acquired an interest in the Property or any such improvements.

6.3. **Assignment by Grantor.** Grantor may assign to any Successor any and all of the rights, powers and duties of Grantor contained herein so long as such person or entity in writing agrees to assume the duties of Grantor pertaining to the particular rights, powers and duties assigned. Upon the recordation of such writing accepting such assignment and assuming such duties, the assignee (herein referred to as "*Grantor's Successor*"), to the extent of such assignment, shall have the same rights and powers and be subject to the same obligations and duties as are given to and assumed by Grantor herein and Grantor shall be released and relieved of such rights and obligations. Without limiting the generality of the foregoing, Grantor may make such assignments as to the entire Property or to any portion thereof. Unless specifically assigned in writing as stated in this Subsection 6.3, and subject to the provisions of this Subsection 6.3 above, Grantor alone shall have the right to enforce the CC&R's and the other provisions of this Grant Deed or to recover damages or other amounts for breach or violation of the CC&R's.

6.4. **Application to Grantor.** Notwithstanding anything to the contrary in this instrument, if Grantor reacquires title to the Property (as to which Grantor has not assigned its rights and obligations hereunder to Grantor's Successor) or any portion thereof at any time after the date hereof, the CC&R's shall upon recordation in the Office of the Riverside County Recorder of a notice of termination executed by Grantor cease and terminate and be of no further force or effect as to Grantor and such property, effective as of the date of such recordation.

6.5. **Termination or Amendment.** Except as specifically provided herein concerning (i) additional descriptions and/or depictions of all or portions of the Benefitted Property, and (ii) reacquisition of the Property by Grantor, the CC&R's may be validly terminated, amended, modified or extended, in whole or in part, only by recordation with the County Recorder of a proper instrument which has been duly executed and acknowledged by Grantor (or Grantor's Successor, if applicable). Notwithstanding the foregoing, the CC&Rs shall automatically terminate as to any portion of the Property that is conveyed to a buyer who is entitled to receive by reason of such conveyance a Subdivision Public Report pursuant to the California Business and Professions Code Section 11018.2 or any similar statute hereafter in effect.

7. **Other Provisions Regarding CC&R's.** The CC&R's shall be subject to the following additional provisions:

7.1. **Default and Remedies.** In the event of any breach, violation or failure to perform or satisfy any of the CC&R's which has not been cured within 30 days after written notice from Grantor to do so, or if such default cannot be cured within such time, then if such cure is not then being diligently pursued to completion (but such cure must be effected no later than 90 days from such written notice), Grantor at its sole option and discretion may enforce any one or more of



the following remedies or any other rights or remedies to which Grantor may be entitled by law or equity, whether or not set forth herein. All remedies provided herein or by law or equity shall be cumulative and not exclusive.

7.1.1. **Damages.** Grantor may bring a suit for damages for any compensable breach of or noncompliance with any of the CC&R's, or declaratory relief to determine the enforceability of any of the CC&R's.

7.1.2. **Equity.** It is recognized that a violation by Grantee of one or more of the foregoing CC&R's may cause Grantor to suffer material injury or damage not compensable in money (including, but not limited to irreparable effects on the type and ongoing quality of the development on the Benefitted Property or portions thereof), and that Grantor shall be entitled to bring an action in equity or otherwise for specific performance to enforce compliance with the CC&R's or an injunction to enjoin the continuance of any such breach or violation thereof whether or not Grantor exercises any other remedy.

7.1.3. **Abatement.** Any such breach or violation of the CC&R's or any provision hereof is hereby declared to be nuisance, and Grantor shall be entitled to prosecute any remedy allowed by law or equity for the abatement of such nuisance against any person or entity acting or failing to act in violation of these CC&R's, all at the sole cost and expense of Grantee or any person having possession under Grantee.

7.1.4. **Liability.** Any Grantor-approved transfer of the fee interest in the Landscape Property by Grantee shall relieve Grantee of any liability with respect to these CC&R's for violations hereof occurring after the date of the approved transfer.

7.2. **Waiver.** No waiver by Grantor of a breach of any of the CC&R's by Grantee and no delay or failure to enforce any of the CC&R's shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other of the CC&R's. No waiver of any breach or default of Grantee hereunder shall be implied from any omission by Grantor to take any action on account of such breach or default if such breach or default persists or is repeated, and no express waiver shall affect a breach or default other than as specified in said waiver. The consent or approval by Grantor to or of any act by Grantee requiring Grantor's consent or approval shall not be deemed to waive or render unnecessary Grantor's consent or approval to or of any subsequent similar acts by Grantee.

