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DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS

AND RESERVATION OF EASEMENTS

FOR

RANCHO MADRINA

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

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**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS
AND RESERVATION OF EASEMENTS**

**FOR
RANCHO MADRINA**

THIS DECLARATION is made by William Lyon Homes, Inc., a California corporation. The capitalized terms used in the Preamble are defined in Article I.

P R E A M B L E:

A. Declarant is the owner of real property ("**Phase 1**") located in the City of San Juan Capistrano, Orange County, California, described as follows:

Lots 15 to 24, inclusive, and Lot L of Tract No. 16221, as shown on a Subdivision Map, Filed on October 14, 2004, in Book 861, Pages 6 to 20, inclusive, of Miscellaneous Maps, in the Office of the Orange County Recorder.

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

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

**ARTICLE I
DEFINITIONS AND INTERPRETATION**

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

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

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

1.1.3 Architectural Guidelines. Architectural Guidelines means rules or guidelines setting forth procedures and standards for submission of plans for Architectural Review Committee approval.

1.1.4 Architectural Review Committee or Committee. Architectural Review Committee or Committee means the Architectural Review Committee created in accordance with Article V.

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

1.1.6 Assessment. Assessment means any Annual Assessment, Capital Improvement Assessment, Reconstruction Assessment and Special Assessment.

1.1.7 Association. Association means Rancho Madrina Community Association, a California nonprofit corporation (formed pursuant to the California Nonprofit Mutual Benefit Corporation Law), and its successors-in-interest. The Association is an "association" as defined in Section 1351(a) of the California Civil Code.

1.1.8 Association Governing Documents. Association Governing Documents means this Declaration, the Articles, Bylaws, Design Guidelines, Rules and Regulations, Supplemental Declarations and Notices of Addition.

1.1.9 Association Maintenance Area. Association Maintenance Area means easements over certain residential Lots, including the Improvements located thereon, easements over real property outside of the Properties, or other real property which are not owned in fee by the Association but which are designated for maintenance by the Association.

(a) **Generally.** The Association Maintenance Areas in a Phase may include:

(i) the structural integrity, cap and exterior surface (facing away from the residential Lot) of those portions of the Community Walls that are constructed on the residential Lots in the Phase;

(ii) the slope landscaping located on certain Lots in the Properties; and

(iii) those portions of lots located outside of Tract 16221 which the Association has the duty to maintain.

(b) **Association Maintenance Areas in Phase 1.** The Association Maintenance Areas in Phase 1 include portions of the Community Wall located on Lots in Phase 1, as depicted on *Exhibit D*.

(c) **Association Maintenance Areas in Future Phases.** Association Maintenance Areas in each future Phase may include the items listed in subparagraph (a) above as applicable to the Lots in such Phase. Declarant may designate additional Association Maintenance Areas in a Notice of Addition or Supplemental Declaration.

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

1.1.11 Belford-Marbella General Plan Trail. Belford-Marbella General Plan Trail means the hiking and equestrian trail and other feeder trails that run adjacent to and through the Properties as approximately depicted on *Exhibits E-1 and E-2* attached hereto.

1.1.12 Board or Board of Directors. Board or Board of Directors means the Association's Board of Directors.

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

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

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

1.1.16 City. City means the City of San Juan Capistrano, California, and its various departments, divisions, employees and representatives.

1.1.17 Close of Escrow. Close of Escrow means the date on which a deed is Recorded conveying a Lot pursuant to a transaction requiring the issuance of a Final Subdivision Public Report by the DRE.

1.1.18 Common Area. Common Area means real or personal property owned in fee by the Association and therefore made subject to the restrictions on Common Area established in this Declaration. Any references in this Declaration to Common Area are references to the Common Area as a whole and to portions thereof. The Common Area is "*common area*" as defined in Section 1351(b) of the California Civil Code. Additional Common Area may be annexed to the Properties pursuant to Article XVI. The Common Area located in Phase 1 includes Lot L of Tract No. 16221.

1.1.19 Common Expenses. Common Expenses means those expenses for which the Association is responsible under this Declaration. Common Expenses include the actual and estimated costs of and reserves for maintaining, managing and operating the Common Property (including amounts incurred for maintenance imposed on the Association by this Declaration), including:

(a) Common Area and Improvements thereon, including clustered mailboxes, address identification signs, landscaped and irrigated areas, portions of the Community Wall, entry gates, private streets, striping improvements, walls, fences, trails (including the Belford-Marbella General Plan Trail and all feeder trails within the Properties), Open Space, detention basins, sidewalks, medians, street lights, street signage, street trees, curbs, gutters, replacement, maintenance and operation of street lights on private streets and gardening and other services benefiting the Common Area;

(b) The Association Maintenance Areas, including the structure, cap and surface of the Community Walls facing away from the Lots, weed abatement on certain off tract property, and private drives and entry gate facilities on certain off tract property

(c) The cost of all utilities and mechanical and electrical equipment serving the Common Property, utilities which serve individual Lots but which are subject to a common meter, trash collection and removal (as applicable);

(d) The costs and fees attributable to managing and administering the Association, compensating the Manager, accountants, attorneys and employees, all insurance covering the Properties and the Directors, officers and agents of the Association, and bonding the members of the Board;

(e) Unpaid Special Assessments, Reconstruction Assessments and Capital Improvement Assessments;

(f) NPDES Expenses;

(g) Taxes paid by the Association;

(h) Surficial Soils Subsidence Expenses;

(i) Amounts paid by the Association for discharge of any lien or encumbrance levied against the Properties, and

(j) All other expenses incurred by the Association for the Properties, for the common benefit of the Owners.

1.1.20 Common Property. Common Property means the Common Area and Association Maintenance Areas. Any references to the Common Property are references to the Common Property as a whole and to portions thereof.

1.1.21 Community Wall. Community Wall means any sound wall, retaining wall, or fence in the Properties (a) that is constructed on a tract boundary; or (b) that separates a Lot from Common Area or public property; or (c) that is constructed entirely within Common Area, or (d) that is designated as a Community Wall by Declarant in this Declaration, or in a Notice of Addition or Supplemental Declaration. Party Walls are not Community Walls. The Community Walls in Phase I are designated as Association Maintenance Areas and are depicted on *Exhibit D*.

1.1.22 County. County means the County of Orange, California, and its various departments, divisions, employees and representatives. If the Properties are annexed into

an incorporated city, then the term "**County**" includes the city in which the Properties are located.

1.1.23 Declarant. Declarant means William Lyon Homes, Inc., a California corporation, its successors and any Person to which it shall have assigned any of its rights by an express written assignment. As used in this Section, "**successor**" means a Person who acquires Declarant or substantially all of Declarant's assets by sale, merger, reverse merger, consolidation, sale of stock or assets, operation of law or otherwise. Declarant shall determine in its sole discretion the time, place and manner in which it discharges its obligations and exercises the rights reserved to it under this Declaration. Declarant is a "**builder**" as described in California Civil Code Section 1375.

1.1.24 Declaration. Declaration means this instrument as currently in effect.

1.1.25 Design Guidelines. Design Guidelines mean the design guidelines approved by the City for the Properties.

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

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

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

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

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

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

1.1.32 Ginnie Mae. Ginnie Mae means the Government National Mortgage Association administered by the United States Department of Housing and Urban Development and its successors.

1.1.33 Improvement. Improvement means any structure and any appurtenance thereto. The Architectural Review Committee may identify additional items that are Improvements.

1.1.34 Include, Including. Whether capitalized or not, include and including mean "**include without limitation**" and "**including without limitation**," respectively.

1.1.35 Lot. Lot means any residential Lot or parcel of land shown on any Recorded subdivision map or Recorded parcel map of the Properties and Lot 121, except the Common Area owned in fee simple by the Association.

1.1.36 **Lot 121.** Lot 121 means that parcel described as Parcel 2 on *Exhibit A* attached hereto.

1.1.37 **Maintain, Maintenance.** Whether capitalized or not, maintain and maintenance mean "*maintain, repair and replace*" and "*maintenance, repair and replacement*," respectively; provided however, that maintain or maintenance shall not include repair and replace(ment) where the context or specific language of this Declaration provides another meaning.

1.1.38 **Maintenance Guidelines.** Maintenance Guidelines means any current written guidelines, setting forth procedures and standards for the maintenance and operation of Common Property or the Lots. Maintenance Guidelines may be provided by Declarant, by the Association, or by any governmental agency. Maintenance Guidelines include any maintenance manual initially prepared at Declarant's direction and containing recommended frequency of inspections and maintenance activities for components of the Common Property or pertaining to a Residence or Lot.

1.1.39 **Manager.** Manager means the Person retained by the Association to perform management functions of the Association as limited by the Association Governing Documents and the terms of the agreement between the Association and the Person.

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

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

1.1.42 **Mortgagee.** Mortgagee means a Person to whom a Mortgage is made, or the assignee of the Mortgagee's rights under the Mortgage by a recorded instrument. For purposes of this Declaration, the term Mortgagee shall include a beneficiary under a deed of trust.

1.1.43 **Mortgagor.** Mortgagor means a person who has mortgaged his property. For purposes of this Declaration, the term Mortgagor shall include a trustor under a deed of trust.

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

1.1.45 **Notice of Addition.** Notice of Addition means an instrument Recorded pursuant to Article XVI to annex additional real property to the Properties.

1.1.46 **NPDES Expenses.** NPDES Expenses means those expenses for which the Association is responsible under Section 2.1.2 of this Declaration, including, but not limited to, maintenance of drainage facilities, detention basins, regular maintenance and replacement of fossil filters and grease traps in the storm drain inlets in accordance with the requirements of the City.

1.1.47 NPDES Fund. NPDES Fund means that portion of the Common Expenses allocated for NPDES Expenses.

1.1.48 Official Records. Official Records means the Official Records of the County.

1.1.49 Open Space. Open Space means those areas designated on the final map for Tract 16221 and as depicted on *Exhibit F* attached hereto.

1.1.50 Operating Fund. Operating Fund means that portion of the Common Expenses allocated for the daily operation of the Association.

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

1.1.52 Party Wall. Party Wall means any wall or fence that separates adjacent Lots.

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

1.1.54 Phase. Phase means each of the following: (a) Phase 1, (b) all the real property covered by a Notice of Addition for which a Final Subdivision Public Report has been issued by the DRE, and (c) real property consisting solely of Common Area as described in a Notice of Addition. Declarant may otherwise define the term "**Phase**" in a Notice of Addition or Supplemental Declaration.

