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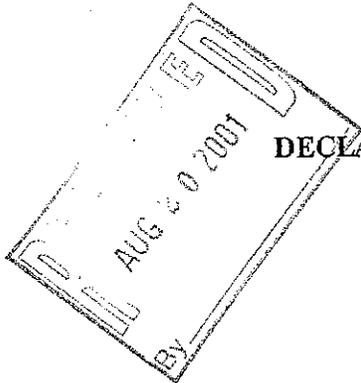
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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

HARBOR LIGHTS

TABLE OF CONTENTS

	<u>Page #</u>
INTRODUCTORY PARAGRAPHS A thru D .....	1
 ARTICLE I  	
DEFINITIONS .....	2
1.1 Annexation Property .....	2
1.2 Articles .....	2
1.3 Assessment .....	2
1.4 Association .....	2
1.5 Board or Board of Directors .....	2
1.6 Bylaws .....	2
1.7 City .....	2
1.8 Common Area .....	2
1.9 Common Expenses .....	2
1.10 Declarant .....	2
1.11 Declaration .....	2
1.12 Eligible Holder Mortgages .....	2
1.13 Eligible Mortgage Holder .....	3
1.14 Eligible Insurer or Guarantor .....	3
1.15 First Lender .....	3
1.16 First Mortgage .....	3
1.17 Foreclosure .....	3
1.18 Lot .....	3
1.19 Map .....	3
1.20 Member .....	3
1.21 Mortgage .....	3
1.22 Mortgagee .....	3
1.23 Mortgagor .....	3

TABLE OF CONTENTS (Continued) - Page 2Page #

1.24	Owner or Owners .....	3
1.25	Person .....	3
1.26	Phase .....	3
1.27	Project .....	4
1.28	Project Documents .....	4
1.29	Reimbursement Assessment .....	4
1.30	Rules .....	4

## ARTICLE II

DESCRIPTION OF PROJECT, DIVISION OF PROPERTY, AND  
CREATION OF PROPERTY RIGHTS .....

2.1	Description of Project .....	4
2.2	Easements; Dedication of Common Area .....	4
2.3	Easements to Accompany Conveyance of Lot .....	5
2.4	Delegation of Use .....	5
2.5	Conveyance of Common Area to Association .....	5
2.6	Owners' Rights and Easements for Utilities .....	6
2.7	Annexation of Additional Property .....	6
	A. Annexation Pursuant to Plan .....	6
	B. Annexation Pursuant to Approval .....	7
	C. Effect of Annexation .....	7
	D. Quality of Construction .....	7
	E. Failure to Annex .....	7
	F. Right of Successor Declarant to Annex .....	7
2.8	Encroachment Easements .....	7
2.9	Maintenance Easement .....	8
2.10	Front Yard Maintenance Easement .....	8
2.11	Drainage Easements .....	8
2.12	Other Easements .....	8
2.13	Rights of Entry and Use .....	8
2.14	Partition of Common Area .....	9
2.15	Right to Deannex .....	9
2.16	All Easements Part of Common Plan .....	9

## ARTICLE III

ASSOCIATION, ADMINISTRATION, MEMBERSHIP AND  
VOTING RIGHTS .....

3.1	Association to Own and Manage Common Areas .....	10
3.2	Membership .....	10
3.3	Transferred Membership .....	10

TABLE OF CONTENTS (Continued) - Page 3Page #

3.4	Membership and Voting Rights .....	10
-----	------------------------------------	----

## ARTICLE IV

MAINTENANCE AND ASSESSMENTS .....	10
-----------------------------------	----

4.1	Creation of the Lien and Personal Obligation of Assessments .....	10
4.2	Purpose of Assessments .....	11
4.3	Assessments .....	11
	A. Annual Assessments .....	11
	B. Special Assessments .....	11
4.4	Restrictions on Increases in Annual or Special Assessments .....	11
4.5	Notice and Quorum for Any Action Authorized Under Section 4.4 .....	12
4.6	Division and Collection of Assessments .....	12
4.7	Date of Commencement of Annual Assessment; Due Dates .....	12
4.8	Effect of Nonpayment of Assessments .....	13
4.9	Transfer of Lot by Sale or Foreclosure .....	13
4.10	Priorities; Enforcement; Remedies .....	13
4.11	Unallocated Taxes .....	15
4.12	Exemptions from Assessments .....	15
4.13	Assessments on Lots in Subsequent Phases .....	15

## ARTICLE V

DUTIES AND POWERS OF THE ASSOCIATION .....	16
--	----

5.1	Duties .....	16
	A. Maintenance .....	16
	B. Insurance .....	17
	C. Discharge of Liens .....	17
	D. Assessments .....	17
	E. Payment of Expenses and Taxes .....	17
	F. Enforcement .....	17
	G. Inspection and Maintenance Guidelines .....	17
5.2	Powers .....	17
	A. Easements .....	17
	B. Manager .....	18
	C. Adoption of Rules .....	18
	D. Access .....	18
	E. Assessments, Liens, Penalties and Fines .....	18
	F. Enforcement .....	18
	G. Acquisition and Disposition of Property .....	18
	H. Loans .....	19
	I. Dedication .....	19

TABLE OF CONTENTS (Continued) - Page 4

Page #

J.	Contracts .....	19
K.	Delegation .....	19
L.	Appointment of Trustee .....	19
M.	Litigation/Arbitration .....	20
N.	Other Powers .....	20
5.3	Commencement of Association's Duties and Powers .....	20

## ARTICLE VI

ARCHITECTURAL CONTROL .....	20	
6.1	Purpose of Architectural Controls .....	20
6.2	Requirement for Approval of Plans .....	21
6.3	Architectural Control Committee Membership .....	21
6.4	Architectural Control Committee Action .....	21
6.5	Landscaping .....	22
6.6	Solar Energy .....	22
6.7	Government Approval .....	22
6.8	Structural Integrity .....	22

## ARTICLE VII

USE RESTRICTIONS .....	22	
7.1	Use of Lot .....	22
7.2	Nuisances .....	23
7.3	Vehicle Restrictions and Towing .....	23
7.4	Commercial Activity .....	24
7.5	Storage in Common Area .....	24
7.6	Signs .....	24
7.7	Animals .....	24
7.8	Garbage and Refuse Disposal .....	25
7.9	Radio and Television Antennas .....	25
7.10	Drapes .....	25
7.11	Power Equipment and Car Maintenance .....	25
7.12	Liability of Owners for Damage to Common Area .....	25
7.13	Leasing of Lots .....	25
7.14	Activities Causing Increase in Insurance Rates .....	26
7.15	Common Area Use .....	26
7.16	Owner's Right and Obligation to Maintain and Repair .....	26

## ARTICLE VIII

INSURANCE; DAMAGE OR DESTRUCTION; CONDEMNATION .....	26
8.1 Insurance .....	26
8.2 Damage or Destruction .....	28
A. Process for Repair or Reconstruction .....	29
B. Process If Repair or Reconstruction Not Undertaken .....	30
8.3 Condemnation .....	30

## ARTICLE IX

GENERAL PROVISIONS .....	31
9.1 Enforcement .....	31
9.2 Invalidity of Any Provision .....	31
9.3 Term .....	31
9.4 Amendments .....	31
9.5 Rights of First Lenders .....	31
A. Copies of Project Documents .....	32
B. Audited Statement .....	32
C. Notice of Action .....	32
D. Consent to Action .....	32
E. Right of First Refusal .....	33
F. Contracts .....	34
G. Reserves .....	34
H. Priority of Liens .....	34
I. Distribution of Insurance or Condemnation Proceeds .....	34
J. Payment of Taxes or Insurance by Lenders .....	34
9.6 Limitation of Restrictions on Declarant .....	34
9.7 Termination of Any Responsibility of Declarant .....	35
9.8 Owner's Compliance .....	35
9.9 Notice .....	35
9.10 Special Provisions Relating to Enforcement of Declarant's Obligation to Complete Common Area Improvements .....	36
9.11 Special Provisions Relating to Enforcement of Declarant's Obligation to Pay Assessments .....	36
9.12 Fair Housing .....	37
9.13 Alternative Dispute Resolution .....	37
9.14 Number; Gender .....	40

Dear Sir,

I am writing to you regarding the matter of the...

I have reviewed the documents and find that...

The information provided is consistent with...

I am sure that you will find this information...

I am sure that you will find this information...

I am sure that you will find this information...

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Hanna & Van Atta  
525 University Avenue, Suite 705  
Palo Alto, California 94301

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

HARBOR LIGHTS

**THIS DECLARATION**; made on the date hereinafter set forth, by SCHULER HOMES OF CALIFORNIA, INC., a California Corporation, ("Declarant"), is made with reference to the following facts:

A. **Location of Property.** Declarant is the owner of certain property located in the City of Pittsburg ("City"), County of Contra Costa, State of California, more particularly described on the map entitled "Subdivision 7514," filed for record in the Office of the Recorder of the County of Contra Costa, State of California, on October 6, 2000, in Book 425 of Maps, page(s) 13 et seq., as some of said Lots have been modified and revised pursuant the following instruments: Parcel Map Waiver PMW 00-04, recorded February 22, 2001, Series No. 2001-40569; Parcel Map Waiver PMW 00-05, recorded February 22, 2001, Series No. 2001-40570; PMW 00-06, recorded February 22, 2001, Series No. 2001-40571; PMW 00-07, recorded February 22, 2001, Series No. 2001-40572; PMW 00-08, recorded February 22, 2001, Series No. 2001-40573; PMW 00-09, recorded February 22, 2001, Series No. 2001-40574.

B. **Phases.** The development shall be referred to as the "Project" as defined in section 1.27. The Declarant intends to develop the Project in up to 5 Phases.

C. **Association.** Each Lot shall have appurtenant to it a membership in the HARBOR LIGHTS HOMEOWNERS ASSOCIATION, a nonprofit mutual benefit corporation, which shall own the Common Areas of the Project.

D. **Intention.** Declarant intends by this document to impose upon the Project mutually beneficial restrictions under a general plan of improvement for the benefit of all Owners of Lots. Phase I of the Project will be subject to this Declaration upon its recordation. The subsequent Phases of the Project will each subsequently be subject to this Declaration upon recording of a Declaration of Annexation applicable to each such Phase as provided in section 2.7 of this Declaration, provided that the property in each subsequent Phase is subject to section 4.13 to the extent applicable.

**NOW, THEREFORE**, Declarant hereby declares that Phase I (and the property in each subsequent Phase to the extent described in Recital D) described above shall be held, sold, leased, mortgaged, encumbered, rented, used, occupied, improved and conveyed subject to the following declarations, limitations, easements, restrictions, covenants, and conditions, which are imposed as equitable servitudes pursuant to a general plan for the development of the Project for the purpose of enhancing and protecting the value and desirability of the Project and every part of it, and which shall run with the Project and be binding on Declarant and its successors and assigns, and on all parties having or acquiring any right, title or interest in or to the described Project or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

02/13/01

TAWPWING60\PROJECTS\REGENCY\DEC.213

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Hanna & Van Atta  
525 UNIVERSITY AVENUE, SUITE 705  
PALO ALTO, CA 94301  
TELEPHONE (650) 321-5700

**ARTICLE I  
DEFINITIONS**

1.1 "Annexation Property" shall mean and refer to the real property described on Exhibit "B" attached to this Declaration which real property may be annexed in subsequent Phases to the Project as set forth in Section 2.7 of this Declaration.

1.2 "Articles" shall mean and refer to the Articles of Incorporation of the Association, as amended from time to time.

1.3 "Assessment" shall mean that portion of the cost of maintaining, improving, repairing, operating and managing the Project which is to be paid by each Owner as determined by the Association, and shall include regular and special Assessments.

1.4 "Association" shall mean and refer to the HARBOR LIGHTS HOMEOWNERS ASSOCIATION, a California nonprofit mutual benefit corporation, the Members of which shall be the Owners of Lots in the Project.

1.5 "Board" or "Board of Directors" shall mean and refer to the governing body of the Association.

1.6 "Bylaws" shall mean and refer to the bylaws of the Association, as amended from time to time.

1.7 "City" shall mean and refer to the City of Pittsburg, State of California.

1.8 "Common Area" shall mean and refer to the portions of the Project and all improvements thereon owned by the Association for the common use and enjoyment of the Owners, consisting initially, for Phase I of the Project, upon conveyance by deed to the Association by Declarant, of Parcels A and K shown on the Map and to consist ultimately, in addition, of those Parcels designated as Common Area for subsequent Phases as set forth in the Declarations of Annexation for subsequent Phases, upon the annexation thereof pursuant to a recorded Declaration or Declarations of Annexation as provided in section 2.7, and conveyance of such Parcels by deed to the Association by Declarant.

1.9 "Common Expenses" means and includes the actual and estimated expenses of maintaining, repairing, operating and replacing the Common Area and any reasonable reserve for such purposes as found and determined by the Board and all sums designated Common Expenses by or pursuant to the Declaration, Articles, or Bylaws.

1.10 "Declarant" shall mean and refer to SCHULER HOMES OF CALIFORNIA, INC., a California Corporation, and any successor or assign that expressly assumes the rights and duties of the Declarant under this Declaration in a recorded written document.

1.11 "Declaration" shall mean and refer to this Declaration, as amended or supplemented from time to time.

1.12 "Eligible Holder Mortgages" shall mean mortgages held by "Eligible Mortgage Holders."

1.13 "Eligible Mortgage Holder" shall mean a First Lender who has requested notice of certain matters from the Association in accordance with section 9.5C.

1.14 "Eligible Insurer or Guarantor" shall mean an insurer or governmental guarantor of a first mortgage who has requested notice of certain matters from the Association in accordance with section 9.5C.

1.15 "First Lender" shall mean any bank, savings and loan association, insurance company, or other financial institution holding a recorded first mortgage on any Lot.

1.16 "First Mortgage" shall mean and refer to any recorded mortgage made in good faith and for value on a Lot with first priority over other mortgages thereon.

