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DECLARATION

OF

COVENANTS, CONDITIONS AND RESTRICTIONS FOR

"SEA VISTA COLONY"

A Residential Planned Development

CITY OF SAN MARCOS, SAN DIEGO COUNTY, CALIFORNIA

SEA VISTA COLONY

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THIS DECLARATION is made on the day and year hereinafter written by SEA VISTA COLONY LTD., a California limited partnership, hereinafter called "**Declarant**," with reference to the following:

1. RECITALS

1.1. PROPERTY OWNED BY DECLARANT.

Declarant is the Owner of the real property located in the in the City of San Marcos, County of San Diego, State of California, more particularly described on EXHIBIT "A" attached hereto and by this reference made a part hereof hereafter referred to herein as the "**Property**."

1.2. NATURE OF PROJECT.

Declarant has or intends to improve the Property by developing thereon a Common Interest Development pursuant to the provisions of the *Davis-Stirling Common Interest Development Act*, more particularly described in California Civil Code Section 1351(k) as a Planned Development (the "**Project**"), and to subject the Property to certain limitations, covenants, conditions and restrictions as hereinafter set forth. To that objective, Declarant desires and intends to impose on the Property mutually beneficial restrictions, limitations, easements, assessments and liens under a comprehensive plan of improvement and development for the use and management of the Property as a residential community called SEA VISTA COLONY ("**Community**"); and for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property for the benefit of all Owners and occupants thereof.

1.3. DESCRIPTION OF PROJECT.

1.3.1. NUMBER OF LOTS.

Declarant intends to develop the Property by subdividing it into *twenty-seven (27) "Residential Lots,"* shown on the Map and Adjustment Plat described in EXHIBIT "A" as Lots 5 through 27, inclusive and Parcels A, B, C and D, and *three (3) "Association Property Lots"* shown on the Map and Adjustment Plat as "Lots 28 and 30 and Parcel E."

1.3.2. PHASING.

The Property is planned to be developed, sold or otherwise conveyed in *two (2) incremental phases ("Phases")*; provided, however, Declarant makes no guarantee of this Phasing plan, or that any a Residential Lot shall be sold or leased in any particular Phase.

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1.3.3. ESTABLISHMENT OF ASSOCIATION.

Declarant will cause or has caused the incorporation of the SEA VISTA COLONY OWNERS ASSOCIATION, a California nonprofit mutual benefit corporation ("**Association**"), organized under the Nonprofit Mutual Benefit Corporation Law (California Corporations Code Sections 7110 et seq.), for the purpose of exercising the powers and functions set forth herein. The Association shall act as the management body for the Community, and shall be responsible for the operation, maintenance and control of the Association Property. By virtue of owning a Residential Lot in the Project, each Owner shall have a membership in the Association, which membership shall be appurtenant to and pass with title to the Residential Lot.

1.4. CONVEYANCE OF ASSOCIATION PROPERTY LOTS.

On or before the conveyance of title to the first Residential Lot in each Phase of the Project to a Retail Buyer under the authority of a Final Subdivision Public Report ("**Public Report**") issued by the California Department of Real Estate ("**DRE**"), Declarant shall convey those Association Property Lots, if any, that are described within the Public Report covering each such respective Phase to the Association free of all liens and encumbrances except current real property taxes (which shall be prorated as of the date of conveyance), any nonmonetary title exceptions of record, and the covenants, conditions, reservations, easements and restrictions contained in this Declaration, to be held for the benefit of Members of the Association.

1.5. DRE; VA.

The development of the Property as a Planned Development will be consistent with any overall development plans submitted to and approved by the DRE and the U.S. Department of Veterans Affairs.

DECLARATION

NOW, THEREFORE, Declarant hereby certifies and declares that all of the Property is, and shall be, held, conveyed, transferred, hypothecated, encumbered, leased, rented, used, occupied and improved, subject to the limitations, covenants, conditions, restrictions, easements, liens and charges hereinafter set forth, all of which are for the purpose of uniformly enhancing, maintaining and protecting the value, attractiveness and desirability of the Property, in furtherance of a general plan of ownership as described in California Civil Code Section 1350 et seq., or any successor statutes or laws for the subdivision, protection, maintenance, improvement, sale and lease of the Property, or any portion thereof. All of the limitations, covenants, conditions, restrictions, easements, liens and charges set forth herein shall run with the land, shall be binding upon and inure to the benefit of all parties having or acquiring any right, title or interest in the Property, or any part thereof, their heirs, successive owners and assigns, shall be enforceable equitable servitudes and shall binding on and inure to the benefit of every portion of the Property and any interest therein, including Declarant, its

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successive owners and each Owner and his or her respective successors-in-interest, and may be enforced by any Owner or by the Association.

2. DEFINITIONS

2.1. ANNEXED.

"Annexed" shall mean and refer to the initial conveying of a Residential Lot in a Phase to a Retail Buyer by Declarant,

2.2. ANNEXED PHASE.

"Annexed Phase" shall mean and refer to (a) the first Phase in the Property upon the conveyance of the first Residential Lot therein by Declarant to a Retail Buyer, and (b) any subsequent Phase after the first Annexed Phase: (i) in which at least one Residential Lot has been conveyed by Declarant to a Retail Buyer under the authority of a **Public Report**, or (ii) in which at least one Residential Lot and a Dwelling located thereon is leased by Declarant or its successor in interest under the authority of a **Public Report**, or (iii) for which Declarant records an "**Annexation Instrument**" declaring that an Unannexed Phase is annexed to the Project and the Association under the authority of a **Public Report**, whereafter each such Phase shall become fully subject to all of the terms, conditions and restrictions contained in this Declaration, and assessments shall commence in accordance with the provisions therefor contained herein.

2.3. ANNEXED PROPERTY.

"Annexed Property" shall mean that portion or portions of the Property consisting of (a) **Association Property Lots Parcel E and Lots 28 and 30** upon their respective conveyance to the Association, and (b) each Annexed Phase.

2.4. ARCHITECTURAL COMMITTEE.

"Architectural Committee" shall mean and refer to the Board, unless the Board specific delegates its authority to act as the Architectural Committee pursuant to the Article herein entitled **ARCHITECTURAL AND DESIGN CONTROL**.

2.5. ARCHITECTURAL GUIDELINES.

"Architectural Guidelines" shall mean and refer to the design criteria adopted by the Architectural Committee pursuant to the provisions of **Section 12.6** herein.

2.6. ARTICLES.

"Articles" shall mean and refer to the Articles of Incorporation, including such amendments thereto as may from time to time be made, which are or shall be filed in the Office of the Secretary of State for the State of California.

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2.7. ASSOCIATION; HOMEOWNERS ASSOCIATION.

"Association" or "Homeowners Association" shall mean and refer to the **SEA VISTA COLONY OWNERS ASSOCIATION**, a California non-profit mutual benefit corporation, incorporated under the Non-Profit Mutual Benefit Laws of the State of California, its successors and assigns.

2.8. ASSOCIATION PROPERTY.

"Association Property" shall mean and refer to: (a) **Lots 28 and 30 and Parcel E** as shown on the Adjustment Plat and Map described in **EXHIBIT "A,"** hereto, and all improvements thereon, upon its conveyance to the Association, and (b) such other real and personal property as the Association may own from time to time.

2.9. ASSOCIATION PROPERTY LOTS.

"Association Property Lots" shall mean and refer to **Lots 28 and 30 and Parcel E** as shown on the Map and Adjustment Plat.

2.10. BOARD.

"Board" shall mean and refer to the Board of Directors of the Association.

2.11. BYLAWS.

"Bylaws" shall mean and refer to the Bylaws of the Association, including such amendments thereto as may from time to time be made.

2.12. CITY.

"City" shall mean and refer to the City of **San Marcos**, a municipal corporation located in the County of **San Diego**, State of California.

2.13. COMMON EXPENSES.

"Common Expenses" shall mean and refer to the actual and estimated costs and expenses incurred or to be incurred by the Association, including, but not limited to:

(a) Maintenance, management, operation, repair and replacement of the **Association Property Lot** (except for the trail portion thereof, for which the City has accepted responsibility of maintenance pursuant to dedication and acceptance thereof on the Subdivision Map) and all other areas within the Project, which are maintained by the Association pursuant to the terms of this Declaration;

(b) Costs and expenses not paid by the Owner responsible for payment, when such costs and expenses are paid by the Association;

(c) Costs of management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and employees;

(d) Costs of utilities, trash pickup and disposal, gardening and other services benefiting the Owners and their property to the extent such services are paid for by the Association;

(e) The costs of fire, casualty, liability, worker's compensation and other insurance covering the Association Property or other property owned by the Association;

(f) The costs of any other insurance obtained by the Association pursuant to the provisions of this Declaration;

(g) Reasonable reserves as deemed appropriate by the Board;

(h) The costs of bonding of the Members of the Board or its delegated committees, any professional managing agent or any other person handling the funds of the Association;

(i) Taxes paid by the Association;

(j) Amounts paid by the Association for the discharge of any lien or encumbrance levied against the Association Property or portions thereof;

(k) Costs incurred by the Board, the Architectural Committee and any other Board delegated committee;

(l) The costs of any other item or items designated by, or in accordance with other expenses incurred by the Association for any reason whatsoever in connection with the operation or maintenance of the Association Property, or in furtherance of the purposes or the discharge of any obligation imposed on the Association by this Declaration or other Project Documents.

2.14. COMMUNITY.

"Community" shall mean and refer to all of the Property which is, from time to time, subject to this Declaration.

2.15. COUNTY.

"County" shall mean and refer to the County of **San Diego** California.

2.16. DECLARANT.

"Declarant" shall mean and refer to **SEA VISTA COLONY LTD.**, a California limited partnership, its successors and assigns, if such successors or assigns acquire any or all of the Declarant's interest in the Property for the purpose of development or sale. A successor Declarant shall also be deemed to include the beneficiary under any deed of trust securing an obligation from a then existing Declarant encumbering all or any portion of the Property, which beneficiary has acquired any such property by foreclosure, power of sale or deed in lieu of such foreclosure or sale.

2.17. DECLARATION.

"Declaration" shall mean and refer to this *Declaration of Covenants, Conditions and Restrictions for "Sea Vista Colony,"* recorded with the Office of the County Recorder of San Diego County, California, covering the Property, including such amendments thereto as may from time to time be recorded.

2.18. DWELLING.

"Dwelling" shall mean a residential structure or structures, including, balconies, patio areas, walkways, driveways and garages located on a Residential Lot.

2.19. ELIGIBLE INSURER, GUARANTOR.

"Eligible Insurer" and "Eligible Guarantor" shall mean and refer to an insurer or governmental guarantor who has provided a written request to the Association, to be notified of those matters which such holder is entitled to notice of by reason of this Declaration or the Bylaws of the Association.

2.20. ELIGIBLE MORTGAGE HOLDER.

"Eligible Mortgage Holder" shall mean and refer to the holder of a first mortgage or deed of trust on a Residential Lot, who has provided a written request to the Association, to be notified of those matters which such holder is entitled to notice of by reason of this Declaration or the Bylaws of the Association. Such notice must contain the Residential Lot number or the street address of the secured Residential Lot.

2.21. EMERGENCY.

"Emergency" shall mean and refer to an unforeseen occurrence or condition calling for immediate action to avert imminent danger to life, health, or property.

2.22. FHLMC.

"FHLMC" shall mean and refer to the Federal Home Loan Mortgage Corporation.

2.23. FIRST MORTGAGE.

"First Mortgage" shall mean and refer to a Mortgage which has priority under the recording statutes of the State of California over all other Mortgages encumbering a specific Residential Lot in the Project. First Mortgage shall mean and refer to a First Deed of Trust as well as a First Mortgage.

2.24. FIRST MORTGAGEE.

"First Mortgagee" shall mean and refer to the Mortgagee of a First Mortgage.

2.25. FNMA.

"FNMA" shall mean and refer to the Federal National Mortgage Association.

2.26. IMPROVEMENT(S).

"Improvement(s)" shall mean and refer to any buildings, structures or improvements of any type or kind constructed within the Project.

2.27. INSTITUTIONAL MORTGAGEE.

"Institutional Mortgagee" shall mean and refer to a First Mortgagee which is (a) a bank, savings and loan association, insurance or mortgage company or other entity or institution chartered under federal and/or state law; (b) an insurer or governmental guarantor of a First Mortgage; (c) any Federal or State agency; (d) the State of California as the vendor under an installment land sales contract covering a Residential Lot; or (e) any other institution specified by the Board in a recorded instrument, who is the Mortgagee of a Mortgage or the beneficiary of a Deed of Trust encumbering a Residential Lot.

2.28. INVITEE.

"Invitee" shall mean and refer to any person whose presence within the Project is approved by or is at the request of a particular Owner, including, but not limited to, lessees, tenants and the family, guests, employees, licensees or invitees of Owners, tenants or lessees.

2.29. MAP; SUBDIVISION MAP; ADJUSTMENT PLAT.**2.29.1. MAP.**

"Map" or "Subdivision Map" shall mean and refer to that certain Subdivision Map filed in Office of the County Recorder of **San Diego County**, as more particularly described in **Exhibit "A"**.

2.29.2. ADJUSTMENT PLAT.

"Adjustment Plat" shall mean and refer to that certain Adjustment Plat attached as **Exhibit "B"** to that certain **Certificate of Compliance** recorded on **August 12, 1997** as **Document No. 1997-0384933** in the Office of the **San Diego County Recorder**, California, by which the boundaries of certain lots depicted on the Map were adjusted and such lots redesignated as "Parcels" bearing alphabetic designations. Each such Parcel is described in **Exhibit "A"** hereto.

2.30. MEMBER.

"Member" shall mean and refer to a Person who holds a membership in the Association as provided herein. Membership shall be appurtenant to and may not be separated from ownership of a Residential Lot.

2.31. MORTGAGE.

"Mortgage" shall mean and refer to a deed of trust as well as a mortgage.

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2.32. MORTGAGEE.

"Mortgagee" shall mean and refer to a beneficiary or a holder of a deed of trust as well as a mortgagee.

2.33. MORTGAGOR.

"Mortgagor" shall mean and refer to the trustor of a Deed of Trust as well as a mortgagor.

2.34. NOTICE AND HEARING.

"Notice and Hearing" shall mean and refer to the procedure that gives an Owner notice of an alleged violation of the Project Documents and the opportunity for a hearing before the Board, as more fully described in the Article herein entitled **RIGHTS OF OWNERS**.

2.35. OWNER.

"Owner" shall mean and refer to the record Owner, whether one (1) or more persons or entities, of a Residential Lot. The term "Owner" shall include a seller under an executory contract of sale, but shall exclude Mortgagees.

2.36. PERSON.

"Person" shall mean a natural individual, a corporation or any other entity with the legal right to hold title to real property, including a leasehold interest.

2.37. PHASE; SUBSEQUENT PHASE.

"Phase" shall mean and refer to an increment of development and/or sales sequence of the Residential Lots in the Property for which a separate Public Report has been issued by the DRE for all of the Residential Lots and Association Property Lot(s) located within that increment. The development, sale and/or leasing of Residential Lots and Dwellings in each Phase, and the development of any Association Property Lot in such Phase, shall be at the sole discretion of Declarant, and there is no assurance (or obligation on the part of Declarant) that the proposed subsequent Phases will be completed or that any a Residential Lot shall be sold or leased. A **"Subsequent Phase"** shall mean and refer to any Phase after the first Phase in the Project, for which a Public Report has been issued.

2.38. PROJECT.

"Project" shall mean and refer to (a) the Association Property, and (b) all Residential Lots located within an Annexed Phase.

2.39. PROJECT DOCUMENTS.

"Project Documents" means and includes this Declaration, the exhibits, if any, attached thereto, the Articles, the Bylaws and any Rules established by the Board, including any amendments to the aforescribed documents as may from time to time be made.

2.40. PROPERTY.

"Property" shall mean and refer to that certain real property located in the City of San Marcos, San Diego County, California, more particularly described in Exhibit "A" hereto.

2.41. PUBLIC REPORT.

"Public Report" shall mean and refer to the Final Subdivision Public Report issued by the California Department of Real Estate covering the Project or any Phase therein.

2.42. PUBLIC STREET(S).

"Public Street(s)" shall mean and refer to those streets shown and dedicated to the public on the Map or by other legal instrument.

2.43. RESIDENTIAL LOT; LOT; PARCEL.

"Residential Lot" or "Lot" means any of the lots located within the Project, including all improvements now or hereafter thereon, with the exception of Association Property Lots. In the event the boundaries of any Lot are adjusted in compliance with the California Subdivision Map Act, then "Lot" shall refer to the Lot -- or Parcel" -- as so adjusted.

2.44. RETAIL BUYER.

"Retail Buyer" shall mean and refer to a Person who purchases a Residential Lot from Declarant for purposes of owning a Residential Lot and any and all improvements located thereon, whether such improvements are existing or proposed.

2.45. RULES.

"Rules" shall mean and refer to any rules or regulations adopted by the Association or its Board pursuant to this Declaration.

2.46. UNANNEXED PHASE.

"Unannexed Phase" shall mean and refer to a Phase of the Property (a) in which no Residential Lot has been conveyed from Declarant to a Retail Buyer or leased under the authority of a **Public Report**, or (b) for which no "**Annexation Instrument**" has been recorded declaring such Phase as being annexed to the Project and the Association.

3. OWNERSHIP**3.1. OWNERSHIP OF RESIDENTIAL LOTS.**

Title to each Residential Lot in the Project shall be conveyed in fee to an Owner. Ownership of each Residential Lot within the Project shall include (a) a membership in the Association, and (b) any exclusive or non-exclusive easement(s) appurtenant to such

Residential Lot over the Association Property as described in this Declaration and/or in the deed to the Residential Lot.

3.2. NO SEPARATE CONVEYANCE.

The interest of each Owner in the use and benefit of the Association Property shall be appurtenant to the Residential Lot.

4. EASEMENTS

The ownership interests in the Association Property and Residential Lots described in this Article are subject to the easements granted and reserved in this Declaration. Each of the easements reserved or granted herein shall be deemed to be established upon the recordation of this Declaration and shall thenceforth be deemed to be covenants running with the land for the use and benefit of the Owners and their Residential Lots superior to all other encumbrances applied against or in favor of any portion of the Project. Individual grant deeds to Residential Lots may, but shall not be required to set forth the easements specified in this Article.

4.1. NON-EXCLUSIVE EASEMENTS FOR ASSOCIATION PROPERTY.

Subject to the provisions of this Declaration, every Member of the Association shall have, for himself or herself, and such Member's Invitees, a non-exclusive easement of access, ingress, egress, use and enjoyment of, in, to and over the Association Property; and such easement shall be appurtenant to and shall pass with title to every Residential Lot in the Project, subject to the rights and restrictions set forth below.

4.1.1. SUSPEND RIGHTS OF MEMBERS.

The Board shall have the right, after Notice and Hearing, to temporarily suspend an Owner's rights as a Member pursuant to the terms of this Declaration.

4.1.2. DEDICATE OR GRANT EASEMENTS.

The Association shall have the right to dedicate and/or grant easements over all or any portion of the Association Property.

4.1.3. PERFORM ASSOCIATION FUNCTIONS.

There is hereby reserved by Declarant for the benefit of Declarant, its successors and assigns, and its duly authorized agents and representatives, and granted to the Association, and its duly authorized agents and representatives, such easements as are necessary to perform the duties and obligations of the Declarant and/or the Association, as the case may be, as are set forth in this Declaration and the other Project Documents, including the Association Rules and/or Architectural Guidelines, and to perform any obligations not performed by the Owner pursuant to the terms of this Declaration and the other Project

Documents. Subject to a concomitant obligation to restore, Declarant and its sales agents, employees and independent contractors shall also have the easements described in the Article herein entitled **DEVELOPMENT RIGHTS**.

4.1.4. EASEMENT TO DECLARANT FOR UNANNEXED PHASES.

Declarant shall have and hereby expressly reserves a non-exclusive easement over and across the Association Property to any Unannexed Phase until all of said Unannexed Phases are annexed to the Project and the Dwellings are constructed thereon, and Notices of Completions issued respectively therefor.

4.2. ASSOCIATION GRANT OF EASEMENTS TO THIRD PARTIES.

The Association may grant to third parties easements in, on, and over the Association Property for the purpose of constructing, installing, repairing or maintaining necessary utilities and services to the Project.

4.3. DRAINAGE; SLOPES.

The Owner of any Residential Lot shall not in any way interfere with (a) the established surface drainage pattern over his or her Residential Lot from adjacent or adjoining Residential Lots, and such Owner will make adequate provisions for property drainage in the event it is necessary to change the established drainage over his or her Lot and it is done in accordance with all applicable governmental codes and ordinances, and/or (b) the established slopes within his or her Residential Lot. For the purpose herein, "*established surface drainage*" and "*established slopes*" are defined as the respective drainage and slopes that existed at the time of the filing of the Notice of Completion for the Project or the portions thereof.

There are reserved and granted for the benefit of each Residential Lot, as dominant tenement, over, under, across and through the Association Property and each other Residential Lot, as servient tenement, a non-exclusive easement to slopes, drainageways and drainage facilities located within such servient tenements, when such access is essential for the maintenance of said slopes, or the maintenance of the drainageways and/or drainage facilities therein, in order to assure (i) the permanent stabilization and support of slopes and/or (ii) proper operation of drainageways and/or drainage facilities located on the dominant tenement Residential Lot.