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

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

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

1.1.58 Record or File. Record or File means, with respect to any document, the entry of such document in Official Records.

1.1.59 Reserve Fund. Reserve Fund means that portion of the Common Expenses allocated (a) for the future repair and replacement of, or additions to, structural

elements, mechanical equipment and other major components of Association-maintained Improvements, and (b) amounts necessary to cover the deductibles under all insurance policies maintained by the Association.

1.1.60 Residence. Residence means the dwelling unit constructed on a Lot, excluding the garage area, which is designed and intended for use and occupancy as a residence by a single Family.

1.1.61 Right to Repair Law. Right to Repair Law means Division 2, Part 2, Title 7 (commencing with Section 895) of the California Civil Code.

1.1.62 Rules and Regulations. Rules and Regulations or "**Rules**" means the current rules and regulations for the Properties.

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

1.1.64 Supplemental Declaration. Supplemental Declaration means an instrument Recorded by Declarant against all or a portion of the Properties in order to supplement, modify, or clarify conditions, covenants, restrictions or easements established under this Declaration. A Supplemental Declaration may affect one or more Lots and Common Area. Declarant may Record a Supplemental Declaration so long as Declarant owns all of the real property to be encumbered by the Supplemental Declaration. A Supplemental Declaration may modify this Declaration as it applies to the property encumbered by the Supplemental Declaration.

1.1.65 Surficial Soils Subsidence Expenses. Surficial Soils Subsidence Expenses means those expenses for which the Association is responsible under Article XVIII of this Declaration, including, but not limited to, maintenance, repair and replacement of certain slope areas, structures and public/private improvements subject to a soils subsidence program in accordance with the requirements of the City.

1.1.66 Surficial Soils Subsidence Fund. Surficial Soils Subsidence Fund means a separate fund kept by the Association, and funded by assessments allocated for Surficial Soils Subsidence Expenses as more fully described in Article XVIII of this Declaration.

1.1.67 Telecommunications Facilities. Telecommunications Facilities means Improvements constructed in the Properties, including cables, conduits, ducts, vaults, connecting hardware, wires, poles, transmitters, towers, antennae and other devices now existing or that may be developed in the future to provide Telecommunication Services to the Properties.

1.1.68 Telecommunications Services. Telecommunications Services means the reception, distribution or transmission of video, audio, data, telephony, all related vertical services, and any other similar services now existing or that may be developed in the future. Declarant may expand this definition in any Supplemental Declaration.

1.1.69 VA. VA means the Department of Veterans Affairs of the United States of America and any department or agency of the United States government which succeeds to the VA's function of issuing guarantees of notes secured by Mortgages on residential real estate.

1.2 INTERPRETATION.

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

1.2.2 **Articles, Sections and Exhibits.** The Article and Section headings are inserted for convenience only and may not be considered in resolving questions of interpretation or construction. Unless otherwise indicated, any references in this Declaration to articles, sections or exhibits are to Articles, Sections and Exhibits of this Declaration. *Exhibits A and D* through *Q*, inclusive, attached to this Declaration, are incorporated in this Declaration by this reference. The locations and dimensions of any Improvements depicted on the Exhibits attached hereto and to any Notice of Addition are approximate only and the as-built location and dimension of any such Improvements shall control.

1.2.3 **Priorities and Inconsistencies.** If there are conflicts or inconsistencies between this Declaration and the Articles, Bylaws, Rules and Regulations, or a Supplemental Declaration, then the provisions of this Declaration shall prevail.

1.2.4 **Severability.** The provisions of this Declaration are independent and severable. A determination of invalidity, partial invalidity or unenforceability of any one (1) provision of this Declaration by a court of competent jurisdiction does not affect the validity or enforceability of any other provisions of this Declaration.

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

ARTICLE II MAINTENANCE COVENANTS AND USE RESTRICTIONS

The Properties shall be held, used and enjoyed subject to the following restrictions and subject to the exemptions of Declarant set forth in the Association Governing Documents.

2.1 REPAIR AND MAINTENANCE.

2.1.1 **Maintenance Standards.** The Association shall maintain everything it is obligated to maintain in a clean, sanitary and attractive condition reasonably consistent with the level of maintenance reflected in the most current Budget, and in conformity with any Maintenance Guidelines. Unless specifically provided herein, or in any Maintenance Guidelines, the Board shall determine, in its sole discretion, the level and frequency of maintenance of the Common Property and Improvements thereon. All trail maintenance must conform to the maintenance standards set forth in the City's adopted Equestrian/Hiking Trail Design Manual a

copy of which shall be kept on file with the Association. Each Owner shall maintain everything the Owner is obligated to maintain in a clean, sanitary and attractive condition and in conformity with any Maintenance Guidelines.

2.1.2 Water Quality Maintenance Obligations. The Association shall maintain the following best management practices with respect to storm drain maintenance:

- (a) Inspect the dry basin twice a year and clean out annually;
- (b) Inspect each catch basin insert after every rain and clean out debris to prevent clogging, and shall inspect and replace filter media annually;
- (c) Inspect catch basins after each major storm that produces at least 0.5 inches of precipitation and clean out the catch basins annually;
- (d) Inspect catch basin stenciling each year and replace as necessary;
- (e) Inspect and clean vegetative swales and landscaping every October and May;
- (f) Sweep private streets bi-weekly;
- (g) Conduct weekly Common Area litter control inspections and clean-up;
- (h) Install pet waste disposal stations in pocket parks in the Common Area; replenish bags for doggie waste disposal weekly; inspect Common Areas weekly for pet waste and dispose of waste in trash; and
- (i) Conduct an annual educational newsletter campaign for homeowners regarding the National Pollutant Discharge Elimination System permit compliance requirements, which shall include materials attached hereto as *Exhibit G*.

2.1.3 Right of City to Assume Certain Maintenance Responsibilities. The City has the right to assume maintenance of the equestrian/hiking trails if the City determines in its reasonable discretion that the Association has not maintained the trails at the minimum standard defined by the Equestrian/Hiking Design Manual. The City also has the right to assume maintenance of the detention basin, catch basins and drainage facilities if the City determines in its reasonable discretion that the Association has not maintained such facilities in accordance with the permit requirements. In each case, the Association shall reimburse the City for any costs incurred in its maintenance role from the Association Maintenance Fund, or if said funds are inadequate, by Special Assessment. Failure by an Owner to pay the Special Assessment shall entitle the Association to place a lien against such Owner's Lot pursuant to Section 12.2 hereof.

2.1.4 By Owners.

- (a) *The Lot.* Each Owner shall maintain at such Owner's sole expense all of the Lot, including the Residence and all other Improvements on the Owner's Lot (excepting any Common Property located thereon) in a clean, sanitary and attractive condition. Each Owner shall pay when due all charges for any utility service separately metered to his Lot.

(b) **Party Walls.** To the extent not inconsistent with the provisions of this Section, the general rules of law regarding Party Walls and liability for property damage due to negligence or willful acts or omissions shall apply.

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

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

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

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

(c) **Other Responsibilities.**

(i) Each Owner shall regularly inspect the Improvements on the Lot for wood-destroying pests, and if such pests are found, the Owner shall be responsible for the costs of eradication and future prevention.

(ii) Each Owner whose Lot utilizes a sewer system lateral is responsible for the maintenance and repair of the portion of the lateral lying in the boundaries of the Lot.

(iii) Each Owner of a Lot not adjacent to a sidewalk and located within a cul-de-sac shall be responsible for installing, planting, irrigating and maintaining landscaping on the parkway adjacent to their Lot. The Lots in Phase 1 with this responsibility are designated on *Exhibit H* attached hereto.

(iv) The Owner of any Lot that is partially or completely enclosed by a portion of the Community Wall (whether constructed on the Lot or adjacent to the Lot) is responsible for maintaining only the surface of the Community Wall that faces the Owner's Residence. However, Owners shall not be responsible for maintenance of any tubular steel portions of the Community Wall.

2.1.5 By Association.

(a) **Commencement of Obligations.** The Association's obligation to maintain the Common Area in a Phase composed solely of Common Area shall commence on conveyance of such Common Area to the Association. The Association's obligation to maintain the Common Area in any Phase that includes Lots commences on the date Annual Assessments commence on Lots in the Phase. The Association's obligation to maintain Association Maintenance Areas in a Phase commences when Annual Assessments commence on residential Lots in such Phase, unless the terms of the reservation or grant of easement for such Association Maintenance Areas provides otherwise. Until the Association is responsible for maintaining the Common Property, Declarant shall maintain the Common Property.

(b) **Maintenance Items.** The Association shall be responsible for all maintenance not provided by the Owners pursuant to Section 2.1.4 above. The Association shall repair and pay for all centrally metered utilities and mechanical and electrical equipment serving the Common Property; pay all Common Expenses and charges for utilities serving recreational amenities shall maintain all Common Property, including all walks, private streets and other means of ingress and egress in the Properties. The Association is responsible for maintaining uniformity of boundary fencing at the perimeter of the Properties. The Association is also responsible for maintaining (i) all tubular steel portions of the Community Wall, (ii) the cap and structural integrity of the Community Wall, and (iii) the surfaces of the Community Wall that do not face the Lot. At the Association's option any wrought iron or glass portion of the Community Wall may be replaced with other materials. If the Association removes or damages any landscaping Improvements on an Owner's Lot while maintaining the Community Wall, the Association is not responsible for replacing those landscaping Improvements.

(c) **Additional Items.** The Association shall also be responsible for maintaining any Improvements a majority of the voting power of the Association designates for maintenance by the Association. Such property shall be deemed to be Common Property and subject to the Association Governing Documents applicable to the Common Property.

(d) **Charges to Owners.** All costs of maintenance of the Common Property shall be paid for as Common Expenses out of the Association Maintenance Funds as provided in this Declaration.

