

Recording requested by  
Chicago Title Company



2006337411

09/05/2006 12:44 PM

OFFICIAL RECORDS OF ALAMEDA COUNTY  
PATRICK O'CONNELL  
RECORDING FEE: 176.00

When Recorded Return To:

Hanna & Van Atta  
525 University Avenue, Suite 703  
Palo Alto, California 94301

59101956

A23  
SA  
SL



57 PGS

## DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

### FAIRVIEW HEIGHTS

**THIS DECLARATION CONTAINS A BINDING ARBITRATION PROVISION IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT. YOU MUST READ THE ARBITRATION PROVISION CAREFULLY AND SHOULD CONSULT LEGAL COUNSEL WITH ANY QUESTIONS.**

**IF THIS DOCUMENT CONTAINS ANY RESTRICTION BASED ON RACE, COLOR, RELIGION, SEX, SEXUAL ORIENTATION FAMILIAL STATUS, MARITAL STATUS, DISABILITY, NATIONAL ORIGIN, SOURCE OF INCOME AS DEFINED IN SUBDIVISION (P) OF SECTION 12955 OF THE GOVERNMENT CODE, OR ANCESTRY, THAT RESTRICTION VIOLATES STATE AND FEDERAL FAIR HOUSING LAWS AND IS VOID, AND MAY BE REMOVED PURSUANT TO SECTION 12956.2 OF THE GOVERNMENT CODE. LAWFUL RESTRICTIONS UNDER STATE AND FEDERAL LAW ON THE AGE OF OCCUPANTS IN SENIOR HOUSING OR HOUSING FOR OLDER PERSONS SHALL NOT BE CONSTRUED AS RESTRICTIONS BASED ON FAMILIAL STATUS.**

**Notice of Airport in Vicinity:** This property is presently located in the vicinity of an airport, within what is known as an airport influence area. For that reason, the property may be subject to some of the annoyances or inconveniences associated with proximity to airport operations (for example: noise, vibration, or odors). Individual sensitivities to those annoyances can vary from person to person. You may wish to consider what airport annoyances, if any, are associated with the property before you complete your purchase and determine whether they are acceptable to you. An "airport influence area," also known as an "airport referral area," is the area in which current or future airport-related noise, overflight, safety, or airspace protection factors may significantly affect land uses or necessitate restrictions on those uses as determined by an airport land use commission.

*Law Offices of*  
Hanna & Van Atta  
525 UNIVERSITY AVENUE, SUITE 703  
PALO ALTO, CA 94301  
TELEPHONE: (650) 321-5700

## FAIRVIEW HEIGHTS

### DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

#### TABLE OF CONTENTS

|  |   |
|--|---|
| INTRODUCTORY PARAGRAPHS A thru C .....   | 1 |
| 1.1. "Architectural Control Committee or Committee" .....  | 1 |
| 1.2. "Articles" .....  | 1 |
| 1.3. "Assessment" .....  | 1 |
| 1.4. "Assessment Lien" .....   | 1 |
| 1.5. "Association" .....   | 1 |
| 1.6. "Board" or "Board of Directors" .....   | 1 |
| 1.7. "Bylaws" .....  | 1 |
| 1.8. "Common Area" .....   | 2 |
| 1.9. "Common Expenses" .....   | 2 |
| 1.10. "County" .....   | 2 |
| 1.11. "Davis-Stirling Act" .....   | 2 |
| 1.12. "Declarant" .....  | 2 |
| 1.13. "Declaration" .....  | 2 |
| 1.14. "Design Guidelines" .....  | 2 |
| 1.15. "DRE" .....  | 2 |
| 1.16. "Eligible Mortgages" .....   | 2 |
| 1.17. "Eligible Mortgage Holder" .....   | 2 |
| 1.18. "Eligible Insurer or Guarantor" .....  | 2 |
| 1.19. "First Lender" .....   | 2 |
| 1.20. "First Mortgage" .....   | 2 |
| 1.21. "Foreclosure" .....  | 2 |
| 1.22. "Governing Documents" .....  | 2 |
| 1.23. "Lot" .....  | 3 |
| 1.24. "Maintenance Guidelines" .....   | 3 |
| 1.25. "Maintenance Manual" .....   | 3 |
| 1.26. "Major Components" .....   | 3 |
| 1.27. "Map" .....  | 3 |
| 1.28. "Member" .....   | 3 |
| 1.29. "Mortgage" .....   | 3 |
| 1.30. "Mortgagee" .....  | 3 |
| 1.31. "Mortgagor" .....  | 3 |
| 1.32. "Notice of Delinquent Assessment" .....  | 3 |
| 1.33. "Owner" or "Owners" .....  | 3 |
| 1.34. "Person" .....   | 3 |
| 1.35. "Project" .....  | 3 |
| 1.36. "Public Report" .....  | 3 |
| 1.37. "Regular Assessments" .....  | 4 |
| 1.38. "Reimbursement Charge" .....   | 4 |
| 1.39. "Reserves or Reserve Funds" .....  | 4 |
| 1.40. "Rules" .....  | 4 |
| 1.41. "SB 800 or the Right to Repair Law" .....  | 4 |
| 1.42. "Special Assessments" .....  | 4 |
| 1.43. "Utility Facilities" .....   | 4 |
| ARTICLE II. DESCRIPTION OF PROJECT, DIVISION OF PROPERTY, AND CREATION OF<br>PROPERTY RIGHTS ..... | 4 |
| 2.1. Description of Project .....  | 4 |
| 2.2. Easements; Dedication of Common Area .....  | 4 |

|              |   |    |
|--------------|---|----|
| 2.3.         | Easements to Accompany Conveyance of Lot.....                       | 5  |
| 2.4.         | Conveyance of Common Area to Association.....                       | 5  |
| 2.5.         | Owners' Rights and Easements for Utilities .....                    | 5  |
| 2.6.         | Encroachment Easements .....  | 6  |
| 2.7.         | Drainage Easements.....   | 6  |
| 2.8.         | Common Utility Meter Easement.....                                  | 6  |
| 2.9.         | Other Easements .....   | 7  |
| 2.10.        | Rights of Entry and Use.....  | 7  |
| 2.11.        | Partition of Common Area .....                                      | 7  |
| 2.12.        | All Easements Part of Common Plan.....                              | 7  |
| ARTICLE III. | ASSOCIATION, ADMINISTRATION, MEMBERSHIP AND VOTING RIGHTS.....      | 8  |
| 3.1.         | Association to Own and Manage Common Areas.....                     | 8  |
| 3.2.         | Membership.....   | 8  |
| 3.3.         | Transferred Membership .....  | 8  |
| 3.4.         | Membership and Voting Rights .....                                  | 8  |
| ARTICLE IV.  | MAINTENANCE AND ASSESSMENTS.....                                    | 8  |
| 4.1.         | Creation of the Lien and Personal Obligation of Assessments.....    | 8  |
| 4.2.         | Purpose of Assessments .....  | 9  |
| 4.3.         | Assessments .....   | 9  |
| A.           | Regular Assessments.....  | 9  |
| B.           | Special Assessments.....  | 9  |
| 4.4.         | Restrictions on Increases in Regular or Special Assessments.....    | 9  |
| A.           | Restrictions .....  | 9  |
| B.           | Assessments - Emergency Situations .....                            | 10 |
| C.           | Notice and Quorum for Any Action Authorized Under Section 4.4 ..... | 10 |
| 4.5.         | Division of Assessments .....                                       | 10 |
| 4.6.         | Date of Commencement of Regular Assessment; Due Dates .....         | 10 |
| 4.7.         | Effect of Nonpayment of Assessments .....                           | 11 |
| 4.8.         | Transfer of Lot by Sale or Foreclosure.....                         | 11 |
| 4.9.         | Priorities; Enforcement; Remedies.....                              | 11 |
| 4.10.        | Reimbursement Charges.....  | 16 |
| 4.11.        | Unallocated Taxes.....  | 16 |
| 4.12.        | Estoppel Certificate .....  | 16 |
| ARTICLE V.   | DUTIES AND POWERS OF THE ASSOCIATION.....                           | 17 |
| 5.1.         | Duties .....  | 17 |
| A.           | Maintenance .....   | 17 |
| B.           | Inspection and Maintenance Guidelines.....                          | 17 |
| C.           | Insurance .....   | 18 |
| D.           | Discharge of Liens .....  | 19 |
| E.           | Assessments .....   | 19 |
| F.           | Payment of Expenses and Taxes .....                                 | 19 |
| G.           | Enforcement .....   | 19 |
| H.           | Crime Watch.....  | 19 |
| I.           | Emergency Route .....   | 19 |
| 5.2.         | Powers.....   | 19 |
| A.           | Utility Service .....   | 19 |
| B.           | Easements .....   | 19 |
| C.           | Manager.....  | 19 |
| D.           | Adoption of Rules.....  | 20 |
| E.           | Access .....  | 20 |
| F.           | Assessments, Liens, Penalties and Fines.....                        | 20 |
| G.           | Enforcement .....   | 20 |
| H.           | Acquisition and Disposition of Property .....                       | 20 |
| I.           | Loans .....   | 21 |

|               |   |    |
|---------------|---|----|
| J.            | Dedication .....  | 21 |
| K.            | Contracts .....   | 21 |
| L.            | Delegation .....  | 21 |
| M.            | Appointment of Trustee .....  | 21 |
| N.            | Litigation/Arbitration .....  | 21 |
| O.            | Other Powers .....  | 22 |
| P.            | Common Area Improvements .....  | 22 |
| Q.            | Granting Rights .....   | 22 |
| 5.3.          | Commencement of Association's Duties and Powers .....                       | 22 |
| ARTICLE VI.   | ARCHITECTURAL CONTROL .....   | 22 |
| 6.1.          | Purpose of Architectural Controls .....                                     | 22 |
| 6.2.          | Requirement for Approval of Plans .....                                     | 23 |
| 6.3.          | Architectural Control Committee Membership .....                            | 23 |
| 6.4.          | Architectural Control Committee Action .....                                | 23 |
| 6.5.          | Landscaping .....   | 24 |
| 6.6.          | Governmental Approval .....   | 25 |
| 6.7.          | Completion of Work; Review of Work .....                                    | 25 |
| 6.8.          | No Waiver of Future Approvals .....   | 26 |
| 6.9.          | Variances .....   | 26 |
| ARTICLE VII.  | USE RESTRICTIONS .....  | 26 |
| 7.1.          | Use of Lot .....  | 26 |
| 7.2.          | Nuisances .....   | 26 |
| 7.3.          | Vehicle Restrictions and Towing .....                                       | 28 |
| 7.4.          | Commercial Activity .....   | 29 |
| 7.5.          | Storage in Common Area .....  | 29 |
| 7.6.          | Signs .....   | 29 |
| 7.7.          | Animals .....   | 30 |
| 7.8.          | Garbage and Refuse Disposal .....   | 30 |
| 7.9.          | Radio and Television Antennas .....   | 30 |
| 7.10.         | Basketball Apparatus .....  | 31 |
| 7.11.         | Clothes Lines .....   | 31 |
| 7.12.         | Power Equipment and Car Maintenance .....                                   | 31 |
| 7.13.         | Liability of Owners for Damage to Common Area .....                         | 31 |
| 7.14.         | Right to Lease .....  | 31 |
| 7.15.         | Commonly Metered Utilities .....  | 32 |
| 7.16.         | Activities Causing Increase in Insurance Rates .....                        | 32 |
| 7.17.         | Common Area Use .....   | 32 |
| 7.18.         | Owner's Right and Obligation to Maintain and Repair .....                   | 32 |
| 7.19.         | Building Restrictions on Certain Lots .....                                 | 33 |
| ARTICLE VIII. | INSURANCE; DAMAGE OR DESTRUCTION; CONDEMNATION .....                        | 33 |
| 8.1.          | Insurance .....   | 33 |
| A.            | Amount, Term and Coverage .....   | 33 |
| B.            | Representation for Claims .....   | 34 |
| C.            | Waiver of Subrogation .....   | 34 |
| D.            | Review of Policies .....  | 34 |
| E.            | Copies of Policies; Notice to Members .....                                 | 34 |
| F.            | Limitation on Liability .....   | 35 |
| G.            | Policies and Procedures Regarding the Filing and Processing of Claims ..... | 35 |
| H.            | Owner's Insurance .....   | 35 |
| 8.2.          | Damage or Destruction .....   | 35 |
| A.            | Process for Repair or Reconstruction .....                                  | 36 |
| B.            | Process If Repair or Reconstruction Not Undertaken .....                    | 37 |
| 8.3.          | Condemnation .....  | 37 |
| ARTICLE IX.   | GENERAL PROVISIONS .....  | 37 |