4.4. OWNERS' RIGHTS, DUTIES AND EASEMENTS FOR UTILITIES.

There are reserved and granted for the benefit of each Residential Lot, as dominant tenement, over, under, across and through the Project (including the Association Property and each other Residential Lot), as the servient tenement, non-exclusive easements for utility services. "*Utility services*" shall mean and refer to any utility facilities, such as electricity, water, gas, cable television, sanitary sewer lines and facilities and drainage facilities.

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Whenever utility services that serve a dominant tenement Residential Lot are installed within the servient tenement Association Property or Residential Lots, the Owner of the dominant tenement Residential Lot served by said utility facilities shall have the right of reasonable access for themselves or for utility companies or the City to repair, replace and generally maintain said utility facilities as and when the same may be necessary.

Whenever utility services are installed within the Project which serve more than one (1) Residential Lot, the Owner of each Residential Lot served by the utility facilities shall be entitled to the full use and enjoyment of such portions of the utility services as service his or her Residential Lot. In the event of a dispute between Owners with respect to the repair or rebuilding of the utility facilities, or with respect to the sharing of the cost thereof, then, upon written request to the Association by one (1) of such Owners, the matter shall be submitted to arbitration pursuant to the rules of the American Arbitration Association, and the decision of the Arbitrator(s) shall be final, conclusive and binding on the parties.

4.5. ENCROACHMENT.

There are hereby reserved and granted for the benefit of each Residential Lot, as dominant tenement, over, under and across each other Residential Lot and the Association Property, as servient tenements, and for the benefit of the Association Property, as dominant tenement, over, under and across each Residential Lot, as servient tenement, non-exclusive easements for encroachment, support, occupancy and use of such portions of Residential Lots and Association Property as are encroached upon, used and occupied by the dominant tenement as a result of any original construction design, accretion, erosion, addition, deterioration, decay, errors in original construction, movement, settlement, shifting or subsidence of any building, structure, or other improvements or any portion thereof, or any other cause. In the event any portion of the Project is partially or totally destroyed, the encroachment easement shall exist for any replacement structure which is rebuilt pursuant to the original construction design. The easement for the maintenance of the encroaching improvement shall exist for as long as the encroachment exists; provided, however, that no valid easement of encroachment shall be created due to the willful misconduct of the Association or any Owner. Any easement of encroachment may, but need not be, cured by repair and restoration of the structure.

4.6. DECLARANT'S NON-EXCLUSIVE EASEMENTS.

Subject to a concomitant obligation to restore, Declarant and its sales agents, employees and independent contractors shall have the easements described in the Article herein entitled DEVELOPMENT RIGHTS.

4.7. DECLARATION SUBJECT TO EASEMENTS.

Notwithstanding anything herein expressly or impliedly to the contrary, this Declaration shall be subject to all easements theretofore or hereafter granted by Declarant for the installation and maintenance of utilities and drainage facilities that are necessary for the Project, and to all easements shown on the Map.

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5. THE ASSOCIATION

5.1. THE ORGANIZATION.

The Association is a nonprofit mutual benefit corporation formed under the Nonprofit Mutual Benefit Law of the State of California. Subject to the provisions of the Section next following entitled "*Commencement of Association Business*," upon the conveyance of the first Residential Lot to a Retail Buyer, the Association shall be charged with the duties and invested with the powers set forth in the Articles, the Bylaws and this Declaration.

5.2. COMMENCEMENT OF ASSOCIATION BUSINESS.

The Association shall commence business at such time that a Board of Directors has been elected pursuant to the provisions therefor contained in the Bylaws.

6. MEMBERSHIP, VOTING, FIRST MEETING

6.1. MEMBERSHIP IN GENERAL.

Every Owner of a Residential Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Membership in the Association shall not be transferred, pledged or alienated in any way, except upon the sale of the Residential Lot to which it is appurtenant, and then only to the purchaser. The transfer of title to a Residential Lot or the sale of a Lot and transfer of possession thereof to the purchaser shall automatically transfer the membership appurtenant thereto to the transferee. As a Member of the Association, each Owner is obligated to promptly, fully and faithfully comply with and conform to the Articles, this Declaration, the Bylaws, the Architectural Guidelines, and the Rules adopted hereunder from time to time by the Board and officers of the Association.

6.2. CLASSES OF VOTING RIGHTS.

The Association shall have two (2) classes of voting membership:

6.2.1. CLASS A.

Each Member, other than the Declarant, shall be a Class A member. Class A membership entitles the holder to one (1) vote for each Residential Lot of which he or she is record owner. If a Residential Lot is owned by more than one person, each such person shall be a Member of the Association, but there shall be no more than one (1) vote for each Residential Lot.

6.2.2. CLASS B.

The Declarant is a Class B Member. Class B membership entitles the holder to three (3) votes for each Residential Lot of which the Declarant is record owner.

The Class B membership shall be irreversibly converted to Class A membership on the first to occur of the following:

(a) Two (2) years following the conveyance by Declarant of the first Residential Lot to a Retail Buyer in the most recent Subsequent Phase of the Project under the authority of a Public Report issued by the DRE; or

(b) The fourth (4th) anniversary of the conveyance by Declarant of the first Residential Lot to a Retail Buyer in the first Phase of the Project under the authority of a Public Report issued by the DRE.

6.3. COMMENCEMENT OF VOTING RIGHTS.

An Owner's right to vote, including Declarant, shall not vest until Assessments have been levied upon such Owner's separate interest as provided in this Declaration. All voting rights shall be subject to the restrictions and limitations provided for herein and in the Articles and Bylaws.

6.4. APPROVAL OF MEMBERS.

Unless specifically provided for otherwise, any provision of the Project Documents requiring the vote or written assent of the Association voting power shall be deemed satisfied by the following:

6.4.1. VOTE OF MAJORITY.

The vote of the majority at a meeting duly called and noticed pursuant to the provisions of the Bylaws dealing with annual or special meetings of the Members, unless a provision of this Declaration requires a special meeting only; provided, however that such majority must include the specified number of all Members entitled to vote at such meeting and not such a majority of a quorum of those Members present;

6.4.2. WRITING.

A writing or writings signed by a majority of the voting power; or

6.4.3. COMBINATION OF VOTES AND WRITING.

A combination of votes and written assent, provided that Members shall not change their vote or written assent after it is cast or delivered and provided further that only those written assents executed within sixty (60) days before or thirty (30) days after a meeting may be combined with votes cast at such meeting to constitute a majority.

6.5. FIRST MEETING OF THE ASSOCIATION.

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The first regular meeting of the Association shall be held no later than:

(a) **Forty-five (45) days** after the conveyance to a Retail Buyer of the Residential Lot which represents the fifty-first percentile interest (51%) authorized for sale under the first Public Report of the first Phase in the Property, or

(b) No later than **six (6) months** after the conveyance of the first Residential Lot in the first Phase in the Property to a Retail Buyer without regard to the number of Residential Lots authorized for sale under the first Public Report for that first Phase,

whichever occurs first. Thereafter, regular meetings of the Association shall be held in accordance with provisions of the Bylaws. At the first meeting, the Members shall elect the Board of Directors. Election to and removal from the Board shall be by secret written ballot with cumulative voting, as more particularly described in the Bylaws.

6.6. CLASS A MEMBERS' SELECTION OF ASSOCIATION DIRECTORS.

In any election of Directors, commencing on the first regular annual meeting scheduled after the first Residential Lot is sold to an Owner, other than Declarant, so long as a majority of the voting power of the Association resides in the Declarant, or so long as there are two (2) outstanding classes of membership in the Association, not less than twenty percent (20%) of the Directors shall have been elected solely by the votes of Class A Members, other than the Declarant. Such Class A elected representative may be removed prior to the expiration of his or her term of office only by a vote of at least a simple majority of the Members, excluding the Declarant.

6.7. NO PERSONAL LIABILITY OF BOARD MEMBERS.

No member of the Board, or of any committee of the Association, or any officer of the Association, or any manager, or Declarant, or any agent of Declarant, shall be personally liable to any Owner, or to any other party, including the Association, for any error or omission of the Association, the Board, its authorized agents or employees or its delegated committee, if such person or entity has, on the basis of such information as may be possess by him or it, acted in good faith without willful or intentional misconduct. In addition to the foregoing, as more particularly specified in **California Civil Code Section 1365.7**, or any successor statute or law, any person who suffers bodily injury, including, but not limited to, emotional distress or wrongful death as a result of the tortious act or omission of a member of the Board who resides in the Project either as a tenant or as an Owner of no more than two (2) Residential Lots, and who, at the time of the act or omission, was a "volunteer" as defined in **California Civil Code Section 1365.7**, or any successor statute or law, shall not recover damages from such Board member, if such Board member committed the act or omission within the scope of his or her Association duties, while acting in good faith and without acting in a willful, wanton or grossly negligent manner, provided that all of the requirements of **California Civil Code Section 1365.7**, or any successor statute or law, have been satisfied.

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7. RIGHTS, POWER AND DUTIES OF ASSOCIATION AND BOARD

The Association shall have all the powers of a nonprofit corporation organized under the Nonprofit Mutual Benefit Corporation Law of California subject only to such limitations on the exercise of such powers as are set forth in the Articles, the Bylaws and this Declaration. It shall have the power to do any lawful thing that may be authorized, required, or permitted to be done by the Association under this Declaration, the Articles and the Bylaws, and to do and perform any act that may be necessary or proper for or incidental to, the exercise of any of the express powers of the Association, including, without limitation, the powers set forth below.

7.1. ASSESSMENTS.

The Association shall have the power to establish, fix, and levy assessments against the Owners and their Residential Lots, and to enforce payment of such assessments in accordance with the provisions of this Declaration.

7.2. RIGHT OF ENFORCEMENT; PENALTIES; NOTICE AND HEARING.

7.2.1. ENFORCEMENT ACTIONS.

The Association in its own name and on its own behalf, or on behalf of any Owner who consents, can commence and maintain actions for damages or to restrain and enjoin any actual or threatened breach of any provision of the Project Documents or any resolutions of the Board, and to enforce by mandatory injunction, or otherwise, all of these provisions. In addition, the Association can temporarily suspend the membership rights and privileges for any violation of the Project Documents or Board resolutions.

7.2.2. PENALTIES AGAINST MEMBERS.

The Board shall have the right to impose the following penalties against Members:

(a) Suspension of the membership rights and privileges, together with the voting rights of any Member of the Association, for any period of time during which the assessment on a Member's Residential Lot remains unpaid;

(b) Suspension of the membership rights and privileges, together with the voting rights of any Member of the Association, for any period not to exceed thirty (30) days for any infraction of the Association's Rules;

(c) Levying of monetary penalties against an individual Member as a disciplinary measure for failure of a Member to comply with provisions of the Project Documents or Board resolutions, or as a means of causing the Member to reimburse the Association for costs and expenses incurred by the Association in the repair of damage to the Association Property and facilities for which the Member was allegedly responsible, or in bringing the Member and his or her Lot to compliance with the Project Documents or Board resolutions; provided, however, no such monetary penalty may be characterized or treated as an assessment which may become a lien against the Owner's subdivision interest enforceable

by a sale of the interest in accordance with the provisions of Sections 2924, 2924(b) and 2924(c) of the California Civil Code.

(d) It is provided, however, that the provisions of the preceding paragraph expressly do not apply to charges imposed against a Member consisting of reasonable late payment penalties for delinquent assessments and/or charges to reimburse the Association for the loss of interest and for costs reasonably incurred (including attorneys' fees) in its efforts to collect delinquent assessments as more fully described in this Declaration.

In the event legal counsel is retained or legal action is instituted by the Board pursuant to this Section, any settlement prior to judgment or any judgment rendered in any such action shall include costs of collection, court costs and reasonable attorneys' fees.

A Member shall have the right to Notice and Hearing prior to the Board's decisions to impose any suspension or monetary penalty, as more fully described in Section 8.1.3 hereafter entitled "**Notice and Hearing.**"

7.3. RULES AND REGULATIONS.

The Board of the Association shall have the power to adopt, amend and repeal uniform rules and regulations ("**Association Rules**" and/or "**Rules**") as it deems reasonable. The Association Rules shall govern the use of the Association Property and portions of the Residential Lots by all Owners or their Invitees, and the conduct of Owners and Invitees with respect to automobile parking, outside storage of bicycles and other objects, disposal of waste materials, drying of laundry, control of pets and other activities which, if not so regulated, might detract from the appearance of the Community or offend or cause inconvenience or danger to persons residing or visiting therein. Such Rules may provide that the Owner of a Lot whose Invitee leaves property on the Association Property in violation of the Rules may be assessed after Notice and Hearing an amount to cover the expense incurred by the Association in removing such property and storing or disposing thereof.

7.4. RIGHT TO ENTER RESIDENTIAL LOT.

Except in the case of an Emergency, in which case no prior notice need be given, the Board or any authorized representative thereof shall have the right to enter during reasonable hours upon any Residential Lot (other than the interior of a Dwelling) when necessary to effect any maintenance obligations of the Association hereunder. Notification of such entry shall be given at least **forty-eight (48) hours** in advance. Such entry shall be made with as little inconvenience to the Owner as possible and any damage caused thereby shall be repaired by the Association at its own expense. The Board or such persons entering on behalf of the Board shall not be deemed guilty of trespass by reason of such entry.

7.5. BORROW FUNDS.

The Board shall have the right to borrow money to improve, repair or maintain the Association Property, provided that, the borrowing of any money or hypothecation of any real or personal property in excess of five percent (5%) of the budgeted gross expenses of the Association shall require the consent of fifty-one percent (51%) of each class of Members.

7.6. POWER OF BOARD TO DEFINE AND INTERPRET.

Notwithstanding anything contained in this Declaration or any other Project Document, the Board shall have the power and the authority to define, interpret and/or construe certain words and terminologies contained in this Declaration and the Project Documents which *may otherwise be unclear, vague and/or ambiguous*, and, which, if not so defined, interpreted or construed, would be detrimental to the Board's ability to conduct, manage and control the affairs and business of the Association, including the enforcement of the covenants, conditions, restrictions and other provisions of the Project Documents, as well as any rules and regulations promulgated by the Board and not (a) inconsistent with law and/or (b) not in contravention to the general plan for the subdivision, protection, maintenance, improvement, sale and lease of the Project, or any portion thereof. Such words and terminology shall include, but not be limited to, "nuisance," "annoyance," "obnoxious," "quiet enjoyment," "excessive," "disturb," "obstruct," "interfere," "minor repair," "hazard," "offensive."

8. RIGHTS OF OWNERS

8.1. RIGHTS OF OWNERS.

Owners, and, to the extent permitted by such Owner, such Owner's Invitees, and contract purchasers who reside in such Owner's Dwelling, shall have the following rights and limitations:

8.1.1. RIGHT OF ACCESS AND USE OF DWELLING.

The right of access over the Association Property for ingress to and egress from such Owner's Residential Lot and Dwelling thereon, and of enjoyment and full use of such Residential Lot and Dwelling, which right shall be appurtenant to and shall pass with title to the Owner's Residential Lot, subject to the limitations contained herein. This right cannot be forfeited or abridged by the failure by an Owner to comply with provisions of the Project Documents or duly-enacted Rules, except by judgment of a court or a decision arising out of arbitration or on account of a foreclosure or sale under a power of sale for failure of the Owner to pay assessments levied by the Association.

8.1.2. RIGHT TO THE USE OF ASSOCIATION PROPERTY.

The right of ingress and egress and of enjoyment in, to and over the Association Property. Such right of ingress and egress and enjoyment shall be appurtenant to and shall pass with title to the Residential Lot, subject to the limitations and restrictions of the Project Documents.

8.1.3. NOTICE AND HEARING.

The right to receive at least fifteen (15) days' written notice prior to a decision by the Board to impose monetary penalties, a temporary suspension of an Owner's right as a Member of the Association, or other appropriate discipline for failure of the Member to comply with the Project Documents as described more fully in the Section entitled **"Penalties Against Members"** hereinabove, or any such longer period as may be required under Section 7341 of the California Corporations Code (or any successor statute or law). Additionally, before the Board decides to impose a suspension of privileges or impose a monetary penalty, the aggrieved Owner shall be provided with an opportunity to be heard by the Board, orally or in writing, not less than five (5) days before the date of the suspension of privileges or imposition of a monetary penalty is to take effect. For purposes of this Section, notice shall be given by any method reasonably calculated to provide actual notice. Notice may be hand-delivered to the Owner, or sent by first class registered or certified mail, return receipt requested, or overnight delivery and addressed to the Owner at the last address of the Owner shown on the Association's records, or any other method deemed reasonable by the Board for delivering notices. Each suspended or fined Owner or other person can appeal a suspension or monetary penalty imposed by the Board, including any claim alleging defective notice, within one (1) year of the date of action taken by the Board, by filing written notice of his or her intention to appeal with the Board. The action imposing the fine or suspension shall then become ineffective until the fine or suspension is unanimously approved by all directors of the Board at a regular or special meeting of the Board at which all directors are present. The Owner or any other person to be fined or suspended can appear, be represented by legal counsel and be heard at the meeting before the Board, either orally or in writing.

8.1.4. DELEGATION OF USE.

Any Owner may delegate his or her right of enjoyment to the Association Property to his or her tenants or contract purchasers who reside on his or her Lot; provided, however, that if any Owner delegates such right of enjoyment to tenants, neither the Owner nor his or her family shall be entitled to use the Association Property by reason of ownership of the Residential Lot during the period of delegation. Invitees of any Owner may use the Association Property only in accordance with this Declaration or any Rules adopted by the Board.

9. ASSESSMENTS

9.1. COVENANT FOR ASSESSMENTS.

Subsequent to the conveyance of the first Residential Lot in the Property to a Retail Buyer, the Declarant, for each Residential Lot owned within a Phase of the Property in which either a Residential Lot has been sold to a Retail Buyer under the authority of a Public Report, or leased, as more fully described, respectively, in the Sections herein entitled **"Commencement of Assessments"** and **"Assessments On Residential Lots Not Conveyed to Retail Buyers,"** hereby covenants, and each Owner of a Residential Lot by acceptance of

a deed therefor, whether or not it shall be so expressed in such Deed, is deemed to covenant and agree to pay to the Association all assessments levied pursuant to the provisions of this Declaration. All assessments, together with interest, costs, late charges and reasonable attorneys' fees, shall be a charge on and a continuing lien upon the Residential Lot against which each such assessment is made, the lien to become effective upon recordation of a *Notice of Delinquent Assessment*, as provided in this Article. Each such assessment, together with interest, costs, late charges and reasonable attorneys' fees, shall also be the personal obligation of the Person who was the Owner of such Residential Lot at the time when the assessment fell due and shall bind his or her heirs, devisees, personal representatives and assigns. Unlike the lien for delinquent assessments, the personal obligation for non-delinquent assessments shall not pass to successive Owners, unless expressly assumed by each such successive Owner. No such assumption of personal liability by a successive Owner (including a contract purchaser under an installment land contract) shall relieve any Owner from personal liability for delinquent assessments. If more than one person or entity was the Owner of a Residential Lot, the personal obligation to pay such assessment or installment respecting such Residential Lot shall be both joint and several.

9.2. FUNDS HELD IN TRUST.

The assessments collected by the Association shall be held by the Association for and on behalf of each Owner and shall be used solely for the operation, care and maintenance of the Project as provided in this Declaration. Upon the sale or transfer of a Residential Lot, the Owner's interest in the funds shall be deemed automatically transferred to the successor in interest of such Owner.

9.3. PURPOSE OF ASSESSMENTS.

The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of all the residents in the Project and for the improvement and maintenance of the Association Property and for any other maintenance responsibilities of the Association, and to reimburse the Association for costs incurred in bringing an Owner into compliance with the Project Documents.

9.4. REGULAR ASSESSMENTS.

9.4.1. PAYMENT OF REGULAR ASSESSMENTS.

Regular Assessments for each fiscal year of the Association shall be established when the Board approves the Budget for that fiscal year, which Budget shall be prepared in accordance with the provisions of this Declaration. Regular Assessments shall be levied on a fiscal year basis. Unless otherwise specified by the Board, Regular Assessments shall be due and payable in monthly installments on the first day of each month during the term of this Declaration.

9.4.2. BUDGETING.

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Regardless of the number of Members or the amount of assets of the Association, each year the Board shall prepare, approve and make available to each Member a Budget as described in the Bylaws. Increases in Regular Assessments shall be subject to the limitations set forth in **Section 9.14** below. For the first fiscal year, the Budget upon which Regular Assessments shall be based shall be the Budget accepted by the DRE and shall be approved by the Board no later than the date on which Regular Assessments are scheduled to commence. Thereafter, the Board shall annually prepare and approve the Budget and distribute a copy thereof to each Member (or a summary thereof as provided in the **Bylaws**), together with written notice of the amount of the Regular Assessment to be levied against the Owner's Residential Lot, not less than forty-five (45) days nor more than sixty (60) days prior to the beginning of the fiscal year.

9.4.3. RESTRICTIONS OF TAX EXEMPTION.

As long as the Association seeks to qualify and be considered as an organization exempt from federal and state income taxes pursuant to Internal Revenue Code Section 528 and California Revenue and Taxation Code Section 23701t and any amendments thereto, then the Board shall prepare its annual budget and otherwise conduct the business of the Association in such manner consistent with federal and state requirements to qualify for such status.

9.4.4. ASSESSMENTS AFTER ANNEXATION.

(a) REALLOCATION OF ASSESSMENTS.

After annexation of a Phase, the assessment in the budget shall be reallocated among all Residential Lots in the Project, including those in the Annexed Property, in the same manner as described above.

