

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

Notice

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

Restrictive Covenant Modification

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

To Record a Restrictive Covenant Modification, you must:

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

This document requires the following:

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

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

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

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

Recording Requested By

When recorded mail document to

Above Space for Recorder's Use Only

RESTRICTIVE COVENANT MODIFICATION

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

The following referenced document contains a restrictive covenant based on race, color, religion, sex, familial status, marital status, disability, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry that violates state and federal fair housing laws and that restriction is void. Pursuant to Section 12956.2 of the Government Code, this document is being recorded solely for the purpose of eliminating that restrictive

covenant as shown on page(s) _____ of the document recorded on _____ (date)

In book _____ and page _____, or Document No. _____ of the Official records of the County of _____, State of California.

The document referenced above was originally indexed in the following manner _____

_____ and this document shall be indexed in like manner pursuant to Section 12956.2 (e).

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

Dated _____



Printed Name(s)

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

STATE OF CALIFORNIA }
COUNTY OF _____ }

On _____ before me, _____, a Notary Public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

RECORDED AT THE REQUEST OF AND
WHEN RECORDED, RETURN TO:

JEFFREY G. WAGNER
Law Office of Jeffrey G. Wagner
1777 N. California Blvd., Suite 200
Walnut Creek, CA 94596-4150

Recorded in Official Records,
Solano County
Doc#: 200600043297
4/06/2006 2:50 PM

**PORTOFINO
DECLARATION
OF
RESTRICTIONS (CC&Rs)**

If this document contains any restriction based on race, color, religion, sex, familial status, marital status, disability, national origin, or ancestry, that restriction violates state and federal fair housing laws and is void and may be removed pursuant to Section 12956.1 of the Government Code. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.

This Declaration contains alternative dispute resolution procedures. These procedures bind subsequent purchasers as well as the initial purchasers. See the Home Builders Limited Warranty and the Alternative Dispute Resolution provision attached as Exhibits B and C to this Declaration. You are advised to read these procedures carefully and consult with legal counsel if you have any questions.

PORTOFINO
DECLARATION
OF
RESTRICTIONS (CC&Rs)

TABLE OF CONTENTS

ARTICLE 1 - Definitions	
1.1	Architectural Committee or Committee 1
1.2	Articles 1
1.3	Association 1
1.4	Attached Residences 1
1.5	Board 1
1.6	Bylaws 2
1.7	Common Area 2
1.8	Courtyards 2
1.9	Courtyard Lots 2
1.10	Declarant 2
1.11	Declaration 2
1.12	Development 2
1.13	Governing Documents 2
1.14	Improvements 2
1.15	Lot or Residential Lot 2
1.16	Map 2
1.17	Member 2
1.18	Mortgage 2
1.19	Mortgagee 2
1.20	Owner 2
1.21	Person 2
1.22	Property 2
1.23	Rules 2
 ARTICLE 2 - Property Rights and Easements	
2.1	Type of Development 3
2.2	Property Rights 3
2.3	Boundary Line Easements 3
2.4	Drainage Easement 3
2.5	Encroachment Easement 3
2.6	Maintenance and Repair Easement 3
2.7	Other Easements 4
2.8	Appurtenant Easements 4
2.9	Reservation of Rights 4
2.10	Authority Over Common Area 4
2.11	Delegation of Use Rights 5
2.12	Conveyance of Common Area 5
2.13	Construction Activity 5
2.14	Notice of Airport in Vicinity 5
2.15	Noise Transmissions 5
2.16	Church Easement Rights (Parcel E) 6
 ARTICLE 3 - Restrictions	
3.1	Residential Use 6

3.2	Renting	6
3.3	Nuisance	6
3.4	Vehicle and Parking Restrictions	6
3.5	Animals	7
3.6	Television or Radio Equipment	7
3.7	Signs	7
3.8	Clothesline	8
3.9	Window Coverings	8
3.10	Subdivision	8
3.11	Automobile Maintenance	8
3.12	Alterations, Modifications or Additions	8
3.13	Compliance with Law	8
3.14	Drilling	8
3.15	Sound Transmissions	8
3.16	Sports Apparatus	8
ARTICLE 4 - Maintenance and Repair Obligations		
4.1	Owner's Maintenance Obligations	8
4.2	Owner's Landscaping Obligations	9
4.3	Attached Residences Shared Maintenance Obligations	9
4.4	Good Neighbor Fences	11
4.5	Mailbox Maintenance	11
4.6	Dispute Resolution	11
4.7	Association's Maintenance Responsibilities	11
4.8	Inspection and Maintenance Guidelines and Schedules	12
4.9	Trash Removal	12
4.10	Cooperation and Access	12
4.11	Reimbursement and Indemnification	12
ARTICLE 5 - The Association		
5.1	Formation of the Association	12
5.2	Governing Body	13
5.3	Membership	13
5.4	Membership Classes and Voting Rights	13
5.5	Joint Ownership Votes	14
5.6	Powers of the Association	14
5.7	Duties of the Association	16
5.8	Taxes and Assessments	16
5.9	Utility Service to the Common Area	16
5.10	Reporting and Notice Requirements	16
5.11	Enforcement of Bonded Obligations	19
5.12	Limitations on Authority of the Board	19
5.13	Notice of Significant Legal Proceedings	20
5.14	Civil Code Sections 896 and 897 Claims	21
5.15	Access to Association Records	21
ARTICLE 6 - Assessments		
6.1	Obligations to Pay Assessments	21
6.2	Annual Regular Assessment	22
6.3	Reserves, Reserve Accounts and Reserves Study	22
6.4	Special Assessments	23
6.5	Reimbursement Assessments	23
6.6	Assessment Increase Restrictions	24
6.7	Commencement of Regular Assessments	24
6.8	Due Dates of Assessments	24
6.9	Allocation of Regular and Special Assessments	25
6.10	Enforcement of Delinquent Assessments	25
6.11	Assessment Exemption	29

6.12	Estoppel Certificate	29
6.13	Restrictions on Association Funds	29
ARTICLE 7 - Architectural Review		
7.1	Architectural Committee	30
7.2	Approval Requirements	30
7.3	Architectural Rules	31
7.4	Basis for Approval	32
7.5	Architectural Committee's Decision	33
7.6	Completion of Work	33
7.7	Non-liability	33
7.8	Enforcement	34
7.9	Board's Authority	34
7.10	Governmental Approval	34
7.11	Declarant Exemption	34
ARTICLE 8 - Insurance		
8.1	Liability Insurance	34
8.2	Association Property Insurance	34
8.3	Cancellation	34
8.4	Board's Authority to Revise Insurance Coverage	35
8.5	Periodic Insurance Review	35
8.6	Insurance Trustee	35
8.7	Individual Property Insurance Policies	35
8.8	Other Insurance	36
ARTICLE 9 - Damage, Destruction or Condemnation		
9.1	Repair or Reconstruction	36
9.2	Reconstruction Contract	36
9.3	Minor Repair and Reconstruction and Deductibles	37
9.4	Completion of Repair or Reconstruction	37
9.5	Election Not to Rebuild	37
9.6	Condemnation	37
ARTICLE 10 - Rights of Mortgagees		
10.1	Lender Definitions	37
10.2	Encumbrance	37
10.3	Rights of Institutional Mortgagees	38
10.4	Subordination	38
10.5	Breaches	38
ARTICLE 11 - Amendments		
11.1	Amendment Before Close of First Sale	38
11.2	Amendment After Close of First Sale	38
11.3	Corrections	39
ARTICLE 12 - Declarant Disputes		
ARTICLE 13 - Miscellaneous Provisions		
13.1	Headings	39
13.2	Severability	39
13.3	Cumulative Remedies	39
13.4	Discrimination	39
13.5	Access to Books	40
13.6	Notification of Sale	40
13.7	Reservation or Grant of Easements	40
13.8	Incorporation of Exhibits	40
13.9	Enforcement Rights and Remedies	40

13.10	Term	40
13.11	Reserved Rights of Declarant	40
13.12	Assignment by Declarant	41
13.13	Attorneys' Fees	41
13.14	Notices	41
13.15	No Enforcement Waiver	41
ARTICLE 14 - Annexation		
14.1	Automatic Annexation	41
14.2	Annexation by Approval	42
EXHIBIT A - Property That May Be Annexed (§14.1)		
EXHIBIT B - Home Builder's Limited Warranty (Article 12)		
EXHIBIT C - Alternative Dispute Resolution Provisions (Article 12)		

PORTOFINO

DECLARATION OF RESTRICTIONS (CC&Rs)

THIS DECLARATION OF RESTRICTIONS (CC&Rs) is executed by STANDARD PACIFIC CORP., a Delaware corporation (the "Declarant") with reference to the following facts:

- A. Declarant is constructing a residential development in multiple phases located on certain real property in Vacaville, California. The first phase consists of Lots 1 through 24, 49 through 56, 64 through 79 and Parcels A and E, more particularly described on the subdivision map entitled "Final Map of Portofino" filed in the records of Solano County, California, on May 24, 2005, in Book 81 of Maps at page 49.
- B. Declarant desires to impose certain restrictions on the lots in the development that will benefit and bind each lot, and each owner and successive owner thereto, as covenants running with the land and equitable servitudes, to grant and describe certain easements that will be appurtenant to the lots and/or in favor of the homeowners association, and to establish a planned development within the meaning of Civil Code section 1351(k). PFVV, L.P., a California limited partnership, the owner of the property is Phase 1, by its signature hereto consents to the recordation of this Declaration, and acknowledges and agrees that the property in Phase 1 is subject to the covenants, restrictions, rights, duties, benefits or burdens set forth in this Declaration.
- C. The covenants, restrictions, rights, duties, benefits and burdens described herein will benefit and bind the lots in Phase 1 on the recordation of this Declaration and each subsequent phase on the recordation of a declaration of annexation annexing that phase into the development.

DECLARANT DECLARES AS FOLLOWS:

ARTICLE 1 - Definitions

Unless the context indicates otherwise, the following terms shall have the following definitions:

- 1.1 Architectural Committee or Committee. The Architectural Committee described in **Section 7.1.**
- 1.2 Articles. The Articles of Incorporation of the Association and any amendments thereto.
- 1.3 Association. Portofino of Vacaville Homeowners Association, a California nonprofit mutual benefit corporation.
- 1.4 Attached Residences. The residences situated on or about the common boundary line with an adjoining Lot that share certain improvements as described in **Section 4.3.**
- 1.5 Board. The Board of Directors of the Association.

- 1.6 Bylaws. The Bylaws of the Association and any amendments thereto.
- 1.7 Common Area. Parcels A and E as shown on the Map and any additional common area parcels that may be subsequently annexed into the Development as described in **Article 14** and any improvements thereon.
- 1.8 Courtyards. Barbera Court, Bianco Court, Bonarda Court, Carema Court, Dolcetto Court, Galatina Court, Gavi Court, Moscato Court, Primivito Court and Refosco Court shown on the Map.
- 1.9 Courtyard Lots. The Lots that use all or any portion of the Courtyards for ingress and egress to the residences and garages situated on the Lots.
- 1.10 Declarant. Standard Pacific Corp., a Delaware corporation, or any successor or assign that assumes in writing all or a portion of the rights and duties of the Declarant hereunder. There may be more than one Declarant.
- 1.11 Declaration. This Declaration of Restrictions (CC&Rs) and any amendments or corrections thereto.
- 1.12 Development. The residential development that is constructed on the Property and made subject to this Declaration, including the Residential Lots, the Common Area, and all Improvements thereon.
- 1.13 Governing Documents. This Declaration, the Articles of Incorporation, the Bylaws and the Rules, provided that the claims procedures attached as Exhibits B and C are not a part of the Governing Documents.
- 1.14 Improvements. Any fixtures affixed to any Lot or Common Area in the Development within the meaning of Civil Code section 660.
- 1.15 Lot or Residential Lot. Lots 1 through 24, 49 through 56 and 64 through 79 as shown on the Map and all Improvements thereon, and any additional residential lots that may be subsequently annexed into the Development as described in **Article 14** and any improvements thereon. Lots include the Lots on which the Attached Residences are situated and the Courtyard Lots.
- 1.16 Map. The subdivision map entitled "Final Map of Portofino" filed for record in Solano County, California, on May 24, 2005, in Book 81 of Maps at page 49, including any subsequently-recorded amended final maps, parcel maps, certificates of correction, lot-line adjustments, and/or records of survey.
- 1.17 Member. A member of the Association.
- 1.18 Mortgage. A recorded mortgage or deed of trust against one or more Lots in the Development.
- 1.19 Mortgagee. A mortgagee under a Mortgage or a beneficiary under a deed of trust recorded against a Lot in the Development.
- 1.20 Owner. The owner or owners of the fee (perpetual) estate of a Lot in the Development.
- 1.21 Person. Any natural person, partnership, trust, corporation, limited liability company, or other legal entity.
- 1.22 Property. The land and Improvements shown on the Map.
- 1.23 Rules. Rules or regulations adopted by the Board from time to time pursuant to the authority of **Section 5.6.2**.

ARTICLE 2 - Property Rights and Easements

2.1 Type of Development. This Development is a planned development within the meaning of Civil Code section 1351(k). Phase 1 consists of the Common Area and 48 Residential Lots. If all the subsequent phases are annexed into the Development as described in **Article 14**, the Development may consist of 178 Residential Lots and all Improvements thereon. Declarant has no obligation to annex any subsequent phase into the Development.

2.2 Property Rights. Each Owner owns a fee (perpetual) estate in a Residential Lot and is a Member of the Association. The Association owns the fee (perpetual) estate in the Common Area.

2.3 Boundary Line Easements. As a part of the original construction of the Development, Declarant has constructed or will construct certain residential Improvements on or within three feet of the boundary line of an adjoining Lot. Each Lot on which such Improvements are constructed as the dominant tenement has an easement over the adjoining Lot as the servient tenement for purposes of maintaining, repairing and replacing any encroachments (such as roof overhangs) into the servient tenement and for purposes of access to that portion of the servient tenement as may be reasonably necessary to maintain (including repainting), repair or replace any portion of any Improvement on the dominant tenement that is located on or within three feet of the common boundary line. Prior to entering the servient tenement for purposes of maintenance, repair or replacement, the Owner or occupant of the dominant tenement shall provide the Owner or occupant of the servient tenement with at least three days' prior notice except in the event of an emergency.

2.4 Drainage Easement. Each Lot and the Common Area as the servient tenement are subject to an easement in favor of each other Lot and the Common Area as the dominant tenement for: (i) the retention, maintenance, repair or replacement of any storm drainage system installed on the servient tenement as a part of the original construction of the Development; and (ii) the flow of surface and subsurface waters through and over any drainage system and/or drainage patterns established as a part of the original construction of the Development. Unless maintained by the Association, each Owner shall maintain and repair that portion of the drainage system located on the Owner's Lot. Each Owner shall at all times keep the drainage system and any intake drains, catch basins or area basins free and clear of debris at all times, and no Owner shall take any action that would in any manner interfere with the operation of the system. No Owner shall alter the grading on any Residential Lot without the prior consent of the Architectural Committee.

Declarant may have installed one or more "sub-drains" beneath the surface of a Lot. The sub-drains and all appurtenant improvements constructed or installed by Declarant, if any, provide for subterranean drainage of water from and to various portions of the Development. To ensure adequate drainage within the Development, it is essential that the sub-drains, if any, not be modified, removed or blocked without having first made alternative drainage arrangements. No Owner may alter, modify, remove or replace any sub-drains located on the Owner's Lot without receiving prior written approval from the Architectural Committee and applicable local government agency.

2.5 Encroachment Easement. Each Lot and the Common Area as the dominant tenement has an easement over any adjoining Lot or Common Area as the servient tenement for the purpose of accommodating any encroachment of roof overhangs, windows, or other residential structural Improvements resulting from the original construction of the Improvements, settlement or shifting of structures, minor original construction changes during the course of construction, and any encroachment easements granted in accordance with **Section 2.10**. The extent of the encroachment easement shall be the location of the encroaching structure as originally constructed by Declarant. If a structure on any Lot is partially or totally destroyed, the structure may be repaired or rebuilt in accordance with the original plans, including the replacement of any encroaching Improvement.

2.6 Maintenance and Repair Easement. Each Lot as the servient tenement is subject to an easement in favor of each other Lot as the dominant tenement for purposes of providing the agents of the Association such access as may be necessary to perform the Association's maintenance and repair duties as described in **Section 4.7**, including maintenance and repair of the Courtyards.

2.7 Other Easements. Each Lot and the Common Area are subject to such other easement(s), rights-of-way, or dedications as may be granted or reserved on the Map, any deed to the Lot or Common Area, or any other appropriate public record.

2.8 Appurtenant Easements. Each easement described herein is an easement that is appurtenant to the dominant tenement, and any transfer of the dominant tenement automatically transfers the easement appurtenant thereto regardless of whether the instrument of transfer describes the easement.

2.9 Reservation of Rights. Notwithstanding any property rights, including easements, granted or reserved herein, each Lot and the Common Area, as the case may be, are subject to each of the following:

(i) the right of Declarant or its agents to enter on any portion of the Development to construct the Improvements that Declarant intends to construct on the Property, to advertise and sell Lots in the Development, to make repairs, and to correct any construction problems thereon, provided that such entry does not unreasonably interfere with the use or occupancy of any occupied Lot unless authorized by its Owner, which authorization shall not be unreasonably withheld;

(ii) the right of the Association's agents to enter any Lot to cure any violation or breach of this Declaration or the Bylaws or the Rules, provided that at least 30 days' prior written notice of such violation or breach (except in the cases of emergency) has been given to the Owner and provided that within the 30-day period such Owner has not acted to cure such violation or breach;

(iii) the right of the Association's agents to enter any Lot to perform its obligations and duties under this Declaration, including the obligations and the duties with respect to maintenance or repair of any Improvement or landscaping located on the Lot;

(iv) the rights reserved in **Sections 2.10, 2.12, and 13.11**;

(v) the right of the Association to adopt and enforce Rules as described in **Section 5.6**;
and

(vi) the right of the Association to suspend an Owner's right to use any recreational facilities as described in **Section 5.6**; limit the number of guests to use the Common Area and any Improvements therein; and assign, rent, license or otherwise designate and control the use of any recreational facilities located on the Common Area.

2.10 Authority Over Common Area. The Board or Declarant (as long as Declarant owns 25% or more of the Lots in the Development) shall have the power and the right in the name of the Association and all of the Owners as their attorney-in-fact, to grant, convey or otherwise transfer to any Owner or any other Person fee title, easements, leasehold estates, exclusive use easements or rights, licenses, lot-line adjustments, rights-of-way and/or dedications in, on, over or under the Common Area or other property, in order to: (i) construct, erect, operate, maintain or replace lines, cables, wires, conduits or other devices for electricity, cable television, internet services, fiber optics, telecommunication equipment, power, telephone and other purposes, public sewers, storm water drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes and any similar public or quasi-public Improvements or facilities; (ii) accommodate any encroachment that in the sole discretion of the Board or Declarant does not unreasonably interfere with the use and enjoyment of the Common Area; or (iii) accomplish any other purpose that in the sole discretion of the Board or Declarant is in the interest of the Association and its Members and does not unreasonably interfere with the use and enjoyment of the Common Area. Each Owner in accepting a deed to a Lot expressly consents to such action and authorizes and appoints the Association and Declarant (as long as Declarant owns 25% or more of the Lots in the Development) as attorney-in-fact of such Owner to execute and deliver all documents and interests to accomplish the action, including, but not limited to, grant deeds, easements, subdivision maps, and lot-line adjustments. Notwithstanding anything herein to the contrary, in no event shall the Board or Declarant: (i) take any action authorized hereunder that would permanently and unreasonably interfere with the use, occupancy and enjoyment by any Owner of his or her Lot without the prior written consent of that Owner; or (ii) grant exclusive use of any portion of the Common Area to any Owner without the affirmative vote of a majority of the Members present in person or by proxy at a duly held meeting, unless Member approval is not required as described in Civil Code section 1363.07. If Member approval is

required, the Board in placing the measure before the Members shall describe whether the Association will receive a monetary consideration for the grant and whether the Association or the transferee is responsible for providing insurance coverage for the exclusive use Common Area and shall comply with the secret balloting requirements of Civil Code section 1363.03(b). Furthermore, the conveyance of fee title to any portion of the Common Area as authorized in this **Section 2.10** (other than conveyances made as a part of lot-line adjustments) shall require the consent of a majority of the total voting power of the Association other than Declarant and such consent of the Mortgagees as may be required by **Article 10**.

2.11 Delegation of Use Rights. An Owner's family members and guests and any such other Persons as may be permitted by the Rules may use and enjoy any Common Area Improvements, including any recreational facilities. All such use shall be subject to restrictions contained in this Declaration and the Rules. If an Owner has rented his or her Lot, the Owner, members of the Owner's family and the Owner's guest shall not be entitled to use any Common Area Improvements, including the recreational facilities other than such use as is directly related to the Owner's rights and duties as a landlord. Such rights may be enjoyed by the tenant or the tenant's family members and guests.

Any Owner who rents his or her Lot must comply with the requirements of **Section 3.2**.

2.12 Conveyance of Common Area. The Common Area in a phase shall be conveyed to the Association on or before the date the Declarant first conveys title to a Lot in that phase. The Common Area as the servient tenement is subject to the rights reserved in **Section 2.9** and to an easement in favor of each Lot as the dominant tenement for ingress and egress over the private streets and walkways situated on the servient tenement, for support from any Common Area land adjacent to any Improvements on any Lot, and for access to and use of (including the right to install, maintain, repair or replace) any utility lines, cables, wires, pipes, meters or other equipment installed within, on or over the servient tenement in order to provide utility or related service to the dominant tenement, including water, electricity, telephone, gas, cable television, fiber optic cable, and sanitary sewer or storm drainage lines and equipment, and for access to and use of the Common Area by Declarant and its subcontractors and agents to construct, maintain and sell the Lots. The rights retained by Declarant and its subcontractors and agents include the right to restrict access to any portion of the Common Area that is undergoing construction or development activity for safety or other reasons by the construction of fences or other barriers, or by the adoption of such other measures that restrict access to authorized personnel only, and the right to use portions of the Common Area as a staging or storage areas for materials and equipment to be used in connection with the construction of Improvements within the Development and to restrict access thereto by means of a fence or otherwise. The Board may adopt Rules regulating the use of the Common Area provided such Rules do not interfere with the exercise of the foregoing easement rights and are consistent with the restrictions contained in this Declaration.

2.13 Construction Activity. Each Owner acknowledges that: (i) the construction of the Development may occur over an extended period of time; (ii) the quiet use and enjoyment of the Owner's Lot may be disturbed as a result of the noise, dust, vibrations and other effects of construction activities; and (iii) the disturbance may continue until the completion of the construction of the Development.

2.14 Notice of Airport in Vicinity. This property is presently located in the vicinity of an airport, within what is known as an airport influence area. For that reason, the property may be subject to some of the annoyances or inconveniences associated with proximity to airport operations (for example: noise, vibrations or odors). Individual sensitivities to these annoyances can vary from person to person. You may wish to consider what airport annoyances, if any, are associated with the property before you complete your purchase and determine whether they are acceptable to you.

In addition, this Property is in the area subject to overflight by the aircraft using Travis Air Force Base and as a result, residents may experience inconvenience, annoyance, or discomfort arising from the noise of such operations. State law (Public Utilities Code section 21670) establishes the importance of public use airports, including federal military airports, to the protection of the public interest of the people of the State of California. Residents of property near the federal military airport should, therefore, be prepared to accept such inconvenience, annoyance, or discomfort from normal aircraft operations.

2.15 Noise Transmissions. The Development has been designed to meet the acoustical building code standards in effect at the time the Development was constructed. The standards establish minimum

performance criteria and do not eliminate all noise transmissions. Occupants will hear noise from other Lots as well as noises from outside.

2.16 Church Easement Rights (Parcel E). Parcel E is a Common Area Lot situated between Lots 59 and 60. Parcel E will be owned and maintained by the Association. Parcel E is subject to a private access and utility easement appurtenant to the Full Gospel Vacaville Church that owns certain real property that abuts Parcel E along its southerly boundary. The Association is responsible for the maintenance and repair of the improvements and landscaping situated within Parcel E.

ARTICLE 3 - Restrictions

3.1 Residential Use. Each Lot shall be used for residential purposes only; and no part of the Development shall be used or caused, allowed or authorized to be used in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending or other nonresidential purpose. Notwithstanding the foregoing, Owners or occupants of the Lots may use a room or rooms in the residence as an office, provided that the primary use of the Lot is as a residence, no advertising or signage is used in any manner in connection with the office use, no customers, clients or patients enter the Lot on any regular basis, and the use is in compliance with all local ordinances. The Board shall have the authority to adopt Rules regarding the use of offices within the Development in order to maintain the residential characteristics of the Development. The use of Lots by the Declarant or its designees as models and sales and construction offices for purposes of developing, improving and selling the Lots in the Development shall not be a violation of this restriction, provided that such use shall terminate no later than three years after the date of recordation of this Declaration or any declaration of annexation annexing property in any additional phase into this Development, whichever occurs first.