1.17 "Foreclosure" shall mean and refer to the legal process by which the mortgaged property of a borrower in default under a mortgage is sold, and the borrower's interest in such property is sold, pursuant to California Civil Code § 2924a et seq. or sale by the Court pursuant to California Code of Civil Procedure § 725a et seq. and any other applicable law.

1.18 "Lot" shall mean and refer to each Lot or parcel shown on the Map, with the exception of the Common Area, including an Lot in a subsequent Phase of the Project upon annexation pursuant to section 2.7 of this Declaration.

1.19 "Map" shall mean and refer to that Map entitled "Subdivision 7514," filed for record in the Office of the Recorder of the County of Contra Costa, State of California, on October 6, 2000, in Book 425 of Maps, page(s) 13 et seq.

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

1.21 "Mortgage" shall include a deed of trust as well as a mortgage.

1.22 "Mortgagee" shall include a beneficiary or a holder of a deed of trust as well as a mortgagee.

1.23 "Mortgagor" shall include the trustor of a deed of trust as well as a mortgagor.

1.24 "Owner" or "Owners" shall mean and refer to the record Owner, whether one (1) or more persons or entities, of fee simple title to any Lot which is a part of the Project, but excluding those persons or entities having an interest merely as security for the performance of an obligation. If a Lot is sold under a contract of sale and the contract is recorded, the purchaser, rather than the fee owner, shall be considered the "Owner" from and after the date the Association receives written notice of the recorded contract.

1.25 "Person" means a natural person, a corporation, a partnership, a trust, or other legal entity.

1.26 "Phase" means an increment of the Project that is subject to this Declaration, including the initial Phase of the Project, Phase I, described on the Map and on Exhibit "A" and any subsequent Phase or Phases added to the Project by annexation as described in Section 2.7 of this Declaration.

1.27 "Project" shall mean and refer to all of the real property in Phase I described on the Map and in Exhibit "A" [Phase I] and all improvements on that real property, subject to this Declaration and any subsequent phase which may become annexed into the Project in accordance with section 2.7, and thereby become subject to this Declaration.

1.28 "Project Documents" shall mean and refer to this Declaration, together with the other basic documents used to create and govern the Project, including the Map, the Articles, and the Bylaws (but excluding unrecorded rules and regulations adopted by the Board or the Association).

1.29 "Reimbursement Assessment" shall mean an Assessment levied by the Board against a Member to reimburse the Association for costs incurred in bringing the Member and his Lot into compliance with provisions of the Project Documents.

1.30 "Rules" shall mean and refer to the rules adopted from time to time by the Association pursuant to section 5.2C.

## ARTICLE II DESCRIPTION OF PROJECT, DIVISION OF PROPERTY, AND CREATION OF PROPERTY RIGHTS

2.1 **Description of Project:** The Project is a planned development which is to consist of Phase I and subsequent Phases which may be annexed to the Project and become a part of the Project pursuant to section 2.7. Phase I shall consist of the Common Area Parcels A and K shown on the Map and 43 residential Lots, Lots 138-157, 161-183 shown on the Map, and all improvements thereon.

2.2 **Easements; Dedication of Common Area:** Each of the Lots shown on the Map shall have appurtenant to it as the dominant tenement an easement over the Common Area(s) now or hereafter owned by the Association as the servient tenement(s) for ingress and egress, and for use, occupancy and enjoyment, and where applicable, for the construction, maintenance and operation of utilities. Declarant hereby reserves to itself, and its successors and assigns, the right to, and agrees that it will, grant to, the Owners of Lots in subsequent Phases of the Project, as the dominant tenement, nonexclusive easements for ingress and egress and construction activities over the Common Area of Phase I of the Project as the servient tenement, and Declarant further agrees that it will reserve to itself and its successors and assigns the right to grant, and agrees that when it annexes any additional Phases as provided in section 2.7 it will grant, to the Owners of Lots in Phase I as the dominant tenements, nonexclusive easements for ingress and egress over the Common Area of the additional Phases as the servient tenements upon annexation thereof pursuant to section 2.7. All of the foregoing easements are subject to the following:

A. The right of the Association to discipline Members and to suspend the voting rights of a Member for any period during which any Assessment against his Lot remains unpaid, and for any infraction of the Declaration, Bylaws, Articles or written Rules in accordance with the provisions of sections 4.10, 5.2E and 9.1 hereof.

B. The right of the Association to dedicate, transfer or mortgage all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members, provided, that in the case of the borrowing of money and the mortgaging of its property as security therefor, the rights of such mortgagee shall be subordinate to the rights of the Members of the Association. No such dedication, transfer or mortgage shall be effective unless an instrument signed or approved by two-thirds (2/3) of each class of Members agreeing to such dedication, transfer or mortgage has been recorded.

C. The right of the Association to grant easements under, in, upon, across, over, above or through any portion of the Common Area for purposes, including, without limitation, access, utilities, and parking, which are beneficial to the development of the Project in accordance with the general plan established by this Declaration.

D. The right of the Association or Declarant to install or have installed a cable or central television antenna system. The system, if and when installed, shall be maintained by the Association or cable television franchisee. To the extent required to effectuate the foregoing plan, there shall be an easement in favor of each Lot for the purpose of connecting the same with the master cable television terminal, central television antenna or line. Each Lot shall be subject to an easement in favor of all other Lots and in favor of the entity holding the CATV franchise, to provide for the passage through the Lot and any structure thereon of television connections from any other Lot to the cable system, and shall be subject to a further easement for the placement and maintenance of such connections.

E. Easements for work necessary to complete development and construction of the Project, including all parcels annexed or to be annexed, as more particularly described in section 9.6.

The foregoing easements are granted and reserved subject to the condition that their use and enjoyment shall not unreasonably interfere with the use, occupancy or enjoyment of all or any part of the Lot servient to them or to which they are appurtenant.

**2.3 Easements to Accompany Conveyance of Lot:** Easements that benefit or burden any Lot shall be appurtenant to that Lot and shall automatically accompany the conveyance of any Lot, even though the description in the instrument of conveyance may refer only to the fee title to the Lot.

**2.4 Delegation of Use:** Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area and facilities to the members of his family, guests, tenants, or contract purchasers, who reside on the Project.

**2.5 Conveyance of Common Area to Association:** On or before conveyance of title to the first Lot in each Phase, Declarant shall deed the Common Area in that Phase to the Association to be held for the benefit of the Members of the Association.

When any Common Area is conveyed by Declarant to the Association, an easement is automatically reserved over the Common Area for the benefit of the remaining Phases not yet annexed, for ingress and egress, and for the construction of utilities, landscaping, residences and other improvements on Lots which have not yet been annexed to the Project (as of the date of conveyance to the Association). The easement shall continue for a reasonable period of time to complete construction of improvements.

**2.6 Owners' Rights and Easements for Utilities:** The rights and duties of the Owners of Lots within the Project with respect to sanitary sewer, drainage, water, electric, gas, television receiving, telephone equipment, cables and lines (hereinafter referred to, collectively, as "utilities facilities") shall be as follows:

A. Whenever utilities facilities are installed within the Project, which utilities facilities or any portion thereof lie in or upon a Lot or Lots owned by other than the Owner of a Lot served by said utilities facilities, the Owners of any Lots served by such utilities facilities shall have the right of reasonable access for themselves or for utility companies or the City to repair, to replace and generally maintain said utilities facilities as and when the same may be necessary, due to failure or inability of the Board to take timely action to make such repairs or perform such maintenance.

B. Whenever utilities facilities are installed within the Project which serve more than one (1) Lot, the Owner of each Lot served by said utilities facilities shall be entitled to the full use and enjoyment of such portions of said utilities facilities as service his Lot.

C. In the event of a dispute between Owners with respect to the repair or rebuilding of said utilities facilities, or with respect to the sharing of the cost thereof, then, upon written request of one (1) Owner addressed to the other Owner(s), the matter shall be submitted first to the Board for mediation, and thereafter, if the dispute remains unresolved, to binding arbitration within sixty (60) days pursuant to the rules of the American Arbitration Association, or any successor thereto, or to any other generally recognized system of alternative dispute resolution. and the decision of the Arbitrator(s) shall be final and conclusive on the parties, and judgment may be entered thereon in any court having jurisdiction.

**2.7 Annexation of Additional Property:** Additional property may be annexed to and become subject to this Declaration by any of the following methods set forth in this section. Upon annexation, the additional property shall become subject to this Declaration without the necessity of amending individual sections hereof.

A. **Annexation Pursuant to Plan:** At the sole discretion of Declarant, any or all of the property described in Exhibit "B" ("Annexation Property") may be annexed to and become a part of the Project as subsequent Phases of the Project, subject to this Declaration, and subject to the jurisdiction of the Association, without the necessity of amending individual sections of this Declaration, without the assent of the Association or its Members, and without the assent of Owners, on condition that:

1. **Plan Approved:** The annexation and development of additional Phases shall be in accordance with a plan of development submitted to the Department of Real Estate of the State of California.

2. **Declaration of Annexation:** A Declaration of Annexation shall be recorded covering the applicable portion of the property to be annexed. The Declaration may contain such complementary additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added property, and as are not inconsistent with the scheme of this Declaration. The Declaration of Annexation shall require the payment by the Declarant to the Association, concurrently with the closing of the escrow for the first sale of a Lot in an annexed Phase, of appropriate amounts for reserves for replacement or deferred maintenance of Common Area improvements in the annexed Phase necessitated by or arising out of the use and occupancy of residential Lots under a rental program conducted by the Declarant which has been in effect for a period of at least one (1) year as of the date of closing of the escrow for the first sale of a residential Lot

in the annexed Phase. The foregoing rights may not be amended, modified or deleted without the prior written consent of the Declarant.

**B. Annexation Pursuant to Approval:** Property other than that described in section 2.7A may be annexed to the Project upon approval in writing of the Association, pursuant to vote or written consent of a two-thirds (2/3) majority of the voting power of its Members, excluding the Declarant, and the approval of Eligible Mortgage Holders as may be required under section 9.6D. Upon such approval, the Owner of such property may file of record a Declaration of Annexation. Upon the recording of such Declaration of Annexation, the annexed property shall be subject to the jurisdiction of the Association.

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

**D. Quality of Construction:** Future improvements to the Project will be consistent with initial improvements in terms of structure type and quality of construction.

**E. Failure to Annex:** If any remaining Phase is not annexed as provided above and the property in that Phase requires ingress and egress access over private streets located within the Project and access to and use of common utilities, easements shall exist for reasonable vehicular and pedestrian traffic and reasonable use of the common utilities for residential developments within the Annexation Property of comparable size and density, provided, however, that the properties not annexed (and their owner(s)) shall be obligated to pay their equitable share of the cost of maintenance and repair of those private streets and utilities and shall be subject to a lien or liens for said maintenance and repair costs, as provided in section 4.13 hereof.

**F. Right of Successor Declarant to Annex:** The right of unilateral annexation provided for in section 2.7A constitutes a covenant running with the land, and is, as such, enforceable by any successor or assignee of Declarant who acquires any part of the Annexation Property, and who assumes the role of Declarant as provided in section 1.10.

**2.8 Encroachment Easements:** Each Lot as the dominant tenement shall have an easement over adjoining Lots and Common Area as the servient tenements for the purpose of accommodating any encroachment due to foundations, exterior wall, windows, roof overhang and fences or walls which are built in accordance with the original design, plans and specifications of Declarant, or due to engineering errors, errors or adjustments in original construction, settlement or shifting of the building, or similar causes. There shall be valid easements for the maintenance of said encroachments as long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachment, settlement or shifting; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the intentional conduct of said Owner or Owners other than adjustments by Declarant in the original construction. In the event a structure is partially or totally destroyed, and then repaired or rebuilt, the Owners of each adjoining Lot agree that minor encroachments over adjoining Lots and Common Area shall be permitted and that there shall be valid easements for the maintenance of said encroachments so long as they shall exist. In the event that an error in engineering, design or construction results in an encroachment of a building into the Common Area, or into or onto an adjoining Lot, or into a required setback area, a correcting modification

may (at the discretion of Declarant) be made in the subdivision map. Said modification shall be in the form of a certificate of correction and shall be executed by Declarant (so long as Declarant is the sole owner of the Project) and by Declarant's engineer and by the City engineer. If the correction occurs after title to the Common Area has been conveyed to the Association, the Association shall also execute the certificate of correction. The Board of Directors may, by vote or written approval of a majority of the directors, authorize the execution of the certificate of correction.

**2.9 Maintenance Easement:** An easement over each Lot as the servient tenement is reserved by Declarant in favor of each other Lot as the dominant tenement, and in favor of the Association, for the purpose of allowing the Association's agents to enter the Lot to perform such maintenance, if any, as the Association may do in accordance with the provisions of sections 5.1A and section 7.16 of this Declaration.

**2.10 Front Yard Maintenance Easement:** An easement is reserved over the front yard of each Lot as the servient tenement in favor of the Association for the purpose of allowing the Association or its agents to enter the front yard to maintain the landscaping thereon. The Association has the right for access to and use of water spigots on any of the Lots for irrigation of the front yards of the Project, with the understanding that the use of such water by the Association from each Lot shall be used in a reasonable and equitable manner.

**2.11 Drainage Easements:** An easement over and under each Lot as the servient tenement is reserved in favor of each other Lot as the dominant tenement for the purpose of allowing the Association's agents to enter the Lot to maintain that portion of an in-tract storm drainage system located thereon. No Owner or occupant shall commit any act that would interfere with the operation of any drainage system (including drainage swales) installed on the Owner's Lot. The Owner shall maintain the system free of debris and other obstacles at all times. Reciprocal appurtenant easements between each Lot and the Common Area and between adjoining Lots are reserved for flow of surface and subsurface water.

**2.12 Other Easements:** The Common Area and each Lot are subject to all easements, dedications, and rights of way granted or reserved in, on, over and under the Project as shown on the Map.