7.3. **Costs of Enforcement.** In the event any legal or equitable action or proceeding shall be instituted between Grantor and Grantee to enforce any provision of this instrument, the party prevailing in such action shall be entitled to recover from the losing party all of its costs, including court costs and reasonable attorneys' fees.

7.4. **Rights of Lenders.** No breach or violation of the CC&R's shall defeat or render invalid the lien of any mortgage, deed of trust or similar instrument securing a loan made in good faith and for value with respect to the purchase, development or permanent financing of the Property or any portion thereof; provided, that all of the CC&R's shall be binding upon and effective



against any subsequent owner of the Property or portion thereof whose title is acquired by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise pursuant to such lien rights, but such subsequent owner shall take title free and clear of any liability for violations by Grantee of the CC&R's occurring prior to such transfer of title.

7.5. **Captions.** The captions used herein are for convenience only and are not a part of this instrument and do not in any way limit or amplify the scope or intent of the terms and provisions hereof.

7.6. **Invalidity of Provision.** If any provision of this instrument as applied to Grantor or Grantee or to any circumstance shall be adjudged by a court of competent jurisdiction to be void or unenforceable for any reason, the same shall in no way affect (to the maximum extent permissible by law) any other provision under circumstances different from those adjudicated by the court, or the validity of enforceability of this instrument as a whole.

7.7. **Notices.** Any notice to be given or other document to be delivered by any party to the other or others hereunder may be delivered in person to an officer of any party, or may be delivered by Federal Express, private commercial delivery or courier service for next business day delivery, or may be deposited in the United States mail in the County, duly certified or registered, return receipt requested, with postage prepaid, and addressed to the party for whom intended, as follows:

GRANTOR: Rio Vista Land Company
c/o Burnett Companies
1300 Bristol Street North, Suite 200
Newport Beach, CA 92660
Attention: Mr. Thomas LeBeau
Ms. Susan Rooke
Phone No.: (949) 475-4125
Fax No.: (949) 475-4136

GRANTEE: Ashbrook GDCI Cathedral City, L.P.
c/o Ashbrook Communities
5140 Avenida Encinas
Carlsbad, CA 92008
Attention: Mr. Tim McGowan
Phone No.: (760) 804-6868
Fax No.: (760) 804-6875

Either Party may, by written notice to the other, designate a different address which shall be substituted for the one specified above. If any notice or other document shall be sent by certified mail as set forth above, it shall be deemed to have been effectively served or delivered seventy-two (72) hours following the deposit of such notice in the United States mail in the manner set forth above. If



any notice or other document shall be sent by facsimile, it shall be deemed to have been served or delivered upon electronic confirmation of transmission; provided that it is confirmed by a follow-up notice using approved methods hereunder within seventy-two (72) hours and provided further that subject to the foregoing if such transmission occurs on a weekend or holiday or after 5:00 p.m. on a weekday, it shall be deemed to have been received at 8:00 a.m. on the immediately following business day.

IN WITNESS WHEREOF, Grantor has executed this Grant Deed on the day and year hereafter written.

RIO VISTA LAND COMPANY, L.P.,
a Texas limited partnership

BY: BURNETT DEVELOPMENT
CORPORATION,
a California corporation
Its: General Partner

By: Suzanne M. Burnett

Its: VP

By: M. J. B.

Its: CFO

“Grantor”



Government Code 27361.7

I certify under the penalty of perjury that the notary seal on this document read as follows:

Name of Notary: Caryn A. Scramlin

Date Commission Expires: 04/16/06

County where bond is Filed: San Diego

Commission No.: 1351910

Manufacturer/Vendor No.: NNA1

Place of execution - Newport Beach

Date - January 23, 2003

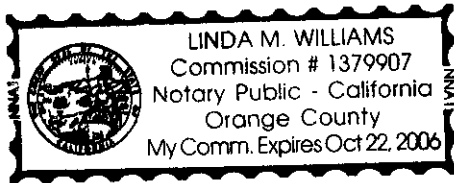

FIDELITY NATIONAL TITLE COMPANY



STATE OF CALIFORNIA)
) ss.
COUNTY OF ORANGE)