2.1.6 Inspections. The Board shall require strict compliance with all provisions of this Declaration and shall periodically cause a compliance inspection of the Properties to be conducted by the Architectural Review Committee to report any violations thereof. The Board shall also cause condition inspections of the Common Property and all Improvements thereon to be conducted in conformity with the applicable Maintenance Guidelines, and in the absence of inspection frequency recommendations in any applicable Maintenance Guidelines at least once every three (3) years, in conjunction with the inspection required for the reserve study to be conducted pursuant to Section 2.10 of the Bylaws, to (a) determine whether the Common Property is being maintained adequately in accordance with the standards of maintenance established in Section 2.1.1, (b) identify the condition of the Common Property and any Improvements thereon, including the existence of any hazards or defects, and the need for performing additional maintenance, refurbishment, replacement, or repair, and (c) recommend preventive actions which may be taken to reduce potential maintenance costs to be incurred in the future. The Board shall, during its meetings, regularly determine whether the

recommended inspections and maintenance activities set forth in any applicable Maintenance Guidelines have been followed and, if not followed, what corrective steps need to be taken to assure proper inspections and maintenance of the Common Property. The Board shall keep a record of such determinations in the Board's minutes. The Board shall keep Declarant fully informed of the Board's activities under this Section 2.1.6. The Board shall employ, consistent with reasonable cost management, such experts, contractors and consultants as are necessary to perform the inspections and make the reports required by this Section.

2.1.7 Reporting Requirements. The Association shall prepare a report of the results of the inspection required by this Section. The report shall be furnished to Owners and Declarant within the time set for furnishing the Budget to the Owners. The report must include at least the following:

- (a) a description of the condition of the Common Property, including a list of items inspected, and the status of maintenance, repair and need for replacement of all such items;
- (b) a description of all maintenance, repair and replacement planned for the ensuing Fiscal Year and included in the Budget;
- (c) if any maintenance, repair or replacement is to be deferred, the reason for such deferral;
- (d) a summary of all reports of inspections performed by any expert or consultant employed by the Association to perform inspections;
- (e) a report of the status of compliance with the maintenance, replacement and repair needs identified in the inspection report for preceding years; and
- (f) such other matters as the Board considers appropriate.

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

2.1.8 Damage by Owners. Each Owner is liable to the Association for any damage to the Common Area caused by the act of an Owner, his Family, guests, tenants or invitees. The Association may, after Notice and Hearing, (a) determine whether any claim shall be made on the Association's insurance, and (b) levy a Special Assessment equal to the cost of repairing the damage or any deductible paid and the increase, if any, in insurance premiums directly attributable to the damage caused by such Owner or the person for whom such Owner may be liable as described in this Declaration. If a Lot is jointly owned, the liability of its Owners is joint and several, except to the extent that the Association has previously contracted in writing with the joint owners to the contrary. After Notice and Hearing, the cost of correcting the damage shall be a Special Assessment against such Owner.

2.2 SINGLE FAMILY RESIDENCE. The Residence shall be used as a dwelling for a single Family and for no other purpose.

2.3 FURTHER SUBDIVISION. Except as otherwise provided in this Declaration, no Owner may physically or legally subdivide a Lot in any manner, including dividing the Lot into time-share estates or time-share uses.

2.4 RESALE AND RENTAL. Nothing in this Declaration shall be deemed to (a) prevent an Owner from selling the Lot or (b) prevent an Owner from entering a written lease or rental agreement for occupancy of the Residence and the Lot by a single Family, provided that the lease or rental agreement is made expressly subject to this Declaration (each of the foregoing is subject to any Owner occupancy or anti-speculation requirements that may be separately imposed by Declarant). Owners may also rent Lots to Declarant for use as sales offices, model homes and parking areas. All lessees, tenants, and their Families, agents and invitees are bound by the Association Governing Documents when present in the Properties, and any violation of the Association Governing Documents constitutes a default under the lease or rental agreement. Declarant may not lease any portion of the Common Property to the Owners or the Association.

2.5 BUSINESS AND COMMERCIAL ACTIVITIES.

2.5.1 Generally. No Owner or other occupant of the Properties may undertake any activity on any Lot or on any portion of the Common Area for business or commercial purposes including manufacturing, mercantile, storage, vending, auctions, transient occupancy (such as vacation rental, hotel, or time-share), vehicle or equipment repair, or other non-residential purposes. Such activities are prohibited whether they are engaged in full- or part-time, whether they are for-profit or non-profit, and whether they are licensed or unlicensed.

2.5.2 Exceptions. This Section shall not be interpreted to conflict with any federal, State or local laws or ordinances or to prohibit any of the following:

(a) The hiring of employees or contractors to provide maintenance, construction or repair of any Improvement consistent with this Declaration or any Supplemental Declaration;

(b) Exercise by Declarant of any rights reserved to it under Article XV;

(c) The provision of in-home health care or assisted-living services to any resident of the Properties;

(d) The provision of family home child care services as defined in California Health and Safety Code Section 1597.40, *et seq.* so long as such services comply with all applicable zoning requirements and state law. Provided, however, that the Association has the power to limit or prohibit use of recreational facilities in the Common Area by clientele of the business; or

(e) The operation of small home-based service businesses that comply with all of the following:

- (i) The operator of the business lives in the Residence on a permanent, full-time basis;
- (ii) When conducted in the Properties, business activities take place solely inside the Residence;
- (iii) The activity does not generate in-person visits by suppliers or clientele;
- (iv) The activity complies with all laws, regulations and ordinances applicable to the Properties, including zoning, health and licensing requirements;
- (v) The activity otherwise complies with the Declaration and is consistent with the residential character of the Properties;
- (vi) The operator of the business posts no signage anywhere in the Properties;
- (vii) There is no visible evidence in the Properties of the activity;
- (viii) The activity does not generate noise or odors that are apparent outside the Residence; and
- (ix) The business does not increase the Association's liability or casualty insurance obligation or premium.

2.6 NUISANCES. Noxious or offensive activities are prohibited in the Properties and on any public street abutting or visible from the Properties. The Board is entitled to determine if any device, noise, odor, or activity constitutes a nuisance.

2.6.1 Nuisance Devices. Nuisance devices may not be kept or operated in the Properties or on any public street abutting the Properties, or exposed to the view of other Lots or Common Area. Nuisance devices include the following:

- (a) All horns, whistles, bells or other sound devices (except security devices used exclusively to protect the security of a Residence or a vehicle and its contents)
- (b) Noisy or smoky vehicles, power equipment (excluding lawn mowers and other equipment used in connection with ordinary landscape maintenance), and Prohibited Vehicles (defined below);
- (c) Devices that create or emit loud noises or noxious odors;
- (d) Construction or demolition waste containers (except as permitted in writing by the Committee);
- (e) Devices that unreasonably interfere with television or radio reception to a Lot;

(f) Plants or seeds infected with noxious insects or plant diseases;

(g) The presence of any other thing in the Properties which may (i) increase the rate of insurance in the Properties, (ii) result in cancellation of the insurance, (iii) obstruct or interfere with the rights of other Owners or the Association, (iv) violate any law or provisions of this Declaration or the Rules and Regulations, or (v) constitute a nuisance or other threat to health or safety under applicable law or ordinance.

2.6.2 Nuisance Activities. Nuisance activities may not be undertaken in the Properties or on any public street abutting the Properties, or exposed to the view of other Lots or Common Area without the Board's prior written approval. Nuisance activities include the following:

(a) Hanging, drying or airing clothing, fabrics or unsightly articles in any place that is visible from other Lots, Common Area or public streets;

(b) The creation of unreasonable levels of noise from parties, recorded music, radios, television or related devices, or live music performance;

(c) Repair or maintenance of vehicles or mechanical equipment, except in a closed garage or rear yard screened from view by other Lots or Common Area;

(d) Outdoor fires, except in barbecue grills and fire pits designed and used in such a manner that they do not create a fire hazard;

(e) Outdoor storage of bulk materials or waste materials except in temporary storage areas designated by the Committee; and

(f) Any activity which may (i) increase the rate of insurance in the Properties, (ii) result in cancellation of the insurance, (iii) obstruct or interfere with the rights of other Owners, (iv) violate any law or provisions of this Declaration or the Rules and Regulations, or (v) constitute a nuisance or other threat to health or safety under applicable law or ordinance.

2.7 SIGNS. Subject to Civil Code Sections 712, 713 and 1353.6, no sign, advertising device or other display of any kind shall be displayed in the Properties or on any public street in or abutting the Properties except for the following signs:

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

2.7.2 for each Lot, one (1) nameplate or address identification sign which complies with Architectural Review Committee rules;

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

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

(a) the sign is not larger than those typically used by real estate agents in the County;

(b) the sign is attached to the ground by a conventional, single vertical stake which does not exceed the height typically used by real estate agents in the County;

(c) the sign is of a color and style and location authorized by the Architectural Review Committee; and

2.7.5 other signs or displays authorized by the Architectural Review Committee.

2.8 PARKING AND VEHICULAR RESTRICTIONS.

2.8.1 **Definitions.** The following definitions shall apply to parking and vehicular restrictions set forth in this Declaration:

2.8.2 **Authorized Vehicle.** An "*Authorized Vehicle*" is an automobile, a passenger van designed to accommodate ten (10) or fewer people, a motorcycle, or a pickup truck having a manufacturer's rating or payload capacity of one (1) ton or less. The Association has the power to identify additional vehicles as Authorized Vehicles in the Rules and Regulations in order to adapt this restriction to other types of vehicles that are not listed above.

2.8.3 **Prohibited Vehicles.** The following vehicles are "*Prohibited Vehicles*:" (a) recreational vehicles, motor homes, travel trailers, camper vans, boats and the like, (b) large commercial-type vehicles (e.g., stakebed trucks, tank trucks, dump trucks, step vans, and concrete trucks), (c) buses, limousines or vans designed to accommodate more than ten (10) people, (d) inoperable vehicles or parts of vehicles, (e) aircraft, (f) any vehicle or vehicular equipment deemed a nuisance by the Association, and (g) any other vehicle not classified as an Authorized Vehicle. If a vehicle qualifies as both an Authorized Vehicle and a Prohibited Vehicle, then the vehicle is presumed to be a Prohibited Vehicle, unless the vehicle is expressly classified as an Authorized Vehicle in writing by the Board. The Association has the power to identify additional vehicles as Prohibited Vehicles in the Rules and Regulations to adapt this restriction to other types of vehicles that are not listed above.

2.8.4 **Parking Restrictions.**

(a) ***Streets and Driveways.*** If an Authorized Vehicle will not fit in a garage it may be parked in the driveway or street, provided that the vehicle does not encroach onto the sidewalk or other public or private right-of-way and is not parked in violation of any other restriction in this Declaration.

