CC&Rs

for the

Whispering Palms Homeowners' Association

May 2009

This copy of the CC&Rs has been reformatted to make it more readable and usable. All of the original language from 1989 and the amendments of 1989, 2000, and 2008 have been included, but the portions that are no longer applicable have been removed and placed at the back of the document. Each place where wording has been removed has a number and the corresponding number with the wording removed will be found at the back of the document. In addition, an index has been created to enable the reader to more easily locate information.

Table of Contents

Table of Contents

PREAMBLE

THIS DECLARATION is made on this 20th day of April 1989 by CSP-Whispering Palms, LTD.

Sections A-D. **(1)**

Section E. As revised by the second amendment of January 28, 2000: The project development shall consist of various phases as set forth in amended Exhibit "A" hereto of the Declaration. Each Lot of Phase 1 shall accommodate a mobile home or manufactured home in compliance with the applicable governmental laws, regulations and ordinances. Additional real property may be annexed or de-annexed to the Properties, subject to regional economic conditions, but upon annexation to the Properties, shall all become subject to this Declaration pursuant to Article XVII. At present, the entire Project consists of a total of 129 residential lots. The Project shall be developed in various Phases with site-built homes. There is no guarantee that all phases or all Lots of the entire Project will be completed. Each residential lot shall have a membership in the corporate Whispering Palms Homeowners Association, being the management body of the Common Area. Each homeowner shall have a non-exclusive easement of enjoyment to the Common Area subject to the provisions of Article II of the Declaration. The development will be created and will exist in full compliance with the applicable laws of the City of Hemet and the State of California. **(2)**

Section F. **(3)** All of the Properties shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following easements, restrictions, covenants, conditions and equitable servitudes, all of which are for the purpose of uniformly enhancing and protecting the value, attractiveness and desirability of the Properties, in furtherance of a general plan for the protection, maintenance, subdivision, improvement and sale of the Properties or any portion thereof. The covenants, conditions, restrictions, reservations, easements and equitable servitudes set forth herein shall run with the Properties and shall be binding upon all persons having any right, title or interest in the Properties, or any part thereof, their heirs, successors and assigns; shall inure to the benefit of every portion of the Properties and any interest therein; and shall inure to the benefit of and be binding upon **(4)** each Owner and their respective heirs, executors and administrators; may be enforced **(5)** by any Owner or by the Association (as hereinafter defined).

ARTICLE I

DEFINITIONS

Unless otherwise expressly provided, the following words and phrases when used herein shall have the meanings hereinafter specified:
Section 1. "ARC" shall mean the Architectural Review Committee created pursuant to Article VIII hereof.

Section 2. "Articles" shall mean the Articles of Incorporation of the Association filed or to be filed in the Office of the Secretary of State of the State of California, and such Articles may be amended from time to time.

Section 3. "Common Assessment" shall mean the annual charge against each Owner and his Lot, representing a portion of the total, ordinary costs of maintaining, improving, repairing, replacing, managing and operating the Common Area, including reserves, and the Common Expenses of the Association, which said charges are to be paid uniformly and equally by each owner to the Association, as provided herein.

Section 4. "Special Assessments" (as revised by the second amendment to the CC&Rs filed January 28, 2000) shall mean a charge against an Owner, directly attributable to, or reimbursable by, that Owner, equal to the cost incurred by the Association for corrective action performed pursuant to the provisions of this Declaration, or a reasonable fine or penalty assessed by the Board, plus interest and other charges on such Special Assessments as provided for herein. Special Assessments shall not include any late payment penalties, interest charges or costs, including attorneys' fees, incurred by the Association in connection and collection of Annual, Capital Improvement and Reconstruction Assessments.

Section 5. "Reconstruction Assessments" shall mean a charge against each owner and his Lot, representing a portion of the cost to the Association for reconstruction of any portion of the Common Area pursuant to the provisions of this Declaration.

Section 6. "Capital Improvement Assessment" shall mean a charge against each Owner and his Lot, representing a portion of the costs to the Association for installation and construction of any improvements on any portion of the Common Area which the Association may from time to time authorize, pursuant to the provisions of this Declaration.

Section 7. "Association" shall mean WHISPERING PALMS HOMEOWNERS ASSOCIATION, a corporation formed under the General Nonprofit Mutual Benefit Corporation law of the State of California, its successors and assigns.

Section 8 "Association Maintenance Funds" shall mean the accounts created for receipts and disbursements of the Association's funds, pursuant to Article VI hereof, and shall include an Operating Fund and a Reserve Fund.

Section 9. "Beneficiary" shall mean a mortgagee under a mortgage or a beneficiary under a deed of trust, as the case may be, and the assignees of such mortgagee or beneficiary.

Section 10. "Board or "Board of Directors" shall mean the Board of Directors of the Association, elected in accordance with the Bylaws of the Association.

Section 11. "Bylaws" shall mean the Bylaws of the Association, as adopted by the Board initially and such Bylaws may be amended by the membership of the Association from time to time.

Section 12. "Common Area" shall mean and refer to those portions of the Properties and improvements thereon, which is owned by the Association for the common use and enjoyment of all of the Owners. The Common Area amenities of Phase 1 shall consist of a swimming pool, recreational building and landscaping on Lot 69 of Tract #16369-1, and private street and parking spaces on Lot "A" of Tract #23301. Said Common Area Lots of the development will be owned by the Association at the time of conveyance of the first Lot in the Properties and shall include that certain real property located in the City of Hemet, County of Riverside, State of California, more particularly described as follows:

Lot 69 of Tract #16369-1 as shown on a subdivision map, recorded in Book 121, Pages 69 through 72, inclusive, of Maps, and Lot "A" of Tract #23301 as shown on a subdivision map, recorded in Book 197, Pages 5 through 8, inclusive, of Maps, in the office of the Riverside County Recorder. (6)

Section 13. "Common Expense" shall mean the actual and estimated costs of: maintenance, management, operation, repair and replacement of the Common Area; costs of management and administration of the Association to managers, accountants, attorneys and other employees; the cost of fire, casualty and liability insurance, workers' compensation insurance (if required) and other insurance covering the Common Area; the cost of bonding or insuring the members of the management body and management company; amounts paid by the Association for discharge of any lien or encumbrance levied against the Properties, or portions thereof; taxes paid by the Association; the costs of any commonly metered utilities and other commonly metered charges for the Properties; the cost of all utilities, gardening and other services benefiting the Common Area; reserves for replacement of Common Area amenities; unpaid Special Assessments, Reconstruction Assessments and Capital Improvement Assessments, and the cost of any other item or items designated by the Association for any reason whatsoever in connection with the Properties and Annexations thereto, for the benefit of all the Owners.

Section 14. "Declaration" shall mean this instrument as it may be amended from time to time.

Section 15. "Deed of Trust" shall mean a mortgage or deed of trust, as the case may be.

Section 16. "Dwelling Unit" (as revised by the second amendment to the CC&Rs filed January 28, 2000) shall mean a mobilehome, manufactured home or site-constructed home which is designed and intended for use and occupancy by a family.

Section 17. (7)

Section 18. "Family" (as revised by the second amendment to the CC&Rs filed January 28, 2000) shall mean one or more natural persons related to each other by blood, marriage or adoption, or a group of natural persons not all so related, but who maintain a common household in a Dwelling Unit.

Section 19. "Lot" shall mean any residential lot shown upon any recorded subdivision map of the Properties.

Section 20. "Manager" or Management Company" shall mean the Person appointed by the Association as its agent and to whom the Association has delegated certain duties, powers or functions as further provided in this Declaration and in the Bylaws.

Section 21. "Member" shall mean any Person holding a membership in the Association as provided in this Declaration.

Section 22. "Mortgage"; "Mortgagee"; "Mortgagor" shall mean any mortgage or deed of trust or other conveyance of a Lot or other portion of the Properties to secure the performance of an obligation, which will be reconveyed upon the completion of such performance. The term "Deed of Trust" or "Trust Deed" when used herein shall be synonymous with the term "Mortgage". The term "Mortgagee" shall mean a person or entity to whom a Mortgage is made and shall include the Beneficiary of a Deed of Trust. "Mortgagor" shall mean a person or entity who mortgages his or her Lot to another (i.e., the maker of a Mortgage), and shall include the Trustor of a Deed of Trust. The term "Trustor" shall be synonymous with the term "Mortgagor", and the term "Beneficiary" shall be synonymous with the term "Mortgagee".

Section 23. "Notice and Hearing" shall mean written notice and a public hearing before the Board or a forum appointed by the Board, at which the Owner concerned shall have an opportunity to be heard in person, or by counsel at Owner's expense, in the manner further provided in the Bylaws pursuant to California Corporation Code Section 7341, or a similar California Code.

Section 24. "Owner" shall mean the Person or Persons, **(8)** holding fee simple interest of record to any Lot which is a part of the Properties, including sellers under executory contracts of sale, but excluding those having such interest merely as security for the performance of an obligation.

Section 25. "Person" shall mean a natural individual or legal entity.

Section 26. "Properties" (as revised by the second amendment to the CC&Rs filed January 28, 2000) shall mean all the real property described in Paragraph A of the Preamble to this Declaration. Additional real property may be annexed to the Properties pursuant to Article XVII of this Declaration.

Section 27. "Record"; "Recorded"; "Filed" or "Recordation" shall mean, with respect to any document, the recordation of such document in the office of the County Recorder of the County of Riverside, State of California.

Section 28. "Phase 1" shall mean and refer to the properties consisting of residential Lots 4-25, inclusive, 38, 40, 45-48, inclusive, 50, 52, 53, 55-57, inclusive, 60-62 inclusive, and 64-68, inclusive of Tract #16369-1, and residential lots 4-11, inclusive, of tract #23301, and Common Area Lot 69 of tract #16369-1, and Common Area Lot A of tract #23301.

Sections 29. **(9)**

Section 30. Mobilehome. (as revised by the first amendment of December 20, 1989) Mobilehome shall mean a structure transportable in one or more sections designed and equipped for use as a residential dwelling unit, and to be used with a low-profile support system consisting of (1) a permanent foundation or (2) a California Health and Safety Code defined "piers and pads" foundation system.

Section 31. Carport. **(11)** (Deleted entirely by the second amendment of January 28, 2000)

Section 32. "Security Holder" shall mean and refer to an owner of a property security interest against a dwelling unit.

ARTICLE II

OWNERS' RIGHTS IN COMMON AREA

Section 1. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of ingress and egress and of enjoyment in, to and over the Common Area, including the annexations thereto, and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The right of the Association to establish uniform rules and regulations pertaining to the use of the Common Area, pursuant to Article XVIII.

(b) **(12)**

(c) The right of the Association to reasonably limit the number of guests of Owners using the Common Area facilities.

(d) The right of the Association, in accordance with the Articles, Bylaws and this Declaration, to borrow money for the purpose of improving the Common Area and facilities, and to mortgage, pledge, deed in trust, or hypothecate any or all of the Common Area property as security for money borrowed or debts incurred, subject to the right of First Mortgagees as described in Article XIII of this Declaration.

(e) The right of the Association to dedicate, release, alienate or transfer the Common Area to any public agency, authority, utility or other person for such purposes and subject to such conditions as may be agreed to by the Members of the Association, subject to the right of First Mortgagees as described in Article XIII of this Declaration.

(f) The right of the Association (by action of the Board) to reconstruct, replace or refinish any improvement or portion thereof upon the Common Area, subject to Article VI, Section 5.

(g) The right of the Association to replace destroyed trees or other vegetation and plant trees, shrubs and ground cover upon any portion of the Common Area.

(h) The right of the Association, acting through the Board, to reasonably restrict access to areas of the Common Area.

(i) The right of the Association to suspend the voting rights and right to use of the recreational facilities by a member or resident for a period of time during which any assessment against his Lot remains unpaid.

Section 2. Easements for Parking. The Association, through its officers, committees and agents, is hereby empowered to establish "Parking" and "No Parking" areas within the Common Area in accordance with Section 22658 of the California Vehicle Code, or any similar statute hereinafter enacted, as well as to enforce these parking limitations by all means lawful for such enforcement on city streets, including the removal of any violating vehicles by those so empowered.

Section 3. Easements for City Public Service Use. In addition to the easements over the Common Area, as herein described, there shall be **(13)** easements for City public services, including but not limited to, the right of the police and fire departments to enter upon any part of the Common Area, for the purpose of enforcing the laws of the State of California, the County of Riverside, and the City of Hemet.

Section 4. Easement for Vehicular Traffic. In addition to the general easements for the use of the Common Area reserved herein, there shall be **(14)** non-exclusive easements appurtenant for vehicular traffic over all private streets within the Common Area, subject to the parking provisions as set forth in Section 2 of this Article II.

Section 5. Waiver of Use. No Owner may exempt himself from personal liability for assessments duly levied by the Association, nor release the Lot or other property owned by him from the liens and charges hereof, by waiver of the use and enjoyment of the Common Area in the facilities thereon or by abandonment of his Lot or any other property in the Properties.

Section 6. Taxes. Each owner shall execute such instruments and take such action as may reasonably be specified by the Association to obtain separate real estate tax assessment of each Lot, including those portions of the Common Area amenities within the Owner's Lot. If any taxes or assessments may, nevertheless, be against the Association, said taxes and assessments may be paid by the Association and each Owner shall be obligated to pay or to reimburse the Association for, as the case may be, the taxing against the Association and attributable to his own Lot.

Section 7. Title to the Common Area is owned by the association. **(15)**

ARTICLE III

MEMBERSHIP IN ASSOCIATION

Section 1. Membership. Every Owner of a Lot shall be a Member of the Association and no Owner shall have more than one membership in the Association. Memberships in the Association shall not be assignable, except to the Person to which title to the Lot has been transferred and every membership in the Association shall be appurtenant to and may not be separated from the fee ownership of such Lot. Ownership of such Lot shall be the sole qualification for membership in the Association.

