



State of California

SECRETARY OF STATE

I, *BILL JONES*, Secretary of State of the State of California, hereby certify:

That the attached transcript of 3 page(s) has been compared with the record on file in this office, of which it purports to be a copy, and that it is full, true and correct.



IN WITNESS WHEREOF, I execute this certificate and affix the Great Seal of the State of California this day of

Bill Jones

Secretary of State

JAN 18 2002

BILL JONES, Secretary of State

**ARTICLES OF INCORPORATION
OF
RANCHO BELLA VISTA COMMUNITY ASSOCIATION**

ONE: The name of this corporation ("Corporation" herein) is **RANCHO BELLA VISTA COMMUNITY ASSOCIATION**.

TWO: This corporation is a nonprofit public benefit corporation and is not organized for the private gain of any person. It is organized under Nonprofit Public Benefit Corporation Law for public purposes. The purpose of this Corporation is to promote the common good and general welfare of the Amerige Heights community and the management of a common interest development under the Davis-Stirling Common Interest Development Act.

THREE: The Corporation's initial agent for service of process is Martin Weiss, whose business address is 43529 Ridge Park Drive, Temecula, California 92590.

FOUR: The Corporation is organized and operated exclusively as a welfare organization within the meaning of Section 23701f of the California Revenue and Taxation Code and shall have and exercise any and all powers, rights and privileges which a corporation organized under the Nonprofit Public Benefit Corporation Law may now or hereafter have or exercise, provided that the Corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the specific purpose of the Corporation, which is to manage a common interest development under the Davis-Stirling Common Interest Development Act.

No part of the activities of this Corporation shall consist of lobbying or propaganda, or otherwise attempting to influence federal, state or local legislation of any type. This Corporation shall not participate in or intervene in any political campaign (including publishing or distributing statements) on behalf of or in opposition to any candidate for political office or any proposed legislation.

FIVE: The classes of Membership and the voting and other rights and privileges of Members shall be as set forth in the Bylaws. So long as there are two classes of Membership, amendment of these Articles of Incorporation shall require the assent (by vote or written consent) of (i) a bare majority of the Board of Directors of the Corporation, and (ii) Members representing a bare majority of the voting power of each class of Members. After conversion of the Class B Membership to Class A Membership, amendment of these Articles of Incorporation shall require the assent (by vote or written consent) of (i) a bare majority of the Board of Directors of the Corporation, (ii) Members representing a bare majority of the total voting power of the Members, and (iii) Members representing a bare majority of the voting power of the Members other than the subdivider of the common interest development.

SIX: The Corporation has no managing agent. The Corporation does not have a corporate office. The common interest development is near the intersection of Murietta Hot Springs Road and Pourroy Road in unincorporated area of Riverside County, California 92591-0000.



RULES AND REGULATIONS

FOR

RANCHO BELLA VISTA COMMUNITY ASSOCIATION

Adopted by the Board of Directors
Dated: December 2002

RANCHO BELLA VISTA COMMUNITY ASSOCIATION

RULES AND REGULATIONS

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**RANCHO BELLA VISTA COMMUNITY ASSOCIATION
A PLANNED COMMUNITY**

MEMBERSHIP INFORMATION

Rancho Bella Vista Community Association (RBV) offers many advantages to the buyer. In order to protect and preserve these benefits, however, certain limitations and restrictions are placed on Owners within the Association.

Rancho Bella Vista Community Association is a California non-profit corporation consisting of those Owners of homes within the ultimate boundaries of RBV.

The purpose of Rancho Bella Vista Community Association is to ensure that the common area will be maintained in an attractive manner and will be available for the enjoyment of all residents. Your automatic membership in the Association provides a membership base to share in the future costs of maintaining the community.

The attached rules, regulations and policies have been developed with consideration given to providing each resident with the greatest enjoyment of the facilities without infringing on other residents and their rights to quiet enjoyment of their homes and community. These revised Rules and Regulations shall have an effective date of December 1, 2002, and have retroactive application.

Although these rules and regulations support the Covenants, Conditions and Restrictions (CC&Rs), they do not cover the entirety of the document. Please be sure to read the CC&Rs carefully.

The Board of Directors is composed of three directors. They are people who volunteer their time, their skills and their energy toward maintaining and enhancing the value of your investment and to make RBV a pleasant environment in which to live.

BOARD OF DIRECTORS

The Board is empowered under Article IV, Section 4.2.7, of the CC&R's to establish, without the consent of the members of the Association, any rules or regulations that it deems reasonable with regard to the use, occupancy and maintenance of the individual Lots, and Community Common Area; by Owners, their tenants or guests and the conduct of such persons with respect to vehicular traffic, parking, control of pets, number of guests and other activities which, if not regulated, might otherwise detract from the appearance of the community, be offensive, cause inconvenience or danger to persons residing in RBV.

ADDITIONAL INFORMATION

All capitalized terms herein have the same meaning as in the CC&Rs unless expressly stated otherwise.

Amendments and exceptions to these rules may be made by the Board of Directors in its sole discretion.

OWNERS, TENANT AND GUEST VIOLATIONS

Owners, tenants, and guests are bound by the CC&R's, Architectural Guidelines and the Rules and Regulations of this Association. Owners are held responsible and liable at all times for the actions and conduct of their families, guests, and tenants while within RBV.

All Owner, tenant and guest violations of the RBV CC&R's and Rules and Regulations, will be cited against the Owner of the Lot from which the violation originates. The Owner will be held liable for payment of any penalty assessment levied for the tenant or guest's violations, as well as costs or fees incurred by the Association for the repair or replacement of any damage caused to Community Common Area. Owners are not precluded from collecting reimbursement from their tenant. It is the responsibility of every Owner to advise their guests or tenants of the Association Rules and Regulations.

USE RESTRICTIONS OF COMMON PROPERTY

Each Owner has a vested interest in the Community Common Areas and should therefore treat these areas with the same pride of Ownership and care as that given to his/her Lot. The rules must be observed to protect your investment.

COMMON AREA RULES

Owner Liability:

1. Owners are responsible at all times for their own conduct and actions, Owner's families and guests, their tenants', tenants families and guests and other occupants of the Owners' Lot.
2. Owners will be held liable for all enforcement assessments resulting from violations of the RBV Rules or Regulations by said Owner, Owner's families and guests, their tenants, tenants' families and guests and any other occupant of the Owners' Lot.
3. The Owner will also be held liable for all costs incurred by the Rancho Bella Vista Community Association for the repair and replacement of damaged common property due to negligent or willful damage or the removal of said common property by any of the above said occupants of the Owners Lot.
4. In addition to the recovery of repair and replacement costs, enforcement penalty assessments may be levied against the Owner which may include attorneys' fees, litigation costs, interest and other charges related thereto.
5. Owners are prohibited from destroying, removing or altering the landscaping in the common area, in any manner, regardless of the condition of the plantings.

6. Littering of the common area is not permitted, including but not limited to the disposal of dirt, trimmings, or other materials. The cost of cleanup or removal shall be that of the Owner who's Lot the material came from, and/or who disposed of the material.
7. No rubbish, trash, garbage or other waste material shall be kept or permitted upon any Lot, Common Area or on any public street abutting or visible from the Properties, except in sanitary containers located in appropriate areas screened from view. Such containers shall be exposed to the view of neighboring Lots only when set out for a reasonable period of time (not to exceed twelve (12) hours before and after scheduled trash collection hours).
8. No clothing or household fabrics shall be hung, dried or aired on or over any Lot in such a way as to be visible from street level or the common area.
9. Street hockey equipment, basketball equipment and any other portable recreation/athletic equipment must be stored away from the street or front of the Lot when not in use. Acceptable means of storage are in the garage or behind the Lot's fence.
10. Basketball hoops of a standard size may be installed on the house provided the backboard is painted to match the house trim, and is maintained in good condition.

TENANT RULES AND REGULATIONS

Please refer to page 10, Section 2.1 of the CC&R's

PARKING RULES

1. With the exception of maintenance vehicles or equipment, all motor vehicles shall be operated only upon paved roads within Rancho Bella Vista Community Association. No off-road riding shall be permitted.
2. No trailer, camper, boat, recreational vehicle, or large commercial vehicles, or similar equipment shall be permitted to remain upon any portion of the Rancho Bella Vista Community Association, including private driveways. Temporary parking for loading, unloading, or cleaning shall not exceed 72 hours, and also shall not exceed three (3) times per month. For example, if you park a commercial or recreational vehicle within RBV more than three times per month, or it is within RBV for more than 72 hours, you are in violation of this rule. Please refer to CC&R's, Article II, Section 2.5 and the First Amendment to the CC&Rs paragraph 2 for additional information.

3. Vehicles owned, operated, or within the control of any resident shall be parked in the garage of such residence and the garage shall be maintained so as to be capable of accommodating vehicle parking. Residences with a three-vehicle garage must park at least two vehicles in the garage and those with two vehicle garages must park at least one vehicle in the garage. Residents with more vehicles may then park in their driveway. No more than two (2) vehicles may be parked in any driveway at any one time.

PET RULES

Please refer to CC&R's Article II, Section 2.6 for more information on this subject.

SIGN RULES

Please refer to CC&R's Article II Section 2.4 for more information on this subject.

1. Signs other than Association approved signs will be removed from the Lot, Community Common Area or Neighborhood Common Area. No unapproved signs are allowed on individual Lots or within Rancho Bella Vista Community Association, including garage sale signs. A \$75.00 charge may be imposed for the Association's removal of any signs pursuant to Section 2.4 of the CC&R's.
2. Open house and directional signs should be placed at intersections and removed nightly. "For Sale" signs or "For Lease" signs shall be no larger than 24" x 18", rectangular in shape and be of commercial quality.

NOTE: All signs must conform to the requirements of all applicable governmental ordinances.

GENERAL RULES FOR CONTRACTORS, OWNER BUILDER AND SERVICE PERSONNEL

APPLICABILITY

The requirements and restrictions set out in this part are applicable to all persons working within RBV, including, but not limited to, the Owner, the Owner's general contractor, and any subcontractor or other agent working on the behalf of the Owner. Such individuals will be personally liable for any fines or penalties assessed against them for violation of any of the terms of this part and, further, shall be personally liable for any damage they cause within RBV.

SPEED LIMIT:

The maximum speed limit in RBV is 25 MPH for all vehicles within RBV. Failure to observe the speed limit may result in a citation and/or denial of driving privileges in RBV.

WORKING HOURS:

The permitted work hours and days are to include Owner builders. Permitted work hours are as follows:

MONDAY - SATURDAY 7:00 a.m. to 5:00 p.m. (must be out of the community by 5:30 p.m.)

No construction activity or any work shall occur on Sunday, legal holidays or during unapproved work hours other than emergency repairs. Violations may result in the stoppage of work and/or fines; entry access authorization may be revoked.

PETS:

General contractors, subcontractors, workers and/or service personnel are not permitted to bring in dogs or pets of any kind.

SIGNS:

The Design Review Committee must approve the displayed sign by the general contractor or developer. A formal written request must be submitted to the Design Review Committee via the management office. The following criteria will apply:

1. One general contractor or developer sign per each property. No subcontractor, architect, lender, landscaper or other signs shall be allowed.
2. One "contractor or designer" or one "For Sale" sign shall be allowed on any property, but not both. The spec homebuilder may place a standard "available" rider under sign, attached to the post.
3. Size shall not be more than six (6) square feet (2' x 3').
4. Time. Signs shall not be displayed for more than 60 days during any 12-month period.

NOISE LEVELS:

Loud radios or unnecessary noise will not be allowed within the subdivision. This is distracting and discomforting to property Owners.

PARKING:

No vehicles, (trucks, vans, cars, etc.) may be left in the subdivision overnight. Large construction equipment, such as graders, tractors, etc., may be left on the site while needed but must not be kept on the street.

Construction crews will not park on, or otherwise use other Lots, or the open space, unless written permission is obtained from the Lot Owner.

STORAGE OF MATERIALS AND EQUIPMENT:

To a maximum of thirty days, Owners and general contractors are permitted to store construction materials and equipment on the construction site during the construction period. All construction materials including but not limited to, trailers, toilets, equipment, and construction signage must be at least 10 feet back from the curb. It shall be neatly stacked, properly covered and secured. Storage of material or construction equipment outside the approved construction site (Owner's or builder's Lot) will be done only with the approval of the Design Review Committee.

Any storage of materials or equipment shall be the responsibility of the Owner and contractor.

CONSTRUCTION TRAILERS, PORTABLE FIELD OFFICE, ETC.,

Any Owner or general contractor who desires to bring a construction trailer, field office or the like to RBV shall obtain written and signed approval from the Design Review Committee. The Design Review Committee will determine the allowable locations. Such temporary structures shall be located only in an approved location and shall be promptly removed upon completion of construction.

Each Owner and general contractor shall be responsible for providing adequate sanitary facilities for his or her construction workers. Portable toilets or similar temporary toilet facilities shall be located only on the construction site.

ENTRY TO ADJACENT PROPERTY:

When construction work requires the use of adjoining property for any purposes, such as transporting labor or materials for work, the applicant shall obtain written permission from the adjoining property Owner (including the Association if the adjoining property is so owned) for "Right of Entry" during the course of construction. A copy of the letter granting permission shall be filed with the Design Review Committee prior to commencement of construction.

EROSION CONTROL:

- The Owner must obtain approval of an erosion-control plan from the Architectural Review Committee before construction commences.
- Keep all siltation runoff off streets, adjoining properties, and (most importantly) around storm drains.
- All sites requiring cut or fill applications will have greater erosion control requirements.
- Use of fabric sandbags, initial drainage systems and/or planting of banks will be required.

- The type and degree of erosion control will depend on Lot location, time of year, and grading plans submitted.

RESTORATION OR REPAIR OF PROPERTY DAMAGE:

Upon completion of construction, all damaged property must be repaired, including but not limited to: restoring grades, planting grass and trees, repair of streets, driveways, pathways, drains, culverts, ditches, signs, lighting and fences.

Before trenching, check location of underground utilities. Report immediately to the Management Company for RBV @ 909-699-2918 should any lines, such as, telephone, cable TV, electrical, etc., be cut.

CLEAN-UP:

Spillage:

Operators of vehicles are prohibited from spilling any material while within RBV. If spillage occurs, clean up is both the operator's and Owner's responsibility.

Trash and Debris:

A trash container shall be located on each building site at all times for containment of lightweight materials, packaging or other trash materials, which may blow off the site. Trash and debris must be cleaned up at the end of each day.

Trash and debris shall be removed from each construction site at least once a week, by every Friday, to a dumping site located off the project. It is prohibited to dump, bury, or burn trash anywhere in RBV.

Streets:

Trucks may not be washed on the streets. Concrete delivery trucks must be washed on the construction site only.

The Owner and general contractor are responsible for clean up of roadways on a daily basis. Keep soil off streets by use of sandbags or other available means. Soil build up on streets must be shoveled and swept back on the site daily. Any Lot not conforming to this requirement will be assessed a fine.

Failure to comply will result in notification, after which the Committee will have the areas involved cleaned, and their costs will be assessed to the responsible party.

FINE SCHEDULE

Penalties (fines) for violations of the Association's governing documents may also be assessed, after Notice and a Hearing, in accordance with the CC&Rs and Rules and Regulations as they may be from time to time amended.

The fine schedule apart from architectural issues is as follows:

| | |
|--|--|
| First Offense | \$ 25.00 |
| Second Offense | up to \$100.00 |
| Third Offense and each additional occurrence | -- \$100.00 more than the previous monetary penalty imposed. |

Architectural Violation Fine Schedule is as follows:

For commencing construction of any improvement
before the required architectural approval is obtained – up to \$500.00

For all other violations of architectural requirements:

| | |
|---------------|---------------------|
| First Offense | \$25.00 to \$150.00 |
|---------------|---------------------|

| | |
|----------------|---------------------|
| Second Offense | \$50.00 to \$250.00 |
|----------------|---------------------|

| | |
|--|--|
| Third Offense and each additional occurrence | -- \$100.00 to \$150.00 more than the previous monetary penalty imposed. |
|--|--|

Offenses for separate infractions will each start at the First Offense stage. However, recurring fines are permissible on a monthly basis until compliance is achieved at the above rates.

In addition, the Board may suspend member privileges as provided for in the Association's Governing Documents.

NUISANCE POLICY

This policy is designed to cover those issues that are not directly addressed in other Association documents. This is concerning alleged violations for disturbances, including stereos, continuous loud noises, dogs barking, etc.

Article II of the CC&Rs, Section 2.3, Nuisances as modified by First Amendment to the CC&Rs paragraph 1 discuss the Nuisance provision and basic provisions. In order to handle a Nuisance complaint the Board has outlined the following procedures:

1. The complaining Owner must send a letter to the offending Owner with a return receipt required, setting forth the complaint and asking for correction prior to bringing this to the attention of the Association.
2. If the problem persists, the Complaining Owner shall then contact local county agencies to help with the matter. If it is a barking dog issue, you may contact the County animal control agency at 888-636-7387 (option 1); if the noise is from stereo speakers, parties, etc., you may call the County Sheriff's Department at 800-950-2444 (option 2).
3. If the offending Owner has not been cooperative in resolving the situation and the local agencies have not been effective in this situation, then the following steps may occur:
 - ◆ The complaining Owner shall submit written correspondence (Exhibit "A") to the Board of Directors, indicating the problem, the dates and specific hours that the reported nuisance occurs. At this point, the Board may exercise its discretion and decide, based upon the information presently available, to take no further action because of inability to substantiate the claim or because the Board presently believes that Rancho Bella Vista Community Association involvement is unwarranted.
 - ◆ If a claim can be substantiated, the Board may direct Management to send a letter to the offending Owner to request resolution within a time period set by the Board.
 - ◆ If compliance is not met within the time period set by the Board, the Board may request the offending Owner to attend a hearing Pursuant to Article XII, Section 12.1 of the CC&R's.
 - ◆ Once a hearing has been held with the offending Owner, and a letter is received by the complaining Owner after the date given by the Board at the hearing for resolution verifying the problem still exists, a date will be set with the offending and complaining Owner for a mediation meeting with the Board.

- ◆ Once a mediation meeting has been held with the complaining and offending Owner(s) and a resolution still cannot be reached, then the complaining Owner is requested to engage in Alternative Dispute Resolution pursuant to California Civil Code section 1354. The cost to mediate this would be split between the Owners.

The Association will not become involved until all of the above efforts have been made to mediate and/or arbitrate the dispute and all claims have been submitted to the local authorities that would have jurisdiction over the particular nuisance.

ENFORCEMENT PROCEDURE

I. Discovery of Violation

- A. Any violation that is an alleged violation of the governing documents for the Association will be processed according to the procedures outlined herein. Any Owner of RBV may report a non-nuisance violation or infraction, in writing to the Management Company.
- B. In the event one or more Owners of the Association files a Violation Report that is confirmed, or an inspection by the Association or it's authorized agent reveals a potential violation, the Board may act as follows:
 - 1. Management will first send a "Friendly Reminder" letter to the Owner. If the violation is not corrected, Management will then send a second "Notice of Violation" letter to the Owner stating the alleged violation and date by which such violation must be cured.
 - 2. Upon expiration of the cure date, if the violation still exists, a third letter will be sent stating the failure to abide by the Association Rules and Regulations, CC&R's or Architectural Guidelines and the Owner will be asked to attend a hearing with the Board of Directors or its appointed Hearing Committee. This letter will inform the Owners of the penalties which may be imposed at the hearing.
 - 3. Within five (5) days following the hearing, the Owner will be notified as to the decision rendered by the Board of Directors or Hearing Committee as a result of the hearing. If the Owner is found to be in violation of the Association documents, the Board will either a) seek remedy by use of the legal system; b) apply monetary fines to the Owners; c) suspend voting privileges, or rights to use the Community Common Area Facilities; d) correct (or caused to be corrected) the violation and assess the Owner for costs; e) issue an extension for violation to be cured; or f) any combination of the above.
 - 4. If the decision is to pursue a monetary fine system, the RBV Fine Schedule will apply.

NOTE: A violation is defined as an act in conflict with the CC&R's, Bylaws, Rules and Regulations and/or Architectural Guidelines of the Association. The Board reserves the right to modify or waive any of provisions of these Rules and Regulations if it determines to do so would be in the best interest of the Association.

EXHIBIT A
RANCHO BELLA VISTA COMMUNITY ASSOCIATION
VIOLATION REPORT

There must be **two (2)** signatures representing two **separate** dwellings of homeowners in the Association to pursue violations that cannot be viewed from the street (i.e., barking dog, noise nuisance, garage storage, etc.). Please be as specific as possible to enable the Board to expedite the enforcement process in a timely manner. All alleged violations will be evaluated to ensure that they are considered an infraction as defined by the Association legal documents.

REPORT FILED BY:

Name: _____

Name: _____

Signature: _____

Signature: _____

Address: _____

Address: _____

Phone: _____ Date: _____

Phone: _____ Date: _____

Name: _____

Name: _____

Signature: _____

Signature: _____

Address: _____

Address: _____

Phone: _____ Date: _____

Phone: _____ Date: _____

VIOLATION INFORMATION:

Name: _____ Address: _____ Phone: _____
(Alleged Violator's Information, if known)

Description of alleged violation: _____

(If additional space is needed, please use reverse side of form)

Date(s) and time(s) alleged violation occurs? _____

How often does the alleged violation occur? _____

BYLAWS
OF
RANCHO BELLA VISTA COMMUNITY ASSOCIATION

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RANCHO BELLA VISTA COMMUNITY ASSOCIATION

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BYLAWS
OF
RANCHO BELLA VISTA COMMUNITY ASSOCIATION

ARTICLE I

1. General Plan of Ownership.

1.1. **Name.** The name of the corporation is Rancho Bella Vista Community Association (the "Association"). The principal office of the Association shall be located in Riverside County, California.

1.2. **Application.** The provisions of these Bylaws are applicable to the phased master planned community known as Rancho Bella Vista, located in the County (the "Properties"). All present and future Owners and their tenants, future tenants, employees, and any other person who might use the facilities of the Properties in any manner, are subject to the regulations set forth in these Bylaws and in the Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Rancho Bella Vista (the "Declaration") Recorded or to be Recorded in the Official Records of Riverside County and applicable to the Properties. The mere acquisition or rental of any Lot in the Properties or the mere act of occupancy of any Lot will signify that these Bylaws are accepted, ratified, and will be complied with.

1.3. **Definitions.** Unless otherwise provided herein, the capitalized terms in these Bylaws have the same meanings as are given to such terms in the Declaration.

ARTICLE II

2. Voting By Association Membership.

2.1. **Classes of Voting Membership.** The Association has three (3) classes of Membership as described in the Declaration.

2.2. **Majority of Quorum.** Unless otherwise provided in the Restrictions, any action which may be taken by the Association may be taken by a majority of a quorum of the Members.

2.3. **Quorum.** Except as otherwise provided in these Bylaws, the presence in person or by proxy of twenty percent (20%) of the Association's voting power constitutes a quorum of the Membership. Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum, if any action taken (other than adjournment) is approved by at least a

majority of the Members required to constitute a quorum. If a meeting is actually attended, in person or by proxy, by Members having less than one-third (1/3) of the Association's voting power, then no matter may be voted upon except such matters notice of the general nature of which was given pursuant to Section 3.5 hereof. No action by the Members on any such matter is effective if the votes cast in favor are fewer than the minimum number of votes required by the Restrictions to approve such an action.

2.4. **Proxies.** Votes may be cast in person or by proxy. Proxies must be in writing and filed with the Secretary in advance of each meeting. Any form of proxy or written ballot distributed by any person to the Members must afford the opportunity to specify a choice between approval and disapproval of each matter or group of matters to be acted upon, except it is not mandatory that a candidate for election to the Board be named in the proxy or written ballot. The proxy or written ballot must provide that, when the Member specifies a choice, the vote shall be cast in accordance with that choice. The proxy must also identify the person or persons authorized to exercise the proxy and the length of time it will be valid. No proxy is valid with respect to a vote on any matter described in Section 5613(f) of the California Corporations Code unless the general nature of the proposal was set forth in the proxy.

ARTICLE III

3. **Administration.**

3.1. **Association Responsibilities.** In accordance with the Declaration, the Association is responsible for administering the Properties, maintaining and repairing the Common Area, approving the Budget, establishing and collecting all assessments authorized under the Declaration, and arranging for overall architectural control of the Properties.

3.2. **Place of Meetings of Members.** Meetings of the Members shall be held on the Properties or such other suitable place as proximate thereto as practical and convenient to the Members as designated by the Board.

3.3. **Annual Meetings of Members.** The first annual meeting of Members shall be held within six (6) months after the first Close of Escrow for the sale of a Lot in the Properties. Thereafter, the annual meetings shall be held on or about the anniversary date of the first annual meeting. Each first Mortgagee may designate a representative to attend all annual meetings.

3.4. **Special Meetings of Members.** The Board shall call a special meeting of the Members (a) as directed by resolution of a majority of a quorum of the Board, (b) by request of the President of the Association, or (c) upon receipt of a petition signed by Members representing at least five percent (5%) of the Association's total voting power. The Secretary shall give notice of any special meeting within twenty (20) days after adoption of such resolution or receipt of such request or petition. The notice must state the date, time and place of such meeting and the general nature of the business to be transacted. The special meeting must be held not less than thirty-five (35) nor more than ninety (90) days after adoption of such resolution or receipt of such request or petition.

No business may be transacted at a special meeting except as stated in the notice. Each first Mortgagee may designate a representative to attend all special meetings.

3.5. **Notice.** The Secretary shall send a notice of each annual or special meeting by first-class mail, stating the purpose thereof as well as the day, hour and place where it is to be held, to each Member of record and to each first Mortgagee who has filed a written request for notice with the Secretary, at least ten (10) but not more than thirty (30) days prior to such meeting. The notice may set forth time limits for speakers and nominating procedures for the meeting. The notice must specify those matters the Board intends to present for action by the Members, but, except as otherwise provided by law, any proper matter may be presented at the meeting for action. The notice of any meeting at which Directors are to be elected must include the names of all nominees at the time the notice is given to Members. The mailing of a notice, postage prepaid, in the manner provided in this Section, shall be considered notice served, forty-eight (48) hours after said notice has been deposited in a regular depository of the United States mail. Such notice must be posted in a conspicuous place on the Common Area and is deemed served upon a Member upon posting if no address has been then furnished the Secretary.

Notwithstanding any other provision of these Bylaws, approval by the Members of any of the following proposals, other than by unanimous approval of those Members entitled to vote, is not valid unless the general nature of the proposal was stated in the notice or in any written waiver of the notice: (a) removing a Director without cause; (b) filling vacancies on the Board; (c) approving a contract or transaction between the Association and one or more Directors, or between the Association and any entity in which a Director has a material financial interest; (d) amendment of the Articles; or (e) electing to wind up and dissolve the Association.

3.6. **Record Dates.** The Board may fix a date as a record date for the determination of the Members entitled to notice of any meeting of Members. The record date so fixed must be not less than ten (10) nor more than sixty (60) days prior to the date of the meeting. If the Board does not fix a record date for notice to Members, the record date for notice is the close of business on the business day preceding the day on which notice is given. In addition, the Board may fix a date in the future as a record date for the determination of the Members entitled to vote at any meeting of Members. The record date so fixed must be not less than ten (10) nor more than sixty (60) days prior to the date of the meeting. If the Board does not fix a record date for determining Members entitled to vote, Members on the day of the meeting who are otherwise eligible to vote are entitled to vote at the meeting.

3.7. **Adjourned Meetings.** If any meeting of Members cannot be organized because a quorum is not present, a majority of the Members who are present, either in person or by proxy, may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the original meeting date, at which meeting the quorum requirement is the presence in person or by proxy of Members holding at least ten percent (10%) of the Association's voting power. Such an adjourned meeting may be held without the notice required by Section 3.5 if notice thereof is given by announcement at the meeting at which such adjournment is taken.

3.8. **Order of Business.** Meetings of Members must be conducted in accordance with a recognized system of parliamentary procedure or such parliamentary procedures as the Association may adopt. The order of business at all meetings of the Members is as follows: (a) roll call to determine the voting power represented at the meeting; (b) proof of notice of meeting or waiver of notice; (c) reading of minutes of preceding meeting; (d) reports of officers; (e) reports of committees; (f) election of inspector of election (at annual meetings or special meetings where Directors will be elected); (g) election of Directors (at annual meetings or special meetings where elections will be held); (h) unfinished business; and (i) new business.

3.9. **Action Without Meeting.** Any action which may be taken at a meeting of the Members (except for the election of Directors) may be taken without a meeting by written ballot of the Members. Ballots must be solicited in the same manner as provided in Section 3.5 for the giving of notice of meetings of Members. Such solicitations must specify (a) the number of responses needed to meet the quorum requirements, (b) the percentage of approvals necessary to approve the action, and (c) the time by which ballots must be received in order to be counted. The form of written ballot must afford an opportunity to specify a choice between approval and disapproval of each matter and must provide that, where the Member specifies a choice, the vote shall be cast in accordance therewith. Receipt within the time period specified in the solicitation of (i) a number of ballots which equals or exceeds the quorum which would be required if the action were taken at a meeting, and (ii) a number of approvals which equals or exceeds the number of votes which would be required for approval if the action were taken at a meeting at which the total number of votes cast was the same as the total number of ballots cast, constitutes approval by written ballot.

3.10. **Consent of Absentees.** The transactions of any meeting of Members, either annual or special, however called and noticed, are valid as though had at a meeting duly held after regular call and notice, if (a) a quorum is present either in person or by proxy, and (b) either before or after the meeting, each of the Members not present in person or by proxy signs (i) a written waiver of notice, (ii) a consent to the holding of such meeting, or (iii) an approval of the minutes thereof. The Secretary shall file all such waivers, consents or approvals with the corporate records or make them a part of the minutes of the meeting.

3.11. **Minutes, Presumption of Notice.** Minutes or a similar record of the proceedings of meetings of Members, when signed by the President or Secretary, shall be presumed truthfully to evidence the matters set forth therein. A recitation in the Minutes executed by the Secretary that notice of the meeting was properly given constitutes prima facie evidence that such notice was given.