(b) REVISION OF BUDGET.

After each Phase has been annexed, the Board shall approve a new Budget for the remainder of the current fiscal year for use upon the commencement of Regular Assessments against Residential Lots in the new Annexed Phase. Declarant shall give notice to the Association of the annexation of an Unannexed Phase and shall give the Association a copy of the Budget submitted to the DRE in connection with the Public Report for that annexing Phase. Notice of the new Regular Assessment to be levied against each Residential Lot in the Project shall be delivered to the Owners and Declarant within thirty (30) days after the date that such Unannexed Phase becomes an Annexed Phase pursuant to this Declaration.

(c) NON-WAIVER OF ASSESSMENTS.

If before the expiration of any fiscal year the Association fails to fix Regular Assessments for the next fiscal year, the Regular Assessment established for the preceding year shall continue until a new Regular Assessment is fixed.

9.5. SPECIAL ASSESSMENTS.

If the Board determines that the estimated total amount of funds necessary to defray the Common Expenses of the Association for a given fiscal year is or will become inadequate to meet expenses for any reason, including, but not limited to, unanticipated delinquencies, costs of construction, unexpected repairs, replacement of or new capital improvements on, damage and destruction or condemnation of the Association Property, the Board shall determine the approximate amount necessary to defray such expenses and, if the amount is approved by a majority vote of the Board and does not exceed five percent (5%) of the budgeted gross expenses of the Association, it shall become a Special Assessment; provided, however that such limitation shall not apply to Special Assessments levied by the Board to replenish the Association's reserve account as provided in the **Bylaws Section entitled "USE OF RESERVE FUNDS."** Except for a Special Assessment levied pursuant to the **Bylaws Section entitled "USE OF RESERVE FUNDS,"** any Special Assessment in excess of five percent (5%) of the budgeted gross expenses of the Association shall be subject to the limitation set forth in the Section below entitled **"Limitations on Assessments."** The Board may, in its discretion, prorate such Special Assessment over the remaining months of the fiscal year or levy the assessment immediately against each Residential Lot. Unless exempt from federal or state income taxation, all proceeds from any Special Assessment shall be segregated and deposited into a Financial Account and shall be used solely for the purpose or purposes of which it was levied or it shall be otherwise handled and used in a manner authorized by law or regulations of the Internal Revenue Service or the California Franchise Tax Board in order to avoid, if possible, its taxation as income of the Association.

9.6. CAPITAL IMPROVEMENT ASSESSMENT

In addition to any other assessments provided for hereunder, the Association may levy a Capital Improvement Assessment for the purpose of defraying, in whole or in part, the cost of any construction or replacement of a capital improvement in accordance with the provisions of the **Bylaws Section entitled "Capital Improvements."** Capital Improvement Assessments shall be due and payable by all Owners in such installments and during such period or periods as the Board shall designate. Increase in Capital Improvement Assessments shall be subject to the limitations set forth in the Section below entitled **"Limitations on Assessments."**

9.7. SINGLE BENEFIT ASSESSMENT.

The Board may establish a Single Benefit Assessment for reconstruction, capital improvements, extraordinary maintenance, or any other cost or expense not otherwise provided for in this Declaration which will benefit less than all of the Owners, and which will be assessed only against the Lots of those Owners so benefiting.

(a) Except as provided in the paragraph immediately below, such Single Benefit Assessments may be imposed only by a vote of at least fifty-one percent (51%) of the Owners of the Residential Lots benefited by the Single Benefit Assessment.

(b) Whenever the Association performs any service or accomplishes any item of repair or maintenance which is the duty of an Owner to accomplish, but which has not been accomplished by such Owner, or whenever the Association determines to preempt the performance of a specific Owner of a given act of maintenance or repair, the Association shall specifically charge the cost thereof, together with any financing costs and administrative costs incurred by the Association, to the Owner for whom such work was done, and shall include such additional cost as a Single Benefit Assessment for such Owner(s).

Each Single Benefit Assessment shall be segregated in the Financial Accounts solely to the Residential Lots which derive the benefit therefrom. In the event that the Association obtains income directly related to an item which has been assessed as a Single Benefit Assessment, such income shall be allocated so as to reduce or offset such Single Benefit Assessment.

9.8. ENFORCEMENT ASSESSMENTS.

The Association may levy an Enforcement Assessment against any Owner who causes damage to the Association Property or for bringing an Owner or his or her Residential Lot into compliance with the provisions of the Project Documents or any other charge designated an Enforcement Assessment in the Project Documents, together with attorneys' fees, interest and other charges related thereto as provided in this Declaration. The Board shall have the authority to adopt a reasonable schedule of Enforcement Assessments for any violation of the Project Documents. If, after Notice and Hearing as required by this Declaration and which satisfies Section 7341 of the California Corporations Code, the Owner fails to cure or continues such violation, the Association may impose an additional fine each time the violation is repeated, and may assess such Owner and enforce the Enforcement Assessment as herein provided for nonpayment of an assessment. A hearing committee may be established by the Board to administer the foregoing. Notwithstanding any other provision in this Declaration to the contrary, Enforcement Assessments are assessments, but they may not become a lien against the Owner's Residential Lot that is enforceable by a power of sale under Civil Code Sections 2924, 2924b and 2924c or any successor statute or laws. This restriction on enforcement is not applicable to late payment penalties for delinquent assessments or charges imposed to reimburse the Association for loss of interest or for collection costs, including reasonable attorneys' fees, for delinquent assessments.

9.9. UNIFORM RATE OF ASSESSMENT.

Regular Assessments, Special Assessments and Capital Improvement Assessments shall be levied at a uniform rate for all Residential Lots and may be collected on a monthly basis, or otherwise, as determined by the Board. Enforcement Assessments and Single Benefit Assessments shall be levied directly to the individual Residential Lots and/or their respective Owners, depending upon whether the assessment may become a lien against the Residential Lot, as provided in this Declaration.

9.10. EXCESSIVE ASSESSMENTS OR FEES.

The Board may not impose or collect an assessment or fee that exceeds the amount necessary to defray the costs for which it is levied.

9.11. COMMENCEMENT OF ASSESSMENTS; DUE DATES.**9.11.1. FIRST PHASE.**

The monthly installments for Regular Assessments provided for herein shall commence as to all Residential Lots in the first Phase of the Project on the first day of the month following the conveyance of the first Residential Lot within such initial Phase to a Retail Buyer under the authority of a Public Report. The first annual assessment shall be adjusted according to the number of months remaining in the fiscal year.

9.11.2. SUBSEQUENT PHASES.

Regular Assessments shall commence as to all Residential Lots in any Subsequent Phase on: (a) the first day of the month following the conveyance of the first Residential Lot within such Subsequent Phase to a Retail Buyer under the authority of a Public Report, or (b) upon the first day of the month following the date that Declarant leases a Dwelling, or (c) such earlier date as may be selected by Declarant for the commencement of assessments in such Subsequent Phase, regardless of whether a conveyance or leasing has occurred.

9.12. NOTICE AND ASSESSMENT INSTALLMENT DUE DATES.

A single *ten (10) day* prior written notice of each **Special Assessment** and **Capital Improvement Assessment** shall be given to each Owner. The first fiscal year's **Regular Assessment** shall be equal to the amount shown in the Budget accepted by the DRE as stated in the Public Report for the first Phase of the Project. Written notice of the amount of the **Regular Assessment** for each fiscal year after the first fiscal year shall be distributed to each Owner not less than forty-five (45) days nor more than sixty (60) days prior to the beginning of the fiscal year, together with a copy of the approved Budget for that fiscal year, as more fully described in **Section 9.4.2** above entitled "**BUDGETING.**" The foregoing notwithstanding, the failure of the Board to comply with the foregoing notice provisions shall not affect the validity of any assessment levied by the Board.

The due dates for the payment of assessments shall normally be established as monthly installments due on the first day of each month unless some other due date and/or payment schedule is established by the Board.

9.13. FAILURE TO FIX ASSESSMENTS.

The omission by the Board to fix the assessments hereunder before the expiration of any fiscal year, for that or the next year, shall not be deemed either a waiver or modification in any respect of the provisions of this Declaration or a release of the Owner from the obligation to pay the assessments or any installment thereof for that or any subsequent

year, but the assessment fixed for the preceding year shall continue until a new assessment is fixed.

9.14. LIMITATIONS ON ASSESSMENTS.

(a) The Board of Directors of the Association shall not impose or collect an assessment, penalty, or fee that exceeds the amount necessary for the purpose or purposes for which it is levied. Annual increases in Regular Assessments for any fiscal year, as authorized by subsection (b) immediately hereinafter, shall not be imposed unless the Board has prepared and distributed the budget described in **Section 9.4.2** above, and in the **"Financial"** Section of the Bylaws, in accordance with the provisions of Civil Code Section 1365(a) as it may from time to time be amended, with respect to that fiscal year, or has obtained the approval of Owners constituting a quorum, casting a majority of the votes at a meeting or election of the Association conducted in accordance with Chapter 5 (commencing with Section 7510) of Part 3 of Division 2 of Title 1 of the Corporations Code and Section 7613 of the Corporations Code, or any successor statute.

(b) From and after January 1st of the year immediately following the conveyance of the first Residential Lot to an Owner, the Board of Directors of the Association may not impose, except as provided herein, a Regular Assessment that is more than *twenty percent (20%)* greater than the Regular Assessment for the Association's preceding fiscal year or impose special assessments which in the aggregate exceed *five percent (5%)* of the budgeted gross expenses of the Association for that fiscal year without the approval of Owners constituting a quorum casting a majority of the votes at a meeting or election of the Association conducted in accordance with Chapter 5 (commencing with Section 7510) of Part 3 of Division 2 of Title 1 of the Corporations Code and Section 7613 of the Corporations Code. These provisions, however, shall not limit assessment increases necessary for the following "emergency situations:"

- (1) An extraordinary expense required by an order of a court;
- (2) An extraordinary expense necessary to repair or maintain those portions of the Project or the Association Property for which the Association is responsible where a threat to personal safety is discovered;
- (3) An extraordinary expense necessary to repair or maintain those portions of the Project or the Association Property for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the budget under this Declaration and the Bylaws, in accordance with Civil Code Section 1365, or any amendment thereto; provided, however, that prior to the imposition or collection of an assessment under this paragraph, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to the Members with the **"Notice of Regular Assessment"**;
- (4) An extraordinary expense in making the first payment of the earthquake insurance surcharge pursuant to Section 5003 of the California Insurance Code.

Any increases authorized under this Section shall not be imposed unless the Board has complied with the budgetary requirements set forth in the Bylaws with respect to the

fiscal year for which an assessment is levied. For the purpose of calculating whether an increase to Regular Assessments exceeds twenty percent (20%), the term "Regular Assessments" shall be deemed to include the amount assessed against each Residential Lot by the Association as a Regular Assessment plus any amount paid by Declarant as a subsidy pursuant to any subsidy agreements, to the extent such subsidy payments offset any amount which would otherwise be paid by Owners as Regular Assessments.

For purposes of this Section, "quorum" is defined as more than fifty percent (50%) of the Owners (including the Declarant) of the Association.

Any action authorized under this Section shall be taken at a meeting called for that purpose, written notice of which shall be sent to all Members not less than ten (10) days nor more than ninety (90) days in advance of the meeting.

9.15. AUTOMATIC ASSESSMENT INCREASES OR DECREASES.

Notwithstanding any other provision of this Article 9, upon the annexation of any Unannexed Phase to the Project and this Declaration, the Regular Assessment shall either (a) be automatically *increased* by the amount, if any, necessary to maintain the Association Areas and to perform the Association's obligations hereunder 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; or (b) be automatically *decreased* by the amount necessary to assure that the Association is not imposing or collecting an assessment or fee that exceeds the amount necessary to defray the costs for which it is levied. Any automatic increase, however, shall occur only if (i) the annexation of an Unannexed Phase is authorized by the DRE as evidenced by its issuance of a **Public Report** therefor, and (ii) the amount of such increase does not result in the levy of a Regular Assessment that is greater than the maximum potential Regular Assessment disclosed in all **Public Reports** for the Property previously issued by the DRE.

9.16. NOTICE OF ASSESSMENT INCREASE.

The Board shall provide notice by first-class mail to the Owners of any increase in the **Regular Assessment** or **Special Assessments** or **Capital Improvement Assessments** of the Association, not less than thirty (30) nor more than sixty (60) days prior to the increased assessment becoming due and payable.

9.17. REDUCTION OR ABATEMENT OF REGULAR ASSESSMENTS.

In the event the amount budgeted to meet Common Expenses for a particular fiscal year proves to be excessive in light of the actual Common Expenses, the Board in its discretion may either reduce the amount of the Regular Assessments or may abate collection of Regular Assessments as it deems appropriate. Nothing in this Section shall require the Board either to abate or reduce the Regular Assessments. The foregoing notwithstanding, neither an abatement nor a reduction in Regular Assessments shall be permitted so long as

Declarant is possessed with or controls a majority of the total voting power of the Association or the Board.

9.18. NO OFFSETS.

All assessments shall be payable in the amount specified by the Board and no offsets against such amount shall be permitted for any reason, including, without limitation (a) a claim that the Association is not properly exercising its duties and powers as provided in this Declaration; (b) a Member has made or elects to make no use of the Association Property or any Improvements located therein; or, (c) any construction or maintenance performed pursuant to **Section 14.4** entitled "**Assumption of Maintenance Obligations**" below, shall in any way postpone assessments or entitle a Member to claim any such offset or reduction.

9.19. DELINQUENCIES; LATE PENALTIES; INTEREST ON ASSESSMENTS.

Any assessment not paid within *fifteen (15) days* after the due date shall be delinquent and shall be subject to a reasonable late penalty not exceeding ten percent (10%) of the delinquent assessment or **ten dollars (\$10.00)**, whichever is greater, and shall bear interest on all sums including the delinquent assessment, reasonable costs for collection and late penalties at an annual percentage not exceeding *twelve percent (12%)* commencing *thirty (30) days* after the assessment becomes due, or at the maximum legal rate as defined in the California Civil Code Section 1366, or any successor statute or law.

9.20. DEBT OF THE OWNER.

Any assessment made in accordance with this Declaration and any late charges, reasonable costs of collection and interest, shall be a debt of the Owner of a Residential Lot from the time the assessment and other sums are levied.

9.21. ASSOCIATION POLICIES AND PRACTICES RE: DEFAULTS.

9.21.1. ASSESSMENT DEFAULTS.

The Board shall annually distribute during the sixty (60) day period immediately preceding the beginning of the Association's fiscal year, a statement of the Association's policies and practices in enforcing its remedies against Members for defaults in the payment of Regular and Special Assessments, including the recording and foreclosing of liens against Members' Residential Lots.

9.21.2. MONETARY PENALTIES AND FEES.

If the Association adopts or has adopted a policy imposing any monetary penalty, including any fee, on any Member for a violation of the Project Documents, including any monetary penalty relating to the activities of an Invitee, the Board shall adopt and distribute to each Member, by personal delivery or first-class mail, a schedule of the monetary penalties that may be assessed for those violations, which shall be in accordance with authorization for Member discipline contained in **Section 7.2.1** entitled "**ENFORCEMENT**

ACTIONS" and Section 8.1.3 entitled "**NOTICE AND HEARING**" herein; provided, however, no such monetary penalty may be characterized or treated as an assessment which may become a lien against the Owner's subdivision interest enforceable by a sale of the interest in accordance with the provisions of Sections 2024, 2024(b) and 2024(c) of the California Civil Code. The Board, however, shall not be required to distribute any additional schedules of monetary penalties unless there are changes from the schedule that was previously adopted and distributed to the Members.

9.22. COLLECTION OF ASSESSMENTS; LIENS.

9.22.1. RIGHT TO ENFORCE ASSESSMENTS.

The right to collect and enforce assessments is vested in the Board acting for and on behalf of the Association. The Board or its authorized representative, can enforce the obligations of the Owners to pay assessments provided for in this Declaration by commencement and maintenance of a suit at law or in equity, or the Board may foreclose by judicial proceedings or through the exercise of the power of sale pursuant to **Section 9.22.7** below, enforce the lien rights created. Suit to recover a money judgment for unpaid assessments together with all other **Additional Charges** described in **Section 9.23** hereafter shall be maintainable without foreclosing or waiving the lien rights. Notwithstanding anything else to the contrary herein, except for monetary penalties imposed by the Association to reimburse the Association for costs incurred by the Association in the repair of damage to the Association Property for which the Member or the Member's Invitees were responsible, which may become a lien on the Owner's Residential Lot, a monetary penalty imposed by the Association as a disciplinary measure for failure of a Member to comply with the Project Documents or in bringing the Member and his or her Residential Lot into compliance with the governing instruments of the Association may not be characterized nor treated as an assessment which may become a lien against the Member's Residential Lot enforceable by a sale of the interest hereunder. The limitation in the preceding sentence however, does not apply to any **Additional Charges**.

9.22.2. NOTICE TO OWNER PRIOR TO LIEN OF ASSESSMENT.

Before the Association may place a lien upon an Owner's Residential Lot to collect any assessment which is past due, the Association shall provide written notice ("**Itemized Debt Notice**") to the Owner by **certified mail** of the following:

- (a) Fee and penalty procedures of the Association as described in **Section 9.21** above;
- (b) An itemized statement of the charges owed by the Owner, including items on the statement which indicate (i) the principal owed, (ii) any late charges and the method of calculation, (iii) any attorney's fees, and (iv) the collection practices used by the Association, including the right of the Association to the reasonable costs of collection.

9.22.3. LIEN OF ASSESSMENT.

At any time after (a) any assessments levied by the Association affecting any Residential Lot have become delinquent, and (b) the Itemized Debt Notice thereof has been mailed to the Owner of such Residential Lot, the Board may file for recording in the Office of the **San Diego County Recorder** a **"Notice of Delinquent Assessment"** as to such Residential Lot, which notice shall state all amounts which have become delinquent with respect to such Residential Lot and the costs (including attorneys' fees), late penalties and interest which have accrued thereon, the amount of any assessments relating to such Residential Lot which is due and payable although not delinquent, a **legal description** of the Residential Lot with the name of the **record or reputed record Owner** of such Residential Lot, and the name and address of the trustee authorized by the Association to enforce the lien, if by nonjudicial foreclosure as provided below. Such notice shall be signed by the President, Vice President, Secretary, or Chief Financial Officer of the Association, or by an authorized agent (as designated by resolution of the Board) of the Association. Immediately upon recording of any Notice of Delinquent Assessment pursuant to the foregoing provisions of this Section, the amounts delinquent, as set forth in such Notice, together with the costs (including attorneys' fees), late penalties and interest accruing thereon, shall be and become a lien upon the Lot described therein, which lien shall also secure all costs (including attorney's fees), late penalties and interest accruing thereon. The lien may be enforced as provided in **Section 9.22.7** below, entitled

9.22.4. NOTICE TO OWNER AFTER LIEN OF ASSESSMENT.

Not later than **ten (10) calendar days** after recordation of the Notice of Delinquent Assessment in the Office of the **San Diego County Recorder, California**, a copy of the Notice of Delinquent Assessment and the recording date thereof shall be mailed to all record Owners of the Residential Lot by certified or registered mailed, in accordance with the manner set forth in **Civil Code Section 2924b**, or any successor statute or law.

9.22.5. PAYMENTS UNDER PROTEST.

An Owner who disputes an assessment imposed by the Association against such Owner and/or such Owner's Residential Lot shall have the right to resolve such dispute through (i) **alternative dispute resolution** as set forth in **Civil Code Section 1354**, (ii) **civil action**, and (iii) any **other dispute resolution procedure** that may be available through the Association, as provided in **Civil Code Section 1366.3**, or any successor statutes or laws.

9.22.6. RELEASE OF LIEN.

In the event the delinquent assessments and all other assessments which have become due and payable with respect to the same Residential Lot together with all costs (including attorneys' fees), late charges and interest which have accrued on such amounts are fully paid or otherwise satisfied prior to the completion of any sale held to

foreclose the lien provided for in this Article, the Board shall record a further notice, similarly signed, stating the satisfaction and release of such lien.

9.22.7. LIEN ENFORCEMENT; FORECLOSURE PROCEEDINGS.

After the expiration of *thirty (30) days* following the recording of the *Notice of Delinquent Assessment* in the Office of the San Diego County Recorder, California, the lien created by such recording may be foreclosed in any manner permitted by law, including sale by the court, sale by the trustee designated in the *Notice of Delinquent Assessment*, or sale by a trustee substituted pursuant to Civil Code Section 2934a. Any sale by the trustee shall be conducted in accordance with the provisions of Civil Code Sections 2924, 2924(b), 2924(c) and 1367, or any successor statute or law. The Association, acting on behalf of the Owners, shall have the power to bid for the Residential Lot at a foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Suit to recover a money judgment for unpaid assessments, costs, late penalties and attorneys' fees shall be maintainable without foreclosing or waiving the lien securing the same.

9.23. ADDITIONAL CHARGES.

In addition to any other amounts due or any other relief or remedy obtained against an Owner who is delinquent in the payment of any assessments, each Owner agrees to pay **Additional Charges** incurred or levied by the Board including such additional costs, fees, charges and expenditures as the Association may incur or levy in the process of collecting from that Owner monies due and delinquent. **Additional Charges** shall include, but not be limited to, the following:

9.23.1. ATTORNEY'S FEES.

Reasonable attorneys' fees and costs incurred in the event an attorney(s) is employed to collect any assessment or sum due, whether by suit or otherwise;

9.23.2. LATE CHARGES.

A late charge in an amount to be fixed by the Board in accordance with Civil Code Section 1366, or any successor statute or law, to compensate the Association for additional collection costs incurred in the event any assessment or other sum is not paid when due or within any "grace" period established by law;

9.23.3. COSTS OF SUIT.

Costs of suit and court costs incurred as are allowed by the court;

9.23.4. INTEREST.

Interest to the extent permitted by law; and

9.23.5. OTHER.

Any such other additional costs that the Association may incur in the process of collecting delinquent assessments or sums.