**2.13 Rights of Entry and Use:** The Lots and Common Area (including Restricted Common Area) shall be subject to the following rights of entry and use:

A. The right of the Association's agents to enter any Lot to cure any violation of this Declaration or the Bylaws, provided that the Owner has received notice and a hearing as required by the Bylaws (except in the case of an emergency) and the Owner has failed to cure the violation or take steps necessary to cure the violation within thirty (30) days after the finding of a violation by the Association;

B. The access rights of the Association to maintain, repair or replace improvements or property located in the Common Area as described in section 5.2D;

C. The easements described in this Article II;

D. The right of the Association's agents to enter any Lot to perform maintenance as described in section 7.16;

E. The rights of the Declarant during the construction period as described in section 9.6.

**2.14 Partition of Common Area:** There shall be no subdivision or partition of the Common Area, nor shall any Owner seek any partition or subdivision thereof. Notwithstanding any provisions to the contrary contained in this Declaration and in order to provide for a means of terminating the Project if this should become necessary or desirable, on occurrence of any of the conditions allowing an Owner of a Lot to maintain an action for partition (as such conditions are presently set forth in California Civil Code § 1359 or as such conditions in the future may be set forth in any amendment thereto or comparable provisions of law), two-thirds (2/3) of the Owners of Lots shall have the right to petition the Superior Court having jurisdiction to alter or vacate the Map under California Government Code § 66499.21, et seq., or any comparable provisions of law, and to vest title to the Project in the Owners as tenants in common and order an equitable partition of the Project in accordance with the laws of the State of California. Nothing herein shall be construed to prohibit partition of a joint tenancy or co-tenancy in any Lot.

**2.15 Right to Deannex:** Notwithstanding any other provisions of this Declaration or any declaration of annexation, notice of addition of property or amendments or supplements to this Declaration as may be hereinafter filed of record to effect an annexation of property under this Article, the Declarant shall have the right at any time after such annexation but before the close of escrow on the sale under the authority of a public report to an Owner other than the Declarant of the first Lot within the property so annexed to deannex such property or any portion thereof by filing of record a notice of deannexation (or such other instrument as may be acceptable for recordation) describing the property to be so deannexed and stating that such deannexation is undertaken in accordance with the terms and conditions of this section. Any such deannexation shall be effective upon the recordation of such notice or other instrument and such notice or other instrument need only be executed by the Declarant. In any case where Declarant has sold and closed escrow on the sale of a Lot under authority of a Public Report, the official document issued by the Department of Real Estate authorizing the offering of the Project for sale to the public pursuant to the Subdivided Lands Act, Declarant shall have the right to deannex a portion of the Project, provided that no such deannexation shall be valid without the approval, by vote or written consent, of a majority of the Owners other than Declarant, and the prior written consent of the Real Estate Commissioner if and as required under California Business and Professions Code § 11018.7. Such deannexation shall not in such case relieve Declarant from the obligation to continue to pay its equitable share of the cost of maintenance and repair of the private streets and to continue to be subject to liens as provided in section 4.13.

**2.16 All Easements Part of Common Plan:** Whenever any easements are reserved or created or are to be reserved or created in this Declaration, such easements shall constitute equitable servitudes for the mutual benefit of all property in the Project, even if only certain Lots are specifically mentioned as subject to or benefiting from a particular easement. Easements referred to in this Declaration that are created by grant deeds, subsequent to the date of this Declaration shall be part of the common plan created by this Declaration for the benefit of all property Owners within the Project.

**ARTICLE III**  
**ASSOCIATION, ADMINISTRATION, MEMBERSHIP AND VOTING RIGHTS**

**3.1 Association to Own and Manage Common Areas:** The Association shall own and manage the Common Area in accordance with the provisions of this Declaration, and the Articles and Bylaws.

**3.2 Membership:** The Owner of a Lot shall automatically, upon becoming the Owner of same, be a Member of the Association, and shall remain a Member thereof until such time as his ownership ceases for any reason. Membership shall be appurtenant to and may not be separated from ownership of a Lot. Membership shall be held in accordance with the Articles and Bylaws.

**3.3 Transferred Membership:** Membership in the Association shall not be transferred, encumbered, pledged, or alienated in any way, except upon the sale or encumbrance of the Lot to which it is appurtenant, and then only to the purchaser, in the case of a sale, or mortgagee, in the case of an encumbrance of such Lot. On any transfer of title to an Owner's Lot, including a transfer on the death of an Owner, membership passes automatically with title to the transferee.

A mortgagee does not have membership rights until it obtains title to the Lot through Foreclosure or deed in lieu of Foreclosure. Any attempt to make a prohibited transfer is void. No Member may resign his membership. On notice of a transfer, the Association shall record the transfer on its books.

**3.4 Membership and Voting Rights:** Membership and voting rights shall be as set forth in the Bylaws.

**ARTICLE IV**  
**MAINTENANCE AND ASSESSMENTS**

**4.1 Creation of the Lien and Personal Obligation of Assessments:** The Declarant, for each Lot owned within the Project, hereby covenants, and each Owner of any Lot by acceptance of a deed for that Lot, whether or not it shall be so expressed in such deed, covenants and agrees:

(1) to pay to the Association annual Assessments or charges, and special Assessments for purposes permitted in this Declaration, such Assessments to be established and collected as subsequently provided in this Declaration; and

(2) to allow the Association to enforce any assessment lien established under this Declaration by nonjudicial proceedings under a power of sale or by any other means authorized by law.

The annual and special Assessments, together with interest, late charges, collection costs, and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such Assessment is made, the lien to become effective upon recordation of a notice of delinquent Assessment. Each such Assessment, together with interest, late charges, collection costs, and reasonable attorneys' fees, shall also be the personal obligation (joint and several) of each person who was the Owner of such property at the time when the Assessment fell due. No Owner of a Lot may exempt himself from liability for his contribution towards the Common Expenses by waiver of the use or enjoyment of any of the Common Areas or by the abandonment of his Lot.

The interest of any Owner in the amounts paid pursuant to any Assessment upon the transfer of ownership shall pass to the new Owner. Upon the termination of these covenants for any reason, any amounts remaining from the collection of such Assessments after paying all amounts properly charged against such Assessments shall be distributed to the then Owners on the same pro rata basis on which the Assessments were collected.

**4.2 Purpose of Assessments:** The Assessments levied by the Association shall be used exclusively to promote the economic interests, recreation, health, safety, and welfare of all the residents in the Project and to enable the Association to perform its obligations hereunder.

**4.3 Assessments:**

**A. Annual Assessments:** The Board shall establish and levy annual Assessments in an amount that the Board estimates will be sufficient to raise the funds needed to perform the duties of the Association during each fiscal year.

The annual Assessment shall include a portion for reserves in such amounts as the Board in its discretion considers appropriate to meet the costs of the future repair, replacement or additions to the major improvements and fixtures that the Association is obligated to maintain and repair. Reserve funds shall be deposited in a separate account and the signatures of at least two (2) persons who shall either be members of the Board or one officer who is not a member of the Board and a member of the Board shall be required to withdraw monies from the reserve account.

**B. Special Assessments:** The Board, at any time, may levy a special Assessment in order to raise funds for unexpected operating or other costs, insufficient operating or reserve funds, or such other purposes as the Board in its discretion considers appropriate. Special Assessments shall be allocated equally among the Lots in the same manner as annual Assessments, except in the case of a Reimbursement Assessment levied by the Board against a Member to reimburse the Association for costs incurred in bringing the Member and his Lot into compliance with provisions of the Project Documents.

**4.4 Restrictions on Increases in Annual or Special Assessments:** The Board may not impose an annual Assessment on any Lot which is more than twenty percent (20%) greater than the annual Assessment for the immediately preceding fiscal year or levy a special Assessment to defray the cost of any action or undertaking on behalf of the Association which in the aggregate exceeds five percent (5%) of the budgeted gross expenses of the Association for that fiscal year, without the vote or written assent of Members casting a majority of the votes at a meeting of the Association at which a quorum is present. For purposes of this section 4.4, a "quorum" means Members constituting more than fifty percent (50%) of the Voting Power of the Association. Any meeting of the Association for purposes of complying with this section 4.4 shall be conducted in accordance with Chapter 5 (commencing with § 7510) of Part 3, Division 2 of Title 1 of the California Corporations Code and § 7613 of the California Corporations Code. The Board may increase annual Assessments by up to twenty percent (20%) over the annual Assessment for the immediately preceding fiscal year only if the Board has complied with the provisions of California Civil Code § 1365(a), which provisions are set forth in section 12.1(1) of the Bylaws or has obtained the approval of such increase by the Members in the manner set forth above in this section 4.4.

Notwithstanding the foregoing, the Board, without membership approval, may increase annual Assessments or levy special Assessments necessary for an emergency situation. For purposes of this section, an emergency situation is one of the following:

- (1) an extraordinary expense required by an order of a court,
- (2) an extraordinary expense necessary to repair or maintain the Project or any part of it for which the Association is responsible where a threat to personal safety on the Project is discovered, or
- (3) an extraordinary expense necessary to repair or maintain the Project or any part of it for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the pro forma operating budget, provided, however, that prior to the imposition or collection of the Assessment, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to the Members with the notice of the Assessment.

The Association shall provide notice to the Owners by first-class mail notice of any increase in the regular or special Assessments of the Association not less than thirty (30) nor more than sixty (60) days prior to the increased Assessment becoming due. This section 4.4 incorporates the statutory requirements of California Civil Code § 1366. If this section of the California Civil Code is amended in any manner, this section 4.4 automatically shall be amended in the same manner without the necessity of amending this Declaration.

**4.5 Notice and Quorum for Any Action Authorized Under Section 4.4:** Any action authorized under section 4.4, which requires a vote of the membership, shall be taken at a meeting called for that purpose, written notice of which shall be delivered or given to all Members not less than ten (10) nor more than ninety (90) days in advance of the meeting, specifying the place, day and hour of the meeting and, in the case of a special meeting, the nature of the business to be undertaken. The action may also be taken without a meeting pursuant to the provisions of California Corporations Code § 7513.

**4.6 Division and Collection of Assessments:** All Assessments, both annual and special, shall be levied equally among the Lots, except for Reimbursement Assessments as provided in section 4.3. Annual Assessments shall be collected on a monthly basis unless the Board directs otherwise. Special Assessments may be collected in one (1) payment or periodically as the Board shall direct.

**4.7 Date of Commencement of Annual Assessment; Due Dates:** The annual Assessments provided for in this Declaration shall commence as to all Lots in Phase I on the first day of the month following the first conveyance of a Lot to an Owner in Phase I under authority of a Public Report. In subsequent Phases, the annual Assessments against all Lots in each Phase shall commence on the earlier to occur of (i) the first day of the month following the closing of the first conveyance to the Owner in that Phase, or (ii) upon the occupancy of a Lot. In the event that an escrow is closed upon sale of a Lot in a later Phase, the closing shall trigger the commencement of assessments on all earlier Phases in which sales have not yet occurred (and for which no escrows have yet closed). The first annual Assessment for each added Phase shall be adjusted according to the number of months remaining in the calendar year after annexation of said Phase.

Subject to the provisions of section 4.3 hereof, the Board of Directors shall use its best efforts to fix the amount of the annual Assessment against each Lot and send written notice thereof to every Owner at least forty-five (45) days in advance of each annual Assessment period, provided that failure to comply with the foregoing shall not affect the validity of any Assessment levied by the Board. The due

date shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth the Assessments on a specified Lot have been paid. Such certificate, stating that Assessments have been paid, shall be conclusive evidence of such payment.

**4.8 Effect of Nonpayment of Assessments:** Any Assessment not paid within fifteen (15) days after the due date shall be delinquent, shall bear interest at the rate of twelve percent (12%) per annum from thirty (30) days after the due date until paid, and shall incur a late payment penalty in an amount to be set by the Board from time to time, not to exceed the maximum permitted by applicable law.

**4.9 Transfer of Lot by Sale or Foreclosure:** Sale or transfer of any Lot shall not affect the assessment lien. However, the sale of any Lot pursuant to Foreclosure of a first mortgage shall extinguish the lien of any Assessments on that Lot (including attorneys' fees, late charges, or interest levied in connection therewith as to payments which became due prior to such sale or transfer, except for assessment liens recorded prior to the mortgage). No sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof. The unpaid share of such Assessments shall be deemed to be Common Expenses collectible from all Owners of the Lots including such acquirer, and his successors or assigns.

If a Lot is transferred, the grantor shall remain liable to the Association for all unpaid Assessments against the Lot through and including the date of the transfer. The grantee shall be entitled to a statement from the Association, dated as of the date of transfer, setting forth the amount of the unpaid Assessments against the Lot to be transferred, and the Lot shall not be subject to a lien for unpaid Assessments in excess of the amount set forth in the statement, provided, however, the grantee shall be liable for any Assessments that become due after the date of the transfer.

**4.10 Priorities; Enforcement; Remedies:** If an Owner fails to pay an Assessment when due, the Association has the right, and option, to bring legal action against the Owner to enforce collection of the unpaid and past due Assessment, or may impose a lien on the Lot owned by Owner pursuant to the provisions of Civil Code § 1367, or both. Suit to recover a money judgment for unpaid Assessments and attorneys' fees shall be maintainable without foreclosing or waiving the lien securing the same. Before the Association may place a lien upon a Lot, pursuant to Civil Code § 1367(a), the Association shall notify the Owner in writing by Certified Mail of the fee and penalty procedures of the Association, provide an itemized statement of the charges owed by the Owner, including the principal owed, any late charges, and the method of collection, any attorneys' fees, and the collection practices used by the Association, including the right of the Association to the reasonable costs of collection. After compliance with the provisions of Civil Code § 1367(a), the Association may record a notice of delinquent Assessment and establish a lien against the Lot of the delinquent Owner 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 deeds of trust with first priority over other mortgages or deeds of trust) made in good faith and for value. The notice of delinquent Assessment shall state the amount of the Assessment, collection costs, attorneys' fees, late charges and interest, a description of the Lot against which the Assessment and other sums are levied, the name of the record Owner, and the name and address of the trustee authorized by the Association to enforce the lien by sale. The notice shall be signed by any officer of the Association or any management agent retained by the Association and shall be mailed in the manner set forth in Civil Code § 2924b to all record owners of the Lot no later than 10 days after recordation.