ARTICLE IV

4. **Board of Directors.**

4.1. **Number and Qualification.** Until the first annual meeting of the Members, the Association's property, business and affairs shall be governed and managed by a Board of Directors composed of three (3) Persons. Commencing with the first annual meeting of the

Members, the property, business and affairs of the Association shall be governed and managed by a Board of Directors composed of five (5) Persons, each of whom, except for those appointed by Declarant, must be an Owner or representative of Declarant or a Guest Builder. The authorized number of Directors may be changed by a duly adopted amendment to the Bylaws. Directors may not receive any salary or compensation for their services as Directors unless such compensation is first approved by the vote or written consent of Members representing at least a majority of the Association's voting power; provided, however, that (i) nothing in these Bylaws precludes any Director from serving the Association in some other capacity and receiving compensation therefor, and (ii) any Director may be reimbursed for actual expenses incurred in performance of Association duties.

Owners (who are not representatives of Declarant or the Guest Builders) must meet the following criteria to be qualified to be elected to the Board of Directors:

(i) The Owner must be in compliance with the Restrictions for the three (3) months immediately preceding the date of the election at which the Owner is being considered for election to the Board of Directors. To be in compliance, the Owner must correct, within five (5) days of receipt of notice, any violation of the Restrictions for which the Owner has been determined to be responsible pursuant to applicable due process requirements.

(ii) The Owner must be current in the payment of all Assessments for the three (3) months immediately preceding the date of the election at which the Owner is being considered for election to the Board of Directors.

In addition, to remain qualified to serve on the Board of Directors, an Owner who has been elected to the Board of Directors (and who is not a Declarant or Guest Builder representative) must:

(i) Attend no less than one-half ($\frac{1}{2}$) of the Board meetings, regular or special, within a twelve (12) month period and not miss more than two (2) consecutive, regularly scheduled Board meetings;

(ii) Comply with every duly approved action of the Board;

(iii) Comply with the Restrictions and correct, within five (5) days of receipt of notice, any violation of the Restrictions for which that Director has been determined to be responsible pursuant to applicable due process requirements;

(iv) Not be more than three (3) months in arrears in the payment of any Assessment;

(v) Refuse any type of gain, such as money, services, products, gifts or gratuities of a significant value, as determined by a majority vote of the Directors who meet all of the required qualifications to serve as such, which gain is offered in relation to the Owner's

service as a Director. In addition, the Owner must disclose such offers at an open meeting of the Board. Compensation for services duly approved by the Board and unrelated to duties as a Director or Officer of the Association, and reimbursement of expenses associated with services to the Association, do not constitute prohibited gain within the meaning of this subsection; and

(vi) Not act, in a manner determined by a majority vote of the Directors to be grossly detrimental to the general safety, health or welfare of the Association and its members.

4.2. Powers and Duties. The Board has the powers and duties necessary to administer the Association's affairs and may do all acts and things not by law, the Articles, the Declaration or by these Bylaws directed to be exercised and done exclusively by the Members. The Board may not enter into any contract with a Person (including Declarant) wherein the Person will furnish goods or services for the Common Area, or the Association for a term in excess of one (1) year, without the vote or written consent of Members representing at least a majority of the Association's voting power, except for the following:

4.2.1. Terminable Agreements. Agreements that are terminable by the Association without cause, penalty or other obligation upon not more than ninety (90) days written notice,

4.2.2. Public Utilities. A contract with a public utility company for a term that does not exceed the shortest term for which the public utility company will contract at the regulated rate if the rates charged for the materials or services are regulated by the California Public Utilities Commission,

4.2.3. Insurance. Prepaid casualty or liability insurance policies of not more than three (3) years' duration provided that the policies permit short-term cancellation by the Association,

4.2.4. Telecommunication Systems. Agreements for Telecommunications Facilities or Services that the Declaration authorizes the Master Association to enter into,

4.2.5. Alarms. Agreements for sale or lease of burglar alarm and fire alarm equipment, installation and services with terms not in excess of five (5) years, provided that Declarant does not have a direct or indirect ownership interest in the supplier of such services or equipment equal to or greater than ten percent (10%),

4.2.6. Nonprofit Corporations and Local Governmental Agencies. Agreements with any nonprofit corporations or Local Governmental Agencies,

4.2.7. Contingency Agreements. Agreements in which the Association enters into litigation or any alternative dispute resolution procedure when the Association's obligation to pay for services is set in whole or in part on a contingency basis only if (i) the

agreement is for collection of assessments or other accounts receivable, (ii) the agreement involves evaluation of services, or (iii) the total amount to be paid by the Association under the agreement is not in excess of Forty Thousand Dollars (\$40,000.00), and

4.2.8. **DRE Approval.** Agreements approved by the DRE.

4.3. **Special Powers and Duties.** Without prejudice to such foregoing general powers and duties and such powers and duties as are set forth in the Declaration, the Board has the following powers and duties:

4.3.1. **Select Offices.** The power and duty to select, appoint and remove all Association officers, agents and employees, to prescribe such powers and duties for them as may be consistent with law and with the Restrictions; to fix their compensation and to require from them security for faithful service when the Board deems advisable.

4.3.2. **Manage Affairs.** The power and duty to conduct, manage and control the Association's affairs, and to make and enforce such Rules and Regulations therefor consistent with law and with the Restrictions as the Board deems necessary or advisable.

4.3.3. **Principal Office.** The power but not the duty to change the principal office for the transaction of the Association's business from one location to another within the County, as provided in Article I hereof; to designate any place within the County for the holding of any annual or special meeting or meetings of Members consistent with the provisions of Section 3.2 hereof; and to adopt and use a corporate seal and to alter the form of such seal from time to time, as the Board, in its sole judgment, deems best, provided that such seal must at all times comply with the provisions of law.

4.3.4. **Assessments.** The power and duty to fix and levy Assessments, as provided in the Declaration; to determine and fix the due date for the payment of such Assessments; provided, however, that such Assessments must be fixed and levied only to provide for the payment of Common Expenses, Designated Services Area Expenses and for other purposes authorized in the Declaration. Subject to any limits imposed by the Declaration and these Bylaws, the Board may incur any and all such expenditures for any of the foregoing purposes and provide, or cause to be provided, adequate reserves for replacements as it deems to be necessary or advisable in the Association's interest or its Members' welfare. The funds collected by the Board from the Members for replacement reserves, maintenance recurring less frequently than annually, and capital improvements, is at all times held in trust for the Members. Disbursements from such trust reserve fund may only be made in accordance with the Declaration. If a Member fails to pay an Assessments before delinquency, the Board may enforce the payment of such delinquent Assessments as provided in the Declaration.

4.3.5. **Enforce Restrictions.** The power and duty to enforce the Restrictions and any Association agreements.

4.3.6. **Maintenance.** The power and duty to contract and pay for maintenance, gardening, utilities, materials, supplies and services relating to the Common Area and to employ personnel necessary to operate the Properties, including legal and accounting services, and to contract and pay for Improvements on the Common Area.

4.3.7. **Delegate.** The power but not the duty to delegate its powers according to law and to adopt these Bylaws.

4.3.8. **Corporate Records.** The power and duty to keep, or cause to be kept, a complete record of all Association acts and corporate affairs and to present a statement thereof to the Members at the annual meeting of the Members and at any other time that such statement is requested by at least ten percent (10%) of the Members who are entitled to vote.

4.3.9. **Membership Committee.** The power but not the duty to appoint a Membership Committee composed of at least one (1) Director and at least one (1) Member at large. The Membership Committee would be responsible for contacting all purchasers of Lots as soon as any transfer of title to a Lot is discovered. The Membership Committee would further attempt to establish initial contact with all Members who are delinquent in the payment of any assessments or other charges due the Association.

4.3.10. **Common Area Disposal.** The power but not the duty to sell property of the Association; provided, however, that the prior vote or written approval of Members representing at least a majority of the Association's voting power must be obtained to sell during any Fiscal Year property of the Association having an aggregate fair market value greater than five percent (5%) of the Association's budgeted gross expenses for that Fiscal Year.

4.4. **Management Agent.** The Board may engage a professional Manager for the Association at a compensation established by the Board to perform such duties and services as the Board authorizes, including, but not limited to, the duties listed in Sections 4.2 and 4.3.

4.5. **Election and Term of Office.**

4.5.1. **Basic Election Procedure.** At the first annual meeting of the Members, and thereafter at each annual meeting of the Members coinciding with the expiration of a Director's term of office or at which a vacancy on the Board exists, the Members shall elect new Directors by secret written ballot as provided in these Bylaws. All positions on the Board shall be filled at the first annual meeting. If an annual meeting is not held, or the Board is not elected thereat, the Board may be elected at any special meeting of the Members held for that purpose. Each Director shall hold office until his successor has been elected or until his death, resignation, removal or judicial adjudication of mental incompetence. The term of office of the three (3) Directors appointed by Declarant with its Class C Membership as of the first annual meeting shall be three (3) years and the term of office of the two (2) Directors elected at the first annual meeting shall be two (2) years. At each annual meeting thereafter, new Directors shall be elected to fill vacancies created by the death, resignation, removal, judicial adjudication of mental incompetence or expiration of the

terms of past Directors. The term of office of each Director elected to fill a vacancy created by the expiration of the term of office of the respective past Director shall be two (2) years. The term of office of each Director elected or appointed to fill a vacancy created by the resignation, death or removal of his predecessor shall be the balance of the unserved term of his predecessor. Any person serving as a Director may be reelected, and there is no limit on the number of terms which he may serve. Cumulative voting must be used in the election of Directors for any election in which more than two (2) Directors are to be selected, subject only to the following procedural requirements: A Member may cumulate his votes for any candidate for the Board if the candidate's name has been placed in nomination prior to the voting and if such Member, or any other Member, has given notice at the meeting prior to the voting of such Member's intention to cumulate votes. If a Member cumulates his votes, such Member may cast a number of votes equal to the Member's share of the voting power as set forth in the Declaration, multiplied by the number of Directors to be elected.

4.5.2. **Special Election.** Notwithstanding the foregoing, whenever (i) notice is given for an election of Directors, (ii) upon such date Declarant and the Guest Builders in the aggregate are entitled to exercise a majority of the Association's voting power and (iii) upon such date the Members (other than Declarant and the Guest Builders collectively) do not have a sufficient percentage of the Association's voting power to elect a number of Directors representing at least twenty percent (20%) (though not less than one (1)) of the entire Board through the foregoing cumulative voting procedure, then such notice must also provide for the following special election procedure. Election of Directors will be first apportioned to the Members other than Declarant and the Guest Builders, until the aggregate number of Directors elected by Members other than Declarant and the Guest Builders represents at least twenty percent (20%) (though not less than one (1)) of the entire Board. Any person is an eligible candidate for the special election upon receipt by the Secretary Declaration of Candidacy, signed by the candidate, at any time prior to the election. Such election will be by secret written ballot. The person or persons receiving the greatest number of votes cast by the Members other than Declarant and the Guest Builders is elected to the Board in a coequal capacity with all other Directors. The remaining Members on the Board who are not appointed by the Class C Membership will be elected through the customary cumulative voting procedure outlined above.

4.6. **Books, Audit.** The Board shall distribute the following financial information to all Members (and any Beneficiary, insurer and guarantor of a first Mortgage upon request), regardless of the number of Members or the amount of assets of the Association:

4.6.1. **Budget.** A pro forma operating budget for each Fiscal Year consisting of at least the following information must be distributed not less than forty-five (45) nor more than sixty (60) days prior to the beginning of the Fiscal Year:

(i) The estimated revenue and Common Expenses and Designated Services Area Expenses computed on an accrual basis.

(ii) A summary of the Association's reserves based upon the most recent review or study conducted pursuant to Section 1365.5 of the California Civil Code or any other applicable statute, as amended, which must be printed in bold type and include all of the following:

(A) The current estimated replacement cost, estimated remaining life, and estimated useful life of each major component for which the Association is responsible.

(B) As of the end of the Fiscal Year for which the study is prepared:

(1) The current estimate of the amount of cash Reserves necessary to repair, replace, restore, or maintain the major components for which the Association is responsible ("Estimated Reserves").

(2) The current amount of accumulated cash Reserves actually set aside to repair, replace, restore or maintain the major components for which the Association is responsible ("Actual Reserves").

(C) The percentage that the Actual Reserves is of the Estimated Reserves.

(iii) A statement as to whether the Board has determined or anticipated that the levy of one or more Capital Improvement or Reconstruction Assessments will be required to repair, replace, or restore any major component for which the Association is responsible or to provide adequate reserves therefor.

(iv) A general statement setting forth the procedures used by the Board in the calculation and establishment of reserves to defray the costs of repair and replacement of, or additions to, major components of the Common Area and facilities for which the Association is responsible.

The Board may distribute a summary of the Budget in lieu of the Budget itself, so long as the Board complies with the provisions of Section 1365(c) of the California Civil Code as it may be amended.

4.6.2. **Balance Sheet.** A balance sheet as of an accounting date which is the last day of the month closest in time to six (6) months from the date of the first Close of Escrow for the sale of a Lot and an operating statement for the period from the date of the first Close of Escrow to the said accounting date, must be distributed within sixty (60) days after the accounting date.

4.6.3. **Reports to Members.** A report consisting of the following must be distributed within one hundred twenty (120) days after the close of the Fiscal Year:

- (i) A balance sheet as of the end of the Fiscal Year.
- (ii) An operating (income) statement for the Fiscal Year.
- (iii) A statement of changes in financial position for the Fiscal Year.
- (iv) Any information required to be reported under Section 6322 of the California Corporations Code.
- (v) For any Fiscal Year in which the Association's gross income exceeds \$75,000, a copy of a review of the annual report prepared in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy.
- (vi) A statement of the place where the names and addresses of the Members is located.

If the Report referred to in this Section 4.6.3 is not prepared by an independent accountant, it must be accompanied by the certificate of an authorized Association officer stating that the statement was prepared from the Association's books and records without independent audit or review.

The Association shall distribute to all of its Members a summary of the Association's property, general liability, and earthquake and flood insurance policies, which shall be distributed within sixty (60) days preceding the beginning of the Association's fiscal year, that includes all of the following about each policy: (i) the name of the insurer, (ii) the type of insurance, (iii) the policy limits of the insurance, and (iv) the amount of deductibles, if any.

(a) The Association shall, as soon as reasonably practical, notify its members by first-class mail if any of the policies described above have lapsed, been canceled, and are not immediately renewed, restored, or replaced, or if there is a significant change, such as a reduction in coverage or limits or an increase in the deductible, for any of those policies. If the Association receives any notice of nonrenewal of a policy described above, the Association shall immediately notify its members if replacement coverage will not be in effect by the date the existing coverage will lapse.

(b) To the extent that any of the information required to be disclosed is specified in the insurance policy declaration page, the Association may meet its obligation to disclose that information by making copies of that page and distributing it to all of its members.

(c) The summary distributed above 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 may, upon request and

provision of reasonable notice, review the Association's insurance policies and, upon request and payment of reasonable duplication charges, obtain copies of those policies. Although the Association maintains the policies of insurance specified in this summary, the Association's policies of insurance may not cover your property, including personal property or, real property improvements to or around your dwelling, or personal injuries or other losses that occur within or around your dwelling. Even if a loss is covered, you may nevertheless be responsible for paying all or a portion of any deductible that applies. Association members should consult with their individual insurance broker or agent for appropriate additional coverage."

In addition to financial statements, the Board shall annually distribute within sixty (60) days prior to the beginning of the Fiscal Year a statement of the Association's policies and practices in enforcing its remedies against Members for defaults in the payment of Annual, Capital Improvement, Reconstruction and Special Assessments, including the recording and foreclosing of liens against Lots.

The Board shall do the following on at least a quarterly basis: (1) cause to be completed and review a current reconciliation of the Association's operating and Reserve accounts, (2) review the current Fiscal Year's actual reserve revenues and expenses compared to the Budget for the then current Fiscal Year, (3) review the income and expense statement for the Association's Operating and Reserve accounts, and (4) review the most current account statements prepared by the financial institutions where the Association maintains its Operating and Reserve accounts. The signatures of either (i) two (2) Directors, or (ii) one (1) Director and one (1) Association officer (who is not also a Director) are required for withdrawal of money from the Association's Reserve accounts. As used in this paragraph, the term "Reserve accounts" means monies that the Board has identified from its Budget for use to defray the future repair and replacement of, or additions to, those major components which the Association is obligated to maintain.

The Board shall cause a study of the Reserve account requirements of the Properties to be conducted in accordance with Section 1365.5(d) of the California Civil Code. As used in this paragraph, "Reserve account requirements" means the estimated funds which the Board has determined are required to be available at a specified point in time to repair, replace or restore those major components which the Association is obligated to maintain.

4.7. **Vacancies.** Vacancies on the Board caused by removal of a Director appointed by the Class C Membership will be filled by appointment by the Class C Membership. Vacancies on the Board caused by any reason other than the removal of a Director by a vote of the Members shall be filled by vote of a majority of the remaining Directors, even though they may constitute less than a quorum. Any vacancy caused by the removal of a Director shall be filled by a vote of the Members. A Director may resign at any time by giving notice to the President, the Secretary or the Board. Any Director who ceases to be an Owner, an agent of Declarant or an agent of a Guest Builder is deemed to have resigned from the Board. A vacancy is deemed to exist in case of death, resignation, removal or judicial adjudication of mental incompetence of any Director, or in case the Members fail to elect the full number of authorized Directors at any meeting at which such election is to take place. Any

vacancy not filled by the Directors may be filled by vote of the Members at the next annual meeting of the Members or at a special meeting of the Members called for such purpose.

4.8. **Removal of Directors.** At any regular or special meeting of the Members duly called, any one individual Director or the entire Board may be removed prior to the expiration of their terms of office with or without cause as follows: (i) for so long as fewer than fifty (50) Lots are included within the Properties, by the vote of Members representing a majority of the Association's total voting power (including votes attributable to Declarant and Guest Builders), and (ii) once fifty (50) or more Lots are included within the Properties, by the vote of Members representing a majority of a quorum of Members.

Notwithstanding the foregoing, if the entire Board is not removed as a group pursuant to a single vote, no individual Director may be removed if the number of votes cast against his removal would be sufficient to elect such Director if voted cumulatively at an election at which the same total number of votes were cast and the entire number of Directors authorized at the time of the Director's most recent election were then being elected. Any Director whose removal has been proposed by the Members must be given an opportunity to be heard at the meeting. If any or all of the Directors are so removed at a meeting, new Directors may be elected at the same meeting. Notwithstanding the foregoing, any Director who has been elected to office solely by the votes of Members other than Declarant pursuant to Section 4.5.2 may be removed from office prior to the expiration of his term of office only by the vote of at least a simple majority of the Association's voting power residing in Members other than Declarant. Any Director appointed by the Class C Membership may be removed solely by the Class C Membership.

4.9. **Organization Meeting of Board.** The first regular ("organization") meeting of a newly elected Board must be held within ten (10) days of election of the Board, at such place as is fixed and announced by the Directors at the meeting at which such Directors were elected, for the purpose of organization, election of officers and the transaction of other business. No notice is necessary to the newly elected Directors in order legally to constitute such meeting; provided that (a) a majority of the whole Board is present when the time and place are announced at the annual meeting and (b) the meeting is held on the same day and at the same place as the annual meeting of the Members at which the newly constituted Board was elected.

4.10. **Regular Meetings of Board.** Regular meetings of the Board must be open to all Members; provided that Members who are not Directors may not participate in any deliberations or discussions at such regular meetings unless authorized by a vote of a majority of a quorum of the Board. Regular meetings may be held at such time and place as is determined by a resolution adopted by a majority of a quorum of the Directors; provided, however, that such meetings must be held no less frequently than quarterly. The meeting place shall ordinarily be within the Properties unless in the Board's judgment a larger meeting room is required than exists within the Properties in which case the meeting room selected shall be as close as possible to the Properties. Notice of the time and place of regular meetings of the Board shall be given to each Director at least four (4) days prior to the date named for such meeting, personally or by mail, telephone or telegraph or posted at a prominent place or places within the Common Area.

4.11. Special Meetings of Board. Special meetings of the Board must be open to all Members; provided that Members who are not Directors may not participate in any deliberations or discussions at such special meetings, unless authorized by a vote of a majority of a quorum of the Board. Special meetings may be called by the President or by any two (2) Directors by posting notice at least four (4) days prior to such meeting at a prominent place or places within the Common Area or upon four (4) days' notice by first-class mail or seventy-two (72) hours' notice delivered personally or by telephone or telegraph. The notice must state the time, place and purpose of the meeting.

4.12. Waiver of Notice. Before or at any meeting of the Board, any Director may, in writing, waive personal notice of such meeting and such waiver is equivalent to the giving of notice to such Director. Attendance by a Director at any Board meeting waives personal notice by him of the time and place thereof. If all the Directors are present at any Board meeting, no notice to Directors is required and any business may be transacted at such meeting. The transactions of any Board meeting, however called and noticed or wherever held, are valid as though had at a meeting duly held after regular call and notice, if (a) a quorum is present, (b) notice to the Members of such meeting was posted as provided in Sections 4.10 and 4.11, and (c) either before or after the meeting, each of the Directors not present signs a written waiver of notice, a consent to holding such meeting, or an approval of the minutes thereof. The Secretary shall file all such waivers, consents and approvals with the Association's records or make them a part of the minutes of the meeting.

4.13. Action Without Meeting. The Board may act without a meeting if all Directors consent in writing to such action. Such written consent or consents must be filed with the minutes of the proceedings of the Board. Such action by written consent has the same effect as a unanimous vote of such Directors. Within three (3) days after the written consents of all Directors have been obtained, an explanation of any action taken by unanimous written consent without a meeting must be either (a) posted by the Board in a prominent place or places in the Common Area, or (b) communicated to the Members by another means the Board determines to be appropriate.

4.14. Quorum and Adjournment. Except as otherwise expressly provided herein, at all meetings of the Board, a majority of the Directors constitutes a quorum for the transaction of business, and the acts of a majority of the Directors present at a meeting at which a quorum is present are the acts of the Board. If at any meeting of the Board there is less than a quorum present, the majority of those present may adjourn the meeting to another time. At any such reconvened meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice if a quorum is present. The Board may, with the approval of a majority of the Directors present at a meeting at which a quorum has been established, adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved, matters relating to the formation of contracts with third parties, and orders of business of a similar nature. The nature of any and all business to be considered in executive session must first be announced in open session and must be generally noted in the minutes of the Board. In any matter relating to the discipline of a Member, the Board shall meet in executive session if requested by that Member, and the Member may attend the executive session.

4.15. **Committees.** The Board may by resolution designate such advisory and other committees as it desires, and may establish the purposes and powers of each such committee created. The resolution designating and establishing the committee must (a) provide for the appointment of its members and a chairman, (b) state the purposes of the committee, and (c) provide for reports, termination and other administrative matters the Board deems appropriate.

ARTICLE V

5. **Officers.**

5.1. **Designation.** The Association's principal officers are a President, a Vice President, a Secretary, and a Treasurer, all elected by the Board. The Board may appoint an Assistant Treasurer, an Assistant Secretary and such other officers as it determines to be necessary. Officers other than the President need not be Directors. Any Person may hold more than one office.

5.2. **Election of Officers.** The Board shall annually elect the Association's officers at the new Board's Organization Meeting. Each officer shall hold his office at the pleasure of the Board, until he resigns or is removed or otherwise disqualified to serve or his successor is elected and qualified to serve.

5.3. **Removal of Officers.** Upon an affirmative vote of a majority of the entire Board, any officer may be removed, either with or without cause, and his successor elected at any regular meeting of the Board, or at any special meeting of the Board called for such purpose. Any officer may resign at any time by giving written notice to the Board or to the President or Secretary. Any such resignation is effective on the date of receipt of such notice or at any later time specified therein. specified in the notice, acceptance of the resignation by the Board is not necessary to make it effective.

5.4. **Compensation.** Officers, agents, and employees shall receive such reasonable compensation for their services as is authorized or ratified by the Board; provided, however, that no officer may receive any compensation for services performed in the conduct of the Association's business unless such compensation is approved by the vote or written consent of Members representing at least a majority of the Association's voting power; and provided further that (a) nothing in these Bylaws precludes any officer from serving the Association in some other capacity and receiving compensation therefor, and (b) any officer may be reimbursed for actual expenses incurred in the performance of Association duties. Appointment of any officer, agent, or employee does not of itself create contractual rights of compensation for services performed by such officer, agent, or employee. Notwithstanding the foregoing, no officer, employee, director or affiliate of Declarant or a Guest Builder may receive any compensation.

5.5. **President.** The President is the chief executive officer of the Association and shall (a) preside at all Association and Board meetings, (b) have all of the general powers and duties which are usually vested in the office of the President of a corporation, including but not limited to the power, subject to the provisions of Section 4.15, to appoint committees from among the Members

as he decides is appropriate to assist in the conduct of the Association's affairs, and (c) subject to the control of the Board, have general supervision, direction and control of the Association's business. The President is ex officio a member of all standing committees and has such other powers and duties as may be prescribed by the Board or these Bylaws.

5.6. **Vice President.** The Vice President shall take the President's place and perform the President's duties whenever the President is absent, disabled, refuses or is unable to act. If neither the President nor the Vice President is able to act, the Board shall appoint some other member of the Board to do so on an interim basis. The Vice President shall also perform such other duties as imposed by the Board or these Bylaws.

5.7. **Secretary.** The Secretary shall (a) keep the minutes of all meetings of the Board and the minutes of all meetings of the Association at the Association's principal office or at such other place as the Board may order, (b) keep the Association's seal in safe custody, (c) have charge of such books and papers as the Board may direct, (d) in general, perform all of the duties incident to the office of Secretary, (e) give, or cause to be given, notices of meetings of the Members and of the Board required by these Bylaws or by law to be given, (f) maintain a record book of Members, listing the names, mailing addresses and telephone numbers of the Members as furnished to the Association ("Membership Register"), (g) record the termination or transfer of ownership by any Member in the Membership Register, together with the date of the transfer, in accordance with the Declaration, and (h) perform such other duties as prescribed by the Board or these Bylaws.

5.8. **Treasurer.** The Treasurer is the Association's chief financial officer and is responsible for Association funds and securities. The Treasurer shall (a) keep, or cause to be kept, full and accurate accounts, tax records and business transactions of the Association, including accounts of all assets, liabilities, receipts and disbursements in books belonging to the Association, (b) be responsible for the deposit of all monies and other valuable effects in the name and to the credit of the Association in such depositories as the Board designates, (c) disburse the Association's funds as ordered by the Board, in accordance with the Declaration, (d) render to the President and Directors, upon request, an account of all transactions as Treasurer and of the Association's financial condition, and (e) have such other powers and perform such other duties prescribed by the Board or these Bylaws.

ARTICLE VI

6. **Obligation of Members.**

6.1. **Assessments.**

6.1.1. All Members shall pay, in accordance with the Declaration, all assessments imposed by the Association, to meet Common Expenses and (as applicable) Designated Services Area Expenses.

6.1.2. All delinquent assessments shall be enforced, collected or foreclosed in the manner provided in the Declaration.

6.2. Maintenance and Repair.

6.2.1. Every Member must perform promptly, at his sole cost, such maintenance and repair work on his Lot as the Declaration requires. All plans for alteration and repair of Improvements on the Lots must receive the Design Review Committee's prior written consent. The Committee shall establish reasonable procedures for the granting of such approval, in accordance with the Declaration.

6.2.2. Each Member shall reimburse the Association for any expenditures incurred in repairing or replacing any portion of the Common Area which are damaged through the fault of such Member or his family, guests, tenants or invitees. Such expenditures include all court costs and reasonable attorneys' fees incurred in enforcing any provision of the Restrictions.

ARTICLE VII

7. **Amendments to Bylaws.** These Bylaws may be amended by the vote or written consent of Members representing at least (a) a majority of the voting power of the Class A and Class B Members, and (b) a majority of the Association's Class A and Class B voting power residing in Members other than Declarant and all Guest Builders; provided that the specified percentage of each class of Members necessary to amend a specific Section or provision of these Bylaws may not be less than the percentage of affirmative votes prescribed for action to be taken under that Section or provision. Notwithstanding the foregoing, these Bylaws may be amended by a majority of the entire Board, at any time prior to the Close of Escrow for the sale of the first Lot. In addition to the foregoing, any amendment to these Bylaws which materially affects matters delineated in Article XI or Section 13.2 of the Declaration must be approved by the Beneficiaries of that percentage of first Mortgages on the Lots which is specified in the affected provision of Article XI or Section 13.2 of the Declaration, respectively; provided that, if an amendment to these Bylaws materially affects matters delineated in both Article XI and Section 13.2 of the Declaration or purports to amend this sentence, the amendment must be approved pursuant to the requirements of both said Article XI and Section 13.2.

ARTICLE VIII

8. Mortgagees.

8.1. **Notice to Association.** Upon the Association's request, a Member who mortgages his Lot or shall notify the Association through the Manager, or through the Secretary if there is no Manager, of the name and address of his Mortgagee. The Association shall maintain such information in a book entitled "Mortgagees of Lots." Upon request, any such Member shall notify the Association of the release or discharge of any such Mortgage.

8.2. **Notice of Unpaid Assessments.** The Board shall, at the request of a Mortgagee, report any unpaid Assessments due from the Owner of such Lot, in accordance with the Declaration.

ARTICLE IX

9. **Conflicting Provisions.** If any of these Bylaws conflict with any laws of the State of California, such conflicting Bylaws shall be void upon final court determination to such effect, but all other Bylaws shall remain in full force. In case of any conflict between the Articles and these Bylaws, the Articles shall control; and in case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

ARTICLE X

10. **Indemnification and Interested Directors Limitation.**

10.1. **Indemnification of Directors and Officers.** The Board may authorize the Association to pay expenses incurred by, or to satisfy a judgment or fine levied against, any present or former Director, officer, employee, or agent of the Association as provided in the Declaration.

10.2. **Interested Directors.** No more than forty-nine percent (49%) of directors may be "interested persons" as described in Corporations Code Section 5227.

ARTICLE XII

11. **Miscellaneous.**

11.1. **Checks, Drafts and Documents.** All checks, drafts, orders for payment of money, notes and other evidences of indebtedness issued in the name of or payable to the Association must be signed or endorsed in the manner and by the person or persons the Board designates by resolution, subject to the requirements of Section 4.6 hereof for withdrawing money from the Association's Reserve accounts.