On JANUARY 20, 2003, before me, LINDA M. WILLIAMS, ^{NOTARY PUBLIC}
personally appeared SYLVIA M. BURNETT and THOMAS G. LEBEAU,
personally known to me (or proved to me on the basis of satisfactory evidence) to be the
person(s) whose name(s) (~~is~~) (are) subscribed to the within instrument and acknowledged to me
that (~~he~~) (~~she~~) (they) executed the same in (~~his~~) (~~her~~) (their) authorized capacity(ies), and that by
(~~his~~) (~~her~~) (their) signature(s) on the instrument the person(s), or the entity upon behalf of which
the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



Linda M. Williams
Notary Public in and for said State

(SEAL)



Government Code 27361.7

I certify under the penalty of perjury that the notary seal on this document read as follows:

Name of Notary: Linda M. Williams

Date Commission Expires: 10/22/06

County where bond is Filed: Orange

Commission No.: 1379907

Manufacturer/Vendor No.: NNA1

Place of execution - Newport Beach

Date - January 23, 2003



FIDELITY NATIONAL TITLE COMPANY



**EXHIBIT "1"
TO
GRANT DEED**

LEGAL DESCRIPTION

All that certain real property located in the City of Cathedral City, Riverside County, California, described as follows:

Lots 17 to 28, 45 to 56, and 61 to 64 of Tract 28639-1, as shown on a Subdivision Map recorded in Book 300, Pages 53 to 66, inclusive, of Maps, in the Office of the Riverside County Recorder.



**EXHIBIT "2"
TO
GRANT DEED**

RESERVED EASEMENT

As provided in Reservation E of the deed to which this Attachment No. I is appended, easements for the following purposes:

1. Construction of the Seller Improvements and Other Builder improvements, if any, described in the Sale Agreement.



EXHIBIT "3"
TO
GRANT DEED

BENEFITTED PROPERTY

The properties described below shall constitute the "***Benefitted Property***" for purposes of this Grant Deed, provided that any such property shall cease being part of the "***Benefitted Property***" as provided in Subsection 6.2 of the Grant Deed at such time as fee title to such property ceases to be owned by either Grantor or a Successor (as that term is defined in the Deed to which this exhibit is a part).

All that certain real property located in the City of Cathedral City, Riverside County, California, described as follows:

Lot 273 of Tract No. 28639-1, as shown on a Subdivision Map recorded in Book 300, Pages 53 to 66, inclusive, of Maps, in the office of the Riverside County Recorder.



RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:



RIO VISTA LAND COMPANY, L.P.
1300 BRISTOL STREET NORTH, SUITE 200
NEWPORT BEACH, CA 92660

M	S	U	PAGE	SIZE	DA	PCOR	NOCOR	SMF	MISC.
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FIRST AMENDMENT TO DECLARATION OF DEVELOPMENT
COVENANTS , CONDITIONS AND RESTRICTIONS

28

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R221350-6

THIS FIRST AMENDMENT TO DECLARATION OF DEVELOPMENT COVENANTS, CONDITIONS AND RESTRICTIONS ("*Amendment*") is made and entered into as of the 12th day of March, 2003, by and between RIO VISTA LAND COMPANY, L.P., a Texas limited partnership ("*Declarant*"), and ASHBROOK GCDI CATHEDRAL CITY, L.P., a Delaware limited partnership ("*Builder*"). Declarant and Builder are hereinafter sometimes referred to as the "*Parties*" and each as a "*Party*."

RECITALS:

A. Builder has previously acquired from Declarant certain real property located in the City of Cathedral City, Riverside County, California, more particularly described in Exhibit "1" hereto (the "*Property*"). The Property is subject, *inter alia*, to the provisions of a certain Declaration of Development Covenants, Conditions and Restrictions, dated January 20, 2003, and recorded in the Official Records of Riverside County, California, on January 24, 2003 as Instrument No. 2003-056056 (the "*Declaration*").

B. Builder has heretofore applied, and received from a third party lender ("*Lender*") a commitment, for a construction loan ("*Loan*"), the proceeds of which are intended to be used for the construction of residential improvements within and upon the Property.