Section 2. Transfer. The Association membership held by any Owner of a Lot shall not be transferred, pledged or alienated in any way, except upon the sale or encumbrance of such Lot, and then only to the purchaser or Mortgagee of such Lot. Any attempt to make a prohibited transfer is void, and will not be reflected upon the books and records of the Association. A Member who has sold his Lot to a contract purchaser under an agreement to purchase shall be entitled to delegate such contract purchaser his membership rights in the Association. Such delegation shall be in writing and shall be delivered to the Board before such contract purchaser may vote. However, the contract seller shall remain liable for all charges and assessments attributable to his Lot until fee title to the Lot sold is transferred. In the event the Owner of any Lot should fail or refuse to transfer the membership registered in his name to the purchaser of such Lot upon transfer of fee title thereto, the Board of Directors shall have the right to record the transfer upon the books of the Association.

ARTICLE IV

VOTING RIGHTS

Section 1. **(16)** Each owner of a Lot **(16a)** is a Member. **(16b)** Membership entitles the holder to one vote for each lot owned. **(16c)** When more than one person holds an interest in any lot, all such persons shall be members. The vote for such lot shall be exercised in accordance with Article IV Section 2 of this declaration and in no event shall more than one (1) **(16d)** vote be cast with respect to any Lot. **(16e)** The membership approval of action to be taken by the Association shall require the vote or written assent of a majority of the total voting power of the Association **(16f)** unless a greater percentage of voting membership is required. **(16g)**

Section 2. Vote Distribution. **(17)** Members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership. When more than one Person holds such interest or interests in any Lot ("co-owner"), all such co-owners shall be Members and may attend any meeting of the Association, but only one such co-owner shall be entitled to exercise the vote to which the Lot is entitled. Such co-owners may from time to time all designate in writing one of their number to vote. Fractional votes shall not be allowed. **(18)** Where no voting owner is designated or if such designation has been revoked, the vote for such Lot shall be exercised as the majority of the co-owners of the Lot mutually agree. Unless the Board receives a written objection from a co-owner, it shall be presumed that the corresponding voting co-owner is acting with the consent of his or her co-owners. No vote shall be cast for any Lot where the majority of the co-owners present in person or by proxy and representing such Lot cannot agree to said vote or other action. The non-voting co-owner or co-owners shall be jointly and severally responsible for all of the obligations imposed upon the jointly owned Lot and shall be entitled to all other benefits of ownership. All agreements and determinations lawfully made by the Association in accordance with the voting percentages established herein, or in the Bylaws, shall be deemed to be binding on all Owners, their successors and assigns. Said voting rights shall be subject to the restrictions and limitations provided in this Declaration, the Articles and Bylaws.

Section 3. Election and Removal of Directors. The Owners shall vote for the election or removal of the members of the Board of Directors of the Association. Each Owner entitled to vote in any election for a Director may cumulate his votes for one or more nominees if the member has given notice at the meeting prior to the voting of his intention to cumulate votes. If any one Member has given such notice, then all Members will be entitled to cumulate their votes. The Candidate receiving the highest number of votes, up to the number of Directors to be elected, shall be deemed elected. The entire Board of Directors of the Association or any individual Director may be removed by a vote of the Owners holding a majority of the outstanding memberships entitled to vote at an election of Directors. However, unless the entire Board is removed, an individual Director shall not be removed unless the affirmative votes for his removal exceed or at least equal the minimum number of votes required to elect a Director under cumulative voting procedures. If a Director is removed in the manner authorized above, a new Director may be elected at the same meeting, subject to Article V, Section (1). **(19)** All voting shall be by secret written ballot.

ARTICLE V

POWERS AND DUTIES OF ASSOCIATION

Subject to other provisions of the Declaration and to the limitations of the Articles of Incorporation, the Bylaws and the California Corporations Code as to action to be authorized or approved by the members, all corporate powers shall be exercised by or under the authority of, and the business and affairs of the Association shall be controlled by the Board. The Association, through its Board, may do any and all other acts and things that a non-profit corporation is empowered to do, which may be necessary, convenient or desirable in the administration of its affairs. Without prejudice to such general powers but subject to the same limitations, it is hereby expressly declared that the Directors shall have the following powers and duties:

(a) Maintain such policy or policies of casualty, liability, fire, fidelity, and if applicable, earthquake and flood insurance with respect to the Common Area as provided herein in furthering the purposes of and protecting the interests of the Association and Members as directed by this Declaration and the Bylaws of the Association. The Association shall continuously maintain in effect said insurance requirements as established by any of the Federal Agencies so long as either is a Mortgagee or Owner and/or insures or guarantees a Mortgage within the Properties, except to the extent such coverage is not available or has been waived in writing by the foregoing entities.

(b) Adopt, promulgate, add, revise, modify and amend Architectural Standards, which are to be administered by the ARC.

(c) Enter upon any Lot without being liable to any Owner, after Notice and Hearing (pursuant to California Corporations Code Section 7341, or similar California Code), for the purpose of enforcing by peaceful means the provisions of this Declaration, or for the purpose of maintaining and repairing the Common Area or the Owner's Lot if for any reason whatsoever the Owner thereof fails to maintain or repair his/her Lot as required by this Declaration. In the event of an emergency arising on any Lot which may endanger any persons, another Lot or any portion of the Common Area, the Association shall have the reasonable right of entry without notice to said Lot in order to perform emergency repairs and work reasonably necessary. The Owner shall pay promptly all amounts due for such work or said costs and expenses of collection may be levied, at the option of the Board of Directors, against the applicable Owner(s) as a Special Assessment.

(d) Have the power and duty to enforce or seek enforcement of this Declaration, the Articles of Incorporation and Bylaws of the Association. The rules and regulations adopted by the Board, provisions of any agreement to which the Association is a party, and other instruments of ownership, management and control of the Properties.

(e) Have the power to establish and maintain an operating capital and contingency fund and a reserve fund in amounts to be determined by the Board of Directors of the Association.

(f) Select and remove all the officers, agents and employees of the Association, prescribe such powers and duties for them as may not be inconsistent with law, the Articles of Incorporation, the Bylaws or the Declaration; and delegate any of its powers hereunder to others, including committees, officers, agents and employees.

(g) Conduct, manage and control the affairs and business of the Association, and to make such rules and regulations, pursuant to the Article XVIII herein, not inconsistent with law, the Articles of Incorporation, the Bylaws or the Declaration.

(h) Contract and pay for maintenance, gardening, utilities, materials, supplies and services relating to the Common Area, and to employ personnel necessary for the operation and maintenance of the same; including legal and accounting services; provided, however, that the term of any contract for a third person for supplying goods or services to the Common Area or for the Association shall not exceed a term of one (1) year unless a longer term is approved by a majority of the voting power of the Association residing in Members, **(19a)** except that (i) a contract with a public utility company, for materials or services, the rates of which are regulated by the Public Utilities Commission, may exceed a term of one (1) year so long as it does not exceed the shortest term for which the public utility will contract at the regulated rate; (ii) a contract for prepaid casualty and/or liability insurance policies covering the Common Area may be for a term not to exceed three (3) years, provided that the policy permits short rate cancellation by the Association; (iii) **(20)** (iv) an agreement for cable television services and equipment or satellite dish television services and equipment of not to exceed five (5) years duration **(21)** (v) a management contract, the terms of which have been approved by the Veterans Administration, or Federal Housing Administration, when applicable, may exceed a term of one (1) year, but not to exceed three (3) years; and (vi) an agreement for the sale or lease of burglar alarm and fire alarm equipment, installation and services of not to exceed five (5) years duration. **(22)** Anything contained herein to the contrary notwithstanding, the Board shall not terminate professional management of the Properties and assume self-management without the prior written approval of those parties described in Article XIII, Section (f). **(23)**

(i) Pay any taxes and governmental special assessments which are or could become a lien on the Common Area or any portion thereof.

(j) Elect the officers of the governing body.

(k) Fill the vacancies of the governing body except for a vacancy created by the removal of a Director from the governing body, which the latter will require the vote or written assent of a majority of the voting power of the Association residing in Members. **(24)**

(l) Maintain, repair and otherwise manage the Common Area and all facilities, improvements and landscaping thereon and the exterior of the perimeter walls surrounding the Properties, in accordance with the provisions of this Article V and Article IX of this Declaration. The responsibility of the Association to maintain the Common Areas and landscaping shall commence immediately on the date of the commencement of annual Common Assessments.

(m) Obtain and pay, for the benefit of the Properties, all commonly metered water, gas and electric services, and may provide for all common-use cable or master television service (if any), as necessary.

(n) Grant easements, rights of way, or strips of land, where necessary, for utilities and sewer facilities over the Common Area to serve the Common Area and the Lots.

(o) With the vote or written assent of the majority of the voting power of the Association residing in Members **(25)**: to incur aggregate expenditures for capital improvements to the Common Area in any fiscal year in excess of five percent (5%) of the budgeted gross expenditures of the Association for that year; to borrow money and incur indebtedness for the purposes of the Association; to sell during any fiscal year, property of the Association having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year; and to cause to be executed and delivered in the corporate name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecations or other evidences of debt and securities therefore.

(p) Prepare budgets and financial statements for the Association as provided in the Bylaws and Article XVI of this Declaration.

(q) Prosecute or defend, in the name of the Association, any action affecting or relating to the Common Area, and any action in which all or substantially all of the Owners have an interest.

(r) Reimburse directors and officers of the Association for expenses incurred in carrying out the business of the Association. However, neither the directors nor the officers shall receive any monetary compensation for their services except upon the consent of a majority of the voting power of the Association (26).

(s) Initiate and execute disciplinary proceedings against members of the Association for violations of the provisions of the Articles of Incorporation and Bylaws of the Association, this Declaration and the rules and regulations adopted by the Board pursuant to Article XVIII.

(t) Make available to any prospective purchaser of a Lot, any owner of a Lot, any Mortgagee and their holders, insurers and guarantors of a first mortgage of any Lot, current copies of this Declaration, the Articles and Bylaws and the rules and regulations of the Association, any amendments thereto, and all other documents, books, records and financial statements of the Association. The Board can charge a reasonable fee to cover the cost of producing said documents.

(u) Permit utility suppliers to use portions of the Common Area which are reasonably necessary to the ongoing development and operation of the Properties.

(v) Disclose information in accordance with Section 1368 of the California Civil Code or similar codes as hereinafter enacted.

(w) The Association shall have standing to institute, defend, settle or intervene in litigation, arbitration, mediation, or administrative proceedings in its own name as the real party in interest and without joining with it individual Owners of Lots, in matters pertaining to (i) enforcement of this Declaration, Articles and Bylaws of the Association, and the Rules and Regulations of the Association, (ii) damages to the Common Areas, and (iii) damages to other properties and improvements that the Association is obligated to maintain or repair.

(x) Maintain and repair the private streets within the Common Area, including cleaning and periodic resurfacing, and maintain and repair the private water and sewer system within the Common Area.

ARTICLE VI

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. **(27)** Each Owner and its successors and assigns, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association (1) annual Common Assessments for the Common Expenses, (2) Special Assessments, (3) Reconstruction Assessments and (4) Capital Improvement Assessments; such assessments to be established and collected as hereinafter provided. Such assessments, together with interest, costs and reasonable attorneys' fees for the collection thereof shall be a charge on the Lot and shall be a continuing lien upon the Lot against which such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the Person who was the Owner of such property at the time when the assessment fell due. Subject to the provisions of this Declaration protecting first Mortgagees, the personal obligation for the delinquent assessments shall pass to the successors-in-title of such Owner. The Board of Directors shall establish no fewer than two (2) separate accounts (the "Association Funds") into which shall be deposited all monies paid to the Association, and from which disbursements shall be made, as provided herein, in the performance of functions by the Association under the provisions of this Declaration. The Association Funds shall include: (1) an Operating Fund for current expenses of the Association, and (2) a Common Area Reserve Fund for replacements, painting and repairs (which would not reasonably be expected to recur on an annual or less frequent basis) of the Common Area. The Board shall prepare budgets and financial statements for the Association as provided in the Bylaws and Article XVI of this Declaration. The Board of Directors shall not co-mingle any amounts deposited into any of the Association Funds with one another.

Section 2. Purposes of Common Assessments. The Assessments levied by the Association shall be used exclusively to promote the common health, safety, benefit, recreation and welfare of the Owners and for the improvement and maintenance of the Common Area as provided herein. However, disbursements from the Common Area Reserve Fund shall be made by the Board of Directors only for the specific purposes specified in Section 1 of this Article VI. Disbursements from the Operating Fund shall be made by the Board of Directors for such purposes as are necessary for the discharge of its responsibilities herein for the common benefit of all of the Owners, other than those purposes for which disbursements from the Common Area Reserve Fund are to be used. Nothing in this Declaration shall be construed in such a way as to permit the Association to use any Assessments to abate any nuisance or annoyance emanating from outside the boundaries of the Properties. Nothing contained herein shall limit, preclude or impair the establishment of additional Association Funds by the Association, so long as the amounts deposited into any such Fund are earmarked for specified purposes authorized by this Declaration.

The Common Assessments to defray expenses attributable to the ownership, operation and furnishing of common interests by the Association shall be levied against each Owner according to the ratio of the number of Lots owned by the Owner assessed to the number of Lots subject to assessments.

Section 3. Common Assessment. Until the first day of the fiscal year immediately following the conveyance of the first improved Lot in the Properties to an Owner, the maximum annual Common Assessment per Lot shall be the amount described in the Final Subdivision Public Report for the Properties issued by the California Department of Real Estate.

(a) From and after the first day of the fiscal year immediately following close of escrow for the sale of the first Lot within the Properties to an Owner, the maximum annual Common Assessment may be increased by the Board, each year, by not more than twenty (20) percent above the maximum assessment for the previous year without the vote or written assent of a majority of the voting power of the Association residing in Members (28).

(b) (29)

(c) The limitation on percentage increases of the annual Common Assessment shall not limit assessment increases for the following emergency situations:

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

(ii) An extraordinary expense necessary to repair or maintain the Common Area or other areas which the Association is obligated to maintain where a threat to personal safety on said areas is discovered;

(iii) An extraordinary expense necessary to repair or maintain the Common Area or other areas which the Association is obligated to maintain that could not have been reasonably foreseen by the Board in preparing and distributing the annual operating budget pursuant to Article XVI. However, prior to the imposition or collection of an assessment under this subsection, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to the members with the notice of the assessment.

