

TABLE OF CONTENTS

1.	DEFINITIONS.....	8
1.1	ANNEXABLE TERRITORY.....	8
1.2	ARCHITECTURAL COMMITTEE OR COMMITTEE.....	8
1.3	ARTICLES.....	8
1.4	ASSESSMENT, ANNUAL.....	9
1.5	ASSESSMENT, CAPITAL IMPROVEMENT.....	9
1.6	ASSESSMENT, RECONSTRUCTION.....	9
1.7	ASSESSMENT, SPECIAL.....	9
1.8	ASSOCIATION.....	9
1.9	ASSOCIATION PROPERTY.....	10
1.10	BENEFICIARY.....	10
1.11	BOARD OR BOARD OF DIRECTORS.....	10
1.12	BUDGET.....	10
1.13	BYLAWS.....	10
1.14	CLOSE OF ESCROW.....	11
1.15	COMMON EXPENSES.....	11
1.16	COMMON INTEREST DEVELOPMENT.....	11
1.17	CUSTOMER CARE PROGRAM.....	11
1.18	DECLARANT.....	12
1.19	DECLARATION.....	12
1.20	DEED OF TRUST.....	12
1.21	DRE.....	12
1.22	DWELLING UNIT.....	12
1.23	FAMILY.....	12
1.24	FHLMC.....	12
1.25	FISCAL YEAR.....	13
1.26	FNMA.....	13
1.27	GNMA.....	13
1.28	GOLF COURSE FACILITIES.....	13
1.29	IMPROVEMENTS.....	13
1.30	LAND.....	13
1.31	LIMITED WARRANTY.....	14
1.32	LOT.....	14
1.33	MAINTENANCE FUNDS.....	14

1.34	MAINTENANCE MANUAL.....	14
1.35	MANAGER.....	14
1.36	MEMBER, MEMBERSHIP.....	14
1.37	MERCHANT BUILDER.....	15
1.38	MORTGAGE.....	15
1.39	MORTGAGEE, MORTGAGOR.....	15
1.40	NOTICE AND HEARING.....	15
1.41	NOTICE OF ADDITION.....	15
1.42	OWNER.....	15
1.43	PERIMETER WALL/FENCE.....	16
1.44	PERSON.....	16
1.45	PHASE 1.....	16
1.46	PHASE OF DEVELOPMENT.....	16
1.47	PROJECT.....	16
1.48	PROPERTY.....	17
1.49	RECORD, FILE, RECORDATION.....	17
1.50	RESTRICTIONS.....	17
1.51	RULES AND REGULATIONS.....	17
2.	HOMEOWNERS ASSOCIATION.....	17
2.1	ORGANIZATION OF ASSOCIATION.....	17
2.2	DUTIES AND POWERS.....	17
2.3	MEMBERSHIP.....	19
2.4	TRANSFER.....	19
2.5	CLASSES OF MEMBERSHIP.....	20
2.6	VOTING RIGHTS.....	21
2.7	REPAIR AND MAINTENANCE BY THE ASSOCIATION.....	22
2.8	UNSEGREGATED REAL PROPERTY TAXES.....	24
2.9	REPAIR AND MAINTENANCE BY OWNERS.....	24
2.10	USE OF AGENT.....	27
3.	RIGHTS IN ASSOCIATION PROPERTY.....	27
3.1	ASSOCIATION EASEMENT; JURISDICTION OF ASSOCIATION.....	27
3.2	PARTITION.....	27
3.3	MEMBERS' EASEMENTS IN ASSOCIATION PROPERTY.....	27
3.4	EXTENT OF MEMBERS' EASEMENTS.....	28
3.5	DELEGATION OF USE.....	29
3.6	WAIVER OF USE.....	29
3.7	DAMAGE BY MEMBER.....	29

4.	ARCHITECTURAL REVIEW COMMITTEE.....	30
4.1	MEMBERS OF COMMITTEE.....	30
4.2	REVIEW OF PLANS AND SPECIFICATIONS.....	30
4.3	CONDITION OF APPROVAL.	32
4.4	COMMENCEMENT OF CONSTRUCTION.....	32
4.5	MEETINGS OF THE COMMITTEE.	33
4.6	NO WAIVER OF FUTURE APPROVALS.	33
4.7	COMPENSATION OF MEMBERS.	33
4.8	CORRECTION OF DEFECTS.....	33
4.9	SCOPE OF REVIEW.....	34
4.10	VARIANCES.....	35
4.11	APPEALS.	35
5.	ASSOCIATION MAINTENANCE FUNDS AND ASSESSMENTS.....	36
5.1	PERSONAL OBLIGATION OF ASSESSMENTS.....	36
5.2	MAINTENANCE FUNDS OF ASSOCIATION.	36
5.3	PURPOSE OF ASSESSMENTS.....	36
5.4	LIMITATIONS ON ANNUAL AND SPECIAL ASSESSMENT INCREASES.	37
5.5	ANNUAL ASSESSMENTS/COMMENCEMENT-COLLECTION.	39
5.6	CAPITAL IMPROVEMENT ASSESSMENTS.....	42
5.7	DELINQUENCY.	42
5.8	CREATION AND RELEASE OF LIEN.	43
5.9	ENFORCEMENT OF LIENS.	44
5.10	PRIORITY OF ASSESSMENT LIEN.....	44
6.	PROJECT EASEMENTS AND RIGHTS OF ENTRY.....	45
6.1	EASEMENTS.....	45
6.2	RIGHTS OF ENTRY.	47
7.	DECLARANT’S & MERCHANT BUILDERS’ RIGHTS AND RESERVATIONS.....	48
8.	DWELLING UNIT AND USE RESTRICTIONS.....	52
8.1	SINGLE FAMILY DWELLING UNITS.....	52
8.2	PARKING AND VEHICULAR RESTRICTIONS.....	53
8.3	NUISANCES.	54
8.4	SIGNS.	55
8.5	ANTENNAS.	56
8.6	INSIDE AND OUTSIDE INSTALLATIONS.	56
8.7	ANIMAL REGULATIONS.	57
8.8	BUSINESS OR COMMERCIAL ACTIVITY.	57
8.9	RUBBISH REMOVAL.....	58

8.10 FURTHER SUBDIVISION.....	58
8.11 DRAINAGE.....	59
8.12 WATER SUPPLY SYSTEM.	59
8.13 VIEW OBSTRUCTIONS.....	59
8.14 DAMAGE AND DESTRUCTION TO DWELLING UNITS.	60
8.15 WINDOW COVERINGS.....	60
8.16 ASSOCIATION PROPERTY FACILITIES.....	60
8.17 PERIMETER WALL/FENCE.	60
8.18 POST-TENSION CONCRETE SYSTEM.....	61
8.19 TEMPORARY BUILDINGS.....	61
8.20 DRILLING.....	61
8.21 SOLAR ENERGY SYSTEMS.....	61
8.22 RIGHTS OF HANDICAPPED.....	62
8.23 FIREARMS AND FIREWORKS.....	62
8.24 HAZARDOUS, TOXIC, FLAMMABLE, CORROSIVE OR EXPLOSIVE MATERIALS.....	62
9. INSURANCE.....	63
9.1 DUTY TO OBTAIN INSURANCE: TYPES.....	63
9.2 WAIVER OF CLAIM AGAINST ASSOCIATION.	64
9.3 RIGHT AND DUTY OF OWNERS TO INSURE.	64
9.4 NOTICE OF EXPIRATION REQUIREMENTS.....	64
9.5 INSURANCE PREMIUMS.....	64
9.6 TRUSTEE FOR POLICIES.	65
9.7 ACTIONS AS TRUSTEE.....	65
9.8 ANNUAL INSURANCE REVIEW.....	65
9.9 REQUIRED WAIVER.....	66
10. DAMAGE TO ASSOCIATION PROPERTY.....	67
11. EMINENT DOMAIN.	67
12. RIGHTS OF MORTGAGEES.	68
13. DURATION AND AMENDMENT.....	71
13.1 DURATION.....	71
13.2 AMENDMENT.....	72
13.3 PROTECTION OF DECLARANT AND MERCHANT BUILDERS.	74
14. ENFORCEMENT OF CERTAIN BONDED OBLIGATION.....	75
14.1 CONSIDERATION BY BOARD OF DIRECTORS.	75
14.2 CONSIDERATION BY THE MEMBERS.....	75
15. GENERAL PROVISIONS.....	76
15.1 LEGAL PROCEEDINGS; ACTIONS ARISING FROM RESTRICTIONS.....	76

15.2 NOTIFICATION OF CONSTRUCTION CLAIMS.	79
15.3 NOTICE TO MEMBERS OF OTHER CIVIL ACTION AGAINST DECLARANT AND/OR MERCHANT BUILDERS.	80
15.4 ALTERNATIVE DISPUTE RESOLUTION.	80
15.5 VIOLATION OF RESTRICTIONS.	85
15.6 SEVERABILITY.	85
15.7 INTERPRETATION.	85
15.8 MERGERS OR CONSOLIDATIONS.	86
15.9 USE OF ASSOCIATION PROPERTY.	86
15.10 NO PUBLIC RIGHT OR DEDICATION.	86
15.11 NO REPRESENTATIONS OR WARRANTIES.	87
15.12 NONLIABILITY AND INDEMNIFICATION.	87
15.13 NOTICES.	88
15.14 PRIORITIES AND INCONSISTENCIES.	88
15.15 CONSTRUCTIVE NOTICE AND ACCEPTANCE.	89
15.16 DECLARANT & MERCHANT BUILDERS DELIVERY OF DOCUMENTS.	89
15.17 ENTRY GATE DISCLOSURE.	90
15.18 GUARDED GATE.	91
15.19 CLOSED COASTAL LANDFILL.	91
15.20 PROXIMITY TO AGRICULTURAL USES.	91
15.21 UNDERGROUND METHANE.	92
15.22 OIL WELL DISCLOSURE.	92
15.23 WATER WELL DISCLOSURE.	92
15.24 ADDITIONAL PROVISIONS.	93
16. ANNEXATION OF ADDITIONAL PROPERTY.	93
16.1 ADDITIONS BY DECLARANT AND MERCHANT BUILDERS.	93
16.2 OTHER ADDITIONS.	94
16.3 RIGHTS AND OBLIGATIONS-ADDED TERRITORY.	94
16.4 NOTICE OF ADDITION OF TERRITORY.	94
16.5 DEANNEXATION; AMENDMENT.	95
17. PARTY WALLS.	96
17.1 GENERAL RULES OF LAW TO APPLY.	96
17.2 SHARING OF REPAIR AND MAINTENANCE.	96
17.3 DESTRUCTION BY FIRE OR OTHER CASUALTY.	96
17.4 RIGHT TO CONTRIBUTION RUNS WITH LAND.	96
17.5 ARBITRATION.	96
18. GOLF COURSE FACILITIES PROVISIONS.	97

18.1 NO RIGHT TO USE GOLF COURSE FACILITIES.....	97
18.2 PROXIMITY TO GOLF COURSE FACILITIES.....	97
18.3 ERRANT GOLF BALLS.....	98
18.4 EASEMENTS.....	98
18.5 HOLD HARMLESS.....	99
18.6 VIEW IMPAIRMENT.....	99
EXHIBIT "A"	LEGAL DESCRIPTION OF ANNEXABLE
TERRITORY	
EXHIBIT "B"	PERIMETER WALL/FENCE
EXHIBIT "C"	PHASE 1 ASSESSMENT LOTS

MASTER DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS AND RESERVATION OF EASEMENTS
FOR
VICTORIA ESTATES MASTER ASSOCIATION

THIS MASTER DECLARATION (“Declaration”) is made by WPH-OXNARD COASTAL, LLC, a Delaware limited liability company (“Declarant”).

P R E A M B L E:

A. Declarant is the owner of certain real property (“Phase 1”) located in the City of Oxnard (“City”), County of Ventura (“County”), State of California, described as follows:

Parcel G, Parcel H, Lots 246 through 253, inclusive, Lots 255 through 261, inclusive, Lots 271 through 277, inclusive, and Lots 278 through 294, inclusive, of Tract No. 5234-3, as shown on a Subdivision Map filed on September 5, 2002, in Book 146 at Pages 35 to 41, inclusive of Maps, in the Office of the Ventura County Recorder (the “Subdivision Map”).

B. Phase 1 is the first of several phases of a multi-phase master planned development subject to this Declaration. The Property (as hereinafter defined) comprising this master planned development will be owned by Declarant and/or other Merchant Builders, as defined in this Declaration.

C. Declarant deems it desirable, for the efficient preservation of the values and amenities of the Property to create a planned development pursuant to the Davis-Sterling Common Interest Development Act and to impose mutually beneficial restrictions under a general plan of improvement for the benefit of all the Lots (as hereinafter defined). To such end, Declarant deems it desirable to create a corporation under the Nonprofit Mutual Benefit Corporation Law of the State of California which will be delegated and assigned the powers of owning and maintaining the Association Property (as hereinafter defined) administering and enforcing the covenants and restrictions established by this Declaration, and collecting and disbursing the assessments and charges hereinafter created.

D. Declarant hereby declares that all of the Property is to be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the following limitations, restrictions, reservations, rights, easements, conditions and covenants, all of which are declared and agreed to be in furtherance of a plan for the protection, subdivision, maintenance, improvement and sale of the Property for the purpose of enhancing the value, desirability and attractiveness of the Property. All provisions of this Declaration, including without limitation the easements, uses, obligations, covenants, conditions and restrictions hereof, are hereby imposed as equitable servitudes upon the Property. All of the limitations, restrictions, reservations, rights, easements, conditions and covenants herein shall run with and burden the Property and shall be binding on and for the benefit of all of the Property and all Persons (as

hereinafter defined) having or acquiring any right, title or interest in the Property, or any part thereof, and their successive owners and assigns.

E. Declarant, its successors, assigns and grantees, covenant and agree that the membership in the Association (as hereinafter defined), any easements conveyed therewith and the fee title to each respective Lot conveyed therewith shall not be separated or separately conveyed, and each such membership and easement shall be deemed to be conveyed or encumbered with its respective Lot even though the description in the instrument of conveyance or encumbrance may refer only to the Lot; provided, however, that this restriction upon the severability of the component interests of the Lots shall not extend beyond the period for which the right to partition the Project is suspended in accordance with Section 1359 of the California Civil Code and the provisions of Article X hereof. Any conveyance by an Owner of a Lot, or any portion thereof, shall be presumed to convey the entire Lot, together with a membership in the Association.

ARTICLE I

1. Definitions.

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

1.1 Annexable Territory.

Annexable Territory shall mean the real property described in Exhibit "A" attached hereto and incorporated herein by this reference, all or any portion of which may from time to time be made subject to this Declaration pursuant to Article XVI hereof.

1.2 Architectural Committee or Committee.

Architectural Committee or Committee shall mean the Architectural Review Committee created pursuant to Article IV hereof.

1.3 Articles.

Articles shall mean the Articles of Incorporation of the Association, filed or to be filed in the Office of the Secretary of State of the State of California, as such Articles may be amended from time to time.

1.4 Assessment, Annual.

Annual Assessment shall mean a charge against each Owner and each Owner's Lot, representing a portion of the Common Expenses which are to be paid by each Owner to the Association in the manner and proportions provided herein.

1.5 Assessment, Capital Improvement.

Capital Improvement Assessment shall mean a charge which the Board may from time to time levy against each Owner and each Owner's Lot, representing a portion of the cost to the Association for installation or construction of any capital improvements on any of the Association Property. Such charge shall be levied among all of the Lots in the Project in the same proportions as are Annual Assessments.

1.6 Assessment, Reconstruction.

Reconstruction Assessment shall mean a charge which the Board may from time to time levy against each Owner and each Owner's Lot, representing a portion of the cost to the Association for reconstruction of any capital improvements on any of the Association Property. Reconstruction Assessments shall be levied among the Owners and their Lots in the same proportions as Annual Assessments.

1.7 Assessment, Special.

Special Assessment shall mean (i) a charge which the Board may from time to time levy against each Owner and each Owner's Lot in order to raise funds for unexpected operating or other costs, insufficient operating or reserve funds, or other purposes as the Board in its discretion considers appropriate; or (ii) a charge against a particular Owner directly attributable to, or reimbursable by, the Owner, equal to the cost incurred by the Association for corrective action performed pursuant to the provisions of this Declaration, or a reasonable fine or penalty assessed by the Board, plus interest and other charges on such Special Assessments as provided for in this Declaration. Special Assessments shall not include any late payment penalties, interest charges or costs (including attorneys' fees) incurred by the Association in the collection of Annual, Capital Improvement and Reconstruction Assessments.

1.8 Association.

Association shall mean Victoria Estates Master Association, a California nonprofit corporation (formed pursuant to the Nonprofit Mutual Benefit Corporation Law of the State of California), its successors and assigns.

1.9 Association Property.

Association Property shall mean all of the real and personal property and Improvements to which the Association shall hold fee title or over which the Association shall hold an easement for the common use and enjoyment of the Members as provided herein. The Association Property located in Phase I shall include, without limitation, all of the following: (i) Parcel G and Parcel H of Tract No. 5234-3, as shown on a Subdivision Map filed in Book 146 at Pages 35 to 41, inclusive, of Maps, in the Office of the Ventura County Recorder, and all improvements now or hereafter located thereon; (ii) the Perimeter Wall/Fence, whether located within the boundaries of the Association Property or any of the Lots; and (iii) such other property or easements which are now or hereafter conveyed to the Association pursuant to or in connection with the operation of this Common Interest Development and any Notice of Addition Recorded pursuant to Article XVI of this Declaration. Declarant hereby expressly reserves for the benefit of the Association a nonexclusive easement for access, ingress and egress over the Property and Lots to the extent necessary to perform the maintenance, repair and replacement of the Association Property in accordance with this Declaration.

1.10 Beneficiary.

Beneficiary shall mean a Mortgagee under a Mortgage or a Beneficiary under a Deed of Trust, as the case may be, and the assignees of such Mortgagee or Beneficiary.

1.11 Board or Board of Directors.

Board of Directors or Board shall mean the Board of Directors of the Association.

1.12 Budget.

Budget shall mean a written, itemized estimate of the income and Common Expenses of the Association in performing its functions under this Declaration, which Budget shall be prepared pursuant to the Bylaws.

1.13 Bylaws.

Bylaws shall mean the Bylaws of the Association, as such Bylaws may be amended from time to time.

1.14 Close of Escrow.

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

1.15 Common Expenses.

Common Expenses shall mean those expenses for which the Association is responsible under this Declaration, including, but not limited to, the actual and estimated costs of: maintenance, management, operation, repair and replacement of the Association Property; unpaid Special Assessments, Reconstruction Assessments and Capital Improvement Assessments, the costs of maintenance of the recreational facilities or areas, if any, located in the Project; the costs of any and all utilities metered to more than one Lot (if any) and other commonly metered charges for the Property; the cost of maintenance of clustered mailboxes and address identification signs (if any); the cost of each annual inspection of the Project; the costs of management and administration of the Association including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and other employees; the costs of all gardening, utilities, security, trash pickup and other services benefiting the Association Property; the costs of fire, casualty and liability insurance, workers' compensation insurance, errors and omissions and director, officer and agent liability insurance, and other insurance covering the Association Property, and the directors, officers and agents of the Association; the costs of bonding of the members of the Board; taxes paid by the Association, including any blanket tax assessed against the Property; amounts paid by the Association for discharge of any lien or encumbrance levied against the Property, or portions thereof; and the costs of any other item or items incurred by the Association, for any reason whatsoever in connection with the Property, for the common benefit of the Owners.

1.16 Common Interest Development.

Common Interest Development shall mean and refer to the Project located on the Property.

1.17 Customer Care Program.

Customer Care Program shall mean and refer to the customer service program provided by Declarant to Owners which acquires a Lot from Declarant. The Customer Care program is more particularly described in the Homeowners Manual And Customer Care Program Guide provided by Declarant.

1.18 Declarant.

Declarant shall mean WPH-Oxnard Coastal, LLC, its successors, and any Person, including any Merchant Builder, to which it shall have assigned all or any of its rights hereunder by an express written assignment. Declarant shall provide written notice to all Merchant Builders of any assignment of its Declarant rights.

1.19 Declaration.

Declaration shall mean this Master Declaration of Covenants, Conditions and Restrictions and Reservation of Easements, as it may be amended from time to time.

1.20 Deed of Trust.

Deed of Trust shall mean a Mortgage or a Deed of Trust, as the case may be.

1.21 DRE.

DRE shall mean the California Department of Real Estate and any successors thereto.

1.22 Dwelling Unit.

Dwelling Unit shall mean the structure or structures on a Lot which contain the residential dwelling areas and any garage attached thereto, intended for use by a single Family.

1.23 Family.

Family shall mean one or more natural Persons each related to the other by blood, marriage or adoption, or one or more natural Persons not all so related, but who maintain a common household in a Dwelling Unit.

1.24 FHLMC.

FHLMC shall mean the Federal Home Loan Mortgage Corporation (also known as The Mortgage Corporation) created by Title II of the Emergency Home Finance Act of 1970, and any successors to such corporation.

1.25 Fiscal Year.

Fiscal Year shall mean the fiscal accounting and reporting period of the Association selected by the Board from time to time.

1.26 FNMA.

FNMA shall mean the Federal National Mortgage Association, a government-sponsored private corporation established pursuant to Title VIII of the Housing and Urban Development Act of 1968, and any successors to such corporation.

1.27 GNMA.

GNMA shall mean the Government National Mortgage Association administered by the United States Department of Housing and Urban Development, and any successor to such association.

1.28 Golf Course Facilities.

Golf Course Facilities shall mean the golf course and related facilities located adjacent to the Project.

1.29 Improvements.

Improvements shall mean all structures and appurtenances thereto of every type and kind, including but not limited to, the following (if applicable) located within the Project: Dwelling Units and other buildings, walkways, sprinkler pipes, carports, swimming pools, spas, recreational facilities or areas, roads, driveways, parking areas, fences, screening walls, block walls, retaining walls, awnings, stairs, decks, irrigation systems, drainage systems, landscaping, hedges, windbreaks, the paint on surfaces of any structure, planted trees and shrubs, poles, signs, and water softener fixtures or equipment.

1.30 Land.

Land shall have the meaning set forth in California Civil Code Section 659.

1.31 Limited Warranty.

Limited Warranty shall mean that certain express written warranty known as the “Home Builder Limited Warranty” which is provided by Declarant to Owners who acquires a Lot from Declarant. Claims under the Limited Warranty will be administered by Professional Warranty Service Corporation, and must be resolved by binding arbitration utilizing an arbitration service known as Construction Arbitration Services.

1.32 Lot.

Lot shall mean any residential lot or other parcel of land shown upon any Recorded subdivision map or Recorded parcel map of any portion of the Property.

1.33 Maintenance Funds.

Maintenance Funds shall mean the accounts created for receipts and disbursements of the Association pursuant to Section 5.2 hereof.

1.34 Maintenance Manual.

Maintenance Manual shall mean the maintenance guidelines set forth in the homeowners’ manual binder which may be prepared by the Declarant, a Merchant Builder or their agents and provided to the Association and to Owners, specifying obligations for maintenance of the Association Property by the Association and the Lots by the Owners, as updated and amended from time to time. Each Owner who receives a Maintenance Manual is obligated to provide a copy of such Maintenance Manual to any successor purchaser of such Owner’s Lot.

1.35 Manager.

Manager shall mean the Person, employed by the Association, pursuant to and limited by Section 2.10 hereof, and delegated the duties, power or functions of the Association as limited by said Section.

1.36 Member, Membership.

Member shall mean every Person holding a membership in the Association, pursuant to Section 2.3 hereof. Membership shall mean the property voting and other rights and privileges of Members as provided herein, together with the correlative duties and obligations contained in the Restrictions.

1.37 Merchant Builder.

Merchant Builder shall mean D.R. Horton Los Angeles Holding Company, Inc., a California corporation, its successors, and any Person who acquires any portion of the Annexable Territory for the purpose of improving such real property with residences and related improvements in accordance with this Declaration for resale to the general public.

1.38 Mortgage.

Mortgage shall mean any Recorded mortgage or deed of trust or other conveyance of a Lot or other portion of the Property to secure the performance of an obligation, which conveyance will be reconveyed upon the completion of such performance. The term “Deed of Trust” or “Trust Deed” when used shall be synonymous with the term “Mortgage”.

1.39 Mortgagee, Mortgagor.

Mortgagee shall mean a Person to whom a Mortgage is made and shall include the Beneficiary of a Deed of Trust; Mortgagor shall mean a Person who mortgages his or its property to another (i.e., the maker of a Mortgage), and shall include the Trustor of a Deed of Trust. The term “Trustor” shall be synonymous with the term “Mortgagor” and the term “Beneficiary” shall be synonymous with the term “Mortgagee”.

1.40 Notice and Hearing.

Notice and Hearing shall mean written notice and a hearing before the Board, at which the Owner concerned shall have an opportunity to be heard in person, or by counsel at the Owner’s expense, in the manner further provided in Article XII of the Bylaws.

1.41 Notice of Addition.

Notice of Addition shall mean an instrument Recorded pursuant to Article XVI hereof to annex all or any portion of the Annexable Territory to the Property.

1.42 Owner.

Owner shall mean the record owner, whether one or more Persons, of a fee simple interest in a Lot, including Declarant and any Merchant Builder with respect to each Lot owned by Declarant or such Merchant Builder. The term “Owner” shall include the seller (but not the buyer) under an executory contract of sale. The term “Owner” shall not

include a Mortgagee prior to its acquisition of fee title to the Lot encumbered by its Mortgage.

1.43 Perimeter Wall/Fence.

Perimeter Wall/Fence shall mean and refer to the perimeter wall/fence described and depicted on Exhibit “B” attached hereto and any additional perimeter wall/fence identified in any Supplemental Declaration or Notice of Addition Recorded pursuant to this Declaration. The Perimeter Wall/Fence is subject to the provisions set forth in Section 8.17 of this Declaration. The depiction and location of the Perimeter Wall/Fence is an approximation. The as-built location of the Perimeter Wall/Fence as constructed by Declarant shall be determinative. The Perimeter Wall/Fence in a particular Phase of Development shall be the Perimeter Wall/Fence shown on Exhibit “B” attached hereto which is within or along the boundaries of the Lots in such Phase of Development. The Association’s obligation to maintain the Perimeter Wall/Fence (as set forth in Section 2.7(b) below) within a Phase of Development shall commence upon the first Close of Escrow for the Sale of a Lot in such Phase of Development.

1.44 Person.

Person shall mean a natural individual, a corporation, a partnership, a trust, or any other entity with the legal right to hold title to real property.

1.45 Phase 1.

Phase 1 shall mean all of the real property described in Paragraph A of the Preamble of this Declaration.

1.46 Phase of Development.

Phase of Development or Phase shall mean (a) Phase 1 or (b) all the real property covered by a Notice of Addition Recorded pursuant to Article XVI hereof for which a Final Subdivision Public Report has been issued by the DRE, unless otherwise defined in such Notice of Addition.