|       |  |    |
|-------|--|----|
| 9.1.  | Enforcement.....   | 37 |
| 9.2.  | Invalidity of Any Provision.....   | 37 |
| 9.3.  | Term.....  | 38 |
| 9.4.  | Amendments.....  | 38 |
| 9.5.  | Rights of First Lenders.....   | 38 |
| A.    | Copies of Governing Documents.....   | 38 |
| B.    | Audited Statement.....   | 38 |
| C.    | Notice of Action.....  | 39 |
| D.    | Consent to Action.....   | 39 |
| E.    | Right of First Refusal.....  | 40 |
| F.    | Contracts.....   | 40 |
| G.    | Reserves.....  | 40 |
| H.    | Priority of Liens.....   | 41 |
| I.    | Distribution of Insurance or Condemnation Proceeds.....  | 41 |
| J.    | Payment of Taxes or Insurance by Lenders.....  | 41 |
| 9.6.  | Limitation of Restrictions on Declarant.....   | 41 |
| 9.7.  | Termination of Any Responsibility of Declarant.....  | 42 |
| 9.8.  | Owners' Compliance.....  | 42 |
| 9.9.  | Notice.....  | 42 |
| 9.10. | Special Provisions Relating to Enforcement of Declarant's Obligation to Complete Common Area Improvements..... | 43 |
| 9.11. | Special Provisions Relating to Enforcement of Declarant's Obligation to Pay Assessments.....                   | 43 |
| 9.12. | Fair Housing.....  | 44 |
| 9.13. | Dispute Resolution.....  | 45 |
| A.    | Claims for Declaratory Relief or Enforcement of Governing Documents.....                                       | 45 |
| B.    | Design or Construction Defect Claims.....  | 45 |
| C.    | Notices to Members of Legal Proceedings Against Declarant.....   | 45 |
| D.    | Judicial Reference for Certain Disputes.....   | 46 |
| E.    | Arbitration of Disputes.....   | 46 |
| 9.14. | Number; Gender.....  | 50 |
| 9.15. | Mergers or Consolidations.....   | 50 |

## **FAIRVIEW HEIGHTS**

### **DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**THIS DECLARATION**, made on the date hereinafter set forth, by FAIRVIEW HILLS, LLC, a California limited liability company ("Declarant"), is made with reference to the following facts:

**A. Location of Property.** Declarant is the owner of certain property located in the County of Alameda ("County"), State of California, more particularly described on the map entitled "Tract No. 6102," filed for record in the Office of the Recorder of the County of Alameda, State of California, on March 27, 2000, in Book 250 of Maps, page(s) 68-73.

**B. Owner's Interest.** The development shall be referred to as the "Project" as defined in section 1.35. Each Lot shall have appurtenant to it a membership in the FAIRVIEW HEIGHTS HOMEOWNERS ASSOCIATION, a nonprofit mutual benefit corporation, which shall own the Common Area.

**C. Intention.** Declarant intends by this document to impose upon the Project mutually beneficial restrictions under a general plan of improvement for the benefit of all Owners of Lots.

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

**1.1. "Architectural Control Committee or Committee":** Architectural Control Committee created pursuant to Article VI.

**1.2. "Articles":** The Articles of Incorporation of the Association, as amended from time to time.

**1.3. "Assessment":** The cost of maintaining, improving, repairing, operating and managing the Project which is to be paid by each Owner as determined by the Association, and shall include Regular Assessments, Special Assessments and Reimbursement Charges.

**1.4. "Assessment Lien":** Described in section 4.9.

**1.5. "Association":** The FAIRVIEW HEIGHTS HOMEOWNERS ASSOCIATION, a California nonprofit mutual benefit corporation, the Members of which shall be the Owners of Lots in the Project.

**1.6. "Board" or "Board of Directors":** The governing body of the Association.

**1.7. "Bylaws":** The Association, as amended from time to time.

1.8. **"Common Area"**: The portions of the Project and all improvements thereon owned by the Association for the common use and enjoyment of the Owners, consisting initially, upon recordation of the Map and conveyance by deed to the Association, of Parcels A, B, and C.

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

1.10. **"County"**: The County of Alameda.

1.11. **"Davis-Stirling Act"**: California Civil Code sections 1350-1378.

1.12. **"Declarant"**: FAIRVIEW HILLS, LLC, a California limited liability company, and any successor or assign that expressly assumes the rights and duties of the Declarant under this Declaration in a recorded written document.

1.13. **"Declaration"**: This Declaration, as amended or supplemented from time to time.

1.14. **"Design Guidelines"**: The rules or guidelines setting forth procedures and standards for submission of plans for Architectural Review Committee approval.

1.15. **"DRE"**: The California Department of Real Estate and any department or agency of the California state government that succeeds to the DRE's functions.

1.16. **"Eligible Mortgages"**: Mortgages held by "Eligible Mortgage Holders."

1.17. **"Eligible Mortgage Holder"**: A First Lender who has requested notice of certain matters from the Association in accordance with section 9.5C.

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

1.19. **"First Lender"**: Any bank, savings and loan association, insurance company, or other financial institution holding a recorded First Mortgage on any Lot.

1.20. **"First Mortgage"**: Any recorded mortgage made in good faith and for value on a Lot with first priority over other mortgages thereon.

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

1.22. **"Governing Documents"**: This Declaration, as amended from time to time, the exhibits, if any, that are attached to the Declaration, together with the other basic documents used to create and govern the Project, including the Map, the Articles, the Bylaws, and Rules adopted by the Board or the Association.

1.23. **"Lot"**: Each Lot or parcel shown on the Map, with the exception of the Common Area.

1.24. **"Maintenance Guidelines"**: Recommendations and suggestions for maintenance of Project improvements.

1.25. **"Maintenance Manual"**: The document containing the maintenance procedures and requirements applicable to the Common Area improvements.

1.26. **"Major Components"**: Those elements of the Project, including, without limitation, structural elements, machinery and equipment, that the Association is obligated to maintain as provided in Civil Code §§ 1365 and 1365.5.

1.27. **"Map"**: The Map, described above in Clause A.

1.28. **"Member"**: A person entitled to membership in the Association as provided herein.

1.29. **"Mortgage"**: A mortgage, deed of trust, assignment of rents, issues and profits or other proper instrument (including, without limitation, those instruments and estates created by sublease or assignment) given as security for the repayment of a loan or other financing which encumbers a Lot, made in good faith and for value.

1.30. **"Mortgagee"**: The holder of a Mortgage including the beneficiary of a deed of trust that constitutes a Mortgage.

1.31. **"Mortgagor"**: A Person who encumbers his Lot with a Mortgage including the trustor of a deed of trust that constitutes a Mortgage.

1.32. **"Notice of Delinquent Assessment"**: A notice of delinquent assessment filed by the Association for a delinquent Assessment pursuant to section 4.9C.

1.33. **"Owner" or "Owners"**: The record holder, whether one (1) or more persons or entities, of fee simple title to any Lot which is a part of the Project, expressly excluding persons or entities having an interest merely as security for the performance of an obligation until such person obtains fee title thereto, and those parties who have leasehold interests in a Lot. If a Lot is sold under a contract of sale and the contract is recorded, the purchaser, rather than the fee owner, shall be considered the "Owner" from and after the date the Association receives written notice of the recorded contract.

1.34. **"Person"**: A natural person, a corporation, a partnership, a trust, or other legal entity.

1.35. **"Project"**: All of the real property described on the Map and in Exhibit "A" and all improvements on that real property, subject to this Declaration.

1.36. **"Public Report"**: The official document and permit issued pursuant to the Subdivided Lands Act [Business & Professions Code §§ 11000 et seq.] by the State of California Department of Real Estate authorizing the offering of the Lots for sale to the public.



1.37. **"Regular Assessments"**: A Regular Assessment determined and levied pursuant to section 4.3A of this Declaration.

1.38. **"Reimbursement Charge"** shall mean and refer to a charge levied by the Board against an Owner to reimburse the Association for costs and expenses incurred in bringing the Owner and/or his or her Lot into compliance with the provisions of this Declaration, determined and levied pursuant to sections 4.10 and 5.1A of this Declaration.

1.39. **"Reserves or Reserve Funds"**: That portion of the Common Expenses collected as part of the Regular Assessments levied against the Lots in the Project allocated (i) for the future repair and replacement of, or additions to, the Major Components which the Association is obligated to maintain pursuant to this Declaration, including reserves for replacement of structural elements and mechanical equipment or other facilities maintained by the Association; and (ii) to cover the deductible amounts of any insurance policies maintained by the Association.

1.40. **"Rules"** shall mean and refer to the rules adopted from time to time by the Association pursuant to section 5.2D.

1.41. **"SB 800 or the Right to Repair Law"**: Division 2, Part 2, Title 7 (commencing with Section 895) of the California Civil Code.

1.42. **"Special Assessments"**: A special assessment levied by the Association pursuant to section 4.3B.

1.43. **"Utility Facilities"**: Defined in section 2.5.

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

2.1. **Description of Project**: The Project is a planned development which shall consist of the Common Area, 40 residential Lots, and all improvements thereon.

2.2. **Easements; Dedication of Common Area**: Each of the Lots shown on the Map shall have appurtenant to it as the dominant tenement an easement over the Common Area(s) now or hereafter owned by the Association as the servient tenement(s) for ingress and egress, and for use, occupancy and enjoyment, and where applicable, for the construction, maintenance and operation of utilities, are subject to the following:

A. The right of the Association to discipline Members and to suspend the voting rights of a Member for any period during which any Assessment against his Lot remains unpaid, and for any infraction of the Declaration, Bylaws, Articles or written Rules in accordance with the provisions of sections 4.9, 5.2F and 9.1 hereof.

B. The right of the Association to dedicate, transfer or mortgage all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members, provided, that in the case of the borrowing of money and the mortgaging of its property as security therefor, the rights of such mortgagee shall be

subordinate to the rights of the Members of the Association. No such dedication, transfer or mortgage shall be effective unless an instrument signed or approved by two-thirds (2/3) of each class of Members agreeing to such dedication, transfer or mortgage has been recorded.

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

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

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

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

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

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

**2.5. Owners' Rights and Easements for Utilities:** The rights and duties of the Owners of Lots within the Project with respect to sanitary sewer, storm sewer, drainage, water, electric, gas, television receiving, telephone equipment, cables and lines, meters, catch basins, and wires (hereinafter referred to, collectively, as "Utility Facilities") shall be as follows:

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

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

**C.** In the event of a dispute between Owners with respect to the repair or rebuilding of said Utility Facilities, or with respect to the sharing of the cost thereof, then, upon written request of one (1) Owner addressed to the other Owner(s), the matter shall be submitted first to the Board for mediation, and thereafter, if the dispute remains unresolved, to binding arbitration within sixty (60) days pursuant to section 9.13, and the decision of the Arbitrator(s) shall be final and conclusive on the parties, and judgment may be entered thereon in any court having jurisdiction.