3.2 Renting. The Owner may rent his or her Lot provided each of the following conditions is satisfied:

- (i) the rental agreement must be in writing;
- (ii) the rental agreement must contain a provision that the rental agreement is subject to this Declaration, the Bylaws and the Rules and that any violation of any of the foregoing shall be a default under the rental agreement; and
- (iii) before commencement of the rental agreement, the Owner shall provide the Association with the names of the tenants and each family member who will reside on the Lot and the address and telephone number of the Owner.

Any Owner who rents his or her Lot shall keep the Association informed at all times of the Owner's address and telephone number. Any rental agreement shall be subject to this Declaration, the Bylaws and the Rules; and any breach of any of the foregoing shall constitute a breach by the Owner and also a default under the rental agreement, regardless of whether it so provides in the rental agreement. If any tenant breaches any restriction contained in this Declaration, the Bylaws or the Rules, the Owner, on demand from the Association, immediately shall take such steps as may be necessary to correct the breach, including, if necessary, eviction of the tenant.

3.3 Nuisance. No activity shall be conducted on any Lot or Common Area that constitutes a nuisance or unreasonably interferes with the use or quiet enjoyment of the occupants of any other Lot.

3.4 Vehicle and Parking Restrictions. No mobile home, camper or recreational vehicle, boat, truck or similar equipment shall be parked within the Development. For purposes herein, "truck" does not include a pickup truck that does not exceed three-quarter ton or a sports utility vehicle. In addition, trucks may park on a temporary basis for delivery or pickup purposes. No disabled vehicle shall be parked within any front yard, driveway or within public view for longer than 72 hours.

No garage space may be converted into any use, such as storage, that would prevent its use for parking the number of vehicles the garage was originally designed to contain. No vehicles shall be parked on the Courtyards except within the designated parking spaces. The designated parking spaces within the Courtyard are reserved for use by the occupants of the Courtyard Lots that abut the Courtyard and their guests on a first come, first serve basis. Subject to the foregoing, the Board may adopt Rules regulating parking within the designated parking space, including rules that impose limitations on the time a vehicle may be parked in the parking space.

Unless the Board provides otherwise, any director or officer, any manager or manager's agent or any owner authorized to do so by any director or officer shall have the authority to act on behalf of the Association to cause the removal of any vehicle wrongfully parked within the Development.

3.5 Animals. Normal and customary household pets may be maintained within the Development in compliance with all local ordinances and the following conditions:

- (i) no animal shall be maintained for any commercial purposes;
- (ii) the use of the Common Area by animals shall be subject to such Rules as may be adopted by the Board;
- (iii) the Lot Owner of the animal immediately shall clean up after his or her animal; and
- (iv) the Owner shall be responsible for any damage to any Common Area caused by any animal maintained on the Owner's Lot.

The Board, after notice and a hearing, may require the permanent removal from the Development of any animal that the Board, in its discretion, determines is a nuisance, a danger to the health or safety of any occupant, or otherwise interferes with the quiet use and enjoyment of occupants of any Lot. The Board may find that an animal is a nuisance if the animal or the animal's owner continue to violate the Rules regulating animals after receipt of a demand from the Board to comply with the Rules.

3.6 Television or Radio Equipment. No television, video or radio poles, antennae, satellite dishes, cables or other transmission and/or reception fixtures or personal property (individually and collectively the "Antenna Equipment") shall be installed or maintained on any Lot except as follows:

- (i) Antenna Equipment that is one meter or less in length or diameter or diagonal measurement, provided that the location, color and screening requirements shall be in accordance with any guidelines imposed by the Architectural Committee, which guidelines shall comply with applicable State and federal laws regulating restrictions on Antenna Equipment; and
- (ii) Antenna Equipment not covered under subparagraph (i) above, the installation of which is approved in advance by the Architectural Committee in accordance with the procedures described in **Article 7**.

Nothing herein shall be construed to restrict in any manner Declarant's or the Board's right to authorize a cable television franchisee or other provider of similar services to provide cable television, satellite dish, radio or other similar services to the Development.

3.7 Signs. Subject to the provisions of **Section 13.11**, the posting or displaying of any signs within the Development is subject to each of the following:

3.7.1 Non-Commercial Signs: The Association may not prohibit posting or displaying of non-commercial signs, posters, flags or banners on or in an Owner's Lot, except as required for the protection of public health or safety or if the posting or display would violate any local, state or federal law. For purposes herein, a non-commercial sign, poster, flag or banner may be made of paper, cardboard, cloth, plastic or fabric and may be posted or displayed from the yard, window, door, balcony or outside wall of the separate interest but may not be made of lights, roofing, siding, paving materials, flora or balloons or any other similar building, landscaping or decorative component or include the painting of architectural surfaces. No non-commercial

sign and poster in excess of nine square feet in size or non-commercial flag or banner in excess of 15 square feet in size shall be permitted anywhere in the development without the prior written approval of the Board.

3.7.2 Commercial Signs. Except as otherwise expressly authorized by law and subject to the provisions of **Section 13.11**, no commercial signs of any nature shall be posted or displayed anywhere within the Development without the prior written consent of the Board and pursuant to such guidelines as may be adopted by the Board which guidelines shall be in compliance with all applicable laws.

3.8 Clothesline. No exterior clothesline shall be erected or maintained on any Lot; and there shall be no exterior drying or laundering of clothes on any balcony, patio, porch or other outside area of any Lot.

3.9 Window Coverings. The interior surfaces of all windows shall be covered with normal and customary window coverings such as curtains, drapes, shutters or blinds. The exterior side of window coverings shall be white or off-white unless approved otherwise in writing by the Architectural Committee.

3.10 Subdivision. No Lot shall be subdivided into two or more lots without the prior written consent of the Association.

3.11 Automobile Maintenance. There shall be no maintenance (other than vehicle washing and cleanup) or repairs performed on any automobile except within an enclosed garage or except for any emergency repairs that are necessary in order to remove the vehicle to a proper repair facility.

3.12 Alterations, Modifications or Additions. There shall be no alterations, modifications or additions made to any Lot or any Improvement thereon except in compliance with the provisions of **Article 7**.

3.13 Compliance with Law. No Owner shall permit anything to be done or kept in his or her Lot that violates any law, ordinance, statute, rule or regulation of any local, county, state or federal agency. Nothing shall be done or kept in any Lot that might increase the rate of or cause the cancellation of any insurance maintained by the Association.

3.14 Drilling. No drilling, mining, or quarrying operation shall be conducted on any Lot or the Common Area at anytime.

3.15 Sound Transmissions. No residential structure shall be altered in any manner that would increase sound transmissions, resonances or reverberations to any adjoining or other Lot, including, but not limited to, the replacement, modification or penetration of any wall that increases sound transmissions, resonances or reverberations to any other residential structure.

3.16 Sports Apparatus. Basketball standards affixed to the structure of a dwelling, the erection of freestanding basketball standards, or fixed sports apparatus are prohibited. Portable basketball standards and other similar sports equipment, including, but not limited to, hockey or soccer nets, are allowed on driveways but are not allowed in the public or private street, or in front yards overnight and must be stored out of view from any adjacent Lots or streets.

ARTICLE 4 - Maintenance and Repair Obligations

4.1 Owner's Maintenance Obligations. Each Owner shall maintain his or her Lot and all Improvements thereon in good condition and repair at all times. Shared Improvements shall be maintained as described in **Sections 4.3, 4.4, and 4.5**. Fences located on a common boundary between the Owner's Lot and the Common Area shall be maintained by the Owner. Each Owner shall have the Improvements on the Owner's Lot periodically inspected for wood-destroying pests or organisms and, if necessary, immediately shall take appropriate corrective action therefor.

The Owner of a Courtyard Lot shall maintain and repair any utility lines situated within the Courtyard that exclusively serve the Owner's residence, including water, gas and electrical lines and sewer laterals,

provided that no Owner may excavate or otherwise disturb any Courtyard Improvements or landscaping without the prior written consent of the Association or its manager. In granting consent, the Association or manager may impose conditions to ensure that the work will be done in a proper manner, will be diligently pursued until completion and will not unreasonably interfere with the use of the Courtyard, and that all costs for labor and materials will be paid in a timely and proper manner.

In addition to the foregoing, each Owner shall comply with each of the following in performing the Owner's maintenance obligations: (i) the Guidelines described in **Section 4.8**; and (ii) commonly-accepted homeowners' maintenance obligations.

If any Owner fails to maintain his or her Lot as required herein, the Association, after notice and hearing as described in the Bylaws, may, but is not obligated to, enter the Lot and perform the necessary maintenance and repair. The Association may levy a reimbursement assessment against the Lot in the manner described in **Section 6.5**.

4.2 Owner's Landscaping Obligations. Each Owner shall maintain the landscaping and irrigation system within the fenced private yard on the Owner's Lot in a healthy and weed-free condition. The Owner immediately shall remove and replace any dying or dead vegetation on the Owner's Lot. Maintenance shall include regular fertilization, mowing, irrigation, pruning, elimination of pests or diseases, and other customary prudent landscaping practices. All lawns shall be kept neatly mown and trees neatly trimmed and pruned at all times. If the Owner fails to properly maintain the landscaping on the Owner's Lot, the Association may enter the Lot and perform the maintenance under the procedures described in **Section 4.1** and shall have the same rights as described in **Section 4.1**.

All other landscaping on the Owner's Lot and the irrigation system serving the landscaping shall be maintained by the Association as described in **Section 4.3.2**.

4.3 Attached Residences Shared Maintenance Obligations. As part of the original construction of the Development, Declarant constructed roofs, siding and foundations on or about the common boundary line between the Attached Residences that are used by or are a part of the structural Improvements on the adjoining Lots, which Improvements are to be shared by the adjoining Lot Owners. The residences share a common foundation footing along the common boundary line. The roofs and siding are joined, and there may be no discernible demarcation between the roof and siding of one residence and the roof and siding on the adjoining residences. The residences do not share a common wall; each residence has its own wall structure separated by an airspace from the abutting wall structure of the adjoining residences.

4.3.1 Definition of Shared Improvements. For purposes of this **Section 4.3**, the Shared Improvements for the Attached Residences consist of the following:

(a) the roofing and its components over the adjoining residences, including tiles, materials, and the waterproofing materials located between the exterior materials and the basic roof structure such as tar paper, membranes or weatherstripping. The basic roof structure (including the trusses and plywood and any chimneys) is not part of the Shared Improvement except any portion of the structure that crosses the common boundary line and serves as part of the basic roof structure for any two adjoining residences;

(b) any rain gutters and downspouts that drain water off the roofs of both adjoining residences (gutters and downspouts that serve only one residence are the responsibility of the Owner of that residence);

(c) the paint on the exterior surfaces of the adjoining residences, including the paint on the stucco, siding, trim, rain gutters and downspouts;

(d) any integral portion of any stucco or siding material that crosses the common boundary line and serves as siding material on the adjoining residences including rock, brick or other exterior treatment;

(e) the portion of the foundation that provides foundation support to two adjoining residential structures; and

(f) any other material located on or about the common boundary line that benefits the adjoining residences.

The foregoing items are individually and collectively referred to as the "Shared Improvements"; and, except as described in subparagraphs (a) through (f), no other property shall be considered a "Shared Improvement".

4.3.2 Shared Improvement Maintenance Obligations. The Shared Improvements shall be maintained in good condition and repair. In order to maintain uniform exterior appearances, the Owners are required to jointly: (a) repair and replace the roof and its components that are a part of the Shared Improvements (other than repair and replacement of individual tiles as described above); (b) repaint the exterior surface of the adjoining residences; and (c) cooperate in the maintenance and repair and replacement of the other Shared Improvements as necessary to maintain uniform exterior appearances and the useful life of the Shared Improvements.

The selection of materials used and paint colors shall be the same materials and paint used as a part of the original construction of the Attached Residences unless agreed otherwise by the Owners of the Attached Residences and approved by the Architectural Committee pursuant to the procedures described in **Article 7**.

Except as specifically provided in this **Section 4.3.2**, each Attached Residence Owner will be solely responsible for normal and customary routine maintenance and cleaning to these portions of the Shared Improvements that are located on such Owner's Lot. Each Owner, at that Owner's cost, shall undertake minor or cosmetic repairs to these Shared Improvements (e.g., replacement of individual roof tiles) located on the Owner's Attached Residence to the extent capable of being performed independently without affecting the integrity, useful life or appearance of the adjoining Shared Improvements, at such Owner's sole cost. The intent of this **Section 4.3** is to minimize the shared maintenance and repair responsibilities so that each residence to the maximum extent is treated as a single-family detached residence.

4.3.3 Notice and Cooperation. If an Owner determines that maintenance, repairs or repainting are needed (the "proposed work"), the Owner shall notify the other Owner and the Owners shall meet within ten days of the request of any Owner to discuss in good faith the need for the proposed work, the party to perform the proposed work, the payment for the proposed work, and any related issues. If any Shared Improvement is damaged or destroyed and the loss is covered by insurance, the Owner immediately shall take the necessary steps to process the appropriate insurance claims. Any portion of any insurance proceeds received by the Owner attributed to any Shared Improvement shall be used only for the purpose of repairing or restoring the Shared Improvements except as may be otherwise required by the Owner's first Mortgagee described in **Section 10.1** or by the provisions of **Article 9**. If the loss is an uninsured loss, each Owner shall contribute his or her allocable share to repair or restore the Shared Improvement except as is otherwise authorized by **Article 9**.

4.3.4 Allocation of Costs. The cost of the maintenance and repair (including replacement of roofing materials or exterior repainting) of the Shared Improvements that are to be jointly maintained or repaired shall be allocated equally between the Lots unless the circumstances warrant a different allocation for a fair and equitable allocation of such costs. For example, if the need for maintenance or repair is caused by the wilful or negligent act or omission of any Owner or occupant or their guests, agents or pets, the responsible Lot Owner shall pay the maintenance or repair costs. Declarant grants to the Owner of each Lot subject to this **Section 4.3** as a dominant tenement an easement over the adjoining Lot as the servient tenement for access to that portion of the servient tenement as may be reasonably necessary to maintain, repair or replace the Shared Improvement as provided in this **Section 4.3**.

Each Attached Residence Owner shall comply with the property insurance requirements described in **Section 8.7** and the repair or reconstruction requirements of **Section 9.1**.

Any disputes between Attached Residence Owners regarding the rights or duties under this **Section 4.3** shall be resolved as described in **Section 4.6**.

4.4 Good Neighbor Fences. As part of the original construction of the Development, Declarant constructed fences on or about the common boundary line between two adjoining Lots that are to be shared by the adjoining Lot Owners. The adjoining Owners shall jointly share the maintenance and repair of the fence. The cost of the maintenance and repair shall be allocated equally between the Lots unless the circumstances warrant a different allocation for a fair and equitable allocation of such costs. Each Lot as a dominant tenement shall have an easement over the adjoining Lot as the servient tenement for access to that portion of the servient tenement as may be reasonably necessary to maintain, repair or replace the fence. Disputes shall be resolved as described in **Section 4.6**.

Fences on a common boundary line between a Lot and the Common Area shall be maintained by the Association. If the Association repairs any damage to the fence caused by any act or omission of the Owner or occupant or any family member, invitee or agent, the Owner shall reimburse the Association for its repair costs. If the Owner fails to do so, the Association may levy a reimbursement assessment against the Owner's Lot as described in **Section 6.5**.

4.5 Mailbox Maintenance. Clustered mailboxes are installed throughout the Development. The cluster mailboxes contain two or more mailboxes that serve two or more Lots. Each Owner whose Lot is served by the clustered mailbox, at that Owner's cost, shall be responsible for the maintenance, repair and replacement of the Owner's individual mailbox. The cost for the maintenance, repair and replacement of the base and post structure that supports the mailboxes shall be allocated equally among the Owners with mailboxes supported by the structure. If an Owner fails to pay the Owner's applicable share, any other Owner using that clustered mailbox may bring an action in any court of appropriate jurisdiction to recover the delinquent Owner's share, including costs and attorneys' fees. If any base, post or mailbox is replaced, it shall be replaced with the same type, size, color, design and materials as originally installed or as otherwise approved in writing by the Architectural Committee. Disputes shall be resolved as described in **Section 4.6**.

4.6 Dispute Resolution. Any dispute between or among the Owners regarding the Owner's shared maintenance rights and duties as described in **Sections 4.3, 4.4, or 4.5**, including, but not limited to, disputes regarding the need for maintenance or repair, the quality or type of maintenance or repair, the allocation of costs, or any related issues shall be submitted to the American Arbitration Association, or any successor thereto, for resolution or such other alternative dispute resolution provider as may be acceptable to the parties. The dispute first shall be submitted to non-binding mediation for resolution. If the dispute cannot be resolved through mediation, the dispute shall be submitted to binding arbitration. Unless the parties agree otherwise, the dispute shall be heard by a single arbitrator in the county where the Development is located. In the arbitration proceeding, each party shall have full discovery rights as authorized by Code of Civil Procedure section 1283.05 or any successor statute thereto. The decision of the arbitrator shall be binding on the parties and may be enforced in any court of appropriate jurisdiction. The arbitrator in his or her discretion may award costs, including reasonable attorneys' fees, to the prevailing party.

4.7 Association's Maintenance Responsibilities. The Association shall maintain each of the following in good condition and repair at all times:

4.7.1 Common Area. The Common Area and all Improvements and landscaping thereon, including, but not limited to, natural preserve areas, park, roadway, irrigation systems, fences, benches, lighting fixtures and utilities serving the Common Area, storm drainage systems, and sanitary sewer systems not maintained by a government agency or public or private utility company. All landscaping to be maintained by the Association shall be maintained in a healthy and weed-free environment. Maintenance shall include regular fertilization, irrigation, pruning and other prudent landscaping practices. All lawns shall be kept neatly mown and trees neatly trimmed and pruned at all times. The Association shall take appropriate steps to maintain the irrigation of the landscaping and to prevent damage resulting from misdirected and/or excessive watering.

4.7.2 Courtyards. The Improvements and any landscaping within the Courtyards, including the roadbed, subbase, pavement, curb, gutters, storm drainage system and sewer submain, but excluding any other utilities serving the residences, including water, gas, electricity and sewer lateral lines.

4.7.3 Landscaping. The landscaping within the unfenced portion of any front or side yard of each Lot and the irrigation system serving this landscaping.

4.8 Inspection and Maintenance Guidelines and Schedules. Declarant shall provide each Owner and the Association with inspection and maintenance guidelines and schedules, including manufacturers' guidelines and schedules, for the inspection and maintenance of certain Improvements and personal property situated within the Development with respect to the Improvements and landscaping to be maintained by that party (collectively the "Guidelines"). Each Owner and the Association shall retain the Guidelines and shall take all appropriate steps to implement and comply with the Guidelines as required herein. Each Owner, on the transfer of the Owner's Residential Lot, shall deliver the Guidelines pertaining to the Improvements and any landscaping to be maintained by the Owner to the transferee on or before title is transferred.

The Board periodically and at least once every three years shall review and update the Guidelines for Improvements and any landscaping maintained by the Association, which may be done in conjunction with the preparation of the reserves study described in **Section 6.3**.

Replacement copies of the original Guidelines prepared by Declarant may be obtained from Declarant by submitting a written request to the Declarant at Declarant's principal place of business.

4.9 Trash Removal. Each Lot Owner shall be responsible for the removal of all the trash and refuse from that Owner's Lot. Each Owner shall engage a trash removal service for the periodic removal from the Owner's Lot unless the Board approves some other arrangement in writing. All trash or refuse shall be kept only in sanitary containers, which containers shall be kept in the areas not visible from any adjoining Lot or public street except on trash collection day if curbside service is provided. Unless the Board adopts Rules to the contrary, trash containers may be placed at curbside no earlier than 6 p.m. on the day preceding the trash collection day and shall be retrieved no later than 9 p.m. of the trash collection day.

4.10 Cooperation and Access. Each Owner and occupant shall fully cooperate with the agents of the Association in the performance of the Association's maintenance and repair obligations described in **Section 4.3** above. Such cooperation shall include, but is not limited to, immediate notification to the Board or its managing agent of any maintenance or repair problems for which the Association is responsible and access to the Owner's or occupant's Lot as may be necessary to inspect and, if appropriate, to perform any necessary maintenance or repairs.

4.11 Reimbursement and Indemnification. If the Association incurs any maintenance or repair costs because of the willful or negligent act or omission of any Owner or occupant or their family members, guests, agents or pets, the Association shall charge the cost to the Owner of the Lot responsible for the costs and may levy a reimbursement assessment as described in **Section 6.5**. The Owner immediately shall pay the charge or reimbursement assessment to the Association, together with interest thereon at the rate of 12% per annum, but not in excess of the maximum rate authorized by law. If the Owner disputes the charge, the Owner shall be entitled to notice and a hearing as provided in **Section 5.6.4**.

The Association shall not charge the Owner to the extent that the cost is met through insurance maintained by the Association, provided that any deductible amount shall be paid by the Owner.

Furthermore, the Owner shall defend, indemnify and hold the Association harmless from any claim, demand, liability or cost, including attorneys' fees, arising from such damage, except to the extent the demand, claim, cost or liability is covered by insurance maintained by the Association. The Owner shall pay the amount of any deductible.

ARTICLE 5 - The Association

5.1 Formation of the Association. The Association is a nonprofit mutual benefit corporation formed under the laws of the State of California. The Association shall commence operations no later than

the date that assessments commence. Pending the commencement of the Association's operations, Declarant shall perform the duties and shall have the rights of the Association as described herein.

5.2 Governing Body. The governing body of the Association shall be the Board. It shall be the responsibility of the Board to ensure that the Association exercises its rights and performs its duties as described within this Declaration, the Articles, Bylaws and any amendments thereto.

The Board shall adopt Rules in accordance with procedures required by Civil Code sections 1357.100 through 1357.150 regarding the elections to the Board and related matters that satisfy the requirements set forth in Civil Code section 1363.03.

5.3 Membership. Each Owner shall automatically be a Member of the Association. If there is more than one fee title Owner of a Lot, each Owner shall be a Member. The holder of a security interest in a Lot shall not be a Member of the Association except and until that holder obtains both the legal and equitable interest in the Lot. Membership shall be appurtenant to the Lot and may not be separated therefrom. Any transfer of an Owner's interest in a Lot (other than a security interest), by operation of law or otherwise, automatically transfers the membership to the Owner's successor in interest. No Owner may resign or revoke his or her membership for any reason.

5.4 Membership Classes and Voting Rights. The Association shall have the following two classes of voting memberships:

5.4.1 Class A. Class A Members are all Owners except the Declarant. Class A Members shall be entitled to one vote for each Lot in which he or she owns an interest. If more than one Owner owns an interest in a Lot, only one vote may be cast with respect to that Lot.

5.4.2 Class B. The Class B Member shall be the Declarant, who shall be entitled to three votes for each Lot owned by the Declarant. Class B membership shall cease and be irreversibly converted to Class A on the first to occur of the following:

(a) the second anniversary of the first conveyance of a Lot in the most recent phase of the Development; or

(b) the fourth anniversary of the first conveyance of a Lot in the Development.

Voting rights shall vest at the time that assessments are levied against the Owner's Lot.

Except as set forth below, all matters requiring the approval of the Members shall be approved if: (i) approved by a majority of the votes cast either in person or by proxy at a duly-held regular or special meeting at which a quorum was present; (ii) approved by a majority of the written ballots cast in compliance with the requirements of Corporations Code section 7513 or any successor statute thereto; or (iii) approved by unanimous written consent of all the Members. Notwithstanding the foregoing, approval by the Members shall be subject to each of the following:

(1) Two Membership Classes. As long as two classes of voting membership exist, any action by the Association that requires approval by the Members shall require approval by the members of each class.

(2) Single Membership Class/Declarant-Owned Lots. If one class of voting membership exists and Declarant owns any Lots, any action by the Association that requires approval by the Members shall require approval by the Members including Declarant's vote(s) and approval by the Members excluding Declarant's votes.

(3) Greater Than a Majority. If, under the terms of this Declaration, a particular action requires approval by more than a majority, the action shall be approved by the Members only if the required percentage of votes approves the action.

(4) Completion Bond and Section 896 Claims. Votes of the Declarant shall be excluded as provided in **Sections 5.11 and 5.14** of this Declaration.

(5) Amendments. Member approval requirements for any amendments to this Declaration, the Articles or Bylaws shall comply with the amendment requirements set forth in the applicable document.

(6) Legal Requirements. If the voting requirements and/or procedures conflict with any applicable statutory requirements, the statutory requirements shall control.

5.5 Joint Ownership Votes. The vote that is attributed to each Lot may not be cast on a fractional basis. If the Lot has more than one Owner and the Owners are unable to agree as to how the vote shall be cast, the vote shall be forfeited on the matter in question. Any vote cast by an Owner for any Lot is presumed conclusively to be the vote cast by all the Owners of that Lot. If more than one Owner casts a vote attributed to a Lot on any matter on which only one vote could be cast for that Lot, the votes cast by such Owners shall be counted as one vote if the votes are the same; if the votes are different, the vote cast by such Owners shall not be counted and shall be forfeited.