9.24. PRIORITY OF THE LIEN.

The lien of assessment herein shall be subordinate to the lien of any First Mortgage now or hereafter placed upon any Residential Lot subject to assessment, and the sale or transfer of any Residential Lot pursuant to judicial or nonjudicial foreclosure transfer (excluding a transfer by deed in lieu of foreclosure) of a First Mortgage shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Residential Lot from lien rights for any assessments thereafter becoming due nor from the lien of any subsequent assessment. Where the First Mortgagee or other purchaser of a Residential Lot obtains title to the same as a result of foreclosure (excluding a transfer by deed in lieu of foreclosure), such acquiror of title, his or her successors and assigns, shall not be liable for the share of common expenses or assessments by the Association chargeable to such Residential Lot which became due prior to the acquisition of title to such Residential Lot by such acquiror, exempt except for a share of such charges or assessments resulting from a reallocation of such charges or assessments which are made against all Residential Lots.

9.25. WAIVER OF EXEMPTIONS.

Each Owner, to the extent permitted by law, waives, to the extent any liens created pursuant to this Article, the benefit of any homestead or exemption laws of California in effect at the time any assessment or installment thereof becomes delinquent, or any lien is imposed.

9.26. TAXATION AGAINST THE ASSOCIATION PROPERTY.

In the event that any taxes are assessed against the Association Property or the personal property of the Association, rather than against the individual Residential Lots, said taxes shall be added to the Regular Assessments, and, if necessary, a Special Assessment may be levied against the Residential Lot in an amount equal to said taxes, to be paid in two (2) installments, thirty (30) days prior to the due date of each tax installment, or as otherwise may be established by the Board.

9.27. PERSONAL LIABILITY OF OWNER.

No Owner may exempt himself from personal liability for assessments levied by the Association, nor release the Residential Lot owned by him from the liens and charges hereof by waiver of the use or enjoyment of any of the Association Property or by abandonment of his or her Residential Lot.

9.28. TRANSFER OF RESIDENTIAL LOT.

After transfer or sale of a Residential Lot within the Project, the selling Owner or Owners shall not be liable for any assessment levied on such Owner or Owner's Residential Lot after the date of such transfer of ownership and written notice of such transfer is delivered to the Association. The selling Owner shall still be personally responsible for all assessments and charges levied on his or her Residential Lot prior to any such transfer.

9.29. FINANCIAL ACCOUNTS.

The Board shall establish financial accounts ("**Financial Accounts**"), into which shall be deposited all monies paid to the Association and from which disbursements shall be made, as provided herein, in the performance of functions by the Association under this Declaration and the Bylaws. The Financial Accounts shall be established in accounts at any banking, savings, brokerage or similar institution ("**Institution**"), provided such funds are fully insured (i) by the Federal Deposit Insurance Corporation or similar Federal insuring agency, or (ii) by a comparable account insurer. Aggregate deposits held in any single Institution shall not exceed the limit of deposit insurance coverage available. The Financial Accounts shall include:

- (a) An Operating Account for current Common Expenses of the Association;
- (b) A Reserve Account for capital improvements, replacements, painting and repairs of the Association Property; and
- (c) Any Other Accounts that the Board may establish to the extent necessary under the provisions of this Declaration.

Except for purposes of transfer of funds upon receipt or disbursement thereof, the Board shall not commingle any amounts deposited into any of the Financial Accounts with one another. Nothing contained herein shall limit, preclude or impair the establishment of additional Financial Accounts by the Declarant so long as the amounts assessed to, deposited into, and disbursed from any such Account are earmarked for specified purposes authorized by this Declaration or the Bylaws.

9.30. USE OF RESERVE FUNDS.

Any reserve fund accounts maintained by the Association (including any capital accounts maintained pursuant to the above Section entitled "Financial Accounts") shall be used for the purposes and in the manner described in California Civil Code Section 1365.5, as it may from time to time be amended.

10. ANNEXATION

10.1. AUTOMATIC ANNEXATION BY CONVEYANCE OR LEASING OF RESIDENTIAL LOT IN AN UNANNEXED PHASE.

A subsequent Unannexed Phase after the first Annexed Phase shall automatically become an Annexed Phase, and thereby become annexed to the Association and to all of the specific terms of this Declaration, upon either (a) the conveyance by Declarant of at least one Residential Lot in such subsequent Phase to a Retail Buyer under the authority of a Public Report, or (b) the leasing or occupancy of at least one Residential Lot and a Dwelling located thereon by Declarant to a tenant, whereafter each such Phase shall become an "**Annexed Phase**," fully subject to all of the terms, conditions and restrictions contained in this Declaration, and voting rights and assessments shall commence in accordance with the provisions therefor contained herein.

10.2. ANNEXATION WITHOUT CONVEYANCE OF RESIDENTIAL LOT.

Declarant may cause an Unannexed Phase and the Residential Lots and Association Property Lots therein to become annexed to the Association and this Declaration and become an "Annexed Phase" without the conveyance of a Residential Lot located therein, by:

(a) The recordation by Declarant of a Declaration of Annexation or a Supplementary Declaration (hereafter "**Annexation Instrument**"), covering any such Unannexed Phase, declaring that upon the recordation of the Annexation Instrument for such Unannexed Phase, that such Phase shall be annexed under this Declaration. Any such Annexation Instrument shall be signed and acknowledged by Declarant.

Upon the recordation of the duly authorized Annexation Instrument and the conveyance of any **Association Property** located within such Unannexed Phase, such Unannexed Phase, the Residential Lots and the Association Property therein, if any, shall become an Annexed Phase.

10.3. DECLARATION OF ANNEXATION.

Declarant may, at its election, record in the Office of the County Recorder a "**Declaration of Annexation**" or "**Supplemental Declaration**" evidencing the annexation of an Unannexed Phase to the Association with the approval of the DRE and under the authority of a **Public Report**, as provided for in Section 10.1 provided, however, the recordation of such Declaration of Annexation or Supplemental Declaration is not a requirement in order to effect the annexation of an Unannexed Phase by operation of the conveyance or leasing described in Section 10.1. A Declaration of Annexation or a Supplemental Declaration may also serve to contain such complementary additions and modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the Phase to be annexed and as are not inconsistent with the plan of this Declaration. In no event, however, shall any such Declaration of Annexation or Supplemental Declaration, or any merger or consolidation revoke, modify or add to the covenants established by the Declaration, nor affect the provisions hereof or thereof as covenants running with the

land or equitable servitudes. The express desired intention of Declarant is to establish a cohesive plan of such covenants and servitudes to be uniformly applicable to the Project, including those portions added thereto by annexation.

10.4. RIGHTS AND OBLIGATIONS OF OWNERS.

Upon annexation of an Unannexed Phase to the Association, all Owners in the Project shall be entitled to the use of any Association Property in such Annexed Phase, subject to the provisions of this Declaration, and Owners of such annexed property shall thereupon be subject to all of the provisions, covenants, conditions and restrictions of this Declaration. After each annexation, the assessments shall be assessed in accordance with the provisions set forth in **Section 9.11** above with the Annexed Phase being assessed for a proportionate share of the total Common Expenses on the same basis as the other Residential Lots in the Project. Assessments for the year that such Unannexed Phase is annexed shall be prorated on the basis of a three-hundred-sixty (360) day year.

10.5. MERGERS OR CONSOLIDATIONS.

Upon a merger or consolidation of the Association with another association, the Association's Property, rights and obligations may, by operation of law, be transferred to the surviving or consolidated association, or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants, conditions and restrictions established by this Declaration within the Project, together with the covenants and restrictions established upon any other property as one plan.

10.6. DE-ANNEXATION.

Declarant may delete all or any portion of the Unannexed Phases or an Annexed Phase from the coverage of this Declaration and rescind any Declaration of Annexation or Supplemental Declaration, if any, provided: (a) Declarant is the sole owner of all of the real property in any such Unannexed or Annexed Phase, and (b) the DRE is notified of such De-Annexation prior to its effective date. Such deletion shall be effective upon the recordation in the Office of the County Recorder of a "Notice of Deletion of Territory" or a "Declaration of De-Annexation" signed and acknowledged by Declarant, stating the status of the Phase or portion of Phase to be deleted and/or de-annexed.

11. USE RESTRICTIONS

11.1. USE OF RESIDENTIAL LOTS.

Residential Lots shall be occupied and used for residential purposes only by the Owners and their Invitees; provided, however, any Residential Lot may be used as a combined residence and executive or professional office, or occupations relating to arts and crafts, so long as such occupations (a) are operated solely within the Residential Lot, (b) are conducted

in conformance with all applicable governmental ordinances, (c) are merely incidental to the use of the Residential Lot as a residence, (d) the patrons or clientele of such occupation do not regularly visit or conduct business on the Residential Lot, (e) the business is operated by the Owner of the Residential Lot whose principal residence is the Residential Lot, by a tenant whose principal residence is the Residential Lot, or by a member of such Owner's or tenant's family whose principal residence is the Residential Lot, (f) the operation of the business does not result in (i) the violation of any of the other provisions of this Declaration, (ii) any unreasonable increase in the flow of traffic, or the creation of parking problems within the Project, or (iii) any odor, noise, or vibration outside of the Residential Lot that interferes with the quiet enjoyment by other Owners or their Invitees. No other use shall be allowed except as specifically permitted by local ordinance, or is otherwise authorized by such California statutory or common law that may take precedence over City requirements and/or this Declaration.

No tent, shack, trailer, garage or structure of a temporary character shall be used on any Residential Lot at any time as a residence, either temporarily or permanently. The foregoing notwithstanding, Declarant may use any of the Residential Lots owned or leased by Declarant as model homes and sales offices during that time period described in **Section 13.2** hereinafter.

11.2. LEASE OF DWELLING.

11.2.1. REQUIREMENTS OF ALL LEASES.

Any Owner who wishes to lease his or her Residential Lot and the Dwelling thereon must meet each and every one of the following requirements, and the lease will be subject to these requirements whether they are included within a lease or not:

- (a) All leases must be in writing;
- (b) Unless the Owner remains in occupancy, the lease must be for the entire Residential Lot, and not merely parts thereof, and shall include the Dwelling and its garage, and no such lease shall allow the tenant to forfeit the use of such garage;
- (c) No lease shall be for a period of less than thirty (30) days;
- (d) All leases shall be subject in all respects to the provisions of this Declaration and the other Project Documents;

11.2.2. FAILURE OF TENANT TO COMPLY WITH PROJECT DOCUMENTS; OTHER TENANT MATTERS.

(a) Any failure of a tenant to comply with the Project Documents shall be a default under the lease, regardless of whether the lease so provides. In the event of any such default, the Owner immediately shall take all actions to cure the default including, if necessary, eviction of the tenant;

(b) Each Owner shall provide a copy of the Project Documents to each tenant of his or her Residential Lot. By becoming a tenant, each tenant agrees to be bound by the Declaration, the Bylaws, the Rules of the Association and any other Project

Document. Anything herein to the contrary notwithstanding, each Owner is responsible and liable to the Association for the acts or omissions of its tenant, including reasonable attorneys' fees.

11.3. EXTERIOR COLORS.

Any changes to the exterior colors of Improvements shall be approved by the Board, provided, however, no permission or approval shall be required to recolor (paint, stucco color coating, etc.) the exterior of a Dwelling or any accessory building in the same color scheme as it had been. The provisions of this Section, however, shall not apply to any Improvements installed by the Declarant or any affiliate or agent of Declarant and the Board shall have no rights of review or approval with respect thereto.

11.4. REASONABLE CONSTRUCTION TIMEFRAME.

All work of construction being performed on a Residential Lot shall be prosecuted diligently and continually from the time of commencement of construction until the same shall be fully completed, excepting therefrom causes beyond the control of the Lot Owner, such as strikes, Acts of God, etc. The Owner of a Lot where a building structure has been damaged or destroyed by fire or other calamity shall cause such structure to be repaired or restored within a reasonable time, commencing within six (6) months after the damage occurs and be completed within one year thereafter, unless prevented by causes beyond his or her reasonable control. This obligation shall not extend to the installation of furniture or the like, but shall be for the purpose of preventing unsightliness caused by such damage or destruction and any resultant health or safety problems to other Owners or occupants within the Property or neighborhood.

11.5. GARAGES.

Any conversions of the portion of any garages originally constructed as three car garages, which results in a change to the exterior portion of the Dwelling shall be subject to the approval of the Board.

11.6. SCREENDOORS; AWNINGS; WINDOWS.

No screendoor on the front or main entrance door or doors, or any aluminum or metal awnings, covers, sunshades or ornamental screens shall be erected or maintained on or around any portion of a Dwelling or accessory building or elsewhere within the Project except those that are installed with the original construction of the Project or as authorized and approved by the Board.

11.7. WINDOW COVERINGS.

Temporary window coverings ("*Temporary Window Coverings*") in a design and color that does not conflict with surrounding Improvements shall be permitted for a maximum period of sixty (60) days from the date that a Residential Lot with a Dwelling constructed thereon by Declarant is conveyed to an Owner by Declarant; provided, however, no window shall ever be covered with paint, aluminum foil, newspapers or any other contrasting material). Non-reflective solar films, however, may be used.

11.8. PETS.

Except as otherwise provided more stringently in the zoning ordinances of the City, an Owner may keep and maintain on his or her Residential Lot domesticated pets such as dogs, cats or other usual and ordinary household pets as may be allowed by the **Association Rules**; provided, however, any pet which may have already been allowed prior to the adoption of a Rule that would preclude such pet, shall be exempt from such Rule for the lifetime of such pet or pets; further provided, that the above pets shall not be kept, maintained or bred for any commercial purposes. Under no circumstances shall poultry, birds of prey, goats, bovine or swine be permitted. The foregoing notwithstanding, no pets may be kept on the Property which result in an annoyance or are obnoxious to other Owners or occupants; provided, however, that the Association Rules may further limit or restrict the keeping of such pets. No pets shall be permitted in any area designated in the Association Rules as being restricted to pets. No dog whose prolonged barking (or other prolonged noise-producing pet) unreasonably disturbs other Owners or occupants shall be permitted to remain in the Project. Persons bringing or keeping a pet within the Project shall prevent their pets from soiling all portions of the Project where other persons customarily walk or otherwise occupy from time to time and shall promptly clean up any mess left by their pets. Each person bringing or keeping a pet within the Project shall be absolutely liable to the Association and other Owners and their invitees for any damage to persons or property caused by any pet brought upon or kept upon the Project by such person or such Owner's Invitees.

11.9. SIGNS.

No signs, placards, decals or other similar objects, visible from neighboring property or streets, shall be erected or displayed on any Residential Lot or the Association Area, which are not in conformance with governmental ordinances or the **Architectural Guidelines**.

Anything contained in this Declaration to the contrary notwithstanding, Declarant and its authorized agents, shall have the right, during the time period described in the **Article 13** entitled "**Development Rights**," to install and maintain such Construction and Marketing Improvements as provided in such Article.

11.10. EXTERIOR LIGHTING.

Any exterior landscape lighting or exterior lighting installed on a Dwelling shall either be indirect, shielded or of such controlled focus and intensity as to prevent glare on surrounding properties and unreasonable disturbance to occupants of other Dwellings in the neighborhood.

11.11. SOLAR ACCESS.

Subject to the provisions for **Architectural Committee** approval contained in **Section 12.7.3** entitled "**Approval of Solar Energy Systems**," all Residential Lots within the Community shall have a right to a minimum of one hundred (100) square feet of solar access. No vegetation shall be planted or improvement maintained on any Lot in such a location or at such a height as to unreasonably obstruct the rays of the sun from a solar collector installed on

another Lot in the Community. The foregoing notwithstanding, should solar collectors be installed at a later date, the cost of removing or modifying the established landscaping upon an adjoining Lot shall be the responsibility of the Owner benefiting from the solar access. The Owner installing the solar collectors shall place the solar collectors in a location as to minimize any impact upon adjoining Lots.

11.12. ANTENNAS, SATELLITE DISHES.

No alteration to or modification of a central radio and/or television antenna system or cable television system, whichever is applicable, if developed by Declarant, a cable television franchisee or third party utility service, and is maintained by the Association or said franchisee or utility service, shall be permitted. No Owner or Invitee may be permitted to construct and/or use and operate his own external radio and/or television antenna, "Citizens Band" (C.B.), amateur radio, microwave transmission, satellite dishes, DBS dishes or other similar electronic receiving or broadcasting devices, except in accordance with the Association Rules and/or **Architectural Standards** promulgated therefor and in compliance with all local, state and federal laws and regulations, as they may from time to time be amended. Nothing herein stated is intended to obligate Declarant or the Board to install a master antenna system. All fees for the use of any cable television system shall be borne by the respective Owners, and not by the Association or Declarant.

11.13. POST TENSION SLABS.

The Dwellings on some or all of the Lots may have been constructed with post-tensioned concrete slabs ("**System**"). The System involves placing steel cables under high tension in the concrete slab located beneath the Dwelling. Each Owner shall be responsible for determining whether the Dwelling on his or her Lot has been constructed with a System. Any attempt by an Owner or other person to alter or pierce the foundation (e.g., saw cutting or drilling) could damage the integrity of the System and/or cause serious injury or damage to persons and property. No Owner shall cut into or otherwise disturb the System upon which the Dwelling on his or her Lot is constructed. The Owner of each Lot on which the residence has been constructed with a System agrees, by acceptance of a Deed to the Lot, that neither Declarant nor any contractor of Declarant shall be responsible for any damage or injury resulting from or arising in connection with the alteration or piercing by the Owner or Invitee thereof of the slab or the foundation or the Dwelling on the Lot. Each Owner shall hold Declarant harmless from and indemnify Declarant against all claims, demands, losses, costs (including attorney's fees), obligations and liability arising out of or in connection with the failure of the Owner to comply with the provisions of this Section.

11.14. OFFENSIVE ACTIVITIES AND CONDITIONS.

No noxious or offensive activity shall be carried on upon any Lot, or on the Association Property. No odor shall be permitted to arise from a Lot which renders the Lot or any portion thereof unsanitary, unsightly or offensive to any portion of the Project or to its occupants. No noise or other nuisance shall be permitted to exist or operate upon any portion of a Lot so as to be unreasonably offensive or detrimental to any other part of the Project or to its occupants. No exterior speakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes) which unreasonably disturb other

Owner or their tenants shall be located, used or placed on any Lot. Alarm devices used exclusively to protect the security of a Dwelling and its contents shall be permitted, provided that the devices do not produce annoying sound or conditions as a result of frequently occurring false alarms.

11.15. GARBAGE AND REFUSE DISPOSAL.

All rubbish, trash and garbage shall be regularly removed from the Property, and shall not be allowed to accumulate thereon. Trash, garbage and other waste shall not be kept except in sanitary containers designed for such purpose. All equipment, trash bins or cans shall be kept screened and concealed from view of other Lots and the Association Property.

11.16. CLOTHES LINES.

Except with written permission from the Board, outside clotheslines or other outside clothes drying or airing facilities shall be prohibited.

11.17. LANDSCAPING; VACANT LOTS.

Unless Declarant has installed the landscaping for a Residential Lot, within six (6) months after the conveyance of the Residential Lot by Declarant to a Retail Buyer, the Owner shall install and shall thereafter maintain plants, shrubs, trees and any other appropriate landscaping improvements, pursuant to plans and specifications approved by the Board, on those portions of the Lot which are visible from any street within the Project. Landscaping shall at all times be maintained in an attractive and well-maintained condition, subject to any water restrictions that may from time to time be imposed by a local water district or other governmental or quasi-governmental jurisdiction.

11.18. USE OF ASSOCIATION PROPERTY.

Except as otherwise provided herein, the Association Property shall be improved and used only for open space purposes provided that the recreational hiking trail may be used for access by Members of the Community and the public.

11.19. VEHICLE RESTRICTIONS.

11.19.1. PROHIBITED VEHICLES.

No house trailer, bus, trucks over 1 ton, commercial vehicles (except as described in "Permitted Vehicles" below), permanent tent or similar equipment shall be permitted to remain upon any area within the Community other than parked temporarily for purposes of loading, unloading. "Temporary parking" shall mean parking of vehicles belonging to Invitees or Owners, delivery trucks, service vehicles and other commercial vehicles being used in the furnishing of services to the Association or the Owner and parking of vehicles belonging to or being used by Owners for loading and unloading purposes only. No noisy or smoky vehicles shall be operated in the Community.

11.19.2. RESTRICTED VEHICLES.

No truck camper (excepting a pick-up truck with a camper shell) , camper trailer, recreational vehicle, recreational motor home, boat, golf cart, all-terrain vehicle (ATV), inoperable or unlicensed vehicle shall be permitted to remain upon any area within the Community in such a manner that it is visible from neighboring property or adjacent streets. Motorcycles and motorbikes shall be permitted, provided they are operated at noise levels not exceeding 45 decibels. Recreational vehicles, campers and horse trailers that may not be enclosed within a garage or otherwise visible from neighboring property shall be permitted to remain on a Residential Lot for short periods of time not to exceed fourteen (14) consecutive days or a total of twenty-five (25) in any one calendar year. The storing, placing or parking of any vehicle, or any part thereof, which is disabled, unlicensed, unregistered, inoperative, or from which an essential or legally required operating part is removed, shall be prohibited unless conducted within a garage or in an area not visible from neighboring property.