**2.6. Encroachment Easements:** Each Lot as the dominant tenement shall have an easement over adjoining Lots and Common Area as the servient tenements for the purpose of accommodating any encroachment due to foundations, exterior wall, windows, roof overhang and fences or walls which are built in accordance with the original design, plans and specifications of Declarant, or due to engineering errors, errors or adjustments in original construction, settlement or shifting of the building, or similar causes. There shall be valid easements for the maintenance of said encroachments as long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachment, settlement or shifting; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the intentional conduct of said Owner or Owners other than adjustments by Declarant in the original construction. In the event a structure is partially or totally destroyed, and then repaired or rebuilt, the Owners of each adjoining Lot agree that minor encroachments over adjoining Lots and Common Area shall be permitted and that there shall be valid easements for the maintenance of said encroachments so long as they shall exist. In the event that an error in engineering, design or construction results in an encroachment of a building into the Common Area, or into or onto an adjoining Lot, or into a required setback area, a correcting modification may (at the discretion of Declarant) be made in the subdivision map. Said modification shall be in the form of a certificate of correction and shall be executed by Declarant (so long as Declarant is the sole owner of the Project) and by Declarant's engineer and by the County engineer. If the correction occurs after title to the Common Area has been conveyed to the Association, the Association shall also execute the certificate of correction. The Board of Directors may, by vote or written approval of a majority of the directors, authorize the execution of the certificate of correction. The modification may also be made by lot line adjustment, if more appropriate.

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

**2.8. Common Utility Meter Easement:** An easement over any Lot or Lots in favor of the Association for the purpose of installing, maintaining, repairing and replacing the common utility meter and connecting lines installed thereon by Declarant or the Association for irrigation and Common Area lighting or other common facilities for any portion of the Project.

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

**2.10. Rights of Entry and Use:** The Lots and Common Area shall be subject to the following rights of entry and use:

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

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

C. The easements described in this Article II;

D. The right of the Association's agents to enter any Lot to perform maintenance as described in section 7.18;

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

**2.11. Partition of Common Area:** There shall be no subdivision or partition of the Common Area, nor shall any Owner seek any partition or subdivision thereof.

Notwithstanding any provisions to the contrary contained in this Declaration and in order to provide for a means of terminating the Project if this should become necessary or desirable, on occurrence of any of the conditions allowing an Owner of a Lot to maintain an action for partition (as such conditions are presently set forth in California Civil Code § 1359 or as such conditions in the future may be set forth in any amendment thereto or comparable provisions of law), two-thirds (2/3) of the Owners of Lots shall have the right to petition the Superior Court having jurisdiction to alter or vacate the Map under California Government Code § 86499.21, et seq., or any comparable provisions of law, and to vest title to the Project in the Owners as tenants in common and order an equitable partition of the Project in accordance with the laws of the State of California.

Nothing herein shall be construed to prohibit partition of a joint tenancy or co-tenancy in any Lot.

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

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

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

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

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

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

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

### **ARTICLE IV. MAINTENANCE AND ASSESSMENTS**

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

(1) to pay Regular Assessments, Special Assessments and Reimbursement Charges for purposes permitted in this Declaration, such Assessments to be established and collected as subsequently provided in this Declaration; and

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

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

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

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

**4.3. Assessments:**

**A. Regular Assessments:** The Board shall establish and levy Regular Assessments in an amount that the Board estimates will be sufficient to raise the funds needed to perform the duties of the Association during each fiscal year. Regular Assessments shall be for a one-year period and collected in monthly installments.

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

**B. Special Assessments:** The Board, at any time, may levy a Special Assessment in order to raise funds for unexpected operating or other costs, insufficient operating or reserve funds, or such other purposes as the Board in its discretion considers appropriate. Special Assessments shall be allocated among the Lots in the same manner as Regular Assessments.

**4.4. Restrictions on Increases in Regular or Special Assessments:**

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

**B. Assessments - Emergency Situations:** Notwithstanding the foregoing, the Board, without membership approval, may increase Regular Assessments or levy Special Assessments necessary for an emergency situation in amounts that exceed the provision of section 4.4A, above. For purposes of this section, an emergency situation is one of the following:

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

The Association shall provide notice to the Owners by first-class mail notice of any increase in the Regular or Special Assessments of the Association not less than thirty (30) nor more than sixty (60) days prior to the increased Assessment becoming due.

This section 4.4 incorporates the statutory requirements of California Civil Code § 1366. If this section of the California Civil Code is amended in any manner, this section 4.4 shall be automatically amended in the same manner without the necessity of amending this Declaration.

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

**4.5. Division of Assessments:** All Assessments, both Regular and Special, shall be levied equally among the Lots. Regular Assessments shall be collected on a monthly basis unless the Board directs otherwise. Special Assessments may be collected in one (1) payment or periodically as the Board shall direct.

**4.6. Date of Commencement of Regular Assessment; Due Dates:** The Regular Assessments provided for in this Declaration shall commence as to all Lots covered by this Declaration on the earlier to occur of (i) the first day of the month following the first conveyance of a Lot to the purchaser thereof under authority of a Public Report, or (ii) upon the occupancy of a subdivision interest in the project.

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

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

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

**4.8. Transfer of Lot by Sale or Foreclosure:** Sale or transfer of any Lot shall not affect the Assessment Lien. However, the sale of any Lot pursuant to Foreclosure of a First Mortgage shall extinguish the lien of any Assessments on that Lot (including attorneys' fees, late charges, or interest levied in connection therewith as to payments which became due prior to such sale or transfer, except for Assessment Liens recorded prior to the mortgage). No sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof.

The unpaid share of such Assessments shall be deemed to be Common Expenses collectible from all Owners of the Lots including such acquirer, and his successors or assigns.

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

**4.9. Priorities; Enforcement; Remedies:** If an Owner fails to pay an Assessment when due, the Association has the right, and option, to bring legal action against the Owner to enforce collection of the unpaid and past due Assessment, or may impose an Assessment Lien on the Lot owned by Owner pursuant to the provisions of Civil Code § 1367.1. Suit to recover a money judgment for unpaid Assessments and attorneys' fees, shall be maintainable without foreclosing or waiving the lien securing the same. The Association shall distribute the written notice described in subdivision (b) of Civil Code § 1365.1 entitled "Notice Assessments and Foreclosure" to each Member during the 60-day period immediately preceding the beginning of the Association's fiscal year. The notice is to be printed in at least 12-point type.

**A. Statement of Charges:** At least 30 days prior to the Association recording an Assessment Lien upon a Lot pursuant to Civil Code § 1367.1(a), the Association shall notify the owner of record in writing by certified mail of the following:

(1) A general description of the collection and lien enforcement procedures of the Association and the method of calculation of the amount owed, a statement that the Owner has the right to inspect the Association's records, pursuant to section 8333 of the Corporations Code, and the following statement in 14-point boldface type, if printed, or in capital letters, if typed: "IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST IS PLACED IN



**FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT ACTION"**

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

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

(4) The right to request a meeting with the Board as provided by Civil Code Section 1367.1(c)(3).

(5) The right to dispute the Assessment debt by submitting a written request for dispute resolution to the Association pursuant to the Association's "meet and confer" program required in Article 5 (commencing with Section 1363.810) of Chapter 4 of the Civil Code.

(6) The right to request alternative dispute resolution with a neutral third party pursuant to Article 2 (commencing with Section 1369.510) of Chapter 7 of the Civil Code before the Association may initiate foreclosure against the Owner's Lot, except that binding arbitration shall not be available if the Association intends to initiate a judicial foreclosure.

**Note:** Any payments made by the Owner toward the debt shall first be applied to the Assessments owed, and, only after the Assessments owed are paid in full shall the payments be applied to the fees and costs of collection, attorneys' fees, late charges, or interest. 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. When an Owner makes a payment, the owner may request a receipt and the Association shall provide it. The receipt shall indicate the date of payment and the person who received it. The Association shall provide a mailing address for overnight payment of Assessments.

**B. Payment Plan:** An Owner may submit a written request to meet with the Board to discuss a payment plan for the Assessment debt noticed pursuant to section 4.9.A. The Association shall provide the Owners the standards for payment plans, if any exist. The Board shall meet with the Owner in executive session within forty five (45) days of the postmark of the request, if the request is mailed within fifteen (15) days of the date of the postmark of the notice, unless there is no regularly scheduled Board meeting within that period, in which case the Board may designate a committee of one or more members to meet with the Owner. Payment plans may incorporate any Assessments that accrue during the payment plan period. Payment plans shall not impede the Association's ability to record a lien on the Owner's Lot to secure payment of delinquent Assessments. Additional late fees shall not accrue during the payment plan period if the Owner is in compliance with the terms of the payment plan. In the event of a default on any payment plan, the Association may resume its efforts to collect the delinquent Assessments from the time prior to entering into the payment plan.

**C. Notice of Delinquent Assessment:** After compliance with the provisions of Civil Code § 1367.1(a), the Association may record a Notice of Delinquent Assessment and establish an Assessment Lien against the Lot of the delinquent Owner prior and superior to all other

liens recorded subsequent to the Notice of Delinquent Assessment, 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 recorded prior to the Notice of Delinquent Assessment. The Notice of Delinquent Assessment shall include an itemized statement of the charges owed by the Owner described in section 4.9A above, a description of the Lot against which the Assessment and other sums are levied, the name of the record Owner, and the name and address of the trustee authorized by the Association to enforce the lien by sale. The notice shall be signed by any officer of the Association or any management agent retained by the Association and shall be mailed by certified mail to every person whose name is shown as an Owner of the Lot in the Association's records no later than ten (10) calendar days after recordation.

**D. Lien Releases:** Within twenty-one (21) days after payment of the sums specified in the Notice of Delinquent Assessment, the Association shall record or cause to be recorded in the Office of the County Recorder in which the Notice of Delinquent Assessment is recorded a lien release or notice of rescission and provide the Owner a copy of the lien release or notice that the delinquent Assessment has been satisfied.

**E. Enforcement of Assessment Lien and Limitations on Foreclosure:** The collection by the Association of delinquent Regular Assessments or delinquent Special Assessments of an amount less than one thousand eight hundred dollars (\$1,800), not including any accelerated Assessments, late charges, fees and costs of collection, attorney's fees, or interest, may not be enforced through judicial or nonjudicial foreclosure, but may be collected or secured in any of the following ways:

(1) By a civil action in small claims court, pursuant to Chapter 5.5 (commencing with Section 116.110) of Title 1 of the Code of Civil Procedure. If the Association chooses to proceed by an action in small claims court, and prevails, the Association may enforce the judgment as permitted under Article 8 (commencing with Section 116.810) of Title 1 of the Code of Civil Procedure. The amount that may be recovered in small claims court to collect upon a debt for delinquent Assessments may not exceed the jurisdictional limits of the small claims court and shall be the sum of the following:

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

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

(c) By recording a lien on the Owner's Lot upon which the Association may not foreclose until the amount of the delinquent Assessments secured by the lien, exclusive of any accelerated Assessments, late charges, fees and costs of collection, attorney's fees, or interest, equals or exceeds one thousand eight hundred dollars (\$1,800) or the Assessments are more than 12 months delinquent. If the Association chooses to record a lien under these provisions, prior to recording the lien, the Association shall offer the Owner and, if so requested by the Owner, participate in dispute resolution as set forth in Article 5 (commencing with Section 1368.810) of Chapter 4.

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

**F. Foreclosure:** The Association may collect delinquent Regular Assessments or delinquent Special Assessments of an amount of one thousand eight hundred dollars (\$1,800) or more, not including any accelerated Assessments, late charges, fees and costs of collection, attorney's fees, or interest, or any Assessments that are more than 12 months delinquent, using judicial or nonjudicial foreclosure subject to the following conditions:

(1) Prior to initiating a foreclosure on an owner's separate interest, the Association shall offer the Owner and, if so requested by the Owner, participate in dispute resolution pursuant to the Association's "meet and confer" program required in Article 5 (commencing with Section 1363.810) of Chapter 4 or alternative dispute resolution as set forth in Article 2 (commencing with Section 1369.510) of Chapter 7. The decision to pursue dispute resolution or a particular type of alternative dispute resolution shall be the choice of the Owner, except that binding arbitration shall not be available if the Association intends to initiate a judicial foreclosure. [Civ. Code 1367.4(c)(1)]

(2) The decision to initiate Foreclosure of an Assessment Lien for delinquent Assessments that has been validly recorded shall be made only by the Board and may not be delegated to an agent of the Association. The Board shall approve the decision by a majority vote of the Board members in an executive session. The Board shall record the vote in the minutes of the next meeting of the Board open to all members. The Board shall maintain the confidentiality of the Owner or Owners of the Lot by identifying the matter in the minutes by the Lot number of the property, rather than the name of the Owner or Owners. A Board vote to approve foreclosure of a lien shall take place at least 30 days prior to any public sale.