11.2. **Execution of Documents.** The Board may authorize any officer or officers, agent or agents to enter into any contract or execute any instrument in the name and on behalf of the Association, and such authority may be general or confined to specific instances. Unless so authorized by the Board, no officer, agent, committee member or employee may bind the Association by any contract or engagement or pledge its credit or render it liable for any purpose or in any amount.

11.3. **Availability of Association Documents.** In addition to the rights afforded by the Declaration to Beneficiaries, insurers and guarantors of first Mortgages with regard to inspection of the Association's management documents, the Association shall maintain at its principal office (or at such other place within the Properties as the Board may prescribe) the Restrictions and the Association's books of account; minutes of meetings of Members, the Board and Board committees;

and the Membership Register (collectively, the “Association Documents”), each of which shall be made available for inspection and copying by any Member or the Member’s duly appointed representative for a purpose reasonably related to the Member’s interest as a Member. The Board shall establish reasonable rules regarding (a) notice to be given to the custodian of the Association Documents by the Member desiring to make the inspection, (b) hours and days of the week when such an inspection may be made, and (c) payment of the cost of copying any of the Association Documents requested by a Member; provided that every Director may at any reasonable time inspect all Association Documents and the physical properties owned or controlled by the Association, and make extracts and copies of documents. The minutes, minutes that are proposed for adoption that are marked to indicate draft status, or a summary of the minutes, of any meeting of the Board (other than an executive session) must be available to Members within thirty (30) days of the meeting. The minutes, proposed minutes or summary minutes must be distributed to any Member upon request and upon reimbursement of the Association’s cost in making that distribution. Members must be notified in writing at the time that the Budget required in Section 4.6.1 hereof is distributed or at the time of any general mailing to the entire Association membership of their right to have copies of the minutes of meetings of the Board and how and where those minutes may be obtained. Notwithstanding any contrary Board rules, no later than ten (10) days after the Association receives written request from any Member, the Association shall provide to that Member a copy of each of the documents listed in California Civil Code Section 1368(a) that have been requested by the Member. The Association may charge a fee for this service not exceeding the Association’s reasonable cost to prepare and reproduce the requested documents.

11.4. **Fiscal Year.** The Board shall determine the Association’s Fiscal Year. The Fiscal Year is subject to change as the Board determines.

ARTICLE XIII

12. Notice and Hearing Procedure.

12.1. **Initial Complaint.** Persons who believe a violation of the Restrictions has occurred may file a complaint with a Person designated by the Board on a form approved by the Board. The Board will commence the enforcement process. In its discretion, the Board may issue one or two violation letters to the Person alleged to have committed the violation (“respondent”) or set a hearing described in Section 12.2 below. The Board may direct the Manager to assist the Board in any of the steps the Board chooses to take in enforcing the Restrictions except that decisions made at hearings must be made by the Board.

12.2. **Scheduling Hearings.** A hearing before the Board to determine whether a sanction should be imposed may be initiated by the Board after receipt of at least one complaint. To initiate a hearing, the Board must deliver to the respondent a notice which includes the following:

12.2.1. **Complaint.** A written statement setting forth in ordinary and concise language the acts or omissions with which the respondent is charged,

12.2.2. **Basis for Violation.** A reference to the specific provisions of the Restrictions which the respondent is alleged to have violated,

12.2.3. **Hearing Schedule.** The date, time and place of the scheduled hearing,

12.2.4. **Sanctions.** A list of sanctions which may be imposed at the hearing.

The date for the hearing may be no less than fifteen (15) days after the date the notice of hearing is mailed or delivered to the respondent. The respondent is entitled to attend the hearing, submit a statement of defense to the Board in advance of the hearing, or present a statement of defense and supporting witnesses at the hearing. If the respondent does not attend the hearing, the respondent waives these rights.

12.3. **Conduct of Hearing.** The Board shall conduct the hearing in executive session, affording the respondent a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of notice and the invitation to be heard must be placed in the minutes of the meeting. Such proof is adequate if a copy of the notice together with a statement of the date and manner of delivery is entered by the Association officer or Board member who mailed or delivered such notice. The record of the meeting must contain a written statement of the results of the hearing and the sanction, if any, imposed.

12.4. **Imposition of Sanctions.** After affording the respondent an opportunity for a hearing before the Board, the Board may impose any one or more of the following sanctions: (a) levy a Special Assessment as authorized in the Declaration; (b) suspend or condition the respondent's right to use any recreational facilities the Association owns, operates or maintains commencing on a date in the future selected by the Board; (c) suspend the respondent's voting privileges established under the Declaration; (d) enter upon a Lot to perform maintenance which, according to the Declaration, is the responsibility of the respondent; or (e) record a notice of noncompliance if allowed by law. Any suspension of Membership privileges may not be for a period of more than thirty (30) days for any noncontinuing infraction, but in the case of a continuing infraction (including nonpayment of any assessment after the same becomes delinquent) may be imposed for so long as the violation continues. Written notice of any sanctions to be imposed must be delivered to the respondent personally, by any system or technology designed to record and communicate messages, facsimile, electronic mail, or other electronic means, via first class mail or certified mail return receipt requested, or any combination of the foregoing. No action against the respondent arising from the alleged violation may take effect prior to five (5) days after the hearing.

12.5. **Limits on Remedies.** The Board's failure to enforce the Restrictions does not waive the right to enforce them. The remedies provided by the Restrictions are cumulative and not exclusive. However, any individual Owner must exhaust all available internal Association remedies prescribed by the Restrictions before that Owner may resort to a court of law for relief with respect to any alleged violation of the Restrictions by another Owner.


CERTIFICATE OF SECRETARY

I, the undersigned, do hereby certify that:

1. I am the duly elected and acting Secretary of RANCHO BELLA VISTA COMMUNITY ASSOCIATION, a California nonprofit public benefit corporation ("Association"); and

2. The foregoing Bylaws, composed of 21 pages including this page, constitute the Bylaws of the Association duly adopted by Consent of Directors in Lieu of First Meeting dated 2/16/02.

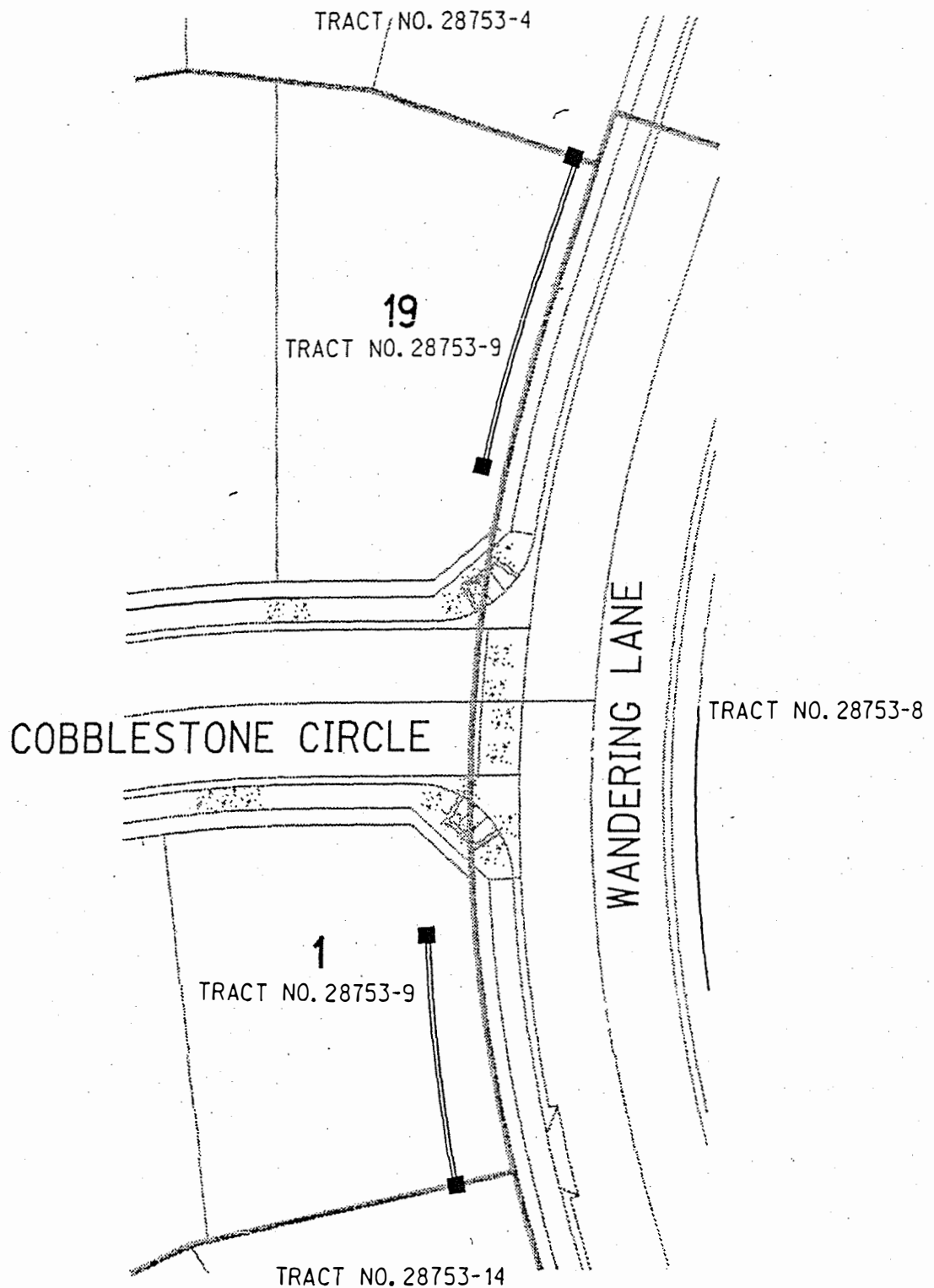
IN WITNESS WHEREOF, I have hereunto subscribed my hand and affixed the seal of the Association this 16th day of FEB. 2002.


Print Name: PAUL GALLETTI

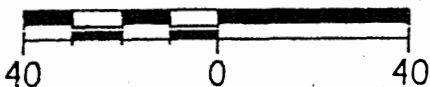
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EXHIBIT D

COMMON AREA IN PHASE 1



SCALE: 1" = 40'

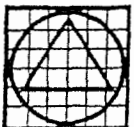
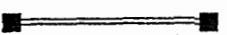


LEGEND

LOT NUMBER

1

PROPERTY WALL



RICK ENGINEERING COMPANY

San Diego

Riverside

Orange

Phoenix

Tucson

1223 University Ave., Ste. 240 • Riverside, CA 92507-3418 • (909)782-0707 • FAX (909)782-0723 • www.rickeng.com

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Assessor, County Clerk & Recorder

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

AND RESERVATION OF EASEMENTS

FOR

RANCHO BELLA VISTA

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AND RESERVATION OF EASEMENTS
FOR
RANCHO BELLA VISTA

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
AND RESERVATION OF EASEMENTS
FOR
RANCHO BELLA VISTA**

This Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Bella Vista is made by Rancho Bella Vista, LLC, a California limited liability company ("Declarant") and Richmond American Homes of California, Inc., a Colorado Corporation (the "Initial Guest Builder"). The capitalized terms used in the Preamble are defined in Article I.

P R E A M B L E:

A. The Initial Guest Builder is the owner of real property in the unincorporated area of Riverside County, California, described as follows:

Lots 1 to 3, inclusive, and Lots 14 to 19, inclusive, of Tract No. 28753-9, as shown on the Subdivision Map Filed on MARCH 21, 2002, in Book 316, Pages 82 to 85, inclusive, of Maps, in the Office of the Riverside County Recorder.

B. Declarant intends to create (1) a "planned development" as defined in Section 1351(k) of the California Civil Code, (2) a "master planned community" as defined in DRE Regulation 2792.32, and (3) a "subdivision" as defined in Section 11000 of the California Business and Professions Code, and to impose mutually beneficial restrictions under a general plan for subdividing, maintaining, improving and selling the Lots in the Properties for the benefit of all the Lots pursuant to the Davis-Stirling Common Interest Development Act.

C. The Properties are to be held, conveyed, encumbered, leased, used, and improved subject to covenants, conditions, restrictions, and easements in this Declaration, in furtherance of a plan for subdividing, maintaining, improving and selling the Lots in the Properties. All provisions of this Declaration are imposed as equitable servitudes on the Properties. All covenants, conditions, restrictions and easements in this Declaration shall (1) run with and burden the Properties and (2) be binding on and for the benefit of all of the Properties and all Persons acquiring any interest in the Properties.

**ARTICLE I
DEFINITIONS AND INTERPRETATION**

1.1. **DEFINITIONS.** Unless otherwise expressly provided, the following words and phrases when used in this Declaration have the following meanings.

1.1.1. **Annexable Territory.** Annexable Territory means the real property described in *Exhibit A* which may be made subject to this Declaration pursuant to Article XVI. Any references in this Declaration to Annexable Territory are references to the Annexable Territory as a whole and to portions thereof.

1.1.2. **Annual Assessment.** Annual Assessment means a charge against the Owners and their Lots representing their share of the Common Expenses. The Annual Assessment is a regular assessment as described in California Civil Code Section 1366.

1.1.3. **Articles.** Articles means the Articles of Incorporation of the Association currently in effect. A copy of the Articles is attached as *Exhibit B*.

1.1.4. **Assessment.** Assessment means any Annual Assessment, Capital Improvement Assessment, Repair Assessment, Reconstruction Assessment and Special Assessment.

1.1.5. **Association.** Association means Rancho Bella Vista Community Association, a California nonprofit corporation (formed pursuant to the California Nonprofit Public Benefit Corporation Law), and its successors. The Association is an "association" as defined in Section 1351(a) of the California Civil Code.

1.1.6. **Association Maintenance Funds.** Association Maintenance Funds means the accounts created for Association receipts and disbursements pursuant to Article VII.

1.1.7. **Association Property.** Association Property means the real property and Improvements owned in fee or by easement by the Association. The Association Property is the part of the Common Area that is owned in fee or by easement by the Association and is not within the Open Space Areas or the CSA.

1.1.8. **Board or Board of Directors.** Board or Board of Directors means the Association's Board of Directors.

1.1.9. **Budget.** Budget means a written, itemized estimate of the Association's income and Common Expenses prepared pursuant to the Bylaws.

1.1.10. **Bylaws.** Bylaws means the Bylaws of the Association as currently in effect. A copy of the Bylaws as initially adopted by the Board is attached as *Exhibit C*.

1.1.11. **Capital Improvement Assessment.** Capital Improvement Assessment means a charge against the Owners and their Lots representing their share of the Association's cost for installing or constructing capital Improvements on the Common Area. Capital Improvements Assessments shall be levied in the same proportion as Annual Assessments. However, Capital Improvement Assessments for a particular Designated Service Area shall be levied in the same proportion as Annual Assessments only against Owners responsible for such Designated Service Area. Capital Improvement Assessments are special assessments as described in California Civil Code Section 1366.

1.1.12. **Close of Escrow.** Close of Escrow means the date on which a deed is Recorded conveying a Lot pursuant to a transaction requiring the issuance of a Final Subdivision

Public Report by the DRE. Among other exempt transfers, the term "Close of Escrow" herein shall not include the Recordation of a deed (a) between Declarant and (1) any successor to the rights of Declarant hereunder, or (2) any Guest Builder, or (b) between two Guest Builders.

1.1.13. Common Area. Common Area means the real or personal property designated by Declarant as Common Area in this Declaration or a Supplemental Declaration and therefore made subject to the restrictions on Common Area established in the Restrictions. The Common Area may include (a) the Association Property, (b) Detention Basins, (c) the Parkways, (d) the portions of the Property Walls that the Association is obligated to maintain, (e) those Open Space Areas not maintained by a Third Party Manager, (f) the Fuel Modification Areas, (g) the CSA (if transferred to the Association by the County) and (h) the Offsite Maintenance Areas. Any references in this Declaration to Common Area are references to the Common Area as a whole and to portions thereof. Additional Common Area may be annexed to the Properties pursuant to Article XVI. The Common Area in Phase 1 is comprised of a nonexclusive easement for access to and maintenance of the exterior surface of the Property Walls on Lots 1 and 19 of Tract No. 28753-9 that face areas in public view as approximately shown on *Exhibit D* attached hereto.

1.1.14. Common Expenses. Common Expenses means those expenses for which the Association is responsible under this Declaration, excepting Designated Service Area Expenses, including the actual and estimated costs of and reserves for maintaining, managing and operating the Common Area. Common Expenses also include unpaid Special Assessments, Reconstruction Assessments and Capital Improvement Assessments. Common Expenses include the cost of all utilities and mechanical and electrical equipment serving the Common Area, Telecommunication Services, if any, which are billed in bulk to the Association but which provide service to individual Residences, utilities which serve individual Lots but which are subject to a common meter, trash collection and removal (as applicable), managing and administering the Association, compensating the Manager, accountants, attorneys and employees, gardening and other services benefitting the Common Area, all insurance covering the Properties and the Directors, officers and agents of the Association, bonding the members of the Board, taxes paid by the Association, amounts paid by the Association for discharge of any lien or encumbrance levied against the Properties, amounts incurred for maintenance imposed by this Declaration on the Association, and all other expenses incurred by the Association for the Properties, for the common benefit of the Owners.

1.1.15. County. County means Riverside County, California, and its various departments, divisions, employees and representatives.

1.1.16. CSA. CSA means the areas and Improvements in the Properties to be maintained by Valley Wide.

1.1.17. Declarant. Declarant means Rancho Bella Vista, LLC, a California limited liability company, its successors and any Person to which it shall have assigned any of its rights by an express written assignment. Any such assignment may include some or all of Declarant's rights and may be subject to such purposes, conditions or limitations as Declarant may impose in its sole discretion. As used in this Section, "successor" means a Person who acquires Declarant or substantially all of Declarant's assets by sale, merger, reverse merger, consolidation, sale of stock

or assets, operation of law or otherwise. Declarant shall determine in its sole discretion the time, place and manner in which it discharges its obligations and exercises the rights reserved to it under this Declaration. Declarant is a “builder” as described in California Civil Code Section 1375.

1.1.18. Declaration. Declaration means this instrument as it may be amended or supplemented.

1.1.19. Design Guidelines. Design Guidelines means the rules or guidelines setting forth procedures and standards for submission of plans for Design Review Committee approval.

1.1.20. Design Review Committee or Committee. Design Review Committee or Committee means the Design Review Committee created in accordance with Article V.

1.1.21. Designated Service Area. Designated Service Area means a group of Lots, the Owners of which are either (a) responsible for maintaining specified Improvements, or (b) entitled to receive specified services. The Lots in Phase 1 are not part of any Designated Service Area as of the date this Declaration is Recorded. Designated Service Areas may be identified by Declarant or a Guest Builder, with the prior written consent of Declarant, in any Supplemental Declaration.

1.1.22. Designated Service Area Expenses. Designated Service Area Expenses means those expenses attributable solely to any Designated Service Area and for which the Association is responsible under this Declaration (of the type listed in Section 1.1.14 of this Declaration).

1.1.23. Detention Basin. Detention Basin means any portion of the Common Area used as a detention basin.

1.1.24. DRE. DRE means the California Department of Real Estate and any department or agency of the California state government which succeeds to the DRE’s functions.

1.1.25. Family. Family means natural individuals, related or not, who live as a single household in a Residence.

1.1.26. FHA. FHA means the Federal Housing Administration of the United States Department of Housing and Urban Development and its successors.

1.1.27. FHLMC. FHLMC means the Federal Home Loan Mortgage Corporation created by Title II of the Emergency Home Finance Act of 1970 and its successors.

1.1.28. Fiscal Year. Fiscal Year means the fiscal accounting and reporting period of the Association.

1.1.29. **FNMA.** FNMA means the Federal National Mortgage Association, a government-sponsored private corporation established pursuant to Title VIII of the Housing and Urban Development Act of 1968 and its successors.

1.1.30. **Fuel Modification Areas.** Fuel Modification Areas means the natural areas extending between approximately thirty (30) to one hundred (100) feet behind the rear property line of certain Lots into adjacent property or as otherwise described in a Notice of Addition or Supplemental Declaration. Fuel Modification Areas may be within and overlap the boundaries of the Open Space Areas. Any part of the Fuel Modification Areas in the Restricted Open Space Areas will be maintained by a Third Party Manager. Fuel Modification Areas in each Phase will be identified in a Notice of Addition or Supplemental Declaration.

1.1.31. **GNMA.** GNMA means the Government National Mortgage Association administered by the United States Department of Housing and Urban Development and its successors.

1.1.32. **Guest Builder.** Guest Builder means a Person who is designated by Declarant as a Guest Builder in a Notice of Addition, Supplemental Declaration or other Recorded document and who acquires a portion of the Properties for the purpose of developing such portion for resale to the general public. The term "Guest Builder" includes the Initial Guest Builder but does not include Declarant. Each Guest Builder is a builder as described in California Civil Code Section 1375.

1.1.33. **Improvement.** Improvement means any structure and any appurtenance thereto including a building, walkway, irrigation system, garage, road, driveway, parking area, fence, any type of wall, awning, stairs, deck, any type of landscaping and planting, antenna, windbreak, pole, sign, the exterior surface of any visible structure and the paint on such surface, exterior air conditioning and water softener fixture or equipment. The Design Review Committee may identify additional items that are Improvements.

1.1.34. **Include.** Whether capitalized or not, include means "include without limitation."

1.1.35. **Initial Guest Builder.** Richmond American Homes of California, Inc., a Colorado corporation. Declarant designates the Initial Guest Builder as a Guest Builder.

1.1.36. **Local Government Agency.** Local Government Agency means the County, a public school district, a public water district, and any other local or municipal government entity or agency including, without limitation, any community service area agency, special assessment district, maintenance district or community facilities district.

1.1.37. **Lot.** Lot means a lot or parcel of land shown on a Recorded subdivision map or Recorded parcel map of any portion of the Properties. Lot also means a condominium as defined in Sections 783 and 1351(f) of the California Civil Code, if (a) the condominium is a volume of real property that is not entirely within a building (a "site condominium") and (b) the Supplemental

Declaration annexing the condominium to this Declaration states that the condominium is a Lot for purposes of this Declaration.

1.1.38. **Maintain.** Whether capitalized or not, maintain means maintain, repair and replace.

1.1.39. **Manager.** Manager means the Person retained by the Association to perform management functions of the Association as limited by the Restrictions and the terms of the agreement between the Association and the Person. The Manager will not be a Third Party Manager.

1.1.40. **Membership.** Membership means the voting and other rights, privileges, and duties established in the Restrictions for members of the Association.

1.1.41. **Model Lot.** Model Lot is a Lot upon which a model home has been constructed and which has thereafter been sold to a buyer subject to a leaseback of the Lot to Declarant or a Guest Builder for the purpose of operating and maintaining a model home thereon.

1.1.42. **Mortgage.** Mortgage means any Recorded document, including a deed of trust, by which any Lot or Common Area is hypothecated to secure performance of an obligation.

1.1.43. **Mortgagee.** Mortgagee means a Person to whom a Mortgage is made, or the assignee of the Mortgagee's rights under the Mortgage by a Recorded assignment. Mortgagee includes a beneficiary under a deed of trust.

1.1.44. **Mortgagor.** Mortgagor means a person who has mortgaged his property. Mortgagor includes a Trustor under a deed of trust.

1.1.45. **Notice and Hearing.** Notice and Hearing means written notice and a hearing before the Board as provided in the Bylaws.

1.1.46. **Notice of Addition.** Notice of Addition means an instrument Recorded pursuant to Article XVI to annex additional real property to the Properties. A Notice of Addition may include a Supplemental Declaration.

1.1.47. **Official Records.** Official Records means the official records of the County Recorder.

1.1.48. **Offsite Maintenance Areas.** Offsite Maintenance Areas means any real property not a part of the Properties and Annexable Territory which Declarant elects, in its sole judgment, by a written assignment, to be maintained by the Association, including (a) the property covered by the Landscape Easement and Maintenance Agreement between Pacific Bay and the Rancho California Water District Recorded on November 18, 2000, as Instrument No. 2000-457980 in the Official Records, (b) certain Parkways, and (c) any other areas designated as Offsite Maintenance Areas in a Supplemental Declaration. Offsite Maintenance Areas may include

landscaped areas, brush thinning areas, monumentation areas, parkways or streetscapes areas within either public streets and right of ways or on private property streets or roadways.

1.1.49. Open Space Areas. Open Space Areas means (a) the Restricted Open Space Areas and (b) any other areas within the Properties that Declarant designates as an Open Space Area in this Declaration or in a Notice of Addition or Supplemental Declaration. A portion of the Open Space Areas will contain Fuel Modification Areas. The Open Space Areas will be conveyed in fee to the Association as part of the Common Area.

1.1.50. Owner. Owner means the Person or Persons, including Declarant and Guest Builders, holding fee simple interest to a Lot. Each Owner has a Membership in the Association. The term "Owner" includes sellers under executory contracts of sale but excludes Mortgagees. The term "Owner" may be expanded in a Supplemental Declaration to include other Persons.

1.1.51. Pacific Bay. Pacific Bay means Pacific Bay Properties, a California corporation, the prior owner of the Properties and Annexable Territory.

1.1.52. Parks. Parks initially means the public park Declarant intends to develop on Lots 3 to 6, inclusive, of Tract No. 28753-1. Additional areas may be designated to be included in the definition of Parks in a Notice of Addition or Supplemental Declaration. The Parks will then become part of the CSA to be maintained by Valley Wide.

1.1.53. Parkways. Parkways mean the medians, landscaped areas and parkways within certain public rights of way that the Association is obligated to maintain the Parkway in accordance with an Agreement for Maintenance of Parkways with the County (the "Parkway Maintenance Agreement").

1.1.54. Person. Person means a natural individual or any legal entity recognized under California law. When the word "person" is not capitalized, the word refers only to natural persons.

1.1.55. Phase. Phase means each of the following: (a) Phase 1, and (b) all the real property covered by a Notice of Addition for which a Final Subdivision Public Report has been issued by the DRE, unless "Phase" is otherwise defined in such Notice of Addition.

1.1.56. Phase 1. Phase 1 means all of the real property described in Paragraph A of the Preamble of this Declaration.

1.1.57. Phase 2. Phase 2 means Lots 2 to 7, inclusive, and Lots 19 to 22, inclusive, of Tract No. 28753-5, as shown on the Subdivision Map Filed on _____, 200 __, in Book ____, Pages ____ to ____, inclusive, of Maps, in the Office of the Riverside County Recorder.

1.1.58. Properties. Properties means (a) Phase 1, and (b) each Phase described in a Notice of Addition. The Properties are a “common interest development” and a “planned development” as defined in Sections 1351(c) and 1351(k) of the California Civil Code. Any references in this Declaration to the Properties are references to the Properties as a whole and to portions thereof.

1.1.59. Property Wall. Property Wall means any wall or fence designated as such in this Declaration or in a Notice of Addition or Supplemental Declaration. Any Notice of Addition or Supplemental Declaration that designates any Property Walls shall also specify the respective maintenance obligations of the Association and the Owners concerning such Property Walls.

1.1.60. Reconstruction Assessment. Reconstruction Assessment means a charge against the Owners and their Lots representing their share of the Association’s cost to reconstruct any Improvements on the Common Area. Such charge shall be levied among all Owners and their Lots in the same proportions as Annual Assessments. Reconstruction Assessments are “special assessments” as described in California Civil Code Section 1366.

1.1.61. Record or File. Record or File means, with respect to any document, the entry of such document in official records of the County Recorder.

1.1.62. Repair Assessment. Repair Assessment means a charge against the Owners and their Lots representing their share of the Association’s cost to repair any damaged or defective Improvements as required in Section 4.8.6 below, to the extent such cost exceeds the net proceeds the Association receives as a result of the resolution of any construction defect Dispute. Such charge shall be levied among all the Owners and their Lots in the same proportion as Annual Assessments. Repair Assessments are “special assessments” as described in California Civil Code Section 1366.

1.1.63. Residence. Residence means a building located on a Lot designed and intended for use and occupancy as a residence by a single Family.

1.1.64. Restrictions. Restrictions means this Declaration, the Articles, Bylaws, Design Guidelines, Rules and Regulations, Supplemental Declarations and Notices of Addition.

1.1.65. Restricted Open Space Areas. Restricted Open Space Areas means the property encumbered by the Amended and Restated Declaration of Covenants, Conditions and Restrictions (Conservation and Open Space Restrictions) Recorded on November 27, 2000, as Instrument No. 469765 in the Official Records (the “Open Space CC&Rs”). The Restricted Open Space Areas may, at Declarant’s sole election, be made subject to a management agreement with a Third Party Manager.

1.1.66. Rules and Regulations. Rules and Regulations means the current rules and regulations for the Properties.

1.1.67. **Special Assessment.** Special Assessment means a charge against an Owner and his Lot representing a reasonable fine or penalty, including reimbursement costs, as provided for in this Declaration.

1.1.68. **Supplemental Declaration.** Supplemental Declaration means any declaration of covenants, conditions and restrictions and reservation of easements or similar document supplementing this Declaration for all or a portion of the Properties, or which makes any minor modifications or corrections to this Declaration or any previously recorded Supplemental Declaration, which document shall be Recorded in the Official Records of the County. A Supplemental Declaration may modify this Declaration as it applies to the property encumbered by the Supplemental Declaration.

1.1.69. **Telecommunication Facilities.** Telecommunication Facilities means equipment, cables, conduits, inner ducts, vaults, connecting hardware, wires, poles, transmitters, towers, antennae and other facilities and structures and Improvements necessary for, or used in, the provision of Telecommunication Services. Declarant may expand this definition in any Supplemental Declaration.

1.1.70. **Telecommunications Services.** Telecommunications Services means services for cable television, communications, telecommunications, high-speed data, telephony and all related vertical services, intranet, internet, information transfer, transmission, video and other similar services. Declarant may expand this definition in any Supplemental Declaration.

1.1.71. **Third Party Manager.** Third Party Manager means any management entity (other than the Association or the Manager) designated by Declarant to manage all or any part of the Fuel Modification Areas, or designated to manage all or any part of the Restricted Open Space Areas. All or any portion of Declarant's rights and obligations under any management agreement between Declarant and any Third Party Manager may, in Declarant's sole discretion, be assigned to the Association, including all maintenance obligations and the obligation to pay all applicable fees, endowments and other costs thereunder.