1.47 Project.

Project shall mean the Property and all Improvements located therein, including, without limitation, the Association Property and the Lots. The Project is a “common interest development” and a “planned development” as defined in Sections 1351(c) and 1351(k), respectively, of the California Civil Code.

1.48 Property.

Property shall mean (a) Phase 1, and (b) each other Phase of Development described in a Notice of Addition.

1.49 Record, File, Recordation.

Record, File or Recordation shall mean, with respect to any document, the recordation or filing of such document in the Office of the County Recorder of the county in which the Property is located.

1.50 Restrictions.

Restrictions shall mean this Declaration, the Articles, Bylaws and the Rules and Regulations of the Association from time to time in effect.

1.51 Rules and Regulations.

Rules and Regulations shall mean the rules and regulations adopted by the Board pursuant to this Declaration or the Bylaws, as such Rules and Regulations may be amended from time to time.

ARTICLE II

2. Homeowners Association.

2.1 Organization of Association.

The Association is or shall be incorporated under the name of VICTORIA ESTATES MASTER ASSOCIATION, as a corporation not for profit under the Nonprofit Mutual Benefit Corporation Law of the State of California.

2.2 Duties and Powers.

(a) General Duties and Powers. The duties and powers of the Association are those set forth in the Declaration, the Articles and Bylaws, together with the general and implied powers of a nonprofit mutual benefit corporation, generally to do any and all things that a corporation organized under the laws of the State of California may lawfully do which are necessary or proper, in operating for the peace, health, comfort, safety and general welfare of its Members, subject only to the limitations upon the exercise of such powers as are expressly set forth in the Articles, the Bylaws and in this Declaration. The

Association shall further have the right to install or construct capital Improvements on the Association Property. The Association may at any time, and from time to time, reconstruct, replace or refinish any Improvement or portion thereof upon the Association Property in accordance with the original design, finish or standard of construction of such Improvement, and may also replace damaged trees or other vegetation and plant trees, shrubs and ground cover upon any portion of the Association Property. The Association may employ personnel necessary for the effective operation and maintenance of the Association Property, including the employment of legal, management and accounting services. The Association shall make available for inspection by any prospective purchaser of a Lot, any Owner of a Lot, and the Beneficiaries, insurers and guarantors of the first Mortgage on any Lot, current copies of the Declaration, the Articles, the Bylaws, and the Rules and Regulations and all other books, records, and financial statements of the Association. The Association shall, acting through the Board, execute all necessary documents in order to effectuate the Limited Warranty, including without limitation, the "Limited Warranty Validation Form" attached to the Limited Warranty.

(b) Litigation. Subject to the provisions of this Declaration, the Association shall have the power, but not the duty, to initiate, defend, settle or intervene in mediation, arbitration, judicial or administrative proceedings on behalf of the Association in matters pertaining to (a) the application or enforcement of this Declaration and (b) damage to the Association Property; provided, however that no representative of Declarant on the Board shall vote on the initiation of any claim under California Civil Code Section 895 et seq., such that Declarant shall have no control over the Association's ability to decide whether to initiate a claim under such statutory provisions and in the event of such a vote, the affirmative vote of a majority of the non-Declarant representatives on the Board shall be binding so long as a quorum of the Board is present at any meeting where such vote is taken. The Association and not the individual Members shall have the power to pursue any claims or other actions using the non-adversarial proceedings for construction defects in the Association Property pursuant to Civil Code Section 895 et seq., and any successor statutes or laws. Any recovery by the Association with respect to any damage to or defect in the Association Property shall be utilized solely for the purpose of paying for the costs of obtaining the recovery and for correcting such damage or defect.

(c) Maintenance Manuals. The Association shall maintain at the offices of the Association a copy of the Maintenance Manual provided by Declarant to the Owners who acquired a Lot from Declarant, and shall make available to each such Owner upon request a copy of the Maintenance Manual for the Owner's Lot. The Association shall have the right to charge the requesting Owner a fee for the copying of such Maintenance Manual. The Association shall also comply with provisions of the Maintenance Manual provided by Declarant to the Association. The Board may, from time to time, make appropriate revisions to the Association's Maintenance Manual based on the Board's review thereof, to update such manual to provide for maintenance according to current industry practices so long as such changes do not reduce the useful life or functionality items being maintained.

(d) Members' Approval of Construction Defect Actions. In the event that any claim or other actions brought by the Association under California Civil Code Section 895 et seq., and any successor statutes or laws, involving allegations of construction defects relating to the Association Property is not resolved pursuant to the non-adversarial procedures set forth in California Civil Code Sections 910 through 938 and any successor statutes or laws, the Association shall not initiate an action or arbitration under Section 15.4 or otherwise without first obtaining the consent of the Owners other than Declarant, constituting a quorum of more than fifty percent (50%) of the Owners of the Association casting a majority of the votes at a meeting or election of the Association conducted in accordance with the provisions of California Corporations Code Sections 7510 et. seq. and 7613 and any successor statutes or laws.

2.3 Membership.

Every Owner, upon becoming the Owner of a Lot, shall automatically become a Member of the Association, and shall remain a Member thereof until such time as such Member's ownership ceases for any reason, at which time such Member's Membership in the Association shall automatically cease. Ownership of a Lot shall be the sole qualification for Membership in the Association. All Memberships shall be appurtenant to the Lot conveyed, and with the exception of Declarant and any Merchant Builder, a Person shall be deemed an Owner of a Lot only upon Recordation of a deed conveying the Lot to such Person. Except as may otherwise be expressly provided herein, the rights, duties, privileges and obligations of all Members of the Association shall be as provided in the Restrictions.

2.4 Transfer.

The Membership held by any Owner shall not be transferred, pledged or alienated in any way, except upon the sale or encumbrance of such Owner's Lot, and then only to the purchaser or Beneficiary of such Lot. A prohibited transfer is void, and will not be reflected upon the books and records of the Association. A Class A Member who has sold such Member's Lot to a contract purchaser under an agreement to purchase shall be entitled to delegate to the contract purchaser such Member's Membership rights in the Association. The delegation shall be in writing and shall be delivered to the Board before the contract purchaser may vote. However, the contract seller shall remain liable for all charges and assessments attributable to such seller's Lot until fee title to the Lot sold is transferred, as further provided in Section 5.1 of this Declaration. If the Owner of any Lot fails or refuses to transfer the Membership registered in such Owner's name to the purchaser of the Lot upon transfer of fee title thereto, then upon receipt of satisfactory evidence of such transfer the Board of Directors shall have the right to record the transfer upon the books of the Association and to allow the purchaser to vote at meetings of the Association. The Association may levy a reasonable transfer fee against a new Owner and such Owner's Lot (which fee shall be added to the Annual Assessment chargeable to such new Owner) to reimburse the Association for the administrative cost of transferring the membership to the

new Owner on the records of the Association provided such fee does not exceed the Association's actual cost involved in changing its records of ownership.

2.5 Classes of Membership.

The Association shall have three (3) classes of voting Membership.

Class A. Class A Members shall originally be all Owners except the Declarant and the Merchant Builders, for so long as there exists a Class B Membership. Class A Members shall be entitled to one (1) vote for each Lot owned by such Class A Member and subject to assessment. Declarant and Merchant Builders shall become a Class A Member with regard to Lots owned by Declarant and Merchant Builders upon conversion of Declarant's and Merchant Builders' Class B Membership as provided below. When more than one (1) Person owns any Lot, all of those Persons shall be Members. The vote of such Lot shall be exercised as they among themselves determine in accordance with Section 2.6, but in no event shall more than one (1) Class A vote be cast for any Lot.

Class B. The Class B Member shall be Declarant and the Merchant Builders. The Class B Member shall be entitled to three (3) votes for each Lot owned and subject to assessment, provided that the Class B Membership shall cease and be converted to Class A Membership immediately upon the first to occur of the following events:

(1) The fifth anniversary of the first Close of Escrow in the Phase of Development for which a Final Subdivision Public Report was most recently issued; or

(2) The tenth anniversary of the first Close of Escrow pursuant to the Final Subdivision Public Report for Phase I.

A Class B Member shall have the right to cause earlier conversion of its membership to Class A by so notifying the Secretary of the Association in writing.

Class C. In addition to other memberships it may hold, Declarant shall be the sole Class C Member of the Association. The Class C membership shall be considered a part of the Association's voting power for the sole purpose of the Class C Member electing a majority of the directors of the Association and reference to "each class of membership" in this Declaration or in the Bylaws or the Articles shall not refer to Class C membership for any purpose other than election of Association directors. The directors which are not elected by the Class C Member shall be elected as set forth in the Bylaws. The Class C membership shall forever cease on the happening of any of the following events, whichever occurs earlier:

(1) The fifth anniversary of the first Close of Escrow in the Phase of Development for which a Final Subdivision Public Report was most recently issued; or

(2) The tenth anniversary of the first Close of Escrow pursuant to the Final Subdivision Public report for Phase I.

The Class C member shall have the right to cause early termination of the Class C membership or to reduce the number of directors which the Class C member is entitled to elect by so notifying the Secretary of the Association in writing.

Anything herein stated to the contrary notwithstanding, this Section shall not be amended to affect Class B or C voting rights without the Declarant's and the Merchant Builders' prior written consent.

2.6 Voting Rights.

(a) All voting rights shall be subject to the Restrictions. Except as provided in Section 14.2 of this Declaration and Section 4.9 of the Bylaws, as long as there exists a Class B Membership, any provision of this Declaration, the Articles or Bylaws which expressly requires the vote or written consent of a prescribed majority of the voting power of the Members of the Association other than Declarant or Merchant Builders for action to be taken by the Association, is not intended to preclude Declarant or Merchant Builders from casting votes attributable to Lots which Declarant or the Merchant Builders owns, and shall require the approval of such prescribed majority of the voting power of each class of Membership. Except as provided in Section 14.2 of this Declaration and Section 4.9 of the Bylaws, when the Class B Membership has terminated, any provision of this Declaration, the Articles or Bylaws which expressly requires the vote or written consent of a prescribed majority of the voting power of the Members of the Association other than Declarant or Merchant Builders for action to be taken by the Association, is not intended to preclude Declarant or Merchant Builders from casting votes attributable to Lots which Declarant or Merchant Builders own, and shall require the vote or written consent of Owners representing such prescribed majority of both the total voting power of the Association and the voting power of the Association residing in Owners other than Declarant or the Merchant Builders.

(b) At any meeting of the Association, each Owner (except as otherwise provided in Section 2.5 with respect to the voting power of Declarant and Merchant Builders), shall be entitled to cast no more than one (1) vote for each Lot owned by such Owner. Where there is more than one (1) record Owner of a Lot (collectively, "Co-owners" and each a "Co-owner"), all of those Co-owners shall be Members and may attend any meeting of the Association, but only one (1) of those Co-owners shall be entitled to exercise the single vote to which the Lot is entitled. Co-owners owning the majority interests in a Lot shall from time to time designate in writing one (1) of their number to vote. Fractional votes shall not be allowed, and the vote for each Lot shall be exercised, if at all, as a unit. Where no voting Co-owner is designated or if the designation has been revoked, the

vote for the Lot shall be exercised as the Co-owners owning the majority interests in the Lot mutually agree. Unless the Board receives a written objection in advance from a Co-owner, it shall be conclusively presumed that the voting Co-owner is acting with the consent of the other Co-owners. No vote shall be cast for any Lot if the Co-owners present in person or by proxy owning the majority interests in such Lot cannot agree to said vote or other action. The nonvoting Co-owner or Co-owners shall be jointly and severally responsible for all of the obligations imposed upon the jointly-owned Lot and shall be entitled to all other benefits of ownership. All agreements and determinations lawfully made by the Association in accordance with the voting percentages established herein, or in the Bylaws of the Association, shall be deemed to be binding on all Owners, their successors and assigns.

2.7 Repair and Maintenance by the Association.

(a) Maintenance Standards. Except as provided in Section 2.9 below, the Association shall paint, maintain, repair and replace the Association Property, and all Improvements thereon, including the Perimeter Wall/Fence, or shall contract for such maintenance, repair and replacement to assure maintenance of the Association Property, and all Improvements thereon, in a clean, sanitary and attractive condition reasonably consistent with the level of maintenance reflected in the most current Budget on file with and approved by the DRE and the maintenance obligations and schedules set forth in the Maintenance Manual; provided, however, except as expressly provided herein, in no event shall the Association be responsible for or obligated to perform those items of maintenance, repair or replacement of the Lots, the maintenance of which is the responsibility of the Owner thereof as provided in Section 2.9 below, nor shall the Association be responsible for or obligated to perform those items of maintenance, repair or replacement of the Association Property (and Improvements thereon), the maintenance of which is the responsibility of a governmental or quasi-governmental entity.

Subject to the qualifications set forth above in this Section 2.7(a), the Board shall determine, in its sole discretion, the level and frequency of maintenance of the Association Property.

(b) Maintenance Items. Without limiting the generality of the foregoing, the Association shall without limitation have the following maintenance rights and obligations pertaining to this Project:

(i) The Association shall be responsible for the maintenance, repair and payment of all centrally-metered utilities, water charges, and mechanical and electrical equipment servicing the Association Property;

(ii) The Association shall be responsible for the repair and maintenance, in a clean and well-maintained condition, of all sidewalks, private streets, driveways, parking areas and other means of ingress and egress located in the Association Property, as well as any Improvements therein or thereon, including, without limitation, all signage, street lights, fire hydrants and reflective pavement markers;

(iii) The Association shall be responsible for the maintenance of any recreational facilities on the Association Property;

(iv) The Association shall be responsible for the maintenance of all landscaping located on the Association Property (including, without limitation, maintaining vegetation necessary to avoid erosion, controlling weed growth and providing for irrigation, within the limits of drought restrictions, if any, and providing, maintaining, and repairing sprinklers and other landscape maintenance equipment and facilities as necessary) in a fertilized, trimmed and otherwise attractive and first-class condition and in accordance with all applicable legal requirements;

(v) The Association shall be responsible for the repair, maintenance, and replacement of the structure and the exterior surfaces of the Perimeter Wall/Fence, regardless of whether located on the Association Property or within any Lot (the interior surface of those portions of the Perimeter Wall/Fence which abut the yard area of the individual Lots shall be maintained by the Lot Owners pursuant to Section 2.9 below). The Association is hereby granted an easement across the Lots as necessary to discharge of its responsibility for maintenance of the Perimeter Wall/Fence;

(vi) The Association shall only use electrostatic paint on any wrought iron or tubular steel fence which abuts the adjacent golf course facility;

(vii) The Association shall be responsible for maintenance of all fire lanes in the Association Property, if any, in compliance with the applicable city or county Fire Code and the Restrictions, and shall maintain all markers located on Association Property indicating the location of fire hydrants on the Property and the red curbing and signage indicating the “no parking” areas on the Property;

(viii) The Association shall review the contents of the Storm Water Pollution Prevention Plan (“SWPPP”) for the Property, and to adhere to all requirements of the SWPPP and applicable stormwater statutes, laws, regulations and ordinances; and

(ix) The Association shall have the right, without obligation, to perform all corrective janitorial, landscaping and repair work within any Lot if the Owner thereof is required to do such work pursuant to the Restrictions and fails to perform such work.

(c) Gate Staffing. The Association may, acting through the Board, elect to provide or contract to provide a guard at the main entry gate in to the Project. The Board shall have the right to commence and/or suspend the guard service at any time.

(d) Charges to Owners. All costs of maintenance, repairs, replacements, and provision of any guard or staffing at the entry gate for the Property shall be paid for as Common Expenses out of the Association Maintenance Funds as provided in this Declaration. It shall be the affirmative duty of the Board of Directors to require strict compliance with all provisions of this Declaration and to cause the Property to be inspected by the Architectural Committee for any violation thereof. The cost of any maintenance, repairs or replacements by the Association which arises out of, or is caused by, the act or inaction of an Owner or such Owner's Family, tenants, guests, invitees or agents shall, after Notice and Hearing, be levied by the Board as a Special Assessment against such Owner.

2.8 Unsegregated Real Property Taxes.

To the extent not assessed to or paid by the Owners, the Association shall pay all real and personal property taxes and assessments levied upon any portion of the Property. In addition, if all of the Lots in a Phase of Development are taxed under a blanket tax bill covering all of such Phase, each Owner shall pay such Owner's proportionate share of any installment due under the blanket tax bill to the Association at least ten (10) days prior to the delinquency date; the Association shall transmit the taxes to the appropriate tax collection agency on or before the delinquency date. Blanket taxes shall be allocated equally among the Owners and their Lots in such Phase, based upon the total number of Lots in such Phase. The Association shall, at least forty-five (45) days prior to the delinquency date of any blanket tax installment, deliver to each Owner in such Phase a copy of the tax bill, along with a written notice setting forth the Owner's obligation to pay such Owner's proportionate share of the tax installment and the potential additional charges to the Owner for failure to comply. The Association shall pay the taxes on behalf of any Owner who does not pay his proportionate share. The Association shall add to the Annual Assessment of a delinquent Owner the amount of any sum advanced, plus interest at the rate of ten percent (10%) per annum, and any amount necessary to reimburse the Association for any penalty or late charge actually assessed in connection with the blanket tax bill for a Phase of Development, which late charge results from the failure of the delinquent Owner to make timely payment of his proportionate share of the taxes. Until the Close of Escrow for the sale of ninety-percent (90%) of the Lots in the Project, the foregoing provisions relating to the collection of taxes in connection with a blanket tax bill on all or any portion of the Project may not be amended without the express written consent of Declarant and the Merchant Builders.

2.9 Repair and Maintenance by Owners.

Each Owner shall maintain, repair, replace, paint, paper, plaster, tile, finish and restore or cause to be so maintained, repaired, replaced and restored, at his sole expense, all portions of his Lot and all Improvements therein, in a clean, sanitary and attractive condition in accordance with the original construction design of the Improvements in the Project, the maintenance obligations and schedules set forth in the Maintenance Manual, and all applicable governmental rules, restrictions and requirements. Such maintenance by each Owner shall include, without limitation, all portions of the interior, exterior and structural integrity of his Dwelling Unit, repair and replacement of the roof of the Dwelling Unit, replacement of all glass areas of an Owner's Dwelling Unit, and the repair

and replacement of the internal and external telephone wiring, drainage, plumbing, cooling and heating systems and related mechanical and electrical equipment, and other utility lines which serve that Owner's Dwelling Unit. The Owner shall be entitled to reasonable access over the Association Property for such purposes, subject to reasonable limitations imposed by the Association. Each Owner is obligated to provide a copy of the Maintenance Manual to any successor purchaser of such Owner's Lot.

Each Owner shall be responsible for installing all yard landscaping (except for those portions of yard landscaping installed by Declarant or the Merchant Builders, if any) for such Owner's Lot within ninety (90) days of Close of Escrow on such Lot. The Association shall strictly enforce the foregoing landscaping installation requirement. Each Owner shall also be responsible for maintaining, repairing and replacing all portions of the front, side, rear and any other yard area in such Owner's Lot and any parkway located between the street curb and the front and/or side yard of the Owner's Lot ("Parkway"), including, without limitation, any surface or sub-surface drainage system located in the Owner's Lot or in the adjacent Parkway(s), and any trees and manufactured slopes located therein, in a neat and orderly condition. Each Owner's maintenance obligations shall include performing all necessary landscaping and gardening to properly maintain and periodically replace trees, plants, grass and other vegetation located in the yard area and parkways for which such Owner is responsible, subject to the approval of the Architectural Committee. Each Owner is hereby granted an easement across the Association Property as necessary to discharge its responsibility for maintenance of the yard areas and Parkways in accordance with the above.

Each Owner shall be responsible for maintaining, repairing and replacing all fences or walls (other than the Perimeter Wall/Fence) defining the exterior of his Lot, regardless of whether such fences or walls are located on his Lot or abut the yard area of his Lot, provided that with respect to such fences or walls (other than the Perimeter Wall/Fence), each Owner shall share maintenance of any party wall defining the exterior of his residential Lot in accordance with the provisions of Article XVII below. Each Owner shall only use electrostatic paint for maintenance and repainting of any wrought iron or tubular steel fencing on his Lot which abuts the adjacent golf course facility. Upon any damage to or destruction of any fence or wall for which maintenance responsibility is allocated to an Owner hereunder, the responsible Owner(s) shall promptly restore same (using, so far as possible, materials identical to those used originally by Declarant or the applicable Merchant Builder) to its original condition as constructed by Declarant or the applicable Merchant Builder (the Architectural Committee shall strictly enforce the terms of this provision). Each Owner is hereby granted an easement across the Association Property as necessary to discharge its responsibility for maintenance of the fences and walls on his Lot in accordance with the above.

Each Owner shall be responsible for maintenance of the interior surface of any Perimeter Wall/Fence which abuts the yard area of such Owner's Lot (the Association shall be responsible for maintaining the structure and the exterior surface of such Perimeter Wall/Fence, as set forth in Section 2.7 above).

Each owner shall be responsible for maintenance and repair of the fire service backflow device located at his Residence. Such backflow device must be serviced annually by a certified professional.

Each Owner shall pay when due all charges for any utility service which is separately metered to his Lot.

Each Owner shall be responsible for adopting an inspection and preventive program for the prevention and eradication of infestation by wood destroying pests or other organisms in his Lot. All costs involved in maintaining the inspection and preventive program as well as repairing and replacing the damaged Improvements in an Owner's Lot when the need for such maintenance, repair or replacement is the result of wood destroying pests or organisms shall be an expense of the Owner.

If any Owner shall permit any Improvement, the maintenance of which is the responsibility of such Owner, to fall into disrepair or to become unsafe, unsightly or unattractive, or to otherwise violate this Declaration, or any applicable governmental rules, restrictions, or requirements, the Board shall have the right to seek any remedies at law or in equity which it may have. In addition, the Board shall have the right, but not the duty, after Notice and Hearing as provided in the Bylaws, to enter upon such Owner's Lot to make such repairs or to perform such maintenance and to charge the cost thereof to the Owner. Said cost shall be a Special Assessment enforceable as set forth in this Declaration.

No Owner shall interfere with the exercise by the Association of its right to maintain the Association Property or perform any of its obligations pertaining to this Project.

Each Owner acknowledges the existence of the SWPPP (as defined in 2.7(b)(vii)) for the Property, and further acknowledges the receipt of the SWPPP from the Declarant, a Merchant Builder or the Association. Each Owner agrees to review the contents of the SWPPP and the restrictions set forth in Section 8.24 below, and to adhere to all requirements of the SWPPP, Section 8.24, and applicable storm water statutes, laws, regulations and ordinances. In addition to providing each Owner with a copy of the SWPPP, the Association will maintain a copy of the SWPPP for review by each Owner. Each Owner represents and warrants that it will inform its contractors and subcontractors of the existence of and contents of the SWPPP and the restrictions in Section 8.24 and will ensure that its contractors and subcontractors comply with the SWPPP, Section 8.24 and all other applicable storm water statutes, laws, regulations and ordinances. All washout/clean up requiring the use of water, including but not limited to drywall finishing materials, paint, concrete or stucco work, shall be completed per the SWPPP and at the DESIGNATED WASHOUT AREA ONLY. Without limiting any other indemnification provisions pursuant to law or specified in this Declaration, each Owner shall, to the fullest extent permitted by law, indemnify, defend (at Owner's sole cost, and with legal counsel approved by Declarant, the Merchant Builders and the Association) and hold Declarant, the Merchant Builders, the Association and their officers, agents, employees and representatives harmless from and against any and all claims, demands, losses, damages, disbursements, liabilities, obligations,

finances, penalties, injuries, fees costs and expenses, including but not limited to attorney's fees, which directly or indirectly arise out of or are in connection with any violation of the SWPPP, Section 8.24, or applicable statutes, rules, regulations, and ordinances governing storm water discharges.

2.10 Use of Agent.

The Board of Directors, on behalf of the Association, may contract with a Manager for the performance of maintenance and repair and for conducting other activities on behalf of the Association, as may be determined by the Board. The maximum term of any such contract ("Management Contract") shall be one (1) year, unless a longer term is (i) contained in a management contract, the terms of which have been approved by the DRE, or (ii) approved either by vote or written assent of a majority of the voting power of the Association residing in members other than Declarant or Merchant Builders, in which case the maximum term of the Management Contract shall be three (3) years. The maximum term of any contract providing for Declarant's services to the Association or the Project shall also be three (3) years. Each such contract for Declarant's services and each Management Contract shall provide for its termination by either party thereto without cause and without payment of a termination fee upon no more than ninety (90) days' written notice to the other party.

ARTICLE III

3. Rights in Association Property.

3.1 Association Easement; Jurisdiction of Association.

The Association shall have an easement over the Property for performing its duties and exercising its powers described in this Declaration. The Association's obligations to maintain the Association Property in any Phase of Development shall commence on the date Annual Assessments commence on Lots in such Phase. Until commencement of Annual Assessments on Lots in any Phase, the Association Property in such Phase shall be maintained by Declarant or the applicable Merchant Builder.

3.2 Partition.

Except as provided in this Declaration, there shall be no judicial partition of the Association Property, or any part thereof, for the term of the Project, nor shall Declarant, any Merchant Builder, any Owner or any other Person acquiring any interest in any Lot in the Project seek any such judicial partition.

3.3 Members' Easements in Association Property.

Subject to the provisions of this Declaration and for the purposes set forth herein, every Member of the Association shall have, for himself, his Family, his tenants and guests, a nonexclusive easement of access, ingress, egress, use and enjoyment of, in and to

the Association Property, and such easements shall be appurtenant to and shall pass with title to every Lot in the Project.

3.4 Extent of Members' Easements.

The rights and easements of use and enjoyment of the Association Property created by this Declaration shall be subject to the Restrictions, which include, without limitation, the following:

(a) The right of the Board to suspend the rights and easements of any Member, and the Persons deriving such rights and easements from any Member, for use and enjoyment of any recreational facilities located on the Association Property, for any period during which the payment of any Annual, Special, Capital Improvement or Reconstruction Assessment against the Member and his Lot remains delinquent, and, after Notice and Hearing as provided in the Bylaws, to suspend such rights and easements for the period set forth in the Bylaws for any violation of the Restrictions, it being understood that any suspension of use and enjoyment of the recreational facilities for either nonpayment of any Assessment or breach of the Restrictions shall not constitute a waiver or discharge of the Member's obligation to pay assessments as provided in this Declaration, nor shall it in any way impinge on any Member's rights of access to or use of such Member's Lot;

(b) The right of the Association to consent to or otherwise cause the construction of additional Improvements on the Association Property and to consent to or otherwise cause the alteration or removal of any existing Improvements on the Association Property for the benefit of the Members of the Association;

(c) The right of the Association, acting through the Board, to grant, consent to, or join in the grant or conveyance of easements, licenses or rights-of-way in, on or over the Association Property for purposes not inconsistent with the intended use of the Property as a residential planned development, including, without limitation, the granting of exclusive easements to Owners over portions of the Association Property to conform the boundaries of the Association Property to the as-built location of Improvements installed or constructed by Declarant or the Merchant Builders;

(d) The rights and reservations of Declarant and Merchant Builders as set forth in this Declaration;

(e) The right of the Association, acting through the Board, to reasonably restrict access to roofs, maintenance and landscaped areas and similar areas of the Property, and to restrict or prohibit access to any portion of the Association Property containing drainage system improvements; provided, however, the provisions of this Section 3.4(e) shall not be used or applied to

restrict a Member's right of access to the roof of such Member's personal Dwelling Unit for purposes of maintenance and repair thereof;

(f) The right of the Association to reasonably limit the number of guests and tenants of the Owners using the Association Property;

(g) The right of the Association, acting through the Board, to establish uniform Rules and Regulations for the use of the Association Property, as provided in this Declaration;

(h) The right of the Association in accordance with the Articles, Bylaws and this Declaration, with a vote or written assent of sixty-seven percent (67%) of the voting power of the Association, to borrow money for the purpose of improving, repairing, or adding to the Association Property, and in aid thereof, subject to the provisions of Article XII of this Declaration, to mortgage, pledge, encumber by deed of trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, provided that the rights of such Mortgagee shall be subordinated to the rights of the Owners; and

(i) The right of the Association, subject to the provisions of Article XII of this Declaration, to dedicate, release, alienate, or transfer the Association Property to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members.

3.5 Delegation of Use.

Any Member entitled to the right and easement of use and enjoyment of the Association Property may delegate his right to use and enjoyment of the Association Property to his tenants, contract purchasers or subtenants who reside in his Lot, subject to reasonable regulation by the Board. An Owner who has made such a delegation of rights shall not be entitled to use and enjoyment of the recreational facilities or equipment of the Property, if any, for so long as such delegation remains in effect.

3.6 Waiver of Use.

No Member may exempt himself from personal liability for Assessments duly levied by the Association, or effect the release of his Lot from the liens and charges thereof, by waiving use and enjoyment of the Association Property or by abandoning his Lot.

3.7 Damage by Member.

Each Member shall be liable to the Association for any damage to the Association Property not fully reimbursed to the Association by insurance (including, without limitation, any deductible amounts under any insurance policies against which the Association files a claim for such damage) if the damage is sustained because of the negligence, willful misconduct or unauthorized or improper installation or maintenance of

any Improvement by the Member, his Family, guests, tenants or invitees, or any other Persons deriving their right and easement of use and enjoyment of the Association Property from the Member, or his or their respective Family and guests, both minor and adult. However, the Association, acting through the Board, reserves the right to determine whether any claim shall be made upon the insurance maintained by the Association, and the Association further reserves the right, after Notice and Hearing as provided in the Bylaws, to levy a Special Assessment equal to the increase, if any, in insurance premiums directly attributable to the damage caused by the Member or the Person for whom the Member may be liable as described above. In the case of joint ownership of a Lot, the liability of the owners shall be joint and several, except to the extent that the Association shall have previously contracted in writing with the joint owners to the contrary. After Notice and Hearing as provided in the Bylaws, the cost of correcting the damage to the extent not reimbursed to the Association by insurance shall be a Special Assessment against such Member's Lot, and may be enforced as provided herein.

ARTICLE IV

4. Architectural Review Committee.

4.1 Members of Committee.

The Architectural Review Committee sometimes referred to in this Declaration as the "Architectural Committee" or the "Committee," shall consist of three (3) members. The initial members of the Committee shall consist of representative of Declarant and D.R. Horton. Subject to the following provisions, Declarant and D.R. Horton shall have the right and power at all times to appoint or remove a majority of the members of the Architectural Committee or to fill any vacancy of such majority until either (i) Close of Escrow has occurred for the sale of ninety percent (90%) of all the subdivision interests in the overall development, or (ii) five (5) years following the date of original issuance of the Final Subdivision Public Report for Phase 1, whichever occurs earlier. Commencing one (1) year from the issuance of the Final Subdivision Public Report for Phase 1, the Board shall have the power to appoint and remove one (1) member of the Architectural Committee. Following termination of Declarant's and D.R. Horton's rights to appoint all or a portion of the members of the Committee pursuant to this Section 4.1, the Board shall have the power to appoint and remove all of the members of the Architectural Committee. Committee members appointed by the Board shall be from the Membership of the Association, but Committee members appointed by Declarant and D.R. Horton need not be Members of the Association. Board members may also serve as Committee members.

4.2 Review of Plans and Specifications.

The Committee shall consider and act upon any and all plans and specifications submitted for its approval under this Declaration and perform such other duties as from time to time shall be assigned to it by the Board, including the inspection of construction in progress to assure its conformance with plans approved by the Committee. No construction, alteration, removal, relocation, repainting, demolishing, addition,

modification, decoration, redecoration or reconstruction of any Improvement, including without limitation, landscaping and the alteration of any established drainage pattern, plan, or grade on any portion of the Property, shall be commenced or maintained, until the plans and specifications therefore showing the nature, kind, shape, height, width, color, materials and location of the same shall have been submitted to the Committee and approved in writing by the Committee; provided, however, that any Improvement may be repainted without Committee approval, so long as the Improvement is repainted the identical color with which it was last painted in compliance with all applicable Restrictions.

Without limiting the generality of this Article IV, the provisions of this Article IV shall be subject to the provisions of California Civil Code Section 714 when applied to the construction, installation, alteration and modification of solar energy equipment. The Owner submitting the plans ("Applicant") shall obtain a written, dated receipt for the plans and specifications from an authorized agent of the Committee and shall submit one set of the plans and specifications by registered or certified mail, postage prepaid, return receipt requested, addressed to the principal office of the Association, or such other address as may be established from time to time by the Board. Until changed by the Board, the address for the submission of such plans and specifications shall be the principal office of the Association. The Committee shall approve proposals or plans and specifications submitted for its approval only in writing and only if it deems that the construction, alterations, or additions contemplated thereby in the locations indicated will not be detrimental to the appearance of the surrounding area of the Property as a whole, that the appearance of any structure affected thereby will be in harmony with the surrounding structures, that the construction thereof will not detract from the beauty, wholesomeness and attractiveness of the Association Property or the enjoyment thereof by the Members, and that the upkeep and maintenance thereof will not become a burden on the Association.

The Committee may condition its written approval of proposals or plans and specifications for any Improvement (1) upon the Applicant's furnishing the Association with security acceptable to the Association against any mechanic's lien or other encumbrance which may be Recorded against the Property as a result of such work, (2) on such changes therein as it deems appropriate, (3) upon the Applicant's agreement to grant appropriate easements to the Association for the maintenance of the Improvements, (4) upon the Applicant's agreement to install (at its sole cost) water, gas, electrical or other utility meters to measure any increased consumption, (5) upon the Applicant's agreement to reimburse the Association for the cost of maintenance, (6) upon the Applicant's agreement to complete the proposed work within a stated period of time, or (7) upon all of the above, and may require submission of additional plans and specifications or other information prior to approving or disapproving material submitted.

The Committee may from time to time adopt, promulgate and amend rules or guidelines which, among other matters, may set forth design and architectural standards, procedures for the submission of plans for approval, requirements for a fee to accompany each application for approval, and/or additional factors which it will take into consideration in reviewing submissions. The Committee may provide that the amount of the fee shall be uniform, or that it be determined in any other reasonable manner, such as by the reasonable

cost of the construction, alterations or additions contemplated. The Committee may require such detail in plans and specifications submitted for its review as it deems proper, including without limitation, floor plans, site plans, drainage plans, elevation drawings and description or samples of exterior material and colors. Until receipt by the Committee of any required plans and specifications, the Committee may postpone review of any plan submitted for approval.

Decisions of the Committee and the reasons for the decisions shall be transmitted by the Committee to the Applicant in writing at the address set forth in the application for approval, within forty-five (45) days after receipt by the Committee of all materials required by the Committee. No purported oral or verbal approval of the Committee shall be permitted and any approval, to be binding upon the Committee and the Association, shall be in writing. In no event will any application for approval or any proposal, plans, or specifications be deemed approved based on the passage or lapse of time; any approval must be by affirmative written action of the Committee to be effective. Notwithstanding approval of any application, proposal, plans, or specifications by the Committee, no Applicant shall undertake any construction or other activity subject to review of the Committee unless, as a separate and independent matter, the Applicant has also met any review or permit requirements of the city or county in which the Property is located prior to making any alterations or Improvements permitted hereunder and has obtained all permits necessary to legally authorize such construction or other activity.

4.3 Condition of Approval.

As a condition to approval of any requested architectural change, modification, addition, or alteration, an Owner, on behalf of himself or herself and his or her successors-in-interest, shall be deemed to have agreed to assume all responsibilities for maintenance, repair, replacement and insurance of such change, modification, addition, or alteration, unless otherwise agreed to in writing by the Board of Directors. It is the responsibility of every Owner of a Lot to determine for himself or herself what architectural modifications have been made to his or her Lot by any predecessor-in-interest. In the discretion of the Board or the Committee, an Owner may be required to confirm and acknowledge such condition of approval by written instrument in recordable form acknowledged by such Owner on behalf of himself or herself and all successors-in-interest.

4.4 Commencement of Construction.

All architectural changes, modifications and improvements approved by the Committee hereunder must be commenced within one (1) year from the date of approval. If not commenced within one (1) year from the date of such approval, then such approval shall be deemed revoked by the Committee, unless the Committee gives a written extension for commencing the work prior to the expiration of said one (1) year period. All work approved by the Committee hereunder shall be completed in its entirety within ninety (90) days from the date of commencement, unless otherwise agreed in writing by the Committee. All approved architectural changes, modifications and improvements must be completed in

their entirety, and an Owner may not construct only a portion or part of an approved architectural change, modification, or improvement.

4.5 Meetings of the Committee.

The Committee shall meet from time to time as necessary to perform its duties hereunder. The Committee may from time to time by resolution unanimously adopted in writing designate a Committee Representative (who may, but need not, be one of its members) to take any action or perform any duties for and on behalf of the Committee, except the granting of variances pursuant to Section 4.10. In the absence of such designation, the vote of a majority of the Committee confirmed by contemporaneous written record executed by one or more members of the Committee or the written consent of a majority of the Committee taken without a meeting, shall constitute an act of the Committee.

4.6 No Waiver of Future Approvals.

The approval of the Committee of any proposals or plans and specifications or drawings for any work done or proposed in connection with any matter requiring the approval and consent of the Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent to any similar proposals, plans and specifications, drawings or matter subsequently or additionally submitted for approval or consent. Each Owner acknowledges that the members of the Board of Directors and the Committee will change from time to time and that interpretation, application, and enforcement of the architectural standards may vary accordingly.

4.7 Compensation of Members.

The members of the Committee shall receive no compensation for services rendered, other than reimbursement for expenses incurred by them in the performance of their duties hereunder.

4.8 Correction of Defects.

Inspection of work and correction of defects therein shall proceed as follows:

(a) The Committee or its duly authorized representative may at any time inspect any Improvement for which approval of plans is required under this Article IV. However, the Committee's right of inspection of Improvements for which plans have been submitted and approved shall terminate one hundred twenty (120) days after the work of Improvement has been completed and the respective Owner has given written notice of its completion to the Committee. The notice of completion shall be delivered by registered or certified mail, postage prepaid, return-receipt requested, addressed to the principal office of the Association, or such other address as may be established from time to time by the Board. The Committee's rights of inspection shall not terminate pursuant to this paragraph if plans for the work of Improvement have not previously been submitted to and approved by the

Committee or if the notice of completion is not properly given. If, as a result of such inspection, the Committee finds that the Improvement was done without obtaining approval of the plans therefor or was not done in substantial compliance with the plans approved by the Committee, it shall notify the Owner in writing of failure to comply with this Article IV, specifying the particulars of noncompliance. The Committee shall have the authority to require the Owner to take such action as may be necessary to remedy the noncompliance.

(b) If upon the expiration of sixty (60) days from the date of such notification, the Owner has failed to remedy the noncompliance, the Committee shall notify the Board in writing of such failure. Upon Notice and Hearing, as provided in the Bylaws, the Board shall determine whether there is a noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If a noncompliance exists, the Owner shall remedy or remove the same within a period of not more than forty-five (45) days from the date that notice of the Board ruling is given to the Owner. If the Owner does not comply with the Board ruling within that period, the Board, at its option, may Record a Notice of Noncompliance and may peacefully remedy the noncompliance, and the Owner shall reimburse the Association, upon demand, for all expenses (including reasonable attorneys' fees) incurred in connection therewith. If such expenses are not promptly repaid by the Owner to the Association, the Board shall levy a Special Assessment against the Owner for reimbursement as provided in this Declaration. The right of the Association to remove a noncomplying Improvement or otherwise remedy the noncompliance shall be in addition to all other rights and remedies which the Association may have at law, in equity or in this Declaration.

(c) If for any reason the Committee fails to notify the Owner of any noncompliance with previously submitted and approved plans within one hundred fifty (150) days after receipt of written notice of completion from the Owner delivered in the manner required above, then the Improvement shall be deemed to be in accordance with the approved plans.

4.9 Scope of Review.

The Architectural Committee shall review and approve or disapprove all plans submitted to it for any proposed Improvement, alteration or addition, on the basis of aesthetic considerations, consistency with this Declaration, and the overall benefit or detriment which would result to the immediate vicinity and the Property generally. The Committee shall take into consideration the aesthetic aspects of the architectural design, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features. The Committee's approval or disapproval shall be based solely on the considerations set forth in this Article IV, and the Committee shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any plan or design from the standpoint of structural safety or conformance with building or other codes. The Architectural Committee may consider the impact of views from other Lots, or Dwelling Units thereon, and reasonable privacy interests as factors in reviewing, approving, or disapproving any proposed landscaping, construction, or other Improvements. However, there is no guaranty of any protected views within the Property and no Lot, or Dwelling Unit

thereon, is guaranteed the existence or unobstructed continuation of any particular view. Each Owner acknowledges that the Board of Directors and the Committee may adopt different architectural standards for different parts of the Project. Neither the Declarant, the Merchant Builders, the Association, the Board of Directors, the Committee, nor any member of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner, quality or effect of approved construction on or modification to any Lot authorized pursuant to this Article IV. In the event legal action is brought against any such party as a result of such construction or modification, the Owner causing such construction or modification shall indemnify and hold harmless the Declarant, the Merchant Builders, the Association, the Board of Directors, the Committee and all members thereof from all costs, expenses and damages (including but not limited to attorneys' fees) incurred in connection with such action, including, without limitation, any defense thereof.

4.10 Variances.

The Committee may authorize variances from compliance with any of the architectural provisions of this Declaration, including restrictions upon height, size, floor area or placement of structures, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations may require. Such variances must be evidenced in writing, must be signed by at least a majority of the members of the Committee, and shall become effective upon Recordation. After Declarant and D.R. Horton have lost the right to appoint a majority of the members of the Committee, the Board must approve any variance recommended by the Committee before any such variance shall become effective. If such variances are granted, no violation of the covenants, conditions and restrictions contained in this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular property and particular provision hereof covered by the variance, nor shall it affect in any way the owner's obligation to comply with all governmental laws and regulations affecting the use of his Dwelling Unit.

4.11 Appeals.

For so long as Declarant is entitled to appoint and remove a majority of the members of the Committee, decisions of the Committee shall be final, and there shall be no appeal to the Board of Directors. When Declarant and D.R. Horton are no longer entitled to appoint and remove a majority of the members of the Committee, the Board may, at its discretion, adopt policies and procedures for the appeal of Committee decisions for reconsideration by the Board. The Board shall have no obligation to adopt or implement any such appeal procedures, and, in the absence of Board adoption of appeal procedures, all decisions of the Committee shall be final.

ARTICLE V

5. Association Maintenance Funds and Assessments.

5.1 Personal Obligation of Assessments.

Declarant, for each Lot owned by it, and each Merchant Builder, for each Lot owned by it, hereby covenant and agree to pay, and each Owner, by acceptance of a deed of a Lot whether or not it shall be so expressed in any such deed, is deemed to covenant and agree to pay to the Association all Annual Assessments for Common Expenses and all applicable Special Assessments, Reconstruction Assessments and Capital Improvement Assessments. The Association shall not levy or collect any Annual Assessment, Capital Improvement Assessment, Special Assessment or Reconstruction Assessment that exceeds the amount necessary for the purpose for which it is levied. Except as provided in this Section 5.1, all such assessments, together with interest, costs, and reasonable attorneys' fees, shall be a separate, distinct and personal obligation of the Person who was the Owner of the Lot at the time when the assessment fell due. This personal obligation cannot be avoided by abandonment of the Lot or by an offer to waive use of the Association Property. The personal obligation for delinquent assessments shall not pass to any new Owner ("Purchaser") unless expressly assumed by the Purchaser.

5.2 Maintenance Funds of Association.

The Board of Directors shall establish no fewer than two (2) separate accounts (the "Maintenance Funds"), into which shall be deposited all monies paid to the Association, and from which disbursements shall be made, as provided herein, in the performance of functions by the Association under this Declaration. The Maintenance Funds may be established as trust accounts at a banking or savings institution. The Maintenance Funds shall include: (1) an operating fund for current Common Expenses of the Association ("Operating Fund"), (2) a reserve fund for capital Improvements, replacements, painting and repairs of the Association Property (which cannot normally be expected to occur on an annual or more frequent basis) ("Reserve Fund"), and (3) any other funds which the Board of Directors may establish to the extent necessary under the provisions of this Declaration. Nothing contained herein shall limit, preclude or impair the establishment of additional Maintenance Funds by the Association, so long as the amounts assessed to, deposited into, and disbursed from any such Fund are earmarked for specified purposes authorized by this Declaration.

5.3 Purpose of Assessments.

The assessments levied by the Board of Directors on behalf of the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Lots, for the operation, replacement, improvement and maintenance of the Property and to discharge any other obligations of the Association under this Declaration. All amounts deposited into the Maintenance Funds must be used solely for the common benefit of all of the Owners for purposes authorized by this Declaration. Disbursements from

the Operating Fund shall be made by the Board of Directors for such purposes as may be necessary for the discharge of its responsibilities herein for the common benefit of all of the Owners, other than those purposes for which disbursements from the Reserve Fund are to be used. Disbursements from the Reserve Fund shall not be made by the Board of Directors for any purpose other than the repair, restoration, replacement or maintenance of, or litigation involving the repair, restoration, replacement or maintenance of, major components which the Association is obligated to repair, restore, replace, or maintain and for which the Reserve Fund was established. However, the Board may authorize the temporary transfer of money from the Reserve Fund to the Association's Operating Fund to meet short-term cash-flow requirements or other expenses, provided that the Board has made a written finding, recorded in the Board's minutes, explaining the reason that the transfer is needed, and describing when and how the money will be repaid to the Reserve Fund. The transferred funds shall be restored to the Reserve Fund within one (1) year of the date of the initial transfer, except that the Board may, upon making a finding supported by documentation that a temporary delay would be in the best interests of the Association, temporarily delay the restoration until the time which the Board reasonably determines to be necessary. The Board shall exercise prudent fiscal management in maintaining the integrity of the Reserve Fund, and shall, if necessary, levy a Capital Improvement Assessment or a Reconstruction Assessment, as applicable, to recover the full amount of the expended funds within the time limits required by this Section 5.3. Such assessment shall be subject to the limitation imposed by California Civil Code Section 1366. The Board may, at its discretion, extend the date that payment of the Capital Improvement Assessment or Reconstruction Assessment is due. Nothing in this Declaration shall be construed in such a way as to permit the use of Association assessments or funds to abate any annoyance or nuisance emanating from outside the boundaries of the Property. Annual Assessments shall be used to satisfy Common Expenses of the Association, as provided herein and in the Bylaws. When the decision is made to use the Reserve Fund or to temporarily transfer money from the Reserve Fund to pay for litigation, the Board shall notify the Members of that decision in the next available mailing to all members pursuant to Section 5016 of the Corporations Code, and of the availability of an accounting of those expenses. The Association shall make an accounting of expenses related to the litigation on at least a quarterly basis. The accounting shall be made available for inspection by Members at the Association's office.

5.4 Limitations on Annual and Special Assessment Increases.

The Board shall levy Annual Assessments in accordance with the following provisions:

(a) Maximum Authorized Annual Assessment for Initial Year of Operations. Until the first day of the Fiscal Year immediately following the Fiscal Year in which Annual Assessments commence, the Board shall not levy an Annual Assessment per Lot in an amount greater than one hundred twenty percent (120%) of the amount of Annual Assessments disclosed for Phase 1 in the most current Budget filed with and approved by DRE at the time Annual Assessments commence without the vote of Members casting a majority of votes at a meeting or election of the Association at which a quorum of the Association is represented; provided, that, for purposes of this Section 5.4(a), a quorum shall

mean more than fifty percent (50%) of the Members of the Association. Notwithstanding the foregoing, this Section 5.4(a) does not limit Annual Assessment increases necessary for addressing an “Emergency Situation” as defined in Section 5.4(e).

(b) Maximum Authorized Annual Assessment for Subsequent Fiscal Years. Starting with the first Fiscal Year immediately following the Fiscal Year in which Annual Assessments commence and for each Fiscal Year thereafter, the Board shall not levy Annual Assessments in any Fiscal Year in excess of one hundred twenty percent (120%) of the Annual Assessments levied during the immediately preceding Fiscal Year without the vote of Members casting a majority of votes at a meeting or election of the Association at which a quorum of the Association is represented; provided that, for purposes of this Section 5.4(b), a quorum shall mean more than fifty percent (50%) of the Members of the Association. In addition, the Board shall provide notice by first-class mail to all Members of any increase in Annual Assessments from the Annual Assessments levied during the immediately preceding Fiscal Year not less than thirty (30) nor more than sixty (60) days prior to the date on which such increased assessment shall become due. Notwithstanding the foregoing, this Section 5.4(b) does not limit Annual Assessment increases necessary for addressing an “Emergency Situation” as defined in Section 5.4(e).

(c) Supplemental Annual Assessments. If the Board, by majority vote, determines that the important and essential functions of the Association may be properly funded by an Annual Assessment in an amount less than the maximum authorized Annual Assessment described above, it may levy such lesser Annual Assessment. If the Board determines that the estimate of total Annual Assessment charges for the current year is or will become inadequate to meet all projected expenses for the Property for any reason, it shall immediately determine the approximate amount of the inadequacy. Subject to the limitations described in Sections 5.4(a) and (b) above, the Board shall have the authority to levy, at any time during the Fiscal Year by a majority vote, a supplemental Annual Assessment reflecting a revision of the total Annual Assessment charges to be assessed against each Lot for the balance of that Fiscal Year.

(d) Special Assessment. The Board shall not levy Special Assessments to defray the cost of any action or undertaking on behalf of the Association that in the aggregate exceeds five percent (5%) of the budgeted gross expenses of the Association for that Fiscal Year without the vote of Members casting a majority of votes at a meeting or election of the Association at which a quorum of the Association is represented; provided that, for purposes of this Section 5.4(d), a quorum shall mean more than fifty percent (50%) of the Members of the Association. In addition, the Board shall provide notice by first-class mail to all Members of any Special Assessment levied during the Fiscal Year not less than thirty (30) nor more than sixty (60) days prior to the date on which such Special Assessment shall become due. Notwithstanding the foregoing, this Section 5.4(d) does not limit assessment increases necessary for addressing an “Emergency Situation” as defined in Section 5.4(e).

(e) Emergency Situations. For purposes of Sections 5.4(a), 5.4(b) and 5.6, 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 Property or any portion thereof for which the Association is responsible where a threat to personal safety on the Property is discovered;
- (iii) An extraordinary expense necessary to repair or maintain the Property or any portion thereof for which the Association is responsible that could not have been reasonably foreseen by the Board when preparing the Budget. Prior to the imposition or collection of an assessment pursuant to this subparagraph (iii), 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. The resolution shall be distributed to the Members with the Notice of Assessment; and
- (iv) An extraordinary expense in making the first payment of the earthquake insurance surcharge pursuant to Section 5003 of the Insurance Code.

5.5 Annual Assessments/Commencement-Collection.

(a) Range of Assessments. During the period the Project is being built out, Declarant and/or the Merchant Builders may annex one or more phases into the Project in accordance with the provisions of this Declaration. Because Annual Assessments will typically change in amount each time a Phase is annexed into the Project and because the annexation of additional Phases might occur in quick succession, in order to facilitate the orderly annexation of Phases and to avoid the confusion and administrative burden which would result from multiple changes in the amount of the Annual Assessments as additional Phases are annexed into the Project, Declarant, with the DRE's approval, has established a "Range of Assessment" procedure.

Unless terminated earlier by Declarant and Merchant Builders with the DRE's approval, the Range of Assessment procedure set forth herein below shall be effective during the period additional Phases may be annexed into the Project without the approval of the Association, as set forth in Section 16.1.

A "range" in the amount of the monthly installment of Annual Assessments has been established by calculating an initial "Minimum Annual Assessment" and a "Maximum Annual Assessment" based upon the respective budget for each Phase of the Project prepared by the Declarant and the Merchant Builders and approved by the DRE. Except as otherwise provided below, the Minimum and Maximum Annual Assessments represent the lowest and the highest Annual Assessment that may be levied by the Association for certain Phases during the Project built out period. Utilizing this range procedure, as additional Phases are annexed into the Project, the monthly installment of the Annual Assessments levied by the Association can automatically increase or decrease, but

will remain within the range approved by the DRE and set forth in the Final Subdivision Public Reports issued by the DRE for such Phases.

The initial range approved by the DRE may be recalculated and adjusted, from time to time, with the approval of Declarant and the DRE in order to account for various changes in circumstances (including, but not limited to, construction of additional Improvements on the Association Property, the delegation to or assumption by the Association of additional maintenance responsibilities, and the incurring of unanticipated extraordinary expenses by the Association).

Except as otherwise provided herein, during the Project build out period, the Board shall not levy Annual Assessments that exceed the approved Maximum Annual Assessment or that exceed the approved Maximum Annual Assessment for that fiscal year. Notwithstanding the foregoing, a Maximum Annual Assessment may be increased as provided in Section 5.4. Each Owner acknowledges and agrees that the provisions in Section 5.4 above which limit increases and decreases in Annual Assessments within the approved range so long as such increase or decrease is the result of the annexation of a subsequent Phase into the Project.

(b) Assessment Commencement and Collection. The Board of Directors shall authorize and levy the amount of the Annual Assessment upon each Lot, as provided herein, by majority vote of the Board. The Annual Assessment shall begin on all Lots in a Phase of Development (including unsold Lots therein owned by Declarant or a Merchant Builder) on the first day of the first calendar month following the first Close of Escrow for the sale of a Lot in such Phase to a Class A Owner or an earlier date as may be selected by Declarant (as to its portion of the Project) or any Merchant Builder (as to their respective portions of the Project) for commencement of Annual Assessments in such Phase. Notwithstanding the foregoing, the Annual Assessment shall commence on all of the Lots described on Exhibit "C" attached hereto ("Phase 1 Assessment Lots") on the first day of the first calendar month following the first Close of Escrow for the sale of a Lot in the Phase 1 Assessment Lots. Unless provided to the contrary in the Budget, all Annual Assessments shall be assessed equally against the Members and their Lots based upon the number of Lots owned by each Member. Annual Assessments for fractions of any month involved shall be prorated. Declarant and each Merchant Builder shall pay their full pro rata share of the Annual Assessments on all unsold Lots for which Annual Assessments have commenced. The Board shall fix the amount of the Annual Assessment against each Lot at least thirty (30) days in advance of each Annual Assessment period. From time to time the Board may determine that all excess funds in the Operating Fund be retained by the Association and used to reduce the following year's Annual Assessments. Upon dissolution of the Association incident to the abandonment or termination of the Property, any amounts remaining in any of the Maintenance Funds shall be distributed to or for the benefit of the Members in the same proportions as such monies were collected from the Members.

Concurrently with the first Close of Escrow for the sale of a Lot in any Phase, Declarant, as to Lots owned by it, or the applicable Merchant Builder, as to Lots owned by it, shall pay to the Association an appropriate amount (as determined by DRE) for

reserves for replacement or deferred maintenance of the Association Property in such Phase necessitated by or arising out of the use and occupancy of the Lots in such Phase under a rental program conducted by Declarant or the applicable Merchant Builder if such rental program was in effect for at least one (1) year prior to such first Close of Escrow.

Declarant, Merchant Builders and any other Owner of a Lot on which a Dwelling Unit has not been constructed shall be exempt from payment of that portion of the Annual Assessment which is for the purpose of defraying expenses and reserves directly attributable to the existence and use of such Dwelling Unit. Any such exemption from the payment of Annual Assessments shall be in effect only until the earlier to occur of (1) the Recordation of a notice of completion of the building comprising such Dwelling Unit, or (2) the occupation or use of such Dwelling Unit.

Notwithstanding any other provisions of this Declaration, conveyance of a Lot which is being used by Declarant or any Merchant Builder for model home, sales office, design center, construction office or similar purposes (any of which uses are referred to in this Section 5.5 as "Model Home") shall not commence the Annual Assessment against such Lot or other Lots within a Phase of Development until discontinuance of use of such Lot as a Model Home or conveyance of any non-Model Home in such Phase of Development to a retail purchaser, whichever first occurs. During the period of time commencing on the first day of the month after conveyance of a Lot being used by Declarant or a Merchant Builder as a Model Home and ending on the date Annual Assessments commence against such Lot, Declarant shall be solely responsible to maintain all portions of the Phase of Development in which a Lot is being used as a Model Home by Declarant, and each Merchant Builder shall be solely responsible to maintain all portions of the Phase of Development in which a Lot is being used as a Model Home by such Merchant Builder.

Notwithstanding any other provisions of this Declaration, until the earlier to occur of (1) the Recordation of a notice of completion of an Improvement on the Association Property, or (2) the placement of such Improvement into use, each Owner (including Declarant and Merchant Builders) shall be exempt from paying that portion of any Annual Assessment which is for the purpose of defraying expenses and reserves directly attributable to the existence and use of such Improvement.

Each Member shall pay to the Association such Member's Annual Assessment in installments at such frequency and in such amounts as established by the Board. Each Annual Assessment may be paid by the Member to the Association in one check or in separate checks as payments attributable to the deposits under the Operating Fund and the Reserve Fund. If any installment of an Annual Assessment payment is less than the amount assessed and the payment does not specify the Maintenance Fund or Funds into which it should be deposited, the receipt by the Association from that Owner shall be credited in order of priority first to the Operating Fund, until that portion of the Annual Assessment has been satisfied, and second to the Reserve Fund.

Notwithstanding any other provisions of this Declaration or the Bylaws regarding the term and termination of contracts with Declarant for providing services to the

Association, Declarant and any Merchant Builder may enter into a written maintenance agreement with the Association under which Declarant and Merchant Builder shall pay all or any portion of the operating Common Expenses and perform all or any portion of the Association's maintenance responsibilities in exchange for a temporary suspension of Annual Assessments. Such maintenance agreement shall extend for a term and shall be on such conditions as are approved by the DRE, and may require Owners to reimburse Declarant and Merchant Builder, through the Association, for a portion of the costs expended in satisfaction of Common Expenses.

5.6 Capital Improvement Assessments.

Should the Board of Directors determine the need for a capital Improvement or other such addition to the Property, the cost of which in the aggregate exceeds five percent (5%) of the Budgeted gross expenses of the Association for the then current Fiscal Year, then the vote or written consent of Members casting a majority of votes at a meeting or election of the Association at which a quorum of the Association is represented shall be required to approve and render effective a Capital Improvement Assessment levied by the Board of Directors to cover the cost of such expenditure; provided that, for purposes of this Section 5.6, a quorum shall mean more than fifty percent (50%) of the Members of the Association. Capital Improvement Assessments may be levied by the Board without the consent of the Members, if the aggregate of such expenditures in each Fiscal Year does not exceed five percent (5%) of the Budgeted gross expenses of the Association for such Fiscal Year, provided, that the Board shall provide notice to each Owner by first-class mail of the levying of such Capital Improvement Assessment not less than thirty (30) nor more than sixty (60) days prior to the date on which such assessment shall become due. Notwithstanding the foregoing, the Board may levy in any Fiscal Year, a Capital Improvement Assessment applicable to that Fiscal Year which exceeds five percent (5%) of the Budgeted gross expenses of the Association for such Fiscal Year if such increase is necessary to address an Emergency Situation as defined in Section 5.4(e).

5.7 Delinquency.

Any installment of an assessment provided for in this Declaration shall become delinquent if not paid within fifteen (15) days of the due date as established by the Board of Directors of the Association. With respect to any such delinquent assessment, the Board is hereby authorized to and, at its election, may require the Owner responsible for such delinquent assessment to pay both of the following: (a) reasonable costs incurred in collecting the delinquent assessment, including reasonable attorneys' fees and costs; and (b) a late charge in the maximum amount permitted by California Civil Code Section 1366(d)(2) (or any successor or replacement statute). In addition to the foregoing, commencing thirty (30) days after the assessment becomes due and continuing until paid, the Board is hereby authorized to and, at its election, may require the Owner responsible for the delinquent assessment to pay interest on all sums identified above (including the delinquent assessment, reasonable costs of collection, attorneys' fees, and late charges) at the maximum rate permitted by Section 1366(d)(3) (or any successor or replacement statute). The Association need not accept any tender of a partial payment of an installment of an assessment and all

costs and attorneys' fees attributable thereto, and any acceptance of any such tender shall not be deemed to be a waiver of the Association's right to demand and receive full payment thereafter of all such amounts owed.

5.8 Creation and Release of Lien.

All sums (other than Special Assessments imposed against a particular Owner as a penalty or disciplinary measure for such Owner's failure to comply with the Restrictions) assessed in accordance with the provisions of this Declaration shall constitute a lien on the respective Lot prior and superior to all other liens, except (1) all taxes, bonds, assessments and other levies which, by law, would be superior thereto, and (2) the lien or charge of any first Mortgage of record (meaning any Recorded Mortgage or Deed of Trust with first priority or seniority over all other Mortgages or Deeds of Trust) made in good faith and for value and Recorded prior to the date on which the "Notice of Lien" (described in this Section) against the respective Lot was Recorded. Notwithstanding anything herein which is or appears to be to the contrary, any assessment lien provided for hereunder shall be prior and superior to any declaration of homestead Recorded after the Recordation of this Declaration. Prior to the Recordation of a Notice of Lien against a Lot, the Association shall (i) notify the Owner of such Lot in writing by certified mail of the fee and penalty procedures of the Association, (ii) provide an itemized statement of the charges owed by such Owner, including items which indicate the principal owed, any late charges and the method of calculating such charges, any attorneys' fees, the collection practices used by the Association, and the right of the Association to the reasonable costs of collection. Any payment toward the charges itemized shall be first applied to the principal owed, and only after the principal owed is paid in full shall such payments be applied to interest or collection expenses. The lien shall become effective upon Recordation by the Board or its authorized agent of a notice of assessment ("Notice of Lien") concerning delinquent payment of any Annual, Capital Improvement or Reconstruction Assessment or installment thereof, levied by the Association against any Lot Owner, as provided in Section 1367 of the California Civil Code. The Notice of Lien shall state (i) the amount of the assessment or installment, as the case may be, and other authorized charges and interest, including the cost of preparing and Recording the Notice of Lien, (ii) the expenses of collection in connection with any delinquent installments, including without limitation reasonable attorneys' fees, (iii) a legal description of the Lot against which the same has been assessed, (iv) the name and address of the Association, (v) the name of the Owner thereof, and (vi) in order for the lien to be enforced by nonjudicial foreclosure, the name and address of the trustee authorized by the Association to enforce the lien by sale. The Notice of Lien shall be signed by the President or Vice President and Secretary or Assistant Secretary of the Association and shall be mailed no later than ten (10) calendar days after Recordation, in the manner set forth in Section 2924b of the Civil Code, to all record Owners of the Lot against which the Notice of Lien was Recorded. The lien shall relate only to the individual Lot against which the assessment was levied and not to the Property as a whole. Upon payment to the Association of the full amount claimed in the Notice of Lien, or other satisfaction thereof, the Board of Directors shall cause to be Recorded a notice of satisfaction and release of lien ("Notice of Release") stating the satisfaction and release of the amount claimed. The Board of Directors may demand and receive from the applicable Owner a reasonable charge for the preparation and

Recordation of the Notice of Release before Recording it. Any purchaser or encumbrancer who has acted in good faith and extended value may rely upon the Notice of Release as conclusive evidence of the full satisfaction of the sums stated in the Notice of Lien.

5.9 Enforcement of Liens.

It shall be the duty of the Board of Directors to enforce the collection of any amounts due under this Declaration by one (1) or more of the alternative means of relief afforded by this Declaration. The lien on a Lot may be enforced by sale of the Lot by the Association, the Association's attorneys, any title insurance company authorized to do business in California, or other persons authorized to conduct the sale as a trustee, after failure of the Owner to pay any Annual, Capital Improvement or Reconstruction Assessment, or installment thereof, as provided herein. The sale shall be conducted in accordance with the provisions of the California Civil Code, applicable to the exercise of powers of sale in mortgages and deeds of trust, or in any manner permitted by law. An action may be brought to foreclose the lien of the Association by the Board, or by any Owner if the Board fails or refuses to act, after the expiration of at least thirty (30) days from the date on which the Notice of Lien was Recorded; provided that at least twenty (20) days have expired since a copy of the Notice of Lien was mailed to the Owner affected thereby. The Association, through its agents, shall have the power to bid on the Lot at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Upon completion of the foreclosure sale, an action may be brought by the Association or the purchaser at the sale in order to secure occupancy of the defaulting Owner's Lot, and the defaulting Owner shall be required to pay the reasonable rental value for such Lot during any period of continued occupancy by the defaulting Owner or any persons claiming under the defaulting Owner. Suit to recover a money judgment for unpaid assessments shall be maintainable without foreclosing or waiving any lien securing the same, but this provision or any institution of suit to recover a money judgment shall not constitute an affirmation of the adequacy of money damages. Any recovery resulting from a suit at law or in equity initiated pursuant to this Section 5.9 shall include reasonable attorneys' fees as fixed by the court.

5.10 Priority of Assessment Lien.

The lien of the Assessments, including interest and costs of collection (including attorneys' fees), provided for herein shall be subordinate to the lien of any first Mortgage of record (meaning any Recorded Mortgage or Deed of Trust) upon any Lot made in good faith and for value and Recorded prior to the date on which the lien became effective. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to judicial or nonjudicial foreclosure of a first Mortgage with priority over the Assessment lien shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liens for any Assessments thereafter becoming due. When the Mortgagee of a first Mortgage of record with priority over the Assessment lien or other purchaser of a Lot obtains title pursuant to a judicial or nonjudicial foreclosure of that first Mortgage, such acquirer of title, his successors and assigns, shall not be liable for the share of the Common Expenses or assessments by the Association chargeable to such Lot which became due prior to the

acquisition of title to such Lot by such acquirer; provided, however, that all such unpaid share of Common Expenses or assessments shall be deemed to be Common Expenses thereafter collectible from all of the Owners of Lots in the Project, including such acquirer of title, and his successors and assigns.

ARTICLE VI

6. Project Easements and Rights of Entry.

6.1 Easements.

(a) Access: Parking. Declarant (as to its portion of the Project) and each Merchant Builder (as to their respective portions of the Project) expressly reserves for the benefit of and grants to the Association and the Owners reciprocal, nonexclusive easements for access, ingress and egress over all of the Association Property, including any private streets or driveways currently existing in the Association Property or subsequently added to it, which easements may be conveyed by Declarant or a Merchant Builder to Owners and to the Association for so long as Declarant or the Merchant Builder owns any interest in their respective portions of the Property. Subject to the provisions of the Restrictions governing use and enjoyment thereof including, without limitations, the provisions for restriction of Owner access to the Association Property upon the terms and for the reasons set forth in Section 3.4 above, the easements may be used by all Owners and their guests, tenants and invitees residing on or temporarily visiting the Property, for walkways, vehicular access and such other purposes reasonably necessary for use and enjoyment of a Lot in the Project. Included within the Association Property are certain unassigned parking spaces. Subject to the provisions of the Restrictions, including, without limitation, Section 8.2(d) below and such Rules and Regulations as may from time to time be adopted by the Board, these spaces shall remain available for the nonexclusive use of the Owners and their guests, tenants and invitees residing on or temporarily visiting the Property.

(b) Maintenance and Repair. Declarant (as to its portion of the Project) and each Merchant Builder (as to their respective portions of the Project) expressly reserves for the benefit of and grants to the Association, the Board of Directors, and all agents, officers and employees of the Association, nonexclusive easements over the Property as necessary to maintain and repair the Association Property, and to perform all other tasks in accordance with the provisions of this Declaration. Such easements over the Property shall be appurtenant to, binding upon, and shall pass with the title to, every Lot conveyed.

(c) Utility Easements. Declarant (as to its portion of the Project) and each Merchant Builder (as to their respective portions of the Project) expressly reserves for the benefit of the Association the right of Declarant (as to its portion of the Project) and each Merchant Builder (as to their respective portions of the Project) and Association to grant additional easements and rights-of-way over the Property to utility companies and public agencies, as necessary, for the proper development, disposal and operation of the Property. Such right of Declarant and Merchant Builder shall expire (i) with respect to any Phase of Development, upon Close of Escrow for the sale of all Lots in such Phase by Declarant or the

applicable Merchant Builder, or (ii) with respect to all Phases, upon expiration of seven (7) years from the date of original issuance by the DRE of the Final Subdivision Public Report for Phase 1.

(d) Support and Encroachments. Declarant, the Merchant Builders, the Association and Owners of contiguous Lots shall have a reciprocal easement appurtenant to each of the Lots over the adjacent Lots and the Association Property for the purpose of (1) lateral and sub-adjacent support, (2) accommodating any existing encroachment of any wall or any Improvement (including, without limitation, utility equipment and other structural appurtenances) resulting from the original construction by Declarant and/or Merchant Builder, and (3) maintaining the same and accommodating authorized construction, reconstruction, repair, shifting, movement or natural settling of the Improvements or any other portion of the Project. Easements and reciprocal negative easements for utility services and repairs, replacement and maintenance of the same over all of the Association Property are specifically reserved for the benefit of the Owners. Declarant (as to its portion of the Project) and each Merchant Builder (as to their respective portions of the Project) expressly reserves for the benefit of the Association Property, and for the benefit of the Owners and the Association, reciprocal nonexclusive easements for drainage of water resulting from the normal use of adjoining Lots or Association Property over, across and upon each of the Lots and the Association Property. The foregoing easements shall not unreasonably interfere with each Owner's use and enjoyment of his Lot. No portion of the Association Property, including, without limitation, parking areas and other amenities contemplated as a part of the Property, are proposed to be leased by Declarant or any Merchant Builder to the Owners or to the Association.

(e) Declarant's and Merchant Builder's Rights. Declarant (as to its portion of the Project) and each Merchant Builder (as to their respective portions of the Project) expressly reserves for their respective benefit the right and easement for access, ingress and egress on and over the Project to complete any Improvement which Declarant or the applicable Merchant Builder deems necessary or desirable to implementation of the Declarant's or the Merchant Builder's development plan for their respective portions of the Project and to install and maintain such structures, displays, advertising signs, billboards, flags, sales offices, model homes, interior design and decorator centers, and parking areas for employees, agents, and prospective buyers as may be reasonably necessary or convenient for the proper development and disposition of the Lots located within the Project by sale, resale, lease or otherwise, including, without limitation, operation of a sales office. Declarant and Merchant Builders further reserves for their benefit the right and easement for access over the Property for construction equipment, access over and through the Project for purposes of equipment, material and construction staging, and access over and through the Project by all contractors, subcontractors, employees and other personnel used in connection with the planning, design, excavation, construction and other improvement work necessary to development of the Project. Declarant (as to its portion of the Project) and each Merchant Builder (as to their respective portions of the Project) further expressly reserves for its respective benefit the right to hereafter create and convey such easements, covenants, conditions, restrictions, and licenses against, over, on, above or below their respective portions of the Project and the Property as necessary or helpful to facilitate the design,

engineering, processing, approval, financing, development, construction and maintenance of the Project and the Property, including, without limitation, easements, covenants, conditions, restrictions, and licenses reasonably necessary to meet set-back, open space, access, fire safety, or other zoning or planning requirements or policies. This Declaration cannot be amended to modify or eliminate the easements reserved to Declarant and Merchant Builders by this Section without prior written consent of Declarant and each Merchant Builder, and any attempt to do so shall have no effect.

(f) Cable Television. Declarant (as to its portion of the Project) and each Merchant Builder (as to their respective portions of the Project) hereby reserves the right to install or have installed a Cable System as defined below. The Cable System if and when installed shall be maintained by a cable television franchisee. To the extent required to effectuate the foregoing plan, Declarant (as to its portion of the Project) and each Merchant Builder (as to their respective portions of the Project) reserves the right to grant nonexclusive easements over their respective portions of the Property a necessary to provide cable television services to Owners, including easements for access, ingress and egress for installation, maintenance and removal of antennas, head end equipment, cable amplifier, line splitting devices, coaxial cable, amplifier housing and all facilities related thereto (collectively, "Cable System"), as well as for the solicitation of sales, marketing, disconnection of service and subscriber equipment retrieval. Each Lot and the Association shall be subject to an easement in favor of all other Lots and in favor of the entity holding the right to provide cable television service to the Project, to provide for the passage through the Lots and the Association Property of television connections from any other Lot to the Cable System, and shall be subject to further easement for the placement and maintenance of such connections.

6.2 Rights of Entry.

The Board of Directors shall have a limited right of entry in and upon the Association Property and the space comprising the Lots for the purpose of inspecting the Project, and taking whatever corrective or maintenance action may be deemed necessary or proper by the Board of Directors, consistent with the provisions of this Declaration, including, without limitation, assuring that the Lots and any slope landscaping and drainage areas thereon are maintained in accordance with all applicable legal requirements and any original landscaping and drainage plan which may have been installed by Declarant and/or the Merchant Builders and assuring that the Perimeter Wall/Fence is properly maintained, repaired and, if necessary, replaced. However, such entry upon a Lot or the interior of a Dwelling Unit thereon shall be made, except to effect emergency repairs or other emergency measures, only after three (3) days prior written notice to the Owner of such Lot. Nothing herein shall be construed to impose any obligation upon the Association to maintain or repair any property or Improvements required to be maintained or repaired by the Owners. Nothing in this Article VI shall in any manner limit the right of the Owner to exclusive occupancy and control over his Lot or the interior of his Dwelling Unit. However, an Owner shall permit a right of entry to the Board of Directors or any other person authorized by the Board of Directors, as reasonably necessary, such as in case of any emergency originating in or threatening his Lot or the Dwelling Unit thereon, whether the Owner is present or not. Any

damage caused to a Lot or Dwelling Unit by such entry by the Board of Directors or by any person authorized by the Board of Directors shall be repaired by the Association as a Common Expense of the Association.

ARTICLE VII

7. Declarant's & Merchant Builders' Rights and Reservations.

Nothing in the Restrictions shall limit, and neither any Owner nor the Association shall do anything to interfere with, the right of Declarant or any Merchant Builder to subdivide or resubdivide any portion of the Property, or to complete Improvements to and on the Association Property or any portion of the Property owned solely or partially by Declarant or any Merchant Builder, or to alter the foregoing or its construction plans and designs, or to construct such additional Improvements as Declarant or the applicable Merchant Builder deems advisable in the course of development of the Property so long as any Lot in their portion of the Project remains unsold.

The rights of Declarant and Merchant Builder hereunder shall include, but shall not be limited to, the exclusive right to install, maintain, locate, relocate and reconfigure such structures, displays, signs, billboards, flags, sales offices, model homes, interior design and decorator centers, and parking areas for employees, agents, and prospective buyers as may be reasonably necessary or convenient in Declarant's or Merchant Builder's judgment for the proper development and disposition of the Lots located within the Project by sale, resale, lease or otherwise, and the right to use any portion of the Project necessary to provide ongoing maintenance, operation, service, construction, punch-out, and repairs to individual Lots. Notwithstanding anything in the Restrictions which is or appears to be to the contrary, Declarant may use any Lots owned by Declarant in the Project and each Merchant Builder may use any Lot owned by Merchant Builder, or portions of the Association Property as model homes and/or real estate sales or leasing offices; provided that use of such office shall be limited to sales, resales and leasing of the Lots located on the Property.

Declarant and the Merchant Builders need not seek or obtain Architectural Committee approval of any Improvement constructed, reconstructed, modified or placed by Declarant or a Merchant Builder on any of their respective portions of the Property, or seek or obtain Architectural Committee approval of the construction upon their respective portions of the Annexable Territory, or a portion thereof, of a project(s) of a type different than the Improvements previously constructed by Declarant or any Merchant Builder upon the Property, or the annexation of all or a portion of the Annexable Territory containing such other project or projects to this Declaration pursuant to Article XVI below. Declarant and Merchant Builders also reserves the right (but not the obligation), subject to DRE approval of a revised budget for the Project, to provide for a "split roll" or "cost center" dues structure, so that the maintenance costs associated with maintenance of Association Property, or identified elements thereof, within separate portions of the Project are segregated and borne by the Owners of the Lots within those portions of the Project. Each Owner hereby grants, upon acceptance of his deed to his Lot, an irrevocable, special power of attorney to Declarant (as to its portion of the Project) and each Merchant Builder (as to their respective portions of the

Project) to execute and Record all documents and maps necessary to allow Declarant and Merchant Builders to exercise their rights under this Article. Declarant, Merchant Builders, and their prospective purchasers of Lots shall be entitled to the nonexclusive use of the Association Property and recreational facilities, if any, thereon, without further cost for access, ingress, egress, use or enjoyment, in order to show the Property to those prospective purchasers, to dispose of the Property as provided herein, and to develop and sell the Annexable Territory. Declarant, Merchant Builders, and their successors and tenants, shall also be entitled to the nonexclusive use of any portions of the Property which comprise private streets, drives and walkways for the purpose of ingress, egress and accommodating vehicular and pedestrian traffic to and from the Property and the Annexable Territory. The use of the Association Property by Declarant and Merchant Builders shall not unreasonably interfere with the use thereof by the other Members. Each Owner, by accepting a deed to a Lot, hereby acknowledges that the activities of Declarant and Merchant Builders may temporarily or permanently impair the view of such Owner and may constitute an inconvenience or nuisance to the Owners, and hereby consents to such impairment, inconvenience or nuisance. This Declaration shall not limit the right of Declarant or any Merchant Builder to establish, reserve, and/or grant additional licenses, easements, reservations and rights-of-way to itself, to utility companies, to cable television companies, or to others as may from time to time be reasonably necessary for the proper development and disposal of their portions of the Project.

Notwithstanding any other provisions of this Declaration to the contrary, and without limiting Declarant's and each Merchant Builder's unilateral rights provided elsewhere in this Declaration or in the Restrictions, until such time as Owners other than Declarant or the Merchant Builders own at least ninety percent (90%) of the Lots within the Project, or until the tenth (10th) anniversary of the first Close of Escrow for a Lot, whichever occurs first, Declarant's and the Merchant Builders' written consent shall be required before the Association may take any action with respect to the following:

- (a) Reduction in the level of, or change in allocation of responsibility for maintenance of and repairs to all or any portion of the Association Property subject to this Declaration, or any other maintenance obligations of the Association set forth in this Declaration;
- (b) Conveyance by the Association of all or any portion of the Association Property;
- (c) Alteration in the method of fixing and collecting Assessments or any increases in Assessments beyond the amounts permitted under Article V of this Declaration;
- (d) Modification of the enforcement and review procedures of the Architectural Committee, or any change in the architectural and landscaping design originally installed by Declarant and/or Merchant Builders;

(e) Modification to Improvements on the Association Property or to the level or frequency of maintenance of the Association Property; or

(f) Alteration in the method of enforcing the provisions of this Declaration.

Each Owner, by accepting a deed to a Lot, hereby irrevocably appoints Declarant (as to its portion of the Project) and each Merchant Builder (as to their respective portions of the Project) as his attorney-in-fact, for himself and each of his Mortgagees, optionees, grantees, licensees, trustees, receivers, lessees, tenants, judgment creditors, heirs, legatees, devisees, administrators, executors, legal representatives, successors and assigns, whether voluntary or involuntary, and hereby grants to Declarant or Merchant Builder, as applicable, an irrevocable limited power of attorney coupled with an interest for Declarant and/or Merchant Builder, as applicable, to act as his attorney-in-fact in connection with any modification to the development plans of all or any portion of the Project. Each Owner hereby acknowledges and agrees that this irrevocable limited power of attorney is: (a) retained for the benefit of the Declarant and the Merchant Builders and not the Owner; and (b) created by Owner's acceptance of a deed to a Lot and as part of the consideration for the purchase and sale of a Lot. Based on the foregoing, each Owner further acknowledges and agrees that this irrevocable limited power of attorney is "coupled with an interest" and, pursuant to Section 2356 of the California Civil Code, as same may be amended, from time to time, may not be terminated by: (a) the Owner's revocation of such limited power of attorney; (b) the Owner's death; or (c) the Owner's incapacity to contract. In furtherance thereof and subject to the limitations and restrictions set forth in this Article, Declarant (as to its portion of the Project) and each Merchant Builder (as to their respective portions of the Project) shall have the right and power as a duly authorized attorney-in-fact to perform any of the following actions:

(a) To prepare, execute, acknowledge and record any map, lot line adjustment, certificate of compliance or record of survey affecting the Project;

(b) To prepare, execute, acknowledge and file for approval any application for zoning or setback changes or lot line adjustments, or variance or conditional use permits, or any other permits or reports required or permitted by law;

(c) 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 lands;

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

(e) 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 by law;

(f) 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 constructed or unconstructed Lots in the Project; and

(g) To prepare, execute, acknowledge and record on behalf of the Owners and the Association any easement over the Association Property and any easement reasonably necessary for the development and disposition of Lots within the Project.

The Association shall provide Declarant and the Merchant Builders with all notices and other documents to which a Beneficiary is entitled pursuant to this Declaration, provided that Declarant and Merchant Builders shall be provided such notices and other documents without making written request therefor.

If any portion of the Annexable Territory is not annexed to this Project pursuant to the provisions of this Declaration, and that portion of the Annexable Territory requires ingress and egress access over private streets located within the Project and/or access to and use of common utilities within the Project, easements shall exist and are hereby reserved in favor of the owners of that portion of the Annexable Territory for reasonable vehicular and pedestrian traffic and reasonable use of the common utilities for residential development; provided, that, in that event, the properties benefited by that easement, and the owners thereof, shall be obligated to pay their equitable share of the cost of maintenance and repair of said private streets and utilities, and, as a condition to the effectiveness of such easements, the properties benefited, and the owners thereof shall be subjected to Recorded covenants obligating them to pay annual and special assessments for the costs of maintenance and repair of said streets. In the event of any disagreement as to the reasonableness of said annual and/or special assessments, or the division thereof, the matter shall be submitted to a neutral arbitrator approved by the Board and the representative of the owners benefited by such easements or, in the absence of agreement on such arbitrator, by a judicial reference action pursuant to Code of Civil Procedure Sections 638-645.1 or any successor statutes thereto.

Declarant and each Merchant Builder shall have the right to assign any or all of its rights and obligations in this Declaration to any successor in interest by a written assignment. Notwithstanding any other provision of this Declaration to the contrary, the prior written approval of Declarant and the Merchant Builders, which may be granted or withheld in their sole discretion, will be required before any amendment to this Article VII shall be effective. The foregoing rights established and reserved by Declarant and Merchant Builders shall be subject only to the applicable regulations and requirements of the DRE and the city or county in which the Project is located.

ARTICLE VIII

8. Dwelling Unit and Use Restrictions.

All of the Property shall be held, used and enjoyed subject to the following limitations and restrictions, subject to the exemptions of Declarant set forth in this Declaration.

8.1 Single Family Dwelling Units.

Each Dwelling Unit shall be used exclusively for single Family residential purposes, subject to the exemption granted Declarant and the Merchant Builders under Article VII of this Declaration. An Owner may rent or lease his Lot to a single Family pursuant to the Leasing Provisions set forth herein.

(a) Leasing Provisions. The following provisions shall govern leasing of Lots:

(i) General. Lots may be leased only in their entirety pursuant to a single lease agreement with only a single Family as the permitted occupant. All leases must be in writing and for an initial term of not less than thirty (30) days, except with prior Board approval. Within seven (7) days after executing a lease agreement for the lease of a Lot, the Lot Owner shall provide the Board with the name of the lessee and all other people occupying the Lot. The Owner shall also provide a copy of the Lease upon request from the Board. The Owner must provide the lessee with copies of the Declaration, Bylaws, and Rules and Regulations.

(ii) Compliance with Restrictions and Liability for Assessments. Each Owner and each lessee, by occupancy of a Lot, covenants and agrees that any lease for a Lot shall contain the following provisions and agrees that if such provisions are not expressly contained therein, then such provisions shall be deemed incorporated into the lease by existence of this covenant on the Lot:

(1) Compliance with Declaration, Bylaws, and Rules and Regulations. The lessee shall comply with all provisions of the Restrictions and shall control the conduct of all other occupants and guests of the leased Lot in order to ensure compliance with the foregoing. The Owner shall cause all occupants of his or her Lot to comply with the Restrictions and shall be responsible for all violations by such occupants, notwithstanding the fact that such occupants are fully liable and may be separately sanctioned for any such violation. Unpaid fines shall, at the election of the Board, be recorded as a lien against the Lot, provided any such lien shall not be subject to non-judicial foreclosure under California Civil Code Sections 2924, 2924(b) and 2924(c).

(2) Violation of Restrictions. Any violation of the Restrictions by the lessee, any occupant, or any guest of lessee, shall be deemed a default under the terms of the lease and shall authorize the Owner to terminate the lease without liability and to evict the lessee in accordance with California law. The Owner hereby delegates and assigns to the Association, acting through the Board, the power and authority of enforcement against the lessee for breaches resulting from such violations, including the power and authority to evict the lessee as attorney-in-fact on behalf and for the benefit of the Owner, in accordance with the terms hereof. If the Association proceeds to evict the lessee, any costs, including attorney's fees and court costs, association with the eviction shall be a Special Assessment and lien against the Lot.

(3) Liability for Assessments. When a Lot Owner who is leasing his or her Lot fails to pay any Annual Assessment or other Assessment or any other charge to be paid by the Owner to the Association pursuant to this Declaration for a period of more than thirty (30) days after it is due and payable, then the delinquent Owner hereby consents to the assignment of any rent received from the lessee during the period of delinquency, and, upon request by the Board, lessee shall pay to the Association all such rent until all unpaid amounts owed by the Owner to the Association have been paid in full. All such payments made by lessee shall reduce, by the same amount, lessee's obligation to make monthly rental payments to lessor. The above provision shall not be construed to release the Owner from any obligation, including the obligation for Assessments, for which he or she would otherwise be responsible.

(b) Inapplicability to Declarant Merchant Builders and Holders of First Mortgages. This Section 8.1 shall not apply to any leasing transaction entered into by Declarant, the Merchant Builders, or by the holder of any first Mortgage on a Lot who becomes the Owner of a Lot through foreclosure or any other means pursuant to the satisfaction of the indebtedness secured by such Mortgage.

8.2 Parking and Vehicular Restrictions.

(a) Authorized Vehicles. The following vehicles are Authorized Vehicles: motorized land vehicles designed and used primarily for non-commercial passenger transport, such as automobiles, passenger vans designed to accommodate ten (10) or fewer people, two-wheel motorcycles, and pick-up trucks having a manufacturer's rating or payload capacity of one (1) ton or less. Subject to Section 8.2(c) below, Authorized Vehicles may be parked in any portion of the Property intended for parking of motorized vehicles. The parking areas of the Property shall be used for parking Authorized Vehicles only and shall not be used for storage, living, recreational or business purposes.

(b) Prohibited Vehicles. The following vehicles are Prohibited Vehicles: recreational vehicles (e.g., motorhomes, travel trailers, camper vans, boats, etc.), commercial-type vehicles (e.g., stakebed trucks, tank trucks, dump trucks, step vans, concrete trucks, etc.), buses or vans designed to accommodate more than ten (10) people, vehicles having more than two (2) axles, trailers, inoperable vehicles or parts of vehicles, aircraft, other similar vehicles or any vehicle or vehicular equipment deemed a nuisance by the Board. Unless otherwise specifically permitted by the City and authorized by the Board in the Rules and Regulations, (i) Prohibited Vehicles shall not be parked, stored or kept on any public or private street or driveway within, adjacent to or visible from the Property or on any other Association Property parking area: and (ii) Prohibited Vehicles may only be parked within an Owner's fully-enclosed garage with the door closed so long as their presence on the Property does not otherwise violate the provisions of this Declaration. Notwithstanding anything herein to the contrary, no recreational vehicles over 20 feet in length will be permitted to be parked within the Project.

(c) General Restrictions. All Authorized Vehicles owned or operated by or within the control of an Owner or a resident of an Owner's Lot and kept within the Property shall be parked in the assigned garage of that Owner to the extent of the space available therein, or on the driveway within such Owner's Lot if no garage space remains available; provided, that each Owner shall maintain his garage in a manner which ensures that it is capable of accommodating at least the number of vehicles for which it was originally designed. There shall be no parking in the driveways, if to do so obstructs free traffic flow, constitutes a nuisance, violates the Rules and Regulations, or otherwise creates a safety hazard. No repair, maintenance or restoration of any vehicle shall be conducted on the Property except within an enclosed garage when the garage door is closed, provided such activity is not undertaken as a business, and provided that such activity may be prohibited entirely by the Board if the Board determines that it constitutes a nuisance.

(d) Parking Regulations. The Board may establish additional regulations as it deems appropriate in its sole discretion with regard to any of the parking areas not assigned to individual Lots, including, without limitation, designating "parking," "guest parking" and "no parking" areas thereon. In any event, no parking shall be permitted in any fire lanes located in the Project. Any parking areas established on the Association Property shall be subject to such further reasonable control and use limitations as the Board of Directors may establish. The Board shall determine, in its discretion, whether there is a violation of the parking and vehicular restrictions set forth in this Declaration or established by the Board, and, if such noncompliance is determined by the Board to exist, the Board shall have the power to enforce all parking and vehicle use regulations applicable to the Property, including the power to remove violating vehicles from any of the Property pursuant to California Vehicle Code Section 22658.2 or other applicable statute.

8.3 Nuisances.

No noxious or offensive activities (including, but not limited to the repair of motor vehicles) shall be carried on upon the Property or on any public street abutting or

visible from the Property. No horns, whistles, bells or other sound devices, except security devices used exclusively to protect the security of a Dwelling Unit and its contents, shall be placed or used in any Lot. No loud noises, noxious odors, noisy or smoky vehicles, large power equipment or large power tools (excluding lawn mowers and other equipment utilized in connection with ordinary landscape maintenance), unlicensed off-road motor vehicles or items which may unreasonably interfere with television or radio reception of any Owner in the Project, shall be located, used or placed on any portion of the Property or on any public street abutting or visible from the Property, or exposed to the view of other Owners without the prior written approval of the Architectural Committee. The Board of Directors of the Association shall have the right to determine if any noise, odor, or activity producing such noise or odor constitutes a nuisance. No Owner shall permit or cause anything to be done or kept upon the Property or on any public street abutting or visible from the Property which may increase the rate of insurance on Lots or on the Property, or result in the cancellation of such insurance, or which will obstruct or interfere with the rights of other Owners. No Person shall commit or permit any nuisance on the Property. Each Owner shall comply with all of the requirements of the local or state health authorities and with all other governmental authorities with respect to the occupancy and use of a Dwelling Unit. Each Owner shall be accountable to the Association and other Owners for the conduct and behavior of children and any other Family members or persons residing in or visiting his Lot. Any damage to the Association Property, personal property of the Association, or property of another Owner, caused by such children, Family members or other persons, shall be repaired at the sole expense of the Owner of the Lot where such children, Family members or other persons are residing or visiting.

8.4 Signs.

No sign, poster, display or other advertising device of any character shall be erected or maintained anywhere on the Property, or on any public street abutting or visible from the Property, or shown or displayed from any Lot or Dwelling Unit thereon, without the prior written consent of the Architectural Committee; provided, however, that the restrictions of this Section 8.4 shall not apply to any sign or notice of customary and reasonable dimension which states that the Lot is for rent or sale or which expresses support or opposition for any political candidate or ballot measure, so long as it is consistent with the standards promulgated by the Architectural Committee in accordance with Section 4.2 hereof. Such sign or notice may be placed within a Lot but not upon any portion of the Association Property. The Board of Directors may erect within the Association Property a master directory of Lots which are for sale or for lease. This Section 8.4 shall not apply to any signs used by Declarant, any Merchant Builder, or their agents in connection with the sale of Lots or the construction or alteration of the Lots or Association Property, traffic and visitor parking signs installed by Declarant or a Merchant Builder, and traffic and parking control signs installed with the consent of the Board. Notwithstanding the foregoing, nothing contained in this Section 8.4 shall be construed in such manner as to permit the maintenance of any sign which is not in conformance with any ordinance of the city or county in which the Property is located.

8.5 Antennas.

No radio station, satellite or shortwave operators of any kind shall operate from any Lot or any other portion of the Property unless approved by the Architectural Committee. With the exception of any master antenna maintained by the Association, no exterior radio antenna, "C.B." antenna, television antenna, receiving station, satellite dish or other antenna of any type (collectively, "Signal Reception Device") shall be erected or maintained anywhere in the Property, without the approval of the Architectural Committee. In considering whether to approve any such application and what conditions, if any, to impose thereon, the Committee may consider any clearly defined safety objective, the impact of any such Signal Reception Device upon Project aesthetics and uniformity of appearance, and any potential structural damage arising from such Signal Reception Device, provided that any restriction imposed by the Committee shall be reasonable, as required by California Civil Code Section 1376 and rules and regulations promulgated by the Federal Communications Commission pursuant Section 207 of the Telecommunications Act of 1996 (collectively, the "Antennas Statutes"). In no event shall the Committee impose any requirement in violation of the Antennas Statutes that would unreasonably delay or prevent installation, maintenance or use of such Signal Reception Device, unreasonably increase the cost of installation, maintenance or use, or prevent reception of an acceptable quality signal. In reviewing an application for approval to install a Signal reception Device, the Committee shall apply the same standards, criteria and guidelines to such application as applicable to any other proposed exterior improvement to any Lot and shall not impose any differential or discriminatory requirements applicable only to a proposed Signal Reception Device. In granting approval of the installation of any such Signal Reception Device, the Architectural Committee may further condition such approval upon compliance with any reasonable restrictions authorized by Antennas Statutes, including, without limitation, provisions concerning the maintenance, repair, or replacement of roofs or other Dwelling Unit components and requirements for the installing Owner to indemnify the Association and its Members for loss or damage caused by the installation, maintenance, or use of those Improvements.

8.6 Inside and Outside Installations.

No outside installation of any type, including but not limited to clotheslines, shall be constructed, erected or maintained on any Lot, excepting antennas installed by Declarant and/or any Merchant Builder as a part of the initial construction of the Property and except as may be installed by, or with the prior consent of the Architectural Committee. No balcony, patio or deck covers or enclosures, wiring, air conditioning, water softeners, or other machines shall be installed on the exterior of the buildings of the Project or be allowed to protrude through the walls or roofs of the buildings (with the exception of those items installed during the original construction of the Project), unless the prior written approval of the Architectural Committee is secured. Outdoor patio or lounge furniture, plants and barbecue equipment may be maintained pursuant to rules and procedures of the Architectural Committee. The type and color of all exposed window coverings shall be consistent with the Architectural Committee's rules and guidelines. No room additions, solariums, swimming pools, spas, jacuzzis, saunas, or similar Improvements shall be installed

without the prior written approval of the Architectural Committee. Notwithstanding the specificity of the foregoing, no exterior addition, change or alteration to any Lot or Dwelling Unit shall be commenced without the prior written approval of the Architectural Committee. No Owner shall cause or permit any mechanic's lien to be filed against any portion of the Project for labor or materials alleged to have been furnished or delivered to the Project or any Lot for such Owner, and any Owner who does so shall immediately cause the lien to be discharged within five (5) days after notice to the Owner from the Board. If any Owner fails to remove such mechanic's lien, the Board may discharge the lien and charge the Owner a Special Assessment for such cost of discharge.

8.7 Animal Regulations.

No animals, livestock, reptiles, insects, poultry or other animals of any kind shall be kept in any Lot except that usual and ordinary domestic dogs, cats, fish, and birds inside bird cages may be kept as household pets within any Lot provided that they are not kept, bred or raised therein for commercial purposes or in unreasonable quantities or sizes. As used in the Declaration, "unreasonable quantities" shall ordinarily mean more than four (4) pets (except with regard to quantities of fish) per Lot; provided, however, that the Board may determine that a reasonable number in any instance may be more. The Board shall have the right to limit the size of pets and may prohibit maintenance of any animal which constitutes, in the opinion of the Board of Directors, a nuisance to any other Owner. Animals belonging to Owners, occupants or their licensees, tenants or invitees within the Property must be kept within an enclosed yard, within an enclosed patio or balcony or on a leash held by a person capable of controlling the animal. Furthermore, any Owner shall be liable to each and all remaining Owners, their Families, guests and invitees, for any unreasonable noise or damage to person or property caused by any animals brought or kept upon the Project by an Owner or by members of his Family, his tenants or his guests. It shall be the duty and responsibility of each such Owner to clean up after such animals which have deposited droppings on or otherwise used any portion of the Association Property or any public street abutting or visible from the Property.

8.8 Business or Commercial Activity.

No part of the Property shall be used for any business, professional, administrative, commercial (including auctions or similar events), manufacturing, mercantile, storage, vending or other nonresidential purposes including, without limitation, any activity for which the provider is compensated in any way or receives any form of consideration, regardless of whether the activity is engaged in full or part-time, generates or does not generate a profit, or requires or does not require a license; except that Declarant, the Merchant Builders, and their successors and assigns may use any portion of the Property for a model home site and for sales and leasing purposes in accordance with Article VII hereof. Notwithstanding the foregoing, the provisions of this Section 8.8 shall not preclude any of the above-described activities without external evidence thereof, provided that all of the following conditions are fulfilled: (a) such activities are conducted in conformance with all applicable governmental ordinances; (b) the patrons or clientele of such activities do not visit the Lot or park automobiles or other vehicles within the Property; (c) the existence or

operation of such activities is not apparent or detectable by sight, sound or smell from outside of the boundaries of the Lot; (d) no such activity increases the liability or casualty insurance obligation or premium of the Association; and (e) such activities are consistent with the residential character of the Property and conform with the provisions of this Declaration. No Owner shall use his Lot in such a manner as to interfere unreasonably with the business of Declarant or the Merchant Builders in selling Lots in the Project, as set forth in Article VII of this Declaration.

8.9 Rubbish Removal.

All rubbish, trash, garbage or other waste material shall be kept in sanitary containers located in appropriate areas screened and concealed from view, and no odor shall be permitted to arise therefrom so as to render the Property, or any portion thereof, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to its occupants. Such containers shall be exposed to the view of neighboring Lots only when set out for a reasonable period of time (not to exceed twelve (12) hours before and after scheduled trash collection hours), and shall be placed on the Association Property immediately in front of the Owner's Dwelling Unit, or such other location as may be designated from time to time by the Board in its Rules and Regulations. Each Owner shall comply with all Restrictions imposed concerning the collection, sorting, separation and recycling of rubbish, trash, garbage or other waste materials. No clothing, household fabrics or other unsightly articles shall be hung, dried or aired in such a way as to be visible from any other Lots, and no lumber, grass, shrub or tree clippings or plant waste, metals, bulk material, scrap, refuse or trash shall be kept, stored or allowed to accumulate on any portion of the Property except within an enclosed structure or if appropriately screened from view. No plants or seeds infected with noxious insects or plant diseases shall be brought, grown or maintained upon the Property.

8.10 Further Subdivision.

Except as otherwise provided in Article VII, unless at least seventy-five percent (75%) of the first Mortgagees, or Owners representing seventy-five percent (75%) of the voting power of the Association residing in Owners other than Declarant or the Merchant Builders have given their prior written approval and all applicable laws and regulations have been complied with, no Owner shall physically or legally subdivide his Lot in any manner, including without limitation, any division of his Lot or his Dwelling Unit into time-share estates or time-share uses; provided, however, that this provision shall not be construed to limit the right of an Owner (1) to rent or lease all of his Lot by means of a written lease or rental agreement subject to the Restrictions of this Declaration, (2) to sell his Dwelling Unit or (3) to transfer or sell any Dwelling Unit to more than one Person to be held by them as tenants-in-common, joint tenants, tenants by the entirety or as community property. Any failure by the lessee of the Lot to comply with the terms of this Declaration, the Bylaws of the Association, the Rules and Regulations or any other Restrictions shall constitute a default under the lease or rental agreement. Notwithstanding the foregoing, no Lot in the Project may be partitioned or subdivided without the prior written approval of the Beneficiary of any first Mortgage on that Lot. This Section 8.10 may not be amended without the prior written

approval of the Beneficiaries of at least seventy-five percent (75%) of the first Mortgages of Lots in the Project.

8.11 Drainage.

There shall be no interference with or alteration of the established drainage pattern over the Property, unless an adequate alternative provision is made for proper drainage and is first approved in writing by the Architectural Committee. For the purpose hereof, "established" drainage in any Phase is defined as the drainage which exists at the time of the first Close of Escrow for the sale of a Lot in such Phase, or that which is shown on any plans approved by the Architectural Committee, and shall include drainage from the Lots onto the Association Property and from the Association Property onto the Lots.

8.12 Water Supply System.

No individual water supply or water softener system shall be permitted in any Lot unless such system is designed, located, constructed and equipped in accordance with the requirements, standards, and recommendations of any applicable water district, the locality in which the Property is located, and all other applicable governmental authorities. Any sewage disposal system shall be installed only after approval by the Architectural Committee and any governmental health authority having jurisdiction.

8.13 View Obstructions.

No vegetation or other obstruction shall be planted or maintained in such location or of such height as to unreasonably obstruct the view from any other Lot or Dwelling Unit thereon in the vicinity thereof. If there is a dispute between Owners concerning the obstruction of a view from a Lot or Dwelling Unit thereon, the dispute shall be submitted to the Architectural Committee, whose decision in such matters shall be binding. Any such obstruction shall, upon request of the Architectural Committee, be removed or otherwise altered to the satisfaction of the Architectural Committee, by the Owner of the Lot upon which the obstruction is located. Any item or vegetation maintained upon any patio, deck or balcony, which item or vegetation is exposed to the view of any Owner, shall be removed or otherwise altered to the satisfaction of the Architectural Committee, if such Committee determines that the maintenance of such item or vegetation in its then existing state is contrary to the purposes or provisions of this Declaration. If an Owner fails to perform necessary pruning, trimming or thinning, the Association shall have the right, after Notice and Hearing, to enter upon such Lot for the purpose of performing such work. The Architectural Committee shall ensure that the vegetation on the Association Property maintained by the Association is cut frequently. Notwithstanding anything in this Declaration which is or appears to be to the contrary, each Owner by accepting title to a Lot, hereby acknowledges that (a) although the Architectural Committee may (but is not obligated to) prohibit the installation of Improvements on a Lot or prohibit the installation or require the pruning, trimming or thinning of landscaping from a Lot where such Improvements or landscaping would unreasonably obstruct the views from any other Lots, there are no protected views within the Property, and no Lot or Dwelling Unit is assured the existence or

unobstructed continuation of any particular view, and (b) any construction, landscaping, or other installation of Improvements by Declarant, Merchant Builders or other Owners may impair the view from any Lot or Dwelling Unit, and the Owners hereby consent to such view impairment.

8.14 Damage and Destruction to Dwelling Units.

If all or any portion of any Dwelling Unit is damaged or destroyed by fire or other casualty, it shall be the duty of the Owner of such Dwelling Unit to rebuild, repair or reconstruct the same in a manner which will restore it substantially to its appearance and condition immediately prior to the casualty or as otherwise approved by the Architectural Committee. The Owner of any damaged Dwelling Unit shall be obligated to proceed with all due diligence hereunder, and such Owner shall cause reconstruction to commence within six (6) months after the damage occurs and to be completed within eighteen (18) months after the damage occurs, unless prevented by causes beyond his reasonable control. A transferee of title to the Lot containing a Dwelling Unit which is damaged shall commence and complete reconstruction within the respective periods which would have remained for the performance of such obligations if the Owner of the Lot at the time of the damage still held title to the Lot. However, in no event shall such transferee of title be required to commence or complete such reconstruction in less than ninety (90) days from the date such transferee acquired title to Lot.

8.15 Window Coverings.

No window in any Dwelling Unit shall be covered in whole or in part, inside or outside, with aluminum foil, newspaper, paint, reflective tint or any other material reasonably deemed by the Architectural Committee to be inappropriate for such use.

8.16 Association Property Facilities.

Nothing shall be altered or constructed in or removed from the Association Property, nor shall any change or alteration in the original landscaping plan for the Association Property or any acquisition of additional Association Property or addition to the Association Property be undertaken without the approval of the Board of Directors.

8.17 Perimeter Wall/Fence.

The Perimeter Wall/Fence shall not be removed, reconstructed or modified (whether as to structure, finish or color) without the prior approval of the Board and any applicable governmental entity with jurisdiction thereof. Upon any damage to or destruction of the Perimeter Wall/Fence, the Association shall restore same (using, so far as possible, materials identical to those used originally by Declarant or a Merchant Builder) to its original condition as constructed by Declarant and/or the Merchant Builders. The Architectural Committee shall strictly enforce the terms of this provision. This Section 8.17 shall not preclude the Association from assessing charges to individual Owners for structural damage

to the Perimeter Wall/Fence caused by such Owner or his Family members, guests, invitees or agents.

8.18 Post-Tension Concrete System.

By acceptance of a deed to a Lot, each Owner acknowledges and understands that his Dwelling Unit may have been built using a post-tension concrete system (“System”). The System involves placing steel cables under high tension in the concrete slab foundation located beneath the Dwelling Unit. Therefore, any attempt to alter or pierce the foundation (for example, saw cutting, drilling or installation of a subterranean floor safe) could damage the integrity of the System and/or cause serious injury or damage to persons and personal property. By accepting a deed to a Lot, each affected Owner specifically covenants and agrees that: (i) he shall not cut into or otherwise tamper with the System; (ii) he shall not knowingly permit or allow any other person to cut into or tamper with the System; (iii) he shall disclose the existence of the System to any tenant, lessee or subsequent purchaser of the Lot; and (iv) Declarant and Merchant Builders shall not be responsible for any damage or injury resulting from or arising in connection with the alteration of the System by the owner or any employee, agent, Family member, contractor or other representatives of the Owner, and Owner shall indemnify, defend and hold Declarant and Merchant Builders harmless with respect to any such damage or injury.

8.19 Temporary Buildings.

No outbuilding, tent, shack, shed, or other like temporary building or Improvement of any kind shall be placed upon any portion of the Property either temporarily or permanently. No garage, carport, trailer, camper, motorhome, recreation vehicle or other vehicle shall be used as a residence in the Property, either temporarily or permanently.

8.20 Drilling.

No oil drilling, oil, gas, or mineral development operations, oil refining, geothermal exploration or development, quarrying or mining operations of any kind shall be permitted upon or in any Lot or the Association Property. With the exception of that abandoned oil and water wells described in Section 15.21 and 15.22 herein, no oil wells, tanks, tunnels, or mineral excavations or shafts be permitted upon the surface of any Lot or within five hundred feet (500’) below the surface of the Property. No derrick or other structure designed for use in boring for water, oil, geothermal heat or natural gas shall be erected, maintained, or permitted upon any Lot.

8.21 Solar Energy Systems.

Each Owner may install a solar energy system on his Lot which serves his Dwelling Unit so long as (a) the design and location of the solar energy system meets the requirements of applicable zoning district ordinances and the “Uniform Building Code” and associated ordinances, and (b) the system is not visible from the public view. The provisions of this section are subject to all applicable government statutes, rules, and requirements, and

this section shall be construed, limited, or modified as necessary to comply with such governmental provisions.

8.22 Rights of Handicapped.

Subject to the provisions of Article IV of this Declaration, each Owner shall have the right to modify his Dwelling Unit and the route over the Lot leading to the front door of his Dwelling Unit, at his sole cost and expense, in order to facilitate access to his Dwelling Unit by persons who are blind, visually handicapped, deaf, or physically disabled, or to alter conditions which could be hazardous to such persons.

8.23 Firearms and Fireworks.

The display and discharge of firearms or fireworks on the Association Property is prohibited; provided that the display of lawful firearms on the Association Property is permitted by law enforcement officers and also is permitted for the limited purpose of transporting lawful firearms across the Association Property to or from the Owner's Lot. The term "firearms" includes "B-B" guns, pellet guns, and other firearms of all types, regardless of size.

8.24 Hazardous, Toxic, Flammable, Corrosive or Explosive Materials.

(a) No Owner nor any Family member, tenant, lessee, agent, employee, licensee, or guest shall at any time bring onto or store in or on the Project any hazardous, toxic, flammable, corrosive or explosive solid, liquid, gas, or chemical substance or other material which may be hazardous to any Person or property, except for household items, handled, stored and applied in accordance with all applicable government restrictions, which are normal and customary to the use and enjoyment of a residential dwelling. Use and disposal of pesticides, fungicides, herbicides, insecticides, fertilizers, and other such chemical treatments shall meet federal, state, county, and city requirements. Under no circumstances may explosives or fireworks be stored by Owners on their Lots or elsewhere within the Project. Nothing other than natural rain water may be discharged into the storm drains and storm drainage system located on the Property. Toxic chemicals or hydrocarbon compounds such as gasoline, motor oil, antifreeze, solvents, paints, paint thinners, wood preservative and other such fluids shall not be discharged into storm drains or storm drainage systems on the Property or into any street, public or private. All water softeners installed in a Lot must be commercially serviced. No Owner shall deposit or dispose, or permit to be deposited or disposed, any salts or other chemicals from water softeners into the Project's drainage or sewage or sewage system.

(b) In order to avoid damage to right-of-way, discharge of pollutants, and erosion, Owners and their contractors are not permitted to stage, place or stockpile landscaping or construction materials on streets, sidewalks, curbs or driveway aprons at any time. All materials and equipment used for construction or landscaping purposes must be stored or used solely within the boundaries of such Owner's Lot. All materials must be

stored properly and positive measures must be taken to prevent the spillage or discharge of the materials or runoff water contaminated by the materials from entering the sidewalks, gutters and streets. Owners and their contractors are required to comply with all Federal, State and City storm water treatment and discharge regulations and are required to control and treat any such permitted discharges within the confines of their own Lot. Failure to comply with such restrictions may result in enforcement actions by Association and the concerned governmental entities and the imposition of penalties and fines.

ARTICLE IX

9. Insurance.

9.1 Duty to Obtain Insurance: Types.

The Board shall cause to be obtained and maintained adequate blanket public liability insurance (including medical payments), with such limits as may be considered acceptable to FNMA (not less than Three Million Dollars (\$3,000,000) covering all claims for personal injury and property damage arising out of a single occurrence), insuring against liability for bodily injury, death and property damage arising from the activities of the Association and its Members, or from activities of the officers and directors of the Association acting in their capacity as representatives of the Association, with respect to the Association Property. The Board shall also cause to be obtained and maintained fire and casualty insurance with extended coverage, without deduction for depreciation, in an amount as near as possible to the full replacement value of the Association Property and all Improvements thereon. Such insurance shall be maintained for the benefit of the Association, the Owners, and the Mortgagees, as their interests may appear as named insured, subject, however, to loss payment requirements as set forth herein. The Board of Directors shall purchase such other insurance and endorsements, as it determines necessary, including, but not limited to, casualty, errors and omissions, directors, officers and agents liability insurance, plate glass insurance, medical payments, malicious mischief, liquor liability and vandalism insurance, flood insurance, fidelity bonds and worker's compensation, and insurance against such other risks as is customarily carried with respect to planned interest developments similar in construction, location and use; provided, that, in any event, the Board shall maintain such insurance coverage as necessary to satisfy all requirements of (i) FNMA, FHLMC, GNMA, (so long as any of which is a Mortgagee or Owner of a Lot within the Project) except to the extent such coverage is not available or has been waived in writing by FNMA, GNMA, and FHLMC, as applicable, and (ii) California Civil Code Sections 1365.7 and 1365.9. Fidelity bond coverage which names the Association as an obligee must be obtained by or on behalf of the Association for any person or entity handling funds of the Association, including, but not limited to, officers, directors, trustees, employees and agents of the Association and employees of the Manager of the Association, whether or not such Persons are compensated for their services, in an amount not less than the estimated maximum of funds, including reserve funds, in the custody of the Association or the Manager, as the case may be, at any given time during the term of each bond. However, in no event may the aggregate amount of such bonds be less than the sum

equal to one-fourth (1/4) of the Annual Assessments on all Lots in the Project, plus reserve funds.

9.2 Waiver of Claim Against Association.

As to all policies of insurance maintained by or for the benefit of the Association and the Owners, the Association and the Owners hereby waive and release all claims against one another, the Board of Directors, Declarant and Merchant Builders, to the extent of the insurance proceeds available, whether or not the insurable damage or injury is caused by the negligence of or breach of any agreement by any of said Persons.

9.3 Right and Duty of Owners to Insure.

It is the responsibility of each Owner to provide insurance on his personal property and upon all other property and Improvements within his Lot, including without limitation his Dwelling Unit. Nothing herein shall preclude any Owner from carrying any public liability insurance as he deems desirable to cover his individual liability for damage to person or property occurring on his individual Lot or elsewhere upon the Property. Such policies shall not adversely affect or diminish any liability under any insurance obtained by or on behalf of the Association, and duplicate copies of such other policies shall be deposited with the Board upon request. If any loss intended to be covered by insurance carried by or on behalf of the Association shall occur and the proceeds payable thereunder shall be reduced by reason of insurance carried by any Owner, such Owner shall assign the proceeds of such insurance carried by him to the Association, to the extent of such reduction, for application by the Board to the same purposes as the reduced proceeds are to be applied.

9.4 Notice of Expiration Requirements.

If available, each of the policies of insurance maintained by the Association shall contain a provision that said policy shall not be canceled, terminated, materially modified or allowed to expire by its terms, without thirty (30) days' prior written notice to the Board, Declarant and the Merchant Builders, and to each Owner and Beneficiary, insurer and guarantor of a first Mortgage who has filed a written request with the carrier for such notice and every other Person in interest who requests such notice of the insurer. In addition, fidelity bonds shall provide that they may not be canceled or substantially modified without thirty (30) days prior written notice to any insurance trustee named pursuant to Section 9.6 and to each FNMA servicer who has filed a written request with the carrier for such notice.

9.5 Insurance Premiums.

Insurance premiums for any blanket insurance coverage obtained by the Association and any other insurance deemed necessary by the Board of Directors shall be a Common Expense to be included in the Annual Assessments levied by the Association and collected from the Owners. That portion of the Annual Assessments necessary for the required insurance premiums shall be separately accounted for by the Association in the

Reserve Fund, to be used solely for the payment of premiums of required insurance as such premiums become due.

9.6 Trustee for Policies.

The Association, acting through its Board of Directors, is hereby appointed and shall be deemed trustee of the interests of all named insureds under policies of insurance purchased and maintained by the Association. Unless the applicable insurance policy provides for a different procedure for the filing of claims, all claims made under such policy shall be sent to the insurance carrier or agent, as applicable, by certified mail and be clearly identified as a claim. A record of all claims made shall be kept by the Association. All insurance proceeds under any such policies as provided for in Section 9.1 above shall be paid to the Board of Directors as trustees. The Board shall have full power to receive and to acknowledge receipt of the proceeds and to deal therewith as provided herein. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried or otherwise disposed of as provided in Article X of this Declaration. The Board is hereby granted the authority to negotiate loss settlements with the appropriate insurance carriers, with participation, to the extent they desire, of first Mortgagees who have filed written requests within ten (10) days of receipt of notice of any damage or destruction as provided in Article X of this Declaration. Any two (2) officers of the Association may sign a loss claim form and release form in connection with the settlement of a loss claim, and such signatures shall be binding on all the named insureds. Notwithstanding the foregoing, there may be named as an insured, a representative chosen by the Board, including a trustee with whom the Association may enter into an insurance trust agreement or any successor to such trustee who shall have exclusive authority to negotiate losses under any policy providing property or liability insurance and to perform such other functions necessary to accomplish this purpose.

9.7 Actions as Trustee.

Except as otherwise specifically provided in this Declaration, the Board, acting on behalf of the Association and all Owners, shall have the exclusive right to bind such parties in respect to all matters affecting insurance carried by the Association, the settlement of a loss claim, and the surrender, cancellation, and modification of all such insurance, in a manner satisfactory to Beneficiaries of seventy-five percent (75%) of the first Mortgages held by first Mortgagees who have filed requests under Section 9.4. Duplicate originals or certificates of all policies of fire and casualty insurance maintained by the Association and of all renewals thereof, together with proof of payment of premiums, shall be delivered by the Association to all Owners and Mortgagees who have requested the same in writing.

9.8 Annual Insurance Review.

The Board shall review the insurance carried by or on behalf of the Association at least annually, for the purpose of determining the amount of the casualty and fire insurance referred to in Section 9.1 above. If economically feasible, the Board shall

obtain a current appraisal of the full replacement value of the Improvements on the Property except for foundations and footings, without deduction for depreciation, from a qualified independent insurance appraiser, prior to each such annual review.

The Board shall, upon issuance or renewal of the Association policy of public liability insurance, but no less than annually, notify its Members as to the amount and type of liability insurance carried by the Association, and it shall accompany this notification with statements to the effect that the Association is or is not insured to the levels specified by Civil Code Section 1365.9, and that if not so insured, Owners may be individually liable for the entire amount of a judgment arising solely as a result of an act or omission occurring on the Association Property, and if the Association is insured to the levels specified in said Section, then Owners may be individually liable only for their proportional share of assessments levied to pay the amount of any judgment which exceeds the limits of the Association's liability insurance.

9.9 Required Waiver.

All policies of physical damage insurance shall provide, if reasonably possible, for waiver of the following rights, to the extent that the respective insurers would have the rights without such waivers:

- (a) subrogation of claims against the Owners and tenants of the Owners;
- (b) any defense based upon coinsurance;
- (c) any right of setoff, counterclaim, apportionment, proration or contribution by reason of other insurance not carried by the Association;
- (d) any invalidity, other adverse effect or defense on account of any breach of warranty or condition caused by the Association, any Owner or any tenant of any Owner, or arising from any act, neglect, or omission of any named insured or the respective agents, contractors and employees of any insured;
- (e) any right of the insurer to repair, rebuild or replace, and, if the Improvement is not repaired, rebuilt or replaced following loss, any right to pay under the insurance an amount less than the replacement value of the Improvements insured;
- (f) notice of the assignment of any Owner of his interest in the insurance by virtue of a conveyance of any Lot;
- (g) any right to require any assignment of any Mortgage to the insurer;
- (h) any denial of an Owner's claim because of negligent acts by the Association or other Owners; and

(i) prejudice of insurance by any acts or omissions of Owners that are not under the Association's control.

ARTICLE X

10. Damage to Association Property.

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

(a) If the Association Property is damaged or destroyed, the Association shall cause the Association Property to be repaired and reconstructed substantially as it previously existed.

(b) If the cost of effecting total restoration of the Association Property exceeds the amount of insurance proceeds, the Association shall cause the Association Property to be repaired and reconstructed substantially as it previously existed, and the difference between the insurance proceeds and the actual cost of reconstruction shall be levied as a Reconstruction Assessment against each Lot and its respective Owner.

(c) To the extent of funds available for restoration, any restoration or repair of the Association Property shall be performed substantially in accordance with the original plans and specifications unless other action is approved by Beneficiaries of fifty-one percent (51%) of the first Mortgages on Lots in the Property.

(d) The Board, immediately upon having knowledge of any damage or destruction affecting a material portion of the Association Property, shall promptly notify all Owners and Beneficiaries, insurers and guarantors of first Mortgages on Lots in the Project who have filed a written request for such notice with the Board. The Board, immediately upon having knowledge of any damage or destruction affecting a Lot, shall promptly notify any Beneficiary, insurer or guarantor of any Mortgage encumbering such Lot who has filed a written request for such notice with the Board.

ARTICLE XI

11. Eminent Domain.

If at any time all or any portion of the Association Property or any interest therein, is taken for any public or quasi-public use, under any statute, by right of eminent domain or by private purchase in lieu of eminent domain, the award in condemnation (exclusive of any severance damages peculiar to, and affecting only, a particular Lot and recoverable by the Owner thereof) shall be paid to the Association. Any such award payable to the Association shall be deposited in the Operating Fund. No Member shall be entitled to participate as a party, or otherwise, in any proceedings relating to such condemnation; provided, each Owner shall be entitled to separately pursue any severance damages applicable to his Lot and recoverable by that Owner as provided above. The Association

shall have the exclusive right to participate in such proceedings and shall, in its name alone, represent the interest of all Members. The Board of Directors, immediately upon having knowledge of any taking by eminent domain affecting a material portion of the Association Property, or any threat thereof, shall promptly notify all Owners and those Mortgagees, insurers and guarantors of Mortgages on Lots in the Project who have filed a written request for such notice with the Board. The Board, immediately upon having knowledge of any taking of eminent domain affecting a Lot, or any threat thereof, shall promptly notify any Mortgagee, insurer or guarantor of a Mortgage encumbering such Lot who has filed a written request for such notice with the Board.

ARTICLE XII

12. Rights of Mortgagees.

Notwithstanding any other provision of this Declaration, no amendment or violation of this Declaration shall operate to defeat or render invalid the rights of the Beneficiary under any Deed of Trust upon a Lot made in good faith and for value, provided that after the foreclosure of any such Deed of Trust such Lot shall remain subject to this Declaration, as amended. For purposes of this Declaration, “first Mortgage” shall mean a Mortgage with first priority over other Mortgages or Deeds of Trust on a Lot, and “first Mortgagee” shall mean the Beneficiary of a first Mortgage. For purposes of any provision of this Declaration or the other Restrictions which require the vote or approval of a specified percentage of first Mortgagees, such vote approval shall be determined based upon one (1) vote for each Lot encumbered by each such first Mortgage. In order to induce FHLMC, GNMA and FNMA to participate in the financing of the sale of Lots within the Project, the following provisions are added hereto (and to the extent these added provisions conflict with any other provisions of this Declaration or any other of the Restrictions, these added restrictions shall control):

(a) Upon written request to the Association, identifying the name and address of the Mortgagee, insurer or guarantor of a first Mortgage encumbering any Lot and the Lot number or address, such Mortgagee, insurer or guarantor will be entitled to timely written notice of:

(1) any condemnation loss or any casualty loss which affects a material portion of the Project or any Lot on which there is a first Mortgage held, insured, or guaranteed by such Mortgagee insurer or guarantor, as applicable;

(2) any default in performance of obligations under the Project Documents or delinquency in the payment of Assessments or charges owed by an Owner of a Lot subject to a first Mortgage held, insured or guaranteed by such Mortgagee, insurer or guarantor, which remains uncured for a period of sixty (60) days;

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

(4) any proposed action under this Declaration which would require the consent of a specified percentage of the first Mortgagees.

(b) Every Owner, including every first Mortgagee of a Mortgage encumbering any Lot, who obtains title to such Lot pursuant to the remedies provided in such Mortgage, or pursuant to foreclosure of the Mortgage, or by deed (or assignment) in lieu of foreclosure, shall be exempt from any “right of first refusal” created or purported to be created by the Restrictions.

(c) Each first Mortgagee of a Mortgage encumbering any Lot, which obtains title to such Lot, pursuant to judicial foreclosure or the powers provided in such Mortgage, shall take title to such Lot free and clear of any claims for unpaid assessments or charges against such Lot which accrued prior to the time such Mortgagee acquires title to such Lot in accordance with Section 5.10.

(d) Unless at least sixty-seven percent (67%) of the first Mortgagees or sixty-seven percent (67%) of the Owners (other than Declarant and Merchant Builders) have given their prior written approval, neither the Association nor the Owners shall:

(1) by act or omission seek to abandon or terminate the Project;
or

(2) change the method of determining the obligations, assessment dues or other charges which may be levied against any Owner or change the pro rata interest or obligations of any Lot for purpose of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards unless the change is due to the annexation of additional phases as authorized in this Declaration; or

(3) partition or subdivide any Lot; or

(4) by act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Association Property unless due to the annexation of additional phases as authorized in this Declaration. (The granting of easements for public utilities or for other purposes consistent with the intended use of the Association Property under this Declaration and the granting of exclusive easements to Owners over portions of the Association Property to conform the boundaries of the Association Property to the as-built location of Improvements installed or constructed by Declarant shall not be deemed a transfer within the meaning of this clause); or

(5) use hazard insurance proceeds for losses to any Property (i.e., Improvements to the Lots or Association Property) for other than the repair, replacement or reconstruction of such Property, except as provided by statute in case of substantial loss to the Lots or Association Property; or

(6) by act or omission change, waive or abandon the provisions of this Declaration, or the enforcement thereof, pertaining to the architectural design or control of the exterior appearance of Improvements on the Property or the maintenance of the Association Property, or any walks, fences, driveways, or landscaping in the Project; or

(7) fail to maintain or cause to be maintained fire and extended coverage on insurable Association Property as provided in Article IX of this Declaration.

(e) All Mortgagees, insurers and guarantors of first Mortgages shall have the right to (1) examine the books and records of the Association, including current copies of all the Restrictions and financial statements, during normal business hours, (2) upon written request, require the Association to submit an annual audited financial statement (prepared at the expense of the requesting party if such statement is not otherwise prepared by the Association) for the preceding Fiscal Year within one hundred twenty (120) days of the end of the Association's Fiscal Year, (3) upon written request, receive written notice of all meetings of the Owners, and (4) designate in writing a representative to attend all such meetings. All Owners shall also have the right to examine the books and records of the Association, including current copies of all the Restrictions and financial statements, during normal business hours.

(f) All Mortgagees, insurers and guarantors of first Mortgagees, upon written request, shall be given thirty (30) days' written notice prior to the effective date of (1) any proposed material amendment to the Restrictions; (2) any termination of an agreement for professional management of the Property following any decision of the Owners to assume self-management of the Project; and (3) any proposed termination of the Property as a planned residential development.

(g) The Reserve Fund described in Article V of this Declaration must be funded by regular scheduled monthly, quarterly, semiannual, or annual payments rather than by large special assessments.

(h) The Board shall secure and cause to be maintained in force at all times a fidelity bond for any Person handling funds of the Association, including, but not limited to, employees of the professional Manager.

(i) No provision of the Restrictions shall be construed or applied to give any Owner, or any other party, priority over any rights of the Mortgagees of a first Mortgage in the case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or taking of Lots and/or Association Property.

(j) In addition to the foregoing, the Board may enter into such contracts or agreements on behalf of the Association as are required in order to satisfy the guidelines of FHLMC, FNMA or GNMA or any similar entity, so as to allow for the purchase, guaranty or insurance, as the case may be, by such entities of first Mortgages

encumbering Lots. Each Owner hereby agrees that it will benefit the Association and the membership of the Association, as a class of potential Mortgage borrowers and potential sellers of their residential Lots, if such agencies approve the Property as a qualifying subdivision under their respective policies, rules and regulations, as adopted from time to time. Mortgagees are hereby authorized to furnish information to the Board concerning the status of any Mortgage encumbering a Lot.

(k) Each Owner hereby authorizes the first Mortgagee of a first Mortgage on his Lot to furnish information to the Board concerning the status of such first Mortgage and the loan which it secures.

(l) When professional management has been previously required by the Restrictions or a Mortgagee, insurer, or guarantor of a first Mortgage, any decision to establish self-management by the Association shall require the approval of sixty-seven percent (67%) of the voting power of the Association and the Mortgagees of fifty-one percent (51%) of the first Mortgages of Lots in the Project.

(m) All intended Improvements in any Phase of Development other than Phase 1 shall be substantially completed or the completion of such Improvements shall be secured by a bond or other arrangement acceptable to the DRE prior to the first Close of Escrow for the sale of a Lot in such Phase.

(n) First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Association Property and may pay any overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for Association Property, and First Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

(o) It is the intent of Declarant that this Declaration and the Articles and Bylaws of the Association, and the Project in general, shall now and in the future meet all requirements necessary to purchase, guarantee, insure, or subsidize any mortgage of a Lot in the Project by FNMA, FHLMC, and GNMA. The Association and each Owner shall take any action or shall adopt any resolutions required by Declarant or the Board to conform this Declaration or the Project to the requirements of any of these entities or agencies.

ARTICLE XIII

13. Duration and Amendment.

13.1 Duration.

This Declaration shall continue in full force for a term of fifty (50) years from the date of Recordation hereof, after which time the same shall be automatically extended for successive periods of ten (10) years, unless a Declaration of Termination is Recorded, satisfying the requirements of an amendment to this Declaration as set forth in

Section 13.2. There shall be no severance by sale, conveyance, encumbrance or hypothecation of an interest in any Lot from the concomitant Membership in the Association, as long as this Declaration shall continue in full force and effect.

13.2 Amendment.

(a) Notice of the subject matter of a proposed amendment to this Declaration in reasonably detailed form shall be included in the notice of any meeting or election of the Association at which a proposed amendment is to be considered. The resolution shall be adopted by the vote, in person or by proxy, or affirmative written ballot of Members representing not less than (i) sixty-seven percent (67%) of the voting power of the Association, and (ii) sixty-seven percent (67%) of the voting power of the Association residing in Members other than the Declarant and the Merchant Builders, provided that the specified percentage of the voting power of the Association necessary to amend a specified section or provision of this Declaration shall not be less than the percentage of affirmative votes prescribed for action to be taken under that section or provision.

(b) In addition to the required notice and consent of Members and Declarant and Merchant Builders provided above, the Mortgagees of fifty-one percent (51%) of the first Mortgages on all the Lots in the Project must approve any amendment to this Declaration which is of a material nature, as follows:

(i) Any amendment which affects or purports to affect the validity or priority of encumbrances or the rights or protection granted to Mortgagees, insurers or guarantors of first Mortgages as provided in Articles V, IX, X, XI, XII and XIII hereof.

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

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

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

(v) Any amendment which would or could result in partition or subdivision of a Lot in any manner inconsistent with the provisions of this Declaration.

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

(vii) Any amendment concerning:

(A) The weight of any Owner's voting rights;

(B) Rights to use the Association Property;

(C) Reductions in reserves for or responsibility for maintenance, repair and replacement of the Association Property;

(D) Boundaries of any Lot;

(E) Leasing of Lots;

(F) Establishment of self-management by the Association where professional management has been required by any Mortgagee, insurer or guarantor of a first Mortgage;

(G) Expansion or contraction of the Project, or the addition, annexation or withdrawal of real property to or from the Project; provided that the conveyance of any part of the Property to the Association as Association Property or the granting of licenses or easements over the Property shall not be considered expansion or contraction thereof;

(H) Increases in assessments that raise the previously assessed amount by more than 25%, assessment liens, or the priority or subordination of such liens; or

(I) Any provisions that expressly benefit Mortgage holders, insurers, or guarantors.

(c) Notwithstanding anything to the contrary contained in this Declaration, Sections 2.2(b), 2.2(c), 2.2(d) and 15.4 of this Declaration shall not be amended without the vote or approval by written ballot of at least (a) ninety percent (90%) of the voting power of the Members of the Association other than Declarant and Merchant Builders, and (b) at least ninety percent (90%) of the Mortgagees.

(d) Termination of this Declaration shall require approval by the Members as provided in subsection (a) of this Section 13.2. No such termination shall be effective unless it is also approved in advance either by fifty-one percent (51%) of the Mortgagees of the first Mortgages on all of the Lots in the Project (if said termination is proposed by reason of the substantial destruction or condemnation of the Project) or by sixty-

seven percent (67%) of such Mortgagees (if said termination is for reasons other than such substantial destruction or condemnation). Any distribution of excess funds held by the Association upon the termination of the Project shall be made equally to each Owner.

(e) Each Mortgagee of a first Mortgage on a Lot in the Project which receives proper written notice of a proposed amendment or termination of this Declaration by certified or registered mail with a return receipt requested shall be deemed to have approved the amendment or termination if the Mortgagee fails to submit a response to the notice within thirty (30) days after the Mortgagee receives the notice.

(f) A copy of each amendment shall be certified by at least two (2) officers of the Association, and the amendment shall be effective when a Certificate of Amendment is Recorded. The Certificate, signed and sworn to by two (2) officers of the Association, stating that the requisite number of Owners and Mortgagees have either voted for or consented in writing to any amendment adopted as provided above, when Recorded, shall be conclusive evidence of that fact. The Association shall maintain in its files the record of all such votes or written consents, for a period of at least four (4) years.

(g) Notwithstanding any other provision of this Section 13.2, at any time prior to the first Close of Escrow for the sale of a Lot within Phase 1, Declarant may unilaterally amend or terminate this Declaration by Recording a written instrument which effects the amendment or termination and is signed and acknowledged by Declarant.

(h) Notwithstanding any other provision of this Declaration, for so long as Declarant or any Merchant Builder owns any portion of the Property or Lot therein, Declarant may, in its sole discretion, unilaterally amend this Declaration by Recording a written instrument signed by Declarant in order to conform this Declaration to the requirements of DRE, FNMA, GNMA or FHLMC then in effect or to any applicable statutory legal requirements.

13.3 Protection of Declarant and Merchant Builders.

The prior written approval of Declarant and the Merchant Builders will be required before any amendment which would impair or diminish the rights of Declarant or any Merchant Builder to complete the Property or sell or lease Lots therein in accordance with this Declaration shall become effective. Notwithstanding any other provisions of the Restrictions, until such time as (i) the third anniversary of the date on which Declarant or any Merchant Builder is no longer entitled to add Annexable Territory to the Property without the consent of the Association pursuant to Section 16.1, or (ii) Declarant and Merchant Builders no longer own any Lots in the Property and no longer have the right to add Annexable Territory to the Property without the consent of the Association pursuant to Section 16.1, whichever occurs first, the following actions, before being undertaken by the Association, shall first be approved in writing by Declarant and the Merchant Builders:

(a) Any amendment or action requiring the approval of first Mortgagees pursuant to this Declaration, including without limitation all amendments and actions specified in Section 13.2;

(b) The annexation to the Property of real property other than the Annexable Territory pursuant to Section 16.2;

(c) The levy of a Capital Improvement Assessment for the construction of new facilities not constructed on the Association property by Declarant and/or the Merchant Builders;

(d) Subject to Section 5.4 regarding limitations on Annual Assessment increases, any significant reduction of Association maintenance or other services; or

(e) Any modification of the rights reserved and granted to Declarant or the Merchant Builders herein, including, without limitation, those rights set forth in Section 6.1, Article VII, and Article XV.

ARTICLE XIV

14. Enforcement of Certain Bonded Obligation.

14.1 Consideration by Board of Directors.

If (1) the Improvements to be located on the Association Property in any Phase of Development are not completed prior to the issuance of a Final Subdivision Public Report for that Phase by the DRE for the sale of Lots in the Project, and (2) the Association is obligee under a bond or other arrangement (“Bond”) required by the DRE to secure performance of the commitment of Declarant to complete such Improvements, the Board of Directors of the Association shall consider and vote on the question of action by the Association to enforce the obligations under the Bond, with respect to any such Improvement for which a Notice of Completion has not been filed within sixty (60) days after the completion date specified for that Improvement in the Planned Construction Statement appended to the Bond. If the Association has given an extension in writing for the completion of any Improvement on the Association Property, the Board shall be directed to consider and vote on the aforesaid question (if a Notice of Completion has not been filed), within thirty (30) days after the expiration of the extension.

14.2 Consideration by the Members.

A special meeting of Members, for the purpose of voting to override a decision by the Board not to initiate action to enforce the obligations under the Bond or on the failure of the Board to consider and vote on the question, shall be held no fewer than thirty-five (35) days nor more than forty-five (45) days after receipt by the Board of a petition for such a meeting signed by Members representing five percent (5%) of the total voting power of the Association residing in Members other than Declarant and Merchant

Builders. A vote at such meeting to take action to enforce the obligations under the Bond by Members representing a majority of the total voting power of the Association residing in Members other than Declarant and Merchant Builders shall be deemed to be the decision of the Association, and the Board shall thereafter implement this decision by initiating and pursuing appropriate action in the name of the Association.

ARTICLE XV

15. General Provisions.

15.1 Legal Proceedings; Actions Arising From Restrictions.

Failure to strictly comply with any of the terms of the Restrictions by an Owner, his Family, guests, employees, contractors, invitees or tenants, shall be grounds for relief which may include, without limitation, an action to recover sums due for damages, injunctive relief, foreclosure of any lien, or any combination thereof. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce that provision, or any other provision hereof. The Board, any Owner (not at the time in default hereunder), Declarant (so long as Declarant is an Owner), or a Merchant Builder (so long as such Merchant Builder is an Owner) shall be entitled to bring an action for damages against any defaulting Owner, and in addition may enjoin any violation of this Declaration. Any judgment rendered in any action or proceeding pursuant to this Declaration shall include a sum for attorneys' fees in such amount as the Court may deem reasonable, in favor of the prevailing party, as well as the amount of any delinquent payment, late payment fee, costs of collection and court costs, and interest thereon. Each remedy provided for in this Declaration shall be cumulative and not exclusive or exhaustive. Each Owner shall have a right of action against the Association for the failure by the Association to comply with the Restrictions.

Notwithstanding anything above to the contrary, any action or claim for enforcement of the Restrictions shall be subject to the following provisions:

(a) Unless the applicable time limitation for commencing the action would run within one hundred twenty (120) days, prior to the filing of a civil action by the Association, an Owner, or a Member of the Common Interest Development solely for declaratory relief or injunctive relief, or for declaratory relief or injunctive relief in conjunction with a claim for monetary damages (other than those relating to Association assessments, except as provided under Section 15.1(j) hereinbelow), not in excess of five thousand dollars (\$5,000), related to the enforcement of the governing documents, the parties shall endeavor, as provided in this subdivision, to submit their dispute to a form of alternative dispute resolution such as mediation or arbitration. The form of alternative dispute resolution chosen may be binding or non-binding at the option of the parties. Any party to such a dispute may initiate this process by serving on another party to the dispute a Request for Resolution. The Request for Resolution shall include (1) a brief description of the dispute between the parties, (2) a request for alternative dispute resolution, and (3) a notice that the party receiving the Request for Resolution is required to respond thereto within thirty (30)

days of receipt or it will be deemed rejected. Service of the Request for Resolution shall be in the same manner as prescribed for service in a small claims action as provided in Section 116.340 of the Code of Civil Procedure. Parties receiving a request for Resolution shall have thirty (30) days following service of the Request for Resolution to accept or reject alternative dispute resolution and if not accepted within the thirty (30) day period by a party shall be deemed rejected by that party. If alternative dispute resolution is accepted by the party upon whom the Request for Resolution is served, the alternative dispute resolution shall be completed within ninety (90) days of receipt of the acceptance by the party initiating the Request for Resolution, unless extended by written stipulation signed by both parties. The costs of the alternative dispute resolution shall be borne by the parties.

(b) At the time of filing a civil action by the Association, an Owner, or a Member of the Common Interest Development solely for declaratory relief or injunctive relief, or for declaratory relief or injunctive relief in conjunction with a claim for monetary damages, not in excess of five thousand dollars (\$5,000), related to the enforcement of the governing documents, the party filing the action shall file with the complaint a certificate stating that alternative dispute resolution has been completed in compliance with Section 15.1(a). The failure to file a certificate as required by Section 15.1(a) shall be grounds for a demurrer pursuant to Section 430.10 of the Code of Civil Procedure or a motion to strike pursuant to Section 435 of the Code of Civil Procedure unless the filing party certifies in writing that one of the other parties to the dispute refused alternative dispute resolution prior to the filing of the complaint, that preliminary or temporary injunctive relief is necessary, or that alternative dispute resolution is not required by Section 15.1(a), because the limitation period for bringing the action would have run within the one hundred twenty (120) day period next following the filing of the action, or unless the court finds that dismissal of the action for failure to comply with Section 15.1(a) would result in substantial prejudice to one of the parties.

(c) Once a civil action to enforce the governing documents has been filed by either the Association or an Owner or Member of this Common Interest Development, upon written stipulation of the parties the matter may be referred to alternative dispute resolution and stayed. The costs of the alternative dispute resolution shall be borne by the parties. During this referral, the action shall not be subject to the rules implementing subdivision (c) of Section 68603 of the Government Code.

(d) The requirements of Section 15.1(a) and Section 15.1(b) shall not apply to the filing of a cross-complaint.

(e) In any action to enforce the governing documents, the prevailing party shall be awarded reasonable attorneys' fees and costs. Upon motion by any party for attorneys' fees and costs to be awarded to the prevailing party in these actions, the court, in determining the amount of the award, may consider a party's refusal to participate in alternative dispute resolution prior to the filing of the action.

(f) Unless consented to by both parties to alternative dispute resolution that is initiated by a Request for Resolution under Section 15.1(a), evidence of

anything said or of admissions made in the course of the alternative dispute resolution process shall not be admissible in evidence, and testimony or disclosure of such a statement or admission may not be compelled, in any civil action in which, pursuant to law, testimony can be compelled to be given.

(g) Unless consented to by both parties to alternative dispute resolution that is initiated by a Request for Resolution under Section 15.1(a), documents prepared for the purpose or in the course of, or pursuant to, the alternative dispute resolution shall not be admissible in evidence, and disclosure of these documents may not be compelled, in any civil action in which, pursuant to law, testimony can be compelled to be given.

(h) Members of the Association shall annually be provided a summary of the provisions of this Section, which specifically references this Section. The summary shall include the following language:

“Failure by any member of the Association to comply with the pre-filing requirements of Section 1354 of the Civil Code may result in the loss of your rights to sue the Association or another member of the Association regarding enforcement of the governing documents.”

The summary shall be provided either at the time the pro forma budget required by Section 1365 of the Civil Code is distributed or in the manner specified in Section 5016 of the Corporations Code.

(i) Any Request for Resolution sent to the Owner of a Lot pursuant to Section 15.1(a) shall include a copy of Civil Code Section 1354.

(j) (1) The exception for disputes related to Association assessments in Section 15.1(a) shall not apply if, in a dispute between the Owner of a Lot and the Association regarding the assessments imposed by the Association, the Owner of the Lot:

(A) chooses to pay in full to the Association:

(i) The amount of the assessment in dispute;

(ii) Late charges;

(iii) Interest; and

(iv) All fees and costs associated with the preparation and filing of a notice of delinquent assessment, including all mailing costs, and including attorneys fees not to exceed Four Hundred Twenty-Five Dollars (\$425.00); and

(B) states by written notice that the amount is paid under protest, and the written notice is mailed by certified mail not more than thirty (30) days from the recording of a notice of delinquent assessment in accordance with § 1367 of the Civil Code.

In those instances, the Association shall inform the Owner that the Owner may resolve the dispute through alternative dispute resolution as set forth in Section 1354 of the Civil Code, civil action, and any other procedures to resolve the dispute that may be available through the Association.

(2) The right of any Owner of a Lot to utilize alternative dispute resolution under this Section 15.1(j) may not be exercised more than two (2) times in any single calendar year, and not more than three (3) times within any five (5) calendar years. Nothing within this Section 15.1(j) shall preclude any Owner of a Lot and the Association, upon mutual agreement, from entering into alternative dispute resolution for a number of times in excess of the limits set forth in this Section 15.1(j). The Owner of the Lot may request and be awarded, through alternative dispute resolution, reasonable interest to be paid by the Association on the total amount paid under Sections 15.1(j)(1)(A)(i) to 15.1(j)(1)(A)(iv), inclusive, which was not in fact due from the Owner of the Lot, if it is determined through alternative dispute resolution that the assessment levied by the Association was not correctly levied.

15.2 Notification of Construction Claims.

(a) Before the Association or any Owner commences an action for damages against Declarant, any Merchant Builder, any contractor, subcontractor, architect, or materialmen engaged by Declarant and/or any Merchant Builder in development of the Project or any director, officer, partner, employee, or agent of any of them, based upon a claim for defects in the design or construction of the Common Interest Development or any portion thereof, all of the requirements of subsections (b) and (c) below shall be met.

(b) A resolution authorizing the Board to commence an action must be approved by Members representing more than 50% of the voting power of the Association. The Board shall provide notice by first-class mail to all Members of a special meeting of Members, for the purpose of voting to authorize the Board to initiate action based upon a claim for defects in the design or construction of the Common Interest Development or any portion thereof, not less than thirty (30) nor more than sixty (60) days prior to the date of such a meeting. The notice to the Members shall include all of the following information:

- (1) Estimated Attorneys' fees and costs;
- (2) Potential benefits and adverse consequences of a civil action, including among other things, potential affects on property values;
- (3) How the action will be funded;

- (4) Offers of settlement;
- (5) How proceeds from the action or settlement of such action would be used.

(c) All applicable requirements of Civil Code Sections 1368.4, 1375, and Sections 910 through 938 as enacted by Cal. Stats. 2002, ch. 722, as such Sections may be amended from time to time, or any successor statute thereto shall be satisfied (notwithstanding the fact that said Section 1375 does not by its terms apply to Owners), including, without limitation, all notice and dispute resolution requirements.

15.3 Notice to Members of Other Civil Action Against Declarant and/or Merchant Builders.

(a) Not later than thirty (30) days prior to the filing of any civil action by the Association against Declarant and/or any Merchant Builders for alleged damage to the Association Property, or alleged damage to the Lots or Dwelling Units that arises out of, or is integrally related to, damage to the Association Property, the Board of Directors of the Association shall provide a written notice to each Member of the Association who appears on the records of the Association when the notice is provided. This notice shall specify all of the following:

- (1) That a meeting will take place to discuss problems that may lead to the filing of a civil action.
- (2) The options, including civil actions, that are available to address the problems.
- (3) The time and place of this meeting.

(b) Notwithstanding subdivision (a), if the Association has reason to believe that the applicable statute of limitations will expire before the Association files the civil action, the Association may give the notice, as described above, within thirty (30) days after the filing of the action.

15.4 Alternative Dispute Resolution.

(a) Disputes and Remedies. In addition to the notification and dispute resolution procedures set forth in Sections 15.2 and 15.3 and notwithstanding anything in the Restrictions to the contrary, it is the desire and intention of this Section 15.4 to provide an expedited means of resolving any claims, disputes and disagreements which may arise between Owner or the Association and the Declarant and/or any Merchant Builder (individually a “Declarant Party”, collectively the “Declarant Parties”) after the close of escrow or other conveyance of any portion of the Property by Declarant or any Merchant Builder concerning the Property and/or any express or implied warranties, including, without limitation, the Limited Warranty and the Customer Care Program provided by Declarant, that

are not resolved pursuant to any applicable statutory dispute resolution procedures (individually referenced to herein as “Dispute” and collectively as “Disputes”). Initially, the Declarant Parties will attempt to resolve any Dispute asserted by an Owner or the Association of which it is given notice. If the Dispute cannot be resolved between the parties in this manner, it will be decided through the arbitration procedure as set forth below. Alternatively, a Declarant Party, an Owner or the Association may elect to resolve such Disputes through a small claims court proceeding. **THIS PROCESS INVOLVES WAIVER OF THE RIGHT TO A JURY TRIAL. BY EXECUTING THIS DECLARATION AND/OR ANY SUPPLEMENTAL DECLARATION, DECLARANT AND EACH MERCHANT BUILDER, AND BY EXECUTING A DEED TO ANY PORTION OF THE PROPERTY, EACH OWNER AND THE ASSOCIATION, AGREE TO BE BOUND BY THE PROVISIONS OF THIS SECTION 15.4.**

(1) Arbitration. Should either proceedings governed by California Civil Code Section 1375, or mediation pursuant to Section 15.4(a)(4) above not be successful in resolving any Dispute, or should the non-adversarial procedures provided by statute in Civil Code Section 910 through 938, and as hereafter amended, fail to resolve any Dispute, the Association, each Owner, and each Declarant Party shall resolve such Dispute exclusively through binding arbitration in the county in which the Property is located. This arbitration provision shall apply to Disputes of any kind or nature regardless of when the Dispute first arose or the nature of the relief sought.

(A) Waiver of Trial by Judge or Jury. By agreeing to resolve all Disputes through binding arbitration, the Association, each Owner and each Declarant Party each give up the right to have their respective claims and defenses decided by a judge or a jury. All claims and defenses shall instead be decided by the arbitrator.

(B) Rules Applicable to All Cases. The arbitration will be conducted by Construction Arbitration Services, Inc. (“CAS”) in accordance with the rules of CAS in effect do the initiation of the arbitration (“CAS Rules”), as supplemented by this Addendum. The following supplemental rules shall apply to all arbitration proceedings and shall govern in the event of a conflict between the rules set forth below and the rules of CAS Rules. In the event an arbitration under this provision involves Professional Warranty Service Corporation (“PWC”), as the administrator of Limited Warranty, and CAS is unwilling or unable to serve as the arbitrator, then PWC shall be entitled to select another reputable arbitration service, at its sole discretion, at the time the request for arbitration is submitted. In the event that PWC selects an alternate arbitration service, the rules and procedures of such arbitration service in effect at the time the request for arbitration is submitted shall be followed.

(C) Qualifications of Arbitrators. The arbitrator shall be neutral and impartial and either a retired judge or a member or former member of the California State Bar with at least 15 years experience as a practicing lawyer.

(D) Appointment of Arbitrator. The arbitrator to preside over the Dispute shall be selected in accordance with the CAS Rules, but no later than sixty (60) days after a notice of claim is filed.

(E) Expenses. All fees charged by CAS and the arbitrator shall be advanced by the Declarant Party (or divided equally among Declarant Parties involved). If the Declarant Party(ies) is the prevailing party in the arbitration, the arbitrator may, in his or her discretion and only to the extent permitted by law and the CAS Rules, direct the Owner or the Association, as applicable, to reimburse the Declarant Party(ies) all or part of the CAS fee and arbitrator's fee advanced by the Declarant Party(ies).

(F) Venue. The venue of the arbitration shall be in the County where the Project is located unless the parties agree in writing to another location.

(G) Preliminary Procedures. If state or federal law requires the Association or an Owner or a Declarant Party to take steps or procedures before commencing an action in court, then the Association, Owner or Declarant Party must take such steps or follow such procedures, as the case may be, before commencing the arbitration. For example, any claims or Disputes pursuant to California Civil Code Section 895 et. seq. as hereafter amended may be subject to the non-adversarial procedures set forth in California Civil Code Section 910 through 938, prior to the initiation of any arbitration or small claims court proceeding against Declarant. In addition, nothing contained herein shall be deemed a waiver or limitation of the provisions of California Civil Code Sections 1368.4, 1375.05 or 1375.1.

(H) Participation by Other Parties. The Association, an Owner and a Declarant Party, to the extent any such party is defending a claim in the arbitration, may, if it chooses, have all necessary and appropriate parties included as parties to the arbitration.

(I) Rules of Law. The arbitrator must follow California substantive law (including statutes of limitations) but strict conformity with the rules of evidence is not required, except that the arbitrator shall apply applicable law relating to privilege and work product. The arbitrator shall be authorized to provide all recognized remedies available at law or equity for any cause of action.

(J) Attorneys Fees and Costs. Each party shall bear its own attorneys fees and costs (including expert witness costs) in the arbitration.

(2) Additional Rules Applicable To Certain Cases. In any arbitration in which a claim of Owner, the Association or Declarant exceeds \$250,000 in value, the following additional rules will supplement the CAS Rules and govern in the event of a conflict between the following rules and the rules set forth above, the CAS Rules, or both.

(A) Qualifications of Arbitrator. In addition to the requirements of Section 15.4(a)(5)(C) above, the arbitrator shall be a retired judge of the California Superior Court, a California Court of Appeal, or the California Supreme Court.

(B) Rules of Law. The California Evidence Code shall apply.

(C) Written Decision. Within thirty (30) days after the hearing is closed, the arbitrator must issue a written decision. If either Buyer or Seller requests it, the arbitrator must issue a reasoned award.

(3) Federal Arbitration Act. Because many of the materials and products incorporated into the home are manufactured in other states, the development and conveyance of the Property evidences a transaction involving interstate commerce and the Federal Arbitration Act (9 U.S.C. §1, et seq.) now in effect and as it may be hereafter amended will govern the interpretation and enforcement of the arbitration provisions of this Declaration.

(4) **AGREEMENT TO ARBITRATION AND WAIVER OF JURY TRIAL.**

(A) **ARBITRATION OF DISPUTE.** BY EXECUTING THIS DECLARATION AND/OR ANY SUPPLEMENTAL DECLARATION, DECLARANT AND EACH MERCHANT BUILDER, AND BY ACCEPTING A DEED FOR THE ASSOCIATION PROPERTY OR A LOT, AS THE CASE MAY BE, THE ASSOCIATION AND EACH OWNER, AGREE (1) TO HAVE ANY DISPUTE DECIDED BY NEUTRAL ARBITRATION IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT AND THE CALIFORNIA ARBITRATION ACT, TO THE EXTENT THE CALIFORNIA ARBITRATION ACT IS CONSISTENT WITH THE FEDERAL ARBITRATION ACT; (2) TO GIVE UP ANY RIGHTS THEY MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL; AND (3) TO GIVE UP THEIR RESPECTIVE JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THIS SECTION 15.4. IF ANY PARTY REFUSES TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, SUCH PARTY MAY BE COMPELLED TO ARBITRATE UNDER THE FEDERAL ARBITRATION ACT AND THE CALIFORNIA ARBITRATION ACT, TO THE EXTENT THE CALIFORNIA ARBITRATION ACT IS CONSISTENT WITH THE FEDERAL ARBITRATION ACT.

(B) **WAIVER OF JURY TRIAL.** IN THE EVENT THE FOREGOING ARBITRATION PROVISION IS HELD NOT TO APPLY OR IS HELD INVALID, VOID OR UNENFORCEABLE IN ITS ENTIRETY FOR ANY REASON, ALL DISPUTES SHALL BE TRIED BEFORE A JUDGE IN A COURT OF COMPETENT JURISDICTION WITHOUT A JURY. THE JUDGE IN SUCH COURT OF COMPETENT JURISDICTION SHALL HAVE THE POWER TO

GRANT ALL LEGAL AND EQUITABLE REMEDIES AND AWARD COMPENSATORY DAMAGES. DECLARANT AND EACH MERCHANT BUILDER, BY EXECUTING THIS DECLARATION AND/OR ANY SUPPLEMENTAL DECLARATION, AND EACH OWNER AND THE ASSOCIATION, BY ACCEPTING A DEED TO ANY PORTION OF THE PROPERTY, HEREBY WAIVE AND COVENANT NOT TO ASSERT THEIR CONSTITUTIONAL RIGHT TO TRIAL BY JURY OF ANY DISPUTES, INCLUDING, BUT NOT LIMITED TO, DISPUTES RELATING TO CONSTRUCTION DEFECTS, MISREPRESENTATION OR ANY DECLARANT PARTY'S FAILURE TO DISCLOSE BINDING UPON THE RESPECTIVE SUCCESSORS AND ASSIGNS OF SUCH PARTIES AND UPON ALL PERSONS AND ENTITIES ASSERTING RIGHTS OR CLAIMS OR OTHERWISE ACTING ON BEHALF OF DECLARANT, ANY MERCHANT BUILDER, ANY OWNER, THE ASSOCIATION OR THEIR RESPECTIVE SUCCESSORS AND ASSIGNS.

(5) **Final and Binding Award.** The decision of the arbitrator or, if an appeal is heard, the decision of the appeal arbitrators, shall be final and binding. A petition to confirm, vacate, modify or correct an award may be filed in any court of competent jurisdiction in the county in which the Property is located, but the award may be vacated, modified or corrected only as permitted by the Federal Arbitration Act.

(6) **Severability.** In addition to and without limiting the effect of any general severability provisions of this Declaration, if the arbitrator or any court determines that any provision of this Section 15.4 is unenforceable for any reason, that provision shall be severed, and proceedings agreed to in this Section 15.4 shall be conducted under the remaining enforceable terms of this Section 15.4.

(7) **Application of Award.** Any proceeds awarded to the Association arising from any Dispute by settlement, award or otherwise shall be applied first for the purpose of repairing any defect claimed under such Dispute or replacing Reserve Funds previously utilized by the Association to cause such repairs and then to the costs of such litigation. Any excess proceeds shall be applied as determined by the Board, subject to any requirements established by the non-profit mutual benefit laws of the State of California and any other applicable laws.

(8) **Statutes of Limitation.** Subject to the terms of Civil Code Section 895, et seq., and as hereafter amended, nothing in this Section 15.4 shall be considered to toll, stay, reduce or extend any applicable statute of limitations; provided, however, that the Declarant Parties, the Association or any Owner shall be entitled to commence a legal action which in the good faith determination of any Declarant Party, the Association or Owner is necessary to preserve the Declarant Parties, the Association's or any Owner's rights under any applicable statute of limitations, provided that the Declarant Party, Association or Owner shall take no further steps in processing the action until it has complied with the procedures described in Sections 15.4(a)(4) and 15.4(a)(5) above.

(9) **Exception to Arbitration.** The procedures set forth in this Section 15.4 shall apply only to Disputes and shall not apply to any action taken by the Association against Declarant, any Merchant Builder, or any Owner for delinquent Assessments (which is covered in Section 5), or any action involving enforcement of certain bonded obligation as set forth in Section 14.

(b) Notwithstanding any other provision of this Declaration to the contrary, this Section 15.4 shall not be amended without the consent of Declarant and the Merchant Builders and the vote or approval by written ballot of at least (a) ninety percent (90%) of the voting power of the Members of the Association other than Declarant, and (b) at least ninety percent (90%) of the Mortgagees.

15.5 Violation of Restrictions.

Without in any way limiting the generality of the foregoing, if the Board of Directors determines that there is a violation of any provision of this Declaration, or the Architectural Committee determines that an Improvement which is the maintenance responsibility of an Owner is in need of installation, repair, restoration or painting, then the Board shall give written notice to the responsible Owner of the condition or violation complained of. Unless the Architectural Committee has approved in writing corrective plans proposed by the Owner to remedy the condition complained of within such period of time as may be determined reasonable by the Board after it has given said written notice, and such corrective work so approved is completed thereafter within the time allotted by the Board, the Board, after Notice and Hearing, shall undertake to remedy such condition or violation complained of, and the cost thereof shall be charged to the Owner and his Lot whose Dwelling Unit is the subject matter of the corrective work. Such cost shall be deemed to be a Special Assessment to such Owner and shall be subject to enforcement and collection by the Board in accordance with the procedures provided for in this Declaration. The Board may also adopt a schedule of reasonable fines or penalties which, in its reasonable discretion, it may assess against an Owner for the failure of such Owner, or of a resident of or visitor to such Owner's Lot, to comply with any provision of the Restrictions. Such fines or penalties shall be deemed to be a Special Assessment and may only be assessed by the Board after Notice and Hearing.

15.6 Severability.

The provisions of this Declaration shall be deemed independent and severable, and a determination of invalidity or partial invalidity or unenforceability of any one provision or portion hereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provisions hereof.

15.7 Interpretation.

The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the creation and operation of a planned residential development and for the maintenance of the Association Property, and any violation of this

Declaration shall be deemed to be a nuisance. The Article and Section headings, titles and captions have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. As used herein, the singular shall include the plural and the masculine, feminine and neuter shall each include the other, unless the context dictates otherwise. In interpreting the Restrictions and the deed to any Lot, the physical as-built boundaries of Improvements, including any fences located on the boundary between two Lots, which are constructed or reconstructed in substantial accordance with the original plans for the Project shall be conclusively presumed to be the boundaries of the Lots, regardless of settling or lateral movement of the Improvements and regardless of minor variances between Lot boundaries, as defined in this Declaration, any Notice of Addition or any Lot deed, and the boundaries of those Improvements, as constructed or reconstructed. As used in this Declaration, the term “including” shall be construed and understood to mean “including, without limitation” or “including, but not limited to”.

15.8 Mergers or Consolidations.

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

15.9 Use of Association Property.

The Board of Directors shall have the right to limit the number of guests that an Owner or such Owner’s tenant may permit to use the open parking or other facilities, including recreational facilities, if any, on the Association Property, and the Board shall have the right to set further reasonable restrictions on the time and manner of use of said parking areas, recreational facilities, and other facilities, in accordance with the Rules and Regulations, including, without limitation, Rules and Regulations restricting or prohibiting the use of all or designated portions of the Property recreational facilities by minors, guests of an Owner or his tenants.

15.10 No Public Right or Dedication.

Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any part of the Property to the public, or for any public use; provided, that the foregoing provisions shall not be construed or understood to limit the effectiveness of any public dedication expressly set forth on any subdivision map or any other instrument Recorded with respect to the Property, or any portion thereof.

15.11 No Representations or Warranties.

No representations or warranties of any kind, express or implied, have been given or made by Declarant, the Merchant Builders, or their agents or employees in connection with the Property, or any portion thereof, concerning its physical condition, zoning, compliance with applicable laws or fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof as a planned residential development project, except as specifically and expressly set forth in this Declaration and except as may be filed by Declarant and the Merchant Builders from time to time with the DRE.

15.12 Nonliability and Indemnification.

Except as specifically provided in the Restrictions or as required by law, no right, power, or responsibility conferred on the Board or the Architectural Committee by this Declaration, the Articles or the Bylaws shall be construed as a duty, obligation or disability charged upon the Board, the Architectural Committee, any member of the Board or of the Person shall be liable to any party (other than the Association or a party claiming in the name of the Association) for injuries or damage resulting from such Person's acts or omissions within what such Person reasonably believed to be the scope of his Association duties ("Official Acts"), except to the extent that such injuries or damage result from such Person's willful or malicious misconduct. No such Person shall be liable to the Association (or to any party claiming in the name of the Association) for injuries or damage resulting from such Person's Official Acts, except to the extent that such injuries or damage result from such Person's negligence or willful or malicious misconduct.

The Association shall pay all expenses incurred by, and satisfy any judgment or fine levied against, any person as a result of any action or threatened action against such Person to impose liability on such Person for his Official Acts, provided that:

- (1) The Board determines that such Person acted in good faith and in a manner such Person reasonably believed to be in the best interests of the Association;
- (2) In the case of a criminal proceeding, the Board determines that such Person had no reasonable cause to believe his conduct was unlawful; and
- (3) In the case of an action or threatened action by or in the right of the Association, the Board determines that such Person acted with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

Any determination of the Board required under this Section 15.12 must be approved by a majority vote of a quorum consisting of Directors who are not parties to the action or threatened action giving rise to the indemnification. If the Board fails or refuses to

make any such determination, such determination may be made by the vote or written consent of a majority of a quorum of the Members of the Association, provided that the Person to be indemnified shall not be entitled to vote.

Payments made hereunder shall include amounts paid and expenses incurred in settling any such action or threatened action. This Section 15.12 shall be construed to authorize payments and indemnification to the fullest extent now or hereafter permitted by applicable law.

The entitlement to indemnification hereunder shall inure to the benefit of the estate, executor, administrator, heirs, legatees, or devisees of any Person entitled to such indemnification.

15.13 Notices.

Except as otherwise provided in this Declaration, in each instance in which notice is to be given to an Owner, the same shall be in writing and may be delivered personally to the Owner, in which case personal delivery of such notice to one (1) or more co-owners of a Lot or to any general partner of a partnership owning a Lot shall be deemed delivery to all co-owners or to the partnership, as the case may be. Personal delivery of such notice to any officer or agent for the service of process on a corporation shall be deemed delivery to the corporation. In lieu of the foregoing, such notice may be delivered by regular United States mail, postage prepaid, addressed to the Owner at the most recent address furnished by such Owner to the Association or, if no such address shall have been furnished, to the street address of such Owner's Lot. Such notice shall be deemed delivered three (3) business days after the time of such mailing, except for notice of a meeting of Members or of the Board of Directors in which case the notice provisions of the Bylaws of the Association shall control. Any notice to be given to the Association may be delivered personally to any member of the Board, or sent by United States mail, postage prepaid, addressed to the Association at such address as shall be fixed from time to time and circulated to all Owners. Any notice to be given to the Declarant or a Merchant Builder shall be delivered personally, or sent by registered or certified mail, return receipt requested, addressed to the principal office of the Declarant or the applicable Merchant Builder, or such other address as may be provided from time to time by the Declarant or the Merchant Builder.

15.14 Priorities and Inconsistencies.

If there are no conflicts or inconsistencies between this Declaration and either the Articles of Incorporation or the Bylaws of the Association, then the terms and provisions of this Declaration shall prevail. If there are conflicts or inconsistencies between this Declaration and the Limited Warranty, the terms and provisions in the Limited Warranty shall prevail.

15.15 Constructive Notice and Acceptance.

Every person who owns, occupies or acquires any right, title, estate or interest in or to any Lot or other portion of the Property does hereby consent and agree, and shall be conclusively deemed to have consented and agreed, to every limitation, restriction, easement, reservation, condition and covenant contained herein, whether or not any reference to these restrictions is contained in the instrument by which such person acquired an interest in the Property, or any portion thereof.

15.16 Declarant & Merchant Builders Delivery of Documents.

(a) Commencing not later than ninety (90) days after the Close of Escrow for the sale of the first Lot in Phase 1 of the Project, copies of the documents listed below, as soon as readily obtainable, shall be delivered by the Declarant (or the Merchant Builder who owns the Phase 1 property) to the Board of Directors at the office of the Association, or at such other place as the Board of Directors shall prescribe. The obligation to deliver the documents listed below shall apply to any documents obtained by the Declarant (or the applicable Merchant Builder) no matter when obtained, provided, however, such obligation shall terminate upon the earlier of (1) the conveyance of the last Lot in Phase 1 of the Project or (2) three (3) years after the expiration of the most recently issued Final Subdivision Public Report for Phase 1 of the Project:

- (1) The Recorded subdivision map or maps for Phase 1;
- (2) The deeds and easements executed by the Declarant conveying the Phase 1 Association Property to the Association, to the extent applicable;
- (3) The Recorded Declaration, including all amendments thereto, and any Notice of Addition of Territory;
- (4) The Association's Articles, and all amendments thereto;
- (5) The Association's Bylaws, and all amendments thereto;
- (6) All architectural guidelines and all other rules regulating the use of an owner's interest in the Project or use of the Association Property which have been promulgated by the Association;
- (7) The plans approved by the local agency or county where the subdivision is located for the construction or improvement of facilities that the Association is obligated to maintain or repair, provided, however, that the plans need not be as-built plans and that the plans may bear restrictions on their commercial exploitation or use and may contain disclaimers regarding their accuracy;

- (8) All notice of completion certificates issued for Association Property Improvements;
- (9) Any bond or other security device in which the Association is the beneficiary;
- (10) Any written warranty being transferred to the Association for Association Property equipment, fixtures or improvements;
- (11) Any insurance policy procured for the benefit of the Association, its governing board or the Association Property;
- (12) Any lease or contract to which the Association is a party;
- (13) The membership register, including mailing addresses and telephone numbers, books of account and minutes of meetings of the Members, of the governing body and of committees of the governing body of the Association;
- (14) Any instrument referred to in Section 11018.6(d) but not described above which established or defines the common, mutual or reciprocal rights or responsibilities of Members of the Association.

(b) Commencing not later than ninety (90) days after the annexation of additional Phases of Development to the Project, copies of those documents listed under subdivision (a) which are applicable to that Phase of Development, shall, as soon as readily obtainable, be delivered by the Declarant (or the applicable Merchant Builder) to the Board of Directors of the Association at the office of the Association, or at such other place as the Board of Directors of the Association shall prescribe. The obligation to deliver the documents listed in subsection (a) shall apply to any documents obtained by the Declarant (or the applicable Merchant Builder) no matter when obtained, provided, however, such obligation shall terminate as to the documentation applicable to each Phase of Development upon the earlier of (1) the conveyance of the last Lot for the applicable Phase of Development or (2) three (3) years after expiration of the most recently issued Final Subdivision Public Report for the applicable Phase of Development.

15.17 Entry Gate Disclosure.

Each Owner, by acceptance of a deed to his Lot, acknowledges that one or more entry gates to the Project were installed by Declarant or a Merchant Builder, however, no guaranties, promises or warranties, express or implied, oral or written, are made by Declarant, the Merchant Builders or the Association as to the continued existence or location of the gates, and no representations, promises or warranties, express or implied, oral or written, are made by Declarant, the Merchant Builders, or the Association regarding the protection or security for the Project in general, or for each Owner, Owner's family, guests, invitees, agents or employees or any of their personal property, which is or might be provided by such gates. So long as any Lots in the Property remain unsold by Declarant or

any Merchant Builder, Declarant and the Merchant Builders shall have the right to require the entry gates to remain open at all times during regular business hours and on weekends, as reasonably determined by the Declarant and/or the Merchant Builders, and no consent to or approval thereof shall be required from the Association or any other Owner. Neither the Association nor any Owner shall interfere with Declarant's or any Merchant Builder's exercise of this right.

15.18 Guarded Gate.

The Association may, but shall not be required to, from time to time, elect to provide a guard at the entry gate to the Project, however, each Owner, for himself or herself and his or her tenants, guests, licensees, and invitees, acknowledges and agrees that the Association is not a provider of security and shall have no duty to provide security on the Project. It shall be the responsibility of each Owner to protect his or her person and property and all responsibility to provide such security shall lie solely with each Owner. Neither Declarant, the Merchant Builders nor the Association shall be held liable for any loss or damage by reason of the failure to provide adequate security or the ineffectiveness of safety measures undertaken.

15.19 Closed Coastal Landfill.

The Property is located in proximity of the former Coastal and Bailard Landfills which have been closed for a number of years and the closures were accomplished in accordance with all applicable requirements. The closed Coastal Landfill is located approximately four hundred (400) feet north of the Property, and the closed Bailard Landfill is located approximately one thousand (1,000) feet west of the Property. The Ventura Regional Sanitation District ("VRSD") is responsible for maintenance of the Bailard Landfill, and responsibility for maintenance of the surface and the subsurface of the Coastal Landfill is apportioned between VRSD and the City of Oxnard ("City") pursuant to the Golf Course Lease and the Landfill Postclosure Maintenance Agreement between the VRSD and the City. Prior to closure, both landfills accepted residential, commercial and municipal waste products as described in the Bailard Landfill Final Closure Plan (1994) and Coastal Sanitary Landfill Closure Plan (1991) which are available for review at the City offices.

15.20 Proximity to Agricultural Uses.

The Property is located in the vicinity of properties which are currently in use for agricultural purposes, including farming, dairy and mushroom plant operations. Declarant, the Merchant Builders and the Association have no responsibility or control over the use and operation of the properties within proximity of the Property. These agricultural operations may create certain inconveniences and environmental impacts affecting the Owners, tenants and occupants of the Property and that Owners, tenants and occupants of the Property are subject to such impacts including, but not limited to, noise, dust, smoke, fumes, odors, insects, flies, operations of machinery (including aircraft) at any hour of the day or night, storage of equipment and materials necessary for normal agricultural practices, and slow moving farm implements. Many activities normal and necessary to the agricultural

operations, such as tilling, irrigation, soil amending (including use of manure, compost materials and mulches) chemical spraying (including pesticides, herbicides, insecticides), dairy production, poultry farming and feed lot operations, may result in noise, insects, flies, dust, fumes, noxious odors, or other potentially significant impacts to the residential use of nearby properties. By acceptance and recordation of a deed to a Lot within the Property, the Owner of a Lot, on behalf of itself and its successors and assigns who succeed to its rights with respect to the Property, expressly acknowledges and accepts these existing and future impacts and forever waives any and all causes of actions against Declarant, the Merchant Builders, the Association, and their respective directors, officers, employees, agents, representatives and consultants for any damages or injuries which may arise from or relate to any such impacts, conditions and/or risks.

15.21 Underground Methane.

The Property is located within proximity of a proposed golf course which was formerly used as landfills. The proposed golf course will be developed on the closed Coastal Landfill which is located approximately 400 feet north of the Project and the closed Bailard Landfill which is located approximately 1000 feet west of the Project. Both landfills have been closed for a number of years and the closures were accomplished with all applicable governmental requirements. The golf course's former landfill operations caused an accumulation of organic matters, which was incorporated into the fill soil. The decomposition of the accumulated organic matters in the soil may produce underground methane in the golf course property. Methane gas is a natural byproduct of biological decomposition of organic materials. This condition is not unusual and commonly exists in many areas of Ventura County that were previously used for agricultural or land fill purposes. Methane is lighter than air, and when mixed in a specific ratio with oxygen, can be explosive.

15.22 Oil Well Disclosure.

The Owner of Lot 133 of Tract No. 5234-2, by acceptance of the deed to his Lot, and each other Owner, by acceptance of the deeds to their Lots, acknowledge that an abandoned, non-performing oil well remains located on Lot 133 of Tract No. 5234-2. The oil well was exposed, tested and plugged, and the well plugging and re-abandonment was approved by the Resources Agency of California Department of Conservation Division of Oil, Gas and Geothermal Resources. The well is located approximately 17.28 feet from the back of the house. If a pool or other proposed structure is built within 10 feet of the abandoned well, the construction plans need to include an approved well-vent system designed to vent natural gases to the atmosphere, as dictated by the Department of Conservation Division of Oil and Gas.

15.23 Water Well Disclosure.

The Owner of Lot 11 of Tract No. 5234-1, by acceptance of the deed to his Lot, and each other Owner, by acceptance of the deeds to their Lots, acknowledge that an abandoned, non-performing water well remains located on Lot 11 of Tract No. 5234-1. The

water well was exposed, tested and plugged, and the well plugging and abandonment was approved by the County of Ventura.

15.24 Additional Provisions.

Notwithstanding the provisions contained in the Restrictions, the Association and the Owners should be aware that there may be provisions of various laws, including, without limitation, the Davis-Sterling Common Interest Development Act contained in the California Civil Code, which may modify, supplement or override the Restrictions as a matter of law.

ARTICLE XVI

16. Annexation of Additional Property.

Additional real property may be annexed to Phase 1 and such additional real property may become subject to this Declaration by any of the methods set forth hereinafter:

16.1 Additions by Declarant and Merchant Builders.

Declarant (as to its portion of the Project) and each Merchant Builder (as to their respective portions of the Project), or their successors or assigns shall have the right from time to time to add the Annexable Territory, or any portion or portions thereof (including recreation facilities, if any, located thereon), to the Property and to bring such added territory within the general plan and scheme of this Declaration without the approval of the Association, its Board of Directors, or Members; provided that such right of Declarant, Merchant Builders and their successors and assigns shall terminate on the seventh (7th) anniversary of the Recordation of this Declaration. At each Phase of Development is developed, Declarant or the applicable Merchant Builder may, with respect thereto, Record a supplemental declaration (“Supplemental Declaration”) which may supplement this Declaration with such additional, supplemental or amendatory covenants, conditions, restrictions, reservations and easements as Declarant and Merchant Builder may deem appropriate for that Phase of Development. The maximum number of Lots with Dwelling Units that may be added to the Project (in addition to the thirty nine (39) Lots with Dwelling Units contained in Phase 1) by annexation to the Project is four hundred and four (403). If the maximum number of Lots with Dwelling Units are annexed, the Project, as fully developed, would contain four hundred forty three (442) Lots with Dwelling Units. The foregoing limitation on the number of residential Lots that may be annexed to the Project is solely for the benefit of FNMA and may be enforced only by FNMA, and may be waived by FNMA without the consent or approval of any other person or entity, including, without limitation, any Owner.

16.2 Other Additions.

In addition to the provision for annexation specified in Section 16.1 above, additional real property may be annexed to the Property and brought within the general plan and scheme of this Declaration upon the approval by vote or written consent of Members entitled to exercise no less than two-thirds (2/3rds) of the voting power of the Association.

16.3 Rights and Obligations-Added Territory.

Subject to the provisions of Section 16.4, upon the Recording of a Notice of Addition of Territory containing the provisions as set forth in this Section 16.3, all provisions contained in this Declaration shall apply to the real property described in such Notice of Addition of Territory (the “added territory”) in the same manner as if it were originally covered by this Declaration. Thereafter, the rights, powers and responsibilities of the parties to this Declaration with respect to the added territory shall be the same as with respect to the property originally covered hereby, and the rights, powers and responsibilities of the Owners, lessees and occupants of Lots within the added territory, as well as within the property originally subject to this Declaration, shall be the same as if the added territory were originally covered by this Declaration. Voting rights attributable to the Lots in the added territory shall not vest until Annual Assessments have commenced as to such Lots.

16.4 Notice of Addition of Territory.

The additions authorized under Sections 16.1 and 16.2 shall be made by Recording a Notice of Addition of Territory, or other similar instrument (which Notice of Instrument may contain the Supplemental Declaration, if any, affecting each such Phase of Development), with respect to the added territory which shall be executed by Declarant (as to its portion of the Project) or a Merchant Builder (as to its respective portion of the Project) and shall extend the general plan and scheme of this Declaration to such added territory (“Notice of Addition”). The Notice of Addition for any addition under Section 16.1 shall be signed either by Declarant (as to its portion of the Project) or by a Merchant Builder (as to its respective portion of the Project). The Notice of Addition for any addition under Section 16.2 shall be signed by at least two (2) officers of the Association and shall certify that the requisite approval of the Members under Section 16.2 was obtained. The Recordation of said Notice of Addition shall constitute and effectuate the annexation of the added territory described therein, and thereupon said added territory shall become and constitute a part of the Project, become subject to this Declaration and encompassed within the general plan and scheme of covenants, conditions, restrictions, reservation of easements and equitable servitudes contained herein, and become subject to the functions, powers and jurisdiction of the Association; and the Owners of Lots in said added territory shall automatically become Members of the Association. Such Notice of Addition may contain a Supplemental Declaration with such additions and modifications of the covenants, conditions, restrictions, reservation of easements and equitable servitudes contained in this Declaration as may be necessary to reflect the different character, if any, of the added territory, or as Declarant and the applicable Merchant Builder may deem appropriate in the development of the added territory, and as are not inconsistent with the general plan and scheme of this Declaration. In

no event, however, shall such Notice of Addition or Supplemental Declaration revoke, modify or add to the covenants, conditions, restrictions, reservation of easements, or equitable servitudes established by this Declaration as the same shall pertain to the real property originally covered by this Declaration. Notwithstanding any other provisions of this Article XVI, at any time prior to the first Close of Escrow for the sale of a Lot within a Phase of Development, Declarant (as to its portion of the Project) or a Merchant Builder (as to its respective portion of the Project) may amend the Supplemental Declaration applicable to such Phase of Development by Recording a written instrument which effects the amendment and is signed and acknowledged by Recording a written instrument which effects the amendment and is signed and acknowledged by Declarant (as to its portion of the Project) or the applicable Merchant Builder (as to its respective portion of the Project).

All Owners shall have ingress and egress to all portions of the Association Property throughout the Project, subject to the provisions of this Declaration, the Bylaws of the Association and to the Rules and Regulations of the Association in effect from time to time, and Assessments collected from Owners may be expended by the Association without regard to the particular Phase from which such Assessments came.

Declarant (as to its portion of the Project) and each Merchant Builder (as to their respective portions of the Project) hereby reserves to themselves and to the Owners of Lots in subsequently annexed Phases, nonexclusive easements for ingress and egress over the Association Property of previously annexed Phases. Declarant (as to its portion of the Project) and each Merchant Builder (as to their respective portions of the Project) further reserves to themselves and the Owners of Lots in each Phase of Development, nonexclusive easements for ingress and egress over the Association Property of subsequently annexed Phases upon annexation thereof pursuant to this Section 16.4.

16.5 Deannexation; Amendment.

Notwithstanding anything herein which is or may appear to be to the contrary, Declarant (as to its portion of the Project) or a Merchant Builder (as to its respective portion of the Project) may amend a Notice of Addition or delete all or a portion of a Phase of Development from coverage of this Declaration and the jurisdiction of the Association, so long as Declarant or the Merchant Builder is the owner of all of such Phase of Development, and provided that (1) an amending instrument or a Notice of Deletion of Territory, as applicable, is Recorded in the same manner as the applicable Notice of Addition was Recorded, (2) Declarant or the Merchant Builder has not exercised any Association vote with respect to any portion of such Phase of Development, (3) assessments have not yet commenced with respect to any portion of such Phase of Development, (4) Close of Escrow has not occurred for the sale of any Lot in such Phase of Development, and (5) the Association has not made any expenditures or incurred any obligations with respect to any portion of such Phase of Development. Any such amendment or deannexation shall be effective upon the Recordation of the amending instrument or Notice of Deletion of Territory, as applicable, which need only be executed by Declarant or the applicable Merchant Builder.

ARTICLE XVII

17. Party Walls.

17.1 General Rules of Law to Apply.

Each wall or fence which is built as a part of the original construction of the Property by Declarant or a Merchant Builder and which is placed on the dividing line between residential Lots and which is not a Perimeter Wall/Fence shall be treated in the same manner as a party wall, and, to the extent not inconsistent with the provisions of this Article XVII, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. Minor discrepancies between the as-built location of any such wall or fence and the legal boundary of any residential Lot shall not affect the Lot Owner's maintenance duties with respect to such wall or fence, and such wall or fence shall, nevertheless, be treated as a party wall.

17.2 Sharing of Repair and Maintenance.

The cost of reasonable repair and maintenance of such a common wall or fence between Lots shall be shared equally by the Owners of the Lots adjacent to such common wall or fence. However, each Owner shall be solely responsible for repainting the side of any common wall or fence facing his Lot.

17.3 Destruction by Fire or Other Casualty.

If such a common wall or fence to be maintained by individual Owners is destroyed or damaged by fire or other casualty, any Owner whose Lot is affected thereby may restore it, and the Owner of the other Lot which is affected thereby shall contribute equally to the cost of restoration thereof without prejudice, however, to the right of any such repairing Owner to call for a larger contribution from the other under any rule of law regarding liability for negligent or willful acts or omissions.

17.4 Right to Contribution Runs With Land.

The right of any Owner to contribution from any other Owner under this Article XVII shall be appurtenant to the land and shall pass to such Owner's successors in title.

17.5 Arbitration.

If any dispute arises concerning a common wall or fence to be maintained by an Owner or the application of the provisions of this Article XVII, then such dispute shall be submitted to and determined by binding arbitration. Each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator. The decision shall be rendered by a majority of all the arbitrators, in accordance with the American Arbitration Association Commercial Rules of Arbitration.

ARTICLE XVIII

18. Golf Course Facilities Provisions.

18.1 No Right to Use Golf Course Facilities.

Declarant and Merchant Builders make no representation, warranty or guaranty about the future operation of the Golf Course Facilities, including, without limitation, any use or operation of the multi-purpose clubhouse building (“Clubhouse”) located on the golf course. Neither membership in the Association nor ownership or occupancy of a Lot shall confer any right to use, or any other interest in, the Golf Course Facilities. Each Owner acknowledges that the purchase of a Lot by such Owner does not confer upon such Owner the right to use the Golf Course Facilities. Each Owner further acknowledges that the use of the Golf Course Facilities requires the payment of such fees and the satisfaction of such other conditions as are in effect from time to time with respect to the use of the Golf Course Facilities.

18.2 Proximity to Golf Course Facilities.

Due to the close proximity of the Golf Course Facilities to the Project, many Lots will be adversely impacted by both normal and extraordinary golf course and Clubhouse uses and activities. Each Owner, by accepting a deed for a Lot, acknowledges that:

(a) There will be significant use of the Golf Course Facilities by the members of the public. There will be significant use of the Clubhouse and any related recreational facilities by users of the Golf Course Facilities and other members of the public. In addition, these facilities will likely be in operation for extended hours, including nights and weekends, for regular and special events. Lots near the Golf Course Facilities will be adversely impacted by, among other things, traffic, noise and light from the use of the Golf Course Facilities, Clubhouse and related recreational facilities.

(b) There will be maintenance and repair activities constantly taking place on the Golf Course Facilities within the immediate vicinity of the Lots, including, without limitation, the use of maintenance utility vehicles, mowers and other equipment;

(c) Agricultural chemicals and fertilizers which may cause certain people to have allergic and adverse reactions may be regularly applied to the Golf Course Facilities; and

(d) Reclaimed water may be used for irrigation of the Golf Course Facilities. The reclaimed water may overspray on to the Lots adjacent to the Golf Course Facilities. Such reclaimed water should not be consumed by people or animals.

Neither Declarant, the Merchant Builders, the owner of the Golf Course Facilities, nor the Association shall be responsible for any traffic, noise, interference with quiet use and

enjoyment, third party actions (including, without limitation, golfers, maintenance personnel and other workers, and golf tournament galleries), odors or other adverse reactions from agricultural chemicals and fertilizers, or the use or overspray of reclaimed water.

18.3 Errant Golf Balls.

Each Owner can expect that errant golf balls will from time to time be hit outside the Golf Course Facilities and enter upon Lots, possibly causing injury to persons or damage to Improvements or other property. Golf balls might regularly enter upon certain Lots, depending upon their location relative to the golf course. In addition, the owner of the Golf Course Facilities may, in its sole and absolute discretion, change the location, configuration, size and elevation of the tees, bunkers, fairways and greens on the golf course from time to time and such changes may greatly change the extent to which a Lot is affected by errant golf balls. Each Owner acknowledges and accepts the risk of such events. Neither Declarant, the Merchant Builders, the owner of the Golf Course Facilities, nor the Association shall have any obligation to take any steps to remove or alleviate such risks.

18.4 Easements.

Declarant (as to its portion of the Project) and each Merchant Builder (as to their respective portions of the Project) hereby reserves and grants the following easements, which shall run with the Land and burden the Property, for as long as the Golf Course Facilities are used:

(a) Non-exclusive easements for the benefit of the owner of the Golf Course Facilities and its successors and assigns, agents, employees, independent contractors, guests, invitees and authorized users of the Golf Course Facilities, for the flight and retrieval of golf balls, including the right to enter on any Lot for that purpose (provided, however, that the right to retrieve golf balls shall only extend to non-enclosed portions of Lots and the person retrieving the golf ball shall do so in a reasonable manner and repair any damage caused by entry onto the Lot to retrieve the golf ball).

(b) Non-exclusive easements appurtenant to the Golf Course Facilities for overspray of water from any irrigation system serving the Golf Course Facilities.

(c) Non-exclusive easements appurtenant to the Golf Course Facilities for natural drainage of storm water runoff from the Golf Course Facilities.

Under no circumstances shall the Declarant, the Merchant Builders, the owner of the Golf Course Facilities, or the Association be held liable for, and the Owners hereby release them from liability for, any damage or injury resulting from the exercise of these easements.

18.5 Hold Harmless.

Each Owner agrees that owning property adjacent to a golf course is beneficial and highly desirable; however, each Owner also acknowledges and agrees that property adjacent to a golf course and persons on that property are subject to the risk of damage or injury from golf balls. Each Owner and his or her successors and assigns hereby assume that risk and releases Declarant, the Merchant Builders, the owner of the Golf Course Facilities, and the Association, and their employees, agents, and representatives from any and all liability for damage or injury caused by golf balls and, further, each Owner and his or her successors and assigns agree to protect, indemnify, defend and hold Declarant, the Merchant Builders, the owner of the Golf Course Facilities, and the Association, and their employees, agents, representatives harmless from any and all liability, damages and claims (including attorneys' fees and costs of suit) by such Owner or his or her successors, assigns, agents, employees, independent contractors, guests, invitees; tenants or other permissive users, and from and against any and all liability and claims arising out of or related to damage or injury caused directly or indirectly by golf balls flying, landing, hitting or resting in or around the Owner's Lot, or for negligent design or alteration of the Golf Course Facilities or location of a Lot. The obligation to protect, indemnify, defend and hold harmless shall pass with title to each Lot, and once an Owner has conveyed title to his or her Lot, the obligation ceases as to that Owner for all subsequent occurrences and that obligation passes to the new Owner.

18.6 View Impairment.

Declarant and the Merchant Builders do not guarantee or represent that any view from a Lot over and across the Golf Course Facilities, the Association Property, or other portions of the Property will be protected or preserved. Declarant, the Merchant Builders, the owner of the Golf Course Facilities, and the Association shall not have any obligation to prune or thin trees or other landscaping, and each of them shall have the right, in its sole and absolute discretion, to add trees and other landscaping and buildings and other structures to its respective property from time to time. In addition, the owner of the Golf Course Facilities may, in its sole and absolute discretion, change the location, configuration, size and elevation of the tees, bunkers, fairways and greens on the Golf Course Facilities and otherwise change the golf course layout from time to time. Any such additions or changes to the Golf Course Facilities may diminish or obstruct any view from the Residences and Lots. Any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

This Declaration is dated for identification purposes December 18, 2002.

“Declarant”

WPH – OXNARD COASTAL, LLC,
A Delaware limited liability company

By: AP LHI, Inc.,
a California corporation
Its Managing Member

By: Signature page on file
Name: Jason Frank
Title: Vice President