5.6 Powers of the Association. The Association shall have all the powers of a nonprofit mutual benefit corporation organized under the general nonprofit mutual benefit corporation laws of California, subject only to such limitations on the exercise of these powers as are set forth in the Articles, Bylaws and this Declaration. The Association shall have the power to do any lawful thing that may be authorized, required or permitted to be done by the Association under this Declaration, the Articles and the Bylaws and to do and perform any act that may be necessary or proper for or incidental to the exercise of any of the express powers of the Association, including, without limitation, each of the following:

5.6.1 Levying Assessments: The Board shall establish, fix and levy assessments against the Lots and collect and enforce payment of such assessments in accordance with the provisions of **Article 6** of this Declaration.

5.6.2 Adopting Rules: The Board may adopt, amend and repeal Rules as it considers appropriate. Rules shall apply generally to the management and operation of the Development and/or the conduct of the business and affairs of the Association and may regulate the use and enjoyment of the Common Area, the use of any commonly-metered utilities that are paid by the Association and such other matters as are authorized in this Declaration. The Rules shall satisfy the requirements of Civil Code section 1357.110 and, to the extent applicable, the procedural requirements for the adoption, amendment or repeal of the Rules as set forth in Civil Code section 1357.130 and for the reversal of Rules as set forth in Civil Code section 1357.140. A copy of the Rules as 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 Development if an appropriate space is available for such posting. If any provision of this Declaration, the Articles or the Bylaws is inconsistent with or materially alters any Rules, this Declaration, the Articles and the Bylaws shall control to the extent of any such inconsistencies. Members shall have the same access to the Rules as they have to the accounting books and records of the Association.

Any Rules adopted by the Board shall apply to all Owners or occupants in a uniform and nondiscriminatory manner. The Board may adopt a Rule as the result of an act or omission of any Owner or occupant or their family members or guests or a Rule that does not directly affect all Owners or occupants in the same manner as long as the Rule applies to all Owners or occupants.

5.6.3 Borrowing Money: The Board may borrow money to meet any anticipated or unanticipated cost of the Association and, subject to the provisions of **Section 5.12(ix)**, may mortgage, encumber or pledge Association assets (including, but not limited to, assessments) as security for such borrowing.

5.6.4 Imposing Disciplinary Action: In addition to any other enforcement rights described in this Declaration and the Bylaws or as may be authorized by law and subject to the due process requirements imposed by this Declaration, the Bylaws or by law, the Board may take any of the following actions against any Person whose act or failure to act violates or threatens to violate any provisions of this

Declaration, the Bylaws or Rules: (a) impose monetary penalties, including late charges and interest; (b) suspend voting rights in the Association; (c) commence any legal or equitable action for damages, injunctive relief or both; and (d) suspend use privileges for any recreational facilities within the Development. Subject to the provisions of **Section 13.9**, the determination of whether to impose any of the foregoing sanctions shall be within the sole discretion of the Board. Any legal action may be brought in the name of the Association on its own behalf and on behalf of any Owner who consents; and, except as otherwise provided herein, the prevailing party in such action shall be entitled to recover costs and reasonable attorneys' fees. The Board, in its sole discretion, may resolve or settle any dispute, including any legal action in which the Association is a party, under such terms and conditions as it considers appropriate.

(i) If the Board adopts a policy imposing monetary penalties, including any fee on any Member for a violation of the governing documents or the Rules, including any monetary penalty relating to the activity of a guest or invitee of a Member, the Board shall adopt and distribute to each Member, by personal delivery or first-class mail, a schedule of the monetary penalties that may be assessed. The Board may change the schedule from time to time and shall distribute a notice of such changes to the Members in the same manner as the schedule of penalties.

(ii) The imposition of any disciplinary action, including, but not limited to, the imposition of monetary penalties or the suspension of use and/or voting privileges except as otherwise noted herein, shall be subject to the following procedures and requirements:

(a) Notice of Hearing: Prior to the time the Board meets to consider or impose discipline upon a Member, the Board shall notify the Member, by either personal delivery or first-class mail, at least 15 days prior to the meeting. The notice shall contain, at a minimum, the date, time and place of the meeting, the nature of the alleged violation for which the Member may be disciplined, and a statement that the Member has a right to attend and may address the Board at the meeting.

(b) Hearing: If requested by the Member, the Board shall conduct the disciplinary proceeding in executive session. The Member, the Member's legal counsel, and the Association's legal counsel shall be entitled to attend the executive session meeting. The Board may interview witnesses and other interested parties in executive session.

(c) Notice of Action Taken: If the Board elects to impose discipline on the Member, the Board shall notify the Member of the disciplinary action within ten days following the election to impose the disciplinary action.

(d) No Forfeiture: Under no circumstances may the Association cause a forfeiture or abridgement of an Owner's right to the full use and enjoyment of the Owner's Lot on account of the failure of the Owner to comply with the provisions of this Declaration, the Articles, Bylaws or Rules, except by judgment of a court or decision of an arbitrator or on account of a foreclosure or sale under power of sale for failure of the Owner to pay assessments duly levied by the Association.

(e) Assessment Charges: The provisions of this **Section 5.6.4** do not apply to charges imposed against a Member for reasonable late payment penalties or charges to reimburse the Association for loss of interest and for costs reasonably incurred (including attorneys' fees) in collecting delinquent assessments.

5.6.5 Delegating Duties: Except as may be limited by the Bylaws, the Board may delegate any of the Association's powers and duties to its employees, committees or agents, including a professional management agent.

5.6.6 Implementing Special Fees: The Board may implement special fees to reimburse the Association for special costs incurred as a result of actions taken by Owners.

5.6.7 Dispute Resolution Procedures: The Board shall implement dispute resolution procedures for disputes between the Association and a Member involving the rights, duties or liabilities under the Governing Documents, the Davis-Stirling Common Interest Development Act (Civil Code sections 1350-

1376) or the Nonprofit Mutual Benefit Corporation Law (Corporations Code sections 7110-8910) that comply with the requirements of Civil Code sections 1363.810 through 1363.850.

5.7 Duties of the Association. In addition to the duties described in the Articles or Bylaws, or elsewhere in this Declaration, the Association shall have the duty to manage the Common Area, perform the maintenance as described in **Section 4.7**, prepare, periodically update, and comply with the maintenance and inspection guidelines described in **Section 4.8**, prepare and distribute financial statements, reports and the other documents and notices described in **Section 5.10**, enforce bonded obligations as described in **Section 5.11**, levy and collect assessments as described in **Article 6**, prepare when required the reserve studies described in **Section 6.3** and annually review and implement adjustments as required, and procure, maintain and review the insurance as described in **Article 8**. The Association shall perform such other acts as may be reasonably necessary to exercise its powers to perform its duties under any of the provisions of this Declaration, the Articles, Bylaws, Rules or Board resolutions.

5.8 Taxes and Assessments. The Association shall pay all real and personal property taxes and assessments and all other taxes levied against the Association, the Common Area or the personal property owned by the Association. Such taxes and assessments may be contested or compromised by the Association, provided that they are paid or that a bond insuring payment is posted before the sale or the disposition of any Property to satisfy the payment of such taxes.

5.9 Utility Service to the Common Area. The Association shall acquire, provide and pay for water, sewer, refuse and rubbish collection, electrical, and other necessary utility services for the Common Area and any recreational facilities thereon.

5.10 Reporting and Notice Requirements. The Association shall prepare and distribute the documents described in this **Section 5.10**.

5.10.1 Pro Forma Operating Budget. A pro forma operating budget for each fiscal year shall be distributed not less than 30 days nor more than 90 days before the beginning of the fiscal year consisting of at least the following:

- (1) Estimated revenue and expenses on an accrual basis.
- (2) A summary of the Association's reserves based on the most recent reserves review or study conducted pursuant to **Section 6.3**, based only on assets held in cash or cash equivalents, which shall be printed in bold type and shall include the following:
 - (A) the current estimated replacement cost, estimated remaining life and estimated useful life of each major component which the Association is obligated to maintain (collectively the "Major Components");
 - (B) as of the end of the fiscal year for which the study was prepared:
 - (i) the current estimate of cash reserves necessary to repair, replace, restore or maintain the Major Components;
 - (ii) the current amount of accumulated cash reserves actually set aside to repair, replace, restore or maintain the Major Components; and
 - (iii) if applicable, the amount of funds received from either a compensatory damage award or settlement to the Association from any Person for injuries to property, real or personal, arising out of any construction or design defects and the expenditure or disposition of funds, including the amounts expended for the direct and indirect costs of repair of construction or design defects. These amounts shall be reported at the end of the fiscal year for which the study is prepared as separate line items under cash reserves pursuant to **Section 5.10.1(2)(B)(ii)**. In lieu of complying with the foregoing requirements, if the Association is obligated to issue a review of its financial statement pursuant to **Section 5.10.2** below, the Association may include in the review a statement containing all of the information required by this **Section 5.10.1(2)(B)(iii)**; and

(C) the percentage that the amount in **Section 5.10.1(2)(B)(ii)** is to the amount in **Section 5.10.1(2)(B)(i)**;

(3) A statement as to both of the following:

(A) whether the Board has determined or anticipates that the levy of one or more special assessments will be required to repair, replace or restore any Major Component or to provide adequate reserves therefor; and if so, the statement shall also set out the estimated amount, commencement date and duration of the assessment; and

(B) the mechanism or mechanisms by which the Board will fund reserves to repair or replace major components, including assessments, borrowing, use of other assets, deferral of selected replacement or repair, or alternative mechanisms.

(4) A general statement addressing the procedures used for the calculation and establishment of those reserves to defray the future repair, replacement or additions to the Major Components. The report shall include, but need not be limited to, reserve calculations made using the formula described in Civil Code section 1365.2.5(b)(4) and may not assume a rate of return on cash reserves in excess of 2 percent above the discount rate published by the Federal Reserve Bank of San Francisco at the time the calculation was made.

In lieu of the distribution of the pro forma operating budget, the Board may elect to distribute a summary of the budget to all its Members with a written notice in at least 10-point bold type on the front page of the summary that the budget is available at the Association's business office or another suitable location within the boundaries of the Development and that copies will be provided on request and at the expense of the Association. If any Member requests a copy of the pro forma operating budget to be mailed to the Member, the Association shall provide the copy to the Member by first-class mail at the expense of the Association, which copy shall be mailed within five days of the receipt of the request.

5.10.2 Financial Statement Review. A review of the financial statement of the Association shall be prepared in accordance with Generally Accepted Accounting Principles by a licensee of the California State Board of Accountancy for any fiscal year in which the gross income of the Association exceeds \$75,000. A copy of the review of the financial statement shall be distributed within 120 days after the close of each fiscal year.

5.10.3 Policies and Practices Statement. A statement of the Association's policies and practices in enforcing lien rights or other legal remedies for default in payment of assessments. A copy of this statement shall be distributed to each Owner and any Mortgagee no less than 30 days nor more than 90 days immediately preceding the beginning of each fiscal year.

5.10.4 Governing Documents. Copies of this Declaration, the Articles, Bylaws, Rules and other applicable documents as required by Civil Code section 1368(a) shall be provided any Owner within ten days of the mailing or delivery of a written request. The items required to be made available pursuant to this **Section 5.10.4** may be maintained in electronic form and requesting parties shall have the option of receiving them by electronic transmission or machine readable storage media if the Association maintains these items in electronic form. The Board may impose a fee to provide these materials but not to exceed the Association's reasonable costs in preparing and reproducing the material.

5.10.5 Minutes. A statement describing the Members' rights to obtain copies of the minutes of meetings of the Board, including a description of how and where these minutes may be obtained shall be distributed to the Members at the time the Pro Forma Operating Budget described in **Section 5.10.1** is distributed to the Members.

5.10.6 Dispute Resolution Summary. A dispute resolution summary shall be provided to the Members either at the time the Pro Forma Operating Budget described in **Section 5.10.1** is distributed to Members or in the manner set forth in Corporations Code section 5016 and shall include a description of the

Association's internal dispute resolution procedures required by Civil Code section 1363.850 and the following statement:

Failure by any member of the Association to comply with the dispute resolution requirements of Civil Code section 1369.520 may result in the loss of your rights to sue the Association or another member of the Association regarding enforcement of the governing documents.

5.10.7 Insurance Summary. A summary of the Association's property, general liability, earthquake, flood and fidelity policies, if any (individually and collectively referred to as the "Policy" or "Policies"), shall be distributed to the Members not less than 30 days nor more than 90 days preceding the beginning of the Association's fiscal year. The summary shall include the following information on the Policies:

- (A) the name of the insurer;
- (B) the type of insurance;
- (C) the Policy limits of the insurance; and
- (D) the amount of deductibles, if any.

The Association, as soon as reasonably practical, shall notify its Members by first-class mail if any of the Policies have been cancelled and not immediately renewed or restored or if there is a significant change such as a reduction in coverage or limits or an increase in the deductible for any Policy. If the Association receives any notice of non-renewal of a Policy, the Association immediately shall notify its Members if replacement coverage will not be in effect by the date the existing coverage will lapse.

To the extent that the information required to be disclosed as described in this **Section 5.10.7** is specified in the insurance policy declaration page, the Association may meet its disclosure obligations by making copies of that page and distributing copies to all its Members.

The summary required in this **Section 5.10.7** shall contain, in at least 10-point boldface type, the following statement:

This summary of the Association's policies of insurance provides only certain information as required by subdivision (e) of section 1365 of the Civil Code and should not be considered a substitute for the complete policy terms and conditions contained in the actual policies of insurance. Any Association member, upon request and reasonable notice, may review the Association's insurance policies and, upon request and payment of reasonable duplication charges, obtain copies of those policies. Although the Association maintains the policies of insurance specified in this summary, the Association's policies of insurance may not cover your property, including personal property, or real property improvements to or around your dwelling, or personal injuries or other losses that occur within or around your dwelling. Even if a loss is covered, you may nevertheless be responsible for paying all or a portion of any deductible that applies. Association members should consult with their individual insurance broker or agent for appropriate additional coverage.

5.10.8 Assessment/Foreclosure Notice. A written notice regarding assessments and foreclosures required by Civil Code section 1365.1(b) shall be distributed to each Member during the 60-day period immediately preceding the beginning of the Association's fiscal year. The notice shall be printed in at least 12-point type.

5.10.9 Architectural Approval/Dispute Resolution Procedure Notices. The Association shall annually provide the Members with notice of the requirements for approval by the Architectural Committee in accordance with the procedures described in **Article 7** for physical changes to the Improvements on the Lots. The notice shall describe the types of changes that require approval, shall include a copy of the procedure used to review and approve or disapprove a proposed change, and shall include a description of the dispute resolution procedures implemented by the Board as required under **Section 5.6.7**.

5.10.10 Secondary Notice Address. A Member may provide written notice by facsimile transmission or United States mail to the Association of a secondary address. If a secondary address is provided, the Association shall send any and all correspondence and legal notices required, pursuant to Civil Code sections 1365 through 1365.1, 1365.2, 1365.2.5 and 1365.5, to both the primary and the secondary address.

5.11 Enforcement of Bonded Obligations. If the Association is the obligee under a bond or other arrangement ("Bond") to secure performance of the commitment of the Declarant or a successor or assign to complete the Common Area Improvements not completed at the time the California Department of Real Estate issued a final subdivision report, the Board will consider and vote on the question of action by the Association to enforce the obligations under the Bond with respect to any Improvement for which a notice of completion has not been filed by the later of: (i) 60 days after the completion date specified for that Improvement in the "planned construction statement" appended to the Bond; or (ii) 30 days after the expiration of any written extension given by the Association. If the Board fails to consider and vote on the action to enforce the obligations under the Bond, or if the Board decides not to initiate action to enforce the obligations under the Bond, then on receipt of a petition signed by Owners representing not less than 5% of the total voting power of the Association, the Board shall call a special meeting of Owners for the purpose of voting to override the decision of the Board not to initiate action or to compel the Board to take action to enforce the obligations under the Bond. The Board shall give written notice of the meeting to all Owners entitled to vote in the manner provided in this Declaration or in the Bylaws for notices of special meetings of Owners. The meeting shall be held not less than 35 days nor more than 45 days after receipt of the petition. At the meeting, the vote in person or by proxy by a majority of the Owners entitled to vote (other than Declarant) in favor of taking action to enforce the obligations under the Bond shall be considered the decision of the Association; and the Board shall implement this decision by initiating and pursuing appropriate action in the name of the Association.

Upon satisfaction of the Declarant's obligation to complete the Common Area Improvements, the Board shall acknowledge in writing that it approves the release of the Bond and shall execute any other documents or instruments as may be necessary or advisable to effect the release of the Bond. The Board shall not condition its approval to release the Bond on the satisfaction of any condition other than the completion of the Common Area Improvements as described in the "planned construction statement". Any dispute between the Declarant and the Association regarding the release of the Bond shall be resolved in accordance with the Bond escrow instructions or, if these instructions are not operative for any reason, in accordance with the procedures of **Article 12**.

5.12 Limitations on Authority of the Board. The Association is prohibited from taking any of the following actions:

(i) except as otherwise provided in law, or order of the court, or an order pursuant to a final and binding arbitration decision, the Association shall not deny an Owner or occupant physical access to his or her Lot, either by restricting access through the Common Areas to the Owner's Lot or by restricting access solely to the Owner's Lot;

(ii) the Association may not voluntarily assign or pledge the Association's right to collect payments or assessments or to enforce or foreclose a lien to a third party except when the assignment or pledge is made to a financial institution or lender chartered or licensed under federal or State law when acting within the scope of that charter or license as security for a loan obtained by the Association; however, the foregoing provision may not restrict the right or ability of the Association to assign any unpaid obligations of a former Member to a third party for purposes of collection;

(iii) adopt a Rule or regulation that arbitrarily or unreasonably restricts an Owner's ability to market the Owner's Lot; or

(iv) establish an exclusive relationship with a real estate broker through which the sale or marketing of Lots is required to occur. This restriction does not apply to the sale or marketing of Common Areas owned by the Association.

Furthermore, the Board shall not take any of the following actions except with the consent, by vote at a meeting of the Association or by written ballot without a meeting pursuant to Corporations Code section 7513 or any successive statute thereto, of a simple majority of the Members other than Declarant constituting a quorum of more than 50% of the voting power of the Association residing in Members other than the Declarant:

(v) incur aggregate expenditures for capital Improvements to the Common Area in any fiscal year in excess of 5% of the budgeted gross expenses of the Association for that fiscal year;

(vi) sell during any fiscal year property of the Association having an aggregate fair market value greater than 5% of the budgeted gross expenses of the Association for that fiscal year;

(vii) pay compensation to members of the Board or to officers of the Association for services performed in the conduct of the Association's business, provided that the Board may reimburse a member or officer for expenses incurred in carrying on the business of the Association;

(viii) enter into a contract with a third Person to furnish goods or services for the Common Area or the Association for a term longer than one year with the following exceptions:

(a) a management contract, the terms of which have been approved by the Federal Housing Administration or Veterans Administration;

(b) a contract with a public utility company if the rates charged for the materials or services are regulated by the Public Utilities Commission, provided the term does not exceed the shortest term for which the supplier will contract at the regulated rate;

(c) prepaid casualty or liability insurance policies not to exceed three years' duration, provided the policy permits for short rate cancellation by the insured;

(d) agreements for cable television services and equipment or satellite dish television services and equipment not exceeding five years in duration, provided the supplier is not an entity in which the Declarant has a direct or indirect ownership interest of 10% or more;

(e) a contract for a term not to exceed three years that is terminable by the Association after no longer than one year without cause, penalty or other obligation upon 90 days written notice of termination to the other party; or

(ix) borrow money secured by any Association assets as authorized under **Section 5.6.3.**

5.13 Notice of Significant Legal Proceedings. Notwithstanding anything herein to the contrary, not later than 30 days prior to the filing of any civil action against the Declarant or other developer for alleged damage to the Common Area, alleged damage to the separate interests that the Association is obligated to maintain or repair, or alleged damage to the separate interests that arises out of, or is integrally related to, damage to the Common Area or separate interests that the Association is obligated to maintain or repair, the Board shall provide written notice to each Member of the Association. The notice shall specify the date and location of the meeting and both of the following:

(i) that a meeting will take place to discuss problems that may lead to the filing of a civil action; and

(ii) the options, including civil actions, that are available to address the problems.

If the Board in good faith determines that there is insufficient time to provide prior notice to the Members as required herein prior to the expiration of any applicable statute of limitations, the Board may take the necessary steps to commence the proceeding to preserve the rights of the Association, provided that as soon as is reasonably practical thereafter, and not later than 30 days following the commencement of the proceeding, the Board shall provide the Members with notice as required herein.

5.14 Civil Code Sections 896 and 897 Claims. The sole and exclusive authority to initiate claims on behalf of the Association in connection with Improvements or landscaping maintained by the Association for violations of the functionality standards set forth in Civil Code sections 896 and 897 shall rest with the Board members elected solely by Class A Members described in **Section 5.4.1** of this Declaration (the "Non-Declarant Directors"). Any Non-Declarant Director may at any time request a meeting for the purpose of discussing, inspecting, investigating and/or initiating any claims under Civil Code sections 896 or 897. Notice of the meeting shall be sent in the same manner as notice for special meetings of the Board. Any member of the Board appointed by Declarant or elected by votes cast by Declarant shall be entitled to attend the meeting but shall not be entitled to vote. The meeting shall be open for all Members of the Association unless the Non-Declarant Directors adjourn to an executive session as authorized by the Bylaws. The decision of a majority of the Non-Declarant Directors shall control. If the Non-Declarant Directors elect to initiate a claim, the authority to initiate a claim also shall require the approval of the votes cast by a majority of the Class A Members present in person or by proxy at a duly-held meeting. Any Non-Declarant Director may call a special meeting of the Members for this purpose. For purposes of this **Section 5.14**, if the Class B membership has been converted to Class A membership as described in **Section 5.4**, the quorum requirements shall be based on the total votes of the Class A Members other than the votes held by Declarant and the Declarant votes shall not count for approval or disapproval purposes. The claim is subject to the provisions and procedures set forth in **Article 12**. If requested by the Non-Declarant Directors, the Association shall provide the administrative support for the notice and conduct of its meetings and any meeting of the Members called to approve the initiation of a claim. In addition, the Association shall provide such reasonable financial support as may be necessary in order for the Non-Declarant Directors to inspect, investigate and/ or initiate the claim on behalf of the Association, subject to the applicable requirements and procedures set forth in **Sections 5.13, 6.6 and Article 12**. The provisions of this **Section 5.14** are effective automatically on the date the first Non-Declarant Director is elected to the Board.

5.15 Access to Association Records. The Association shall comply with the requirements of Civil Code section 1365.2 in making the "Association Records" and "Enhanced Association Records", as defined in Civil Code section 1365.2(a), available for copy and inspection.

ARTICLE 6 - Assessments

6.1 Obligations to Pay Assessments. The Owner of each Lot is obligated to pay any assessments levied against that Owner's Lot on or before the due date of the assessment. If there is more than one Owner of the Lot, the obligation is joint and several. Each Owner on acceptance of a deed to a Lot automatically personally assumes the obligation to pay any assessments against the Owner's Lot (including, but not limited to, that portion of the annual regular assessment not yet due and payable) and agrees to allow the Association to enforce any assessment lien established hereunder by nonjudicial proceedings under the power of sale or by any other means authorized by law. The Owner shall be liable for the full assessment levied against that Owner's Lot regardless of the Owner's possession or use of the Lot, the Common Area or any services rendered by the Association. The Owner has no right or power to commit or omit any act, such as waiving the right to use the Common Area Improvements, in an attempt to eliminate or reduce the assessments against that Owner's Lot. An assessment shall be both a personal obligation of the Owners of the Lot against which the assessment is levied and, on the recordation of a notice of delinquent assessment, a lien against the Lot. Any Owner who transfers a Lot shall remain personally liable for any unpaid assessments that accrued on or before the date of the transfer. No Owner shall be liable for any defaults of the Owner's predecessor in interest in the payment of any assessment that has accrued prior to the Owner taking title to the property unless that Owner expressly assumes the obligation to cure the delinquent assessments. Notwithstanding the foregoing, any Owner who takes title to a Lot on which a lien for a delinquent assessment has been established will take title subject to the lien and the Association's

enforcement remedies as a result thereof unless the Owner takes title under a foreclosure or trustee sale resulting from a foreclosure or exercise of a power of sale under a Mortgage, deed of trust, or other lien recorded before the recordation of the notice of delinquent assessment.

6.2 Annual Regular Assessment. Prior to the beginning of each fiscal year of the Association, the Board shall meet for the purpose of establishing the annual regular assessment for the forthcoming fiscal year. At such meeting, the Board shall review the preliminary pro forma operating budget prepared for the forthcoming fiscal year, any written comments received from Members and Mortgagees, and such other related information that has been made available to the Board. After making any adjustments that the Board considers appropriate and subject to such Member approval as may be required by **Section 6.6**, the Board will establish an annual regular assessment for the forthcoming fiscal year. Each annual regular assessment shall include a portion for reserves as described in **Section 6.3**.

If the Board for any reason fails to take the appropriate steps to establish the annual regular assessment for the next fiscal year, the annual regular assessment for the preceding fiscal year shall continue in effect subject to the Board's right at anytime during the next fiscal year to adjust the assessment pursuant to the procedures described herein.