After the expiration of 30 days following the recordation of the lien, an assessment lien may be enforced in any manner permitted by law, including sale by the court, sale by the trustee designated in the notice of delinquent Assessment, or sale by a trustee substituted pursuant to California Civil Code § 2934(a). Any sale by the trustee shall be conducted in accordance with the provisions of §§ 2924, 2924b, 2924c, 2924f, 2924g, 2924h and 2924j of the California Civil Code applicable to the exercise of powers of sale in mortgages and deeds of trust, including any successor statutes thereto, or in any other manner permitted by law. Nothing in this Declaration shall preclude the Association from bringing an action directly against an Owner for breach of the personal obligation to pay Assessments.

The Association, acting on behalf of the Owners, shall have the power to bid for the Lot at foreclosure sale, and to acquire and hold, lease, mortgage and convey the Lot. If the purchase of a Lot would result in a five percent (5%) or greater increase in Assessments, the purchase shall require the vote or written consent of a majority of the total voting power of the Association, including a majority of Members other than Declarant. During the period a Lot is owned by the Association, following Foreclosure:

- (1) no right to vote shall be exercised on behalf of the Lot;
- (2) no Assessment shall be assessed or levied on the Lot; and
- (3) each other Lot shall be charged, in addition to its usual Assessment, its share of the Assessment that would have been charged to such Lot had it not been acquired by the Association as a result of Foreclosure.

After acquiring title to the Lot at foreclosure sale following notice and publication, the Association may execute, acknowledge and record a deed conveying title to the Lot, which deed shall be binding upon the Owners, successors, and all other parties.

The Board may temporarily suspend the voting rights of a Member who is in default in payment of any Assessment, after notice and hearing, as provided in the Bylaws.

Fines and penalties for violation of restrictions are not "Assessments," and are not enforceable by assessment lien, but are enforceable by court proceedings; provided, however, pursuant to Civil Code §1367(b), monetary penalties imposed by the Association to reimburse the Association for costs incurred for repair of damage to Common Area or facilities for which the Owner, or guests or tenants of an Owner, were responsible, may become the subject of a lien.

In conformity to Civil Code §1367(c), fines and penalties imposed by the Association for violation of this Declaration as a disciplinary measure for failure of an Owner to comply with this Declaration or the Rules, except for late payments, are not "Assessments," and are not enforceable by assessment lien, but are enforceable by court proceedings; provided, however, pursuant to Civil Code § 1367(b), monetary penalties imposed by the Association to reimburse the Association for costs incurred for repair of damage to Common Area or facilities for which the Owner, or guests or tenants of an Owner, were responsible may become the subject of a lien. In the event that Civil Code §1367(c) is amended to permit fines and penalties imposed by the Association for violation of this Declaration as a disciplinary measure for failure of an Owner to comply with this Declaration or the Rules to be enforceable by assessment lien, then this provision shall be deemed amended to conform to any such amendment of Civil Code §1367(c), provided however that any such enforcement as a lien shall only be permitted if there are no Lots in the Project that are subject to the jurisdiction of the Department of Real Estate under a Final Subdivision Public Report.

**4.11 Unallocated Taxes:** In the event that any taxes are assessed against the Common Area, or the personal property of the Association, rather than against the Lots, said taxes shall be included in the Assessments made under the provisions of section 4.1 and, if necessary, a special Assessment may be levied against the Lots in an amount equal to said taxes, to be paid in two (2) installments, thirty (30) days prior to the due date of each tax installment.

**4.12 Exemptions from Assessments:** Any Lot which does not include a structural improvement for human occupancy shall be exempt from the payment of that portion of any Assessment which is for the purpose of defraying expenses and reserves directly attributable to the existence and use of the structural improvement. The exemption may include:

- (1) exterior landscaping maintenance;
- (2) walkway and carport lighting;
- (3) insurance on uncompleted units.

The foregoing exemption shall be in effect until the earliest of the following events:

- (1) a notice of completion of the structural improvements has been recorded;
- (2) occupation or use of the residential structure on the Lot; or
- (3) completion of all elements of the residential structure which the Association is obligated to maintain.

The Declarant and any other Owner of a Lot are exempt from the payment of that portion of any Assessment which is for the purpose of defraying expenses and reserves directly attributable to the existence and use of a common facility that is not complete at the time Assessments commence. This exemption from the payment of Assessments shall be in effect until the earliest of the following events:

- (1) a notice of completion of the common facility has been recorded; or
- (2) the common facility has been placed into use.

**4.13 Assessments on Lots in Subsequent Phases:** In the event that any part of the subsequent Phases are not annexed to this Declaration, pursuant to section 2.7 [or are deannexed pursuant to section 2.15], and the property in the such Phase or Phases is developed, and sold or leased to persons whose use and occupancy of those Phases results in use of the private streets and/or utilities within the Common Area, the property and the owner(s) of that property (including Declarant) shall be subject to annual and special Assessments pursuant to section 4.1 levied by the Board for the costs of maintenance and repair of those streets and/or utilities. The cost of maintenance and repair under such circumstances shall be prorated equitably between the properties, and payment for that maintenance and repair shall be enforced pursuant to section 4.10. In the event of any disagreement as to the reasonableness of those annual and/or special Assessments or their division, the matter shall be submitted to binding arbitration under the rules of the American Arbitration Association. Notwithstanding the foregoing, none of the other sections of this Declaration shall apply to any such Phase of the Annexation Property until and unless it is annexed in accordance with section 2.7.

**ARTICLE V  
DUTIES AND POWERS OF THE ASSOCIATION**

**5.1 Duties:** In addition to the duties enumerated in the Articles and Bylaws, or elsewhere provided for in this Declaration, and without limiting the generality of those duties, the Association shall perform the following duties:

**A. Maintenance:** The Association shall maintain and repair the following:

(1) the Common Area, all improvements, landscaping and open space areas thereon, and all property owned by the Association, including, without limitation, park and recreational areas and facilities, private streets, irrigation systems, lighting fixtures, and utility, storm sewers or drainage basins and systems not maintained by a public entity, utility company, or improvement district.

(a) Maintenance by the Association shall include maintenance, repair and replacement of the storm drainage infrastructure within the Project Common Area, including the detention basins and siltation basins and any other on-site structures, in accordance with the program of regular maintenance of the detention basin submitted to the City's Public Services Department and Community Development Department, and providing mosquito abatement.

(b) Maintenance by the Association shall include maintenance, repair and replacement of the private streets within the subdivision and all utilities not maintained by utility companies or the City; maintenance, repair and replacement of all perimeter fencing and soundwalls (including removal of graffiti); maintenance, irrigation and replacement of street trees, park areas and other landscaping in the Project Common Areas; maintenance of wetlands areas within the Project Common Area.

The foregoing subparagraphs (a) and (b) cannot be amended, modified or deleted without the prior written approval of the City.

(2) landscaping for the unfenced front yard or unfenced side yard areas of each Lot, expressly excluding any private enclosed rear yard areas of the Lots.

(3) Weed abatement on the perimeter of the Project between the soundwall and the adjoining railroad property to the south of the Project.

Except as expressly assigned to the Association in this section 5.1A, all other maintenance and repair obligations for any residential structure shall be done by and at the expense of the Owner of the residence as described in section 7.16.

The responsibility of the Association for maintenance and repair shall not extend to repairs or replacements arising out of or caused by the willful or negligent act or omission of any Owner, or his guest, tenant, invitee or pet. Any such repairs or replacements not covered by insurance carried by the Association shall be made by the responsible Owner, provided the Board approves the person or entity actually making the repairs and the method of repair. If the responsible Owner fails to take the necessary steps to make the repairs within a reasonable time under the circumstances, the Association shall cause the repairs to be made and charge the costs thereof to the responsible Owner, which costs shall bear interest at the rate of twelve percent (12%) per annum (but no greater than the maximum rate allowed by law) until paid in full. If such repair is covered by the insurance carried by the Association, the

Association shall be responsible for making the repairs, and the responsible Owner shall pay any deductible pursuant to the insurance policy. If the Owner fails to make such payment, then the Association may make such payment and shall charge the responsible Owner, which charge shall bear interest at the rate of twelve percent (12%) per annum (but no greater than the maximum rate allowed by law) until paid in full. If the Owner disputes the charge, the Owner shall be entitled to a notice and a hearing as provided in the Bylaws before the charge may be collected.

**B. Insurance:** The Association shall obtain and maintain such policy or policies of insurance as are required by section 8.1 of this Declaration.

**C. Discharge of Liens:** The Association shall discharge by payment, if necessary, any lien against the Common Area and charge the cost thereof to the Member or Members responsible for the existence of the lien after notice and hearing as provided in the Bylaws.

**D. Assessments:** The Association shall fix, levy, collect and enforce Assessments as set forth in Article IV hereof.

**E. Payment of Expenses and Taxes:** The Association shall pay all expenses and obligations incurred by the Association in the conduct of its business including, without limitation, all licenses, taxes or governmental charges levied or imposed against the property of the Association.

**F. Enforcement:** The Association shall be responsible for the enforcement of this Declaration.

The Association shall maintain and operate the Common Area of the Project in accordance with all applicable municipal, state, and federal laws, statutes and ordinances, as the case may be. The Association shall also, as a separate and distinct responsibility, insure that third parties (including Owners and their guests) utilize the Common Area in accordance with the aforementioned regulations. The Association shall, when it becomes aware of any violation of the aforementioned regulations, expeditiously correct such violations.

**G. Inspection and Maintenance Guidelines:** The Board shall adopt inspection and maintenance guidelines for the periodic inspection and maintenance of the Common Area improvements and landscaping, and the landscaping on Lots which the Association has the responsibility to maintain. The Board periodically and at least once every three (3) years shall review and update the inspection and maintenance guidelines. The Board shall take all appropriate steps to implement and comply with the inspection and maintenance guidelines. The Board shall inspect or cause to be inspected annually all publicly accessible facilities within the Common Areas to identify and correct potential hazards. Homeowners association shall also promote earthquake awareness, conducting training on an annual basis for project residents on earthquake preparedness and reduction of seismic hazard.

**5.2 Powers:** In addition to the powers enumerated in the Articles and Bylaws, or elsewhere provided for in this Declaration, and without limiting their generality, the Association shall have the following powers:

**A. Easements:** The Association shall have authority by document signed by the President and the Secretary to grant easements where necessary for utilities, cable television, and sewer facilities over the Common Area to serve the Common Areas and Lots, and/or where necessary to satisfy or achieve appropriate governmental purpose or request.

**B. Manager:** The Association may employ a manager or other persons and contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association, except for the responsibility to levy fines, impose discipline, hold hearings, file suit, record or foreclose liens, or make capital expenditures, provided that any contract with a firm or person appointed as a manager or managing agent shall not exceed a one (1) year term, shall provide for the right of the Association to terminate the same at the first annual meeting of the Members of the Association, and to terminate the same without cause or payment of a termination fee on ninety (90) days' written notice, or for cause on thirty (30) days' written notice.

**C. Adoption of Rules:** The Association or the Board, by majority vote, may adopt reasonable Rules not inconsistent with this Declaration relating to the use of the Common Area and all its facilities, and the conduct of Owners and their tenants and guests with respect to the Property and other Owners. Written copies of such Rules and any schedule of fines and penalties adopted by the Board shall be furnished to Owners.

**D. Access:** For the purpose of performing construction, maintenance or emergency repair for the benefit of the Common Area or the Owners in common, and/or to perform maintenance work that a Lot Owner has failed to perform as provided in section 7.16 the Association's agents or employees shall have the right, after reasonable notice (except in emergencies, not less than twenty-four (24) hours) to the Owner of the Lot in which maintenance work has not been performed, to enter the Lot at reasonable hours. Such entry shall be made with as little inconvenience to the Owner as practicable, and any damage caused by such entry shall be repaired by the Board at the expense of the Association.

**E. Assessments, Liens, Penalties and Fines:** The Board shall have the power to levy and collect Assessments in accordance with the provisions of Article IV hereof. The Association may impose fines or take disciplinary action against any Owner for failure to pay Assessments or for violation of any provision of the Project Documents and the unrecorded Rules adopted by the Board or the Association. Penalties may include but are not limited to fines, temporary suspension of voting rights, or other appropriate discipline, provided the Member is given notice and a hearing as provided in the Bylaws before the imposition of any fine or disciplinary action. The Board shall have the power to adopt a schedule of reasonable fines and penalties for violations of the terms of this Declaration, and for violations of any Rules adopted pursuant to section 5.2C, provided that such schedule is approved by vote or written consent of a majority of all Members. The penalties prescribed may include suspension of all rights and privileges of membership; provided, however, that suspension for failure to pay Assessments shall be for a maximum period of thirty (30) days, renewable by the Board for an additional thirty (30) day period or periods until paid; and provided further that suspension for infraction of Rules or violation of this Declaration, other than for failure to pay Assessments, shall be limited to a maximum period of thirty (30) days per infraction or violation, and shall be imposed only after a hearing before the Board. The Board may extend that period for an additional thirty (30) day period or periods in the case of a continuing infraction or violation, and no hearing need be held for such extension. Written copies of Rules and the schedule of penalties shall be furnished to Owners. The Board shall levy fines and penalties and shall enforce such assessments as appropriate under applicable law.