C. In connection with the making of the Loan, Lender has required that the Declaration be amended to provide certain lender protection provisions intended to reduce the potential exposure of Lender to loss in the event of a default by the borrower under the Loan.

D. Declarant recognizes and agrees that it is in the best interests of both Declarant and Builder for the Loan to be made and that Lender would not make the Loan without the adoption of the amendment contained herein.

NOW, THEREFORE, Declarant and Builder hereby covenant, agree and declare that all of their respective interests, as the same may from time to time appear in the Burdened Property

covenants, conditions, and restrictions which are hereby declared to be for the benefit of all such interests in the Burdened Property, and the owners of such interests, their successors and assigns. These covenants, conditions, and restrictions shall run with such interests and shall be binding upon all parties having or acquiring any right or title in such interests or any part thereof, and shall inure to the benefit of each owner thereof and are imposed upon such interests and every part thereof as a servitude in favor of each and all of such interests as the dominant tenement or tenements.

The following is hereby added to the Declaration as a new Section 14.2 .1:

14.2.1 Foreclosure. Declarant may initiate foreclosure proceedings under the Development Trust Deed and any other appropriate instrument provided for in or contemplated by the Sale Agreement and recorded at any time subsequent to the Declaration and prior to the recordation of this Amendment. Additionally, if Builder breaches any of Builder's obligations to pay to Declarant any sums due and owing under the Development Documents, Declarant shall have the right to impose a lien upon the Burdened Property remaining subject to the Declaration and to foreclose such lien in accordance with the provisions of the California Civil Code or any similar statute hereafter enacted applicable to the exercise of powers of sale in mortgages and deeds of trust, or in any other manner permitted by law. Declarant's rights under the Development Trust Deed and Declarant's right to impose a lien upon the Burdened Property pursuant to this Section 14.2.1 are subordinate to the "**Loan**" (as that term is defined in the First Amendment to the Declaration, dated as of March ____, 2003 and any "**New Loan**" (as that term is defined in the Development Trust Deed) to which Declarant has subordinated, or is obligated to subordinate, the Development Trust Deed.

IN WITNESS WHEREOF, the undersigned parties have executed this First Amendment as of the date first hereinabove set forth.


Declarant has executed this Declaration as of the date set forth below.

[SIGNATURES ON FOLLOWING PAGE]

"DECLARANT"

RIO VISTA LAND COMPANY, L.P., a Texas limited partnership

By: BURNETT DEVELOPMENT CORPORATION, a California corporation, General Partner

By: 
Thomas LeBeau, Senior Vice President



“BUILDER”

ASHBROOK GCDI CATHEDRAL CITY, L.P., a
Delaware limited partnership

By: ASHBROOK CATHEDRAL CITY GP, L.P., a
California limited partnership, General Partner

By: ASHBROOK CATHEDRAL CITY
MANAGEMENT, LLC, a California limited
liability company, General Partner

By: ASHBROOK DEVELOPMENT
COMPANY, INC., a California
corporation, Member

By: _____
Richard L. Crook, President

[NOTARIES ON FOLLOWING PAGE]




"BUILDER"

ASHBROOK GCDI CATHEDRAL CITY, L.P., a
Delaware limited partnership

By: ASHBROOK CATHEDRAL CITY GP, L.P., a
California limited partnership, General Partner

By: ASHBROOK CATHEDRAL CITY
MANAGEMENT, LLC, a California limited
liability company, General Partner

By: ASHBROOK DEVELOPMENT
COMPANY, INC., a California
corporation, Member

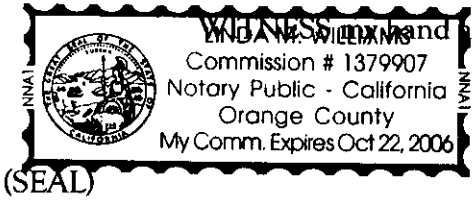
By: 
Richard L. Crook, President

[NOTARIES ON FOLLOWING PAGE]



STATE OF CALIFORNIA }
COUNTY OF ORANGE } ss.

On March 11, 2003, before me, LINDA M. WILLIAMS a Notary Public in and for such State, personally appeared THOMAS G. LE BEAU and _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) (is) (~~are~~) subscribed to the within instrument and acknowledged to me that (he) (~~she~~) (~~they~~) executed the same in (his) (~~her~~) (~~their~~) authorized capacity(ies), and that by (his) (~~her~~) (~~their~~) signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



Linda M. Williams
Notary Public in and for such State

STATE OF CALIFORNIA }
COUNTY OF ORANGE } ss.