(b) ***Prohibited Vehicles.*** No Prohibited Vehicle may be parked, stored or kept in the Properties except for brief periods during loading, unloading, or emergency repairs. However, a resident may park a Prohibited Vehicle in the garage so long as the garage is kept closed and the presence of the Prohibited Vehicle does not prevent any Authorized Vehicle from being parked in the garage or driveway at the same time.

(c) **Garage Parking.** Each Owner shall at all times ensure that the garage accommodates at least one less than the number of Authorized Vehicles for which it was originally constructed by Declarant. The garages shall be used for parking of vehicles and storage of personal property only. No garage may be used for any living, recreational, or other purpose. Garage doors must be kept closed except as necessary for entry or exit of vehicles or persons.

2.8.5 Repair, Maintenance and Restoration. No Person may repair, maintain or restore any vehicle in the Properties, unless such work is conducted in the garage with the garage door closed. However, no Person may carry on in any portion of the Properties any vehicle repair, maintenance or restoration business.

2.8.6 Enforcement. The streets in the Properties are private. The Board has the right and power to enforce all parking and vehicle use regulations applicable to the Properties, including the designation of "no parking zones" and removal of violating vehicles from streets and other portions of the Properties in accordance with California Vehicle Code Section 22658.2 or other applicable laws.

2.8.7 Regulation and Restriction by Board. The Board has the power to: (a) establish additional rules and regulations concerning parking in the Common Area, including designating "*parking*," "*guest parking*," and "*no parking*" areas; (b) prohibit any vehicle repair, maintenance or restoration activity in the Properties if it determines in its sole discretion that such activity is a nuisance; and (c) promulgate rules and regulations concerning vehicles and parking in the Properties as it deems necessary and desirable.

2.8.8 Common Area Parking Spaces. Street parking spaces (collectively, "*Common Area Parking Spaces*") are for temporary, short-term use by residents and invitees of residents only. Common Area Parking Spaces are unreserved and unassigned, and they are available on a strict first-come-first-served basis. However, the spaces shall not be used for long-term parking or permanent storage of any vehicle or other personal property. The Board may, but is not required to, impose additional restrictions on Common Area Parking Spaces.

2.8.9 Fire Lanes. No person may park any vehicle in designated fire lanes at any time. The fire lanes located in the Properties are depicted on *Exhibit I* attached hereto.

2.9 ANIMAL REGULATIONS. Unless otherwise approved by the Board, up to three (3) domestic dogs, cats, birds or other customary household pets, may be kept in each Residence; provided that they are not kept, bred or maintained for commercial purposes, or in unreasonable quantities. Small household pets such as fish and caged birds may be kept in reasonable numbers so long as there is no external evidence of their presence in the Properties. Animals belonging to Owners, tenants, residents or guests in the Properties must be kept in the Residence; provided however, when outdoors, animals must be kept under the control of a Person capable of controlling the animal either on a leash or other appropriate restraint when outside the Residence. Furthermore, each Owner shall be absolutely liable to each and all remaining Owners, their families, tenants, residents and guests for damages or injuries caused by any animals brought or kept in the Properties by an Owner, by members of the Owner's Family, or by the Owner's guests, tenants or invitees. Each Owner shall immediately remove any excrement or clean other unsanitary conditions caused by such Owner's animals on any portion of the Properties.

2.10 ANTENNA RESTRICTIONS. No Person may install on the exterior of any Residence, rooftops, balcony railings or in a yard any antenna or over-the-air receiving device except for an **"Authorized Antenna."** An Authorized Antenna is (a) an antenna designed to receive direct broadcast satellite service, including direct-to-home satellite service, that is one (1) meter or less in diameter, (b) an antenna designed to receive video programming service, including multichannel multipoint distribution service, instructional television fixed service, and local multipoint distribution service, and is one (1) meter or less in diameter or diagonal measurement, (c) an antenna designed to receive television broadcast signals, or (d) an antenna used to receive and transmit fixed wireless signals. An Authorized Antenna may be mounted on a mast to reach the height needed to receive an acceptable quality signal, subject to local governmental agency permitting requirements for safety purposes.

2.10.1 Restrictions on Installation. The Committee may adopt reasonable restrictions on installation and use of an Authorized Antenna as part of its Design Guidelines in order to minimize visibility of the Authorized Antenna from other Lots. Such restrictions may designate one (1) or more preferred installation locations, or require camouflage such as paint (subject to the antenna manufacturer's recommendations) or screening vegetation or other Improvements. However, no restriction imposed by the Committee may (a) unreasonably delay or prevent the installation, maintenance or use of an Authorized Antenna, (b) unreasonably increase the cost of the installation, maintenance or use of an Authorized Antenna, or (c) preclude acceptable quality reception.

2.10.2 Prohibitions on Installation. The Committee may prohibit the installation of an Authorized Antenna in a particular location if, in the Committee's opinion, the installation, location or maintenance of such Authorized Antenna unreasonably affects the safety of the Owners or any other Person, or for any other safety-related reason established by the Committee. The Committee may also prohibit an Owner from installing an Authorized Antenna on any real property which such Owner does not own or is not entitled to exclusively use or control under the Association Governing Documents. The Committee also has the power to prohibit or restrict the installation of any antenna or other over-the-air receiving device that does not meet the definition of an Authorized Antenna as set forth above.

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

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

2.11 TRASH. Trash must be stored in sanitary trash containers. No trash or containers may be left or stored outdoors. However, trash containers may be set out at curbside for a reasonable period of time on trash collection days (not to exceed twelve (12) hours before and after scheduled trash collection hours). At all other times, Owners must store trash containers in the garage or within the fenced portion of the yard until scheduled collection times.

2.12 IMPROVEMENTS.

2.12.1 Outdoors. No Person shall install any permanent outdoor Improvements on the Lot if such Improvements are visible from other Lots, or from the streets or the Common Area, without the prior written approval of the Architectural Review Committee obtained in accordance with Article V and the Rules and Regulations. Examples of outdoor Improvements that require prior Committee approval include the following:

- (a) Roof-mounted equipment, including heating, ventilation and air conditioning equipment, vents or ducts;
- (b) Screening structures that are intended to hide roof-mounted Improvements (such Improvements may be hidden from view only by extension of the main structure);
- (c) Modifications to the building exteriors including room additions, second-story additions or other cosmetic or structural changes in the architectural elements of the Residence;
- (d) Permanent athletic equipment (portable athletic equipment may be used in front yards or street areas but it must be brought indoors or out of the view of other Lots when not in use);
- (e) Sunshades, awnings or patio covers;
- (f) Accessory structures such as sheds, barns and casitas;
- (g) Front yard or parkway landscaping and hardscape, including flatwork and fences or walls; and
- (h) Rear yard landscaping and hardscape, including flatwork and fences or walls.

The foregoing list is provided for guidance but it is not intended to be an exhaustive list. The Committee has the power to require prior review and approval of other Improvements that are not listed above. Outdoor patio or lounge furniture, potted plants and portable barbecue equipment may be kept pursuant to the Rules and Regulations.

All Persons who intend to install any outdoor Improvements should consult the Committee prior to installation to determine if prior review is required. This Section shall not apply to any Improvements installed by Declarant or by the Association.

2.12.2 Installation of Front Yard Landscaping. Each Owner shall complete the installation of landscaping on the front yard of the Lot in accordance with a plan approved by the Architectural Review Committee, no later than six (6) months after the Close of Escrow. At a minimum, the front yard landscaping shall include the following items: (a) shrub plantings, with at least ten percent (10%) of such shrub plantings to include fifteen (15) gallon containers, sixty percent (60%) of such shrub plantings to include five (5) gallon containers and thirty percent (30%) of such shrub plantings to include one (1) gallon containers; (b) two (2) 36" box trees, and (c) sodded turf areas. All species of landscaping shall be approved by the Committee.

Each Owner shall obtain all permits necessary and shall comply with all requirements of the City, including submitting landscape and hardscape plans the City's Design Review Committee, if applicable.

2.12.3 Installation of Rear Yard Landscaping. Each Owner shall complete the installation of landscaping on the rear yard of the Lot in accordance with a plan approved by the Architectural Review Committee no later than six (6) months after the Close of Escrow. Each Owner shall obtain all permits necessary and shall comply with all requirements of the City, including submitting landscape and hardscape plans to the City's Design Review Committee, if applicable. Decks and gazebos may be constructed on the flat surface portion of the rear yard only, and not in the slope portion of the rear yard.

2.12.4 Indoors. No Owner or other resident of the Properties may apply paint, foil, film, or other reflective material to the glass portion of any window in the Residence. Pending installation of permanent window coverings, Owners may cover windows with white sheets up to six (6) months following the Close of Escrow. Nothing may be done on any Lot or in, on or to the Common Property which may impair the structural integrity of any building in the Properties or which structurally alters any such building except as otherwise expressly provided in this Declaration.

2.12.5 No Liability. Neither the Declarant nor the Association shall be liable or responsible for any damage that results from Improvements installed, constructed or modified by or at the direction of an Owner. Owners are advised to consult and use qualified consultants and contractors when installing, constructing or modifying Improvements on the Owner's Lot.

2.13 MECHANICS' LIENS. No Owner may cause or permit any mechanic's lien to be filed against the Common Property or another Owner's Lot for labor or materials alleged to have been furnished or delivered for such Owner and any Owner who permits a mechanics' lien to be so filed shall cause the lien to be discharged within five (5) days after notice to the Owner from the Board. If the Owner fails to remove such mechanic's lien, the Board may discharge the lien and levy a Special Assessment against the violating Owner's Lot to recover the cost of discharge.

2.14 FURTHER SUBDIVISION. Except as otherwise provided in this Declaration, no Owner may physically or legally subdivide his Lot in any manner, including dividing such Owner's Lot into time-share estates or time-share uses. This provision does not limit the right of an Owner to (a) rent or lease his entire Lot by a written lease or rental agreement subject to this Declaration, (b) sell such Owner's Lot, or (c) transfer or sell any Lot to more than one (1) Person to be held by them as tenants-in-common, joint tenants, tenants by the entirety or as community property. Any failure by the tenant of the Lot to comply with the Association Governing Documents constitutes a default under the lease or rental agreement.

