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POINTE MARIN
DECLARATION
OF
RESTRICTIONS (CC&Rs)

If this document contains any restriction based on race, color, religion, sex, familial status, marital status, disability, national original, 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.

Covenants and restrictions, if any, based on race, color, religion, sex, handicap, familial status, or national origin are deleted unless and only to the extent that said covenant (a) is exempt under Chapter 42, Section 3607 of the United States Code or (b) relates to handicap but does not discriminate against handicapped persons.

POINTE MARIN
DECLARATION
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RESTRICTIONS (CC&Rs)

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POINTE MARIN

DECLARATION OF RESTRICTIONS (CC&Rs)

THIS DECLARATION OF RESTRICTIONS (CC&Rs) is executed by CENTEX HOMES, a Nevada general partnership, and SHEA HOMES LIMITED PARTNERSHIP, a California limited partnership (the "Declarant") with reference to the following facts:

- A. Declarant is constructing a residential development in multiple phases located on certain real property in Novato, California. The first phase consists of Lots 36 through 49, 136, 156, 157 and 160 through 164 identified on the subdivision map entitled "Map of Pointe Marin Phase One" filed in the records of Marin County, California, on December 28, 2001, in Book 2001 of Maps at page 238.
- 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).
- C. The restrictions, rights and duties 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 Articles. The Articles of Incorporation of the Association and any amendments thereto.
- 1.2 Association. Pointe Marin Association, a California nonprofit mutual benefit corporation.
- 1.3 Board. The Board of Directors of the Association.
- 1.4 Bylaws. The Bylaws of the Association and any amendments thereto.
- 1.5 City. The City of Novato, California.
- 1.6 Committee. The Architectural Committee described in **Article 7**.

1.7 Common Area. The common area lots or parcels conveyed to the Association as described in **Section 2.13**. There are no common area lots or parcels in Phase 1.

1.8 Declarant. Centex Homes, a Nevada general partnership ("Centex"), or any successor or assign of Centex's interest in any Lot subject to this Declaration or any lot that may be annexed into the Development and to whom Centex has assigned in writing all or a portion of the rights and duties of the Declarant hereunder; and Shea Homes Limited Partnership, a California limited partnership ("Shea"), or any successor or assign of Shea's interest in any Lot subject to this Declaration or any lot that may be annexed into the Development and to whom Shea has assigned in writing all or a portion of the rights and duties of the Declarant hereunder. There may be more than two Declarants.

1.9 Declaration. This Declaration of Restrictions (CC&Rs) and any amendments or corrections thereto.

1.10 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.

1.11 Fuel Modification Plan. The Fuel Modification Plan, dated September 2001, prepared by Nuvis and approved by the City and any modifications thereto as may be approved by the City.

1.12 Governing Documents. This Declaration, the Articles of Incorporation, the Bylaws and the Rules.

1.13 Improvements. Any fixtures affixed to any Lot or Common Area in the Development within the meaning of Civil Code section 660.

1.14 Lot or Residential Lot. Lots 36 through 49, 136, 157 and 160 through 164 as shown on the Map and Improvements thereon, and any additional residential lots that may be subsequently annexed into the Development as described in **Article 14** and any improvements thereon.

1.15 Map. The subdivision map entitled "Map of Pointe Marin Phase One" filed for record in Marin County, California, on December 28, 2001, in Book 2001 of Maps at page 238, including any subsequently-recorded amended final maps, parcel maps, certificates of correction, lot-line adjustments, and/or records of survey. "Map" also shall mean any other recorded subdivision maps describing property that may be subsequently annexed into the Development as described in **Article 14**.

1.16 Member. A member of the Association.

1.17 Mortgage. A recorded mortgage or deed of trust against one or more Lots in the Development.

1.18 Mortgagee. A mortgagee under a Mortgage or a beneficiary under a deed of trust recorded against a Lot in the Development.

1.19 Owner. The record fee title owner or owners of a Lot in the Development.

1.20 Person. Any natural person, partnership, trust, corporation, limited liability company, or other legal entity.

1.21 Property. The land and Improvements shown on the Map.

1.22 Rules. Rules or regulations adopted by the Board from time to time pursuant to the authority of **Section 6.6(ii)**.

ARTICLE 2 - Property Rights, Easements and Restrictions

2.1 Type of Development. This Development is a planned development within the meaning of Civil Code section 1351(k). Phase 1 shall consist of 22 Residential Lots. If all the subsequent phases are annexed into the Development as described in **Article 14**, the Development may consist of three Common Area Lots and 344 Residential Lots and all Improvements thereon. No Declarant has any obligation to annex any subsequent phase into the Development.

2.2 Property Rights. Each Owner shall own a fee title interest in a Residential Lot and shall be a Member of the Association. The Association shall own the fee title interest in the Common Area.

2.3 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.

Any dispute between the adjoining Lot Owners 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 resolved in accordance with the provisions of **Sections 12.3 and 12.4** in that order.

2.4 Shared Driveways. Certain Lots within the Development share a driveway for ingress and egress to the adjoining public streets. The Owners of Lots that share a driveway shall jointly share the maintenance and repair of the driveway Improvements, including the pavement, roadbed, sub-base, any shared sewer lines, and any storm drainage Improvements within the driveway. Utility Improvements, including the separate sewer laterals to the individual Lots, within the driveway are not part of the driveway Improvements and are to be maintained and repaired by the Owner(s) of the Lot(s) served by the utility Improvements. Some of the driveways are situated on Lots that do not use the driveway for access to the garage on that Lot. The Owners of these Lots shall have no obligation to participate in the maintenance or repair of the shared driveway Improvements. The cost of the maintenance and repair of the driveway Improvements shall be allocated equally among the Lots using the driveway 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 portion of any other Lot that contains the driveway Improvements as the servient tenement for access to that portion of the servient tenement as may be reasonably necessary to maintain, repair or replace the driveway Improvements.