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

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

In addition to the requirements of Civil Code Section 2924, a notice of default shall be served by the Association on the Owner's legal representative in accordance with the manner of service of summons in Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure. Upon receipt of a written request by an Owner identifying a secondary address for purposes of collection notices, the Association shall send additional copies of any notices required by this section to the secondary address provided. The Association shall notify Owners of their right to submit secondary addresses to the Association, at the time the Association issues the pro forma operating budget pursuant to Section 1365. The Owner's request shall be in writing and shall be mailed to the Association in a manner that shall indicate the Association has received it. The Owner may identify or change a secondary address at any time, provided that, if a secondary address is identified or changed during the collection process, the Association shall only be required to send notices to the indicated secondary address from the point the Association receives the request.

**G. Sale by Trustee:** Any sale by the trustee shall be conducted in accordance with the provisions of §§ 2924, 2924b, 2924c, 2924f, 2924g, 2924h and 2924j of the California Civil Code applicable to the exercise of powers of sale in mortgages and deeds of trust, including any successor statutes thereto, or in any other manner permitted by law. The fees of a trustee may not exceed the amounts prescribed in Civil Code §§ 2924c and 2924d. Nothing in this Declaration shall preclude the Association from bringing an action directly against an Owner for breach of the personal obligation to pay Assessments nor from taking a deed in lieu of foreclosure.

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

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

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

**I. Suspension of Rights of Delinquent Owner:** The Board may temporarily suspend the voting rights and right to use Common Area facilities of a Member who is in default in payment of any Assessment, after notice and hearing, as provided in the Bylaws.

**J. Fines and Penalties:** In conformity to Civil Code §1367.1(e), fines and penalties imposed by the Association for violation of this Declaration as a disciplinary measure for failure of an Owner to comply with this Declaration or the Rules, except for late payments, are not "Assessments," and are not enforceable by Assessment Lien, but are enforceable by court proceedings; provided, however, pursuant to Civil Code § 1367.1(d), monetary penalties imposed by

the Association to reimburse the Association for costs incurred for repair of damage to Common Area or facilities for which the Owner, or guests or tenants of an Owner, were responsible may become the subject of a lien. Provided however that any such enforcement as a lien shall only be permitted if there are no Lots in the Project that are subject to the jurisdiction of the Department of Real Estate under a Final Subdivision Public Report. In the event that Civil Code §1367.1(e) is amended to permit fines and penalties imposed by the Association for violation of this Declaration as a disciplinary measure for failure of an Owner to comply with this Declaration or the Rules to be enforceable by Assessment Lien, then this provision shall be deemed amended to conform to any such amendment of Civil Code §1367.1(e).

The provisions of this Section 4.9 are intended to comply with the requirements of Civil Code section 1367.1 in effect as of January 1, 2006. If these sections are amended or rescinded in any manner the provisions of this Section 4.9 automatically shall be amended or rescinded in the same manner. Civil Code section 1367.1 may have been amended by the State Legislature, and the Board should confirm the current statutory requirements.

**4.10. Reimbursement Charges:** The Board may levy a Reimbursement Charge against a Member to reimburse the Association for costs incurred by the Association in the repair of damage to the Common Area and facilities for which the Member or the Member's guests or tenants were responsible and in bringing the Member and his Lot into compliance with the provisions of the Governing Documents in the amount required to reimburse the Association for the actual costs and expenses incurred and the amounts incurred to enforce the Association's rights under this Declaration as are then permitted by law. Reimbursement Charges shall be payable when directed by the Board after written notice to the Owners, which notice shall in no event be less than thirty (30) days. If an Owner disputes a Reimbursement Charge, the Owner may request a hearing before the Board.

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

**4.12. Estoppel Certificate:** Within ten (10) days of the mailing or delivery of a written request by any Owner, the Board shall provide the Owner with a written statement containing the following information: (i) whether to the knowledge of the Association, the Owner or occupant of the Owner's Lot is in violation of any of the provisions of this Declaration, the Articles, Bylaws or Rules; (ii) the amount of Regular Assessments and Special Assessments, and Reimbursement Charges, including installment payments, paid by the Owner during the fiscal year in which the request is received; and (iii) the amount of any assessments levied against the Owner's Lot that are unpaid as of the date of the statement, including any late charges, interest or costs of collection, and that, as of the date of the statement, are or may be made a lien against the Owner's Lot as provided by this Declaration. The Association may charge a fee to provide this information, provided the fee shall not exceed the Association's reasonable cost to prepare and reproduce the requested items.

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

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

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

(1) the Common Area, all improvements and landscaping thereon, and all property owned by the Association, including, without limitation, parking areas, private streets, irrigation systems, lighting fixtures, and utility, sewer or drainage systems not maintained by a public entity, utility company, or improvement district.

Except as expressly assigned to the Association in this section 5.1A, all other maintenance and repair obligations for any residential structure shall be done by and at the expense of the Owner of the residence as described in section 7.18.

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

**B. Inspection and Maintenance Guidelines:** The Declarant has provided the Association and each Owner with the inspection and maintenance guidelines and schedules including manufacturers' guidelines and schedules for the inspection and maintenance of the improvements within the Project ("Maintenance Guidelines"). When an Owner transfers a Lot, the Owner shall deliver complete copies of the Maintenance Guidelines to the transferee of the Lot on or before the date of the transfer of title. The Board shall comply with the Maintenance Guidelines for the periodic inspection and maintenance of the Common Area improvements and landscaping that the Association is required to maintain under this Declaration, and any other improvements outside of the Common Area, which the Association has the responsibility to maintain. The Board shall take all appropriate actions to implement and comply with the Maintenance Guidelines. The Board periodically and at least once every three (3) years shall review and update the Maintenance Guidelines. The Maintenance Guidelines may not be modified by the Association to reduce the maintenance obligations and requirements of the Association without prior written approval of Declarant for a period of ten (10) years after the conveyance of the first Lot in the Project to an Owner other than the Declarant.

(1) The Association shall cause professional inspections of all infrastructure to be routinely made. Inspections will include a review of all repair records since the previous inspection.

(2) The inspections shall be reported at the annual membership meeting and in writing, and shall include recommendations for cleaning, maintenance, repair, replacement, etc. (if any), as well as opinions of the costs. The reports shall address any noted deterioration which may require future attention.

(3) The Association shall keep permanent records of all: (a) Complaints and potential problems, including description, date and by whom; (b) Reports, including inspections and recommendations; (c) Repairs, including description, location, date, by whom made and cost; and (d) Plans, including construction drawings, subsequent modifications, and repair plans.

(4) For a period of ten (10) years after the date of the last Close of Escrow in the Project, the Board shall also furnish to Declarant: (a) the report of each inspection performed for the Board, whenever such inspection is performed and for whatever portion of the Common Area that is inspected, within thirty (30) days after the completion of such inspection; and (b) the most recent inspection report prepared for any portion of the Project, within ten (10) days after the Association's receipt of a written request therefor from Declarant.

(5) The Board may, from time to time, make appropriate revisions to the Association's Maintenance Manual based on the Board's review thereof, to update such manual to provide for maintenance according to current industry practices so long as such changes do not reduce the useful life or functionality of the items being maintained. No changes may be made to the Maintenance Manual without the Declarant's prior written consent as long as there are Class B Members of the Association pursuant to the Bylaws.

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

(7) The Association shall have the power and duty to: (a) operate, maintain and inspect the Project and its various components in conformance with any Maintenance Guidelines and any Maintenance Manual; and (b) review any Maintenance Manual applicable to the Project for necessary or appropriate revisions no less than annually after the Board has prepared the budget; provided, however, that the Association shall not revise the Maintenance Manual to reduce the level of maintenance required of any improvement without the prior written consent of Declarant until ten (10) years after the last Close of Escrow for the sale of a Lot in the Project by Declarant.

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

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

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

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

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

**H. Crime Watch:** The Association shall establish and maintain a neighborhood crime watch program as required by the County.

**I. Emergency Route:** The Association shall be responsible for establishing and maintaining a secondary emergency access route over that portion of the Common Area east of Sarita Street, if and when required by the County.

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

**A. Utility Service:** The Association shall have the authority (but not the obligation) to obtain, for the benefit of all of the Owners, all water, gas and electric service and refuse collection, janitorial service, window cleaning service and CATV.

**B. Easements:** The Association shall have authority by document signed by the President and the Secretary to grant easements where necessary for utilities, cable television, and sewer facilities over the Common Area to serve the Common Areas and Lots, and/or where necessary to satisfy or achieve appropriate governmental purpose or request. The Board of Directors may grant exclusive use easement rights over a portion of the Common Area to a Member with the affirmative vote of sixty-seven percent (67%) of the separate interests in the Project, and without the approval of the Members in those limited cases set forth in Civil Code § 1363.07.

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



**D. Adoption of Rules:** The Association or the Board, by majority vote, may adopt reasonable Rules not inconsistent with this Declaration relating to the use of the Common Area and all its facilities, and the conduct of Owners and their tenants and guests with respect to the Property and other Owners. Written copies of such Rules and any schedule of fines and penalties adopted by the Board shall be furnished to Owners. All changes to the Rules will become effective fifteen (15) days after they are either: (i) posted in a conspicuous place in the Common Area; or (ii) sent to the Owners via first-class mail or by any system or technology designed to record and communicate messages.

**E. Access:** For the purpose of performing construction, maintenance or emergency repair for the benefit of the Common Area or the Owners in common, and/or to perform maintenance work that a Lot Owner has failed to perform as provided in section 7.18, the Association's agents or employees shall have the right, after reasonable notice (except in emergencies, not less than twenty-four (24) hours) to the Owner of the Lot in which maintenance work has not been performed, to enter the Lot at reasonable hours. Such entry shall be made with as little inconvenience to the Owner as practicable, and any damage caused by such entry shall be repaired by the Board at the expense of the Association.

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

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

**H. Acquisition and Disposition of Property:** The Board shall have the power to acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, or otherwise dispose of real or personal property in connection with the affairs of the Association. Any transfer of property shall be by document signed or approved by two-thirds (2/3) of the total voting power of the Association which shall include two-thirds (2/3) of the Members other than Declarant, or where the two (2) class voting structure is still in effect, two-thirds (2/3) of the voting power of each class of Members.

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

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

**K. Contracts:** The Board shall have the power to contract for goods and/or services for the Common Areas, facilities and interests or for the Association, subject to limitations set forth in the Bylaws, or elsewhere herein. The Board shall not enter into any contracts with an independent contractor until it meets the requirements of section 8.1(3) herein.

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

(1) to make expenditures for capital additions or improvements chargeable against the reserve funds;

(2) to conduct hearings concerning compliance by an Owner or his tenant, lessee, guest or invitee with the Declaration, Bylaws or Rules promulgated by the Board;

(3) to make a decision to levy monetary fines, levy Reimbursement Charges, temporarily suspend an Owner's rights as a Member of the Association or otherwise impose discipline;

(4) to make a decision to levy Regular or Special Assessments; or

(5) to make a decision to bring suit, record a claim of lien or institute Foreclosure proceedings for default in payment of Assessments.

**M. Appointment of Trustee:** The Association, or the Board acting on behalf of the Association, has the power to appoint or designate a trustee to enforce Assessment Liens by sale as provided in section 4.9 and California Civil Code § 1367.1(d).

**N. Litigation/Arbitration:** The Board of Directors has authority to enter into a contract with an attorney, in a matter involving alleged design or construction defects in the Project, only as to facilities or improvements the Association is responsible for maintaining as provided herein, only if the matter is not resolved pursuant to the procedures set forth in section 9.13, and

only after getting the vote at a duly noticed and properly held membership meeting, of a majority of the Members other than Declarant.