1.1.72. **VA.** VA means the Department of Veterans Affairs of the United States of America and its successors.

1.1.73. **Valley Wide.** Valley Wide means the Valley Wide Park and Recreational District and its successors.

1.2. INTERPRETATION.

1.2.1. **General Rules.** This Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for subdividing, maintaining, improving and selling the Properties. As used in this Declaration, the singular includes the plural and the plural the singular. The masculine, feminine and neuter each includes the other, unless the context dictates otherwise.

1.2.2. **Articles, Sections and Exhibits.** The Article and Section headings are inserted for convenience only and may not be considered in resolving questions of interpretation or construction. Unless otherwise indicated, any references in this Declaration to articles, sections or exhibits are to Articles, Sections and Exhibits of this Declaration. *Exhibit A* attached to this Declaration is incorporated in this Declaration by this reference.

1.2.3. **Severability.** The provisions of this Declaration are independent and severable. A determination of invalidity or partial invalidity or unenforceability of any one provision of this Declaration by a court of competent jurisdiction does not affect the validity or enforceability of any other provisions of this Declaration.

1.2.4. **Statutory References.** All references made in this Declaration to statutes are to those statutes as currently in effect or to subsequently enacted replacement statutes.

ARTICLE II RESIDENCE AND USE RESTRICTIONS

The Properties shall be held, used and enjoyed subject to the following restrictions and the exemptions of Declarant and Guest Builders set forth in this Declaration and any Supplemental Declarations.

2.1. **SINGLE FAMILY RESIDENCE.** Each Lot shall be used as a dwelling for a single Family and for no other purpose. Subject to any Owner occupancy requirements separately imposed by Declarant or a Guest Builder, an Owner may rent his Lot to a single Family provided that the Lot is rented pursuant to a lease or rental agreement which (a) is in writing, (b) is subject to this Declaration, (c) has a term of at least thirty (30) days, and (d) does not provide for any services normally associated with a hotel or motel or bed and breakfast inn. Any failure by a tenant of a Lot to comply with the Restrictions constitutes a default under the lease or rental agreement. A Residence may not be used for a "community care facility" as defined in California Health and Safety Code Section 1502(a)(i). Additionally, home child care facilities shall be permitted only to the extent they are operated according to applicable law, including zoning requirements and licensing regulations.

2.2. **BUSINESS OR COMMERCIAL ACTIVITY.** Except as permitted in this Section, no part of the Properties may be used for any business, commercial (including auctions or similar events), manufacturing, mercantile, storage, vending or other nonresidential purposes, including any activity for which the provider is compensated or receives any consideration, regardless of whether the activity is engaged in full or part-time, generates or does not generate a profit, or requires or does not require a license. This Section does not preclude any of the above-described activities provided that: (1) the activity complies with the law; (2) the patrons or clientele of the activity do not visit the Lot or park automobiles or other vehicles in the Properties; (3) the existence or operation of the activity is not apparent or detectable by sight, sound or smell from outside the boundaries of the Lot; (4) the activity does not increase the Association's liability or casualty insurance obligation or premium; and (5) the activity is consistent with the residential character of the Properties and this Declaration.

2.3. **NUISANCES.** Noxious or offensive activities are prohibited on the Properties and on any public street abutting or visible from the Properties. All horns, whistles, bells or other sound devices, except security devices used exclusively to protect the security of a Residence or a vehicle and its contents, are also prohibited. Noisy, unsightly, unusually painted vehicles or vehicles that emit smoke, large power equipment and large power tools (excluding lawn mowers and other equipment used in connection with ordinary landscape maintenance), off-road motor vehicles and objects which create or emit loud noises or noxious odors may not be located or used in the Properties or on any public street abutting the Properties, or exposed to the view of other Owners without the Board's prior written approval. Any item which would unreasonably interfere with television or radio reception to a Lot may be located or used in the Properties or on any public street abutting the Properties only with the prior written approval of the Board. The Board is entitled to determine if any noise, odor, or activity producing such noise or odor constitutes a nuisance. No Owner may permit or cause anything to be done or kept on the Properties or on any public street abutting the Properties which may increase the rate of insurance in the Properties, or result in cancellation of such insurance. Each Owner shall comply with all laws regarding occupancy and use of a Lot. No plants or seeds infected with noxious insects or plant diseases may be brought upon, grown or maintained on the Properties.

2.4. **SIGNS.** Subject to Civil Code Sections 712 and 713 and California Government Code Section 434.5, no sign, advertising device or other display of any kind shall be displayed in the Properties or on any public street in or abutting the Properties except for the following signs:

2.4.1. entry monuments, community identification signs, and traffic or parking control signs maintained by the Association;

2.4.2. for each Lot, one (1) nameplate or similar Owner name or address identification sign which complies with Design Review Committee rules;

2.4.3. for each Lot, one (1) sign advising of the existence of security services protecting a Lot which complies with Design Review Committee rules;

2.4.4. for each Lot, one (1) sign advertising the Lot for sale or lease that complies with the following requirements:

(a) the sign is not larger than such signs commonly utilized for similar purposes by a real estate company licensed to conduct business in the State of California.

(1) the sign is attached to the ground by a conventional, single vertical stake which does not exceed normal size standards for signs commonly utilized for similar purposes by a real estate company licensed to conduct business in the State of California;

(2) the top of the sign is not taller than such signs commonly utilized for similar purposes by a real estate company licensed to conduct business in the State of California.

2.4.5. other signs or displays authorized by the Design Review Committee.

2.5. **PARKING AND VEHICULAR RESTRICTIONS.**

2.5.1. **Authorized Vehicles.** The following vehicles are "Authorized Vehicles": standard passenger vehicles including automobiles, passenger vans designed to accommodate ten (10) or fewer people, motorcycles, and pick-up trucks having a manufacturer's rating or payload capacity of one (1) ton or less. Authorized Vehicles may be parked in any portion of the Properties intended for parking of motorized vehicles; however, no Owner may park a vehicle in a manner which the Association determines either restricts the passage of pedestrians or vehicles over driveways, streets or sidewalks in the Properties or extends beyond the limits of the space where the vehicle is parked. The Association has the power to identify additional vehicles as Authorized Vehicles in the Rules and Regulations and to adapt this restriction to other types of vehicles.

2.5.2. **Restricted Vehicles.** The following vehicles are "Restricted Vehicles:" recreational vehicles, motor homes, travel trailers, camper vans, boats and the like. Restricted Vehicles may be parked wholly within an Owner's garage or in a sideyard or rearyard, screened from view in a manner approved by the Design Review Committee. Owners who park Restricted Vehicles in a yard shall also be required to install a concrete pad created for the purpose of accommodating the weight of the Restricted Vehicle.

2.5.3. **Prohibited Vehicles.** The following vehicles are "Prohibited Vehicles": (a) commercial-type vehicles (e.g., stakebed trucks, tank trucks, dump trucks, step vans, concrete trucks and limousines), (b) buses or vans designed to accommodate more than ten (10) people, (c) vehicles having more than two (2) axles, (d) trailers, (e) inoperable vehicles or parts of vehicles, (f) aircraft, (g) any vehicle or vehicular equipment deemed a nuisance by the Board, and (h) any other vehicle not classified as an Authorized Vehicle or Restricted Vehicle. Prohibited Vehicles may not be parked, stored or kept on any public or private street in, adjacent to or visible from the Properties or any other Common Area parking area except for brief periods for loading, unloading, making deliveries or emergency repairs. If a vehicle qualifies as both (a) an Authorized Vehicle or a Restricted Vehicle, and (b) a Prohibited Vehicle, then the vehicle is presumed to be a Prohibited Vehicle, unless the vehicle is expressly classified as an Authorized Vehicle or Restricted Vehicle in writing by the Board. Prohibited Vehicles may only be parked in an Owner's fully enclosed garage with the door closed so long as their presence on the Properties does not otherwise violate this Declaration.

2.5.4. **General Restrictions.** Subject to the restriction on Prohibited Vehicles, all vehicles owned or operated by or under the control of an Owner or a resident of an Owner's Lot and kept in the Properties must be parked in the assigned garage of that Owner to the extent of the space available; provided that each Owner shall ensure that any such garage accommodates at least the number of Authorized Vehicles for which it was originally constructed by Declarant or Guest Builder.

2.5.5. **Parking Regulations.** The Board may establish additional regulations regarding any parking areas not assigned to individual Lots, including designating "parking," "guest parking," and "no parking" areas. The Board may take all actions necessary to enforce all parking

and vehicle use regulations for the Properties including removing violating vehicles from the Properties pursuant to California Vehicle Code Section 22658.2 or other applicable law. If the Board fails to enforce any of the parking or vehicle use regulations, the County may enforce such regulations.

2.6. ANIMAL REGULATIONS. The only animals that may be raised, bred or kept in any Residence are dogs, cats, fish, birds, reptiles and other usual household pets, provided that they are not kept, bred or raised for commercial purposes, in unreasonable quantities or sizes or in violation of the Restrictions. As used in the Declaration, "unreasonable quantities" ordinarily means more than two (2) pets per Residence; however, that limitation does not apply to fish and the Association may determine that a reasonable number in any instance may be more or less. The Association may limit the size of pets and may prohibit maintenance of any animal which, in the Association's opinion, constitutes a nuisance to any other Owner. Animals must be either kept in an enclosed area or on a leash held by a person capable of controlling the animal. Each Person is liable for any unreasonable noise and for damage to person or property caused by any animals brought or kept on the Properties by such Person. Each Person shall clean up after such Person's animals. Any Person who keeps any animal in the Properties shall indemnify, defend and hold harmless the Association, its officers, directors, contractors, agents and employees from any claim brought by any Person against the Association, its officers, directors, agents and employees for personal injuries or property damage caused by such animal.

2.7. ANTENNA RESTRICTIONS. No Person may install on the exterior of any Residence or in a yard any antenna or over-the-air receiving device except for an "Authorized Antenna." An Authorized Antenna is (i) an antenna designed to receive direct broadcast satellite service, including direct-to-home satellite service, that is one meter or less in diameter, or (ii) an antenna designed to receive video programming service, including multichannel multipoint distribution service, instructional television fixed service, and local multipoint distribution service, and is one meter or less in diameter or diagonal measurement, (iii) an antenna designed to receive television broadcast signals, or (iv) an antenna used to receive and transmit fixed wireless signals. An Authorized Antenna may be mounted on a mast to reach the height needed to receive an acceptable quality signal, subject to local governmental agency permitting requirements for safety purposes.

2.7.1. Restrictions on Installation. The Committee may adopt reasonable restrictions on installation and use of an Authorized Antenna as part of its Design Guidelines in order to minimize visibility of the Authorized Antenna from other Lots. Such restrictions may designate one or more preferred installation locations, or require camouflage such as paint (subject to the antenna manufacturer's recommendations) or screening vegetation or other Improvements. However, no restriction imposed by the Committee may (i) unreasonably delay or prevent the installation, maintenance or use of an Authorized Antenna, (ii) unreasonably increase the cost of installation, maintenance or use of an Authorized Antenna, or (iii) preclude acceptable quality reception.

2.7.2. Prohibitions on Installation. The Committee may prohibit the installation of an Authorized Antenna in a particular location if, in the Committee's opinion, the installation,

location or maintenance of such Authorized Antenna unreasonably affects the safety of the Owners or any other Person, or for any other safety-related reason established by the Committee. The Committee may also prohibit an Owner from installing an Authorized Antenna on any real property which such Owner does not own or is not entitled to exclusively use or control under the Restrictions. The Committee also has the power to prohibit or restrict the installation of any antenna or other over-the-air receiving device that does not meet the definition of an Authorized Antenna above.

2.7.3. Review after Installation. The Committee may review the location and installation of an Authorized Antenna after it is installed. After its review, the Committee may require that the Authorized Antenna be moved to a preferred location (if one has been designated) for safety reasons or to comply with reasonable restrictions subject to this Section 2.7 and applicable law.

2.7.4. Restatement of Applicable Law. This Section is intended to be a restatement of the authority granted to the Committee under the law. All amendments, modifications, restatements and interpretations of the law applicable to the installation, use or maintenance of an antenna or other over-the-air receiving device shall be interpreted to amend, modify, restate or interpret this Section.

2.8. TRASH. No trash may be kept or permitted upon the Properties or on any public street abutting or visible from the Properties except in containers located in appropriate areas screened from view. Such containers may be exposed to the view of neighboring Lots only when set out at a location approved by the Design Review Committee for a reasonable period of time (not to exceed twenty-four (24) hours before and after scheduled trash collection hours, except where a longer time period is authorized by the Design Review Committee).

2.9. INSTALLATIONS.

2.9.1. Mechanics Liens. If any Owner fails to remove any mechanic's lien against any portion of the Properties other than just that Owner's Lot, the Board may discharge the lien and charge the Owner a Special Assessment for such cost of discharge.

2.9.2. Outside Installations. Unless installed in the original construction of a Residence or approved by the Design Review Committee, the following outside installations are prohibited: (a) clotheslines, balcony, patio or deck covers, wiring, air conditioning equipment, water softeners, other machines and other similar Improvements, (b) Improvements protruding through the walls or roofs of buildings, and (c) other exterior additions or alterations to any Residence. Outdoor patio or lounge furniture, plants and barbecue equipment may be kept in accordance with the Rules and Regulations. No outdoor fires are permitted, except in barbecue grills, fire pits, fireplaces and similar structures designed and used in such a manner that they do not create a fire hazard. No clothing, fabrics or unsightly articles may be hung, dried or aired on or over any Lot.

2.9.3. Window Coverings. Temporary window coverings ("Temporary Window Coverings") in a design and color that does not conflict with the surrounding Improvements (but

excluding aluminum foil, newspaper, plywood or any other material that contrasts with the exterior of the Residence) are permitted for a maximum period of ninety (90) days after the Lot is conveyed by Declarant to an Owner. Except as specifically provided in the proceeding sentence, no Temporary Window Coverings shall be used to cover any door or window of any Residence. All window coverings (including Temporary Window Coverings) shall be of a neutral color harmonious with and not in conflict with the color scheme of the exterior wall surface of the Residence. The Design Review Committee has the right to specify in the Design Guidelines the types and colors of window coverings that may be exposed in the Properties.

2.9.4. Indemnity. Neither the Declarant, Guest Builders, nor the Association are liable or responsible for any damage that results from Improvements constructed or modified by an Owner. Improvements should not be installed, constructed or modified without the assistance of qualified consultants.

2.9.5. Limitations on Applicability. Except for subsection 2.9.4., this Section 2.9 does not apply to Improvements installed (a) by Declarant, (b) by Guest Builders, (c) by the Association, or (d) with the approval of the Design Review Committee.

2.10. FURTHER SUBDIVISION. Except as otherwise provided in this Declaration, no Owner may physically or legally subdivide his Lot in any manner, including dividing such Owner's Lot into time-share estates or time-share uses. This provision does not limit the right of an Owner to (a) rent or lease his entire Lot by a written lease or rental agreement subject to this Declaration; (b) sell such Owner's Lot; (c) transfer or sell any Lot to more than one Person to be held by them as tenants-in-common, joint tenants, tenants by the entirety or as community property; or (d) adjust the Lot lines between his Lot and any adjoining Lot.

2.11. DRAINAGE. No one may interfere with or alter the established drainage pattern over any Lot unless an adequate alternative provision is made for proper drainage with the Board's prior written approval. For the purpose of this Section, "established" drainage means, for any Lot, the drainage which (a) exists at the time of the first Close of Escrow of such Lot, or (b) is shown in any plan approved by the Board. Established drainage includes drainage from the Lots onto the Common Area and from the Common Area onto the Lots.

Each Owner, by accepting a grant deed to his Lot, acknowledges and understands that in connection with the development of the Properties, Declarant or Guest Builders may have installed one or more "sub-drains" beneath the surface of such Owner's Lot. The sub-drains, grade and all appurtenant improvements constructed or installed by Declarant or Guest Builders ("Drainage Improvements"), if any, provide for subterranean drainage of water from and to various portions of the Properties. Drainage Improvements, if any, shall not be modified, removed or blocked without first making alternative drainage arrangements approved by the Board.

2.12. WATER SUPPLY SYSTEM. No individual water supply, sewage disposal or self-generating water softener system is permitted on any Lot unless such system is designed, located, constructed and equipped in accordance with the requirements of the Design Review Committee and all applicable governmental authorities (including any applicable water or sanitation district).

2.13. VIEW OBSTRUCTIONS. Each Owner acknowledges that (a) there are no protected views in the Properties, and no Lot is assured the existence or unobstructed continuation of any particular view, and (b) any construction, landscaping or other installation of Improvements by Declarant, Guest Builders or other Owners may impair the view from any Lot, and each Owner consents to such view impairment.

2.14. SOLAR ENERGY SYSTEMS. Each Owner may install a solar energy system on his Lot which serves his Residence so long as (a) the design and location of the solar energy system meet the requirements of all applicable governmental ordinances, and (b) the design and location is approved in writing by the Design Review Committee.

2.15. INSTALLATION OF YARD LANDSCAPING. In each case where a Declarant does not install landscaping for the Owner, that Owner shall complete the installation of landscaping on the portions of that Owner's Lot that are visible from any portion of the Common Area or any street, in accordance with a plan approved by the Design Review Committee no later than one hundred eighty (180) days after the Close of Escrow or such earlier date as may be necessary to minimize discharges as described in Section 2.21 below. Each Owner shall obtain all permits necessary and shall comply with all requirements of the County.

2.16. RIGHTS OF DISABLED. Subject to Article VIII, each Owner may modify his Residence and the route over the Lot leading to the front door of his Residence, at his sole expense to facilitate access to his Residence by persons who are blind, visually impaired, deaf or physically disabled, or to alter conditions which could be hazardous to such persons, in accordance with California Civil Code Section 1360 or any other applicable law.

2.17. TEMPORARY BUILDINGS. No outbuilding, tent, shack, shed or other temporary building or Improvement may be placed upon any portion of the Properties either temporarily or permanently, without the written consent of the Design Review Committee. No garage, carport, trailer, camper, motor home, recreation vehicle or other vehicle may be used as a residence in the Properties, either temporarily or permanently.

2.18. COMMON AREA. The Common Area may not be altered without the Board's written consent.

2.19. DRILLING. No oil drilling, oil, gas or mineral development operations, oil refining, geothermal exploration or development, quarrying or mining operations of any kind may be conducted on the Properties, nor are oil wells, tanks, tunnels or mineral excavations or shafts permitted upon the surface of any Lot or within five hundred feet (500') below the surface of the Properties. No derrick or other structure designed for use in boring for water, oil, geothermal heat or natural gas may be erected, maintained or permitted on any Lot.

2.20. POLLUTANT CONTROL. The Association and the Owners shall comply with any NPDES requirements and the BMP guidelines (as defined below), as they apply to the Properties.

2.20.1. Compliance with Requirements Regarding Project Storm Water Pollution. Each Owner acknowledges that water that enters a storm drain flows directly to natural sources of water, including waterways, creeks, drains, rivers, lakes and that erosion has an impact on the environment. Unlike the water in the sewer system in the Residence which is being purchased by Owner, which flows to wastewater treatment plants, water that enters a storm drain flows directly, without any treatment, to waterways, creeks, streams, rivers, lakes and/or oceans. Accordingly, the National Pollutant Discharge Elimination System ("NPDES"), the Federal Clean Water Act, and the policies and ordinances of the County prohibit discharging anything other than natural rain water into storm drainage systems, including gutters and streets which drain into storm drains. Toxic chemicals or hydrocarbon compounds such as gasoline, motor oil, antifreeze, solvents, paints, paint thinners, wood preservatives, fertilizers, lawn clippings, yard waste, detergents, pet waste, paints and other such materials and pollutants shall not be discharged into any street, public or private, gutters, or into storm drains or storm water conveyance systems. Owner further acknowledges that the disposal of such pollutants and materials into a storm drain system may result in significant penalties and fines and that such Owner may be responsible for any activities by Owner's contractors (e.g., painters, landscapers, etc.) who dispose of such pollutants from Owner's Lot into a storm drain system. Use and disposal of pesticides, fungicides, herbicides, insecticides, fertilizers, and other such chemicals shall meet all federal, state, and County requirements and requirements of any other governmental agencies having jurisdiction over the Properties. All Owners within the Properties are required to comply with such restrictions. Owners are encouraged to consult with the County, other governmental authorities, concerning the proper disposal of any toxic or hazardous materials. Dumping any such materials into sewers, gutters or storm drains is against the law.

2.20.2. Storm Water Pollution Prevention Best Management Practices. To comply with the requirements of the County in connection with the storm water pollution prevention best management practices ("BMPs"), each Owner shall, at all times, maintain all Improvements located on a Lot in a clean, safe and attractive condition, free and clear of any and all debris. All landscaping shall be maintained by an Owner in a manner that will prevent soil erosion and minimize sediment transport. To the extent that the Declarant or a Guest Builder has installed any erosion protection devices (e.g., sandbags) an Owner shall not remove such devices unless and until all landscaping has been installed on a Lot, and has been sufficiently grown so as to prevent soil erosion and transport of any sediment. All trash receptacles on an Owner's Lot shall be covered and closed at all times. The Association and the Owners shall comply with all applicable BMPs and perform all maintenance that may be imposed by any water quality management plan that may affect the Properties. The costs of the Association's portion of such maintenance, if any, shall be treated as Common Expenses.

2.20.3. Guidelines. The Association and each Owner shall ensure that all landscape irrigation on the Properties is implemented in accordance with the BMPs, including without limitation (a) the provision for water sensors and programmable irrigation times allowing for short cycles, (b) the use of planting material similar to that installed by Declarant or Guest Builder, as applicable, and with similar water requirements in order to reduce excess irrigation runoff and to promote surface filtration, and (c) the maintenance of all permanent slopes with required landscaping with native or other drought tolerant planting materials.

2.21. POST TENSION CONCRETE SLABS. Concrete slabs for Residences constructed in the Properties may be reinforced with a grid of steel cable installed in the concrete slab and then tightened to create extremely high tension. This type of slab is commonly known as a "Post Tension Slab." Cutting into a Post Tension Slab for any reason (e.g., to install a floor safe, to remodel plumbing, etc.) is very hazardous and may result in serious damage to the Residence, personal injury, or both. Each Owner shall determine if his Residence has been constructed with a Post Tension Slab and, if so agrees: (a) Owner shall not cut into or otherwise tamper with the Post Tension Slab; (b) Owner will not permit or allow any other Person to cut into or tamper with the Post Tension Slab so long as Owner owns any interest in the Residence; (c) Owner shall disclose the existence of the Post Tension Slab to any Person who rents, leases or purchases the Residence from Owner; and (d) Owner shall indemnify and hold Declarant, Guest Builders, and their agents, free and harmless from and against any and all claims, damages, losses or other liability (including attorneys' fees and costs of court) arising from any breach of this covenant by Owner.

2.22. COMPLIANCE WITH AGREEMENTS AND LAWS. The Association and each Owner shall comply at all times with the Open Space CC&Rs, Parkway Maintenance Agreement, Fuel Modification Area regulations or any other applicable local, state or federal law, ordinance, rule or regulation.

2.23. RESTRICTED ENTRY. No Owner may enter or construct or install any Improvements in the Open Space Areas or Fuel Modification Areas at any time. The Association and its authorized representatives may enter the Open Space Areas and Fuel Modification Areas solely to perform the Association's obligations concerning such areas under this Declaration or a Supplemental Declaration or written agreement.

ARTICLE III DISCLOSURES

Because much of the information included in this Article (a) was obtained from other sources (e.g., governmental and other public agencies and public records) and (b) is subject to change for reasons beyond the control of Declarant, Guest Builders and the Association, Declarant, the Guest Builders and the Association do not guarantee the accuracy or completeness of any of the information in this Article. Further, neither Declarant, Guest Builders nor the Association undertakes to advise any Person of any changes affecting the disclosures in this Article. All Persons should make specific inquiries or investigations to determine the current status of the following information.

3.1. NO REPRESENTATIONS OR WARRANTIES. No representations or warranties, express or implied, have been given by Declarant, Guest Builders, the Association or their agents regarding the Properties, the Properties' physical condition, zoning, compliance with law, fitness for intended use, subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation of the Properties as a planned unit development, except as provided in this Declaration, filed by Declarant or a Guest Builder with the DRE, or provided by Declarant or a Guest Builder to the first Owner of a Lot.

3.2. **GRADING.** The grading and drainage design in the Properties should not be altered in the course of installing Improvements in a manner that will redirect surface water flow toward the Residences or onto adjacent property or that will trap water so that it ponds or floods. Drainage devices such as concrete ditches, area drain lines and gutters should be carefully designed and installed with professional assistance and then maintained in an unobstructed condition. Drainage devices installed by Declarant or Guest Builders and designed to serve more than one Lot or the Common Area, should not be altered in any manner that will redirect or obstruct the drainage through these drainage devices. Grading and drainage modifications are subject to law, approval by the Board, and the terms of any Recorded drainage easements.

3.3. **OFFERS OF DEDICATION.** Portions of the Common Area maybe subject to irrevocable offers of dedication as shown on the Recorded tract maps for the Properties. The County may accept the offer of dedication and assume responsibility for maintaining these portions of the Common Area at any time.

3.4. **PROPERTY LINES.** The boundaries of each Lot in the Properties and the Common Area owned by the Association are delineated on subdivision (tract) maps, lot line adjustments or parcel maps that are public records and are available at the County Recorder's office.

3.5. **CHANGE IN PLANS.** Declarant and each Guest Builder has the right to develop the Annexable Territory with Improvements that may be different in design, size, character, style and price from those in Phase 1 or any other Phase.

3.6. **ADDITIONAL PROVISIONS.** There may be provisions of various laws, including the Davis-Stirling Common Interest Development Act codified at Sections 1350 et seq. of the California Civil Code and the federal Fair Housing Act codified at Title 42 United States Code, Section 3601 et seq., which may supplement or override the Restrictions. Declarant makes no representations or warranties regarding the future enforceability of any portion of the Restrictions.

3.7. **MASTER COMMUNITY.**

3.7.1. **Overview.** The Properties and the Annexable Territory are currently planned to be developed as a master-planned community (sometimes collectively herein called the "Master Community") primarily composed of residential, biological preserve, open space and recreational land uses. If developed as planned, the Master Community will include the following major features:

(a) **Residential.** The Master Community includes approximately 391.4 acres of land to be improved with a maximum of 1,998 Residences.

(b) **Parks.** A Park with approximately 30.5 acres of passive uses and 3.2 acres of active uses is proposed to be located to the north of the proposed extension of Bond Road and to the west of the proposed realignment of Pourroy Road. A second Park with approximately 6.2 acres of active uses is proposed to be located adjacent to an approximately 20.6 acre middle school site to the east of the planned Pourroy Road alignment. A third Park will consist of

approximately 7.2 acres. These Parks will be available for use by both residents of the Master Community and the surrounding area. The active uses in the Parks may include tot lots, sand volleyball courts, tennis courts, basketball courts, play fields, sports fields, bleachers, picnic areas, shade structures, parking and restroom facilities, trails, scenic view structures, and adventure play areas. Some of the fields and other active use facilities may be lighted at night. Owners in the vicinity of the Parks may experience glare from the lights at night, noise and increased traffic from use of the Parks, and noise, odors and inconvenience from Park maintenance activities including fertilizing, mowing and other landscaping maintenance activities.

(c) **Open Space Areas.** In addition to the Parks, the Master Community will include various Open Space Areas including biological preserves, natural undisturbed Open Space Areas, and portions of Tualota Creek and its tributaries that traverse the northerly portion of the Master Community. A majority of the Master Community site drains into Tualota Creek.

The biological preserves are adjacent to a large vernal pool, locally known as "Skunk Hollow." The pool is considered to be one of the last remaining vernal pools in Southern California, and is home to rare species of fairy shrimp and Orcutt grass. Water levels in Skunk Hollow fluctuate from year to year depending on the area's rainfall. When water within the depression reaches its highest level, the pool drains into Tualota Creek. Skunk Hollow is not, however, a part of the Open Space Areas or any other part of the Master Community, and the Association has no maintenance or management responsibilities concerning Skunk Hollow.

(d) **Reservoirs.** A 6.8 million gallon water tank is located on the large knoll in the Open Space Area of the Master Community adjacent to its western boundary. This water tank is operated by the Eastern Municipal Water District. There is room adjacent to the existing water tank for a planned future tank that would be constructed if and when there is need for additional water storage in the future.

A 7.0 million gallon water reservoir is also planned to be constructed on the southwest corner of the Master Community as a part of the Rancho California Water District's Water Facilities Master Plan.

(e) **Schools.** Two schools are planned to be built in the Master Community. A middle school will be built on an approximately 20.6 acre site adjacent to Pourroy Road and one of the active Parks. The other school will be built on an approximately 9.9 acre site adjacent to Borel Road and the large passive Park.

(f) **No Assurances.** There is no assurance that any of the foregoing features of the Master Community which are still to be developed will be developed as planned.

3.8. **SKINNER RESERVOIR.** The Master Community is located downstream of Skinner Reservoir which is part of the domestic water distribution system for Southern California. The dam that creates the reservoir area is an earthen embankment and as a part of the construction of dams within California, an inundation map has been prepared in the event of failure of the dam. This map indicates that within approximately five (5) minutes, the floodway from this type of

catastrophic dam failure would reach the project limits. Additionally, seiche hazards exist originating from Lake Skinner Reservoir and it is likely that any seiche flood water would fall within the limits of inundation from a dam failure. The seismic stability evaluation of the dam, dikes and headworks embankments performed by Harding-Lawson Associates in December 1978 concluded that they will perform satisfactorily during maximum credible earthquake; however, neither Declarant nor any Guest Builder has made any independent investigation concerning the accuracy of this opinion.

3.9. **FRENCH VALLEY AIRPORT.** The Master Community is located approximately one-half mile west of the French Valley Airport and is subject to an avigation easement and overflights by aircraft using the airport. The avigation easement imposes building and other restrictions related to the safe operations of the airport. Accordingly, Owners may experience inconvenience, annoyance or discomfort arising from the overflights and the noise of such operations.