(d) The Board of Directors may fix an annual Common Assessment at an amount not in excess of the maximum allowed.

Section 4. Special Assessment. In addition to the Common Assessment authorized above, the Association may levy a Special Assessment against selected owners to reimburse the Association for costs incurred in bringing said selected Owners and their subdivision interest into compliance with the provisions of this Declaration and the Articles, Bylaws and Rules and Regulations of the Association.

Section 5. Reconstruction Assessment and Capital Improvement Assessment. In addition to the Common Assessment authorized above, the Association may levy, in any assessment year, a Reconstruction Assessment or Capital Improvement Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of the Common Area; provided, however, that in any fiscal year, the Board may not, without the vote or written assent of fifty-one (51%) percent of **(30)** the total voting power of the Association, levy a Reconstruction Assessment or Capital Improvement Assessment to defray the costs of any action or undertaking on behalf of the Association which in the aggregate exceeds 5% of the budgeted gross expenses of the Association for that fiscal year.

Section 6. Notice. Written notice of any meeting called for the purpose of taking action by the members authorized under this Article VI, shall be sent to all Members not less than ten (10) days, nor more than ninety (90) days, in advance of the meeting. The notice shall specify the place, day and hour of the meeting and the nature of business to be undertaken.

Section 7. Quorum. A quorum for an Association meeting shall be fifty-one (51%) percent of the total voting power of the Association through presence in person or by proxy. If the required quorum is not present, another meeting may be called subject to the same notice requirements stated herein, and the required quorum at the subsequent meeting shall be one-half (½) of the required quorum for the preceding meeting, but not less than twenty-five (25%) percent of the total voting power of the Association.

Section 8. Uniform Rate of Assessment. Common Assessments, Special Assessments, Capital Improvement Assessments and Reconstruction Assessments provided for in this Article VI must be fixed at a uniform rate for all Lots within the Properties, except the Board may levy Special Assessments against selected owners pursuant to Section 4 of this Article VI. Said uniform assessments shall continue to be fixed at a uniform rate for all Lots. **(31)** All installments of Common Assessments shall be collected in advance on a regular monthly basis by the Board of Directors, or its appointed agent.

Section 9. Date of Commencement of Common Assessments. **(32)** The Board of Directors shall fix the amount of the Common Assessment against each Lot. The Board shall determine and fix the amount of the Common Assessment against each Lot and distribute same not less than 45 days nor more than 60 days prior to the beginning of the Association's fiscal year. The Board shall estimate the total Common Expenses to be incurred by the Association for such forthcoming assessment period in determining the amount of the Common Assessment. Written notice of the Common Assessment shall be sent to every Owner subject thereto.

Section 10. Payment of Assessment. The due dates shall be established by the Board. Any assessment not paid within fifteen (15) days after the due date shall be delinquent. If an assessment is delinquent, the Association may charge a late fee not exceeding ten (10%) percent of the delinquent assessment or ten dollars ($10.00), whichever is greater. The Association may also charge the reasonable costs of collection, including attorneys' fees, and interest on all sums imposed pursuant to the terms of this Declaration, at an annual rate of twelve (12%) percent interest, or such percentage rate of interest authorized by California Civil Code Section 1366 as modified from time to time. The interest charge shall accrue commencing thirty (30) days after the assessment becomes due.

The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer or authorized representative of the Association, setting forth whether the assessments on a specific Lot have been paid. A properly executed certificate of the Association as to the status of assessments against a Lot is binding upon the Association as of the date of its issuance.

Each annual Common Assessment shall constitute an aggregate of separate assessments for each of the Association Funds, reflecting an itemization of the amounts assessed and attributable to prospective deposits into the Common Area Reserve Fund, the Operating Fund and any other Association Maintenance Fund established by the Association. If the estimated sums prove inadequate for any reason, including nonpayment of any owner's annual Common Assessment, the Board may at any time levy supplemental Common Assessments, subject to the provisions of Section 3 of this Article, for any of the Association Funds which shall be assessed equally against the Owner of each Lot in the Properties.

Each Common Assessment installment is to be paid in full by the Owner to the Association in one check. In the event that any installment of a Common Assessment payment is less than the amount assessed, subject to Article VII of this Declaration, the funds received by the Association from that Owner shall be credited in order of priority first to the Operating Fund, until that portion of the Common Assessment has to the been satisfied, and second Common Area Reserve Fund.

Section 11. Exempt Property. The following property subject to this Declaration shall be exempt from the assessments herein:

(a) All Properties dedicated to and accepted by a public authority;
(b) Common Area property.

ARTICLE VII

EFFECT OF NONPAYMENT OF ASSESSMENTS; REMEDIES OF THE ASSOCIATION

Section 1. Effect of Nonpayment of Assessments; Notice of Assessment. There is hereby created a claim of lien, with power of sale, on each and every Lot to secure payment to the Association of any and all assessments levied against any and all Owners of such Lots pursuant to this Declaration, together with interest thereon as provided for in this Declaration, and all costs of collection which may be paid or incurred by the Association in connection therewith, including reasonable attorneys' fees. All liens for assessments against an owner are subordinated to the first Mortgage against the subdivision interest of said Owner. At any time after the occurrence of any delinquency in the payment of such assessment, the Board or any authorized representative thereof may make a written demand to the delinquent Owner(s) for payment. Said demand shall state the due date and amount of the delinquency. Each delinquency shall constitute a separate basis for a demand or claim of lien or a lien, but any number of defaults may be included within a single demand or claim of lien and any demand or claim of lien or lien on account of prior delinquencies shall be deemed to include subsequent delinquencies and amounts due on account thereof. If such delinquency is not paid within ten (10) days after such demand, the Board or its duly authorized representative may thereafter record a Notice of Delinquent Assessment ("Notice") on behalf of the Association against the Lot of the defaulting owner in the Office of the County Recorder. Said Notice shall state all amounts which have become delinquent with respect to such Lot and the costs (including attorney's fees) and interest which have accrued thereon, the amount of any assessments relating to such Lot which are due and payable although not delinquent, a legal description of the Lot with respect to which the delinquent assessments are owed, and the name of the record or reputed record Owner of such Lot, and the name and address of the trustee authorized by the Association to enforce the lien by public sale. Such notice shall be signed by an officer of the Association or authorized representative thereof. Immediately upon recording of any Notice of delinquency pursuant to the foregoing provisions of this Section, the amounts delinquent, as set forth in such Notice, together with the costs (including attorney's fees) and interest accruing thereon shall be and become a lien upon the lot described therein, which lien shall secure all other payments, and/or assessments which shall become due and payable with respect to said lot following such recording, and all costs (including attorney's fees) and interest accruing thereon. Said lien shall continue for a period of one (1) year unless extended for a period of an additional year by the recording of a written extension by the Association. Said lien on each respective Lot shall be prior and superior to all other subsequently recorded liens, except (i) all taxes, bonds, assessments and other levies which, by law, would be superior thereto, and (ii) the lien or charge of any first Mortgage of record. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his/her Lot.

Section 2. Foreclosure Sale. Each 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 Section 2934(a). The assessment lien may be foreclosed, subject to Section 6 of this Article VII, as and in the same manner as the foreclosure of a mortgage upon real property under the laws of the State of California or may be enforced by sale pursuant to Sections 1367, 2924, 2924(a), 2924(b), 2924(c) and 2924(f) of the California Civil Code, and to that end a power of sale is hereby conferred upon the Association. The Association, acting on behalf of the Owners, shall have the power to bid for the Lot at a foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. The Association is authorized to accept a deed in lieu of foreclosure.

Section 3. Curing of Default. Upon the timely curing of any default for which a Notice of Delinquent Assessment was filed by the Association (which includes full payment of all delinquent assessments, all cost including attorney's fees, and all interest which has accrued on such delinquent assessments), the Board or its duly authorized representative shall record an appropriate Release of Lien. A certificate executed and acknowledged by the Board or authorized representative stating the indebtedness secured by liens upon any Lot created hereunder has been paid shall be conclusive upon the Association and the Owners as to the amount of such indebtedness as of the date of the certificate, in favor of all persons who rely thereon in good faith.

Section 4. Cumulative Remedies. The assessment liens and the rights to foreclosure and sale thereunder shall be in addition to and not in substitution for all other rights and remedies which the Association and its assigns may have hereunder and by law. Suit to recover a money judgment for unpaid assessments and attorney's fees shall be maintainable without foreclosing or waiving the lien securing same.

Section 5. Mortgage Protection. Notwithstanding all other provisions hereof, no lien created under this Article VII, nor any breach of this Declaration, nor the enforcement of any provision hereof shall defeat or render invalid the rights of the beneficiary under any recorded First Mortgage or First Deed of Trust upon a Lot; provided that after such Beneficiary or other Person obtains title to such Lot by judicial foreclosure or by means of the powers set forth in such Deed of Trust, such Lot shall remain subject to the Declaration and to the payment of all installments of Assessments accruing subsequent to the date such Beneficiary or other Person obtains title.

Section 6. Monetary Penalty. A monetary penalty imposed by the Association as a disciplinary measure for failure of a member to comply with the governing instruments or as a means of reimbursing the Association for cost incurred by the Association in the repair of damage to the Common Area for which the member was allegedly responsible or in bringing the member and his subdivision interest into compliance with the governing instruments may not be characterized nor treated in the governing instruments as an assessment which may become a lien against the member's subdivision interest enforceable by a sale of the interest in accordance with the provisions of Sections 2924, 2924(a), 2924(b), 2924(c), and 2924(f) of the Civil Code.

The provisions of this Section 6 do not apply to charges imposed against an Owner consisting of reasonable late payment penalties for delinquent assessments and/or charges to reimburse the Association for the loss of interest and for costs reasonably incurred (including attorney's fees) in its efforts to collect delinquent assessments.

If there exists a conflict between the terms of this Article VII, Section 6, and any other provision of this Declaration, this Article VII, Section 6 will prevail.

ARTICLE VIII

ARCHITECTURAL CONTROL

Section 1. Members of Committee. (33) (As revised by the third amendment of October 10, 2008 to read as follows) The Architectural Review Committee, sometimes referred to in this Declaration as the "ARC", shall consist of seven members, with a quorum consisting of 5 members. Persons appointed to the ARC by the Board shall be from the membership of the Association. The ARC shall have the right and duty to adopt and promulgate reasonable architectural and landscaping standards ("Architectural Standards") against which to examine any request made pursuant to this Article. The ARC may designate and appoint a representative who is a licensed architect and a majority of the members of said ARC may, from time to time, remove or replace such representative. The designated representative of the ARC may be, but need not be, a member of the ARC. Such representative must be consulted prior to disapproval of any plans by the ARC, but the decision of the ARC with respect to the approval or disapproval thereof shall be final.

Section 2. Review of Plans and Specifications. The ARC shall consider and act upon any and all plans and specifications submitted for its approval under this Declaration and perform such other duties as from time to time shall be assigned to it by the Board, including the inspection of construction in progress to assure its conformance with the plans approved by the ARC. No construction, alteration, addition, modification, decoration, redecoration or reconstruction (34) shall be commenced or maintained until the plans and specifications therefore showing the nature, kind, shape, height, width, color, materials and location of the same shall have been submitted to the ARC and approved in writing by the ARC. The ARC shall approve plans and specifications submitted for its approval only if it deems that the construction, alterations or additions contemplated thereby in the locations indicated will not be detrimental to the appearance of the surrounding area of the Properties as a whole, that the appearance of any structure affected thereby will be in harmony with the surrounding structures, and that the construction thereof will not detract from the beauty, wholesomeness and attractiveness of the Properties and that the upkeep and maintenance thereof will not become a burden on the Association.

Each Owner of a (35) dwelling unit shall be responsible for the interior and exterior maintenance, painting, repair and replacement of their specific (35) dwelling unit, subject to prior approval of ARC for said exterior maintenance, painting, repair and replacement. Written approval of ARC is required for exterior color selection. (as revised by the second amendment of January 28, 2000) No ARC approval is required if color selection reasonably matches the existing exterior colors.

Plans and specifications for any improvements, including the installation of a solar heating system, by an owner must be submitted to the ARC for approval prior to the making of said improvements. The ARC shall reasonably review and grant its approval of said improvement unless the proposed work will harm the project or conflict with the general plan of the development. Any improvement approved by the ARC will still be subject to the applicable zoning district regulations, the Uniform Building Code and associated ordinances.

The ARC may condition its approval of proposals or plans and specifications for any improvement upon: (1) such changes therein as it deems appropriate, (2) the agreement by the Person (referred to in this Section 2 as "applicant") submitting the same to grant appropriate easements to the Association for the maintenance of the improvement, or (3) the agreement of the applicant to reimburse the Association for the cost of such maintenance, or all three, and may require submission of additional plans and specifications or other information prior to approving or disapproving material submitted. The ARC may also issue rules and guidelines setting forth procedures for the submission of plans for approval requiring a reasonable fee payable to the Association to accompany each application for approval, or additional factors which it will take into consideration in reviewing submissions. The ARC may provide that the amount of such fee shall be uniform, or that it be determined in any other reasonable manner, such as by the reasonable cost of the construction, alterations or additions contemplated. The ARC may require such detail in plans and specifications submitted for its review as it deems proper, including, without limitation, floor plans, site plans, drainage plans, elevation drawings and description or samples of exterior material and colors. Decision of the ARC and the reasons therefore shall be transmitted by the ARC to the applicant at the address set forth in the application for approval, within thirty (30) days after receipt by the ARC of all materials required by the ARC. Any application submitted pursuant to this Section 2 shall be deemed approved, unless written disapproval or a request for additional information or materials by the ARC has been transmitted to the applicant within thirty (30) days after the date of receipt by the ARC of such application or additional information. In the event the plan specifications and application submitted to the ARC are disapproved, the party making such submission may appeal in writing to the Board. The written appeal must be received by the Board not more than thirty (30) days following the decision of disapproval by ARC. The Board must render its decision within sixty (60) days following receipt of said written appeal. The decision of the Board shall be final. Any improvement approved by the ARC will still be subject to the applicable County and/or City regulations, ordinances and codes as well as the Uniform Building Code.