If, and to the extent that, there is any inconsistency between this section 5.2N and applicable provisions of the California Civil Code pertaining to the commencement of an action by the Association for construction defect litigation, the applicable provisions of the California statutes shall control.

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

**P. Common Area Improvements:** The Association shall have the authority and power to demolish, remove and reconstruct any and all improvements on or over or under the Common Area in a manner not inconsistent with this Declaration, and to construct, improve and repair improvements that are appropriate for the use and benefit of the Members of the Association, provided that the Association shall not include in any Regular or Special Assessment the cost of any new capital improvement which exceeds \$5,000 in cost to be expended in any one calendar year, unless fifty-one percent (51%) or more of the voting power of the Association previously shall have approved said expenditure.

**Q. Granting Rights:** The power to grant exclusive or non-exclusive easements, licenses, rights of way or fee interests in the Common Area, to the extent any such grant is reasonably required: (a) for utilities and facilities to serve the Common Area and the Lots; (b) for purposes of conformity with the as-built location of improvements installed or authorized by Declarant or the Association; (c) in connection with any lawful lot line adjustment; or (d) for other purposes consistent with the intended use of the Project. The Association may deannex any real property from the encumbrance of this Declaration in connection with any lawful lot line adjustment.

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

## **ARTICLE VI. ARCHITECTURAL CONTROL**

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

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

**B.** Following initial sell-out, the emphasis shall be upon keeping out of the Project what is considered bizarre, outlandish, or offensive to a reasonably prudent homeowner within the Project. The objective then becomes to prevent additions, alterations or replacements which are reasonably likely to be detrimental to the overall ambience of the Project, and reasonably

likely to adversely affect property values throughout the Project. The restrictions are not intended to empower the Board or the Committee to act arbitrarily, capriciously, or whimsically in the process of reviewing plans. Standards should be established which are both reasonable and objective, and which are reasonably ascertainable, and are uniformly and fairly applied to all, and in all cases. The Board and the Committee shall base their decisions on what is in the best interests of the Project as a whole, and not upon what will appease a particular Member or group of Members.

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

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

**6.4. Architectural Control Committee Action:** In the event the Committee fails to approve or disapprove plans and specifications in writing within thirty (30) days after the same have been submitted to it, approval will not be required and the related covenants shall be deemed to have been fully complied with. Approval of plans by the Committee or the Board shall in no way

make the Committee or its members or the Board or its members responsible for or liable for the improvements built after approval of the plans, and the Owner whose plans are approved shall defend, indemnify and hold the Committee, the Board, the Association, and the members thereof, harmless from any and all liability arising out of such approval.

The Committee shall meet as necessary to perform its duties. The Committee may, by resolution unanimously adopted in writing, designate a Committee Representative (who may be a licensed architect or other professional consultant retained by the Committee) to review Applications and recommend action to be taken by the Committee or to take any other action or perform any other duties for and on behalf of the Committee except the granting of variances. In the absence of such designation, the vote or written consent of a majority of the Committee constitutes an act of the Committee. All approvals issued by the Committee must be in writing. Verbal approvals issued by the Committee, any individual 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.

In reviewing and approving or disapproving a proposed alteration, modification or improvements to a Lot that is subject to review, the Board or Architectural Committee shall satisfy the following requirements in accordance with California Civil Code section 1378:

(1) The Board or Architectural Committee in the Design Guidelines shall provide a fair, reasonable, and expeditious procedure for making its decision. The procedure shall provide for prompt deadlines. The procedure shall state the maximum time for response to an application or a request for reconsideration by the Board of Directors.

(2) A decision on a proposed change shall be made in good faith any may not be unreasonable, arbitrary, or capricious.

(3) A decision on a proposed change shall be consistent with any governing provision of law, including, but not limited to, the Fair Employment and Housing Act (Part 2.8, commencing with Section 12900) of Division 3 of Title 2 of the Government Code.

(4) A decision on a proposed change shall be in writing. If a proposed change is disapproved, the written decision shall include both an explanation of why the proposed change is disapproved and a description of the procedure for reconsideration of the decision by the Board of Directors.

(5) If a proposed change is disapproved, the applicant is entitled to reconsideration by the Board of Directors that made the decision at an open meeting of the Board. This paragraph does not require reconsideration of a decision that is made by the Board or a body that has the same membership as the Board, at a meeting that satisfies the requirements of California Civil Code section 1363.05. Reconsideration by the Board does not constitute dispute resolution within the meaning of California Civil Code section 1363.820.

Nothing in this provision authorizes a physical change to the Common Area in a manner that is inconsistent with an association's governing documents or governing law.

**6.5. Landscaping:** No landscaping or other physical improvements or additions shall be made or added to any decks, balconies, patios or yards or portions of Lots which is visible from the street or from any Common Area by any Owner until plans and specifications showing the nature,

kind, shape, and location of the materials shall have been submitted to and approved in writing by the Architectural Control Committee, or the Board.

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

**6.7. Completion of Work; Review of Work:** Upon approval of the Committee or Board, the Owner shall diligently proceed with the commencement and completion of all work so approved by the Committee in compliance with the approvals granted. The work must be commenced within six months from the date of approval unless the Committee or Board permits the work to be commenced at a later time. If the work is not commenced within six months after the approval date, or such later time as the Committee or Board has granted, then the approval shall be deemed cancelled, and the Owner must reapply to the Committee or Board before undertaking any such work.

The Committee or Board shall inspect work within sixty days after a notice of completion has been delivered to the Committee or Board by the Owner. The Committee or Board may also inspect the work at any time prior to completion as it deems appropriate to determine that the Committee or Board approval is being followed. The Committee or Board is to inspect the work performed, and determine whether it was performed and completed in compliance with the approval granted in all material respects. If at any time during the construction of any work, the Committee or Board finds that the work was not performed or completed in compliance of the approval granted in all material respects, or if the Committee or Board finds that the appropriate approval which was required for any work was not obtained, the Committee or Board shall notify the Owner in writing of the non-compliance. The notice shall specify in writing the particulars of non-compliance, and shall set forth the requirement of the Owner to remedy the non-compliance. The Committee or Board shall determine in its reasonable judgement whether an alteration, modification or improvement complies with the approval as granted in material respects. Minor changes, deviations or imperfections that do not negatively affect or impact the Project shall not be considered as non-compliance. The Board shall act under this section 6.7 only if the Board has undertaken the architectural review functions under this Article.

If the Committee or the Board has determined an Owner has not constructed an improvement in compliance of the approval granted in all material respects, and if the Owner fails to remedy such non-compliance in accordance with provisions of the notice of non-compliance, then after expiration of thirty (30) days from the date of such notification, if the Committee has undertaken the architectural review functions under this Article, the Committee shall notify the Board, and the Board shall provide Notice and Hearing to consider the Owner's continuing non-compliance. If the Board is undertaken the architectural review functions under this Article, the Board shall act after expiration of thirty (30) days from the date of such notification. At the Hearing, if the Board finds that there is no valid reason for the continuing non-compliance, the Board shall then require the Owner to remedy the non-compliance as necessary and appropriate in the determination of the Board as to result in the improvement being rendered as reasonably in compliance as is appropriate for the overall good and benefit of the Project, or remove the same within a period of not more than forty-five (45) days from the date of the Board's determination. If the Owner does not comply with the Board's ruling within such period, or within any extension of such period as the Board, in its discretion may grant, the Board may (1) remove the non-complying improvement, (2) remedy the non-compliance, (3) institute legal proceedings to enforce compliance or completion.

After ninety percent (90%) of the Lots in the Project have been sold by the Declarant, an Owner who has submitted an application to the Committee may appeal a decision to deny or conditionally approve the Owner's application to the Board by written appeal to the Board. The Board shall notify the appealing Owner in writing of the date set for a hearing regarding the Owner's appeal within ten (10) days after receipt of the Owner's appeal. The hearing shall be held within thirty (30) days after receipt of the Owner's appeal by the Board. The Board shall make its determination on the appeal in writing delivered to the appealing Owner within ten (10) days after the hearing. The determination of the Board shall be final.

**6.8. No Waiver of Future Approvals:** The Committee's approval of any proposals, plans and specifications or drawings for any work done or proposed in connection with any matter requiring the 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.

**6.9. Variances:** The Committee may authorize variances from compliance with any of the architectural provisions of Declaration or the Design Guidelines, including restrictions on height, size, floor area or placement of structure, or similar restrictions, when circumstances such as hardship, aesthetic or environmental consideration require. Such variances must be evidenced in writing, must be signed by a majority of the Committee, and become effective on recordation. After Declarant's right to appoint a majority of the Committee's members expires, the Board must approve any variance recommended by the 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 provisions 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. The Committee's written variance shall be recorded against applicant's Lot in the Official Records. The cost of recording the variance shall be borne solely by the applicant.

## **ARTICLE VII. USE RESTRICTIONS**

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

**7.1. Use of Lot:** No Lot shall be occupied and used except for residential purposes by the Owners, their tenants, and social guests, except that Declarant, its successors or assigns, may use the Project for a model home site or sites, and display and sales/construction office during construction until the last Lot is sold by Declarant, or, where Declarant elects to retain one (1) or more Lots as an investment, until three (3) years from the date of issuance of the Public Report, whichever occurs first, except that a home may be used as a combined residence and executive or professional office by the Owner or occupant thereof, so long as such use: (a) does not interfere with the quiet enjoyment by other Owners; (b) does not include visiting clients; (c) business activities take place solely inside the home; (d) does not generate in-person visits by suppliers or clientele; (e) complies with all laws, regulations and ordinances applicable to the Property, including zoning, health and licensing requirements; (f) otherwise complies with the Declaration and is consistent with the residential character of the Property; (g) no signs, logos, billboards, or other advertising materials or devices are displayed in the windows of the home, or on exterior of the Building, or on

any Common Area, to advertise the activity; (h) the existence or operation of the business is not apparent or detectable outside the home by sight, sound or odor; and (i) the business does not increase the liability or casualty insurance obligation or premium of the Association. No tent, shack, trailer, basement, garage, outbuilding or structure of a temporary character shall be used on any Lot at any time as a residence, either temporarily or permanently.

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

No health care facilities operating as a business or charity, unless permitted by law or ordinance which preempts this restriction.

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

A. Name the Association as an additional insured on the liability insurance policy or bond carried by the owner/operator of the day care center;

B. Defend, indemnify and hold the Association harmless from any liability arising out of the existence and operation of the day care center;

C. Abide by and comply with all of the Association's Rules;

D. Supervise and be completely responsible for children at all times while they are within the project;

E. Cooperate with the Association if the Association's insurance agent or carrier requires proof of insurance, proof of the agreement of the owner or operator of the center to these conditions, or other reasonable requests.

No Lot or Lots or any portion thereof in the Project shall be leased, subleased, occupied, rented, let, sublet, or used for or in connection with any time sharing agreement, plan, program or arrangement, including, without limitation, any so called "vacation license," "travel club," "extended vacation," or other membership or time interval ownership arrangement. The term "time sharing" as used herein shall be deemed to include, but shall not be limited to, any agreement, plan, program, or arrangement under which the right to use, occupy, or possess the Lot or Lots or any portion thereof or residence thereon in the Project rotates among various persons, either corporate, partnership, individual, or otherwise, on a periodically recurring basis for value exchanged, whether monetary or like-kind use privileges, according to a fixed or floating interval or period of time. This section shall not be construed to limit the personal use of any Lot or any portion thereof in the Project by any Owner or his social or familial guests.



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

**7.3. Vehicle Restrictions and Towing:** Except as otherwise permitted in this section 7.3, only Permitted Vehicles shall be parked, stored or operated within the Project.