Declarant's obligation to pay regular assessments for Lots owned by Declarant may be reduced or abated pursuant to a maintenance or subsidy agreement between Declarant and the Association and approval by the California Department of Real Estate.

6.3 Reserves, Reserve Accounts and Reserves Study. Each annual regular assessment shall include a portion for reserves in such amount as the Board in its discretion considers appropriate to meet the cost of the future repair, replacement or additions to the Major Components as described in **Section 5.10.1** that the Association is obligated to maintain and repair. For all purposes in this Declaration and in the Bylaws, reserve accounts shall mean: (i) the funds that the Board has identified for the foregoing purposes ("Regular Reserve Funds") and (ii) the funds received and not yet expended or disposed from either a compensatory damage award or settlement to the Association from any Person for injuries to property, real or personal arising from any construction or design defects (the "Construction Reserve Funds"). Construction Reserve Funds shall be separately itemized from funds designated as Regular Reserve Funds.

Reserve funds shall be deposited in a separate account; and the signatures of at least two persons, who shall either be members of the Board or one officer who is not a member of the Board and a member of the Board, shall be required to withdraw monies from the reserve account. Reserve funds may not be expended for any purpose other than the repair, restoration, replacement, or maintenance of, or litigation involving the repair, restoration, replacement, or maintenance of, Major Components which the Association is obligated to maintain.

Notwithstanding the foregoing, the Board may authorize the temporary transfer of money from a reserve fund to the Association's general operating fund to meet short-term cash-flow requirements or other expenses, provided the Board has made a written finding, recorded in the Board's minutes, explaining the reason that the transfer is needed and describing when and how the money will be repaid to the reserve fund. The transferred funds shall be restored to the reserve fund within one year of the date of the initial transfer, provided that the Board, on the making of a finding supported by documentation that a temporary delay is in the best interest of the Development, may delay temporarily the restoration. The Board shall exercise prudent fiscal management in maintaining the integrity of the reserve account and, if necessary, shall levy a special assessment to recover the full amount of the expended funds within the time limits required herein. This special assessment shall be subject to the assessment increase restrictions set forth in **Section 6.6** and Civil Code section 1366(b).

If the Board elects to use reserve funds or to temporarily transfer money from the reserve fund to pay for litigation, the Association shall notify the Members of that decision in the next available mailing to all Members pursuant to Corporations Code section 5016. The notice shall inform Members of the availability of an accounting of these expenses. The Board shall distribute a written accounting of this expense to the Members on at least a quarterly basis, with the first accounting to be delivered no later than the 30th day following the Board's decision to use reserve funds for litigation, either directly or through a transfer to operating funds. In any proposed litigation in which the amount in controversy is expected to exceed \$25,000,

the first accounting shall include a description of expenses paid to date, a description of the principal terms and conditions of any contract with any Person providing services in connection with the litigation, including attorneys and expert witnesses, a good faith estimate of the total legal fees, expert fees and other litigation costs that may be incurred, and a sample disclosure that Members should provide prospective purchasers, lenders and other parties that have obtained or may obtain an interest in the Owner's Lot regarding the litigation. In each subsequent accounting, the information required in the first accounting shall be appropriately updated.

At least once every three years, the Board shall cause to be conducted a reasonably competent and diligent visual inspection of the accessible areas of the Major Components which the Association is obligated to repair, replace, restore or maintain as a part of a study of the reserve account requirements of the Development if the current replacement value of the Major Components is equal to or greater than one-half of the gross budget of the Association, which excludes the Association's reserve account for that period. **The Board shall review this study annually and shall consider and implement necessary adjustments to the Board's analysis of the reserve account requirements as a result of that review.**

The study, at a minimum, shall include:

- (i) identification of the Major Components which the Association is obligated to repair, replace, restore, or maintain which, as of the date of the study, have a remaining useful life of less than 30 years;
- (ii) identification of the probable remaining useful life of the Major Components identified in subparagraph (i) as of the date of the study;
- (iii) an estimate of the cost of repair, replacement, restoration, or maintenance of the Major Components identified in subparagraph (i) during and at the end of its useful life; and
- (iv) an estimate of the total annual contribution necessary to defray the cost to repair, replace, restore, or maintain the Major Components during and at the end of its useful life after subtracting total reserve funds as of the date of the study.

6.4 Special Assessments. Subject to the restrictions described in **Section 6.6**, the Board may levy a special assessment if the Board in its discretion determines that the Association's available funds are or will become inadequate to meet the estimated expenses of the Association, including, but not limited to, expenses resulting from inadequate reserves, unanticipated delinquencies, costs of construction, unexpected repairs or replacements of capital Improvements, inadequate insurance proceeds, or other unanticipated expenses. The Board may levy the entire special assessment immediately or levy it in installments over a period the Board considers appropriate.

6.5 Reimbursement Assessments. The Board shall have the authority to levy reimbursement assessments against one or more Lot Owners to reimburse the Association for any costs incurred or to be incurred by the Association as the result of any act or omission of any Owner or occupant of any Lot or their family members, guests, agents or pets. The levy shall not include any portion that is paid or will be paid by any insurer under a policy maintained by the Association. Payment of the deductible amount shall be the responsibility of the Owner. If the reimbursement assessment is levied and paid before all or any portion of the costs have been incurred by the Association and the amount paid exceeds the costs incurred, the Association promptly shall refund the excess to the Owner. If the costs exceed the amount, the Owner shall reimburse the Association within 30 days thereafter. If payment is not made when due, the payment shall be considered a delinquent assessment and the Association may enforce the delinquent assessment as described in **Section 6.10**, subject to the non-judicial foreclosure restrictions described in this **Section 6.5**.

In addition to reimbursing the Association for costs necessary to repair any Common Area or other Property that is maintained by the Association, the Association may seek reimbursement for any costs incurred by the Association, including attorneys' fees, to bring the Owner or occupant or the Owner's Lot into compliance with this Declaration, the Articles, Bylaws or Rules. A reimbursement assessment may not be levied against any Lot until notice and hearing have been provided the Owner as described in **Section 5.6.4**; and under no circumstances may a reimbursement assessment (or a monetary penalty imposed by the

Association as a disciplinary measure for violation of this Declaration or the Rules) become a lien against the Owner's Lot that is enforceable by nonjudicial foreclosure proceedings under a power of sale. The foregoing restriction on enforcement is not applicable to late payment penalties or interest for delinquent assessments or charges imposed to reimburse the Association for loss of interest or for collection costs, including reasonable attorneys' fees, for delinquent assessments.

6.6 Assessment Increase Restrictions. The Association shall provide notice by personal delivery or by first-class mail to the Owners of any increase in the regular or special assessments not less than 30 days nor more than 60 days prior to the due date of the increased assessment.

The Board may not: (i) impose an annual regular assessment for any fiscal year more than 20% above the annual regular assessment for the Association's preceding fiscal year, or (ii) impose special assessments which in the aggregate exceed 5% of the budgeted gross expenses of the Association for that fiscal year without the approval of a majority of the votes of Owners at a meeting of the Members of the Association at which a quorum is present. For purposes of this **Section 6.6**, a "quorum" means more than 50% of the Owners, and the meeting must be conducted in accordance with Corporations Code sections 7510 through 7527 and 7613. The foregoing restrictions on assessment increases do not apply to increases necessary for emergency situations. An emergency situation is any one of the following:

- (i) an extraordinary expense required by an order of court;
- (ii) an extraordinary expense necessary to repair or maintain the Development or any part of it that the Association is responsible to maintain where a threat to personal safety on the Property is discovered; and/or
- (iii) an extraordinary expense necessary to repair or maintain the Development or any part of it that the Association is responsible to maintain that could not have been reasonably foreseen by the Board in preparing and distributing the pro forma operating budget required under Civil Code section 1365, provided that before the imposition or collection of any assessment under this subparagraph the Board must 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 shall distribute the resolution to the Members with the notice of the assessment.

If the Board fails to distribute the Pro Forma Operating Budget as required by **Section 5.10.1** for any fiscal year, the Association may not increase its annual regular assessment for that fiscal year, as authorized by Civil Code section 1366(b), unless the Board has obtained the approval of a majority of the votes of the Owners at a meeting of the Members at which a quorum was present. For the foregoing purposes, a "quorum" means more than 50% of the Owners of the Association; and the meeting must be conducted in accordance with Corporations Code sections 7510 through 7527 and 7613 or any successor statute thereto.

6.7 Commencement of Regular Assessments. Annual regular assessments shall commence for all Lots in a phase on the first day of the month coinciding with or immediately following the date of the first transfer of title of a Lot in that phase by the Declarant to a purchaser under the authority of a final subdivision public report issued by the California Department of Real Estate or an earlier date at the discretion of the Declarant. No Lot shall be subject to any special assessments until regular assessments have commenced against that Lot.

Notwithstanding the foregoing, the sale of a Lot in a phase that is not occupied and that is used as a model home will not commence assessments against the Lots in that phase. The subsequent sale of a Lot in that phase not used as a model home will commence assessments against the Lots in that phase, including assessments against any model homes in that phase.

6.8 Due Dates of Assessments. Unless otherwise directed by the Board or unless accelerated as described herein, the annual regular assessment shall be collected in monthly installments and shall be due and payable on the first day of each month. If any monthly installment is delinquent, the Board, at its election, may accelerate the remaining installment payments so that the entire remaining balance of the annual regular assessment is immediately due and payable. Special assessments shall be due on such date or dates as selected by the Board. Reimbursement assessments shall be due and payable ten days after the

Owner receives the notice of the reimbursement assessment. The notice shall be deemed received on the date described in **Section 13.14**.

Any annual regular assessment installment (including any accelerated installments), special assessment, or reimbursement assessment not paid within 15 days after the due date shall be delinquent, shall bear interest at the rate of 12% per annum from 30 days after the due date until paid, and shall incur a late penalty in an amount to be set by the Board from time to time, not to exceed the maximum amount permitted by law.

6.9 **Allocation of Regular and Special Assessments.** Regular and special assessments levied by the Board shall be allocated among the Lots as described in this **Section 6.9**.

6.9.1 **Courtyards Cost Center.** All costs to inspect, maintain, repair and replace (including reserves) the Courtyard Improvements or landscaping, including the roadbed, subbase, pavement, curb, gutters and storm drainage system, and any administrative and management costs related thereto shall be allocated equally among all the Courtyard Lots. By way of example, costs to repair the Improvements within a specific Courtyard shall be allocated to all Courtyard Lots and not just the Courtyard Lots served by that Courtyard.

6.9.2 **Remaining Costs.** All remaining costs shall be allocated equally among all the Lots.

Cost center funds may be used only for the purposes they were intended for and not as general Association funds. The Board shall provide for a separate accounting of the cost center funds that are collected and expended on behalf of the cost center and for an annual review and disclosure of cost center reserves and reserve study. The Owners of Lots that are members of the cost center may establish an advisory committee to consult with the Board regarding the cost center, including issues regarding the level and quality of the maintenance. The final decision of any cost center issues shall rest with the Board.

Notwithstanding anything herein to the contrary in this **Section 6.9**, if the use of any Lot, the equipment or facilities maintained within any Lot or any related reason results in an increase in the Association costs, including, but not limited to, increases in maintenance and repair costs, trash removal costs, commonly-metered utility costs or insurance costs, the Board may allocate the amount of the increase to the Lot or Lots responsible for the increase.

6.10 **Enforcement of Delinquent Assessments.** The Association may elect to pursue one or both of the following remedies in the event of a delinquent assessment:

6.10.1 **Personal Obligation.** The Association may bring a legal action directly against the Owner for breach of the Owner's personal obligation to pay the assessment and in such action shall be entitled to recover the delinquent assessment or assessments, accompanying late charges, interest, costs and reasonable attorneys' fees. Commencement of a legal action shall not constitute a waiver of any lien rights as described in **Section 6.10.2**.

6.10.2 **Assessment Lien.** Except as otherwise provided in **Section 6.5** and subject to the provisions of **Section 6.10.3**, the Association may impose a lien against the Owner's Lot for the amount of the delinquent assessment or assessments, plus any costs of collection (including attorneys' fees), late charges and interest by taking the following steps:

(a) At least 30 days prior to recording a lien upon the Owner's Lot to collect a delinquent assessment, the Association shall notify the Owner in writing by certified mail of the following (the "Delinquency Notice"):

(1) A general description of the collection and lien enforcement procedures of the Association and the method of calculation of the amount, a statement that the Owner of the Lot has the right to inspect the Association records, pursuant to section 8333 of the Corporations Code, and the following statement in 14-point boldface type, if printed, or in capital letters, if typed: "IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST IS PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT ACTION".

(2) An itemized statement of the charges owed by the Owner, including items on the statement which indicate the amount of any delinquent assessments, the fees and reasonable costs of collection, reasonable attorneys' fees, any late charges, and interest, if any.

(3) A statement that the Owner shall not be liable to pay the charges, interest, and costs of collection, if it is determined the assessment was paid on time to the Association.

(4) The right to request a meeting with the Board as provided by **Section 6.10.2(b)(3)**.

(5) The right to dispute the assessment debt by submitting a written request for dispute resolution to the Association pursuant to the Association's "meet and confer" program required in Civil Code sections 1363.810 through 1363.850.

(6) The right to request alternative dispute resolution with a neutral third party pursuant to Civil Code sections 1369.510 through 1369.590 before the Association may initiate foreclosure against the Owner's Lot, except that binding arbitration shall not be available if the Association intends to initiate a judicial foreclosure.

(b) Any payments made by the Lot Owner toward the delinquent assessment shall first be applied to the assessments owed; and only after the assessments owed are paid in full shall the payments be applied to the fees and the costs of collection, attorneys' fees, late charges or interest. When an Owner makes a payment, the Owner may request a receipt and the Association shall provide it. The receipt shall indicate the date of payment and the Person who received it. The Association shall provide a mailing address for overnight payment of assessments.

(1) Prior to recording a lien for delinquent assessments, the Association shall offer the Owner and, if so requested by the Owner, participate in dispute resolution pursuant to the Association's "meet and confer" program required in Civil Code sections 1363.810 through 1363.850.

Prior to initiating a foreclosure for delinquent assessments, the Association shall offer the Owner and, if so requested by the Owner, shall participate in dispute resolution pursuant to the Association's "meet and confer" program required in Civil Code sections 1363.810 through 1363.850 or alternative dispute resolution with a neutral third party pursuant to Civil Code sections 1369.510 through 1369.580. The decision to pursue dispute resolution or a particular type of alternative dispute resolution shall be the choice of the Owner, except that binding arbitration shall not be available if the Association intends to initiate a judicial foreclosure.

(2) The decision to record a lien for delinquent assessments shall be made only by the Board and may not be delegated to an agent of the Association. The Board shall approve the decision by a majority vote of the Board members in an open meeting. The Board shall record the vote in the minutes of that meeting.

(3) An Owner may submit a written request to meet with the Board to discuss a payment plan for the delinquent assessment. The Association shall provide the Owners the standards for payment plans if any exist. The Board shall meet with the Owner in executive session within 45 days of the postmark of the request if the request is mailed within 15 days of the date of the postmark of the Delinquency Notice unless there is no regularly-scheduled Board meeting within that period, in which case the Board may designate a committee of one or more Members to meet with the Owner. Payment plans may incorporate any assessments that accrue during the payment plan period. Payment plans shall not impede an Association's ability to record a lien on the Owner's Lot to secure payment of delinquent assessments. Additional late fees shall not accrue during the payment plan period if the Owner is in compliance with the terms of the payment plan. In the event of a default on any payment plan, the Association may resume its efforts to collect the delinquent assessments from the time prior to entering into the payment plan.

(c) The amount of the assessment, plus any costs of collection, late charges, and interest assessed in accordance with **Section 6.8**, shall be a lien on the Owner's Lot from and after the time the Association causes to be recorded with the county recorder of the county in which the Lot is located a notice of delinquent assessment, which shall state the amount of the assessment and other sums imposed

in accordance with Civil Code section 1366, a legal description of the Owner's interest in the Development against which the assessment and other sums are levied, and the name of the record owner of the Owner's interest in the Development against which the lien is imposed. The itemized statement of the charges owed by the Owner described in **Section 6.10.2(a)(2)** shall be recorded together with a notice of delinquent assessment. In order for the lien to be enforced by nonjudicial foreclosure as provided in **Section 6.10.2(e)**, the notice of delinquent assessment shall state the name and address of the trustee authorized by the Association to enforce the lien by sale. The notice of delinquent assessment shall be signed by any officer of the Association or by the Person designated by the Association for that purpose. A copy of the recorded notice of delinquent assessment shall be mailed by certified mail to every person whose name is shown as an Owner in the Association's records, and the notice shall be mailed no later than ten calendar days after recordation. Within 21 days of the payment of the sums specified in the notice of delinquent assessment, the Association shall record or cause to be recorded in the office of the county recorder in which the notice of delinquent assessment is recorded a lien release or notice of rescission and provide the Lot Owner a copy of the lien release or notice that the delinquent assessment has been satisfied.

A monetary charge imposed by the Association: (i) as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to Common Area Improvements or landscaping for which the Member or the Member's guests or tenants were responsible; or (ii) as a disciplinary measure for failure of a Member to comply with the Governing Documents, except for the late payments, may not be characterized nor treated as an assessment that may become a lien against the Member's Lot enforceable by the sale of the interest under Civil Code sections 2924, 2924b and 2924c.

(d) A lien created pursuant to **Section 6.10.2(c)** shall be prior to all other liens recorded subsequent to the notice of assessment, except as described in **Article 10**.

(e) Subject to the limitations of this **Section 6.10**, after the expiration of 30 days following the recording of a lien created pursuant to **Section 6.10.2(c)**, the 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 Civil Code section 2934a. Any sale by the trustee shall be conducted in accordance with Civil Code sections 2924, 2924b and 2924c applicable to the exercise of powers of sale in mortgages and deeds of trusts. The fees of a trustee may not exceed the amounts prescribed in Civil Code sections 2924c and 2924d.

(f) If it is determined that a lien previously recorded against a Lot was recorded in error, the party who recorded the lien, within 21 calendar days, shall record or cause to be recorded in the office of the county recorder in which the notice of delinquent assessment is recorded a lien release or notice of rescission and provide the Lot Owner with a declaration that the lien filing or recording was in error and a copy of the lien release or notice of rescission.

(g) In addition to the requirements of Civil Code section 2924, a notice of default shall be served by the Association on the Owner's legal representative in accordance with the manner of service of summons in Code of Civil Procedure sections 415.10 through 415.95.

(h) Upon receipt of a written request by an Owner identifying a secondary address for purposes of collection notices, the Association shall send additional copies of any notices required by this section to the secondary address provided. The Association shall notify Owners of their right to submit secondary addresses to the Association, at the time the Association issues the Pro Forma Operating Budget pursuant to Civil Code section 1365. The Owner's request shall be in writing and shall be mailed to the Association in a manner that shall indicate the Association has received it. The Owner may identify or change a secondary address at any time, provided that, if a secondary address is identified or changed during the collection process, the Association shall only be required to send notices to the indicated secondary address from the point the Association receives the request.

(i) This **Section 6.10.2** is subordinate to and shall be interpreted in conformity with **Section 6.10.3**.

(j) If the Association fails to comply with the procedures set forth in this **Section 6.10.2**, prior to recording a lien, the Association shall recommence the required notice process. Any

costs associated with recommencing the notice process shall be borne by the Association and not by the Lot Owner.

6.10.3 Assessment Enforcement Restrictions.

(a) If the Association seeks to collect delinquent regular or special assessments of an amount less than one thousand eight hundred dollars (\$1,800), not including any accelerated assessments, late charges, fees and costs of collection, attorneys' fees, or interest, may not collect that debt through judicial or nonjudicial foreclosure, but may attempt to collect or secure that debt in any of the following ways:

(1) By a civil action in small claims court, pursuant to Code of Civil Procedure sections 116.110 through 116.950. If the Association chooses to proceed by an action in small claims court, and prevails, the Association may enforce the judgment as permitted under Code of Civil Procedure sections 116.810 through 116.880. The amount that may be recovered in small claims court to collect upon a debt for delinquent assessments may not exceed the jurisdictional limits of the small claims court and shall be the sum of the following:

(A) The amount owed as of the date of filing the complaint in the small claims court proceeding.

(B) In the discretion of the court, an additional amount to that described in **Section 6.10.3(a)(1)** equal to the amount owed for the period from the date the complaint is filed until satisfaction of the judgment, which total amount may include accruing unpaid assessments and any reasonable late charges, fees and costs of collection, attorneys' fees, and interest, up to the jurisdictional limits of the small claims court.

(2) By recording a lien on the Owner's Lot upon which the Association may not foreclose until the amount of the delinquent assessments secured by the lien, exclusive of any accelerated assessments, late charges, fees and costs of collection, attorneys' fees, or interest, equals or exceeds one thousand eight hundred dollars (\$1,800) or the assessments are more than 12 months delinquent. If the Association chooses to record a lien under these provisions, prior to recording the lien, the Association shall offer the Owner and, if so requested by the Owner, participate in dispute resolution as set forth in Civil Code sections 1363.810 through 1363.850.

(3) Any other manner provided by law, except for judicial or nonjudicial foreclosure.

(b) If the Association seeks to collect delinquent regular or special assessments of an amount of one thousand eight hundred dollars (\$1,800) or more, not including any accelerated assessments, late charges, fees and costs of collection, attorneys' fees, or interest, or any assessments that are more than 12 months delinquent, the Association may use judicial or nonjudicial foreclosure subject to the following conditions:

(1) Prior to initiating a foreclosure on an Owner's Lot, the Association shall offer the Owner and, if so requested by the Owner, participate in dispute resolution pursuant to the Association's "meet and confer" program required in Civil Code sections 1363.810 through 1363.850 or alternative dispute resolution as set forth in Civil Code sections 1369.510 through 1369.580. The decision to pursue dispute resolution or a particular type of alternative dispute resolution shall be the choice of the Owner, except that binding arbitration shall not be available if the Association intends to initiate a judicial foreclosure.

(2) The decision to initiate foreclosure of a lien for delinquent assessments that has been validly recorded shall be made only by the Board and may not be delegated to an agent of the Association. The Board shall approve the decision by a majority vote of the Board members in an executive session. The Board shall record the vote in the minutes of the next meeting of the Board open to all members. The Board shall maintain the confidentiality of the Owner or Owners of the Lot by identifying

the matter in the minutes by the parcel number of the property, rather than the name of the Owner or Owners. A Board vote to approve foreclosure of a lien shall take place at least 30 days prior to any public sale.

(3) The Board shall provide notice by personal service to an Owner of a Lot who occupies the Lot or to the Owner's legal representative, if the Board votes to foreclose upon the Lot. The Board shall provide written notice to an Owner who does not occupy the Lot by first-class mail, postage prepaid, at the most current address shown on the books of the Association. In the absence of written notification by the Owner to the Association, the address of the Owner's Lot may be treated as the Owner's mailing address.

(4) A nonjudicial foreclosure by the Association to collect upon a debt for delinquent assessments shall be subject to a right of redemption. The redemption period within which the Lot may be redeemed from a foreclosure sale under this paragraph ends 90 days after the sale.

6.10.4 Erroneous Liens. If it is determined, through dispute resolution pursuant to the Association's "meet and confer" program required in Civil Code sections 1363.810 through 1363.850 or alternative dispute resolution with a neutral third party pursuant to Civil Code sections 1369.510 through 1369.590, that the Association has recorded a lien for a delinquent assessment in error, the Association shall promptly reverse all late charges, fees, interest, attorneys' fees, costs of collection, costs imposed for the notice prescribed in Civil Code sections 1367.1(a) and 1367.1(b) and pay all costs related to the dispute resolution or alternative dispute resolution.

The provisions of this Section 6.10 are intended to comply with the requirements of Civil Code sections 1367.1, 1367.4 and 1367.5 in effect as of January 1, 2006. If these sections are amended or rescinded in any manner, the provisions of this Section 6.10 automatically shall be amended or rescinded in the same manner. Civil Code sections 1367.1, 1367.4 and 1367.5 may have been amended by the State Legislature, and the Board should confirm the current statutory requirements.

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

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

6.12 Estoppel Certificate. Within ten days of the mailing or delivery of a written request by any Owner, the Board shall provide the Owner with a written statement containing the following information: (i) whether to the knowledge of the Association, the Owner or occupant of the Owner's Lot is in violation of any of the provisions of this Declaration, the Articles, Bylaws or Rules; (ii) the amount of regular and special assessments, including installment payments, paid by the Owner during the fiscal year in which the request is received; and (iii) the amount of any assessments levied against the Owner's Lot that are unpaid as of the date of the statement, including any late charges, interest or costs of collection, and that, as of the date of the statement, are or may be made a lien against the Owner's Lot as provided by this Declaration. The Association may charge a fee to provide this information provided the fee shall not exceed the Association's reasonable cost to prepare and reproduce the requested items.

6.13 Restrictions on Association Funds. Pursuant to the requirements of Civil Code section 1363.04, no Member funds shall be used for campaign purposes in connection with any election of members to the Board or for company purposes in connection with any other Association election, except to the extent necessary to comply with duties of the Association imposed by law.