11.19.3. PERMITTED VEHICLES.

Automobiles, standard-sized vans and pickup trucks (including pickup trucks with a camper shell) shall be permitted vehicles within the Community. Permitted commercial vehicles shall include automobiles or standard sized vans and pickup trucks which are used both for business and personal use, provided that any signs or markings of a commercial nature on such vehicles shall be unobtrusive and inoffensive as determined by the Board.

11.19.4. CONSTRUCTION AND SALES.

Declarant, or Declarant's successor in interest, may maintain such trailers or temporary construction shelters or facilities within the Property which are related to the construction or sale of Residential Lots and improvements thereon and within the Property, in accordance with the provisions therefor contained in **ARTICLE 13** herein.

11.20. USE OF GARAGES; PARKING.

When garages are not in use, garage doors shall be closed. Garages shall be used only for the purpose of parking automobiles and other vehicles and equipment and storing an Owner's household goods; provided, however, that all such uses shall be accomplished so that garage doors can be closed. Garages shall not be converted into any use (such as recreational room) that would prevent its use as parking space for the number of vehicles the garage was designed to contain. Owners are to use their garages and driveways for parking of their vehicles so that any street parking will be available for guests. Parking of vehicles on Residential Lots shall be conducted on paved surfaces only; there shall be no parking of vehicles on unpaved surfaces, such as lawns or dirt surfaces.

11.21. TOWING.

Any vehicle within the Community parked in violation of this Declaration or the Rules and Regulations of the Board may be removed as provided for in accordance with the

provisions of California Vehicle Code Section 22658.2 and any amendments thereto, or in accordance with City ordinances.

Notwithstanding the foregoing, the Association may cause the removal, without notice, of any vehicle parked in a marked fire lane, within fifteen (15) feet of a fire hydrant, or in a manner which interferes with any entrance to or exit from the Project or any Residential Lot, parking space, garage or driveway located thereon.

The Association shall not be liable for any damages incurred by the vehicle owner because of the removal in compliance with this Section or for any damage to the vehicle caused by the removal, unless such damage resulted from the intentional or negligent act of the Association or any person causing the removal of or removing the vehicle. If requested by the owner of the vehicle, the Association shall state the grounds for the removal of the vehicle.

11.22. WELLS; SEPTIC TANKS.

No well or septic tank shall be located and constructed in the Project.

11.23. LIABILITY FOR DAMAGE TO ASSOCIATION PROPERTY.

Each Owner shall be liable to the Association and to the remaining Owners for any damage to the Association Property that may be sustained by reasons of the negligence of that Owner, his or her Invitees or any occupant of such Owner's Dwelling, as such liability may be determined under California law. Each Owner shall be responsible for compliance with the provisions of the Declaration, Articles, Bylaws and Rules of the Board by his or her Invitees, and shall, after written notice and an appointment for a hearing, pay the fines and penalties assessed pursuant hereto, the Bylaws or Board rules for any violation by his or her Invitees.

11.24. RESTRICTIONS ON FURTHER SUBDIVISION.

No Residential Lot shall be further subdivided nor shall less than all of any such Residential Lot be conveyed by an Owner thereof; provided, however, that nothing in this Section shall be deemed to prevent an Owner, including Declarant, from adjusting the boundary of a Lot by boundary adjustment or parcel map.

11.25. INDEMNIFICATION.

Each Owner shall be liable to the remaining Owners for any damage to the Association Property or to any other Residential Lot that may be sustained by reason of the negligence or willful misconduct of that Owner, or the Owner's Invitees, but only to the extent that any such damage is not covered by insurance of the Association. Each Owner, by acceptance of his or her deed, agrees for himself or herself and for the Owner's Invitees, to indemnify each and every other Owner, and to hold each Owner harmless from, and to defend each Owner against, any claim of any person for personal injury or property damage caused by the negligence or willful misconduct of such Owner, occurring within the Residential Lot of that particular Owner unless the injury or damage occurred by reason of the negligence or willful misconduct of any other Owner or the Association or is fully covered by insurance covered by the Association.

12. ARCHITECTURAL AND DESIGN CONTROL

12.1. APPROVAL FOR ARCHITECTURAL AND DESIGN MATTERS.

Each Owner, other than Declarant, shall obtain the approval of the Board for any modification or installation of Improvements in accordance with the provisions set forth below.

12.2. GENERAL.

The powers and duties set forth in this Article shall be vested in, and exercised by the Board of Directors of the Association; provided, however, the Board may, upon unanimous approval thereof, delegate its powers and duties to an Architectural Committee consisting of not less than three (3) nor more than five (5) members, in which case all references to the "Board" herein, where appropriate, shall be construed thereafter to refer to the "**Architectural Committee**." In the event the Board elects to delegate such powers to an Architectural Committee, prior to conversion of the Class B membership in the Association to Class A membership, Declarant may appoint all of the original members of the Committee and all replacements until the first (1st) anniversary of the conveyance of the first Residential Lot in the first Phase of the Project under the authority of a **Public Report**; additionally, Declarant reserves to itself the power to appoint a majority of the members to the Committee until ninety percent (90%) of all the Lots in the Project have been sold or until the fifth (5th) anniversary of the conveyance of the first Residential Lot in the first Phase of the Project under the authority of a **Public Report**, whichever first occurs. Thereafter, the Board shall have the power to appoint and remove all of the members of the Architectural Committee. Members appointed to the Architectural Committee by the Board shall be from the membership of the Association. Members appointed to the Architectural Committee by the Declarant need not be members of the Association. A majority of the Architectural Committee may designate a representative to act for it. In the event of death or resignation of any member of the Committee, the successor shall be appointed by the person, entity or group which appointed such member until Declarant no longer has the right to appoint any members to the Committee, and thereafter the Board shall appoint such a successor.

12.3. DUTIES.

The Board shall consider and act upon such proposals or plans submitted to it pursuant to the terms hereof and to the extent it has been granted the authority and delegated the responsibility to review such proposals.

12.4. MEETINGS.

The Board shall meet from time to time as necessary to properly perform its duties hereunder. The vote or written consent of any *two* (2) members of the Board shall constitute an act by the Board unless the unanimous decision of its members is otherwise required by this Declaration. The Board shall keep and maintain a record of all actions taken by it at such meeting or otherwise.

12.5. SCOPE.

No Improvements of any kind whatsoever shall be commenced, erected, placed or altered upon or around any Residential Lot until the location and the complete plans and specifications showing the nature, kind, shape, height and materials, including the color ("*Plans and Specifications*"), have been submitted to and approved in writing as to harmony of external design and location to surrounding structures and topography by the Board. In addition, the grade, level or drainage characteristics of the Residential Lot or any portion thereof shall not be altered without the prior written consent of the Board.

12.6. ARCHITECTURAL GUIDELINES.

The Board may, from time to time and in its sole discretion, adopt, amend and repeal, by unanimous vote, rules and regulations to be known as "***Architectural Guidelines.***" The Architectural Guidelines shall interpret and implement the provisions hereof by setting forth the standards and procedures for Board review and guidelines for architectural design of Improvements, placement of Improvements, color schemes, exterior finishes and materials and similar features which are recommended for use in the Project; provided, however, that said rules shall not be in derogation of the standards required by this Declaration. The Architectural Guidelines may provide for the pre-approval or exemption from approval of certain specified types or categories of improvements, provided that such pre-approved or exempted construction activities are implemented by the affected Owner in conformance with the standards for design, materials and other criteria established in the Architectural Guidelines for such pre-approved or exempted construction activities. The Board may from time to time adopt, supplement or amend the Architectural Guidelines to establish, expand, limit or otherwise modify the categories and criteria for any pre-approved or exempted construction activities.

12.7. APPROVAL OF PLANS & SPECIFICATIONS BY ARCHITECTURAL COMMITTEE.

Any Owner proposing to construct Improvements taking other actions requiring the prior approval of the Board pursuant to this Declaration shall first apply to the Board for preliminary approval by submission of preliminary drawings of the proposed Improvements in accordance with the Architectural Guidelines, if any. The purpose of the preliminary approval procedure is to allow an Owner proposing to construct Improvements an opportunity to obtain guidance concerning design considerations before expending substantial sums for plans and other exhibits required to apply for final approval. Applications for preliminary approval shall be considered and disposed of as set forth below.

12.7.1. PRELIMINARY APPROVAL.**(a) TIME PERIODS FOR REVIEW.**

Within thirty (30) days after proper application for preliminary approval, the Board shall consider and act upon such request. The Board shall grant such approval only if the proposed Improvements, to the extent its nature and characteristics are shown by the application, would be entitled to a final approval on the basis

of a full and complete application. In the event the Board fails to approve or disapprove any such preliminary plans within thirty (30) days after all documents and information requested by the Board have been received by it, the Owner requesting said approval may submit a written notice to the Board advising the same of its failure to act. If the Board fails to approve or disapprove any such preliminary plans within fifteen (15) days after the receipt of said notice from such Owner, said preliminary plans shall be deemed approved, provided that any improvements conform to all conditions and restrictions contained in this Article and are in harmony with similar structures erected within the Project. In granting or denying approval, the Board may give the applicant such directions concerning the form and substance of the final application for approval as it may deem proper or desirable for the guidance of the applicant. The giving of any preliminary approval shall not affect the right of the Board to deny approval of any final Plans and Specifications which are in substantial conformance with the approved preliminary Plans and Specifications.

(b) EFFECTIVENESS OF APPROVAL.

Any preliminary approval granted by the Board as provided above shall be effective for a period of ninety (90) days from the date of the issuance thereof. In no event shall any preliminary approval be deemed to be an approval authorizing construction of the subject Improvements.

12.7.2. FINAL APPROVAL

During the ninety (90) day preliminary approval period described above, any application for final approval which consists of proposed Improvements in accordance with the provisions of the preliminary approval, and is otherwise acceptable under the terms of this Declaration and the Architectural Guidelines, shall be approved by the Board as set forth below.

(a) TIME PERIODS FOR REVIEW.

Within thirty (30) days after proper application for final approval, the Board shall consider and act upon such application. In the event the Board fails to approve or disapprove any such final plans within thirty (30) days after all documents and information requested by the Board have been received by it, the Owner requesting said approval may submit a written notice to the Board advising the same of its failure to act. If the Board fails to approve or disapprove any such final plans within thirty (30) days after the receipt of said notice from such Owner, said final plans shall be deemed approved, provided that the proposed Improvements conform to all conditions and restrictions contained in this Article and are in harmony with similar structures erected within the Project.

12.7.3. APPROVAL OF SOLAR ENERGY SYSTEMS.

Any Owner proposing to install or use a solar energy system, as defined in Civil Code Section 801.5, shall be subject to the same review and approval process as any owner proposing to construction any Improvements or other actions requiring the approval of the Board pursuant to this Declaration. However, only reasonable restrictions on

the installation and use of a solar energy system shall be permitted. Reasonable restrictions on a solar energy system are those restrictions which do not significantly increase the cost of the system or significantly its sufficiency or specified performance, or which allow for an alternative system of comparable costs, efficiency, and energy conservation benefits.

12.8. INSPECTION AND CORRECTION OF WORK.

The Board, or its duly authorized representative, shall have the right to enter onto the exterior of the Residential Lot (but not into the Dwelling) to inspect such Improvement to determine whether it was constructed, reconstructed, altered or refinished to substantial compliance with the approved Plans and Specifications. If the Board finds that such construction, reconstruction, alteration or refinishing was not done in substantial compliance with the approved Plans and Specifications, it shall notify the Owner in writing of such non-compliance within such thirty (30) day period, specifying particulars of non-compliance, and shall require the Owner to remedy such non-compliance. If such Owner fails to comply with the written directive from the Board, the Board shall have the right and authority to enforce, pursuant to the "**Enforcement**" Article hereinafter, the performance of the subject matter of such directive, including, if necessary, the right to enter onto the Residential Lot where a violation of these restrictions exists and perform remedial work, and the cost of such performance shall be charged to the Owner of the Residential Lot in question. Such costs shall be due within five (5) days after receipt of written demand therefor, and shall bear interest at the maximum rate allowed by law. If such costs are not promptly repaid by the Owner to the Association, the Board shall levy an Enforcement Assessment against such Owner for reimbursement.

12.9. FAILURE TO NOTIFY.

If for any reason the Board fails to notify the Owner of any non-compliance within sixty (60) days after receipt of said notice of completion from the Owner, the Improvement shall be deemed to be in accordance with said approved Plans and Specifications.

12.10. ENTRY INTO DWELLING.

Notwithstanding anything to the contrary set forth herein, nothing contained in this Article shall give to the Association the right to enter onto the interior of any Dwelling.

12.11. DILIGENCE IN CONSTRUCTION.

Upon final approval of any Plans and Specifications, the Owner(s) shall promptly commence construction and diligently pursue the same to completion.

12.12. FEE FOR REVIEW.

The Board shall have the right to establish a reasonable fee for the review and approval of Plans and Specifications which must be submitted to it pursuant to the provisions of this Article or the Bylaws, which shall be reasonably related to the duties performed and to cover any expense incurred in obtaining professional review assistance from licensed engineers, architects or contractors.

12.13. INTERPRETATION.

All questions of interpretation or construction of any of the terms or conditions herein shall be resolved by the Board and its decision shall be final, binding and conclusive on all of the parties affected.

12.14. WAIVER.

The approval by the Board of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval of the Board under this Declaration, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification or matter subsequently submitted for approval.

12.15. ESTOPPEL CERTIFICATE.

Within thirty (30) days after written demand is delivered to the Board by any Owner, and upon payment to the Association of a reasonable fee (as fixed from time to time by the Association), the Board shall record an estoppel certificate, executed by any two (2) of its members, certifying (with respect to any Residential Lot of said Owner) that as of the date thereof, either; (a) all Improvements made and other work completed by said Owner comply with this Declaration, or (b) such Improvements or work do not so comply, in which event the certificate shall also identify the non-complying Improvements or work and set forth with particularity the basis of such non-compliance. Any purchaser from the Owner, or from anyone deriving any interest in said Residential Lot through him, shall be entitled to rely on said certificate with respect to the matters therein set forth, such matters being conclusive as between the Association, Declarant and all Owners and such persons deriving any interest through them.

12.16. LIABILITY.

The Board shall not be liable to the Association or to any Owner for any damage, loss or prejudice suffered or claimed on account of: (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective; (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications; (c) the Project of any property within the Project; or (d) the execution and filing of an estoppel certificate pursuant to **Section 12.15**, whether or not the facts therein are correct; provided, however, that such Board member has acted in good faith on the basis of such information as may be possessed by him. Without in any way limiting the generality of the foregoing, the Board or any member thereof may, but is not required to, consult with or hear the views of the Association or any Owner with respect to any plans, drawings, specifications or any other proposal submitted to the Board.

12.17. NON-APPLICABILITY TO DECLARANT.

The provisions of this Article or any related provision in this Declaration affecting the architectural design, shape, height and material of any Improvement in the Property, including the color, shall not apply to any Improvements installed by the Declarant or any

affiliate or agent of Declarant and the Board shall have no rights of review or approval with respect thereto.

12.18. GOVERNMENT REQUIREMENTS.

The application to and the review and approval by the Board of any proposals, plans or other submittals shall in no way be deemed to be satisfaction of or compliance with any building permit process or any other governmental requirements, the responsibility for which shall like lie solely with the respective Owner.

12.19. AMENDMENTS.

Notwithstanding Article 19 hereof entitled AMENDMENTS, no amendment, verification or rescission of this Article may be had, nor shall Declarant, or any successor thereof, be prohibited from completing the construction of the Project prior to the conveyance by Declarant, or its successor, of the last Residential Lot in the Property without (a) written consent of Declarant, and (b) the recording of such consent in the Office of the County Recorder. Such written consent shall not be required after the conveyance by Declarant (or its successors) of all the Residential Lots in the Property to Retail Buyers.

12.20. VARIANCES.

The Board may authorize variances from compliance with any of the architectural provisions of this Declaration. Such variances must be in writing, and must be signed and acknowledge by at least a majority of the members of the Board. The granting of a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular property and particular Residential Lot and particular provision hereof covered by the variance, nor shall it affect in any way affect the Owner's obligation to comply with all governmental laws and regulations affecting its use of the Residential Lot, including, but not limited to, zoning ordinances and lot setback lines or requirements imposed by the City or any other governmental authority.

13. DEVELOPMENT RIGHTS

13.1. LIMITATION OF RESTRICTIONS.

Declarant is undertaking the work of developing Residential Lots and other Improvements within the Property. The completion of that work and the marketing, sale, rental and other disposition of the Residential Lots is essential to the establishment and welfare of the Property as a residential community. In order that said work may be completed and said Project Property be established as a fully occupied residential community as rapidly as possible, nothing in this Declaration shall be interpreted to deny Declarant the rights set forth in this Article.

13.2. RIGHTS OF ACCESS; COMPLETION; MARKETING.

Until (a) all the Residential Lots in the Project are sold and conveyed by Declarant to Retail Buyers or other Persons, or, (b) five (5) years following the date of conveyance of the first Residential Lot in the first Phase of the Project to a Retail Buyer under the authority of a Public Report, whichever shall first occurs, Declarant, its contractors and subcontractors shall have the rights set forth below.

13.2.1. ACCESS.

Declarant, its contractors and subcontractors shall have the right to obtain reasonable access over and across the roadways and accessways within the Community and the Association Property, or do within any Residential Lot owned by it whatever is reasonably necessary or advisable in connection with the completion of the Project and the marketing and maintenance thereof.

13.2.2. CONSTRUCTION IMPROVEMENTS.

Declarant, its contractors and subcontractors shall have an easement and right to erect, construct and maintain on the Association Property of the Project or within any Residential Lot owned by it, such structures or improvements, including, but not limited to, sales offices, flags, balloons, banners and signs, as may be reasonably necessary for the conduct of its business to complete the work, establish the Project as a residential community and dispose of the Residential Lots by sale, lease or otherwise, as determined by Declarant in its sole discretion and to perform or complete any work to improvements required for Declarant to obtain a release of any bonds posted by Declarant with the City.

13.2.3. GRANT EASEMENTS.

Declarant, its contractors and subcontractors shall have the right to establish and/or grant over and across the Association Property such easements and rights of way on, over, under or across all or any part thereof to or for the benefit of the State of California, the City, or any other political subdivision or public organization, any public utility entity, cable or other television signal provider, or any online computer access provider, for the purpose of constructing, erecting, operating and maintaining facilities and improvements thereon, therein or thereunder at that time or at any time in the future, including: (a) poles, wires and conduits for transmission of electricity, providing telephone, television or online computer services and for the necessary attachments in connection therewith, and (b) public and private sewers, sewage disposal systems, storm water drains, land drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes and any and all equipment in connection therewith. The Association Property shall be subject to any dedication stated in the Subdivision Map for the Project of an easement for public use for installation, maintenance and operation of facilities for public utilities over all or any part of the Association Property. Said public utilities easement over the Association Property shall inure and run to all franchised utility companies and to the City and shall include the right of ingress and egress over the Association Property by vehicles of the City and such utility companies to

properly install, maintain, repair, replace and otherwise service such utility facilities. The grant of said public utility easement shall not be interpreted to imply any obligation or responsibility of any such utility company or the City for maintenance or operation of any of the Association Property or the facilities located thereon or the repair, replacement or reconstruction thereof except as occasioned by such utility companies, the City of the utility facilities for which they are responsible. The Association Property shall also be subject to any easements granted by Declarant to any public or private entity for cellular, cable, computer or other similar transmission lines. Except for lawful and proper fences, structures and facilities placed upon the Association Property by utility companies, the Association Property subject to the public utility easement shall be kept open and free from buildings and structures. The City and the County, furthermore, are granted an easement across the Association Property for ingress and egress for use by emergency vehicles of the City and County.

13.2.4. MARKETING RIGHTS.

(a) GENERAL RIGHTS.

Subject to the limitations of this Declaration, Declarant shall have the right to:

(1) Maintain model homes, sales offices, trailers, temporary construction shelters, storage areas and related facilities in any unsold Residential Lot or portion of the Association Property as are necessary or reasonable in the opinion of Declarant for the construction, sale, or disposition of the Residential Lots, Dwellings or other Improvements with the Property;

(2) Make reasonable use of the Association Property and facilities for the sale of Residential Lots;

(3) Post signs, flags, balloon and banners within the Association Property and unsold Residential Lots in connection with its marketing of Residential Lots; and

(4) Conduct its business of disposing of Residential Lots by sale, lease or otherwise.

(b) AGREEMENT FOR EXTENDED USE.

If, following the *fifth (5th) anniversary* of the conveyance of the first Residential Lot in the most recently Annexed Phase of the Project to a Retail Buyer under the authority of a Public Report, Declarant requires use of any portion of the Association Property for marketing and/or construction purposes, Declarant may use the Association Property only if an agreement is entered into between Declarant and the Association. The Association shall not unreasonably withhold entering into such agreement, on such terms and conditions as may be mutually agreed upon, or, if an terms and conditions cannot be agreed upon, then upon such terms and conditions as may be prevalent in similar projects in the County. In the event no action is taken, Declarant shall be required to terminate and remove all marketing and construction-related facilities upon thirty (30) days written notice from the Association to Declarant.