<u>Section 3</u>. <u>Meetings of the ARC</u>. The ARC shall meet from time to time as necessary to perform its duties hereunder. The ARC may from time to time, by resolution unanimously adopted in writing, designate an ARC Representative (who may, but need not be one of its members) to take action or perform any duties for and on behalf of the ARC except the granting of variances pursuant to Section 8 of

this Article VIII. In the absence of such designation, the vote of any (36) five members taken without a meeting, shall constitute an act of the ARC.

Section 4. No Waiver of Future Approvals. The approval of the ARC to any proposals or plans and specifications or drawings for any work done or proposed or in connection with any other matter requiring the approval and consent of the ARC, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or any matter whatever subsequently or additionally submitted for approval or consent.

Section 5. Compensation of Members. The members of the ARC shall receive no compensation for services rendered, other than reimbursement for expenses incurred by them in the performance of their duties hereunder.

Section 6. Inspection of Work. Inspection of work and correction of defects therein shall proceed as follows:

(a) Upon the completion of any work for which approved plans are required under this Article VIII, the Owner shall give written notice of completion to the ARC.

(b) Within sixty (60) days thereafter, the ARC or its duly authorized representative may inspect such improvement. If the ARC finds that such work was not done in substantial compliance with the approved plans it shall notify the Owner in writing of such noncompliance within such 60 day period, specifying the particulars of noncompliance, and shall require the owner to remedy the same.

(c) If upon the expiration of thirty (30) days from the date of such notification the Owner shall have failed to remedy such noncompliance, the ARC shall notify the Board in writing of such failure. After affording such owner Notice and Hearing, the Board shall determine whether there is a noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If a noncompliance exists, the owner shall remedy or remove the same within a period of not more than forty-five (45) days from the date of the announcement of the Board ruling. If the owner does not comply with the Board ruling within such period, the Board, at its option, may record a notice of noncompliance with the office of the County Recorder and may either peacefully remove the noncomplying improvement or otherwise remedy the noncompliance, and the Owner shall reimburse the Association, upon demand, for all expenses incurred in connection therewith. If such expenses are not promptly repaid by the Owner to the Association, the Board shall levy a Special Assessment against such Owner for reimbursement. The right of the Association to remove a noncomplying improvement or otherwise remedy the noncompliance shall be in addition to all other rights and remedies which the Association may have at law, in equity or in this Declaration.

(d) If for any reason the ARC fails to notify the Owner of any noncompliance within sixty (60) days after receipt of said written notice of completion from the Owner, the improvement shall be deemed to be in accordance with said approved plans.

Section 7. Non-liability of ARC Members. **(37)** Neither the ARC nor any member of the ARC, the Board nor their duly authorized representative, shall be liable to the Association, or to any Owner, for any loss, damage or injury arising out of or in any way connected with the performance of the ARC's duties hereunder, unless due to willful misconduct or bad faith of the ARC. The ARC shall review and approve or disapprove all plans submitted to it for any proposed improvement, alteration or addition, solely on the basis of aesthetic considerations and the overall benefit or detriment which would result to the immediate vicinity and the Properties generally. The ARC shall take into consideration the aesthetic aspects of the architectural designs, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features. The ARC's approval or disapproval shall be based solely on the consideration set forth in this Article VIII, and the ARC shall not be responsible for reviewing nor shall its approval of any plan or design be deemed approval of any plan or design from the standpoint of structural safety or conformance with building or other codes.

Section 8. Variance. The ARC may authorize variances from compliance with any of the architectural provisions of this Declaration, including without limitation, restrictions upon height, size, floor area or placement of structures, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental consideration may require. Such variances must be evidenced in writing, must be signed by at least **(36)** five members of the ARC, and shall become effective upon recordation in the Office of the County Recorder. If such variances are granted, no violation of the covenants, conditions and restrictions contained in this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular property and particular provision hereof covered by the variance, nor shall it affect in any way the owner's obligation to comply with all governmental laws and regulations affecting his use of the premises, including but not limited to zoning ordinances and lot set-back lines or requirements imposed by the applicable County and/or City, or any other governmental authority.

Section 9. **(38)**

ARTICLE IX

MAINTENANCE AND REPAIR OBLIGATIONS

Section 1. Maintenance Obligation of Owners. Subject to the duty of the Association to provide for maintenance as provided in Article IX, Section 2, of this Declaration, it shall be the duty of each Owner, at his sole cost and expense, subject to the provisions of this Declaration regarding Architectural Review Committee approval, to maintain, repair, replace and restore areas subject to his exclusive control, in a neat, sanitary and attractive condition. Areas subject to the exclusive control of the Owner shall be deemed to include, without limitation, the Owner's dwelling unit if damaged by the presence of wood-destroying pests or organisms. Each Owner shall be entitled to reasonable access to the Common Area for the purpose of maintaining those areas which are the obligation of said Owner to maintain. In the event that any Owner shall permit any improvement or area, which is the responsibility of such Owner to maintain, to fall into disrepair or not be so maintained so as to create a dangerous obstructed, unsafe, unsightly or unattractive condition, or to otherwise violate this Declaration, the Board shall have either the right to seek any remedies at law or in equity which it may have, and the right, but not the duty, after Notice and Hearing, to enter upon such Owner's Lot to make such repairs or to perform such maintenance and the cost thereof shall be charged to the Owner. If said cost is not paid, the Board shall levy a Special Assessment and shall create a lien enforceable in the same manner as other assessments as set forth in Article VII, Section 2 of this Declaration.

Section 2. Maintenance Obligations of the Association. No improvement, excavation or work which in any way alters the Common Area from its existing state on the date any such area is conveyed by the Association shall be made or done by any person other than the Association or its authorized agents. Subject to the provisions of Section 1 of this Article, the Association shall maintain, or provide for the maintenance of all of the Common Area and all improvements thereon, in good order and repair, and shall likewise provide for all commonly metered utilities and exterior maintenance, repair and replacement as necessary for all Common Area facilities and improvements including the perimeter walls surrounding the Properties. The Association shall also be responsible for the maintenance and replacement of trees, shrubs, vegetation, landscaping, walls, irrigation system, private water and sewer systems, private streets and other improvements located within the Common Area. Each owner shall maintain, repair and replace the landscaping, walls, interior surface of the perimeter walls surrounding the properties, and other improvements located on his individual Lot. All of the foregoing obligations of the Association shall be discharged when and in such manner as the Board of Directors of the Association shall determine in their judgment to be appropriate.

Section 3. Damage and Destruction Affecting Dwelling Units - Duty to Rebuild. If all or any portion of any Dwelling Unit or the improvements on any Lot are damaged or destroyed by fire or other casualty, it shall be the duty of the owner of said Lot to rebuild, repair or reconstruct said Dwelling Unit or improvement in a manner which will restore it substantially to its appearance and condition immediately prior to the casualty. The owner or Owners of any damaged Dwelling Unit, or improvement shall be obligated to proceed with all due diligence hereunder, and the responsible party shall commence reconstruction within six (6) months after the damage occurs and complete reconstruction within twelve (12) months after damage occurs, unless prevented by causes beyond their reasonable control.

ARTICLE X

USE RESTRICTIONS

All real property within the Properties shall be held, used and enjoyed subject to the following limitations and restrictions **(39)** :

Section 1. Single Family Residence. Each Lot shall be developed and used as a residence for a single Family and for no other purpose.

Section 2. Business or Commercial Activity. No part of the Properties shall ever be used or caused to be used or allowed or authorized in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storage, vending or other such nonresidential purposes **(40)**. The provisions of this Section 2 shall not preclude professional and administrative occupations without external evidence thereof, for so long as such occupations are in conformance with the ordinances of the applicable County and/or City and are merely incidental to the use of the Dwelling Unit as a residential home.

Section 3. Nuisance. No noxious or offensive activity (including but not limited to the repair of motor vehicles) shall be carried on, in or upon any Lot or the Common Area, nor shall anything be done therein which may be or become an unreasonable annoyance or nuisance to any other Owner. Without limiting the generality of the foregoing provisions, no loud noises or noxious odors, no exterior speakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes), noisy or smoky vehicles, large power equipment or large power tools, unlicensed off-road motor vehicles or other items which may unreasonably interfere with television or radio reception of any owner in the Properties, shall be located, used or placed on any portion of the Properties, or exposed to the view of other Owners without the prior written approval of the ARC. The Board of Directors shall have the right to determine in accordance with the Bylaws, if any noise, odor, interference or activity producing such noise, odor or interference constitutes a nuisance.

Section 4. Signs. No sign, poster, display, billboard or other advertising device of any kind shall be displayed to the public view on any portion of the Properties or any Lot, without the prior written consent of the ARC, except one sign for each Dwelling Unit, of not larger than eighteen (18) inches by thirty (30) inches, advertising the Dwelling Unit for sale or rent. **(41)** All signs or billboards and the conditions promulgated for the regulation thereof shall conform to the requirements of all applicable governmental ordinances.

Section 5. Parking and Vehicular Restrictions. No Owner shall park, store or keep on any property or street (public or private) within the Properties any large commercial-type vehicle (including, but not limited to, any dump truck, cement mixer truck, oil or gas truck or delivery truck), any recreational vehicle, any bus, trailer, boat, aircraft, inoperable vehicle or any other similar vehicle or any vehicular equipment, mobile or otherwise, deemed to be a nuisance by the Board. The above excludes camper trucks and similar vehicles up to and including three-quarter (¾) ton, when used for everyday-type transportation and subject to approval by the Board. No owner of a Lot shall conduct major repairs or major restorations of any motor vehicle, or other vehicle upon any portion of any Lot, provided, however, that such activity shall at no time be permitted if it is determined by the Board or its agent to be a nuisance. Carports shall be used for parking of vehicles only and shall not be converted to other uses. Storage of material and equipment shall be in enclosed storage areas or accessory storage buildings approved by ARC. Vehicles owned, operated or within the control of any Owner shall be parked in the **(42)** garage of such Owner to the extent of the space available therein, and each Owner, to the extent necessary, shall ensure that his **(42)** garage is maintained so as to be capable of accommodating at least two (2) full-sized automobiles. Notwithstanding the foregoing, these restrictions shall not be interpreted in such a manner so as to permit any activity which would be contrary to any ordinance of the applicable County and/or City.

Section 6. Animal Restrictions. No insects, reptiles, poultry, livestock, or animals of any kind shall be raised, bred or kept on any Lot; except usual and ordinary dogs, cats, fish, birds and other household pets, (excluding, without limitation, equine, bovine, sheep, swine, goats, or other such animals) may be kept on Lots, provided that they are not kept, bred or maintained for commercial purposes or in unreasonable quantities, nor in violation of the rules and regulations adopted by the Association as provided in the Bylaws. As used in this Declaration, "unreasonable quantities" shall ordinarily mean more than two (2) pets per household, provided, however, that the Association (or the ARC or such other person or entity as the Association may from time to time designate) may determine that a reasonable number in any instance may be more or less. No large pets shall be allowed within the properties. No pet may weigh over fifty (50) pounds.

The Association, acting through the Board of Directors, shall have the right to prohibit maintenance of any animal which constitutes, in the opinion of the Board, a nuisance to any other Owner. Animals belonging to Owners, occupants or their licensees, tenants or invitees within the Properties must either be kept within an enclosure, an enclosed yard or on a leash being held by a person capable of controlling the animal within the Owner's Lot. Furthermore, any Owner shall be absolutely liable to each and all remaining Owners, their families, guests, tenants and invitees, for any unreasonable noise or damage to person or property caused by any animals brought or kept upon the Owner's Lot by an Owner or members of his family, his tenants or his guests. There shall be no walking of animals on the

Common Area, including the recreational areas and streets, except the walking of animals to and from the Owner's Lot to the Properties' boundaries. The walking exercise of animals must be done outside the Properties' boundaries.

Section 7. Trash and Clotheslines. No rubbish, trash or garbage or other waste material shall be kept or permitted upon any Lot or Common Area, except in sanitary containers located in appropriate areas screened and concealed from view, and no odor shall be permitted to arise therefrom so as to render the Properties, or any portion thereof, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or its occupants. Such containers shall be exposed to the view of neighboring Lots only when set out for a reasonable period of time (not to exceed twelve (12) hours before and after scheduled trash collection hours). There shall be no exterior fires whatsoever except barbeque fires contained within receptacles therefore and that do not create a fire hazard. No clothing or household fabrics shall be hung, dried or aired in such a way in the Properties as to be visible to other property, and no lumber, grass, shrub or tree clippings or plant waste, metals, bulk material or scrap or refuse or trash shall be kept, stored or allowed to accumulate on any portion of the Properties except within an enclosed structure or appropriately screened from view.

Section 8. View Obstructions. **(43)**

Section 9. Temporary Buildings. No temporary building or improvement of any kind shall be placed upon any portion of the Properties for residential use. Accessory buildings for storage of material and equipment may be constructed subject to prior approval of ARC. No travel trailer, camper, motor home or recreation vehicle shall be used as a residence in the Properties, either temporarily or permanently.

Section 10. Common Area. Nothing shall be altered or constructed in or removed from the Common Area except upon the written consent of the Association.

Section 11. Outside Installations. **(44)** (As revised by the second amendment of January 28, 2000 No television or radio antenna or tower may be erected on any Lot. Direct TV systems using small type dishes not exceeding 36" in diameter may be installed as may be provided by the California Civil Code. No free hanging overhead wiring or cables shall be permitted above ground. No fence or wall shall be erected, altered or maintained on any Lot in the Properties, except with the prior approval of the ARC and applicable County/City governmental body.

Section 12. Insurance Rates. Nothing shall be done or kept in the Properties which will increase the rate of insurance on any property insured by the Association without the approval of the Board, nor shall anything be done or kept in the Properties which would result in the cancellation of insurance on any property insured by the Association or which would be in violation of any law.