3.10. **UNEXPLODED MILITARY ORDINANCE (UXO) INVESTIGATION AND REMOVAL.** UXB International, Inc. (UXB) was retained by Pacific Bay in December of 1999 to conduct a geophysical investigation and potential removal of unexploded military ordinance (UXO) on an approximately 160 acre parcel located within the boundaries of the Master Community. This parcel was used by the US Navy as a practice dive-bombing and strafing range (the "Practice Range") toward the end of World War Two. As a result of the geophysical investigation of the entire Practice Range, 2,603 metal objects were identified. 119 of these objects were some type of military ordinance related scrap, including 68 fully expended Mk 23 practice bombs and the rest from Mk 15 water filled bomb cases or other scrap deemed to be of military origin. No unexploded ordinance of any type was found anywhere on the Practice Range. All of the recovered scrap was certified to be inert by UXB personnel in the field, picked up by a certified and insured professional ordinance related scrap disposal company and transported to that company's Arizona facility. In UXB's opinion, there is no UXO present on the Practice Ranch; however, neither Declarant nor any Guest Builder has made any independent investigation concerning the accuracy of this opinion.

3.11. **MOUNT PALOMAR ORDINANCE.** All proposed construction and outdoor lighting systems in the Properties must comply with the lighting restrictions set forth in County Ordinance No. 655, which are intended to reduce the effects of night lighting on the Mount Palomar Observatory.

ARTICLE IV ASSOCIATION

4.1. **GENERAL DUTIES AND POWERS.** The Association has the duties and powers listed in the Restrictions and also has the general and implied powers of a nonprofit public benefit corporation, generally to do all things that a corporation organized under the laws of the State of California may lawfully do which are necessary or proper in operating for the general welfare of the Owners, subject only to the limits on the exercise of such powers listed in the Articles, Bylaws, this Declaration and any Supplemental Declarations, including, the exemptions of Declarant and Guest Builders herein, and in the Supplemental Declarations. Unless otherwise indicated in the Articles,

Bylaws, this Declaration, or the Supplemental Declarations, the powers of the Association may be exercised by the Board.

4.2. **SPECIFIC DUTIES AND POWERS.** In addition to its general powers and duties, the Association has the following specific powers and duties.

4.2.1. **Common Area.** The power and duty to accept, maintain and manage the Common Area, except any portion thereof to be maintained by a Third Party Manager, subject to compliance with all agreements, conditions and requirements affecting all or any portion of the Common Area. The Association may install or remove capital Improvements on the Common Area. The Association may reconstruct, replace or refinish any Improvement on the Common Area.

4.2.2. **Utilities.** The power and duty to obtain all commonly metered water, gas and electric services, and the power but not the duty to provide for trash collection.

4.2.3. **Granting Rights.** The power to grant exclusive or nonexclusive easements, licenses, rights of way or fee interests in the Common Area owned by the Association, to the extent any such grant is reasonably required (a) for Improvements to serve the Properties, (b) for purposes of conformity with the as-built location of Improvements installed or authorized by Declarant, Guest Builders or the Association, or (c) in connection with any lawful lot line adjustment, or (d) for other purposes consistent with the intended use of the Properties. The Association may deannex any portion of the Properties from the encumbrance of the Declaration in connection with any lawful lot line adjustment.

4.2.4. **Employ Personnel.** The power to employ Persons necessary for the effective operation of the Association and maintenance of the Common Area, including legal, management and accounting services.

4.2.5. **Insurance.** The power and duty to keep insurance as required by this Declaration.

4.2.6. **Sewers and Storm Drains.** The power and duty to maintain any private sewer systems, private storm drains, or private drainage facilities in the Common Area owned by the Association.

4.2.7. **Rules and Regulations.** The power but not the duty to establish, amend, restate, delete, and create exceptions to, the Rules and Regulations.

(a) **Effective Date.** All changes to the Rules and Regulations will become effective fifteen (15) days after they are either (i) posted in a conspicuous place in the Properties or (ii) sent to the Owners via first-class mail or by any system or technology designed to record and communicate messages.

(b) ***Areas of Regulation.*** The Rules and Regulations may concern use of the Properties, signs, parking restrictions, minimum standards of property maintenance, and any other matter under the Association's jurisdiction; however, the Rules and Regulations are enforceable only to the extent they are consistent with the Articles, Bylaws, Declaration, any Supplemental Declarations and any Notices of Addition.

(c) ***Limits on Regulation.*** The Rules and Regulations must apply uniformly to all Owners. The rights of Owners to display religious, holiday and political signs, symbols and decorations inside their Residences of the kinds normally displayed in single family residential neighborhoods shall not be abridged, except the Association may adopt time, place and manner restrictions for such displays if they are visible outside of the Residence. No modification to the Rules and Regulations may require an Owner to dispose of personal property that was on a Lot before adoption of such modification if such personal property was in compliance with all rules previously in force; however, this exemption shall apply only during the period of such Owner's ownership of the Lot and shall not apply to (i) subsequent Owners who take title to the Lot after the modification is adopted, or (ii) clarifications to the Rules and Regulations.

4.2.8. ***Borrowings.*** The power, but not the duty, to borrow money for purposes authorized by the Articles, Bylaws, Declaration, any Supplemental Declarations or any Notice of Addition, and to use the Common Area owned by the Association as security for the borrowing.

4.2.9. ***Contracts.*** The power but not the duty to enter into contracts. This includes contracts with Owners or other Persons to provide services or to maintain Improvements in the Properties and elsewhere which the Association is not otherwise required to provide or maintain by this Declaration.

4.2.10. ***Indemnification.***

(a) ***For Association Representatives.*** To the fullest extent authorized by law, the Association has the power and duty to indemnify Board members, Association officers, Design Review Committee members, and all other Association committee members for all damages, pay all expenses incurred, and satisfy any judgment or fine levied as a result of any action or threatened action brought because of performance of an act or omission within what such person reasonably believed to be the scope of the Person's Association duties ("Official Act"). Board members, Association officers, Design Review Committee members, and all other Association committee members are deemed to be agents of the Association when they are performing Official Acts for purposes of obtaining indemnification from the Association pursuant to this Section. The entitlement to indemnification under this Declaration inures to the benefit of the estate, executor, administrator and heirs of any person entitled to such indemnification.

(b) ***For Other Agents of the Association.*** To the fullest extent authorized by law, the Association has the power, but not the duty, to indemnify any other Person acting as an agent of the Association for damages incurred, pay expenses incurred, and satisfy any judgment or fine levied as a result of any action or threatened action because of an Official Act.

(c) ***Provided by Contract.*** The Association also has the power, but not the duty, to contract with any Person to provide indemnification in addition to any indemnification authorized by law on such terms and subject to such conditions as the Association may impose.

4.2.11. Annexing Additional Property. The power but not the duty to annex, pursuant to Article XVI, additional property to the Properties encumbered by this Declaration.

4.2.12. Vehicle Restrictions. The power granted in Section 2.5 to identify Authorized Vehicles or Prohibited Vehicles and to modify the restrictions on vehicles.

4.2.13. License and Use Agreements. The Association may enter into agreements with Declarant, and with Declarant's prior written consent, Guest Builders or the owner of any neighboring property, to share facilities located on the Common Area. Any such agreement shall be in form and content acceptable to Declarant, any involved Guest Builder or owner of neighboring property, and the Board of Directors (without the approval of Owners), and shall include provisions regarding use and sharing of maintenance costs for the shared facility.

4.2.14. Telecommunications Contract. Notwithstanding anything in the Restrictions to the contrary, the Board shall have the power to enter into, accept an assignment of, or otherwise cause the Association to comply with the terms and provisions of a Telecommunications Services contract ("Telecommunications Contract") with a Telecommunications Service provider ("Service Provider"), pursuant to which the Service Provider shall serve as a provider of Telecommunications Services to each Lot in the Properties. The Board shall only enter into, accept an assignment of, or otherwise cause the Association to comply with the terms and provisions of the Telecommunications Contract if the Board determines, in its sole discretion, that such action is in the best interests of the Association. Although not exhaustive, the Board shall consider the following factors in making such a determination:

(a) ***Initial Term and Extensions.*** The initial term of the Telecommunications Contract should not exceed five (5) years, and, if the Telecommunications Contract provides for automatic extensions, the length of each such extension should also not exceed five (5) years.

(b) ***Termination.*** The Telecommunications Contract should provide that: (i) at least six (6) months prior to the expiration of either the initial or any extended term of the Telecommunications Contract, the entire Membership of the Association (excluding the voting power of Declarant and any Guest Builder) may, without cause, by a sixty percent (60%) vote, prevent any automatic extension that the Telecommunications Contract may provide for, and thereby allow the Telecommunications Contract to expire, and (ii) at any time, the Board may terminate the Telecommunications Contract if, in the sole discretion of the Board, the Service Provider fails to provide quality, state-of-the-art Telecommunications Services.

(c) ***Fees.*** Whether the monthly fee charged to the Association by the Service Provider for the provision of the Telecommunications Services to all of the Lots represents

a discount from the comparable retail fees charged by the Service Provider in the general geographic area in which the Properties are located, and, if so, the amount of such discount.

(d) ***Installation of Telecommunications Facilities.*** Whether the Service Provider is solely responsible for the installation and maintenance, and the cost thereof, of all of the Telecommunications Facilities necessary to provide Telecommunications Services to each Lot.

(e) ***Removal of Telecommunications Facilities.*** Whether the Service Provider has the right to remove the Telecommunications Facilities upon expiration or termination of the Telecommunications Contract.

(f) ***County Requirements.*** The Telecommunications Contract shall comply with any applicable County requirements, including any applicable County telecommunications ordinance.

4.2.15. Third Party Manager Agreements. The power and duty to perform all obligations and exercise all rights assigned by Declarant to the Association under any agreement with any Third Party Manager.

4.2.16. Prohibited Functions.

(a) ***Off-site Nuisances.*** The Association shall not use any Association funds or resources to abate any annoyance or nuisance emanating from outside the physical boundaries of the Properties.

(b) ***Political Activities.*** The Association shall not (i) participate in federal, state or local political activities or activities intended to influence a governmental action affecting areas outside the boundaries of the Properties (e.g., endorsement or support of (A) legislative or administrative actions by a local governmental authority, (B) candidates for elected or appointed office, or (C) ballot proposals, or (ii) conduct, sponsor, participate in or expend funds or resources toward any activity, campaign or event, including any social or political campaign, event or activity which is not directly and exclusively pertaining to the authorized activities of the Association. There shall be no amendment of this Section so long as Declarant or any Guest Builder owns the Properties or Annexable Territory.

4.2.17. Designated Service Area. For so long as Declarant has a veto right under Section 4.6 of this Declaration, neither the Association nor any Owner nor any Guest Builder, without the prior written consent of Declarant, shall create a Designated Service Area or other such device to apportion any Common Expenses of the Association against fewer than all of the Owners and their Lots.

4.2.18. Transfer of CSA Obligations by County. Notwithstanding any provision in this Declaration to the contrary, the Association shall be obligated to unconditionally accept from the County, upon the County's demand, fee title to all or any part of the CSA. Such acceptance shall occur through any two (2) officers of the Association who shall be authorized to execute any

documents required to facilitate transfer of the CSA to the Association. The decision to require the Association to unconditionally accept title to the CSA shall be at the sole discretion of the County. If the CSA or any part thereof is conveyed to the Association, the Association thereafter shall own such CSA, shall manage and continuously maintain such CSA at the Association's sole expense, and shall not sell or transfer such CSA, or any part thereof, absent the prior written consent of the Planning Director of the County. The Association's cost of maintaining such CSA shall be included in the Common Expenses. This Section may not be terminated or amended without the prior written consent of the County Planning Director.

4.3. STANDARD OF CARE, NONLIABILITY.

4.3.1. Scope of Powers and Standard of Care.

(a) *General Scope of Powers.* Rights and powers conferred on the Board, the Design Review Committee or other committees or representatives of the Association by the Restrictions are not duties, obligations or disabilities charged upon those Persons unless the rights and powers are explicitly identified as including duties or obligations in the Restrictions or law. Unless a duty to act is imposed on the Board, the Design Review Committee or other committees or representatives of the Association by the Restrictions or law, the Board, the Design Review Committee and the committees have the right to decide to act or not act. Any decision to not act is not a waiver of the right to act in the future.

(b) *Business Affairs.* This Section 4.3.1(b) applies to Board member actions in connection with management, personnel, maintenance and operations, insurance, contracts and finances, and Design Review Committee member actions. Each Board member shall perform his duties in good faith, in a manner the Board member believes to be in the best interests of the Association and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances. When performing his duties, a Board member is entitled to rely on information, opinions, reports or statements, including financial data prepared or presented by:

(1) One or more officers or employees of the Association whom the Board member believes to be reliable and competent in the matters presented;

(2) Counsel, independent accountants or other Persons as to matters which the Board member believes to be within such Person's professional or expert competence; or

(3) A committee of the Board upon which the Board member does not serve, as to matters under its designated authority, which committee the Board member believes to merit confidence, so long as the Board member acts in good faith, after reasonable inquiry when the need is indicated by the circumstances and without knowledge that would cause such reliance to be unwarranted.

This Section 4.3.1(b) is intended to be a restatement of the business judgement rule established in applicable law. All modifications and interpretations of the business judgment rule applicable to the Association shall be interpreted to modify and interpret this Section 4.3.1(b).

(c) **Association Governance.** This Section 4.3 applies to Board actions and Design Review Committee decisions in connection with interpretation and enforcement of the Restrictions, architectural and landscaping control, regulation of uses within the Properties, rule making and oversight of committees. Actions taken or decisions made in connection with these matters shall be reasonable, fair and nondiscriminatory.

4.3.2. **Nonliability.**

(a) **General Rule.** No Person is liable to any other Person (other than the Association or a party claiming in the name of the Association) for injuries or damage resulting from such Person's Official Acts, except to the extent that such injuries or damage result from the Person's willful or malicious misconduct. No Person is liable to the Association (or to any party claiming in the name of the Association) for injuries or damage resulting from such Person's Official Acts, except to the extent that such injuries or damage result from such Person's negligence or willful or malicious misconduct. The Association is not liable for damage to property in the Properties unless caused by the negligence of the Association, the Board, the Association's officers, the Manager or the Manager's staff.

(b) **Nonliability of Volunteer Board Members and Officers.** A volunteer Board member or volunteer Association officer shall not be personally liable to any Person who suffers injury, including bodily injury, emotional distress, wrongful death or property damage or loss as a result of the tortious act or omission of the volunteer officer or Board member if all applicable conditions specified in Section 1365.7 of the California Civil Code are met.

4.4. **MEMBERSHIP.**

4.4.1. **Generally.** Every Owner shall automatically acquire a Membership in the Association and retain the Membership until such Owner's Lot ownership ceases, at which time such Owner's Membership shall automatically cease. Ownership of a Lot is the sole qualification for Membership. Memberships are not assignable except to the Person to whom title to the Lot is transferred, and every Membership is appurtenant to and may not be separated from the fee ownership of such Lot.

4.4.2. **Transfer.** The Membership of any Owner may not be transferred, pledged or alienated in any way, except on the transfer or encumbrance of such Owner's Lot, and then only to the transferee or Mortgagee of such Lot. A prohibited transfer is void and will not be reflected in the records of the Association. A Class A Member who has sold his Lot to a contract purchaser under an agreement to purchase may delegate the Owner's Membership rights to the contract purchaser. The delegation must be in writing and must be delivered to the Board before the contract purchaser may vote. The contract seller shall remain liable for all Assessments attributable to the contract seller's Lot which accrue before title to the Lot is transferred. If the contract seller fails or refuses to delegate his Membership rights to the contract purchaser before the Close of Escrow, the

Association may record the transfer to the contract purchaser in the Association's records. However, no contract purchaser will be entitled to vote at Association meetings during the term of a purchase contract without satisfactory evidence of the delegation of the contract seller's Membership rights to the contract purchaser. The Association may levy a reasonable transfer fee against a new Owner and such Owner's Lot (which fee shall be paid through escrow or added to the Annual Assessment chargeable to such new Owner) to reimburse the Association for the administrative cost of transferring the Membership to the new Owner on the Association's records. Such fee may not exceed the Association's actual cost involved in changing its records.

4.4.3. Classes of Voting Membership. Members of the Association are Declarant, for so long as Declarant is entitled to cast a Class C vote pursuant to this Section, and each Owner (including Declarant and any Guest Builder) of one (1) or more Lots in the Properties. Membership in the Association is subject to the Restrictions. Except for the Class C Membership, all Memberships in the Association held by Owners are appurtenant to the Lot owned by each Owner.

(a) *Class A and Class B.* Association classes of voting Membership are as follows:

(1) Class A. Class A Members are all Owners except Declarant and the Guest Builders for so long as there exists a Class B Membership. Class A Members are entitled to one (1) vote for each Lot subject to Assessment that is owned by such Class A Members. Declarant and the Guest Builders shall become a Class A Member upon conversion of the Class B Membership as provided below. When more than one (1) Person owns any Lot, all such Persons are Members. The vote for such Lot shall be exercised in accordance with Section 4.5.

(2) *Class B.* The Class B Members are Declarant and the Guest Builders. Class B Members are entitled to three (3) votes for each Lot subject to assessment that is owned by Declarant or a Guest Builder which is subject to Assessment. The Class B Membership shall be converted to Class A Membership upon the first to occur of the following events:

(i) The fifth (5th) anniversary of the first Close of Escrow in the Phase for which a Public Report was most recently issued.

(ii) The twenty-fifth (25th) anniversary of the first Close of Escrow for the sale of a Lot in the Properties.

(b) *Class C.* The Class C Member shall be Declarant (whether or not Declarant is a Member). The Class C Membership shall not be considered a part of the voting power of the Association. The Class C Member is entitled to select a majority of the members of the Board of Directors until the Class C Termination Date. The "Class C Termination Date" shall be the earlier to occur of the following events:

(1) The Close of Escrow for the sale of One Thousand Four Hundred Ninety-Nine (1,499) Lots (75% of 1998) in the overall development composed of the Properties and Annexable Territory.

(2) The fifth (5th) anniversary of the first Close of Escrow in the Phase for which a Public Report was most recently issued.

(3) The twenty-fifth (25th) anniversary of the first Close of Escrow for the sale of a Lot in the Properties.

4.5. VOTING RIGHTS.

4.5.1. General Rule. All voting rights are subject to the Restrictions.

4.5.2. Co-Ownership. When more than one (1) Person holds an ownership interest in any Lot ("co-owner"), all such co-owners are Members and may attend any Association meetings, but only one (1) such co-owner shall be entitled to exercise the vote to which the Lot is entitled. Co-owners owning the majority interests in a Lot may designate in writing one (1) of their number to vote. The votes for each Lot shall be exercised, if at all, as a unit. Where no voting co-owner is designated or if the designation has been revoked, the vote for the Lot shall be exercised as the co-owners owning the majority interests in the Lot agree. Unless the Board receives a written objection in advance from a co-owner, it shall be conclusively presumed that the voting co-owner is acting with his co-owners' consent. No vote may be cast for any Lot if the co-owners present in Person or by proxy owning the majority interests in such Lot fail to agree to said vote or other action. The nonvoting co-owner or co-owners are jointly and severally responsible for all of the obligations imposed upon the jointly owned Lot and are entitled to all other benefits of Membership. All agreements and determinations lawfully made by the Association in accordance with the voting percentages established in the Articles, Bylaws and Declaration are binding on all Owners and their successors-in-interest.

4.6. DECLARANT'S VETO RIGHT. Declarant shall have a veto right with respect to specified actions of the Association as provided in Section 4.7. Such veto right shall terminate on the date on which Declarant no longer owns any portion of the Annexable Territory or has a Mortgage or a Mortgage interest in any portion of the Annexable Territory.

4.7. ACTIONS SUBJECT TO DECLARANT'S VETO. The following actions are subject to veto by Declarant:

4.7.1. Change in Design. Any change in the general, overall architectural and landscaping design of the Properties;

4.7.2. Design Review Committee. The adoption of and any change to the Design Guidelines, all decisions of the Design Review Committee, any decisions made on appeal to the Board, and any decision to terminate the Design Review Committee.

4.7.3. Rules and Regulations. The adoption of any change to the Rules and Regulations.

4.7.4. **Designated Service Areas.** The creation of or modification of a Designated Service Area;

4.7.5. **Annexations.** The annexation to the Properties of real property pursuant to Section 16.1; and

4.7.6. **Amendments.** All proposed amendments to Article I, Article II, Article III, Article VIII, Article XI, Article XII, Article XV or Article XVI.

4.8. REPAIR AND MAINTENANCE.

4.8.1. By Owners.

(a) ***The Lot.*** Each Owner shall maintain, at such Owner's sole expense, all of his Lot (except for any Common Area located thereon, unless otherwise specified in a Supplemental Declaration) and the Residence and all other Improvements on the Owner's Lot in a clean, sanitary and attractive condition. Subject to section 4.8.2, such maintenance shall include the entire portion of any Property Wall on the Lot. Each Owner shall pay when due all charges for any utility service separately metered to that Owner's Lot.

(b) ***Party Walls.*** Each wall or fence placed approximately on the dividing line between the Lots (the "Party Wall") is a party (division) wall, and, to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions apply thereto.

(1) **Sharing of Repair and Maintenance.** The cost of reasonable repair and maintenance of a Party Wall shall be shared equally by the Owners of the Lots connected by such Party Wall. However, each Owner shall be solely responsible for repainting the side of any Party Wall facing his Lot.

(2) **Destruction by Fire or Other Casualty.** Unless covered by a blanket insurance policy maintained by the Association under Section 8.1, if a Party Wall is destroyed or damaged by fire or other casualty, any Owner whose Lot is affected thereby may restore it, and the Owner of the other Lot affected thereby shall contribute equally to the cost of restoration thereof without prejudice, however, to the right of any such Owner to call for a larger contribution from the other under any rule of law regarding liability for negligent or willful acts or omissions.

(3) **Weatherproofing.** Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes a Party Wall to deteriorate or require repair or replacement shall bear the whole cost of furnishing the necessary protection against such elements or the necessary repairs or replacement.

(4) **Right to Contribution Runs With Land.** The right of any Owner to contribution from any other Owner under this Article is appurtenant to the land and passes to such Owner's successors in title.

(c) **Public Easement Area.** Unless otherwise designated in a Supplemental Declaration, each Owner shall, at that Owner's expense, maintain the landscaping within the public right of way at the front of the Owner's Lot (if any), including all trees thereon (the "Public Easement Area"). No Owner may remove any landscaping from the Public Easement Area without the County's prior written approval. At the County's request, each Owner shall sign an encroachment permit in connection with that Owner's Public Easement Area maintenance obligations. No Owner may be released from that Owner's Public Easement Area maintenance obligations without the County's prior written consent.

(d) **Potential Tree Damage.** Each Owner acknowledges that trees have been or will be planted within the Properties as a part of the overall landscaping plan. Each Owner agrees, by accepting a deed to a Lot, to release, indemnify and hold harmless Declarant, each Guest Builder and each of the Declarant Parties (as defined in Section 12.4) from and against any loss, cost (including attorneys' fees) or liability arising out of or incurred in connection with damage to any trees in the Properties unless caused by the gross negligence or wilful misconduct of the indemnified party.

(e) **Other Responsibilities.** Unless otherwise designated in a Supplemental Declaration, each Owner shall maintain his individual mailbox and share the costs of other structure holding the group of mailboxes including the Owner's mailbox. Each whose Lot utilizes a sewer system lateral is responsible for the maintenance and repair of that portion of the lateral which exclusively serves such Owner's Lot.

4.8.2. By Association.

(a) **Commencement of Obligations.** The Association's obligation to maintain the Common Area in a Phase composed solely of Common Area shall commence on conveyance of such Common Area to the Association. The Association's obligation to maintain the Common Area in any Phase that includes Lots commences on the date Annual Assessments commence on Lots in the Phase. Until the Association is responsible for maintaining the Common Area, Declarant shall maintain the Common Area.

(b) **Maintenance Standards.** Subject to Articles IX and X, the Association shall maintain the Common Area and Improvements thereon in a clean, sanitary and attractive condition reasonably consistent with the level of maintenance reflected in the most current Budget. The Board shall determine, in its sole discretion, the level and frequency of maintenance provided by the Association.

(c) **Maintenance Items.** Except for any part of the Common Area to be maintained by a Third Party Manager, or as otherwise specified in a Supplemental Declaration, the Association shall maintain all Common Area. The Association is responsible for (1) performing all fuel modification work in the Fuel Modification Areas (except for any such work to be performed by a Third Party Manager), and (2) maintaining the surfaces of the Property Walls that face areas in public view. If the Association removes or damages any landscaping Improvements on an Owner's

Lot while maintaining the Property Walls, the Association is responsible for replacing the landscaping Improvements.

(d) ***Maintenance Costs.*** The Association's cost of maintaining the Common Area, including the costs incurred under any maintenance agreement with any Third Party Manager, shall be included in the Common Expenses.

4.8.3. Inspection of the Properties. Three (3) years after the Class C Termination Date, and at least once every three (3) years thereafter, the Association shall have the Common Area and all Improvements thereon inspected to (a) determine whether the Common Area is being maintained adequately in accordance with the standards of maintenance established in Section 4.8.2, (b) identify the condition of the Common Area and any Improvements thereon, including the existence of any hazards or defects, and the need for performing additional maintenance, refurbishment, replacement, or repair, and (c) recommend preventive actions to reduce potential future maintenance costs. The Association may employ such experts and consultants it deems necessary to perform the inspection and make the report required by this Section. The Board shall keep Declarant fully informed of the Board's activities under this Section 4.8.2. The Association shall prepare a report of the results of the inspection. The report shall be furnished to Owners and Declarant within the time set for furnishing the Budget to the Owners. That report must include at least the following:

(a) a description of the condition of the Common Area, including a list of items inspected, and the status of maintenance of all such items;

(b) a description of all maintenance planned for the ensuing Fiscal Year and included in the Budget;

(c) if any maintenance is to be deferred, the reason for such deferral;

(d) a summary of all reports of inspections performed by any expert or consultant employed by the Association to perform inspections;

(e) a report of the status of compliance with the maintenance needs identified in the inspection report for preceding years; and

(f) such other matters as the Board considers appropriate.

4.8.4. Damage by Owners. Each Owner is liable to the Association for any damage to the Properties caused by the act of an Owner, his Family, guests, tenants or invitees, or any other persons deriving their right to use the Properties from the Owner, or such Owner's Family, tenants and guests. The Association may, after Notice and Hearing, (a) determine whether any claim shall be made on the Association's insurance, and (b) levy a Special Assessment equal to the cost of repairing the damage or any deductible paid and the increase, if any, in insurance premiums directly attributable to the damage caused by such Owner or the person for whom such Owner may be liable as described in this Declaration. If a Lot is jointly owned, the liability of its Owners is joint and

several, except to the extent that the Association has previously contracted in writing with the joint owners to the contrary. After Notice and Hearing, the cost of correcting the damage shall be a Special Assessment against such Owner.

4.8.5. Common Area Damage or Neglect. If any maintenance, repair or replacement of the Common Area is necessitated in the sole judgment of the Board as a result of the willful or negligent act or neglect of an Owner, his family, guests, or invitees, such maintenance, repairs or replacements shall be performed at the expense of such Owner, after Notice and Hearing, and a Special Assessment therefor shall be levied against such Owner; provided, however, that the liability of an Owner for such damage to the Common Area shall not be absolute, but shall only be that for which the Owner is legally responsible under California law. The foregoing shall include, without limitation, any settlement damage to wall footings adjoining a Lot or Common Area caused by any excavation, construction or excess irrigation occurring on such adjacent Lot or Common Area.

4.8.6. Construction Defect Repairs. If the Association receives any insurance proceeds or other funds as a result of the resolution of a Dispute concerning latent or patent construction defects, the Association shall, after paying any required attorneys' fees and court costs, use the balance of such funds to repair the damaged or defective Improvements as soon as reasonably possible. If in the Board's judgment, such proceeds are inadequate to complete the repairs, the Board shall levy a Repair Assessment in the amount reasonably necessary to satisfy such deficiency.

ARTICLE V DESIGN REVIEW COMMITTEE

5.1. MEMBERS OF COMMITTEE. The Design Review Committee shall be composed of three (3) members; however, the Board may, at any time, increase the number of members to five (5) members. The initial members of the Design Review Committee shall be representatives of Declarant until one (1) year after the original issuance of the Final Subdivision Public Report ("Public Report") for the Properties ("First Anniversary"). After the First Anniversary the Board may appoint and remove one (1) member of the Design Review Committee, and Declarant may, but shall not be obligated to, appoint and remove a majority of the members of the Design Review Committee and fill any vacancy of such majority, until the earlier to occur of (a) Close of Escrow for the sale of ninety percent (90%) Lots in the Properties and the Annexable Territory, or (b) the fifth anniversary of the original issuance of the Public Report for the Properties, after which the Board may appoint and remove all members of the Design Review Committee. Design Review Committee members appointed by the Board must be Owners or agents of Owners, but Design Review Committee members appointed by Declarant need not be Owners or agent of Owners. Board members may serve as Design Review Committee members.

5.2. POWERS AND DUTIES.

5.2.1. General Powers and Duties. The Design Review Committee shall consider and act upon all plans and specifications submitted for its approval, including inspection of work in

progress to assure conformance with plans approved by the Design Review Committee, and shall perform such other duties as the Board assigns to it.

5.2.2. Issuance of Standards. The Design Review Committee shall issue and update its Design Guidelines. The Design Guidelines may require a fee to accompany each application for approval, and may identify additional factors which the Design Review Committee will consider in reviewing submissions. The Design Review Committee may provide that fees it imposes be uniform, or that fees be determined in any other reasonable manner. The Design Review Committee may require such detail in plans and specifications submitted for its review as it deems proper, including landscape plans, floor plans, site plans, drainage plans, elevation drawings and descriptions or samples of exterior materials and colors.

5.2.3. Retaining Consultants. The Design Review Committee has the power but not the duty to retain Persons to advise its members in connection with decisions; however, the Design Review Committee does not have the power to delegate its decision-making power. If the Design Review Committee does retain a consultant in connection with a decision pertaining to a particular Owner, that Owner shall reimburse the Design Review Committee for the consultant's charges promptly after written request from the Design Review Committee.