13.3. SIZE AND APPEARANCE OF PROJECT.

Declarant shall not be prevented from increasing or decreasing the number of Residential Lots that may, pursuant to the provisions of **Article 10**, be annexed to the Project or from changing the exterior appearance of the Residential Lot Dwellings or any other improvements structures, the landscaping or any other improvement or matter directly or indirectly connected with the Project in any manner deemed desirable by Declarant, if Declarant obtains such governmental consents therefor as may be required by law.

13.4. ASSIGNABILITY OF RIGHTS.

The rights of Declarant under this Declaration may be assigned to any successor(s) by an express assignment in a recorded instrument, including without limitation a deed, option or lease. This Declaration shall not be construed to limit the right of Declaration at any time prior to such assignment to establish additional licenses, reservations and rights-of-way to itself, to utility companies or to others as may be reasonably necessary to the proper development and disposal of property owned by Declarant.

13.5. TERMINATION OF ANY RESPONSIBILITY OF DECLARANT.

In the event Declarant shall convey all of its rights, title and interest in and to the Property to any partnership, individual or individuals, corporation or corporations, then and in such event, Declarant shall be relieved of the performance of any further duty or obligation hereunder, and such partnership, individual or individuals, corporation or corporations, shall be obligated to perform all such duties and obligations of the Declarant.

13.6. AMENDMENT.

The provisions of this Article may not be amended without the consent of Declarant (or its duly authorized successor in interests) until such time that all of the Residential Lots in the Project owned by Declarant have been conveyed to Retail Buyers.

14. RESPONSIBILITIES OF MAINTENANCE**14.1. MAINTENANCE OBLIGATIONS OF OWNER.****14.1.1. OVERALL MAINTENANCE OF RESIDENTIAL LOTS.**

Each Owner shall maintain, repair and otherwise care for the maintenance, repair and replacement of the Owner's Residential Lot and all Improvements situated therein, in a good condition of maintenance and repair.

14.1.2. DRAINAGE.

Each Owner shall periodically inspect and perform such reasonable and normal maintenance as necessary to keep any drainage systems located on

or under his or her Residential Lot in proper working order and free from debris and obstructions which may change the direction or retard the flow of water.

14.1.3. MAINTENANCE OF FENCES OR WALLS.

(a) OWNER MAINTENANCE OBLIGATIONS.

Each Owner shall have the obligation to maintain in a good condition of maintenance and repair the interior and exterior of any fencing located exclusively within the boundaries of such Owner's Residential Lot and not share with an adjacent Owner;

(b) BETWEEN TWO RESIDENTIAL LOTS.

For any *fence or wall which separates two (2) Residential Lots*, each Owner shall have the obligation to maintain the interior of the fence or wall; however, both Owners shall share, on an equitable basis, the cost of replacing such fence or wall. The Owner of each affected portion of the Residential Lots on which a party wall or fence is located shall have a reciprocal non-exclusive easement to the Residential Lot immediately adjacent to the fence or wall for the limited purpose and only to the extent necessary to maintain the party wall, fence;

(c) RESIDENTIAL LOT AND ASSOCIATION AREA.

For any *fence or wall* which separates a *portion of a Residential Lot* and a *Common Area Lot* for which the Association is responsible, the Owner of such Residential Lot shall have the obligation to paint, stain and otherwise maintain the fence or wall. The cost of replacing any such fence or wall that is shared between an Owner and the Association shall be the responsibility of the Residential Lot Owner;

14.2. OWNER'S FAILURE TO MAINTAIN; WILLFUL OR NEGLIGENT ACT.

In the event an Owner fails to maintain the areas described herein pursuant to the standards set by the Board, or if an Owner, or his or her Invitees or pets, cause the willful or negligent act or neglect of the same or any other area within the Project, the Board may give written notice to the Owner of the work required and request that the same be done within a reasonable time under the specific circumstances, provided, however, that Board shall have the right to approve the person or company who shall perform the maintenance or repairs and the method of repair. In the event the Owner fails to carry out such work of maintenance or repair within said time period, the Board may, following a Notice and Hearing as provided in the Article herein entitled **RIGHTS OF OWNERS, BOARD AND ASSOCIATION**, cause such work to be completed and shall assess the cost thereof to such Owner as an **Enforcement Assessment** in accordance with the procedures set forth in this Declaration.

14.3. RESPONSIBILITY OF ASSOCIATION.

The Association shall be responsible for maintaining, repairing, replacing and otherwise caring for the *Association Property* in a good condition of maintenance and repair,

and in accordance with any requirements of the City. The foregoing Association responsibilities are not intended to be applicable when due to any negligent act of an Owner or his or her Invitee(s).

14.4. ASSUMPTION OF MAINTENANCE OBLIGATIONS.

Declarant and its subcontractors, and the agents and employees of the same, shall have the right to come upon the Association Property to complete the construction, refurbishment or installation of any landscaping or other improvements to be installed thereupon. In the event that any of Declarant's subcontractors are contractually obligated to maintain the landscaping and/or other improvements on any portion of the Association Property, such maintenance shall not be assumed by the Association until the termination of such contractual obligation. If there is any excess of assessments collected over actual Common Expenses incurred by the Association, caused by reason of this Section, or otherwise, such excess shall be placed in reserve to offset the future expenses of the Association in any manner designated by the Board.

14.5. PROPERTY MANAGEMENT.

The Board may, at its option, employ a professional management company ("Managing Agent") to handle the day to day management and operation of the Project; upon such election, the Board shall from prospective Managing Agents written statements to the Board which shall contain the information concerning the managing agent required to comply with California Civil Code Section 1363.1, or any succeeding statute.

15. INSURANCE

15.1. MASTER INSURANCE POLICY.

The Association shall obtain and continue in effect the following insurance:

15.1.1. LIABILITY INSURANCE.

A general, comprehensive liability insuring the Association, the Board, the Architectural Committee, any manager, the Declarant and the Owners and occupants of the Residential Lots and their respective Invitees against any liability incident to ownership or use of the Association Property or any other Association owned or maintained real or personal property, and the performance by the Association of its duties under this Declaration, arising out of any single occurrence; the amount of general liability insurance which the Association shall carry at all times shall be not less than **Two Million Dollars (\$2,000,000)**. Such coverage shall include coverage against water damage liability, property of others and any other liability or risk as are customarily covered with respect to similar real estate developments in the area of the Project. The general liability policy shall also include such provisions as may be required by the provisions of California Civil Code Section 1365.7, or any successor statute, to limit the monetary liability of volunteer directors and officers of the Association.

15.1.2. CASUALTY INSURANCE.

A casualty policy insuring all Association Property improvements and fixtures and such other improvements that may be owned by the Association to the extent necessary to fully protect the interests of the Owners, or as may be required by Institutional Mortgagees. In the event of any loss, damage or destruction to the Association Property (that is, excluding Residential Lots), the Association shall cause the same to be replaced, repaired or rebuilt in accordance with the provisions of this Declaration.

(a) COVERED CAUSE OF LOSS.

The policy shall provide coverage against losses caused by fire and all other hazards normally covered by a "special form" policy or its equivalent.

(b) PRIMARY.

The policy shall be primary and noncontributing with any other insurance policy covering the same loss.

(c) ENDORSEMENTS.

The policy shall contain such endorsements as the Board in its discretion shall elect.

(d) WAIVER OF SUBROGATION.

Except as provided in **Section 11.25** entitled "*Indemnification*," the Association waives all rights of subrogation against the Owners and their Invitees. All insurance policies obtained by the Association shall include a waiver of all subrogation rights against any Owner and their Invitees; provided, however, that a failure or inability of the Association to obtain such waiver shall not defeat or impair the waiver of subrogation rights between the Association and the Owners and their Invitees set forth herein. Insurance proceeds for Improvements in the Association Property and personalty owned by the Association shall be payable to the Association.

15.1.3. DISHONEST ACTS; FIDELITY BOND.

Such insurance covering directors, officers and employees of the Association and employees of any manager or managing agent, or administrator, whether or not any such persons are compensated for their services, against dishonest acts on their part, or in lieu thereof, a fidelity bond, naming the Association as obligee, written in an amount equal to at least the estimated maximum of funds, including reserves in the custody of the Association or the management agent at any given time during the term of the fidelity bond. However, the bond shall not be less than a sum equal to three (3) months aggregate Regular Assessments on all Residential Lots, including reserve funds.

15.1.4. WORKERS COMPENSATION INSURANCE.

Worker's compensation insurance covering any employees of the Association to the extent required by law.

15.1.5. DIRECTORS AND OFFICERS INSURANCE.

To the extent insurance is available, Directors and officers liability insurance in an amount of not less than *Two Million Dollars (\$2,000,000)* on behalf of any Director, Officer or member of a Committee of the Association (collectively, the "Agents") against any liability asserted against or incurred by the Agent in such capacity or arising out of the Agent's status as such, regardless of whether the Association would have the power to indemnify the Agent against such liability under applicable law.

15.1.6. OTHER INSURANCE.

Such other insurance as the Board in its discretion considers necessary or advisable to fully protect the interests of the Owners.

15.2. FNMA; FHLMC; INSTITUTIONAL MORTGAGEE.

The amount, term and coverage of any policy required hereunder shall satisfy the minimum requirements imposed for this type of project by the FNMA and the FHLMC or any successor thereto and any Institutional Mortgagee. If the FNMA, FHLMC or Institutional Mortgagee requirements conflict, the more stringent requirement shall be met. If FNMA, FHLMC and any Institutional Mortgagee (on a Residential Lot) do not impose requirements on any policy required hereunder, the term, amount and coverage of such policy shall be no less than that which is reasonable for the nature of the Project and its insurable assets.

15.3. TEN (10) DAY CANCELLATION NOTICE.

All insurance policies shall provide that they shall not be cancelable by the insurer without first giving at least ten (10) days' prior notice in writing to the Association.

15.4. TRUSTEE; ADJUSTMENT OF LOSSES.

Each Owner, by acceptance of a deed or other conveyance to his or her Residential Lot, hereby agrees:

15.4.1. TRUSTEE.

That all insurance proceeds payable under **Sections 15.1.1, and 15.1.2** above, may be paid to a trustee (the "Trustee"), to be held and expended for the benefit of the Association, the Owners, Mortgagees and others, as their respective interests shall appear. The Trustee shall be a commercial bank or other institution with trust powers in the County that agrees in writing to accept such trust.

15.4.2. ADJUSTMENT OF LOSSES.

That the Board may act as attorney-in-fact on behalf of each Owner to negotiate and agree on the value and extent of any loss under any policy carried pursuant **Section 15.1** above, and shall have full right and authority to compromise and settle any claims or enforce any claim by legal action or otherwise and to execute releases in favor of any insured.

15.5. DUTY TO CONTRACT.

If repair or reconstruction is authorized as a result of damage or destruction, the Board and any the duly appointed Trustee shall have the duty to contract for such work as provided for in pursuant to **Section 16.4** hereinafter.

15.6. OWNERS' INSURANCE.

Each Owner may obtain and maintain, at no expense to the Association or other Owners, such fire, casualty and liability coverage as may be desired or as may be required by any Mortgagee of the Owner's Residential Lot.

15.7. FAILURE TO ACQUIRE.

The Association, and its directors and officers, shall have no liability to any Owner or Mortgagee if, after a good faith effort, it is unable to obtain the liability insurance required hereunder, because the insurance is no longer available or, if available, can be obtained only at a cost that the Board in its sole discretions determines is unreasonable under the circumstances, or the Members fail to approve any assessment increase needed to fund the insurance premiums. In such event, the Board immediately shall notify each Member and any First Mortgagee entitled to notice that the liability insurance will not be obtained or renewed.

15.8. PERIODIC REVIEW OF POLICIES.

The Board shall review the adequacy of all insurance as least once every year. The review shall include a replacement cost appraisal of all insurable Association Property and Association owned Improvements without respect to depreciation. The Board shall adjust and modify the policies to provide coverage and protection that is customarily carried by and reasonably available to prudent owners of similar property in the area in which the Project is situated.

15.9. DISTRIBUTION TO MORTGAGEES.

Any Mortgagee has the option to apply insurance proceeds payable directly to an Owner on account of a Residential Lot as provided in this Declaration in reduction of the obligation secured by the Mortgage of such Mortgagee.

15.10. INSPECTION OF POLICIES.

Copies of all Association insurance policies (or certificates thereof showing the premiums thereon to have been paid) shall be retained by the Association and be open for inspection by Owners at any reasonable times.

15.11. INSURANCE INFORMATION TO MEMBERS.

The Board shall annually prepare and distribute or caused to be prepared and distributed within *sixty (60)* days preceding the beginning of the Association's fiscal year, a summary of the Association's insurance policies pursuant to the requirements of Civil Code Section 1365(e), as it may be amended from time to time, or, the extent that any of the information required to be disclosed pursuant to said Civil Code Section is specified in the insurance policy declaration page, the Board may meet the requirements thereof by making copies of that page(s) and distributing it to all Members.. Any Association Member may, upon request and provision of reasonable notice, review the Association's actual insurance policies and, upon request and payment of reasonable duplication charges, obtain copies of those policies.

16. DAMAGE OR DESTRUCTION**16.1. RESTORATION DEFINED.**

As defined in this Article, the term "*restore*" shall mean repairing, rebuilding or reconstructing damaged Improvements located within the Property for which the Association is responsible pursuant to this Declaration to substantially the same condition and appearance in which it existed prior to fire or other casualty damage.

16.2. INSURED CASUALTY.

If any Improvement is damaged or destroyed from a risk covered by the insurance required to be maintained by the Association, then the Association shall, to the extent permitted under existing laws, restore the Improvement to the same condition as it was in immediately prior to the destruction. If such damage or destruction occurs prior to the date of completion of construction the Project by Declarant, then, such construction shall be completed in coordination with any construction required or deemed necessary to be completed by Declarant. If fire or other casualty damage extends to any Improvement which is so insured, the Association shall proceed with the filing and adjustment of all claims arising under the existing insurance policies. The insurance proceeds shall be paid to and held by the Association or its Trustee.

16.3. RESTORATION PROCEEDS.

The costs of restoration of damaged Improvement shall be funded first by any insurance proceeds paid to the Association under existing insurance policies. If the insurance proceeds exceed the costs of restoration, the excess proceeds shall be paid to the reserve accounts of the Association and held for the benefit of the Association. If the insurance

proceeds are insufficient to restore the damaged Improvement, the Board shall then add to the insurance proceeds all reserve account funds designated for the repair or replacement of the Improvement(s) which have been damaged. If the total funds then available are sufficient to restore the damaged Improvement, the damaged Improvement shall be restored. If the aggregate amount of insurance proceeds and such reserve account funds are still insufficient to pay the total costs of restoration, a **Special Assessment** against all Owners shall be levied by the Board (but without the consent or approval of Members, despite any contrary provisions in this Declaration or other Project Documents) for the cost of repairing and reconstructing Improvements to the extent insurance proceeds are unavailable.

16.4. REBUILDING CONTRACT.

The Board or its authorized representative shall obtain bids from at least two (2) licensed and reputable contractors and shall accept the repair and reconstruction work from whomever the Board determines to be in the best interests of the Members. The Board shall have the authority to enter into a written contract with the contractor for such repair and reconstruction, and the insurance proceeds held by the Trustee shall be disbursed to the contractor according to the terms of the contract. It shall be the obligation and duty of the Board to take all steps necessary to contract for, assure the commencement and completion of authorized repair and reconstruction at the earliest possible date. Such construction shall return the Project to substantially the same condition it was in prior to such damage or destruction and shall be carried out pursuant to all applicable laws and ordinances.

16.5. MINOR REPAIR AND RECONSTRUCTION.

The Board shall have the duty to repair and reconstruct Improvements, without the consent of the Members and irrespective of the amount of available insurance proceeds, in all cases of partial destruction when the estimated cost of repair and reconstruction does not exceed **One-Hundred-Thousand Dollars (\$100,000.00)**, which amount shall be increased three percent (3%) per annum on a compounded basis commencing on the anniversary date of the recordation of this Declaration and each anniversary date thereafter. The Board is expressly empowered to levy a **Special Assessment** for the cost of repairing and reconstructing such improvements to the extent insurance proceeds are unavailable (but without the consent or approval of Members, despite any contrary provisions in this Declaration or other Project Documents).

16.6. BOARD'S ACTION.

The Board shall have the exclusive right to participate in and represent the interests of all Owners in any proceedings affecting the Project relating to the rebuilding or any portion of the Project, including, without limitation, proceedings with any governmental or quasi-governmental agency to obtain permits or approvals for any rebuilding, and no Owner shall have the right to directly participate therein, except that, prior to the conversion of the Class B membership in the Association to Class A membership, Declarant shall have the right to directly participate therein.

16.7. DAMAGE TO DWELLINGS.

Restoration and repair of any damage to the Dwelling on a Residential Lot, or other Improvements thereon, shall be made by and at the individual expense of the Owner of such Residential Lot. In the event of a determination by an Owner not to rebuild the Dwelling, the Residential Lot shall be landscaped and maintained in an attractive and well-kept condition by the Owner thereof. All such repair and restoration shall be completed as promptly as practical and in a lawful and workmanlike manner, in accordance with plans approved by the Board as provided herein.

17. CONDEMNATION; EMINENT DOMAIN.**17.1. CONDEMNATION OF ASSOCIATION PROPERTY.**

If at any time all or any portion of the Association Property, or any interest therein, is taken for any public or quasi-public use, under any statute, by right of eminent domain or by private purchase in lieu of eminent domain, the entire award in condemnation, shall be paid to the Association and shall be used for restoring the balance of the Project. To the extent the Association is not permitted by the governmental agency to rebuild, then such award shall be apportioned among the Owners by court judgment or by agreement between the condemning authority and each of the affected Owners in the Project, the Association and their respective Mortgagee to such area as their interests may appear according to the fair market values of each Residential Lot at the time of destruction, as determined by independent appraisal. Said appraisal shall be made by a qualified real estate appraiser with an MAI certificate or the equivalent, which appraiser shall be selected by the Board. Any such award to the Association shall be deposited into the maintenance and operation account of the Association. The Association shall represent the interests of all Owners of any proceeding relating to such condemnation.

17.2. CONDEMNATION OF A RESIDENTIAL LOT.

In the event of any taking of a Residential Lot, the Owner (and such Owner's Mortgagees as their interests may appear) of the Residential Lot shall be entitled to receive the award for such taking and, after acceptance thereof, such Owner and such Owner's Mortgagee(s) shall be divested of all further interest in the Residential Lot and membership in the Association, if such Owner shall vacate such Owner's Residential Lot as a result of such taking. In such event said Owner shall grant his or her remaining interest as a Member in the Association appurtenant to the Residential Lot so taken to the other Members.

18. RIGHTS OF MORTGAGEES

18.1. CONFLICT.

Notwithstanding any contrary provision contained elsewhere in the Project Documents, the provisions of this Article shall control with respect to the rights and obligations of Mortgagees as specified herein.

18.2. MORTGAGEE PROTECTION.

A breach of any of the conditions contained in this Declaration shall not defeat nor render invalid the lien of any First Mortgage made in good faith and for value as to any Residential Lot in the Project; provided, however, that the conditions contained in this Declaration shall be binding upon and effect against any Owner of a Residential Lot if the Residential Lot is acquired by foreclosure, trustee's sale or otherwise.

18.3. LIABILITY FOR UNPAID ASSESSMENTS AND COMMON EXPENSES.

Any First Mortgagee who obtains title to a Residential Lot pursuant to the remedies provided in the First Mortgage (except upon a voluntary conveyance to the First Mortgagee) or as a result of judicial or power-of-sale foreclosure of the First Mortgage, shall take title property free of any claims for unpaid assessments or charges for Common Expenses against the Residential that became due prior to the acquisition of title to such Residential Lot by the First Mortgagee.. Such unpaid assessment or charges for Common Expenses, however, shall be deemed to be a Common Expenses collectible from all of the Residential Lots including such First Mortgagee, its successors and assigns, and subject to the provisions for the collection of assessments contained in this Declaration, as may be amended by statute.

18.4. PAYMENT OF TAXES AND INSURANCE.

First Mortgagees may, jointly, singly or severally: (a) pay taxes or other charges which are in default and which may or have become a charge against any Residential Lot or the Association Property or Improvements situated thereon, unless the taxes or charges are separately assessed against the Owners, in which case, the rights of First Mortgagees shall be governed by the provisions of their Mortgages; (b) pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for the Association Property. First Mortgagees making such payments shall be owed immediate reimbursement from the Owner of the Residential Lot for payments that are solely attributable to charges against such Owner's Residential Lot, or from the Association as to payments that are solely attributable to the Association Property or other Improvements owned by the Association. This provision shall constitute an agreement by the Association for the express benefit of all First Mortgagees, and upon the request of any First Mortgagee, the Association shall execute and deliver to such First Mortgagee a separate written agreement embodying this provision.

18.5. AGREEMENT FOR MANAGEMENT.

Any management agreement of the Project, or any portion thereof, and any other contract providing for services by the Declarant, shall be terminable for cause upon thirty (30) days written notice, and without cause or payment of a termination fee upon ninety (90) days, written notice and shall have a term of not more than one (1) year, renewable with the consent of the Association and the management agent. The Board shall not terminate professional management of Project and assume self-management, when professional management had been required previously by an Eligible Mortgage Holder, without the prior written approval of Mortgagees holding seventy-five percent (75%) or more of the First Mortgages on Dwellings.