Section 13. Drilling. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels or mineral excavations or shafts be permitted upon the surface of any Lot or within five hundred fifty (550) feet below the surface of the Properties. No derrick or other structure designed for use in boring for oil, water or natural gas shall be erected, maintained or permitted upon any Lot.

Section 14. Further Subdivision. No Owner shall further partition or subdivide his Lot; provided, however, that this provision shall not be construed to limit the right of an Owner (1) to rent or lease all or any portion of his Lot by means of a written lease or rental agreement subject to the restrictions of this Declaration, so long as the Lot is not leased for transient or hotel purposes; (2) to sell his Lot; or (3) to transfer or sell any Lot to more than one person to be held by them as tenants-in-common, joint tenants, tenants by the entirety or as community property. The terms of any such lease or rental agreement shall be subject in all respects to the provisions of this Declaration and the Bylaws of the Association, and any failure by the lessees of such Lot to comply with the terms of this Declaration or the Bylaws of the Association shall constitute a default under the lease.

Section 15. Drainage. There shall be no interference with the established drainage pattern over any Lot within the Properties, unless an adequate alternative provision is made for proper drainage and is first approved by the ARC in accordance with any requirements of the applicable County and/or City. For the purposes hereof, "established" drainage is defined as the drainage which exists at the time that such Lot is conveyed to a purchaser from Grantor, or that which is shown on any plans approved by the ARC, which may include drainage from the Common Area over any Lot or Lots in the Properties. Each Owner, with respect to his Lot, and the Association with respect to the Common Area, shall have the right to use the established drainage pattern and system for the purpose of draining their respective Lots and improvements thereon; provide that such right of drainage shall not include the right to discharge noxious or offensive matter. Water from any Lot and the improvements thereon may drain or flow into adjacent streets. Water shall not be allowed to drain or flow onto adjacent Lots except to the extent provided for by the established drainage pattern and system. All slopes or terraces on any Lot shall be maintained as provided thereon at the time such Lot is initially conveyed to a purchaser, so as to prevent any erosion thereof upon adjacent streets or adjoining properties.

Section 16. Utility Systems. No individual water supply, sewage disposal system or water softener system shall be permitted on any Lot in the Properties unless such system is designed, located, constructed and equipped in accordance with the requirements, standards and recommendations of any applicable water district, the County Health Department, the ARC and all other applicable governmental authorities.

Section 17. Landscaping Installation. Within ninety (90) days following the close of escrow for the sale of a Lot, (45) the Owner shall plant lawns or otherwise landscape his Lot in a neat and attractive condition, in accordance with a landscape plan approved in writing by the ARC pursuant to Article VIII of this Declaration. Said plan shall call for a predominance of living vegetation and shall include landscaping sufficient to prevent drainage or flow of water from said Owner's Lot onto any adjacent Lot or Common Area (except as provided by the established drainage pattern for the Properties). All vegetation on the Lots shall be irrigated, fertilized and maintained regularly. In the event of the failure of an Owner to comply with any of the requirements of this Section, the Association, acting through its authorized agents, shall have the right to enter upon such Owner's Lot after Notice and Hearing and do all things necessary to place such Lot and the landscaping thereon in compliance with the requirements of this Section. Any expenses in connection with such entry, installation or landscaping or other required activities shall be reimbursed to the Association as a Special Assessment which shall become a lien upon the Lot of the offending Owner, in the manner provided in Article VII of this Declaration and subject to Section 7 of said Article VII.

Section 18. Violation of Governing Instruments. There shall be no violation of the restrictions of this Declaration or of the rules and regulations of the Association adopted in accordance with Article XVIII of this Declaration. If any Owner, his family, guest, licensee, lessee or invitee violates any such restrictions, or the Association rules, the Board may impose a reasonable Special Assessment in the form of a monetary penalty upon such Owner for each such violation and may suspend the voting privileges of such Owner subject to Article VII, Section 6. The Board shall give such Owner Notice and Hearing, pursuant to California Corporation Code Section 7341, before invoking such Special Assessment or suspension.

Section 19. Encroachment. Each Lot within the Properties is hereby declared to have an easement over all adjoining Lots for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, settlement or shifting of the building roof overhangs, architectural or other appendages, drainage of rainwater from roofs, or any other cause. There shall be valid easements for the maintenance of said encroachments so 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 willful misconduct of said Owner or owners. In the event a structure on any Lot is partially or totally destroyed and then repaired or rebuilt, the Owners of each Lot agree that minor encroachments over adjoining Lots shall be permitted, and that there shall be valid easements for the maintenance of said encroachments so long as they shall exist.

ARTICLE XI
DAMAGE, DESTRUCTION, CONDEMNATION

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

(a) In the event of damage or destruction to the Common Area, the Association shall cause such damage or destruction of the Common Area to be repaired and reconstructed substantially as it previously existed.

If there exists insufficient Association Reserve Funds or insufficient insurance proceeds, if any, then the Association shall raise the necessary funds by levying equal Reconstruction Assessments against all Lots.

(b) Each Lot Owner shall be liable to the Association for any damage to the Common Area, which may be sustained by reason of the negligence or willful misconduct of said Lot Owner or the Persons deriving their right and easement of use and enjoyment of the Common Area from said Lot Owner, or his respective family and guests, both minor and adult. In the case of Joint ownership of a Lot, the liability of such Owners shall be joint and several. After Notice and Hearing, pursuant to California Corporation Code Section 7341, the cost of correcting such damage shall be a Special Assessment against the Lot and may be collected as provided herein for the collection of Common Assessments.

(c) If at any time all or any portion of the Common Area, or any interest therein, be taken for any public or quasi-public use, under any statute, by right of eminent domain or by private purchase in lieu of eminent domain, the award in condemnation shall be paid to the Association. Any such award payable to the Association shall be deposited in the Operating Fund. No member shall be entitled to participate as a party, or otherwise, in any proceedings relating to such condemnation. The Association shall have the exclusive right to participate in such proceedings and shall, in its name alone, represent the interest of all Members.

(d) In the event of any taking of all or any portion of a residential Lot for any public or quasi-public use, under any statute, by right of eminent domain or by private purchase in lieu of eminent domain, the award in condemnation shall be paid to the applicable Lot Owners and their Mortgagees.

(e) In the event of any taking of all or any portion of a Dwelling Unit for any public or quasi-public use, under any statute, by right of eminent domain or by private purchase in lieu of eminent domain, the award in condemnation shall be paid to the applicable Owner and Security holder.

(f) In the Event of damage or destruction to any dwelling unit(s) or carport(s), the Owner(s) thereof shall reconstruct the same pursuant to Article IX, Section 3.

ARTICLE XII

INSURANCE

Section 1. Liability and Other Insurance. The Association shall have the Power and duty to and shall obtain comprehensive public liability insurance, including medical payments, liquor liability insurance and malicious mischief, in such limits as it shall deem desirable, insuring against liability for bodily injury, death and property damage arising from the activities of the Association or with respect to the Common Area property, including, if obtainable, a cross-liability endorsement insuring each insured against liability to each other insured. The Association may also obtain, through the Board, Worker's Compensation insurance and other liability insurance as it may deem desirable, insuring each Lot Owner and the Association, Board of Directors and Manager from liability in connection with the Common Area, the premiums for which are a Common Expense included in the Common Assessments made against the Owners. All insurance policies shall be reviewed at least annually by the Board of Directors and the limits increased in its discretion. The Board may also obtain such errors and omissions insurance, indemnity bonds, fidelity insurance or bonds and other insurance as it deems advisable, insuring the Board, the officers of the Association and the Manager against any liability for any act or omission in carrying out their obligations hereunder, or resulting from their membership on the Board or on any committee thereof. Said fidelity insurance or bond shall name the Association as obligee and be written in an amount equal to at least the estimated maximum of funds, including reserves, in the custody of the Association or a management agent at any time during the term of the fidelity coverage (provided, however, the fidelity coverage shall not be less than a sum equal to three months' aggregate assessments on all Lots, plus reserve funds). Notwithstanding any other provisions herein, the Association shall continuously maintain in effect such casualty, flood, earthquake, liability insurance and fidelity insurance or bond meeting the requirements established by the Federal National Mortgage Association ("FNMA"), the Government National Mortgage Association ("GNMA") and the Federal Home Loan Mortgage Corporation ("FHLMC"), except to the extent such coverage is not available or has been waived in writing by the FNMA, GNMA, and FHLMC where applicable. The Association, upon written request, shall provide holders of first Mortgages duplicate copies of policies or certificates which the Association is obligated to maintain.

Section 2. Casualty Insurance-Common Area. The Association shall keep all improvements and fixtures of the Common Area insured against loss or damage by fire or other hazards and casualties for the full insurance replacement cost thereof. Said casualty insurance shall be reviewed at least annually by the Board of Directors. The Association may also insure any other property whether real or personal, owned by the Association, against loss or damage by fire or such other hazards as the Association may deem desirable, with the Association as the owner and beneficiary of such insurance. The insurance coverage with respect to the Common Area and amenities under its jurisdiction (perimeter wall surrounding the Properties) shall be written in the name of, and the proceeds thereof shall be payable to the Association. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried. Premiums for all insurance carried by the Association are Common Expenses included in the Common Assessments made by the Association.

Section 3. Insurance Obligations of Owners. It shall be the responsibility of each Owner to obtain liability insurance for his Lot and to insure any Dwelling Unit and carport upon said Owner's Lot, including the structural portions of his Dwelling Unit and carport, against loss or damage by fire or by any other casualty, under the standard form of extended endorsement now in use in the State of California or under such other insurance as may be required by any Mortgagee of the Dwelling Unit. All such other insurance shall be in an amount as near as practicable to the full replacement cost of the dwelling unit and carport, without deduction for depreciation or co-insurance, and in such limits as required by FNMA, GNMA, FHLMC and any other federal agency.

Section 4. Replacement or Repair of Property. In the event of damage to or destruction of any part of the Common Area improvements or property, whether real or personal, and under the Association's jurisdiction, the Association shall repair or replace the same from the insurance proceeds available, pursuant to the provisions of Article XI of this Declaration. If such insurance proceeds are insufficient to cover the cost of repair or replacement of the property damaged or destroyed, the Association shall make a Reconstruction Assessment against all Lot Owners to cover the additional cost of repair or replacement not covered by the insurance proceeds, in addition to any other Common Assessments made against such Lot Owners, in accordance with the provisions of Article VI, Section 5 and Article XI of this Declaration. In the event of damage or destruction to any Dwelling Unit or carport, the Owner(s) thereof shall reconstruct the same pursuant to Article IX, Section 3.

Section 5. Waiver of Subrogation. All policies of physical damage insurance maintained by the Association shall provide, if reasonably possible, for waiver of: (1) any defense based on co-insurance; (2) any right of set-off, counterclaim, apportionment, proration or contribution by reason of other insurance not carried by the Association; and (3) any invalidity, or other adverse effect or defense on account of any breach of warranty or condition caused by the Association, any Owner or tenant of any Owner, or arising from any act, neglect, or omission of any named insured or the respective agents, contractors and employees of any insured.

ARTICLE XIII

LENDER PROTECTION CLAUSES

Notwithstanding any and all provisions hereof to the contrary, in order to induce the Federal Home Loan Mortgage Corporation ("FHLMC"), the Government National Mortgage Association ("GNMA") and the Federal National Mortgage Association ("FNMA") to participate in the financing of the sale of Lots within the Properties, the following provisions are added hereto (and to the extent these added provisions conflict with any other provisions of the Declaration, these added provisions shall control):

(a) Each First Mortgagee of a Mortgage encumbering any Lot and each Security Holder, at their written request is entitled to written notification from the Association of any default by the applicable Owner of such Lot and **(35)** Dwelling Unit in the performance of such Owner's obligations under this Declaration, the Articles of Incorporation of the Association or the Bylaws of the Association, which default is not cured within thirty (30) days after the Association learns of such default;

(b) Each First Mortgagee of a Mortgage encumbering any Lot, which obtains title to such Lot pursuant to the remedies provided in such Mortgage, or by foreclosure, or by deed (or assignment) in lieu of foreclosure, shall be exempt from any "right of first refusal"; and said right of first refusal shall not impair the rights of the first Mortgagee to (i) foreclose or take title to a Lot pursuant to the remedies provided in the Mortgage, (ii) accept a deed in lieu of foreclosure in the event of default by the Trustor of the Mortgage, or (iii) to sell or lease a Lot acquired by the first Mortgagee.

(c) Each First Mortgagee of a Mortgage encumbering any Lot which obtains title to such Lot pursuant to the remedies provided in such Mortgage (which shall not include deed in lieu of foreclosure) or by foreclosure of such Mortgage, shall take title to such Lot free and clear of any claims of unpaid assessments or charges against such Lot which accrued prior to the acquisition of title to such Lot by the Mortgagee. Said Mortgagee, or successor in interest, shall be liable for assessments thereafter becoming due.

(d) Provided that the Mortgagee informs the Association in writing of its appropriate address and requests in writing to be notified, neither the Association nor any Owner shall do any of the following, unless at least sixty-seven (67%) percent of the First Mortgagees of Mortgages encumbering Lots (based upon one (1) vote for each Mortgage) have given their written approval:

(1) subject to California Nonprofit Corporation law to the contrary, seek, by act or omission, to abandon, partition, alienate, subdivide, release, hypothecate, encumber, sell or transfer the Common Area;

(The granting of easement 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);

(2) change the method of determining the obligations, assessments, dues or other charges which may be levied against a Lot Owner, or the method of allocation of distributions of insurance proceeds or condemnation awards; (dues and charges shall include an adequate reserve fund for the repair and replacement of the Common Area and property and improvements under the Association's jurisdiction);

(3) by act or omission, change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the project design, the maintenance and upkeep of the Common Area facilities and improvements within the Properties, and maintenance and upkeep of other property and improvements under the Association's jurisdiction;

(4) fail to maintain adequate fire and extended coverage on insurable Common Area property in an amount not less than one hundred percent (100%) of the insurable value based on current replacement cost;

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

(e) First Mortgagees and Security Holders, upon written request, shall have the right to (1) examine the books and records of the Association during normal business hours, (2) require from the Association the submission of audited annual financial reports and other financial data, (3) receive written notice of all meetings of the members, (4) designate in writing a representative to attend all such meetings, (5) receive thirty (30) days' written notice prior to the effective date of any proposed amendment to this Declaration or the Articles or Bylaws of the Association and (6) receive immediate notice following any threatened condemnation proceeding or proposed acquisition of any portion of the Properties;

(f) Professional management of this development is required. Any amendment to this declaration regarding the owners' decision to assume self-management of the properties shall require (1) prior written approval of sixty-seven (67%) percent or more of the first Mortgagees and Security Holders and (2) prior written waiver of the requirement of professional management by FNMA, if applicable.