**F. Enforcement:** The Board shall have the power to enforce this Declaration.

**G. Acquisition and Disposition of Property:** The Board shall have the power to acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain,

convey, sell, lease, transfer, or otherwise dispose of real or personal property in connection with the affairs of the Association. Any transfer of property shall be by document signed or approved by two-thirds (2/3) of the total voting power of the Association which shall include two-thirds (2/3) of the Members other than Declarant, or where the two (2) class voting structure is still in effect, two-thirds (2/3) of the voting power of each class of Members.

**H. Loans:** The Board shall have the power to borrow money, and only with the assent (by vote or written consent) of two-thirds (2/3) of the total voting power of the Association including two-thirds (2/3) of the Members other than Declarant, or where the two (2) class voting structure is still in effect, two-thirds (2/3) of the voting power of each class of Members, to mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

**I. Dedication:** The Association shall have the power to dedicate, sell, or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication shall be effective unless an instrument has been signed or approved by two-thirds (2/3) of the total voting power of the Association including two-thirds (2/3) of the Members other than Declarant, or where the two (2) class voting structure is still in effect, two-thirds (2/3) of the voting power of each class of Members, agreeing to such dedication, sale or transfer.

**J. Contracts:** The Board shall have the power to contract for goods and/or services for the Common Areas, facilities and interests or for the Association, subject to limitations set forth in the Bylaws, or elsewhere herein. The Board shall not enter into any contracts with an independent contractor until it meets the requirements of section 5.1B(3) herein.

**K. Delegation:** The Association, the Board, and the officers of the Association shall have the power to delegate their authority and powers to committees, officers or employees of the Association, or to a manager employed by the Association, provided that the Board shall not delegate its responsibility:

- (1) to make expenditures for capital additions or improvements chargeable against the reserve funds;
- (2) to conduct hearings concerning compliance by an Owner or his tenant, lessee, guest or invitee with the Declaration, Bylaws or Rules promulgated by the Board;
- (3) to make a decision to levy monetary fines, impose special Assessments against individual Lots, temporarily suspend an Owner's rights as a Member of the Association or otherwise impose discipline;
- (4) to make a decision to levy annual or special Assessments; or
- (5) to make a decision to bring suit, record a claim of lien or institute Foreclosure proceedings for default in payment of Assessments.

**L. Appointment of Trustee:** The Association, or the Board acting on behalf of the Association, has the power to appoint or designate a trustee to enforce assessment liens by sale as provided in section 4.10 and California Civil Code § 1367(b).

**M. Litigation/Arbitration:** The Association, subject to section 9.13 of this Declaration, shall have the power to institute, defend, settle or intervene in litigation, arbitration, mediation or administrative proceedings on behalf of the Association pursuant to Code of Civil Procedure § 383. The Board of Directors has authority to enter into a contingent fee contract with an attorney, in a matter involving alleged design or construction defects in the Project, only as to facilities or improvements the Association is responsible for maintaining as provided herein, and then only after getting the vote at a duly noticed and properly held membership meeting, of a majority of the Members other than Declarant. The Board shall, not later than thirty (30) days prior to the filing of any civil action by the Association for alleged design or construction defects in the areas of the Project which it is obligated to maintain, notify the Members in the manner required by California Civil Code § 1368.4. In the event the Board files an action in advance of a meeting of the Members, in order to avoid the running of a statute of limitations, the Board shall call a special meeting of the Members within thirty (30) days after filing the action, for the purpose of discussing the action taken by the Board.

Before commencing an action for damages against a builder of the Project based upon a claim for defects in the design or construction of the Project, the Association shall comply with the requirements of Civil Code § 1375. If, and to the extent that, there is any inconsistency between this section and applicable provisions of the California Civil Code and/or the California Code of Civil Procedure pertaining to the commencement of an action by the Association for construction defect litigation, the applicable provisions of the California statutes shall control.

**N. Other Powers:** In addition to the powers contained herein, the Board may exercise the powers granted to a nonprofit mutual benefit corporation under California Corporations Code § 7140.

**5.3 Commencement of Association's Duties and Powers:** Until incorporation of the Association, all duties and powers of the Association as described in this Declaration, including all rights of consent and approval, shall be and remain the duties and powers of Declarant. After the date of incorporation of the Association, the Association shall assume all duties and powers.

## ARTICLE VI ARCHITECTURAL CONTROL

**6.1 Purpose of Architectural Controls:** The purpose and intent of this Article is to empower the Association to preserve property values within the Project. The Board has the ultimate responsibility, but may delegate that authority to an Architectural Control Committee. The Board and the Architectural Control Committee shall operate pursuant to the following guidelines:

**A.** During the period of initial sales, through transition of control from Declarant to the Members of the Association, the emphasis shall be upon uniformity of appearance, and consistency in carrying out Declarant's original design and architectural scheme for the Project.

**B.** Following initial sell-out, the emphasis shall be upon keeping out of the Project what is considered bizarre, outlandish, or offensive to a reasonably prudent homeowner within the Project. The objective then becomes to prevent additions, alterations or replacements which are reasonably likely to be detrimental to the overall ambiance of the Project, and reasonably likely to adversely affect property values throughout the Project. The restrictions are not intended to empower the Board or the Committee to act arbitrarily, capriciously, or whimsically in the process of reviewing plans. Standards should be established which are both reasonable and objective, and which are reasonably ascertainable, and are

uniformly and fairly applied to all, and in all cases. The Board and the Committee shall base their decisions on what is in the best interests of the Project as a whole, and not upon what will appease a particular Member or group of Members.

**6.2 Requirement for Approval of Plans:** No building, fence, wall, pool, spa, obstruction, outside or exterior wiring, balcony, screen, patio, patio cover, tent, awning, carport, carport cover, trellis, improvement, or structure of any kind shall be commenced, installed, erected, painted or maintained upon the Project, nor shall any alteration or improvement of any kind be made thereto, or to the exterior of any residence, until the same has been approved in writing by the Board, or by an Architectural Control Committee appointed by the Board. Plans and specifications showing the nature, kind, shape, color, size, materials and location of such improvements, alterations, etc., shall be submitted to the Board or to the Architectural Control Committee for approval as to quality of workmanship and design and harmony of external design with existing structures, and as to location in relation to surrounding structures, topography, and finish grade elevation. No fence or wall shall be erected, placed or altered on any Lot nearer to any street than the minimum building set back line. No permission or approval shall be required to repaint in accordance with Declarant's original color scheme, or to rebuild in accordance with Declarant's original plans and specifications. No permission or approval shall be required to repaint in accordance with a color scheme previously approved by the Committee or the Board, or to rebuild in accordance with plans and specifications previously approved by the Committee or by the Board. Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of his residence or to paint the interior of his residence any color desired.

**6.3 Architectural Control Committee Membership:** The Architectural Control Committee shall consist of three (3) members. Declarant may appoint all of the original members of the Committee and all replacements until the first anniversary of the issuance of the original final Public Report for the Project. The Declarant reserves to itself the power to appoint a majority of the members to the Committee until ninety percent (90%) of all the Lots in the Project have been sold or until the fifth anniversary of the issuance of the final Public Report for the Project, whichever first occurs. After one (1) year from the date of the issuance of the original Public Report for the Project, the Board shall have the power to appoint one (1) member to the Architectural Control Committee until ninety percent (90%) of all of the Lots in the development have been sold or until the fifth anniversary date of the issuance of the final Public Report, whichever first occurs. Thereafter, the Board shall have the power to appoint all of the Architectural Control Committee Members. Members appointed to the Architectural Control Committee need not be Members of the Association. A majority of the Architectural Control Committee may designate a representative to act for it. In the event of death or resignation of any member of the Committee, the successor shall be appointed by the person, entity or group which appointed such member until Declarant no longer has the right to appoint any members to the Committee, and thereafter the Board shall appoint such a successor. Neither the members of the Committee nor its designated representative shall be entitled to any compensation for services performed pursuant hereto.

**6.4 Architectural Control Committee Action:** In the event the Committee fails to approve or disapprove plans and specifications in writing within thirty (30) days after the same have been submitted to it, approval will not be required and the related covenants shall be deemed to have been fully complied with. Approval of plans by the Committee or the Board shall in no way make the Committee or its members or the Board or its members responsible for or liable for the improvements built after approval of the plans, and the Owner whose plans are approved shall defend, indemnify and hold the Committee and the Board, and the members thereof, harmless from any and all liability arising out of such approval.

**6.5 Landscaping:** No landscaping or other physical improvements or additions shall be made to any decks, balconies, patios or yards or portions of Lots which are visible from the street or from any Common Area by any Owner until plans and specifications showing the nature, kind, shape, and location of the materials shall have been submitted to and approved in writing by the Architectural Control Committee, or the Board.

**6.5 Solar Energy:** The Architectural Control Committee may impose such restrictions on the installation of solar panels as are permitted by applicable state laws.

**6.6 Governmental Approval:** Before commencement of any alteration or improvements approved by the Architectural Control Committee, the Owner shall comply with all appropriate governmental laws and regulations. Approval by the Committee does not satisfy the appropriate approvals that may be required by any governmental entity with appropriate jurisdiction.]

**6.7 Structural Integrity:** Nothing shall be done in or on any Lot or in or on the Common Area which will impair the structural integrity of any building.

## ARTICLE VII USE RESTRICTIONS

In addition to all of the covenants contained in this Declaration, the use of the Project and each Lot in the Project is subject to the following:

**7.1 Use of Lot:** No Lot shall be occupied and used except for residential purposes by the Owners, their tenants, and social guests, except that Declarant, its successors or assigns, may use the Project for a model homesite or sites, and display and sales/construction office during construction until the last Lot is sold by Declarant, or, where Declarant elects to retain one (1) or more Lots as an investment, until three (3) years from the date of closing of the first sale in the latest annexed Phase of the Project, whichever occurs first. A Lot may be used as a combined residence and executive or professional office by the Owner thereof, so long as such use does not interfere with the quiet enjoyment by other Lot Owners of their Lots and does not include visiting clients and such use is not visible from the Common Area, adjoining Lots or streets of the Project. No tent, shack, trailer, basement, garage, outbuilding or structure of a temporary character shall be used on any Lot at any time as a residence, either temporarily or permanently.

The number of residents, unless applicable law provides otherwise, shall be limited as follows: No more than two (2) persons per bedroom shall be permitted as permanent residents. A "permanent resident" means any person residing on the Lot more than sixty (60) days out of any twelve (12) consecutive month period, provided that one (1) child under three (3) years of age shall be allowed in addition to the maximum number of permanent residents otherwise permitted in each Lot.

No health care facilities operating as a business or charity and serving the sick, elderly, disabled, handicapped or retarded shall be permitted in the Project, unless permitted by law or ordinance which preempts this restriction.

No family day care center for children shall be permitted within the Project except as specifically authorized by California Health and Safety Code §1597.40 and other applicable state statutes. The owner/operator of any such day care facility shall comply with all local and state laws regarding the licensing and operating of a day care center and, in addition, shall:

- A. Name the Association as an additional insured on the liability insurance policy or bond carried by the owner/operator of the day care center;
- B. Defend, indemnify and hold the Association harmless from any liability arising out of the existence and operation of the day care center;
- C. Abide by and comply with all of the Association's Rules;
- D. Supervise and be completely responsible for children at all times while they are within the project;
- E. Cooperate with the Association if the Association's insurance agent or carrier requires proof of insurance, proof of the agreement of the owner or operator of the center to these conditions, or other reasonable requests.

**7.2 Nuisances:** No noxious, illegal, or seriously offensive (to a reasonable person) activities shall be carried on within any Lot, or in any part of the Project, nor shall anything be done thereon that may be or may become a serious annoyance or a nuisance to or which may in any way interfere with the quiet enjoyment of each of the Owners of his respective Lot.

**7.3 Vehicle Restrictions and Towing:** No trailer, camper, mobile home, commercial vehicle, recreational vehicle, or truck having carrying capacity of greater than 1/2 ton, or van having seating capacity in excess of eight (8) persons or which is too large to fit within the Owner's garage, boat, inoperable automobile, or similar equipment shall be permitted to be parked or remain upon any area within the Project. Permitted vehicles which are used both for business and personal use are not prohibited, provided that any signs or markings of a commercial nature on such vehicles shall be unobtrusive and inoffensive as determined by the Board. No noisy or polluting vehicles shall be operated on the Project. No unregistered or unlicensed motor vehicles shall be operated or parked upon the Project. The occupants of any one Lot shall not have or park more than three (3) permitted vehicles within the Project at any one time. Garages may not be converted to any uses other than the parking of motor vehicles, and for ancillary storage, home utility or shop uses that do not interfere with the parking of at least two automobiles within the garage. The Association may regulate parking on the private streets of the Project, including prohibiting on-street parking on one side of any such private street.

A. The Association may install a sign at each vehicular entrance to the Project containing a statement that public parking is prohibited and that all vehicles not authorized to park on the Project will be removed at the Owner's expense. The sign shall contain the telephone number of the local traffic law enforcement agency and shall not be less than 17 x 22 inches in size with lettering not less than one inch in height.

B. The Association may cause the removal of any vehicle wrongfully parked on the Project, including a vehicle owned by an occupant. If the identity of the registered owner of the vehicle is known or readily ascertainable, the President of the Association or his designee shall, within a reasonable time thereafter, notify the owner of the removal in writing by personal delivery or first class mail. In addition, notice of the removal shall be given to the local traffic law enforcement agency immediately after the vehicle has been removed. The notice shall include a description of the vehicle, the license plate number and the address from where the vehicle was removed. If the identity of the owner is not known or readily ascertainable and the vehicle has not been returned to the owner within one hundred twenty (120) hours after its removal, the Association immediately shall send or cause to be sent a written report of the removal by mail to the California Department of Justice in Sacramento, California and shall file a copy of the notice with the proprietor of the public garage in which the vehicle is stored. The report shall be made on a form furnished by the Department of Justice and shall include a complete description of the vehicle, the date, time and place from which the vehicle was removed, the amount of mileage on the

vehicle at the time of removal, the grounds for removal and the name of the garage or place where the vehicle is stored. Notwithstanding the foregoing, the Association may cause the removal, without notice, of any vehicle parked in a marked fire lane, within fifteen (15) feet of a fire hydrant, in a parking space designated for handicapped without proper authority or in a manner which interferes with any entrance to, or exit from, the Project or any Lot, parking space or garage located thereon.