ARTICLE 7 - Architectural Review

7.1 Architectural Committee. An Architectural Committee may be established by the Declarant or by the Board. The Committee shall consist of three members. Declarant may appoint all of the original members of the Committee and all replacements until the first anniversary of the issuance of the original final subdivision public report for the Development. Declarant's appointees need not be Members of the Association. Declarant shall have the right to appoint a majority of the members of the Committee until 90% of all the Lots in the Development have been sold or until the fifth anniversary of the issuance of the final public report for the Development, whichever occurs first. On the first anniversary date of the issuance of the original public report for the Development, the Board shall have the power to appoint one member to the Committee until 90% of the Lots of the Development have been sold or until the fifth anniversary date of the issuance of the final public report for the Development, whichever first occurs. Thereafter, the Board shall have the power to appoint all of the members of the Committee. The Board appointees shall be Members of the Association and shall serve at the will of the Board. The term of the members shall be as designated by the Declarant or by the Board. If a member is removed from the Committee for any reason, the person appointing the member immediately shall appoint a replacement for the balance of the removed member's term. Until a replacement is named, the remaining members of the Committee shall have full authority to act on behalf of the Committee. No member of the Committee shall be entitled to any compensation for serving as a member, provided that member shall be entitled to be reimbursed by the Committee for any expenses incurred by the member in performing its duties, provided the member received prior authorization for the incurrence of the expense. All actions of the Committee shall be governed by a majority vote of the members. The Committee shall meet at such times and places as it shall designate. Meetings of the Committee shall be open to all Members of the Association. The Committee may adopt guidelines regarding the type, location, quality, size, height and other matters relating to any Improvements or landscaping to be constructed or installed on the Lots and may establish a procedure for reviewing all plans and specifications submitted to it for prior approval and shall be responsible for periodic review and modification of the guidelines. The guidelines shall comply with the use restrictions described in **Article 3**. Factors that shall be considered in approving proposed plans and specifications shall include without limitation: (i) conformity and harmony of external design with other Lots in the Development; (ii) effect of the proposed location on neighboring Lots; (iii) relation of the topography, grade and finished ground elevation to that of adjoining Lots; (iv) proper facing of elevations with respect to nearby streets and adjoining Lots; (v) overall conformity with the general purpose of the Development and the restrictions in this Declaration; and (vi) the guidelines.

7.2 Approval Requirements. None of the following actions shall take place anywhere within the Development without the prior written approval of the Committee:

(i) any construction, installation, addition, repair (including exterior painting), replacement, alteration or removal of any building, outbuilding, structure, exterior wall, roof, windows, exterior doors, exterior stairs, fence, sign, garage, trash enclosure, storage area, berms, utilities, fixtures (gas, electricity, telephone, water, or otherwise) or other Improvements visible from any other Lot or Common Area;

(ii) any planting or landscaping (including the removal of any tree);

(iii) any grading, excavation or site preparation; or

(iv) any placement or storage of building materials or temporary structures (including trailers, tents, mobile homes, offices or vehicles).

(v) (applicable to Attached Residences only) any replacement or modification to any floor coverings or wall or ceiling materials or any penetration or other disturbance of any wall, floor, or ceiling if the replacement, modification, penetration or disturbance could result in any increase in the sound transmissions, resonances or reverberations from the residence to any adjoining residence.

If the Committee has established landscaping guidelines, the installation or replacement of all landscaping and planting (including tree removal) shall comply with the guidelines, subject to such variances as may be approved in writing by the Committee.

The Committee may impose terms and conditions on any approval, including: (i) contractor licensing requirements; (ii) insurance requirements; (iii) completion and labor and material bonds or other acceptable collateral; and (iv) construction regulations such as authorized hours of construction, access restrictions, noise restrictions and clean-up requirements.

Notwithstanding anything herein to the contrary, any Owner may repaint the exteriors of any Improvements on the Owner's Lot in the same colors, remove and replace any siding or roofing materials with the same material and in the same color, and remove and replace vegetation of the same type as originally constructed or installed by Declarant or as previously approved by the Committee. In addition, any Owner may repaint the interior of the Owner's residence in any color the Owner desires or remodel the interior, provided the remodeling does not in any manner alter the exterior appearance of the building or, in the case of any residences that immediately abut an adjoining residence, result in the increase of the sound transmissions, resonances or reverberations from the residence to the adjoining residence.

7.3 Architectural Rules. The Committee, from time to time, may adopt, amend and repeal rules and regulations to be known as "Architectural Rules". Pending adoption of the Architectural Rules, the provisions of this **Section 7.3** shall control the actions of the Committee and shall bind all Owners. The Architectural Rules shall interpret and implement the provisions of this **Article 7**, and shall contain the following mandatory elements and such other elements as the Committee considers necessary or advisable:

7.3.1 Application Requirements. The Architectural Rules shall set forth the necessary documents to be submitted by the applicant. Unless otherwise waived in writing by the Committee, or an authorized representative thereof, the application shall include plans and specifications prepared by an architect or a licensed building designer which adequately describe the proposed work and shall include the following to the extent applicable to the proposed work: plot layout; location of all existing and proposed Improvements; setbacks from Lot lines of all existing and proposed Improvements; proposed drainage; exterior designs; roofing and siding materials; elevations; of all Improvements; floor plans; location of all heating or cooling equipment; decking; screening devices; bearing walls and retaining walls; materials and colors; landscaping plans; construction schedule; and such other information as the Committee shall reasonably require. Landscaping plans shall include a complete and professionally prepared plan including the name, location and sizes of all proposed trees, sodding, shrubbery, lawn areas, hardscape and irrigation system. The plans shall identify any trees scheduled for removal and describe the plans for replanting trees and vegetation.

If the proposed work does not merit extensive plans and specifications, the Committee may, but shall not be obligated to, waive or modify any of the above requirements upon receipt of a written request from the applicant to do so.

An application shall not be considered a "complete application" for purposes of **Section 7.4** until the Committee has received all the required documents. After the submission of an application, the applicant may request in writing from the Committee confirmation that the application is complete. The initial confirmation request may be made no sooner than seven calendar days after the initial application has been received by the Committee. If the Committee fails to respond within 30 days of receipt of the request, the application shall be considered complete for purposes of **Section 7.4** only. The foregoing does not preclude the Committee from requesting additional documentation unless the application has been deemed approved pursuant to the provisions of **Section 7.4**. If a timely request for additional documentation is received, this documentation or the failure to receive the documentation can be considered by the Committee in rendering its decision on the proposed work.

The application, any request for confirmation of a complete application, any additional documents requested by the Committee, and any other notices or documents given to the Committee under the provisions of this **Article 7** shall be considered received by the Committee in accordance with the "receipt" procedures described in the Architectural Rules or, if there are no such procedures, on the date of personal delivery to the Association's manager, the President of the Association, or the Chair of the Committee or, if mailed, on the date receipt is acknowledged on the return receipt when mailed certified mail, return receipt requested, addressed to the President of the Association or Chair of the Committee and mailed to the principal office of the Association.

7.3.2 Application Fee. The Architectural Rules may require that the application be accompanied by a reasonable application fee to pay for any out-of-pocket costs incurred by the Committee in reviewing any plans and specifications. This fee may include the cost of retaining outside consultants for purposes of assisting the Committee in reviewing the plans and specifications. If, during the review process, the Committee determines that additional fees will be necessary to cover additional out-of-pocket costs, the Committee may require the applicant to advance any additional fees before the review can be completed. The proposed work can be denied for the sole reason that the applicant has failed to pay the required fees.

7.3.3 Guidelines and Variances. The Architectural Rules may include guidelines for any proposed work that are not inconsistent with any use restriction contained in this Declaration. The guidelines can apply to structures and/or landscaping. The guidelines may set forth specific standards regarding color, height, quality, setbacks, materials, size and such other standards as the Committee may adopt from time to time that are consistent with the approval conditions described in **Section 7.4**. The Committee, from time to time and upon request from the applicant, may grant variances from any guidelines established by the Committee. Under no circumstances shall the Committee have any authority to grant any variance that would result in violation of any use restrictions contained in this Declaration.

7.3.4 Hearings (Optional). If the Committee, in its sole discretion, elects to conduct a hearing on an application, reasonable notice of the time, place and proposed agenda for the Committee's hearing shall be distributed prior to the date of a hearing to any applicant whose application is scheduled to be heard. The applicant shall be entitled to appear at the hearing, shall be entitled to be heard on the matter, and may be accompanied by the applicant's architect, engineer and/or contractor. Notice also shall be given to such adjoining or nearby Lot Owners that the Committee reasonably believes could be affected by the proposed work. These Owners shall be entitled to attend the hearing and given reasonable opportunity to present their views on the proposed work.

7.3.5 Preliminary Approval Procedures. The Committee may adopt procedures for preliminary approval. This would enable applicants who are proposing to make Improvements an opportunity to obtain guidance and comments from the Committee prior to the expenditure of substantial sums on completed plans and specifications. Preliminary approval shall be granted if the Committee, in its sole discretion, determines that it would approve final plans as described in **Section 7.4**. Pending or denying preliminary approval, the Committee may give the applicant such directions or recommendations concerning the form and substance of the final application for approval as it may deem proper or desirable for guidance of the applicant. Any preliminary approval granted by the Committee shall be effective for a period of 90 days from the date of issuance or such longer period as, in the Committee's discretion, may be granted. During this period, any application for final approval that presents complete plans and specifications for the proposed Improvements, consistent with the provisions of preliminary approval and otherwise acceptable under the terms of this Declaration and the Architectural Rules, shall be approved by the Committee. In no event shall any preliminary approval of a proposed Improvement constitute final approval authorizing construction of the Improvement. The purpose of the preliminary review procedure is to give the applicant a measure of security in proceeding with the proposed Improvement, committing funds thereto. Final approval shall be based on a complete submittal conforming to the requirements of this **Section 7.3**.

7.4 Basis for Approval. The Committee shall not approve the application unless the Committee, in its sole discretion, finds all of the following conditions have been satisfied:

(i) the applicant has complied with the application procedures described in **Section 7.3** and any additional procedures adopted by the Committee;

(ii) the proposed work is in compliance with the use restrictions contained in this Declaration, the Architectural Rules, and, unless a variance is granted, any guidelines established by the Committee under **Section 7.3.3** in effect at the time the application was submitted to the Committee;

(iii) the proposed work is in compliance with all governmental laws and ordinances (the Committee shall have no duty to independently confirm such compliance);

(iv) if the proposed work involves any exterior modifications or additions, the work is in harmony with the external design of other structures and/or landscaping within the Development and is

consistent with the architectural and aesthetic standards prevailing within the Development and with the overall general plan and scheme of the Development; and

(v) if the residence immediately abuts the wall of an adjoining residence, the proposed work will not unreasonably increase the sound transmissions, resonances or reverberations to the other residence.

The Committee shall be entitled to determine that the proposed work is unacceptable even if the same or similar work previously had been approved for another Lot as long as the Committee finds that reasonable factors exist to distinguish this application from the approved work. The Committee shall be entitled to make subjective judgments and to consider the aesthetics of a proposal when the proposed work will result in Improvements and/or landscaping that can be seen from any other Lot or public right-of-way as long as the Committee acts in good faith and not unreasonably, arbitrarily or capriciously.

In approving any proposed work, the Committee may grant conditional approval on the adoption of modifications to the proposed work that in the Committee's judgment are necessary to bring the proposed work into compliance with the approval conditions contained in this **Section 7.4**. In addition, the Committee may impose reasonable construction restrictions, such as construction hours, dust controls, noise abatement measures, and such other conditions as the Committee may reasonably require, to minimize the interference with the quiet use and enjoyment of the surrounding residences during the course of construction.

In reviewing and approving plans, the Committee shall comply with the requirements of Civil Code section 1378, the restrictions contained in **Article 3** and with all federal, State and local laws regulating the rights of handicapped persons. If there is any conflict between this **Article 7** and Civil Code section 1378, Civil Code section 1378 shall control to the extent of the conflict.

7.5 Architectural Committee's Decision. The decision on any proposed work shall be in writing. If a proposed change is disapproved by the Committee, the written decision shall include both an explanation of why the proposed change is disapproved and a description of the procedure for reconsideration of the decision by the Board. If disapproved, the applicant is entitled to reconsideration by the Board at an open meeting of the Board unless the disapproval decision was made by the Board instead of the Committee or unless the Architectural Committee has the same members as the Board. Reconsideration by the Board does not constitute a dispute resolution procedure described in **Section 5.6.7**.

If the Committee fails to approve or disapprove any application or fails to request additional information within 60 days of receipt of either the complete application or any advance payments required by the Committee, whichever shall occur later, the application shall be deemed approved unless a written extension is executed by the Person submitting the application and by the Committee. The burden shall be on the applicant to establish that the Committee did receive the complete application and/or advance payments and to establish the date of receipt.

7.6 Completion of Work. On receipt of approval, the Owner shall commence the work as soon as reasonably practicable and shall diligently pursue the completion of the work. If the work is not commenced within 90 days after receipt of approval or completed within 180 days or such later date as the Committee shall approve in writing, the approval automatically shall be deemed revoked and no further work shall be done without again obtaining the written approval of the Committee as described herein. The work shall be done in strict compliance with the approved plans except for minor non-material changes as may be necessary during the course of construction.

7.7 Non-liability. The Association, the Committee, the Declarant, or the other Lot Owners, or their respective successors or assigns, shall not be liable to any Person submitting plans to the Committee for approval or to any other Lot Owners or occupants by reason of any act or omission arising out of or in connection with the approval or disapproval of any plans or specifications. Approval shall not constitute any warranty or representation by the Committee or its members that the plans satisfy any applicable governmental law, ordinance or regulation or that any Improvement constructed in accordance with the plans shall be fit for the use for which it was intended and safe for use and occupancy. Applicants shall make their own independent verifications of the foregoing and shall not rely on the Committee or its members in any manner in this regard.

7.8 Enforcement. If any Owner or occupant violates the provisions of this **Article 7**, the Declarant or the Association, in addition to any other remedy available at law or equity, may bring an action to compel compliance, including an action for a court order mandating the removal of any Improvement or other property constructed or installed in violation of the provisions of this **Article 7**. In such action, the prevailing party shall be entitled to recover costs and reasonable attorneys' fees.

7.9 Board's Authority. If for any reason the Committee is not established or not active, the Board shall perform the duties and shall have the rights of the Committee as described in this **Article 7**.

7.10 Governmental Approval. Before commencement of any alteration or Improvement approved by the Committee, the Owner shall comply with all the appropriate governmental laws and regulations. Approval by the Committee does not satisfy the appropriate approvals that may be required from any governmental entity with appropriate jurisdiction.

7.11 Declarant Exemption. Declarant, or its successor or assign, shall not be subject to the approval requirements of this **Article 7** in connection with the construction or alteration of any Improvement within the Development or the installation of any landscaping, provided that this exemption shall expire on the third anniversary date of the recordation of this Declaration. In addition Declarant, or its successor or assign shall not be subject to the approval requirements of this **Article 7** in connection with any repairs or modifications made to any Improvements as may be required by law or pursuant to an agreement with any Lot Owner or the Association.

ARTICLE 8 - Insurance

8.1 Liability Insurance. The Association shall obtain and maintain the following liability policies:

8.1.1 Commercial General Liability Policy: A commercial general liability insurance policy insuring the Association, any manager, Declarant, the Association's directors and officers, and the Owners and occupants of the Residential Lots and their respective family members against any liability incident to any bodily injury or property damage from any accident or occurrence within the Common Area. The policy shall also cover any liability incident to any bodily injury or property damage from any accident or occurrence within any Lot related to any maintenance or repair work required to be performed on any Lot by the Association pursuant to this Declaration, including, but not limited to, work performed in any Common Area. The policy shall include, if obtainable, a cross liability or severability of interest endorsement insuring each insured against the liability to each other. The limits of such insurance shall not be less than \$2,000,000 covering all claims for death, personal injury and property damage arising out of a single occurrence. Such insurance shall include coverage against water damage liability, liability for non-owned and hired automobiles, liability for property of others, and other liability or risk customarily covered with respect to projects similar in construction, location and use and shall require at least 30 days' written notice to the Association before the policy can be cancelled or substantially modified unless the policy is being replaced with a policy of equivalent coverage. The policy shall be primary and noncontributing with any other liability policy covering the same liability.

8.1.2 Directors and Officers Liability Policy: A directors and officers liability policy containing such terms and conditions that are normally and customarily carried for directors and officers of a residential association in the County where the Development is located.

8.2 Association Property Insurance. The Association, in the sole discretion of the Board, may obtain and maintain a property insurance policy on the Common Area Improvements and Association personal property in such amounts and containing such terms and conditions as the Board from time to time may select.

8.3 Cancellation. All of the policies of insurance maintained by the Association shall contain a provision that such policy or policies shall not be cancelled or terminated, or expired by their terms, or not renewed without 30 days' prior written notice to the Board, the Owners and their respective first Mortgagees

(provided that such Owners or Mortgagees have filed written requests with the carrier for such notice) and every other Person in interest who shall have requested such notice of the insurer.

8.4 Board's Authority to Revise Insurance Coverage. The Board shall have the power and right to deviate from the insurance requirements contained in this **Article 8** in any manner that the Board, in its discretion, considers to be in the best interests of the Association. If the Board elects to materially reduce the coverage from the coverage required in this **Article 8**, the Board shall make all reasonable efforts to notify the Members of the reduction in coverage and the reasons therefor at least 30 days prior to the effective date of the reduction.

The Board is authorized to negotiate and agree on the value and extent of any loss under any policy carried by the Association, including, but not limited to, the right and authority to compromise and settle any claim or enforce any claim by legal action or otherwise and to execute releases in favor of any insurer.

Each Owner, by acceptance of a deed to a Lot, irrevocably appoints the Association or the Insurance Trustee, described in **Section 8.6**, as that Owner's attorney-in-fact for purposes of procuring, negotiating, accepting, compromising, releasing, settling, distributing and taking other related actions in connection with any insurance policy maintained by the Association and any losses or claims related thereto and agrees to be bound by the actions so taken as if the Owner had personally taken the action.

8.5 Periodic Insurance Review. The Board periodically (and not less than once every three years) shall review the Association's insurance policies and make such adjustments to the policies' terms and conditions as the Board considers to be in the best interests of the Association. If applicable, the review shall include an appraisal by a qualified appraiser of the current replacement costs of all covered property under the Association's property insurance policy unless the Board is satisfied that the current dollar limit of the property insurance policy, coupled with the amount of actual reserves on hand, is equal to or greater than the current replacement costs.

8.6 Insurance Trustee. All property insurance proceeds payable to the Association under any property insurance policy procured by the Association as described in **Section 8.2**, subject to the rights of Mortgagees under **Article 10**, may be paid to a trustee as designated by the Board to be held and expended for the benefit of the Owners and Mortgagees as their respective interests shall appear. The trustee shall be a commercial bank or other financial institution with trust powers in the county in which the Development is located that agrees in writing to accept such trust. If repair or reconstruction is authorized, the Association will have the duty to contract for such work as provided for in this Declaration.

8.7 Individual Property Insurance Policies. Each Owner shall obtain and maintain, at the Owner's expense, a property insurance policy which provides in the minimum coverage against losses caused by fire and all other hazards normally covered under a "special form" policy or its equivalent in an amount not less than 90% of the replacement cost of the insurable Improvements on the Lot. The policy shall contain the following endorsements or their equivalents: agreed amount, inflation guard, ordinance or law, and replacement cost. The policy shall provide liability coverage in such amounts and for such acts or omissions as are normally and customarily included in homeowners property insurance policies of the types required herein. The Board from time to time may require each Owner to provide a certificate from the Owner's insurer certifying that the required insurance has been procured and is in full force and effect.

Any deviation from the insurance requirements set forth in this **Section 8.7** shall require the approval in writing of the adjoining Attached Residence Owner and that Owner's First Mortgagee. Each Attached Residence Owner may from time to time require the adjoining Attached Residence Owner to provide a certificate from the Owner's insurer certifying that the required insurance has been procured and is in full force and effect.

Each Owner is strongly advised to seek the advice of a qualified insurance consultant regarding: (i) the amount of personal liability insurance coverage the Owner should maintain because of the Owner's ownership interest in the Common Area and Lot and (ii) the availability of loss assessment insurance coverage.

8.8 Other Insurance. In addition to the policies described in **Sections 8.1 and 8.2**, the Association may obtain and maintain the following insurance:

- (i) Workers Compensation Insurance to the extent required by law;
- (ii) fidelity bonds or insurance covering officers, directors and employees who have access to any Association funds; and
- (iii) such other insurance as the Board in its discretion considers necessary or advisable.

ARTICLE 9 - Damage, Destruction or Condemnation

9.1 Repair or Reconstruction. If an Improvement on any Lot is damaged or destroyed by fire or other casualty, the Owner of such Lot shall repair or reconstruct the Improvement in accordance with the original as-built plans and specifications subject to such modifications as may be approved by the Architectural Committee or as required by law. Notwithstanding the foregoing, in lieu of repairing or restoring the residence, any Owner other than an Owner of an Attached Residence subject to the provisions of **Section 4.3** may elect to remove the residence and any other Improvements and all debris and maintain the unimproved Lot in a neat and weed-free condition pending reconstruction of the residence or sale of the Lot. Any Owner of an Attached Residence subject to the provisions of **Section 4.3** shall be required to rebuild the Improvements on the Owner's Lot unless the Owner's first Mortgagee and the adjoining Lot Owner and this Owner's first Mortgagee agree in writing that the Improvement need not be repaired or rebuilt. If the Improvement is to be repaired or rebuilt, the Attached Residence Owner immediately shall take the appropriate steps to process the necessary insurance claims and shall use the proceeds only for the purpose of repairing or rebuilding the Improvement. If the Improvement is not to be repaired or rebuilt, the Attached Residence Owner, at his or her cost, shall remove the Improvements, shall take any necessary steps to repair or restore any adjoining residence so that it can remain as a single-family detached residence (unless this residence also is removed), and shall maintain the unimproved Lot in a neat and weed-free condition pending reconstruction of the residence or sale of the Lot.

Pending removal and restoration of any residence, the Owner immediately shall take appropriate steps to secure any hazardous conditions (such as the installation of temporary fencing) and to the extent reasonably practical screen any unsightly views.

If any Common Area Improvement is damaged or destroyed by fire or other casualty, the Association shall repair or reconstruct the Improvement substantially in accordance with the original as-built plans and specifications subject to such modifications as may be approved by the Architectural Committee or as required by law. Notwithstanding the foregoing but subject to the provisions of **Section 9.3**, the Association will not be required to reconstruct or restore the damaged or destroyed Common Area Improvement if there are not available insurance proceeds and reserves sufficient to pay for at least 85% of the costs of such repairs or reconstruction and three-fourths of the total voting power of the Association's residing Members and their first lenders vote against such repair or reconstruction.

9.2 Reconstruction Contract. If the Common Area Improvements are to be rebuilt or restored, the Board shall solicit and obtain bids from at least two reputable contractors to repair and reconstruct the Common Area Improvements in accordance with the original plans and specifications, subject to such changes as may be approved by the Architectural Committee or required by law, and shall award the repair and reconstruction work to the lowest qualified bidder unless the Board in its reasonable judgment elects to select a higher bidder. The Association shall have the authority to enter into a written contract with the contractor or contractors for the repair and reconstruction, and the insurance proceeds held by the Association or insurance trustee shall be disbursed to the contractor according to the terms of the contract. It shall be the obligation of the Association to take all steps necessary to ensure the commencement and completion of authorized rebuilding at the earliest possible date.

9.3 Minor Repair and Reconstruction and Deductibles. The Association shall have the duty to repair and reconstruct Common Area Improvements within the Development without the requirement of any consent of the Owners and irrespective of the amount of available insurance proceeds in all cases of partial destruction when the estimated cost of repair or reconstruction does not exceed \$20,000, which amount shall be increased 3% per annum on a compounded basis commencing on the anniversary date of the recordation of this Declaration and each anniversary date thereafter. The Association may levy a special assessment for the cost of repairing and reconstructing Improvements to the extent insurance proceeds are unavailable pursuant to the procedures described in **Article 6**.

9.4 Completion of Repair or Reconstruction. The repair or reconstruction of any Improvement shall commence no later than 90 days after the date of such damage or destruction and shall be completed no later than 180 days subject to extensions because of delays that are beyond the control of the Association. The Association immediately shall take such steps as may be reasonably required to secure any hazardous condition resulting from the damage or destruction and to screen any unsightly views.

9.5 Election Not to Rebuild. If any Common Area Improvement is not repaired or reconstructed in accordance with the foregoing, any Association's obligation to maintain, repair or insure the Improvements shall terminate and any available insurance proceeds from any property insurance policy maintained by the Association shall be disbursed to the Association unless Members holding a majority of the total voting power elect to have the proceeds disbursed to the Owners, in which case the proceeds shall be disbursed equally among all the Lots, subject to the rights of the Owners' respective Mortgagees, after first applying the proceeds to the cost of mitigating hazardous conditions on the Property, screening the area from unsightly views, and complying with all the applicable requirements of governmental agencies.