**A.** Permitted Vehicles shall mean appropriately licensed passenger automobiles, sports utility vehicles, motorcycles, and trucks having carrying capacity of  $\frac{3}{4}$  ton or less, vans having seating capacity of eight (8) persons or less. Owners and their tenants and invitees shall park their Permitted Vehicles only in the garages or parking space appurtenant to or assigned to their Lot. Vehicles that are not Permitted Vehicles shall not be parked or stored in the Project. Except for commercial vehicles or construction equipment that are providing services to a Lot or the Association (but only during the period of time in which such services are being provided and subject to the Rules), Permitted Vehicles shall not include any commercial vehicle, construction equipment, trailer, camper, mobile home, recreational vehicle, truck having carrying capacity of greater than  $\frac{3}{4}$  ton, van having seating capacity in excess of eight (8) persons, inoperable vehicles, boats or similar equipment, or any vehicle which is too large to fit within the Owner's garage. Vehicles that are otherwise Permitted Vehicles that are used both for business and personal use are not prohibited, provided that any signs or markings of a commercial nature on such vehicles shall be unobtrusive and inoffensive as determined by the Board. No excessively noisy or smoky vehicles shall be operated on the Project.

**B.** No parking shall be permitted within the Private Streets of the Project, except in Common Area parking bays. All Common Area parking shall be used in accordance with the Rules of the Association.

**C.** The Association may install a sign at each vehicular entrance to the Project containing a statement that public parking is prohibited and that all vehicles not authorized to park on the Project will be removed at the owner's expense. The sign shall contain the telephone number of the local traffic law enforcement agency and shall not be less than 17 x 22 inches in size with lettering not less than one (1) inch in height.

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

removal, the grounds for removal and the name of the garage or place where the vehicle is stored. Notwithstanding the foregoing, the Association may cause the removal, without notice, of any vehicle parked in a marked fire lane, within fifteen (15) feet of a fire hydrant, in a parking space designated for handicapped without proper authority or in a manner which interferes with any entrance to, or exit from, the Project or any Lot, parking space or garage located thereon. The Association shall not be liable for any damages incurred by the vehicle owner because of the removal in compliance with this section or for any damage to the vehicle caused by the removal, unless such damage resulted from the intentional or negligent act of the Association or any person causing the removal of or removing the vehicle. If requested by the owner of the vehicle, the Association shall state the grounds for the removal of the vehicle. Unless the Board provides otherwise, any director or officer, any manager or manager's agent or any Owner authorized to do so by any director or officer shall have the authority to act on behalf of the Association to cause the removal of any vehicle wrongfully parked within the Project.

**E.** Garage space shall not be converted into any use (such as a recreational room or storage room) that would prevent its use as parking space for the number of vehicles the space was designed to contain. Garage doors shall be kept closed at all times except when in use by the occupant of the Lot which the garage is appurtenant, for ingress and egress to and from the garage.

The provisions of this section 7.3 are intended to comply with Vehicle Code section 22658.2 in effect as of January 1, 2006. If this Vehicle Code section is amended, this provision automatically shall be amended in the same manner. If this section is repealed and no successor section is enacted, this provision shall remain in full force and effect. Vehicle Code section 22658.2 may have been amended by the State Legislature since this Declaration was recorded, and the Board should confirm the current statutory requirements.

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

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

**7.6. Signs:** Subject to Civil Code §§ 712, 713 and 1353.6, no signs shall be displayed to the public view on any Lot or on any other portion of the Project except non-commercial signs may be displayed within a Lot that are approved by the Board or a committee appointed by the Board, that conform to the Rules regarding signs that comply with the requirements of State law or that conform to the requirements of State law, and applicable local ordinances. "For Sale" or "For Rent" or "For Exchange" signs shall be allowed to be displayed within areas of the Project that are designated in the Rules regarding such signs that comply with the requirements of State law or conform to the requirements of State law, and applicable local ordinances, provided the design, dimensions and locations are reasonable. An Owner or his or her agent may display one (1) such For Sale or For Rent or For Exchange sign within his or her Lot and one sign in the Common Area advertising directions to the Owner's Lot which is for sale, rent, or exchange, provided the design, dimensions and locations are reasonable and comply with the Rules regarding signs that comply with the requirements of State law, and applicable local ordinances.

**7.7. Animals:** No animals of any kind shall be raised, bred, or kept on any Lot or in the Common Area with the exception of trained dogs used for assistance by visually impaired, hearing impaired or physically handicapped persons, except no more than two (2) usual and ordinary household pets such as dogs or cats provided they are not kept, bred, or maintained for any commercial purposes, and are kept under reasonable control at all times. No pets shall be allowed in the Common Area except as may be permitted by Rules of the Board. No Owner shall allow his dog to enter the Common Area except on a leash. After making a reasonable attempt to notify the Owner, the Association or any Owner may cause any pet found within the Common Area in violation of the Rules of the Board or this Declaration to be removed by the Association (or any Owner) to a pound or animal shelter under the jurisdiction of the County, by calling the appropriate authorities, whereupon the owner may, upon payment of all expenses connected therewith, repossess the pet. Owners shall prevent their pets from soiling the Common Area and shall promptly clean up any waste left by their pets. Owners shall be fully responsible for any damage caused by their pets.

An owner shall prohibit any animal on his lot from making disturbing noises heard from any structure on any other lot between the hours of 10:00 PM to 7:00 AM. An owner in violation of this section may be deemed to be permitting, or causing a serious annoyance or nuisance to any other owner. The Board, after notice and a hearing, may require the permanent removal of any animal that the Board determines to be a danger to the health and safety of any occupant in the Project, or otherwise to be a nuisance within the Project. The Board may find that an animal is a nuisance if the animal or its owner continue to violate the Rules regulating pets after receipt by the Owner of a written demand from the Board to comply with the Rules.

Owners are required to inform the Association of the type of breed of pet upon commencement of occupancy and provide the Association with proof of rabies vaccination. In no event shall any Owner authorize, bring or keep within the Project: (a) any pit bull, rottweiler, doberman pinscher, mastiff, canaria presa, or any other breed known as a "fighting breed"; or (b) any snakes, pigs, large lizards, spiders, rats or vermin.

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

**7.9. Radio and Television Antennas:** No Owner shall construct, install and/or use and operate a radio and/or television antenna, satellite dish, other signal reception or transmission devices or related equipment in the Project, including without limitation, within any balconies, decks or patios, without the consent of the Board, which the Board shall have the discretion to withhold, subject to applicable legal requirements. In considering whether to approve applications for any such devices to be located within any balcony, deck or patio, the Board shall consider and give great weight to considerations of aesthetics, safety within the community, uniformity of appearance, and the requirements of any applicable laws. The Board shall, in acting upon requests for approval of a satellite dish or other signal reception or transmission devices comply with California Civil Code §1376 and FCC [Federal Communications Commission] regulations. The Board may adopt other

Rules for installation and operation of any satellite dish or other signal reception or transmission devices that comply with California Civil Code §1376 and FCC regulations.

**7.10. Basketball Apparatus:** No portable apparatus for basketball be permitted within the Common Area.

**7.11. Clothes Lines:** No exterior clothes lines shall be erected or maintained, and there shall be no outside laundering or drying of clothes. No draping of towels, carpets, or laundry over exterior railings shall be allowed.

**7.12. Power Equipment and Car Maintenance:** No power equipment, hobby shops, or car maintenance (other than emergency work), or boat maintenance shall be permitted on the Project except with prior written approval of the Board. Approval shall not be unreasonably withheld and, in deciding whether to grant approval, the Board shall consider the effects of noise, air pollution, dirt or grease, fire hazard, interference with radio or television reception, and similar objections. All hazardous waste shall be disposed of properly by each Owner.

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

**7.14. Right to Lease:**

**A.** Any Owner who wishes to lease his Lot must meet each of the following requirements, and the lease will be subject to these requirements whether they are included within the lease or not:

- (1) all leases must be in writing;
- (2) the lease must be for the entire Lot and not merely parts of the Lot, unless the Owner remains in occupancy;
- (3) all leases shall be subject in all respects to provisions of the Declaration, the Bylaws, and all Rules adopted by the Board;
- (4) all Owners who lease their Lots shall promptly notify the Secretary of the Association in writing of the names of all tenants and members of tenants' family occupying such Lots and shall provide the Secretary of the Association with a complete copy of the lease. All Owners leasing their Lot shall promptly notify the Secretary of the Association of the address and telephone number where such Owner can be reached;
- (5) no Owner shall lease his Lot for a period of less than thirty (30) days.

**B.** Any failure of a tenant to comply with the Declaration, Bylaws, and Association Rules, shall be a default under the lease, regardless of whether the lease so provides. In the event of any such default, the Owner immediately shall take all actions to cure the default including, if necessary, eviction of the tenant.

C. If any tenant is in violation of the provisions of the Declaration, Bylaws, or Rules of the Association, the Association may bring an action in its own name and/or in the name of the Owner to have the tenant evicted and/or to recover damages. If the court finds that the tenant is violating, or has violated any of the provisions of the Declaration, the Bylaws of the Association, or the Rules of the Association, the court may find the tenant guilty of unlawful detainer notwithstanding the fact that the Owner is not the plaintiff in the action and/or the tenant is not otherwise in violation of tenant's lease. For purposes of granting an unlawful detainer against the tenant, the court may assume that the Owner or person in whose name a contract (the lease or rental agreement) was made was acting for the benefit of the Association. The remedy provided by this subsection is not exclusive and is in addition to any other remedy or remedies which the Association has. If permitted by present or future law, the Association may recover all its costs, including court costs and reasonable attorneys' fees incurred in prosecuting the unlawful detainer action.

D. The Association shall give the tenant and the Owner notice in writing of the nature of the violation of the Declaration and/or Rules, and twenty (20) days from the mailing of the notice in which to cure the violation before the Association may file for eviction.

E. Each Owner shall provide a copy of the Declaration, Bylaws and all Rules of the Association to each tenant of his or her Lot. By becoming a tenant, each tenant agrees to be bound by the Declaration, the Bylaws and the Rules of the Association, and recognizes and accepts the right and power of the Association to evict a tenant for any violation by the tenant of the Declaration, the Bylaws, and Rules of the Association.

**7.15. Commonly Metered Utilities:** The Board may establish restrictions regarding the individual use of any utility on a common meter, and may impose reasonable charges for the individual use thereof.

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

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

**7.18. Owner's Right and Obligation to Maintain and Repair:**

A. Each Owner shall, at his sole cost and expense, maintain and repair his Lot and all improvements thereon, keeping the same in good condition.

B. In order to reduce the presence of mold, fungi, spores, pollens and other botanical substances, or other allergens (collectively "Mold") within the Lot, the Owners shall inspect the interior of their dwellings not less frequently than once each quarter to check for water leaks or other breaches of the watertight integrity of the improvements, and for the presence of Mold. If any water leaks and/or Mold are detected within the Lot, the Owner shall immediately take appropriate corrective steps to repair the leak, and/or remove the Mold and to maintain proper ventilation within enclosed areas, and to maintain humidity levels to reduce the risk of Mold growth, and take such other prudent steps as may be appropriate to prevent Mold growth, or eliminate any existing Mold.

C. Each Owner shall maintain the improvements within his or her Lot in accordance with the Maintenance Guidelines established by the Declarant. A copy of the Maintenance Guidelines shall be delivered by Declarant to each Owner when the Lot is sold to the Owner. Each Owner shall retain the Maintenance Guidelines and take all appropriate actions to comply with and implement the Maintenance Guidelines. When an Owner transfers a Lot, the Owner shall deliver a complete copy of the Maintenance Guidelines to the transferee of the Lot on or before the date the Lot is transferred.

**7.19. Building Restrictions on Certain Lots:** Lots 1 through 8, 16 through 23, 25 and 26, 27 through 29, and 40 through 53 are required to obtain review and approval from the Planning Director of the County of site grading and house plans and elevations before issuance of a building permit. Said Lots are subject to special design requirements imposed by the County.