C. The Association shall not be liable for any damages incurred by the vehicle owner because of the removal in compliance with this section or for any damage to the vehicle caused by the removal, unless such damage resulted from the intentional or negligent act of the Association or any person causing the removal of or removing the vehicle. If requested by the owner of the vehicle, the Association shall state the grounds for the removal of the vehicle. The provisions of this section 7.3 are intended to comply with Vehicle Code section 22658.2 in effect as of January 1, 2000. If this Vehicle Code section is amended, this provision automatically shall be amended in the same manner. If this section is repealed and no successor section is enacted, this provision shall remain in full force and effect. Vehicle Code section 22658.2 may have been amended by the State Legislature since this Declaration was recorded, and the Board should confirm the current statutory requirements.

D. **Recreational Vehicle Storage:** The Association may grant licenses for the parking of recreational vehicles by Owners within Parcel "T" in accordance with Rules adopted by the Association. The priority for the parking of recreational vehicles shall be on a first come, first served basis under a priority system to be devised and managed by the Association Board, with the express understanding that no Owner is assured of having space to park a recreational vehicle in the recreational vehicle storage area.

E. The Association may establish Rules from time to time for parking of vehicles in the Common Areas.

**7.4 Commercial Activity:** No business, professional, or commercial activity of any kind shall be conducted on any Lot, except as provided in section 7.1.

**7.5 Storage in Common Area:** Nothing shall be stored in the Common Area without the prior consent of the Board.

**7.6 Signs:** No signs shall be displayed to the public view on any Lot or on any portion of the Project except such signs as are approved by the Board or committee appointed by the Board. "For Sale" or "For Rent" or "For Exchange" signs shall be allowed, and the Owner may display one (1) sign within the Common Area advertising directions to the Owner's Lot which is for sale, rent, or exchange, provided the design, dimensions and locations are reasonable. Only one (1) such sign shall be permitted on any Lot. The sign shall not be attached to the outside of the house or fence. It may be displayed in the window, or staked in the yard.

**7.7 Animals:** No animals of any kind shall be raised, bred, or kept on any Lot or in the Common Area, with the exception of trained dogs used for assistance by visually impaired, hearing impaired or physically handicapped persons, except no more than two (2) usual and ordinary household pets such as dogs or cats provided they are not kept, bred, or maintained for any commercial purposes, and are kept under reasonable control at all times. No pets shall be allowed in the Common Area except as may be permitted by Rules of the Board. After making a reasonable attempt to notify the Owner, the Association or any Owner may cause any pet found within the Common Area in violation of the Rules of the Board or this Declaration to be removed by the Association (or any Owner) to a pound or animal shelter under the jurisdiction of the City or the County of Contra Costa, by calling the appropriate

authorities, whereupon the owner may, upon payment of all expenses connected therewith, repossess the pet. Owners shall prevent their pets from soiling the Common Area and shall promptly clean up any waste left by their pets. Owners shall be fully responsible for any damage caused by their pets. An Owner shall prohibit any animal on his lot from making unreasonably disturbing noises heard from any structure on any other Lot between the hours of 10:00 PM to 7:00 AM. An Owner in violation of this section may be deemed to be permitting, or causing a serious annoyance or nuisance to any other owner.

**7.8 Garbage and Refuse Disposal:** All rubbish, trash and garbage shall be regularly removed from the Lots, and shall not be allowed to accumulate thereon. Trash, garbage and other waste shall only be kept in sanitary containers. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition, and shall be screened from view of neighboring Lots, Common Areas and streets. No toxic or hazardous materials shall be disposed of within the Project by dumping in the garbage containers or down the drains, or otherwise. Each Owner shall be responsible for removal of trash or garbage from his Lot.

**7.9 Radio and Television Antennas:** No alteration to or modification of a central radio and/or television antenna system or cable television system, whichever is applicable, as developed by Declarant, and as maintained by the Association, shall be permitted. Subject to applicable laws and regulation, no Owner may be permitted to construct and/or use and operate his own external radio and/or television transmitting or receiving antenna or satellite dish or related equipment without the consent of the Board. The Board shall, in acting upon requests for approval of a satellite dish or other signal reception or transmission devices comply with California Civil Code §1376 and FCC [Federal Communications Commission] regulations. The Board may adopt other Rules for installation and operation of any satellite dish or other signal reception or transmission devices that comply with California Civil Code §1376 and FCC regulations.

**7.10 Drapes:** No portion of any drapes, blinds or curtains which are installed on the interior of any residence which may be seen from outside such residence shall be of a color, texture or material which, in the reasonable opinion of the Board or Architectural Control Committee, is inharmonious with the exterior appearance of all residences.

**7.11 Power Equipment and Car Maintenance:** No power equipment, hobby shops, or vehicle maintenance (other than emergency work), shall be permitted on the Project except with prior written approval of the Board. Approval shall not be unreasonably withheld and, in deciding whether to grant approval, the Board shall consider the effects of noise, air pollution, dirt or grease, fire hazard, interference with radio or television reception, and similar objections. Provided however, use of portable power tools and yard maintenance equipment shall be permitted during reasonable hours of the day if the use is conducted in a manner as to avoid any unreasonable noise, dust, fumes or hazard adversely impacting neighboring Lots, subject to Rules adopted by the Association. All hazardous waste shall be disposed of properly by each Owner.

**7.12 Liability of Owners for Damage to Common Area:** The Owner of each Lot shall be liable to the Association for all damage to the Common Area improvements (including landscaping) caused by such Owner or the Owner's agents, occupants, invitees, or pets, except for that portion of damage covered by insurance carried by the Association. The responsible Owner shall be charged with the cost of repairing such damage (including interest thereon) as described in section 5.1A.

**7.13 Leasing of Lots:** No Owner shall be permitted to lease his Lot for any period less than thirty (30) days. Any lease shall be in writing and shall be subject in all respects to the provisions

of the Declaration, the Bylaws and all Rules adopted by the Board, and any failure of the tenant to comply with the foregoing shall be a default under the lease, regardless of whether the lease so provides. In the event of such a default, the Owner immediately shall take all action to cure the default including, if necessary, eviction of the tenant. Other than the foregoing, there is no restriction in the right of any Owner to lease his Lot. All Owners leasing their Lots shall promptly notify the Secretary of the Association in writing of the names of all tenants and members of tenant's family occupying such Lot and of the address and telephone number where such Owner can be reached.

**7.14 Activities Causing Increase in Insurance Rates:** Nothing shall be done or kept on any Lot or in any improvements constructed in any Lot, or in the Common Area, which will increase any applicable rate of insurance or which will result in the cancellation of insurance on any Lot or any part of the Common Area, or which would be in violation of any law.

**7.15 Common Area Use:** Nothing shall be stored, grown, or displayed in the Common Area, that is not approved in advance by the Architectural Control Committee.

**7.16 Owner's Right and Obligation to Maintain and Repair:** Except for those portions of the Project which the Association is required to maintain and repair, each Owner shall, at his sole cost and expense, maintain and repair his Lot and all landscaping thereon, keeping the same in good condition. Landscaping and irrigation on the Lots shall be maintained and kept in good order by the Owner or the residents thereof, except for that landscaping of front yards and side yards which are to be maintained by the Association under the Declaration. The Lot Owners shall maintain the fences which enclose their yards. Where a fence is on the boundary between Lots, the Lot Owners shall have joint responsibility for maintenance and repair of the fence and shall share the costs of such maintenance and repair. In the event an Owner of any Lot shall fail to maintain his Lot and the improvements thereon as required herein, the Association's agents may, after notice and a hearing as provided in the Bylaws, enter the Lot and perform the necessary maintenance. The cost of such maintenance shall immediately be paid to the Association by the Owner of such Lot, together with interest at the rate of twelve percent (12%) per annum (but not to exceed the maximum interest rate authorized by law) from the date the cost was incurred by the Association until the date the cost is paid by the Owner.

## ARTICLE VIII INSURANCE; DAMAGE OR DESTRUCTION; CONDEMNATION

**8.1 Insurance:** The Association shall obtain and maintain the following insurance:

(1) a hazard policy insuring all improvements, equipment, and fixtures owned by the Association, with policy limits full replacement value of the covered improvements unless the Board determines, in its sole discretion, that such insurance is not necessary.

(2) a comprehensive general liability policy, in an occurrence version if such version is obtainable; insuring the Association, its agents, the Owners and their respective family members against liability incident to the ownership or use of the Common Area or any other Association owned or maintained real or personal property. The amount of general liability insurance that the Association shall carry at all times shall be not less than the minimum amounts required by California Civil Code § 1365.7;

(3) workers' compensation insurance to the extent required by law (or such greater amount as the Board deems necessary). The Association shall obtain a Certificate of Insurance naming

it as an additional insured in regard to workers' compensation claims from any independent contractor who performs any service for the Association, if the receipt of such a certificate is practicable;

(4) fidelity bonds or insurance covering officers, directors, and employees that have access to any Association funds;

(5) flood insurance if the Project is located in an area designated by an appropriate governmental agency as a special flood hazard area;

(6) officers and directors liability insurance in the minimum amounts required by California Civil Code § 1365.7;

(7) insurance against water damage, and liability for non-owned and hired automobiles, and such other insurance as the Board in its discretion considers necessary or advisable;

(8) earthquake insurance to the extent required by law, and if not required by law, then to the extent available at commercially reasonable rates in the opinion of the Board; and

(9) the following endorsements should be included, if applicable:

(a) changes in building codes, and demolition coverage (sometimes referred to as "ordinance or law endorsement");

(b) inflation guard coverage;

(c) "agreed-amount" endorsement (to eliminate a coinsurance problem);

(d) replacement cost endorsement; and

(e) primary coverage endorsement.

**A. Amount, Term and Coverage.** The amount, term and coverage of any policy required hereunder (including the type of endorsements, the amount of the deductible, the named insureds, the loss payees, standard mortgage clauses, notices of changes or cancellations, and the insurance company rating) shall satisfy the minimum requirements imposed for this type of project by the Federal National Mortgage Association ("FNMA") and the Federal Home Loan Mortgage Corporation ("FHLMC") or any successor to either of those entities (except for earthquake insurance, the purchase of which shall be within the discretion of the Board, as provided in § 8.1(8) above). If the FNMA or FHLMC requirements conflict, the more stringent requirement shall be met. If FNMA and FHLMC do not impose requirements on any policy required hereunder, the term, amount and coverage of such policy shall be no less than that which is customary for similar policies on similar projects in the area. The Board shall adopt a policy regarding payment of deductibles on any insurance coverage. Unless the Board determines otherwise, the Association shall pay deductibles required under any insurance claim from Association funds, unless insufficient funds are available to the Association from the Association's accounts or from funds borrowed by the Association in accordance with this Declaration, in which event the Association shall levy a Special Assessment, in accordance with sections 4.3B and 4.4 of this Declaration, with respect to the amount of any such deductible which exceeds funds available to the Association from Association funds or from borrowing.

**B. Representation for Claims:** Each Owner appoints the Association or any insurance trustee designated by the Association to act on behalf of the Owners in connection with all insurance matters arising from any insurance policy maintained by the Association, including without limitation, representing the Owners in any proceeding, negotiation, settlement or agreement.

**C. Waiver of Subrogation:** Any insurance maintained by the Association shall contain "waiver of subrogation" as to the Association and its officers, directors and Members, the Owners and occupants of the Lots and mortgagees, and, if obtainable, a cross-liability or severability of interest endorsement insuring each insured against liability to each other insured. All individually owned insurance shall contain a waiver of subrogation as to the Association and its officers, directors and Members, the Owners and occupants of the Lots and mortgagees, and all Members are deemed to have waived subrogation rights as to the Association and/or other Members, whether or not their policies so provide.

**D. Review of Policies:** The Association shall periodically (and not less than once every three (3) years) review all insurance policies maintained by the Association to determine the adequacy of the coverage and to adjust the policies accordingly.

**E. Separate Insurance:** Each Owner shall obtain and maintain, at the Owner's sole expense, fire and casualty coverage as may be required by any mortgagee of the Lot and in no event less than the amount and type of fire and casualty insurance required to be obtained and maintained as determined by the Board, and with respect to amount, the coverage shall be for one hundred percent (100%) of current replacement cost of all improvements on his Lot. All such individually carried insurance shall contain a waiver of subrogation by the carrier as to the other Owners, the Association, Declarant, and the mortgagees of such Lot.

**F. Copies of Policies:** The Association shall make available to all Members a copy of the Association's policy to enable Members to insure their Units without duplicating insurance carried by the Association and inadvertently triggering a co-insurance clause in the Association's policy referred to in Section 8.1(1).

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

**H. Policies and Procedures Regarding the Filing and Processing of Claims:** The Board shall adopt a policies and procedures regarding the filing and processing of claims for damage and destruction of Common Area improvements or any other matters covered by insurance maintained by the Association.

**8.2 Damage or Destruction:** If any improvements or landscaping on any Lot other than a Common Area lot are damaged or destroyed by fire or other casualty, the Owner of such Lot shall repair or reconstruct the improvement in accordance with the original as-built plans and specifications, modified as may be required by applicable building codes and regulations in force at the time of such repair or reconstruction or as authorized by the Architectural Control Committee.