2.15 DRAINAGE. No one may interfere with or alter the established drainage pattern over any Lot unless an adequate alternative provision is made for proper drainage with the Board's prior written approval. For the purpose of this Section, "*established*" drainage means, for any Phase, the drainage which (a) exists at the time of the first Close of Escrow in such Phase, or (b) is shown in any plan approved by the Board. Established drainage includes drainage from the Lots onto the Common Property and from the Common Property onto the Lots. Drainage devices installed in the Properties by Declarant should not be altered in any manner that will

redirect or obstruct drainage through these devices. The construction or modification of Improvements must not result in ponding of water. Drainage devices, including, concrete ditches, area drain lines and gutter must be carefully designed and installed with professional assistance and then maintenance in an unobstructed condition. Drainage devices installed by Declarant designed to serve more than one (1) Lot or the Common Property shall not be altered in a manner that will redirect or obstruct the drainage through these drainage devices. The landscape irrigation system should be designed, constructed, and operated to prevent excessive saturation of soils. Water must drain away from the Residence footings and other Improvements. Obstructions such as walls should not be constructed across swales unless adequate replacement drainage Improvements have been installed or created. Planters should be lined with an impervious surface and should contain outlets to drain excess water.

2.16 WATER SUPPLY SYSTEM. No individual water supply, sewage disposal or water softener system is permitted on any Lot unless such system is designed, located, constructed and equipped in accordance with the requirements, standards and recommendations of any water district having jurisdiction, the City, County, the Architectural Review Committee and all other applicable governmental authorities with jurisdiction.

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

2.18 SOLAR ENERGY SYSTEMS. Subject to reasonable restrictions imposed by the Association in accordance with Civil Code Sections 714 and 714.1, each Owner may install a solar energy system (as defined in California Civil Code Section 801.5), each Owner may install a solar energy system on his Lot to serve his domestic needs, so long as (a) the design and location of the solar energy system meet the requirements of all applicable governmental ordinances, and (b) the design and location receive the prior written approval of the Architectural Review Committee.

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

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

2.21 NO ALTERATION OF THE COMMON PROPERTY. The Common Property, including those areas located on the Lots, may not be altered without the Board's prior written consent.

2.22 RETENTION OF OPEN SPACE. All Open Space within the Properties shall be retained as indicated on the Final Map for Tract No. 16221, recorded in the Official Records of the County, and no structures shall be allowed on the Open Space in perpetuity. No development or encroachment shall be permitted within the Open Space, except as permitted for the Open Space district in the City's Comprehensive Development Plan.

2.23 NO OBSTRUCTIONS ON PRIVATE STREETS. No obstructions such as speed bumps or speed humps, control gates or other modifications may be made to any access points or private streets within the Properties without prior approval of the Orange County Fire Authority.

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

2.25 POLLUTANT CONTROL. The Properties are subject to all federal, state and local requirements of the National Pollutant Discharge Elimination System ("NPDES"), adopted in accordance with the Federal Clean Water Act. In 1999, the California State Water Resources Control Board ("SWRCB") enacted a new statewide General Permit for Storm Water Discharges Associated with Construction Activity ("General Permit"). The General Permit imposes a comprehensive series of requirements on developers and builders to file a Storm Water Pollution Prevention Plan ("SWPPP") with the Regional Water Quality Control Board that sets forth Best Management Practices ("BMPS") for the design, implementation and maintenance of measures to mitigate or eliminate pollutants in storm water discharges from the Properties both during and after construction of the Residences. In addition, the City may impose its own construction storm water management requirements, policies and guidelines on the Properties such as the creation of a Drainage Area Management Plan. The SWPPP contains a specific maintenance schedule for post-construction operation of the BMPs that may impose long term maintenance obligations on the Association and each Owner in the Properties. The BMPs are in addition to any local ordinances established by the City and any rules and regulations imposed by the Association with regard to discharge of non-storm water into storm drains.

The Association shall ensure that the landscape irrigation located on the portions of the Properties maintained by the Association is implemented in accordance with the BMPs set forth in the SWPPP for the Properties, including (a) the provision for water sensors and programmable irrigation times allowing for short cycles, (b) the use of planting materials similar to that installed by Declarant, with similar water requirements, in order to reduce excess irrigation runoff and to promote surface filtration, and (c) maintenance of all permanent slopes with required landscaping with native or other drought tolerant planting materials. The cost of the Association's portion of such maintenance, if any, shall be treated as a Common Expense.

All activities undertaken by Owner or Owner's agents, employees or representatives, with respect to Owner's Lot must comply with the BMPs. The BMPs may include, but are not limited to, preventing run-off of soil, sand, sediment, oil, gasoline or other hydrocarbons, paint, fertilizer, pool chemicals, and other household chemicals into the storm drains located in the Properties. For example, Owners must place sandbags around soil and sod when installing

landscaping in order to prevent run-off into the storm drain. Also, when fertilizing landscaping, Owners must take measures to prevent over-watering the landscaping to ensure that fertilizer and other lawn chemicals do not run-off into the storm drains in the Properties.

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

ARTICLE III DISCLOSURES

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

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

3.2 ACCESS FACILITIES. Vehicular and pedestrian access into the Properties may be controlled by entry gates located at the private street entrances into the Properties. There may also be controlled access pedestrian gates in the Properties. There is currently no intent to provide any staff at the entry gates. There are no assurances that any entry gates will be installed or staffed. The gates are planned to include electronic gate closing devices, and Owners, the Ortega Highway Owners and the Woods Lane Owners (as each is defined in Article XVII below) will be issued access keys. Electronic gate closing equipment is intended to keep the entry facilities closed, but it is neither designed nor intended to provide additional security to the Properties or to prevent Persons from gaining access to the Properties. Access keys must remain in Owner's control and the control of other residents of Owner's Lot at all times. The Board has the power to assess a reasonable charge, including a penalty or fine, to replace a lost or stolen

access device. Until the last Close of Escrow occurs in the Properties, (a) the access gate may be open to the general public, (b) Declarant may change the hours of access gate operation in its sole discretion without notice to accommodate construction and marketing activities, (c) interim access gate staffing may be provided or eliminated, and (d) operation of the access gate may be limited. In addition, all Owners in the Properties acknowledge, by acceptance of a deed to a Lot, that certain agencies, including but not limited to, any governmental agency (such as the United States Postal Service), public or private utility company (such as water (including the Capistrano Acres Mutual Water Company), gas, electricity, cable, waste collection, phone, etc), any City or County district or department (such as the Capistrano Valley Water District, etc) or any other business, will be required to obtain access to the Properties for purposes of providing services to the Properties. Neither Declarant nor the Association make any representations or warranties regarding access to the Properties by these companies.

3.3 NOISE FROM ENTRY GATE. If an entry gate is installed and operated to control access to the Properties, residents living in the vicinity of the entry gate will experience noise from the operation of the entry gate and from traffic entering and exiting the Properties. For the period during which Declarant is building homes in the Properties, construction vehicles may line up outside the Properties at the start of each work day if the gate is not open. The Association may need to clean the streets in the Properties more frequently due to such construction traffic until all Residences have been constructed.

3.4 DECORATIVE PAVEMENT/NOISE. Decorative treatment of pavement used on the main entrance to the Properties and throughout other portions of the Properties may heighten the sound of vehicular noise in the Properties and may be heard at all times of the day and night. Owners should take this matter into consideration when deciding whether to purchase a Lot in the Properties.

3.5 SECURITY AND PRIVACY DISCLAIMER. Access gates and their staffing are not intended to provide security or privacy for persons, personal property or Lots in the Properties. The public will have access to the Properties through multipurpose trails discussed in Section 3.16 below and adjacent owners will have access to the Properties, as more fully discussed in Article XVII below. Neither Declarant nor the Association undertakes to provide security or privacy for the Properties or Owners, nor do they make any representations or warranties concerning the security or privacy of the Properties or Owners.

3.6 AUXILIARY ACCESS GATE. There is an auxiliary access gate (the "*Auxiliary Access Gate*") located adjacent to Lot 120, which will be owned by the City. The location of the Auxiliary Access Gate is approximately shown on *Exhibit J* attached hereto. The Auxiliary Access Gate will be used by the City for maintenance of the water pressure reducing station and for access by emergency services. The Auxiliary Access Gate will act as the point of access to the Properties for one (1) or more adjacent landowners whose access easement will include access through the Auxiliary Access Gate (as more particularly described in Section 17.1 below). The Association will be responsible for maintaining the Auxiliary Access Gate. Owners and residents living near the Auxiliary Access Gate can expect to experience noise from the operation of the Auxiliary Access Gate and from traffic entering and exiting the Properties at those locations.

3.7 WATER PRESSURE REDUCING PUMP STATION. A water pressure reducing pump station is located on Lot 120. If a water pressure reducing pump station or any

other facility ("**Water Facility**") is constructed on this site, then the City will own and maintain the Water Facility. The City's access to the Water Facility will be through the Auxiliary Access Gate located adjacent to Lot 120, as more fully discussed in Section 3.6 above. The Water Facility is expected to be constructed with block walls around it to screen it from view; however, Owners and residents living in the vicinity of Lot 120 may hear noise from the Water Facility. Declarant and the Association have no control over the construction, maintenance or use of the Water Facility or the site.

3.8 **STORM DRAIN DETENTION BASIN AND HORNO CREEK.** Lot KK of Tract No. 16221 is improved with a storm drain detention basin (the "**Basin**"). The Association is required to maintain the Basin. The Basin is intended to collect storm water and other surface runoff from the Properties and adjacent property. Although the Basin is fenced, it is a water hazard. During periods of storm flow, water levels in the Basin may rise rapidly. Residents are advised to keep children and pets away from the Basin at all times. Except for Association maintenance personnel or representatives of governmental agencies, no Person may enter the Basin or the access road leading up to the Basin for any purpose. Horno Creek is located along the eastern perimeter of the Properties. There may be water at all times of the year in the creek, which constitutes a water hazard. Residents must ensure that children and pets are kept away from Horno Creek to avoid accidental drowning.

3.9 **WATER TANK.** There is a 300,000 gallon water tank located on Lot T of Tract No. 16221 (the "**Water Tank**"). The Water Tank is owned by the Capistrano Acres Mutual Water Company ("**CAMWC**"). CAMWC has reserved easements to itself over the Properties to install a larger water tank in the future, to construct and maintain water pipelines in the Properties and for water distribution purposes (the "**CAMWC Easements**"). All Owners in the Properties acknowledge, by acceptance of a deed to a Lot, that catastrophic damage to the Water Tank (such as a major earthquake) could cause flooding of Lots located in the vicinity of the Water Tank. Owners should contact CAMWC if they have any questions about the Water Tank or any future water tank proposed to be constructed on the Properties. Declarant and the Association have no control over the maintenance or use of the existing Water Tank or any future water tank(s).

3.10 **SOIL CONDITIONS.** In purchasing a Residence, Owners should review soils reports for the Properties and take into consideration the following:

3.10.1 **Expansive Soil.** The soil in the Properties may be composed of materials that have "**expansive**" characteristics. Owners should perform soils testing, use special construction techniques and take precautions when constructing new Improvements or modifying existing Improvements because the soil expands when it is wet and can cause Improvements to lift and crack. Owners should consider the following information and recommendations before making or modifying any Improvements:

(a) **Concrete and Masonry Improvements.** Special attention is required in designing and constructing concrete and masonry Improvements such as masonry walls and planters, concrete slabs, pools, patios, sidewalks, spas and decking. For example, steel reinforcing bars may be required in lieu of steel mesh in concrete patio slabs. Block walls may require extra horizontal and vertical steel reinforcing bars. Pools and spas located at the top or bottom of a slope or on expansive soils may require special design and construction methodology.

(b) **Drainage and Irrigation.** Owners must use adequate drainage and irrigation control. Owners are required to comply with Section 2.15 herein. Inadequate or improper alteration of established drainage or drainage devices installed in the Properties by Declarant could result in damage to such Owner's Lot or their neighbor's Lot. Water must drain away from the Residence footings and other Improvements. Declarant is not responsible for any damage caused by an Owner's alterations to drainage patterns or drainage devices.

(c) **Slope Creep.** While horizontal and vertical movement (often described as "*slope creep*") is generally minor in nature and does not always occur, it may affect Improvements such as pools, spas, patios, walls, slabs, planters, decking and the like. Slope creep can cause pools, spas and walls to tilt and crack and may cause cracking or lifting in brickwork or concrete in a manner that will allow these Improvements to function yet not meet the Owner's cosmetic expectations. Professional soils and structural engineers should be retained to design and construct such Improvements to mitigate the effects of slope creep and to ensure compliance with special rules for such Improvements that are required under the Uniform Building Code or other applicable regulations. If possible, Improvements should not be constructed within ten (10) feet of the edge, top or toe of a slope. Even with professional assistance, minor lifting and cracking can occur.

3.10.2 Fill soil. Some of the Residences in the Properties are constructed on fill soil in accordance with the recommendations and inspection of licensed civil and soils engineers. Fills range in depth from approximately two (2) to sixty (60) feet. Fill soil will demonstrate some post placement settlement. A report certifying the compaction of the fill soils is available for review in the sales office.

3.10.3 Corrosive Soil. Soils in some areas of the Properties are potentially severely corrosive to ferrous metals. Soluble sulfates and acidic soils are highly corrosive to buried metals and concrete and should be taken into account in the construction of below grade structures and hardscape. Sulfates may chemically and physically attack concrete that is not sulfate resistant, causing the concrete to break down. Thus, Owners must use the proper type of cement and water-to-cement ratio for the level of sulfates or acidity that exists on Owner's Lot. Overwatering soil will exacerbate the corrosivity of the soil. Owners should inform contractors of this potential condition to allow them to use appropriate measures to combat the effects of corrosive soil on buried metals, below grade structures and hardscape.

3.10.4 Groundwater. The Properties are located in the San Juan Groundwater Basin, where the quality of groundwater is effected by the saltwater intrusion and high salt content in the groundwater. The current groundwater level in portions of the Properties is approximately fifteen (15) to more than forty-five (45) feet below the ground surface. No Person may not dig or drill on any Lot to ensure that such Persons do not disturb or otherwise come in contact with the groundwater. Groundwater may rise during the rainy season.

3.10.5 Soil Remediation. The soil in portions of the Properties has been impacted by petroleum and petroleum byproducts. The impacted soil required remediation and was removed from the Properties and disposed of in accordance with the applicable standards of the State of California. All environmental removal and remedial work done by Phase One, Inc. (on behalf of Declarant) was conducted in accordance with all applicable laws and regulations, and the Properties have been certified as safe for residential development. A "No Further

Action" letter dated December 26, 2003 prepared by Phase One, Inc. is on file for review (but not removal) at the sales office.

3.11 GRADING. The grading design in the Properties should not be altered to redirect surface water flow toward the Lots or onto adjacent property, or to trap water so that it ponds or floods. Grading modifications are subject to law, approval by the Board, and the terms of any Recorded drainage easements.

3.12 ELECTRIC POWER LINES AND POWER LINE EASEMENT. A one hundred fifty foot (150') power line easement runs through the Properties for the benefit of San Diego Gas & Electric ("SDG&E"). SDG&E currently has a 220 kv overhead electric distribution line within this easement. Owners and residents are advised that some noise may be produced by this distribution line. In addition, other overhead and underground electric transmission and distribution lines and transformers are located in and around the Properties. The lines and transformers are owned, operated and maintained by SDG&E. Power lines and transformers produce extremely low-frequency electromagnetic fields ("ELF-EMF") when operating. For some time, there has been speculation in the scientific community about health risks associated with living near ELF-EMF sources. In 1992, the United States Congress authorized the Electric and Magnetic Fields Research and Public Information Dissemination Program ("EMF-RAPID Program") to perform research on these issues and to analyze the existing scientific evidence in order to clarify the potential for health risks from exposure to ELF-EMF. In May of 1999, the National Institute of Environmental Health Sciences ("NIEHS") issued a report to Congress summarizing its review of scientific data from over three hundred (300) studies on ELF-EMF health risks. The ELF-EMF studies consist of both epidemiological studies (studies of exposure in human populations) and controlled laboratory experiments on animal and cell models. While some epidemiological studies suggested some link between certain health effects and exposure to ELF-EMF, the laboratory experiments did not support such a link. According to the NIEHS report, the scientific evidence shows no clear pattern of health hazards from ELF-EMF exposure, and the NIEHS report did not find evidence of any link sufficient to recommend widespread changes in the design or use of electrical transmission equipment. However, because the evidence does not clearly rule out any effect, NIEHS advocated continuing inexpensive and safe reductions in exposure to ELF-EMF and endorsed current utility practices regarding design and siting of new transmission and distribution lines. Further information on this subject is available from the Regional EMF Manager, Southern California Edison Company, 1851 West Valencia Drive, Fullerton, California 92833. Additional information on ELF-EMF and copies of the NIEHS report are available from the EMF-RAPID website at <http://www.niehs.nih.gov/emfrapid/home.htm>.

3.13 INDUSTRIAL AND COMMERCIAL PROJECTS. There are many commercial, retail and industrial projects within a two (2) mile radius of the Properties. A commercial center has been approved by the City and is planned to be constructed to the west side of Rancho Viejo Road. Owners may experience noise, traffic, dust, odors and other impacts from the operation of the commercial, retail or industrial property in the vicinity of the Properties. By acceptance of a deed to a Lot, each Owner acknowledges and accepts that Declarant has no control over any commercial, retail or industrial property or their impact on the Owners or the Properties.

3.14 PRIVATE GOLF COURSE. There is a private golf course (the "Golf Course") located to the north and northwest of the Properties. The Golf Course is currently owned and

operated by the Marbella Golf & Country Club. Golf Course use may begin immediately after daybreak up to seven (7) days per week and Golf Course maintenance including irrigation may be carried on during both evening and daylight hours. As a result, Owners acknowledge and understand that Golf Course use and maintenance may create noise and other disturbances which may result in inconvenience and disturbance to Owners or Residents of the Properties. Declarant has no control over the current or future uses of the Golf Course. Any view an Owner may have of the Golf Course may be changed or entirely blocked by construction within or outside the Properties.

3.15 DEVELOPMENT POCKET PARKS. Declarant plans to construct one (1) or more "pocket" parks (individually, a "**Park**" and collectively, the "**Parks**") in the Properties on Lots U, V, MM and CC of Tract No. 16221. Lot CC is proposed to be an "active" Park and may include facilities such as tot lots, trails, benches, picnic tables or other popular park facilities. There is no guarantee that any of these facilities will be included in this Park. The other Parks are proposed to be "passive" Parks and are planned to include only open space areas. The Parks are intended for the use of the residents of the Properties only; however, there is no effective way to limit use by members of the public. Residents living in the areas nearest to the Parks may experience noise, traffic and parking congestion, light spillage, glare and other impacts from the operation of these Parks and the events that take place there and may be inconvenienced by these impacts. Owners are advised that Declarant has no control over the operation or use of the Parks after they have been completed and turned over to the Association.

3.16 TRAILS. A public equestrian trail is planned to be located over Lots G, J and H of the Properties, which trail is proposed to connect with the Marbella Golf and Country Club to the north and the Belford Terrace equestrian trail, an existing equestrian trail located along the eastern boundary of the Properties adjacent to an existing residential community (Belford Terrace). In addition to these trails, there are existing ten (10) foot wide multipurpose trails located along the east side of Rancho Viejo Road within the Properties. The location of these trails is approximately shown on *Exhibits E-1 and E-2* attached hereto. The Association will be responsible for the maintenance of these trails. Members of the public will have access to these trails at all hours. Residents in the vicinity of these trails will notice foot and equestrian traffic and attendant noise, both from members of the public and from residents accessing these trails. Neither Declarant nor the Association have any control over the use of these trails.

3.17 RAILROAD LINES. The Orange County Transportation Authority Railroad/Metrolink line is located approximately one-half (0.5) mile west of the Properties. The impact of this Railroad may include, without limitation, increased noise, light and vibration levels in the area of the Properties. The Railroad could be an attractive nuisance to children who may play in the vicinity of the Railroad. Declarant and the Association have no control over the use, maintenance or care of the railroad.

3.18 ADJACENT HOMEOWNER USE. Declarant has entered into various agreements that provide certain access and use rights and that impose maintenance obligations on the Association. These agreements are more fully described in Article XVII.

3.19 RURAL AREA. The Properties are located in a rural area which includes various rural land uses. As a result of the rural character of the area in the vicinity of the Properties, Lots may be affected by wildlife, noises, odors, reptiles or insect life typically found in rural areas. Snakes, rodents, skunks, raccoons, possums, mountain lions and coyotes are some of the wildlife

typically encountered in rural areas. Owners should expect to encounter insects of all types including flies, ticks, Africanized (killer) bees, mosquitoes, spiders, black and red fire ants, crickets and aphids. Declarant and the Association are not responsible for wildlife control or eradication. If accepted by the City at a later time, the level of maintenance provided by the City may not be the same as that provided by the Association.

3.20 PRIOR AGRICULTURAL USE. The Properties are located on or near lands that are or were previously used for agricultural purposes, specifically orange and avocado groves. By reason of such agricultural use, Owners may be subject to dust, noise and odors and may be exposed to pesticides, herbicides, insecticides and other chemicals. By acceptance of a deed to a Lot, each Owner (for and on their behalf, and the members of their family, tenants, lessees, guests and invitees) expressly acknowledge and accept these existing and future impacts and forever waive any and all causes of actions against Declarant and its respective directors, officers, employees, agents, representatives and consultants for any damages or injuries which may arise from or relate to any such conditions or risks.

3.21 CLIFF SWALLOWS. Cliff Swallows are prevalent in San Juan Capistrano from approximately mid-March to mid-October and often live in close proximity to people, building their mud nests in eaves and above doorways. Cliff Swallows can become a nuisance because their droppings can harm machinery, create aesthetic problems and cause potential health hazards by contaminating foodstuffs. In addition, their mud nests may contain mites and insects such as swallow bugs. All swallows are classified under the Migratory Bird Treaty Act of 1918 as migratory insectivorous birds and are protected by state and federal regulations. Once nests have been established and any new eggs or young are present, a depredation permit issued by the U.S. Fish and Wildlife Service is required to remove the nests. Declarant and the Association have no control over the impact Cliff Swallows may have on Owner's Lot or the Properties.

3.22 RESTRICTIONS FOR ACCESSORY STRUCTURES. Any additions to structures within the Properties or additions of accessory structures on any Lot must comply with minimum setback and height restrictions required by the City, the Design Guidelines and planned community zoning requirements ("*Zoning Requirements*"). These restrictions include, without limitation, a limitation that two-story homes can be constructed only on those Lots which abut existing residential lots containing two-story homes or where it can be demonstrated that the proposed height, orientation and scale of the proposed home will not conflict with the scale of the existing home. The minimum set backs for each Lot are set forth in the Design Guidelines. Additional restrictions with respect to the construction or alteration of any Improvements on Owner's Lot are set forth in the Design Guidelines and Architectural Guidelines. Owner's should refer to these guidelines for additional information prior to the construction or alteration of any Improvement on Owner's Lot.

3.23 HILLSIDE MAINTENANCE REGULATIONS. Some Lots in the Properties may be subject to the City's Hillside Maintenance Regulations. Any impacts on Lots within the Properties will be set forth in the Design Guidelines, Zoning Restrictions, the City's General Plan and Title 9 of the City's Municipal Code. Owners should contact the City for further information. Declarant and the Association have no control over the impact of these regulations on the Lot and Owners should investigate this matter fully before deciding whether to purchase a Lot.

3.24 EQUESTRIAN ZONED LOTS. Declarant has been informed the land adjacent to the Properties may be zoned for equestrian uses. Such zoning would permit the keeping of horses or other livestock on any of these adjacent lands. Declarant and the Association have no control over the impact of such uses on the Properties or any Lot. For more information, please contact the City

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

3.26 SPECIAL TAX ASSESSMENT OR MELLO-ROOS COMMUNITY FACILITIES DISTRICTS. The Properties lie within the boundaries of special tax assessment districts and Mello-Roos Community Facilities Districts which require the levy of a special tax for repayment of bonds issued for the purpose of paying the cost of services or capital improvements. The amount of the special tax and any other information pertaining to any such district can be obtained from the County Assessor's office.

3.27 RECLAIMED WATER. In its efforts to conserve water, the Capistrano Mutual Water District ("*Water District*") requires the use of reclaimed water (treated wastewater) to irrigate parks, school yards, golf courses, greenbelt areas and common areas. The Water District may require the use of reclaimed water to irrigate landscaping in private yards. The water used in the Residences and outside in the patio and yard areas through hose bibs will be domestic potable water. The water used to irrigate the Common Area may include reclaimed water. Reclaimed water is not potable and therefore not suitable for human consumption. As with any water overspray, the repeated spray of reclaimed water may stain or discolor personal property, fencing and structural Improvements.

According to the Water District, the Water District's reclaimed water is disinfected with chlorine and its clarity to the human eye is indistinguishable from domestic water. The standards imposed on the Water District for reclaimed water quality are established by governmental regulatory agencies, and these standards are subject to change. Declarant, the Association and their agents are not liable for any property damage or personal injury by reclaimed water. Owners are subject to Water District rules and regulations, one of which prohibits the use of self-generating water softeners connected to Water District sewer facilities. Further information regarding Water District regulations is available at the Water District's headquarters.

3.28 FIRE SPRINKLER SYSTEM. As a result of newly adopted requirements of the City and the Orange County Fire Authority ("*OCFA*"), some Residences in the Properties have been improved with emergency fire sprinkler systems (collectively, the "*Sprinkler System*"). Maintenance of the Sprinkler System will be the responsibility of Owners of Lots equipped with the Sprinkler System. Damage to a Lot or Residence resulting from any malfunction of the Sprinkler System including, damage to personal property, shall be the sole responsibility of such Owner and such Owner agrees to indemnify, defend and hold Declarant and the Association, its Board of Directors, agents, representatives and members harmless from any and all loss, damage or liability in connection therewith.

3.29 NATURAL HAZARD ZONE DISCLOSURES.

3.29.1 Earthquake Fault Zone. California is subject to a wide range of earthquake activity. California has many known faults as well as yet undiscovered faults. Declarant has been advised that the Properties are not located within an Earthquake Fault Zone as defined by California Public Resources Code Section 2621.9. However, there are several "inactive" and "active" faults located near the Properties, such as the Newport-Inglewood Fault (offshore) located approximately six (6) miles southwest of the Properties and the Newport-Inglewood Fault (L.A. Basin) located approximately sixteen and one-half (16.5) miles west of the Properties. Owner must evaluate the potential for future seismic activity that might seriously damage an Owner's Lot and Residence. Although the Properties are not located in an Earthquake Fault Zone, a major earthquake, which some have predicted will occur in our lifetimes, could cause very serious damage to Lots and Residences, located even many miles from the epicenter of the earthquake. A more moderate earthquake occurring on a more minor fault, or on an undiscovered fault, could also cause substantial damage.

Declarant makes no representations or warranties as to the degree of earthquake risk within the Properties. Please read *"The Homeowner's Guide to Earthquake Safety,"* and consult with the County, other public agencies, and appropriate experts to evaluate the potential risk.

3.29.2 Seismic Hazard Zone. Many portions of Southern California are subject to risks associated with seismic activity or *"earthquakes."* Declarant has been informed that all or a portion of the Properties are located within a Seismic Hazard Zone. A Seismic Hazard Zone is defined in the Seismic Hazards Mapping Act (California Public Resources Code Section 2690 et seq.), and shown on maps that are released by the California Department of Conservation, Division of Mines and Geology. Copies of these maps are on file with the County. There are two (2) types of Seismic Hazard Zones: a landslide zone and a liquefaction zone. All or a portion of the Properties are located in a landslide zone. For more information concerning seismic activity and risks, read *"The Homeowner's Guide to Earthquake Safety."*

3.29.3 Very High Fire Hazard Severity Zone. Declarant has been informed that the Properties are located within a Very High Fire Hazard Severity Zone pursuant to applicable state maps. This Zone is susceptible to fires, and the physical conditions of the area, including such factors as fuel, slope, and weather could cause fires that are more severe, more difficult to put out and, as a result, could cause more damage. Owners of Lots located within this Zone may have additional maintenance responsibilities to prevent or retard fires, including restrictions on constructing Improvements on the Lot, as stated in California Government Code Section 51182. These maps are updated periodically, and Declarant makes no representations, guarantees or warranties with respect to any future Very High Fire Hazard Severity Zone determinations.

3.29.4 Special Flood Hazard Zone. All or a portion of the Properties are located within a Special Flood Hazard Zone as designated by the Federal Emergency Management Agency (*"FEMA"*). Special Flood Hazard Zones are areas that have a one percent (1%) chance of severe flooding every year. These maps are updated periodically, and Declarant makes no representations, guarantees or warranties with respect to any future flood zone determinations.

In addition, the Properties are located within Flood Zone X. Flood Zone X is an area subject to moderate or minimal hazard from the principal source of flooding in the area.

Areas in Flood Zone X have a 0.2% chance of flooding every year. Buildings in Flood Zone X may be flooded by severe, concentrated rainfall, coupled with inadequate local drainage systems. Flood insurance is available, but is not required by federal regulations. Declarant makes no recommendations regarding whether Owners should obtain flood insurance.

3.29.5 Compliance with Civil Code Section 1103 et seq. In addition to the foregoing natural hazard disclosures, Declarant has provided or will provide the initial Owner with the Natural Hazard Disclosure Statement in compliance with Article 1.7, commencing at Section 1103 of the California Civil Code.

3.30 UNITED STATES MARINE CORPS, CAMP PENDLETON. United States Marine Corps, Camp Pendleton ("*Camp Pendleton*"), is an active year-round federal training facility for the United States Marine Corps and Navy that is located south of the Properties near Oceanside, California. The Properties may be subject to noise and visual impacts resulting from training activities at Camp Pendleton at any time and to significantly increased noise and visual impacts when the United States is preparing for or in the midst of a war. Persons in the Properties may expect to see aircraft and hear noise associated with overflight, especially low flying helicopters, explosive ordnance and other military training activities. Weather conditions, such as low clouds and Santa Ana winds, may amplify live firing range noise impacts. These weather conditions may also amplify naval gunfire off San Clemente Island such that the sounds seem to originate from Camp Pendleton. The training activities conducted at Camp Pendleton are vital to the defense of the United States. Training at night is essential to the ability of the Marine Corps to successfully carry out this mission. In an order to limit the effects of night operations, night firing of large caliber weapons and use of aviation ordnance normally has a self-imposed curfew of 10:00 p.m. However, there will be exceptions when Camp Pendleton must operate after 10:00 p.m. in order to meet operational commitments, such as increased training schedules during periods when the United States is preparing for or in the midst of a war. Declarant and the Association have no control over the maintenance or operations of Camp Pendleton.