(g) No provision of this Declaration gives any Lot Owner priority over any rights of the First Mortgagee of any Lot pursuant to its Mortgage in the case of a distribution to such Lot Owner of insurance proceeds or condemnation awards for losses to or taking of the Common Area property;

(h) First Mortgagees of Lots within the Properties and Security Holders may, jointly or singly, pay taxes or other charges which are in default and which have or may become a charge against the Common Area property and may pay overdue premiums on insurance policies, or secure new insurance coverage upon the lapse of a policy for such Common Area, and the First Mortgagee(s) making such payments shall be owed immediate reimbursement therefore from the Homeowners' Association.

(i) The Association shall furnish FNMA, GNMA, or FHLMC, in care of the mortgage company or other financial institution acting as its servicer, in writing, notice of any loss to, or taking of the Common Area if such loss or taking exceeds $10,000.

(i) Any amendment to this Declaration or equivalent document which materially modifies the following shall require prior written approval of sixty-seven (67%) percent or more of the First Mortgagees and Security Holders before same shall become effective: voting; assessment liens or subordination of such liens; maintenance reserves; insurance; fidelity bonds or insurance; rights to use Common Area; maintenance responsibility; Lot boundaries; right of first refusal restrictions; and self-management.

In addition to the foregoing, the Board of Directors may enter into such contracts or agreements on behalf of the Association as are required in order to satisfy the guidelines of the FHLMC, the FNMA or the GNMA or any similar entity, so as to allow for the purchase, insurance or guaranty, as the case may be, by such entities of the First Mortgagees encumbering the Lots with Dwelling Units thereon. Each Owner hereby agrees that it will benefit the Association and the membership of the Association, as a class of potential borrowers and potential seller of their Dwelling Units, if such agencies approve the Properties as a qualifying subdivision under their respective policies, rules and regulations, as adopted from time to time. Mortgagees are hereby authorized to furnish information to the Board concerning the status of any Mortgage encumbering a Lot. Security Holders are hereby authorized to furnish information to the Board concerning the status of any security interest against a **(35)** Dwelling Unit.

ARTICLE XIV

GRANTOR EXEMPTION

(46)

ARTICLE XV

GENERAL PROVISIONS

Section 1. Enforcement. This Declaration, the Articles of Incorporation and the Bylaws may be enforced by the Association and the applicable County and/or City as follows:

(a) Breach of any of the covenants contained in the Declaration or the Bylaws and the continuation of any such breach may be enjoined, abated or remedied by appropriate legal proceedings by any Owner, **(47)** by the Association or the successors-in-interest of the Association. Any judgment rendered in any action or proceeding pursuant hereto shall include a sum for attorneys' fees in an amount as the Court may deem reasonable, in favor of the prevailing party, as well as the amount of any delinquent payment, interest thereon, costs of collection and court costs.

(b) The result of every act or omission whereby any of the covenants contained in this Declaration or the Bylaws are violated in whole or in part is hereby declared to be and constitutes a nuisance, and every remedy allowed by law or equity against a nuisance either public or private shall be applicable against every such result and may be exercised by any Owner, by the Association or its successors-in-interest.

(c) The remedies herein provided for breach of the covenants contained in this Declaration or in the Bylaws shall be deemed cumulative, and none of such remedies shall be deemed exclusive.

(d) The failure of the Association to enforce any of the covenants contained in this Declaration or the Bylaws shall not constitute a waiver of the right to enforce the same thereafter.

(e) A breach of the covenants, conditions or restrictions contained in this Declaration or in the Bylaws shall not affect or impair the lien or charge of any First Mortgage or Deed of Trust; provided, however, that any subsequent Owner of such property shall be bound by said covenants, whether such Owner's title was acquired by foreclosure, in a trustee's sale or otherwise.

(f) Covenants, conditions and restrictions of this Declaration shall run with the applicable County and/or City insofar as they shall apply to the maintenance and repair of the Common Area as herein defined. In the event the Association or other legally responsible persons fail to maintain said Common Area at any time and allow the Common Area properties or improvements to become a public nuisance, the County or City may, upon proper notice and hearing, institute any necessary abatement procedures and impose a lien for the cost of such abatement upon said Common Area, individual Lots or the whole thereof as provided by law.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3. Term. The covenants and restrictions of this Declaration shall run with and bind the Properties, and shall inure to the benefit of and be enforceable by the Association or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of twenty (20) years from the date this Declaration is recorded, after which time said covenants, conditions, reservation of easements, equitable servitudes and restrictions shall be automatically extended for successive periods of ten (10) years, unless an instrument, signed by the then Owners of a majority of the Lots, has been recorded, agreeing to change or terminate said covenants and restrictions in whole or in part.

Section 4. Interpretation. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a residential community and for the maintenance and repair of the Common Area. The articles and section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine and neuter shall each include the masculine, feminine and neuter.

Section 5. Amendment. This Declaration and any amendments to it may be amended or revoked as follows:

(a) **(48)**

(b) After the issuance of the Final Public Report, this Declaration may be amended or revoked in any respect by the vote or written consent of the holders of not less than seventy-five (75%) percent of the voting rights of **(49)** Members. However, if any provision of this Declaration requires a greater or lesser percentage of the voting rights of **(49)** Members in order to take affirmative or negative action under such provision, the same percentage of **(49)** Members shall be required to amend or revoke such provision. **(50)** Pursuant to California

Civil Code Section 1356(a), the Board or any Owner of a Living Unit may petition the Superior Court of California for an order reducing the percentage of the affirmative votes necessary for such an amendment. An amendment or modification to this Declaration shall be effective when executed by the President and Secretary of the Association who shall certify that the amendment or modification has been approved as hereinabove provided, and recorded in the Official Records of the Riverside County Recorder. Also, if the consent or approval of any governmental authority, Mortgagee, Security Holder, or other person, firm, agency or entity is required under this Declaration with respect to any amendment or revocation of any provision of this Declaration, no such amendment or revocation shall become effective unless such consent or approval is obtained. Neither the maintenance responsibilities of the individual owners or the Association, nor the City's rights to enforce the Project's maintenance may be amended without the prior written consent of the City of Hemet. No Supplemental Declaration nor Declaration of Annexation for future phases shall diminish or materially alter the rights of the City as stated herein. No amendment may be made to Article XIII by the Association membership without the prior written consent of at least sixty-seven (67%) percent of: (1) the Mortagees of First Mortgages encumbering the Lots within the Properties, based on one vote for each such Mortgage (unless a higher percentage of approval is required by a Federal Agency for an amendment) and (2) Security Holders. **(51)**

Section 6. No Public Right or Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any part of the Properties to the public, or for any public use.

Section 7. Constructive Notice and Acceptance. Every person who owns, occupies or acquires any right, title, estate or interest in or to any Lot or other portion of the Properties does and shall be conclusively deemed to have consented and agreed to every limitation, restriction, easement, reservation, condition and covenant contained herein, whether or not any reference to these restrictions is contained in the instrument by which such person acquired an interest in the Properties, or any portion thereof.

Section 8. Reservation of Easement. Reciprocal easements are hereby reserved for the benefit of adjoining Lot Owners for the control, maintenance and repair of the utilities of adjoining Lot Owners. **(52)** Owners have reciprocal easements of access, ingress and egress over all Lots, and over the Common Area, for the purpose of enjoyment of the Lots in accordance with this Declaration, including without limitation, for installation and repair of utility services, for drainage over, across and upon adjacent Lots for water resulting from the normal use of adjoining Lots, and for maintenance and repair of any Dwelling Unit to be constructed. Such easements may be used by **(53)** all Owners, their guests, tenants and invitees, residing on or temporarily visiting the Properties, for pedestrian walkways, vehicular access and such other purposes reasonably necessary for the use and enjoyment of a Lot and the Common Area. In the event that any Dwelling Unit encroaches upon the Common Area as a result of construction, reconstruction, repair, shifting, settlement or movement of any portion of the Properties, a valid easement for encroachment and for the maintenance of same shall exist so long as the encroachment exists. **(54)** The Lot Owners of each Lot on which there is constructed a Dwelling Unit or other structure along or adjacent to said Lot line, subject to applicable County an/or City Codes and Ordinances, shall have an easement appurtenant to said Lot over the Lot line to and over the adjacent Lot, for the purposes of accommodating any natural movement or settling of any Dwelling Unit or other structure located on said Lot, any encroachment of any Dwelling Unit or other structure due to minor engineering or construction variances, and any encroachment of eaves, roof overhangs and architectural features as parts of the original construction of any Dwelling Unit or other structure located on said Lot. **(55)** Each Owner, his guests, tenants and invitees have a non-exclusive easement over and across the Common Area and private streets as shown on recorded Tract Map(s) of the Properties. The Association, in accordance with the adopted rules and regulations of the Association and the provisions of this Declaration, may regulate use of the Common Area.

Section 9. Notices. Any notice permitted or required to be delivered as provided herein shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered forty-eight (48) hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to any person at the address given by such person to the Association for the purpose of service of such notice, or to the residence of such person if no address has been given to the Association. Such address may be changed from time to time by notice in writing to the Association.

Section 10. No Representation or Warranties. **(56)**

Section 11. City Rights. Notwithstanding any other provisions of this Declaration, the use of the Properties shall be in compliance with all ordinances of the City of Hemet ("City"). The City shall have the unrestricted right and authority to refuse issuance of any building, electrical or plumbing permit which may be in violation of this Declaration and/or City Ordinances. To assure the City of access to maintain and repair its services and facilities and for the provision of fire and police protection, the Board shall keep all access ways, streets and appurtenances thereto on the Common Area that are not dedicated streets, in a state of good condition and repair, consistent with the standard of quality of said roadways and appurtenances on original installation. If, in the opinion of the City, said access ways, streets or appurtenances fall into a state of disrepair or the Association fails to maintain the Common Area in accordance with the terms of this Declaration, the City shall give written notice to the Association specifying the exact nature of such deficiency. The Association shall take appropriate corrective action within thirty days of receipt of such written notice unless there exists a hazardous condition requiring immediate action, provided, however, the Association shall have the right, within ten days of receipt of said written notice of deficiency, to file an appeal before the City Council for a public hearing. The decision of the City Council may be appealed by the Association through an appropriate action in a court of law having jurisdiction. All rights of notice, protest and appeal under City Ordinances or otherwise provided by law are reserved to the Association and Owners. All required repairs and maintenance shall be made at the expense of the Association and Owners. If the Board does not undertake said repairs and maintenance within the required time, the City may undertake and complete such corrective measures and assess the costs thereof against the Association and/or Owners as a lien, in the same manner as set forth herein for the establishment of liens. The above mentioned notice of deficiency from the City to the Association shall state the anticipated costs that the City will assess. No Amendment to this Declaration which affects maintenance duties or enforcement provisions or which amends this Article XV, Section 11, shall be effective without prior written consent of the City of Hemet.

Section 12. FHA/VA Approval. **(57)**

Section 13. Attorneys' Fees. In the event action is instituted to enforce any of the provisions of this Declaration, the party prevailing in such action shall be entitled to recover from the other party thereto, as a part of the judgment, reasonable attorneys' fees and costs of such suit.

Section 14. Owner's Obligations. Each Owner of a Lot shall, before execution of a sale or lease agreement, make available for examination by the prospective purchaser or lessee, and as soon as practicable before transfer of the interest being acquired, give to each purchaser or lessee, (i) a copy of the Articles of Incorporation and Bylaws of the Association and this Declaration, (ii) copies of any other instruments which define the rights and responsibilities of the owner or lessee and the rules and regulations of the Association, (iii) a copy of the most recent financial statement distributed by the Association pursuant to Article XVI of this Declaration, and (iv) a written statement prepared by the Board or an authorized representative of the Association as to the amount of any delinquent assessments and information relating to penalties, late charges, interests or other charges and costs authorized by this Declaration which are or may be a lien on such Owner's Lot as of the date the statement is issued. Upon written request, the Association shall, within ten (10) days of the mailing or delivery of the request, provide the requesting owner of a Lot with a copy of the requested items. The Association may charge a fee for this service, which shall not exceed the Association's reasonable cost to prepare and reproduce the requested items. The Association shall not impose or collect any assessment, penalty or fee in connection with a transfer of title or any other interest except the Association's actual costs to change its records.

ARTICLE XVI

ASSOCIATION FINANCIAL INFORMATION

1. The following financial information shall be regularly prepared and distributed by the governing body to all members regardless of the number of members or the amount of assets of the Association.

(A) A budget for each fiscal year consisting of at least the following information shall be distributed not less than 45 days nor more than 60 days prior to the beginning of the fiscal year:

(1) Estimated revenue and expenses on an accrual basis;

(2) The amount of the total cash reserves of the Association currently available for replacement or major repair of common facilities and for contingencies;

(3) An itemized estimate of the remaining life of, and the methods of funding to defray repair, replacement or additions to major components of the common areas and facilities for which the Association is responsible;

(4) A general statement setting forth the procedures used by the governing body in the calculation and establishment of reserves to defray the costs of repair, replacement or additions to major components of the common areas and facilities for which the Association is responsible.

(B) **(58)**

(C) A report consisting of the following shall be distributed within 120 days after the close of the fiscal year:

(1) A balance sheet as of the end of the fiscal year;

(2) An operating (income) statement for the fiscal year;

(3) A statement of changes in financial position for the fiscal year;

(4) For any fiscal year in which the gross income to the Association exceeds $75,000, a copy of the review of the annual report prepared in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy shall be included with said annual report.