5.3. REVIEW OF PLANS AND SPECIFICATIONS.

5.3.1. Improvements Requiring Approval. No construction, installation or alteration of an Improvement, including landscaping, in the Properties may be commenced until the plans and specifications therefor showing the nature, kind, shape, height, width, color, materials and location thereof have been submitted to and approved in writing by the Design Review Committee; however, any Improvement may be repainted without Design Review Committee approval so long as the Improvement is repainted the identical color which it was last painted. The provisions of this Article apply to construction, installation and alteration of solar energy systems, as defined in Section 801.5 of the California Civil Code, subject to the provisions of California Civil Code Section 714, the County Building Code, zoning regulations, and other laws.

5.3.2. Application Procedure. Until changed by the Board, the address for the submission of such plans and specifications is the Association's principal office. The form of application used by the Design Review Committee may include spaces allowing 'Adjacent Owners' to sign or initial the application confirming that they have been notified of the application. The Design Review Committee may establish a definition of "Adjacent Owners" in its design guidelines. Applications will be complete and may be approved or disapproved by the Design Review Committee even if all of the Adjacent Owners do not initial the applications so long as the Owner submitting plans and specifications ("Applicant") certifies that the Applicant has asked the Adjacent Owners to sign the applications.

The Design Review Committee may reject the application for approval if it determines that the Applicant's plans and specifications are incomplete. The Design Review Committee shall transmit its decision and the reasons therefor to the Applicant at the address listed in the application for approval within forty-five (45) days after the Design Review Committee receives all required

materials. Any application submitted shall be deemed approved unless the Design Review Committee transmits written disapproval or a request for additional information or materials to the Applicant within forty-five (45) days after the date the Design Review Committee receives all required materials.

5.3.3. Standard for Approval. The Design Review Committee shall approve plans and specifications submitted for its approval only if it determines that (a) installation, construction or alterations of the Improvements in the locations indicated will not be detrimental to the appearance of the surrounding area of the Properties as a whole, (b) the appearance of any structure affected by the proposed Improvements will be in harmony with the surrounding structures, (c) installation, construction or alteration of the proposed Improvements will not detract from the beauty, wholesomeness and attractiveness of the Properties or the enjoyment thereof by the Owners, (d) maintenance of the proposed Improvements will not become a burden on the Association, and (e) the proposed Improvements are consistent with this Declaration.

The Design Review Committee may condition its approval of proposals or plans and specifications for any Improvement on any of the following: (i) the Applicant's furnishing the Association with security acceptable to the Association against any mechanic's lien or other encumbrance which may be Recorded against the Properties as a result of such work, (ii) such changes therein as the Design Review Committee considers appropriate, (iii) the Applicant's agreement to grant easements made necessary by the Improvement to the Association, (iv) the Applicant's agreement to install water, gas, electrical or other utility meters to measure any increased consumption, (v) the Applicant's agreement to reimburse the Association for the cost of such maintenance, (vi) the Applicant's agreement to complete the proposed work within a stated period of time, or (vii) satisfaction of any requirement of the Community Architectural Committee. The Design Review Committee may require submission of additional plans and specifications or other information before approving or disapproving material submitted. The Applicant shall meet any review or permit requirements of the County before making any construction, installation or alterations permitted under this Declaration.

The Design Review Committee's approval or disapproval shall be based solely on the considerations listed in this Article. The Design Review Committee is not responsible for reviewing, nor may its approval of any plan or design be deemed approval of, any plan or design from the standpoint of structural safety or conformance with building or other codes. The Design Review Committee shall take into consideration the aesthetic aspects of the architectural designs, scaling and massing, placement of buildings, landscaping, color schemes, exterior finishes and similar features. The Design Review Committee may also consider the impact of views from other Residences or Lots and reasonable privacy right claims as factors in reviewing, approving or disapproving any proposed landscaping, construction or other Improvement. However, neither the Declarant, Guest Builders, nor the Association warrants that any views in the Properties are protected. No Residence or Lot is guaranteed the existence or unobstructed continuation of any particular view.

5.4. MEETINGS AND ACTIONS OF THE DESIGN REVIEW COMMITTEE. The Design Review Committee shall meet as necessary to perform its duties. So long as a majority of the members of the Design Review Committee are Declarant representatives, the Design Review

Committee may, by resolution adopted in writing by a majority of its members, designate a Design Review Committee Representative (who may, but need not, be one of its members) to take any action or perform any duties for and on behalf of the Design Review Committee except the granting of variances. In the absence of such designation, the vote or written consent of a majority of the Design Review Committee constitutes an act of the Design Review Committee. All approvals issued by the Design Review Committee must be in writing. Verbal approvals issued by the Design Review Committee, any individual Design Review Committee member or any other representative of the Association are not valid, are not binding on the Association and may not be relied on by any Person.

5.5. NO WAIVER OF FUTURE APPROVALS. The Design Review Committee's approval of any proposals or plans and specifications or drawings for any work done or proposed or in connection with any matter requiring the Design Review Committee's approval does not waive the right to withhold approval of any similar proposals, plans and specifications, drawings or matters subsequently or additionally submitted for approval.

5.6. COMPENSATION OF MEMBERS. The Design Review Committee's members shall receive no compensation for services rendered, other than reimbursement for expenses incurred by them in performing their duties.

5.7. INSPECTION OF WORK. The Design Review Committee or its duly authorized representative may inspect any work for which approval of plans is required under this Article ("Work"). The right to inspect includes the right to require any Owner to take such action as may be necessary to remedy any noncompliance with the Design Review Committee-approved plans for the Work or with the requirements of this Declaration ("Noncompliance").

5.7.1. Time Limit. The Design Review Committee's right to inspect the Work and notify the responsible Owner of any Noncompliance shall terminate sixty (60) days after the Work is completed and the Design Review Committee receives written notice on a form provided by the Committee from the Owner that the Work is completed. If the Design Review Committee fails to send a notice of Noncompliance to an Owner before this time limit expires, the Work shall be deemed to comply with the approved plans. Upon the request of an Owner who has completed Work in accordance with Design Review Committee Approved Plans, the Design Review Committee shall execute and deliver to such Owner a certificate stating that such Work has been completed in accordance with such Plans.

5.7.2. Remedy. If an Owner fails to remedy any Noncompliance within sixty (60) days after the date of notice from the Design Review Committee, the Design Review Committee may take action as authorized in Section 12.1.1.

5.8. VARIANCES. The Design Review Committee may authorize variances from compliance with any of the architectural provisions of this Declaration or the Design Guidelines including restrictions on height, size, floor area or placement of structures, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental consideration require. Such variances must be evidenced in writing, must be signed by a majority of the Design Review Committee, and become effective on Recordation. After Declarant's right to

appoint a majority of the Design Review Committee's members expires, the Board must approve any variance recommended by the Design Review Committee before any such variance becomes effective. If variances are granted, no violation of the covenants, conditions and restrictions in this Declaration shall be deemed to have occurred with respect to the matter for which the variances were granted. The granting of a variance does not waive any of the provisions of this Declaration for any purpose except as to the particular property and particular provision of this Declaration covered by the variance, nor does it affect the Owner's obligation to comply with all laws affecting the use of his Lot.

5.9. **PRE-APPROVALS.** The Design Review Committee may authorize pre-approval of specified types of construction activities if, in the exercise of the Design Review Committee's judgment, such preapproval is appropriate in carrying out the purposes of the Restrictions.

5.10. **APPEALS.** So long as Declarant has the right to appoint and remove a majority of the Design Review Committee's members, the Design Review Committee's decisions are final. There is no appeal to the Board. After Declarant's right to appoint a majority of the Design Review Committee's members expires, the Board may adopt policies and procedures for appeal of Design Review Committee decisions by the Applicant (but no other parties) to the Board. The Board has no obligation to adopt or implement any appeal procedures. In the absence of Board adoption of appeal procedures, all Design Review Committee decisions are final.

ARTICLE VI PROPERTY EASEMENTS AND RIGHTS

6.1. EASEMENTS.

6.1.1. **Utility Easements.** Declarant and each Guest Builder, with the prior written consent of Declarant, reserve easements to install and maintain utilities in the Common Area for the benefit of the Owners and their Lots. Declarant and each Guest Builder, with the prior written consent of Declarant, reserve the right to grant additional easements and rights-of-way throughout the Properties to utility companies and public agencies as it deems necessary for the proper development of the Properties. Declarant's and each Guest Builder's right shall expire on the later of (a) the Close of Escrow for the sale of the last Lot in the Properties and the Annexable Territory, or (b) the termination of any warranty or guaranty obligation of Declarant and the Guest Builder.

6.1.2. **Encroachments.** Declarant reserves, for its benefit, for the benefit of the Guest Builders, and for the benefit of Owners and their Lots, a reciprocal easement appurtenant to each Lot over the other Lots and the Common Area to accommodate (a) any existing encroachment of any wall, fence or any other Improvement installed by Declarant or approved by the Design Review Committee, and (b) shifting, movement or natural settling of the Residences or other Improvements.

6.1.3. **Owners' Easements in Common Area.** Declarant and each Guest Builder reserve, for the benefit of every Owner, his Family, tenants and guests, nonexclusive easements for (a) use and enjoyment of the Common Area owned by the Association, and (b) vehicular and

pedestrian access over the Common Area owned by the Association. This easement is appurtenant to and passes with title to every Lot in the Properties.

6.1.4. Easement Over Common Area on Lots. Declarant and each Guest Builder reserve, for the benefit of the Association, an easement over the portion of the Common Area, if any, on the Lots, if any, for maintenance and over the remainder of the Lots for access, ingress and egress necessary to perform such maintenance. No Owner may interfere with the Association's exercise of its rights under the easement reserved in this Section.

6.1.5. Property Wall Easements. Declarant and each Guest Builder reserve for the benefit of the Association the following easements:

(a) An easement over all Lots abutting the Common Area owned by the Association, consisting of a three (3) foot wide strip of land (or wider if and to the extent required by the location of the Property Wall on the Lot) along the entire length of the property line separating such Lot from the Common Area owned by the Association, for the purpose of accommodating the footings and other structural components of any Property Wall located on or immediately adjacent to such property line, including any encroachments thereof onto the Lot; and

(b) An easement for access over such Lots reasonably necessary for maintaining the Property Walls and related Improvements.

6.1.6. Access Easements. Declarant reserves for its benefit, the benefit of the Guest Builders, and for the benefit of the Owners of Residences that may be constructed in the Annexable Territory (whether annexed to the Properties or not) easements for pedestrian and vehicular access over all streets and driveways located within the Common Area.

6.1.7. Drainage Easements. Declarant reserves for the benefit of the Properties, the Owners, the Guest Builders, and the Association, reciprocal nonexclusive easements for drainage of water over, across and on the Properties.

6.1.8. Easement for Declarant and Guest Builders Over Common Area. Declarant reserves for the benefit of Declarant and all Guest Builders, for the benefit of their respective agents, subcontractors, invitees, employees and contractors, and for the benefit of their respective successors and assigns, a nonexclusive easement appurtenant to the Annexable Territory, in, to, and over the Common Area for access, ingress, egress, use and enjoyment, in order to show the Properties or Annexable Territory to Guest Builders and other prospective purchasers, or to develop, construct, market, sell, lease or otherwise dispose of the Properties or the Annexable Territory. Such easement shall continue until the last Close of Escrow in the Properties and the Annexable Territory has occurred; provided, however, that such use shall not unreasonably interfere with the rights of enjoyment of the other Owners as provided herein.

6.1.9. Telecommunications Easements. Declarant reserves blanket easements (collectively, "Telecommunications Easements") over the Properties for access and for purposes of constructing, installing, locating, altering, operating, maintaining, inspecting, upgrading, removing

and enhancing Telecommunications Facilities (collectively, "Telecommunications Purposes"). Such easements are freely transferable by Declarant to any other Person and their successors and assigns. No one, except for Declarant, and Declarant's transferees may use the Properties for Telecommunications Purposes. All Telecommunications Facilities shall be owned, leased or licensed by Declarant, as determined by Declarant, in its sole discretion and business judgment. Transfer of the Properties does not imply transfer of any Telecommunications Easements or Telecommunications Facilities. The holders of the Telecommunications Easements may not exercise the rights reserved hereunder in any manner which will unreasonably interfere with the reasonable use and enjoyment of the Properties by any Owners. If the exercise of any Telecommunications Easements results in damage to the Properties, the holder of the Telecommunications Easements shall, within a reasonable period of time, repair such damage. If Declarant has not conveyed Telecommunications Easements in a Phase to another person before the last Close of Escrow in the Properties and the Annexable Territory, then Declarant grants Telecommunications Easements to the Association effective as of the last Close of Escrow in the Properties and the Annexable Territory.

6.1.10. Easements for Public Service Use. In addition to the foregoing easements, Declarant reserves easements over the Properties for public services of the Local Government Agencies, including but not limited to, the right of law enforcement and fire protection personnel to enter upon any part of the Properties for the purpose of carrying out its official duties.

6.2. RIGHT TO GRANT EASEMENTS. Declarant reserves easements over the Common Area owned by the Association for the exclusive use by an Owner or Owners of contiguous property as a yard, recreational, gardening, and landscaping area. Any such easement may be conveyed by the Declarant before the last Close of Escrow for sale of a Lot in the Properties and the Annexable Territory. Such conveyance must be approved by the Board, which approval must not be unreasonably withheld. The purpose of the easement, the portion of the Common Area affected, the Lot to which the easement is appurtenant, and any restrictions on use of the easement area shall be identified in a Recorded grant of easement.

6.3. EASEMENT RELOCATION. Future Common Area comprising easements over real property the fee title to which has not been made subject to the Declaration ("Interim Easement Area") may be relocated, modified or terminated by Declarant or any Guest Builder (with Declarant's written consent) to accommodate the final plan of development for the future Phase in which the Interim Easement Area is located. Such relocation, modification or termination shall be set forth in the Recorded instrument annexing fee title to the Interim Easement Area to the Declaration. Notwithstanding the foregoing, no such relocation, modification or termination shall prevent access to any Lot.

6.4. DELEGATION OF USE. Any Owner may delegate his right to use the Common Area owned by the Association in writing to his tenants, contract purchasers or subtenants who reside in such Owner's Residence, subject to regulation by the Board.

6.5. RIGHT OF ENTRY.

6.5.1. **Association.** The Association has the right to enter the Lots to inspect the Properties, and may take whatever corrective action it determines to be necessary or proper. Entry onto any Lot under this Subsection may be made after at least three (3) days' advance written notice to the Owner of the Lot except for emergency situations, which shall not require notice. Nothing in this Subsection limits the right of an Owner to exclusive occupancy and control over the portion of his Lot that is not Common Area. Any damage to a Residence or Lot caused by entry under this Subsection shall be repaired by the Association.

6.5.2. **Declarant and Guest Builders.** The Declarant and each Guest Builder have the right to enter the Lots (a) to complete and repair any improvements or landscaping located thereon as determined necessary or proper by the Declarant or the Guest Builder, as applicable, in their sole discretion, (b) to comply with requirements for the recordation of the Map or the grading or construction of the Properties, and (c) to comply with requirements of applicable governmental agencies. Declarant or Guest Builder, as applicable, shall provide reasonable notice to Owner prior to entry into the Owner's Lot under this Subsection except for emergency situations, which shall not require notice. Nothing in this Subsection limits the right of an Owner to exclusive occupancy and control over the portion of his Lot that is not Common Area. Any damage to a Residence or Lot caused by entry under this Subsection shall be repaired by the Declarant or Guest Builder, as applicable, to substantially the same condition as existed before the damage to the extent practicable. Unless otherwise specified in the initial grant deed of a Lot from Declarant or Guest Builder, as applicable, this right of entry shall automatically expire ten (10) years after the Recordation of that grant deed.

6.5.3. **Owners.** Each Owner shall permit other Owners, and their representatives, to enter his Lot to perform installations, alterations or repairs to the mechanical or electrical services to a Lot if (a) requests for entry are made in advance; (b) entry is made at a time reasonably convenient to the Owner whose Lot is to be entered; and (c) the entered Lot is left in substantially the same condition as existed immediately preceding such entry. Any damage to the Lot caused by entry under this Subsection shall be repaired by the entering Owner to substantially the same condition as existed before the damage to the extent practicable.

ARTICLE VII ASSOCIATION MAINTENANCE FUNDS AND ASSESSMENTS

7.1. **PERSONAL OBLIGATION TO PAY ASSESSMENTS.** Each Owner covenants to pay to the Association Assessments established and collected pursuant to this Declaration. The Association shall not levy or collect any Assessment that exceeds the amount necessary for the purpose for which it is levied. All Assessments, together with late payment penalties, interest, costs, and reasonable attorney fees for the collection thereof, are a charge and a continuing lien on the Lot against which such Assessment is made. Each Assessment, together with late payment penalties, interest, costs and reasonable attorney fees, is also the personal obligation of the Person who was the Owner of the Lot when the Assessment accrued. The personal obligation for delinquent Assessments may not pass to any new Owner unless expressly assumed by the new Owner or unless

the Owner has actual or constructive knowledge of such delinquent Assessments, whether by virtue of the Recordation of a Notice of Delinquent Assessment or receipt from the Association of a certificate pursuant to Section 1368(a)(4) of the California Civil Code.

7.2. ASSOCIATION FUNDS. The Association shall establish no fewer than two (2) separate Association Maintenance Funds into which shall be deposited all money paid to the Association and from which disbursements shall be made. The Association Maintenance Funds may be established as trust accounts at a banking or savings institution and shall include: (a) an Operating Fund for current Common Expenses, (b) an adequate Reserve Fund for the portion of Common Expenses allocated to (i) reserves for Improvements which the Board does not expect to perform on an annual or more frequent basis, and (ii) payment of deductible amounts for insurance policies which the Association obtains, and (c) any other funds which the Association may establish including "Designated Service Area Operating and Reserve Funds". As used herein, "Designated Services Area Operating and Reserve Funds" refers to Maintenance Funds established for the purpose of paying Common Expenses attributable to a Designated Service Area. All provisions of this Declaration requiring the vote or approval of a specified percentage of Owners who are responsible for Assessments within the Designated Service Area.

7.3. PURPOSE OF ASSESSMENTS. The Assessments shall be used exclusively to (a) promote the Owners' welfare, (b) operate, improve and maintain the Common Area, (c) pay any applicable Third Party Manager expense, and (d) discharge any other Association obligations under the Declaration. Disbursements from the Operating Fund shall be made by the Association for such purposes as are necessary for the discharge of its responsibilities in this Declaration for the common benefit of all Owners, other than those purposes for which disbursements from the Reserve Fund are to be used. Disbursements from the Reserve Fund shall be made by the Association only for the purposes specified in this Article and in Section 1365.5(c) of the California Civil Code.

7.4. WAIVER OF USE. No Owner may exempt himself from personal liability for Assessments, nor release such Owner's Lot from the liens and charges thereof, by waiving use and enjoyment of the Common Area or by abandoning such Owner's Lot.

7.5. LIMITS ON ANNUAL ASSESSMENT INCREASES.

7.5.1. Maximum Authorized Annual Assessment For Initial Year of Operations. During the Fiscal Year in which Annual Assessments commence, the Board may levy an Annual Assessment per Lot in an amount which exceeds one hundred twenty percent (120%) of the amount of Annual Assessments disclosed for the Properties in the most current Budget filed with and approved by the DRE only if the Board first obtains the approval of Owners casting a majority of votes at a meeting or election of the Association in which more than fifty percent (50%) of the Lots are represented ("Increase Election"). This Section does not limit Annual Assessment increases necessary for addressing an "Emergency Situation" as defined in Section 7.5.5.

7.5.2. Maximum Authorized Annual Assessment For Subsequent Fiscal Years. During the Fiscal Years following the Fiscal Year in which Annual Assessments commence, the

Board may levy Annual Assessments which exceed the Annual Assessments for the immediately preceding Fiscal Year only as follows:

(a) If the increase in Annual Assessments is less than or equal to twenty percent (20%) of the Annual Assessments for the immediately preceding Fiscal Year, then the Board must either (i) have distributed the Budget for the current Fiscal Year in accordance with Section 1365(a) of the California Civil Code, or (ii) obtain the approval of Owners casting a majority of votes in an Increase Election; or

(b) If the increase in Annual Assessments is greater than twenty percent (20%) of the Annual Assessments for the immediately preceding Fiscal Year, then the Board must obtain the approval of Owners casting a majority of votes in an Increase Election.

This Section does not limit Annual Assessment increases necessary for addressing an "Emergency Situation" as defined in Section 7.5.5.

7.5.3. Supplemental Annual Assessments. If the Board determines that the Association's essential functions may be properly funded by an Annual Assessment in an amount less than the maximum authorized Annual Assessment described above, it may levy such lesser Annual Assessment. If the Board determines that the estimate of total charges for the current year is or will become inadequate to meet all Common Expenses, it shall immediately determine the approximate amount of the inadequacy. Subject to the limits described in Sections 7.5.1, 7.5.2 and 7.5.5, the Board may levy a supplemental Annual Assessment reflecting a revision of the total charges to be assessed against each Lot. To minimize the need for frequent adjustments in the amount of the Annual Assessments during the development of the Properties, the Board may stabilize the amount of the Annual Assessments invoiced to the Owners at a level amount calculated to defray annual Common Expenses during the time that Annual Assessments are fluctuating due to the periodic annexation of Lots and Common Area.

7.5.4. Automatic Assessment Increases. Despite any other provisions of this Section 7.5, on Declarant's or Guest Builder's annexation of the Annexable Territory, the Annual Assessment shall be automatically increased by the additional amount, if any, necessary to maintain the Common Area identified in the Notice of Addition as a part of the Phase that includes the Annexable Territory so long as (a) the annexation is permitted by the DRE, and (b) the amount of such increase does not result in the levy of an Annual Assessment which is greater than the maximum potential Annual Assessment disclosed in all Final Subdivision Public Reports for the Properties.

7.5.5. Emergency Situations. For purposes of Sections 7.5.1, 7.5.2 and 7.7, an "Emergency Situation" is any one of the following:

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

(b) An extraordinary expense necessary to maintain the portion of the Properties for which the Association is responsible where a threat to personal safety on the Properties is discovered; and

(c) An extraordinary expense necessary to maintain the portion of the Properties for which the Association is responsible that could not have been reasonably foreseen by the Board when preparing the Budget. Before imposing or collecting an Assessment pursuant to this Subparagraph (c), the Board shall adopt a resolution containing written findings regarding the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process. The resolution shall be distributed to the Owners with the notice of the assessment.

7.6. COMMENCEMENT AND COLLECTION OF ANNUAL ASSESSMENTS.

7.6.1. Establishment and Commencement. Except as provided in Section 7.6.4 and 7.6.5 below, Annual Assessments shall commence on all Lots in a Phase on the first day of the first calendar month following the first Close of Escrow in such Phase. All Annual Assessments shall be assessed uniformly and equally against the Owners and their Lots based on the number of Lots owned by each Owner, except as may be otherwise provided in a Supplemental Master Declaration. Annual Assessments for fractions of a month shall be prorated. Declarant and each Guest Builder shall pay its full pro rata share of the Annual Assessments on all unsold Lots which are owned by such parties and for which Annual Assessments have commenced. The Board shall fix the amount of the Annual Assessment against each Lot at least thirty (30) days in advance of each Annual Assessment period. However, unless otherwise established by the Board, the initial Annual Assessments shall be assessed in accordance with the most recent Budget on file with and approved by the DRE. Written notice of any change in the amount of any Annual Assessment, Capital Improvement Assessment or Reconstruction Assessment shall be sent via first-class mail to every Owner subject thereto not less than thirty (30) nor more than sixty (60) days before the increased Assessment becomes due.

7.6.2. Use of Association Funds. The Board has the power to require that funds in the Operating Fund at the end of the Fiscal Year be retained and used to reduce the following Fiscal Year's Annual Assessments. On dissolution of the Association incident to the abandonment or termination of the Properties as a planned development, any amounts remaining in any of the Maintenance Funds shall be distributed to or for the benefit of the Owners in the same proportions as such money was collected from the Owners.

7.6.3. Installments. Each Owner shall pay Annual Assessments in installments at such frequency, in such amounts and by such methods as are established by the Board. If the Association incurs additional expenses because of a payment method selected by an Owner, the Association may charge that expense to the Owner. The Association does not have to apportion the expense among all Owners as a part of Annual Assessments. Each installment of Annual Assessments may be paid to the Association in one check or in separate checks as payments attributable to specified Association Maintenance Funds. If any payment of an Annual Assessment installment (1) is less than the amount assessed and (2) does not specify the Association Maintenance

Fund or Funds into which it should be deposited, then the amount received shall be credited in order of priority first to the Operating Fund, then to any applicable Designated Service Area Operating Fund until that portion of the Annual Assessment has been satisfied, then to the Reserve Fund, until that portion of the Annual Assessment has been satisfied, then to any applicable Designated Service Area Reserve Fund until that portion of the Annual Assessment has been satisfied, then to any other funds established by the Association.

7.6.4. Model Lot Assessments. For any Phase which includes Model Lots, Annual Assessments shall commence on all Lots in that Phase, including each Model Lot in that Phase, on the first day of the first calendar month following the first Close of Escrow in that Phase on a Lot other than a Model Lot.

7.6.5. Phases 1 and 2. Except as otherwise provided in Section 7.6.4, Annual Assessments shall commence on all Lots in both Phases 1 and 2 on the first day of the first calendar month after the Close of Escrow in either of those Phases.

7.7. CAPITAL IMPROVEMENT ASSESSMENTS. The Board may levy, in any Fiscal Year, a Capital Improvement Assessment or Reconstruction Assessment to defray, in whole or in part, the cost of any construction, repair or replacement of a capital Improvement to the Common Area. No Capital Improvement Assessments in any Fiscal Year which, if added to the Capital Improvement Assessments already levied during such Fiscal Year, exceed five percent (5%) of the Association's Budgeted gross expenses for such Fiscal Year, may be levied without the vote or written consent of Owners casting a majority of votes at an Increase Election. The Board may levy in any Fiscal Year, a Capital Improvement Assessment applicable to that Fiscal Year which exceeds five percent (5%) of the Association's Budgeted gross expenses for such Fiscal Year if such increase is necessary for addressing an Emergency Situation as defined in Section 7.5.5.

7.8. DESIGNATED SERVICE AREA ASSESSMENT. The Designated Service Expenses of the Association comprising Designated Service Area Operating and Reserve Funds Budgeted to any particular Designated Service Area ("Designated Service Area Assessment") shall be assessed to the Owners of Lots designated in a Supplemental Declaration as Lots to which the exclusive or disproportionate maintenance of such Designated Service Area has been allocated. Any Supplemental Declaration covering a Lot subject to a Designated Service Area Assessment shall: (a) identify the Designated Service Area, if existing, or describe the Designated Service Area if proposed; (b) identify the Lots covered by the Supplemental Declaration which are entitled to use the facilities of the Designated Service Area or which are obligated to bear the exclusive or disproportionate maintenance of such Designated Service Area and which shall be obligated to pay the Designated Service Area Assessment attributable to such Designated Service Area; and (c) specify the Designated Service Expenses comprising the Designated Service Area Assessment attributable to such Designated Service Area.

7.9. LEVEL ASSESSMENT PROCEDURE. As long as Annexable Territory may be added to the Properties as a Phase, the Board may elect to implement a level assessment procedure in accordance with applicable DRE guidelines ("Level Assessment Procedure") for the General Assessment Component of Annual Assessments. Where the Level Assessment Procedure is used,

the General Assessment Component of Annual Assessments for certain Phases may be less than or more than the actual Common Expenses for a given year, however, the General Assessment Component of Annual Assessment cannot be more than fifteen percent (15%) above or below the actual Common Expenses. To implement the Level Assessment Procedure, the Board must:

- (a) Establish and maintain a separate account for the cumulative operating surplus ("Cumulative Surplus Fund Account");
- (b) Use the Cumulative Surplus Fund Account and the funds therein only for the funding of Annual Assessments in a given Fiscal Year (as determined by the Board);
- (c) Include in the report referenced in Section 4.8.3 a review of the Level Assessment Procedure, to ensure that adequate Annual Assessments are being collected; and
- (d) Meet any other requirements which may be imposed by the DRE.

ARTICLE VIII INSURANCE

8.1. DUTY TO OBTAIN INSURANCE; TYPES. The Association shall obtain and keep in effect at all times the following insurance coverages:

8.1.1. Public Liability. Adequate public liability insurance (including coverage for medical payments), with limits acceptable to FNMA and as required by Section 1365.9 of the California Civil Code, insuring against liability for bodily injury, death and property damage arising from the activities of the Association and the Owners on the Common Area.

8.1.2. Fire and Casualty Insurance. Fire and casualty insurance with extended coverage, without deduction for depreciation, in an amount as near as possible to the full replacement value of all insurable Improvements on the Common Area. The casualty insurance shall not include earthquake coverage unless the Board is directed to obtain earthquake coverage by a majority of the Association's voting power.

8.1.3. Fidelity Insurance. Fidelity insurance coverage for any Person handling funds of the Association, whether or not such persons are compensated for their services, in an amount not less than the estimated maximum of funds, including reserve funds, in the custody of the Person during the term of the insurance. The aggregate amount of the fidelity insurance coverage may not be less than the sum equal to one-fourth (1/4) of the Annual Assessments on all Lots in the Properties, plus reserve funds.

8.1.4. Insurance Required by FNMA, GNMA and FHLMC. Casualty, flood, liability and fidelity insurance covering the Common Area and meeting the insurance requirements for planned unit developments established by FNMA, GNMA and FHLMC, so long as any of these entities is a Mortgagee or Owner of a Lot in the Properties, except to the extent such coverage is not reasonably available or has been waived in writing by the entity requiring the insurance coverage.

8.1.5. Other Insurance. Such other insurance insuring other risks customarily insured by associations managing planned unit developments similar in construction, location and use. Such additional insurance shall include general liability insurance and director's and officer's errors and omissions insurance in the minimum amounts established in Section 1365.9 of the California Civil Code.

8.1.6. Beneficiaries. The Association's insurance shall be kept for the benefit of the Association, the Owners, and the Mortgagees, as their interests may appear as named insureds, subject, however, to loss payment requirements established in this Declaration.

8.2. WAIVER OF CLAIM AGAINST ASSOCIATION. All policies of insurance kept by or for the benefit of the Association and the Owners must provide that the Association and the Owners waive and release all claims against one another, the Board, Guest Builders and Declarant, to the extent of the insurance proceeds available, whether or not the insurable damage or injury is caused by the negligence of or breach of any agreement by any of the Persons.