## **ARTICLE VIII. INSURANCE; DAMAGE OR DESTRUCTION; CONDEMNATION**

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

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

(2) an occurrence version comprehensive general liability policy insuring the Association, its agents, the Owners and their respective family members, against liability incident to the ownership or use of the Common Area or any other Association owned or maintained real or personal property. The amount of general liability insurance that the Association shall carry at all times shall be not less than the minimum amounts required by California Civil Code §§ 1365.7 and 1365.9;

(3) workers' compensation insurance to the extent required by law (or such greater amount as the Board deems necessary). The Association shall obtain a Certificate of Insurance naming it as an additional insured in regard to workers' compensation claims from any independent contractor who performs any service for the Association, if the receipt of such a certificate is practicable;

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

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

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

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

**A. Amount, Term and Coverage:** The amount, term and coverage of any policy required hereunder (including the type of endorsements, the amount of the deductible, the named insureds, the loss payees, standard mortgage clauses, notices of changes or cancellations, and the

insurance company rating) shall satisfy the minimum requirements imposed for this type of project by the Federal National Mortgage Association ("FNMA") and the Federal Home Loan Mortgage Corporation ("FHLMC") or any successor to either of those entities. If the FNMA or FHLMC requirements conflict, the more stringent requirement shall be met. If FNMA and FHLMC do not impose requirements on any policy required hereunder, the term, amount and coverage of such policy shall be no less than that which is customary for similar policies on similar projects in the area.

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

**C. Waiver of Subrogation:** Any insurance maintained by the Association shall contain "waiver of subrogation" as to the Association and its officers, directors and Members, and the Owners and occupants of the Lots (including Declarant) and mortgagees; and cross-liability and severability of interest coverage insuring each insured against liability to each other insured.

All individually owned insurance shall contain a waiver of subrogation as to the Association and its officers, directors and Members, the Owners and occupants of the Lots and mortgagees, and all Members are deemed to have waived subrogation rights as to the Association and/or other Members, whether or not their policies so provide.

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

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

**E. Copies of Policies; Notice to Members:** The Association shall make available to all Members a copy of the Association's policy. The Association shall distribute annually to the Members a summary of the Association's insurance policies as required by Civil Code section 1365(e) and as provided in the Bylaws. The Association, as soon as reasonably practical, shall notify its Members by first-class mail if any of the policies have been cancelled and not immediately renewed or restored or if there is a significant change such as a reduction in coverage or limits or an increase in the deductible for any policy. If the Association receives any notice of non-renewal of a policy, the Association immediately shall notify its Members if replacement coverage will not be in effect by the date the existing coverage will lapse.

To the extent that the information required to be disclosed, as described in Civil Code §1365(e), is specified in the insurance policy declaration page, the Association may meet its disclosure obligations by making copies of that page and distributing copies to all its Members.

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

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

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

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

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

**A. Process for Repair or Reconstruction:** If the Common Area improvement is to be repaired or reconstructed and the cost for repair or reconstruction is in excess of twenty-five percent (25%) of the current replacement cost of all the Common Area improvements, the Board shall designate a construction consultant, a general contractor, and an architect for the repair or reconstruction. All insurance proceeds, Association monies allocated for the repair or



reconstruction, and any borrowings by the Association for the repair or reconstruction shall be deposited with a commercial lending institution experienced in the disbursement of construction loan funds (the "depository") as selected by the Board. Funds shall be disbursed in accordance with the normal construction loan practices of the depository that require as a minimum that the construction consultant, general contractor and architect certify within ten (10) days prior to any disbursement substantially the following:

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

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

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

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

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

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

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

In the event the work required to maintain or to repair or restore damage or destruction involves work that is the responsibility of Owner and the Association as provided in sections 7.18 and 5.1A, then all of such work shall be directed by the Board, with the expense to be allocated between Owner and the Association pursuant to sections 7.18 and 5.1A. If more than one Owner is involved, the expense to be paid by each Owner shall be apportioned by the Board. If the Association is involved in a dispute over the apportionment of such expenses, then the dispute shall be settled by arbitration pursuant to any appropriate alternative dispute process.

If the Association undertakes any work which section 7.18 requires an Owner to undertake, or any work which the Association is required to undertake at the expense of the Owner, the Board shall assess the Lot of the Owner for such work and shall so inform the Owner thereof in writing; provided, however, that the Assessment shall be reduced by the amount of any insurance proceeds paid to the Association as a result of damage to or destruction of the residence or the Lot involved. Such Assessment shall be a lien upon the Lot of the Owner and may be foreclosed, as set forth in section 4.9.

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

**8.3. Condemnation:** If all or any part of a Lot (except the Common Area) is taken by eminent domain, the award shall be disbursed to the Owner of the Lot, subject to the rights of the Owner's Mortgagees. If the taking renders the Lot uninhabitable, the Owner shall be divested of any further interest in the Project, including membership in the Association, and the interest of the remaining Owners shall be adjusted accordingly. If all or any part of the Common Area is taken by eminent domain, the proceeds of condemnation shall be used to restore or replace the portion of the Common Area affected by condemnation, if restoration or replacement is possible, and any remaining funds, after payment of any and all fees and expenses incurred by the Association relating to such condemnation, shall be distributed among the Owners in the same proportion as such Owners are assessed, subject to the rights of Mortgagees. If necessary, the remaining portion of the Project shall be resurveyed to reflect such taking. The Association shall participate in the negotiations, and shall propose the method of division of the proceeds of condemnation, where Lots are not valued separately by the condemning authority or by the court. The Association shall represent the Owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the Common Area, or part of the Common Area(s).

## **ARTICLE IX. GENERAL PROVISIONS**

**9.1. Enforcement:** The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration, the Articles and the Bylaws, and in such action shall be entitled to recover reasonable attorneys' fees as are ordered by the Court. The Association has the right to record a Notice of Violation against the Lot of an Owner who is not in compliance with the provisions of the Governing Documents. Failure by the Association or by any Owner to enforce any covenant or restriction contained in this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

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

**9.3. Term:** The covenants and restrictions of this Declaration shall run with and bind the Project, and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any property subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by a majority of the then Owners of the Lots, has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to change the covenants and restrictions in whole or in part, or to terminate the same.

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

**9.4.1. Amendments Regarding Initiation of Construction Defect Claims:** Notwithstanding anything to the contrary contained in this Declaration, this section 9.4.1 and section 9.13 of this Declaration shall not be amended without the vote or approval by written ballot of at least (a) ninety percent (90%) of the voting power of the Members of the Association other than Declarant, and (b) at least ninety percent (90%) of the First Lenders.

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

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

**B. Audited Statement:** Any holder of a First Mortgage shall be entitled, upon written request, to have an audited financial statement for the immediately preceding fiscal year prepared at its expense if one is not otherwise available. Such statement shall be furnished within one hundred twenty (120) days of the Association's fiscal year-end.

**C. Notice of Action:** Upon written request to the Association, identifying the name and address of the Eligible Mortgage Holder or Eligible Insurer or Guarantor, and the Lot number or address, such Eligible Mortgage Holder or Eligible Insurer or Guarantor will be entitled to timely written notice of: (1) any condemnation loss or any casualty loss which affects a material portion of the Project or any Lot on which there is a First Mortgage held, insured, or guaranteed by such Eligible Mortgage Holder or Eligible Insurer or Guarantor, as applicable; (2) any default in performance of obligations under the Governing Documents or delinquency in the payment of Assessments or charges owed by an Owner of a Lot subject to a First Mortgage held, insured or guaranteed by such Eligible Mortgage Holder or Eligible Insurer or Guarantor, which remains uncured for a period of sixty (60) days; (3) any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; (4) any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders as specified in section 9.5D. The Association shall discharge its obligation to notify Eligible Mortgage Holders or Eligible Insurers or Guarantors by sending written notices required herein to such parties, at the address given on the current request for notice, in the manner prescribed by section 9.9.

**D. Consent to Action:**

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

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

(b) the consent of Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated and the approval of Eligible Mortgage Holders holding mortgages on Lots which have at least fifty-one percent (51%) of the votes of the Lots subject to Eligible Holder Mortgages, shall be required to add or amend any material provisions of the Governing Documents which establish, provide for, govern or regulate any of the following: (i) voting rights; (ii) increases in Assessments that raise the previously assessed amount by more than twenty-five percent (25%), Assessment Liens, or the priority of Assessment Liens; (iii) reductions in reserves for maintenance, repair, and replacement of Common Areas; (iv) responsibility for maintenance and repairs; (v) convertibility of Lots into Common Areas or vice versa; (vi) expansion or contraction of the Project, or the addition, Annexation, or withdrawal of property to or from the Project; (vii) hazard or fidelity insurance requirements; (viii) imposition of any restrictions on the leasing of Lots; (ix) imposition of any restrictions on an Owner's right to sell or transfer his Lot; (x) restoration or repair of the Project (after damage or partial condemnation) in a manner other than that specified in the Governing Documents; or (xi) any provisions that expressly benefit mortgage holders, insurers, or guarantors;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The foregoing rights of Declarant shall terminate upon sale of Declarant's entire interest in the Project.

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

**9.7. Termination of Any Responsibility of Declarant:** In the event Declarant shall assign or convey all of its rights, title and interest in and to the Project to any successor Declarant, then and in such event, Declarant shall be relieved of the performance of any further duties or obligations under this Declaration arising after such conveyance, and such successor Declarant shall be obligated to perform all such duties and obligations of the Declarant. The obligations of Declarant to the County contained in the conditions of approval for the Project, which obligations are intended to be on-going after Declarant has sold its interest in the Project, shall become the obligations of the Association, and the Association shall indemnify Declarant against any liability arising out of the performance or non-performance of those obligations after Declarant has sold its interest in the Project and/or turned over the maintenance and management of the Project to the Association.

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

In the event of a violation of the Governing Documents, the Association may, if permitted by applicable law, record a Notice of Violation against the Lot of the non-complying Owner. Upon recording a Notice of Violation, the Association shall have complete discretion in deciding whether, when and how to proceed with enforcement, and any delay after recording a Notice of Violation shall not give rise to a defense of waiver or estoppel in favor of a non-complying Owner. The Association may take action to enforce compliance against a subsequent Owner who acquires a Lot with a recorded Notice of Violation. The right of the Association to record a Notice of Violation shall be in addition to all other rights and remedies the Association may have at law or under the Governing Documents.

All agreements and determinations lawfully made by the Association in accordance with the voting percentages established in this Declaration, or in the Articles or the Bylaws, shall be deemed to be binding on all Owners, their successors and assigns.

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

**9.10. Special Provisions Relating to Enforcement of Declarant's Obligation to Complete Common Area Improvements:** Where the Project includes Common Area improvements which have not been completed prior to the close of escrow on the sale of the first Lots, and where the Association is obligee under a bond or other arrangement (hereafter "Bond") to secure performance of the commitment of Declarant to complete said improvements, the Board shall consider and vote on the question of action by the Association to enforce the obligations under the Bond with respect to any improvement for which a notice of completion has not been filed within sixty (60) days after the completion date specified for those improvements in the planned construction statement appended to the Bond. If the Association has given an extension in writing for the completion of any Common Area improvement, the Board shall consider and vote on the aforesaid question if a notice of completion has not been filed within thirty (30) days after the expiration of the extension. A special meeting of Members of the Association for the purpose of: (i) voting to override a decision by the Board not to initiate action to enforce the obligations under the Bond; or (ii) to consider the failure of the Board to consider and vote on the question shall be held not less than thirty-five (35) days nor more than forty-five (45) days after receipt by the Board of a petition for such a meeting signed by Members representing five percent (5%) or more of the total voting power of the Association. At such special meeting a vote of a majority of Members of the Association other than the Declarant shall be required to take action to enforce the obligations under the Bond and a vote of a majority of the voting power of the Association, excluding Declarant, shall be deemed to be the decision of the Association, and the Board shall thereafter implement this decision by initiating and pursuing appropriate action in the name of the Association.

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

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



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

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

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

**9.13. Dispute Resolution:** The Board is authorized to resolve any civil claim or action through alternative dispute resolution proceedings such as mediation, binding arbitration, or non-binding arbitration proceedings.