If the report referred to in this subsection (C) is not prepared by an independent accountant, it shall be accompanied by the certificate of an authorized officer of the Association that the statement was prepared from the books and records of the Association without independent audit or review.

2. In addition to financial statements, the governing body shall annually distribute within 60 days prior to the beginning of the fiscal year a statement of the Association's policies and practices in enforcing its remedies against members for defaults in the payment of regular and special assessments, including the recording and foreclosing of liens against members' subdivision interests.

3. The governing body shall do the following not less frequently than quarterly:

(A) Cause a current reconciliation of the Association's operating accounts to be made and review the same;

(B) Cause a current reconciliation of the Association's reserve account to be made and review the same;

(C) Review the current year's actual reserve revenues and expenses compared to the current year's budget;

(D) Review the most current account statements prepared by the financial institution where the Association has its operating and reserve accounts;

(E) Review an income and expense statement for the Association's operating and reserve accounts.

ARTICLE XVII

PROPERTY SUBJECT TO THIS DECLARATION AND ADDITIONS THERETO

Section 1. The real property which shall be held, used, leased, sold and conveyed subject to this Declaration is the property referred to herein as Phase 1.

Section 2. **(59)** (As revised by the second amendment to the CC&Rs dated January28, 2000) Additional real property may be annexed to Phase I as described in amended Exhibit "A" hereto as subsequent phases. The overall Project is proposed to be constructed in various phases comprising 50 manufactured home lots and 79 site-constructed homes, for a total of 129 residential lots.

Sections 3-7. **(59)**

ARTICLE XVIII

ASSOCIATION RULES

The Association shall have the power to adopt, amend and repeal such rules and regulations as it deems reasonable ("Association Rules"). The Association Rules shall govern such matters in furtherance of the purposes of the Association, as the Board shall deem appropriate in its sole and absolute discretion, provided, however, that the Association Rules may not discriminate among the owners and their tenants and guests and shall not be inconsistent with this Declaration, the Articles or the Bylaws. The Association Rules shall [apply to] operation of the Common Area and facilities owned and controlled by the Association, the recreational amenities, the parking and storage of vehicles and other objects, disposal of waste materials, control of pets, and other activities, which, if not so regulated, might detract from the appearance of the community or offend or cause inconvenience or danger to persons residing or visiting therein, or create a nuisance. The Association shall also have the power to adopt, amend and repeal such Association Rules as it deems reasonable which may include the establishment of a system of fines and penalties and the suspension of voting rights and the right to use the recreational facilities located on the Common Area for the infraction of its published rules and regulations. The affected owner shall have the right to Notice and Hearing prior to suspension of voting rights or imposition of fines. A monetary penalty imposed by the Association as a disciplinary measure is subject to the provisions of Section 6 of Article VII of this Declaration. The Association shall not abridge the Owner's right to his Dwelling Unit except by foreclosure for failure of owner to pay assessments or by a judgment of a court or decision arising out of arbitration. A copy of the Association Rules as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner and a copy shall be posted in a conspicuous place within the Common Area. Upon such mailing or delivery and posting, said Association Rules shall have the same force and effect as if they were set forth in and were part of this Declaration. The Association Rules as adopted, amended or repealed, shall also be available to any first Mortgagee upon written request. In the event of any conflict between any such Association Rules and any other provisions of this Declaration or the Articles or the Bylaws of the Association, the provisions of this Declaration, Articles or Bylaws shall govern to the extent of any such inconsistency.

ARTICLE XIX

ENFORCEMENT OF BONDED OBLIGATION

This article referred to the actions to be taken for the failure to complete the Common Area construction and has been removed to the back of the CC&Rs under number **(60)**

ARTICLE XX

MOBILEHOMES

Section 1. Development. **(61)** (As revised by the second amendment to the CC&Rs dated January 28, 2000) **(61)** Each Owner of a mobilehome on a Lot within the Properties shall abide by the Association's Rules and Regulations and Architectural Standards for the installation and appearance of the mobilehome and accessory buildings. Carports shall not be permitted, unless existing as at the date of this Second Amendment of the Declaration. Two car or more car garages must be constructed to house the Owner's vehicles. Subsequent Phases shall be constructed as site-built or site-constructed homes.

Section 2. Licensing. Each Owner of a Mobilehome on a Lot within the Properties shall be responsible for any registration and/or licensing requirements that may apply under California State laws. Owners of property security interests against Mobilehomes on Lots within the Properties shall be responsible for perfection of said security interest under applicable California State laws.

Section 3. Rules, Regulations and Laws. This Declaration shall incorporate any California jState and/or U.S. Federal laws and amendments thereto as they are adopted regarding mobilehomes and each Mobilehome Owner subject to the covenants, conditions and restrictions under this Declaration shall be subject to said rules, regulations and laws governing mobilehomes as they are adopted, changed, and/or amended.

ARTICLE XXI

SENIOR COMMUNITY

(As revised by the third amendment to the CC&Rs dated September 9, 2008)

The Properties and all the subsequent phases set forth in Amended Exhibit "A" shall be developed as a "Senior Housing Development." Each residential dwelling unit is intended for occupancy by at least one person 55 years of age or older ("Qualifying Resident"), and each other resident must be a "Qualifying Permanent Resident," meaning a person who meets the following requirements;

a) the person was residing with the Qualifying Resident or senior citizen prior to the death, hospitalization, or other prolonged absence of, dissolution of marriage with the Qualifying Resident or senior citizen; [and]
b) the person was 45 years of age or older, or was a spouse, co-habitat, or person providing primary physical or economic support to the Qualifying Resident or senior citizen; and
c) the person has an ownership interest, or is in expectation of an ownership interest in the dwelling unit.

Upon the death or dissolution of marriage, or upon hospitalization, or other prolonged absence of the Qualifying Resident, any qualified permanent resident shall be entitled to continue his/her occupancy of the dwelling unit.

Guests who are less than 45 years of age may temporarily reside in a dwelling unit, provided they do not stay for more than sixty (60) days in any year (a 365 day period).

A dwelling unit may be occupied by a Permitted Health Care Resident, meaning a person hired to provide live-in, long term, or terminal health care to a Qualifying or Qualifying Permanent Resident. The occupancy by the Permitted Health Care Resident shall be for only the period of time the person is actually providing live-in long term, or hospice health care to a Qualifying or Qualifying Permanent Resident for compensation.

(1) DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND RESERVATIONS OF EASEMENTS

This declaration is made on this 20th day of April, 1989, by CSP-WHISPERING PALMS, LTD.

PREAMBLE

A. Grantor is Owner of certain property (Properties in the City of Hemet, County of Riverside, State of California, more particularly described as follows:

Lots 4 through 25, inclusive, 38, 40, 45 through 48, inclusive, 50, 52, 53, 55 through 57, inclusive, 60 through 62, inclusive, 64 through 68 inclusive, and Common Area Lot 69 of Tract #16369-1, as shown on a subdivision map recorded in Book 121 Pages 69 through 72, inclusive, of Maps, in the office of the Riverside County Recorder, State of California, and Lots 4 through 11, inclusive, and Common Area Lot "A" of Tract #23301, as shown on a subdivision map recorded in Book 197, Pages 5 through 8, inclusive, of Maps, in the office of the Riverside County Recorder, State of California.

B. Grantor has deemed it desirable, for the efficient preservation of the values and amenities in the Properties, to create a corporation under the General Nonprofit Mutual Benefit Corporation Laws of the State of California to which be delegated and assigned the powers of owning and maintaining the Common Area as hereinafter defined, and administering and enforcing the covenants and restrictions, and collecting and disbursing the assessments and charges hereinafter created.

C. Grantor will, or has caused, such corporation, the members of which shall be the respective Owners of Lots in the Properties, to be formed for the purpose of exercising such functions.

D. Grantor intends to develop and convey all of the Properties pursuant to a general plan for all of the Properties and subject to certain protective covenants, conditions, restrictions, reservations, easements, equitable servitudes, liens and charges, all running with the Properties as hereinafter set forth.

E. The development of the Properties is proposed to be constructed as a three (3) phase senior citizen residential mobilehome project. The first phase development shall consist of 50 residential lots of Lots 4 through 25, inclusive, 38, 40, 45 through 48, inclusive, 50, 52, 53, 55 through 57, inclusive, 60 through 62 inclusive, and 64 through 68, inclusive, of Tract #16369-1, and Lots 4 through 11, inclusive, of Tract #23301, and Common Area Lot 69 of Tract #16369-1 and Common Area Lot "A" of Tract #23301.

(2) Each residential Lot will be developed with a mobilehome pad.

(3) F. Grantor hereby declares that...

(4) Grantor,

(5) by Grantor,

(6) Additional Common Area might be transferred to the Association in the future, pursuant to the terms of Article XVII. The Common Area located within any future Phase shall be conveyed, lien-free, to the Association prior to the close of escrow for the sale of the first Lot in that Phase of development to the public.

(7) Section 17. (As revised by the 2nd amendment to the CC&Rs filed January 28, 2000) "Grantor" shall mean Arcon Homes, Inc. ("Arcon"), a California Corporation, its successors and/or any person which it shall have assigned any rights hereunder by express written assignment if such successors or assigns should acquire more than one (1) undeveloped Lot for purposes of developing the Properties. The term "Declarant" shall be synonymous with Grantor or Arcon.

(8) Section 24 including Grantor,

(9) Section 29. "Phase" shall mean a stage of the development of the overall project on Tracts #16369-1, #23301 and #16369, consisting of a group of specific Lots.

(10) Section 30. "Mobilehome" shall mean a structure transportable in one or more sections, to be used without a low-profile foundation system, and to be designed and equipped for use as a residential dwelling unit. (Revised by second amendment to the CC&Rs filed January 28, 2000 to include the sentence: Refer to Amended definition set forth in the First Amendment.)

(11) Section 31. "Carport" shall mean and refer to an open-sided structure with a roof, designed for the parking of automobiles. The term "Garage" as used herein shall be synonymous with the term "Carport." (This section was deleted in its entirety by the second amendment to the CC&Rs filed January 28, 2000.)

(12) (b) The right of Grantor and its sales agents, representatives and prospective purchasers, to the non-exclusive use of the Common Area and the facilities thereof, without cost, for access, ingress, egress and use, in order to dispose of the Properties as provided herein, provided, however, that such use shall not unreasonably interfere with the rights of the other Owners as provided herein.

(13) ...and Grantor hereby reserves and covenants for himself and all future Owners within the Properties,...

(14) ...and Grantor hereby reserves and covenants for himself and all future Owners of Lots within the Properties, including annexations thereto,...

(15) Grantor hereby covenants for itself, its successors and assigns, that it will convey to the Association fee simple title to the Common Area, free and clear of any and all encumbrances and liens, subject to reservations, easements, covenants and conditions then of record, including those set forth in this Declaration. Said conveyance shall be made prior to the conveyance of the first Lot to a purchaser from Grantor pursuant to a Final Subdivision Public Report, issued by the California Department of Real Estate, covering the Properties.

(16) Section 1. Classes of Voting Membership. The Association shall have two (2) classes of voting membership as follows:
Class A.

(16A) .. other than Grantor if a Class "B" membership exists, ... Class A.

(16B) Class A

(16C) Grantor shall become a Class "A" Member with regard to Lots owned by Grantor upon conversion of Grantor's Class "B" membership as provided below.

(16D) Class A

(16E) Class B. The Grantor is a Class "B" member and shall be entitled to three (3) votes for each Lot owned. The Class "B" membership shall cease and be irreversibly converted to Class "A" membership on the happening of any of the following events, whichever occurs earliest:

(a) Two years following the date of the original issuance of the most recently issued final public report for a phase of the development by the California Department of Real Estate; or

(b) Four years following the date of the original issuance of the final public report by the California Department of Real Estate for Phase 1 of the development.

The voting rights shall be vested upon the commencement of the assessments against the residential Lots.

Except with respect to action to enforce the obligations of Grantor under any completion bond, membership approval of action to be taken by the Association shall require the vote or written consent of a majority of each class of membership during the time that there are two classes of membership, unless a greater percentage of the voting membership is required. Except with respect to action to enforce the obligations of Grantor under any completion bond, upon conversion of Class B to Class A membership,....

(16F) ...as well as a majority of the total voting power of Class A members other than the Grantor,

(16G) Any requirement in the Articles of Incorporation, Bylaws or Declaration of Restrictions, that the vote of the Grantor shall be excluded in any determination, shall be applicable only if there has been a conversion of Class "B" Members to Class "A" Members, and the same shall be read as requiring a majority of Class "A" Members and a majority of Class "A" members other than the Grantor, unless a greater percentage of voting membership is required.

(17) Class "A" ...

(18) and the Class "A" vote for each Lot shall be exercised, if at all, as a unit.

(19) At all times not less than 20% of the incumbents on the Board of Directors shall have been elected solely by votes of Members other than Grantor.

(19A) other than Grantor...

(20) a lease agreement for laundry room fixtures and equipment of not to exceed five (5) years duration provided that the lessor under the agreement is not an entity in which Grantor has a direct or indirect ownership interest of ten percent (10%) or more;

(21) ...provided that the supplier is not an entity in which the Grantor has a direct or indirect ownership interest of ten percent (10%) or more.

(22) ...provided that the supplier or suppliers are not entities in which the Declarant has a direct or indirect ownership interest of ten percent (10%) or more.

(23) Any agreement for management of the Properties, or contract providing for services by the Grantor, shall be terminable without cause or payment of a termination fee on thirty (30) days' written notice. No contract with the Association negotiated by Grantor shall exceed a term of one (1) year.

(24) ...other than the Grantor....

(25) ...other than the Grantor

(26) ...other than Grantor

(27) Original language: Grantor, (replaced by "Each owner")

(28) ...other than Grantor

(29) From and after January 1st of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above twenty (20%) percent by the vote or written assent of fifty-one (51%) percent of each class of members, provided, however, that following conversion of the Class B membership to Class A membership, any such increase shall have the vote or written assent of (i) fifty-one (51%) percent of the total voting power of the Association and (ii) fifty-one (51%) percent of the total voting power of members other than Grantor.