9.6 Condemnation. If any action for condemnation of all or any portion of the Common Area is proposed or threatened by any governmental agency having the right of eminent domain, then, after approval by vote or written consent of Members holding at least 51% of the total voting power of the Association and with the consent of the first mortgagees as may be required herein, the Common Area or a portion of it may be sold and conveyed to the condemning authority by the Association or its designees acting as the attorney-in-fact of all the Owners under an irrevocable power of attorney, which each Owner by accepting a deed to a Lot in the Development grants to the Board, and which shall be coupled with the interest of all other Owners, for a price deemed fair and equitable by the Board. Proceeds of any such sale shall be allocated equally among the Lots and distributed to each Owner and their Mortgagees as their respective interests may appear. If the Common Area or any portion of it is not sold but is instead taken, the award shall be apportioned among the Owners and their respective Mortgagees by the terms of the judgment of condemnation; and if not so apportioned, then the award shall be distributed equally to each Owner and their Mortgagees as their respective interests may appear.

Notwithstanding anything herein to the contrary, the Board may elect to retain all or any portion of any condemnation proceeds with the Association's funds in lieu of distribution.

ARTICLE 10 - Rights of Mortgagees

10.1 Lender Definitions. Unless the context indicates otherwise, the following terms as used in this **Article 10** shall have the definitions contained in this **Section 10.1**. An "institutional" Mortgagee is a first Mortgagee that is: (i) a federally or state chartered or licensed bank or savings and loan association; (ii) a mortgage company or other entity chartered or licensed under federal or state laws whose principal business is lending money on the security of real property or investing in such loans; (iii) an insurance company; (iv) a federal or state agency or instrumentality including, without limitation, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation; or (v) an insurer or governmental guarantor of a first Mortgage including the Federal Housing Authority and the Veterans Administration. A "first Mortgage" or "first Mortgagee" is one having a priority as to all other Mortgages encumbering the same Lot or other portions of the Development.

10.2 Encumbrance. Any Owner may encumber his or her Lot with a Mortgage or Mortgages.

10.3 Rights of Institutional Mortgagees. Any institutional Mortgagee who obtains title to a Lot pursuant to the remedies provided in the first Mortgage, including judicial foreclosure or nonjudicial foreclosure under a power of sale (but excluding voluntary conveyance to the first Mortgagee), shall take the Lot free of any obligation to pay any assessments that were delinquent as of the date the institutional Mortgagee acquired title to the Lot, including any interest, penalties or late charges in connection therewith. The institutional Mortgagee as Owner of the Lot shall be obligated to pay any assessments that were not delinquent as of the date the institutional Mortgagee took title to the Lot and all future assessments levied against the Lot as long as the institutional Mortgagee remains in title, including any special assessments levied by the Association to raise operating or reserve funds needed because of uncollected delinquent assessments, as long as the special assessment is allocated among all the Lots as provided in **Section 6.9**.

10.4 Subordination. Any assessment lien established under the provisions of this Declaration is expressly made subject to and subordinate to the rights of any Mortgage that encumbers all or any portion of the Development or any Lot made in good faith and for value and recorded before the recordation of a notice of delinquent assessment. No assessment lien shall in any way defeat, invalidate or impair the obligation or priority of such Mortgage unless the Mortgagee expressly subordinates in writing its interest to such lien. If any Lot is encumbered by a Mortgage made in good faith and for value, the foreclosure of any assessment lien cannot operate to affect or impair the lien of any Mortgage recorded prior to the recordation of the notice of delinquent assessment. Upon the foreclosure of any prior-recorded Mortgage, any lien for delinquent assessment shall be subordinate to the Mortgage lien; and the purchaser at the foreclosure sale shall take title free of the assessment lien. By taking title, the purchaser shall be obligated to pay only assessments or other charges that were not delinquent at the time the purchaser acquired title or that were levied by the Association on or after the date the purchaser acquired title to the Lot. Any subsequently-levied assessments or other charges may include previously-unpaid assessments, provided all Owners, including the purchaser and its successors and assigns, are required to pay their proportionate share of such unpaid assessments.

10.5 Breaches. No breach of any provision of this Declaration shall invalidate the lien of any Mortgage made in good faith or for value; but all of the covenants, conditions and restrictions shall be binding on any Owner whose title is derived through foreclosure sale, trustee sale or otherwise.

ARTICLE 11 - Amendments

11.1 Amendment Before Close of First Sale. Before the close of the first sale of a Lot in the Development to a purchaser other than Declarant or an entity controlled by Declarant, this Declaration may be amended in any respect or rescinded by Declarant by recording an instrument amending or rescinding this Declaration. Before the close of the first sale of a Lot in a subsequent phase of the Development to a purchaser other than Declarant or entity controlled by Declarant, any declaration of annexation recorded pursuant to **Article 14** with respect to such phase may be amended in any respect or rescinded by the Declarant by recording an instrument amending the declaration of annexation or rescinding the declaration of annexation. If the declaration of annexation is rescinded, the phase shall be de-annexed from the Development and no longer subject to this Declaration. The amending or rescinding instrument shall make appropriate reference to this Declaration and its amendments and shall be acknowledged and recorded in the county in which the Development is located. For purposes herein, a Person is considered controlled by Declarant if the Declarant holds 50% or more of the capital and profit interests if a partnership or limited liability company, 50% or more of the voting shares if a corporation, and 50% or more of the beneficial interests if a trust.

11.2 Amendment After Close of First Sale. After the close of the first sale of a Lot in the Development to a purchaser other than Declarant or an entity controlled by Declarant, this Declaration may be amended or revoked in any respect with the vote or written consent of the holders of not less than 51% of the voting rights of each class of Owners or, if a single class of Owners is then in effect, by the vote or written consent of not less than 51% of all votes and 51% of all votes excluding Declarant. If any provision of this Declaration requires a greater or lesser percentage of the voting rights of any class of Owners in order to take affirmative or negative action under such provision, the same percentage of such class or classes of

Owners shall be required to amend or revoke such provision. Also, if the consent or approval of any governmental authority, Mortgagee 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. Notwithstanding anything herein to the contrary, any provision in this Declaration that specifically confers rights or benefits on Declarant as the Declarant and not on any other Owner may not be amended or rescinded without the prior written consent of Declarant except as expressly authorized by Civil Code section 1355.5. The amendment is effective when it has been approved by the appropriate percentage of Owners as required herein, the approval has been certified in a writing executed and acknowledged by the officer designated in this Declaration or by the Association for that purpose (or, if no one has been designated, the President of the Association), and the amendment and certification have been recorded in the county in which the Development is located.

11.3 Corrections. Notwithstanding anything herein to the contrary, Declarant reserves the right as the attorney-in-fact for each Lot Owner to record an amendment or appropriate instrument of correction to correct any errors in this Declaration, any Declarations of Annexation, or any exhibits thereto, and the consent of neither the Association nor any Lot Owner shall be required provided that if the correction affects the size, location or access or use rights to any Lot, the consent of that Lot Owner shall be required.

ARTICLE 12 - Declarant Disputes

Any claim, dispute or other controversy between: (i) the Association and/or any Owner(s) and (ii) the Declarant or any affiliated general contractor or affiliated contractor who is a "builder" within the meaning of Civil Code section 911, or any director, officer, member, shareholder, partner, employee or agent thereof (individually and collectively the "Declarant" for purposes of this **Article 12**) and/or any non-affiliated general contractor, non-affiliated contractor, subcontractor, material supplier, individual product manufacturer, design professional or any other Person that provided materials or services to the Development on behalf of Declarant, relating to this Declaration, the use, condition, design, specifications, surveying, grading, construction, installation and/or operation of any Improvements or landscaping located within the Development, including any claims made under Civil Code sections 896 and 897 (individually and collectively the "Claim") shall be subject to the claims procedures set forth in the Home Builder Limited Warranty attached as Exhibit B and the Alternative Dispute Resolution provision attached as Exhibit C to this Declaration.

The claims procedures do not apply to any action taken by the Association to enforce delinquent assessments against Declarant, which shall be governed by **Section 6.10** of this Declaration.

ARTICLE 13 - Miscellaneous Provisions

13.1 Headings. The headings used in this Declaration are for convenience only and are not to be used to interpret the meaning of any of the provisions of this Declaration.

13.2 Severability. The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any provision or provisions or any portion thereof shall not invalidate any other provision or any portion of the provisions not found invalid or unenforceable.

13.3 Cumulative Remedies. Each remedy provided for in this Declaration shall be cumulative and nonexclusive. Failure to exercise any remedy provided for in this Declaration shall not, under any circumstances, be construed as a waiver of the remedy.

13.4 Discrimination. No Owner shall execute or cause to be recorded any instrument that imposes a restriction on the sale, leasing or occupancy of the Owner's Lot on the basis of race, sex, marital status, national ancestry, color or religion.

13.5 Access to Books. Any Owner, at any reasonable time and upon reasonable notice to the Board or manager and at the Owner's expense, may cause an audit or inspection to be made of the books and financial records of the Association.

13.6 Notification of Sale. No later than five days after the closing of the sale of any Lot, the new Owner shall notify the Association of such sale. Such notification shall be in writing and shall set forth the name and address of the new Owner and the date of sale.

13.7 Reservation or Grant of Easements. Any easements referred to in this Declaration shall be deemed reserved or granted, or both reserved and granted, by reference to this Declaration in any deed to any Lot.

13.8 Incorporation of Exhibits. All exhibits referred to herein and attached to this Declaration are incorporated herein by reference as fully set forth herein.

13.9 Enforcement Rights and Remedies. The covenants, restrictions, rights and duties contained in this Declaration constitute covenants running with the land and equitable servitudes that benefit and bind each Lot in the Development, each Owner, and each successive Owner thereto, and may be enforced by the Association or any Owner in any legal or equitable action pursuant to the procedures described herein.

Each Owner acknowledges and agrees that if any Person breaches any of the restrictions contained herein, money damages may not be adequate compensation. As a result, each Owner agrees that in the event of a breach, the non-breaching party, in addition to any other remedy available at law or equity, shall be entitled to equitable relief, including, but not limited to, an order compelling the breaching party to perform an act which the party is required to perform under this Declaration or which is necessary to bring the breaching party or the breaching party's Lot into compliance with restrictions contained herein or prohibiting the breaching party from performing any act that violates the restrictions.

Notwithstanding anything herein to the contrary, the Association shall have the exclusive right to levy assessments and to take appropriate action to enforce delinquent assessments, including imposition of an assessment lien and the foreclosure of the lien. Furthermore, the Association shall have the primary responsibility for enforcing the restrictions contained in **Article 3** and the architectural provisions contained in **Article 7**. If any Owner or occupant desires the Association to take any enforcement action, the Owner or occupant shall notify the Association in writing of the alleged violation. On receipt, the Board shall review the matter and shall determine what action, if any, to take. Neither the Board nor the Association or any director, officer or agent thereof shall be liable if the Board in the exercise of its judgment elects not to take any action. To the extent applicable, the Board shall comply with the due process requirements described in this Declaration. If within 90 days after receipt of the notice the Board has failed to take any corrective action and the alleged violation has not been cured and is continuing, any Owner may bring an action on the Owner's behalf for appropriate legal and/or equitable relief. In such action, the Owner shall bear his or her own costs and attorneys' fees, provided that the prevailing party in such action shall be entitled to recovery of such costs and fees.

Prior to the commencement of any action by the Association or Owner to enforce the Governing Documents, the Davis-Stirling Common Interest Development Act (Civil Code sections 1350-1376) or the Nonprofit Mutual Benefit Corporation Law (Corporations Code sections 7110-8910), the Association or the Owner shall comply with the requirements of Civil Code sections 1369.510 through 1369.560 to the extent applicable.

13.10 Term. The term of this Declaration shall be for a period of 50 years from the date on which this Declaration is recorded in the records of the county in which the Development is located. After that time, this Declaration and each of its restrictions and covenants and other provisions automatically shall be extended for successive ten-year periods unless this Declaration is rescinded by the written consent of Owners holding a majority of the total voting power of the Association. The rescission shall be effective on recordation of a notice of rescission in the records of the county in which the Development is located.

13.11 Reserved Rights of Declarant. Declarant is recording this Declaration as part of the construction of a residential development. No covenant or restriction contained herein shall be applied in any

manner that would unreasonably interfere with Declarant's rights to complete the construction of the Improvements and to sell the Improvements. The rights retained by Declarant during the construction and sales period include, but are not limited to, the right to:

- (i) maintain construction equipment, personnel and materials on the Property;
- (ii) use such portions of the Property as may be necessary or advisable to complete the construction or sales;
- (iii) maintain construction and/or sales offices on the Property and appropriate parking to accommodate the foregoing;
- (iv) maintain sale signs or other appropriate advertisements on the Property;
- (v) maintain model homes for viewing by prospective purchasers; and
- (vi) allow prospective purchasers access to the Property to inspect any Common Area or any model homes.

13.12 Assignment by Declarant. Declarant may assign all or any portion of its rights and delegate all or any portion of its duties to any other Person; and from and after the date of such assignment and/or delegation, the Declarant shall have no further rights and/or duties hereunder with respect to the rights assigned and duties delegated. Any successor or assignee of the rights and duties of the Declarant shall execute an instrument assuming the rights and duties of the Declarant hereunder and thereafter shall be entitled to exercise all the rights of Declarant so assigned and shall be obligated to perform all the Declarant's duties so delegated, provided such successor or assignee shall not be liable in any manner for any act or omission committed or omitted by the Declarant before the date the successor or assignee succeeded to the rights of the Declarant hereunder.

13.13 Attorneys' Fees. Except as provided in **Article 12**, in the event of any litigation or alternative dispute resolution procedure arbitration regarding the rights or obligations of the Association or any Person subject to this Declaration, the prevailing party in such proceeding, in the discretion of the judge or decision-maker, shall be entitled to recover costs, including reasonable attorneys' fees.

13.14 Notices. Any notice permitted or required by this Declaration, the Articles, Bylaws or Rules shall be considered received on the date the notice is personally delivered to the recipient or 48 hours after the notice is deposited in the United States mail, first-class, registered or certified, postage prepaid and addressed to the recipient at the address that the recipient has provided the Association for receipt of notice or, if no such address was provided, at the recipient's Lot address in the Development.

13.15 No Enforcement Waiver. Failure to enforce a restriction in the past in and of itself shall not constitute a defense to any action brought against any Owner for violation of any restriction contained herein. Each Owner, by acceptance of a deed to a Lot in the Development, acknowledges that the enforcement of these restrictions may vary as a result of different Owners, Boards or Architectural Committees, changing conditions, or other reasons and agrees that the failure of any Owner, Board or Committee to enforce any particular restriction, even if such failure is for an extended period of time, shall not in any manner restrict or estop the right of any Owner, Board or Committee to enforce these restrictions at any future time.

ARTICLE 14 - Annexation

14.1 Automatic Annexation. The real property described in Exhibit A or any portion of it may be annexed at anytime into the Development in one or more phases and made subject to this Declaration at the written election of the Declarant (or by the successors in title to such real property and to whom Declarant has assigned annexation rights). Declarant reserves the right to determine the number of phases, the number of lots in a phase, and the building types in a phase. Declarant makes no representations or warranty that

any subsequent phase will be annexed into the Development and has no obligation to annex any subsequent phase into the Development. Each election shall be made by the recording of a declaration of annexation. The declaration of annexation shall describe the real property to be annexed and shall state that it is being executed pursuant to the terms of this Declaration for the purpose of annexing the property described in the declaration of annexation into the Development and to subject the property to the terms of this Declaration. Any declaration of annexation recorded in accordance with the terms of this section shall be conclusively presumed valid in favor of all Persons who relied on it in good faith. In recording the declaration of annexation in accordance with the provisions of this Declaration, the real property described in the declaration of annexation shall be a part of the Development and subject to the provisions of this Declaration and to the rights and powers of the Association pursuant to the terms of this Declaration, the Articles and the Bylaws; and thereafter all Owners of Lots constituting a portion of the annexed real property shall automatically be Members of the Association with voting rights commencing on the date regular assessments commence. Regular and special assessments with respect to the annexed property shall commence at the time and to the extent described in **Section 6.7**.

The declaration of annexation may contain complementary additions, amendments and modifications to this Declaration necessary to reflect the different character, if any, of the real property being annexed which are not consistent with the general scheme of this Declaration or which are required by any institutional Mortgagee as defined in **Section 10.1** to make Lots in the Development eligible for mortgage, purchase, guarantee or insurance.

If the annexed property has been rented for at least one year before the closing of the first Lot in the annexed phase, the Declarant shall pay the Association appropriate amounts for reserves for replacement or deferred maintenance of Common Area Improvements or other Improvements that the Association is required to maintain in the annexed phase.

14.2 Annexation by Approval. Except for the automatic annexation provision contained in **Section 14.1**, no additional real property shall be annexed into the Development without the approval of Members holding two-thirds of the total voting power of the Association other than Declarant and such approval of Mortgages as may be required herein.

THIS DECLARATION is executed this 6th day of APRIL, 2006.

STANDARD PACIFIC CORP.
a Delaware corporation

By:


Its Authorized Representative

STATE OF CALIFORNIA

COUNTY OF Alameda

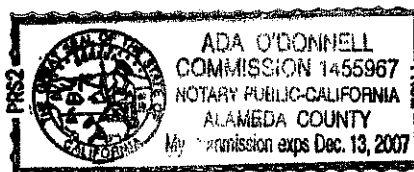
)
) ss.
)

On April 6, 2006 before me, ADA O'DONNELL, personally appeared Thomas Burnell, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature

Ada O'Donnell



(Seal)

EXHIBIT A - Property That May Be Annexed

Lots 25 through 48, 57 through 63 and 80 through 178, and Common Area Parcels B and C shown on the subdivision map entitled "Final Map of Portofino" filed for record on May 24, 2005, in Solano County, California.*

*Declarant at its discretion reserves the right to establish the order of phases; the number of Common Area Lots or Residential Lots in a phase, the number of phases, or the building types in a phase.

SAMPLE

HOME BUILDER'S LIMITED WARRANTY

Administered by Professional Warranty Service Corporation

Throughout this HOME BUILDER'S LIMITED WARRANTY, referred to hereinafter as the "LIMITED WARRANTY", the words "YOU" and "YOUR" refer to the HOMEOWNER and HOMEOWNERS ASSOCIATION. The words "WE", "US" and "OUR" refer to the BUILDER. The other words and phrases which appear in boldface uppercase type also have special meaning. Refer to the Section X. Definitions, so that YOU will understand the terminology applicable to this LIMITED WARRANTY.

This LIMITED WARRANTY establishes an agreed method for determining when a CONSTRUCTION DEFECT exists and a clear understanding of OUR responsibilities for remedying any such CONSTRUCTION DEFECT. This LIMITED WARRANTY also helps distinguish a CONSTRUCTION DEFECT that is OUR responsibility from those minor imperfections that can reasonably be expected in a HOME or the COMMON ELEMENTS or result from normal wear and tear or are routine HOMEOWNER or HOMEOWNERS ASSOCIATION maintenance responsibilities.

This LIMITED WARRANTY contains the procedures YOU must use to notify US of a condition in YOUR HOME or the COMMON ELEMENTS, which YOU believe may constitute a CONSTRUCTION DEFECT. In the event a condition occurs in the HOME or the COMMON ELEMENTS that YOU believe may constitute a CONSTRUCTION DEFECT, YOU agree to submit any request for warranty performance under this LIMITED WARRANTY. Based on the information YOU provide, and where WE deem it necessary information obtained from OUR onsite investigation inspection and/or testing of the HOME or the COMMON ELEMENTS, WE will determine whether WE agree with YOU that the condition constitutes a CONSTRUCTION DEFECT. If WE determine that the condition reported by YOU is a CONSTRUCTION DEFECT, WE will remedy the condition in accordance with the remedies prescribed in this LIMITED WARRANTY. WE will make this determination in accordance with Section III, OUR Coverage Obligations, contained in this LIMITED WARRANTY.

If WE determine that a condition does not constitute a CONSTRUCTION DEFECT that is OUR responsibility and therefore deny YOUR request for warranty performance, YOU have the right to initiate binding arbitration that will irrevocably determine whether the condition constitutes a CONSTRUCTION DEFECT that is OUR responsibility. If this binding arbitration determines that the condition does constitute a CONSTRUCTION DEFECT that is OUR responsibility, WE will resolve the problem in accordance with the remedies prescribed in this LIMITED WARRANTY. The arbitrator will make a determination based on the language contained in Section III, OUR Coverage Obligations.

Enclosed with this LIMITED WARRANTY is a Limited Warranty Validation Form. The Limited Warranty Validation Form provides the dates on which the warranty coverage period begins and expires. It is important that this form is retained with the LIMITED WARRANTY. Liability under this LIMITED WARRANTY is limited to the amount shown on the Limited Warranty Validation Form.

All express or implied warranties other than this LIMITED WARRANTY, including any oral or written statement or representation made by US or any other person, and any implied warranty of habitability, merchantability or fitness, are hereby disclaimed by US and are waived by YOU. In addition, YOU waive the right to seek damages or other legal or equitable remedies from US, OUR subcontractors, agents, vendors, suppliers, design professionals and materialmen, under any other common law or statutory theory of liability, including but not limited to negligence and strict liability. YOUR only remedy in the event of a CONSTRUCTION DEFECT in or to the HOME or the COMMON ELEMENTS or to the real property on which the HOME or the COMMON ELEMENTS is situated is the coverage provided to YOU under this LIMITED WARRANTY. Notwithstanding the foregoing, nothing in this LIMITED WARRANTY shall diminish any rights, obligations, or remedies that YOU or WE may have under California Civil Code Sections 895 through 945.5 or under any

procedures adopted in place of California Civil Code sections 910 through 938. Additionally, there may be instances where an additional PWC administered Builder's Limited Warranty is issued together with this LIMITED WARRANTY. If both of these warranties are issued to YOU, YOU agree to request warranty performance under either warranty relative to warrantable issues on the HOME or the COMMON ELEMENTS. YOU may not collect twice relative to the same defect and amounts paid or expended by US for warranty performance under either warranty will reduce the limit of liability remaining under both warranties simultaneously.

WE have contracted with PWC for certain administrative services relative to this LIMITED WARRANTY. PWC's sole responsibility is to provide administrative services. Under no circumstances or conditions is PWC responsible for fulfilling OUR obligations under this LIMITED WARRANTY.

If any provision of this LIMITED WARRANTY is determined to be unenforceable, such a determination will not affect the remaining provisions. If this LIMITED WARRANTY or any provision herein is determined to be unenforceable as to a HOMEOWNERS ASSOCIATION or a specific HOMEOWNER, such a determination will not affect the enforceability of this LIMITED WARRANTY or such provision as to any other HOMEOWNERS ASSOCIATION or any other HOMEOWNER. The issue of enforceability, as well as all other issues, will be determined by Binding Arbitration as provided for in this LIMITED WARRANTY.

I. Coverage Limit

The amount shown on the Limited Warranty Validation Form is OUR limit of liability. It is the most WE will pay or expend for all covered CONSTRUCTION DEFECTS regardless of the number of requests for warranty performance made against this LIMITED WARRANTY. Once OUR limit of liability has been paid, no further requests for warranty performance can be made against this LIMITED WARRANTY or any other PWC administered Builder's Limited Warranty issued for the HOME or the COMMON ELEMENTS.

II. Warranty Coverage

Coverage under this LIMITED WARRANTY is expressly limited to CONSTRUCTION DEFECTS which occur during the WARRANTY PERIOD indicated on the Limited Warranty Validation Form and are reported by YOU in accordance with the notification requirements of Section VII, Procedure to Request US To Perform Under This LIMITED WARRANTY.

Coverage During the WARRANTY PERIOD indicated on the Limited Warranty Validation Form that is attached to and made part of this LIMITED WARRANTY, WE warrant the HOME and the COMMON ELEMENTS will be free of CONSTRUCTION DEFECTS. To be eligible for coverage WE must receive written notice from YOU of the alleged CONSTRUCTION DEFECT as soon as it is reasonably possible after YOU have become aware or should have become aware of a CONSTRUCTION DEFECT but in no event later than thirty (30) days after the expiration of the coverage.

III. OUR Coverage Obligations

All notices of alleged CONSTRUCTION DEFECTS, and complaints under this LIMITED WARRANTY must be made by YOU in writing. Telephonic or face-to-face discussion will not protect YOUR rights under this LIMITED WARRANTY (see Section VII, Procedure to Request US To Perform Under This LIMITED WARRANTY).

In the event YOU allege a CONSTRUCTION DEFECT occurs during the WARRANTY PERIOD, upon receiving written notice from YOU, WE, or a third party designated by US or acting on OUR behalf, will inspect, investigate and/or test (including destructive testing) the alleged CONSTRUCTION DEFECT to determine if a CONSTRUCTION DEFECT exists. Upon confirmation of a CONSTRUCTION DEFECT, WE, or a third party designated by US or acting on OUR behalf, will (1) repair or replace the CONSTRUCTION DEFECT, (2) pay to YOU the actual amount it would cost US to repair or replace the CONSTRUCTION DEFECT or (3) PAY to YOU an amount equal to the diminution in fair market value caused by the CONSTRUCTION DEFECT. The decision to repair, replace, or to make payment to YOU is at OUR or OUR authorized representative's sole option.

WE will have been considered to have breached this LIMITED WARRANTY only if WE fail to resolve a CONSTRUCTION DEFECT in accordance with the terms and conditions of this LIMITED WARRANTY.

A. Standards By Which the Presence of a CONSTRUCTION DEFECT Will Be Determined

In the event YOU believe that a flaw in the HOME or the COMMON ELEMENTS constitutes a CONSTRUCTION DEFECT, the following factors will be considered by US in determining whether the condition constitutes a CONSTRUCTION DEFECT. Should either YOU or WE elect to initiate binding arbitration, these factors will be considered by the arbitrator in rendering a decision. These factors are provided to assist in the interpretation of the standards set forth in California Civil Code applicable to the HOME or the COMMON ELEMENTS. These factors are not intended to diminish or supersede the standards set forth in California Civil Code applicable to the HOME or COMMON ELEMENTS.

1. Any performance standards or guidelines or other documents or manuals that contain OUR building standards, including those applicable to the "fit and finish" of cabinets, mirrors, flooring, interior and exterior walls, countertops, paint finishes, and trim which are warranted for the first year of the WARRANTY PERIOD, that were provided to YOU at or prior to closing on the HOME, or in the case of the HOMEOWNERS ASSOCIATION, prior to transferring title to all the COMMON ELEMENTS. Absent such standards, the Residential Construction Performance Guidelines published by the National Association of Home Builders, in effect at the time of closing on the HOME, or in the case of the HOMEOWNERS ASSOCIATION, at the time of transferring title to all the COMMON ELEMENTS shall apply to the aforementioned "fit and finish items" during the first year of the WARRANTY PERIOD. Absent a specific standard in the documents identified above, building practices and standards in use in the region of the country in which the HOME or the COMMON ELEMENTS are located shall apply;
2. Consideration as to whether the magnitude of the flaw or imperfection:
 - materially affects the structural integrity of the HOME or COMMON ELEMENTS;
 - or
 - has an obvious and material negative impact on the appearance of the HOME or COMMON ELEMENTS; or
 - jeopardizes the life or safety of the occupants; or
 - results in the inability of the HOME or the applicable COMMON ELEMENTS to provide the functions that can reasonably be expected in such a HOME or COMMON ELEMENT.
3. Consideration as to whether a condition is the result of normal wear and tear (conditions that are normal wear and tear, or are caused by normal wear and tear are not CONSTRUCTION DEFECTS);
4. Consideration as to whether the condition was caused by, or in any way resulted from, the failure of the HOMEOWNER or HOMEOWNERS ASSOCIATION to perform normal or routine maintenance (any condition that is determined to be a HOMEOWNER or HOMEOWNERS ASSOCIATION maintenance issue, or any condition that results from improper or inadequate HOMEOWNER or HOMEOWNERS ASSOCIATION maintenance, is not a CONSTRUCTION DEFECT);
5. Consideration as to whether the condition was caused by the HOMEOWNER or HOMEOWNERS ASSOCIATION or their representatives, other than US, after the HOMEOWNER took possession of the HOME or the COMMON ELEMENTS (WE and YOU conducted a walk through inspection just prior to closing on the HOME. Damage that was caused by YOU or YOUR representatives is not a CONSTRUCTION DEFECT, for example, a large, visible scratch on marble tile in the entry foyer that was not noted in the walk through inspection, but was reported after furniture was moved into the HOME, will not be considered a CONSTRUCTION DEFECT);

6. Recognition that any condition resulting directly or indirectly from or worsened by changes, additions, alterations or other actions or omissions by the HOMEOWNER or HOMEOWNERS ASSOCIATION or their agents, other than US, will not be considered a CONSTRUCTION DEFECT (this includes changes to the topography, drainage or grade of the property);
7. Any Exclusions contained in this LIMITED WARRANTY.

IV. Homeowner Maintenance Obligations

Maintenance of the HOME and the COMMON ELEMENTS is YOUR responsibility. All homes and common elements require periodic maintenance to prevent premature deterioration, water intrusion and to ensure adequate performance of the SYSTEMS. WE will make a "Homeowner Maintenance Manual" or similar publication available to YOU upon request. Whether from this document or others that are readily available to YOU, YOU must understand and perform the maintenance that the HOME and COMMON ELEMENTS require. As stated in other sections of this LIMITED WARRANTY, WE are not responsible for HOME or COMMON ELEMENTS maintenance issues or for damage that results from YOUR failure to maintain the HOME or the COMMON ELEMENTS.

V. Coverage Limitations

When WE or a third party designated by US or acting on OUR behalf, repair or replace a CONSTRUCTION DEFECT the repair or replacement will include the repair or replacement of only those surfaces, finishes and coverings that were damaged by the CONSTRUCTION DEFECT that were part of the HOME or the COMMON ELEMENTS when title was first transferred by US. Surfaces, finishes and coverings that require repair or replacement in order for US or a third party designated by US to repair or replace CONSTRUCTION DEFECTS will be repaired or replaced. The extent of the repair and replacement of these surfaces, finishes or coverings will be to approximately the same condition they were in prior to the CONSTRUCTION DEFECT, but not necessarily to a like new condition.

When repairing or replacing surfaces, finishes and coverings, the repair or replacement will attempt to achieve as close a match with the original surrounding areas as is reasonably possible, but an exact match cannot be guaranteed due to such factors as fading, aging and unavailability of the same materials.

In the case where a CONSTRUCTION DEFECT exists and the HOME is rendered uninhabitable and the CONSTRUCTION DEFECT is repaired or replaced, the repair or replacement shall include the reasonable cost of the HOMEOWNER'S alternative shelter, storage expenses and lost business income (if the HOME was used as a principal place of business licensed to be operated from the HOME) until the HOME is made habitable.

VI. Exclusions

A. This LIMITED WARRANTY does not cover:

1. Any CONSTRUCTION DEFECTS or other damages resulting, either directly or indirectly, from the following causes or occurring in the following situations:
 - a. Fire;
 - b. Lightning;
 - c. Explosion;
 - d. Riot and Civil Commotion;
 - e. Smoke;
 - f. Hail;
 - g. Aircraft;
 - h. Falling Objects;
 - i. Vehicles;
 - j. Floods;
 - k. Earthquake;

- l. Landslide or mudslide originating on property other than the site of the HOME or the COMMON ELEMENTS or other property developed by the BUILDER;
 - m. Mine subsidence or sinkholes;
 - n. Changes in the underground water table not reasonably foreseeable by the BUILDER;
 - o. Volcanic eruption; explosion or effusion;
 - p. Wind including:
 - (i) Gale force winds;
 - (ii) Hurricanes;
 - (iii) Tropical storms;
 - (iv) Tornadoes;
 - q. Insects, animals or vermin;
 - r. Changes of the grading of the ground by anyone other than US or OUR agents, or subcontractors which results in surface drainage towards the HOME or other improper drainage or permits water to pond or become trapped in localized areas against the foundation or otherwise;
 - s. Changes, additions, or alterations made to the HOME or the COMMON ELEMENTS by anyone after the WARRANTY PERIOD begins, except those made or authorized by US;
 - t. Any defect in material or workmanship supplied by anyone other than US or OUR agents, or subcontractors;
 - u. Improper maintenance, negligence or improper use of the HOME or the COMMON ELEMENTS by YOU or anyone other than US that results in rot, dry rot, moisture, rust, mildew or any other damage;
 - v. Dampness or condensation due to YOUR failure to maintain adequate ventilation;
 - w. Damage resulting from the weight and/or performance of any type of waterbed or other furnishings which exceeds the load-bearing design of the HOME or the COMMON ELEMENTS;
 - x. Normal wear and tear or normal deterioration of materials;
 - y. Economic damages due to the HOME'S or the COMMON ELEMENTS' failure to meet consumer expectations.
2. Any costs arising from, or any CONSTRUCTION DEFECT resulting from the actual, alleged or threatened discharge, dispersal, release or escape of POLLUTANTS. WE will not cover costs or expenses arising from the uninhabitability of the HOME or the COMMON ELEMENTS or health risk due to the proximity of POLLUTANTS. WE will not cover costs, or expenses resulting from the direction of any governmental entity to test, clean-up, remove, treat, contain or monitor POLLUTANTS;
 3. Any costs arising from, or any CONSTRUCTION DEFECT resulting from the effects of electromagnetic fields (EM F's) or radiation;
 4. Any damage to personal property that does not result from a CONSTRUCTION DEFECT;
 5. Any "CONSEQUENTIAL OR INCIDENTAL DAMAGES";
 6. Any damage to CONSUMER PRODUCTS;
 7. Any CONSTRUCTION DEFECT as to which YOU have not taken timely and reasonable steps to protect and minimize damage after WE or OUR authorized representative have provided YOU with authorization to prevent further damage;
 8. Any damage to the extent it is incurred after or as a result of YOUR failure to notify US in a reasonably timely manner after YOU have become aware or should have become aware of the CONSTRUCTION DEFECT or condition causing such damage;
 9. Any costs or obligations paid or incurred by YOU in violation of Section VII. C. below;

10. Any non-conformity with local building codes, regulations or requirements that has not resulted in a CONSTRUCTION DEFECT. While WE acknowledge OUR responsibility to build in accordance with applicable building codes, this LIMITED WARRANTY does not cover building code violations in the absence of a CONSTRUCTION DEFECT;
 11. Any deviation from plans and specifications that has not resulted in a CONSTRUCTION DEFECT;
 12. Any claims barred by any limitations period provided by law;
 13. The 'fit and finish' of cabinets, mirrors, flooring, interior and exterior walls, countertops, paint finishes, and trim which are reported by YOU after the first year of the WARRANTY PERIOD, except where the 'fit and finish' of such items is damaged by other CONSTRUCTION DEFECTS covered under this LIMITED WARRANTY.
- B. OUR LIMITED WARRANTY does not cover any CONSTRUCTION DEFECT which would not have occurred in the absence of one or more of the excluded events or conditions listed in Exclusions, Section VI. A.1 a. —A.1.q., A.2. or A.3. above, regardless of:
1. the cause of the excluded event or condition; or
 2. other causes of the loss or damage; or
 3. whether other causes acted concurrently or in any sequence with the excluded event or condition to produce the loss or damage.

VII. Procedure to Request US To Perform Under This LIMITED WARRANTY

Subsections A through E of this Section VII apply in all cases, except where other procedures or provisions apply pursuant to a written contract between YOU and US.

If YOU become aware of a condition that YOU believe is a CONSTRUCTION DEFECT under this LIMITED WARRANTY, YOU have the following responsibilities:

A. Notification

YOU must notify US in writing as soon as it is reasonably possible after YOU have become aware or should have become aware of a CONSTRUCTION DEFECT, but in no event may YOUR written notice of a CONSTRUCTION DEFECT or YOUR written request for warranty performance be postmarked or received by US later than thirty (30) days after this LIMITED WARRANTY has expired.

If the written notice is postmarked or received by US more than thirty (30) days after the expiration of this LIMITED WARRANTY, WE shall have no obligation to remedy the CONSTRUCTION DEFECT. In order to establish a record of timely notification, WE recommend that written notice should always be sent by Certified Mail, return receipt requested.

B. Cooperate With US

YOU must give US and any third parties acting on OUR behalf reasonable help in inspecting, investigating, testing (including destructive testing), monitoring, repairing, replacing or otherwise correcting an alleged CONSTRUCTION DEFECT. Help includes, but is not limited to, granting reasonable access to the HOME or COMMON ELEMENTS for the forgoing purposes. If YOU fail to cooperate or provide such reasonable access to the HOME or COMMON ELEMENTS, WE will have no obligation to do any of the foregoing.

C. Do Not Make Voluntary Payments

YOU agree not to make any voluntary payments or assume any obligations or incur any expenses for the remedy of a condition YOU believe is a CONSTRUCTION DEFECT without prior written approval from US, or other parties authorized to act on OUR behalf. WE will not reimburse YOU for costs incurred where YOU did not obtain prior written approval.

However, YOU may incur reasonable expenses in making repairs in an EMERGENCY CONDITION without prior written approval, provided the repairs are solely for the protection of the HOME or COMMON ELEMENTS from further damage or to prevent an unsafe living condition and provided YOU notify US as soon as is reasonably possible. To obtain reimbursement for repairs made during an EMERGENCY CONDITION, YOU must provide US with an accurate written record of the repair costs.

D. Sign A Release

When WE or a third party designated by US or acting on OUR behalf have completed repairing, replacing or paying YOU as to any CONSTRUCTION DEFECTS or other related damage to the HOME or the COMMON ELEMENTS covered by this LIMITED WARRANTY, YOU must sign a full release of OUR obligation for the CONSTRUCTION DEFECTS. The release shall be applicable to the CONSTRUCTION DEFECTS and shall not prevent YOU from notifying US should YOU become aware of a subsequent CONSTRUCTION DEFECT.

E. If YOU Disagree With US

If YOU believe WE have not responded to YOUR request for warranty performance to YOUR satisfaction or in a manner that YOU believe this LIMITED WARRANTY requires, YOU may provide written notice to PWC requesting Mediation. Upon PWC's receipt of written notice from YOU, PWC may review and mediate YOUR request by communicating with YOU, US, and any other individuals or entities that PWC believes may possess relevant information. If after forty-five (45) days, PWC is unable to successfully mediate YOUR request for warranty performance, or at any earlier time when PWC determines that YOU and WE are at an impasse, PWC will notify YOU that YOUR request for warranty performance remains unresolved and that YOU may elect to initiate Binding Arbitration. Binding Arbitration as described in the following section is the sole remedy for the resolution of disputes between YOU and US as set forth in the following section.

VIII. Binding Arbitration Procedure

Any disputes between YOU and US, or parties acting on OUR behalf, including PWC, related to or arising from this LIMITED WARRANTY, the design or construction of the HOME or the COMMON ELEMENTS or the sale of the HOME or transfer of title to the COMMON ELEMENTS will be resolved by binding arbitration. Binding arbitration shall be the sole remedy for resolving any and all disputes between YOU and US, or OUR representatives.

Disputes subject to binding arbitration include, but are not limited to:

- A. Any disagreement that a condition in the HOME or the COMMON ELEMENTS is a CONSTRUCTION DEFECT and is therefore covered by this LIMITED WARRANTY;
- B. Any disagreement as to whether a CONSTRUCTION DEFECT has been corrected in compliance with this LIMITED WARRANTY;
- C. Any alleged breach of this LIMITED WARRANTY;
- D. Any alleged violation of consumer protection, unfair trade practice, or any other statute;
- E. Any allegation of negligence, strict liability, fraud, and/or breach of duty of good faith, and any other claims arising in equity or from common law;
- F. Any dispute concerning the issues that should be submitted to binding arbitration;

- G. Any dispute concerning the timeliness of OUR performance and/or YOUR notifications under this LIMITED WARRANTY;
- H. Any dispute as to the payment or reimbursement of the arbitration filing fee;
- I. Any dispute as to whether this LIMITED WARRANTY, or any provision hereof, including, but not limited to any waiver hereunder, is unenforceable;
- J. Any other claim arising out of or relating to the sale, design or construction of YOUR HOME or the COMMON ELEMENTS, including, but not limited to any claim arising out of, relating to or based on any implied warranty or claim for negligence or strict liability not effectively waived by this LIMITED WARRANTY.

The arbitration shall be conducted by Construction Arbitration Services, Inc., or such other reputable arbitration service that PWC shall select, at its sole discretion, at the time the request for arbitration is submitted. The rules and procedures of the designated arbitration organization, that are in effect at the time the request for arbitration is submitted, will be followed. A copy of the applicable rules and procedures will be delivered to YOU upon request.

This arbitration agreement shall be governed by the United States Arbitration Act (9 U.S.C. 1 — 16) to the exclusion of any inconsistent state law, regulation or judicial decision. The award of the arbitrator shall be final and binding and may be entered as a judgment in any court of competent jurisdiction.

Each party shall bear its own attorneys fees and costs (including expert costs) for the arbitration. The arbitration filing fee, which is the amount charged by the arbitration service to PWC for each arbitration, shall be divided and paid equally as between YOU and US, unless YOU and WE have otherwise agreed in writing to a different allocation. Based on the outcome of the arbitration, the arbitrator may, at their discretion and to the extent permitted by law, direct that WE reimburse YOU some or all of that portion of the arbitration filing fee YOU have paid. Contact PWC to determine the arbitration filing fee in effect at the time an arbitration is being requested.

The process for YOU to initiate arbitration is described below.

Step 1 YOU complete a Binding Arbitration Request Form and mail it to PWC along with the appropriate arbitration filing fee. A Binding Arbitration Request Form is attached to this LIMITED WARRANTY. YOUR Binding Arbitration Request Form must be received no later than ninety (90) days after this LIMITED WARRANTY expires. YOU must still notify US of an alleged CONSTRUCTION DEFECT as soon as it is reasonably possible after YOU have become aware or should have become aware of the CONSTRUCTION DEFECT, but in no event later than thirty (30) days after expiration of this LIMITED WARRANTY. Please Note that while YOU have thirty (30) days after this LIMITED WARRANTY expires to notify US and ninety (90) days after it expires to file for arbitration, this time period does not extend the WARRANTY PERIOD for CONSTRUCTION DEFECTS. Additionally, no investigation, inspection, testing, repair, replacement, or payment, nor any promise of same by US under this LIMITED WARRANTY, nor any dispute resolution efforts, shall extend the term of this LIMITED WARRANTY or extend or toll any statutes of limitations or any of YOUR rights or remedies.

Step 2 PWC Will Arrange the Arbitration Proceeding. The arbitrator or arbitration organization will notify YOU of the time, date and location of the arbitration hearing. Most often the hearing will be conducted at the HOME or the COMMON ELEMENTS or some other location that is agreeable to all the parties to the dispute. In scheduling the hearing the arbitrator will set a time and date that is reasonably convenient to all the parties.

Step 3 The Arbitration Hearing. The parties at the arbitration hearing will include the arbitrator, YOU, US and/or a third party designated by US or acting on OUR behalf. Any party to the proceeding may be represented at the hearing. All persons who are parties to the arbitration, as well as representatives and witnesses, are entitled to attend hearings.

After evidence is presented by YOU, US or OUR representatives, a decision will be rendered by the arbitrator. The decision is final and binding on YOU and US. The arbitrator first will determine whether any claimed or

alleged CONSTRUCTION DEFECT exists and whether it is OUR responsibility. Second, if the arbitrator finds US responsible for a CONSTRUCTION DEFECT, the arbitrator will determine the scope of any repair or replacement, OUR cost of any such repair or replacement, and the diminution in fair market value, if any, caused by such CONSTRUCTION DEFECT. Based upon the arbitrator's decision, WE shall choose whether WE shall (1) repair, replace the CONSTRUCTION DEFECT, (2) pay to YOU the actual amount it would cost US to repair or replace the CONSTRUCTION DEFECT or (3) PAY to YOU an amount equal to the diminution in fair market value caused by the CONSTRUCTION DEFECT. The decision to repair, replace, or to make payment to YOU is at OUR or OUR authorized representative's sole option. In addition, the arbitrator shall render a decision resolving any other disputed matters or issues related to or arising from this LIMITED WARRANTY, the design or construction of the HOME or the COMMON ELEMENTS or the sale of the HOME or transfer of title to the COMMON ELEMENTS.

Step 4 OUR Arbitration Performance Obligations. WE will comply with the arbitrator's decision no later than 60 days from the date of the award or other such date as may be specified or allowed in the decision. However, delays caused by circumstances beyond OUR or OUR representative's control shall be excused.

Step 5 If YOU believe WE Have Failed To Comply With The Award. YOU should contact PWC at its mailing address specified in this LIMITED WARRANTY if YOU believe WE have not complied with the arbitrator's award. PWC will mediate this dispute and if it cannot be resolved, will advise YOU that a compliance inspection arbitration is available to determine whether WE have performed adequately under the original arbitration award. PWC will communicate these findings to both US and YOU. If it is determined that WE have not properly performed, WE will be obligated to immediately comply.

PWC's sole responsibility is to administer this LIMITED WARRANTY on OUR behalf and as such PWC assumes no other liabilities in connection with this LIMITED WARRANTY. Under no condition or circumstance is PWC responsible for fulfilling any of OUR obligations under this LIMITED WARRANTY.

IX. General Conditions

A. Separation of This LIMITED WARRANTY From The Contract Of Sale

This LIMITED WARRANTY is separate and independent of the contract between YOU and US for the construction and/or sale of the HOME or transfer of the COMMON ELEMENTS. Except as otherwise provided herein, the provisions of this LIMITED WARRANTY shall in no way be restricted or expanded by anything contained in the construction and/or sales contract or other documents between YOU and US.

B. Transfer to Subsequent HOMEOWNERS

This LIMITED WARRANTY will transfer to new owners of the HOME for the remainder of the WARRANTY PERIOD. YOU agree to provide this LIMITED WARRANTY to any subsequent purchaser of the HOME as a part of the contract of sale of the HOME. OUR duties under this LIMITED WARRANTY to the new HOMEOWNER will not exceed the limit of liability then remaining, if any.

C. Transfer of Manufacturer's Warranties

WE assign to YOU all the manufacturer's warranties on all appliances, fixtures and items of equipment that WE installed in the HOME. Should an appliance or item of equipment malfunction YOU must follow the procedures set forth in that manufacturer's warranty to correct the problem. OUR obligation under this LIMITED WARRANTY is limited to the workmanlike installation, including the requirements and provision contained in the standards set forth in California Civil Code applicable to the HOME or the COMMON ELEMENTS, of such appliances and equipment. WE have no obligation for appliances and equipment defined as CONSUMER PRODUCTS.

D. Recovery Rights

If WE or a third party designated by US or acting on OUR behalf repairs, replaces or pays YOU as to a CONSTRUCTION DEFECT, or other related damage to the HOME or the COMMON ELEMENTS covered by this LIMITED WARRANTY, WE are entitled, to the extent of OUR payment, to take over YOUR related rights of recovery from other people and organizations, including but not limited to, other warranties and insurance. YOU have an obligation not to make it harder for US to enforce these rights. YOU agree to sign any papers, deliver them to US, and do anything else that is necessary to help US exercise OUR rights.

E. General Provisions

1. If any provision of this LIMITED WARRANTY is determined to be unenforceable, such a determination will not affect the remaining provisions. If this LIMITED WARRANTY or any provision herein is determined to be unenforceable as to a HOMEOWNERS ASSOCIATION or a specific HOMEOWNER, such a determination will not affect the enforceability of this LIMITED WARRANTY or such provision as to any other HOMEOWNERS ASSOCIATION or any other HOMEOWNER. The issue of enforceability, as well as all other issues, will be determined by Binding Arbitration as provided for in this LIMITED WARRANTY.
2. This LIMITED WARRANTY and the binding arbitration process are binding on YOU and US. It is also binding on YOUR and OUR heirs, executors, administrators, successors, and assigns, subject to paragraph B of the General Conditions.
3. As may be appropriate, the use of the plural in this LIMITED WARRANTY includes the singular, and the use of one gender includes all genders.

X. Definitions

BUILDER means the individual, partnership, corporation or other entity which participates in the Warranty Program administered by the Professional Warranty Service Corporation and provides YOU with this LIMITED WARRANTY. Throughout this document the BUILDER is also referred to as "WE", "US" and "OUR".

COMMON ELEMENTS means the property as specified in the recorded Covenants, Conditions and Restrictions as common area and any other property as to which the HOMEOWNERS ASSOCIATION has standing under the law to make a claim. This may include, but is not limited to, streets, slopes, the structure or components of enclosure or other parts of the HOME, corridors, lobbies, vertical transportation elements, rooms, balconies, clubhouses or other spaces that are for the common use of the residents of the development in which the HOME is located. SYSTEMS serving two or more HOMES, and the outbuildings that contain parts of such SYSTEMS are also included in this definition.

CONSEQUENTIAL OR INCIDENTAL DAMAGES means any loss or injury other than:

- A. OUR cost to correct a CONSTRUCTION DEFECT including the correction of those surfaces, finishes and coverings damaged by the CONSTRUCTION DEFECT;
- B. OUR cost of repair or replacement of furniture, carpet or personal property damaged by the CONSTRUCTION DEFECT. Should replacement be necessary, OUR obligation is limited to replacement with items providing the same function and quality and that are readily available at the time the item is being replaced.
- C. OUR costs of removal or replacement in order to repair or replace a CONSTRUCTION DEFECT;
- D. The reasonable cost of the HOMEOWNER'S alternative shelter, storage expenses and lost business income (if the HOME was used as a principal place of business licensed to be operated from the HOME) where the HOME is uninhabitable due to a

CONSTRUCTION DEFECT or where the HOME is rendered uninhabitable by the repair of the CONSTRUCTION DEFECT.

Diminished fair market value is considered "CONSEQUENTIAL OR INCIDENTAL DAMAGE" and is excluded under this LIMITED WARRANTY unless WE elect this remedy in lieu of the repair, replacement or other payment as to a CONSTRUCTION DEFECT.

CONSTRUCTION DEFECT(S) means a flaw in the materials or workmanship used in constructing the HOME that:

- materially affects the structural integrity of the HOME or the COMMON ELEMENTS; or
 - has an obvious and material negative impact on the appearance of the HOME or the COMMON ELEMENTS;
- or
- jeopardizes the life or safety of the occupants; or
 - results in the inability of the HOME or the applicable COMMON ELEMENTS to provide the functions that can reasonably be expected in a residential dwelling.

WE and any arbitrator assigned to rule relative to a CONSTRUCTION DEFECT will consider both this definition and Section III — A. (Standards By Which the Presence of a CONSTRUCTION DEFECT Will Be Determined) in determining the existence of a CONSTRUCTION DEFECT. A flaw is a CONSTRUCTION DEFECT if either WE or an arbitrator conducting a binding arbitration hearing declares the flaw to be a CONSTRUCTION DEFECT. OUR obvious and visible failure to complete the construction of the HOME or COMMON ELEMENTS, or any portion of the HOME or COMMON ELEMENTS, is not a CONSTRUCTION DEFECT.

CONSUMER PRODUCT means any item of equipment, appliance or other item defined as a CONSUMER PRODUCT in the Magnuson-Moss Warranty Act (15 U.S.C. 2301, g.) Examples of Consumer Products include, but are not limited to dishwasher, garbage disposal, gas or electric cook-top, range, range hood, refrigerator or refrigerator/freezer combination, gas oven, electric oven, microwave oven, trash compactor, garage door opener, clothes washer and dryer, hot water heater and thermostat.

EMERGENCY CONDITION means an event or situation that creates the imminent threat of damage to the HOME or COMMON ELEMENTS, or results in an unsafe living condition due to a CONSTRUCTION DEFECT that YOU (or as applicable, the HOMEOWNERS ASSOCIATION) become aware of at a point in time other than OUR normal business hours and YOU were unable to obtain OUR or OUR authorized representative's prior written approval to initiate repairs to stabilize the condition or prevent further damage.

HOME means a single family residence either attached or detached covered by this LIMITED WARRANTY or a condominium or cooperative unit in a multi-unit residential structure/building covered by this LIMITED WARRANTY.

HOME BUILDER'S LIMITED WARRANTY means only this express warranty document provided to YOU by US.

HOMEOWNER means the first person(s) to whom a HOME (or a unit in a multi-unit residential structure/building) is sold, or for whom such HOME is constructed, for occupancy by such person or such person's family, and such person's(s') successors in title to the HOME, or mortgagees in possession and any representative of such person(s) who has standing to make a claim on that person(s) behalf, including any class representative or HOMEOWNERS ASSOCIATION making a claim in a representative capacity.

HOMEOWNERS ASSOCIATION means a profit or nonprofit corporation, unincorporated association, organization, partnership, assessment district, limited liability company, limited liability partnership or other entity of any kind that owns, manages, maintains, repairs, administers, or is otherwise responsible for and has standing to make a claim as to any part of the COMMON ELEMENTS.

POLLUTANTS means all solid, liquid, or gaseous irritants or contaminants. The term includes, but is not limited to, petroleum products, smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, radon gas, and waste materials, including materials to be recycled.

PWC means Professional Warranty Service Corporation which administers the warranty program in which WE participate. As such, PWC assumes no other liabilities in connection with this LIMITED WARRANTY. The PWC mailing address is: Professional Warranty Service Corporation
P.O. Box 800 Annandale, VA 22003-0800

SYSTEMS means the following:

- (a) Plumbing system - gas supply lines and fittings; water supply, waste and vent pipes and their fittings; septic tanks and their drain fields; and water, gas and sewer services piping and their extensions to the tie-in of a public utility connection or on-site well and sewage disposal system.
- (b) Electrical system - all wiring, electrical boxes, switches, outlets, and connections up to the public utility connection.
- (c) Heating, Cooling, and Ventilation system - all duct-work; steam, water and refrigerant lines; and registers, connectors, radiation elements and dampers.

WARRANTY PERIOD shall commence on the date the title to the HOME is transferred to the first HOMEOWNER. Notwithstanding anything to the contrary set forth in this LIMITED WARRANTY, the WARRANTY PERIOD for the COMMON ELEMENTS of an individual structure/building commences on the date the title for the first HOME in the structure/building is transferred to the first HOMEOWNER or as concerns clubhouses or outbuildings or other COMMON ELEMENTS not part of the HOME the date the title to these structures is transferred to the HOMEOWNERS ASSOCIATION. The dates the WARRANTY PERIOD begins and ends are indicated on the Limited Warranty Validation Form which is attached to and made part of this LIMITED WARRANTY.

WE, US, OUR means the BUILDER.

YOU, YOUR means the HOMEOWNER and the HOMEOWNERS ASSOCIATION.

SAMPLE

BINDING ARBITRATION REQUEST FORM

Dear Homeowner (Homeowners Association):

Prior to requesting binding arbitration under the terms of the HOME BUILDER'S LIMITED WARRANTY, you should have sent your builder a clear and specific written request outlining the situation or condition that you are herein submitting to binding arbitration. If you have taken this step and believe the builder has not properly responded in accordance with the HOME BUILDER'S LIMITED WARRANTY, fill out this form and send it to PWC along with the arbitration filing fee. Be sure to attach a copy of all pertinent correspondence between you and your builder relative to the issue.

The information you need to fill out this form can be found on the Limited Warranty Validation Form. However, if you do not know the answers to any questions, write "Don't Know." Please do not leave any item blank.

Your name: _____

Address: _____

CITY STATE ZIP

Home Phone:(_____) _____ Business Phone:(_____) _____

LIMITED WARRANTY #: _____ Date Warranty Period begins: _____

Builder's Name: _____

Address: _____

Describe the dispute that you wish to submit to binding arbitration under the terms of the HOME BUILDER'S LIMITED WARRANTY. If the dispute is relative to a construction defect please include information on when the construction defect(s) first occurred or when you first noticed the construction defect. (Attach additional sheets, if necessary).

I/we are hereby requesting PWC to initiate a binding arbitration to resolve the dispute described herein above.

Signature Date Signature Date

INSTRUCTIONS: Photo-copy this form and complete the fields.

Obtain the required arbitration filing fee by contacting PWC at 1-800/850-2799.

Send this Binding Arbitration Request Form and the arbitration filing fee to:

**PROFESSIONAL WARRANTY SERVICE CORPORATION
P.O. BOX 800
ANNANDALE, VIRGINIA 22003-0800**

SAMPLE

SUBSEQUENT HOME BUYER ACKNOWLEDGMENT AND TRANSFER

Any coverage remaining under the HOME BUILDER'S LIMITED WARRANTY applicable to the home specified on the Limited Warranty Validation Form is transferred to the subsequent homeowner. Any obligations under the HOME BUILDER'S LIMITED WARRANTY to any subsequent homeowner shall not exceed the limit of liability remaining at the time of transfer, if any.

The undersigned home buyer(s) hereby acknowledge and agree:

I/we acknowledge that I have reviewed, understand and agree to all the terms of the HOME BUILDER'S LIMITED WARRANTY document (PWC Form No. '117)

I/we understand and acknowledge that Professional Warranty Service Corporation ("PWC") is not the warrantor of the HOME BUILDER'S LIMITED WARRANTY.

I/we understand that I/we am responsible for the maintenance of the home including maintenance of the grade of the land surrounding the home, and that the builder shall not be responsible for any defect of damage to the home which is the result of my/our failure to maintain the home.

I/we acknowledge and agree to the Binding Arbitration Procedure contained in the HOME BUILDER'S LIMITED WARRANTY.

Signature(s) of Subsequent Home Buyer(s): _____ Date: _____
_____ Date: _____

Print above name(s): _____

Re-issuance of the Limited Warranty Validation Form with the name(s) of the new Home Buyer(s) is necessary for you to receive the coverage remaining under the HOME BUILDER'S LIMITED WARRANTY. Upon receipt of this signed form, PWC will update its records to reflect the name(s) of the new homeowner(s). If you want PWC to issue another Limited Warranty Validation Form with your name(s) on the form, please check the box below and send a check in the amount of \$20.00 made payable to "PWC" with your submission of this form.

YES, re-issue the Limited Warranty Validation Form in the above name(s) ☐ (check box) Initial _____

Address of Home: _____

Limited Warranty No.: _____

INSTRUCTIONS: Photo-copy this form. Provide information requested, sign, fill in Limited Warranty # in the space provided (this number is provided on the Limited Warranty Validation Form), and provide a telephone number where you can be reached () _____. If you want the Limited Warranty Validation Form reissued in your name, enclose your check to PWC in the amount of \$20.00 (check box above and initial). To reach PWC by phone, call: 1-800/850-2799.

Mail this form and a photocopy of applicable settlement/closing documents indicating transfer of title, to:

PROFESSIONAL WARRANTY SERVICE CORPORATION P.O. BOX 800 ANNANDALE, VA 22003-0800

EXHIBIT C - Alternative Dispute Resolution Provisions

1. **DEFINITIONS.** For purposes of this Exhibit C ("ADR Provisions") only: (i) "Declarant" means and includes Declarant, any director, officer, partner, member, employee, agent or representative of Declarant, and any contractor, subcontractor, design professional, engineer, or supplier who provided labor, services or materials to the Development and who is bound or has agreed to be bound to the following or similar dispute notification and resolution procedures; (ii) "Dispute" means any and all actions or claims between any Declarant party on the one hand and any Owner and/or the Association on the other hand arising out of or in any way relating to the Development, any real property or improvements in the Development, the Declaration, a purchase and sale contract between Owner and Declarant for the purchase and sale of a Lot ("Contract"), liquidated damages issues under a Contract, the Home Builder's Limited Warranty described in Article 12 and Exhibit B (the "Home Warranty"), the Common Area, the Courtyards and/or any other agreements or duties or liability as between any Declarant party and any Owner and/or the Association relating to the sale or transfer of the Lots or the Common Area, or regarding the use or condition of the Lots and/or Common Area, or the design or construction of or any condition on or affecting the Development and/or any Lot and/or the Common Area or Courtyard in the Development, including without limitation construction defects, surveys, soils conditions, grading, specifications, installation of improvements, or disputes which allege strict liability, negligence or breach of implied or express warranties as to the condition of the Lots, the Common Area or other portions of the Development, provided that Disputes do not include actions taken by the Association against Declarant to collect delinquent assessments or any action involving the Common Area completion bonds; and (iii) "Fix It Law Claim" means any claim by an Owner and/or the Association made in compliance with California Civil Code Section 910 that Declarant contributed to or is otherwise responsible for a violation of the standards set forth in California Civil Code Sections 896 through 897.
2. **FIX IT LAW NONADVERSARIAL DISPUTE RESOLUTION PROCEDURES.** These ADR Provisions set forth dispute resolution procedures which apply after application of any "nonadversarial dispute resolution" procedures required for Fix It Law Claims, as set forth in California Civil Code Sections 910 through 938. Nothing herein diminishes the rights and obligations of an Owner, the Association and Declarant under the nonadversarial dispute resolution procedures set forth in California Civil Code Sections 910 through 938 with respect to any Fix It Law Claim.
3. **ARBITRATION OF DISPUTES.** WITH RESPECT TO ALL DISPUTES, DECLARANT, OWNERS AND THE ASSOCIATION SHALL COMPLY WITH THE DISPUTE RESOLUTION AND ARBITRATION PROCEDURES AND PROVISIONS SPECIFIED IN THE HOME WARRANTY, WHICH ARE GOVERNED BY THE FEDERAL ARBITRATION ACT (9 U.S.C. §§ 1-16). The Association acknowledges and agrees that the Home Warranty form to be issued has been made available to the Association for review, that the Association has made such review of the Home Warranty and the dispute resolution procedures specified therein as the Association deems necessary and appropriate, and that the Association consents to participation in such procedures for resolution of Disputes.

Notwithstanding the dispute resolution procedures specified in the Home Warranty and upon written request of an Owner or the Association, Declarant agrees to pay on the Owner's or the Association's behalf (or, upon satisfactory evidence, to reimburse them) the amount of the arbitration initiation/filing fees in excess of the amount of the filing fees for a civil lawsuit required under local law at the time. Declarant and the Owner and/or Association may agree to otherwise change the applicable dispute resolution procedures, but only by a written agreement to do so signed by both the Owner and/or the Association, whichever is applicable, and Declarant.

The procedures specified in the Home Warranty and these ADR Provisions are to be interpreted and enforced as authorized by the Federal Arbitration Act (9 U.S.C. §§ 1-16),

which is designed to encourage use of alternative methods of dispute resolution that avoid costly and potentially lengthy court proceedings. Interpretation and application of these procedures shall conform to Federal court rulings interpreting and applying the Federal Arbitration Act. References to California law made in this Exhibit shall not be construed as a waiver of any rights under the Federal Arbitration Act or of any rights to have the procedures set forth in the Home Warranty and/or these ADR Provisions interpreted and enforced under the Federal Arbitration Act.

4. SECONDARY ALTERNATIVE DISPUTE RESOLUTION PROCEDURES AND PROVISIONS. TO THE EXTENT ANY OF THE DISPUTE RESOLUTION OR ARBITRATION PROCEDURES AND PROVISIONS SPECIFIED IN THE HOME WARRANTY ARE DETERMINED TO BE UNENFORCEABLE IN WHOLE OR IN MATERIAL PART PREVENTING THEIR USE, DECLARANT, OWNERS AND/OR THE ASSOCIATION SHALL COMPLY WITH THE DISPUTE RESOLUTION PROCEDURES AND PROVISIONS SET FORTH IN THIS PARAGRAPH.

(a) Pre-Litigation Procedures.

- (i) ***Fix It Law Claims.*** For all Fix It Law Claims, the parties shall proceed pursuant to California Civil Code Sections 895 through 945.5.
- (ii) ***Notice and Opportunity to Cure non-Fix It Law Claims.*** Any Person asserting a Dispute which is not a Fix It Law Claim shall notify Declarant in writing of the Dispute, which writing reasonably shall describe the nature of the claim and any proposed remedy (the ***"Claim Notice"***). Within a reasonable period (not to exceed 60 days) after receipt of the Claim Notice, Declarant and the claimant (and any other involved Declarant parties provided with the Claim Notice) shall meet at a mutually acceptable place within the Development to discuss the claim. At such meeting or at such other mutually agreeable time, Declarant and the Declarant's representatives shall have and/or be provided full access to the property that is the subject of the claim and shall have the right to conduct inspections and testing, including destructive or intrusive testing, of the same, in a manner deemed appropriate to Declarant, which rights shall continue until the Dispute is resolved. The parties to the Dispute shall negotiate in good faith in an attempt to resolve the claim. If Declarant elects to take any corrective action, Declarant and Declarant's representatives shall be provided full access to the Lots, the Common Area and the Development to take and complete corrective action. Declarant shall not be liable for any general, special or consequential damage, cost, diminution in value, or other loss which an Owner and/or the Association may suffer as a result of any defect in the Lots and/or the Common Area, which reasonably might have been avoided had the Owner or the Association given to Declarant the notice and opportunity to cure described above. The ADR Provisions do not establish any duty, obligation or warranty (express or implied) on the part of Declarant to repair, replace or cure any defect in the Lots or the Common Area. An Owner's and the Association's rights with respect to the foregoing shall be governed by the Home Warranty provided by Declarant.

(b) Adversarial Dispute Resolution Procedures.

- (i) ***JAMS Arbitration.*** If the parties to the Dispute cannot resolve the claim pursuant to the procedures described in paragraphs 4(a)(i) or 4(a)(ii) (whichever is applicable), the Dispute shall be submitted for resolution pursuant to arbitration by Judicial Arbitration and Mediation Services (***"JAMS"***), or any other entity offering judicial reference dispute resolution procedures as may be mutually acceptable to the parties to the Dispute, pursuant to its standard arbitration procedures for construction matters. The parties to the Dispute shall cooperate in this arbitration proceeding. The arbitrator in this proceeding shall have the authority to try and shall try all issues, whether of fact or law, including without limitation, the validity, scope

and enforceability of these dispute resolution provisions, and to report a statement of decision to the court. All parties to the Dispute shall use the arbitrator's standard arbitration procedures for construction matters, provided that the rules and procedures set forth in paragraph 4(b)(iii) shall apply in all cases unless the parties to the Dispute agree otherwise in writing.

- (ii) **Judicial Reference.** If the parties to the Dispute cannot resolve the claim pursuant to the procedures described in paragraphs 4(a)(i) or 4(a)(ii) (whichever is applicable), and if and to the extent any of the dispute resolution procedures specified in paragraph 4(b)(i) above are determined to be unenforceable in whole or in material part preventing their use, the Dispute shall be submitted for resolution to a general judicial reference pursuant to California Code of Civil Procedure Sections 638(a) and 640 through 645.2, or any successor statutes thereto, and as modified or as otherwise provided herein. The parties to the Dispute shall cooperate in the judicial reference proceeding. The general referee shall have the authority to try and shall try all issues, whether of fact or law, including without limitation, the validity, scope and enforceability of these dispute resolution provisions, and to report a statement of decision to the court. All parties to the Dispute shall use the procedures adopted by JAMS for judicial reference (or any other entity offering judicial reference dispute resolution procedures as may be mutually acceptable to the parties to the Dispute), provided that the rules and procedures set forth in paragraph 4(b)(iii) shall apply in all cases unless the parties to the Dispute agree otherwise in writing.
- (iii) **Rules and Procedures.** The following rules and procedures apply to any arbitration or judicial reference proceeding pursuant to this paragraph 4(b):
 - (A) The arbitrator must be a neutral and impartial retired judge, attorney or other Person with substantial experience in relevant matters. The referee must be a neutral and impartial retired judge with substantial experience in relevant matters. Any dispute regarding the selection of the arbitrator or referee shall be resolved by the entity providing the arbitration or reference services, or, if no such entity is involved, by the court with appropriate jurisdiction.
 - (B) The arbitration or judicial reference proceeding will not involve resolution of the Dispute by trial by jury.
 - (C) The parties to the Dispute shall be entitled to conduct all discovery as otherwise provided in the California Code of Civil Procedure, and the arbitrator or referee shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge, with rights to regulate discovery and to issue and/or enforce subpoenas, protective orders or other limitations on discovery available under California law. In the context of construction defect Disputes, all parties to the Dispute shall be deemed to consent to and/or are entitled to reasonable site inspections, visual inspections, destructive testing and other discovery mechanisms commonly employed in such Disputes.
 - (D) The arbitration or judicial reference proceeding shall be conducted in accordance with California law (including the rules of evidence), and in all regards the arbitrator or referee shall follow California law as applicable at the time of the dispute resolution proceeding. The arbitrator or referee may issue any remedy or relief that the courts of the State of California could issue if presented the same

circumstances, and the arbitrator or referee shall follow and otherwise employ the standards for issuing such relief as defined by California law. The arbitrator or referee may require one or more pre-hearing conferences. A stenographic record of the arbitration hearing or trial shall be made. The arbitrator's or referee's statement of decision shall contain findings of fact and conclusion of law to the extent applicable. The arbitrator or referee shall have the authority to rule on all post-hearing motions in the same manner as a trial judge. The statement of decision of the arbitrator or referee upon all of the issues considered by the arbitrator or referee is binding upon all of the parties to the Dispute, and upon filing the statement of decision with the clerk of any court in the State of California having jurisdiction thereof, or with the judge if there is no clerk, judgment may be entered thereon. The judgment and decision of the arbitrator or referee shall be appealable in the same manner and subject to the same rules as if rendered by the court.

- (E) If a Dispute involved parties other than those listed above, this provision shall be interpreted to bring those third-party disputes into the dispute resolution procedures prescribed herein to the fullest extent permitted by law. All parties to the Dispute shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the proceeding. Declarant, as defined in the Declaration, shall not be required to participate in the proceeding if all parties against whom Declarant has necessary or permissive cross-claims or counterclaims, including without limitation other Declarant parties, will not or cannot be joined in the proceeding such that Declarant may be forced to litigate in two separate forums or may suffer inconsistent rulings.
- (F) The exclusive venue for all dispute resolution proceedings conducted under this paragraph 4 shall be in the county in which the Development is located.
- (G) The parties to the Dispute shall bear their own attorneys' fees and expert fees in any dispute resolution proceeding conducted pursuant to these ADR Provisions. Declarant shall initially advance (or, upon satisfactory evidence, reimburse) the amount of any arbitration or reference initiation/filing fees in excess of the amount of the filing fees for a civil lawsuit required under local law at the time. Other and/or ongoing fees and costs of the arbitrator or referee shall be divided equally between the claimant(s), on one hand, and Declarant and any other parties to the proceeding, on the other hand. In the event that any of the foregoing provisions for payment of the arbitrator's or referee's fees and costs are determined by the arbitrator or referee, or by a court, to be unenforceable for any reason, then such unenforceable provisions shall be deemed severed and Declarant shall instead advance all arbitrator or referee fees and costs associated with the proceeding. In any event, the arbitrator or referee may ultimately re-allocate such fees and costs among all parties to the proceeding in his or her discretion as the interests of justice dictate. The arbitrator or referee shall award litigation "costs" to the prevailing party to the same extent and in the same manner as a California court may award such "costs" pursuant to California Civil Code Section 1032, et seq. For purposes of determining the "prevailing party", the arbitrator or referee shall specifically consider, in addition to other factors deemed relevant under applicable law, the total relief

requested by each of the involved parties, the total relief awarded as to each of the involved parties, and any prior settlement offers of the parties in relation to the total relief awarded.

5. **ACKNOWLEDGMENT.** AS TO ALL DISPUTES COVERED BY THESE ADR PROVISIONS AND ALL DISPUTE RESOLUTION PROCEDURES SET FORTH OR REFERENCED HEREIN, DECLARANT, ANY OWNER AND THE ASSOCIATION UNDERSTAND AND ACKNOWLEDGE THAT THE RESOLUTION OF DISPUTES UNDER THESE PROVISIONS DOES NOT INVOLVE RESOLUTION BY JURY TRIAL AND DOES NOT ENCOMPASS OTHER CIVIL LITIGATION PROCEEDINGS FOR SUCH DISPUTES. THESE PARTIES FURTHER ACKNOWLEDGE THAT THEY HAVE HAD THE OPPORTUNITY TO BE ADVISED BY INDEPENDENT LEGAL COUNSEL IN CONNECTION WITH THESE ADR PROVISIONS. THESE PARTIES FURTHER ACKNOWLEDGE HAVING READ AND UNDERSTOOD THE MEANING AND RAMIFICATIONS OF THESE PROCEDURES. THESE ADR PROVISIONS SHALL IN NO WAY BE CONSTRUED TO LIMIT THE RIGHT OF ANY PARTY TO BE REPRESENTED BY COUNSEL IN ANY PROCEDURES PURSUANT TO THESE ADR PROVISIONS.
6. **COOPERATION CLAUSE.** The parties to any Dispute shall at all times cooperate so as to permit compliance with the terms of these ADR Provisions and to accomplish their purposes.
7. **CHOICE OF FORUM CLAUSE.** In the event any party to a Dispute subject to these ADR Provisions seeks review by a court of the enforceability of any of the ADR Provisions set forth or referenced herein (despite the provisions herein making that issue one to be resolved by the arbitrator or general referee), the exclusive jurisdiction and venue for any such review shall be the Federal District Court for the county in which the Development is located.
8. **SURVIVAL OF PROVISIONS.** As contemplated by California Civil Code Section 1670.5 and case law applying that statute, if any provision or part of these ADR Provisions is for any reason held to be invalid, unconscionable, contrary to any public policy, law, statute and/or ordinance, or unenforceable for any other reason, then such enforceable provision(s) or part(s) shall be deemed severed and the remainder of these ADR Provisions shall not be affected thereby and shall remain valid and fully enforceable notwithstanding the severance and unenforceability of the severed portions.

Consent of Owner

PFVV, L.P., a California limited partnership (the "Owner"), owns Lots 1 through 24, 49 through 56, 64 through 79, and Parcels A and E, more particularly described in the subdivision map entitled "Final Map of Portofino" filed in the records of Solano County, California, on May 24, 2005, in Book 81 of Maps at page 49 (the "Phase 1 Property"). The Owner consents to the recordation of the foregoing Portofino Declaration of Restrictions (CC&Rs) (the "Declaration") and acknowledges and agrees that from and after the date the Declaration is recorded in the records of Solano County, California, the covenants, restrictions, rights, duties, benefits and burdens contained in the Declaration will benefit and bind the Phase 1 Property and all owners and successive owners thereto.

PFVV, L.P.

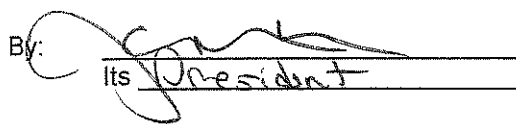
a California limited partnership

By: PFGP, LLC
a California limited liability company
Its Sole General Partner

By: Silverwing Development
a Nevada corporation
Its Managing Member

By:

Its


President

STATE OF CALIFORNIA

COUNTY OF CONTRA COSTA

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On 06 APRIL 2006 before me, JO-ANN DALY LEE, NOTARY PUBLIC
personally appeared J CARTER WITT III, personally known to me ~~(or proved to me on the basis of satisfactory evidence)~~ to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature

JoAnn



(Seal)