If Project Common Area] improvements are damaged or destroyed by fire or other casualty, the improvements shall be repaired or reconstructed substantially in accordance with the original as-built plans and specifications, modified as may be required by applicable building codes and regulations in force at

the time of such repair or reconstruction and subject to such alterations or upgrades as may be approved by the Architectural Control Committee, unless either of the following occurs: (1) the cost of repair or reconstruction is more than fifty percent (50%) of the current replacement costs of all Common Area improvements, available insurance proceeds are not sufficient to pay for at least eighty-five percent (85%) of the cost of such repairs or reconstruction, and three-fourths (3/4) of the total voting power of the Association residing in Members and their First Lenders vote against such repair and reconstruction; or (2) available insurance proceeds are not sufficient to substantially repair or reconstruct the improvements within a reasonable time as determined by the Board, a special Assessment levied to supplement the insurance fails to receive the requisite approval (if such approval is required) as provided in section 4.4, and the Board, without the requirement of approval by the Owners, is unable to supplement the insurance by borrowing on behalf of the Association sufficient monies to enable the improvements to be substantially repaired or reconstructed within a reasonable time.

In the case of damage or destruction of an individual home, whether by fire, earthquake or other causes, the Owner(s) of that Lot and home are responsible for the cost of reconstruction that is not covered by insurance or is within the deductible amount. If an Owner fails to pay the cost of reconstruction, the Association may elect to pay for the uninsured portion of the cost and shall have the right to assess the Owner(s) for the cost thereof and to enforce the assessment as provided in this Declaration. In any case where insurance proceeds are pre-empted by any Owner's lender for application to said Owner's debt, the Association shall immediately impose an individual Assessment upon said Owner's Lot equal in amount to such preemption pursuant to section 4.3, and shall enforce such Assessment in accordance with sections 4.3 and 5.2F hereof. The proceeds of such Assessment or lien shall then be substituted for the pre-empted insurance proceeds.

**A. Process For Repair or Reconstruction:** If the improvement is to be repaired or reconstructed and the cost for repair or reconstruction is in excess of twenty-five percent (25%) of the current replacement cost of all the Project Common Area improvements, the Board shall designate a construction consultant, a general contractor, and an architect for the repair or reconstruction. All insurance proceeds, Association monies allocated for the repair or reconstruction, and any borrowings by the Association for the repair or reconstruction shall be deposited with a commercial lending institution experienced in the disbursement of construction loan funds (the "depository") as selected by the Board. Funds shall be disbursed in accordance with the normal construction loan practices of the depository that require as a minimum that the construction consultant, general contractor and architect certify within ten (10) days prior to any disbursement substantially the following:

(1) that all of the work completed as of the date of such request for disbursement has been done in compliance with the approved plans and specifications;

(2) that such disbursement request represents monies which either have been paid by or on behalf of the construction consultant, the general contractor or the architect and/or are justly due to contractors, subcontractors, materialmen, engineers, or other persons (whose name and address shall be stated) who have rendered or furnished certain services or materials for the work and giving a brief description of such services and materials and the principal subdivisions or categories thereof and the respective amounts paid or due to each of those persons in respect of such services and stating the progress of the work up to the date of the certificate;

(3) that the sum then requested to be disbursed plus all sums previously disbursed does not exceed the cost of the work insofar as actually accomplished up to the date of such certificate;

(4) that no part of the cost of the services and materials described in the foregoing paragraph 8.2A(1) has been or is being made the basis for the disbursement of any funds in any previous or then pending application; and

(5) that the amount held by the depository, after payment of the amount requested in the pending disbursement request, will be sufficient to pay in full the costs necessary to complete the repair or reconstruction.

If the cost of repair or reconstruction is less than twenty-five percent (25%) of the current replacement cost of all the Project Common Area improvements, the Board shall disburse the available funds for the repair and reconstruction under such procedures as the Board deems appropriate under the circumstances.

The repair or reconstruction shall commence as soon as reasonably practicable after the date of such damage or destruction and shall be completed as quickly as is reasonably practicable after commencement of reconstruction, subject to delays that are beyond the control of the party responsible for making the repairs. The Owner of the damaged or destroyed improvement immediately shall take such steps as may be reasonably necessary to secure any hazardous condition and to screen any unsightly views resulting from the damage or destruction.

In the event the work required to maintain or to repair or restore damage or destruction involves work that is the responsibility of Owner and the Association as provided in sections 7.16 and 5.1A, then all of such work shall be directed by the Board, with the expense to be allocated between Owner and the Association pursuant to sections 7.16 and 5.1A. If more than one Owner is involved, the expense to be paid by each Owner shall be apportioned by the Board. If the Association is involved in a dispute over the apportionment of such expenses, then the dispute shall be settled by arbitration pursuant to any appropriate alternative dispute process.

If the Association undertakes any work which section 7.16 requires an Owner to undertake, or any work which the Association is required to undertake at the expense of the Owner, the Board shall assess the Lot of the Owner for such work and shall so inform the Owner thereof in writing; provided, however, that the Assessment shall be reduced by the amount of any insurance proceeds paid to the Association as a result of damage to or destruction of the residence or the Lot involved. Such Assessment shall be a lien upon the Lot of the Owner and may be foreclosed, as set forth in section 4.10.

**B. Process If Repair or Reconstruction Not Undertaken:** If the Common Area improvement is not required to be repaired or reconstructed in accordance with the foregoing, all available insurance proceeds shall be disbursed among all Owners and their respective Mortgagees in the same proportion that the Owners are assessed, subject to the rights of the Owners' mortgagees, after first applying the proceeds to the cost of mitigating hazardous conditions on the Project, making provision for the continuance of public liability insurance to protect the interests of the Owners until the property can be sold, and complying with all other applicable requirements of governmental agencies.

**8.3 Condemnation:** If all or any part of a Lot (except the Common Area) is taken by eminent domain, the award shall be disbursed to the Owner of the Lot, subject to the rights of the Owner's Mortgagees. If the taking renders the Lot uninhabitable, the Owner shall be divested of any further interest in the Project, including membership in the Association, and the interest of the remaining Owners shall be adjusted accordingly. If all or any part of the Common Area is taken by eminent domain, the proceeds of condemnation shall be used to restore or replace the portion of the Common Area affected by condemnation, if restoration or replacement is possible, and any remaining funds, after payment of any

and all fees and expenses incurred by the Association relating to such condemnation, shall be distributed among the Owners in the same proportion as such Owners are assessed, subject to the rights of Mortgagees. If necessary, the remaining portion of the Project shall be resurveyed to reflect such taking. The Association shall participate in the negotiations, and shall propose the method of division of the proceeds of condemnation, where Lots are not valued separately by the condemning authority of by the court. The Association shall represent the Owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the Common Area, or part of the Common Area(s).

## ARTICLE IX GENERAL PROVISIONS

**9.1 Enforcement:** The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration, the Articles and the Bylaws, and in such action shall be entitled to recover reasonable attorneys' fees as are ordered by the Court. Failure by the Association or by any Owner to enforce any covenant or restriction contained in this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

**9.2 Invalidity of Any Provision:** Should any provision or portion of this Declaration be declared invalid or in conflict with any law of the jurisdiction where this Project is situated, the validity of all other provisions and portions hereof shall remain unaffected and in full force and effect.

**9.3 Term:** The covenants and restrictions of this Declaration shall run with and bind the Project, and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any property subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of fifty (50) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by a majority of the then Owners of the Lots, has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to change said covenants and restrictions in whole or in part, or to terminate the same.

**9.4 Amendments:** Prior to close of escrow on the sale of the first Lot, Declarant may amend this Declaration. After sale of the first Lot, this Declaration may be amended only by the affirmative vote (in person or by proxy) or written consent of Members representing a majority of the total voting power of the Association, and a majority of the affirmative votes or written consent of Members other than the Declarant, or where the two (2) class voting structure is still in effect, a majority of each class of membership. However, the percentage of voting power necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any amendment must be certified in a writing executed and acknowledged by the President or Vice President of the Association and recorded in the Recorder's Office of the County of Contra Costa. No amendment shall adversely affect the rights of the holder of any mortgage of record prior to the recordation of such amendment.

**9.5 Rights of First Lenders:** No breach of any of the covenants, conditions and restrictions contained in this Declaration, nor the enforcement of any of its lien provisions, shall render invalid the lien of any first mortgage (meaning a mortgage with first priority over any other mortgage) on any Lot made in good faith and for value, but all of those covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through Foreclosure or trustee's sale, or

otherwise. Notwithstanding any provision in this Declaration to the contrary, First Lenders shall have the following rights:

**A. Copies of Project Documents:** The Association shall make available to Owners and First Lenders, and to holders, insurers or guarantors of any First Mortgage, current copies of the Declaration, Bylaws, Articles or other Rules concerning the Project and the books, records and financial statements of the Association. "Available" means available for inspection and copying, upon request, during normal business hours or under other reasonable circumstances. The Board may impose a fee for providing the foregoing requested documents which may not exceed the reasonable cost to prepare and reproduce them.

**B. Audited Statement:** Any holder, insurer or guarantor of a First Mortgage shall be entitled, upon written request, to an audited financial statement for the immediately preceding fiscal year, free of charge to the party so requesting. Such statement shall be furnished within one hundred twenty (120) days of the Association's fiscal year-end.

**C. Notice of Action:** Upon written request to the Association, identifying the name and address of the Eligible Mortgage Holder or Eligible Insurer or Guarantor, and the Lot number or address, such Eligible Mortgage Holder or Eligible 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 Eligible Mortgage Holder or Eligible 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 Eligible Mortgage Holder or Eligible 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; (4) any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders as specified in section 9.5D. The Association shall discharge its obligation to notify Eligible Mortgage Holders or Eligible Insurers or Guarantors by sending written notices required herein to such parties, at the address given on the current request for notice, in the manner prescribed by section 9.9.

**D. Consent to Action:**

(1) Except as provided by statute or by other provision of the Project Documents in case of substantial destruction or condemnation of the Project, and further excepting any reallocation of interests in the Common Area(s) which might occur pursuant to any plan of expansion or Phased development contained in the original Project Documents:

(a) the consent of Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated and the approval of Eligible Mortgage Holders holding mortgages on Lots which have at least fifty-one percent (51%) of the votes of Lots subject to Eligible Holder Mortgages, shall be required to terminate the legal status of the Project as a planned unit development project; provided, however, that if termination is for reasons other than substantial destruction or condemnation, the agreement of Eligible Mortgage Holders representing at least sixty-seven percent (67%) of the votes of the mortgaged Lot is required;

(b) the consent of Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated and the approval of Eligible Mortgage Holders holding

mortgages on Lots which have at least fifty-one percent (51%) of the votes of the Lots subject to Eligible Holder Mortgages, shall be required to add or amend any material provisions of the Project Documents which establish, provide for, govern or regulate any of the following: (i) voting rights; (ii) increases in Assessments that raise the previously assessed amount by more than twenty-five percent (25%), assessment liens, or the priority of assessment liens; (iii) reductions in reserves for maintenance, repair, and replacement of Common Areas; (iv) responsibility for maintenance and repairs; (v) reallocation of interests in the general or Restricted Common Areas, or rights to their use; (vi) convertibility of Lots into Common Areas or vice versa; (vii) expansion or contraction of the Project, or the addition, annexation, or withdrawal of property to or from the Project; (viii) hazard or fidelity insurance requirements; (ix) imposition or any restrictions on the leasing of Lots; (x) imposition of any restrictions on an Owner's right to sell or transfer his Lot; (xi) restoration or repair of the Project (after damage or partial condemnation) in a manner other than that specified in the Project Documents; or (xii) any provisions that expressly benefit mortgage holders, insurers, or guarantors;

(c) an Eligible Mortgage Holder who receives a written request to approve additions or amendments without delivering or posting to the requesting party a negative response within thirty (30) days after the notice of the proposed addition or amendment shall be deemed to have approved such request, provided the notice has been delivered to the mortgage holder by certified or registered mail, return receipt requested.

(2) unless the holder(s) of at least two-thirds (2/3) of the first mortgages (based upon one (1) vote for each first mortgage or deed of trust owned), or two-thirds (2/3) of the Owners (other than Declarant) of the individual Lots in the Project have given their prior written approval, the Association and/or the Owners shall not be entitled to:

(a) by act or omission, seek to abandon or terminate the Project, or abandon, partition, subdivide, encumber, sell or transfer the Common Area or property owned directly or indirectly by the Association (the granting of easements for public utilities or for other public purposes consistent with the intended use of such property shall not be deemed a transfer within the meaning of this clause) [except for abandonment or termination provided by law in the case of substantial destruction by fire or other casualty, or in the case of a taking by condemnation or eminent domain]; or

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

(c) by act or omission, change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of Lots, the exterior maintenance of Lots, the maintenance of the Common Area walks or fences and driveways, or the upkeep of landscaping in the Common Area; or

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

(e) use hazard insurance proceeds for losses to any Common Area property for other than the repair, replacement or reconstruction of such Common Area property.

**E. Right of First Refusal:** The right of an Owner to sell, transfer, or otherwise convey his Lot shall not be subject to any right of first refusal or similar restriction.

**F. Contracts:** Any agreement for professional management of the Project, or lease or any other contract providing for services of the developer, sponsor, or builder, may not exceed one (1) year. Any such agreement, contract, or lease, including a management contract entered into prior to passage of control of the Board to Lot purchasers, must provide for termination by either party for cause on thirty (30) days' written notice, or without cause and without payment of a termination fee or penalty on ninety (90) days' or less written notice.

**G. Reserves:** Association dues or charges shall include an adequate reserve fund for maintenance, repairs, and replacement of those improvements which the Association is obligated to maintain and that must be replaced on a periodic basis, and the Assessments therefor shall be payable in regular installments rather than by special Assessments.

**H. Priority of Liens:** Any First Lender who obtains title to a Lot pursuant to the remedies provided in the Mortgage or Foreclosure of the mortgage will not be liable for such Lot's unpaid Assessments and fees, late charges, fines or interest levied in connection with such claims which accrue prior to the acquisition of title to such Lot by the Mortgagee (except for claims for a pro rata share of such Assessments or charges resulting from a pro rata reallocation of such Assessments or charges to all project Lots including the mortgaged Lot, and except for assessment liens recorded prior to the Mortgage).