**A. Claims for Declaratory Relief or Enforcement of Governing Documents:**

Prior to the filing of a civil action solely for declaratory relief or injunctive relief to enforce the Governing Documents, or for declaratory, injunctive or writ relief in conjunction with a claim for monetary damages not in excess of Five Thousand Dollars (\$5,000), the Board, or any Owner who seeks such relief, shall first endeavor to submit the matter to alternative dispute resolution in compliance with the provisions of California Civil Code Sections 1369.510-1369.580. The Board shall comply with the requirements of California Civil Code Section 1369.590 by providing Members of the Association annually with a summary of Article 2 (commencing with Civil Code Section 1369.510 of Chapter 7 of Title 6 (Division 2, part 4) of the California Civil Code, including the following language: "Failure of a Member of the Association to comply with the alternative dispute resolution requirements of Section 1369.520 of the Civil Code may result in the loss of your right to sue the Association or another Member of the Association regarding enforcement of the Governing Documents or the applicable law"

**B. Design or Construction Defect Claims:** Actions by the Association pertaining to or based upon a claim for defects in the design or construction of improvements within the Project against the Declarant, or any architect, engineer or other consultant, or any contractor, subcontractor or materials supplier engaged by or on behalf of Declarant for the design and/or construction of the Project, or any element thereof, or otherwise defined in Civil Code sections 896 or 897 as an Actionable Defect ("Claim"), shall be resolved and administered in accordance with Civil Code sections 895 through 945.5, and Civil Code sections 1375 and 1375.05, as such sections may be amended, revised or superseded, from time to time.

If a Claim is subject to pre-litigation procedures in Civil Code sections 910 through 938, or any successor statutes, each Owner, and the Declarant, prior to filing any civil action, arbitration or action in judicial reference regarding such Claim shall comply with the prelitigation procedures of Civil Code sections 910 through 938. Notices of Claims shall specify all of the matters as set forth in Civil Code section 1368.5 and/or Civil Code sections 910 through 938, as applicable, and any successor statutes or laws.

If the Claim is not resolved by and pursuant to the prelitigation procedures of under Civil Code sections 910 through 938, subject to the provisions of Civil Code section 1375 and 1375.05, then notwithstanding the provisions of California Code of Civil Procedure Section 1298.7, the Claim shall be resolved in accordance with the provisions of section 9.13D of this Declaration [Judicial Reference] and section 9.13E of this Declaration [Arbitration of Disputes].

**C. Notices to Members of Legal Proceedings Against Declarant.** In accordance with Civil Code Section 1368.5, at least 30 days prior to filing any civil action, including arbitration, against Declarant or other developer of the Project for alleged damage to (i) the Common Area, (ii) all or portions of Lots which the Association is required to maintain, or (iii) the Lots which arises from or is integrally related to alleged damage to the Common Area or all or portions of the Lots which the Association is required to maintain, the Board shall provide written notice to each Member specifying each of the following:

- (1) That a meeting will take place to discuss problems that may lead to the filing of a civil action;
- (2) The options, including civil actions, that are available to address the problems; and
- (3) The time and place of the meeting.

If the Association has reason to believe that the applicable statute of limitations will expire before the Association is able to give notice, hold the meeting and file the civil action, the Association may file the civil action first and then give the notice within thirty (30) days after filing of the action.

**D. Judicial Reference for Certain Disputes:** For any action by the Association or any Owner against the Declarant, any architect, engineer or other consultant, or any contractor, subcontractor or materials supplier engaged by or on behalf of Declarant for the design and/or construction of the Project, or any element thereof ("Developer Parties"), subject to the provisions of Civil Code sections 895 through 938, Civil Code section 1375 and Civil Code section 1375.05, or any other action by the Association or any Owner against the Declarant, except as otherwise provided herein, such claim shall be submitted to Judicial Reference as hereinafter provided:

(1) The dispute shall be submitted to binding general judicial reference pursuant to California Code of Civil Procedure Sections 638 through 645.2, or any successor statutes thereto pertaining to proceedings under judicial reference ("Judicial Reference"). The parties shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the Judicial Reference proceeding. Declarant shall not be required to participate in the Judicial Reference proceeding unless it is satisfied that all necessary and appropriate parties will participate. The parties shall share the fees and costs of the Referee for the Judicial Reference proceeding as determined by the Referee.

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

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

(b) The proceedings shall be heard in the County;

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

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

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

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

(g) A stenographic record of the Judicial Reference proceedings shall be made, provided that the record shall remain confidential except as may be necessary for post-hearing motions and any appeals;

(h) The Referee's statement of decision shall contain findings of fact and conclusions of law to the extent applicable;

(i) The Referee shall have the authority to rule on all post-hearing motions in the same manner as a trial judge;

(j) The Referee shall be authorized to provide all recognized remedies available in law or equity for any cause of action that is the basis of the Judicial Reference; and

(k) The statement of decision of the Referee upon all of the issues considered by the Referee shall be binding upon the parties, and upon filing of the statement of decision with the clerk of the court, or with the judge where there is no clerk, judgment may be entered thereon. The decision of the Referee shall be appealable as if rendered by the court.

(l) If submission of a disputed matter referenced in this section 9.13D to Judicial Reference is not permitted under the then applicable law, then notwithstanding California Code of Civil Procedure Section 1298.7, if the dispute is not resolved through mediation, each Owner, the Association and Declarant shall resolve such dispute exclusively through binding arbitration, pursuant to section 9.13E of this Declaration.

(3) Judicial Reference shall only proceed for any matter that is subject to the requirements of California Civil Code sections 1369.510-1369.580 after the parties have attempted to reasonably comply with the alternative dispute resolution requirements set forth in California Civil Code sections 1369.510-1369.580, as same may be amended from time to time.

(4) Notwithstanding the foregoing, any dispute under sections 9.10 and 9.11 of this Declaration between the Declarant and the Association regarding the question of satisfaction of the conditions for exoneration or release of the security shall, at the request of either party, be submitted to arbitration pursuant to section 9.13E of this Declaration.

**E. Arbitration of Disputes:** If a dispute is the subject of binding arbitration under this Declaration, the following shall apply:

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

(2) a neutral and impartial individual shall be appointed to serve as arbitrator, with the arbitrator to be selected by mutual agreement of the parties. If the parties are unable to agree on an arbitrator within fifteen (15) days after any party initiates the arbitration, a neutral and impartial arbitrator shall be selected by the JAMS. In selecting the arbitrator, the provisions of §1297.121 of the Code of Civil Procedure shall apply. An arbitrator may be challenged for any of the grounds listed in §1297.121, or in §1297.124 of the Code of Civil Procedure;

(3) venue of the arbitration to be in the County;

(4) the arbitration shall commence in a prompt and timely manner in accordance with (i) the Commercial Rules of the JAMS, or if the rules do not specify a date by which arbitration is to commence, then (ii) by a date agreed upon by the parties, and if they cannot agree as to a commencement date, (iii) a date determined by the arbitrator. The arbitrator shall apply California substantive law in rendering a final decision. The arbitrator shall have the power to grant all legal and equitable remedies and award compensatory damages. When the arbitrator is prepared to make the award, the arbitrator shall first so inform the parties, who shall have ten (10) days to attempt to resolve the matter by a binding agreement between them. If the parties resolve the matter, the arbitrator shall not make any award. If the parties do not so resolve the matter within the ten (10) day period, the arbitrator shall make the award on the eleventh day following the arbitrator's notice of being prepared to make the award;

(5) the arbitration shall be conducted in accordance with the Commercial Rules of the JAMS;

(6) the arbitration shall be conducted and concluded in a prompt and timely manner;

(7) the arbitrator shall be authorized to provide all recognized remedies available in law or equity for any cause of action that is the basis of arbitration;

(8) A judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction or application may be made to such court for judicial acceptance of the award and an order of enforcement. The parties agree to be bound by the decision of the arbitrator, which shall be final and non-appealable.

(9) Preliminary Procedures. If state or federal law requires an Owner, the Association or Declarant to take steps or procedures before commencing an action in arbitration, then the Owner, the Association or Declarant must take such steps or follow such procedures, as the case may be, before commencing the arbitration. For example, any claim or Disputes pursuant to California Civil Code Section 895 et seq., as hereafter amended may be subject to the

non-adversarial procedures set forth in California Civil Code Section 910 through 938, prior to the initiation of any arbitration. In addition, nothing contained herein shall be deemed a waiver or limitation of the provisions of California Civil Code Sections 1368.5, 1375, 1375.05 or 1375.1;

(10) **Participation by Other Parties.** An Owner, the Association and Declarant, to such extent any such party is defending a claim in the arbitration, may, if it chooses, have all necessary and appropriate parties included as parties to the arbitration;

(11) **Federal Arbitration Act.** Because many of the materials and products incorporated into the home are manufactured in other states, the development and conveyance of the Property evidences a transaction involving interstate commerce and the Federal Arbitration Act (9 U.S.C. §1 et seq.) now in effect and as it may be hereafter amended will govern the interpretation and enforcement of the arbitration provisions set forth herein;

(12) **WAIVER OF RIGHT TO TRIAL.** BY EXECUTING THIS DECLARATION, DECLARANT AND BY ACCEPTING A DEED TO ANY PORTION OF THE PROPERTY, EACH OWNER AND THE ASSOCIATION SHALL BE DEEMED TO HAVE AGREED TO HAVE ANY DISPUTE DECIDED BY NEUTRAL ARBITRATION IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT AND THE CALIFORNIA ARBITRATION ACT, TO THE EXTENT THE CALIFORNIA ARBITRATION ACT IS CONSISTENT WITH THE FEDERAL ARBITRATION ACT, AND DECLARANT, THE ASSOCIATION AND EACH OWNER ARE GIVING UP ANY RIGHTS DECLARANT, THE ASSOCIATION AND EACH OWNER MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT TRIAL. DECLARANT, THE ASSOCIATION AND EACH OWNER ARE GIVING UP JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THIS "ARBITRATION OF DISPUTES" PROVISION. IF DECLARANT, THE ASSOCIATION OR ANY OWNER REFUSES TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, DECLARANT, THE ASSOCIATION OR SUCH OWNER MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE.

9.14. Number; Gender. The singular and plural number and the masculine, feminine and neuter gender shall each include the other where the context requires.

9.15. 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 Project, together with the covenants and restrictions established on any other property, as one (1) plan.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has executed this Declaration this 5<sup>th</sup> day of September, 2006

FAIRVIEW HILLS, LLC  
A California limited liability company

By: Satinder Grewal  
Satinder Grewal - Manager

By: Ranbir Atwal  
Ranbir Atwal - Manager

By: Aftab S Gill  
Aftab S Gill - Manager

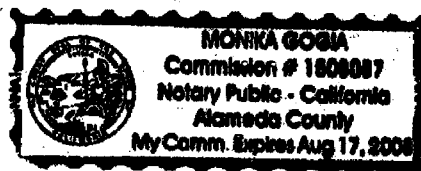
STATE OF CALIFORNIA

COUNTY OF

)  
) ss.  
)

On this 5<sup>th</sup> day of September, 2006, before me, Monika Gogia, a notary public for the state, personally appeared Satinder Grewal, Ranbir Atwal, Aftab S Gill known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



Monika Gogia  
Notary Public, State of California

# **FAIRVIEW HILLS**

## **Exhibit "A"**

**Map**

**Lots**

**Common Area**

**Tract 6102**

**1-40**

**Parcels A, B and C**



# **ILLEGIBLE NOTARY SEAL DECLARATION**

## **GOVERNMENT CODE 27361.7**

I declare under penalty of perjury that the Notary Seal on the document to which this statement is attached, reads as follows:

Name of Notary Public: Monika Gogia

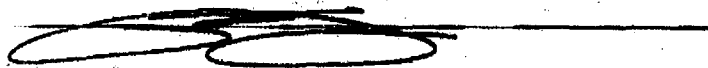
Commission number: 1508087

Notary Public State: California

Notary Public County: Alameda

My commission expires: August 17, 2008

Signature of Declarant:

A handwritten signature in black ink, appearing to read "Ross Kennedy", is written over a horizontal line.

Print Name of Declarant: Ross Kennedy

City and State of Execution: Pleasanton, California

Date Signed: September 5, 2006