Any dispute between the adjoining Lot Owners regarding the need for maintenance or repair, the quality or type of maintenance or repair, the party responsible for the maintenance or repair, the allocation of costs, or any related issues shall be resolved in accordance with the provisions of **Sections 12.3 and 12.4** in that order.

2.5 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.

2.6 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 due to roof overhangs, eaves, windows, porches, staircases or other structural Improvements resulting from the original construction of the Improvements, settlement or shifting of structures, and any encroachment easements granted in accordance with **Section 2.11**. The extent of the encroachment easement shall be the location of the encroaching structure as originally constructed by a 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.

2.7 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 4.3**.

2.8 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.

2.9 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.

2.10 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 a 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 2.11, 2.13, and 13.11**; and

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

2.11 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 interests, 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 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. Furthermore, the conveyance of fee title to any portion of the Common Area as authorized in this **Section 2.11** (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.

2.12 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. 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. Such rights may be enjoyed by the tenant or the tenant's family members and guests except in connection with the Owner's rights and duties as a landlord.

2.13 Conveyance of Common Area. The Common Area in each phase shall be conveyed to the Association on or before the date the Declarant owning Lots in that phase first conveys title to a Lot in that phase. The Common Area as the servient tenement is subject to the rights reserved in **Section 2.10** 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 a Declarant and its subcontractors and agents to construct, maintain and sell the Lots and all related Improvements in the subsequent phases. The rights retained by a 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.

On the conveyance of any Common Area to the Association, Declarant automatically reserves the easements and rights over that Common Area described in this **Article 2** in favor of the Lots subject to the Declaration. If a Lot is not subject to the Declaration at the time of the conveyance,

the reserved easements and rights shall become effective as of the date the Lot is annexed into the Development as described in **Article 14**.

2.14 Phasing. The property that may be annexed into the Development as a part of a subsequent phase is described in Exhibit A attached hereto (which includes Exhibit A-1). Each Declarant reserves the right to determine the number of phases, the number of lots in a phase, and the building types in a phase. No Declarant makes any representation or warranty that any subsequent phase will be annexed into the Development and has no obligation to annex any subsequent phase into the Development. The restrictions, rights and duties described herein shall benefit and bind Phase 1 on recordation of this Declaration and each subsequent phase on the recordation of a declaration of annexation annexing that phase into the Development as described in **Article 14**.

2.15 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.

2.16 Maintenance District. Declarant intends to form a landscaping and lighting district, community facilities district, or other form of assessment district (the "Maintenance District") to own and/or maintain certain property and Improvements within the Development, including parkways along Ignacio Blvd., perimeter walls, and a pedestrian access area; to maintain certain fuel modification areas in accordance with the requirements of the Fuel Modification Plan; and to remove any landscape cuttings or other debris deposited within any portion of any Lot containing a portion of Arroyo San Jose Creek and subject to a flood control easement as shown on the Map (collectively the "Maintenance Properties"). If the Maintenance District is formed, legal title to certain Maintenance Properties is expected to be conveyed either to the Maintenance District or to the City. Exhibit B attached hereto describes the Maintenance Properties and maintenance requirements. All of the Lots in the Development, including the Lots that may be annexed into the Development as described in **Article 14** will be within the Maintenance District. The cost for maintaining and repairing the Maintenance Properties, including, but not limited to, administrative, management, utilities and landscaping costs, shall be funded through assessments levied against each Lot in the Maintenance District. These assessments will be due and payable at the same time as the real property taxes levied by the County of Marin against each Lot. These assessments are not included within the assessments levied by the Association and are to be paid in addition to the assessments levied by the Association.

If for any reason the Maintenance District is not formed or is formed but ceases to own and/or maintain any of the Maintenance Properties in accordance with the maintenance requirements, Declarant shall convey title to the Maintenance Properties to the Association and/or transfer maintenance obligations over any Improvements that would have been maintained by the Maintenance District or that the Maintenance District ceases to maintain to the Association; and the Association shall accept title and shall assume the maintenance responsibilities over the Maintenance Properties so transferred. In addition, if the Maintenance District is formed but not all of the Maintenance Properties and/or maintenance obligations are transferred or assumed by the Maintenance District, Declarant shall convey title to the Maintenance Properties not transferred to the District to the Association and/or transfer maintenance obligations over any Improvements not assumed by the District to the Association; and the Association shall accept title and shall assume the maintenance responsibilities over the Maintenance Properties so transferred.

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 additional Rules regarding the use of offices within the Development in order to maintain the residential characteristics of the Development. The use of Lots by 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 later.

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

- (i) the 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 and the address and telephone number of the Owner.

Any Owner that 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 Garage Restrictions. No mobile home, camper or recreational vehicle, boat, truck (other than pickup trucks that do not exceed three-quarter ton) or similar equipment shall be parked at anytime within the Development (including on any public rights-of-way) except trucks parked on a temporary basis for purposes of loading or unloading.