**I. Distribution of Insurance or Condemnation Proceeds:** No Owner or any other party shall have priority over any rights of First Lenders pursuant to their mortgages in the case of a distribution to lot Owners of insurance proceeds or condemnation awards for losses to or taking of Common Area property.

**J. Payment of Taxes or Insurance by Lenders:** First Lenders may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area property and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such Common Area property, and First Lenders making such payment shall be owed immediate reimbursement therefor from the Association, provided that said lender(s) have given notice to the Association prior to the making of such payment(s) and the Association has failed to pay the same.

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

A. Prevent Declarant, its contractors, or subcontractors from doing on the Project or any Lot, whatever is reasonably necessary or advisable in connection with the completion of said work; or

B. Prevent Declarant or its representatives from erecting, constructing and maintaining on the Project (except upon Lots owned by others), such structures as may be reasonable and necessary for developing the Project as a residential community and disposing of the same by sale, lease or otherwise; or

C. Prevent Declarant from conducting on the Project (except upon Lots owned by others) its business of completing the work and of establishing a plan of residential ownership and of disposing of the Project in Lots by sale, lease or otherwise;

D. Prevent Declarant from maintaining or displaying such signs, pennants and flag(s) on the Project (except upon Lots owned by others) as may be necessary for the sale, lease or disposition thereof; or

E. Subject Declarant to the architectural control provisions of Article VI for the construction of any residence or other improvement on the Project.

The foregoing rights of Declarant shall terminate upon sale of Declarant's entire interest in the Project and may not be amended, modified or deleted without Declarant's written consent..

So long as Declarant, or its successors and assigns, owns one (1) or more of the Lots described herein, Declarant, or its successors and assigns, shall be subject to the provisions of this Declaration. Declarant shall make reasonable efforts to avoid disturbing the use and enjoyment of Lots and the Common Area by their owners, while completing any work necessary to said Lots or Common Area.

**9.7 Termination of Any Responsibility of Declarant:** In the event Declarant shall convey all of its rights, title and interest in and to the Project to any successor Declarant, then and in such event, Declarant shall be relieved of the performance of any further duties or obligations under this Declaration arising after such conveyance, and such successor Declarant shall be obligated to perform all such duties and obligations of the Declarant.

**9.8 Owners' Compliance:** Each Owner, tenant or occupant of a Lot shall comply with the provisions of this Declaration, and (to the extent they are not in conflict with the Declaration) the Articles and Bylaws, and the decisions and resolutions of the Association or the Board, as lawfully amended from time to time. Failure to comply with any such provisions, decisions, or resolutions shall be grounds for an action (1) to recover sums due, (2) for damages, (3) for injunctive relief, (4) for costs and attorneys' fees, or (5) any combination of the foregoing. All agreements and determinations lawfully made by the Association in accordance with the voting percentages established in this Declaration, or in the Articles or the Bylaws, shall be deemed to be binding on all Owners, their successors and assigns.

**9.9 Notice:** Any notice permitted or required by the Declaration, Articles or Bylaws may be delivered either personally or by mail. If delivery is by mail, it shall be deemed to have been delivered seventy-two (72) hours after a copy of the same has been deposited in the United States mail, first-class or registered, postage prepaid, addressed to the person to be notified at the current address given by such person to the Secretary of the Board or addressed to the Lot of such person if no address has been given to the Secretary.

**9.10 Special Provisions Relating to Enforcement of Declarant's Obligation to Complete Common Area Improvements:** Where the Project includes Common Area improvements which have not been completed prior to the close of escrow on the sale of the first Lots, and where the Association is obligee under a bond or other arrangement (hereafter "bond") to secure performance of the commitment of Declarant to complete said improvements, the Board shall consider and vote on the question of action by the Association to enforce the obligations under the bond with respect to any improvement for which a notice of completion has not been filed within sixty (60) days after the completion date specified for those improvements in the planned construction statement appended to the bond. If the Association has given an extension in writing for the completion of any Common Area improvement, the Board shall consider and vote on the aforesaid question if a notice of completion has not been filed within thirty (30) days after the expiration of the extension. A special meeting of Members of the Association for the purpose of: (i) voting to override a decision by the Board not to initiate action to enforce the obligations under the bond; or (ii) to consider the failure of the Board to consider and vote on the question shall be held not less 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%) or more of the total voting power of the Association. At such special meeting a vote of a majority of Members of the Association other than the Declarant shall be required to take action to enforce the obligations under the bond and a vote of a majority of the voting power of the Association, excluding Declarant, 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.

On satisfaction of the Declarant's obligation to complete the Common Area improvements, the Association shall acknowledge in writing that it approves the release of the bond and shall execute any other documents as may be necessary to effect the release of the bond. The Association shall not condition its approval of the release of the bond on the satisfaction of any condition other than the completion of the Common Area improvements as described on the planned construction statement. Any dispute between the Declarant and the Association regarding the question of satisfaction of the Conditions for exoneration or release of the security shall, at the request of either party, be submitted to arbitration pursuant to section 9.13 of this Declaration.

**9.11 Special Provisions Relating to Enforcement of Declarant's Obligation to Pay Assessments:** Where the Association is obligee under a bond or other arrangement (hereafter "bond") to secure performance of the commitment of Declarant to pay assessments on Lots owned by Declarant, the Board shall consider and vote on the question of action by the Association to enforce the obligations under the bond with respect to any of Declarant's assessments which are delinquent for thirty (30) days. A special meeting of Members of the Association for the purpose of voting to override a decision by the Board not to initiate action to enforce the obligations under the bond or such a meeting to consider the failure of the Board to consider and vote on the question shall be held not less than ten (10) days nor more than twenty (20) days after receipt by the Board of a petition for such a meeting signed by Members representing five percent (5%) or more of the total voting power of the Association. At such special meeting a vote of a majority of Members of the Association other than the Declarant shall be required to take action to enforce the obligations under the bond and a vote of a majority of the voting power of the Association, excluding Declarant, 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.

Upon satisfaction of the Declarant's obligation to assure the availability of funds to pay assessments upon unsold Lots as set forth in Title 10 Cal Code of Regs § 2792.9, the escrow holder holding the bond shall return the bond to Declarant, after delivery to said escrow holder of Declarant's written request for release

of the bond, and Declarant's written statement that [1] Declarant has paid, as and when due, all regular and special assessments levied by the Association against Lots owned by the Declarant and that [2] 80% of the Lots in the Project have been conveyed by Declarant, unless pursuant to Title 10 Cal Code of Regs § 2792.9, the Association delivers to said escrow holder its written objection to the return of the Bond to Declarant within forty (40) days after delivery of notice of Declarant's request from release and the statement to the Association. The Association shall not condition its approval of the release of the bond on the satisfaction of any condition other than the payment of Assessments.

If the Association delivers to the escrow holder of the bond a demand for remittance of the bond or a portion thereof, or the proceeds thereof to the escrow holder of the bond, which demand is accompanied by a written statement signed by an officer of the Association that the Declarant is delinquent in the payment of regular or special assessments which have been levied by the Association against Lots owned by the Declarant, then all or some specified portion of the security as demanded shall be remitted to the Association upon the Declarant's failure to give the escrow holder within forty (40) days after receipt of delivery of the demand by the escrow holder, the subdivider's written objection to remittance of the security. Both the Declarant and the Association shall adhere and comply with the terms of escrow instructions with the escrow depository of the bond, which shall be in the form approved by the Department of Real Estate, with respect to the holding of the bond, the return or remittance of the bond and other disposition of matters set forth in said escrow instructions with respect to the bond. Any dispute between the Declarant and the Association regarding the question of satisfaction of the conditions for exoneration or release of the security shall, at the request of either party, be submitted to Arbitration as provided in Section 9.13E hereof.

**9.12 Fair Housing.** No Owner shall, either directly or indirectly, forbid or restrict the conveyance, encumbrance, leasing, or mortgaging, or occupancy of his Lot to any person of a specified race, sex, age, marital status, color, religion, ancestry, physical handicap, or national origin.

**9.13 Alternative Dispute Resolution:** The Board is authorized to resolve any civil claim or action through alternative dispute resolution proceedings such as mediation, binding arbitration, or non-binding arbitration proceedings. For any action by the Association or any Owner of a Lot in the Project against the Declarant or any architect, engineer or other consultant, or any contractor, subcontractor or materials supplier engaged by or on behalf of Declarant for the design and/or construction of the Project, or any element thereof, such claim shall be submitted to Judicial Reference, as set forth in section 9.13F below.

A. The Board may provide, or in good faith attempt to provide, one hundred twenty (120) days advance notice of the Board's intent to initiate the prosecution of any civil action stating the nature and basis of the claim, to every member of the Association and every entity or person who is a prospective party to the civil action, provided that such notice can be given more than one hundred twenty (120) days prior to the expiration of any pertinent statute of limitations, and such notice can be given without prejudice to the Association's right to enforce the Project Documents, and further provided that no such notice need be given prior to the filing of an action in small claims court or an action solely to enforce Assessment obligations.

B. Prior to initiating the prosecution of a civil action solely for declaratory relief or injunctive relief to enforce the Project Documents, or for declaratory relief or injunctive relief to enforce the Project Documents in conjunction with a claim for monetary damages not in excess of five thousand dollars (\$5,000), the Board shall endeavor to submit the matter to alternative dispute resolution in compliance with the provisions of Section 1354(b) of the California Civil Code.

C. Immediately after initiating the prosecution or defense of any civil action, the Board shall make a reasonable effort, in good faith, to meet and confer with every person who is a party concerning appropriate processes for resolving the civil action, including available alternative dispute resolution proceedings; concerning appropriate processes for avoiding or reducing costs or losses by the parties associated with the action; providing an opportunity to cure any alleged defect in the Common Areas or facilities which is the basis for the action; and providing for the scope of discovery, if any, to be conducted prior to the inception of any alternative dispute resolution procedure. The Board is authorized to consider diversion of the prosecution or defense of any civil action to alternative dispute resolution proceedings such as mediation, non-binding arbitration, or binding arbitration and is authorized to agree to participate and to participate fully and in good faith in the resolution of any civil action through any alternative dispute resolution proceedings, including, but not limited to, mediation, non-binding arbitration, and binding arbitration, and paying costs reasonably incurred by the Association on account of those alternative dispute resolution proceedings.

D. The Board shall comply with the requirements of California Civil Code Section 1354(i) by providing Members of the Association annually with a summary of the provisions of California Civil Code Section 1354, including 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."

E. If a dispute is the subject of arbitration under this section, the following shall apply:

(1) costs and fees of the arbitration, including ongoing costs and fees of the arbitration shall be paid as agreed by the parties, and, if the parties cannot agree, as determined by the arbitrator(s), with the costs and fees of the arbitration to ultimately be borne as determined by the arbitrator(s); provided, however, if the Declarant is a party to the arbitration, then any fee to initiate arbitration shall be paid by Declarant, but the cost of arbitration shall ultimately be borne as determined by the arbitrator(s);

(2) neutral and impartial individual(s) shall be appointed to serve as arbitrator(s), with the arbitrator(s) to be appointed within a reasonable period of time, which in no event shall be more than 60 days from the administrator's receipt of a written request from a party to arbitrate the claim or dispute. In selecting the arbitrator, the provisions of §1297.121 of the Code of Civil Procedure shall apply. An arbitrator may be challenged for any of the grounds listed in §1297.121, or in §1297.124 of the Code of Civil Procedure;

(3) venue of the arbitration to be in the county where the subdivision is located, unless the parties agree to some other location;

(4) for the prompt and timely commencement of the arbitration in accordance with (i) the rules of the arbitration, or if the rules do not specify a date by which arbitration is to commence, then (ii) a date was agreed by the parties, and if they cannot agree as to a commencement date, (iii) a date determined by the arbitrator[s];

(5) for the arbitration to be conducted in accordance with rules and procedures which are reasonable and fair to the parties;

(6) for the prompt and timely conclusion of the arbitration;

(7) the arbitrators shall be authorized to provide all recognized remedies available in law or equity for any cause of action that is the basis of arbitration; provided, however, that there shall in no event be any award of punitive damages.

(8) A judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

F. Judicial Reference for Certain Disputes. For any action by the Association or any Owner of a Lot in the Project against the Declarant or any architect, engineer or other consultant, or any contractor, subcontractor or materials supplier engaged by or on behalf of Declarant for the design and/or construction of the Project, or any element thereof ("Developer Parties"), such claim shall be submitted to Judicial Reference as hereinafter provided:

(1) Subject to compliance with the mandatory alternative dispute resolution ("ADR") requirements set forth in Section 1354 of the California Civil Code, as same may be amended from time to time, all other disputes between or among the Association, any Owner(s) and/or the Developer Parties (excepting disputes with the Declarant for delinquent Assessments, and disputes with Declarant regarding the releases or exoneration of completion bonds for the Association Property) shall be resolved in accordance with the provisions of subsection (2) below.

(2) All unresolved disputes under subsections (1) above shall be submitted to general judicial reference pursuant to California Code of Civil Procedure Sections 638(1) through 6451, or any successor statutes thereto. The parties shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the judicial reference proceeding. Declarant shall not be required to participate in the judicial reference proceeding unless it is satisfied that all necessary and appropriate parties will participate. The parties shall share the fees and costs as determined by Referee.

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

(a) If the Declarant is a party to the judicial reference, then any fee to initiate the judicial reference shall be paid by Declarant, provided, however, that the cost of the judicial reference shall ultimately be borne as determined by the Referee;

(b) The proceedings shall be heard in Contra Costa County;

(c) The Referee must be a neutral and is interested party who is a retired judge or a licensed attorney with at least ten (10) years experience in relevant real estate matters;

(d) Any dispute regarding the selection of the Referee shall be resolved by JAMS or the entity providing the reference services, or, if no entity is involved, by the court with appropriate jurisdiction;

(e) The Referee may require one or more pre-hearing conferences;

(f) The parties shall be entitled to discovery, and the Referee shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge;