CALIFORNIA ASSOCIATION OF REALTORS®

# REAL ESTATE TRANSFER DISCLOSURE STATEMENT
## (CALIFORNIA CIVIL CODE §1102, ET SEQ.)
**(C.A.R. Form TDS, Revised 6/24)**

☐ This property is a duplex, triplex or fourplex. A TDS is required for all units. This TDS is for ALL units (or ☐ only unit(s) ___).

**THIS DISCLOSURE STATEMENT CONCERNS THE REAL PROPERTY SITUATED IN THE CITY OF** Carlsbad, **COUNTY OF** San Diego, **STATE OF CALIFORNIA, DESCRIBED AS** 4099 Peninsula Dr, Carlsbad, CA, 92010 **.**

**THIS STATEMENT IS A DISCLOSURE OF THE CONDITION OF THE ABOVE DESCRIBED PROPERTY IN COMPLIANCE WITH § 1102 OF THE CIVIL CODE AS OF (DATE)** 07/28/2026 **. IT IS NOT A WARRANTY OF ANY KIND BY THE SELLER(S) OR ANY AGENT(S) REPRESENTING ANY PRINCIPAL(S) IN THIS TRANSACTION, AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR WARRANTIES THE PRINCIPAL(S) MAY WISH TO OBTAIN.**

## I. COORDINATION WITH OTHER DISCLOSURE FORMS

This Real Estate Transfer Disclosure Statement is made pursuant to § 1102 of the Civil Code. Other statutes require disclosures, depending upon the details of the particular real estate transaction (for example: special study zone and purchase-money liens on residential property).

**Substituted Disclosures:** The following disclosures and other disclosures required by law, including the Natural Hazard Disclosure Report/Statement that may include airport annoyances, earthquake, fire, flood, or special assessment information, have or will be made in connection with this real estate transfer, and are intended to satisfy the disclosure obligations on this form, where the subject matter is the same:

☒ Inspection reports completed pursuant to the contract of sale or receipt for deposit.
☒ Additional inspection reports or disclosures: Seller may have obtained a limited number of third-party inspections that will be supplied to Buyer at buyers request if available.
☒ *No substituted disclosures for this transfer.*

## II. SELLER'S INFORMATION

The Seller discloses the following information with the knowledge that even though this is not a warranty, prospective Buyers may rely on this information in deciding whether and on what terms to purchase the subject property. Seller hereby authorizes any agent(s) representing any principal(s) in this transaction to provide a copy of this statement to any person or entity in connection with any actual or anticipated sale of the property.

**THE FOLLOWING ARE REPRESENTATIONS MADE BY THE SELLER(S) AND ARE NOT THE REPRESENTATIONS OF THE AGENT(S), IF ANY. THIS INFORMATION IS A DISCLOSURE AND IS NOT INTENDED TO BE PART OF ANY CONTRACT BETWEEN THE BUYER AND SELLER.**

**Seller ☐ is ☒ is not occupying the property.**

**A. The subject property has the items checked below:***

| | | |
|---|---|---|
| ☒ Range | ☐ Wall/Window Air Conditioning | ☐ Pool: |
| ☒ Oven | ☒ Sprinklers | ☐ Child Resistant Barrier |
| ☒ Microwave | ☒ Public Sewer System | ☐ Pool/Spa Heater: |
| ☒ Dishwasher | ☐ Septic Tank | ☐ Gas ☐ Solar ☐ Electric |
| ☐ Trash Compactor | ☐ Sump Pump | ☒ Water Heater: |
| ☐ Garbage Disposal | ☐ Water Softener | ☐ Gas ☐ Solar ☐ Electric |
| ☒ Washer/Dryer Hookups | ☒ Patio/Decking | ☒ Water Supply: |
| ☒ Rain Gutters | ☐ Built-in Barbecue | ☒ City ☐ Well |
| ☐ Burglar Alarms | ☐ Gazebo | ☐ Private Utility or |
| ☐ Carbon Monoxide Device(s) | ☐ Security Gate(s) | Other City of Carlsbad |
| ☐ Smoke Detector(s) | ☒ Garage: | ☒ Gas Supply: |
| ☐ Fire Alarm | ☒ Attached ☐ Not Attached | ☒ Utility ☐ Bottled (Tank) |
| ☐ TV Antenna | ☐ Carport | ☐ Window Screens |
| ☐ Satellite Dish | ☐ Automatic Garage Door Opener(s) | ☐ Window Security Bars |
| ☐ Intercom | ☒ Number Remote Controls ____ | ☐ Quick Release Mechanism on Bedroom Windows |
| ☒ Central Heating | ☐ Sauna | |
| ☒ Central Air Conditioning | ☐ Hot Tub/Spa: | ☐ Water-Conserving Plumbing Fixtures |
| ☐ Evaporator Cooler(s) | ☐ Locking Safety Cover | |

Exhaust Fan(s) in Kitchen 220 Volt Wiring in ____________ Fireplace(s) in Living Room
☐ Gas Starter ________ ☒ Roof(s): Type: Tile Age: 20 (approx.)
☐ Other: ____________

Are there, to the best of your (Seller's) knowledge, any of the above that are not in operating condition? ☐ Yes/☒ No. If yes, then describe. (Attach additional sheets if necessary): List of items in the home may not be complete. Any items remaining in home at time of sale will be left. Seller has never occupied this property. Seller encourages Buyer to have their own inspections performed and verify all information relating to this property.

**(*see note on page 2)**

Property Address: 4099 Peninsula Dr, Carlsbad, CA, 92010 Date: 07/28/2026

**B.** Are you (Seller) aware of any significant defects/malfunctions in any of the following? [X] Yes/[ ] No. If yes, check appropriate space(s) below.

[ ] Interior Walls [ ] Ceilings [ ] Floors [ ] Exterior Walls [ ] Insulation [ ] Roof(s) [ ] Windows [ ] Doors [ ] Foundation [ ] Slab(s) [ ] Driveways [ ] Sidewalks [ ] Walls/Fences [X] Electrical Systems [ ] Plumbing/Sewers/Septics [X] Other Structural Components

(Describe: Per work order, kitchen electrical wiring installed in junction boxes and open knockouts sealed. Seller has never occupied this property. Seller encourages Buyer to have their own inspections performed and verify all information relating to this property where applicable as noted. )

If any of the above is checked, explain. (Attach additional sheets if necessary.):

Per work order, kitchen cabinets replaced. Per work order, kitchen electrical wiring installed in junction boxes and open knockouts sealed. Seller has never occupied this property. Seller encourages Buyer to have their own inspections performed and verify all information relating to this property where applicable as noted.

*Installation of a listed appliance, device, or amenity is not a precondition of sale or transfer of the dwelling. The carbon monoxide device, garage door opener, or child-resistant pool barrier may not be in compliance with the safety standards relating to, respectively, carbon monoxide device standards of Chapter 8 (commencing with § 13260) of Part 2 of Division 12 of, automatic reversing device standards of Chapter 12.5 (commencing with § 19890) of Part 3 of Division 13 of, or the pool safety standards of Article 2.5 (commencing with § 115920) of Chapter 5 of Part 10 of Division 104 of, the Health and Safety Code. Window security bars may not have quick-release mechanisms in compliance with the 1995 edition of the California Building Standards Code. § 1101.4 of the Civil Code requires all single-family residences built on or before January 1, 1994, to be equipped with water-conserving plumbing fixtures after January 1, 2017. Additionally, on and after January 1, 2014, a single-family residence built on or before January 1, 1994, that is altered or improved is required to be equipped with water-conserving plumbing fixtures as a condition of final approval. Fixtures in this dwelling may not comply with § 1101.4 of the Civil Code.

**C.** Are you (Seller) aware of any of the following:

1. Substances, materials, or products which may be an environmental hazard such as, but not limited to, asbestos, formaldehyde, radon gas, lead-based paint, mold, fuel or chemical storage tanks, and contaminated soil or water on the subject property . . . [ ] Yes [X] No
2. Features of the property shared in common with adjoining landowners, such as walls, fences, and driveways, whose use or responsibility for maintenance may have an effect on the subject property . . . [ ] Yes [X] No
3. Any encroachments, easements or similar matters that may affect your interest in the subject property . . . [ ] Yes [X] No
4. Room additions, structural modifications, or other alterations or repairs made without necessary permits. . . . [ ] Yes [X] No
5. Room additions, structural modifications, or other alterations or repairs not in compliance with building codes . . [ ] Yes [X] No

(**Note to C4 and C5:** If transferor acquired the property within 18 months of accepting an offer to sell it, transferor shall make additional disclosures regarding the room additions, structural modifications, or other alterations or repairs on a Seller Property Questionnaire (C.A.R. Form SPQ).)

6. Fill (compacted or otherwise) on the property or any portion thereof . . . [ ] Yes [X] No
7. Any settling from any cause, or slippage, sliding, or other soil problems . . . [ ] Yes [X] No
8. Flooding, drainage or grading problems . . . [ ] Yes [X] No
9. Major damage to the property or any of the structures from fire, earthquake, floods, or landslides . . . [ ] Yes [X] No
10. Any zoning violations, nonconforming uses, violations of "setback" requirements . . . [ ] Yes [X] No
11. Neighborhood noise problems or other nuisances . . . [ ] Yes [X] No
12. CC&R's or other deed restrictions or obligations . . . [X] Yes [ ] No
13. Homeowners' Association which has any authority over the subject property . . . [X] Yes [ ] No
14. Any "common area" (facilities such as pools, tennis courts, walkways, or other areas co-owned in undivided interest with others) . . . [X] Yes [ ] No
15. Any notices of abatement or citations against the property . . . [ ] Yes [X] No
16. Any lawsuits by or against the Seller threatening to or affecting this real property, claims for damages by the Seller pursuant to § 910 or 914 threatening to or affecting this real property, claims for breach of warranty pursuant to § 900 threatening to or affecting this real property, or claims for breach of an enhanced protection agreement pursuant to § 903 threatening to or affecting this real property, including any lawsuits or claims for damages pursuant to § 910 or 914 alleging a defect or deficiency in this real property or "common areas" (facilities such as pools, tennis courts, walkways, or other areas co-owned in undivided interest with others) . . . [ ] Yes [X] No

If the answer to any of these is yes, explain. (Attach additional sheets if necessary.):

12. HOA Name: Mystic Point Homeowners Association, Phone Number: 760-585-1741, Main Fee: $415.00 paid monthly. HOA Demand and CC&Rs attached. Seller has never occupied this property. Seller encourages Buyer to have their own inspections performed and verify all information relating to this property where applicable as noted.

Seller has never occupied this property. Seller encourages Buyer to have their own inspections performed and verify all information relating to this property.

**D.** 1. The Seller certifies that the property, as of the close of escrow, will be in compliance with § 13113.8 of the Health and Safety Code by having operable smoke detector(s) which are approved, listed, and installed in accordance with the State Fire Marshal's regulations and applicable local standards.

2. The Seller certifies that the property, as of the close of escrow, will be in compliance with § 19211 of the Health and Safety Code by having the water heater tank(s) braced, anchored, or strapped in place in accordance with applicable law.

**Seller certifies that the information herein is true and correct to the best of the Seller's knowledge as of the date signed by the Seller.**

Seller Brad Bonney Authorized Signer on Behalf of Opendoor Property Trust I Date 07/28/2026

Seller ______________________ Date ______________



EQUAL HOUSING OPPORTUNITY

Property Address: 4099 Peninsula Dr, Carlsbad, CA, 92010 Date: 07/28/2026

## III. AGENT'S INSPECTION DISCLOSURE

(To be completed only if the Seller is represented by an agent in this transaction.)

**THE UNDERSIGNED, BASED ON THE ABOVE INQUIRY OF THE SELLER(S) AS TO THE CONDITION OF THE PROPERTY AND BASED ON A REASONABLY COMPETENT AND DILIGENT VISUAL INSPECTION OF THE ACCESSIBLE AREAS OF THE PROPERTY IN CONJUNCTION WITH THAT INQUIRY, STATES THE FOLLOWING:**

- [X] See attached Agent Visual Inspection Disclosure (AVID Form)
- [ ] Agent notes no items for disclosure.
- [ ] Agent notes the following items: ______

Agent (Broker Representing Seller) Opendoor Brokerage Inc. (Please Print) By Lisa Soltez (Associate Licensee or Broker Signature) Date 07/28/2026

## IV. AGENT'S INSPECTION DISCLOSURE

(To be completed only if the agent who has obtained the offer is other than the agent above.)

**THE UNDERSIGNED, BASED ON A REASONABLY COMPETENT AND DILIGENT VISUAL INSPECTION OF THE ACCESSIBLE AREAS OF THE PROPERTY, STATES THE FOLLOWING:**

- [ ] See attached Agent Visual Inspection Disclosure (AVID Form)
- [ ] Agent notes no items for disclosure.
- [ ] Agent notes the following items: ______

Agent (Broker Obtaining the Offer) ______ (Please Print) By ______ (Associate Licensee or Broker Signature) Date ______

**V. BUYER(S) AND SELLER(S) MAY WISH TO OBTAIN PROFESSIONAL ADVICE AND/OR INSPECTIONS OF THE PROPERTY AND TO PROVIDE FOR APPROPRIATE PROVISIONS IN A CONTRACT BETWEEN BUYER AND SELLER(S) WITH RESPECT TO ANY ADVICE/INSPECTIONS/DEFECTS.**

**I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS STATEMENT.**

Seller Brad Bonney Authorized Signer on Behalf of Opendoor Property Trust I Date 07/28/2026 Buyer ______ Date ______

Seller ______ Date ______ Buyer ______ Date ______

Agent (Broker Representing Seller) Opendoor Brokerage Inc. (Please Print) By Lisa Soltez (Associate Licensee or Broker Signature) Date 07/28/2026

Agent (Broker Obtaining the Offer) ______ (Please Print) By ______ (Associate Licensee or Broker Signature) Date ______

**§ 1102.3 OF THE CIVIL CODE PROVIDES A BUYER WITH THE RIGHT TO RESCIND A PURCHASE CONTRACT FOR AT LEAST THREE DAYS AFTER THE DELIVERY OF THIS DISCLOSURE IF DELIVERY OCCURS AFTER THE SIGNING OF AN OFFER TO PURCHASE. IF YOU WISH TO RESCIND THE CONTRACT, YOU MUST ACT WITHIN THE PRESCRIBED PERIOD.**

**A REAL ESTATE BROKER IS QUALIFIED TO ADVISE ON REAL ESTATE. IF YOU DESIRE LEGAL ADVICE, CONSULT YOUR ATTORNEY.**



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CALIFORNIA ASSOCIATION OF REALTORS®

# SELLER PROPERTY QUESTIONNAIRE

**(C.A.R. Form SPQ, Revised 6/26)**

This form is not a substitute for the Real Estate Transfer Disclosure Statement (TDS). It is used by the Seller to provide additional information when a TDS is completed. If Seller is exempt from completing a TDS, Seller should either complete an Exempt Seller Disclosure (C.A.R. Form ESD) or use this SPQ form instead:

**NOTE TO SELLER:** YOU ARE STRONGLY ADVISED TO CAREFULLY REVIEW THE DISCLOSURE INFORMATION ADVISORY (C.A.R. Form DIA) BEFORE YOU COMPLETE THIS SELLER PROPERTY QUESTIONNAIRE. ALL SELLERS OF CALIFORNIA REAL PROPERTY ARE REQUIRED TO PROVIDE VARIOUS DISCLOSURES, WHETHER BY CONTRACT, STATUTE, OR CASE LAW. MANY DISCLOSURES MUST BE MADE WITHIN CERTAIN TIME LIMITS. TIMELY AND THOROUGH DISCLOSURES HELP TO REDUCE DISPUTES AND FACILITATE A SMOOTH SALES TRANSACTION.

Seller makes the following disclosures with regard to the real property or manufactured home described as 4099 Peninsula Dr, Carlsbad, CA, 92010, Assessor's Parcel No. 168-341-06-24, situated in Carlsbad, County of San Diego California ("Property").

☐ This property is a duplex, triplex, fourplex, or otherwise has additional dwelling units. A SPQ is required for all units. This SPQ is for ALL units (or ☐ only unit(s) ________).

1. **Disclosure Limitation: The following are representations made by the Seller and are not the representations of the Agent(s), if any. This disclosure statement is not a warranty of any kind by the Seller or any agents(s) and is not a substitute for any inspections or warranties the principal(s) may wish to obtain. This disclosure is not intended to be part of the contract between Buyer and Seller. Unless otherwise specified in writing, Broker and any real estate licensee or other person working with or through Broker, has not verified information provided by Seller. A real estate broker is qualified to advise on real estate transactions. If Seller or Buyer desires legal advice, they should consult an attorney.**
2. **Note to Seller, PURPOSE:** To tell the Buyer about known material or significant items affecting the value or desirability of the Property and help to eliminate misunderstandings about the condition of the Property.
   - Answer based on actual knowledge and recollection at this time.
   - Something that you do not consider material or significant may be perceived differently by a Buyer.
   - Think about what you would want to know if you were buying the Property today.
   - Read the questions carefully and take your time.
   - If you do not understand how to answer a question, or what to disclose or how to make a disclosure in response to a question, whether on this form or a TDS, you should consult a real estate attorney in California of your choosing. A broker cannot answer the questions for you or advise you on the legal sufficiency of any answers or disclosures you provide.
3. **Note to Buyer, PURPOSE:** To give you more information about known material or significant items affecting the value or desirability of the Property and help to eliminate misunderstandings about the condition of the Property.
   - Something that may be material or significant to you may not be perceived the same way by the Seller.
   - If something is important to you, be sure to put your concerns and questions in writing (C.A.R. Form BMI).
   - Sellers can only disclose what they actually know. Seller may not know about all material or significant items.
   - Seller's disclosures are not a substitute for your own investigations, personal judgments, or common sense.
4. **SELLER AWARENESS:** For each statement below, answer the question "Are you (Seller) aware..." by checking either "Yes" or "No."
   - **A "Yes" answer is appropriate no matter how long ago the item being asked about happened or was documented unless otherwise specified.**
   - **Explain any "Yes" answers** in the space provided or attach additional comments and check **paragraph 19B** is checked and attach additional comments.
5. **DOCUMENTS:** Documents include any reports, inspections, disclosures, warranties, maintenance recommendations, estimates, studies, surveys, or other documents that pertain to:
   **(i)** the condition or repair of the Property;
   **(ii)** any improvement on this Property;
   **(iii)** easements, encroachments, or boundary disputes affecting the Property.
   These documents include, but are not limited to, any document:
   **(i)** prepared in the past or present;
   **(ii)** provided during any previous transaction or from a previous owner;
   **(iii)** indicating the condition or proposing recommendations, whether or not Seller acted upon them; and
   **(iv)** whether or not it was provided to the Seller.
   **A.** Are you (Seller) aware of any Documents regarding the Property that were prepared before your ownership, whether in your possession or in the possession of others? .......... ☒ Yes ☐ No
   **B.** Are you (Seller) aware of any Documents regarding the Property that were prepared for you during your ownership, whether in your possession or in the possession of others? .......... ☐ Yes ☒ No
   **C.** Are you (Seller) aware of any Documents regarding the Property that were provided by others during your ownership (such as Documents obtained by potential buyers)? .......... ☐ Yes ☒ No
   **Note: If yes to any, provide any such documents in your possession to Buyer. Receipt for Reports (C.A.R. Form RFR) may be used to list such documents and explanation can be given to provide context.**
   If Yes to any, provide explanation: Seller is a corporate entity. Documents in Seller's possession during ownership include work orders, inspection reports, renovation scopes, and third-party assessments. Seller will provide available details upon request.
6. **STATUTORILY OR CONTRACTUALLY REQUIRED OR RELATED: ARE YOU (SELLER) AWARE OF...**
   **A.** Within the last 3 years, the death of an occupant of the Property upon the Property .......... ☐ Yes ☒ No
   (Note to Seller: The manner of death may be a material fact to the Buyer, and should be disclosed, except for a death by HIV/AIDS.)
   **B.** An Order from a government health official identifying the Property as being contaminated by methamphetamine. (If yes, attach a copy of the Order.) .......... ☐ Yes ☒ No

Property Address: 4099 Peninsula Dr, Carlsbad, CA, 92010
If this Property is a duplex, triplex, fourplex, or otherwise has additional dwelling units this SPQ is for unit # ______________.

C. The release of an illegal controlled substance on or beneath the Property ........ ☐ Yes ☒ No

D. Whether the Property is located in, or adjacent to, an "industrial use" zone ........ ☐ Yes ☒ No
(In general, a zone or district allowing manufacturing, commercial or airport uses.)

E. Whether the Property is affected by a nuisance created by an "industrial use" zone ........ ☐ Yes ☒ No

F. Whether the Property is located within 1 mile of a former federal or state ordnance location (In general, an area once used for military training purposes that may contain potentially explosive munitions.) ........ ☐ Yes ☒ No

G. Whether the Property is **(i)** a condominium or **(ii)** located in a planned unit development or **(iii)** other common interest subdivision (see **paragraph 14** for more disclosures)........ ☒ Yes ☐ No

H. Insurance claims affecting the Property within the past 5 years ........ ☐ Yes ☒ No

I. Matters affecting title of the Property ........ ☐ Yes ☒ No

J. Plumbing fixtures on the Property that are non-compliant plumbing fixtures as defined by Civil Code § 1101.3 ........ ☐ Yes ☒ No

K. Any inspection reports on any exterior balconies, stairways, or other "Elevated Elements" on buildings with 3 or more units on the Property prepared within the last 6 years, or 9 years for condominiums ........ ☐ Yes ☒ No
(See C.A.R. Form WBSA for more information)

L. Material facts or defects affecting the Property not otherwise disclosed to Buyer ........ ☐ Yes ☒ No

If Yes to any, provide explanation:
Seller has never occupied this property. Seller encourages Buyer to have their own inspections performed and verify all information relating to this property where applicable as noted.

**7. REPAIRS AND ALTERATIONS:** **ARE YOU (SELLER) AWARE OF...**

A. Any alterations, modifications, replacements, improvements, remodeling, or material repairs on the Property (including those resulting from Home Warranty claims) ........ ☒ Yes ☐ No

B. Any alterations, modifications, replacements, improvements, remodeling, or material repairs to the Property done for the purpose of energy or water efficiency improvement or renewable energy? ........ ☐ Yes ☒ No

C. Ongoing or recurring maintenance on the Property
(for example, drain or sewer clean-out, tree or pest control service) ........ ☐ Yes ☒ No

D. Any part of the Property being painted within the past 12 months ........ ☐ Yes ☒ No

E. Whether the Property was built before 1978 (if No, leave (1) and (2) blank)........ ☐ Yes ☒ No
(1) If yes, whether any renovations (i.e., sanding, cutting, demolition) of lead-based paint surfaces started or completed (if No, leave (2) blank) ........ ☐ Yes ☒ No
(2) If yes to (1), whether such renovations were done in compliance with the Environmental Protection Agency Lead-Based Paint Renovation Rule ........ ☐ Yes ☒ No

F. Whether you acquired the property within 18 months of accepting an offer to sell it........ ☒ Yes ☐ No
If yes, have any room additions, structural modifications, or other alterations or repairs (collectively "Improvements") been performed by a contractor while you have owned the Property?........ ☒ Yes ☐ No
**Note 1:** If yes to F(1), Seller shall provide in the Explanation below: **(i)** a list of such Improvements and (ii) the name and contact information for each contractor who performed services of $1,000 or more.
**Note 2:** If yes to F(1), Seller shall provide in the Explanation below **(i)** a list of those Improvements for which Seller has obtained permits, and Seller shall attach copies of those permits to this SPQ, and **(ii)** for those Improvements for which Seller does not have a permit, Seller shall include a statement identifying those Improvements stating that Seller was not provided permits by the third party making the Improvement, and providing the contact information for such third parties from whom the Buyer may obtain those permits.

If Yes to any, provide explanation:
F) Property acquired on 2026-06-24. Seller has never occupied this property. Seller encourages Buyer to have their own inspections performed and verify all information relating to this property where applicable as noted.

**8. STRUCTURAL, SYSTEMS AND APPLIANCES:** **ARE YOU (SELLER) AWARE OF...**

A. Defects in any of the following (including past defects that have been repaired): heating, air conditioning, electrical, plumbing (including the presence of polybutylene pipes), water, sewer, waste disposal or septic system, sump pumps, well, roof, gutters, chimney, fireplace, foundation, crawl space, attic, soil, grading, drainage, retaining walls, interior or exterior doors, windows, walls, ceilings, floors, or appliances ........ ☐ Yes ☒ No

B. The existence of a solar power system (if yes, Seller to provide C.A.R. Form SOLAR)........ ☐ Yes ☒ No

C. The existence of a septic system, well, or propane tank (if yes, Seller to provide C.A.R. Form SWPI-Q)........ ☐ Yes ☒ No

D. The leasing of any of the following on or serving the Property: water softener system, water purifier system, or alarm system ........ ☐ Yes ☒ No

E. Whether any structure on the Property other than the main improvement is used as a dwelling ........ ☐ Yes ☒ No
(1) If Yes to E, whether there are separate utilities and meters for the dwelling........ ☐ Yes ☒ No
(2) If Yes to E, whether the dwelling received a permit or other government approval as an Accessory Dwelling Unit (ADU) ........ ☐ Yes ☒ No

If Yes to any, provide explanation:

**9. DISASTER RELIEF, INSURANCE OR CIVIL SETTLEMENT:** **ARE YOU (SELLER) AWARE OF...**

A. Financial relief or assistance, insurance or settlement, sought or received, from any federal, state, local or private agency, insurer or private party, by past or present owners of the Property, due to any actual or alleged damage to the Property arising from a flood, earthquake, fire, other disaster, or occurrence or defect, whether or not any money received was actually used to make repairs ........ ☐ Yes ☒ No
If yes, was federal flood disaster assistance conditioned upon obtaining and maintaining flood insurance on the Property ........ ☐ Yes ☒ No
(NOTE: If the assistance was conditioned upon maintaining flood insurance, Buyer is informed that federal law, 42 USC 5154a requires Buyer to maintain such insurance on the Property, and if such insurance is not maintained, and the Property is damaged by a flood disaster, Buyer may be required to reimburse the federal government for the disaster relief provided.)

Property Address: 4099 Peninsula Dr, Carlsbad, CA, 92010

If this Property is a duplex, triplex, fourplex, or otherwise has additional dwelling units this SPQ is for unit # ______________.

**B.** Receiving domestic water storage tank assistance pursuant to § 13194 of the Water Code or whether the real property ever received such assistance and the real property currently still has the domestic storage tank.............. ☐ Yes ☒ No
If yes, the following disclosure is made: (1) This property has a domestic water storage tank provided by a county, community water system, local public agency, or nonprofit organization, pursuant to § 13194 of the Water Code. (2) The domestic water storage tank was made available to households that had a private water well that had gone dry, or had been destroyed due to drought, wildfire, other natural disasters, or was otherwise nonfunctioning. (3) The domestic water storage tank provided pursuant to § 13194 of the Water Code might not convey with the real property. (4) Due to the water well issues that led to this property obtaining assistance pursuant to § 13194 of the Water Code, the buyer is advised to have an inspection of the water well and to have a professional evaluate the availability of water to the property to ensure it suits the purposes for which the buyer is purchasing the property.

If Yes to any, provide explanation: ______________

**10. WATER-RELATED AND MOLD ISSUES:** **ARE YOU (SELLER) AWARE OF...**

**A.** Water intrusion, whether past or present, into any part of any physical structure on the Property; leaks from or in any appliance, pipe, slab or roof; standing water, drainage, flooding, underground water, moisture, water-related soil settling or slippage, on or affecting the Property .............. ☐ Yes ☒ No

**B.** Any problem with or infestation of mold, mildew, fungus, or spores, past or present, on or affecting the Property.. ☐ Yes ☒ No

**C.** Rivers, streams, flood channels, underground springs, high watertable, floods, or tides, on or affecting the Property or neighborhood .............. ☐ Yes ☒ No

If Yes to any, provide explanation: ______________

**11. PETS, ANIMALS, AND PESTS:** **ARE YOU (SELLER) AWARE OF...**

**A.** Past or present pets on or in the Property .............. ☐ Yes ☒ No

**B.** Past or present problems with livestock, wildlife, insects, or pests on or in the Property .............. ☐ Yes ☒ No

**C.** Past or present odors, urine, feces, discoloration, stains, spots or damage in the Property, due to any of the above .............. ☐ Yes ☒ No

**D.** Past or present treatment or eradication of pests or odors, or repair of damage due to any of the above .............. ☐ Yes ☒ No
If so, when and by whom ______________

If Yes to any, provide explanation: ______________
Seller has never occupied this property. Seller encourages Buyer to have their own inspections performed and verify all information relating to this property where applicable as noted.

**12. BOUNDARIES, ACCESS, AND PROPERTY USE BY OTHERS:** **ARE YOU (SELLER) AWARE OF...**

**A.** Surveys, easements, encroachments or boundary disputes .............. ☐ Yes ☒ No

**B.** Use or access to the Property, or any part of it, by anyone other than you, with or without permission, for any purpose, including but not limited to, using or maintaining roads, driveways, or other forms of ingress or egress or other travel or drainage.............. ☐ Yes ☒ No

**C.** Use of any neighboring property by you .............. ☐ Yes ☒ No

If Yes to any, provide explanation: ______________

**13. LANDSCAPING, POOL AND SPA:** **ARE YOU (SELLER) AWARE OF...**

**A.** Diseases or infestations affecting trees, plants, or vegetation on or near the Property .............. ☐ Yes ☒ No

**B.** Operational sprinklers on the Property .............. ☐ Yes ☒ No
(1) If yes, are they ☐ automatic or ☐ manually operated.
(2) If yes, are there any areas with trees, plants, or vegetation not covered by the sprinkler system. ☐ Yes ☒ No

**C.** A pool heater on the Property .............. ☐ Yes ☒ No
If yes, is it operational? .............. ☐ Yes ☒ No

**D.** A spa heater on the Property .............. ☐ Yes ☒ No
If yes, is it operational? .............. ☐ Yes ☒ No

**E.** Past or present defects, leaks, cracks, repairs, or other problems with the sprinklers, pool, spa, waterfall, pond, stream, drainage, or other water-related decor including any ancillary equipment, including pumps, filters, heaters and cleaning systems, even if repaired .............. ☐ Yes ☒ No

If Yes to any, provide explanation: ______________

**14. CONDOMINIUMS, COMMON INTEREST DEVELOPMENTS AND OTHER SUBDIVISIONS (AND ANY OTHER PROPERTIES FOR WHICH ANY PARAGRAPH A-F APPLIES): (IF APPLICABLE)** **ARE YOU (SELLER) AWARE OF...**

**A.** Property being: **(i)** a condominium; **(ii)** being located in a planned unit development or; **(iii)** being located in a common interest subdivision.............. ☒ Yes ☐ No

**B.** Any Homeowners' Association (HOA) which has any authority over the subject property.............. ☒ Yes ☐ No

**C.** Any "common area" (facilities such as pools, fitness centers, walkways, conference rooms, or other areas co-owned in undivided interest with others) .............. ☐ Yes ☒ No

**D.** CC&R's or other deed restrictions or obligations .............. ☒ Yes ☐ No

**E.** Any pending or proposed dues increases, special assessments, rules changes, insurance availability issues, or litigation by or against or fines or violations issued by a Homeowner Association or Architectural Committee affecting the Property .............. ☐ Yes ☒ No

**F.** CC&R's or other deed restrictions or obligations or any HOA Committee that has authority over improvements made on or to the Property .............. ☒ Yes ☐ No

If this Property is a duplex, triplex, fourplex, or otherwise has additional dwelling units this SPQ is for unit # ______________.

(1) If Yes to F, any improvements made on or to the Property inconsistent with any declaration of restrictions or HOA Committee requirement ............ ☐ Yes ☒ No

(2) If Yes to F, any improvements made on or to the Property without the required approval of an HOA Committee ............ ☐ Yes ☒ No

If Yes to any, provide explanation:
B) Property is part of HOA
F) Contact HOA for specific guidelines and requirements
Seller has never occupied this property. Seller encourages Buyer to have their own inspections performed and verify all information.

**15. TITLE, OWNERSHIP, LIENS, AND LEGAL CLAIMS:** **ARE YOU (SELLER) AWARE OF...**

**A.** Other than the Seller signing this form, any other person or entity with an ownership interest ............ ☐ Yes ☒ No

**B.** Leases, options, or claims affecting or relating to title or use of the Property ............ ☐ Yes ☒ No

**C.** Past, present, pending or threatened lawsuits, settlements, mediations, arbitrations, tax liens, mechanics' liens, notice of default, bankruptcy or other court filings, or government hearings affecting or relating to the Property, Homeowner Association, or neighborhood ............ ☐ Yes ☒ No

**D.** Features of the property shared in common with adjoining landowners, such as walls, fences and driveways, whose use or responsibility for maintenance may have an effect on the subject property............ ☐ Yes ☒ No

**E.** Any encroachments, easements, boundary disputes, or similar matters that may affect your interest in the subject property, whether in writing or not ............ ☐ Yes ☒ No

**F.** Any private transfer fees, triggered by a sale of the Property, in favor of private parties, charitable organizations, interest-based groups, or any other person or entity. ............ ☐ Yes ☒ No

**G.** Any PACE lien (such as HERO or SCEIP) or other lien on your Property securing a loan to pay for an alteration, modification, replacement, improvement, remodel, or material repair of the Property ............ ☐ Yes ☒ No

**H.** The cost of any alteration, modification, replacement, improvement, remodel, or material repair of the Property being paid by an assessment on the Property tax bill ............ ☐ Yes ☒ No

If Yes to any, provide explanation:
Seller has never occupied this property. Seller encourages Buyer to have their own inspections performed and verify all information.

**16. NEIGHBORS/NEIGHBORHOOD:** **ARE YOU (SELLER) AWARE OF...**

**A.** Neighborhood noise, nuisance, or other problems from sources such as, but not limited to, the following: Neighbors, traffic, parking congestion, airplanes, trains, light rail, subway, trucks, freeways, buses, schools, parks, refuse storage or landfill processing, agricultural operations, business, odor, recreational facilities, restaurants, entertainment complexes or facilities, parades, sporting events, fairs, neighborhood parties, litter, construction, air conditioning equipment, air compressors, generators, pool equipment or appliances, underground gas pipelines, cell phone towers, high voltage transmission lines, or wildlife ............ ☐ Yes ☒ No

**B.** Any past or present disputes or issues with a neighbor which might impact the use, development and enjoyment of the Property ............ ☐ Yes ☒ No

If Yes to any, provide explanation:
HOA Name: Mystic Point Homeowners Association, Main Fee: $415 paid monthly. Please see attached for HOA-related expenses provided to the Seller at the time the Seller purchased this property. Buyer is encouraged to contact the HOA for current information. Seller has never occupied this property. Seller encourages Buyer to have their own inspections performed and verify all information relating to this property where applicable as noted.

**17. GOVERNMENTAL:** **ARE YOU (SELLER) AWARE OF...**

**A.** Ongoing or contemplated eminent domain, condemnation, annexation or change in zoning or general plan that applies to or could affect the Property ............ ☐ Yes ☒ No

**B.** Existence or pendency of any rent control, occupancy restrictions, improvement restrictions, or retrofit requirements that apply to or could affect the Property ............ ☐ Yes ☒ No

**C.** Existing or contemplated building or use moratoria that apply to or could affect the Property ............ ☐ Yes ☒ No

**D.** Any state or local requirements or restrictions relating to the future replacement of existing gas-powered appliances that are being transferred with the property. Gas-powered appliances include, but are not limited to, appliances fueled by natural gas or liquid propane ............ ☐ Yes ☒ No

**E.** Current or proposed bonds, assessments, or fees that do not appear on the Property tax bill that apply to or could affect the Property ............ ☐ Yes ☒ No

**F.** Proposed construction, reconfiguration, or closure of nearby Government facilities or amenities such as schools, parks, roadways, and traffic signals ............ ☐ Yes ☒ No

**G.** Existing or proposed Government requirements affecting the Property **(i)** that tall grass, brush or other vegetation be cleared; **(ii)** that restrict tree (or other landscaping) planting, removal, or cutting or **(iii)** that flammable materials be removed ............ ☐ Yes ☒ No

**H.** Any protected habitat for plants, trees, animals, or insects that apply to or could affect the Property............ ☐ Yes ☒ No

**I.** Whether the Property is historically designated or falls within an existing or proposed Historic District ............ ☐ Yes ☒ No

**J.** Any water surcharges or penalties being imposed by a public or private water supplier, agency or utility; or restrictions or prohibitions on wells or other ground water supplies ............ ☐ Yes ☒ No

**K.** Any differences between the name of the city in the postal/mailing address and the city which has jurisdiction over the property ............ ☐ Yes ☒ No

If Yes to any, provide explanation:
Seller has never occupied this property. Seller encourages Buyer to have their own inspections performed and verify all information.

**18. OTHER:** **ARE YOU (SELLER) AWARE OF...**

**A.** Any occupant of the Property smoking or vaping any substance on or in the Property, whether past or present ............ ☐ Yes ☒ No

**B.** Any residue, which may be indicated by smell or test results, from smoking tobacco or nicotine products, which includes the use of an electronic cigarette or vape device............ ☐ Yes ☒ No

**C.** Any use of the Property for, or any alterations, modifications, improvements, remodeling or material change to the Property due to, cannabis cultivation or growth ............ ☐ Yes ☒ No

**D.** Whether the Property was originally constructed as a Manufactured or Mobile home ............ ☐ Yes ☒ No

Property Address: 4099 Peninsula Dr, Carlsbad, CA, 92010

If this Property is a duplex, triplex, fourplex, or otherwise has additional dwelling units this SPQ is for unit # ______________.

**E.** Whether the Property is tenant occupied ............................................................ ☐ Yes ☒ No
If Yes, do you have photographs from the beginning of the tenancy (if in your possession, provide along with any other move-in reports created at the beginning of the tenancy)........................................ ☐ Yes ☒ No

**F.** Whether the Property was previously tenant occupied even if vacant now .............................. ☐ Yes ☒ No
If yes, disclose if you know the method or manner of how the tenancy ended.

If Yes to any, provide explanation: ______________________________

**19. MATERIAL FACTS:**

**A.** Any past or present known material facts or other significant items affecting the value or desirability of the Property not otherwise disclosed to Buyer ........................................................ ☐ Yes ☒ No

**B.** ☐ **(IF CHECKED) ADDITIONAL COMMENTS:** The attached addendum contains an explanation or additional comments in response to specific questions answered "yes" above. Refer to line and question number in explanation.

If Yes to any, provide explanation: ______________________________

**Seller represents that Seller has provided the answers and, if any, explanations and comments on this form and any attached addenda and that such information is true and correct to the best of Seller's knowledge as of the date signed by Seller. Seller acknowledges (i) Seller's obligation to disclose information requested by this form is independent from any duty of disclosure that a real estate licensee may have in this transaction; and (ii) nothing that any such real estate licensee does or says to Seller relieves Seller from Seller's own duty of disclosure.**

Seller Brad Bonney Authorized Signer on Behalf of Opendoor Property Trust I Date 07/28/2026

Seller ______________________________ Date ______________

**By signing below, Buyer acknowledges that Buyer has read, understands and has received a copy of this Seller Property Questionnaire form.**

Buyer ______________________________ Date ______________

Buyer ______________________________ Date ______________



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# Opendoor

**4099 Peninsula Dr, Carlsbad, CA 92010**

*Information on permits (if any) may be obtained from the contractor*

| Description | Contractor | Contact information |
|---|---|---|
| **Repaired kitchen backsplash, serviced kitchen cabinets, and installed new kitchen wall cabinets in July 2026.** | **G 3 Equity - SAN** | **G 3 Equity - SAN**<br>**g3equity@gmail.com**<br>**(310) 867-1045** |
| **Installed and repaired carpet in July 2026.** | **Redi Carpet Inc - SAN-S** | **Redi Carpet Inc - SAN-S**<br>**eddie.yniguez@redicarpet.com**<br>**(619) 395-3285** |

# Required Statement of Fees - Demand (Required Civil Code Sec. 4525)
## Mystic Point Homeowners Association
## Property Advantage

**Property Information:**
4099 Peninsula Dr
Carlsbad, CA 92010-5565
Seller: [redacted]dated 10/01/14
Buyer: OPENDOOR PROPERTY TRUST I a Delaware

**Requestor:**
OS National
Processing Team
678-282-2342
Estimated Closing Date: 06-29-2026

## General Information

| | |
|---|---|
| This information is good through | 07-08-2026 |
| Is this account in collections? | No |
| What is the current regular assessment against the unit? | 415.00 |
| What is the frequency of the assessment charge? | Monthly |
| The regular assessment is paid through: | 06-30-2026 |
| The regular assessment is next due: | 07-01-2026 |
| What day of the month are regular assessments due? | 1st |
| How many days after the due date is the regular assessment considered delinquent? | 15 |
| The penalty for delinquent assessments is: | 10% |

## Specific Fees Due To Mystic Point Homeowners Association

| | |
|---|---|
| Closing agent is required to collect the following number of additional regular assessments at closing: | |
| Are there any current special assessments or governing body approved special assessments, against units within the association? If yes, a comment is provided. | No |
| Owner's current balance due (you may total the owners balance due using the breakdown below): | $0.00 |

## General Association Information

| | |
|---|---|
| Are there any violations against this unit? | No |
| Is the association or the developer (if the project has not been turned over to the homeowners association) involved in any current or pending litigation? If yes, a comment is required. (Do not include neighbor disputes or rights of quiet enjoyment, litigation where the claim amount is known and the insurance carrier will provide defense and coverage, or where the HOA is named as a plaintiff in a foreclosure action or to collect past due assessments). | No |
| **Comments: See enclosed Litigation Notice** | |
| Is there a restriction in the governing documents limiting the occupancy, residency, or use of a separate interest on the basis of age in a manner different from that provided in California Civil Code Section 51.3? If yes, please comment. | No |
| Is there a provision in the governing documents that prohibits the rental or leasing of any of the separate interests in the common interest development to a renter, lessee or tenant? If yes, please comment. | No |

# Required Statement of Fees - Demand (Required Civil Code Sec. 4525)

## Mystic Point Homeowners Association

## Property Advantage

**Property Information:**
4099 Peninsula Dr
Carlsbad, CA 92010-5565
Seller: [redacted] dated 10/01/14
Buyer: OPENDOOR PROPERTY TRUST I a Delaware

**Requestor:**
OS National
Processing Team
678-282-2342
Estimated Closing Date: 06-29-2026

| | |
|---|---|
| Does a preliminary list of defects exist pursuant to Section 6000 of the Davis Stirling Act? If yes, please comment and provide the list. | No |
| Does a Settlement Notice regarding common area defects exist pursuant to Section 6100 of the Davis Stirling Act? If yes, please comment and provide the list. | No |

### Insurance Information

| | |
|---|---|
| Insurance broker's or agent's company name: | Brian Berg Insurance Services |
| Identify the insurance agent's name: | Brian Berg |
| Insurance agent's phone number: | 888-791-7069 |
| Insurance agent's fax number: | 877-203-6958 |
| Insurance agent's email address: | unknown |

*Stephanie Bruno*

**Stephanie Bruno, Escrow Specialist** **Date: 06-08-2026**

**Property Advantage**

**Phone: 760-585-1741**

# Required Statement of Fees - Demand (Required Civil Code Sec. 4525)

## Mystic Point Homeowners Association

## Property Advantage

**Property Information:**
4099 Peninsula Dr
Carlsbad, CA 92010-5565
Seller: [redacted]dated 10/01/14
Buyer: OPENDOOR PROPERTY TRUST I a Delaware

**Requestor:**
OS National
Processing Team
678-282-2342
Estimated Closing Date: 06-29-2026

### Fee Summary

**Amounts Prepaid**

| | |
|---|---|
| Closing Statement of Fees, Association Documents and Minutes (Required Civil Code Sec. 4525) | $682.00 |
| Litigation (Non Required Civil Code Sec. 4525) | $0.00 |
| Convenience Fee | $9.95 |
| Insurance Dec Page (Non Required Civil Code Sec. 4525) | $45.00 |
| **Total** | **$736.95** |

**Fees Due to Property Advantage**

| | |
|---|---|
| Transfer Fee | $265.00 |
| **Total** | **$265.00** |

# Required Statement of Fees - Demand (Required Civil Code Sec. 4525)

## Mystic Point Homeowners Association

## Property Advantage

**Property Information:**
4099 Peninsula Dr
Carlsbad, CA 92010-5565
Seller: [redacted]dated 10/01/14
Buyer: OPENDOOR PROPERTY TRUST I a Delaware

**Requestor:**
OS National
Processing Team
678-282-2342
Estimated Closing Date: 06-29-2026

**PLEASE RETURN THIS FORM WITH YOUR CHECK AND CERTIFIED COPIES OF THE CLOSING DISCLOSURE FORM (FORMERLY THE HUD-1 FORM) AND THE GRANT OR WARRANTY DEED. PLEASE INDICATE CONFIRMATION NUMBER HXZ8753KS ON THE CHECK TO ENSURE PAYMENT IS CREDITED PROPERLY.**

**Fees Due to Property Advantage**

| | |
|---|---|
| Transfer Fee | $265.00 |
| **Total** | **$265.00** |

**Include this confirmation number HXZ8753KS on the check for $265.00 payable to and send to the address below.**

**Property Advantage**

**5142 Avenida Encinas**

**Carlsbad, CA 92008**

# Required Statement of Fees - Demand (Required Civil Code Sec. 4525)

## Mystic Point Homeowners Association

## Property Advantage

**Property Information:**
4099 Peninsula Dr
Carlsbad, CA 92010-5565
Seller: [redacted]dated 10/01/14
Buyer: OPENDOOR PROPERTY TRUST I a Delaware

**Requestor:**
OS National
Processing Team
3097 Satellite Blvd, Suite 500
Duluth , GA 30096
678-282-2342
souprocessing@osnational.com

### Closing Information

File/Escrow Number:
Estimated Close Date: 06-29-2026
HomeWiseDocs Confirmation #: HXZ8753KS

Sales Price: $847,700.00
Closing Date:
Is buyer occupant? No

### Status Information

Date of Order: 06-02-2026
Board Approval Date:
Order Completion Date: 06-08-2026
Date Paid: 06-08-2026

Order Retrieved Date:
Inspection Date:

### Community Manager Information

Company: Property Advantage
Completed By: Stephanie Bruno
Primary Contact: Stephanie Bruno
Address:
5142 Avenida Encinas
Carlsbad, CA 92008
Phone: 760-585-1741
Fax: 760-438-6886
Email: escrow@propadvantage.com

# Litigation (Non Required Civil Code Sec. 4525)
# Mystic Point Homeowners Association

Epsten APC
Attorneys at Law since 1986
1.800.300.1704 | Epsten.com

*Respond to San Diego Office*

February 18, 2026

**In re Civil Action:** Mystic Point HOA v. Hardesty, et al.

**Court Location:** San Diego Superior Court, North County Regional Center
25CU012414N

To Whom It May Concern:

Be advised that as of the date of this notice, Mystic Point Homeowners Association ("Association") is involved in litigation brought by the Association against a member regarding a Breach of Covenant cause of action and seeking declaratory relief and injunctive relief. The name and case number of the litigation is *Mystic Point Homeowners Association v. Adam D. Hardesty, Trustee of the A&K Trust dated June 11, 2018, et al.*, Case No 25CU012414N. The Association has filed its Complaint seeking an injunction to stop all construction of a junior accessory dwelling unit and to revert the property back to its original pre-construction condition. The member has filed a Cross-Complaint against the Association in which the Association is working with its legal counsel to prepare its defense. Persons interested in the allegations of the case, progress or current status of the case are referred to the file at the San Diego Superior Court, North County Regional Center, Dept. N-31, 325 S. Melrose, Vista, CA 92081, or you can access the records filed with the Court at https://odyroa.sdcourt.ca.gov (Enter the Case Number and then click on Register of Actions to see pleadings that may be accessible for purchase). Please note there is a fee for pulling the files for review.

**The purpose of this letter is to provide notice regarding the above referenced litigation. Neither the Association, its Board of Directors, nor its agents, provide this notice with an intent to advise any Lot owner regarding his or her disclosure obligations in selling his/her Lot, in obtaining refinancing, or for any other purpose. All owners should consult with their real estate agent, loan broker, personal attorney, and/or other appropriate professional with respect to such matters.**

Please do not contact this office for information regarding this matter. We will not be able to discuss this matter with individual owners due to the attorney/client privilege based on our representation of the Association.

The Association disclaims any duty to provide any disclosures to any person who is not a member of the Association. This disclosure does not waive any privilege that is attached to the information provided.

Sincerely,

EPSTEN, APC

Pejman D. Kharrazian
Shareholder

PDK/jac

6163930



**San Diego**
3111 Camino del Rio North, Ste. 560
San Diego, CA 92108
1.858.527.0111 · fax 1.858.527.1531

**Coachella Valley**
74-199 El Paseo Dr., West Building, Ste. 201A
Palm Desert, CA 92260
1.760.836.1036 · fax 1.760.836.1040

**Inland Empire**
43460 Ridge Park Dr., Ste. 200
Temecula, CA 92590
1.951.461.1181 · fax 1.858.527.1531

**The following notice is pursuant to California Government Code Section 12956.1(b)(1))**

# Notice

If this document contains any restriction based on age, race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, genetic information, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.2 of the Government Code by submitting a "Restrictive Covenant Modification" form, together with a copy of the attached document with the unlawful provision redacted to the county recorder's office. The "Restrictive Covenant Modification" form can be obtained from the county recorder's office and may be available on its internet website. The form may also be available from the party that provided you with this document. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.

# Restrictive Covenant Modification

Under current state law, including AB1466 effective January 1, 2022, homeowners can request to modify property documents that contain unlawful discriminatory covenants. Government Code Section 12956.2 allows a person who holds an ownership interest of record in property that the person believes is the subject of an unlawfully restrictive covenant to record a Restrictive Covenant Modification document to have the illegal language stricken. Unlawful restrictions include those restrictions based on race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, veteran or military status, national origin, source of income as defined in Government Code Section 12955subdivision (p), ancestry, or genetic information.

**To Record a Restrictive Covenant Modification, you must:**

- Complete a Restrictive Covenant Modification Form; this must be signed in front of a notary public.
- Attach a copy of the original document containing the unlawful restrictive language with the unlawful language stricken.
- Submit the completed document to the County Recorder.

**This document requires the following:**

1. Name(s) of current owner(s)
2. Identification of document page number and language in violation
3. Recording reference of document with unlawful restrictive covenant
4. Copy of referenced document attached complete with unlawful restrictive language stricken out
5. Signature(s) of owner(s)
6. Signature(s) acknowledged
7. Approval by County Counsel provided to County Recorder

Upon receipt, the Recorder's office will submit the document to County Counsel who will determine whether the original document contains any unlawful restrictions, as defined in Government Code Section 12956.2 subdivision (b). Only those determined to be in violation of the law will be recorded and those that are not, will be returned to the submitter unrecorded.

Please note that the County Recorder is not liable for modification not authorized by law. This is the sole responsibility of the holder of ownership interest who caused the modified recordation per Government Code Section 12956.2 subdivision (f).

Pursuant to the requirements of AB1466, and no later than July 1, 2022, the Assessor-County Clerk-Recorder will post an implementation plan outlining our strategy to identify records with discriminatory restrictions.

Recording Requested By

When recorded mail document to

____________________________________

____________________________________

____________________________________

Above Space for Recorder's Use Only

# RESTRICTIVE COVENANT MODIFICATION

I (We) _______________________________________________________________________have an ownership interest of record in the property located at ________________________________________ that is covered by the document described below.

The following referenced document contains a restrictive covenant based on race, color, religion, sex, familial status, marital status, disability, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry that violates state and federal fair housing laws and that restriction is void. Pursuant to Section 12956.2 of the Government Code, this document is being recorded solely for the purpose of eliminating that restrictive covenant as shown on page(s)______________ of the document recorded on _______________ (date) In book ____________ and page__________ , or Document No. __________________________ of the Official records of the County of______________________________________________ , State of California.

The document referenced above was originally indexed in the following manner_________________________ ________________________ and this document shall be indexed in like manner pursuant to Section 12956.2 (e).

The effective date of the terms and conditions of this modification document shall be the same as the effective date of the original document referenced above.

Dated______________________

________________________________________

________________________________________

________________________________________

Printed Name(s)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA }
COUNTY OF ____________________________}

On ________________________________ before me, ______________________________, a Notary Public, personally appeared __________________________________________________ who 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/their/her authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

*Signature*________________________________________

4

RECORDED REQUEST OF
First American Title
SUBDIVISION MAPPING DEPT.

F8
7P
2W
2Cons

Recording Requested By
and
When Recorded Mail To:

8438

HECHT SOLBERG ROBINSON GOLDBERG & BAGLEY LLP
Ms. Katie Jacobsen
600 West Broadway, Eighth Floor
San Diego, California 92101

1295451-15

DOC # 2005-0097032

FEB 04, 2005 12:36 PM

OFFICIAL RECORDS
SAN DIEGO COUNTY RECORDER'S OFFICE
GREGORY J. SMITH, COUNTY RECORDER
FEES: 34.00 WAYS: 2
PAGES: 7

2005-0097032

# DECLARATION OF ANNEXATION
## Mystic Point
[Village U]

THIS DECLARATION OF ANNEXATION is made this 27 day of January, 2005, by CAL E1 LLC, a Delaware limited liability company ("Declarant"), with reference to the following

**RECITALS:**

A. Declarant is the "Declarant" under that certain Declaration of Restrictions for Mystic Point, which was recorded on January 30, 2004 with the Office of the County Recorder of San Diego County, California as Document No. 2004-0075064 (the "Declaration"). The definitions set forth in the Declaration shall apply to this Declaration of Annexation.

B. The Declaration provides in the Section entitled "Annexation; Reservation of Easements" of the Article entitled "ADDITIONAL PROVISIONS" that Declarant may annex additional Real Property to the Covered Property and Project described in the Declaration and thereby make such additional property subject to the Declaration and subject to the jurisdiction of the MYSTIC POINT HOMEOWNERS ASSOCIATION, a California nonprofit mutual benefit corporation (the "Association").

C. Declarant is the owner of the real property located in the City of Carlsbad, County of San Diego, State of California, described as:

> Lots 1 through 5 of CITY OF CARLSBAD TRACT NO. 01-04 CALAVERA HILLS VILLAGE U, in the City of Carlsbad, County of San Diego, State of California, according to Map thereof No. 14725, filed in the Office of the County Recorder of San Diego County, California, on December 23, 2003 ("Annexed Property"),

which property is a part of the Real Property described in the Declaration which may be annexed to the Covered Property and Project and thereby to the jurisdiction of the Association.

D. Declarant now wishes to annex the Annexed Property to the Project, to the Declaration and to the jurisdiction of the Association and thereby make the Annexed Property subject to the terms, conditions and restrictions of the Declaration and a part of the Covered Property.

NOW, THEREFORE, Declarant declares as follows:

1. Pursuant to the terms of the Declaration, Declarant, as the owner of the Annexed Property, declares that all of the Annexed Property is hereby annexed to and made a part of the Covered Property and Project as defined in the Declaration. All of the Annexed Property shall be held, sold, leased, transferred, occupied and conveyed subject to the terms, provisions, covenants, restrictions and easements of the Declaration, as the same may be amended or hereafter amended.

2. The Annexed Property includes or will include one hundred thirty-five (135) Condominiums, including Common Area, as defined in the Declaration and as shown upon the Condominium Plans covering Lots 1 through 4 of the Annexed Property, which have been or will be recorded in the Office of the County Recorder of San Diego County, California. The Association Property within the Annexed Property includes Lot 5 of the Annexed Property and those portions of Lots 1 through 4 of the Annexed Property described on the Condominium Plans covering such lots.

3. Exhibit "A" to the Declaration sets forth the anticipated phasing of Mystic Point and correctly states the number of Condominiums planned for each Phase. However, the Living Units planned for Phases 6 through 11 of Mystic Point have been renumbered, and currently Phases 6 through 11 of Mystic Point are planned to contain the following numbered Living Units:

| Phase | Living Unit Nos. | No. of Living Units | Map No. |
|---|---|---|---|
| 6 | 118-126; 241-252 | 21 | 14725 |
| 7 | 127-138; 229-240 | 24 | 14725 |
| 8 | 139-150; 223-228 | 18 | 14725 |
| 9 | 151-156; 178-183; 208-222 | 27 | 14725 |
| 10 | 184-207 | 24 | 14725 |
| 11 | 157-177 | 21 | 14725 |

However, as stated in the Declaration, there is no guarantee that all Phases will be constructed or completed or that the phasing will occur in the exact order set forth above or in the Condominium Plans.

4. Pursuant to Section 6.16(b) of the Declaration, the approximate locations of subsurface drainage improvements within the Annexed Property are depicted on **Exhibit "A"** attached hereto.

5. The Annexed Property shall be benefitted and the Association Property and Common Area in the Annexed Property shall be burdened by certain cross easements as set forth in the Declaration.

6. The obligation of Owners of Condominiums in the Annexed Property to pay assessments to the Association and their right to vote as members of the Association shall commence as set forth in the Declaration. The Annexed Property may be de-annexed any time prior to the first conveyance of a Condominium in the Annexed Property by Declarant executing, acknowledging and recording a Declaration of De-annexation for the Annexed Property.

7. Should Declarant have conducted a rental program within a Phase in the Annexed Property that has been in effect for a period of at least one year as of the date of closing of the first escrow for sale of a Condominium within that Phase, Declarant shall pay to the Association, for each Condominium within the Phase that has been so rented and occupied for at least one year prior to close of the first escrow in the Phase, a sum equal to that portion of the annual regular assessment amount applicable against each Condominium which was budgeted for reserves for replacement of Common Area or Association Property improvements as shown on the Association's budget for the Phase, as approved by the California Department of Real Estate, prorated on a per diem basis for each day each such Condominium is so rented and occupied prior to the close of the first escrow in such Phase. Such sums, if any, shall be paid by Declarant to the Association concurrently with the closing of the first escrow for sale of a Condominium within the applicable

Phase. Payment of such sums by Declarant shall not relieve or reduce any Owner's obligation to pay regular assessments, including reserves for replacement of Common Area or Association Property improvements.

IN WITNESS WHEREOF, the undersigned, being Declarant herein, has executed this instrument the day and year first hereinabove written.

CAL E1 LLC, a Delaware limited liability company

By ______________________

Its Vice Pres.

By Elizabeth Zepeda

Its Secretary

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

On Jan. 27 2005, before me, Colette Kavanagh, Notary Public, personally appeared E. Dale Gleed & Elizabeth Zepeda ______________________, 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.

Signature Colette Kavanagh (Seal)

COLETTE KAVANAGH
Commission # 1317084
Notary Public - California
San Diego County
My Comm. Expires Sep 8, 2005

# EXHIBIT "A"

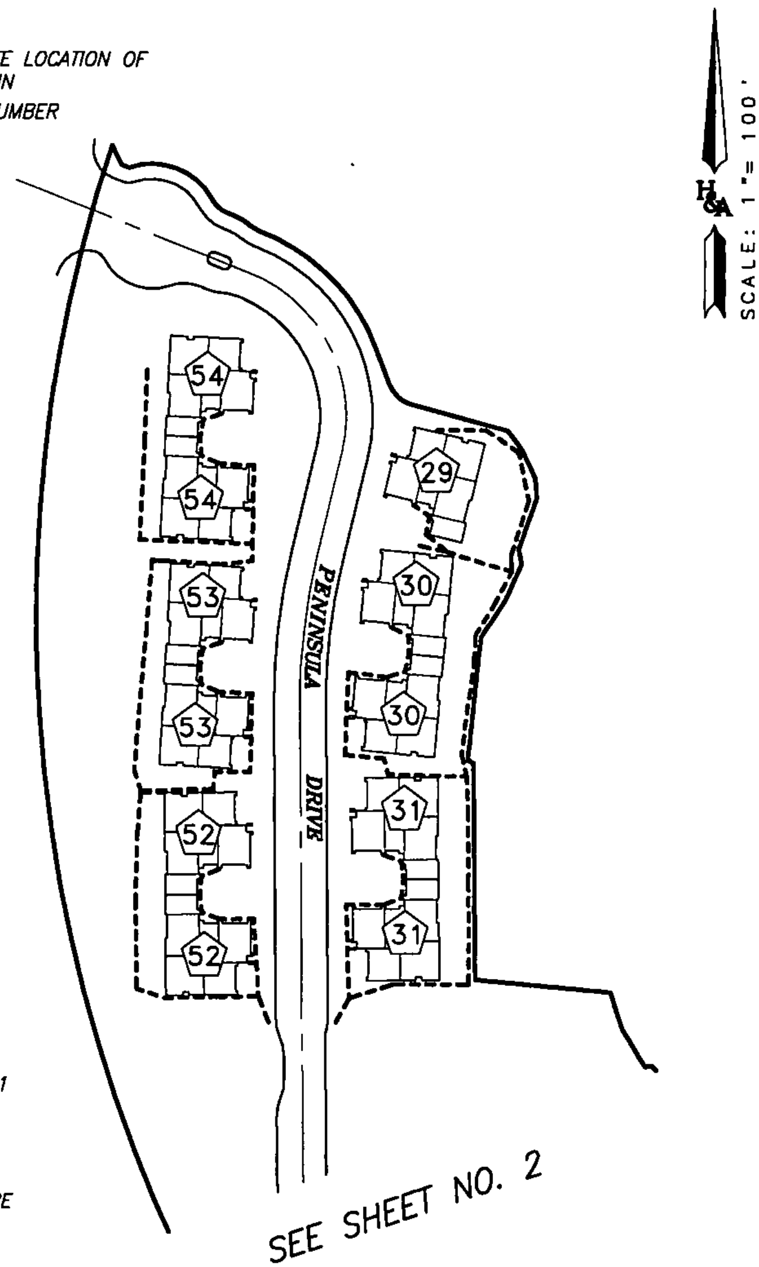


## CROSS UNIT DRAINAGE FACILITIES
## MYSTIC POINT VILLAGE U

LEGEND

- - - - - - - INDICATES APPROXIMATE LOCATION OF CROSS UNIT SUB DRAIN

29 INDICATES BUILDING NUMBER



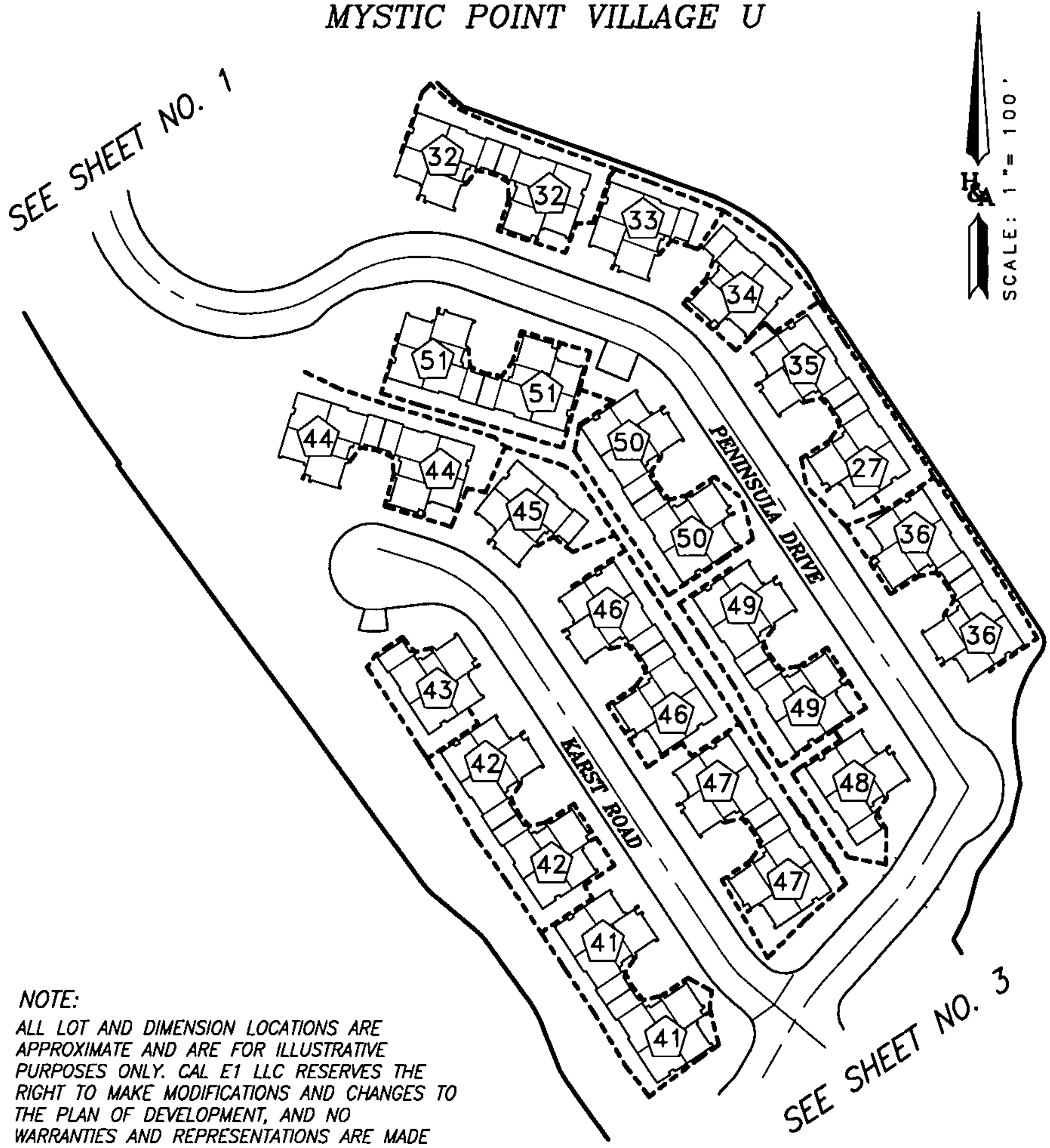

NOTE:
ALL LOT AND DIMENSION LOCATIONS ARE APPROXIMATE AND ARE FOR ILLUSTRATIVE PURPOSES ONLY. CAL E1 LLC RESERVES THE RIGHT TO MAKE MODIFICATIONS AND CHANGES TO THE PLAN OF DEVELOPMENT, AND NO WARRANTIES AND REPRESENTATIONS ARE MADE THAT THE PROJECT WILL BE DEVELOPED AS SHOWN ON THIS EXHIBIT.


HUNSAKER & ASSOCIATES
SAN DIEGO, INC

PLANNING 10179 Huennekens Street
ENGINEERING San Diego, Ca 92121
SURVEYING PH(858)558-4500 · FX(858)558-1414


R:\0227\&Map\Sub Drain SHT 01.dwg[ 1275]Sep-13-2004: 14:45

# EXHIBIT "A"
# CROSS UNIT DRAINAGE FACILITIES
# MYSTIC POINT VILLAGE U




NOTE:
ALL LOT AND DIMENSION LOCATIONS ARE APPROXIMATE AND ARE FOR ILLUSTRATIVE PURPOSES ONLY. CAL E1 LLC RESERVES THE RIGHT TO MAKE MODIFICATIONS AND CHANGES TO THE PLAN OF DEVELOPMENT, AND NO WARRANTIES AND REPRESENTATIONS ARE MADE THAT THE PROJECT WILL BE DEVELOPED AS SHOWN ON THIS EXHIBIT.

H&A HUNSAKER & ASSOCIATES
SAN DIEGO, INC

PLANNING 10179 Huennekens Street
ENGINEERING San Diego, Ca 92121
SURVEYING PH(858)558-4500 · FX(858)558-1414

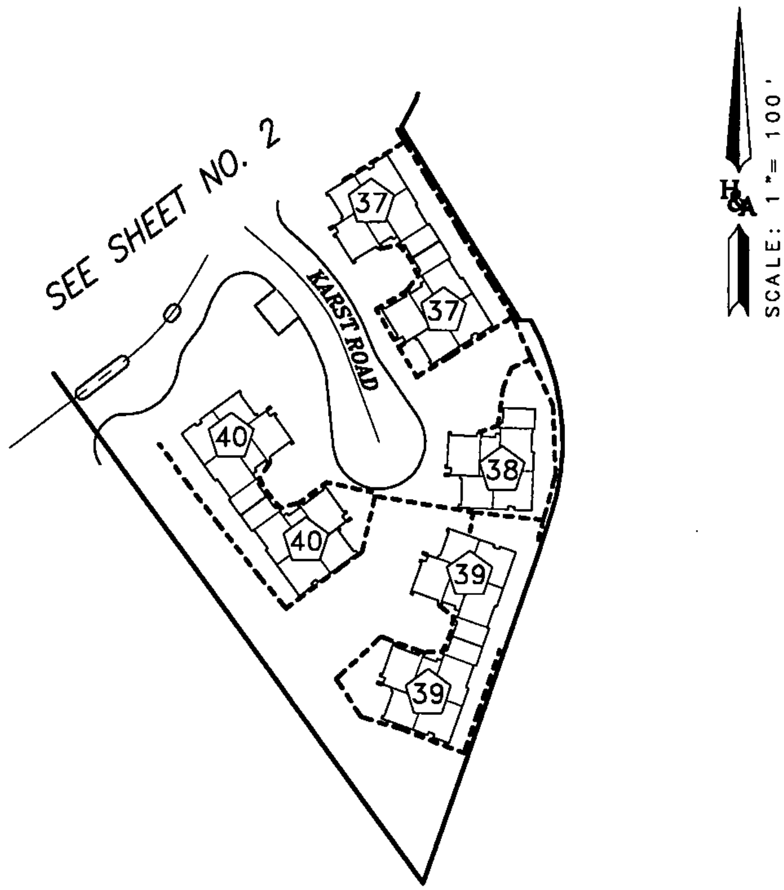
## LEGEND

- - - - - - - INDICATES APPROXIMATE LOCATION OF CROSS UNIT SUB DRAIN

32 INDICATES BUILDING NUMBER

R: \0227\&Map\Sub Drain SHT 02.dwg[ 1275]Sep-13-2004: 14: 44

# EXHIBIT "A"
# CROSS UNIT DRAINAGE FACILITIES
# MYSTIC POINT VILLAGE U




*NOTE:*
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& ASSOCIATES
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SURVEYING PH(858)558-4500 · FX(858)558-1414

LEGEND

| | |
|---|---|
| ------- | INDICATES APPROXIMATE LOCATION OF CROSS UNIT SUB DRAIN |
| 37 | INDICATES BUILDING NUMBER |

8444

## SUBORDINATION AGREEMENT

UNION BANK OF CALIFORNIA, N.A., being the beneficiary under that certain deed of trust recorded June 8, 2004 as Document No. 2004-0535711 with the Office of the County Recorder of San Diego County, California, hereby declares that the lien and charge of said deed of trust are and shall be subordinate and inferior to the Declaration of Restrictions referred to in the Declaration of Annexation to which this Subordination Agreement is attached, and to the Declaration of Annexation.

UNION BANK OF CALIFORNIA, N.A.

By ____________________
Its James Nigro
Vice President

By ____________________
Its ____________________

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

On February 1, 2005, before me, Robin L. Melanson, Notary Public, personally appeared James Nigro, 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.

Signature Robin L. Melanson

ROBIN L. MELANSON
Commission # 1344674
Notary Public - California
San Diego County
My Comm. Expires Feb 25, 2006

(Seal)

1/21/05

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DOC # 2004-0075064

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OFFICIAL RECORDS
SAN DIEGO COUNTY RECORDER'S OFFICE
GREGORY J. SMITH, COUNTY RECORDER
FEES: 187.00
WAY: 2

RECORDED REQUEST OF
*First American Title*
SUBDIVISION MAPPING DEPT.
and
When Recorded Mail To:

HECHT, SOLBERG, ROBINSON, GOLDBERG & BAGLEY LLP
Ms. Katie Jacobsen
600 West Broadway, Eighth Floor
San Diego, California 92101

844321-15

2004-0075064

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# DECLARATION OF RESTRICTIONS

# FOR

# MYSTIC POINT

(A CONDOMINIUM COMMON INTEREST DEVELOPMENT)

**TABLE OF CONTENTS**

PAGE

PAGE

16923

# DECLARATION OF RESTRICTIONS

THIS DECLARATION OF RESTRICTIONS is made as of the 15th day of January, 2004, by CAL E1 LLC, a Delaware limited liability company (hereinafter called "Declarant"), with reference to the following

**RECITALS:**

A. **THE REAL PROPERTY.** Declarant is the owner of the real property located in the City of Carlsbad, County of San Diego, California, described as:

> Lot 1 of CITY OF CARLSBAD TRACT NO. 01-03 CALAVERA HILLS VILLAGE E-1, in the City of Carlsbad, County of San Diego, State of California, according to Map thereof No. 14696, filed in the Office of the County Recorder of San Diego County, California, on October 9, 2003; and
>
> Lots 1 through 5 of CITY OF CARLSBAD TRACT NO. 01-04 CALAVERA HILLS VILLAGE U, in the City of Carlsbad, County of San Diego, State of California, according to Map thereof No. 14725, filed in the Office of the County Recorder of San Diego County, California, on December 23, 2003

(the "Real Property").

B. **THE PROJECT.** Declarant plans to construct a phased residential condominium project called "Mystic Point" on portions of the Real Property, with more than one home in each building.

C. **PHASING OF MYSTIC POINT.** It is currently intended that Mystic Point will be marketed in the twelve (12) Phases described in the Condominium Plans. **Exhibit "A"** attached hereto states the number of Condominiums planned for each Phase. However, there is no guarantee that all Phases will be constructed or completed or that the phasing will occur in the exact order set forth in the Condominium Plans. If all Phases of Mystic Point are completed as planned, there will be a total of two hundred fifty-two (252) Condominiums in the Project. Each Condominium shall have appurtenant to it a membership in MYSTIC POINT HOMEOWNERS ASSOCIATION, a California nonprofit mutual benefit corporation ("Association"), which will be the management body for the Project and the owner in fee of the Association Property.

D. **PROPERTY INITIALLY COVERED BY THIS DECLARATION.** Initially, this Declaration encumbers only the following real property located in the City of Carlsbad, County of San Diego, State of California:

> Lot 1 of CITY OF CARLSBAD TRACT NO. 01-03 CALAVERA HILLS VILLAGE E-1, in the City of Carlsbad, County of San Diego, State of California, according to Map thereof 14696, filed in the Office of the County Recorder of San Diego County, California, on October 9, 2003

(the "Covered Property"). Other portions of the Real Property may be annexed to this Declaration pursuant to the Section below entitled "Annexation; Reservation of Easements" and thereby become a part of the Covered Property.

E. **CONDOMINIUMS.** Declarant intends to establish a condominium project under the provisions of the California CIVIL CODE. Each home in the Covered Property will be located within space shown as a

Living Unit on a Condominium Plan. Each Living Unit will consist of a separate interest in space within a building and it is intended that there will be more than one Living Unit in each building. Declarant currently intends to construct buildings that each contain either three or six living units.

F. **CONDOMINIUM PLANS.** It is intended that each Condominium Plan shall be deemed a separate Condominium Plan for each Phase which, for purposes of convenience, has been combined as one recorded instrument.

G. **THE COMMON AREA AND ASSOCIATION PROPERTY.** The Common Area will consist of those portions of Mystic Point which are owned in undivided interests amongst certain Owners, with the Owners of the Living Units in a building sharing an equal undivided interest in the Common Area portions of the applicable Building Envelope; the Common Area portions of a Building Envelope will be the entire Building Envelope excepting the Living Units in the building. The Association Property refers to portions of the Covered Property and other real property which will be transferred to the Association (either as easements or fee title). The Association Property in a Phase will include all portions of the Phase other than the Building Envelopes in the Phase.

H. **NO REPRESENTATION OF COMPLETION.** Declarant makes no representation that all the Condominiums, Association Property or Common Area planned for the Project will in fact be completed.

I. **CONDOMINIUM ELEMENTS.** Generally, the Owners of a Condominium will receive those property interests which are described below in the definition of "Condominium".

J. **ENVIRONMENTAL PRESERVE.** The Real Property is adjacent to an environmental preserve that is planned to be owned and maintained by an entity organized for managing and maintaining the preserve for conservation purposes.

K. **NOTICE OF STATUTORY PROCEDURES FOR CERTAIN CLAIMS. PURSUANT TO CALIFORNIA CIVIL CODE SECTION 912(F).** Declarant, on behalf of itself and each Affiliated Contractor (as defined in Article XVII below), notifies each Owner and the Association that Chapter 4 (commencing with Section 910) of Title 7 of Part 2 of Division 2 of the California CIVIL CODE sets forth non-adversarial procedures and remedies that may apply to claims for construction defect which may arise in connection with the Project. The non-adversarial procedures impact the legal rights of Owners and the Association. The statute allows Declarant and its Affiliated Contractors to elect not to use its procedures. The statute also allows Declarant and its Affiliated Contractors, by contract with Owners or the Association, to provide alternative non-adversarial procedures and remedies in lieu of the procedures and remedies contained in CIVIL CODE Section 910, *et seq.*

L. **NOTICE OF ALTERNATIVE DISPUTE RESOLUTION AND JURY TRIAL WAIVER PROVISIONS. NOTICE: ARTICLE XVII OF THIS DECLARATION ESTABLISHES MANDATORY ALTERNATIVE DISPUTE RESOLUTION PROCEDURES FOR CERTAIN DISPUTES. ARTICLE XVII ALSO CONTAINS A WAIVER OF THE CONSTITUTIONAL RIGHT TO A JURY TRIAL WITH RESPECT TO ANY SUCH DISPUTES.**

M. **INTERPRETATION OF DECLARATION.** In preparing this Declaration the law firm of Hecht, Solberg, Robinson, Goldberg & Bagley LLP represented Declarant and not any Owner or the Association. For interpretation of this Declaration or for advice concerning it, an Owner or the Association should contact their own legal advisor.

N. **COMMON PLAN OF RESTRICTIONS; BINDING ON FUTURE OWNERS.** Before selling or conveying any interests in the Covered Property, Declarant desires to subject the Covered Property to certain covenants and restrictions, in accordance with a common plan, for the benefit of Declarant and any and all present and future owners of the Covered Property.

NOW, THEREFORE, Declarant hereby declares that all the Covered Property, (including, upon annexation, additional portions of the Real Property which are added to the Covered Property), shall be held, sold and conveyed subject to the following easements, restrictions and covenants, which are enforceable equitable servitudes as described in California CIVIL CODE Section 1354 and which are for the purpose of establishing a general plan for protecting the value and desirability of, and which shall run with the Covered Property and be binding on all parties having any right, title or interest in the Covered Property, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

## ARTICLE I

## DEFINITIONS

Section 1.1. **"Architectural Committee"** shall mean and refer to the person or persons which may be from time to time appointed by the Board to serve as the Architectural Committee. The members of the Architectural Committee need not be members of the Board or the Association. Each member of the Architectural Committee shall serve until he or she resigns or is removed by the Board. The Board shall act as the Architectural Committee in the event the Board does not appoint an Architectural Committee.

Section 1.2. **"Articles"** shall mean and refer to the Articles of Incorporation of the Association as they may from time to time be amended.

Section 1.3. **"Association"** shall mean and refer to MYSTIC POINT HOMEOWNERS ASSOCIATION, a California Nonprofit Mutual Benefit Corporation, its successors and assigns.

Section 1.4. **"Association Property"** shall mean all real property and easements owned by the Association from time to time for the common use and enjoyment of the Owners. The Association Property in a Phase will include the remainder of the Phase after excluding all the Building Envelopes in the Phase. "Association Property" shall also include those areas (including public areas) located outside the Covered Property that the Association is required to maintain by the City, this Declaration or by easement or agreement. Any pipes, wires or other utility installations which serve more than one Living Unit but which are not owned and maintained by the City or a public utility and are not part of the Common Area will also be Association Property *(e.g.,* it is currently intended that there will be private storm drain, sewer and water systems within the Project). Television cable and related CATV equipment may be owned by the cable supplier.

Section 1.5. **"Board"** shall mean and refer to the Board of Directors of the Association.

Section 1.6. **"Building Envelope"** shall mean and refer to a three dimensional portion of the Covered Property, established pursuant to GOVERNMENT CODE Section 66427 and shown as a Building Envelope on the applicable Condominium Plan.

Section 1.7. **"Bylaws"** shall mean and refer to the Bylaws of the Association as they may from time to time be amended.

Section 1.8. **"City"** shall mean and refer to the City of Carlsbad, California.

Section 1.9. **"Common Area"** shall consist of all portions of a Building Envelope except the Living Units located in such Building Envelope. The boundaries of the Common Area shall be the boundaries of the applicable Building Envelope as shown on the applicable Condominium Plan. The Owners of the Living Units within a Building Envelope shall receive an equal undivided ownership interest in the Common Area of that Building Envelope only, with the undivided interest of each such Owner being equal to the reciprocal of the number of Living Units within the Building Envelope. It is intended that the Common Area include all portions of the building in a Building Envelope, including, but not limited to, the roof, any chimneys, vents, balconies, foundations, overhangs, columns and other appurtenances regardless of whether any such items lie outside the boundary lines shown on the applicable Condominium Plan. In interpreting deeds and plans, the then existing physical boundaries of a building whether in its original state or reconstructed in substantial accordance with the original plans thereof, shall be conclusively presumed to be its boundaries rather than the boundaries expressed in the deed or plan, regardless of settling or lateral movement of the building and regardless of minor variance between boundaries shown on the plan or deed and those of the building.

**Section 1.10.** **"Common Expenses"** means and includes the actual and estimated expenses of operating the Project and any reasonable reserve for such purposes as found and determined by the Board and all sums designated common expenses by or pursuant to the condominium documents.

**Section 1.11.** **"Condominium"** shall mean and refer to a fee simple estate in the Project and shall consist of:

(a) A Living Unit airspace;

(b) The exclusive right to use and occupy any Exclusive Use Area which the applicable Condominium Plan shows as being appurtenant to the Living Unit;

(c) An undivided interest as tenant in common to the Common Area portion of the Building Envelope in which the Living Unit is located; and

(d) An easement over the Association Property which has been conveyed to the Association, subject to the Association's rules, regulations and procedures.

**Section 1.12.** **"Condominium Plan"** shall mean and refer to each Condominium Plan recorded pursuant to California CIVIL CODE Section 1351(e) covering any portion of the Covered Property. It is intended that several separate Condominium Plans be recorded concurrently, and for purposes of convenience, more than one such Condominium Plan may be attached together as a single document; however, each such Condominium Plan shall remain a separate Condominium Plan within the meaning of CIVIL CODE SECTION 1351(e).

**Section 1.13.** **"County"** shall mean and refer to the County of San Diego, California.

**Section 1.14.** **"Covered Property"** shall initially mean the following real property located in the City of Carlsbad, County of San Diego, State of California:

> Lot 1 of CITY OF CARLSBAD TRACT NO. 01-03 CALAVERA HILLS VILLAGE E-1, in the City of Carlsbad, County of San Diego, State of California, according to Map thereof 14696, filed in the Office of the County Recorder of San Diego County, California, on October 9, 2003.

Other portions of the Real Property may be annexed to this Declaration pursuant to the Section below entitled "Annexation; Reservation of Easements" and will thereby become a part of the Covered Property.

**Section 1.15.** **"Declarant"** shall mean and refer to CAL E1 LLC, a Delaware limited liability company. Declarant shall also refer to (a) the assigns of Declarant who are expressly assigned the rights of Declarant and (b) successors of Declarant who become successors by operation of law or by exercise of the remedies under a mortgage, deed of trust or deed in lieu of foreclosure.

**Section 1.16.** **"Declaration"** shall mean and refer to this enabling Declaration of Restrictions, as it may from time to time be amended.

**Section 1.17.** **"Eligible Insurer or Guarantor"** shall mean and refer to an insurer or governmental guarantor who has requested notice from the Association of those matters which such insurer or guarantor is entitled to notice of by reason of this Declaration or the Bylaws of the Association and who has provided the Association with the address to which such notice is to be sent and the Condominium unit number which is encumbered by a Mortgage in which it has an interest.

**Section 1.18.** **"Eligible Mortgage Holder"** shall mean and refer to a holder of a first Mortgage on a Condominium who has requested notice from the Association of those matters which such holder is entitled to notice of by reason of this Declaration or the Bylaws of the Association and who has provided the

Association with the address to which such notice is to be sent and the Condominium unit number which is encumbered by a Mortgage in which it has an interest.

Section 1.19. **"Exclusive Use Area"** shall mean and refer to those portions of the Association Property or Common Area to which an exclusive right to use is granted to an Owner as shown and described on the applicable Condominium Plan. Yard and Deck Exclusive Use Areas are currently planned for the Project. A Condominium Plan may show the minimum square footage area of one or more Exclusive Use Areas but not show the actual dimensions of the Exclusive Use Area except by reference to Project improvements (*e.g.*, fences and walls which adjoin a Yard). Also, in the event one or more fences or walls installed by Declarant are in locations that do not coincide with the dimensions of the Exclusive Use Area shown on a Condominium Plan, the boundaries of the Exclusive Use Area shall be established by the locations of the adjacent fences and walls as installed by Declarant.

Section 1.20. **"Final Map"** shall mean and refer to any final subdivision map or parcel map covering any portion of the Covered Property.

Section 1.21. **"Fire Suppression Zones"** shall mean and refer to those areas within the Project designated by the City as lying within a fire suppression zone or modified fire suppression zone, which areas are subject to certain restrictions and obligations of maintenance as set forth in this Declaration and the conditions to approval of tentative tract map(s) for the Final Maps. None of Lot 1 of Final Map No. 14696 is in a Fire Suppression Zone. The approximate locations of Fire Suppression Zones in other portions of the Real Property will be shown or described on the Condominium Plan or Declaration of Annexation covering such property.

Section 1.22. **"Fire Suppression Requirements"** shall mean and refer to the fire protection requirements contained in the Landscape Manual adopted by the City Council on November 13, 1990, together with (and as may be modified by) any particular fire suppression plan approved by the City for the Project, as any of the fire suppression plan(s) may be revised from time to time.

Section 1.23. **"Living Unit"** shall mean and refer to a separate interest in space as defined in California CIVIL CODE Section 1351(f) and as shown and described as such on the applicable Condominium Plan. The following are Common Area or Association Property and not a part of any Living Unit: Bearing walls, columns, floors, roofs, foundations, central heating and fire sprinkler equipment, reservoir tanks, pumps and other central services, pipes, ducts, flues, chutes, conduits, wires and other utility installations, wherever located, except the outlets thereof when located in the Living Unit. Each Living Unit shall include any door or window within a perimeter wall, the interior undecorated surfaces of bearing walls and perimeter walls, floors and ceilings, any photo cell sensor porch entry lighting, and the outlets of all utility installations in the Living Unit, including the fire box of any fireplace located in the Living Unit. In interpreting deeds and plans, the then existing physical boundaries of a Living Unit, whether in its original state or reconstructed in substantial accordance with the original plans thereof, shall be conclusively presumed to be its boundaries rather than the boundaries expressed in the deed or plan, regardless of settling or lateral movement of the building and regardless of minor variance between boundaries shown on the plan or deed and those of the building. "Living Unit" includes any garage portion thereof as shown on the applicable Condominium Plan.

Section 1.24. **"Member"** shall mean and refer to a person entitled to membership in the Association as provided herein.

Section 1.25. **"Mortgage"** shall mean and refer to a mortgage or deed of trust which encumbers a Condominium.

Section 1.26. **"Mortgagee"** shall mean and refer to a beneficiary under a deed of trust which encumbers a Condominium as well as a mortgagee under a Mortgage.

Section 1.27. **"Owner"** shall mean and refer to the record owner, whether one (1) or more persons or entities, of fee simple title to any Condominium, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 1.28. **"Phase"** shall mean and refer to a three dimensional portion of the Covered Property, established pursuant to GOVERNMENT CODE Section 66427. Each Phase shall be the area which is so described on the applicable Condominium Plan. However, Declarant shall have the right to revise the phasing of the Project from time to time as evidenced by recordation of a revised Condominium Plan(s) which cover(s) Phase(s) owned by Declarant. The obligation of Condominium Owners to pay dues to the Association and the right of such Condominium Owners to exercise voting rights in the Association shall not commence against the Condominiums within a Phase until the first day of the month following close of the first sale of a Condominium by Declarant in that particular Phase of development.

<u>Section 1.29</u>. **"Preserve"** shall mean and refer to the land depicted on **Exhibit "B"** attached hereto as "PHASE II HABITAT CONSERVATION AREA".

<u>Section 1.30</u>. **"Project"** shall mean and refer to the Covered Property.

<u>Section 1.31</u>. **"Real Property"** shall mean and refer to that real property located in the City of Carlsbad, California, described in Recital A above.

<u>Section 1.32</u>. **"Retail Purchaser"** shall mean and refer to anyone other than a successive Declarant who purchases a Condominium from Declarant through authority of a Final Subdivision Public Report issued by the California Department of Real Estate.

<u>Section 1.33</u>. **"RV Park"** shall mean and refer to CALAVERA HILLS RECREATIONAL VEHICLE PARK, a California nonprofit corporation (formed pursuant to the Nonprofit Mutual Benefit Corporation Law of the State of California).

## ARTICLE II

## PROPERTY RIGHTS IN ASSOCIATION PROPERTY AND COMMON AREA

<u>Section 2.1</u>. <u>Title to the Association Property</u>. Declarant covenants for itself, its successors and assigns, that Declarant will convey to the Association any Association Property within a Phase of the Covered Property free and clear of all encumbrances and liens, except non-delinquent taxes, easements, covenants, conditions and reservations then of record, including those set forth in this Declaration, prior to the conveyance of the first Condominium in the respective Phase to a Retail Purchaser.

<u>Section 2.2</u>. <u>Owners' Easements of Enjoyment</u>. Subject to the limitations set forth in this Declaration, every Owner of a Condominium shall have a right and easement of enjoyment, use and ingress and egress to and from the Association Property from and after conveyance of the same to the Association. These rights and an Owner's undivided interest in the Common Area shall be appurtenant to and shall pass with the title of each Condominium, subject to the following provisions:

(a) The right of the Board to make rules and regulations relating to the operation and use of the Association Property and Common Area, including the right of the Board to restrict use of the recreational facilities to those in possession of Living Units and to those additional persons who are entitled to use. Except for areas where easement rights have been transferred or reserved to the contrary, the Board shall have the right to control the hours of such use and to determine whether such facilities may be used by guests of persons entitled to use. The Association shall have no right to restrict reasonable access to a Condominium by the persons who have the right to possession of the Condominium.

(b) The right of the Board to suspend the voting rights of an Owner and right to suspend use of recreational facilities by the Owner and occupants of a Condominium:

(i) During the period of time any Association assessment against the Condominium remains delinquent; and/or

(ii) For a period of not more than thirty (30) days for any infraction of the Board's published rules and regulations after reasonable written notice and an opportunity for a hearing before the Board which satisfies the minimum requirements of California CORPORATIONS CODE Section 7341 as set forth in the Bylaws.

(c) The right of the Board, subject to the limitations stated in the Section below entitled **"Approval of First Mortgagees"** of the Article entitled **'RIGHTS OF LENDERS"** and subject to the restrictions stated in California CORPORATIONS CODE Section 8724, to transfer less than substantially all of the Association Property. It is specifically intended that the Board have the right to cooperate with Declarant and any Owner in adjusting the boundaries of Exclusive Use Areas or between the Association Property and other portions of the Project.

(d) The sole and exclusive right of the Association, acting through its Board, to operate, maintain and control the Association Property and Common Area except as otherwise stated in this Declaration.

(e) The right of the Board to grant or dedicate to third parties permits, licenses (which may be irrevocable), and easements over the Association Property and Common Area for utilities, roads and other purposes necessary for the proper operation of the Project; and the right of the Board to convey portions of the Association Property to others in connection with a boundary adjustment requested by an adjacent property owner or public entity.

(f) The right of the Board to grant easements and licenses over the Association Property and the Common Area pursuant to this Declaration.

(g) The right of the Board, in accordance with this Declaration, to permit Owners to install improvements within Association Property and Common Area, provided that the installation of such improvements would not materially and adversely affect any Owner's use of the Association Property or Common Area. For example, the Board shall have the right to permit an Owner to install improvements necessary to provide private technology or entertainment services to the Owner's Living Unit (*e.g.*, satellite dishes, cables and similar improvements).

(h) The right of the Association, in accordance with the Articles and Bylaws, to borrow money for the purpose of improving the Association Property and to hypothecate any or all real or personal property owned by the Association.

(i) The right of access, ingress and egress over the Association Property and Common Area and the right of installation and use of utilities on the Association Property and Common Area for the benefit of the Condominiums.

(j) Declarant's right to construct and market homes and other improvements within the Real Property, including the following rights:

(i) Declarant and its sales agents, employees and independent contractors shall have the right to the non-exclusive use of the Association Property and Common Area for the purpose of maintaining sales offices, parking, signs and flags reasonably necessary to market the Condominiums in the Real Property. Declarant shall have the right, during its marketing of the Real Property, to control those hours in which Declarant, its agents, contractors and potential buyers to have access to the Real Property. These rights of Declarant may be exercised only until close of escrow to Retail Purchasers of all 252 Condominiums planned for the Real Property.

(ii) Declarant shall also have a non-exclusive easement over the Association Property and Common Area to provide access and utilities thereto for the purpose of constructing, marketing and utilizing portions of the Real Property owned by Declarant.

(iii) Declarant shall have the other rights of Declarant under this Declaration, including those set forth in the Article below entitled **"DEVELOPMENT BY DECLARANT"**.

The use of the Common Area and the Association Property by Declarant and its agents shall not unreasonably interfere with the use thereof by the Class A Members of the Association. Declarant shall repair any portion of the Association Property or Common Area which may be damaged by Declarant.

(k) Use of the Association Property and Common Area shall also be subject to:

(i) Any dedicated public rights and any third party easements or other rights that may exist of record. For example, the right to use the Common Area and Association Property shall be subject to the provisions of any open space easements or similar interests dedicated to the City or any other governmental or quasi-governmental entity on any Final Map.

(ii) The applicable ordinances of the City, easements in favor of the City, and permits and approvals issued by the City, including, but not limited to, the conditions of approval of any tentative subdivision map or condominium permit that pertains to the Real Property.

**Section 2.3.** **Delegation of Use.** Subject to the restrictions stated in this Declaration, any Owner may delegate, in accordance with the Bylaws and the rules and regulations of the Board, the Owner's right of enjoyment to the Association Property and Common Area and facilities to the members of the Owner's family, tenants, guests or contract purchasers who reside in the applicable Living Unit. Each Owner shall be responsible to the Association for any damage to the Association Property and Common Area caused by such Owner or persons to whom Common Area or Association Property rights have been transferred.

**Section 2.4.** **Power of Attorney to Correct Errors.** The Association is hereby given a power of attorney to act on behalf of the Owners and their Mortgagees to correct errors in any Condominium Plan by executing on behalf of the affected Owners and Mortgagees an amendment to the applicable Condominium Plan and an instrument to effect any conveyances or partial reconveyances necessary to correct such errors. The power hereby given to the Association is limited as follows:

(a) The power may be exercised only to correct errors in a Condominium Plan as evidenced by a written statement which describes the error(s) and which is signed by the engineer who prepared the Condominium Plan or by Declarant. The power hereby given may not be utilized for any other purpose.

(b) The power may not be exercised on behalf of an Owner or his or her Mortgagee if the Owner's Living Unit or Exclusive Use Area would be reduced in size by reason of the correction.

The power hereby given is coupled with an interest and may not be revoked by an Owner but may be revoked by a Mortgagee. Any such revocation by a Mortgagee shall be by means of its signed statement of revocation recorded with the County Recorder of the County.

**Section 2.5.** **City Easement.** The City shall have an easement over the Association Property and Common Area for maintenance purposes that may be exercised upon the failure of the Association to maintain the Association Property or Common Area in accordance with the conditions of approval of the Final Maps, pursuant to **Section 7.4** of this Declaration.

## ARTICLE III

## MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION

**Section 3.1.** **Each Owner Is A Member.** Each Owner of a Condominium shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Condominium. Each Owner is obligated promptly, fully and faithfully to comply with and conform to this Declaration and the Bylaws and the rules and regulations adopted from time to time by the Board and officers of the Association. Membership in the Association shall not be transferred, pledged or alienated in any way, except upon the sale or encumbrance of the Condominium to which it is appurtenant, and then only to the purchaser, in the case of a sale, or Mortgagee, in the case of an encumbrance of such Condominium. Any attempt to make a prohibited transfer is void. In the event the Owner of any Condominium should fail or refuse to transfer the membership registered in the Owner's name to the purchaser of his or her Condominium, the Association shall have the right to record the transfer upon its books and thereupon the old membership outstanding in the name of the seller shall be null and void.

Section 3.2. Voting Rights. The Association shall have three (3) classes of voting membership:

(a) ***Class A.*** Class A Members shall be all Owners, with the exception of Declarant, and shall be entitled to one (1) vote for each Condominium owned. When more than one (1) person holds an interest in any Condominium, all such persons shall be Members. The vote for the Condominium shall be exercised as the Owners among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Condominium. The Class A Members shall be entitled to elect, by their sole votes, two (2) members of the five (5) member Board of Directors at the first annual meeting of Members and thereafter until expiration of the three-year terms of Class C Elected Directors; upon termination of the Class C Elected Directors' three-year terms, Class A members will be entitled to vote for all nominees to the Board.

(b) ***Class B.*** Class B Member(s) shall be Declarant and shall be entitled to three (3) votes for each Condominium owned. The Class B membership shall cease and be converted to Class A membership on the happening of the earlier of the following to occur:

(i) Two (2) years following the first conveyance of record by Declarant of a Condominium to a Retail Purchaser pursuant to the most recent Final Subdivision Public Report issued by the California Department of Real Estate for a Phase of the Project; or

(ii) Four (4) years following the date of the first conveyance of record by Declarant of a Condominium to a Retail Purchaser pursuant to the original Final Subdivision Public Report issued by the California Department of Real Estate for Phase 1 of the Project.

Class B Members shall have no right to vote in the election of directors until the expiration of the three-year terms of the Class C Elected Directors.

(c) ***Class C.*** Class C Member(s) shall be Declarant and shall be entitled, by its sole vote, to elect three directors ("**Class C Elected Directors**") of the five member Board of Directors of the Association at the first annual meeting of Members of the Association. Each Class C Elected Director shall have a three (3) year term. The Class C membership shall automatically expire after the first annual meeting of Members of the Association; provided, however, the Class C membership will not expire for purposes of Declarant's right to replace any Class C Elected Director for the unexpired portion of the original three (3) year term of that directorship.

Section 3.3. Commencement of Voting Rights. Except with respect to Class C, voting rights shall not commence with respect to a Condominium until the Association's regular assessments have commenced against the Condominium.

## ARTICLE IV

## COVENANT FOR MAINTENANCE ASSESSMENTS TO ASSOCIATION

Section 4.1. Covenant for Assessments. The Declarant, for each Condominium owned, covenants, and each Owner of any Condominium by acceptance of a deed to the Condominium, whether or not so expressed in such deed, is deemed to covenant and agrees to pay to the Association: (a) regular assessments, which shall include an adequate reserve fund for periodic maintenance, repair and replacement of the Association Property and Common Area, (b) special assessments, and (c) those other assessments provided for in this Article. The regular and special assessments, together with interest, costs, late charges and reasonable attorney's fees, shall, except as stated in **Section 4.4**, be a charge and continuing lien upon the Condominium against which each such assessment is made, the lien to become effective upon recordation of a notice of assessment. Each such assessment, together with interest, costs, late charges and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner of such Condominium at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to an Owner's successors in title unless expressly assumed by them; however, the assessment shall remain a lien on the Condominium.

Section 4.2. 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 entire Project and for the improvement and maintenance of the Association Property and Common Area for the common good of the Project, to reimburse the Association for the costs incurred in bringing an Owner into compliance with the Bylaws, this Declaration and the rules and regulations adopted by the Board, and for those other purposes described in this Declaration. The regular assessments shall be determined at least annually by the Board to meet the expenses of the Association, including the establishment of reserve accounts, based upon the annual budget adopted by the Board pursuant to the Bylaws. A special assessment is an assessment the Board, in its discretion, determines necessary if the Association's available funds are or will become inadequate to meet the estimated expenses of the Association for a fiscal year. The Board may levy the entire special assessment immediately or levy it in installments over a period the Board determines appropriate. In addition, a special assessment against a particular Owner only may be levied by the Board as set forth in Section 4.4.

Section 4.3. Limitation on Regular and Special Assessments. The Board shall levy regular and special assessments sufficient to perform the obligations of the Association as provided in the Declaration and Bylaws; provided, however, except for assessment increases necessary for emergency situations:

(a) The Board may not increase the regular assessments for any fiscal year unless (i) the Board has complied with the provisions of California CIVIL CODE Section 1365(a) with respect to the fiscal year or (ii) the increase is approved by Owners 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 California CORPORATIONS CODE and Section 7613 of the California CORPORATIONS CODE at which a quorum was present or participated; and

(b) The Board may not impose a regular assessment that is more than twenty percent (20%) greater than the regular assessment for the Association's preceding fiscal year nor special assessments which in the aggregate exceed five percent (5%) of the budgeted gross expense of the Association for the fiscal year, without the approval of Owners 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 California CORPORATIONS CODE and Section 7613 of the California CORPORATIONS CODE at which a quorum was present or participated. An emergency situation is any one of the following:

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

(ii) An extraordinary expense necessary to repair or maintain the Project or any part of the Project for which the Association is responsible where a threat to personal safety in the Project is discovered.

(iii) An extraordinary expense necessary to repair or maintain the Project or any part of the Project for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the pro forma operating budget under CIVIL CODE Section 1365. However, prior to the imposition or collection of an assessment under this Subsection, 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 assessment.

(c) For purposes of this **Section 4.3**, "quorum" means more than fifty percent (50%) of the Owners. The term "regular assessment for the Association's preceding fiscal year" as used in this **Section 4.3** is deemed to be the regular assessment which would have existed in the absence of any subsidy of assessments agreed to be paid by Declarant. Anything in this **Section 4.3** to the contrary notwithstanding, the limitation on regular and special assessments shall comply with the laws of the State of California at the time the regular or special assessment is levied by the Association.

(d) Notwithstanding the above stated limitation against increases in regular assessments:

(i) The Board may increase regular assessments more than twenty percent (20%) if such increase was shown on an Association budget approved by the California Department of Real Estate and if such increase is allowed by California law;

(ii) Sums assessed against Owners pursuant to the Section below entitled **"Non-Lien Assessments (Compliance)"** shall not be considered in calculating the increases in assessments; and

(iii) The Board may levy special assessments pursuant to the Section in the Bylaws entitled "Limitation on Expenditure of Reserve Funds".

The due dates of assessments shall be as the Board establishes them. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Condominium have been paid. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment.

**Section 4.4.** **Non-Lien Assessments (Compliance).** The Association may also impose a special assessment against any Owner to reimburse the Association for costs incurred in bringing an Owner and the Owner's Condominium into compliance with the provisions of the Declaration, the Bylaws and Association rules and regulations, or as a penalty imposed as a disciplinary measure for failure of an Owner or occupants of the Owner's Condominium to comply with such provisions. Such special assessment may be imposed upon the vote of the Board after notice and an opportunity for a hearing which satisfy the requirements of Section 7341 of the California CORPORATIONS CODE, as set forth in the Bylaws, and the Board shall meet in executive session if requested by the Owner being disciplined and the Owner shall be entitled to attend the executive session. Except to the extent such special assessment is to reimburse the Association for the cost of collecting assessments, the special assessment shall not constitute a lien on the Owner's Condominium and shall be assessed only against the Owner who is or was in non-compliance. The Association shall have lien rights with respect to charges imposed against an Owner which are reasonable late payment fees for delinquent assessments, interest and other charges to reimburse the Association for costs reasonably incurred (including attorney's fees) in its efforts to collect delinquent assessments.

**Section 4.5.** **Schedule of Monetary Penalties.** If the Association adopts a policy of imposing any monetary penalty, including any fee, on any Owner for violation of this Declaration or the rules of the Association, including any monetary penalty relating to the activities of a guest or invitee of an Owner, the Board shall adopt and distribute to each Owner, 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 the authorization for Owner discipline set forth in this Declaration and the Bylaws. The Board shall not be required to distribute any additional schedules of monetary penalties unless there are changes from the schedule that was adopted and distributed to the Owners pursuant to this Section.

**Section 4.6.** **Rate of Regular Assessments.** Both regular and special assessments shall be levied upon each Condominium at a uniform rate. However, this Section does not apply to the sums payable by reason of **Section 4.4, 4.7** or **4.10.**

**<u>Section 4.7.</u>** **<u>Rate of Special Assessments for Repairs</u>**. Any special assessment to raise funds for the rebuilding or major repair of a portion of the structural Common Area or Association Property shall be levied against each Condominium in the Project against which the Association's regular assessments have commenced. Such special assessments shall be levied upon the basis of the ratio of the square footage of the floor area of the Living Unit of the Condominium to be assessed to the total square footage of the aggregate floor area of the Living Units in all Condominiums to be assessed.

**<u>Section 4.8.</u>** **<u>Date of Commencement of Regular Assessments</u>**. The regular assessments shall commence as to all Condominiums in a particular Phase of the Project on the first day of the month following the conveyance of the first Condominium to a Retail Purchaser in that Phase.

**<u>Section 4.9.</u>** **<u>Adjustment of Assessments; Due Dates</u>**. The Board shall fix the amount of the regular assessments against each Condominium at least thirty (30) days in advance of each fiscal year but may change the assessment amount on any subsequent occasion. Although the amount of regular assessments (other than special assessments) shall be determined at least annually, commencement of regular assessments against an additional Phase during the marketing period may cause the regular assessment amounts to change. Unless otherwise determined by the Board, regular assessments shall be due and payable in monthly installments on the first day of each calendar month. No notice of regular assessments shall be required except for notices of changes in assessment amount or changes in due dates. Written notice of changes in the regular assessments or of any special assessment shall be sent by first class mail to every Owner subject thereto not less than thirty (30) nor more than sixty (60) days prior to the change in assessments or the special assessment becoming due.

**<u>Section 4.10.</u>** **<u>Limited Regular Assessments</u>**. This Section shall apply only if not all the residential buildings within a Phase have been completed at the time the regular assessments commence against the Phase. Any Condominiums which will be located in a building which is uncompleted at the time regular assessments commence are referred to herein as **"Uncompleted Condominiums"** and shall be subject to limited regular assessments in lieu of regular assessments as hereinafter provided, unless the Board resolves and Declarant expressly agrees otherwise. For purposes hereof, a Condominium shall be deemed **"Uncompleted"** if the construction of the structural improvements to the building in which the Condominium is located has not progressed to the point which allows the Condominium to be legally occupied. Should any Phase of the Project include any Uncompleted Condominium at the time assessments commence against such Phase, then:

(a) In addition to preparing its usual budget, the Association shall prepare a budget which includes costs and reserves for operation, repair and replacement of all portions of the Association Property then under the jurisdiction of the Association, other than any portion of any building within the Project. Such budget is referred to herein as the **"Budget for Non-Building Association Property"**.

(b) The regular assessments which commence against each Uncompleted Condominium (**"Limited Regular Assessments"**) shall be based only upon the Budget for Non-Building Association Property until the first to occur of (i) completion of the structural improvements of the building in which the Uncompleted Condominium is located (as is evidenced by Declarant's filing a Notice of Completion for such building), or (ii) actual occupancy of such Uncompleted Condominium. An Uncompleted Condominium shall thereafter forever lose its status of being Uncompleted and shall be subject to the same regular assessment as all other completed Condominiums.

(c) The Limited Regular Assessments shall be uniform in amount. Limited Regular Assessments, if any, shall commence against each Uncompleted Condominium within a Phase at the same time as regular assessments commence for the Phase, and Limited Regular Assessment shall be in lieu of such regular assessments.

(d) The limitations on assessment increases set forth in **Section 4.3** shall not apply to increases in assessments against a previously Uncompleted Condominium which result from the conversion of Limited Regular Assessments to regular assessments.

(e) Limited Regular Assessments shall be deemed to be regular assessments, as such term is used in this Declaration, for all purposes, except as this Section specifically provides otherwise. The Board shall have the right to disregard this Section provided that Declarant has given its consent to Board's decision to do so. If Limited Regular Assessments are applicable, the non-limited regular assessments will exclude costs of maintenance and reserves for each building containing the Uncompleted Condominiums until non-limited regular assessments commence against such building.

**Section 4.11. Effect of Non-Payment of Assessments; Remedies of the Association.** Any assessment made in accordance with this Declaration (including lien and non-lien assessments) shall be a debt of the Owner of a Condominium from the time the assessment is due. Any assessment not paid within fifteen (15) days after the due date shall be delinquent. If an assessment is delinquent, the Association may recover any of the following: (i) reasonable costs incurred in collecting the delinquent assessment, including reasonable attorney's fees, (ii) a late charge on unpaid assessments in an amount not exceeding the greater of Ten Dollars ($10.00) or ten percent (10%) of each assessment, and (iii) commencing thirty (30) days after the assessment becomes due until paid, interest at the rate of twelve percent (12%) per annum on the delinquent assessment and all sums imposed by this Section, including reasonable fees and costs of collection and reasonable attorney's fees. After any assessments levied by the Association affecting any Condominium have become delinquent, the Board may, after giving notice to the delinquent Owner pursuant to CIVIL CODE Section 1367.1( as more fully described below), file for recording in the Office of the County Recorder of the County a notice of delinquency as to such Condominium. The notice of delinquency shall state all amounts which have become delinquent with respect to such Condominium and the costs (including attorney's fees), interest and late charges which have accrued thereon, the amount of any assessments relating to such Condominium which is due and payable although not delinquent, a description of the Condominium with respect to which the delinquent assessments are owed, the name of the record or reputed record Owner of such Condominium, and the name and address of the trustee authorized by the Association to enforce the lien by sale. Such notice shall be signed by an officer of the Association or its authorized agent.

Pursuant to CIVIL CODE Section 1367.1, the Association shall provide the delinquent Owner with written notice by certified mail at least thirty (30) days prior to filing a notice of delinquency with the County Recorder. The precise form and content of the notice is set forth in CIVIL CODE Section 1367.1., but includes, without limitation, the following information: (i) a general description of the collection and lien enforcement procedures of the Association; (ii) a statement that the Owner has the right to inspect Association records pursuant to CORPORATIONS CODE Section 8333; (iii) the following statement in 14-point boldface type if printed, or in capital letters, if typed:

> "IMPORTANT NOTICE: IF YOUR RESIDENTIAL UNIT IS PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT ACTION";

(iv) an itemized statement of the charges owed by the Owner, including items on the statement which indicate the amount of any delinquent assessments, the fees and reasonable costs of collection, reasonable attorneys' fees, any late charges, and interest, if any; (v) a statement that the Owner shall not be liable to pay the charges, interest, and costs of collection, if it is determined the assessment was paid on time to the Association; and (vi) a statement that the Owner has the right to request a meeting with the Board as provided in subdivision (c) of CIVIL CODE Section 1367.1.

Immediately upon recording of any notice of delinquency pursuant to the foregoing provisions of this Section, the amounts delinquent, as set forth in such notice, together with the costs (including attorney's fees), late charges and interest accruing thereon, shall (except as provided in **Section 4.4** of this Declaration) be and become a lien upon the Condominium described therein, which lien shall also secure all other payments and/or assessments which shall become due and payable with respect to said Condominium following such recording, and all costs (including attorney's fees), late charges and interest accruing thereon. When a notice of assessment has been recorded, such assessment shall constitute a lien on each respective Condominium prior and superior to all other liens, except (i) all taxes, bonds, assessments and other levies which, by law, would be superior thereto, and (ii) the lien or charge of any first Mortgage of record.

Any payments toward sums due under this Article shall be first applied to the delinquent assessments owed, and only after the assessments owed are paid in full shall the payments be applied to the fees and costs of collection, attorney's fees, late charges or interest. When an Owner makes a payment, the Owner may request a receipt and the Association shall provide it. The receipt shall indicate the date of payment and the person who received it.

In the event the delinquent assessments and all other assessments which have become due and payable with respect to the same Condominium, together with all costs (including attorney's 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 releasing of such lien.

Each assessment lien may be foreclosed in the same manner as the foreclosure of a mortgage upon real property under the laws of the State of California, or may be enforced by sale pursuant to Sections 2924, 2924(b), 2924(c) and 1367 the California CIVIL CODE, and all other applicable statutes, and to that end a power of sale is hereby conferred upon the Association. The Association, acting on behalf of the Condominium Owners, shall have the power to bid for the Condominium at a foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Suit to recover a money judgment for unpaid assessments, rent and attorney's fees shall be maintainable without foreclosing or waiving the lien.

**Section 4.12.** **Subordination of the Lien to First Deeds of Trust and First Mortgages.** The lien of the assessments, interest, costs, attorney's fees and late charges shall be subordinate to the lien of any first Mortgage upon any Condominium. Sale or transfer of any Condominium shall not affect the assessment lien. However, the sale or transfer of any Condominium pursuant to judicial or non-judicial foreclosure of a first Mortgage shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. However, the Association may treat as Common Expenses, assessable against all the Condominiums, any unpaid assessments for which lien rights have terminated. No sale or transfer shall relieve such Condominium from lien rights for any assessments thereafter becoming due.

**Section 4.13.** **Estoppel Certificate.** The Association shall furnish, upon demand by any person, a certificate signed by an officer of the Association setting forth whether the assessments on a specified Condominium have been paid. A properly executed certificate of the Association as to the status of assessments on a Condominium is binding upon the Association as of the date of its issuance.

**Section 4.14.** **Non-Use of Association Property or Common Area.** No Owner shall be exempt from personal liability for assessments levied by the Association, nor shall any Condominium be released from the liens and charges of assessments because of the non-use of the Association Property or Common Area nor because of abandonment of the Condominium.

**Section 4.15.** **Taxation of Association.** In the event that any taxes are assessed against the Common Area, Association Property or the personal property of the Association, rather than against the individual Condominiums, the taxes shall be added to the regular assessments and, if necessary, a special assessment may be levied against the Condominiums in an amount equal to the taxes, to be paid in two (2) installments, thirty (30) days prior to the due date of each tax installment.

**Section 4.16.** **Payment of Assessments By Declarant.** Except as specifically stated otherwise in this Article, Declarant shall pay all assessments levied by the Association against any Condominium owned by Declarant at the same time, in the same manner and in the same amount as any other Owner.

**Section 4.17.** **Uncompleted Facilities.** The Board may (but shall have no obligation to) exclude from Association regular assessments those portions of budgeted assessments which are for the purpose of defraying expenses and reserves directly attributable to the existence of improvements to be maintained by the Association but which are not complete at the time of the assessment. Any such exemption from assessments shall be in effect only until completion of the improvements, which may be evidenced by recordation of a notice of completion for the same.

**Section 4.18.** **Assessments Levied By City.** If the City performs maintenance of the Common Area or Association Property as provided in **Section 7.4** below, the City shall submit a written invoice to the Association for all costs incurred by the City to perform such maintenance. The City shall provide a copy of such invoice to each Owner, together with a statement that if the Association fails to pay such invoice in full within the time specified, the City will pursue collection against the Owners pursuant to the provisions of this Section and **Section 7.4** below. The invoice shall be due and payable by the Association within twenty (20) days of receipt by the Association. If the Association fails to pay such invoice in full within the period specified, payment shall be deemed delinquent and shall be subject to a late charge in an amount equal to six percent (6%) of the amount of the invoice. Thereafter, the City may pursue collection from the Association by means of any remedies available in law or in equity. Without limiting the generality of the foregoing, in addition to all other rights and remedies available to the City, the City may levy a special assessment against the Owners of each Condominium in the Project for an equal pro-rata share of the invoice, plus the late charge. Such special assessment shall constitute a charge and continuing lien on the Condominiums so assessed. Each Owner in the Project hereby vests the City with the right and power to levy such special assessment, to impose a lien upon their respective Condominium and to bring all legal actions and/or pursue lien foreclosure procedures against any Owner and his or her respective Condominium for purposes of collecting such special assessment in accordance with the procedures set forth in this Article.

**Section 4.19.** **Code Sections Subject To Change.** This Article relies on provisions of California statutory law which have been revised frequently. The Board is cautioned to have its legal consultant carefully review statutes in effect as of the date any notices or other actions are taken pursuant to this Article.

## ARTICLE V

## POWERS AND DUTIES OF ASSOCIATION

**Section 5.1.** **Participation in RV Park.** The Association shall have the power and duty to actively participate in the RV Park. The RV Park was formed for the purpose of owning, managing, operating and maintaining a storage area for recreational and other vehicles for use by members of Qualifying Organizations (as defined in the Bylaws of the RV Park). Membership in the Association does not guarantee space in the RV Park's storage facility. The RV Park is intended to recoup the expenses of owning, managing, operating and maintaining its storage facility by charging fees for its use. If fees charged by the RV Park are inadequate to recoup its operating expenses, it may assess the Association (and other Qualifying Organizations within the Calavera Hills Master Plan (MP-150(H)) a proportionate amount in order to cover the difference between receipts and expenses. As of the date of this Declaration, Qualifying Organizations include the following California non-profit mutual benefit corporations: (i) The Cape at Calavera Hills Homeowners Association; (ii) The Colony at Calavera Hills Homeowners Association; (iii) The Crest of Calavera Hills Homeowners Association; (iv) The Knolls of Calavera Hills Homeowners Association; (v) The Trails of Calavera Hills Homeowners Association; (vi) The Villas of Calavera Hills Homeowners Association; (vii) Calavera Hills Master Association; (viii) Calavera Hills II Homeowners Association; and (ix) the Association.

**Section 5.2.** **Additional Powers and Duties.** The Association shall have those additional powers and duties set forth in its Bylaws.

## ARTICLE VI

## USE OF CONDOMINIUMS

**Section 6.1.** **Residential Purposes.** Each Condominium shall be improved, used and occupied for private, single-family dwelling purposes only, and shall be not be used for any commercial purposes other than home businesses which are allowed by City zoning ordinances. However, Declarant may use any of the Condominiums owned by Declarant as model homes, design centers, construction offices and sales offices until all the Condominiums in all Phases of the Project are sold and conveyed by Declarant to Retail Purchasers.

**Section 6.2.** **Lease of Condominium.** Each Owner shall have the right to lease the Owner's Condominium provided that such lease is in writing. Each tenant shall be bound by and obligated to abide by the provisions of this Declaration, the Bylaws and the rules and regulations of the Board, and a tenant's failure to do so shall be deemed a default under the lease. No Owner shall lease a Condominium for transient or hotel purposes and no Condominium shall be leased for a term of less than twenty-six (26) days. Should the Board so request an Owner to do so, the Owner shall forward an executed copy of a lease to the Owner's Condominium to the Board together with the telephone number and street address of the residence of the Owner. Other than as provided in this Section, there shall be no restriction on the right of any Owner to lease a Condominium.

**Section 6.3.** **Use Not to Impair Insurance.** No Condominium shall be occupied, improved or used for any purpose or in any manner which shall cause such Condominium or any Condominium to be uninsurable against loss by fire or the perils of the extended coverage endorsement to the California Standard Fire Policy form, or cause any such policy or policies representing such insurance to be cancelled or suspended, or the company issuing the same to refuse renewal thereof or to increase the premium therefor.

**Section 6.4.** **Animals.** No animals of any kind shall be raised, bred or kept on the Project except that a reasonable number of dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose, nor in violation of any other provision of this Declaration. A "reasonable number" as used in this Section shall ordinarily include no more than an aggregate of three (3) dogs and cats per household; provided, however, a reasonable number in any instance may be more or less depending on whether the pets constitute a nuisance to other Owners. Animals belonging to Owners, occupants or their licensees, tenants or invitees within the Project must be kept within an enclosed area (Living Unit, Deck or Yard), or on a leash being held by an individual capable of controlling the animal, or in an appropriate carrier or container from which the animal cannot escape. Each Owner shall be liable to each and all remaining Owners, their families, guests, tenants and invitees, for any unreasonable noise or damage to person or property caused by any animals brought or kept upon the Project by the Owner or by members of his or her family, his or her tenants or his or her guests; and it shall be the duty and responsibility of each Owner to immediately clean up any waste from his or her animals.

**Section 6.5.** **Nuisance.** No Condominium shall be used in such manner as to obstruct or interfere with the enjoyment of occupants of other such areas or annoy them by unreasonable noise or otherwise, nor shall any nuisance be committed or permitted to occur in any portion of the Project. Ordinary and usual techniques of construction of improvements permitted hereunder shall not be deemed a nuisance. Any violation of the Section above entitled **"Animals"** or ordinances or regulations of the City is hereby declared to be a nuisance.

**Section 6.6.** **Sign Control and Flags.** An Owner may place one (1) sign of reasonable and customary dimensions in the window of the Owner's Living Unit to advertise the Condominium for sale or rent. An Owner shall have the right to display the flag of the United States on or in the Owner's Living Unit as provided in CIVIL CODE Section 1353.5, as such Section may be amended from time to time, and an Owner shall have the right to display such non-commercial signs, posters, flags or banners on or in the Owner's Living Unit as provided in CIVIL CODE Section 1353.6, as such Section may be amended from time to time. Except as provided in this Section and except for Declarant's rights set forth in this Declaration, no other signs may be placed anywhere in the Project without the prior written permission of the Architectural Committee. All signs must conform with applicable City ordinances. Anything contained in this Declaration to the contrary notwithstanding, Declarant shall have the right to install and maintain in any Condominium owned or leased by it, on the Association Property and Common Area during the sales period set forth in Section 6.1 above, such signs, poles, flags, banners and advertisements as it deems appropriate in connection with its sales program for the sale to the public of Condominiums.

**Section 6.7.** **Outside Antennae and Poles.** There shall be no outside television or radio antennae, masts, satellite dishes, transmitter tower or facility, poles or flag poles (other than poles or flag poles installed and maintained by Declarant in connection with its sales program for the period set forth in **Section 6.1** above) constructed, installed or maintained in the Project for any purpose whatsoever without approval of the Architectural Committee. However, in considering whether to approve an antenna or pole, or to impose requirements on such approval, the Architectural Committee shall not violate any applicable law or regulation, including, but not limited to, any law of the State of California or applicable regulations of the Federal Communications Commission, and the Architectural Committee shall comply with CIVIL CODE Section 1353.5 by allowing an Owner to display the flag of the United States, as defined by subdivision (b) of Section 434.5 of the GOVERNMENT CODE within such Owner's Condominium, in a location reasonably approved by the Architectural Committee. For purposes of this paragraph, "displaying the flag of the United States" means a flag of the United States made of fabric, cloth, or paper displayed from a staff or pole or in a window, and does not mean a depiction or emblem of the flag of the United States made of lights, paint, roofing, siding, paving materials, flora, or balloons, or any similar building, landscaping, or decorative component.

**Section 6.8.** **No Owner Modification to Association Property or Common Area.** Except as otherwise specifically provided in this Declaration, no Owner shall have the right to alter, paint, decorate, remodel, landscape or adorn any part of the Association Property or Common Area without the written consent of the Board.

**Section 6.9.** **No Offensive Activity.** No noxious or offensive activity shall be carried on in the Project, nor shall anything be done in the Project which may be or become an annoyance or nuisance to the others within the Project. However, construction or repair of improvements made at the Board's instruction or at Declarant's instruction shall be permitted. Nothing shall be done in any Condominium or elsewhere in the Project which will impair the structural integrity of any building. Except as otherwise provided in this Declaration, nothing shall be altered or constructed in or removed from the Association Property or Common Area, except upon the written consent of the Board. All equipment, garbage cans, wood piles or storage piles shall be kept screened and concealed from view of neighboring Condominiums, streets, Association Property and Common Area. All rubbish, trash or garbage shall be regularly removed from each Condominium and shall not be allowed to accumulate in the Project. No fences, hedges or walls shall be erected or maintained in the Project except such as are installed in accordance with the initial construction by Declarant or as provided by the Architectural Committee. No exterior clothes lines shall be erected or maintained, and there shall be no outside drying or laundering of clothes in an Exclusive Use Area or other portion of the Association Property or on the Common Area except in areas (if any) which may be approved by the Board.

**Section 6.10.** **Power Equipment.** No power equipment, hobby shops or car maintenance (other than emergency work) shall be permitted in the Project except with prior written approval of the Board. Approval shall not be unreasonably withheld and in deciding whether to grant approval the Board shall consider the effects of noise, air pollution, dirt or grease, fire hazard, interference with radio or television reception, and similar objections. Construction or repair of improvements at Declarant's request shall not require such approval.

**Section 6.11.** **Use of Association Property and Common Area.**

(a) Except as otherwise provided in this Declaration, the Association Property and Common Area shall be improved and used only for the following purposes:

(i) Affording vehicular passage and pedestrian movement within the Project, including access to the Condominiums;

(ii) Recreational use by the Owners and occupants of Condominiums and their guests, subject to rules established by the Board;

(iii) Beautification of the Project and providing privacy to the residents of the Project through landscaping and such other means as the Board shall deem appropriate;

(iv) Parking of automotive passenger vehicles in areas provided therefor as may be designated and approved by the Board by such persons, upon such terms and conditions as may from time to time be determined by the Board; the rules and regulations of the Board may be enforced by the Board, which shall have the right and power to remove vehicles from the Project at the cost of the vehicle owner and to levy monetary penalties as provided in this Declaration;

(v) As Exclusive Use Areas to be used in the manner described in this Declaration or a Declaration of Annexation;

(vi) By Declarant for marketing and construction activities; and

(vii) Those additional purposes which may be allowed by the Board or as provided in this Declaration.

(b) No Owner shall use or interfere with use of the Common Area or Association Property in any manner which shall increase the Association's cost of insurance or which shall result in cancellation of insurance or making insurance unavailable.

(c) The Board may permit Owners to install improvements within the Common Area and Association Property (*e.g.,* improvements necessary to provide private technology or entertainment services to the Owner's Living Unit, such as satellite dishes, cables and similar improvements), provided that:

(i) The installation of such improvements would not materially and adversely affect any Owner's use of the Association Property or Common Area;

(ii) The improvements are installed in a location and by a contractor reasonably approved by the Board;

(iii) The Board is reasonably satisfied the improvements will be waterproof;

(iv) The installation of the improvements will not increase the Association's cost to maintain the Common Area or the Association Property;

(v) The Owner causing the improvements to be installed indemnifies and holds the Association harmless from and against any and all liabilities, claims, damages, actions, costs, losses, proceedings, causes of action and expenses of any nature, including, but not limited to, attorneys' fees, arising from, attributable to or in connection with the installation of such improvements; and

(vi) The installation complies with the rules and regulations adopted by the Board from time to time.

(d) The Board shall rule on a request to install improvements pursuant to Paragraph (c) of this **Section 6.11** within thirty (30) days of receipt of the request; provided, however, in no event shall an improvement approved by the Board pursuant to Paragraph (c) of this **Section 6.11** be installed within the Common Area or Association Property until the person causing the installation is an Owner of a Condominium.

**Section 6.12.** **Owners Liable for Damage.** Each Owner shall be legally liable to the Association for all damages to the Project, including but not limited to, the buildings, recreational facilities and landscaping caused by such Owner, such Owner's guests (or other licensees) or any occupant of such Owner's Living Unit as such liability may be determined under California law. Each Owner shall be responsible for compliance with the provisions of this Declaration, the Bylaws and rules and regulations of the Board by such Owner's licensees and occupants of such Owner's Condominium.

**Section 6.13.** **Decorating by Owner.** Each Owner shall have the right, at the Owner's sole cost and expense, to maintain, repair, paint, paper, panel, plaster, tile and finish the interior surfaces of the ceilings, floors, window frames, door frames, trim and perimeter walls of the Owner's Living Unit, and the surfaces of the bearing walls and partitions located within the Living Unit. Such Owner shall have the right to substitute new finished surfaces in place of those existing on the ceiling, floors, walls and doors of his or her Living Unit. Windows shall be covered only by drapes, curtains and shades, and shall not be painted or covered by aluminum foil, paper, bed sheets or similar materials. Each Owner shall have the obligation to keep in good repair all items mentioned in this Section.

**Section 6.14.** **No Impairment of Structures.** No Owner shall make any change to his or her Condominium which would adversely affect the structural integrity of the building.

**Section 6.15.** **Exclusive Use Areas.** Each Exclusive Use Area shall be appurtenant to the Living Unit it serves. Conveyance of a Living Unit will automatically convey all appurtenant Exclusive Use Areas. No Owner shall make any improvements to an Exclusive Use Area unless such improvements have been approved or pre-approved by the Architectural Committee.

**Section 6.16.** **Use of Exclusive Use Areas.** Each Owner shall be entitled to use any Exclusive Use Area appurtenant to the Owner's Living Unit for usual and ordinary residential purposes for which such area was designed.

(a) Each Owner shall be entitled to the Deck Exclusive Use Area, if any, which is appurtenant to the Owner's Living Unit for usual and ordinary residential purposes. The Board shall have the right to restrict the storage of items on a Deck which it deems unsightly or hazardous.

(b) Each Owner shall have the right to use his or her Yard for residential yard purposes and an Owner may install such improvements in his or her Yard as are permitted by the Architectural Committee. Each Owner shall be responsible to maintain and repair any subsurface drainage improvements installed by Declarant in the Owner's Yard unless the Association has assumed such maintenance. No Owner shall interfere with the surface or any subsurface drainage of his or her Yard as established by Declarant nor shall any Owner install any Yard improvements which would make it impractical to repair or replace subterranean drainage installed by Declarant within such Owner's Yard. The approximate locations of subsurface drainage improvements within the initial Covered Property are depicted on **Exhibit "C"** attached hereto; the approximate locations of subsurface drainage improvements within other portions of the Real Property shall be depicted in the Declaration of Annexation by which such property is annexed to this Declaration. All improvements installed by an Owner in his or her Yard shall provide for proper and adequate drainage.

(c) No Owner shall make any improvements to his or her Exclusive Use Area unless and until the Architectural Committee has approved plans of such improvements showing such detail as the Architectural Committee or its consultant deems appropriate. Any such approval may be conditional. The Architectural Committee shall have forty-five (45) days to approve or disapprove such plans from the date the plans, in form required by the Architectural Committee, are received by the Architectural Committee. Failure of the Architectural Committee to approve or disapprove the plans within such forty-five (45) day period shall be deemed an approval. The Architectural Committee shall have the right to hire a civil engineer, landscape architect or other expert consultant as the Architectural Committee deems appropriate to evaluate plans and inspect the improvements. The Owner shall be required to pay the cost of such consultant. The Architectural Committee may require an Owner to deposit the estimated cost of such consultant at the time plans are submitted for Architectural Committee approval.

(d) Each Owner assumes all risks which may result from improvements he or she makes to his or her Exclusive Use Area(s) and each Owner indemnifies and holds harmless the Association, the Architectural Committee, Declarant and each other Owner from any claim, demands, liabilities, judgments, attorney's fees and other obligations which arise out of or are incurred in connection with the installation, existence or removal of improvements.

(e) The Board or Architectural Committee shall have the right to restrict those activities and improvements which it believes would have adverse structural, drainage or maintenance impacts or adverse visual or noise impacts on other Owners.

(f) The Board shall have the right to allow Owners to exclusively use portions of the Association Property or Common Area above or below the vertical limits of any Exclusive Use Area.

**Section 6.17.** **Balconies, Patio Covers and Decks.** The Association and each Owner shall comply with all applicable requirements of the City regarding balconies, patio covers and decks. For example, the number of such improvements that may be constructed for certain buildings in the Project is limited.

**Section 6.18.** **Garages.** Each Owner shall have the right to use any garage portion of the Owner's Living Unit for parking of automotive vehicle(s) (including cars, passenger vans and trucks) and the storage of non-hazardous materials. Neither the Association nor any Owner shall convert any garage to any use which prevents its use for vehicular parking of the number of automotive vehicles used by the Owner. However, nothing herein stated is intended to disallow Declarant from converting garage area to living area. No resident may park automotive vehicles outside his or her garage except temporarily for purposes of loading or unloading unless the garage is being used to park the number of vehicles for which it was originally designed or the resident has obtained the Board's prior written approval pursuant to rules promulgated by the Board.

**Section 6.19.** **Outside Parking.** No dune buggy, boat, trailer, recreational vehicle, mobile home, motor home, van, camper shell which is detached from a vehicle or otherwise mounted on a vehicle, nor truck which (a) is larger than one ton capacity, or (b) has a mounted camper shell which protrudes from the truck from either side or from beyond the rear gate or above the cab ceiling, shall be parked within any private street or anywhere else in the Project where visible to other Owners unless the Board expressly allows otherwise. Commercial vehicles shall be permitted within the Project for purposes of making deliveries and similar purposes, provided the same conform to rules which may be established by the Board. No dismantled or wrecked vehicle or equipment shall be parked, stored or deposited within the Project and no vehicle shall be repaired within the Project.

**Section 6.20.** **Right of Access.** Each Owner shall have the right of reasonable access for egress and ingress to and from such Owner's Living Unit (including, but not limited to, the garage portion) and Exclusive Use Areas.

**Section 6.21.** **Window Coverings.** Unless Declarant has done so, each Owner shall, within one hundred twenty (120) days after close of escrow for his or her Condominium, install window coverings on all windows of his or her Living Unit which are visible from any public or private street. The exterior appearance of such window coverings must be consistent with **Section 6.13** and any requirements promulgated by the Architectural Committee.

**Section 6.22.** **Sight Distance Corridors.** The Association and the Owner of each affected area shall at all times comply with all sight distance requirements of the City, including without limitation those shown on any Final Map or on City-approved plans for the Project. For example, no structure, fence, wall, tree, shrub, sign or other object over thirty inches (30") above the street level may be placed or permitted to encroach within an area identified as a sight distance corridor in accordance with Section 8.B.3 of the City Standard Public Street–Design Criteria.

**Section 6.23.** **Street Trees.** Neither the Association nor any Owner shall remove any street tree or replace any street tree with a different type of tree without the prior approval of the Planning Director of the City. As used in this section, "street tree" means and refers to each tree that is located within those portions of the Real Property that are subject to a general utility and access easement in favor of the City.

**Section 6.24.** **City Requirements Fire Suppression Zones.** The Association and each Owner shall at all times comply with City requirements.

**Section 6.25.** **Fire Suppression Zones.** Portions of the Real Property are within a Fire Suppression Zone. The Association and each Owner shall at all times comply with all applicable requirements and restrictions imposed by the City on such areas. The City's Fire Suppression Requirements may include restrictions on the types, materials and locations of improvements within the Project.

**Section 6.26.** **Post-Tensioned Slabs.** It is anticipated that some or all of the residences within the Project will be constructed with post-tensioned concrete slabs ("System") because of soils conditions. The System involves placing steel cables under high tension in the concrete slab located beneath the residence. Each Owner shall be responsible for determining whether his or her residence 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 to install a floor safe) 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. Neither Declarant nor any contractor of Declarant shall be responsible for any damage or injury resulting from or arising in connection with any alteration or piercing of the slab or the foundation of any residence. Each Owner shall hold Declarant harmless from and indemnify Declarant against all claims, demands, losses, costs (including attorney's fees), obligations and liabilities arising out of or in connection with the failure of the Owner to comply with the provisions of this Section.

**Section 6.27.** **No Over Irrigation**. The Association shall not over irrigate the Association Property or the Common Area or allow irrigation or water delivery systems to fall into disrepair. No Owner shall carelessly use water, allow overflow of water or over irrigate any plants within his or her Yard Exclusive Use Area or Living Unit. The excess water may cause substantial damage to the Project.

**Section 6.28.** **Trash Drop Off Locations.** Certain portions of the Association Property may be designated as trash container drop off locations by the Board. The residents within the Project are required to place their trash containers at such locations during designated time periods. The Board may adopt rules and regulations regarding the trash container drop off and pick-up policies. The Board may also adopt rules and regulations to designate such Association Property for guest parking spaces on the days such areas are not utilized for container drop off locations.

**Section 6.29.** **Construction and Sales Activities**. The development, construction, marketing and sales activities of Declarant are exempt from the covenants, restrictions and limitations set forth in this Article. None of the covenants, restrictions and limitations set forth in this Article or elsewhere in this Declaration, including without limitation those provisions requiring approval of the Architectural Committee, shall be applied to the development, construction, marketing or sales activities of Declarant or construed in such a manner as to prevent or limit development, construction, marketing or sales activities by Declarant.

**Section 6.30.** **Reduction of Surface Pollutants**. The Association shall coordinate the programs established by the City from time to time to assist Owners with the removal and proper disposal of toxic and hazardous waste products. Toxic chemicals or hydrocarbon compounds such as gasoline, motor oil, antifreeze, solvents, paints, paint thinners, wood preservatives and other such fluids shall not be discharged into any street or drive, public or private, or into any storm drain or storm water conveyance systems. Use and disposal of pesticides, fungicides, herbicides, insecticides, fertilizers and other such chemical treatments must, as prescribed in their respective containers, meet Federal, State, County and City requirements. Best Management Practices (as referenced in the "California Storm Water Best Management Practices Handbook") shall be used to eliminate or reduce surface pollutants when planning any changes to the landscaping and surface improvements.

**Section 6.31.** **Water Quality Protection**.

(a) ***Governmental Requirements.*** To protect the quality of our nation's waters, a number of federal, state and local laws, ordinances, rules, regulations and orders prohibit the discharge of anything other than natural rain water into storm drain systems, including gutters and streets that drain into storm drains. These governmental requirements include the Clean Water Act, the National Pollution Discharge Elimination System, orders and permits of the State Water Resources Control Board and the Regional Water Quality Control Board, the ordinances and regulations of the City and County, and any Storm Water Pollution Prevention Plan covering the Project. Each Owner shall comply with all such governmental requirements.

(b) ***Prohibited Discharges.*** Most discharges of anything other than natural rain water into storm drain systems are unlawful and may result in significant penalties and fines. No Owner shall discharge or permit to be discharged (for example, by a contractor working for the Owner) any of the following into any street, gutter, storm drain or storm water conveyance system: toxic or hazardous chemicals, hydrocarbon compounds such as gasoline, motor oil, antifreeze, solvents, paints, paint thinner, wood preservatives, fertilizers, lawn clippings, yard waste, detergents, pet waste, or other similar materials or pollutants.

(c) ***Use of Certain Chemicals.*** Each Owner shall comply with and cause its contractors to comply with all federal, state and City requirements, and the requirements of any other applicable governmental agency regarding the use, storage and disposal of pesticides, fungicides, herbicides, insecticides, fertilizers and other such chemicals. Owners should consult with the City, other governmental authorities, and their refuse hauler regarding the proper disposal of any toxic or hazardous materials.

(d) ***Spillage.*** Each Owner shall ensure that any landscaping and construction materials brought into the Project by the Owner or the Owner's contractors shall be properly contained to prevent spillage into any street, gutter or storm drain system. Should a spillage occur, the Owner shall (or cause the contractor responsible for the spill to) sweep the spilled material and place it in a container; it shall not be washed into any storm water curb drain inlet. Each Owner shall prevent erosion and the runoff of soil and other sediment from any Yard Exclusive Use Area appurtenant to the Owner's Living Unit into any street, gutter or storm drain system.

(e) ***Compliance With Storm Water Management Plan.*** Neither the Association nor any Owner shall remove any temporary devices installed by Declarant during construction of the Project to prevent the discharge of soil, sediment or other materials into any storm drain system.

(f) ***Indemnity.*** Each Owner shall indemnify, protect, defend and hold Declarant harmless from any and all claims, liability, actions, penalties or damages (including attorneys' fees, experts' fees and costs of suit) arising from or attributable to the Owner's failure to comply with the requirements of this **Section 6.31**.

**Section 6.32.** **Preserve.** The Real Property is located adjacent to the Preserve, which is intended to be a habitat conservation area for threatened, endangered or sensitive plants and animals that are covered under the City's Habitat Management Plan. Access to the Preserve may be restricted.

## ARTICLE VII

## RESPONSIBILITIES OF MAINTENANCE

**Section 7.1.** **Maintenance by Owners.** Each Owner of a Condominium shall be responsible for the maintenance and repair of:

(a) The windows and the interior surfaces of doors enclosing the Living Unit, including the vinyl or metal frames, tracks and exterior screens of glass doors and windows.

(b) The interior of the Living Unit and all appliances whether "built-in" or freestanding within the Living Unit.

(c) Except as stated in **Section 7.1(d)**, the plumbing, electrical, cable television, water heating systems, heating systems and air conditioning systems (if any), any photo cell sensor porch entry lighting fixtures, any exterior waterproof duplex outlet, any interior fire sprinkler heads, any exterior speakers and other systems servicing the Owner's Condominium and located either within or without the outside perimeter of the exterior walls, floors and ceilings thereof, so long as those systems are used exclusively by such Owner and not in common. For example, each Owner shall be responsible to maintain any automatic garage door opener for his or her garage. Declarant hereby reserves an easement to allow such systems to be located within the Association Property and Common Area in those locations where installed by Declarant. No Owner may permanently remove the photo cell sensor porch entry lighting fixtures servicing his or her Living Unit.

(d) The Project is serviced by private sanitary sewer and private water systems which deliver waste from each Living Unit to the public sewer lateral and water to each Living Unit from the public water main. Each Owner shall be responsible for the proper operation and maintenance of any portion of the private sanitary sewer and water delivery systems which lie within such Owner's Living Unit. Any portion of such systems which do not lie within a Living Unit, up to the point where they connect to the public sewer lateral or the public water main, will be the responsibility of the Association to operate and maintain.

(e) The maintenance and repair of the interior surfaces and drainage systems of any Deck which the Owner has the exclusive right to use. For example, the Owner shall be responsible for re-surfacing his or her Deck and shall keep his or her Deck free from all trash and debris. All drainage systems for a Deck, if any, shall be in good working condition at all times. The Association shall be responsible to paint and maintain both the exterior and interior surfaces of any open railings such as iron or tubular steel railings.

(f) The routine maintenance (for example, sweeping and cleaning) of any Deck or Yard Exclusive Use Area appurtenant to the Condominium. An Owner shall also be responsible to maintain, repair and replace when appropriate, any improvements which the Owner makes to his or her Exclusive Use Area.

(g) All Yard improvements. All such improvements shall be maintained in good condition and appearance, free from weeds, trash and debris. All landscaping improvements shall be maintained in accordance with applicable City requirements, including without limitation, the Landscape Concept Plan(s) for the Project on file with the City. All Yard drainage systems shall be kept in good working condition at all times.

(h) The interior of any fences and walls which separate the Owner's Yard from Common Area or Association Property.

(i) Should a fence or wall exist between two Yards, the cost of maintenance, repair and replacement of such fence or wall shall be shared equally by the Owners of the two adjoining Yards.

**Section 7.2. Failure to Maintain.** In the event an Owner defaults in his or her maintenance or repair obligations, the Board may give written notice of such default, stating with particularity the work of maintenance or repair the Board finds to be required and requesting the same be completed in a reasonable period of time as specified in the notice. In the event the Owner fails to complete such maintenance or repair within the period specified in the notice, the Board may cause such work to be completed and assess the Owner the cost thereof.

**Section 7.3. Maintenance by Association.** The Association shall maintain the Association Property within a Phase and Common Area within a Phase (except for those items of maintenance which the Owner is required to perform pursuant to **Section 7.1** above) from and after the date of the first close of escrow for the sale of a Condominium in that Phase by Declarant to a Retail Purchaser. Declarant shall, at Declarant's expense, maintain the Common Area and Association Property in each Phase until the obligation of the Association to maintain the Common Area and Association Property in that Phase commences. The Association shall be responsible for the maintenance and repair of the structure and exterior of each wall or fence separating the Yards from Common Area or Association Property in a Phase in which the Association's maintenance obligations have commenced. The Association's maintenance obligations include, but are not limited to the following amenities and utilities: The exterior and structural components of the buildings (including the exterior and structural components of any balconies or decks), building sprinkler systems (excluding sprinkler heads located within Living Units), private streets and street lights, private sidewalks, private storm drains, private water and sewer systems, and any other private amenities or utilities.

(a) The Association shall maintain any subterranean drainage improvements which are located within an Exclusive Use Area only if such improvements are identified on a Condominium Plan for Association maintenance; otherwise the Owner of the Exclusive Use Area shall be responsible to maintain any subterranean drainage facilities located within such Owner's Exclusive Use Area.

(b) The Association shall maintain all concrete terrace drains and other drainage systems (if any) which are located on Association Property or Common Area.

(c) All landscaping within the Association Property or Common Area shall be maintained in a healthy and thriving condition, free from weeds, trash and debris. All landscaping within the Association Property or Common Area shall also be maintained in accordance with applicable City requirements, including without limitation, the Landscape Concept Plan(s) for the Project on file with the City.

(d) The Association shall maintain any parkways, street medians or other public areas within or adjoining the Project which the City requires to be maintained by the Association, unless and to the extent that such areas are publicly maintained or maintained by another entity.

(e) The Association shall maintain and provide for the maintenance of all the Common Area and Association Property in accordance with the requirements of the City, including the City's Fire Suppression Requirements. The Association shall perform or cause to be performed by May 15 of each year brush management within the Common Area and Association Property, in strict compliance with the Fire Suppression Requirements.

(f) Notwithstanding any vote of its Members to the contrary, the Association shall be obligated to maintain any public area (*e.g.*, parkway) designated by Declarant in this Declaration, a Declaration of Annexation or other recorded document to the level of maintenance at least equal to the level of maintenance performed by the City or imposed by the City on other similar public areas. However, maintenance of any such public area by the Association is subject to the City allowing such maintenance.

**Section 7.4.** **City's Rights If Association Fails To Maintain.** In the event the Association fails to maintain all or any portion of the Common Area or Association Property it is responsible to maintain in accordance with this Article, the City shall have the right, but not the duty, to perform the necessary maintenance. If the City elects to perform such maintenance, the City shall give written notice to the Association, with a copy thereof to the Owners, setting forth with particularity the maintenance which the City finds to be required and requesting the same to be carried out by the Association within a period of thirty (30) days from the giving of such notice. In the event the Association fails to carry out such maintenance within the period specified by the City's notice, the City shall be entitled to cause such work to be completed and shall be entitled to reimbursement with respect thereto from the Owners as provided in **Section 4.18** above.

**Section 7.5.** **Reimbursement**. Each Owner shall reimburse the Association for those costs incurred which result from the Condominium occupants' excessive or neglectful use of the Exclusive Use Area or other portions of the Common Area or Association Property.

**Section 7.6.** **Wood-Destroying Pests.** The Association shall be responsible for the repair and maintenance of the Association Property and Common Area occasioned by the presence of wood-destroying pests or organisms; provided, however, it shall be the responsibility of each Owner to maintain and repair any improvements which may have been added by such Owner to the Owner's Living Unit and/or Exclusive Use Area. The Association may cause the temporary, summary removal of any occupant of the Project for such periods and at such times as may be necessary for prompt, effective treatment of wood-destroying pests or organisms. The costs of temporary relocation during the repair and maintenance by the Association shall be borne by the affected Owners and not the Association.

The Association shall give notice of the need to temporarily vacate a residence to the occupants and to the Owner not less than fifteen (15) days nor more than thirty (30) days prior to the date of the temporary relocation. The notice shall state the reason for the temporary relocation, the date and time of the beginning of treatment, the anticipated date and time of termination of treatment, and that the occupants will be responsible for their own accommodations during the temporary relocation. Notice by the Association shall be deemed complete upon either:

(a) Personal delivery of a copy of the notice to the occupants, and sending a copy of the notice to the Owner, if different than the occupants, by first-class mail, postage prepaid at the most current address shown on the books of the Association; or

(b) By sending a copy of the notice to the occupants at the residence address and a copy of the notice to the Owner, if different than the occupants, by first-class mail, postage prepaid at the most current address shown on the books of the Association.

**Section 7.7.** **Maintenance Manuals**. Declarant may provide its original purchasers and/or the Association with manuals (**"Maintenance Manuals"**) which outline Declarant's or manufacturers' recommended homeowner and/or Association maintenance obligations and schedules.

(a) Each Owner who receives a Maintenance Manual shall provide the same to any purchaser or other transferee of his or her Condominium.

(b) The Association shall keep and make available to any Owner the Maintenance Manual(s) provided by Declarant (including any Maintenance Manual which pertains to Association or Owner maintenance). The Association shall have the right to require an Owner to reimburse the Association for its costs of copying any such Maintenance Manual which the Association provides to an Owner.

(c) The Association and each Owner, respectively, shall follow the recommendations set forth in the applicable Maintenance Manual provided by Declarant, as the same may be updated from time to time.

**Section 7.8.** **Mold**. The Association, with respect to Common Area and Association Property, and each Owner, with respect to his or her Condominium, shall take all reasonable and appropriate steps to prevent conditions that may cause mold or mildew to develop, including following any recommendations contained in the Maintenance Manual or in any applicable publications of the California Department of Health Services (**"DHS"**) or the United States Environmental Protection Agency (**"EPA"**). As of the date of this Master Declaration, the EPA and DHS have Web sites which contain information and publications regarding mold and other biological pollutants. For example, see "Biological Pollutants in Your Home" and "Mold Resources" on the EPA Web site (http://www.epa.gov); and "Indoor Air Quality Info Sheet: Mold in My Home: What Do I Do" on the DHS Web site (http://www.dhs.ca.gov). An Owner shall promptly report to the Association any evidence the Owner may discover of moisture accumulation or mold in the Project. Should an Owner fail promptly to report to the Association any evidence of moisture accumulation or mold in the Owner's Living Unit that may affect the Common Area or Association Property or should an Owner fail promptly to report to another Owner any evidence of such moisture accumulation or mold that may affect or another Living Unit, such Owner shall be obligated to reimburse the Association and the other Owner for all costs incurred by the Association or other Owner as a result of the unreasonable delay in reporting the condition to the Association or other Owner.

**Section 7.9.** **Use of Reclaimed Water for Irrigation**. The Association may use reclaimed water for irrigation purposes if and when reclaimed water becomes available. It is possible that reclaimed water will flow into the Yards of those Condominiums adjoining the toe of a slope or that it will overspray onto Yards and buildings adjacent to the areas being irrigated. Reclaimed water is not potable and should not be consumed by people or animals. Reclaimed water may cause discoloring of fences or walls.

## ARTICLE VIII

## SEPARATION OF INTERESTS AND PARTITION PROHIBITED

**Section 8.1.** **No Separation of Interests.** No Owner may sell, assign, lease or convey any portion of his or her Condominium separate or apart from the entire Condominium. Any conveyance, encumbrance, judicial sale or other transfer (voluntary or involuntary) of any portion of his or her Condominium separate or apart from the entire Condominium shall be void.

**Section 8.2.** **No Partition.** There shall be no termination of the Project and the Common Area of the Project shall remain undivided with no judicial partition thereof except:

(a) With the approval, after substantial destruction or condemnation of the Project occurs, of at least sixty-seven percent (67%) of the total voting power of the Association and approval by Eligible Mortgage Holders who represent at least fifty-one percent (51%) of the Condominiums that are subject to Mortgages held by Eligible Mortgage Holders; or

(b) With the approval, for reasons other than substantial destruction or condemnation of the Project, of at least sixty-seven percent (67%) of the total voting power of the Association and approval by Eligible Mortgage Holders who represent at least sixty-seven percent (67%) of the Condominiums that are subject to Mortgages held by Eligible Mortgage Holders; or

(c) As allowed by California law, including California CIVIL CODE Section 1359, as the same may be amended from time to time.

An Eligible Mortgage Holder who receives a written request to give such approvals who does not deliver or mail the requesting party a negative response within thirty (30) days shall be deemed to have given such approval provided such written request was delivered by certified mail or registered mail with "return receipt" requested.

Nothing in this Section shall be deemed to prohibit partition of a cotenancy in a Condominium.

**Section 8.3.** **Power of Attorney.** The Association is hereby granted an irrevocable power of attorney to sell the Project for the benefit of all the Owners thereof when partition of the Owners' interests in the Project may be had pursuant to this Article. The power of attorney herein granted may be exercised upon the vote or written consent of Owners who own at least fifty percent (50%) of the Condominiums in the Project. Such power of attorney may be exercised by any two (2) Members of the Board who are hereby authorized to record a certificate of exercise in the Office of the County Recorder of the County, which certificate shall be conclusive evidence thereof in favor of any person relying thereon in good faith.

## ARTICLE IX

## DAMAGE, DESTRUCTION AND CONDEMNATION OF COMMON AREA OR ASSOCIATION PROPERTY

**Section 9.1.** **Damage or Destruction.** If any portion of the Common Area or Association Property is damaged or destroyed by fire or other casualty, then:

(a) If the cost of repairing or rebuilding does not exceed the amount of available insurance proceeds by more than five percent (5%) of the budgeted gross expenses of the Association, the Board shall contract to repair or rebuild the damaged portions of the Common Area or Association Property. Such repair or rebuilding will be in substantial accordance with the original construction unless it is impractical to do so.

(b) If the cost of repairing or rebuilding exceeds the amount of available insurance proceeds by more than five percent (5%) of the budgeted gross expenses of the Association, then:

(i) The Board shall obtain at least two competitive bids for the repair or rebuilding not more than forty-five (45) days after such damage occurs;

(ii) The Board shall use its best efforts to cause a special meeting of the Members to occur no later than ninety (90) days after such damage occurs. The notice of such meeting shall state that the reason for the meeting is to consider repair or rebuilding the portion of the Project which was damaged and whether to impose a special assessment to repair or rebuild. Such notice shall be accompanied with a summary of the competitive bids for repair or replacement.

(iii) Unless a majority of the voting power of the Association votes against the Board doing so, the Board shall within one hundred and eighty (180) days after such damage enter into a contract for repair or replacement and impose special assessments therefor pursuant to its Resolution to do so in accordance with Paragraph (c) of **Section 4.3** above. For purposes hereof, a "Majority of the voting power of the Association" means: (A) a majority of the voting power of each Class of Members if the two-class voting structure is in effect, or (B) a majority of the total voting power if only one-class voting is in effect.

(iv) Nothing herein stated is intended to prevent the Board from repairing or replacing the Common Area or Association Property and imposing a special assessment therefor pursuant to its authority to do so in accordance with Paragraph (a) or (b) of **Section 4.3** above.

(c) If the Owners vote to not repair or rebuild the Common Area or Association Property, then each Owner (and the Owner's Mortgagee(s) as their respective interests shall then appear) shall be entitled to receive that portion of insurance proceeds equal to the proportion of the decrease in fair market value of the Owner's Condominium as compared to the aggregate decrease in fair market values of all the Condominiums in the Project caused by such damage or destruction. Fair market value shall be determined by an MAI (Member Appraisal Institute of the American Institute of Real Estate Appraisers) appraiser selected by the Board and hired by and at the expense of the Association. Should a dispute arise as to the distribution of insurance proceeds, the dispute shall be decided by arbitration by the American Arbitration Association pursuant to its Commercial Rules of Arbitration.

(d) If a bid to repair or rebuild is accepted, the Board shall levy a special assessment against each Condominium pursuant to **Section 4.7** above for purposes of raising funds for the rebuilding or repair and to make up any deficiency between the total insurance proceeds and the contract price for such repair and rebuilding, and such assessment and all insurance proceeds, whether or not subject to liens of Mortgagees, shall be paid to the account of the Association to be used for such rebuilding.

(e) This Article shall not apply to any destruction of a Phase unless and until a Condominium has been conveyed in such Phase. Prior to any such conveyance within a Phase, the Association shall have no right or obligation to insure or repair the improvements of such Phase and no Owner but Declarant shall be entitled to the proceeds of any insurance carried by Declarant.

<u>Section 9.2</u>. <u>Condemnation</u>. If any portion of the Common Area in any Phase is taken by condemnation, eminent domain or any proceeding in lieu thereof, then all the Owners in all Phases of the Project, and their Mortgagees as their respective interests then appear, shall be entitled to receive a distribution from the award for such taking in the same proportion as insurance proceeds would be distributed pursuant to Paragraph (c) of the Section above entitled **"Damage or Destruction"**; provided, however, that should it be determined to repair or rebuild any portion of the Common Area, such proceeds shall be paid to the Association for that purpose in the same manner and subject to the same terms, conditions and limitations as are set forth above in this Article for repairing damaged or destroyed portions of the Common Area. A decision to repair or rebuild shall be made in the same manner and subject to the same conditions and limita-

tions as provided above in this Article for determining whether to rebuild or repair following damage or destruction.

**Section 9.3.** **Insurance.** The Association shall obtain and continue in effect at least the following insurance:

(a) A master fire insurance policy with glass coverage and extended coverage endorsement for one hundred percent (100%) of the current replacement cost of all of the Common Area and Association Property improvements within the Project, excluding land, foundations, excavations and other items that are usually excluded from insurance coverage. The maximum deductible amount shall be the lesser of $10,000 or one percent (1%) of the policy face amount. The Association shall have no right or obligation to obtain such insurance for a Phase unless and until the first conveyance of a Condominium in such Phase. "Improvements" means and refers to the Association Property and Common Area together with those appliances and improvements located within the Living Units provided by Declarant to the initial Owners of Condominiums and does not include items not provided by Declarant. The form and content of such policy must satisfy the requirements of the Federal National Mortgage Association (**"FNMA"**) and the Federal Home Loan Mortgage Corporation (**"FHLMC"**) and shall contain the following endorsements:

(i) An Inflation Guard Endorsement, when it can be obtained.

(ii) A construction code endorsement, if there is a construction code provision that would require changes to undamaged portions of the building(s) even when only part of a building is destroyed by an insured hazard (typical endorsements include Demolition Cost Endorsements, Contingent Liability From Operation of Building Laws Endorsement and Increased Cost of Construction Endorsement).

(iii) A Special Condominium Endorsement which states the policy shall provide that any insurance trust agreement will be recognized; the right of subrogation against Owners will be waived; the insurance will not be prejudiced by any acts or omissions of Owners that are not under the control of the Association; and the policy will be primary, even if an Owner has other insurance that covers the same loss.

(b) A comprehensive general liability and property damage insurance policy with cross liability endorsement, if available, insuring the Association, any manager, the Declarant, and the Owners against liability incident to ownership or use of the Association Property and Common Area. The limits of such insurance shall not be less than $3 Million covering all claims for death, personal injury and property damage arising out of a single occurrence. The form and content of the comprehensive general liability policy must satisfy the requirements of FNMA and FHLMC.

(c) A policy insuring the Association's officers and directors against liability for their negligent acts or omissions while acting in their capacity as officers and directors. The limits of such insurance shall be not less than $1 Million for all claims arising out of a single occurrence.

(d) Section 1365.7 of the California CIVIL CODE provides for a partial limitation on the liability of volunteer officers and directors of the Association who reside in a Living Unit, provided that certain requirements, as set forth in the Code section, are satisfied. The requirements include that general liability insurance and insurance covering individual liability of officers and directors for negligent acts or omissions be carried by the Association in specified amounts. The Association shall maintain general liability insurance and insurance covering individual liability of officers and directors for negligent acts or omissions in amounts which satisfy the requirements of the Code to limit the liability of volunteer officers and directors of the Association.

(e) A fidelity bond covering members of the Board, officers and employees of the Association and employees of any manager or managing agent, whether or not such persons are compensated for their services, naming the Association as obligee and written in an amount equal to

16951

at least three (3) months' aggregate regular assessments (including reserves) by the Association against all Condominiums then subject to assessment.

(f) Workers' compensation insurance covering any employees of the Association.

(g) A standard all risk of loss perils insurance policy under an extended coverage casualty policy for the full insurable value of all insurable improvements to the Association Property, a policy covering all loss to personalty owned by the Association insured with coverage in the maximum insurable fair market value of such personalty as determined annually by an insurance carrier selected by the Association. Insurance proceeds for improvements in the Association Property and personalty owned by the Association shall be payable to the Association.

Insurance premiums for the master policy and other insurance obtained by the Association (other than the cost of indorsements which cover only particular Owners) shall be a Common Expense to be included in the regular assessments levied by the Association. Each Owner shall be responsible to pay any deductible amount for any loss to his or her Condominium. Each Owner may separately insure the improvements not covered by the master fire insurance policy and personal property within the Owner's Condominium. However, no Owner shall insure a Condominium in any manner which would cause any diminution in insurance proceeds from the master policy. Should any Owner violate this provision the Owner shall be responsible to the Association for any such diminution.

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 and the servicer of each first Mortgage which requests such notice, and shall contain a waiver of subrogation by the insurers against the Association, Board and Owners.

The Association shall maintain such insurance coverage as may be required by FNMA or FHLMC so long as either FNMA or FHLMC respectively holds a Mortgage on or owns any Condominium.

Nothing herein stated shall prevent the Association from obtaining additional amounts of insurance or from adding to the items covered by a master policy.

**Section 9.4.** **Mortgagee Approval.** Any restoration or repair of the Project after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with original plans and specifications, unless other action is approved as provided in the Article below entitled **"RIGHTS OF LENDERS"**.

## ARTICLE X

## DAMAGE, DESTRUCTION AND CONDEMNATION OF SEPARATE INTERESTS

**Section 10.1.** **Damage or Destruction.** In the event of damage or destruction to any Living Unit or Exclusive Use Area improvements which the Owner is obligated to maintain, the Owner shall reconstruct the same as soon as reasonably practicable (unless the Association is not required to repair surrounding damaged Association Property or Common Area pursuant to the terms of **Article IX** above). The Owner shall be entitled to the benefit from an equitable distribution of the master policy of casualty insurance referred to in **Article IX** above to the extent the distribution covers the damage or destruction of elements of the Condominium which are the obligation of the Owner to repair as provided in this Section.

**Section 10.2.** **Condemnation.** In the event of any taking of a Living Unit or Exclusive Use Area, the Owner of the Condominium (and such Owner's Mortgagees as their interests may appear) shall be entitled to receive the award for such taking and after acceptance thereof the Owner and the Owner's Mortgagee shall be divested of all further interest in the Project and membership in the Association if such Owner shall vacate the Condominium as a result of such taking of the Living Unit. In such event the Owner shall grant the Owner's remaining interest in the Common Area appurtenant to the Living Unit so taken, if any, to the other Owners

16952

owning a fractional interest in the same Common Area, such grant to be in proportion to the fractional interest in the Common Area then owned by each.

**Section 10.3.** **Mortgagee Approval.** Any restoration or repair of the Project after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with original plans and specifications, unless other action is approved as provided in the Article below entitled **"RIGHTS OF LENDERS"**.

## ARTICLE XI

## CONDEMNATION OF ASSOCIATION PROPERTY

In the event the Association Property or any portion thereof shall be taken for public purposes or condemnation as a result of any action or proceeding in eminent domain, or shall be transferred in lieu of condemnation to any authority entitled to exercise the power of eminent domain, then the award or consideration for such taking or transfer shall be paid to and belong to the Association.

## ARTICLE XII

## ASSOCIATION'S RIGHT OF ENTRY

For the purpose of performing the maintenance of the Association Property and Common Area or for any other purpose reasonably related to the performance by the Board of its responsibilities under this Declaration, the Association's agents or employees shall have the right to enter any Living Unit, Exclusive Use Area or upon any portion of the Association Property and Common Area to effect repairs, improvements, replacements or maintenance as necessary; provided, however, except in case of an emergency, there shall be no entry into a Living Unit or Exclusive Use Area without (a) a court order allowing such entry or (b) the Owner's consent, which consent shall not unreasonably be withheld and shall be presumed if the Owner makes no objection to such entry within three (3) days after the Board delivers notice of its intent to enter. When there is an entrance into any Living Unit or Exclusive Use Area such entrance shall be made with as little inconvenience to the Owner as possible and any damage caused shall be repaired by the Association.

## ARTICLE XIII

## ADDITIONAL EXCLUSIVE EASEMENTS AND LICENSES

The Board shall have the right to grant the following additional easements and licenses:

**Section 13.1.** **Common Area Licenses.** The Board shall have the right to grant revocable and irrevocable licenses for Owners to exclusively use portions of the Common Area adjoining the Owners' Exclusive Use Area, provided that the granting of such licenses would not materially and adversely affect any Owner's use of the Common Area.

**Section 13.2.** **Association Property.** The Board shall have the right to grant easements for Owners to exclusively use portions of the Association Property adjoining the Owners' Exclusive Use Area, provided that the granting of such easements would not materially and adversely affect any Owner's use of the Association Property.

## ARTICLE XIV

## RIGHTS OF LENDERS

**Section 14.1.** **Payments of Taxes or Premiums by First Mortgagees.** First Mortgagees may, jointly or severally, pay taxes or other charges which are in default and which may or have become a charge against the Association Property, unless such 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 deeds of trust. First

Mortgagees may, jointly or severally, also pay overdue premiums on casualty insurance policies, or secure a new casualty insurance coverage on the lapse of a policy for the Association Property, and first Mortgagees making such payments shall be owed immediate reimbursement thereof from the Association. Entitlement to such reimbursement shall be reflected in an agreement in favor of any first Mortgagee who requests the same to be executed by the Association.

Section 14.2. Mortgagee Protection. A breach by an Owner of any of the covenants, conditions and restrictions contained herein shall not affect, impair, defeat or render invalid the lien, charges or encumbrance of any first Mortgage made for value which may then exist on any Condominium; provided, however, that in the event of a foreclosure of any such first Mortgage, or if the holder of the note secured by such first Mortgage acquires title to a Condominium in any manner whatsoever in satisfaction of the indebtedness, then the purchaser at the foreclosure sale shall, upon acquiring title, become subject to each and all of the covenants, conditions and restrictions contained herein, but free from the effects of any breach occurring prior thereto.

Section 14.3. Mortgagee Curing Defaults. A Mortgagee who acquires title by judicial foreclosure, deed in lieu of foreclosure or trustee's sale shall not be obligated to cure any breach of the provisions of this Declaration which is non-curable or of a type which is not practical or feasible to cure. The determination of the Board made in good faith as to whether a breach is non-curable or not feasible to cure shall be final and binding on all Mortgagees.

Section 14.4. Approval of First Mortgagees. Except as provided by statute in case of condemnation or substantial loss to the Living Units, Association Property and/or Common Area, unless at least sixty-seven percent (67%) of the first Mortgagees (based on one vote for each Condominium encumbered by the first Mortgage) have given their prior written approval or at least sixty-seven percent (67%) of Owners other than Declarant have given their prior written approval, the Association shall not be entitled to do any of the following:

(a) By act or omission seek to abandon or terminate the Project.

(b) Change the pro rata interest or obligations of any Condominium in order to levy assessments or charges, allocate distribution of hazard insurance proceeds or condemnation awards, or determine the pro rata share of ownership of each Condominium in the Common Area. (This Subsection is not intended to require approval of first Mortgagees to the annexation of additional Phases to the Project or to the sale of Condominiums in such additional Phases.)

(c) Partition or subdivide any Condominium.

(d) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Association Property (this requirement does not apply to areas which are Association Property only for maintenance purposes). The granting of easements for public utilities or for other public purposes and other easements allowed by this Declaration shall not be deemed a transfer within the meaning of this Subsection, nor shall non-material boundary adjustments be deemed a transfer within the meaning of this Subsection.

(e) Use hazard insurance proceeds for losses to any portion of the Association Property or Common Area for other than the repair, replacement or reconstruction of such Association Property or Common Area.

Section 14.5. Termination of Legal Status. Except as provided by statute, any action to terminate the legal status of the Project after substantial destruction or condemnation occurs must be approved by (a) at least sixty-seven percent (67%) of the total voting power of the Association, and (b) Eligible Mortgage Holders which represent at least fifty-one percent (51%) of the votes of Condominiums which are subject to Mortgages held by Eligible Mortgage Holders. Termination of the legal status of the Project for reasons other than substantial destruction or condemnation of the Project must be approved by (i) at least sixty-seven percent (67%) of the total voting power of the Association, and (ii) Eligible Mortgage Holders which represent at least sixty-seven percent (67%) of the votes of Condominiums which are subject to Mortgages held by Eligible Mortgage Holders. Any Eligible Mortgage Holder shall be deemed to have approved such termination if such Eligible Mortgage Holder fails to submit a written response to any written proposal for termination within thirty (30) days after such Eligible Mortgage Holder receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, with a "return receipt" requested.

**Section 14.6.** **Restoration of Project.** Any restoration or repair of the Project after partial condemnation or damage due to an insurable event shall be performed substantially in accordance with this Declaration and original plans and specifications unless other action is approved by (a) at least sixty-seven percent (67%) of the total voting power of the Association, and (b) Eligible Mortgage Holders which represent at least fifty-one percent (51%) of the votes of Condominiums which are subject to Mortgages held by Eligible Mortgage Holders.

**Section 14.7.** **Third Party Proceeds for Claimed Defects.** The Association shall not be entitled to use proceeds from third parties for claimed defects in any portion of the Association Property or Common Area for other than the repair, replacement or reconstruction of such Association Property or Common Area unless at least sixty-seven percent (67%) of the first Mortgagees (based on one vote for each Condominium encumbered by the first Mortgage) have given their prior written approval and at least sixty-seven percent (67%) of Owners other than Declarant have given their prior written approval.

**Section 14.8.** **Professional Management.** The Association shall obtain the services of a professional property manager to assist in the discharge of the Association's duties. The term of any agreement for professional management shall not exceed one (1) year, and any agreement for professional management or any other contract providing for services by Declarant must provide for termination by either party without cause or payment of a termination fee upon ninety (90) days or fewer written notice.

**Section 14.9.** **Notice to Eligible Mortgagees.** Upon written request to the Association identifying the name and address of the Eligible Mortgage Holder, Eligible Insurer or Guarantor and the Condominium number or address, any Eligible Mortgage Holder, Eligible Insurer or Guarantor 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 any Condominium on which there is a Mortgage held, insured or guaranteed by such Eligible Mortgage Holder, Eligible Insurer or Guarantor.

(b) Any delinquency in the payment of assessments or other default by an Owner subject to a Mortgage held, insured or guaranteed by such Eligible Mortgage Holder, Eligible Insurer or Guarantor which remains uncured for a period of sixty (60) days.

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

(d) Any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders, Eligible Insurers or Guarantors as specified above.

**Section 14.10.** **Documents to be Available to Mortgagees.** The Association shall, within ten (10) days of delivery of a written request and for a fee which does not exceed its reasonable cost to prepare and reproduce the items, make available to Owners and Mortgagees, and holders, insurers or guarantors of any Mortgage, current copies of this Declaration, the Articles, the Bylaws, rules and regulations concerning the Project and the books, records and financial statements of the Association. The Association shall also make such items available to prospective purchasers. "**Available**" means available for inspection, upon request, during normal business hours or under other reasonable circumstances. Any such financial statement so requested shall be furnished within one hundred twenty (120) days of the Association's fiscal year end provided the request was made within a reasonable time prior to such date. If the Project consists of fifty (50) or more Condominiums, the Association must provide an audited statement for the preceding fiscal year if a holder, insurer or guarantor of a first Mortgage submits a written request for it. If the Project consists of less than fifty (50) Condominiums and no audited statement is available, the holder or insurer or guarantor of a first Mortgage may have an audited statement prepared at its expense.

**Section 14.11.** **Conflicts.** In the event of any conflict between any of the provisions of this Article and any of the other provisions of this Declaration, the provisions of this Article shall control.

## ARTICLE XV

## ENFORCEMENT

**Section 15.1.** **Enforcement.** The Association, Declarant, and/or any Owner shall have the right to enforce against one another, by any proceeding at law or in equity, all restrictions, covenants, reservations, liens and charges now or hereafter imposed by this Declaration. The City shall have the right, but not the obligation, to enforce the provisions of this Declaration in the same manner as any Owner.

**Section 15.2.** **No Waiver.** Failure by the Association, Declarant, the City or any Owner to enforce any provision of this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

## ARTICLE XVI

## ADDITIONAL PROVISIONS

**Section 16.1.** **Severability.** Should any provision in this Declaration be void or become invalid or unenforceable in law or equity by judgment or court order, the remaining provisions hereof shall be and remain in full force and effect.

**Section 16.2.** **Amendments.**

(a) ***By Declarant.*** Prior to the date escrow closes for any sale of a Condominium to a Retail Purchaser, this Declaration may be unilaterally amended by Declarant.

(b) ***By Members.*** The following provisions shall apply after the close of the first escrow for a sale of a Condominium to a Retail Purchaser. During the period of time prior to conversion of the Class B membership to Class A membership, this Declaration may be amended by an instrument in writing signed by the President or Secretary of the Association certifying that at least sixty-seven percent (67%) of the voting power of each class of Members of the Association have approved the amendment. After conversion of the Class B membership in the Association to Class A membership, the Declaration may be amended by an instrument in writing signed by the President or Secretary of the Association certifying that the following have approved the amendment: (a) at least sixty-seven percent (67%) of the total voting power of the Association, and (b) at least sixty-seven percent (67%) of the voting power of Members of the Association other than Declarant.

(c) ***Mortgagee Approval of Amendment.*** Anything contained herein to the contrary notwithstanding, no amendment material to a Mortgagee may be made to this Declaration without the prior written consent of Eligible Mortgage Holders whose Mortgages encumber fifty-one percent (51%) or more of the Condominiums within the Project which are subject to Eligible Mortgage Holder Mortgages. For purposes hereof, any amendments to provisions of this Declaration governing any of the following subjects, shall normally be deemed "material to a Mortgagee":

(i) Voting rights.

(ii) Assessment liens and the priority of assessment liens and the right of Eligible Mortgage Holders to approve increases in regular assessments of in aggregate more than twenty-five percent (25%) during any fiscal year from the regular assessments assessed during the previous fiscal year.

(iii) The right of Eligible Mortgage Holders to approve reductions in reserves for maintenance, repair and replacement of the Association Property and the Common Area.

(iv) Responsibility for maintenance and repairs.

(v) Reallocation of interests in the Common Area or Association Property (including Exclusive Use Area) or rights to its use.

(vi) Redefinition of boundaries.

(vii) Convertibility of Living Units into Common Area or Association Property and vice versa.

(viii) Annexation and deannexation.

(ix) Hazard or fidelity insurance requirements.

(x) Imposition of any restrictions on the leasing of Condominiums.

(xi) Imposition of any right of first refusal or similar restriction on the right of a Condominium Owner to sell, transfer or otherwise convey the Owner's Condominium.

(xii) **Article XIV** of this Declaration.

(xiii) Restoration or repair of the Project (after a hazard or partial condemnation) in a manner other than specified herein.

(xiv) Any action to terminate the legal status of the Project after substantial destruction or condemnation occurs.

(xv) Any provision which, by its terms, is specifically for the benefit of the first Mortgagees, or specifically confers rights on first Mortgagees.

An Eligible Mortgage Holder who receives a written request to approve amendments (including additions) who does not deliver or mail to the requesting party a negative response within thirty (30) days, shall be deemed to have approved such request provided that such written request was delivered by certified mail or registered mail, with "return receipt" requested.

(d) ***Amendments to Specific Clauses.*** Notwithstanding the above provisions, (i) the percentage of the voting power necessary to amend a specific clause or provision in the Declaration shall not be less than the percentage of affirmative votes necessary for action to be taken under that clause or provision; and (ii) any amendment to this Declaration shall require the consent of the City Attorney of the City if such amendment would reduce or eliminate the standards of maintenance and repair of Common Area or Association Property or reduce or eliminate any right of the City set forth in this Declaration.

(e) ***Reduction of Required Percentage.*** The percentage of membership votes or written consents required to amend the Declaration may be reduced under certain circumstances by Court Order obtained pursuant to California CIVIL CODE Section 1356.

(f) ***No Amendment Without Declarant's Written Consent.*** Any provision within this Declaration which provides Declarant specific rights shall not be amended without the written approval of Declarant during the period prior to (i) ten (10) years after this Declaration is recorded or (ii) the annexation of all the Real Property and sale of all the Condominiums to Retail Purchasers, whichever shall first occur.

(g) ***City Consent.*** In addition, no amendment to or revocation of the provisions of **Section 2.5, 4.11** (to the extent of the City's lien rights thereunder), **4.18, 5.1, 7.3, 7.4** or **15.1** shall be made without the prior written consent of the City. A copy of any amendment proposed to any such Section shall be provided to the City in advance and the City shall have the right to approve or disapprove the proposed amendment. A copy of the finally approved amendment shall be transmitted to the City within thirty (30) days after recording.

**Section 16.3. Extension of Declaration.** Each and all of these covenants, conditions and restrictions shall terminate sixty (60) years following the recordation of this Declaration with the Office of the County Recorder of the County, after which date they shall automatically be extended for successive periods of ten (10) years unless all the Owners have executed and recorded at any time within six (6) months prior to said sixty (60) year period, or within six (6) months prior to the end of any such ten (10) year period, in the manner required for a conveyance of real property, a writing in which it is agreed that said restrictions shall terminate at the end of said sixty (60) year period or at the end of any such ten (10) year period.

**Section 16.4. Annexation; Reservation of Easements.**

(a) If Declarant should develop portions of the Real Property which are not initially a part of the Covered Property, such additional lands or any portion thereof may be annexed to this Declaration and thereby be added to and included within the Project and the Covered Property and thereby become subject to the jurisdiction of the Association by action of Declarant without the assent of Members of the Association. Annexation may be accomplished by the recording of a Declaration of Annexation which requires Owners of Condominiums therein to be Members of the Association. Any such area may be deannexed anytime prior to the first conveyance of a Condominium in such area by Declarant executing, acknowledging and recording a Declaration of Deannexation for such area.

(b) Annexation of any additional portion of the Real Property to the Covered Property is subject to the following requirements:

(i) Recordation of a Declaration of Annexation identifying the specific land to be annexed;

(ii) Declarant shall be obligated to pay the Association, concurrently with the closing of the escrow for the first sale of a Condominium in a Phase of the annexed area, appropriate amounts for reserves for replacement or deferred maintenance of Common Area or Association Property improvements in the annexed area necessitated by or arising out of the use and occupancy of Condominiums under a rental program, if any, conducted by Declarant which has been in effect for a period of at least one (1) year as of closing of escrow for the first sale of a Condominium in the annexed area;

(iii) The Condominiums to be constructed in the area to be annexed shall be substantially consistent with the Condominiums in the initially Covered Property in structure type and quality of construction, if so required by FNMA. This Subsection (iii) is intended to benefit FNMA only and its requirements may be waived by FNMA;

(iv) Annexation shall not result in there being more than 252 Condominiums in the Project; and

(v) The Declaration of Annexation shall not change the provisions herein set forth (including, but not limited to, those pertaining to voting rights and assessments) but may impose additional restrictions, easements and covenants on the area being annexed.

(c) Declarant reserves the right to construct on the portions of the Real Property annexed to this Declaration, Condominiums of those sizes, price ranges, floor plans, architectural styles and designs as Declarant may, in its sole discretion, determine. Such sizes, price ranges, floor plans, architectural styles and/or designs need not be consistent with any previous or other Phase except as required by FNMA pursuant to Subsection (b)(iii) above. Among other things, but not as a limitation, Declarant may construct on the Real Property annexed hereto, lower or higher priced Condominiums, higher density or lower density residences, attached or detached residences. Moreover, Declarant shall not be obligated to complete the future Phases at all or in any particular order and has the right to change the Association Property and the numbers of Condominiums in a Phase, subject to the limitations stated in Subsection (b) above.

(d) The Declaration of Annexation shall contain (i) a description of the property to be annexed, and (ii) a statement that the property to be annexed shall be subject to this Declaration.

(e) Declarant hereby reserves reciprocal cross-easements in and to the Association Property (other than Exclusive Use Areas) and Common Area in all Phases of the Project for the benefit of the Owners of Condominiums in all other Phases of the Project. These cross-easements shall not benefit or burden a Phase until (i) such Phase has become subject to this Declaration and (ii) a Condominium has been conveyed to a Retail Purchaser in such Phase; provided, however, each Owner of a Condominium shall at all times be provided with ingress and egress to such Owner's Condominium.

(f) As an alternative method of annexation, pursuant to a two-thirds (2/3) majority of the voting power of its Members, or the written assent of such Members, excluding the voting power or written assent of Declarant, the owner of any property who desires to add it to the scheme of this Declaration and to subject it to the jurisdiction of the Association, may file of record a Declaration of Annexation.

(g) Declarant hereby reserves in favor of each Condominium and the Association Property in each Phase which is subject to this Declaration an appurtenant non-exclusive easement to use any drainage systems installed anywhere within the Real Property for the purposes of accepting drainage from such Association Property or Condominium regardless of whether the drainage system is located within a Phase which is within the Covered Property.

**Section 16.5.** **Enforcement Litigation.** In the event the Association , Declarant or any Owner shall commence litigation to enforce any of the covenants or restrictions contained in this Declaration, the prevailing party in such litigation shall be entitled to costs of suit and such attorney's fees as the Court may adjudge reasonable and proper. The "prevailing party" shall be the party in whose favor a final judgment is entered. It is not intended that this Section entitle a party to his or her attorney's fees for any claim based on alleged defects in the design or construction of the Real Property or any portion of the Real Property and/or any improvements to the same.

**Section 16.6.** **Encroachment Easements.** Easements are hereby reserved in favor of the Owner of each Condominium and the Association over all adjoining Condominiums, the Association Property and Common Area for the purpose of accommodating any minor encroachments due to engineering errors, errors in original construction, repair, settlement or shifting of any building, or any other cause. There shall be easements for the maintenance of said encroachments as long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachments, settlement or shifting; provided, however, that in no event shall an easement for encroachment be created in favor of an Owner if the encroachment occurred due to the willful misconduct of any Owner. In the event any portion of a structure in the Project is partially or totally destroyed and then repaired or rebuilt, each Owner agrees that minor encroachments over adjoining Condominiums, Association Property or Common Area shall be easements for the maintenance of said encroachments so long as they shall exist.

**Section 16.7.** **Provisions Apply to All Condominiums.** The provisions of this Declaration apply to all Condominiums which have been made subject to this Declaration, including any unsold Condominiums which may be owned by Declarant. Declarant shall have the same rights and assumes the same duties as any other Owner with respect to unsold Condominiums, except as expressly stated otherwise.

**Section 16.8.** **Special Responsibilities of Association.** In the event that the improvements to be installed by Declarant to the Association Property or Common Area have not been completed prior to the issuance by the California Department of Real Estate of a Final Subdivision Public Report covering a Phase and in the further event that the Association is the obligee under a bond to secure performance by the Declarant to complete such improvements, then if such improvements have not been completed and a Notice of Completion filed within sixty (60) days after the completion date specified in the Planned Construction Statement appended to the bond, the Board shall consider and vote upon the question of whether or not to bring action to enforce the obligations under the bond. If the Association has given an extension in writing for the completion of any such improvement then the Board shall consider and vote on said question if such improvements have not been completed and a Notice of Completion filed within thirty (30) days after the expiration of the extension period. In the event that the Board determines not to take action to enforce the obligations secured by the bond, or does not vote on the question as above provided, then, in either such event, upon petition signed by Members representing not less than five percent (5%) of the total voting power of the Association, the Board shall call a special meeting of the Members of the Association to consider the question of overriding the decision of the Board or of requiring the Board to take action on the question of enforcing the obligations secured by the bond. Said meeting of Members shall be held not less than thirty-five (35) days nor more than forty-five (45) days following receipt of the petition. At said meeting a vote of a majority of the voting power of the Members of the Association, excluding the vote of Declarant, to take action to enforce the obligations under the bond shall be deemed to be the decision of the Association, and the Board shall thereafter implement the decision by initiating and pursuing appropriate action in the name of the Association.

**Section 16.9.** **Limitation of Restrictions on Declarant.** Declarant is undertaking the work of construction of residential Condominium dwellings and incidental improvements within the Project. The completion of that work, and the sale, rental and other disposal of said Condominium dwellings is essential to the establishment and welfare of the Project as a residential community. In order that Declarant's work may be completed and the Project may be established as a fully occupied residential community as rapidly as possible, nothing in this Declaration shall be understood or construed to:

(a) Prevent Declarant, its contractors or subcontractors from doing in the Project whatever is reasonably necessary or advisable in connection with the completion of such work; or

(b) Prevent Declarant or its representatives from erecting, constructing and maintaining on any part of the Project such structures as may be reasonable and necessary for the conduct of its business of completing such work and establishing the Project as a residential community and disposing of the same in parcels by sale, lease or otherwise; or

(c) Prevent Declarant from conducting on any part of the Project its business of completing such work, and of establishing a plan of Condominium ownership and of disposing of Condominiums in the Project by sale, lease or otherwise; or

(d) Prevent Declarant from maintaining such signs within the Project as may be necessary for the sale, lease or disposition of Condominiums; provided, however, that the maintenance of any such sign shall not unreasonably interfere with the use by any Owner of such Owner's Condominium.

The rights of Declarant provided in Paragraphs (a) through (d) above may be exercised during the period of time commencing when the Condominiums are first sold or offered for sale to the public and ending when all Condominiums have closed escrow to Retail Purchasers.

**Section 16.10.** **Phased Development of Real Property; Construction Activity.** Due to the planned phased development of the Real Property, Owners may be inconvenienced by construction activity, road improvements, dust, noise, sales office operation and other activities until such time as the Project has been completed.

**Section 16.11.** **Owners' Compliance.** Each Owner, tenant or occupant of a Condominium shall comply with the provisions of this Declaration, the Bylaws, decisions and resolutions of the Association or its duly authorized representative, as lawfully amended from time to time, and failure to comply with any such provisions, decisions, or resolutions shall be grounds for an action to recover sums due, for damages, or for injunctive relief.

All agreements and determinations lawfully made by the Association in accordance with the voting percentages established in this Declaration or in the Bylaws, shall be deemed to be binding on all Owners of Condominiums, their successors and assigns.

Section 16.12. Provisions of Civil Code Section 1360. Section 1360 of the California CIVIL CODE provides as follows:

"(a) Subject to the provisions of the governing documents and other applicable provisions of law, if the boundaries of [a Living Unit] are contained within a building, the owner of [a Living Unit] may do the following:

(1) Make any improvements or alterations within the boundaries of his or her [Living Unit] that do not impair the structural integrity or mechanical systems or lessen the support of any portions of the common interest development.

(2) Modify a unit in a condominium project, at the owner's expense, to facilitate access for persons who are blind, visually handicapped, deaf, or physically disabled, or to alter conditions which could be hazardous to these persons. These modifications may also include modifications of the route from the public way to the door of the unit for the purposes of this paragraph if the unit is on the ground floor or already accessible by an existing ramp or elevator. The right granted by this paragraph is subject to the following conditions:

(A) The modifications shall be consistent with applicable building code requirements.

(B) The modifications shall be consistent with the intent of otherwise applicable provisions of the governing documents pertaining to safety or aesthetics.

(C) Modifications external to the dwelling shall not prevent reasonable passage by other residents, and shall be removed by the owner when the unit is no longer occupied by persons requiring those modifications who are blind, visually handicapped, deaf, or physically disabled.

(D) Any owner who intends to modify a unit pursuant to this paragraph shall submit his or her plans and specifications to the association of the condominium project for review to determine whether the modifications will comply with the provisions of this paragraph. The association shall not deny approval of the proposed modifications under this paragraph without good cause.

(b) Any change in the exterior appearance of a [Living Unit] shall be in accordance with the governing documents and applicable provisions of law."

Section 16.13. Documents to be Provided to Prospective Purchasers.

(a) ***By Owners.*** Each Owner shall, as soon as practicable before transfer of title to his or her Condominium or execution of a real property sales contract therefor (as defined in CIVIL CODE Section 2985), provide the following to the prospective purchaser those items which Civil Code Section 1368 requires be provided to the prospective purchaser. As of the date of this Declaration, CIVIL CODE Section 1368 requires the following items be provided:

(i) A copy of this Declaration, the Association's Articles and Bylaws, and the Condominium Plan for the Phase which describes the Condominium offered for sale.

(ii) The statement required by CIVIL CODE Section 1368(2), if applicable (*i.e.*, if an age restriction becomes applicable).

(iii) A copy of the Association's most recent financial statement distributed pursuant to CIVIL CODE Section 1365.

(iv) A true statement, in writing, from an authorized representative of the Association, as to the respective amounts levied upon the Owner's Condominium which are unpaid on the date of the statement. The statement shall also include true information on late charges, interest and costs of collection which, as of the date of the statement, are or may be made a lien upon the Owner's Condominium pursuant to CIVIL CODE Section 1367.

(v) A copy of the preliminary list of defects provided to each Owner pursuant to Civil Code Section 1375 if that Section requires the list to be provided.

(vi) A copy of the latest information required by CIVIL CODE Section 1375.1, if that Section is applicable.

(vii) Any change in the Association's current regular and special assessments and fees which have been approved by the Board but have not become due and payable as of the date of the disclosure required by this Section.

(b) ***By the Association.*** Upon written request to the Association it shall, within ten (10) days of mailing or delivery of the request, provide an Owner with a copy of the requested Association items specified in (i) through (vii) above. The Association may charge a fee for this service which may not exceed the cost to prepare and reproduce the requested items.

**Section 16.14. Documents to be Provided by Owners to Subsequent Purchasers.** In conjunction with the sale of each Condominium by Declarant to a Retail Purchaser, Declarant provided the Retail Purchaser certain documents ("**Homeowner Documents**"), which may include, without limitation, the following: (i) a Maintenance Manual and/or other maintenance or preventive maintenance information; (ii) manufactured products' maintenance and limited warranty information; and (iii) a fit and finish warranty or other contractual warranty. Each Owner shall maintain a full and complete copy of the Homeowner Documents and provide the Homeowner Documents to any subsequent purchaser of the Owner's Condominium.

**Section 16.15. Easement to Inspect and Test.** Declarant reserves easements to enter any portion of the Project, including the interior of any residence and Exclusive Use Area, to inspect those areas and to conduct destructive testing should a claim alleging a defect in design or construction be brought against Declarant. However, Declarant shall notify the Association, with respect to the Association Property which is to be inspected and the Owner of the Exclusive Use Area or Living Unit to be inspected of at least three (3) alternative dates and times when such inspection can take place (the earliest of which shall not be less than ten (10) days after the notification is given) and Declarant shall give the Association and Owner, respectively, the opportunity to specify which date and time is acceptable to the Association and Owner. Should the Association or Owner not respond affirmatively with respect to one of the dates and times within five (5) days, then Declarant may decide which of the dates and times the inspection and testing shall take place and so notify the Association or Owner, respectively. Alternatively, Declarant may seek a judicial order allowing such inspection and testing to take place. Declarant shall be entitled to its reasonably incurred attorney's fees and be deemed the "Prevailing Party" should such court order be sought and obtained. Declarant shall be obligated to fully repair any damage caused by any such destructive testing. If the provisions of Section 1375 *et seq.* of the California CIVIL CODE apply to the claim alleging a defect in design or construction, the provisions of Section 1375 *et seq.*, and not this Section, shall govern destructive testing.

**Section 16.16.** **Association Property and Common Area Inspection.** In addition to its other inspection and testing rights set forth in this Declaration, Declarant may, at its election, notify the Board that (i) Association Property and Common Area landscaping and related improvements for a particular Phase, or some portion thereof, have been completed and (ii) Declarant is requesting the inspection provided for in this Section. Within fifteen (15) days after Declarant gives such notice, Declarant shall select an independent and qualified landscape architect to perform the inspection. Each person selected or appointed pursuant to this Section is referred to collectively as the "Expert". Declarant shall pay the reasonable compensation of the Expert.

Promptly upon the selection of the Expert as provided above, the Expert shall inspect the improvements as to which Declarant has given notice of completion and requested inspection. One representative of the Declarant and one representative of the Board may accompany the Expert during the inspection. The inspection shall be limited to a visual inspection, and improvements shall not be uncovered. The Expert shall not be responsible for identifying latent deficiencies. Promptly after the inspection is completed, the Expert shall submit a written report (the "Report") to Declarant and the Board specifying the respects, if any, in which the improvements do not substantially conform to the plans and specifications therefor and are defective, and if there are no such deficiencies, the Report shall state that the improvements conform to the plans and specifications therefor. The Report shall constitute conclusive and binding evidence that, except as otherwise provided therein and except for latent deficiencies, if any, the improvements have been constructed in substantial accordance with the plans and specifications therefor, and thereafter Declarant shall have no further liability, duty or obligation with respect to such improvements, except to remedy any deficiencies specified in the Report and except with respect to latent deficiencies, if any, and the separate repair obligations of Declarant under express written warranty, if any.

Declarant shall correct any deficiencies specified in the Report, and the Expert shall reinspect such improvements within thirty (30) days after Declarant's request. Such reinspection shall be performed in the same manner as provided for the first inspection. Promptly after the reinspection is completed, the Expert shall submit another written report (the "Reinspection Report") to Declarant and the Board specifying the deficiencies specified in the Report which have not been corrected, if any, and if all such deficiencies have been corrected the Reinspection Report shall state that the improvements substantially conform to the plans and specifications therefor. The Reinspection Report shall constitute conclusive and binding evidence that, except as otherwise provided therein and except for latent deficiencies, if any, the improvements have been constructed in substantial accordance with the plans and specifications therefor, and thereafter Declarant shall have no further liability, duty or obligation with respect to such improvements, except to remedy any deficiencies specified in the Reinspection Report, and except with respect to latent deficiencies, if any, and the separate repair obligations of Declarant under express written warranty, if any.

Additional inspections and Reinspection Reports shall be made, if necessary, all in accordance with and with the same effect as provided hereinabove.

Within ten (10) days after all deficiencies have been corrected, as evidenced by a Report or Reinspection Report, the Board shall be deemed to have accepted the improvements in writing and shall release in writing any and all rights under any and all payment and performance, labor and material, and completion bonds pertaining to the improvements.

No amendment may be made to this Section without the written consent of Declarant.

**Section 16.17.** **Member Approval Required to Initiate Judicial Reference or Litigation.** Neither the Board nor any committee of the Board shall initiate judicial reference or litigation with respect to portions of the Project owned or maintained by the Association for violation of the construction standards set forth in California CIVIL CODE Sections 896 and 897 and any successor statutes or laws which exceeds $100,000 without first obtaining the approval of a majority of the voting power of Members of the Association, excluding the vote of Declarant. The Board and any committee so authorized by the Board shall have the right and authority, without Member approval, to engage in non-adversarial proceedings or mediation with respect to such claim (*e.g.* pursuant to California CIVIL CODE Sections 910 through 938 or California CIVIL CODE Section 1375).

## ARTICLE XVII

## JUDICIAL REFERENCE

**Section 17.1. Resolution of Disputes by Judicial Reference.** The purpose of this Article is to provide an expedited means of resolving any claims, disputes and disagreements which may arise between a Construction Party (defined below) and a Claimant (defined below) concerning the Covered Property that are not resolved pursuant to any applicable statutory dispute resolution procedures (individually a "Dispute" and collectively "Disputes"). Alternatively, a Construction Party and a Claimant may elect to resolve Disputes through a small claims court proceeding. **THE JUDICIAL REFERENCE PROCESS INVOLVES WAIVER OF THE RIGHT TO A JURY TRIAL. DECLARANT, BY EXECUTING THIS DECLARATION, AND EACH OWNER AND THE ASSOCIATION, BY ACCEPTING A DEED TO ANY PORTION OF THE COVERED PROPERTY, COVENANT AND AGREE TO RESOLVE DISPUTES AS SET FORTH IN THIS ARTICLE.** Accordingly, any Dispute, including, but not limited to, any claim related to construction of the Covered Property, shall be heard by a referee under the provisions of the California CODE OF CIVIL PROCEDURE, Sections 638 through 645.1, inclusive. However, the judicial reference provisions of this Article do not pertain to any Dispute which a Construction Party or Claimant elects to have resolved by a small claims court proceeding.

**Section 17.2. Definitions.** For purposes of this Article, the following terms shall have the following meanings:

(a) **"Affiliated Contractor"** shall mean and refer to each general contractor and contractor who, as of the time of sale of the portion of the Covered Property that is the subject of a Dispute: (i) is in the business of building, developing or constructing the Covered Property for public purchase; and (ii) is a partner, member of, subsidiary of, or otherwise similarly affiliated with Declarant.

(b) **"Claimant"** shall mean and refer to any party (including any Owner or the Association) who intends to make a claim for Dispute against a Construction Party.

(c) **"Construction Party"** shall mean and refer to Declarant or any director, officer, partner, employee, subcontractor or agent of Declarant or any Affiliated Contractor.

**Section 17.3. Selection of the Referee.** The parties to the Dispute shall agree upon a single referee who shall then try all issues, whether of fact or law, and report a finding and judgment on such issues. If the parties are unable to agree upon a referee within ten (10) days of a written request to do so by any party, then any party may thereafter seek to have a referee appointed under the California CODE OF CIVIL PROCEDURE Sections 638 and 640.

**Section 17.4. Powers of the Referee.** The referee shall have the power to decide all issues of fact and law and report his or her decision on such issues, and to issue all legal and equitable relief appropriate under the circumstances of the controversy before the referee. **Declarant, by executing this Declaration, and each Owner and the Association, by accepting a deed to any portion of the Covered Property, waive the right to a jury trial and agree that the referee shall decide all factual and legal issues of any dispute.**

**Section 17.5. Cooperation by the Parties.** The parties to the Dispute shall promptly and diligently cooperate with one another and the referee, and shall perform such acts as may be necessary to obtain a prompt and expeditious resolution of the dispute or controversy in accordance with the terms of this Article.

**Section 17.6. Expenses of Judicial Reference.** The fees charged by the referee for his or her services shall be borne by the parties to the Dispute in the amounts ordered by the referee. However, the Construction Party shall advance the fees required to initiate the proceeding and which become due and payable during the proceeding. The Claimant shall reimburse the Construction Party the sums so advanced

16964

by the Construction Party after the conclusion of the judicial reference proceeding to the extent ordered by the referee.

**Section 17.7.** **Attorneys' Fees and Costs**. Each party to the Dispute shall bear its own attorneys' fees and costs (including expert witness costs) in the reference; provided, however the fees charged by the referee for the reference shall be paid as provided in **Section 17.6**.

**Section 17.8.** **Waiver of Trial by Jury**. **DECLARANT, BY EXECUTING THIS DECLARATION, AND EACH OWNER AND THE ASSOCIATION, BY ACCEPTING A DEED TO ANY PORTION OF THE COVERED PROPERTY, HEREBY WAIVE THEIR RESPECTIVE RIGHT TO TRIAL BY JURY OF ANY CONTROVERSY OR DISPUTE ARISING OUT OF OR IN ANY WAY RELATING TO THE COVERED PROPERTY.**

**Section 17.9.** **Other Parties**. The parties to the Dispute shall cooperate in good faith to attempt to include all appropriate parties in the judicial reference proceeding. Neither a Construction Party nor a Claimant shall be required to participate in the judicial reference proceeding if the enforcement of the provisions of judicial reference would impair the insurance coverage of a party for any claim arising out of the Dispute.

**Section 17.10.** **Procedure To Determine If Judicial Reference Applies.** If a party to the Dispute determines that insurance coverage would be impaired with respect to the Dispute because of judicial reference, such party may elect not to participate in the judicial reference proceeding. If a party so elects not to participate in the judicial reference proceeding, such party will provide notice to the other parties to the judicial reference proceeding that the dispute will not be resolved by judicial reference. In such circumstances, the other party or parties may seek determination of the party's right not to participate by way of a motion under California CODE OF CIVIL PROCEDURE Sections 638, 641 through 645.1, or any successor statutes thereto.

**Section 17.11.** **Waiver of Jury Trial.** If a determination is made pursuant to **Section 17.10** that a party is not required to participate in the judicial reference proceeding, the Dispute shall not be resolved by judicial reference but instead shall be resolved in the appropriate court of law. The legal proceeding shall be tried by a judge and not a jury and **Declarant, by executing this Declaration, and each Owner and the Association, by accepting a deed to any portion of the Covered Property, hereby waive their respective rights to a jury**.

**Section 17.12.** **Limitation on Amendment**. This Article may not be amended without the written approval of Declarant attached to the instrument of amendment.

## ARTICLE XVIII

## DEVELOPMENT BY DECLARANT

**Section 18.1.** **Planned Development**. Declarant intends, but is not obligated, to complete the Project and Declarant shall have the right to construct the residences and to complete improvements allowed by the City to be completed within the Real Property.

**Section 18.2.** **Reservation of Rights to Complete Project**. Until the first close of escrow for the sale by Declarant of a Condominium in a Building Envelope, Declarant shall have the exclusive right to possession of the entire Building Envelope and, if appropriate, related portions of the Association Property reasonably related to the Building Envelope, for purposes of completing the construction of the Condominiums and other Common Area and related Association Property; provided, however, that each Owner shall have the right of vehicular and pedestrian access, ingress and egress across the Association Property or Common Area if necessary for access to the Owner's Living Unit. Declarant shall also have a non-exclusive right of access, ingress and egress across the Project as may be reasonably necessary or convenient for purposes of completing the construction and sale of the Real Property. Commencing on the first day of the month following the first close of escrow for the sale of a Condominium, Declarant shall, during construction of

Condominiums and related improvements, carry public liability insurance which covers the Association and Owners for liability for personal injury and property damage arising out of or in connection with Declarant's construction activities in the Project.

Section 18.3. Failure to Complete Project. In the event all Phases of the Covered Property are not constructed as originally intended by Declarant and a building has not been constructed in one or more Building Envelopes (**"Undeveloped Building Envelopes"**), Declarant may convey by quitclaim deed to the Association, the Undeveloped Building Envelopes within the Covered Property then owned by Declarant. Upon the conveyance of an Undeveloped Building Envelope to the Association, the Living Units and Common Area which have not then been constructed shall thereafter be Association Property, and the applicable Condominium Plan(s) may be amended by Declarant in accordance with this Declaration. Within sixty (60) days following any such conveyance, Declarant shall at Declarant's expense clean-up any debris from the Undeveloped Building Envelope so conveyed and from and after such clean-up has occurred, the Association, and not Declarant, shall be obligated to maintain the Phase in which the Undeveloped Building Envelope is located.

Section 18.4. Right of Declarant to Redesign Project. Declarant reserves the right in its sole discretion, but subject to any necessary City approvals, to redesign any portion of the Project other than Living Units and Common Area which have been conveyed by Declarant to others. The redesign may alter the boundaries of any improvement, adjust the location of the Building Envelopes and Association Property, change the elevation and appearance of improvements, and change the location of the amenities. However, in no event shall the redesign result in more than one hundred eighty-six (186) Living Units being constructed within the Project.

Section 18.5. Amendment to Condominium Plan(s). The Condominium Plan covering a Building Envelope may be amended or revoked by a document signed and acknowledged by the then owners of the Building Envelope and by their Mortgagees. For example, until the conveyance of a Condominium within a Building Envelope, amendment of the applicable Condominium Plan covering just that Building Envelope shall require the signature only of Declarant as the owner of the Building Envelope and of the Mortgagees whose Mortgages encumber the Building Envelope.

Section 18.6. Power of Attorney. Each Mortgagee of a Mortgage and each Owner of a Condominium by accepting a Mortgage or deed to a Condominium, shall be deemed to have constituted and irrevocably appointed Declarant as his attorney-in-fact, for himself and each of his optionees, grantees, licensees, trustees, receivers, lessees, tenants, judgment creditors, heirs, legatees, devisees, administrators, executors, legal representatives, successors and assigns, whether voluntary or involuntary, and thereby to have conveyed a power of attorney coupled with an interest to Declarant as his attorney-in-fact to effect the redesign of all or any portion of the Project in accordance with the limitations and requirements set forth in this Article; and further:

(a) To prepare, execute, acknowledge and record any map or record of survey required or permitted by the provisions of the Subdivision Map Act of the State of California in effect on the date of the recording of this Declaration and as thereafter enacted or amended, and any ordinances, rules and regulations of applicable governmental entities and authorities having jurisdiction over the Project in effect on the date of the recording of this Declaration and as thereafter enacted or amended, or which may be required or permitted by any title insurer, and in connection therewith, to perform all conditions, undertake any obligations and execute all agreements and documentation required or permitted by any federal, state and local governmental entities and authorities; to appear before any such governmental entities and authorities; and to execute, acknowledge and deliver any improvement agreements and bonds and post deposits securing the performance of any such conditions and obligations.

(b) To prepare, execute, acknowledge and record any amendment to a Condominium Plan for the Project, including, without limitation, any amendments necessary to cause the Condominium Plan to conform with the improvements as actually built, which may be required or permitted by the laws of the State of California in effect on the date of the recording of this Declaration as thereafter enacted or amended, and any ordinances, rules and regulations of any applicable governmental entities and authorities having jurisdiction over the Project in effect on the date of the recording of this Declaration and as thereafter enacted or amended, or which may be required or permitted by any title insurer, and in connection therewith, to perform all conditions, undertake any obligations and execute all agreements and documentation required or permitted by any federal, state and local governmental entities and authorities; to appear before any such governmental entities and authorities; and to execute and deliver any improvement agreements and bonds and post deposits securing the performance of any such conditions and obligations.

(c) To prepare, execute, acknowledge and file for approval any application for zoning or setback changes or variance or special use permits or any other permits or reports required or permitted by statutes, ordinances and regulations applicable to the Project in effect on the date of the recording of this Declaration as thereafter enacted or amended, and in connection therewith, to perform all conditions, undertake any obligations and execute all agreements and documentation required or permitted by any federal, state and local governmental entities and authorities; to appear before any such governmental entities and authorities; and to execute and deliver any improvement agreements and bonds and post deposits securing the performance of any such conditions and obligations.

(d) To make applications for any property reports or public reports or amendments thereto or exemption from the requirements therefor required or permitted by federal and state statutes, rules and regulations relating to the sale, lease, transfer or other disposition of subdivided land, and in connection therewith, to perform all conditions, undertake any obligations and execute all agreements and documentation required or permitted by any federal, state and local governmental entities and authorities; to appear before any such governmental entities and authorities; and to execute and deliver any improvement agreements and bonds and post deposits securing the performance of any such conditions and obligations.

(e) To deliver any public reports or property reports, or amendments thereto, obtain receipts, and offer and administer rescission rights required by law.

(f) To prepare, execute, acknowledge and file for approval any registration or application for any permit, approval, exemption, ruling or entitlement, which registration or application is required or permitted pursuant to any law or regulation in effect as of the date of the recording of this Declaration and as hereafter enacted or amended by any federal, state and local governmental entities and authorities, and in connection therewith, to perform all conditions, undertake any obligations and execute all agreements and documentation required or permitted by any such governmental body and by any such laws and regulations; to appear before any such governmental bodies and to execute and deliver any improvement agreements and bonds and post deposits securing the performance of any such conditions and obligations; and do all other things now or hereafter permitted or required by any such governmental body and any such laws and regulations.

(g) To prepare, execute, acknowledge and record any deeds, waivers, releases, reconveyances or other documentation which may be permitted or required to clear title to any Condominiums in the Project.

(h) To do any and all things necessary or desirable under the circumstances to effect and accomplish the purposes of this Article.

**Section 18.7.** **Indemnification of Owners on Exercise of Power of Attorney**. Declarant shall indemnify and hold each Owner free and harmless from all liabilities, including attorney's fees, which are incurred as a direct result of the execution by Declarant of any improvement agreements or bonds, or both, in connection with the exercise by Declarant of the power of attorney set forth in **Section 18.6**.

**Section 18.8.** **Limitation on Amendment**. This Article may not be amended without the written approval of Declarant attached to the instrument of amendment.

16967

**IN WITNESS WHEREOF,** the undersigned, being Declarant herein, has executed this instrument the day and year first hereinabove written.

CAL E1 LLC, a Delaware limited liability company

By________________________
Its E. Dale Gleed V.P.

By Stephen P Doyle
Its President

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

On Jan. 23, 2004, before me, Colette Kavanagh, Notary Public, personally appeared E. Dale Gleed and Stephen P. Doyle ________________________, 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.

Signature Colette Kavanagh

COLETTE KAVANAGH
Commission # 1317064
Notary Public - California
San Diego County
My Comm. Expires Sep 6, 2005

(Seal)

EXHIBIT "A"

Phasing of the Project

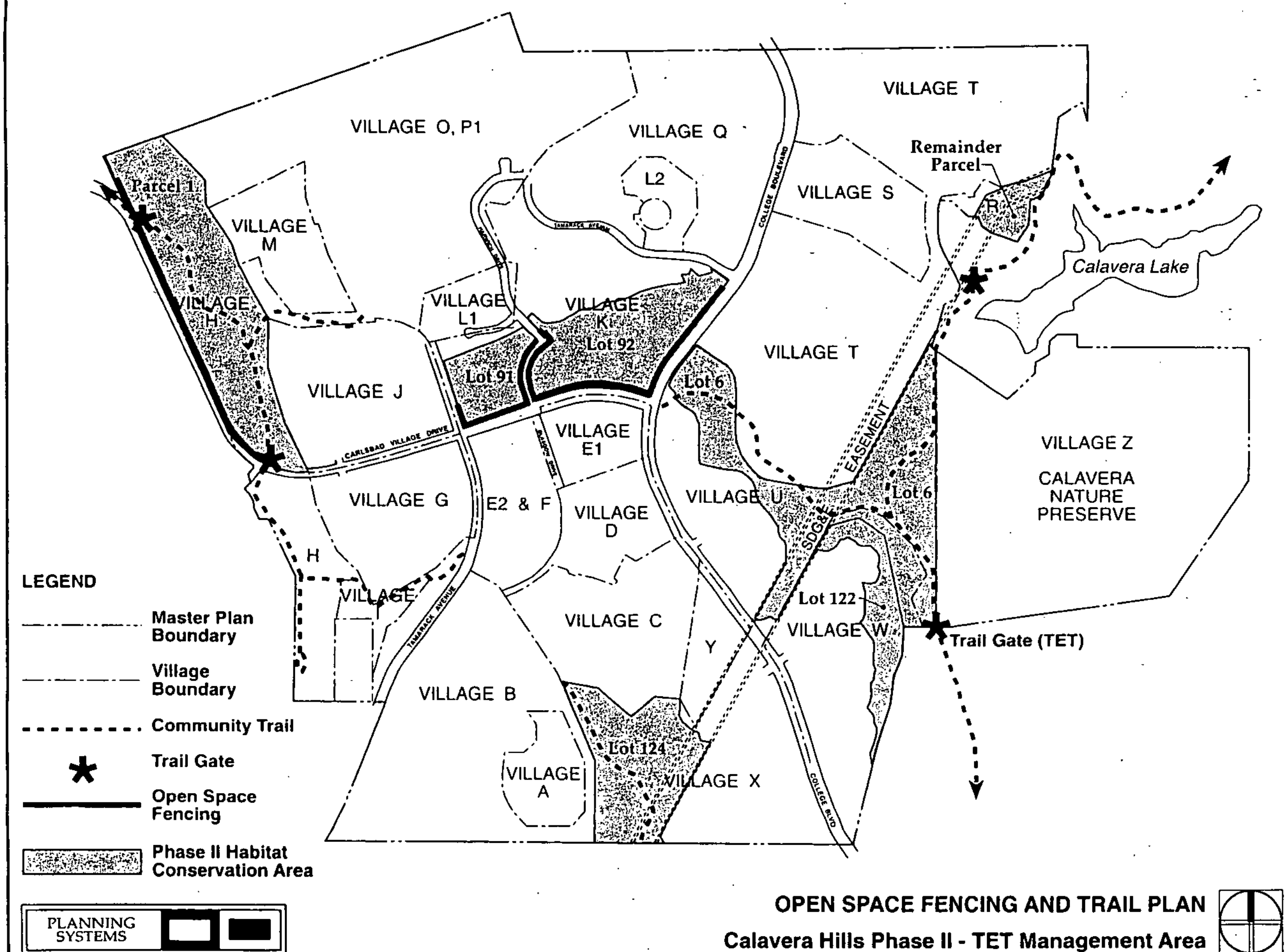
| Phase | Living Unit Nos. | No. of Living Units | Map No. |
|---|---|---|---|
| 1 | 16-27; 64-75 | 24 | 14696 |
| 2 | 28-45; 76-81 | 24 | 14696 |
| 3 | 46-51; 82-99 | 24 | 14696 |
| 4 | 52-57; 100-117 | 24 | 14696 |
| 5 | 1-6; 58-63 | 12 | 14696 |
| 6 | 118-138 | 21 | 14725 |
| 7 | 139-162 | 24 | 14725 |
| 8 | 163-180 | 18 | 14725 |
| 9 | 181-207 | 27 | 14725 |
| 10 | 208-231 | 24 | 14725 |
| 11 | 232-252 | 21 | 14725 |
| 12 | 7-15 | 9 | 14696 |

**EXHIBIT "B"**

**<u>The Preserve</u>**

*[attached]*

16970




**OPEN SPACE FENCING AND TRAIL PLAN**

**Calavera Hills Phase II - TET Management Area**

**EXHIBIT "C"**

**Approximate Locations of Subsurface Drainage Systems in Lot 1 of Map No. 14696**

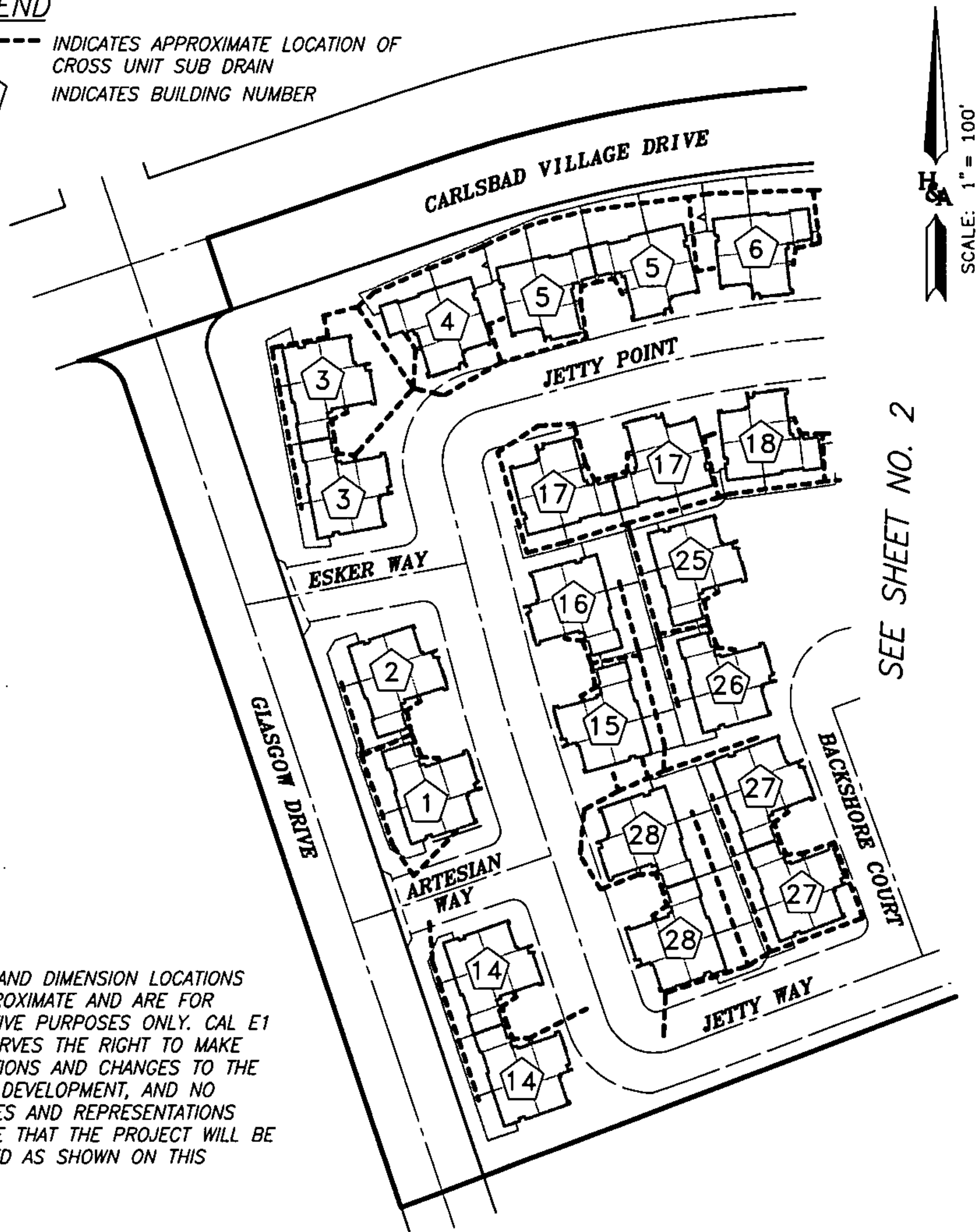
*[attached]*

# EXHIBIT "C"
# CROSS UNIT DRAINAGE FACILITIES
# MYSTIC POINT VILLAGE E-1

LEGEND

-------- INDICATES APPROXIMATE LOCATION OF CROSS UNIT SUB DRAIN

(3) INDICATES BUILDING NUMBER



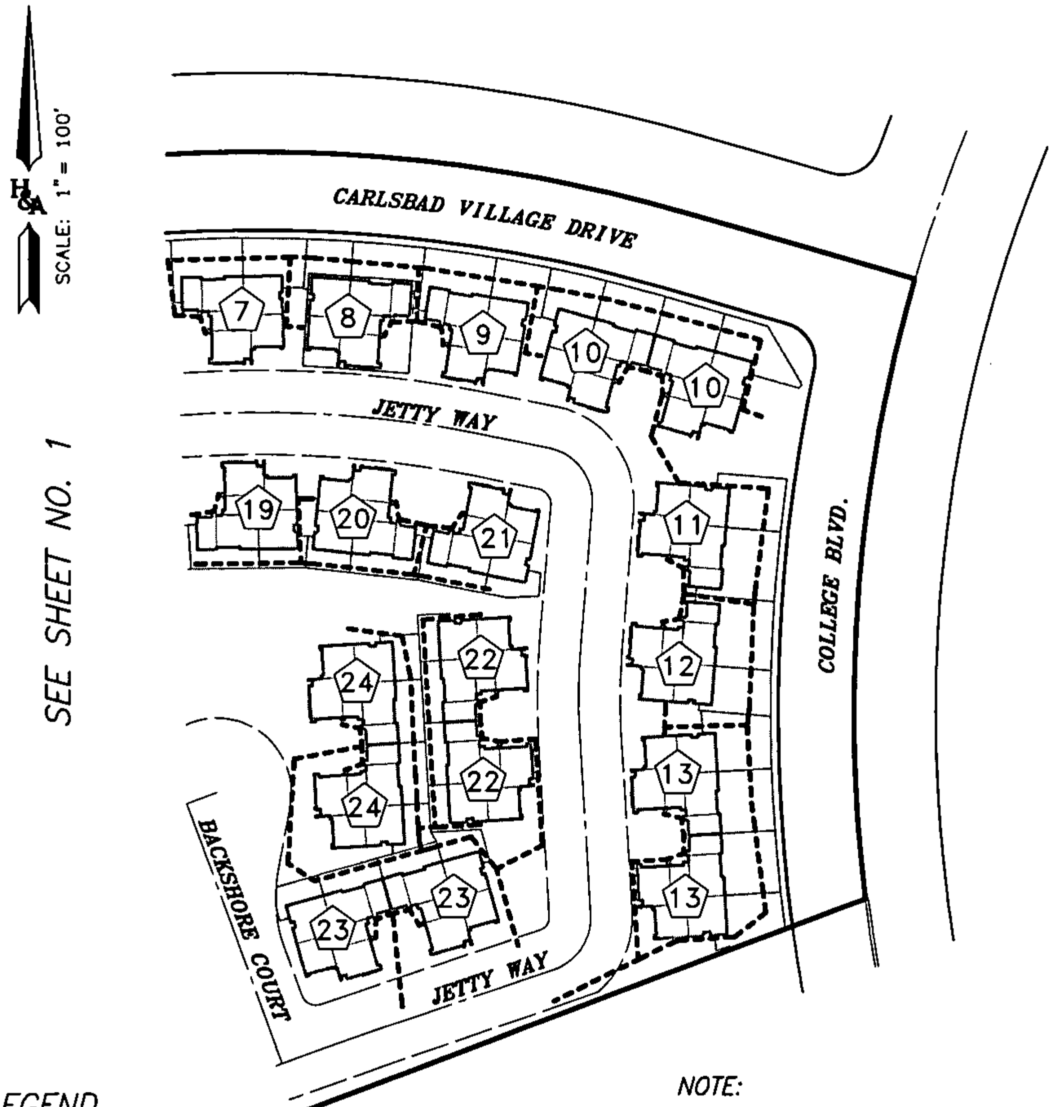

NOTE:
ALL LOT AND DIMENSION LOCATIONS ARE APPROXIMATE AND ARE FOR ILLUSTRATIVE PURPOSES ONLY. CAL E1 LLC RESERVES THE RIGHT TO MAKE MODIFICATIONS AND CHANGES TO THE PLAN OF DEVELOPMENT, AND NO WARRANTIES AND REPRESENTATIONS ARE MADE THAT THE PROJECT WILL BE DEVELOPED AS SHOWN ON THIS EXHIBIT.

H&A HUNSAKER & ASSOCIATES
SAN DIEGO, INC

PLANNING 10179 Huennekens Street
ENGINEERING San Diego, Ca 92121
SURVEYING PH(858)558-4500 · FX(858)558-1414

R:\0196\&MapSub Drain SHT 01.dwg WO # 553-163

# EXHIBIT "C"
## CROSS UNIT DRAINAGE FACILITIES
## MYSTIC POINT VILLAGE E-1




LEGEND

-------- INDICATES APPROXIMATE LOCATION OF CROSS UNIT SUB DRAIN

19 INDICATES BUILDING NUMBER

NOTE:
ALL LOT AND DIMENSION LOCATIONS ARE APPROXIMATE AND ARE FOR ILLUSTRATIVE PURPOSES ONLY. CAL E1 LLC RESERVES THE RIGHT TO MAKE MODIFICATIONS AND CHANGES TO THE PLAN OF DEVELOPMENT, AND NO WARRANTIES AND REPRESENTATIONS ARE MADE THAT THE PROJECT WILL BE DEVELOPED AS SHOWN ON THIS EXHIBIT.

H&A
HUNSAKER
& ASSOCIATES
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SURVEYING PH(858)558-4500 · FX(858)558-1414

R:\0196\&MapSub Drain SHT 02.dwg WO # 553-163

16974

## SUBORDINATION AGREEMENT

UNION BANK OF CALIFORNIA, N.A., being the beneficiary under that certain deed of trust recorded August 26, 2003 as Document No. 2003-1036612 with the Office of the County Recorder of San Diego County, California, hereby declares that the lien and charge of said deed of trust are and shall be subordinate and inferior to the Declaration of Restrictions to which this Subordination Agreement is attached.

UNION BANK OF CALIFORNIA, N.A.

By [signature]
Its Vice President

By ______________________
Its ______________________

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

On 1-26-2004, before me, Robin L. Melanson Notary Public, personally appeared DALE NORTHUP, 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.

Signature Robin L. Melanson

ROBIN L. MELANSON
Commission # 1344674
Notary Public - California
San Diego County
My Comm. Expires Feb 25, 2006

(Seal)

W

[redacted] Grant Deed [redacted]

I.R.S.$ 114.95

7016 ... 536

ALLAN O. KELLY and KATHERINE M. KELLY, husband and wife, and

ELSIE M. KELLY and VIRGINIA ROBERTSON,

(GRANTOR - GRANTORS)

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

Do ...... Hereby Grant To ...... LIDO LAND COMPANY, a Partnership,

the real property in the ......

County of San Diego ......, State of California, described as follows:

PARCEL 1:

That portion of Lot "D" of Rancho Agua Hedionda, in the County of San Diego, State of California, according to the Partition Map thereof No. 823, filed in the Office of the Recorder of said San Diego County, November 16, 1896 described as follows:

Commencing at a point on the Northerly line of said Lot "D", distant thereon North 87° 29' 20" East, 4706.8 feet (record North 87° 40' East, 4696.00 feet) from the Northwest corner of said Lot; thence South 2° 02' 11" West, 2895.52 feet (record due South, 2916.00 feet) to the true point of beginning, being the Southeast corner of land conveyed to W. S. Kelly by deed dated March 12, 1904 and recorded in Book 393, page 212 of Deeds; thence South 89° 19' 35" West (record due West) along the Southerly line of said Kelly's land, 4465.21 feet to a point in the Westerly boundary line of said Lot "D", said point being the Southwest corner of said Kelly's land; thence South 13° 25' East 2602.94 feet (record South 13° 57' East, 2957.52 feet) along said Westerly line to corner No. 5 of said Lot; thence South 1° 43' 28" West, 2639.26 feet (record due South, 2640.00 feet) along said Westerly line to Corner No. 4 of said Lot, being also the Southeast corner of Lot "J" of said Rancho; thence South 89° 22' 33" East along the Southerly line of said Lot "D", a distance of 2342.24 feet to a point in the center line of the existing water pipe line as said pipe line was described in a Deed to the Oceanside Mutual Water Company, recorded July 11, 1930, in Book 1796, page 142 of Deeds; thence along said center line as follows: North 11° 37' 17" East, 65.21 feet and North 7° 16' 27" East, 135.37 feet and North 14° 44' 17" East, 57.17 feet and North 20° 56' 47" East, 126.00 feet and North 9° 50' 02" East, 112.77 feet and North 1 18' 02" East, 150.10 feet to an intersection with a line that is parallel with the Southerly line of Lot "L" of said Rancho and 660.00 feet Southerly of the Southwesterly corner of said Lot "L", said 660.00 feet being measured along the Southerly prolongation of the Westerly line of said Lot "L"; thence leaving said center line South 89° 37' 38" East along said parallel line 2[illegible].66 feet to an intersection with the Southerly prolongation of the Westerly line of said Lot "L"; thence North 0° 22' 22" East, 2181.38 feet (record North 0° 40' 58" West) along said Southerly prolongation and said Westerly line of said Lot "L" to a point in the boundary of land conveyed to Oceanside Mutual Water Company, a corporation, by deed dated July 8, 1930 and recorded in Book 1796, page 142 of Deeds; thence along the boundary of said land so conveyed to Oceanside Mutual Water Company the following courses and distances:

7016/536

BEST COPY

San Diego

(GRANTOR - GRANTORS)

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

Do..............Hereby Grant To...........LIDO LAND COMPANY, a Partnership,

the real property in the

County of San Diego, State of California, described as follows:

PARCEL 1:

That portion of Lot "D" of Rancho Agua Hedionda, in the County of San Diego, State of California, according to the Partition Map thereof No. 823, filed in the Office of the Recorder of said San Diego County, November 16, 1896 described as follows:

Commencing at a point on the Northerly line of said Lot "D", distant thereon North 87° 29' 20" East, 4706.8 feet (record North 87° 40' East, 4696.00 feet) from the Northwest corner of said Lot; thence South 2° 02' 11" West, 2895.52 feet (record due South, 2916.00 feet) to the true point of beginning, being the Southeast corner of land conveyed to W. S. Kelly by deed dated March 12, 1904 and recorded in Book 393, page 212 of Deeds; thence South 89° 19' 35" West (record due West) along the Southerly line of said Kelly's land, 4485.21 feet to a point in the Westerly boundary line of said Lot "D", said point being the Southwest corner of said Kelly's land; thence South 13° 25' East 2602.94 feet (record South 13° 57' East, 2957.52 feet) along said Westerly line to corner No. 5 of said Lot; thence South 1° 43' 28" West, 2639.26 feet (record due South, 2640.00 feet) along said Westerly line to Corner No. 4 of said Lot, being also the Southeast corner of Lot "J" of said Rancho; thence South 89° 22' 33" East along the Southerly line of said Lot "D", a distance of 2342.24 feet to a point in the center line of the existing water pipe line as said pipe line was described in a Deed to the Oceanside Mutual Water Company, recorded July 11, 1930, in Book 1796, page 142 of Deeds; thence along said center line as follows: North 11° 37' 17" East, 65.21 feet and North 7° 16' 27" East, 135.37 feet and North 14° 44' 17" East, 57.17 feet and North 20° 56' 47" East, 126.00 feet and North 9° 50' 02" East, 112.77 feet and North 1° 18' 02" East, 150.10 feet to an intersection with a line that is parallel with the Southerly line of Lot "L" of said Rancho and 660.00 feet Southerly of the Southwesterly corner of said Lot "L", said 660.00 feet being measured along the Southerly prolongation of the Westerly line of said Lot "L"; thence leaving said center line South 89° 37' 38" East along said parallel line 265.66 feet to an intersection with the Southerly prolongation of the Westerly line of said Lot "L"; thence North 0° 22' 22" East, 2181.38 feet (record North 0° 40' 58" West) along said Southerly prolongation and said Westerly line of said Lot "L" to a point in the boundary of land conveyed to Oceanside Mutual Water Company, a corporation, by deed dated July 8, 1930 and recorded in Book 1796, page 142 of Deeds; thence along the boundary of said land as conveyed to Oceanside Mutual Water Company the following courses and distances:

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thence North 57° 46' 28" West (record North 58° 19' 20" West) 56.48 feet; thence North 15° 39' 22" East, 352.89 feet (record North 15° 07' 40" East, 352.94 feet); thence North 59° 29' 02" East, 133.65 feet (record North 58° 55' 10" East, 133.68 feet); thence North 13° 32' 02" East, 98.60 feet (record North 12° 59' 10" East, 98.60 feet); thence North 28° 31' 28" West, 327.22 feet (record North 29° 04' 20" West, 327.22 feet); thence North 8° 20' 28" West, 203.55 feet (record North 8° 53' 20" West, 203.55 feet); thence North 7° 42' 02" East, 191.00 feet (record North 7° 09' 10" East, 191.00 feet); thence South 81° 26' 28" East, 97.10 feet (record South 81° 59' 20" East, 97.10 feet); thence South 43° 06' 58" East, 154.05 feet (record South 43° 39' 50" East, 154.05 feet); thence South 79° 38' 58" East, 119.10 feet (record South 80° 11' 50" East, 119.10 feet); thence South 10° 24' 08" East, 66.52 feet (record South 10° 57' East, 66.52 feet); thence South 59° 47' 08" East, 131.15 feet (record South 60° 20' East, 131.15 feet); thence South 72° 17' 08" East, 179.60 feet (record South 72° 50' East, 179.60 feet); thence North 35° 13' 52" East, 151.66 feet (record North 34° 41' East, 151.65 feet); thence North 6° 59' 52" East, 213.56 feet (record North 6° 27' East, 213.52 feet); thence North 67° 15' 52" East, 104.52 feet (record North 66° 43' East, 104.52 feet); thence North 23° 37' 52" East, 176.04 feet (record North 23° 05' East, 178.00 feet); thence North 6° 55' 52" East, 454.10 feet (record North 6° 23' East, 454.00 feet); thence North 55° 46' 52" East, 224.13 feet (record North 55° 14' East, 224.10 feet); thence South 14° 10' 08" East (record South 14° 43' East) 173.55 feet to an intersection with the North and South center line of the Southeast Quarter of Section 34, Township 11 South, Range 4 West, San Bernardino Meridian; thence leaving said boundary North 2° 02' 11" East along said center line, [illegible] feet to the true point of beginning.

PARCEL 2:

An easement and right of way for road purposes over a continuous strip of land 60.00 feet wide in Lot "D" and "E" of Rancho Agua Hedionda, in the County of San Diego, State of California, according to Map thereof No. 823, filed in the Office of the Recorder of said San Diego County November 1[illegible], 189[illegible] the center line of said 60.00 foot strip being described as follows:

Commencing at corner No. 1 of said Lot "E"; thence Northwesterly in a straight line 135.40 feet, more or less, to Engineer's Station F. C. 130 plus 00.23 at the Northwesterly end of a 400.00 foot radius curve in the center line of the County Road known as Road Survey No. 682, according to Map thereof on file in the Office of the County Surveyor of San Diego County; thence along the center line of said County Road North 67° 4[illegible] West (record North 67° 10' West) 3092.48 feet to the true point of beginning of said center line of the 60.00 foot easement described herein; said true point of beginning being South 67° 4[illegible] East, [illegible].39 feet from the intersection of said center line with the

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thence North 57° 46' 28" West (record North 58° 19' 30" West) 56.48 feet; thence North 15° [illegible] East, [illegible] feet (record North 15° 07' [illegible] East, [illegible] feet); thence North [illegible] 29' 02" East, 133.65 feet (record North [illegible] 55' 10" East, 133.68 feet); thence North 13° 32' 02" East, [illegible].60 feet (record North 12° 59' 10" East, 98.60 feet); thence North 20° 31' 28" West, 327.22 feet (record North 29° 04' 20" West, [illegible] feet); thence North 8° 20' 28" West, 203.55 feet (record North 8° 53' 20" West, 203.55 Feet); thence North 7° 42' 02" East, 191.00 feet (record North 7° 09' 10" East, 191.00 feet); thence South 81° 26' 28" East, 97.10 feet (record South 81° 59' 20" East, 97.10 feet); thence South 43° 06' 58" East, 154.05 feet (record South 43° 39' 50" East, 154.05 feet); thence South 79° 38' 58" East, 119.10 feet (record South 80° 11' 50" East, 119.10 feet); thence South 10° 24' 08" East, 66.52 feet (record South 10° 57' East, 66.52 feet); thence South 59° 47' 08" East, 131.15 feet (record South 60° 20' East, 131.15 feet); thence South 72° 17' 08" East, 179.60 feet (record South 72° 50' East, 179.60 feet); thence North 35° 13' 52" East, 151.66 feet (record North 34° 41' East, 151.65 feet); thence North 6° 59' 52" East, 213.56 feet (record North 6° 27' East, 213.52 feet); thence North 67° 15' 52" East, 104.52 feet (record North 66° 43' East, 104.52 feet); thence North 23° 37' 52" East, 178.04 feet (record North 23° 05' East, 178.00 feet); thence North 6° 55' 52" East, 454.10 feet (record North 6° 23' East, 454.00 feet); thence North 55° 46' 52" East, 224.13 feet (record North 55° 14' East, 224.10 feet); thence South 14° 10' 08" East (record South 14° 43' East) 173.55 feet to an intersection with the North and South center line of the Southeast Quarter of Section 34, Township 11 South, Range 4 West, San Bernardino Meridian; thence leaving said boundary North 2° 02' 11" East along said center line, 610.79 feet to the true point of beginning.

PARCEL 2:

An easement and right of way for road purposes over a continuous strip of land 60.00 feet wide in Lot "D" and "E" of Rancho Agua Hedionda, in the County of San Diego, State of California, according to Map thereof No. 823, filed in the Office of the Recorder of said San Diego County November 16, 1896 the center line of said 60.00 foot strip being described as follows:

Commencing at corner No. 1 of said Lot "E"; thence Northwesterly in a straight line 135.40 feet, more or less, to Engineer's Station P. C. 130 plus 00.23 at the Northwesterly end of a 400.00 foot radius curve in the center line of the County Road known as Road Survey No. 682, according to Map thereof on file in the Office of the County Surveyor of San Diego County; thence along the center line of said County Road North 67° 46' West (record North 67° 10' West) 3092.48 feet to the true point of beginning of said center line of the 60.00 foot easement described herein; said true point of beginning being South 67° 46' East, 59.89 feet from the intersection of said center line with the

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Northerly prolongation of the Easterly line of Lot "I" of said Rancho Agua Hedionda; thence North 29° 29' 30" East, 332.63 feet; thence North 38° 27' 30" East, 349.61 feet; thence North 64° 26' 50" East, 494.62 feet; thence South 79° 01' 10" East, 634.84 feet; thence North 63° 58' 50" East, 387.32 feet; thence North 47° 02' East, 404.90 feet; thence North 50° 31' 30" East, 1167.34 feet; thence North 3° 14' East, 960.18 feet; thence North 0° 03' 10" East, 1266.45 feet; thence North 19° 25' 30" West, 691.73 feet; thence North 2° 16' 30" West, 305.18 feet to a point on a line which is parallel with and 660.00 feet Southerly at right angles from the Southerly line of Lot "L" of said Rancho Agua Hedionda, said point being distant Easterly along said parallel line 89.92 feet from the intersection of said parallel line with the Southerly prolongation of the Westerly line of said Lot "L", said 60.00 foot strip beginning in the Northerly line of said County Road and ending in the parallel line described above.

PARCEL 3:

An easement and right of way for road purposes over a continuous strip of land 60.00 feet wide in said Lot "D" of Rancho Agua Hedionda the center line of said 60.00 foot strip being described as follows:

Beginning at a point in the center line of the property described in Parcel 2 above distant thereon South 2° 16' 30" East, 136.18 feet from the Northerly end of said center line; thence North 44° 37' 30" West, a distance of 192.51 feet more or less to a point in the boundary of the property described in Parcel 1 above said point being distant North 89° 37' 38" West, 42.43 feet from the angle point formed by the courses in said boundary of South 89° 37' 38" East, 265.66 feet and North 0° 22' 22" East, 2101.38 feet.

The side lines of said 60.00 foot strip of land shall be prolonged or shortened Northwesterly as is necessary so as to terminate in the boundary of the property described in Parcel 1 above and prolonged or shortened Southeasterly as is necessary so as to terminate in the Westerly line of the property described in Parcel 2 above.

Excepting from said 60.00 foot strip of land that portion thereof lying within the boundaries of the property described in Parcel 2 above.

Said easements described in Parcels 2 and 3 above are for the benefit of and appurtenant to the property described in Parcel 1 above and shall inure to the benefit of and may be used by all persons who may hereafter become the owners of said appurtenant property or any parts or portions thereof.

Reserving to the grantors herein, their successors and assigns, the right and power to convey similar easements over the above described strips of land to other persons.

The property described in Parcel 1 above is also shown on Record of Survey Map No. 4610, filed in the Office of the Recorder of San Diego County, March 13, 1958

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Northerly prolongation of the Easterly line of Lot "I" of said Rancho Agua Hedionda; thence North [illegible]° 29' 30" East, 332.63 feet; thence North 38° 27' 30" East, 349.61 feet; thence North 64° 26' 50" East, 494.68 feet; thence South 79° 01' 10" East, 634.84 feet; thence North 63° 58' 50" East, 387.32 feet; thence North 47° 02' East, 404.90 feet; thence North 50° 31' 30" East, 1167.34 feet; thence North 3° 14' East, 960.18 feet; thence North 0° 03' 10" East, 1266.45 feet; thence North 19° 25' 30" West, 691.73 feet; thence North 2° 16' 30" West, 305.18 feet to a point on a line which is parallel with and 660.00 feet Southerly at right angles from the Southerly line of Lot "L" of said Rancho Agua Hedionda, said point being distant Easterly along said parallel line 89.92 feet from the intersection of said parallel line with the Southerly prolongation of the Westerly line of said Lot "L", said 60.00 foot strip beginning in the Northerly line of said County Road and ending in the parallel line described above.

PARCEL 3:

An easement and right of way for road purposes over a continuous strip of land 60.00 feet wide in said Lot "D" of Rancho Agua Hedionda the center line of said 60.00 foot strip being described as follows:

Beginning at a point in the center line of the property described in Parcel 2 above distant thereon South 2° 16' 30" East, 136.18 feet from the Northerly end of said center line; thence North 44° 37' 36" West, a distance of 192.51 feet more or less to a point in the boundary of the property described in Parcel 1 above said point being distant North 89° 37' 38" West, 42.43 feet from the angle point formed by the courses in said boundary of South 89° 37' 38" East, 205.60 feet and North 0° 22' 22" East, 2181.38 feet.

The side lines of said 60.00 foot strip of land shall be prolonged or shortened Northwesterly as is necessary so as to terminate in the boundary of the property described in Parcel 1 above and prolonged or shortened Southeasterly as is necessary so as to terminate in the Westerly line of the property described in Parcel 2 above.

Excepting from said 60.00 foot strip of land that portion thereof lying within the boundaries of the property described in Parcel 2 above.

Said easements described in Parcels 2 and 3 above are for the benefit of and appurtenant to the property described in Parcel 1 above and shall inure to the benefit of and may be used by all persons who may hereafter become the owners of said appurtenant property or any parts or portions thereof.

Reserving to the grantors herein, their successors and assigns, the right and power to convey similar easements over the above described strips of land to other persons.

The property described in Parcel 1 above is also shown on Record of Survey Map No. [illegible]10, filed in the Office of the Recorder of San Diego County, March 13, [illegible]

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to the follow[illegible]
subsequent and shall [illegible] successors and
assigns:

(1) That no poultry, swine, goats, sheep or dairy animals shall ever be kept or allowed to be kept on the premises herein described and said premises shall not be used for commercial poultry or livestock business.

(2) That no obnoxious or offensive or noisy factory of any kind, no obnoxious or offensive or noisy trade of any kind, and no obnoxious or offensive or noisy business of any kind shall ever be operated or carried on upon said premises. It is not the purpose or intention of this restriction to preclude the installation and maintenance of a high class shopping center or other such legitimate use.

Provided, that a breach of either of the foregoing conditions and restrictions shall cause the land herein to revert to the grantor, his successors and assigns, each of whom, respectively, shall have the right of re-entry immediately upon said land in the event of any such breach.

Provided, also, that a breach of either of the foregoing conditions and restrictions, or any re-entry by reason of such breach, shall not defeat or render invalid the lien of any deed of trust or mortgage, made in good faith and for value which may exist upon said land; provided, however, that in the event of a foreclosure of any deed of trust or mortgage, or if the owner of the note secured by such deed of trust or mortgage acquires title to said land in any manner whatsoever in satisfaction of his indebtedness, then any purchaser at the foreclosure or trustee's sale, or any such owner of a note acquiring title as aforesaid, desiring to accept the benefits of this provision, agrees that said land acquired by them shall become subject to the foregoing conditions and restrictions but free from the effects of any breach occurring prior [illegible]

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[illegible] assigns:

(1) That no poultry, [illegible] shall ever be kept or allowed to be kept on the [illegible] and said premises shall not be used for commercial [illegible] business.

(2) That no obnoxious or offensive or noisy factory of any kind, no obnoxious or offensive or noisy trade of any kind, and no obnoxious or offensive or noisy business of any kind shall ever be operated or carried on upon said premises. It is not the purpose or intention of this restriction to preclude the installation and maintenance of a high class shopping center or other such legitimate use.

Provided, that a breach of either of the foregoing conditions and restrictions shall cause the land herein to revert to the grantor, his successors and assigns, each of whom, respectively, shall have the right of re-entry immediately upon said land in the event of any such breach.

Provided, also, that a breach of either of the foregoing conditions and restrictions, or any re-entry by reason of such breach, shall not defeat or render invalid the lien of any deed of trust or mortgage, made in good faith and for value which may exist upon said land; provided, however, that in the event of a foreclosure of any deed of trust or mortgage, or if the owner of the note secured by such deed of trust or mortgage acquires title to said land in any manner whatsoever in satisfaction of his indebtedness, then any purchaser at the foreclosure or trustee's sale, or any such owner of a note acquiring title as aforesaid, desiring to accept the benefits of this provision, agrees that said land acquired by them shall become subject to the foregoing conditions and restrictions but free from the effects of any breach occurring prior to.

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BOOK 7016 PAGE 540

Dated January 8, 1958

Allan O. Kelly

Maurine M. Kelly

Elsie M. Kelly
(Elsie M. Kelly)

Virginia Robertson
(Virginia Robertson)

STATE OF CALIFORNIA
COUNTY OF San Diego } SS.

On February 11, 1958 before me, the undersigned a Notary Public in and for said County and State, personally appeared Elsie M. Kelly and Virginia Robertson

known to me to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the same.

WITNESS my hand and official seal.

(Seal) Notary Public in and for said County and State.

My Commission Expires Dec. 23, 1958.

(8 pt.)

WHEN RECORDED, PLEASE MAIL THIS INSTRUMENT TO
Vestee:

SPACE BELOW FOR RECORDER'S USE ONLY

DOCUMENT No. 51674
RECORDED AT REQUEST OF
SECURITY TITLE INSURANCE CO.
APR 1 1958 at 9:00 A.M.
BOOK 7016 PAGE 536
OFFICIAL RECORDS
County of San Diego, California
Fee $ Folio
ROGER N. HOWE, County Recorder
Deputy

STATE OF CALIFORNIA
COUNTY OF
San Diego

On March , 58 before me the undersigned a Notary Public in and for said County and State, personally appeared Allan O. Kelly and Katherine M. Kelly

known to me to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the same.

WITNESS my hand and official seal.

(Seal)

My Commission Expires

A

BOOK 7016 PAGE 540

Dated January 8, 1958

Allan O. Kelly

Katherine M. Kelly

Elsie M. Kelly
(Elsie M. Kelly)

Virginia Robertson
(Virginia Robertson)

STATE OF CALIFORNIA
COUNTY OF
San Diego
} ss.

On February 11, 1958 before me, the undersigned a Notary Public in and for said County and State, personally appeared Elsie M. Kelly and Virginia Robertson known to me to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the same.

WITNESS my hand and official seal.

(Seal) [illegible]
Notary Public in and for said County and State.

My Commission Expires Dec. 23, 1958.

(G.S.) 11-30-55 30M Photo Form) (8 pt.)
Rev. 11-48)

WHEN RECORDED, PLEASE MAIL THIS INSTRUMENT TO
Vestee: [illegible]
[illegible]

SPACE BELOW FOR RECORDER'S USE ONLY

DOCUMENT No. 51674
RECORDED AT REQUEST OF
SECURITY TITLE INSURANCE COMPANY
APR 1 1958 at 9:00 A.M.
BOOK 7016 PAGE 536
OFFICIAL RECORDS
County of San Diego, California
Fee $ [illegible] Folios [illegible]
ROGER N. HOWE, County Recorder
By [illegible] Deputy

STATE OF CALIFORNIA
COUNTY OF
San Diego
} ss.

On March 25, 1958 before me, the undersigned a Notary Public in and for said County and State, personally appeared Allan O. Kelly and Katherine M. Kelly known to me to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the same.

WITNESS my hand and official seal.

(Seal) Kenneth [illegible]
Notary Public in and for said County and State.

My Commission Expires

Misc. 186 (G.S.) A.F. General (Photo Form) 9-22-54 10M

B

# CC&Rs (Required Civil Code Sec. 4525)
# Mystic Point Homeowners Association

**NOTICE:**

**If this document contains any restriction based on age, race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, veteran or military status, genetic information, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.2 of the Government Code by submitting a "Restrictive Covenant Modification" form, together with a copy of the attached document with the unlawful provision redacted to the county recorder's office. The "Restrictive Covenant Modification" form can be obtained from the county recorder's office and may be available on its internet website. The form may also be available from the party that provided you with this document. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.**

# CC&Rs (Required Civil Code Sec. 4525)
# Mystic Point HOA

**NOTICE:**

**If this document contains any restriction based on race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, veteran or military status, genetic information, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.2 of the Government Code. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.**

**NOTICE:**

**If this document contains any restriction based on race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, genetic information, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.2 of the Government Code. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.**

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DOC # 2004-0075064

JAN 30, 2004 12:22 PM

OFFICIAL RECORDS
SAN DIEGO COUNTY RECORDER'S OFFICE
GREGORY J. SMITH, COUNTY RECORDER
FEES: 187.00
WAY: 2

2004-0075064

RECORDED REQUEST OF
*First American Title*
SUBDIVISION MAPPING DEPT.
and
When Recorded Mail To:

HECHT, SOLBERG, ROBINSON, GOLDBERG & BAGLEY LLP
Ms. Katie Jacobsen
600 West Broadway, Eighth Floor
San Diego, California 92101

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# DECLARATION OF RESTRICTIONS

# FOR

# MYSTIC POINT

(A CONDOMINIUM COMMON INTEREST DEVELOPMENT)

16918

TABLE OF CONTENTS

PAGE

16920

PAGE

16923

# DECLARATION OF RESTRICTIONS

THIS DECLARATION OF RESTRICTIONS is made as of the 15th day of January, 2004, by CAL E1 LLC, a Delaware limited liability company (hereinafter called "Declarant"), with reference to the following

RECITALS:

A. THE REAL PROPERTY. Declarant is the owner of the real property located in the City of Carlsbad, County of San Diego, California, described as:

> Lot 1 of CITY OF CARLSBAD TRACT NO. 01-03 CALAVERA HILLS VILLAGE E-1, in the City of Carlsbad, County of San Diego, State of California, according to Map thereof No. 14696, filed in the Office of the County Recorder of San Diego County, California, on October 9, 2003; and
>
> Lots 1 through 5 of CITY OF CARLSBAD TRACT NO. 01-04 CALAVERA HILLS VILLAGE U, in the City of Carlsbad, County of San Diego, State of California, according to Map thereof No. 14725, filed in the Office of the County Recorder of San Diego County, California, on December 23, 2003

(the "Real Property").

B. THE PROJECT. Declarant plans to construct a phased residential condominium project called "Mystic Point" on portions of the Real Property, with more than one home in each building.

C. PHASING OF MYSTIC POINT. It is currently intended that Mystic Point will be marketed in the twelve (12) Phases described in the Condominium Plans. **Exhibit "A"** attached hereto states the number of Condominiums planned for each Phase. However, there is no guarantee that all Phases will be constructed or completed or that the phasing will occur in the exact order set forth in the Condominium Plans. If all Phases of Mystic Point are completed as planned, there will be a total of two hundred fifty-two (252) Condominiums in the Project. Each Condominium shall have appurtenant to it a membership in MYSTIC POINT HOMEOWNERS ASSOCIATION, a California nonprofit mutual benefit corporation ("Association"), which will be the management body for the Project and the owner in fee of the Association Property.

D. PROPERTY INITIALLY COVERED BY THIS DECLARATION. Initially, this Declaration encumbers only the following real property located in the City of Carlsbad, County of San Diego, State of California:

> Lot 1 of CITY OF CARLSBAD TRACT NO. 01-03 CALAVERA HILLS VILLAGE E-1, in the City of Carlsbad, County of San Diego, State of California, according to Map thereof 14696, filed in the Office of the County Recorder of San Diego County, California, on October 9, 2003

(the "Covered Property"). Other portions of the Real Property may be annexed to this Declaration pursuant to the Section below entitled "Annexation; Reservation of Easements" and thereby become a part of the Covered Property.

E. CONDOMINIUMS. Declarant intends to establish a condominium project under the provisions of the California CIVIL CODE. Each home in the Covered Property will be located within space shown as a

Living Unit on a Condominium Plan. Each Living Unit will consist of a separate interest in space within a building and it is intended that there will be more than one Living Unit in each building. Declarant currently intends to construct buildings that each contain either three or six living units.

F. CONDOMINIUM PLANS. It is intended that each Condominium Plan shall be deemed a separate Condominium Plan for each Phase which, for purposes of convenience, has been combined as one recorded instrument.

G. THE COMMON AREA AND ASSOCIATION PROPERTY. The Common Area will consist of those portions of Mystic Point which are owned in undivided interests amongst certain Owners, with the Owners of the Living Units in a building sharing an equal undivided interest in the Common Area portions of the applicable Building Envelope; the Common Area portions of a Building Envelope will be the entire Building Envelope excepting the Living Units in the building. The Association Property refers to portions of the Covered Property and other real property which will be transferred to the Association (either as easements or fee title). The Association Property in a Phase will include all portions of the Phase other than the Building Envelopes in the Phase.

H. NO REPRESENTATION OF COMPLETION. Declarant makes no representation that all the Condominiums, Association Property or Common Area planned for the Project will in fact be completed.

I. CONDOMINIUM ELEMENTS. Generally, the Owners of a Condominium will receive those property interests which are described below in the definition of "Condominium".

J. ENVIRONMENTAL PRESERVE. The Real Property is adjacent to an environmental preserve that is planned to be owned and maintained by an entity organized for managing and maintaining the preserve for conservation purposes.

K. NOTICE OF STATUTORY PROCEDURES FOR CERTAIN CLAIMS. PURSUANT TO CALIFORNIA CIVIL CODE SECTION 912(F). Declarant, on behalf of itself and each Affiliated Contractor (as defined in Article XVII below), notifies each Owner and the Association that Chapter 4 (commencing with Section 910) of Title 7 of Part 2 of Division 2 of the California CIVIL CODE sets forth non-adversarial procedures and remedies that may apply to claims for construction defect which may arise in connection with the Project. The non-adversarial procedures impact the legal rights of Owners and the Association. The statute allows Declarant and its Affiliated Contractors to elect not to use its procedures. The statute also allows Declarant and its Affiliated Contractors, by contract with Owners or the Association, to provide alternative non-adversarial procedures and remedies in lieu of the procedures and remedies contained in CIVIL CODE Section 910, *et seq*.

L. NOTICE OF ALTERNATIVE DISPUTE RESOLUTION AND JURY TRIAL WAIVER PROVISIONS. **NOTICE: ARTICLE XVII OF THIS DECLARATION ESTABLISHES MANDATORY ALTERNATIVE DISPUTE RESOLUTION PROCEDURES FOR CERTAIN DISPUTES. ARTICLE XVII ALSO CONTAINS A WAIVER OF THE CONSTITUTIONAL RIGHT TO A JURY TRIAL WITH RESPECT TO ANY SUCH DISPUTES.**

M. INTERPRETATION OF DECLARATION. In preparing this Declaration the law firm of Hecht, Solberg, Robinson, Goldberg & Bagley LLP represented Declarant and not any Owner or the Association. For interpretation of this Declaration or for advice concerning it, an Owner or the Association should contact their own legal advisor.

N. COMMON PLAN OF RESTRICTIONS; BINDING ON FUTURE OWNERS. Before selling or conveying any interests in the Covered Property, Declarant desires to subject the Covered Property to certain covenants and restrictions, in accordance with a common plan, for the benefit of Declarant and any and all present and future owners of the Covered Property.

NOW, THEREFORE, Declarant hereby declares that all the Covered Property, (including, upon annexation, additional portions of the Real Property which are added to the Covered Property), shall be held, sold and conveyed subject to the following easements, restrictions and covenants, which are enforceable equitable servitudes as described in California CIVIL CODE Section 1354 and which are for the purpose of establishing a general plan for protecting the value and desirability of, and which shall run with the Covered Property and be binding on all parties having any right, title or interest in the Covered Property, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

## ARTICLE I

## DEFINITIONS

Section 1.1. **"Architectural Committee"** shall mean and refer to the person or persons which may be from time to time appointed by the Board to serve as the Architectural Committee. The members of the Architectural Committee need not be members of the Board or the Association. Each member of the Architectural Committee shall serve until he or she resigns or is removed by the Board. The Board shall act as the Architectural Committee in the event the Board does not appoint an Architectural Committee.

Section 1.2. **"Articles"** shall mean and refer to the Articles of Incorporation of the Association as they may from time to time be amended.

Section 1.3. **"Association"** shall mean and refer to MYSTIC POINT HOMEOWNERS ASSOCIATION, a California Nonprofit Mutual Benefit Corporation, its successors and assigns.

Section 1.4. **"Association Property"** shall mean all real property and easements owned by the Association from time to time for the common use and enjoyment of the Owners. The Association Property in a Phase will include the remainder of the Phase after excluding all the Building Envelopes in the Phase. "Association Property" shall also include those areas (including public areas) located outside the Covered Property that the Association is required to maintain by the City, this Declaration or by easement or agreement. Any pipes, wires or other utility installations which serve more than one Living Unit but which are not owned and maintained by the City or a public utility and are not part of the Common Area will also be Association Property (*e.g.*, it is currently intended that there will be private storm drain, sewer and water systems within the Project). Television cable and related CATV equipment may be owned by the cable supplier.

Section 1.5. **"Board"** shall mean and refer to the Board of Directors of the Association.

Section 1.6. **"Building Envelope"** shall mean and refer to a three dimensional portion of the Covered Property, established pursuant to GOVERNMENT CODE Section 66427 and shown as a Building Envelope on the applicable Condominium Plan.

Section 1.7. **"Bylaws"** shall mean and refer to the Bylaws of the Association as they may from time to time be amended.

Section 1.8. **"City"** shall mean and refer to the City of Carlsbad, California.

Section 1.9. **"Common Area"** shall consist of all portions of a Building Envelope except the Living Units located in such Building Envelope. The boundaries of the Common Area shall be the boundaries of the applicable Building Envelope as shown on the applicable Condominium Plan. The Owners of the Living Units within a Building Envelope shall receive an equal undivided ownership interest in the Common Area of that Building Envelope only, with the undivided interest of each such Owner being equal to the reciprocal of the number of Living Units within the Building Envelope. It is intended that the Common Area include all portions of the building in a Building Envelope, including, but not limited to, the roof, any chimneys, vents, balconies, foundations, overhangs, columns and other appurtenances regardless of whether any such items lie outside the boundary lines shown on the applicable Condominium Plan. In interpreting deeds and plans, the then existing physical boundaries of a building whether in its original state or reconstructed in substantial accordance with the original plans thereof, shall be conclusively presumed to be its boundaries rather than the boundaries expressed in the deed or plan, regardless of settling or lateral movement of the building and regardless of minor variance between boundaries shown on the plan or deed and those of the building.

Section 1.10. "Common Expenses" means and includes the actual and estimated expenses of operating the Project and any reasonable reserve for such purposes as found and determined by the Board and all sums designated common expenses by or pursuant to the condominium documents.

Section 1.11. "Condominium" shall mean and refer to a fee simple estate in the Project and shall consist of:

(a) A Living Unit airspace;

(b) The exclusive right to use and occupy any Exclusive Use Area which the applicable Condominium Plan shows as being appurtenant to the Living Unit;

(c) An undivided interest as tenant in common to the Common Area portion of the Building Envelope in which the Living Unit is located; and

(d) An easement over the Association Property which has been conveyed to the Association, subject to the Association's rules, regulations and procedures.

Section 1.12. "Condominium Plan" shall mean and refer to each Condominium Plan recorded pursuant to California CIVIL CODE Section 1351(e) covering any portion of the Covered Property. It is intended that several separate Condominium Plans be recorded concurrently, and for purposes of convenience, more than one such Condominium Plan may be attached together as a single document; however, each such Condominium Plan shall remain a separate Condominium Plan within the meaning of CIVIL CODE SECTION 1351(e).

Section 1.13. "County" shall mean and refer to the County of San Diego, California.

Section 1.14. "Covered Property" shall initially mean the following real property located in the City of Carlsbad, County of San Diego, State of California:

> Lot 1 of CITY OF CARLSBAD TRACT NO. 01-03 CALAVERA HILLS VILLAGE E-1, in the City of Carlsbad, County of San Diego, State of California, according to Map thereof 14696, filed in the Office of the County Recorder of San Diego County, California, on October 9, 2003.

Other portions of the Real Property may be annexed to this Declaration pursuant to the Section below entitled "Annexation; Reservation of Easements" and will thereby become a part of the Covered Property.

Section 1.15. "Declarant" shall mean and refer to CAL E1 LLC, a Delaware limited liability company. Declarant shall also refer to (a) the assigns of Declarant who are expressly assigned the rights of Declarant and (b) successors of Declarant who become successors by operation of law or by exercise of the remedies under a mortgage, deed of trust or deed in lieu of foreclosure.

Section 1.16. "Declaration" shall mean and refer to this enabling Declaration of Restrictions, as it may from time to time be amended.

Section 1.17. "Eligible Insurer or Guarantor" shall mean and refer to an insurer or governmental guarantor who has requested notice from the Association of those matters which such insurer or guarantor is entitled to notice of by reason of this Declaration or the Bylaws of the Association and who has provided the Association with the address to which such notice is to be sent and the Condominium unit number which is encumbered by a Mortgage in which it has an interest.

Section 1.18. "Eligible Mortgage Holder" shall mean and refer to a holder of a first Mortgage on a Condominium who has requested notice from the Association of those matters which such holder is entitled to notice of by reason of this Declaration or the Bylaws of the Association and who has provided the

Association with the address to which such notice is to be sent and the Condominium unit number which is encumbered by a Mortgage in which it has an interest.

Section 1.19. **"Exclusive Use Area"** shall mean and refer to those portions of the Association Property or Common Area to which an exclusive right to use is granted to an Owner as shown and described on the applicable Condominium Plan. Yard and Deck Exclusive Use Areas are currently planned for the Project. A Condominium Plan may show the minimum square footage area of one or more Exclusive Use Areas but not show the actual dimensions of the Exclusive Use Area except by reference to Project improvements (*e.g.*, fences and walls which adjoin a Yard). Also, in the event one or more fences or walls installed by Declarant are in locations that do not coincide with the dimensions of the Exclusive Use Area shown on a Condominium Plan, the boundaries of the Exclusive Use Area shall be established by the locations of the adjacent fences and walls as installed by Declarant.

Section 1.20. **"Final Map"** shall mean and refer to any final subdivision map or parcel map covering any portion of the Covered Property.

Section 1.21. **"Fire Suppression Zones"** shall mean and refer to those areas within the Project designated by the City as lying within a fire suppression zone or modified fire suppression zone, which areas are subject to certain restrictions and obligations of maintenance as set forth in this Declaration and the conditions to approval of tentative tract map(s) for the Final Maps. None of Lot 1 of Final Map No. 14696 is in a Fire Suppression Zone. The approximate locations of Fire Suppression Zones in other portions of the Real Property will be shown or described on the Condominium Plan or Declaration of Annexation covering such property.

Section 1.22. **"Fire Suppression Requirements"** shall mean and refer to the fire protection requirements contained in the Landscape Manual adopted by the City Council on November 13, 1990, together with (and as may be modified by) any particular fire suppression plan approved by the City for the Project, as any of the fire suppression plan(s) may be revised from time to time.

Section 1.23. **"Living Unit"** shall mean and refer to a separate interest in space as defined in California CIVIL CODE Section 1351(f) and as shown and described as such on the applicable Condominium Plan. The following are Common Area or Association Property and not a part of any Living Unit: Bearing walls, columns, floors, roofs, foundations, central heating and fire sprinkler equipment, reservoir tanks, pumps and other central services, pipes, ducts, flues, chutes, conduits, wires and other utility installations, wherever located, except the outlets thereof when located in the Living Unit. Each Living Unit shall include any door or window within a perimeter wall, the interior undecorated surfaces of bearing walls and perimeter walls, floors and ceilings, any photo cell sensor porch entry lighting, and the outlets of all utility installations in the Living Unit, including the fire box of any fireplace located in the Living Unit. In interpreting deeds and plans, the then existing physical boundaries of a Living Unit, whether in its original state or reconstructed in substantial accordance with the original plans thereof, shall be conclusively presumed to be its boundaries rather than the boundaries expressed in the deed or plan, regardless of settling or lateral movement of the building and regardless of minor variance between boundaries shown on the plan or deed and those of the building. "Living Unit" includes any garage portion thereof as shown on the applicable Condominium Plan.

Section 1.24. **"Member"** shall mean and refer to a person entitled to membership in the Association as provided herein.

Section 1.25. **"Mortgage"** shall mean and refer to a mortgage or deed of trust which encumbers a Condominium.

Section 1.26. **"Mortgagee"** shall mean and refer to a beneficiary under a deed of trust which encumbers a Condominium as well as a mortgagee under a Mortgage.

Section 1.27. **"Owner"** shall mean and refer to the record owner, whether one (1) or more persons or entities, of fee simple title to any Condominium, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 1.28. **"Phase"** shall mean and refer to a three dimensional portion of the Covered Property, established pursuant to GOVERNMENT CODE Section 66427. Each Phase shall be the area which is so described on the applicable Condominium Plan. However, Declarant shall have the right to revise the phasing of the Project from time to time as evidenced by recordation of a revised Condominium Plan(s) which cover(s) Phase(s) owned by Declarant. The obligation of Condominium Owners to pay dues to the Association and the right of such Condominium Owners to exercise voting rights in the Association shall not commence against the Condominiums within a Phase until the first day of the month following close of the first sale of a Condominium by Declarant in that particular Phase of development.

Section 1.29. **"Preserve"** shall mean and refer to the land depicted on **Exhibit "B"** attached hereto as "PHASE II HABITAT CONSERVATION AREA".

Section 1.30. **"Project"** shall mean and refer to the Covered Property.

Section 1.31. **"Real Property"** shall mean and refer to that real property located in the City of Carlsbad, California, described in Recital A above.

Section 1.32. **"Retail Purchaser"** shall mean and refer to anyone other than a successive Declarant who purchases a Condominium from Declarant through authority of a Final Subdivision Public Report issued by the California Department of Real Estate.

Section 1.33. **"RV Park"** shall mean and refer to CALAVERA HILLS RECREATIONAL VEHICLE PARK, a California nonprofit corporation (formed pursuant to the Nonprofit Mutual Benefit Corporation Law of the State of California).

## ARTICLE II

## PROPERTY RIGHTS IN ASSOCIATION PROPERTY AND COMMON AREA

Section 2.1. **Title to the Association Property**. Declarant covenants for itself, its successors and assigns, that Declarant will convey to the Association any Association Property within a Phase of the Covered Property free and clear of all encumbrances and liens, except non-delinquent taxes, easements, covenants, conditions and reservations then of record, including those set forth in this Declaration, prior to the conveyance of the first Condominium in the respective Phase to a Retail Purchaser.

Section 2.2. **Owners' Easements of Enjoyment**. Subject to the limitations set forth in this Declaration, every Owner of a Condominium shall have a right and easement of enjoyment, use and ingress and egress to and from the Association Property from and after conveyance of the same to the Association. These rights and an Owner's undivided interest in the Common Area shall be appurtenant to and shall pass with the title of each Condominium, subject to the following provisions:

(a) The right of the Board to make rules and regulations relating to the operation and use of the Association Property and Common Area, including the right of the Board to restrict use of the recreational facilities to those in possession of Living Units and to those additional persons who are entitled to use. Except for areas where easement rights have been transferred or reserved to the contrary, the Board shall have the right to control the hours of such use and to determine whether such facilities may be used by guests of persons entitled to use. The Association shall have no right to restrict reasonable access to a Condominium by the persons who have the right to possession of the Condominium.

(b) The right of the Board to suspend the voting rights of an Owner and right to suspend use of recreational facilities by the Owner and occupants of a Condominium:

(i) During the period of time any Association assessment against the Condominium remains delinquent; and/or

(ii) For a period of not more than thirty (30) days for any infraction of the Board's published rules and regulations after reasonable written notice and an opportunity for a hearing before the Board which satisfies the minimum requirements of California CORPORATIONS CODE Section 7341 as set forth in the Bylaws.

(c) The right of the Board, subject to the limitations stated in the Section below entitled "**Approval of First Mortgagees**" of the Article entitled '**RIGHTS OF LENDERS**" and subject to the restrictions stated in California CORPORATIONS CODE Section 8724, to transfer less than substantially all of the Association Property. It is specifically intended that the Board have the right to cooperate with Declarant and any Owner in adjusting the boundaries of Exclusive Use Areas or between the Association Property and other portions of the Project.

(d) The sole and exclusive right of the Association, acting through its Board, to operate, maintain and control the Association Property and Common Area except as otherwise stated in this Declaration.

(e) The right of the Board to grant or dedicate to third parties permits, licenses (which may be irrevocable), and easements over the Association Property and Common Area for utilities, roads and other purposes necessary for the proper operation of the Project; and the right of the Board to convey portions of the Association Property to others in connection with a boundary adjustment requested by an adjacent property owner or public entity.

(f) The right of the Board to grant easements and licenses over the Association Property and the Common Area pursuant to this Declaration.

(g) The right of the Board, in accordance with this Declaration, to permit Owners to install improvements within Association Property and Common Area, provided that the installation of such improvements would not materially and adversely affect any Owner's use of the Association Property or Common Area. For example, the Board shall have the right to permit an Owner to install improvements necessary to provide private technology or entertainment services to the Owner's Living Unit (*e.g.*, satellite dishes, cables and similar improvements).

(h) The right of the Association, in accordance with the Articles and Bylaws, to borrow money for the purpose of improving the Association Property and to hypothecate any or all real or personal property owned by the Association.

(i) The right of access, ingress and egress over the Association Property and Common Area and the right of installation and use of utilities on the Association Property and Common Area for the benefit of the Condominiums.

(j) Declarant's right to construct and market homes and other improvements within the Real Property, including the following rights:

(i) Declarant and its sales agents, employees and independent contractors shall have the right to the non-exclusive use of the Association Property and Common Area for the purpose of maintaining sales offices, parking, signs and flags reasonably necessary to market the Condominiums in the Real Property. Declarant shall have the right, during its marketing of the Real Property, to control those hours in which Declarant, its agents, contractors and potential buyers to have access to the Real Property. These rights of Declarant may be exercised only until close of escrow to Retail Purchasers of all 252 Condominiums planned for the Real Property.

(ii) Declarant shall also have a non-exclusive easement over the Association Property and Common Area to provide access and utilities thereto for the purpose of constructing, marketing and utilizing portions of the Real Property owned by Declarant.

(iii) Declarant shall have the other rights of Declarant under this Declaration, including those set forth in the Article below entitled "**DEVELOPMENT BY DECLARANT**".

The use of the Common Area and the Association Property by Declarant and its agents shall not unreasonably interfere with the use thereof by the Class A Members of the Association. Declarant shall repair any portion of the Association Property or Common Area which may be damaged by Declarant.

(k) Use of the Association Property and Common Area shall also be subject to:

(i) Any dedicated public rights and any third party easements or other rights that may exist of record. For example, the right to use the Common Area and Association Property shall be subject to the provisions of any open space easements or similar interests dedicated to the City or any other governmental or quasi-governmental entity on any Final Map.

(ii) The applicable ordinances of the City, easements in favor of the City, and permits and approvals issued by the City, including, but not limited to, the conditions of approval of any tentative subdivision map or condominium permit that pertains to the Real Property.

<u>Section 2.3</u>. <u>Delegation of Use</u>. Subject to the restrictions stated in this Declaration, any Owner may delegate, in accordance with the Bylaws and the rules and regulations of the Board, the Owner's right of enjoyment to the Association Property and Common Area and facilities to the members of the Owner's family, tenants, guests or contract purchasers who reside in the applicable Living Unit. Each Owner shall be responsible to the Association for any damage to the Association Property and Common Area caused by such Owner or persons to whom Common Area or Association Property rights have been transferred.

<u>Section 2.4</u>. <u>Power of Attorney to Correct Errors</u>. The Association is hereby given a power of attorney to act on behalf of the Owners and their Mortgagees to correct errors in any Condominium Plan by executing on behalf of the affected Owners and Mortgagees an amendment to the applicable Condominium Plan and an instrument to effect any conveyances or partial reconveyances necessary to correct such errors. The power hereby given to the Association is limited as follows:

(a) The power may be exercised only to correct errors in a Condominium Plan as evidenced by a written statement which describes the error(s) and which is signed by the engineer who prepared the Condominium Plan or by Declarant. The power hereby given may not be utilized for any other purpose.

(b) The power may not be exercised on behalf of an Owner or his or her Mortgagee if the Owner's Living Unit or Exclusive Use Area would be reduced in size by reason of the correction.

The power hereby given is coupled with an interest and may not be revoked by an Owner but may be revoked by a Mortgagee. Any such revocation by a Mortgagee shall be by means of its signed statement of revocation recorded with the County Recorder of the County.

<u>Section 2.5</u>. <u>City Easement</u>. The City shall have an easement over the Association Property and Common Area for maintenance purposes that may be exercised upon the failure of the Association to maintain the Association Property or Common Area in accordance with the conditions of approval of the Final Maps, pursuant to **Section 7.4** of this Declaration.

## ARTICLE III

## MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION

<u>Section 3.1</u>. <u>Each Owner Is A Member</u>. Each Owner of a Condominium shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Condominium. Each Owner is obligated promptly, fully and faithfully to comply with and conform to this Declaration and the Bylaws and the rules and regulations adopted from time to time by the Board and officers

of the Association. Membership in the Association shall not be transferred, pledged or alienated in any way, except upon the sale or encumbrance of the Condominium to which it is appurtenant, and then only to the purchaser, in the case of a sale, or Mortgagee, in the case of an encumbrance of such Condominium. Any attempt to make a prohibited transfer is void. In the event the Owner of any Condominium should fail or refuse to transfer the membership registered in the Owner's name to the purchaser of his or her Condominium, the Association shall have the right to record the transfer upon its books and thereupon the old membership outstanding in the name of the seller shall be null and void.

Section 3.2. Voting Rights. The Association shall have three (3) classes of voting membership:

(a) *Class A.* Class A Members shall be all Owners, with the exception of Declarant, and shall be entitled to one (1) vote for each Condominium owned. When more than one (1) person holds an interest in any Condominium, all such persons shall be Members. The vote for the Condominium shall be exercised as the Owners among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Condominium. The Class A Members shall be entitled to elect, by their sole votes, two (2) members of the five (5) member Board of Directors at the first annual meeting of Members and thereafter until expiration of the three-year terms of Class C Elected Directors; upon termination of the Class C Elected Directors' three-year terms, Class A members will be entitled to vote for all nominees to the Board.

(b) *Class B.* Class B Member(s) shall be Declarant and shall be entitled to three (3) votes for each Condominium owned. The Class B membership shall cease and be converted to Class A membership on the happening of the earlier of the following to occur:

(i) Two (2) years following the first conveyance of record by Declarant of a Condominium to a Retail Purchaser pursuant to the most recent Final Subdivision Public Report issued by the California Department of Real Estate for a Phase of the Project; or

(ii) Four (4) years following the date of the first conveyance of record by Declarant of a Condominium to a Retail Purchaser pursuant to the original Final Subdivision Public Report issued by the California Department of Real Estate for Phase 1 of the Project.

Class B Members shall have no right to vote in the election of directors until the expiration of the three-year terms of the Class C Elected Directors.

(c) *Class C.* Class C Member(s) shall be Declarant and shall be entitled, by its sole vote, to elect three directors (**"Class C Elected Directors"**) of the five member Board of Directors of the Association at the first annual meeting of Members of the Association. Each Class C Elected Director shall have a three (3) year term. The Class C membership shall automatically expire after the first annual meeting of Members of the Association; provided, however, the Class C membership will not expire for purposes of Declarant's right to replace any Class C Elected Director for the unexpired portion of the original three (3) year term of that directorship.

Section 3.3. Commencement of Voting Rights. Except with respect to Class C, voting rights shall not commence with respect to a Condominium until the Association's regular assessments have commenced against the Condominium.

## ARTICLE IV

## COVENANT FOR MAINTENANCE ASSESSMENTS TO ASSOCIATION

Section 4.1. Covenant for Assessments. The Declarant, for each Condominium owned, covenants, and each Owner of any Condominium by acceptance of a deed to the Condominium, whether or not so expressed in such deed, is deemed to covenant and agrees to pay to the Association: (a) regular assessments, which shall include an adequate reserve fund for periodic maintenance, repair and replacement of the Association Property and Common Area, (b) special assessments, and (c) those other assessments provided for in this Article. The regular and special assessments, together with interest, costs, late charges and reasonable attorney's fees, shall, except as stated in Section 4.4, be a charge and continuing lien upon the Condominium against which each such assessment is made, the lien to become effective upon recordation of a notice of assessment. Each such assessment, together with interest, costs, late charges and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner of such Condominium at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to an Owner's successors in title unless expressly assumed by them; however, the assessment shall remain a lien on the Condominium.

Section 4.2. 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 entire Project and for the improvement and maintenance of the Association Property and Common Area for the common good of the Project, to reimburse the Association for the costs incurred in bringing an Owner into compliance with the Bylaws, this Declaration and the rules and regulations adopted by the Board, and for those other purposes described in this Declaration. The regular assessments shall be determined at least annually by the Board to meet the expenses of the Association, including the establishment of reserve accounts, based upon the annual budget adopted by the Board pursuant to the Bylaws. A special assessment is an assessment the Board, in its discretion, determines necessary if the Association's available funds are or will become inadequate to meet the estimated expenses of the Association for a fiscal year. The Board may levy the entire special assessment immediately or levy it in installments over a period the Board determines appropriate. In addition, a special assessment against a particular Owner only may be levied by the Board as set forth in Section 4.4.

Section 4.3. Limitation on Regular and Special Assessments. The Board shall levy regular and special assessments sufficient to perform the obligations of the Association as provided in the Declaration and Bylaws; provided, however, except for assessment increases necessary for emergency situations:

(a) The Board may not increase the regular assessments for any fiscal year unless (i) the Board has complied with the provisions of California CIVIL CODE Section 1365(a) with respect to the fiscal year or (ii) the increase is approved by Owners 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 California CORPORATIONS CODE and Section 7613 of the California CORPORATIONS CODE at which a quorum was present or participated; and

(b) The Board may not impose a regular assessment that is more than twenty percent (20%) greater than the regular assessment for the Association's preceding fiscal year nor special assessments which in the aggregate exceed five percent (5%) of the budgeted gross expense of the Association for the fiscal year, without the approval of Owners 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 California CORPORATIONS CODE and Section 7613 of the California CORPORATIONS CODE at which a quorum was present or participated. An emergency situation is any one of the following:

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

(ii) An extraordinary expense necessary to repair or maintain the Project or any part of the Project for which the Association is responsible where a threat to personal safety in the Project is discovered.

(iii) An extraordinary expense necessary to repair or maintain the Project or any part of the Project for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the pro forma operating budget under CIVIL CODE Section 1365. However, prior to the imposition or collection of an assessment under this Subsection, 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 assessment.

(c) For purposes of this **Section 4.3**, "quorum" means more than fifty percent (50%) of the Owners. The term "regular assessment for the Association's preceding fiscal year" as used in this **Section 4.3** is deemed to be the regular assessment which would have existed in the absence of any subsidy of assessments agreed to be paid by Declarant. Anything in this **Section 4.3** to the contrary notwithstanding, the limitation on regular and special assessments shall comply with the laws of the State of California at the time the regular or special assessment is levied by the Association.

(d) Notwithstanding the above stated limitation against increases in regular assessments:

(i) The Board may increase regular assessments more than twenty percent (20%) if such increase was shown on an Association budget approved by the California Department of Real Estate and if such increase is allowed by California law;

(ii) Sums assessed against Owners pursuant to the Section below entitled **"Non-Lien Assessments (Compliance)"** shall not be considered in calculating the increases in assessments; and

(iii) The Board may levy special assessments pursuant to the Section in the Bylaws entitled "Limitation on Expenditure of Reserve Funds".

The due dates of assessments shall be as the Board establishes them. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Condominium have been paid. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment.

Section 4.4. Non-Lien Assessments (Compliance). The Association may also impose a special assessment against any Owner to reimburse the Association for costs incurred in bringing an Owner and the Owner's Condominium into compliance with the provisions of the Declaration, the Bylaws and Association rules and regulations, or as a penalty imposed as a disciplinary measure for failure of an Owner or occupants of the Owner's Condominium to comply with such provisions. Such special assessment may be imposed upon the vote of the Board after notice and an opportunity for a hearing which satisfy the requirements of Section 7341 of the California CORPORATIONS CODE, as set forth in the Bylaws, and the Board shall meet in executive session if requested by the Owner being disciplined and the Owner shall be entitled to attend the executive session. Except to the extent such special assessment is to reimburse the Association for the cost of collecting assessments, the special assessment shall not constitute a lien on the Owner's Condominium and shall be assessed only against the Owner who is or was in non-compliance. The Association shall have lien rights with respect to charges imposed against an Owner which are reasonable late payment fees for delinquent assessments, interest and other charges to reimburse the Association for costs reasonably incurred (including attorney's fees) in its efforts to collect delinquent assessments.

Section 4.5. Schedule of Monetary Penalties. If the Association adopts a policy of imposing any monetary penalty, including any fee, on any Owner for violation of this Declaration or the rules of the Association, including any monetary penalty relating to the activities of a guest or invitee of an Owner, the Board shall adopt and distribute to each Owner, 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 the authorization for Owner discipline set forth in this Declaration and the Bylaws. The Board shall not be required to distribute any additional schedules of monetary penalties unless there are changes from the schedule that was adopted and distributed to the Owners pursuant to this Section.

Section 4.6. Rate of Regular Assessments. Both regular and special assessments shall be levied upon each Condominium at a uniform rate. However, this Section does not apply to the sums payable by reason of **Section 4.4, 4.7** or **4.10**.

Section 4.7. Rate of Special Assessments for Repairs. Any special assessment to raise funds for the rebuilding or major repair of a portion of the structural Common Area or Association Property shall be levied against each Condominium in the Project against which the Association's regular assessments have commenced. Such special assessments shall be levied upon the basis of the ratio of the square footage of the floor area of the Living Unit of the Condominium to be assessed to the total square footage of the aggregate floor area of the Living Units in all Condominiums to be assessed.

Section 4.8. Date of Commencement of Regular Assessments. The regular assessments shall commence as to all Condominiums in a particular Phase of the Project on the first day of the month following the conveyance of the first Condominium to a Retail Purchaser in that Phase.

Section 4.9. Adjustment of Assessments; Due Dates. The Board shall fix the amount of the regular assessments against each Condominium at least thirty (30) days in advance of each fiscal year but may change the assessment amount on any subsequent occasion. Although the amount of regular assessments (other than special assessments) shall be determined at least annually, commencement of regular assessments against an additional Phase during the marketing period may cause the regular assessment amounts to change. Unless otherwise determined by the Board, regular assessments shall be due and payable in monthly installments on the first day of each calendar month. No notice of regular assessments shall be required except for notices of changes in assessment amount or changes in due dates. Written notice of changes in the regular assessments or of any special assessment shall be sent by first class mail to every Owner subject thereto not less than thirty (30) nor more than sixty (60) days prior to the change in assessments or the special assessment becoming due.

Section 4.10. Limited Regular Assessments. This Section shall apply only if not all the residential buildings within a Phase have been completed at the time the regular assessments commence against the Phase. Any Condominiums which will be located in a building which is uncompleted at the time regular assessments commence are referred to herein as **"Uncompleted Condominiums"** and shall be subject to limited regular assessments in lieu of regular assessments as hereinafter provided, unless the Board resolves and Declarant expressly agrees otherwise. For purposes hereof, a Condominium shall be deemed **"Uncompleted"** if the construction of the structural improvements to the building in which the Condominium is located has not progressed to the point which allows the Condominium to be legally occupied. Should any Phase of the Project include any Uncompleted Condominium at the time assessments commence against such Phase, then:

(a) In addition to preparing its usual budget, the Association shall prepare a budget which includes costs and reserves for operation, repair and replacement of all portions of the Association Property then under the jurisdiction of the Association, other than any portion of any building within the Project. Such budget is referred to herein as the **"Budget for Non-Building Association Property"**.

(b) The regular assessments which commence against each Uncompleted Condominium (**"Limited Regular Assessments"**) shall be based only upon the Budget for Non-Building Association Property until the first to occur of (i) completion of the structural improvements of the building in which the Uncompleted Condominium is located (as is evidenced by Declarant's filing a Notice of Completion for such building), or (ii) actual occupancy of such Uncompleted Condominium. An Uncompleted Condominium shall thereafter forever lose its status of being Uncompleted and shall be subject to the same regular assessment as all other completed Condominiums.

(c) The Limited Regular Assessments shall be uniform in amount. Limited Regular Assessments, if any, shall commence against each Uncompleted Condominium within a Phase at the same time as regular assessments commence for the Phase, and Limited Regular Assessment shall be in lieu of such regular assessments.

(d) The limitations on assessment increases set forth in **Section 4.3** shall not apply to increases in assessments against a previously Uncompleted Condominium which result from the conversion of Limited Regular Assessments to regular assessments.

(e) Limited Regular Assessments shall be deemed to be regular assessments, as such term is used in this Declaration, for all purposes, except as this Section specifically provides otherwise. The Board shall have the right to disregard this Section provided that Declarant has given its consent to Board's decision to do so. If Limited Regular Assessments are applicable, the non-limited regular assessments will exclude costs of maintenance and reserves for each building containing the Uncompleted Condominiums until non-limited regular assessments commence against such building.

Section 4.11. Effect of Non-Payment of Assessments; Remedies of the Association. Any assessment made in accordance with this Declaration (including lien and non-lien assessments) shall be a debt of the Owner of a Condominium from the time the assessment is due. Any assessment not paid within fifteen (15) days after the due date shall be delinquent. If an assessment is delinquent, the Association may recover any of the following: (i) reasonable costs incurred in collecting the delinquent assessment, including reasonable attorney's fees, (ii) a late charge on unpaid assessments in an amount not exceeding the greater of Ten Dollars ($10.00) or ten percent (10%) of each assessment, and (iii) commencing thirty (30) days after the assessment becomes due until paid, interest at the rate of twelve percent (12%) per annum on the delinquent assessment and all sums imposed by this Section, including reasonable fees and costs of collection and reasonable attorney's fees. After any assessments levied by the Association affecting any Condominium have become delinquent, the Board may, after giving notice to the delinquent Owner pursuant to CIVIL CODE Section 1367.1( as more fully described below), file for recording in the Office of the County Recorder of the County a notice of delinquency as to such Condominium. The notice of delinquency shall state all amounts which have become delinquent with respect to such Condominium and the costs (including attorney's fees), interest and late charges which have accrued thereon, the amount of any assessments relating to such Condominium which is due and payable although not delinquent, a description of the Condominium with respect to which the delinquent assessments are owed, the name of the record or reputed record Owner of such Condominium, and the name and address of the trustee authorized by the Association to enforce the lien by sale. Such notice shall be signed by an officer of the Association or its authorized agent.

Pursuant to CIVIL CODE Section 1367.1, the Association shall provide the delinquent Owner with written notice by certified mail at least thirty (30) days prior to filing a notice of delinquency with the County Recorder. The precise form and content of the notice is set forth in CIVIL CODE Section 1367.1., but includes, without limitation, the following information: (i) a general description of the collection and lien enforcement procedures of the Association; (ii) a statement that the Owner has the right to inspect Association records pursuant to CORPORATIONS CODE Section 8333; (iii) the following statement in 14-point boldface type if printed, or in capital letters, if typed:

> "IMPORTANT NOTICE: IF YOUR RESIDENTIAL UNIT IS PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT ACTION";

(iv) an itemized statement of the charges owed by the Owner, including items on the statement which indicate the amount of any delinquent assessments, the fees and reasonable costs of collection, reasonable attorneys' fees, any late charges, and interest, if any; (v) a statement that the Owner shall not be liable to pay the charges, interest, and costs of collection, if it is determined the assessment was paid on time to the Association; and (vi) a statement that the Owner has the right to request a meeting with the Board as provided in subdivision (c) of CIVIL CODE Section 1367.1.

Immediately upon recording of any notice of delinquency pursuant to the foregoing provisions of this Section, the amounts delinquent, as set forth in such notice, together with the costs (including attorney's fees), late charges and interest accruing thereon, shall (except as provided in Section 4.4 of this Declaration) be and become a lien upon the Condominium described therein, which lien shall also secure all other payments and/or assessments which shall become due and payable with respect to said Condominium following such recording, and all costs (including attorney's fees), late charges and interest accruing thereon. When a notice of assessment has been recorded, such assessment shall constitute a lien on each respective Condominium prior and superior to all other liens, except (i) all taxes, bonds, assessments and other levies which, by law, would be superior thereto, and (ii) the lien or charge of any first Mortgage of record.

Any payments toward sums due under this Article shall be first applied to the delinquent assessments owed, and only after the assessments owed are paid in full shall the payments be applied to the fees and costs of collection, attorney's fees, late charges or interest. When an Owner makes a payment, the Owner may request a receipt and the Association shall provide it. The receipt shall indicate the date of payment and the person who received it.

In the event the delinquent assessments and all other assessments which have become due and payable with respect to the same Condominium, together with all costs (including attorney's 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 releasing of such lien.

Each assessment lien may be foreclosed in the same manner as the foreclosure of a mortgage upon real property under the laws of the State of California, or may be enforced by sale pursuant to Sections 2924, 2924(b), 2924(c) and 1367 the California CIVIL CODE, and all other applicable statutes, and to that end a power of sale is hereby conferred upon the Association. The Association, acting on behalf of the Condominium Owners, shall have the power to bid for the Condominium at a foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Suit to recover a money judgment for unpaid assessments, rent and attorney's fees shall be maintainable without foreclosing or waiving the lien.

Section 4.12. Subordination of the Lien to First Deeds of Trust and First Mortgages. The lien of the assessments, interest, costs, attorney's fees and late charges shall be subordinate to the lien of any first Mortgage upon any Condominium. Sale or transfer of any Condominium shall not affect the assessment lien. However, the sale or transfer of any Condominium pursuant to judicial or non-judicial foreclosure of a first Mortgage shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. However, the Association may treat as Common Expenses, assessable against all the Condominiums, any unpaid assessments for which lien rights have terminated. No sale or transfer shall relieve such Condominium from lien rights for any assessments thereafter becoming due.

Section 4.13. Estoppel Certificate. The Association shall furnish, upon demand by any person, a certificate signed by an officer of the Association setting forth whether the assessments on a specified Condominium have been paid. A properly executed certificate of the Association as to the status of assessments on a Condominium is binding upon the Association as of the date of its issuance.

Section 4.14. Non-Use of Association Property or Common Area. No Owner shall be exempt from personal liability for assessments levied by the Association, nor shall any Condominium be released from the liens and charges of assessments because of the non-use of the Association Property or Common Area nor because of abandonment of the Condominium.

Section 4.15. Taxation of Association. In the event that any taxes are assessed against the Common Area, Association Property or the personal property of the Association, rather than against the individual Condominiums, the taxes shall be added to the regular assessments and, if necessary, a special assessment may be levied against the Condominiums in an amount equal to the taxes, to be paid in two (2) installments, thirty (30) days prior to the due date of each tax installment.

Section 4.16. Payment of Assessments By Declarant. Except as specifically stated otherwise in this Article, Declarant shall pay all assessments levied by the Association against any Condominium owned by Declarant at the same time, in the same manner and in the same amount as any other Owner.

Section 4.17. Uncompleted Facilities. The Board may (but shall have no obligation to) exclude from Association regular assessments those portions of budgeted assessments which are for the purpose of defraying expenses and reserves directly attributable to the existence of improvements to be maintained by the Association but which are not complete at the time of the assessment. Any such exemption from assessments shall be in effect only until completion of the improvements, which may be evidenced by recordation of a notice of completion for the same.

Section 4.18. Assessments Levied By City. If the City performs maintenance of the Common Area or Association Property as provided in Section 7.4 below, the City shall submit a written invoice to the Association for all costs incurred by the City to perform such maintenance. The City shall provide a copy of such invoice to each Owner, together with a statement that if the Association fails to pay such invoice in full within the time specified, the City will pursue collection against the Owners pursuant to the provisions of this Section and Section 7.4 below. The invoice shall be due and payable by the Association within twenty (20) days of receipt by the Association. If the Association fails to pay such invoice in full within the period specified, payment shall be deemed delinquent and shall be subject to a late charge in an amount equal to six percent (6%) of the amount of the invoice. Thereafter, the City may pursue collection from the Association by means of any remedies available in law or in equity. Without limiting the generality of the foregoing, in addition to all other rights and remedies available to the City, the City may levy a special assessment against the Owners of each Condominium in the Project for an equal pro-rata share of the invoice, plus the late charge. Such special assessment shall constitute a charge and continuing lien on the Condominiums so assessed. Each Owner in the Project hereby vests the City with the right and power to levy such special assessment, to impose a lien upon their respective Condominium and to bring all legal actions and/or pursue lien foreclosure procedures against any Owner and his or her respective Condominium for purposes of collecting such special assessment in accordance with the procedures set forth in this Article.

Section 4.19. Code Sections Subject To Change. This Article relies on provisions of California statutory law which have been revised frequently. The Board is cautioned to have its legal consultant carefully review statutes in effect as of the date any notices or other actions are taken pursuant to this Article.

## ARTICLE V

## POWERS AND DUTIES OF ASSOCIATION

Section 5.1. Participation in RV Park. The Association shall have the power and duty to actively participate in the RV Park. The RV Park was formed for the purpose of owning, managing, operating and maintaining a storage area for recreational and other vehicles for use by members of Qualifying Organizations (as defined in the Bylaws of the RV Park). Membership in the Association does not guarantee space in the RV Park's storage facility. The RV Park is intended to recoup the expenses of owning, managing, operating and maintaining its storage facility by charging fees for its use. If fees charged by the RV Park are inadequate to recoup its operating expenses, it may assess the Association (and other Qualifying Organizations within the Calavera Hills Master Plan (MP-150(H)) a proportionate amount in order to cover the difference between receipts and expenses. As of the date of this Declaration, Qualifying Organizations include the following California non-profit mutual benefit corporations: (i) The Cape at Calavera Hills Homeowners Association; (ii) The Colony at Calavera Hills Homeowners Association; (iii) The Crest of Calavera Hills Homeowners Association; (iv) The Knolls of Calavera Hills Homeowners Association; (v) The Trails of Calavera Hills Homeowners Association; (vi) The Villas of Calavera Hills Homeowners Association; (vii) Calavera Hills Master Association; (viii) Calavera Hills II Homeowners Association; and (ix) the Association.

Section 5.2. Additional Powers and Duties. The Association shall have those additional powers and duties set forth in its Bylaws.

## ARTICLE VI

## USE OF CONDOMINIUMS

Section 6.1. Residential Purposes. Each Condominium shall be improved, used and occupied for private, single-family dwelling purposes only, and shall be not be used for any commercial purposes other than home businesses which are allowed by City zoning ordinances. However, Declarant may use any of the Condominiums owned by Declarant as model homes, design centers, construction offices and sales offices until all the Condominiums in all Phases of the Project are sold and conveyed by Declarant to Retail Purchasers.

Section 6.2. Lease of Condominium. Each Owner shall have the right to lease the Owner's Condominium provided that such lease is in writing. Each tenant shall be bound by and obligated to abide by the provisions of this Declaration, the Bylaws and the rules and regulations of the Board, and a tenant's failure to do so shall be deemed a default under the lease. No Owner shall lease a Condominium for transient or hotel purposes and no Condominium shall be leased for a term of less than twenty-six (26) days. Should the Board so request an Owner to do so, the Owner shall forward an executed copy of a lease to the Owner's Condominium to the Board together with the telephone number and street address of the residence of the Owner. Other than as provided in this Section, there shall be no restriction on the right of any Owner to lease a Condominium.

Section 6.3. Use Not to Impair Insurance. No Condominium shall be occupied, improved or used for any purpose or in any manner which shall cause such Condominium or any Condominium to be uninsurable against loss by fire or the perils of the extended coverage endorsement to the California Standard Fire Policy form, or cause any such policy or policies representing such insurance to be cancelled or suspended, or the company issuing the same to refuse renewal thereof or to increase the premium therefor.

Section 6.4. Animals. No animals of any kind shall be raised, bred or kept on the Project except that a reasonable number of dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose, nor in violation of any other provision of this Declaration. A "reasonable number" as used in this Section shall ordinarily include no more than an aggregate of three (3) dogs and cats per household; provided, however, a reasonable number in any instance may be more or less depending on whether the pets constitute a nuisance to other Owners. Animals belonging to Owners, occupants or their licensees, tenants or invitees within the Project must be kept within an enclosed area (Living Unit, Deck or Yard), or on a leash being held by an individual capable of controlling the animal, or in an appropriate carrier or container from which the animal cannot escape. Each Owner shall be liable to each and all remaining Owners, their families, guests, tenants and invitees, for any unreasonable noise or damage to person or property caused by any animals brought or kept upon the Project by the Owner or by members of his or her family, his or her tenants or his or her guests; and it shall be the duty and responsibility of each Owner to immediately clean up any waste from his or her animals.

Section 6.5. Nuisance. No Condominium shall be used in such manner as to obstruct or interfere with the enjoyment of occupants of other such areas or annoy them by unreasonable noise or otherwise, nor shall any nuisance be committed or permitted to occur in any portion of the Project. Ordinary and usual techniques of construction of improvements permitted hereunder shall not be deemed a nuisance. Any violation of the Section above entitled **"Animals"** or ordinances or regulations of the City is hereby declared to be a nuisance.

Section 6.6. Sign Control and Flags. An Owner may place one (1) sign of reasonable and customary dimensions in the window of the Owner's Living Unit to advertise the Condominium for sale or rent. An Owner shall have the right to display the flag of the United States on or in the Owner's Living Unit as provided in CIVIL CODE Section 1353.5, as such Section may be amended from time to time, and an Owner shall have the right to display such non-commercial signs, posters, flags or banners on or in the Owner's Living Unit as provided in CIVIL CODE Section 1353.6, as such Section may be amended from time to time. Except as provided in this Section and except for Declarant's rights set forth in this Declaration, no other signs may be placed anywhere in the Project without the prior written permission of the Architectural Committee. All signs must conform with applicable City ordinances. Anything contained in this Declaration to the contrary notwithstanding, Declarant shall have the right to install and maintain in any Condominium owned or leased by it, on the Association Property and Common Area during the sales period set forth in Section 6.1 above, such signs, poles, flags, banners and advertisements as it deems appropriate in connection with its sales program for the sale to the public of Condominiums.

Section 6.7. Outside Antennae and Poles. There shall be no outside television or radio antennae, masts, satellite dishes, transmitter tower or facility, poles or flag poles (other than poles or flag poles installed and maintained by Declarant in connection with its sales program for the period set forth in Section 6.1 above) constructed, installed or maintained in the Project for any purpose whatsoever without approval of the Architectural Committee. However, in considering whether to approve an antenna or pole, or to impose requirements on such approval, the Architectural Committee shall not violate any applicable law or regulation, including, but not limited to, any law of the State of California or applicable regulations of the Federal Communications Commission, and the Architectural Committee shall comply with CIVIL CODE Section 1353.5 by allowing an Owner to display the flag of the United States, as defined by subdivision (b) of Section 434.5 of the GOVERNMENT CODE within such Owner's Condominium, in a location reasonably approved by the Architectural Committee. For purposes of this paragraph, "displaying the flag of the United States" means a flag of the United States made of fabric, cloth, or paper displayed from a staff or pole or in a window, and does not mean a depiction or emblem of the flag of the United States made of lights, paint, roofing, siding, paving materials, flora, or balloons, or any similar building, landscaping, or decorative component.

Section 6.8. No Owner Modification to Association Property or Common Area. Except as otherwise specifically provided in this Declaration, no Owner shall have the right to alter, paint, decorate, remodel, landscape or adorn any part of the Association Property or Common Area without the written consent of the Board.

Section 6.9. No Offensive Activity. No noxious or offensive activity shall be carried on in the Project, nor shall anything be done in the Project which may be or become an annoyance or nuisance to the others within the Project. However, construction or repair of improvements made at the Board's instruction or at Declarant's instruction shall be permitted. Nothing shall be done in any Condominium or elsewhere in the Project which will impair the structural integrity of any building. Except as otherwise provided in this Declaration, nothing shall be altered or constructed in or removed from the Association Property or Common Area, except upon the written consent of the Board. All equipment, garbage cans, wood piles or storage piles shall be kept screened and concealed from view of neighboring Condominiums, streets, Association Property and Common Area. All rubbish, trash or garbage shall be regularly removed from each Condominium and shall not be allowed to accumulate in the Project. No fences, hedges or walls shall be erected or maintained in the Project except such as are installed in accordance with the initial construction by Declarant or as provided by the Architectural Committee. No exterior clothes lines shall be erected or maintained, and there shall be no outside drying or laundering of clothes in an Exclusive Use Area or other portion of the Association Property or on the Common Area except in areas (if any) which may be approved by the Board.

Section 6.10. Power Equipment. No power equipment, hobby shops or car maintenance (other than emergency work) shall be permitted in the Project except with prior written approval of the Board. Approval shall not be unreasonably withheld and in deciding whether to grant approval the Board shall consider the effects of noise, air pollution, dirt or grease, fire hazard, interference with radio or television reception, and similar objections. Construction or repair of improvements at Declarant's request shall not require such approval.

Section 6.11. Use of Association Property and Common Area.

(a) Except as otherwise provided in this Declaration, the Association Property and Common Area shall be improved and used only for the following purposes:

(i) Affording vehicular passage and pedestrian movement within the Project, including access to the Condominiums;

(ii) Recreational use by the Owners and occupants of Condominiums and their guests, subject to rules established by the Board;

(iii) Beautification of the Project and providing privacy to the residents of the Project through landscaping and such other means as the Board shall deem appropriate;

(iv) Parking of automotive passenger vehicles in areas provided therefor as may be designated and approved by the Board by such persons, upon such terms and conditions as may from time to time be determined by the Board; the rules and regulations of the Board may be enforced by the Board, which shall have the right and power to remove vehicles from the Project at the cost of the vehicle owner and to levy monetary penalties as provided in this Declaration;

(v) As Exclusive Use Areas to be used in the manner described in this Declaration or a Declaration of Annexation;

(vi) By Declarant for marketing and construction activities; and

(vii) Those additional purposes which may be allowed by the Board or as provided in this Declaration.

(b) No Owner shall use or interfere with use of the Common Area or Association Property in any manner which shall increase the Association's cost of insurance or which shall result in cancellation of insurance or making insurance unavailable.

(c) The Board may permit Owners to install improvements within the Common Area and Association Property (*e.g.*, improvements necessary to provide private technology or entertainment services to the Owner's Living Unit, such as satellite dishes, cables and similar improvements), provided that:

(i) The installation of such improvements would not materially and adversely affect any Owner's use of the Association Property or Common Area;

(ii) The improvements are installed in a location and by a contractor reasonably approved by the Board;

(iii) The Board is reasonably satisfied the improvements will be waterproof;

(iv) The installation of the improvements will not increase the Association's cost to maintain the Common Area or the Association Property;

(v) The Owner causing the improvements to be installed indemnifies and holds the Association harmless from and against any and all liabilities, claims, damages, actions, costs, losses, proceedings, causes of action and expenses of any nature, including, but not limited to, attorneys' fees, arising from, attributable to or in connection with the installation of such improvements; and

(vi) The installation complies with the rules and regulations adopted by the Board from time to time.

(d) The Board shall rule on a request to install improvements pursuant to Paragraph (c) of this **Section 6.11** within thirty (30) days of receipt of the request; provided, however, in no event shall an improvement approved by the Board pursuant to Paragraph (c) of this **Section 6.11** be installed within the Common Area or Association Property until the person causing the installation is an Owner of a Condominium.

**Section 6.12**. **Owners Liable for Damage**. Each Owner shall be legally liable to the Association for all damages to the Project, including but not limited to, the buildings, recreational facilities and landscaping caused by such Owner, such Owner's guests (or other licensees) or any occupant of such Owner's Living Unit as such liability may be determined under California law. Each Owner shall be responsible for compliance with the provisions of this Declaration, the Bylaws and rules and regulations of the Board by such Owner's licensees and occupants of such Owner's Condominium.

**Section 6.13**. **Decorating by Owner**. Each Owner shall have the right, at the Owner's sole cost and expense, to maintain, repair, paint, paper, panel, plaster, tile and finish the interior surfaces of the ceilings, floors, window frames, door frames, trim and perimeter walls of the Owner's Living Unit, and the surfaces of the bearing walls and partitions located within the Living Unit. Such Owner shall have the right to substitute new finished surfaces in place of those existing on the ceiling, floors, walls and doors of his or her Living Unit. Windows shall be covered only by drapes, curtains and shades, and shall not be painted or covered by aluminum foil, paper, bed sheets or similar materials. Each Owner shall have the obligation to keep in good repair all items mentioned in this Section.

Section 6.14. No Impairment of Structures. No Owner shall make any change to his or her Condominium which would adversely affect the structural integrity of the building.

Section 6.15. Exclusive Use Areas. Each Exclusive Use Area shall be appurtenant to the Living Unit it serves. Conveyance of a Living Unit will automatically convey all appurtenant Exclusive Use Areas. No Owner shall make any improvements to an Exclusive Use Area unless such improvements have been approved or pre-approved by the Architectural Committee.

Section 6.16. Use of Exclusive Use Areas. Each Owner shall be entitled to use any Exclusive Use Area appurtenant to the Owner's Living Unit for usual and ordinary residential purposes for which such area was designed.

(a) Each Owner shall be entitled to the Deck Exclusive Use Area, if any, which is appurtenant to the Owner's Living Unit for usual and ordinary residential purposes. The Board shall have the right to restrict the storage of items on a Deck which it deems unsightly or hazardous.

(b) Each Owner shall have the right to use his or her Yard for residential yard purposes and an Owner may install such improvements in his or her Yard as are permitted by the Architectural Committee. Each Owner shall be responsible to maintain and repair any subsurface drainage improvements installed by Declarant in the Owner's Yard unless the Association has assumed such maintenance. No Owner shall interfere with the surface or any subsurface drainage of his or her Yard as established by Declarant nor shall any Owner install any Yard improvements which would make it impractical to repair or replace subterranean drainage installed by Declarant within such Owner's Yard. The approximate locations of subsurface drainage improvements within the initial Covered Property are depicted on **Exhibit "C"** attached hereto; the approximate locations of subsurface drainage improvements within other portions of the Real Property shall be depicted in the Declaration of Annexation by which such property is annexed to this Declaration. All improvements installed by an Owner in his or her Yard shall provide for proper and adequate drainage.

(c) No Owner shall make any improvements to his or her Exclusive Use Area unless and until the Architectural Committee has approved plans of such improvements showing such detail as the Architectural Committee or its consultant deems appropriate. Any such approval may be conditional. The Architectural Committee shall have forty-five (45) days to approve or disapprove such plans from the date the plans, in form required by the Architectural Committee, are received by the Architectural Committee. Failure of the Architectural Committee to approve or disapprove the plans within such forty-five (45) day period shall be deemed an approval. The Architectural Committee shall have the right to hire a civil engineer, landscape architect or other expert consultant as the Architectural Committee deems appropriate to evaluate plans and inspect the improvements. The Owner shall be required to pay the cost of such consultant. The Architectural Committee may require an Owner to deposit the estimated cost of such consultant at the time plans are submitted for Architectural Committee approval.

(d) Each Owner assumes all risks which may result from improvements he or she makes to his or her Exclusive Use Area(s) and each Owner indemnifies and holds harmless the Association, the Architectural Committee, Declarant and each other Owner from any claim, demands, liabilities, judgments, attorney's fees and other obligations which arise out of or are incurred in connection with the installation, existence or removal of improvements.

(e) The Board or Architectural Committee shall have the right to restrict those activities and improvements which it believes would have adverse structural, drainage or maintenance impacts or adverse visual or noise impacts on other Owners.

(f) The Board shall have the right to allow Owners to exclusively use portions of the Association Property or Common Area above or below the vertical limits of any Exclusive Use Area.

Section 6.17. Balconies, Patio Covers and Decks. The Association and each Owner shall comply with all applicable requirements of the City regarding balconies, patio covers and decks. For example, the number of such improvements that may be constructed for certain buildings in the Project is limited.

Section 6.18. Garages. Each Owner shall have the right to use any garage portion of the Owner's Living Unit for parking of automotive vehicle(s) (including cars, passenger vans and trucks) and the storage of non-hazardous materials. Neither the Association nor any Owner shall convert any garage to any use which prevents its use for vehicular parking of the number of automotive vehicles used by the Owner. However, nothing herein stated is intended to disallow Declarant from converting garage area to living area. No resident may park automotive vehicles outside his or her garage except temporarily for purposes of loading or unloading unless the garage is being used to park the number of vehicles for which it was originally designed or the resident has obtained the Board's prior written approval pursuant to rules promulgated by the Board.

Section 6.19. Outside Parking. No dune buggy, boat, trailer, recreational vehicle, mobile home, motor home, van, camper shell which is detached from a vehicle or otherwise mounted on a vehicle, nor truck which (a) is larger than one ton capacity, or (b) has a mounted camper shell which protrudes from the truck from either side or from beyond the rear gate or above the cab ceiling, shall be parked within any private street or anywhere else in the Project where visible to other Owners unless the Board expressly allows otherwise. Commercial vehicles shall be permitted within the Project for purposes of making deliveries and similar purposes, provided the same conform to rules which may be established by the Board. No dismantled or wrecked vehicle or equipment shall be parked, stored or deposited within the Project and no vehicle shall be repaired within the Project.

Section 6.20. Right of Access. Each Owner shall have the right of reasonable access for egress and ingress to and from such Owner's Living Unit (including, but not limited to, the garage portion) and Exclusive Use Areas.

Section 6.21. Window Coverings. Unless Declarant has done so, each Owner shall, within one hundred twenty (120) days after close of escrow for his or her Condominium, install window coverings on all windows of his or her Living Unit which are visible from any public or private street. The exterior appearance of such window coverings must be consistent with **Section 6.13** and any requirements promulgated by the Architectural Committee.

Section 6.22. Sight Distance Corridors. The Association and the Owner of each affected area shall at all times comply with all sight distance requirements of the City, including without limitation those shown on any Final Map or on City-approved plans for the Project. For example, no structure, fence, wall, tree, shrub, sign or other object over thirty inches (30") above the street level may be placed or permitted to encroach within an area identified as a sight distance corridor in accordance with Section 8.B.3 of the City Standard Public Street–Design Criteria.

Section 6.23. Street Trees. Neither the Association nor any Owner shall remove any street tree or replace any street tree with a different type of tree without the prior approval of the Planning Director of the City. As used in this section, "street tree" means and refers to each tree that is located within those portions of the Real Property that are subject to a general utility and access easement in favor of the City.

Section 6.24. City Requirements Fire Suppression Zones. The Association and each Owner shall at all times comply with City requirements.

Section 6.25. Fire Suppression Zones. Portions of the Real Property are within a Fire Suppression Zone. The Association and each Owner shall at all times comply with all applicable requirements and restrictions imposed by the City on such areas. The City's Fire Suppression Requirements may include restrictions on the types, materials and locations of improvements within the Project.

Section 6.26. Post-Tensioned Slabs. It is anticipated that some or all of the residences within the Project will be constructed with post-tensioned concrete slabs ("System") because of soils conditions. The System involves placing steel cables under high tension in the concrete slab located beneath the residence. Each Owner shall be responsible for determining whether his or her residence 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 to install a floor safe) 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. Neither Declarant nor any contractor of Declarant shall be responsible for any damage or injury resulting from or arising in connection with any alteration or piercing of the slab or the foundation of any residence. Each Owner shall hold Declarant harmless from and indemnify Declarant against all claims, demands, losses, costs (including attorney's fees), obligations and liabilities arising out of or in connection with the failure of the Owner to comply with the provisions of this Section.

Section 6.27. No Over Irrigation. The Association shall not over irrigate the Association Property or the Common Area or allow irrigation or water delivery systems to fall into disrepair. No Owner shall carelessly use water, allow overflow of water or over irrigate any plants within his or her Yard Exclusive Use Area or Living Unit. The excess water may cause substantial damage to the Project.

Section 6.28. Trash Drop Off Locations. Certain portions of the Association Property may be designated as trash container drop off locations by the Board. The residents within the Project are required to place their trash containers at such locations during designated time periods. The Board may adopt rules and regulations regarding the trash container drop off and pick-up policies. The Board may also adopt rules and regulations to designate such Association Property for guest parking spaces on the days such areas are not utilized for container drop off locations.

Section 6.29. Construction and Sales Activities. The development, construction, marketing and sales activities of Declarant are exempt from the covenants, restrictions and limitations set forth in this Article. None of the covenants, restrictions and limitations set forth in this Article or elsewhere in this Declaration, including without limitation those provisions requiring approval of the Architectural Committee, shall be applied to the development, construction, marketing or sales activities of Declarant or construed in such a manner as to prevent or limit development, construction, marketing or sales activities by Declarant.

Section 6.30. Reduction of Surface Pollutants. The Association shall coordinate the programs established by the City from time to time to assist Owners with the removal and proper disposal of toxic and hazardous waste products. Toxic chemicals or hydrocarbon compounds such as gasoline, motor oil, antifreeze, solvents, paints, paint thinners, wood preservatives and other such fluids shall not be discharged into any street or drive, public or private, or into any storm drain or storm water conveyance systems. Use and disposal of pesticides, fungicides, herbicides, insecticides, fertilizers and other such chemical treatments must, as prescribed in their respective containers, meet Federal, State, County and City requirements. Best Management Practices (as referenced in the "California Storm Water Best Management Practices Handbook") shall be used to eliminate or reduce surface pollutants when planning any changes to the landscaping and surface improvements.

Section 6.31. Water Quality Protection.

(a) *Governmental Requirements*. To protect the quality of our nation's waters, a number of federal, state and local laws, ordinances, rules, regulations and orders prohibit the discharge of anything other than natural rain water into storm drain systems, including gutters and streets that drain into storm drains. These governmental requirements include the Clean Water Act, the National Pollution Discharge Elimination System, orders and permits of the State Water Resources Control Board and the Regional Water Quality Control Board, the ordinances and regulations of the City and County, and any Storm Water Pollution Prevention Plan covering the Project. Each Owner shall comply with all such governmental requirements.

(b) ***Prohibited Discharges***. Most discharges of anything other than natural rain water into storm drain systems are unlawful and may result in significant penalties and fines. No Owner shall discharge or permit to be discharged (for example, by a contractor working for the Owner) any of the following into any street, gutter, storm drain or storm water conveyance system: toxic or hazardous chemicals, hydrocarbon compounds such as gasoline, motor oil, antifreeze, solvents, paints, paint thinner, wood preservatives, fertilizers, lawn clippings, yard waste, detergents, pet waste, or other similar materials or pollutants.

(c) ***Use of Certain Chemicals***. Each Owner shall comply with and cause its contractors to comply with all federal, state and City requirements, and the requirements of any other applicable governmental agency regarding the use, storage and disposal of pesticides, fungicides, herbicides, insecticides, fertilizers and other such chemicals. Owners should consult with the City, other governmental authorities, and their refuse hauler regarding the proper disposal of any toxic or hazardous materials.

(d) ***Spillage***. Each Owner shall ensure that any landscaping and construction materials brought into the Project by the Owner or the Owner's contractors shall be properly contained to prevent spillage into any street, gutter or storm drain system. Should a spillage occur, the Owner shall (or cause the contractor responsible for the spill to) sweep the spilled material and place it in a container; it shall not be washed into any storm water curb drain inlet. Each Owner shall prevent erosion and the runoff of soil and other sediment from any Yard Exclusive Use Area appurtenant to the Owner's Living Unit into any street, gutter or storm drain system.

(e) ***Compliance With Storm Water Management Plan***. Neither the Association nor any Owner shall remove any temporary devices installed by Declarant during construction of the Project to prevent the discharge of soil, sediment or other materials into any storm drain system.

(f) ***Indemnity***. Each Owner shall indemnify, protect, defend and hold Declarant harmless from any and all claims, liability, actions, penalties or damages (including attorneys' fees, experts' fees and costs of suit) arising from or attributable to the Owner's failure to comply with the requirements of this **Section 6.31**.

Section 6.32. Preserve. The Real Property is located adjacent to the Preserve, which is intended to be a habitat conservation area for threatened, endangered or sensitive plants and animals that are covered under the City's Habitat Management Plan. Access to the Preserve may be restricted.

## ARTICLE VII

## RESPONSIBILITIES OF MAINTENANCE

Section 7.1. Maintenance by Owners. Each Owner of a Condominium shall be responsible for the maintenance and repair of:

(a) The windows and the interior surfaces of doors enclosing the Living Unit, including the vinyl or metal frames, tracks and exterior screens of glass doors and windows.

(b) The interior of the Living Unit and all appliances whether "built-in" or freestanding within the Living Unit.

(c) Except as stated in **Section 7.1(d)**, the plumbing, electrical, cable television, water heating systems, heating systems and air conditioning systems (if any), any photo cell sensor porch entry lighting fixtures, any exterior waterproof duplex outlet, any interior fire sprinkler heads, any exterior speakers and other systems servicing the Owner's Condominium and located either within or without the outside perimeter of the exterior walls, floors and ceilings thereof, so long as those systems are used exclusively by such Owner and not in common. For example, each Owner shall be responsible to maintain any automatic garage door opener for his or her garage. Declarant hereby reserves an easement to allow such systems to be located within the Association Property and Common Area in those locations where installed by Declarant. No Owner may permanently remove the photo cell sensor porch entry lighting fixtures servicing his or her Living Unit.

(d) The Project is serviced by private sanitary sewer and private water systems which deliver waste from each Living Unit to the public sewer lateral and water to each Living Unit from the public water main. Each Owner shall be responsible for the proper operation and maintenance of any portion of the private sanitary sewer and water delivery systems which lie within such Owner's Living Unit. Any portion of such systems which do not lie within a Living Unit, up to the point where they connect to the public sewer lateral or the public water main, will be the responsibility of the Association to operate and maintain.

(e) The maintenance and repair of the interior surfaces and drainage systems of any Deck which the Owner has the exclusive right to use. For example, the Owner shall be responsible for re-surfacing his or her Deck and shall keep his or her Deck free from all trash and debris. All drainage systems for a Deck, if any, shall be in good working condition at all times. The Association shall be responsible to paint and maintain both the exterior and interior surfaces of any open railings such as iron or tubular steel railings.

(f) The routine maintenance (for example, sweeping and cleaning) of any Deck or Yard Exclusive Use Area appurtenant to the Condominium. An Owner shall also be responsible to maintain, repair and replace when appropriate, any improvements which the Owner makes to his or her Exclusive Use Area.

(g) All Yard improvements. All such improvements shall be maintained in good condition and appearance, free from weeds, trash and debris. All landscaping improvements shall be maintained in accordance with applicable City requirements, including without limitation, the Landscape Concept Plan(s) for the Project on file with the City. All Yard drainage systems shall be kept in good working condition at all times.

(h) The interior of any fences and walls which separate the Owner's Yard from Common Area or Association Property.

(i) Should a fence or wall exist between two Yards, the cost of maintenance, repair and replacement of such fence or wall shall be shared equally by the Owners of the two adjoining Yards.

Section 7.2. Failure to Maintain. In the event an Owner defaults in his or her maintenance or repair obligations, the Board may give written notice of such default, stating with particularity the work of maintenance or repair the Board finds to be required and requesting the same be completed in a reasonable period of time as specified in the notice. In the event the Owner fails to complete such maintenance or repair within the period specified in the notice, the Board may cause such work to be completed and assess the Owner the cost thereof.

Section 7.3. Maintenance by Association. The Association shall maintain the Association Property within a Phase and Common Area within a Phase (except for those items of maintenance which the Owner is required to perform pursuant to **Section 7.1** above) from and after the date of the first close of escrow for the sale of a Condominium in that Phase by Declarant to a Retail Purchaser. Declarant shall, at Declarant's expense, maintain the Common Area and Association Property in each Phase until the obligation of the Association to maintain the Common Area and Association Property in that Phase commences. The Association shall be responsible for the maintenance and repair of the structure and exterior of each wall or fence separating the Yards from Common Area or Association Property in a Phase in which the Association's maintenance obligations have commenced. The Association's maintenance obligations include, but are not limited to the following amenities and utilities: The exterior and structural components of the buildings (including the exterior and structural components of any balconies or decks), building sprinkler systems (excluding sprinkler heads located within Living Units), private streets and street lights, private sidewalks, private storm drains, private water and sewer systems, and any other private amenities or utilities.

(a) The Association shall maintain any subterranean drainage improvements which are located within an Exclusive Use Area only if such improvements are identified on a Condominium Plan for Association maintenance; otherwise the Owner of the Exclusive Use Area shall be responsible to maintain any subterranean drainage facilities located within such Owner's Exclusive Use Area.

(b) The Association shall maintain all concrete terrace drains and other drainage systems (if any) which are located on Association Property or Common Area.

(c) All landscaping within the Association Property or Common Area shall be maintained in a healthy and thriving condition, free from weeds, trash and debris. All landscaping within the Association Property or Common Area shall also be maintained in accordance with applicable City requirements, including without limitation, the Landscape Concept Plan(s) for the Project on file with the City.

(d) The Association shall maintain any parkways, street medians or other public areas within or adjoining the Project which the City requires to be maintained by the Association, unless and to the extent that such areas are publicly maintained or maintained by another entity.

(e) The Association shall maintain and provide for the maintenance of all the Common Area and Association Property in accordance with the requirements of the City, including the City's Fire Suppression Requirements. The Association shall perform or cause to be performed by May 15 of each year brush management within the Common Area and Association Property, in strict compliance with the Fire Suppression Requirements.

(f) Notwithstanding any vote of its Members to the contrary, the Association shall be obligated to maintain any public area (*e.g.*, parkway) designated by Declarant in this Declaration, a Declaration of Annexation or other recorded document to the level of maintenance at least equal to the level of maintenance performed by the City or imposed by the City on other similar public areas. However, maintenance of any such public area by the Association is subject to the City allowing such maintenance.

Section 7.4. City's Rights If Association Fails To Maintain. In the event the Association fails to maintain all or any portion of the Common Area or Association Property it is responsible to maintain in accordance with this Article, the City shall have the right, but not the duty, to perform the necessary maintenance. If the City elects to perform such maintenance, the City shall give written notice to the Association, with a copy thereof to the Owners, setting forth with particularity the maintenance which the City finds to be required and requesting the same to be carried out by the Association within a period of thirty (30) days from the giving of such notice. In the event the Association fails to carry out such maintenance within the period specified by the City's notice, the City shall be entitled to cause such work to be completed and shall be entitled to reimbursement with respect thereto from the Owners as provided in **Section 4.18** above.

Section 7.5. Reimbursement. Each Owner shall reimburse the Association for those costs incurred which result from the Condominium occupants' excessive or neglectful use of the Exclusive Use Area or other portions of the Common Area or Association Property.

Section 7.6. Wood-Destroying Pests. The Association shall be responsible for the repair and maintenance of the Association Property and Common Area occasioned by the presence of wood-destroying pests or organisms; provided, however, it shall be the responsibility of each Owner to maintain and repair any improvements which may have been added by such Owner to the Owner's Living Unit and/or Exclusive Use Area. The Association may cause the temporary, summary removal of any occupant of the Project for such periods and at such times as may be necessary for prompt, effective treatment of wood-destroying pests or organisms. The costs of temporary relocation during the repair and maintenance by the Association shall be borne by the affected Owners and not the Association.

The Association shall give notice of the need to temporarily vacate a residence to the occupants and to the Owner not less than fifteen (15) days nor more than thirty (30) days prior to the date of the temporary relocation. The notice shall state the reason for the temporary relocation, the date and time of the beginning of treatment, the anticipated date and time of termination of treatment, and that the occupants will be responsible for their own accommodations during the temporary relocation. Notice by the Association shall be deemed complete upon either:

(a) Personal delivery of a copy of the notice to the occupants, and sending a copy of the notice to the Owner, if different than the occupants, by first-class mail, postage prepaid at the most current address shown on the books of the Association; or

(b) By sending a copy of the notice to the occupants at the residence address and a copy of the notice to the Owner, if different than the occupants, by first-class mail, postage prepaid at the most current address shown on the books of the Association.

<u>Section 7.7</u>. <u>Maintenance Manuals</u>. Declarant may provide its original purchasers and/or the Association with manuals (**"Maintenance Manuals"**) which outline Declarant's or manufacturers' recommended homeowner and/or Association maintenance obligations and schedules.

(a) Each Owner who receives a Maintenance Manual shall provide the same to any purchaser or other transferee of his or her Condominium.

(b) The Association shall keep and make available to any Owner the Maintenance Manual(s) provided by Declarant (including any Maintenance Manual which pertains to Association or Owner maintenance). The Association shall have the right to require an Owner to reimburse the Association for its costs of copying any such Maintenance Manual which the Association provides to an Owner.

(c) The Association and each Owner, respectively, shall follow the recommendations set forth in the applicable Maintenance Manual provided by Declarant, as the same may be updated from time to time.

<u>Section 7.8</u>. <u>Mold</u>. The Association, with respect to Common Area and Association Property, and each Owner, with respect to his or her Condominium, shall take all reasonable and appropriate steps to prevent conditions that may cause mold or mildew to develop, including following any recommendations contained in the Maintenance Manual or in any applicable publications of the California Department of Health Services (**"DHS"**) or the United States Environmental Protection Agency (**"EPA"**). As of the date of this Master Declaration, the EPA and DHS have Web sites which contain information and publications regarding mold and other biological pollutants. For example, see "Biological Pollutants in Your Home" and "Mold Resources" on the EPA Web site (http://www.epa.gov); and "Indoor Air Quality Info Sheet: Mold in My Home: What Do I Do" on the DHS Web site (http://www.dhs.ca.gov). An Owner shall promptly report to the Association any evidence the Owner may discover of moisture accumulation or mold in the Project. Should an Owner fail promptly to report to the Association any evidence of moisture accumulation or mold in the Owner's Living Unit that may affect the Common Area or Association Property or should an Owner fail promptly to report to another Owner any evidence of such moisture accumulation or mold that may affect or another Living Unit, such Owner shall be obligated to reimburse the Association and the other Owner for all costs incurred by the Association or other Owner as a result of the unreasonable delay in reporting the condition to the Association or other Owner.

<u>Section 7.9</u>. <u>Use of Reclaimed Water for Irrigation</u>. The Association may use reclaimed water for irrigation purposes if and when reclaimed water becomes available. It is possible that reclaimed water will flow into the Yards of those Condominiums adjoining the toe of a slope or that it will overspray onto Yards and buildings adjacent to the areas being irrigated. Reclaimed water is not potable and should not be consumed by people or animals. Reclaimed water may cause discoloring of fences or walls.

## ARTICLE VIII

## SEPARATION OF INTERESTS AND PARTITION PROHIBITED

Section 8.1. No Separation of Interests. No Owner may sell, assign, lease or convey any portion of his or her Condominium separate or apart from the entire Condominium. Any conveyance, encumbrance, judicial sale or other transfer (voluntary or involuntary) of any portion of his or her Condominium separate or apart from the entire Condominium shall be void.

Section 8.2. No Partition. There shall be no termination of the Project and the Common Area of the Project shall remain undivided with no judicial partition thereof except:

(a) With the approval, after substantial destruction or condemnation of the Project occurs, of at least sixty-seven percent (67%) of the total voting power of the Association and approval by Eligible Mortgage Holders who represent at least fifty-one percent (51%) of the Condominiums that are subject to Mortgages held by Eligible Mortgage Holders; or

(b) With the approval, for reasons other than substantial destruction or condemnation of the Project, of at least sixty-seven percent (67%) of the total voting power of the Association and approval by Eligible Mortgage Holders who represent at least sixty-seven percent (67%) of the Condominiums that are subject to Mortgages held by Eligible Mortgage Holders; or

(c) As allowed by California law, including California CIVIL CODE Section 1359, as the same may be amended from time to time.

An Eligible Mortgage Holder who receives a written request to give such approvals who does not deliver or mail the requesting party a negative response within thirty (30) days shall be deemed to have given such approval provided such written request was delivered by certified mail or registered mail with "return receipt" requested.

Nothing in this Section shall be deemed to prohibit partition of a cotenancy in a Condominium.

Section 8.3. Power of Attorney. The Association is hereby granted an irrevocable power of attorney to sell the Project for the benefit of all the Owners thereof when partition of the Owners' interests in the Project may be had pursuant to this Article. The power of attorney herein granted may be exercised upon the vote or written consent of Owners who own at least fifty percent (50%) of the Condominiums in the Project. Such power of attorney may be exercised by any two (2) Members of the Board who are hereby authorized to record a certificate of exercise in the Office of the County Recorder of the County, which certificate shall be conclusive evidence thereof in favor of any person relying thereon in good faith.

## ARTICLE IX

## DAMAGE, DESTRUCTION AND CONDEMNATION OF COMMON AREA OR ASSOCIATION PROPERTY

Section 9.1. Damage or Destruction. If any portion of the Common Area or Association Property is damaged or destroyed by fire or other casualty, then:

(a) If the cost of repairing or rebuilding does not exceed the amount of available insurance proceeds by more than five percent (5%) of the budgeted gross expenses of the Association, the Board shall contract to repair or rebuild the damaged portions of the Common Area or Association Property. Such repair or rebuilding will be in substantial accordance with the original construction unless it is impractical to do so.

(b) If the cost of repairing or rebuilding exceeds the amount of available insurance proceeds by more than five percent (5%) of the budgeted gross expenses of the Association, then:

(i) The Board shall obtain at least two competitive bids for the repair or rebuilding not more than forty-five (45) days after such damage occurs;

(ii) The Board shall use its best efforts to cause a special meeting of the Members to occur no later than ninety (90) days after such damage occurs. The notice of such meeting shall state that the reason for the meeting is to consider repair or rebuilding the portion of the Project which was damaged and whether to impose a special assessment to repair or rebuild. Such notice shall be accompanied with a summary of the competitive bids for repair or replacement.

(iii) Unless a majority of the voting power of the Association votes against the Board doing so, the Board shall within one hundred and eighty (180) days after such damage enter into a contract for repair or replacement and impose special assessments therefor pursuant to its Resolution to do so in accordance with Paragraph (c) of **Section 4.3** above. For purposes hereof, a "Majority of the voting power of the Association" means: (A) a majority of the voting power of each Class of Members if the two-class voting structure is in effect, or (B) a majority of the total voting power if only one-class voting is in effect.

(iv) Nothing herein stated is intended to prevent the Board from repairing or replacing the Common Area or Association Property and imposing a special assessment therefor pursuant to its authority to do so in accordance with Paragraph (a) or (b) of **Section 4.3** above.

(c) If the Owners vote to not repair or rebuild the Common Area or Association Property, then each Owner (and the Owner's Mortgagee(s) as their respective interests shall then appear) shall be entitled to receive that portion of insurance proceeds equal to the proportion of the decrease in fair market value of the Owner's Condominium as compared to the aggregate decrease in fair market values of all the Condominiums in the Project caused by such damage or destruction. Fair market value shall be determined by an MAI (Member Appraisal Institute of the American Institute of Real Estate Appraisers) appraiser selected by the Board and hired by and at the expense of the Association. Should a dispute arise as to the distribution of insurance proceeds, the dispute shall be decided by arbitration by the American Arbitration Association pursuant to its Commercial Rules of Arbitration.

(d) If a bid to repair or rebuild is accepted, the Board shall levy a special assessment against each Condominium pursuant to **Section 4.7** above for purposes of raising funds for the rebuilding or repair and to make up any deficiency between the total insurance proceeds and the contract price for such repair and rebuilding, and such assessment and all insurance proceeds, whether or not subject to liens of Mortgagees, shall be paid to the account of the Association to be used for such rebuilding.

(e) This Article shall not apply to any destruction of a Phase unless and until a Condominium has been conveyed in such Phase. Prior to any such conveyance within a Phase, the Association shall have no right or obligation to insure or repair the improvements of such Phase and no Owner but Declarant shall be entitled to the proceeds of any insurance carried by Declarant.

<u>Section 9.2</u>. <u>Condemnation</u>. If any portion of the Common Area in any Phase is taken by condemnation, eminent domain or any proceeding in lieu thereof, then all the Owners in all Phases of the Project, and their Mortgagees as their respective interests then appear, shall be entitled to receive a distribution from the award for such taking in the same proportion as insurance proceeds would be distributed pursuant to Paragraph (c) of the Section above entitled **"Damage or Destruction"**; provided, however, that should it be determined to repair or rebuild any portion of the Common Area, such proceeds shall be paid to the Association for that purpose in the same manner and subject to the same terms, conditions and limitations as are set forth above in this Article for repairing damaged or destroyed portions of the Common Area. A decision to repair or rebuild shall be made in the same manner and subject to the same conditions and limita-

tions as provided above in this Article for determining whether to rebuild or repair following damage or destruction.

Section 9.3. Insurance. The Association shall obtain and continue in effect at least the following insurance:

(a) A master fire insurance policy with glass coverage and extended coverage endorsement for one hundred percent (100%) of the current replacement cost of all of the Common Area and Association Property improvements within the Project, excluding land, foundations, excavations and other items that are usually excluded from insurance coverage. The maximum deductible amount shall be the lesser of $10,000 or one percent (1%) of the policy face amount. The Association shall have no right or obligation to obtain such insurance for a Phase unless and until the first conveyance of a Condominium in such Phase. "Improvements" means and refers to the Association Property and Common Area together with those appliances and improvements located within the Living Units provided by Declarant to the initial Owners of Condominiums and does not include items not provided by Declarant. The form and content of such policy must satisfy the requirements of the Federal National Mortgage Association (**"FNMA"**) and the Federal Home Loan Mortgage Corporation (**"FHLMC"**) and shall contain the following endorsements:

(i) An Inflation Guard Endorsement, when it can be obtained.

(ii) A construction code endorsement, if there is a construction code provision that would require changes to undamaged portions of the building(s) even when only part of a building is destroyed by an insured hazard (typical endorsements include Demolition Cost Endorsements, Contingent Liability From Operation of Building Laws Endorsement and Increased Cost of Construction Endorsement).

(iii) A Special Condominium Endorsement which states the policy shall provide that any insurance trust agreement will be recognized; the right of subrogation against Owners will be waived; the insurance will not be prejudiced by any acts or omissions of Owners that are not under the control of the Association; and the policy will be primary, even if an Owner has other insurance that covers the same loss.

(b) A comprehensive general liability and property damage insurance policy with cross liability endorsement, if available, insuring the Association, any manager, the Declarant, and the Owners against liability incident to ownership or use of the Association Property and Common Area. The limits of such insurance shall not be less than $3 Million covering all claims for death, personal injury and property damage arising out of a single occurrence. The form and content of the comprehensive general liability policy must satisfy the requirements of FNMA and FHLMC.

(c) A policy insuring the Association's officers and directors against liability for their negligent acts or omissions while acting in their capacity as officers and directors. The limits of such insurance shall be not less than $1 Million for all claims arising out of a single occurrence.

(d) Section 1365.7 of the California CIVIL CODE provides for a partial limitation on the liability of volunteer officers and directors of the Association who reside in a Living Unit, provided that certain requirements, as set forth in the Code section, are satisfied. The requirements include that general liability insurance and insurance covering individual liability of officers and directors for negligent acts or omissions be carried by the Association in specified amounts. The Association shall maintain general liability insurance and insurance covering individual liability of officers and directors for negligent acts or omissions in amounts which satisfy the requirements of the Code to limit the liability of volunteer officers and directors of the Association.

(e) A fidelity bond covering members of the Board, officers and employees of the Association and employees of any manager or managing agent, whether or not such persons are compensated for their services, naming the Association as obligee and written in an amount equal to

16951

at least three (3) months' aggregate regular assessments (including reserves) by the Association against all Condominiums then subject to assessment.

(f) Workers' compensation insurance covering any employees of the Association.

(g) A standard all risk of loss perils insurance policy under an extended coverage casualty policy for the full insurable value of all insurable improvements to the Association Property, a policy covering all loss to personalty owned by the Association insured with coverage in the maximum insurable fair market value of such personalty as determined annually by an insurance carrier selected by the Association. Insurance proceeds for improvements in the Association Property and personalty owned by the Association shall be payable to the Association.

Insurance premiums for the master policy and other insurance obtained by the Association (other than the cost of indorsements which cover only particular Owners) shall be a Common Expense to be included in the regular assessments levied by the Association. Each Owner shall be responsible to pay any deductible amount for any loss to his or her Condominium. Each Owner may separately insure the improvements not covered by the master fire insurance policy and personal property within the Owner's Condominium. However, no Owner shall insure a Condominium in any manner which would cause any diminution in insurance proceeds from the master policy. Should any Owner violate this provision the Owner shall be responsible to the Association for any such diminution.

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 and the servicer of each first Mortgage which requests such notice, and shall contain a waiver of subrogation by the insurers against the Association, Board and Owners.

The Association shall maintain such insurance coverage as may be required by FNMA or FHLMC so long as either FNMA or FHLMC respectively holds a Mortgage on or owns any Condominium.

Nothing herein stated shall prevent the Association from obtaining additional amounts of insurance or from adding to the items covered by a master policy.

Section 9.4. Mortgagee Approval. Any restoration or repair of the Project after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with original plans and specifications, unless other action is approved as provided in the Article below entitled **"RIGHTS OF LENDERS"**.

## ARTICLE X

## DAMAGE, DESTRUCTION AND CONDEMNATION OF SEPARATE INTERESTS

Section 10.1. Damage or Destruction. In the event of damage or destruction to any Living Unit or Exclusive Use Area improvements which the Owner is obligated to maintain, the Owner shall reconstruct the same as soon as reasonably practicable (unless the Association is not required to repair surrounding damaged Association Property or Common Area pursuant to the terms of **Article IX** above). The Owner shall be entitled to the benefit from an equitable distribution of the master policy of casualty insurance referred to in **Article IX** above to the extent the distribution covers the damage or destruction of elements of the Condominium which are the obligation of the Owner to repair as provided in this Section.

Section 10.2. Condemnation. In the event of any taking of a Living Unit or Exclusive Use Area, the Owner of the Condominium (and such Owner's Mortgagees as their interests may appear) shall be entitled to receive the award for such taking and after acceptance thereof the Owner and the Owner's Mortgagee shall be divested of all further interest in the Project and membership in the Association if such Owner shall vacate the Condominium as a result of such taking of the Living Unit. In such event the Owner shall grant the Owner's remaining interest in the Common Area appurtenant to the Living Unit so taken, if any, to the other Owners

16952

owning a fractional interest in the same Common Area, such grant to be in proportion to the fractional interest in the Common Area then owned by each.

Section 10.3. Mortgagee Approval. Any restoration or repair of the Project after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with original plans and specifications, unless other action is approved as provided in the Article below entitled **"RIGHTS OF LENDERS"**.

## ARTICLE XI

## CONDEMNATION OF ASSOCIATION PROPERTY

In the event the Association Property or any portion thereof shall be taken for public purposes of condemnation as a result of any action or proceeding in eminent domain, or shall be transferred in lieu of condemnation to any authority entitled to exercise the power of eminent domain, then the award or consideration for such taking or transfer shall be paid to and belong to the Association.

## ARTICLE XII

## ASSOCIATION'S RIGHT OF ENTRY

For the purpose of performing the maintenance of the Association Property and Common Area or for any other purpose reasonably related to the performance by the Board of its responsibilities under this Declaration, the Association's agents or employees shall have the right to enter any Living Unit, Exclusive Use Area or upon any portion of the Association Property and Common Area to effect repairs, improvements, replacements or maintenance as necessary; provided, however, except in case of an emergency, there shall be no entry into a Living Unit or Exclusive Use Area without (a) a court order allowing such entry or (b) the Owner's consent, which consent shall not unreasonably be withheld and shall be presumed if the Owner makes no objection to such entry within three (3) days after the Board delivers notice of its intent to enter. When there is an entrance into any Living Unit or Exclusive Use Area such entrance shall be made with as little inconvenience to the Owner as possible and any damage caused shall be repaired by the Association.

## ARTICLE XIII

## ADDITIONAL EXCLUSIVE EASEMENTS AND LICENSES

The Board shall have the right to grant the following additional easements and licenses:

Section 13.1. Common Area Licenses. The Board shall have the right to grant revocable and irrevocable licenses for Owners to exclusively use portions of the Common Area adjoining the Owners' Exclusive Use Area, provided that the granting of such licenses would not materially and adversely affect any Owner's use of the Common Area.

Section 13.2. Association Property. The Board shall have the right to grant easements for Owners to exclusively use portions of the Association Property adjoining the Owners' Exclusive Use Area, provided that the granting of such easements would not materially and adversely affect any Owner's use of the Association Property.

## ARTICLE XIV

## RIGHTS OF LENDERS

Section 14.1. Payments of Taxes or Premiums by First Mortgagees. First Mortgagees may, jointly or severally, pay taxes or other charges which are in default and which may or have become a charge against the Association Property, unless such 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 deeds of trust. First

Mortgagees may, jointly or severally, also pay overdue premiums on casualty insurance policies, or secure a new casualty insurance coverage on the lapse of a policy for the Association Property, and first Mortgagees making such payments shall be owed immediate reimbursement thereof from the Association. Entitlement to such reimbursement shall be reflected in an agreement in favor of any first Mortgagee who requests the same to be executed by the Association.

Section 14.2. Mortgagee Protection. A breach by an Owner of any of the covenants, conditions and restrictions contained herein shall not affect, impair, defeat or render invalid the lien, charges or encumbrance of any first Mortgage made for value which may then exist on any Condominium; provided, however, that in the event of a foreclosure of any such first Mortgage, or if the holder of the note secured by such first Mortgage acquires title to a Condominium in any manner whatsoever in satisfaction of the indebtedness, then the purchaser at the foreclosure sale shall, upon acquiring title, become subject to each and all of the covenants, conditions and restrictions contained herein, but free from the effects of any breach occurring prior thereto.

Section 14.3. Mortgagee Curing Defaults. A Mortgagee who acquires title by judicial foreclosure, deed in lieu of foreclosure or trustee's sale shall not be obligated to cure any breach of the provisions of this Declaration which is non-curable or of a type which is not practical or feasible to cure. The determination of the Board made in good faith as to whether a breach is non-curable or not feasible to cure shall be final and binding on all Mortgagees.

Section 14.4. Approval of First Mortgagees. Except as provided by statute in case of condemnation or substantial loss to the Living Units, Association Property and/or Common Area, unless at least sixty-seven percent (67%) of the first Mortgagees (based on one vote for each Condominium encumbered by the first Mortgage) have given their prior written approval or at least sixty-seven percent (67%) of Owners other than Declarant have given their prior written approval, the Association shall not be entitled to do any of the following:

(a) By act or omission seek to abandon or terminate the Project.

(b) Change the pro rata interest or obligations of any Condominium in order to levy assessments or charges, allocate distribution of hazard insurance proceeds or condemnation awards, or determine the pro rata share of ownership of each Condominium in the Common Area. (This Subsection is not intended to require approval of first Mortgagees to the annexation of additional Phases to the Project or to the sale of Condominiums in such additional Phases.)

(c) Partition or subdivide any Condominium.

(d) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Association Property (this requirement does not apply to areas which are Association Property only for maintenance purposes). The granting of easements for public utilities or for other public purposes and other easements allowed by this Declaration shall not be deemed a transfer within the meaning of this Subsection, nor shall non-material boundary adjustments be deemed a transfer within the meaning of this Subsection.

(e) Use hazard insurance proceeds for losses to any portion of the Association Property or Common Area for other than the repair, replacement or reconstruction of such Association Property or Common Area.

Section 14.5. Termination of Legal Status. Except as provided by statute, any action to terminate the legal status of the Project after substantial destruction or condemnation occurs must be approved by (a) at least sixty-seven percent (67%) of the total voting power of the Association, and (b) Eligible Mortgage Holders which represent at least fifty-one percent (51%) of the votes of Condominiums which are subject to Mortgages held by Eligible Mortgage Holders. Termination of the legal status of the Project for reasons other than substantial destruction or condemnation of the Project must be approved by (i) at least sixty-seven percent (67%) of the total voting power of the Association, and (ii) Eligible Mortgage Holders which represent at least sixty-seven percent (67%) of the votes of Condominiums which are subject to Mortgages held by Eligible Mortgage Holders. Any Eligible Mortgage Holder shall be deemed to have approved such termination if such Eligible Mortgage Holder fails to submit a written response to any written proposal for termination within thirty (30) days after such Eligible Mortgage Holder receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, with a "return receipt" requested.

Section 14.6. Restoration of Project. Any restoration or repair of the Project after partial condemnation or damage due to an insurable event shall be performed substantially in accordance with this Declaration and original plans and specifications unless other action is approved by (a) at least sixty-seven percent (67%) of the total voting power of the Association, and (b) Eligible Mortgage Holders which represent at least fifty-one percent (51%) of the votes of Condominiums which are subject to Mortgages held by Eligible Mortgage Holders.

Section 14.7. Third Party Proceeds for Claimed Defects. The Association shall not be entitled to use proceeds from third parties for claimed defects in any portion of the Association Property or Common Area for other than the repair, replacement or reconstruction of such Association Property or Common Area unless at least sixty-seven percent (67%) of the first Mortgagees (based on one vote for each Condominium encumbered by the first Mortgage) have given their prior written approval and at least sixty-seven percent (67%) of Owners other than Declarant have given their prior written approval.

Section 14.8. Professional Management. The Association shall obtain the services of a professional property manager to assist in the discharge of the Association's duties. The term of any agreement for professional management shall not exceed one (1) year, and any agreement for professional management or any other contract providing for services by Declarant must provide for termination by either party without cause or payment of a termination fee upon ninety (90) days or fewer written notice.

Section 14.9. Notice to Eligible Mortgagees. Upon written request to the Association identifying the name and address of the Eligible Mortgage Holder, Eligible Insurer or Guarantor and the Condominium number or address, any Eligible Mortgage Holder, Eligible Insurer or Guarantor 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 any Condominium on which there is a Mortgage held, insured or guaranteed by such Eligible Mortgage Holder, Eligible Insurer or Guarantor.

(b) Any delinquency in the payment of assessments or other default by an Owner subject to a Mortgage held, insured or guaranteed by such Eligible Mortgage Holder, Eligible Insurer or Guarantor which remains uncured for a period of sixty (60) days.

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

(d) Any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders, Eligible Insurers or Guarantors as specified above.

Section 14.10. Documents to be Available to Mortgagees. The Association shall, within ten (10) days of delivery of a written request and for a fee which does not exceed its reasonable cost to prepare and reproduce the items, make available to Owners and Mortgagees, and holders, insurers or guarantors of any Mortgage, current copies of this Declaration, the Articles, the Bylaws, rules and regulations concerning the Project and the books, records and financial statements of the Association. The Association shall also make such items available to prospective purchasers. "Available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances. Any such financial statement so requested shall be furnished within one hundred twenty (120) days of the Association's fiscal year end provided the request was made within a reasonable time prior to such date. If the Project consists of fifty (50) or more Condominiums, the Association must provide an audited statement for the preceding fiscal year if a holder, insurer or guarantor of a first Mortgage submits a written request for it. If the Project consists of less than fifty (50) Condominiums and no audited statement is available, the holder or insurer or guarantor of a first Mortgage may have an audited statement prepared at its expense.

Section 14.11. Conflicts. In the event of any conflict between any of the provisions of this Article and any of the other provisions of this Declaration, the provisions of this Article shall control.

## ARTICLE XV

## ENFORCEMENT

Section 15.1. Enforcement. The Association, Declarant, and/or any Owner shall have the right to enforce against one another, by any proceeding at law or in equity, all restrictions, covenants, reservations, liens and charges now or hereafter imposed by this Declaration. The City shall have the right, but not the obligation, to enforce the provisions of this Declaration in the same manner as any Owner.

Section 15.2. No Waiver. Failure by the Association, Declarant, the City or any Owner to enforce any provision of this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

## ARTICLE XVI

## ADDITIONAL PROVISIONS

Section 16.1. Severability. Should any provision in this Declaration be void or become invalid or unenforceable in law or equity by judgment or court order, the remaining provisions hereof shall be and remain in full force and effect.

Section 16.2. Amendments.

(a) *By Declarant.* Prior to the date escrow closes for any sale of a Condominium to a Retail Purchaser, this Declaration may be unilaterally amended by Declarant.

(b) *By Members.* The following provisions shall apply after the close of the first escrow for a sale of a Condominium to a Retail Purchaser. During the period of time prior to conversion of the Class B membership to Class A membership, this Declaration may be amended by an instrument in writing signed by the President or Secretary of the Association certifying that at least sixty-seven percent (67%) of the voting power of each class of Members of the Association have approved the amendment. After conversion of the Class B membership in the Association to Class A membership, the Declaration may be amended by an instrument in writing signed by the President or Secretary of the Association certifying that the following have approved the amendment: (a) at least sixty-seven percent (67%) of the total voting power of the Association, and (b) at least sixty-seven percent (67%) of the voting power of Members of the Association other than Declarant.

(c) *Mortgagee Approval of Amendment.* Anything contained herein to the contrary notwithstanding, no amendment material to a Mortgagee may be made to this Declaration without the prior written consent of Eligible Mortgage Holders whose Mortgages encumber fifty-one percent (51%) or more of the Condominiums within the Project which are subject to Eligible Mortgage Holder Mortgages. For purposes hereof, any amendments to provisions of this Declaration governing any of the following subjects, shall normally be deemed "material to a Mortgagee":

(i) Voting rights.

(ii) Assessment liens and the priority of assessment liens and the right of Eligible Mortgage Holders to approve increases in regular assessments of in aggregate more than twenty-five percent (25%) during any fiscal year from the regular assessments assessed during the previous fiscal year.

(iii) The right of Eligible Mortgage Holders to approve reductions in reserves for maintenance, repair and replacement of the Association Property and the Common Area.

(iv) Responsibility for maintenance and repairs.

(v) Reallocation of interests in the Common Area or Association Property (including Exclusive Use Area) or rights to its use.

(vi) Redefinition of boundaries.

(vii) Convertibility of Living Units into Common Area or Association Property and vice versa.

(viii) Annexation and deannexation.

(ix) Hazard or fidelity insurance requirements.

(x) Imposition of any restrictions on the leasing of Condominiums.

(xi) Imposition of any right of first refusal or similar restriction on the right of a Condominium Owner to sell, transfer or otherwise convey the Owner's Condominium.

(xii) **Article XIV** of this Declaration.

(xiii) Restoration or repair of the Project (after a hazard or partial condemnation) in a manner other than specified herein.

(xiv) Any action to terminate the legal status of the Project after substantial destruction or condemnation occurs.

(xv) Any provision which, by its terms, is specifically for the benefit of the first Mortgagees, or specifically confers rights on first Mortgagees.

An Eligible Mortgage Holder who receives a written request to approve amendments (including additions) who does not deliver or mail to the requesting party a negative response within thirty (30) days, shall be deemed to have approved such request provided that such written request was delivered by certified mail or registered mail, with "return receipt" requested.

(d) ***Amendments to Specific Clauses.*** Notwithstanding the above provisions, (i) the percentage of the voting power necessary to amend a specific clause or provision in the Declaration shall not be less than the percentage of affirmative votes necessary for action to be taken under that clause or provision; and (ii) any amendment to this Declaration shall require the consent of the City Attorney of the City if such amendment would reduce or eliminate the standards of maintenance and repair of Common Area or Association Property or reduce or eliminate any right of the City set forth in this Declaration.

(e) ***Reduction of Required Percentage.*** The percentage of membership votes or written consents required to amend the Declaration may be reduced under certain circumstances by Court Order obtained pursuant to California CIVIL CODE Section 1356.

(f) ***No Amendment Without Declarant's Written Consent.*** Any provision within this Declaration which provides Declarant specific rights shall not be amended without the written approval of Declarant during the period prior to (i) ten (10) years after this Declaration is recorded or (ii) the annexation of all the Real Property and sale of all the Condominiums to Retail Purchasers, whichever shall first occur.

(g) ***City Consent***. In addition, no amendment to or revocation of the provisions of Section 2.5, 4.11 (to the extent of the City's lien rights thereunder), 4.18, 5.1, 7.3, 7.4 or 15.1 shall be made without the prior written consent of the City. A copy of any amendment proposed to any such Section shall be provided to the City in advance and the City shall have the right to approve or disapprove the proposed amendment. A copy of the finally approved amendment shall be transmitted to the City within thirty (30) days after recording.

Section 16.3. Extension of Declaration. Each and all of these covenants, conditions and restrictions shall terminate sixty (60) years following the recordation of this Declaration with the Office of the County Recorder of the County, after which date they shall automatically be extended for successive periods of ten (10) years unless all the Owners have executed and recorded at any time within six (6) months prior to said sixty (60) year period, or within six (6) months prior to the end of any such ten (10) year period, in the manner required for a conveyance of real property, a writing in which it is agreed that said restrictions shall terminate at the end of said sixty (60) year period or at the end of any such ten (10) year period.

Section 16.4. Annexation; Reservation of Easements.

(a) If Declarant should develop portions of the Real Property which are not initially a part of the Covered Property, such additional lands or any portion thereof may be annexed to this Declaration and thereby be added to and included within the Project and the Covered Property and thereby become subject to the jurisdiction of the Association by action of Declarant without the assent of Members of the Association. Annexation may be accomplished by the recording of a Declaration of Annexation which requires Owners of Condominiums therein to be Members of the Association. Any such area may be deannexed anytime prior to the first conveyance of a Condominium in such area by Declarant executing, acknowledging and recording a Declaration of Deannexation for such area.

(b) Annexation of any additional portion of the Real Property to the Covered Property is subject to the following requirements:

(i) Recordation of a Declaration of Annexation identifying the specific land to be annexed;

(ii) Declarant shall be obligated to pay the Association, concurrently with the closing of the escrow for the first sale of a Condominium in a Phase of the annexed area, appropriate amounts for reserves for replacement or deferred maintenance of Common Area or Association Property improvements in the annexed area necessitated by or arising out of the use and occupancy of Condominiums under a rental program, if any, conducted by Declarant which has been in effect for a period of at least one (1) year as of closing of escrow for the first sale of a Condominium in the annexed area;

(iii) The Condominiums to be constructed in the area to be annexed shall be substantially consistent with the Condominiums in the initially Covered Property in structure type and quality of construction, if so required by FNMA. This Subsection (iii) is intended to benefit FNMA only and its requirements may be waived by FNMA;

(iv) Annexation shall not result in there being more than 252 Condominiums in the Project; and

(v) The Declaration of Annexation shall not change the provisions herein set forth (including, but not limited to, those pertaining to voting rights and assessments) but may impose additional restrictions, easements and covenants on the area being annexed.

(c) Declarant reserves the right to construct on the portions of the Real Property annexed to this Declaration, Condominiums of those sizes, price ranges, floor plans, architectural styles and designs as Declarant may, in its sole discretion, determine. Such sizes, price ranges, floor plans, architectural styles and/or designs need not be consistent with any previous or other Phase except as required by FNMA pursuant to Subsection (b)(iii) above. Among other things, but not as a limitation, Declarant may construct on the Real Property annexed hereto, lower or higher priced Condominiums, higher density or lower density residences, attached or detached residences. Moreover, Declarant shall not be obligated to complete the future Phases at all or in any particular order and has the right to change the Association Property and the numbers of Condominiums in a Phase, subject to the limitations stated in Subsection (b) above.

(d) The Declaration of Annexation shall contain (i) a description of the property to be annexed, and (ii) a statement that the property to be annexed shall be subject to this Declaration.

(e) Declarant hereby reserves reciprocal cross-easements in and to the Association Property (other than Exclusive Use Areas) and Common Area in all Phases of the Project for the benefit of the Owners of Condominiums in all other Phases of the Project. These cross-easements shall not benefit or burden a Phase until (i) such Phase has become subject to this Declaration and (ii) a Condominium has been conveyed to a Retail Purchaser in such Phase; provided, however, each Owner of a Condominium shall at all times be provided with ingress and egress to such Owner's Condominium.

(f) As an alternative method of annexation, pursuant to a two-thirds (2/3) majority of the voting power of its Members, or the written assent of such Members, excluding the voting power or written assent of Declarant, the owner of any property who desires to add it to the scheme of this Declaration and to subject it to the jurisdiction of the Association, may file of record a Declaration of Annexation.

(g) Declarant hereby reserves in favor of each Condominium and the Association Property in each Phase which is subject to this Declaration an appurtenant non-exclusive easement to use any drainage systems installed anywhere within the Real Property for the purposes of accepting drainage from such Association Property or Condominium regardless of whether the drainage system is located within a Phase which is within the Covered Property.

Section 16.5. Enforcement Litigation. In the event the Association , Declarant or any Owner shall commence litigation to enforce any of the covenants or restrictions contained in this Declaration, the prevailing party in such litigation shall be entitled to costs of suit and such attorney's fees as the Court may adjudge reasonable and proper. The "prevailing party" shall be the party in whose favor a final judgment is entered. It is not intended that this Section entitle a party to his or her attorney's fees for any claim based on alleged defects in the design or construction of the Real Property or any portion of the Real Property and/or any improvements to the same.

Section 16.6. Encroachment Easements. Easements are hereby reserved in favor of the Owner of each Condominium and the Association over all adjoining Condominiums, the Association Property and Common Area for the purpose of accommodating any minor encroachments due to engineering errors, errors in original construction, repair, settlement or shifting of any building, or any other cause. There shall be easements for the maintenance of said encroachments as long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachments, settlement or shifting; provided, however, that in no event shall an easement for encroachment be created in favor of an Owner if the encroachment occurred due to the willful misconduct of any Owner. In the event any portion of a structure in the Project is partially or totally destroyed and then repaired or rebuilt, each Owner agrees that minor encroachments over adjoining Condominiums, Association Property or Common Area shall be easements for the maintenance of said encroachments so long as they shall exist.

Section 16.7. Provisions Apply to All Condominiums. The provisions of this Declaration apply to all Condominiums which have been made subject to this Declaration, including any unsold Condominiums which may be owned by Declarant. Declarant shall have the same rights and assumes the same duties as any other Owner with respect to unsold Condominiums, except as expressly stated otherwise.

Section 16.8. Special Responsibilities of Association. In the event that the improvements to be installed by Declarant to the Association Property or Common Area have not been completed prior to the issuance by the California Department of Real Estate of a Final Subdivision Public Report covering a Phase and in the further event that the Association is the obligee under a bond to secure performance by the Declarant to complete such improvements, then if such improvements have not been completed and a Notice of Completion filed within sixty (60) days after the completion date specified in the Planned Construction Statement appended to the bond, the Board shall consider and vote upon the question of whether or not to bring action to enforce the obligations under the bond. If the Association has given an extension in writing for the completion of any such improvement then the Board shall consider and vote on said question if such improvements have not been completed and a Notice of Completion filed within thirty (30) days after the expiration of the extension period. In the event that the Board determines not to take action to enforce the obligations secured by the bond, or does not vote on the question as above provided, then, in either such event, upon petition signed by Members representing not less than five percent (5%) of the total voting power of the Association, the Board shall call a special meeting of the Members of the Association to consider the question of overriding the decision of the Board or of requiring the Board to take action on the question of enforcing the obligations secured by the bond. Said meeting of Members shall be held not less than thirty-five (35) days nor more than forty-five (45) days following receipt of the petition. At said meeting a vote of a majority of the voting power of the Members of the Association, excluding the vote of Declarant, to take action to enforce the obligations under the bond shall be deemed to be the decision of the Association, and the Board shall thereafter implement the decision by initiating and pursuing appropriate action in the name of the Association.

Section 16.9. Limitation of Restrictions on Declarant. Declarant is undertaking the work of construction of residential Condominium dwellings and incidental improvements within the Project. The completion of that work, and the sale, rental and other disposal of said Condominium dwellings is essential to the establishment and welfare of the Project as a residential community. In order that Declarant's work may be completed and the Project may be established as a fully occupied residential community as rapidly as possible, nothing in this Declaration shall be understood or construed to:

(a) Prevent Declarant, its contractors or subcontractors from doing in the Project whatever is reasonably necessary or advisable in connection with the completion of such work; or

(b) Prevent Declarant or its representatives from erecting, constructing and maintaining on any part of the Project such structures as may be reasonable and necessary for the conduct of its business of completing such work and establishing the Project as a residential community and disposing of the same in parcels by sale, lease or otherwise; or

(c) Prevent Declarant from conducting on any part of the Project its business of completing such work, and of establishing a plan of Condominium ownership and of disposing of Condominiums in the Project by sale, lease or otherwise; or

(d) Prevent Declarant from maintaining such signs within the Project as may be necessary for the sale, lease or disposition of Condominiums; provided, however, that the maintenance of any such sign shall not unreasonably interfere with the use by any Owner of such Owner's Condominium.

The rights of Declarant provided in Paragraphs (a) through (d) above may be exercised during the period of time commencing when the Condominiums are first sold or offered for sale to the public and ending when all Condominiums have closed escrow to Retail Purchasers.

Section 16.10. Phased Development of Real Property; Construction Activity. Due to the planned phased development of the Real Property, Owners may be inconvenienced by construction activity, road improvements, dust, noise, sales office operation and other activities until such time as the Project has been completed.

Section 16.11. Owners' Compliance. Each Owner, tenant or occupant of a Condominium shall comply with the provisions of this Declaration, the Bylaws, decisions and resolutions of the Association or its duly authorized representative, as lawfully amended from time to time, and failure to comply with any such provisions, decisions, or resolutions shall be grounds for an action to recover sums due, for damages, or for injunctive relief.

All agreements and determinations lawfully made by the Association in accordance with the voting percentages established in this Declaration or in the Bylaws, shall be deemed to be binding on all Owners of Condominiums, their successors and assigns.

Section 16.12. Provisions of Civil Code Section 1360. Section 1360 of the California CIVIL CODE provides as follows:

"(a) Subject to the provisions of the governing documents and other applicable provisions of law, if the boundaries of [a Living Unit] are contained within a building, the owner of [a Living Unit] may do the following:

(1) Make any improvements or alterations within the boundaries of his or her [Living Unit] that do not impair the structural integrity or mechanical systems or lessen the support of any portions of the common interest development.

(2) Modify a unit in a condominium project, at the owner's expense, to facilitate access for persons who are blind, visually handicapped, deaf, or physically disabled, or to alter conditions which could be hazardous to these persons. These modifications may also include modifications of the route from the public way to the door of the unit for the purposes of this paragraph if the unit is on the ground floor or already accessible by an existing ramp or elevator. The right granted by this paragraph is subject to the following conditions:

(A) The modifications shall be consistent with applicable building code requirements.

(B) The modifications shall be consistent with the intent of otherwise applicable provisions of the governing documents pertaining to safety or aesthetics.

(C) Modifications external to the dwelling shall not prevent reasonable passage by other residents, and shall be removed by the owner when the unit is no longer occupied by persons requiring those modifications who are blind, visually handicapped, deaf, or physically disabled.

(D) Any owner who intends to modify a unit pursuant to this paragraph shall submit his or her plans and specifications to the association of the condominium project for review to determine whether the modifications will comply with the provisions of this paragraph. The association shall not deny approval of the proposed modifications under this paragraph without good cause.

(b) Any change in the exterior appearance of a [Living Unit] shall be in accordance with the governing documents and applicable provisions of law."

Section 16.13. Documents to be Provided to Prospective Purchasers.

(a) *By Owners*. Each Owner shall, as soon as practicable before transfer of title to his or her Condominium or execution of a real property sales contract therefor (as defined in CIVIL CODE Section 2985), provide the following to the prospective purchaser those items which Civil Code Section 1368 requires be provided to the prospective purchaser. As of the date of this Declaration, CIVIL CODE Section 1368 requires the following items be provided:

(i) A copy of this Declaration, the Association's Articles and Bylaws, and the Condominium Plan for the Phase which describes the Condominium offered for sale.

(ii) The statement required by CIVIL CODE Section 1368(2), if applicable (*i.e.*, if an age restriction becomes applicable).

(iii) A copy of the Association's most recent financial statement distributed pursuant to CIVIL CODE Section 1365.

(iv) A true statement, in writing, from an authorized representative of the Association, as to the respective amounts levied upon the Owner's Condominium which are unpaid on the date of the statement. The statement shall also include true information on late charges, interest and costs of collection which, as of the date of the statement, are or may be made a lien upon the Owner's Condominium pursuant to CIVIL CODE Section 1367.

(v) A copy of the preliminary list of defects provided to each Owner pursuant to Civil Code Section 1375 if that Section requires the list to be provided.

(vi) A copy of the latest information required by CIVIL CODE Section 1375.1, if that Section is applicable.

(vii) Any change in the Association's current regular and special assessments and fees which have been approved by the Board but have not become due and payable as of the date of the disclosure required by this Section.

(b) ***By the Association.*** Upon written request to the Association it shall, within ten (10) days of mailing or delivery of the request, provide an Owner with a copy of the requested Association items specified in (i) through (vii) above. The Association may charge a fee for this service which may not exceed the cost to prepare and reproduce the requested items.

Section 16.14. Documents to be Provided by Owners to Subsequent Purchasers. In conjunction with the sale of each Condominium by Declarant to a Retail Purchaser, Declarant provided the Retail Purchaser certain documents (**"Homeowner Documents"**), which may include, without limitation, the following: (i) a Maintenance Manual and/or other maintenance or preventive maintenance information; (ii) manufactured products' maintenance and limited warranty information; and (iii) a fit and finish warranty or other contractual warranty. Each Owner shall maintain a full and complete copy of the Homeowner Documents and provide the Homeowner Documents to any subsequent purchaser of the Owner's Condominium.

Section 16.15. Easement to Inspect and Test. Declarant reserves easements to enter any portion of the Project, including the interior of any residence and Exclusive Use Area, to inspect those areas and to conduct destructive testing should a claim alleging a defect in design or construction be brought against Declarant. However, Declarant shall notify the Association, with respect to the Association Property which is to be inspected and the Owner of the Exclusive Use Area or Living Unit to be inspected of at least three (3) alternative dates and times when such inspection can take place (the earliest of which shall not be less than ten (10) days after the notification is given) and Declarant shall give the Association and Owner, respectively, the opportunity to specify which date and time is acceptable to the Association and Owner. Should the Association or Owner not respond affirmatively with respect to one of the dates and times within five (5) days, then Declarant may decide which of the dates and times the inspection and testing shall take place and so notify the Association or Owner, respectively. Alternatively, Declarant may seek a judicial order allowing such inspection and testing to take place. Declarant shall be entitled to its reasonably incurred attorney's fees and be deemed the "Prevailing Party" should such court order be sought and obtained. Declarant shall be obligated to fully repair any damage caused by any such destructive testing. If the provisions of Section 1375 *et seq.* of the California CIVIL CODE apply to the claim alleging a defect in design or construction, the provisions of Section 1375 *et seq.*, and not this Section, shall govern destructive testing.

Section 16.16. Association Property and Common Area Inspection. In addition to its other inspection and testing rights set forth in this Declaration, Declarant may, at its election, notify the Board that (i) Association Property and Common Area landscaping and related improvements for a particular Phase, or some portion thereof, have been completed and (ii) Declarant is requesting the inspection provided for in this Section. Within fifteen (15) days after Declarant gives such notice, Declarant shall select an independent and qualified landscape architect to perform the inspection. Each person selected or appointed pursuant to this Section is referred to collectively as the "Expert". Declarant shall pay the reasonable compensation of the Expert.

Promptly upon the selection of the Expert as provided above, the Expert shall inspect the improvements as to which Declarant has given notice of completion and requested inspection. One representative of the Declarant and one representative of the Board may accompany the Expert during the inspection. The inspection shall be limited to a visual inspection, and improvements shall not be uncovered. The Expert shall not be responsible for identifying latent deficiencies. Promptly after the inspection is completed, the Expert shall submit a written report (the "Report") to Declarant and the Board specifying the respects, if any, in which the improvements do not substantially conform to the plans and specifications therefor and are defective, and if there are no such deficiencies, the Report shall state that the improvements conform to the plans and specifications therefor. The Report shall constitute conclusive and binding evidence that, except as otherwise provided therein and except for latent deficiencies, if any, the improvements have been constructed in substantial accordance with the plans and specifications therefor, and thereafter Declarant shall have no further liability, duty or obligation with respect to such improvements, except to remedy any deficiencies specified in the Report and except with respect to latent deficiencies, if any, and the separate repair obligations of Declarant under express written warranty, if any.

Declarant shall correct any deficiencies specified in the Report, and the Expert shall reinspect such improvements within thirty (30) days after Declarant's request. Such reinspection shall be performed in the same manner as provided for the first inspection. Promptly after the reinspection is completed, the Expert shall submit another written report (the "Reinspection Report") to Declarant and the Board specifying the deficiencies specified in the Report which have not been corrected, if any, and if all such deficiencies have been corrected the Reinspection Report shall state that the improvements substantially conform to the plans and specifications therefor. The Reinspection Report shall constitute conclusive and binding evidence that, except as otherwise provided therein and except for latent deficiencies, if any, the improvements have been constructed in substantial accordance with the plans and specifications therefor, and thereafter Declarant shall have no further liability, duty or obligation with respect to such improvements, except to remedy any deficiencies specified in the Reinspection Report, and except with respect to latent deficiencies, if any, and the separate repair obligations of Declarant under express written warranty, if any.

Additional inspections and Reinspection Reports shall be made, if necessary, all in accordance with and with the same effect as provided hereinabove.

Within ten (10) days after all deficiencies have been corrected, as evidenced by a Report or Reinspection Report, the Board shall be deemed to have accepted the improvements in writing and shall release in writing any and all rights under any and all payment and performance, labor and material, and completion bonds pertaining to the improvements.

No amendment may be made to this Section without the written consent of Declarant.

Section 16.17. Member Approval Required to Initiate Judicial Reference or Litigation. Neither the Board nor any committee of the Board shall initiate judicial reference or litigation with respect to portions of the Project owned or maintained by the Association for violation of the construction standards set forth in California CIVIL CODE Sections 896 and 897 and any successor statutes or laws which exceeds $100,000 without first obtaining the approval of a majority of the voting power of Members of the Association, excluding the vote of Declarant. The Board and any committee so authorized by the Board shall have the right and authority, without Member approval, to engage in non-adversarial proceedings or mediation with respect to such claim (*e.g.* pursuant to California CIVIL CODE Sections 910 through 938 or California CIVIL CODE Section 1375).

## ARTICLE XVII

## JUDICIAL REFERENCE

Section 17.1. Resolution of Disputes by Judicial Reference. The purpose of this Article is to provide an expedited means of resolving any claims, disputes and disagreements which may arise between a Construction Party (defined below) and a Claimant (defined below) concerning the Covered Property that are not resolved pursuant to any applicable statutory dispute resolution procedures (individually a "Dispute" and collectively "Disputes"). Alternatively, a Construction Party and a Claimant may elect to resolve Disputes through a small claims court proceeding. **THE JUDICIAL REFERENCE PROCESS INVOLVES WAIVER OF THE RIGHT TO A JURY TRIAL. DECLARANT, BY EXECUTING THIS DECLARATION, AND EACH OWNER AND THE ASSOCIATION, BY ACCEPTING A DEED TO ANY PORTION OF THE COVERED PROPERTY, COVENANT AND AGREE TO RESOLVE DISPUTES AS SET FORTH IN THIS ARTICLE.** Accordingly, any Dispute, including, but not limited to, any claim related to construction of the Covered Property, shall be heard by a referee under the provisions of the California CODE OF CIVIL PROCEDURE, Sections 638 through 645.1, inclusive. However, the judicial reference provisions of this Article do not pertain to any Dispute which a Construction Party or Claimant elects to have resolved by a small claims court proceeding.

Section 17.2. Definitions. For purposes of this Article, the following terms shall have the following meanings:

(a) **"Affiliated Contractor"** shall mean and refer to each general contractor and contractor who, as of the time of sale of the portion of the Covered Property that is the subject of a Dispute: (i) is in the business of building, developing or constructing the Covered Property for public purchase; and (ii) is a partner, member of, subsidiary of, or otherwise similarly affiliated with Declarant.

(b) **"Claimant"** shall mean and refer to any party (including any Owner or the Association) who intends to make a claim for Dispute against a Construction Party.

(c) **"Construction Party"** shall mean and refer to Declarant or any director, officer, partner, employee, subcontractor or agent of Declarant or any Affiliated Contractor.

Section 17.3. Selection of the Referee. The parties to the Dispute shall agree upon a single referee who shall then try all issues, whether of fact or law, and report a finding and judgment on such issues. If the parties are unable to agree upon a referee within ten (10) days of a written request to do so by any party, then any party may thereafter seek to have a referee appointed under the California CODE OF CIVIL PROCEDURE Sections 638 and 640.

Section 17.4. Powers of the Referee. The referee shall have the power to decide all issues of fact and law and report his or her decision on such issues, and to issue all legal and equitable relief appropriate under the circumstances of the controversy before the referee. **Declarant, by executing this Declaration, and each Owner and the Association, by accepting a deed to any portion of the Covered Property, waive the right to a jury trial and agree that the referee shall decide all factual and legal issues of any dispute.**

Section 17.5. Cooperation by the Parties. The parties to the Dispute shall promptly and diligently cooperate with one another and the referee, and shall perform such acts as may be necessary to obtain a prompt and expeditious resolution of the dispute or controversy in accordance with the terms of this Article.

Section 17.6. Expenses of Judicial Reference. The fees charged by the referee for his or her services shall be borne by the parties to the Dispute in the amounts ordered by the referee. However, the Construction Party shall advance the fees required to initiate the proceeding and which become due and payable during the proceeding. The Claimant shall reimburse the Construction Party the sums so advanced

16964

by the Construction Party after the conclusion of the judicial reference proceeding to the extent ordered by the referee.

Section 17.7. Attorneys' Fees and Costs. Each party to the Dispute shall bear its own attorneys' fees and costs (including expert witness costs) in the reference; provided, however the fees charged by the referee for the reference shall be paid as provided in **Section 17.6**.

Section 17.8. Waiver of Trial by Jury. **DECLARANT, BY EXECUTING THIS DECLARATION, AND EACH OWNER AND THE ASSOCIATION, BY ACCEPTING A DEED TO ANY PORTION OF THE COVERED PROPERTY, HEREBY WAIVE THEIR RESPECTIVE RIGHT TO TRIAL BY JURY OF ANY CONTROVERSY OR DISPUTE ARISING OUT OF OR IN ANY WAY RELATING TO THE COVERED PROPERTY.**

Section 17.9. Other Parties. The parties to the Dispute shall cooperate in good faith to attempt to include all appropriate parties in the judicial reference proceeding. Neither a Construction Party nor a Claimant shall be required to participate in the judicial reference proceeding if the enforcement of the provisions of judicial reference would impair the insurance coverage of a party for any claim arising out of the Dispute.

Section 17.10. Procedure To Determine If Judicial Reference Applies. If a party to the Dispute determines that insurance coverage would be impaired with respect to the Dispute because of judicial reference, such party may elect not to participate in the judicial reference proceeding. If a party so elects not to participate in the judicial reference proceeding, such party will provide notice to the other parties to the judicial reference proceeding that the dispute will not be resolved by judicial reference. In such circumstances, the other party or parties may seek determination of the party's right not to participate by way of a motion under California CODE OF CIVIL PROCEDURE Sections 638, 641 through 645.1, or any successor statutes thereto.

Section 17.11. Waiver of Jury Trial. If a determination is made pursuant to **Section 17.10** that a party is not required to participate in the judicial reference proceeding, the Dispute shall not be resolved by judicial reference but instead shall be resolved in the appropriate court of law. The legal proceeding shall be tried by a judge and not a jury and **Declarant, by executing this Declaration, and each Owner and the Association, by accepting a deed to any portion of the Covered Property, hereby waive their respective rights to a jury.**

Section 17.12. Limitation on Amendment. This Article may not be amended without the written approval of Declarant attached to the instrument of amendment.

## ARTICLE XVIII

## DEVELOPMENT BY DECLARANT

Section 18.1. Planned Development. Declarant intends, but is not obligated, to complete the Project and Declarant shall have the right to construct the residences and to complete improvements allowed by the City to be completed within the Real Property.

Section 18.2. Reservation of Rights to Complete Project. Until the first close of escrow for the sale by Declarant of a Condominium in a Building Envelope, Declarant shall have the exclusive right to possession of the entire Building Envelope and, if appropriate, related portions of the Association Property reasonably related to the Building Envelope, for purposes of completing the construction of the Condominiums and other Common Area and related Association Property; provided, however, that each Owner shall have the right of vehicular and pedestrian access, ingress and egress across the Association Property or Common Area if necessary for access to the Owner's Living Unit. Declarant shall also have a non-exclusive right of access, ingress and egress across the Project as may be reasonably necessary or convenient for purposes of completing the construction and sale of the Real Property. Commencing on the first day of the month following the first close of escrow for the sale of a Condominium, Declarant shall, during construction of

Condominiums and related improvements, carry public liability insurance which covers the Association and Owners for liability for personal injury and property damage arising out of or in connection with Declarant's construction activities in the Project.

Section 18.3. Failure to Complete Project. In the event all Phases of the Covered Property are not constructed as originally intended by Declarant and a building has not been constructed in one or more Building Envelopes (**"Undeveloped Building Envelopes"**), Declarant may convey by quitclaim deed to the Association, the Undeveloped Building Envelopes within the Covered Property then owned by Declarant. Upon the conveyance of an Undeveloped Building Envelope to the Association, the Living Units and Common Area which have not then been constructed shall thereafter be Association Property, and the applicable Condominium Plan(s) may be amended by Declarant in accordance with this Declaration. Within sixty (60) days following any such conveyance, Declarant shall at Declarant's expense clean-up any debris from the Undeveloped Building Envelope so conveyed and from and after such clean-up has occurred, the Association, and not Declarant, shall be obligated to maintain the Phase in which the Undeveloped Building Envelope is located.

Section 18.4. Right of Declarant to Redesign Project. Declarant reserves the right in its sole discretion, but subject to any necessary City approvals, to redesign any portion of the Project other than Living Units and Common Area which have been conveyed by Declarant to others. The redesign may alter the boundaries of any improvement, adjust the location of the Building Envelopes and Association Property, change the elevation and appearance of improvements, and change the location of the amenities. However, in no event shall the redesign result in more than one hundred eighty-six (186) Living Units being constructed within the Project.

Section 18.5. Amendment to Condominium Plan(s). The Condominium Plan covering a Building Envelope may be amended or revoked by a document signed and acknowledged by the then owners of the Building Envelope and by their Mortgagees. For example, until the conveyance of a Condominium within a Building Envelope, amendment of the applicable Condominium Plan covering just that Building Envelope shall require the signature only of Declarant as the owner of the Building Envelope and of the Mortgagees whose Mortgages encumber the Building Envelope.

Section 18.6. Power of Attorney. Each Mortgagee of a Mortgage and each Owner of a Condominium by accepting a Mortgage or deed to a Condominium, shall be deemed to have constituted and irrevocably appointed Declarant as his attorney-in-fact, for himself and each of his optionees, grantees, licensees, trustees, receivers, lessees, tenants, judgment creditors, heirs, legatees, devisees, administrators, executors, legal representatives, successors and assigns, whether voluntary or involuntary, and thereby to have conveyed a power of attorney coupled with an interest to Declarant as his attorney-in-fact to effect the redesign of all or any portion of the Project in accordance with the limitations and requirements set forth in this Article; and further:

(a) To prepare, execute, acknowledge and record any map or record of survey required or permitted by the provisions of the Subdivision Map Act of the State of California in effect on the date of the recording of this Declaration and as thereafter enacted or amended, and any ordinances, rules and regulations of applicable governmental entities and authorities having jurisdiction over the Project in effect on the date of the recording of this Declaration and as thereafter enacted or amended, or which may be required or permitted by any title insurer, and in connection therewith, to perform all conditions, undertake any obligations and execute all agreements and documentation required or permitted by any federal, state and local governmental entities and authorities; to appear before any such governmental entities and authorities; and to execute, acknowledge and deliver any improvement agreements and bonds and post deposits securing the performance of any such conditions and obligations.

(b) To prepare, execute, acknowledge and record any amendment to a Condominium Plan for the Project, including, without limitation, any amendments necessary to cause the Condominium Plan to conform with the improvements as actually built, which may be required or permitted by the laws of the State of California in effect on the date of the recording of this Declaration as thereafter enacted or amended, and any ordinances, rules and regulations of any applicable governmental entities and authorities having jurisdiction over the Project in effect on the date of the recording of this Declaration and as thereafter enacted or amended, or which may be required or permitted by any title insurer, and in connection therewith, to perform all conditions, undertake any obligations and execute all agreements and documentation required or permitted by any federal, state and local governmental entities and authorities; to appear before any such governmental entities and authorities; and to execute and deliver any improvement agreements and bonds and post deposits securing the performance of any such conditions and obligations.

(c) To prepare, execute, acknowledge and file for approval any application for zoning or setback changes or variance or special use permits or any other permits or reports required or permitted by statutes, ordinances and regulations applicable to the Project in effect on the date of the recording of this Declaration as thereafter enacted or amended, and in connection therewith, to perform all conditions, undertake any obligations and execute all agreements and documentation required or permitted by any federal, state and local governmental entities and authorities; to appear before any such governmental entities and authorities; and to execute and deliver any improvement agreements and bonds and post deposits securing the performance of any such conditions and obligations.

(d) To make applications for any property reports or public reports or amendments thereto or exemption from the requirements therefor required or permitted by federal and state statutes, rules and regulations relating to the sale, lease, transfer or other disposition of subdivided land, and in connection therewith, to perform all conditions, undertake any obligations and execute all agreements and documentation required or permitted by any federal, state and local governmental entities and authorities; to appear before any such governmental entities and authorities; and to execute and deliver any improvement agreements and bonds and post deposits securing the performance of any such conditions and obligations.

(e) To deliver any public reports or property reports, or amendments thereto, obtain receipts, and offer and administer rescission rights required by law.

(f) To prepare, execute, acknowledge and file for approval any registration or application for any permit, approval, exemption, ruling or entitlement, which registration or application is required or permitted pursuant to any law or regulation in effect as of the date of the recording of this Declaration and as hereafter enacted or amended by any federal, state and local governmental entities and authorities, and in connection therewith, to perform all conditions, undertake any obligations and execute all agreements and documentation required or permitted by any such governmental body and by any such laws and regulations; to appear before any such governmental bodies and to execute and deliver any improvement agreements and bonds and post deposits securing the performance of any such conditions and obligations; and do all other things now or hereafter permitted or required by any such governmental body and any such laws and regulations.

(g) To prepare, execute, acknowledge and record any deeds, waivers, releases, reconveyances or other documentation which may be permitted or required to clear title to any Condominiums in the Project.

(h) To do any and all things necessary or desirable under the circumstances to effect and accomplish the purposes of this Article.

Section 18.7. Indemnification of Owners on Exercise of Power of Attorney. Declarant shall indemnify and hold each Owner free and harmless from all liabilities, including attorney's fees, which are incurred as a direct result of the execution by Declarant of any improvement agreements or bonds, or both, in connection with the exercise by Declarant of the power of attorney set forth in **Section 18.6**.

Section 18.8. Limitation on Amendment. This Article may not be amended without the written approval of Declarant attached to the instrument of amendment.

16967

**IN WITNESS WHEREOF,** the undersigned, being Declarant herein, has executed this instrument the day and year first hereinabove written.

CAL E1 LLC, a Delaware limited liability company

By_______________________________
Its E. Dale Gleed V.P.

By Stephen P Doyle
Its President

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

On Jan. 23, 2004, before me, Colette Kavanagh, Notary Public, personally appeared E. Dale Gleed and Stephen P. Doyle, 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.

Signature Colette Kavanagh

COLETTE KAVANAGH
Commission # 1317064
Notary Public - California
San Diego County
My Comm. Expires Sep 8, 2005

(Seal)

16968

## EXHIBIT "A"

### Phasing of the Project

| Phase | Living Unit Nos. | No. of Living Units | Map No. |
|---|---|---|---|
| 1 | 16-27; 64-75 | 24 | 14696 |
| 2 | 28-45; 76-81 | 24 | 14696 |
| 3 | 46-51; 82-99 | 24 | 14696 |
| 4 | 52-57; 100-117 | 24 | 14696 |
| 5 | 1-6; 58-63 | 12 | 14696 |
| 6 | 118-138 | 21 | 14725 |
| 7 | 139-162 | 24 | 14725 |
| 8 | 163-180 | 18 | 14725 |
| 9 | 181-207 | 27 | 14725 |
| 10 | 208-231 | 24 | 14725 |
| 11 | 232-252 | 21 | 14725 |
| 12 | 7-15 | 9 | 14696 |

EXHIBIT "B"

<u>The Preserve</u>

*[attached]*

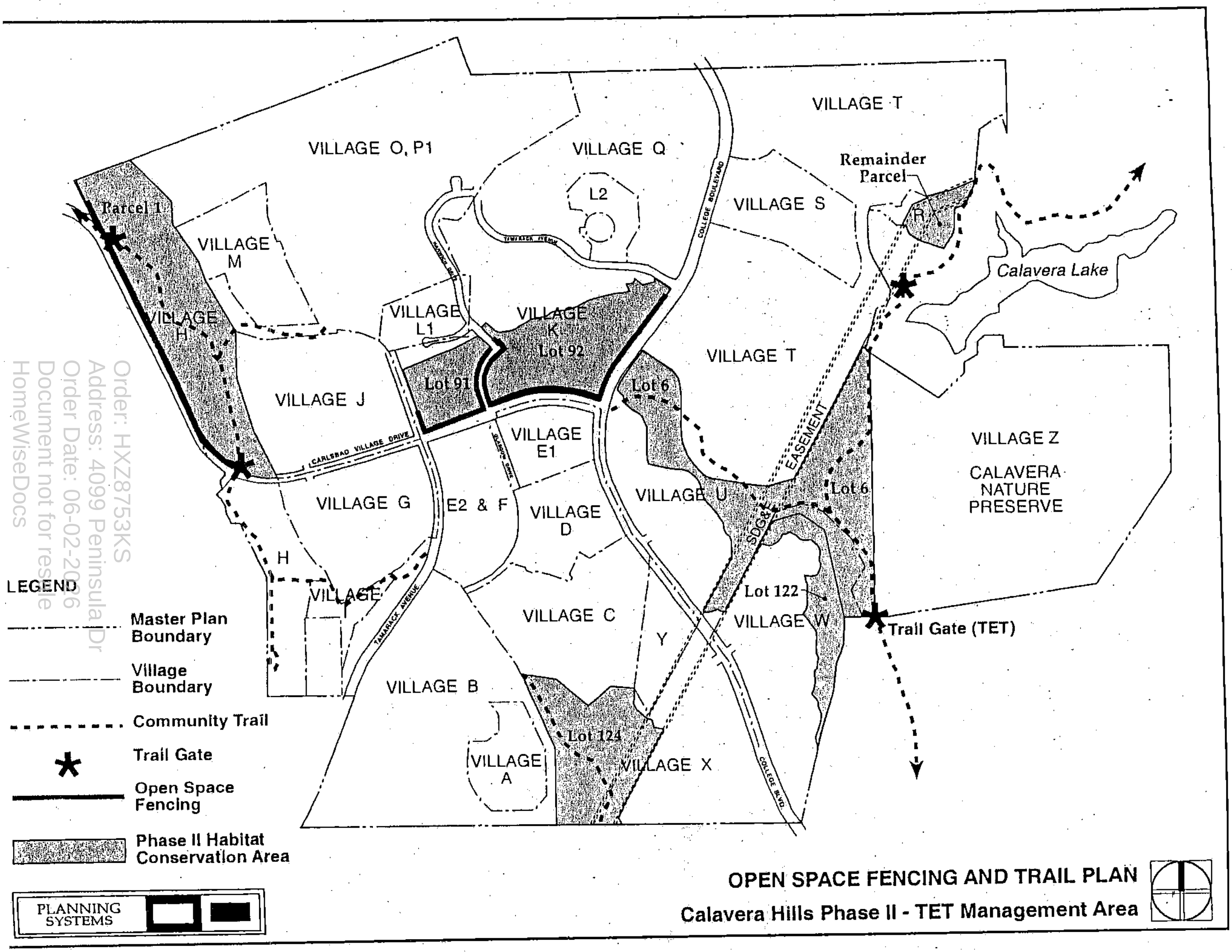

VILLAGE O, P1
VILLAGE Q
VILLAGE T
Remainder Parcel
R
VILLAGE S
L2
Calavera Lake
Parcel 1
VILLAGE M
VILLAGE H
VILLAGE L1
VILLAGE K
Lot 92
Lot 91
VILLAGE J
VILLAGE T
Lot 6
EASEMENT
VILLAGE Z
CALAVERA NATURE PRESERVE
VILLAGE E1
CARLSBAD VILLAGE DRIVE
COLLEGE BOULEVARD
TAMARACK AVENUE
VILLAGE G
E2 & F
VILLAGE D
VILLAGE U
SDG&E
Lot 6
H
VILLAGE I
Lot 122
VILLAGE C
Y
VILLAGE W
Trail Gate (TET)
VILLAGE B
Lot 124
VILLAGE A
VILLAGE X
COLLEGE BLVD.
LEGEND
Master Plan Boundary
Village Boundary
Community Trail
Trail Gate
Open Space Fencing
Phase II Habitat Conservation Area
PLANNING SYSTEMS
OPEN SPACE FENCING AND TRAIL PLAN
Calavera Hills Phase II - TET Management Area

EXHIBIT "C"

Approximate Locations of Subsurface Drainage Systems in Lot 1 of Map No. 14696

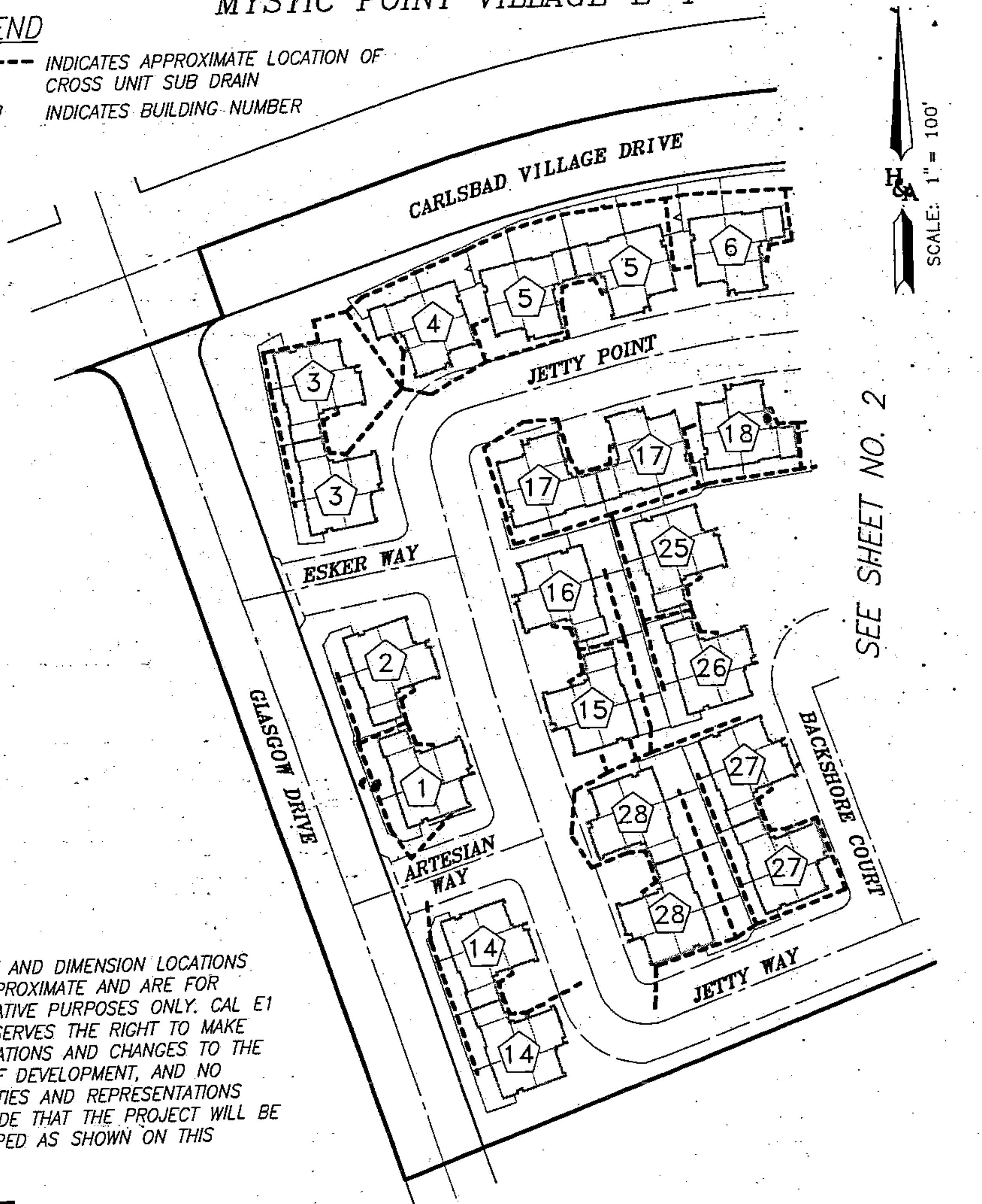
*[attached]*

# EXHIBIT "C"
# CROSS UNIT DRAINAGE FACILITIES
# MYSTIC POINT VILLAGE E-1

LEGEND

- - - - - - INDICATES APPROXIMATE LOCATION OF CROSS UNIT SUB DRAIN

(3) INDICATES BUILDING NUMBER




NOTE:
ALL LOT AND DIMENSION LOCATIONS ARE APPROXIMATE AND ARE FOR ILLUSTRATIVE PURPOSES ONLY. CAL E1 LLC RESERVES THE RIGHT TO MAKE MODIFICATIONS AND CHANGES TO THE PLAN OF DEVELOPMENT, AND NO WARRANTIES AND REPRESENTATIONS ARE MADE THAT THE PROJECT WILL BE DEVELOPED AS SHOWN ON THIS EXHIBIT.

H&A HUNSAKER & ASSOCIATES
SAN DIEGO, INC.

PLANNING 10179 Huennekens Street
ENGINEERING San Diego, Ca 92121
SURVEYING PH(858)558-4500 FX(858)558-1414

R:\0196\&MapSub Drain SHT 01.dwg WO # 553-163

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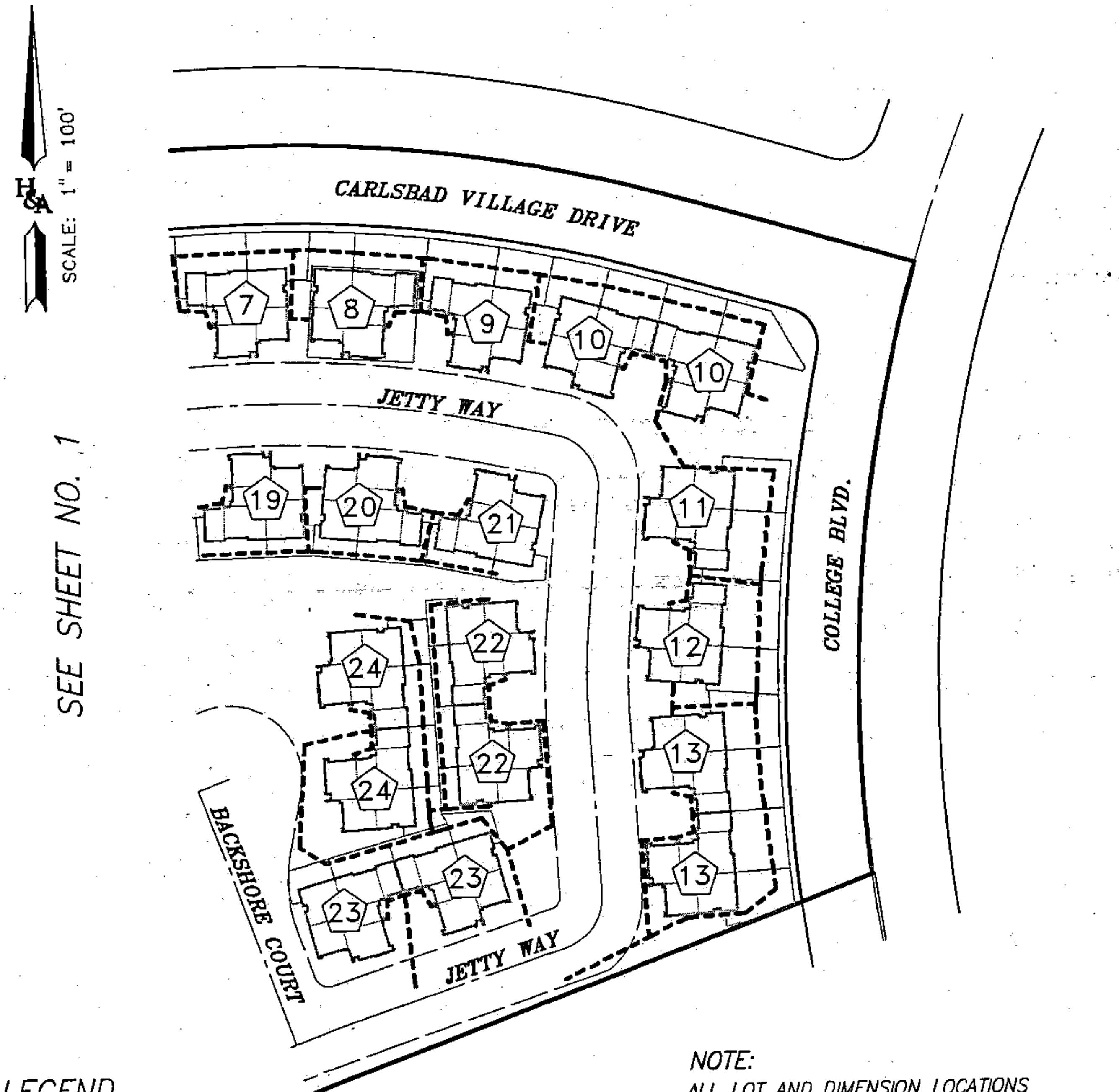
# EXHIBIT "C"
# CROSS UNIT DRAINAGE FACILITIES
# MYSTIC POINT VILLAGE E-1




## LEGEND

- - - - - - - - INDICATES APPROXIMATE LOCATION OF CROSS UNIT SUB DRAIN

(19) INDICATES BUILDING NUMBER

NOTE:
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R:\0196\&MapSub Drain SHT 02.dwg WO # 553-163

16974

## SUBORDINATION AGREEMENT

UNION BANK OF CALIFORNIA, N.A., being the beneficiary under that certain deed of trust recorded August 26, 2003 as Document No. 2003-1036612 with the Office of the County Recorder of San Diego County, California, hereby declares that the lien and charge of said deed of trust are and shall be subordinate and inferior to the Declaration of Restrictions to which this Subordination Agreement is attached.

UNION BANK OF CALIFORNIA, N.A.

By [signature]
Its Vice President

By ____________________
Its ____________________

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

On 1-26-2004, before me, Robin L - Melanson, Notary Public, personally appeared DALE NORTHUP, 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.

Signature Robin L. Melanson

ROBIN L. MELANSON
Commission # 1344674
Notary Public - California
San Diego County
My Comm. Expires Feb 25, 2006

(Seal)