Except as expressly described in plans filed with and approved by the City, no Owner or other person or entity shall convert any garage space to a family room, living room, bedroom or other such room which would normally be considered living area for the Owner or storage, recreational use or any other use if such conversion would in any manner prevent the parking of at least two vehicles within the garage or the ingress or egress of vehicles to and from at least two parking spaces in the garage. The foregoing shall not prohibit the placement of a washer, dryer, freezer or other such appliance or personal property in a garage as long as such placement does not in any manner prevent the parking of two vehicles in the garage at all times. Garage doors shall be kept in a closed position except when the door is open to permit the entry or exit of vehicles or to provide

ventilation to individuals working in the garage area. Lot occupants shall park their vehicle in the garages so that parking on the street or driveway apron of the Lot is available primarily for guest parking.

3.5 Animals. Normal and customary household animals 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 regulations as may be adopted by the Board;
- (iii) the 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 within 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**, no sign of any kind shall be displayed from any Lot that is visible from the Common Area or any other Lot except the following:

- (i) any sign not exceeding 2½ feet by 2½ feet advertising the Lot for sale or for rent, provided that no more than one such sign is used and the sign is situated on the Lot that is to be sold or rented; or
- (ii) any sign approved by the Board either on an individual basis or pursuant to Rules adopted by the Board.

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 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.

3.11 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.**

3.12 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.

3.13 Flood Control Easements Restrictions. Portions of Ignacio Creek are situated within the flood control easement that encumbers Lots 5, 6, 15, 16 and 28 as shown on the Map and such lots that are described in a declaration of annexation. No Improvements, including, but not limited to, patio or deck Improvements, may be installed or maintained within the flood control easement area at anytime.

3.14 Uniform Boundary Fencing. All boundary fencing shall comply with the design guidelines for boundary fencing approved by the City.

3.15 Fence Gate Restriction. No gates shall be installed in any back yard fence or perimeter fence on any Lot.

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, including good neighbor fences and shared driveways, shall be maintained and repaired as described in **Sections 2.3 and 2.4.** All fences on a Residential Lot, including fences located on a common boundary between the Owner's Lot and the Common Area, shall be maintained by the Owner. The maintenance shall comply with the property maintenance standards set forth in Chapter 19.31 of the City's Municipal Code or any successor ordinance thereto. 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.

Certain of the perimeter walls to be maintained by the Maintenance District or the Association as described in **Sections 2.16 and 4.3** and Exhibit B are situated on Residential Lots. The Owner of any Residential Lot shall be responsible, at that Owner's cost, for the periodic repainting and graffiti removal of and from the side of the wall facing into the Owner's Lot. The Maintenance District or the Association shall be responsible for structural repairs to the wall and the periodic repainting and graffiti removal of and from the side of the wall facing away from the Residential Lot.

If any Owner fails to maintain his or her Lot as required herein, the Association, after notice and hearing as described in the Bylaws, shall take appropriate steps to compel compliance; and, without limiting any appropriate remedy, the Association 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 and Fuel Management Requirements. Unless installed by a Declarant, the Residential Lot Owner shall install, plant and complete the permanent landscaping and irrigation system within any unenclosed portions of the Owner's Lot within six months after the close of escrow for the sale of the Residential Lot from the Declarant. Installation of the landscaping and irrigation systems shall be subject to: (i) the prior approval of the Architectural Committee and (ii) issuance of a required grading permit by the City, which shall strictly enforce its grading requirements and restrictions.

Each Owner shall maintain the landscaping 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 shall take appropriate steps to compel compliance; and, without limiting any appropriate remedy, the Association may enter the Lot and perform the maintenance under the procedures described in **Section 4.1** and shall have the same remedies as described in **Section 4.1**.

Each Lot Owner shall take the necessary steps to comply with the Fuel Modification Plan described in **Section 1.11**, including restricting the plant material within 30 feet of any residential structures to the plants identified in the Fire Resistant Plant List contained in the Plan and complying with the management and maintenance procedures described in the Plan.

4.3 Association's Maintenance Responsibilities. The Association shall maintain the Common Area and all Improvements and landscaping thereon, including, but not limited to, irrigation systems, 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.

In addition, the Association shall maintain the monuments located within the parkways described in Exhibit B and such additional monuments as may be described in any declaration of annexation or other recorded document.

As described in **Section 2.16** and Exhibit B, if the Maintenance District is not formed, or if formed ceases for any reason to perform the maintenance obligations, the Association shall perform the maintenance obligations, including, the maintenance that would have been performed by the District within the fuel modification areas pursuant to the requirements of the Fuel Modification Plan.

4.4 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.

4.5 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 designated for such except on trash collection day if curbside service is provided.

4.6 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(iv)**. The Association shall not charge the Owner to the extent that the cost is met through insurance maintained by the Association. 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 the Declaration, the Articles, the Bylaws and any amendments thereto.

5.3 Membership. Each Owner of a fee title interest in a Lot automatically shall 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. If any Owner executes an installment contract of sale for the sale of that Owner's Lot, the purchaser shall become the Member if the contract is recorded in the public records and if the Association is notified in writing of the contract; and the Owner no longer shall be a Member. If the purchaser's rights are terminated under the contract without transfer of title to the purchaser, the Board, upon receipt of satisfactory evidence of the termination of the purchaser's rights, shall reinstate the Owner as the Member; and the purchaser shall no longer be a Member.

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:

(i) Class A. Class A Members are all Owners except 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.

(ii) Class B. The Class B Member shall be each Declarant, who shall be entitled to three votes for each Lot owned by that 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 first phase of 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 a Declarant owns any Lots, any action by the Association that requires approval by the Members shall require approval by the Members including that Declarant's vote(s) and approval by the Members excluding that 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 Voting Requirements. Votes of a Declarant shall be excluded as provided in **Section 5.12** of this Declaration.

(5) Amendments. Member approval requirements for any amendments to the Declaration, Bylaws or Articles 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:

(i) 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.

(ii) Adopting Rules: The Board may adopt, amend and repeal Rules as it considers appropriate. The Rules shall 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 herein. 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, the Declaration, the Articles or the Bylaws shall control to the extent of any such inconsistency.

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.

(iii) Borrowing Money: The Board may borrow money to meet any anticipated or unanticipated cost of the Association and, subject to the provisions of **Section 5.13(v)** and may mortgage, encumber or pledge Association assets (including, but not limited to, assessments) as security for such borrowing.

(iv) 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; and (c) commence any legal or equitable action for damages, injunctive relief or both. 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.

(a) 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.

(b) 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:

(1) 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.

(2) 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.

(3) 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.

(4) 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 the Declaration, 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.

(5) Assessment Charges: The provisions of this **Section 5.6(iv)** 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.

(v) 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.

(vi) 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.

5.7 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 accept title and/or maintenance responsibilities as described in **Section 2.16**, manage the Common Area, perform the maintenance as described in **Section 4.3**, prepare and distribute financial statements, reports and copies of Governing Documents as described in **Section 5.11**, enforce bonded obligations as described in **Section 5.12**, 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 Professional Management. The Association shall engage professional management to assist the Association for a minimum of two years immediately following the commencement of the Association's operations. The Board, in its discretion, may elect to retain professional management beyond the minimum two-year period.

5.9 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.

5.10 Utility Service to the Common Area. The Association shall acquire, provide and pay for water, sewer, garbage disposal, refuse and rubbish collection, electrical, telephone, gas and other necessary utility services for the Common Area.

5.11 Reporting Requirements. The Association shall prepare and distribute the following:

(i) a pro forma operating budget for each fiscal year shall be distributed not less than 45 days nor more than 60 days before the beginning of the fiscal year consisting of at least the following:

- (a) estimated revenue and expenses on an accrual basis;
- (b) a summary of the Association's reserves based on the most recent reserves review or study conducted pursuant to **Section 6.3**, which shall be printed in bold type and shall include the following:
 - (1) 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");
 - (2) as of the end of the fiscal year for which the study was prepared:
 - a. the current estimate of cash reserves necessary to repair, replace, restore or maintain the Major Components;
 - b. the current amount of accumulated cash reserves actually set aside to repair, replace, restore or maintain the Major Components; and
 - c. 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 or 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 5.11(i)(b)(2)b**. In lieu of complying with the foregoing requirements, if the Association is obligated to issue a review of its financial statement pursuant to **Section 5.11(ii)** below, the Association may include in the review a statement containing all of the information required by this **Section 5.11(i)(b)(2)c**;
 - (3) the percentage that the amount in **Section 5.11(i)(b)(2)b** is to the amount in **Section 5.11(i)(b)(2)a**;
- (c) a statement as to 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;
- (d) 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; and
- (e) 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.

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 United States mail at the expense of the Association, which copy shall be mailed within five days of the receipt of the request;

- (ii) 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.

(iii) a statement of the Association's policies and practices in enforcing its remedies against Owners for delinquent regular or special assessments, including the recording and foreclosing of liens against a delinquent Owner's Lot. A copy of this statement shall be distributed to each Owner and any Mortgagee who has requested a copy within 60 days prior to the beginning of each fiscal year;

(iv) copies of this Declaration, the Articles, Bylaws, Rules, and a statement regarding delinquent assessments as described in **Section 6.12** shall be provided any Owner within ten days of the mailing or delivery of a written request. 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; and

(v) a summary of the provisions of Civil Code section 1354 which specifically references the section and includes the following:

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

The summary shall be provided either at the time the pro forma budget described in **Section 5.11(i)** is distributed or in the manner set forth in Corporations Code section 5016.

(vi) a summary of the Association's property, general liability, and earthquake and flood policies, if any, (individually and collectively referred as the "Policy" or "Policies") shall be distributed to the Members within 60 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 5.11(vi)** 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 5.11(vi)** 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 brokers or agent for appropriate additional coverage.

5.12 Enforcement of Bonded Obligations. If the Association is the obligee under a bond or other arrangement ("Bond") to secure performance of the commitment of a Declarant or a successor or assign to complete the Common Area Improvements not completed at the time the California Commissioner of Real Estate issued a final subdivision report, for the latest phase of the Development, 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 a 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 a 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**.

5.13 Limitations on Authority of the Board. 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 Declarant:

(i) 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;

(ii) 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;

(iii) 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;

(iv) 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) lease agreements for laundry room fixtures and equipment not to exceed five years' duration, provided a Declarant does not have a direct or indirect ownership interest of 10% or more in any lessor under such agreements;

(e) 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 a Declarant has a direct or indirect ownership interest of 10% or more;

(f) agreements for sale or lease of burglar alarm and fire alarm equipment, installation and services not exceeding five years' duration, provided that the supplier or suppliers are not entities in which a Declarant has a direct or indirect ownership interest of 10% or more; and

(g) 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

(v) borrow money secured by any Association assets as authorized under **Section 5.6(iii)**.

5.14 Notice of Significant Legal Proceedings. Notwithstanding anything herein to the contrary, the Board shall not institute any significant legal proceeding, including any arbitration or judicial reference proceeding, against any Person without providing the Members of the Association with at least 30 days' prior written notice of the Association's intention to institute legal proceedings. The notice shall describe the purpose of the proceeding, the parties to the proceeding, the anticipated cost to the Association (including attorneys' fees) in processing the proceeding, the source of funds to process the proceedings (reserves or special or regular assessments), and suggested information that should be disclosed to third parties, such as prospective purchasers and lenders, while the proceeding is being prosecuted. For purposes herein, "significant legal proceeding" shall mean any legal proceeding in which it reasonably could be anticipated that any of the following events could occur:

(i) the levy of a special assessment to fund all or any portion of the proceeding;

(ii) the expenditure of funds from the Association's reserves in connection with the proceeding in an amount in excess of 5% of the then current reserves;

(iii) the amount of the claim is in excess of \$25,000; or

(iv) the action could have a material adverse effect on the ability to sell and/or refinance the Lots within the Development during the period the proceeding is being prosecuted.

If the proposed legal proceeding is against a 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 notice also shall specify each of the following (unless not required by reason of Civil Code section 1375(g)(1)(E) or 1375(g)(2)(D)) as amended from time to time:

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

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

Notwithstanding the foregoing, the notice shall not be required to commence and pursue any action to collect delinquent assessments as described in **Section 6.10** or to enforce any Common Area completion bond as described in **Section 5.12**. Furthermore, 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 or prior to the loss of any other significant right of the Association, 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.

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 title 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.

If an Owner has a dispute with the Association regarding an assessment levied by the Association, the Owner may pay the assessment under protest in accordance with the procedures set forth in Civil Code section 1366.3 or any successor statute thereto.

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

6.2 Annual Regular Assessment. Not more than 90 days nor less than 60 days before 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 in accordance with the provisions of **Section 5.11(i)**, 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.

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 5.11(i)(b)(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 witness, 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**.

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(iv)**; and under no circumstances may a reimbursement assessment (or a monetary penalty imposed by the Association as a disciplinary measure for violation of the Declaration or 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, 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; 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 statement as required by **Section 5.11(i)** 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 a 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 a Declarant who desires to commence assessments earlier against that Declarant's Lots. No Lot shall be subject to any special assessments until regular assessments have commenced against that Lot.

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 in equal amounts among the Residential Lots.

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:

(i) 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(ii).**

(ii) Assessment Lien. Except as otherwise provided in **Section 6.5**, 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) The Association shall notify the Owner in writing by certified mail of the fee and penalty procedures of the Association and the collection practices used by the Association, including the right of the Association to recover the reasonable costs of collection. The statement shall include an itemized statement of the charges owed by the Owner describing the principal owed, any late charges and the method of calculation, and any attorneys' fees.

(b) After compliance with the notice requirements of **Section 6.10(ii)(a)**, the Association may impose a lien against the Owner's Lot in the amount of the delinquent assessment or assessments, plus costs of collection, late charges and interest by recording a notice of delinquent assessment with the county recorder of the county in which the Development is located. The notice shall state the amount of the assessment(s) and other sums imposed in accordance with Civil Code section 1366 or any successor statute thereto, a legal description of the Owner's interest in the Development against which the assessment(s) and other sums are levied, the name of the record owner of the Owner's interest in the Development against which the lien is imposed, and, if the lien is to be enforced by nonjudicial foreclosure, the name and address of the trustee authorized

by the Association to enforce the lien by sale. The notice shall be signed by any officer of the Association or an employee or agent of the Association authorized to do so by the Board and a copy mailed in the manner required by Civil Code section 2924b to all record owners of the Owner's interest in the Development no later than ten days after recordation.

Any payments made on the delinquent assessment(s) shall be applied first to the principal owed, and only after the principal owed is paid in full shall payments be applied to interest or collection costs. Upon payment of the sums specified in the notice of delinquent assessment, the Association shall cause to be recorded with the county recorder of the county in which the Development is located a notice stating the satisfaction and release of the lien thereof.

After the expiration of 30 days following the recordation of the notice of delinquent assessment, the Board may enforce any assessment lien established hereunder by filing an action for judicial foreclosure or, if the notice of delinquent assessment contained the name and address of the trustee authorized by the Association to enforce the lien by nonjudicial foreclosure, by recording a notice of default in the form described in Civil Code section 2924c(b)(1) to commence a nonjudicial foreclosure. Any nonjudicial foreclosure shall be conducted in accordance with the requirements of Civil Code sections 2924, 2924b, 2924c, 2924f, 2924g and 2924h that apply to nonjudicial foreclosure of mortgages or deeds of trust. The sale shall be conducted by the trustee named in the notice of delinquent assessment or by a trustee substituted in accordance with the provisions of Civil Code section 2934a. The Association may bid on the Lot at the sale and may hold, lease, mortgage and convey the acquired Lot.

If the default is cured before the sale, including payment of all costs and expenses incurred by the Association, the Association shall record a notice of satisfaction and release of lien and, to the extent required by Civil Code section 2924(c)(a)(2), a notice of rescission. In addition to the remedies described herein, the Board, pending the payment in full of all delinquent assessments and related charges, may suspend the voting rights of the Owner.

The provisions of this Section 6.10 are intended to comply with the requirements of Civil Code sections 1366.3 and 1367 in effect as of January 1, 2002. 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 1366.3 and 1367 may have been amended by the State Legislature, and the Board should confirm the current statutory requirements.

6.11 Assessment Exemption. Each 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.

ARTICLE 7 - Architectural Review

7.1 Architectural Committee. An Architectural Committee may be established by 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 first phase of the Development, whichever occurs first. On the first anniversary date of the issuance of the original public report for the first phase of 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 first phase of 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. The term of the members shall be as designated by 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** and with the design guidelines for boundary fencing approved by the City. 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, 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).