18.6. NOTIFICATION TO ELIGIBLE MORTGAGEE HOLDER.

Upon written request to the Association, identifying the name and address of the holder, insurer or guarantor and the Residential Lot number or address, any Eligible Mortgage Holder or Eligible Insurer will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Project or the Residential Lot insured or guaranteed by such Eligible Mortgage Holder or Eligible Insurer;

(b) Any default in the performance by an Owner of any obligation under the Project Documents not cured within sixty (60) days;

(c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and

(d) Any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders as required by the Project Documents.

18.7. NO RIGHT OF FIRST REFUSAL.

This Declaration neither contains nor shall be amended to contain any provision creating a "*right of first refusal*" to the Association before a Residential Lot can be sold. Should any such rights nevertheless be created in the future, such rights shall not impair the rights of any First Mortgagee to: (a) foreclose or take title to a Residential Lot pursuant to the remedies provided in the First Mortgage, (b) accept a deed (or assignment) in lieu of foreclosure in the event of a default by a Mortgagor, or (c) sell or lease a Residential Lot acquired by the Mortgagee.

18.8. ACTION REQUIRING MORTGAGEE APPROVAL.

Unless at least sixty-seven percent (67%) of the Eligible Mortgage Holders (based upon one (1) vote for each Mortgage owned), or sixty-seven percent (67%) of the Owners (other than Declarant) have given their prior written approval, the Association and/or the Owners shall not be entitled to:

(a) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Association Property, or any property owned, directly or indirectly, by the Association for the benefit of the Residential Lots and the Owners (the granting of easements for public utilities or other public purposes consistent with the intended use of the Association

Property by the Association and Owners shall not be deemed a transfer in the meaning of this clause);

(b) By act or omission change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner;

(c) By act or omission, change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance or exterior maintenance of Residential Lots, the maintenance of the Association Property; or

(d) Fail to maintain fire and extended coverage on insurable Association Property on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement costs); or

(e) Use hazard insurance proceeds for losses to any property or improvements owned by the Association other than for the repair, replacement or reconstruction of such Common property and improvements.

18.9. PRIORITY OF PROCEED OR AWARD DISTRIBUTION.

Any other provision herein contained to the contrary notwithstanding, no provision of this Declaration or any other Project Document shall give a Residential Lot Owner, or any other party, priority over any rights of the First Mortgagee of a Residential Lot pursuant to its mortgage in the case of a distribution to such Lot Owner of insurance proceeds or condemnation awards for losses to or a taking of the of Association Property.

18.10. INSPECTION OF PROJECT DOCUMENTS, BOOKS AND RECORDS.

The Association shall make available to Eligible Mortgage Holders, current copies of the Project Documents and the books, records and financial statements of the Association. "Available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances.

18.11. SELF-MANAGEMENT.

The vote or written consent of sixty-seven percent (67%) of the total voting power of the Association and fifty-one percent (51%) of the Eligible Mortgage Holders shall be required to assume self-management of the Project if professional management of the Project has been required by an Eligible Mortgage Holder at any time. Notwithstanding the foregoing, the Association shall not be permitted to elect to self-manage the Project for a period of three (3) years after the first conveyance of a Residential Lot to a Retail Buyer under the authority of a Public Report.

18.12. VOTING RIGHTS ON DEFAULT.

In case of default by any Owner in any payment under the terms of any First Mortgage encumbering such Owner's Residential Lot, or the promissory noted secured by the Mortgage, the Mortgagee or its representative, on giving written notice to such defaulting Owner or Owners, and placing of record a "Notice of Default," is hereby granted a proxy and can exercise the voting rights of such defaulting Owner attributable to such Residential Lot at any

regular or special meetings of the Members held during such time as such default may continue.

18.13. NON-CURABLE BREACH.

Any Mortgagee who acquires title to a Residential Lot by foreclosure or by deed-in-lieu of foreclosure or assignment-in-lieu of foreclosure shall not be obligated to cure any breach of this Declaration that is non-curable or of a type that is not practical or feasible to cure. A "breach", as used herein, shall not apply to any lien of or obligation for assessments owed to the Association which became due prior to the acquisition of title by deed or assignment in lieu of foreclosure.

18.14. LOAN TO FACILITATE.

Any First Mortgage given to secure a loan to facilitate the resale of a Residential Lot after acquisition by foreclosure or by a deed-in-lieu of foreclosure or by an assignment-in-lieu of foreclosure shall be deemed to be a loan made in good faith and for value and entitled to all of the rights and protections of this Article.

18.15. DOCUMENTS TO BE MADE AVAILABLE.

The Association shall make available to First Mortgagees and to holders, insurers or guarantors of any First Mortgage, current copies of the Project Documents, and the books, records and financial statements of the Association. "Available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances. Eligible Mortgage Holders who represent at least fifty-one percent (51%) or more of the Residential Lots subject to a Mortgage shall be entitled to have an audited statement for the immediately preceding fiscal year prepared at their own expense, if one is not otherwise available. Any financial statement so requested shall be furnished within a reasonable time following the request.

In the event that fifty (50) or more Lots have been made subject to this Declaration, then the Association shall make available to the holder, insurer or guarantor of any First Mortgage, an audited financial statement on submission of a written request for the same. The audited financial statement must be made available within one hundred twenty (120) days of the Association's fiscal year end.

In the event fewer than fifty (50) Lots have been made subject to this Declaration, then a First Mortgagee shall be entitled to have an audited financial statement, provided the same is prepared at the Mortgagee's sole expense.

18.16. MORTGAGEES FURNISHING INFORMATION.

Any Mortgagee can furnish information to the Board concerning the status of any Mortgage.

18.17. FINANCIAL STATEMENT.

Any First Mortgagee shall be entitled, on written request therefor, to have an audited financial statement for the immediately preceding fiscal year prepared at its own

expense if one is not otherwise available. Such statement shall be furnished within a reasonable time following such request.

18.18. TERMINATION WITHOUT SUBSTANTIAL DESTRUCTION.

Neither the Association nor Owners may elect to terminate the legal status of the Project for reasons other than substantial destruction or condemnation of the Project without the written consent of Eligible Mortgage Holders who represent at least sixty-seven percent (67%) of the votes of the mortgaged Residential Lots.

19. AMENDMENTS

19.1. AMENDMENT PRIOR TO FIRST CONVEYANCE.

Prior to the first conveyance of a Residential Lot to a Person other than Declarant, this Declaration and any amendments to it may be amended in any respect or revoked by the execution by Declarant and any Mortgagee of record, of an instrument amending or revoking this Declaration. The amending or revoking instrument shall make appropriate reference to this Declaration and its amendments, be acknowledged, and recorded in the Office of the County Recorder.

19.2. AMENDMENTS AFTER FIRST CONVEYANCE.

Except as may be in accordance with the provisions of California Civil Code Sections 1355 and 1368 or any amendment or successor statute thereto, during the period of time after the conveyance of the first Residential Lot to a Person other than Declarant, and prior to conversion of the Class B membership in the Association to Class A membership, this Declaration may be amended at any time and from time to time by the vote or written assent of **sixty-seven percent (67%)** of the total voting power of each class of Members of the Association. After conversion of the Class B membership in the Association to Class A membership, this Declaration may be amended at any time and from time to time by the vote or written assent of **(i) sixty-seven percent (67%)** of the total voting power of the Association, and **(ii) sixty-seven percent (67%)** of the voting power of the Members of the Association other than Declarant. However, the percentage of voting power necessary to amend a specific clause or provision shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any such amendment shall become effective upon the recording with the Office of the County Recorder of either a **Certificate of Amendment** or **Declaration of Amendment** signed and acknowledged by the President or Vice President of the Association and the Secretary or Assistant Secretary of the Association, or by the incorporator of the Association, in the event that no Board of Directors has yet been elected to establish officers of the Association, certifying that such votes or written consent have been obtained. For the purposes of recording such instrument, the President or Vice-President and Secretary or Assistant Secretary, or incorporator of the Association are hereby granted an irrevocable power of attorney to act for and on behalf of each and every Owner in certifying and executing and recording said amendment with the Office of the County Recorder. No material amendment may be made to this Declaration

without the additional prior written consent of Eligible Mortgage Holders who represent at least fifty-one percent (51%) of the votes of Residential Lots which are subject to mortgages held by such Eligible Mortgage Holders. "Material amendment" shall mean any amendments to provisions of this Declaration which establish, provide for, govern or regulate any of the following:

- (a) Voting rights;
- (b) Increases in assessments that raise the previously assessed amount by more than 25%, assessment liens, or the priority of assessment liens;
- (c) Reduction in reserves for maintenance, repair, and replacement of the Association Property;
- (d) Responsibility for maintenance and repairs;
- (e) Reallocation of interests in the Project, or rights to their use;
- (f) Redefinition of the boundaries of any Residential Lot;
- (g) Convertibility of Residential Lots into Association Property or visa versa;
- (h) Expansion or contraction of the Project, or the addition, annexation or withdrawal of property to or from the Project;
- (i) Insurance or fidelity bond coverage;
- (j) Leasing of Dwellings;
- (k) Imposition of any restrictions on an Owner's right to sell or transfer his or her Dwelling;
- (l) Any decision by the Board to establish self-management when professional management had been required previously by the Project Documents or by an Eligible Mortgage Holder;
- (m) The restoration or repair of the Project (after hazard damage or partial condemnation) in a manner other than that specified in the Project Documents;
- (n) Any action to terminate the legal status of the Project after substantial destruction or condemnation occurs; or
- (o) Any provisions that expressly benefit Mortgage Holders, insurers or guarantors.

An addition or amendment to this instrument shall not be considered material if it is for the purpose of correcting technical errors, or for clarification only, or if it is made pursuant

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to an amendment of or new statutory law; and each Owner and Mortgagee agrees that such Owner's and/or Mortgagee's interest in a Residential Lot and/or the Property shall be subordinate to any such correctional or clarification addition or amendment instrument that is recorded in the Office of the County Recorder. The President or Vice-President and Secretary or Assistant Secretary, or the incorporator of the Association are hereby granted an irrevocable power of attorney to act for and on behalf of each and every Owner and Mortgagee in certifying and executing and recording such correctional or clarification addition or amendment instrument in the Office of the County Recorder.

With the exception of the VA and FHA, any Eligible Mortgage Holder or Eligible Insurer who receives a written request to consent to additions or amendments requiring consent under this provision who does not deliver or post to the requesting party a negative response within thirty (30) days after such receipt shall be deemed to have consented to such request, provided that notice was delivered by certified or registered mail, with a "return receipt" requested.

19.3. APPROVAL BY FHA AND VA.

So long as there is a Class B membership, and provided that the Project has been approved by the FHA and/or VA, the following shall require the prior approval of FHA and/or VA: annexation of additional properties, de-annexation, mergers and consolidations, any special assessments and any amendment of this Declaration. A draft of any amendment to this Declaration should be submitted to the VA for its approval prior to its approval by the membership of the Association.

19.4. BUSINESS AND PROFESSIONS CODE SECTION 11018.7.

All amendments or revocations of this Declaration shall comply with the provisions of California Business and Professions Code Section 11018.7, or any successor statutes or laws, to the extent said Section is applicable.

19.5. RELIANCE ON AMENDMENTS.

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

20. ENFORCEMENT; ARBITRATION; DECLARANT DISPUTES; MEDIATION; JUDICIAL REFERENCE; REQUIREMENTS PRIOR TO CERTAIN LEGAL ACTIONS

20.1. RIGHT TO ENFORCE.

Subject to the "prefiling requirements" of the provisions of California Civil Code Section 1354, as it may be amended from time to time, the Association and/or an Owner or Owners, including Declarant, shall have the right to enforce, by any proceeding at law, in equity or pursuant to the provisions of this Declaration, all restrictions, conditions, covenants,

reservations, liens and charges now or hereafter imposed by this Declaration. The foregoing notwithstanding, by mutual agreement, the parties to any action hereunder may elect to use arbitration for resolution of any matter, as more fully described in the Section hereinafter entitled "*Arbitration.*"

20.2. BOARD TO PROVIDE ANNUAL NOTICE TO MEMBERS OF PREFILING REQUIREMENTS OF CIVIL CODE SECTION 1354.

The Board shall provide or cause to be provided annually to Members of the Association a summary ("*Annual Prefiling Summary*") of the provisions of California Civil Code Section 1354, which provides, among other things, that prior the filing of a civil action by either the Association or a Member of the Association of a civil action solely for declaratory relief or injunctive relief, or for declaratory relief or injunctive relief in conjunction with a claim for monetary damages, other than Association assessments not in excess of five thousand dollars (\$5,000.00), related to the enforcement of the Project Documents, that the parties shall endeavor to submit their dispute to a form of alternative dispute resolution such as mediation or arbitration. The Annual Prefiling Summary shall be provided either at the time that the proforma operating budget is distributed in accordance with the provisions contained in the Bylaws, or in a manner specified in Section 5016 of the Corporations Code, as it may from time to time be amended. The Annual Prefiling Summary shall include the following language: "*Failure by any Member of the Association to comply with the prefiling requirements of Section 1354 of the Civil Code may result in the loss of your right to sue the Association or another Member of the Association regarding enforcement of the governing documents.*"

20.3. NUISANCE.

The result of every act or omission, whereby any provision, condition, restriction, covenants, easement, or reservation contained in this Declaration is violated in whole or in part, is hereby declared to be and constitute a nuisance, and every remedy allowed by law or equity against a nuisance, either public or private, shall be applicable against every such result and may be exercised by the Association or any Member. Each remedy provided by this Declaration shall be cumulative and not exclusive.

20.4. FAILURE TO ENFORCE.

Failure by the Association, any Owner, including Declarant, to enforce any provisions of this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

20.5. VIOLATION OF LAW.

Any violation of any state, municipal or local law, ordinance or regulation pertaining to the ownership, occupation or use of any Residential Lot within the Project is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures herein set forth.

20.6. ARBITRATION.

Unless alternative arbitration procedures are mutually agreed upon between the parties -- such as, but not limited to, the Commercial Arbitration Rules of the **American Arbitration Association ("AAA")** in effect at the time demand for arbitration is made, or the procedures available through **Judicial Arbitration Mediation Services, Inc. ("JAMS")** -- the arbitration procedure to be adhered to by the parties shall be those rules, procedures and powers concerning arbitration as set forth in **Part 3, Title 9, of the California Code of Civil Procedure which includes Section 1280, et seq. ("CCP 1280 et seq.")** and any successor, replacement or additional provision of said Title as enacted into law. Any party shall have the full right of discovery as provided for by the California Code of Civil Procedure in effect at the time of the arbitration. In the event that any alternative arbitration procedure as noted hereinbefore does not provide for a specific protocol, the provisions therefor contained within CCP 1280 et seq. shall be utilized. The decision of the arbitrator shall be conclusive, final, and binding upon all of the parties, their heirs, executors, administrators, successors, assigns, officers, directors and shareholders, as applicable. Judgment upon the decision of the arbitrator may be entered in any court of competent jurisdiction. The prevailing party(ies) (defined in the Section immediately hereafter) in such arbitration shall be entitled to costs of such arbitration and such attorney's fees as the arbitrator may adjudge reasonable and proper.

20.7. PREVAILING PARTY.

The "*prevailing party*" shall be the party who is entitled to recover his costs of arbitration, whether or not the arbitration proceeds to final judgment. A party not entitled to recover his costs shall not recover attorney's fees.

20.8. DECLARANT DISPUTES.

Any disputes between the Association (or any Owners) and the Declarant or any director, officer, partner, employer, subcontractor or agent of the Declarant relating to this Declaration, the use or condition of the Property, and/or the design, construction and installation of any improvements located thereon shall be subject to the following provisions:

20.8.1. DECLARANT NOTICE.

Any Person with a claim against the Declarant or any director, officer, partner, employer subcontractor or agent thereof (collectively the "**Declarant**" for purposes of this section) shall notify the Declarant in writing of the claim, which writing shall describe the nature of the claim and the proposed remedy (the "**Claim Notice**").

20.8.2. RIGHT TO INSPECT AND RIGHT TO CORRECTIVE ACTION.

Within a reasonable period after receipt of the Claim Notice, which period shall not exceed sixty (60) days, the Declarant and the claimant shall meet at a mutually-acceptable place within the Development to discuss the claim. At such meeting or at such other mutually agreeable time, Declarant and Declarant's representatives shall have full

access to the Property that is subject to the claim for the purposes of inspecting the Property. The parties shall negotiate in good faith in an attempt to resolve the claim. If the Declarant elects to take any corrective action, Declarant and Declarant's representatives and agents shall be provided full access to the Development to take and complete corrective action.

If the claim is subject to the provisions of **Civil Code Section 1375** as it may be amended from time to time, compliance with the procedures of **Civil Code Section 1375(b), (c), (d) and (e)** shall satisfy the requirements of **Sections 20.8.1 and 20.8.2** above.

20.8.3. MEDIATION.

If the parties cannot resolve the claim pursuant to the procedures described in **Section 20.8.2** above (including, if applicable, **Civil Code Section 1375** procedures), the matter shall be submitted to mediation pursuant to the mediation procedures adopted by the **American Arbitration Association** or any successor thereto or to any other entity offering mediation services that is acceptable to the parties. No person shall serve as a mediator in any dispute in which the person has any financial or personal interest in the result of the mediation, except by the written consent of all parties. Prior to accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or prevent a prompt commencement of the mediation process.

Within ten (10) days at the selection of the mediator, each party shall submit a brief memorandum setting forth its position with regard to the issues that need to be resolved. The mediator shall have the right to schedule a pre-mediation conference, and all parties shall attend unless otherwise agreed. The mediation shall be commenced within ten days following the submittal of the memoranda and shall be concluded within fifteen (15) days from the commencement of the mediation unless the parties mutually agree to extend the mediation period. The mediation shall be held in the county in which the Development is located or such other place as is mutually acceptable by the parties.

The mediator has discretion to conduct the mediation in the manner in which the mediator believes is most appropriate for reaching a settlement of the dispute. The mediator is authorized to conduct joint and separate meetings with the parties and to make oral and written recommendations for settlement, whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the dispute, provided the parties agree and assume the expenses of obtaining such advice. The mediator does not have the authority to impose a settlement on the parties.

Prior to the commencement of the mediation session, the mediator and all parties to the mediation shall execute an agreement pursuant to **California Evidence Code Section 1152.6(c)** or successor statute in order to exclude the use of any testimony or evidence produced at the mediation in any subsequent dispute resolution forum, including, but not limited to, court proceedings, reference proceedings, or arbitration hearings. Pursuant to **California Evidence Code Section 1152.6(a)**, the agreement shall specifically state:

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Evidence of anything said or of any admission made in the course of the mediation is not admissible evidence, and disclosure of any such evidence shall not be compelled in any civil action in which, pursuant to law, testimony can be compelled to be given. Unless the document provides otherwise, no document prepared for the purpose of, or in the course of, or pursuant to the mediation, or copy thereof, is admissible in evidence; and disclosure of any such document shall not be compelled in any civil action in which, pursuant to law testimony can be compelled to be given.

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

The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including required traveling and other expenses of the mediator, and the expenses of any witnesses or the cost of any proofs or expert advice produced at the direct request of the mediator, shall be borne equally by the parties unless they agree otherwise.

20.8.4. JUDICIAL REFERENCE.

If the parties cannot resolve the claim pursuant to the procedures described in **Section 20.8.3** above, prior to the commencement of any litigation in any court of competent jurisdiction, the parties shall negotiate in good faith regarding the submission of the claim to judicial reference pursuant to **Code of Civil Procedure Sections 638 through 645.1, inclusive** 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. Declarant shall not be required to participate in the judicial reference proceeding unless it is satisfied all necessary and appropriate parties will participate.

The general referee shall have the authority to try all issues, whether of fact or law, and to report a statement of decision. The parties shall use the procedures adopted by the American Arbitration Association for judicial reference 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.

- (a) The proceedings shall be heard in the county in which the Development is located;
- (b) The referee shall be an attorney or retired judge unless the parties agree otherwise

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- (c) Any dispute regarding the selection of the referee shall be resolved by the entity providing the reference services or, if no entity is involved, by the court with appropriate jurisdiction;
- (d) The referee may require one or more pre-hearing conferences;
- (e) 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;
- (f) The referee shall have the power to hear and dispose of motions in the same manner as a trial court judge;
- (g) The referee shall apply the rules of law, including the rules of evidence, unless expressly waived by both parties;
- (h) A stenographic record of the hearing shall be made, provided, that the record shall remain confidential except as may be necessary for post-hearing motions and any appeals;
- (i) The referee's statement of decision shall contain findings of fact and conclusions of law to the extent applicable; and
- (j) The referee shall have the authority to rule on all post-hearing motions in the same manner as a trial judge.

If the Association and or Owner has complied with the requirements of **Sections 20.8.1, 20.8.2, 20.8.3 and 20.8.4** above and either party elects not to participate in the judicial reference proceeding because all necessary and appropriate parties will not participate, the Association, any Owner, or Declarant may bring an action in any court of competent jurisdiction to resolve the dispute. The Association and each Owner covenants that each shall forbear from commencing any litigation against the Declarant without complying with the procedures described **Sections 20.8.1, 20.8.2, 20.8.3 and 20.8.4** above. If the Association or any Owner breaches the foregoing covenant, Declarant may obtain an appropriate order compelling the Association and/or Owner to comply with the procedures described in **Sections 20.8.1, 20.8.2, 20.8.3 and 20.8.4**. The procedures set forth in **Sections 20.8.1, 20.8.2, 20.8.3 and 20.8.4** above shall not apply to any action taken by the Association against Declarant for delinquent assessments, which shall be governed by **Section 9.22** or in any action involving any **Association Area Improvement bonds**, which shall be governed by the provisions contained in the Article entitled **ENFORCEMENT OF BONDED OBLIGATIONS** of the **BYLAWS**. Furthermore, nothing herein shall prevent the Association or any Owner from commencing any legal action which, in the good faith determination of the Board or Owner is necessary to preserve any Association's or Owner's rights under any applicable statute of limitations, provided that the Association or Owner shall take no further steps in prosecuting the action until it has complied with the procedures described in **Sections 20.8.1, 20.8.2, 20.8.3, 20.8.4**.

Notwithstanding any other provision herein to the contrary, in any dispute between the Association and/or any Owner and the Declarant each party shall bear its own attorneys fees.

Any and all communications by and between the parties, whether written or oral, which are delivered by the parties or their attorneys or other representatives in an effort to settle the claim shall be considered communications undertaken in the course of effecting a settlement or compromise and, as such, shall not be admissible as the admission on the part of any party or any representative or agent of that party to be utilized for any such purpose in any action or proceeding.

Notwithstanding the provisions of this section, the Association, any Owner, or the Declarant shall not be obligated to participate in the mediation or judicial reference proceedings described herein if, prior to the commencement of the proceeding, that party makes a good faith determination supported by valid and sufficient reasons that such participation is not in that party's interest and notifies the other party in writing of its determination not to participate.

Nothing herein shall be considered to reduce or extend any applicable statute of limitations.

20.9. ASSOCIATION CLAIMS.

In order to assure sufficient funds to effect proper construction, reconstruction, repair or replacement of Improvements within the Project, in any litigation, mediation, conciliation, settlement, administrative proceeding, arbitration or any other form of dispute resolution (hereafter collectively "*Proceeding*") for a dispute, controversy or claim by the Association against any contractor, subcontractor, architect, materialman, or other person or entity involved in the planning, development or construction of the Project or any component part thereof, including Declarant, pertaining to the planning, development, construction or reconstruction of the Project or any component part thereof, not less than ninety percent (90%) of the amount actually awarded, if any, as a result of such Proceeding must be utilized by the Association, solely and exclusively, for the construction, reconstruction, repair or replacement of the Project, unless a lesser amount is approved by vote or written assent of seventy five percent (75%) of the total voting power of the Association, other than the Declarant.

20.10. MEETING AND NOTICE TO MEMBERS PRIOR TO CERTAIN LEGAL ACTIONS BY THE BOARD.

Notwithstanding anything contained in this Declaration to the contrary, the Board shall not institute any significant legal proceeding, including any mediation, arbitration or administrative proceeding, against any person without (i) conducting a Special Meeting of Members to discuss the nature of the proposed proceeding, and (ii) providing the Members written notice of such Special Meeting, which notice shall be sent not less than thirty (30) days [Civil Code Section 1368.4] and not more than ninety (90) days before such Special Meeting. The notice shall describe the following:

- (a) The purpose of the proceeding;

- (b) The parties to the proceeding;
- (c) The anticipated cost to the Association (including attorneys' fees) in processing the proceeding;
- (d) The source of funds to process the proceeding (reserves or special or regular assessments)
- (e) The options, including civil action, that are available to address the purpose of the proceeding;
- (f) The place, day and hour of the meeting.

All such notices shall be delivered in accordance with the provisions therefor contain in the Section entitled "**Notice**" in the Article hereafter entitled **GENERAL PROVISIONS**.

20.10.1. DEFINITION OF "SIGNIFICANT LEGAL PROCEEDING."

For purposes herein, "significant legal proceeding" shall mean and refer to any legal proceeding in which it reasonably could be anticipated that any of the following events could occur:

- (a) The levy of a Special Assessment to fund all or any portion of the costs of the proceeding;
- (b) The expenditure of funds from the Association's reserves in connection with the proceeding in an amount in excess of five percent (5%) of the then current reserves;
- (c) The expenditure of funds from the Association's Regular Assessment operating account in connection with the proceeding in an amount in excess of five percent (5%) of the then current fiscal year's budgeted gross expenses;
- (d) The amount at issue is in excess of \$25,000;
- (e) The proceeding could have a material adverse effect on the ability to sell and/or refinance the Lots during the period in which the proceeding is being prosecuted; or
- (f) The matter relates to the filing of any civil action by the Association against the Declarant or other person for alleged damage to the Association Property, alleged damage to the Lots or portions thereof that the Association is obligated to maintain or repair, or alleged damage to the Lots or portions thereof that arises out of, or is integrally related to, damage to the Association Property or Lots or portions thereof that the Association is obligated to maintain or repair.

20.10.2. INAPPLICABILITY OF PROVISIONS; POWER TO TAKE ACTION.

Notwithstanding the foregoing, the notice to Members shall not apply:

- (a) To the filing or foreclosure of a lien levied by the Association for nonpayment of assessments and/or to the filing of an action in a court of competent jurisdiction to enforce such lien and/or collect such assessments;
- (b) To an action or proceeding to abate a nuisance and/or to effect the repair or maintenance of any element of the Association Property, or a Lot where an immediate threat to personal safety or of further property damage is involved;
- (c) To any dispute arising with a prospective purchaser which concerns or affects the close of escrow or matters concerning the close of escrow for the purchase of any Lot;
- (d) To enforce any completion bond as described in the Bylaws;
- (e) If the Board determines that an Association's claim or act with regard to an Action will be barred by an applicable statute of limitation or other exigency by reason of a delay in giving the notice, in which case the Board may take the necessary steps to commence the proceeding to preserve the rights of the Association; provided, however, that as soon as is reasonably practical thereafter, and not later than thirty (30) days following the commencement of the proceeding, the Board shall provide the Owners with notice as required herein and conduct the meeting therefor within ninety (90) days of such notice being given.

21. GENERAL PROVISIONS

21.1. SEVERABILITY.

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

21.2. EXTENSION OF DECLARATION.

Each and all of these covenants, conditions and restrictions shall terminate on December 31, 2055, after which date they shall automatically be extended for successive periods of ten (10) years, unless the Owners have executed and recorded at any time within six (6) months prior to December 31, 2055, or within six (6) months prior to the end of any such

ten (10) year period, in the manner required for the conveyance of real property, a writing in which it is agreed that said restrictions shall terminate on December 31, 2055, or at the end of any such ten (10) year period.

21.3. NOTICE.

In each instance in which notice is to be given to the Owner of a Residential Lot, the same shall be in writing and may be hand-delivered to the Owner, in which case personal delivery of such notice to one or two or more co-Owners of the Lot, or to any general partner of a partnership owning such Lot, shall be deemed delivered to all of the co-Owners or to the Partnership, as the case may be, and personal delivery of the notice to any officer or agent for the service of process of a corporation owning such Lot shall be deemed delivered to the corporation, or such notice may be delivered by United States Mail certified, or registered, postage prepaid, return receipt requested, addressed to the Owner of such Lot at the most recent address furnished by such Owner to the Secretary of the Board, or, if no such address shall have been furnished then to the street (or Post Office Box) address of such Lot, and any notice so deposited in the mail within San Diego County, California, shall be deemed delivered seventy-two (72) hours after such deposit.

21.4. CIVIL CODE SECTION 1368.

The Owner of a Residential Lot shall, as soon as practicable before transfer of title or execution of a real property sales contract therefor, as defined in California Civil Code Section 2985, provide copies of the Project Documents and such disclosures and certificates as may be required by Civil Code Section 1368, or any successor statute or law. The Association shall, if requested by said Owner, provide copies of the same to such Owner within ten (10) days of the mailing or delivery of the request.

21.5. NOTIFICATION OF SALE OR CONVEYANCE.

Concurrently with the consummation of the sale or other conveyance of any Residential Lot where the transferee becomes an Owner of the Lot, or within five (5) business days thereafter, the transferee shall notify the Association in writing of such sale or conveyance. Such notification shall set forth the name of the transferee and his or her Mortgagee and transferor, the common address of the Lot purchased by the transferee, the transferee's and the Mortgagee's mailing address, and the date of sale or conveyance. Before the receipt of such notification, any and all communications required or permitted to be given by the Association, the Board, the Board's delegated committee or the Association's manager shall be deemed to be duly made and given to the transferee if duly and timely made and given to the transferee's transferor. Mailing addresses may be changed at any time upon written notification to the Association. Notices shall be deemed given and given in accordance with the provisions of the Section herein entitled "Notice".

21.6. UNANNEXED PHASES - ENCUMBRANCE OF DECLARATION.

All of the Property described in EXHIBIT "A" hereto shall be encumbered by this Declaration upon recordation hereof in the Office of the County Recorder. Prior to the conveyance of a Residential Lot to a Retail Buyer in an Unannexed Phase under the authority

**SEA VISTA COLONY
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of a DRE Public Report, such Unannexed Phase shall be subject to the following limited Articles/Sections of this Declaration solely as they relate to or provide for the future annexation of an Unannexed Phase or any portion thereof and/or such easements and other rights of ingress, egress and access to and from an Unannexed Phase or for purposes of maintenance and the protection of the value thereof: **Article 1 - RECITALS, Article 2 -DEFINITIONS, Article 4 - EASEMENTS, Article 10 - ANNEXATION, Article 13- DEVELOPMENT RIGHTS, Article 19 - AMENDMENTS, Article 20 - ENFORCEMENT, and Article 20 - GENERAL PROVISIONS.** Upon the annexation of an Unannexed Phase, as provided in **Article 10** hereinabove, conveyance of the first Residential Lot in an Unannexed Phase to a Retail Buyer, such Phase and the Residential Lots therein, shall become an operative part of the Project, subject to all of the specific terms, covenants, conditions, and restrictions contained in this Declaration relating to the operation of the Association, the Residential Lots, and the Association Property.

21.7. EASEMENTS RESERVED AND GRANTED.

Any easements referred to in this Declaration shall be deemed reserved or granted, or both reserved and granted, by reference to this Declaration in a deed to any Residential Lot.

21.8. GOVERNING DOCUMENTS.

In the event of a conflict between this Declaration and any other Project Document, the provisions of this Declaration shall control.

21.9. SINGULAR INCLUDES PLURAL.

Whenever the context of this Declaration requires same, the singular shall include the plural and the masculine shall include the feminine.

21.10. LIBERAL CONSTRUCTION.

The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a residential community and for the maintenance of the Project. The titles or headings of the Articles or Sections of this Declaration have been inserted for convenience only and shall not be considered or referred to in resolving questions or interpretation or construction.

IN WITNESS WHEREOF, the undersigned, being Declarant herein, has executed this instrument on JANUARY 13, 1998.

DECLARANT:

SEA VISTA COLONY LTD.,
a California limited partnership

By: **HALLMARK COMMUNITIES, INC.,**
a California corporation
Its: GENERAL PARTNER

By: 

(Please Attach Proper Notary Certificate(s) of Acknowledgment)

SEA VISTA COLONY
DECLARATION OF CC&R'S

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EXHIBIT "A" - LEGAL DESCRIPTION

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PARCEL 1:

Lots 5 through 28, inclusive and Lot 30 of San Marcos Tract No. 336, in the City of San Marcos, County of San Diego, State of California, according to Map thereof No 12881, filed in the Office of the San Diego County Recorder, California, October 23, 1991.

PARCEL 2:

Parcel "A" as shown on that certain Adjustment Plat – Exhibit "B" of Certificate of Compliance recorded on August 12, 1997 as Document No. 1997-0384933 in the Office of the San Diego County Recorder, California, being:

A portion of Lots 1, 2 and 29 of San Marcos Tract No. 336, as filed in the Office of the County Recorder of San Diego County October 23, 1991, according to Map thereof No. 12881, in the City of San Marcos, County of San Diego, State of California, more particularly described as follows:

BEGINNING at the most Southwesterly corner of Lot 29 of said Map No. 12881, said point also being a Point on the North line of Sea Vista Place, as dedicated to public use; thence along the Northerly line of said Sea Vista Place, North 86°23'19" East a distance of 5.01 feet to the TRUE POINT OF BEGINNING; thence leaving said line, North 00°10'39" East a distance of 100.22 feet; thence North 86°23'19" West a distance of 54.12 feet; thence South 00°10'39" West a distance of 110.22 feet to a point on the Northerly line of said Sea Vista Place; thence along said line, South 86°23'19" West a distance of 54.12 feet to the TRUE POINT OF BEGINNING.

PARCEL 3:

Parcel "B" as shown on that certain Adjustment Plat – Exhibit "B" of Certificate of Compliance recorded on August 12, 1997 as Document No. 1997-0384933 in the Office of the San Diego County Recorder, California, being:

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EXHIBIT "A"

A portion of **Lots 1, 2 and 3 of San Marcos Tract No. 336**, as filed in the Office of the County Recorder of San Diego County **October 23, 1991**, according to **Map thereof No. 12881**, in the City of San Marcos, County of San Diego, State of California, more particularly described as follows:

BEGINNING at the most SouthWesterly corner of Lot 29 of said Map No. 12881, said point also being a point on the North line of Sea Vista Place, as dedicated to public use; thence along the Northerly line of said Sea Vista Place, North 86°23'19" East a distance of 59.13 feet to the TRUE POINT OF BEGINNING; thence leaving said line, North 00°23'19" East a distance of 100.22 feet; thence North 86°23'19" East a distance of 43.25 feet; thence South 03°36'41" East a distance of 100.00 feet to a point on the Northerly line of said Sea Vista Place; thence along said line, South 86°23'19" West a distance of 49.87 feet to the TRUE POINT OF BEGINNING.

PARCEL 4:

Parcel "C" as shown on that certain **Adjustment Plat – Exhibit "B"** of **Certificate of Compliance** recorded on **August 12, 1997** as **Document No. 1997-0384933** in the Office of the **San Diego County Recorder, California**, being:

A portion of **Lots 3 and 4 of San Marcos Tract No. 336**, as filed in the Office of the County Recorder of San Diego County **October 23, 1991**, according to **Map thereof No. 12881**, in the City of San Marcos, County of San Diego, State of California, more particularly described as follows:

BEGINNING at the most SouthWesterly corner of Lot 29 of said Map No. 12881, said point also being a point on the North line of Sea Vista Place, as dedicated to public use; thence along the Northerly line of said Sea Vista Place, North 86°23'19" East a distance of 109.00 feet to the TRUE POINT OF BEGINNING; thence leaving said line, North 03°36'41" West a distance of 100.00 feet; thence North 86°23'19" East a distance of 48.00 feet; thence North 85°43'25" East a distance of 2.00 feet; thence South 03°36'41" East a distance of 100.00 feet to a point on the Northerly line of said Sea Vista Place; thence along

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DECLARATION OF CC&R'S**

EXHIBIT "A"

said line, South 86°23'19" West a distance of 50.00 feet to the TRUE POINT OF BEGINNING.

PARCEL 5:

Parcel "D" as shown on that certain Adjustment Plat – Exhibit "B" of Certificate of Compliance recorded on August 12, 1997 as Document No. 1997-0384933 in the Office of the San Diego County Recorder, California, being:

A portion of Lot 4 of San Marcos Tract No. 336, as filed in the Office of the County Recorder of San Diego County October 23, 1991, according to Map thereof No. 12881, in the City of San Marcos, County of San Diego, State of California, more particularly described as follows:

BEGINNING at the most SouthWesterly corner of Lot 29 of said Map No. 12881, said point also being a point on the North line of Sea Vista Place, as dedicated to public use; thence along the Northerly line of said Sea Vista Place, North 86°23'19" East a distance of 159.00 feet to the TRUE POINT OF BEGINNING; thence leaving said line, North 03°36'41" West a distance of 100.00 feet; thence North 85°43'25" East a distance of 43.26 feet; thence South 06°53'03" East a distance of 100.00 feet to a point on the Northerly line of said Sea Vista Place, as dedicated to public use and a point on the arc of a non-tangent 422.00 foot radius curve concave northerly, a radial line to said point bears South 06°53'03" East; thence westerly along the arc of said curve through a central angle of 03°16'22" a distance of 24.11 feet; thence South 86°23'19" West a distance of 24.87 feet to the TRUE POINT OF BEGINNING.

PARCEL 6:

Parcel "E" as shown on that certain Adjustment Plat – Exhibit "B" of Certificate of Compliance recorded on August 12, 1997 as Document No. 1997-0384933 in the Office of the San Diego County Recorder, California, being:

A portion of Lot 29 of San Marcos Tract No. 336, as filed in the Office of the County Recorder of San Diego County October 23,

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EXHIBIT "A"

1991, according to Map thereof No. 12881, in the City of San Marcos, County of San Diego, State of California, more particularly described as follows:

BEGINNING at the most SouthWesterly corner of Lot 29 of said Map No. 12881, thence along the Westerly line thereof, North 00°10'39" East a distance of 184.94 feet to a point on the Northerly line thereof; thence along said Northerly line, South 89°21'41" East a distance of 341.99 feet; thence North 40°38'19" East a distance of 190.00 feet; thence South 89°21'41" East a distance of 300.00 feet; thence South 66°29'58" East a distance of 120.87 feet; thence leaving said line, South 23°39'02" West a distance of 12.14 feet to a point on the arc of a non-tangent 60.00 foot radius curve concave SouthWesterly, a radial line to said point bears North 23°39'02" East; thence Westerly along the arc of said curve through a central angle of 94°40'02" a distance of 99.14 feet to a point of reverse curvature with a 25.00 foot radius curve concave NorthWesterly, a radial line to said point bears South 71°01'00" East; thence Westerly along the arc of said curve through a central angle of 70°46'01" a distance of 30.88 feet; thence North 00°14'59" West a distance of 93.00 feet; thence South 89°45'01" West a distance of 162.50 feet; thence South 71°17'37" West a distance of 61.83 feet; thence South 67°44'16" West a distance of 115.37 feet; thence South 51°08'04" West a distance of 108.00 feet; thence South 58°31'09" West a distance of 41.67 feet; thence South 70°30'08" West a distance of 43.47 feet; thence South 71°45'36" West a distance of 45.02 feet; thence South 79°26'32" West a distance of 41.26 feet; thence South 85°43'25" West a distance of 45.26 feet; thence South 86°23'19" West a distance of 145.37 feet; thence South 00°10'39" West a distance of 100.22 feet to a point on the Northerly line of Sea Vista Place, as dedicated to public use; thence along said Northerly line, South 86°23'19" West a distance of 5.01 feet to the POINT OF BEGINNING.

SEA VISTA COLONY
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EXHIBIT "A"

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

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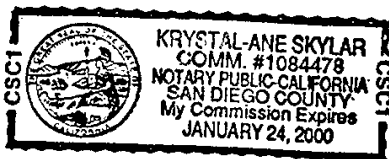
State of California

County of San Diego

On 1/13/98 before me, Krystal-Anne Skylar, Notary Public
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared MICHAEL J. HALL
Name(s) of Signer(s)

☒ 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.

Krystal-Anne Skylar
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: SEA VISTA CCR'S

Document Date: 1/13/98 Number of Pages: 76

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- ☐ Individual
- ☐ Corporate Officer
Title(s): _____
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney-in-Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
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Signer's Name: _____

- ☐ Individual
- ☐ Corporate Officer
Title(s): _____
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney-in-Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
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SUBORDINATION AGREEMENT

GROSSMONT BANK, a California Banking Corporation, Beneficiary under that certain Deed of Trust recorded July 23, 1997 as File No. 1997-0349213 of Official Records in the Office of the County Recorder of San Diego County, California, hereby declares that the lien and charge of said Deed of Trust is and shall be subordinate to the Declaration to which this Subordination Agreement is attached.

GROSSMONT BANK

BY: 

DATE: 1/15/98

NO. 987 P. 2/3

CHICAGO TITLE SD

JAN. 14. 1998 9:14AM

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

On January 20, 1998, before me, Jodi L. Kramer,
 Notary Public, personally appeared Walter Strangman,
 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.



Jodi L. Kramer
 Signature of Notary

c:\wp51\wpdata\notack

RECORDING REQUESTED BY AND

WHEN RECORDED MAIL TO:

Rita C. Grady, Trustee

Grady Family Trust

1915 Morena Blvd.

San Diego, CA 92110

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(Space Above This Line For Recorder's Use)

SUBORDINATION AGREEMENT

Rita C. Grady, Trustee of Trust A under the Grady Family Trust dated March 24, 1980, as successor in interest to San Marcos Lenders, L.P., a California limited partnership, Beneficiary under that certain Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing ("Deed of Trust") recorded July 23, 1997 as File No. 1997-0349214 of Official Records in the Office of the County Recorder of San Diego County, California, as assigned pursuant to that certain Assignment of Deed of Trust dated December 31, 1997, hereby declares that the lien and charge of the Deed of Trust is and shall be subordinate to the Declaration to which this Subordination Agreement is attached.

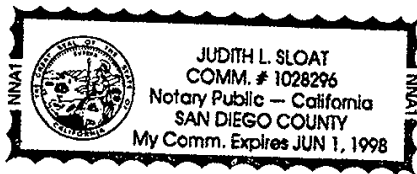
Dated: January 29, 1998

Rita C. Grady
Rita C. Grady, Trustee of Trust
A under the Grady Family Trust
dated March 24, 1980

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

On January 29, 1998, before me, Judith L. Sloat, personally appeared Rita C. Grady, 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 executed the same in her authorized capacity, and that by her 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.



Judith L. Sloat
Notary Public in and for said
County and State