(30) ..."each class of members, or after the conversion of the Class B membership to Class A membership, without the vote or written assent of (I) fifty-one (51%) of the total voting power of the Association and (ii) fifty-one (51%) of the total voting power of the members other than the Grantor, " removed and substituted with "the total voting power of the association"

(31) ...as subsequent phases are annexed.

(32) The annual Common Assessments provided for herein shall commence as to all Lots of Phase 1 on the first day of the month following the close of escrow for the conveyance of the first improved Lot within the Phase 1 development of the Properties pursuant to a Final Subdivision Public Report. As subsequent Lots are added to the Properties by annexation, the annual Common Assessment amount will change to include the new Owners of the subsequently annexed Lots in the development. The Annual Common Assessment for the annexed Lots shall commence on the first day of the month following the conveyance of the first Lot in the subsequent Phases. The annual Common Assessment shall continue to be fixed at a uniform rate for all Lot Owners as the subsequent phases are added and developed under the multi-phase plan.

(33) This section was amended and replaced by new language on 10/10/08. Section 1. Members of Committee. The Architectural Review Committee, sometimes referred to in this Declaration as the "ARC", shall consist of three (3) members. The initial members of the ARC shall be representatives of Grantor. Subject to the following provisions, Grantor shall have the right and power at all times to appoint and remove a majority of the members of the ARC or to fill any vacancy of such majority until the "turnover date" which shall be the date on which either: (1) ninety (90%) percent of the Lots subject to this Declaration have been sold and the deeds recorded ("close of escrow"), or (2) five (5) years following the date of issuance of the Final Subdivision Public Report for the Properties, whichever occurs earlier. Commencing one (1) year from the date of the close of escrow for the sale of the first Lot in the Properties to a purchaser (other than a developer) from Grantor, the Board shall have the power to appoint one (1) member to the ARC, until the turnover date. Thereafter, the Board shall have the power to appoint and remove all of the members of the ARC. Persons appointed to the ARC by the Board shall be from the membership of the Association, but persons appointed to the ARC by Grantor need not be members of the Association. The ARC shall have the right and duty to adopt and promulgate reasonable architectural and landscaping standards ("Architectural Standards") against which to examine any request made pursuant to this Article. The ARC may designate and appoint a representative who is a licensed architect and a majority of the members of said ARC may, from time to time, remove or replace such representative. The designated representative of the ARC may be, but need not be, a member of the ARC. Such representative must be consulted prior to disapproval of any plans by the ARC, but the decision of the ARC with respect to the approval or disapproval thereof shall be final.

(34) ...of an improvement in the Properties, including the installation of Mobilehomes,

(35) "mobilehome " exchanged to "dwelling unit"

(36) The amendment to Article VIII, Section 1, dated 10/10/08, changes the number required for a quorum from 2 to 5.

(37) ...Grantor

(38) Section 9. Initial Construction. The provisions of this Article VIII shall not apply to the initial construction and installation by Grantor of any building structures, mobilehomes, or other improvements on the Properties, and neither ARC, the Board nor any committee appointed by the Board shall have any authority or right to approve or disapprove thereof. Grantor is undertaking the work of construction and installation of residential Lots with Mobilehomes, Common Area Lots and incidental improvements thereon under a multi-phase development plan. The completion of that work and the sale, rental or other disposal of said residential Lots is essential to the establishment and welfare of the planned development as a senior citizen residential community. No owner nor the Association shall do anything to interfere with Grantor's undertaking as stated more fully in Article XIV of this Declaration. The initial construction and installation of any building structures, mobilehomes, or other improvements on the Properties shall be subject to the approval of Grantor.

(39) ....subject to the exception of Grantor in Article XIV hereof

(40) ...except Grantor, its successors or assigns, may use any portion of the Properties for a model home site, and display and sales office during the construction and sales period in accordance with Article II, Section 1(b), and Article XIV of this Declaration.

(41) ...or (b) signs, regardless of size, used by the Grantor, its successors or assigns, to advertise the Properties during construction and sale period.

(42) ...carport...

(43) Article X, Section 8. View Obstructions. Each owner by accepting a deed to a Lot hereby acknowledges that any construction or installation by Grantor may impair the view of such owner and hereby consents to such impairment.

(44) This section was amended and replaced by new language on 1/28/2000. Article , Section 11: Outside Installations. No radio or shortwave station nor exterior radio or "C.B." antennae of any kind shall be operated from any Lot or Dwelling Unit unless approved by the ARC and subject to the conditions, regulations and ordinances of the applicable County and/or City. No fence or wall shall be erected, altered or maintained on any Lot in the Properties, except with prior approval of the ARC and applicable County/City governmental body.

(45) ...from Grantor to a purchaser,...

(46) ARTICLE XIV, GRANTOR EXEMPTION

Grantor or its successors or assigns will undertake the work of constructing streets and utility systems within the Properties and developing a subdivision consisting of real property Lots with Dwelling Units thereon within the Properties. The completion of that work and the sale or other disposal of the Lots is essential to the establishment and welfare of the Properties as a first-class residential community. As used in this section and its subparagraphs, the words "its successors and assigns" specifically do not include purchasers of individual Lots. In order that said work may be completed and the Properties be established as a residential community as rapidly as possible, no Owner nor Association shall do anything to interfere with, and nothing in this Declaration shall be understood or construed to:

(a) Prevent Grantor, its successors or assigns, or its or their contractors or subcontractors, from doing on any Lot owned by them whatever they determine to be necessary or advisable in connection with the completion of said work, including without limitation the alteration of construction plans and designs as Grantor deems advisable in the course of development; or

(b) Prevent Grantor, its successors or assigns, or its or their representatives, from constructing and maintaining on the Common Area or any Lot, of portion thereof, owned and controlled by Grantor, or its successors or assigns, or its or their contractors or subcontractors, such improvements and/or structures as may reasonably be necessary for the conduct of its or their business of completing said work and establishing the Properties as a residential community and disposing of the same in Lots by sale, lease or otherwise;

(Grantor will not unreasonably interfere with the use of the Common Area by the Owners of the Lots within the Properties); or

© Prevent Grantor, its successors or assigns, or its or their contractors or subcontractors, from conducting on any Lot, or any portion thereof, owned or controlled by Grantor, or its successors or assigns, its or their business of developing, subdividing, grading and constructing Lots and improvements as a residential community and disposing of the Lots by sale, lease or otherwise; or

(d) Prevent Grantor, its successors or assigns, or its or their contractors or subcontractors, from maintaining such sign or signs on or near the Common Area or any Lot owned or controlled by any of them as may be necessary in connection with the sale, lease or other marketing of Lots in the Properties.

(e) Prevent Grantor from the use of the common streets, parking, and ingress and egress from the Common Area for the purpose of completing said work, and disposing of the Lots by sale, lease or otherwise.

The right of Grantor provided in sub-paragraph (a) through (e) may be exercised during the period of time commencing when the Lots are first sold or offered for sale and ending when all Lots in the overall project are sold and conveyed by Grantor to separate Owners, or three (3) years from the original issuance of the most recently issued final subdivision public report for a phase of the development, whichever first occurs.

(47) ...including Grantor,

(48) Before the issuance of a Final Public Report, this Declaration and any amendments to it may be amended in any respect or revoked by the execution by Grantor and any Mortgagee of record of an instrument amending or revoking the Declaration. The amending or revoking instrument shall make appropriate reference to this Declaration and its amendments and shall be acknowledged and recorded in the office of the Riverside County Recorder.

(49) ...of each class of ....

(50) When the two-class structure is no longer in effect because of conversion of one class to another, then any amendment or revocation may be enacted by seventy-five (75%) percent of the voting rights of the Association and at least a bare majority of the voting rights of Class A Members other than Grantor.

(51) No amendment which would materially change the rights of an Owner is valid without the prior written consent of the California Real Estate Commissioner during the period of time in which the Grantor or his successor-in-interest holds or controls as much as one-fourth (1/4) of the votes of the Association that may be cast to effect such change.

(52) Grantor expressly reserves for the benefit of all of the real property in the Properties, and the...

(53) ...Grantor, its successors, purchasers and ...

(54) Grantor and ...

(55) Grantor expressly reserves for the benefit of......of a Lot in the Properties (including the Owners of Lots in the real property to be annexed pursuant to Article XVII)...

(56) Article XV, Section 10. No Representation or Warranties. No representations or warranties of any kind, expressed or implied, have been given or made by Grantor or its agents or employees in connection with the Properties, or any improvement thereon, its physical condition, zoning, compliance with applicable laws, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof as a planned development, except as specifically and expressly set forth in this Declaration and except as may be filed by Grantor from time to time with the California Department of Real Estate or with any other governmental authority.

(57) Article XV, Section 12 FHA/VA Approval. As long as there is a Class B membership, and provided that FHA or VA are insuring or guaranteeing loans or have issued commitments to insure or guarantee loans on a portion of the Properties, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: dedication of any portion of the Common Area, and amendment or termination of this Declaration.

(58) A balance sheet as of an accounting date which is the last day of the month closest in time to six months from the date of closing of the first sale of an interest in the subdivision; and an operating statement for the period from the date of the first closing to the said accounting date, shall be distributed within 60 days after the accounting date. This operating statement shall include a schedule of assessments received and receivable identified by the number of subdivision interest and the name of the entity assessed.

(59) Article XVII, section 2. Additional real property may be annexed to Phase 1 and become subject to this Declaration by and of the methods set forth hereinafter. The development of the overall project is proposed to be constructed in three (3) phases and contain a total of 129 residential lots.

Section 3. Grantor intends to develop or cause to be developed the additional real property as described in Exhibit "A" attached hereto and incorporated herein by this reference. Grantor shall have the right to annex such additional real property to Phase 1 and to bring any such real property within the general plan and scheme of this Declaration without the approval of the Association, its Board of Directors or members; provided that said right of Grantor is exercised prior to the third anniversary of the original issuance of the most recently issued public report for a phase of the development and said proposed phased development has been approved by the California Department of Real Estate. A written commitment by the Grantor shall be made, if applicable, obligating the Grantor to pay to the Association, concurrently with the closing of escrow for the first sale of a subdivision interest in an annexed phase, appropriate amounts for reserves for replacement or deferred maintenance of common area improvement in the annexed phase necessitated by or arising out of the use and occupancy of the Dwelling Units under a rental program conducted by the Grantor which has been in effect for a period of at least one year as of the date of closing of the escrow for the first sale of a Dwelling Unit in the annexed phase.

Section 4. In addition to the provisions specified for annexation in Section 3 above, additional property may be annexed to Phase 1 and brought within the general plan and scheme of this Declaration upon the approval by written consent of two-thirds (2/3) of the membership and two-thirds (2/3) of the members other than Grantor who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. The additions authorized under Sections 3 and 4 hereof shall be made by filing of record a supplemental declaration, or other similar instrument, with respect to the additional real property which shall be executed by Grantor and shall extend the general plan and scheme of this Declaration to such additional real property. The filing of record of said supplemental declaration shall constitute and effectuate the annexation of the additional real property described therein, and thereupon said additional real property shall become subject to this Declaration and encompassed within the general plan and scheme of the covenants, conditions and restrictions contained therein, and become subject to assessments by the Association and to the functions, powers and jurisdiction of the Association, and the Owners of the additional Lots on said additional real property shall automatically become Members of the Association.

Section 6. Such supplemental declaration contemplated above may contain such complementary additions and modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added real property, or as Grantor may deem appropriate in the development of such real property, and as are not inconsistent with the general plan and scheme of this Declaration. In no event, however, shall such supplemental declaration revoke, modify or add to the covenants, conditions and restrictions established by this Declaration as the same pertains to Phase 1, except as otherwise hereinafter provided.

Section 7. Grantor may delete all Lots of an individual phase of the Properties from the coverage of the Declaration and the jurisdiction of the Association so long as Grantor is the Owner of all such Lots of such phase which has previously been annexed to the Properties and a Notice of Deannexation is recorded in the Office of the Riverside County Recorder.

(60) Article XIX ENFORCEMENT OF BONDED OBLIGATION

In the event that the improvements to the Common Area of the Properties have not been completed prior to the issuance of a Final Subdivision Public Report covering the Properties by the Department of Real Estate of the State of California, and the Association is obligee under a bond or other arrangement (hereinafter the "Bond") to secure performance of the commitment of Declarant to complete such improvements, the following provisions shall apply:

(a) 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 improvements for which a Notice of Completion has not been filed within sixty (60) days after the completion date specified for such improvement 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 such extension.

(b) In the event that the Board determines not to initiate action to enforce the obligations under the Bond, or in the event the Board fails to consider and vote on such question as provided above, the Board shall call a special meeting of the Members for the purpose of voting to override such decision or such failure to act by the Board. Such meeting shall be called according to the provisions of the Bylaws dealing with meetings of the Members, but in any event such meeting shall be held not less than thirty-five (35) days nor more that forty-five (45) days after receipt by the Board of a petition for such meeting, signed by Members representing five percent (5%) or more of the total voting power of the Association.

(c) The only Members entitled to vote at such meeting shall be the Owners other than Grantor. A vote at such meeting of a majority of the voting power if such Members, other than Grantor, to take action to enforce the obligations under the Bond shall be deemed to be the decision of the Association and the Board shall thereafter implement such decision by initiating and pursuing appropriate action in the name of the Association.

(61) ARTICLE XX. MOBILEHOMES

(Original language) Section 1. Development. Grantor intends to develop all of the Properties as a senior citizen mobilehome development consisting of residential real property Lots. Grantor intends to improve said residential real property Lots with Mobilehomes without low-profile foundations and Carports. Each Owner of a mobilehome on a Lot within the Properties shall abide by the Association's Rules and Regulations and Architectural Standards regarding the installation and appearance of the Owner's Mobilehome, Carport and any accessory building for storage area.

(Second Amendment language) Section 1. Development. Grantor intends to develop and or sell the thirteen lots owned by Arcon Homes, Inc. of Phase 1 as a senior citizen development for mobilehomes or manufactured homes as set forth in this Declaration and Amendments thereto.