On March _____, 2003, before me, _____, a Notary Public in and for such State, personally appeared _____ and _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) (is) (are) subscribed to the within instrument and acknowledged to me that (he) (she) (they) executed the same in (his) (her) (their) authorized capacity(ies), and that by (his) (her) (their) signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public in and for such State

(SEAL)

STATE OF CALIFORNIA)
) ss.
COUNTY OF ORANGE)

On March _____, 2003, before me, _____, a Notary Public in and for such State, personally appeared _____ and _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) (is) (are) subscribed to the within instrument and acknowledged to me that (he) (she) (they) executed the same in (his) (her) (their) authorized capacity(ies), and that by (his) (her) (their) signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public in and for such State

(SEAL)

STATE OF CALIFORNIA)
) ss.
COUNTY OF ORANGE)

On March 12, 2003, before me, Jennifer Young, a Notary Public in and for such State, personally appeared Richard L. Crook and *, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) (is) ~~(are)~~ subscribed to the within instrument and acknowledged to me that (he) ~~(she)~~ ~~(they)~~ executed the same in (his) ~~(her)~~ ~~(their)~~ authorized capacity(ies), and that by (his) ~~(her)~~ ~~(their)~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Jennifer Young
Notary Public in and for such State

(SEAL)

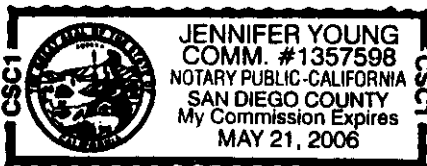


EXHIBIT "I"

THE LAND REFERRED TO IN THIS POLICY IS SITUATED IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

LOTS 17 TO 28, 45 TO 56 AND 61 TO 64 OF TRACT 28639-1, IN THE CITY OF CATHEDRAL CITY, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 300, PAGES 53 TO 66 INCLUSIVE OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM ANY AND ALL OIL, OIL RIGHTS, MINERALS, MINERALS RIGHTS, NATURAL GAS RIGHTS, AND OTHER HYDROCARBONS BY WHATSOEVER NAME KNOWN, GEOTHERMAL STEAM, AND ALL PRODUCTS DERIVED FROM ANY OF THE FOREGOING, THAT MAY BE WITHIN OR UNDER THE LAND, TOGETHER WITH THE PERPETUAL RIGHT OF DRILLING, MINING, EXPLORING AND OPERATING THEREFOR AND STORING IN AND REMOVING THE SAME FROM THE LAND OR ANY OTHER LAND, INCLUDING THE RIGHT TO WHIPSTOCK OR DIRECTIONALLY DRILL AND MINE FROM LANDS OTHER THAN THOSE CONVEYED HEREBY, OIL OR GAS WELLS, TUNNELS AND SHAFTS INTO, THROUGH OR ACROSS THE SUBSURFACE OF THE LAND, AND TO BOTTOM SUCH WHIPSTOCKED OR DIRECTIONALLY DRILLED WELLS, TUNNELS AND SHAFTS UNDER AND BENEATH OR BEYOND THE EXTERIOR LIMITS THEREOF, AND TO REDRILL, RETUNNEL, EQUIP, MAINTAIN, REPAIR, DEEPEN AND OPERATE ANY SUCH WELLS OR MINES; WITHOUT, HOWEVER, THE RIGHT TO DRILL, MINE, STORE, EXPLORE AND OPERATE THROUGH THE SURFACE OF THE UPPER 500 FEET OF THE SUBSURFACE OF THE LAND AS RESERVED BY RIO VISTA LAND COMPANY, L.P., BY DEED RECORDED JANUARY 24, 2003, AS INSTRUMENT NO. 03-056055, OFFICIAL RECORDS.



Under the provisions of Government Code 27361.7, I certify under penalty of perjury that the notary seal on the document to which this statement is attached reads as follows:

Name of Notary: Hinda M. Williams

Commission #: 1379907

County Where Bond is Filed: Orange

State Where Bond is Filed: Ca

Date Commission Expires: 10-22-06

Date: 3-19-03

Signature: Hinda M. Williams