8.3. RIGHT AND DUTY OF OWNERS TO INSURE. Each Owner is responsible for insuring his personal property and all other property and Improvements on his Lot. Nothing in this Declaration precludes any Owner from carrying any public liability insurance he considers desirable; however, Owners' policies may not adversely affect or diminish any coverage under any of the Association's insurance policies. Duplicate copies of Owners' insurance policies shall be deposited with the Association on request. If any loss intended to be covered by the Association's insurance occurs and the proceeds payable are reduced due to insurance carried by any Owner, such Owner shall assign the proceeds of the Owner's insurance to the Association, to the extent of such reduction, for application to the same purposes as the reduced proceeds are to be applied.

8.4. NOTICE OF EXPIRATION REQUIREMENTS. If available, each of the Association's insurance policies must contain a provision that the policy may not be canceled, terminated, materially modified or allowed to expire by its terms, without at least ten (10) days' prior written notice to the Board and Declarant, and to each Owner and Mortgagee, insurer and guarantor of a first Mortgage who has filed a written request with the carrier for such notice and every other Person in interest who requests such notice of the insurer. In addition, fidelity insurance shall provide that it may not be canceled or substantially modified without at least ten (10) days' prior written notice to any insurance trustee named pursuant to Section 8.5 and to each FNMA servicer who has filed a written request with the carrier for such notice.

8.5. TRUSTEE FOR POLICIES. The Association is trustee of the interests of all named insureds under the Association's insurance policies. Unless an insurance policy provides for a different procedure for filing claims, all claims must be sent to the insurance carrier or agent by certified mail and be clearly identified as a claim. The Association shall keep a record of all claims made. All insurance proceeds under any Association insurance policies must be paid to the Board as trustees. The Board has the authority to negotiate loss settlements with insurance carriers, with participation, to the extent the Board desires, of first Mortgagees who have filed written requests within ten (10) days of receipt of notice of any damage or destruction as provided in Section 9.4.

Any two (2) officers of the Association may sign a loss claim form and release form in connection with the settlement of a loss claim, and such signatures are binding on all the named insureds. A representative chosen by the Board may be named as an insured, including a trustee with whom the Association may enter into an insurance trust agreement and any successor to such trustee, who shall have exclusive authority to negotiate losses under any insurance policy and to perform such other functions necessary to accomplish this purpose.

8.6. ACTIONS AS TRUSTEE. Except as otherwise specifically provided in this Declaration, the Board has the exclusive right to bind the Association and the Owners to all matters affecting insurance carried by the Association, the settlement of a loss claim, and the surrender, cancellation, and modification of all such insurance. Duplicate originals or certificates of all policies of fire and casualty insurance kept by the Association and of all renewals thereof, together with proof of payment of premiums, shall be delivered by the Association to all Owners and Mortgagees who requested them in writing.

8.7. ANNUAL INSURANCE REVIEW. The Board shall review the Association's insurance policies at least annually. If economically feasible, the Board shall obtain a current appraisal of the full replacement value of the Improvements on the Common Area, without deduction for depreciation, from a qualified independent insurance appraiser, before each such annual review.

8.8. REQUIRED WAIVER. All of the Association's insurance policies insuring against physical damage must provide, if reasonably possible, for waiver of:

8.8.1. Subrogation of claims against the Owners and tenants of the Owners;

8.8.2. Any defense based on coinsurance;

8.8.3. Any right of setoff, counterclaim, apportionment, proration or contribution due to other insurance not carried by the Association;

8.8.4. Any invalidity, other adverse effect or defense due to any breach of warranty or condition caused by the Association, any Owner or any tenant of any Owner, or arising from any act or omission of any named insured or the respective agents, contractors and employees of any insured;

8.8.5. Any right of the insurer to repair, rebuild or replace, and, if the Improvement is not repaired, rebuilt or replaced following loss, any right to pay under the insurance an amount less than the replacement value of the Improvements insured;

8.8.6. Notice of the assignment of any Owner of his interest in the insurance by virtue of a conveyance of any Lot;

8.8.7. Any right to require any assignment of any Mortgage to the insurer;

8.8.8. Any denial of an Owner's claim because of negligent acts by the Association or other Owners; and

8.8.9. Prejudice of the insurance by any acts or omissions of Owners that are not under the Association's control.

ARTICLE IX DESTRUCTION OF IMPROVEMENTS

9.1. **RESTORATION OF THE PROPERTIES.** Except as otherwise authorized by the Owners, if any portion of the Properties which the Association is responsible for maintaining is destroyed, including any landscaping, habitat or Improvements located in any applicable Fuel Modification Area, Offsite Maintenance Area, CSA, Median Areas or Open Space Areas (other than the Restricted Open Space Areas), the Association shall restore the same to its former condition as promptly as practical. The Association shall use the proceeds of its insurance for reconstruction or repair of the Properties unless otherwise authorized in this Declaration or by the Owners. The Board shall commence such reconstruction promptly. The Properties shall be reconstructed or rebuilt substantially in accordance with the original construction plans if they are available, unless changes recommended by the Design Review Committee have been approved by the Owners. If the insurance proceeds amount to at least ninety-five percent (95%) of the estimated cost of restoration and repair, the Board shall levy a Reconstruction Assessment to provide the additional funds necessary for such reconstruction. If the insurance proceeds amount to less than ninety-five percent (95%) of the estimated cost of restoration and repair, the Board may levy a Reconstruction Assessment and proceed with the restoration and repair only if both of the following conditions ("Conditions to Reconstruction") have been satisfied: (a) the levy of a Reconstruction Assessment to pay the costs of restoration and repair of the Properties is approved by the Owners, and (b) within one (1) year after the date on which the destruction occurred, the Board Records a certificate of the resolution authorizing the restoration and repair ("Reconstruction Certificate"). If either of the Conditions to Reconstruction does not occur following a destruction for which insurance proceeds available for restoration and repair are less than ninety-five percent (95%) of the estimated cost of restoration and repair, then the Board shall deposit the funds in the Operating Fund.

9.2. **DAMAGE TO RESIDENCES-RECONSTRUCTION.** If all or any portion of any Residence or other Improvements on a Lot (except Common Area) is damaged or destroyed by fire or other casualty, the Owner of such Lot shall rebuild, repair or reconstruct the Residence and Improvements in a manner which will restore them substantially to their appearance and condition immediately before the casualty or as otherwise approved by the Design Review Committee. If all or any portion of an Owner's Lot is destroyed to such an extent that it would be impractical to restore the Lot or rebuild damaged Improvements, the Owner shall install landscaping Improvements on the Lot in accordance with Design Review Committee Guidelines. The Owner of any damaged Lot or Residence and the Design Review Committee shall proceed with all due diligence, and the Owner shall cause reconstruction or installation of landscape Improvements, as applicable, to commence within six (6) months after the damage occurs and to be completed within twelve (12) months after damage occurs, unless prevented by causes beyond such Owner's reasonable control. The transfer of a damaged Lot or a Lot with a damaged Residence to another Person will not extend the time

allowed in this Section for commencement and completion of reconstruction or installation of landscape Improvements, as applicable, by the transferee. However, no such transferee will be required to commence or complete reconstruction or installation of landscape Improvements, as applicable, in less than thirty (30) days from the date the transferee acquired title to the Lot.

9.3. NOTICE TO OWNERS AND LISTED MORTGAGEES. The Board, immediately on having knowledge of any damage or destruction affecting a material portion of the Common Area owned by the Association, shall promptly notify all Owners and Mortgagees, insurers and guarantors of first Mortgages on Lots in the Properties who have filed a written request for such notice with the Board.

ARTICLE X EMINENT DOMAIN

The term "taking" as used in this Article means condemnation by exercise of the power of eminent domain or by sale under threat of the exercise of the power of eminent domain. The Board shall represent the Owners in any proceedings, negotiations, settlements, or agreements regarding takings. All takings proceeds shall be payable to the Association for the benefit of the Owners and their Mortgagees, and shall be distributed to such Owners and Mortgagees as provided in this Article.

10.1. CONDEMNATION OF COMMON AREA. If there is a taking of the Common Area owned by the Association, then the award in condemnation shall be paid to the Association and shall be deposited in the Operating Fund, unless the Common Area is located in a Designated Service Area in which case the award shall be paid to the corresponding Designated Service Area Operating Fund.

10.2. CONDEMNATION OF LOTS. If there is a taking of a Lot, the award in condemnation shall be paid to the Owner of the Lot; however, such award shall first be applied to the balance then due on any Mortgages encumbering such Owner's Lot, in order of priority.

10.3. NOTICE TO OWNERS AND MORTGAGEES. The Board, on learning of any condemnation proceeding affecting a material portion of the Common Area, or any threat thereof, shall promptly notify all Owners and those Mortgagees, insurers and guarantors of Mortgages on Lots in the Properties who have filed a written request for such notice with the Association.

ARTICLE XI RIGHTS OF MORTGAGEES

11.1. GENERAL PROTECTIONS. No amendment or violation of this Declaration defeats or renders invalid the rights of the Mortgagee under any Mortgage encumbering one (1) or more Lots made in good faith and for value, provided that after the foreclosure of any such Mortgage, such Lot(s) will remain subject to this Declaration. For purposes of this Declaration, "first Mortgage" means a Mortgage with first priority over other Mortgages or Deeds of Trust on a Lot, and "first Mortgagee" means the Mortgagee of a first Mortgage. For purposes of any provisions

of the Restrictions which require the vote or approval of a specified percentage of first Mortgagees, such vote or approval is determined based on one (1) vote for each Lot encumbered by each such first Mortgage.

11.2. ADDITIONAL RIGHTS. In order to induce VA, FHA FHLMC, GNMA and FNMA to participate in the financing of the sale of Lots, the following provisions are added hereto (and to the extent these added provisions conflict with any other provisions of the Restrictions, these added provisions control):

11.2.1. Notices. Each Mortgagee, insurer and guarantor of a Mortgage encumbering one (1) or more Lots, upon filing a written request for notification with the Board, is entitled to written notification from the Association of: (a) any condemnation or casualty loss which affects either a material portion of the Properties or the Lot(s) securing the respective first Mortgage; (b) any delinquency of sixty (60) days or more in the performance of any obligation under the Restrictions, including the payment of assessments or charges owed by the Owner(s) of the Lot(s) securing the Mortgage, which notice each Owner hereby consents to and authorizes; and (c) a lapse, cancellation, or material modification of any policy of insurance or fidelity bond kept by the Association.

11.2.2. Right of First Refusal. Each Owner, including each first Mortgagee of a Mortgage encumbering any Lot who obtains title to such Lot pursuant to (a) the remedies provided in such Mortgage, (b) foreclosure of the Mortgage, or (c) deed or assignment in lieu of foreclosure, is exempt from any 'right of first refusal' created or purported to be created by the Restrictions.

11.2.3. Unpaid Assessments. Each first Mortgagee of a first Mortgage encumbering any Lot who obtains title to such Lot pursuant to the remedies provided in such Mortgage or by foreclosure of such Mortgage, shall take title to such Lot free and clear of any claims for unpaid assessments or charges against such Lot which accrued before the time such Mortgagee acquires title to such Lot.

11.2.4. Association Records. All Mortgagees, insurers and guarantors of first Mortgages, on written request to the Association, shall have the right to:

- (a) examine current copies of the Association's books, records and financial statements and the Restrictions during normal business hours; and
- (b) receive written notice of all meetings of Owners; and
- (c) designate in writing a representative who shall be authorized to attend all meetings of Owners.

11.2.5. Payment of Taxes. First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Area property and may pay any overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for Common Area, and the Association shall immediately reimburse first Mortgagees who made such payments.

11.2.6. **Contracts.** The Board may enter into such contracts or agreements on behalf of the Association as are required in order to satisfy the guidelines of VA, FHA, FHLMC, FNMA, GNMA or any similar entity, so as to allow for the purchase, insurance or guaranty, as the case may be, by such entities of first Mortgages encumbering Lots improved with Residences. Each Owner hereby agrees that it will benefit the Association and the Owners, as a class of potential Mortgage borrowers and potential sellers of their Lots, if such agencies approve the Properties as a qualifying subdivision under their respective policies, rules and regulations. Each Owner hereby authorizes his Mortgagees to furnish information to the Board concerning the status of any Mortgage encumbering a Lot.

ARTICLE XII ENFORCEMENT

12.1. **ENFORCEMENT OF RESTRICTIONS.** All violations of the Restrictions, other than those described in Sections 12.2 and 12.3 or regulated by Civil Code Section 1375, shall be resolved as follows:

12.1.1. **Violations Identified by the Association.** If the Board or the Design Review Committee determines that there is a violation of the Restrictions, other than nonpayment of any Assessment, then the Board shall give written notice to the responsible Owner identifying (a) the condition or violation complained of, and (b) the length of time the Owner has to remedy the violation including, if appropriate, the length of time the Owner has to submit plans to the Design Review Committee and the length of time the Owner has to complete the work proposed in the plans submitted to the Design Review Committee. If an Owner does not perform corrective action as within the allotted time, the Board, after Notice and Hearing, may remedy such condition or violation complained of, and the cost thereof shall be charged to the Owner as a Special Assessment.

12.1.2. **Violations Identified by an Owner.** If an Owner alleges that another Person is violating the Restrictions (other than nonpayment of any Assessment), the complaining Owner must first submit the matter to the Board for Notice and Hearing before the complaining Owner may resort to alternative dispute resolution, as required by Section 1354 of the California Civil Code, or litigation for relief.

12.1.3. **Legal Proceedings.** Failure to comply with any of the terms of the Restrictions by any Person is grounds for relief which may include an action to recover damages, injunctive relief, foreclosure of any lien, or any combination thereof; however, the procedures established in Section 1354 of the California Civil Code and in Sections 12.1.1 and 12.1.2 must first be followed, if they apply.

12.1.4. **Additional Remedies.** The Board may adopt a schedule of reasonable fines or penalties which, in its reasonable discretion, the Board may assess against a Person for the failure of such Person to comply with the Restrictions. Such fines or penalties may only be assessed after Notice and Hearing. After Notice and Hearing, the Board may direct the officers of the Association to Record a notice of noncompliance (if allowed by law) against a Lot owned by any Owner who has violated any provision of this Declaration. The notice shall include a legal description of the Lot and

shall specify the provision of the Declaration that was violated, the violation committed, and the steps required to remedy the noncompliance. Once the noncompliance is remedied or the noncomplying Owner has taken such other steps as reasonably required by the Board, the Board shall direct the officers of the Association to Record a notice that the noncompliance has been remedied.

12.1.5. No Waiver. Failure to enforce any provision of this Declaration does not waive the right to enforce that provision, or any other provision of this Declaration.

12.1.6. Right to Enforce. The Association and any Owner may enforce the Restrictions as described in this Article, subject to Section 1354 of the California Civil Code. Each Owner has a right of action against the Association for the Association's failure to comply with the Restrictions. Each remedy provided for in this Declaration is cumulative and not exclusive or exhaustive.

12.1.7. Limit on Expenditures. The Association may not incur litigation expenses, including attorneys' fees, or borrow money to fund litigation, where the Association initiates legal proceedings or is joined as a plaintiff in legal proceedings, unless the Association first obtains the consent of a majority of the voting power of the Owners (excluding the voting power of any Owner who would be a defendant in such proceedings), and, if applicable, complies with the requirements of Section 1354 of the California Civil Code. Such approval is not necessary if the legal proceedings are initiated (a) to enforce the use restrictions contained in Article II, (b) to enforce the architectural and landscaping control provisions contained in Article V, (c) to collect any unpaid Assessments levied pursuant to the Restrictions, (d) for a claim, the total value of which is less than Five Hundred Thousand Dollars (\$500,000), or (e) as a cross-complaint in litigation to which the Association is already a party. If the Association decides to use or transfer reserve funds or borrow funds to pay for any litigation, the Association must notify the Owners of the decision by mail. Such notice shall provide an explanation of why the litigation is being initiated or defended, why operating funds cannot be used, how and when the reserve funds will be replaced or the loan will be repaid, and a proposed budget for the litigation. The notice must state that the Owners have a right to review an accounting for the litigation which will be available at the Association's office. The accounting shall be updated monthly.

12.2. NONPAYMENT OF ASSESSMENTS.

12.2.1. Delinquency. Assessments are delinquent if not paid within fifteen (15) days after the due date established by the Association. Assessments not paid within thirty (30) days after the due date, plus all reasonable costs of collection (including attorneys' fees) and late charges bear interest at the maximum rate permitted by law commencing thirty (30) days after the due date until paid. The Association may also require the delinquent Owner to pay a late charge in accordance with California Civil Code Section 1366(d)(2). The Association need not accept any tender of a partial payment of an Assessment and all costs and attorneys' fees attributable thereto. Acceptance of any such tender does not waive the Association's right to demand and receive full payment.

12.2.2. Creation and Release of Lien.

(a) **Priority of Lien.** All liens levied in accordance with this Declaration shall be prior and superior to (i) any declaration of homestead Recorded after the Recordation of this Declaration, and (ii) all other liens, except (1) all taxes, bonds, Assessments and other levies which, by law, would be superior thereto, and (2) the lien or charge of any first Mortgage of Record (meaning any Recorded Mortgage with first priority or seniority over other Mortgages) made in good faith and for value and Recorded before the date on which the "Notice of Delinquent Assessment" (described in this Section) against the assessed Lot was Recorded.

(b) **Prerequisite to Creating Lien.** Before the Association may place a lien on an Owner's Lot to collect a past due Assessment, the Association shall send a written notice to the Owner by certified mail which contains the following information: (i) the fee and penalty procedure of the Association, (ii) an itemized statement of the charges owed by the Owner, including the principal owed, any late charges and the method of calculation, any attorneys' fees, (iii) the collection practices used by the Association, and (iv) a statement that the Association may recover the reasonable costs of collecting past due Assessments.

(c) **Notice of Delinquent Assessment.** The lien becomes effective on Recordation by the Board or its authorized agent of a Notice of Delinquent Assessment ("Notice of Delinquent Assessment") as provided in Section 1367 of the California Civil Code. The Notice of Delinquent Assessment must identify (i) the amount of the Assessment and other authorized charges and interest, including the cost of preparing and Recording the Notice of Delinquent Assessment, (ii) the amount of collection costs incurred, including reasonable attorneys' fees, (iii) a sufficient description of the Lot that has been assessed, (iv) the Association's name and address, (v) the name of the Owner of the Lot that has been assessed, and (vi) 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 of Delinquent Assessment must be signed by an authorized Association officer or agent and must be mailed in the manner required by Section 2924b of the California Civil Code to the Owner of record of the Lot no later than ten (10) calendar days after Recordation. The lien relates only to the individual Lot against which the Assessment was levied and not to the Properties as a whole.

(d) **Exceptions.** Assessments described in Section 1367(c) of the California Civil Code and Section 2792.26(c) of the California Code of Regulations may not become a lien against an Owner's Lot enforceable by the sale of the Lot under Sections 2924, 2924(b) and 2924(c) of the California Civil Code.

(e) **Release of Lien.** On payment of the full amount claimed in the Notice of Delinquent Assessment, or other satisfaction thereof, the Board shall cause to be Recorded a Notice of Satisfaction and Release of Lien ("Notice of Release") stating the satisfaction and release of the amount claimed. The Board may require the Owner to pay a reasonable charge for preparing and Recording the Notice of Release. Any purchaser or encumbrancer who has acted in good faith and extended value may rely on the Notice of Release as conclusive evidence of the full satisfaction of the sums identified as owed in the Notice of Delinquent Assessment.

12.2.3. Enforcement of Liens. The Board shall enforce the collection of amounts due under this Declaration by one (1) or more of the alternative means of relief afforded by this Declaration. The lien on a Lot may be enforced by foreclosure and sale of the Lot after failure of the Owner to pay any Assessment or installment thereof as provided in this Declaration. The sale shall be conducted in accordance with the provisions of the California Civil Code applicable to the exercise of powers of sale in Mortgages, or in any manner permitted by law. The Association (or any Owner if the Association refuses to act) may sue to foreclose the lien if (a) at least thirty (30) days have elapsed since the date on which the Notice of Delinquent Assessment was Recorded and (b) at least ten (10) days have elapsed since a copy of the Notice of Delinquent Assessment was mailed to the Owner affected thereby. The Association may bid on the Lot at foreclosure sale, and acquire and hold, lease, mortgage and convey the same. On completion of the foreclosure sale, the Association or the purchaser at the sale may file suit to secure occupancy of the defaulting Owner's Lot, and the defaulting Owner shall be required to pay the reasonable rental value for the Lot during any period of continued occupancy by the defaulting Owner or any persons claiming under the defaulting Owner. A suit to recover a money judgment for unpaid Assessments may be brought without foreclosing or waiving any lien securing the same, but this provision or any suit to recover a money judgment does not affirm the adequacy of money damages. Any recovery resulting from a suit at law or in equity initiated pursuant to this Section may include reasonable attorneys' fees as fixed by the court.

12.2.4. Priority of Assessment Lien. Mortgages Recorded before a Notice of Delinquent Assessment have lien priority over the Notice of Delinquent Assessment. Sale or transfer of any Lot does not affect the Assessment lien, except that the sale or transfer of any Lot pursuant to judicial or nonjudicial foreclosure of a first Mortgage extinguishes the lien of such Assessments as to payments which became due before such sale or transfer. No sale or transfer relieves such Lot from liens for any Assessments thereafter becoming due. No Person who obtains title to a Lot pursuant to a judicial or nonjudicial foreclosure of the first Mortgage is liable for the share of the Common Expenses or Assessments chargeable to such Lot which became due before the acquisition of title to the Lot by such Person. Such unpaid share of Common Expenses or Assessments is a Common Expense collectible from all Owners including such Person. The Association may take such action as is necessary to make any Assessment lien subordinate to the interests of the Department Veterans Affairs of the State of California under its Cal-Vet loan contracts as if the Cal-Vet loan contracts were first Mortgages of record.

12.2.5. Alternative Dispute Resolution. An Owner may dispute the Assessments imposed by the Association if such Owner pays in full (a) the amount of the Assessment in dispute, (b) any late charges, (c) any interest, and (d) all fees and costs associated with preparing and filing a Notice of Delinquent Assessment (including mailing costs and attorneys' fees not to exceed the maximum amount allowed by law), and states by written notice that such amount is paid under protest, and the written notice is mailed by certified mail not more than thirty (30) days after Recording the Notice of Delinquent Assessment. On receipt of the written notice, the Association shall inform the Owner in writing that the dispute may be resolved through alternative dispute resolution as established in Civil Code Section 1354. The right of any Owner to use alternative dispute resolution under this Section may not be exercised more than two (2) times in any single

calendar year, and not more than three (3) times within any five (5) calendar years unless the Owner and the Association mutually agree to use alternative dispute resolution when this limit is exceeded. An Owner may request and be awarded through alternative dispute resolution reasonable interest to be paid by the Association in the total amount paid under items (a) through (d) above, if it is determined that the Assessment levied by the Association was not correctly levied.

12.2.6. Receivers. In addition to the foreclosure and other remedies granted the Association in this Declaration, each Owner, by acceptance of a deed to such Owner's Lot, conveys to the Association all of such Owner's right, title and interest in all rents, issues and profits derived from and appurtenant to such Lot, subject to the right of the Association to collect and apply such rents, issues and profits to any delinquent Assessments owed by such Owner, reserving to the Owner the right, before any default by the Owner in the payment of Assessments, to collect and retain such rents, issues and profits as they may become due and payable. On any such default the Association may, on the expiration of thirty (30) days following delivery to the Owner of the "Notice of Delinquent Assessment" described in this Declaration, either in person, by agent or by receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness secured by the lien described in this Declaration, (a) enter in or on and take possession of the Lot or any part thereof, (b) in the Association's name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and (c) apply the same, less allowable expenses of operation, to any delinquencies of the Owner, and in such order as the Association may determine. The entering upon and taking possession of the Lot, the collection of rents, issues and profits and the application thereof, shall not cure or waive any default or notice of default under this Declaration or invalidate any act done pursuant to such notice.

12.3. ENFORCEMENT OF BONDED OBLIGATIONS. If (a) the Common Area Improvements in any Phase are not completed before issuance of a Final Subdivision Public Report for such Phase by the DRE, and (b) the Association is obligee under a bond or other arrangement ("Bond") required by the DRE to secure performance of Declarant's or a Guest Builder's commitment to complete such Improvements, then the following provisions of this Section will be applicable:

12.3.1. The Board shall consider and vote on the question of action by the Association to enforce the obligations under the Bond with respect to any such Improvement for which a Notice of Completion has not been filed within sixty (60) days after the completion date specified for that Improvement in the Planned Construction Statement appended to the Bond. If the Association has given an extension in writing for the completion of any Common Area Improvement, then the Board shall be directed to consider and vote on the aforesaid question if a Notice of Completion has not been filed within thirty (30) days after the expiration of the extension.

12.3.2. A special meeting of Owners for the purpose of voting to override a decision by the Board not to initiate action to enforce the obligations under the Bond or on the Board's failure to consider and vote on the question shall be held no fewer than thirty-five (35) nor more than forty-five (45) days after the Board receives a petition for such a meeting signed by Owners representing five percent (5%) of the Association's total voting power. A vote of a majority of the Association's voting power (excluding Declarant and Guest Builders) to take action to enforce the

obligations under the Bond shall be deemed to be the decision of the Association, and the Board shall thereafter implement such decision by initiating and pursuing appropriate action in the Association's name.

12.4. DISPUTE WITH DECLARANT PARTIES. Any disputes (each, a "Dispute") between or among the Association, any Owners, Guest Builders and Declarant, or any director, officer, partner, shareholder, member, employee, representatives, contractor, subcontractor, design professional or agent of the Declarant (collectively "Declarant Parties") arising under this Declaration or relating to the Properties, including disputes regarding latent or patent construction defects, but excluding actions taken by the Association against Declarant to collect delinquent Assessments, and any action involving any Common Area completion bonds, where the amount in controversy is greater than Five Thousand Dollars (\$5,000), shall be subject to the following provisions:

12.4.1. Notice. Any Person with a Dispute shall give written notice of the Dispute by personal or mail service as authorized by Code of Civil Procedure Sections 415.10, 415.20, 415.21, 415.30 or 415.40 to the party to whom the Dispute is directed ("Respondent") describing the nature of the Dispute and any proposed remedy (the "Dispute Notice").

12.4.2. Right to Inspect and Correct. Commencing on the date the Dispute Notice is delivered to the Respondent and continuing until the Dispute is resolved, the Respondent and its representatives have the right to (i) meet with the party alleging the Dispute at a reasonable time and place to discuss the Dispute, (ii) enter the Properties to inspect any areas that are subject to the Dispute, and (iii) conduct inspections and testing (including destructive or invasive testing) in a manner deemed appropriate by the Respondent. If Respondent elects to take any corrective action, Respondent and its representatives shall be provided full access to the Properties to take and complete the corrective action. Respondent is not obligated to take any corrective action. Respondent, with the consent of Declarant, has the right to select the corrective action Respondent believes is appropriate. The right to inspect and correct granted in this Section is in addition to the rights granted in California Civil Code Section 1375 ("Calderon Act"). The procedures established in the Calderon Act may be implemented, before, during or after the procedure in this Section is implemented.

12.4.3. Mediation. If the Dispute is not resolved within ninety (90) days after the Respondent receives the Dispute Notice, any party may submit the Dispute to mediation by delivering a request for mediation ("Mediation Notice") in the same manner as allowed for delivery of the Dispute Notice. The Dispute shall be mediated pursuant to (i) the American Arbitration Association ("AAA") mediation procedures in existence when the Dispute Notice is delivered, as modified by this Section, or (ii) the mediation procedures of any successor to the AAA in existence when the Dispute Notice is delivered, as modified by this Section, or (iii) mediation procedures approved by the parties of any entity offering mediation services that is acceptable to the parties to the Dispute ("Parties"). Except as provided in Section 12.4.5, no Person shall commence litigation regarding a Dispute without complying with this Section 12.4.3.

(a) **Selection of Mediator.** The mediator shall be selected within sixty (60) days from delivery of the Mediation Notice. The mediator shall be selected by mutual agreement of the Parties. If the parties cannot agree on a mediator, the mediator shall be selected by the entity providing the mediation service. No Person shall serve as a mediator in any Dispute in which the Person has any financial or personal interest in the result of the mediation, except by the written consent of all Parties. Before accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or to prevent a prompt commencement of the mediation process.

(b) **Position Letter; Pre-Mediation Conference.** No later than sixty (60) days after selection of the mediator, each party to the Dispute shall submit a letter ("Position Statement") containing (i) a description of the party's position concerning the issues that need to be resolved, (ii) a detailed description of the defects allegedly at issue, and (iii) a suggested plan of repair, remediation or correction. The mediator may schedule a pre-mediation conference. All Parties shall attend unless otherwise mutually agreed. The mediation shall be commenced within twenty (20) days after submittal of all Position Statements and shall be concluded within fifteen (15) days after the mediation began unless either (a) the mediator extends the mediation period, or (b) the Parties mutually agree to extend the mediation period. The mediation shall be held in the County or another place mutually acceptable to the parties.

(c) **Conduct of Mediation.** The mediator has discretion to conduct the mediation in the manner in which the mediator believes is most appropriate to achieve the goal of settling the Dispute. The mediator is authorized to conduct joint and separate meetings with the Parties and to make oral and written recommendations for settlement. The mediator may also obtain expert advice concerning technical aspects of the Dispute, provided the Parties agree to and do assume the expenses of obtaining such advice. The mediator shall not have the authority to impose a settlement on the Parties.

(d) **Application of Evidence Code.** The provisions of California Evidence Code Sections 1115 through 1128 shall be applicable to the mediation process. Use and disclosure of statements, evidence and communications offered or made in the course of the mediation shall be governed by these sections, including the sections which preclude use of material in future proceedings and the sections which provide for confidentiality of material.

(e) **Parties Permitted at Mediation.** Persons other than the Parties, their liability insurers, Declarant, attorneys for the Parties, the liability insurers and Declarant and the mediator may attend mediation sessions only with the permission of the Parties and the consent of the mediator. Declarant has the right to attend the mediation session even if Declarant is not one of the Parties.

(f) **Record.** There shall be no stenographic, video or audio record of the mediation process.

(g) **Expenses.** Each Party shall bear its own attorneys' fees and costs incurred in connection with the mediation. All other expenses of the mediation including the fees

charged by the mediator and the cost of any proof or expert advice requested by the mediator, shall be borne equally by each of Declarant and the Declarant Parties to whom the Dispute is directed, unless the Parties agree otherwise. This provision does not modify any provision of a contract between Declarant and any Declarant Party requiring indemnification or establishing a different allocation of costs between the Declarant and the Declarant Party.

12.4.4. Judicial Reference. If a Dispute remains unresolved after the mediation required by 12.4.3 is completed, any of the Parties may file a lawsuit, provided that the Association must obtain the vote or written consent of Owners other than Declarant who represent not less than sixty-seven percent (67%) of the Association's voting power (excluding the voting power of Declarant) prior to filing a lawsuit in a Dispute with Declarant or a Declarant Party. All lawsuits regarding Disputes must be resolved by general judicial reference pursuant to California Code of Civil Procedure Sections 638 and 641 through 645.1, as modified by this 12.4.4. The Parties shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the judicial reference proceeding. No party shall be required to participate in the judicial reference proceeding if all parties against whom such party would have necessary or permissive cross-claims or counterclaims will not or cannot be joined in the judicial reference proceeding. The general referee shall have the authority to try all issues of fact and law and to report a statement of decision to the court. The referee shall be the only trier of fact and law in the reference proceeding, and shall have no authority to further refer any issues of fact or law to any other Person unless (a) all parties to the judicial reference proceeding consent, or (b) the referee determines that a conflict of interest or similar situation has arisen which would make it inappropriate for the referee to act as the trier of fact or law concerning an issue or matter. In the second alternative, an alternative judicial referee shall be selected in accordance with 12.4.4(ii) solely for resolving or rendering a decision concerning the issue or matter involved in the conflict.

(a) **Place.** The proceedings shall be heard in the County.

(b) **Referee.** The referee shall be a retired judge who served on the Superior Court of the State of California in the County with substantial experience in the type of matter in dispute and without any relationship to the Parties or interest in the Properties, unless the Parties agree otherwise. The parties to the judicial reference proceeding shall meet to select the referee no later than thirty (30) days after service of the initial complaint on all defendants named in the complaint. Any dispute regarding selecting the referee shall be resolved by the court in which the complaint is filed.

(c) **Commencement and Timing of Proceeding.** The referee shall commence the proceeding at the earliest convenient date and shall conduct the proceeding without undue delay.

(d) **Pre-hearing Conferences.** The referee may require pre-hearing conferences.

(e) **Discovery.** The parties to the judicial reference proceeding shall be entitled only to limited discovery, consisting of the exchange of the following: (i) witness lists, (ii)

expert witness designations, (iii) expert witness reports, (iv) exhibits, (v) reports of testing or inspections, and (vi) briefs. Any other discovery authorized in the California Code of Civil Procedure shall be permitted by the referee upon a showing of good cause or based on the consent of all parties to the judicial reference proceeding.

(f) **Motions.** The referee shall have the power to hear and dispose of motions, including motions relating to discovery, provisional remedies, demurrers, motions to dismiss, motions for judgment on the pleadings and summary judgment and/or adjudication motions, in the same manner as a trial court judge. The referee shall also have the power to adjudicate summarily issues of fact or law including the availability of remedies whether or not the issue adjudicated could dispose of an entire cause of action or defense.

(g) **Record.** A stenographic record of the hearing shall be made which shall remain confidential except as may be necessary for post-hearing motions and any appeals.

(h) **Statement of Decision.** The referee's statement of decision shall contain an explanation of the factual and legal basis for the decision pursuant to California Code of Civil Procedure Section 632. The decision of the referee shall stand as the decision of the court, and upon filing of the statement of decision with the clerk of the court, judgment may be entered thereon in the same manner as if the Dispute had been tried by the court.

(i) **Remedies.** The referee may grant all legal and equitable remedies and award damages in the judicial reference proceeding.

(j) **Post-hearing Motions.** The referee may rule on all post-hearing same manner as a trial judge.

(k) **Appeals.** The decision of the referee shall be subject to appeal in the same manner as if the Dispute had been tried by the Court.

(l) **Expenses.** Each party shall bear its own attorneys' fees and cost incurred in connection with the judicial reference proceeding. All other fees and costs incurred in connection with the judicial reference proceeding, including the cost of the stenographic record, shall be advanced equally by each of Declarant and the Declarant Parties to whom the Dispute is directed. However, the referee shall have the power to reallocate such fees and costs among the Parties in the referee's final ruling. This provision does not modify any provision of a contract between Declarant and any Declarant Party requiring indemnification or establishing a different allocation of costs between Declarant and the Declarant Party.

12.4.5. Statutes of Limitation. Nothing in this Section 12.4 shall be considered to toll, stay, reduce or extend any applicable statute of limitations, provided, however, that Declarant, the Declarant Parties, the Association and any Owner may commence a legal action which in the good faith determination of that Person is necessary to preserve that Person's rights under any applicable statute of limitations so long as no further steps in processing the action are taken except those authorized in this Section 12.4.

12.4.6. Agreement to Dispute Resolution; Waivers of Jury Trial. DECLARANT, THE ASSOCIATION AND EACH OWNER AGREE TO USE THE PROCEDURES ESTABLISHED IN THIS SECTION 13.4 TO RESOLVE ALL DISPUTES AND WAIVE THEIR RIGHTS TO RESOLVE DISPUTES IN ANY OTHER MANNER. DECLARANT, THE ASSOCIATION, AND EACH OWNER ACKNOWLEDGE THAT BY AGREEING TO RESOLVE ALL DISPUTES AS PROVIDED IN THIS SECTION 12.4, THEY ARE GIVING UP THEIR RIGHT TO HAVE DISPUTES TRIED BEFORE A JURY, PURSUANT TO THE FEDERAL ARBITRATION ACT. THIS SECTION 12.4 MAY NOT BE AMENDED WITHOUT DECLARANT'S PRIOR WRITTEN CONSENT.

12.4.7. Civil Code Section 1354. Section 12.4 governs only the resolution of Disputes with Declarant Parties and shall not affect the subject matter of such Disputes. Unless the subject matter of a Dispute expressly involves enforcement of the Restrictions, such Dispute shall not be governed by the provisions of California Civil Code Section 1354, or any successor statute. Enforcement of Section 12.4 shall not entitle the prevailing party in any Dispute with a Declarant Party to recover attorney's fees or costs.

ARTICLE XIII DURATION AND AMENDMENT

13.1. DURATION. This Declaration shall continue in full force for a period of sixty (60) years from the date of its Recordation (the "Initial Term"). At the end of the Initial Term, this Declaration shall automatically continue for an indefinite period (up to the maximum period permitted by California law) unless and until a Declaration of Termination is Recorded which satisfies the requirements of an amendment to the Declaration, as set forth in Section 13.2.1.

13.2. TERMINATION AND AMENDMENT.

13.2.1. Amendment Approval. Notice of the subject matter of a proposed amendment to this Declaration in reasonably detailed form must be included in the notice of any Association meeting or election at which a proposed amendment is to be considered. To be effective, a proposed amendment (other than an Amendment described in Section 15.7) must be adopted by the vote, in person or by proxy, or written consent of Owners representing not less than (i) sixty-seven percent (67%) of the voting power of each Class of the Association and (ii) sixty-seven percent (67%) of the Association's voting power represented by Owners other than Declarant and Guest Builders, provided that the specified percentage of the Association's voting power necessary to amend a specific provision of this Declaration may not be less than the percentage of affirmative votes prescribed for action to be taken under the provision that is the subject of the proposed amendment. Declarant has the right to appoint a majority of the members of the Board.

13.2.2. Mortgagee Consent. In addition to the consents required by Section 13.2.1, the Mortgagees of fifty-one percent (51%) of the first Mortgages on all the Lots in the Properties who have requested the Association to notify them of proposed action requiring the consent of a

specified percentage of first Mortgagees must approve any amendment to this Declaration which is of a material nature, as follows:

(a) Any amendment which affects or purports to affect the validity or priority of Mortgages or the rights or protection granted to Mortgagees, insurers or guarantors of first Mortgages.

(b) Any amendment which would require a Mortgagee after it has acquired a Lot through foreclosure to pay more than its proportionate share of any unpaid Assessment or Assessments accruing before such foreclosure.

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

(d) Any amendment relating to (i) the insurance provisions in Article VIII, (ii) the application of insurance proceeds in Article IX, or (iii) the disposition of any money received in any taking under condemnation proceedings.

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

13.2.3. Termination Approval. Termination of this Declaration requires approval of the Owners as provided in Section 13.2.1 and the County Planning Director as provided in Article XIX.

13.2.4. Notice to Mortgagees. Each Mortgagee of a first Mortgage on a Lot in the Properties which receives proper written notice of a proposed amendment or termination of this Declaration with a return receipt requested is deemed to have approved the amendment or termination if the Mortgagee fails to submit a response to the notice within thirty (30) days after the Mortgagee receives the notice.

13.2.5. Certificate. A copy of each amendment (excluding the amendments described in Section 15.7 of this Declaration) must be certified by at least two (2) Association officers. The amendment becomes effective when a Certificate of Amendment is Recorded. The certificate, signed and sworn to by two (2) Association officers that the requisite number of Owners and Mortgagees have approved the amendment, when Recorded, is conclusive evidence of that fact. The Association shall keep in its files for at least four (4) years the record of all such approvals. The certificate reflecting any termination or amendment which requires the written consent of any of the Mortgagees of first Mortgages must include a certification that the requisite approval of such first Mortgagees was obtained.

13.2.6. Amendment by the Board. Notwithstanding any other provisions of this Section, the Board may amend this Declaration or any Supplemental Declaration by Recording a written instrument signed by two officers of the Association certifying that the Board approved the amendment in order to (i) conform this Declaration or the Supplemental Declaration to applicable

law, (ii) correct typographical errors, and (iii) change any exhibit to this Declaration or the Supplemental Declaration or portion of an exhibit to conform to as-built conditions. So long as Declarant owns any portion of the Properties or the Annexable Territory, the Board must obtain Declarant's consent to any amendment the Board approves pursuant to this Section.

ARTICLE XIV GENERAL PROVISIONS

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

14.2. NO PUBLIC RIGHT OR DEDICATION. Nothing in this Declaration is a gift or dedication of all or any part of the Properties to the public, or for any public use.

14.3. NOTICES. Except as otherwise provided in this Declaration, notice to be given to an Owner must be in writing and may be delivered personally to the Owner. Personal delivery of such notice to one (1) or more co-Owners, or any general partner of a partnership owning a Lot, constitutes delivery to all Owners. Personal delivery of such notice to any officer or agent for the service of process on a corporation or limited liability company constitutes delivery to the corporation or limited liability company. Such notice may also be delivered by regular United States mail, postage prepaid, addressed to the Owner at the most recent address furnished by such Owner to the Association or, if no such address has been furnished, to the street address of such Owner's Lot. Such notice is deemed delivered three (3) business days after the time of such mailing, except for notice of a meeting of Owners or of the Board, in which case the notice provisions of the Bylaws control. Any notice to be given to the Association may be delivered personally to any member of the Board, or sent by United States mail, postage prepaid, addressed to the Association at such address as may be fixed and circulated to all Owners.

14.4. CONSTRUCTIVE NOTICE AND ACCEPTANCE. Every Person who owns, occupies or acquires any right, title, estate or interest in or to any Lot or other portion of the Properties consents and agrees to every limit, restriction, easement, reservation, condition and covenant contained in this Declaration, whether or not any reference to these restrictions is in the instrument by which such person acquired an interest in the Properties.

ARTICLE XV DECLARANT'S RIGHTS AND RESERVATIONS

If there is a conflict between any other portion of the Restrictions and this Article, this Article shall control. Each of Declarant's rights and reservations in Section 15.1 to 15.9 below shall also

be rights and reservations of each Guest Builder to the extent applicable to that Guest Builder's portion of the Properties except to the extent any of such rights or reservations are expressly withheld by Declarant in the Recorded document designating that Guest Builder as a Guest Builder, and provided in all cases that the exercise of any such rights has the prior written consent of Declarant.

15.1. CONSTRUCTION RIGHTS. Declarant or a Guest Builder has the right to (a) subdivide or resubdivide the Properties, (b) complete or modify Improvements to and on the Common Area or any portion of the Properties owned or leased solely or partially by Declarant or a Guest Builder, (c) alter Improvements and Declarant's or a Guest Builder's construction plans and designs, (d) modify Declarant's or a Guest Builder's development plan for the Properties and the Annexable Territory, including designating and redesignating Phases, reshaping the Lots and Common Area, and constructing Residences of larger or smaller sizes, values, and of different types, (e) construct such additional Improvements as Declarant or a Guest builder considers advisable in the course of development of the Properties so long as any Lot in the Properties or the Annexable Territory remains unsold, and (f) increasing or decreasing the number of Lots which may be annexed.

15.2. SALES AND MARKETING RIGHTS. Declarant's rights under this Declaration include the right to install and maintain such structures, displays, signs, billboards, flags and sales offices as may be reasonably necessary to conduct Declarant's business of completing construction and disposing of the Lots and the Annexable Territory. Declarant may use any Lots in the Properties as model home complexes, real estate sales offices or leasing offices.

15.3. CREATING ADDITIONAL EASEMENTS. At any time before Close of Escrow for a Lot, Declarant or a Guest Builder has the right to establish on that Lot additional licenses, easements, reservations and rights-of-way to itself, to utility companies, or to others as Declarant determines are reasonably necessary to the Properties' proper development and disposal. Without limiting the foregoing, Declarant hereby reserves, together with the right to grant and transfer the same (a) easements (i) over the Common Area to construct, erect, operate and maintain thereon, therein or thereunder roads, streets, walks, driveways and parkways, and (ii) over the Properties for the installation and maintenance of electric, telephone, cable television, water, gas, irrigation, sanitary sewer and drainage lines and facilities and other Improvements, including without limitation, the right for a period of five (5) years after the Close of Escrow for a Lot to install and construct any such items on the portion of such Lot, if any, approximately where shown on an exhibit to this Declaration or in a Notice of Addition or other document and, if desired, by Declarant in its sole and absolute discretion, to designate any or all of such items as Common Area to be maintained by the Association as described in this Declaration, and (b) the right to place on, under or across the Properties transmission lines and other facilities for Telecommunications Facilities and Telecommunications Services and the right to enter upon the Properties to service, maintain, repair, reconstruct and replace such Telecommunications Facilities and Telecommunications Services.

15.4. ARCHITECTURAL RIGHTS. Declarant and any Person to whom Declarant may assign all or a portion of its exemption under this Declaration need not seek or obtain Design Review Committee approval of any Improvements constructed anywhere on the Properties by Declarant or such Person. Declarant may exclude portions of the Properties from jurisdiction of the Design Review Committee in the applicable Notice of Addition or Supplemental Declaration. Declarant,

may, at its option, establish an additional design review committee for any area exempted from the jurisdiction of the Design Review Committee.

15.5. USE RESTRICTION EXEMPTION. Declarant and any Person to whom Declarant may assign all or a portion of its exemption under this Declaration is exempt from the restrictions established in Article II.

15.6. ASSIGNMENT OF RIGHTS. Declarant may assign its rights under the Restrictions to any successor in interest to any portion of Declarant's interest in the Properties by a written assignment.

15.7. AMENDMENTS. No amendment may be made to this Article without the prior written approval of Declarant. At any time before the first Close of Escrow in Phase 1, Declarant, and the Initial Guest Builder, may unilaterally amend or terminate this Declaration by Recording a written instrument which effects the amendment or termination and is signed and acknowledged by Declarant and the Initial Guest Builder. For so long as Declarant or a Guest Builder owns any portion of the Properties or the Annexable Territory, Declarant may unilaterally amend this Declaration by Recording a written instrument signed by Declarant to (a) conform this Declaration to the rules, regulations or requirements of VA, FHA, DRE, FNMA, GNMA or FHLMC, (b) amend Article III, (c) amend any of the Exhibits to this Declaration that depict a Lot for which Close of Escrow has not occurred or Common Area that has not been conveyed to the Association, (d) comply with any laws, and (e) correct any typographical errors.

15.8. EXERCISE OF RIGHTS. Each Owner grants an irrevocable, special power of attorney to Declarant to execute and Record all documents and maps necessary to allow Declarant to exercise its rights under this Article.

15.9. USE OF PROPERTIES. Declarant and its prospective purchasers of Lots are entitled to the nonexclusive use of the Common Area owned by the Association without further cost for access, ingress, egress, use or enjoyment, to (a) show the Properties to prospective purchasers, (b) dispose of the Properties as provided in this Declaration, and (c) develop and sell the Annexable Territory. Declarant, and prospective purchasers, are also entitled to the nonexclusive use of any portions of the Properties which are private streets, drives and walkways for construction access and accommodating vehicular and pedestrian traffic to and from the Properties and the Annexable Territory. The use of the Common Area by Declarant and the Guest Builders may not unreasonably interfere with the use thereof by the other Owners.

15.10. PARTICIPATION IN ASSOCIATION. The Association shall provide Declarant with written notice of the transfer of any Lot and all notices and other documents to which a Mortgagee is entitled pursuant to this Declaration, provided that Declarant shall be provided such notices and other documents without making written request therefor. Commencing on the date on which Declarant no longer has an elected representative on the Board, and continuing until the later to occur of the date on which Declarant (a) no longer owns a Lot in the Properties or (b) cannot unilaterally annex property to the Properties, the Association shall provide Declarant with written notice of all meetings of the Board as if Declarant were an Owner and Declarant shall be entitled to

have a representative present at all such Board meetings ("Declarant's Representative"). The Declarant's Representative shall be present in an advisory capacity only and shall not be a Board member or have any right to vote on matters coming before the Board.

15.11. DECLARANT APPROVAL OF ACTIONS. Until Declarant or any Guest Builder no longer owns any Lots in the Properties or the Annexable Territory, the following actions, before being undertaken by the Association, must first be approved in writing by Declarant:

- (a) Any amendment or action requiring the approval of first Mortgagees;
- (b) The annexation to the Properties of real property other than the Annexable Territory pursuant to Section 16.2;
- (c) The levy of a Capital Improvement Assessment for the construction of new facilities not constructed on the Common Area by Declarant;
- (d) Any significant reduction of Association maintenance or other services; or
- (e) Any modification or termination of any provision of the Restrictions benefitting Declarant or the Guest Builder or which would impair or diminish Declarant's or the Guest Builder's rights to complete the Properties or the Annexable Territory or sell or lease dwellings therein.

15.12. NO RACIAL RESTRICTION. No Owner shall execute or cause to be recorded any instrument which imposes a restriction on the sale, lease or occupancy of that Owner's Lot on the basis of race, sex, color or creed.

15.13. MARKETING NAME. The Properties shall be marketed under the general name "Rancho Bella Vista." Declarant may change the marketing name of the Properties or designate a different marketing name for any Phase at any time in Declarant's sole discretion. Declarant shall notify the DRE of any change in or addition to the marketing name or names of the Properties or any Phase.

15.14. RESTRICTED OPEN SPACE AREAS. Declarant reserves the right, in its sole discretion, to (a) convey fee title to all or any portion of the Restricted Open Space Areas to an entity other than the Association, and (b) to convey fee title to all or any portion of the Restricted Common Area to the Association subject to the terms of a management agreement between the Association (as Declarant's assignee) and the Center for National Lands Management or any other Third Party Manager of Declarant's selection.

15.15. DECLARANT REPRESENTATIVE. Until the later to occur of the date on which Declarant (a) no longer owns a Lot in the Properties or (b) no longer has an assignment of a Guest Builder's voting rights or (c) cannot unilaterally annex property to the Properties, the Association shall provide Declarant with written notice of all meetings of the Board as if Declarant were an

Owner and Declarant shall be entitled, without obligation, to have a representative present at all such Board meetings ("Declarant's Representative"). The Declarant's Representative shall be in addition to any representative which the Declarant may have on the Board and, if Declarant elects to have an additional representative, the Declarant's Representative may be present in an advisory capacity only and shall not be a Board member or have any right to vote on matters coming before the Board.

ARTICLE XVI ANNEXATION OF ADDITIONAL PROPERTY

Additional real property may be annexed to the Properties and become subject to this Declaration by any of the following methods:

16.1. ADDITIONS BY DECLARANT OR GUEST BUILDERS. Declarant and any Guest Builder may add the Annexable Territory or any portion thereof to the Properties and bring such added territory under the general plan of this Declaration without the approval of the Association, the Board, or Owners, so long as Declarant or any Guest Builder owns any portion of the Annexable Territory. Annexable Territory added under this Section 16.1 may consist of Common Area without residential Lots. Any proposed addition by a Guest Builder must be approved by Declarant in writing. As each Phase is developed, Declarant and Guest Builder may, with respect thereto and as the owner thereof, Record a Supplemental Declaration which may supplement this Declaration with such additional covenants, conditions, restrictions, reservations and easements as Declarant or Guest Builder may deem appropriate for that Phase. Any Supplemental Declaration executed by a Guest Builder must also be executed by Declarant, evidencing Declarant's consent.

16.2. OTHER ADDITIONS. Additional real property may be annexed to the Properties and brought under the general plan of this Declaration upon the approval by vote or written consent of Members entitled to exercise no less than two-thirds (2/3) of the Association's voting power.

16.3. RIGHTS AND OBLIGATIONS-ADDED TERRITORY. Subject to the provisions of Section 16.4, when a Notice of Addition containing the provisions required by this Section is Recorded, all provisions in this Declaration will apply to the real property described in such Notice of Addition (the "Added Territory") in the same manner as if the real property were originally covered by this Declaration. Thereafter, the rights, powers and responsibilities of the Owners, lessees and occupants of Lots in the Added Territory, as well as in the property originally subject to this Declaration, will be the same as if the Added Territory were originally covered by this Declaration. After the first day of the month following the first Close of Escrow in the Added Territory, the Owners of Lots located in the Added Territory shall share in the payment of Assessments to the Association. Voting rights attributable to the Lots in the Added Territory do not vest until Annual Assessments have commenced on such Lots.

16.4. NOTICE OF ADDITION. The additions authorized under Sections 16.1 and 16.2 must be made by Recording a Notice of Addition which will extend the general plan of this Declaration to such Added Territory. The Notice of Addition for any addition under Section 16.1 must be signed by Declarant and/or the Guest Builder, as applicable. The Notice of Addition for any addition under Section 16.2 must be signed by at least two (2) officers of the Association to certify

that the Owner approval required under Section 16.2 was obtained. On Recordation of the Notice of Addition, the Added Territory will be annexed to and constitute a part of the Properties and will become subject to this Declaration; the Owners of Lots in the Added Territory will automatically acquire Membership. A Notice of Addition may contain a Supplemental Declaration with such additions and modifications of the covenants, conditions, restrictions, reservation of easements and equitable servitudes contained in this Declaration as may be necessary to reflect the different character, if any, of the Added Territory, or as Declarant deems appropriate in the development of the Added Territory, and as are not inconsistent with the general plan of this Declaration. Such Supplemental Declaration shall identify any Designated Service Areas in the Added Territory. No Notice of Addition or Supplemental Declaration may revoke the covenants, conditions, restrictions, reservation of easements, or equitable servitudes in this Declaration as the same pertain to the real property originally covered by this Declaration. In a Notice of Addition under Section 16.1, Declarant and the Guest Builder shall have the right, if it determines in the exercise of its sole discretion that the Added Territory will not benefit from Improvements or services which are Common Expenses of the Association, to designate that such Common Expense items will not be shared by the Added Territory, provided that such designation is also identified in the current Association Budget approved by the DRE for the Added Territory annexed, and provided that such designation does not result in an increase in Common Assessments in excess of the limit set in this Declaration. Concurrently with the first Close of Escrow for the sale of a Lot in any Phase annexed to the Properties in accordance herewith, Declarant or the Guest Builder, whoever owns the property, shall pay to the Association an appropriate amount (as determined by DRE) for reserves for replacement or deferred maintenance of the Common Area in such Phase required by or arising out of the use and occupancy of the Residences in such Phase under a rental program conducted by Declarant if such rental program was in effect for at least one (1) year before such first Close of Escrow.

16.5. DEANNEXATION AND AMENDMENT. Declarant (or Declarant and a Guest Builder acting together if the Phase is owned by a Guest Builder) may amend a Notice of Addition or delete all or a portion of a Phase from coverage of this Declaration and the Association's jurisdiction so long as Declarant or Guest Builder is the owner of all of such Phase and (a) an amending instrument or a Notice of Deletion of Territory, as applicable, is Recorded in the same manner as the applicable Notice of Addition was Recorded, (b) Declarant and the Guest Builders have not exercised any Association vote with respect to any portion of such Phase, (c) Assessments have not yet commenced with respect to any portion of such Phase, (d) Close of Escrow has not occurred for the sale of any Lot in such Phase, and (e) the Association has not made any expenditures or incurred any obligations with respect to any portion of such Phase.

ARTICLE XVII

COUNTY RESTRICTIONS IMPOSED AS CONDITIONS OF APPROVAL FOR TRACT NO. 28753

The following provisions are included in accordance with the Conditions of Approval for Tract No. 28753:

Notwithstanding any provision in this Declaration to the contrary, the following provisions shall apply:

The Association shall manage and continuously maintain the Common Area in the Properties, and shall not sell or transfer the Common Area, or any part thereof, absent the prior written consent of the Planning Director of the County Director of Riverside or the County's successor-in-interest.

The Association shall have the right to assess the Owners of each individual Lot for the reasonable cost of maintaining such Common Area, and shall have the right to lien the property of any such Owner who defaults in the payment of a maintenance assessment. An assessment lien, once created, shall be prior to all other liens recorded subsequent to the notice of assessment or other document creating the assessment lien.

This Declaration shall not be terminated 'substantially' amended, or property deannexed therefrom absent the prior written consent of the Planning Director of the County of Riverside or the County's successor-in-interest. A proposed amendment shall be considered 'substantial' if it affects the extent, usage, or maintenance of the common area established pursuant to this Declaration.

In the event of any conflict between this Declaration, and the Articles, the Bylaws, or the Rules and Regulations, if any, this Declaration shall control.

The County shall have the right under the Parkway Maintenance Agreement (a) to maintain the Parkways and place a special assessment on the tax bills of individual Owners if the Association fails to perform such maintenance and (b) remove any or all of the landscaping or irrigation system if the Association fails to do so upon the County's request, and to place a special assessment on the tax bills of the individual Owners for the cost thereof. Additionally, the Association shall not be dissolved or abandon its obligations under the Parkway Maintenance Agreement as long as that Agreement is in effect.

[SIGNATURES ON FOLLOWING PAGES]

**[SIGNATURE PAGE TO DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS AND RESERVATION OF EAS EMENTS FOR RANCHO BELLA VISTA]**

This Declaration is dated for identification purposes 2 - 18, 2002.

Rancho Bella Vista, LLC,
a California limited liability company

By: Paul Garrett

Name: PAUL GARRETT

Title: Manager

By: _____

Name: _____

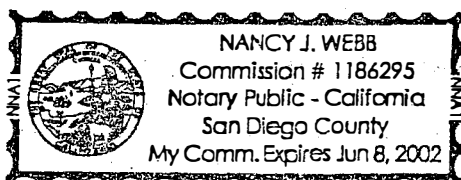
Title: _____

"Declarant"

STATE OF CALIFORNIA)
) ss.
COUNTY OF Riverside)

On 2 - 18, 2002, before me, Nancy J. Webb,
personally appeared Paul Garrett and _____
_____, personally known to me (or proved to me on the basis of satisfactory evidence)
to be the persons whose name is subscribed to the within instrument and acknowledged to me that
^{he} they executed the same in their ^{his} authorized capacities, and that by their ^{his} signatures on the instrument
the persons, or the entities upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.



Nancy J. Webb
Notary Public in and for said State

[SIGNATURE PAGE TO DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS AND RESERVATION OF EASEMENTS FOR RANCHO BELLA VISTA]

This Declaration is dated for identification purposes 2-19, 2002.

Richmond American Homes of California, Inc.,
a Colorado corporation

By: [Signature]

Name: James D. McMenamin

Title: Vice President/Regional Manager

By: _____

Name: _____

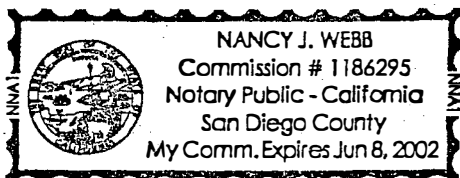
Title: _____

"Initial Guest Builder"

STATE OF CALIFORNIA)
) ss.
COUNTY OF Riverside)

On 2-19, 2002, before me, Nancy J. Webb,
personally appeared James D. McMenamin and _____,
personally known to me (~~or proved to me on the basis of satisfactory evidence~~) to be the persons
whose name is subscribed to the within instrument and acknowledged to me that ~~they~~ ^{he} executed the
same in ~~their~~ ^{his} authorized capacities, and that by ~~their~~ ^{his} signatures on the instrument the persons, or the
entities upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.



Nancy J. Webb
Notary Public in and for said State

EXHIBIT A

LEGAL DESCRIPTION OF ANNEXABLE TERRITORY

Portions of Section 8 and Section 17 Township 7 South, Range 2 West San Bernardino Base and Meridian, Records of Riverside County, State of California, more particularly described as follows:

Lots 4 through 17, inclusive, per Tract 25619-1, as filed in Book 221, Pages 63 through 74, inclusive, of Maps, Records of Riverside County, California.

EXCEPTING THEREFROM: the portion of land described in Grant Deed to Eastern Municipal Water District per document recorded March 5, 1991 as Instrument No. 72218, Records of Riverside County, California.

ALSO EXCEPTING THEREFROM: the portion of land described in Grant Deed to Rancho California Water District per document recorded November 16, 2000 as Instrument Number 457909, Records of Riverside County, California.

TOGETHER WITH: all of the land described by document recorded March 28, 1999 as Instrument Number 165236 pursuant to Lot Line Adjustment Number 4064, approved by the Riverside County Planning Department on March 1, 1999.

EXCEPTING THEREFROM: the "ADJUSTED REMAINDER PARCEL" described by said Instrument Number 165236.

EXHIBIT B

ARTICLES OF INCORPORATION OF THE ASSOCIATION