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 or substantially similar 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.

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:

(i) **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.

(ii) 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.

(iii) 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.

(iv) 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.

(v) 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 the Declaration, the Architectural Rules, and, unless a variance is granted, any guidelines established

by the Committee under **Section 7.3(iii)** 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, Common Area, or public right-of-way as long as the Committee acts in good faith and not 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 restrictions contained in **Article 3** and with all federal, State and local laws regulating the rights of handicapped persons.

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 completed application and/or advance payments and to establish the date of receipt.

7.5 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.

7.6 Non-liability. The Association, the Committee, 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 plan 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.

7.7 Enforcement. If any Owner or occupant violates the provisions of this **Article 7**, any 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.

7.8 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**. Notwithstanding anything herein to the contrary, modifications, changes or additions to any Common Area Improvements authorized by the Board shall not require approval from the Committee.

7.9 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.

7.10 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 the declaration of annexation annexing the last phase into the Development.

ARTICLE 8 - Insurance

8.1 Liability Insurance. The Association shall obtain and maintain 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: (i) the ownership or use of the Common Area or any other Association owned or maintained real or personal property; and (ii) the performance or nonperformance of any of the Association's duties under this Declaration. 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 \$1,000,000 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.

8.2 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 60 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.

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;
- (iii) flood insurance on Common Area Improvements if the Development is located in an area designated by an appropriate governmental agency as a special flood hazard area and the Improvements are of the nature on which property insurance is normally maintained;
- (iv) officers and directors liability insurance; and
- (v) 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. 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 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 the 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, including a residence, 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 party responsible for making the repairs. The party responsible for making the repairs 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 all available insurance proceeds will 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. In addition, the Association, acting as the attorney-in-fact of all the Owners under an irrevocable power of attorney, which each Owner by accepting a deed or a Lot in the Development grants to the Board, and which shall be coupled with the interest of all other Owners, may abandon any easements that the Owners retain over that portion of the Common Area that is sold. 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 allocated equally among the Lots and distributed 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; 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 Mortgagee 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 or holders of 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 the Declaration. Before the close of the first sale of a Lot in a second or 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 annexing the property 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 the 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 a 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 to a Declarant or any entity controlled by a 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 conferring rights or benefits on Declarant may not be amended or rescinded without the prior written consent of Declarant except as expressly authorized by Civil Code section 1355.5 and in **Section 11.4**. 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 the 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 Rights of the City of Novato. Notwithstanding anything herein to the contrary, **Sections 2.10, 2.11, 2.16, 3.4, 3.15, 3.16, 4.1, 4.2, 4.3, 4.4, 4.5, 5.7 and 5.8**, a rescission under **Section 11.1**, this **Section 11.3**, **Section 13.16**, and/ or Exhibit B may not be rescinded or amended without the prior written consent of the City's Planning Commission.

11.4 Rights of Declarant. Notwithstanding anything herein to the contrary, until the 15th anniversary of the recordation of this Declaration in the records of Marin County, any provision herein conferring rights on a Declarant, including, but not limited to, the provisions of **Sections 1.8, 2.10(i), 2.16, 3.1, 5.14, 7.1, 7.10, this Section 11.4, Article 12, Section 13.11, and Section 14.1** and may not be rescinded or amended without the prior written consent of that Declarant.

ARTICLE 12 - Declarant Disputes

12.1 Dispute Resolution Procedure (Declarant Disputes). Any claim, dispute or other controversy between the Association and/or any Owner(s) and a Declarant or any director, officer, shareholder, partner, employee or agent of the Declarant (collectively the "Declarant" for purposes of this **Article 12**) relating to this Declaration, the use or condition of any Lot, or Common Area, and/or the design, specifications, surveying, grading, construction, installation and/or operation of any Improvements or landscaping located thereon (individually and collectively the "Claim") shall be subject to the procedures set forth in **Sections 12.2, 12.3 and 12.4**, in that order. Any and all communications by and between the parties, whether written or oral, which are delivered by the parties or their attorneys or other representatives in an effort to settle the Claim shall be considered communications undertaken in the course of effecting a settlement or compromise and as such shall not be admissible as the admission on the part of any party or any representative or agent of that party to be utilized for any such purpose in any action or proceeding.

Declarant, the Association and each Owner covenant that each shall forbear from commencing any litigation without complying with the procedures described in **Sections 12.2, 12.3 and 12.4**. If any party breaches the foregoing covenant, the other party may obtain an appropriate order compelling the breaching party to comply with the procedures described in **Sections 12.2, 12.3 and 12.4**. Notwithstanding the foregoing, any party may file a lawsuit and take such other action as may be necessary in order to toll the running of any applicable statute of limitations, provided that the party immediately shall stay any further proceedings under the legal action and shall comply with the provisions of **Sections 12.2, 12.3 and 12.4**. Notwithstanding any other provision herein to the contrary, in any Claim between the Owner and the Declarant, each party shall bear its own attorneys' fees and costs. The provisions of this **Article 12** shall not apply to any action taken by the Association to enforce delinquent assessments, which shall be governed by **Section 6.10**.

Nothing herein, including any repairs or remedial work, shall be considered to reduce or extend any applicable statute of limitations or statute of repose without the prior written approval of the Person entitled to rely on the statute of limitations or statute of repose.

12.2 Notice, Right to Inspect, and Right to Corrective Action. Any Person with a Claim against the Declarant shall notify the Declarant in writing of the Claim, which writing shall describe the nature of the Claim and the proposed remedy (the "Claim Notice"). Within a reasonable period after receipt of the Claim Notice, which period shall not exceed 60 days, the Declarant and the claimant 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 Declarant's representatives shall have full access to the Property that is subject to the Claim for the purposes of inspecting the Property. The parties shall negotiate in good faith in an attempt to resolve the Claim. If the Declarant elects to take any corrective action, Declarant and Declarant's representatives and agents shall be provided full access to the Development to take and complete corrective action.

If the Claim is subject to the provisions of Civil Code section 1375 or any successor statute thereto, compliance with the procedures of Civil Code section 1375(b), (c), (d) and (e) shall satisfy the requirements of this **Section 12.2**.

12.3 Mediation. If the parties cannot resolve the Claim pursuant to the procedures described in **Section 12.2** above, the Claim shall be submitted to mediation pursuant to the mediation procedures adopted by the JAMS or any successor thereto or to any other entity offering mediation services that is acceptable to the parties. No person shall serve as a mediator in any Claim who has any financial or personal interest in the result of the mediation, except by the written consent of all parties. Prior to accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or prevent a prompt commencement of the mediation process.

Each party shall submit a brief memorandum setting forth its position with regard to the issues that need to be resolved within ten days of the selection of the mediator or within such time frame established by the mediator. The mediator shall have the right to schedule a pre-mediation conference, and all parties shall attend unless otherwise agreed. The mediation shall be commenced within ten days following the submittal of the memoranda and shall be concluded within 15 days from the commencement of the mediation unless the parties mutually agree to extend the mediation period. The mediation shall be held in the county in which the Development is located or such other place as is mutually acceptable by the parties.

The mediator has discretion to conduct the mediation in the manner in which the mediator believes is most appropriate for reaching a settlement of the Claim. The mediator is authorized to conduct joint and separate meetings with the parties and to make oral and written recommendations for settlement. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the Claim, provided the parties agree and assume the expenses of obtaining such advice. The mediator does not have the authority to impose a settlement on the parties.

The mediation shall be subject to the provisions of Evidence Code sections 1115 through 1128, or any successor statutes thereto, except as the parties may agree otherwise in writing or orally in accordance with the requirements of Evidence Code section 1118.

Persons other than the parties, the representatives and the mediator may attend mediation sessions only with the permission of the parties and the consent of the mediator. Confidential information disclosed to a mediator by the parties or by witnesses in the course of the mediation shall not be divulged by the mediator. All records, reports, or other documents received by the mediator while serving in such capacity shall be confidential. There shall be no stenographic record of the mediation process.

Each party shall bear their own mediation expenses provided that the mediation administrative fee and the mediator's fee shall be borne equally by the parties unless they agree otherwise.

12.4 Arbitration. If the parties cannot resolve the claim pursuant to the procedures described in **Section 12.3**, either party, at anytime after the termination of the procedures described in **Section 12.3**, may commence appropriate legal action in any court of competent jurisdiction to resolve the Claim unless the parties elect in writing to resolve the Claim through binding arbitration under the American Arbitration Association or any other arbitration provider mutually acceptable to the parties. Participation in binding arbitration is voluntary, and no party shall be compelled to participate in binding arbitration unless the party has signed an agreement to participate. If the Claim is submitted to binding arbitration, the following rules and procedures shall apply in all cases unless the parties agree otherwise in writing:

- (i) the proceedings shall be heard in Marin County, California;
 - (ii) the arbitration costs and fees, including any initiation fee, shall be borne as determined by the arbitrator;
 - (iii) the arbitrator shall be appointed within 60 days of the administrator's receipt of a written request to arbitrate the dispute. In selecting the arbitrator, the provisions of section 1297.121 of the Code of Civil Procedure shall apply. The arbitrator may be challenged for any of the grounds listed therein or in section 1297.124 of the Code of Civil Procedure;
 - (iv) the parties shall have a right to discovery to the extent authorized under Code of Civil Procedures section 1283.05;
 - (v) the arbitration shall be conducted in accordance with the commercial arbitration rules and procedures of the American Arbitration Association;
 - (vi) at the written request of either party, a stenographic record of the hearing shall be made, provided that the record shall remain confidential except as may be necessary for post-hearing motions and any appeals (the requesting party shall pay the stenographic fees, which shall be included as court costs);
 - (vii) the arbitrator's statement of decision shall contain findings of fact and conclusions of law to the extent applicable, and the arbitrator's decision shall be rendered within 30 days of the conclusion of the hearing;
 - (viii) the arbitrator in his or her discretion may award costs and/or attorneys' fees to the party that the arbitrator determines was the prevailing party;
 - (ix) the arbitrator may award all recognized remedies available in law or equity;
- and
- (x) the arbitrator's decision shall be final and binding on the parties unless corrected or vacated under the grounds authorized in Code of Civil Procedure sections 1286.2 or 1286.6.

The arbitrator's decision may be enforced in any court of competent jurisdiction.

12.5 Necessary and Appropriate Parties. Notwithstanding anything to the contrary in **Sections 12.3 or 12.4**, if any party determines in good faith that not all necessary and appropriate parties, including, but not limited to, contractors, subcontractors, design professionals, and/or material suppliers, will participate in the procedures described in **Sections 12.3 and/or 12.4** in order to accomplish a complete and final resolution of the Claim, this party shall notify the other party or parties in writing identifying the parties that will not participate; and thereafter all parties to the Claim shall be released from any obligation to participate in the procedures described in **Sections 12.3 and 12.4**, and any party may file a lawsuit in any court of appropriate jurisdiction to resolve the Claim.

12.6 Civil Code Section 1375. If the Claim is subject to the provisions of Civil Code section 1375 or any successor statute thereto, compliance with the procedures of Civil Code section 1375 shall satisfy the requirements of **Sections 12.2 and 12.3.**

12.7 Shared Driveway Disputes. Any disputes between or among Owners of Lots subject to the provisions of **Section 2.4** shall be resolved in accordance with the provisions of **Sections 12.3 and 12.4** in that order.

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 provision 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 2**. 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 civil action against the Association or any Owner, the Association or the Owner bringing the civil action shall comply with the requirements of Civil Code section 1354 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 a Declarant's rights to complete the construction of the Improvements and to sell the Improvements. The rights retained by each 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. A Declarant may assign all or any portion of its rights and delegate all of its duties or any portion of its duties to any other Person via a written assignment; and from and after the date of such assignment and/or delegation, the assigning Declarant shall have no further rights and/or duties hereunder with respect to the rights assigned and duties delegated. Any successor or assign of the rights and duties of a Declarant thereafter shall be entitled to exercise all the rights of that Declarant so assigned and shall be obligated to perform all that Declarant's

duties so delegated, provided such successor or assign shall not be liable in any manner for any act or omission committed or omitted by that Declarant before the date the successor or assign succeeded to the rights of that Declarant hereunder.

13.13 Attorneys' Fees. Except as provided in **Article 12**, in the event of any litigation or alternative dispute resolution procedure 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.

13.16 City's Enforcement Rights and Remedies. If the Association breaches any of its duties, including specifically, but not limited to, its duties to perform the maintenance as described in **Section 4.3** and to enforce the restrictions in **Article 3**, the City, at its election and without any obligation to do so, may bring any action in any court of competent jurisdiction for such legal and/or equitable relief as may be appropriate to cure the breach. In such action, the prevailing party shall be entitled to recover costs and reasonable attorneys' fees.

The City also, at its election and without any obligation to do so, may send a written notice to the Association or to one or more members of the Board or to one or more members of the Architectural Committee mandating that the Association take appropriate remedial and/or enforcement action to cure any breaches of the Association's duties under **Section 4.3** or to take appropriate steps to enforce the use restrictions in **Article 3** or the architectural review requirements of **Article 7**.

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 that owns the real property (or by the successors in title to such real property). Each Declarant reserves the right to determine the number of phases, the number of lots in a phase, and the building types in a phase. No Declarant makes any 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**.

Each Declarant expressly reserves for the benefit of all property that may from time to time be covered by this Declaration reciprocal easements of use, enjoyment, access, ingress and egress over the private streets, walkways and recreational areas in that phase for use by Declarant, its successors, purchasers and all Owners of Lots, their guests, tenants and invitees for reasonably necessary to the use and enjoyment of all the Lots in the Development. 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 inconsistent 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 annexing the property 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.

THIS DECLARATION is executed this _____ day of _____, 2002.

CENTEX HOMES

a Nevada General partnership

By: _____
Its _____

By: _____
Its _____

SHEA HOMES LIMITED PARTNERSHIP

a California limited partnership

By: J. F. Shea Co., Inc.
a Nevada corporation

By: _____
Its _____

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, before me, _____, personally appeared _____, 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 _____

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, before me, _____, personally appeared _____, 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 _____

EXHIBIT A - Property That May Be Annexed¹

Lots 1 through 35, 50 through 135, 137 through 155, 158, 159, 165 through 186 and Parcel D as shown on the subdivision map entitled "Map of Pointe Marin Phase One" recorded on December 28, 2001, in Book 2001 of Maps at page 238 in the records of Marin County, California.

The real property described in Exhibit A-1 attached hereto.

¹ Declarant reserves the right to determine the number of phases, the number of lots in a phase, and the building types in a phase.

EXHIBIT B - Maintenance District Ownership and Maintenance Obligations

Set forth below is a description of the property that is expected to be owned and/or maintained by the Maintenance District described in **Section 2.16** and a description of the maintenance requirements. As set forth in **Section 2.16**, if the Maintenance District is not formed, the Association shall assume the ownership and/or maintenance obligations over these properties and improvements:

Parkways. Parcels B, C and Q described in **Section 1.15** are the parkways shown on the Map. Additional parkways may be identified on the subdivision maps(s) for lots that will be annexed into the Development in later phases. The landscaping and irrigation system within the parkways shall be maintained in good condition and repair and in a healthy and weed-free condition. Maintenance shall include regular fertilization, mowing, irrigation, pruning and other customary prudent landscaping practices. The monuments within the parkways shall be maintained by the Association as described in **Section 4.3**.

Perimeter Walls. The perimeter walls for the Lots shown on the Map are located along the southerly boundary lines of Lots 28, 29, 30, 35, 38 (the wall extends along the easterly boundary line of Lot 38 as well), 39, 44, 45, 50, 51, 56, 57, 62, 63 and 68. Additional perimeter walls may be described in a declaration of annexation annexing additional properties into the Development. The walls shall be maintained in good condition and repair. Maintenance shall include repainting on an as-needed basis and graffiti removal in accordance with the City's graffiti ordinance.

Pedestrian Access. The pedestrian access parcel is Parcel A shown on the Map and described in **Section 1.15**. The pedestrian access improvements shall be maintained in good condition and repair.