3.31 SAN ONOFRE NUCLEAR GENERATING STATION. The San Onofre Nuclear Generating Station ("*San Onofre Plant*") is located approximately ten (10) miles from the Properties, next to San Onofre State Beach. Southern California Edison ("*SCE*") has operated the San Onofre Plant since January 1968 to generate electricity for commercial and residential customers. According to SCE, a nuclear power accident can occur only after a highly unlikely combination of events, and the San Onofre Plant has both primary and back-up safety features and systems to contain radioactive materials if an accident occurs. Also according to SCE, before SCE was permitted to operate the San Onofre Plant, SCE was required to demonstrate to the United States Nuclear Regulatory Commission that the San Onofre Plant would not present undue risk to public health and safety. In accordance with federal law, SCE has established an Emergency Planning Zone within a ten-mile radius surrounding the San Onofre Plant and a Public Education Zone in an area from ten to twenty miles from the San Onofre Plant. The Emergency Planning Zone and the Public Education Zone encompass portions of both San Diego and Orange Counties. Declarant has been advised that Owners may obtain additional information by contacting SCE to request "Fact Sheets" concerning the operations and safety features of the San Onofre Plant and the purpose and workings of the Emergency Planning Zone and the Public Education Zone. Declarant and the Association have no control over the maintenance or operations of the San Onofre Plant.

3.32 NORTHROP GRUMMAN CAPISTRANO TEST SITE. The Northrop Grumman Capistrano Test Site ("*Test Site*"), formerly the TRW Capistrano Test Site, is located near Camp Pendleton and has a lease to operate on the site through the year 2018. The Grumman Space Technology Group of Northrop operates the Test Site for the purpose of conducting tests of lasers, fossil fuel technologies and space communications systems. According to Northrop, equipment at the Test Site is operated under licenses from a variety of governmental agencies, including the South Coast Air Quality Management District, and all operations involving chemicals, including the receipt, storage and use of hazardous chemicals and the resulting hazardous waste, are in full compliance with local, state and federal rules. Persons within the Community can expect to hear loud noises when tests are being conducted and may see smoke caused by the testing of rockets and other equipment. Declarant has been advised that Owners may obtain additional information about the Test Site by reviewing their website at <http://www.st.northropgrumman.com/capabilities/Content.cfm?ContentID=352> and a PDF file at http://www.st.northropgrumman.com/capabilities/SiteFiles/docs/Capistrano_Test_Site.pdf. Declarant and the Association have no control over the operation of the Test Site or the timing of any tests conducted by Northrop or the ultimate duration of the use of the test site.

3.33 UNITED STATES MARINE CORPS, EL TORO. The former Marine Corps Air Station at El Toro ("*MCAS El Toro*") was closed on July 2, 1999. The closed base is located just north of the confluence of the Interstate 5 and 405 freeways. After closure of the base, the County of Orange was responsible under federal law to prepare a reuse plan for the MCAS El Toro property, and had at one time planned to use the property as a future civilian passenger and cargo airport. As a result of the passage of ballot Measure W in March 2002, however, the County's General Plan was amended and the land was designated for non-aviation uses. The non-aviation uses discussed in Measure W included, among other things, a multi-purpose central park, open space, nature preserve, universities and schools, cultural facilities use of existing base housing for emergency and affordable housing, and other interim and long-term uses compatible with park uses. The Department of the Navy subsequently announced its intention to honor the decision of Orange County voters in favor of non-aviation uses, and the County has ceded control of planning and development of the MCAS El Toro property to the City of Irvine ("*Irvine*"). The Local Agency Formation Commission approved the annexation of the former base property by Irvine. Irvine has completed environmental, zoning and other actions to allow development of a portion of the land as the "Orange County Great Park." A description of the development plan for the Orange County Great Park may be found at Irvine's website at www.ci.irvine.ca.us.

In 2005, the United States Department of the Navy sold the MCAS El Toro property to Lennar Corp. in a joint venture with LNR Property Corp., Rockpoint Real Estate Fund I, Blackacre Institutional Capital Management and MSD Capital. As currently proposed, the MCAS El Toro property will be transformed into a 3,700-acre mixed-use master planned community called Heritage Fields, which is planned to include 3,400 home sites, commercial and retail properties and more than 1,300 acres of public land known as the Great Park (to be developed by the City of Irvine), among other public service areas. Declarant has no control over the future planning of MCAS El Toro.

3.34 SAND AND GRAVEL OPERATIONS. Oglebay Norton Industrial Sands, Inc. mines and processes industrial sand from an open pit located at 31302 Ortega Highway, San Juan Capistrano, California. Mining is accomplished with conventional earthmoving equipment. All activities are regulated by county, regional, state and federal agencies. Lots within the Properties

may be subject to noise and visual impacts resulting from the sand and gravel operations and distribution-related activities. Declarant and the Association have no control over the maintenance or operation of this facility.

3.35 PRIMA DESHECHA SANITARY LANDFILL. Owner understands and acknowledges that approximately three (3) miles to the northeast of the Properties is the Prima Deshecha Sanitary Landfill (the "*Landfill*"), a Class III sanitary landfill which accepts only non-hazardous municipal solid waste including a limited amount of de-watered sewage sludge. It is approximately 1,530 acres in size, with 1,000 acres permitted for waste disposal purposes. The Landfill is permitted to accept up to 4,000 tons of waste per day and currently receives approximately 1,500 tons of waste per day. According to information from the Landfill, the facility is operated in full compliance with all federal, state and local codes, ordinances and regulations. It is Declarant's understanding that the Landfill has a network of environmental programs and systems to protect the areas surrounding the Landfill and to prevent any potential impacts to those areas. The Landfill may be accessed via Ortega Highway off the Santa Ana Freeway (I-5). The Landfill is open from 7:00 a.m. to 4:00 p.m., daily, Monday through Saturday, and is closed on Sundays and major holidays. Owner may obtain additional information about the Landfill by contacting the County of Orange Integrated Waste Management Department, telephone (949) 834-4176 or the Landfill at (714) 834-4000. Declarant and the Association have no control over the Landfill and is not responsible for its use or maintenance.

3.36 FUTURE DEVELOPMENT OF NEARBY LANDS. All of the adjacent land within the sphere of influence of the City has uses designated on the City's General Plan and regulated by Title 9 of the City's Municipal Code (including, without limitation, any applicable zoning ordinances). Uses on properties outside of the City's sphere of influence, including the Rancho Mission Viejo Company's proposal for a new large residential and commercial development along Ortega Highway, will be evaluated by the County of Orange. If constructed as planned, residents of that development may use Ortega Highway as an access road, thereby increasing noise and traffic in and around the Properties.

3.37 IMPACTS OF NOISE. Owners and residents in the Properties may experience noise from several different sources inside and outside the Properties. Many of these sources have been discussed in other sections of this Article III (see Sections 3.3, 3.4, 3.6, 3.7, 3.12, 3.13, 3.14, 3.15, 3.16, 3.17, 3.30, 3.32, 3.34 and 3.36). Owners acknowledge, understand and accept that living in close proximity to other persons and businesses has limitations on solitude. During the construction process, Owners will experience noise, dust and vibration from construction activity. Other potential sources of noise, dust and traffic are the 5 freeway, Ortega Highway and arterial streets in the vicinity of the Properties. Declarant and the Association have no control over the transmission of noise from sources outside the Properties.

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

3.39 ADDITIONAL PROVISIONS. There may be provisions of various laws, including the Davis-Stirling Common Interest Development Act codified at Sections 1350 et seq. of the California Civil Code and the federal Fair Housing Act codified at Title 42 United States Code, Section 3601 et seq., which may supplement or override the Association Governing

Documents. Declarant makes no representations or warranties regarding the future enforceability of any portion of the Association Governing Documents.

ARTICLE IV THE ASSOCIATION

4.1 GENERAL DUTIES AND POWERS. The Association has the duties and powers listed in the Association Governing Documents and also has the general and implied powers of a nonprofit mutual benefit corporation, generally to do all things that a corporation organized under the laws of the State of California may lawfully do which are necessary or proper in operating for the general welfare of the Owners, subject only to the limits on the exercise of such powers listed in the Association Governing Documents. Unless otherwise indicated in the Articles, Bylaws, this Declaration, or the Supplemental Declarations, the powers of the Association may be exercised by the Board.

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

4.2.1 Common Property. The power and duty to accept, maintain and manage the Common Property in accordance with the Association Governing Documents. The Association may install or remove capital Improvements on the Common Property. The Association may reconstruct, replace or refinish any Improvement on the Common Property.

4.2.2 Utilities. The power and duty to obtain, for the benefit of the Properties, all commonly metered water, gas and electric services, and the power, but not the duty, to provide for trash collection and cable or master television service.

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

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

4.2.5 Insurance. The power and duty to keep insurance for the Common Area in accordance with this Declaration.

4.2.6 Sewers and Storm Drains. The power and duty to maintain any private sewer systems, private storm drains, or private drainage facilities in the Common Area (excluding any private sewer easement in favor of the Owner of Lot 121) in accordance with the Association Governing Documents.

4.2.7 Maintenance Guidelines. The power and duty to (a) operate, maintain and inspect the Common Property and its various components in conformity with any Maintenance Guidelines and any maintenance manual, and (b) review any maintenance manual for necessary or appropriate revisions no less than annually after the Board has prepared the Budget.

4.2.8 Rules and Regulations. The power, but not the duty, to adopt, amend, repeal, and create exceptions to, the Rules and Regulations.

(a) **Standards for Enforceability.** To be valid and enforceable, a Rule must satisfy all the following requirements:

- (i) The Rule must be in writing;
- (ii) The Rule is within the authority of the Board conferred by law or by this Declaration, the Articles or the Bylaws;
- (iii) The Rule is not inconsistent with governing law, this Declaration, the Articles, or the Bylaws;
- (iv) The Rule is adopted, amended or repealed in good faith and in substantial compliance with the requirements of Article 4 of Title 6 of Part 4 of Division 2 of the California Civil Code;
- (v) The Rule is reasonable; and
- (vi) The Rule complies with the requirements of California Civil Code Section 1357.110 (as amended from time to time).

(b) **Areas of Regulation.** The Rules and Regulations may concern use of the Properties, signs, parking restrictions, minimum standards of property maintenance, and any other matter under the Association's jurisdiction.

(c) **Limits on Regulation.** The Rules and Regulations must apply uniformly to all Owners and must comply with this Declaration and all applicable state and local laws.

(d) **Procedure for Adoption, Amendment and Repeal.** Rules or procedures concerning (i) the use of Common Property, (ii) the use of a Lot, including any aesthetic standards or Design Guidelines that affect Lots, (iii) member discipline, including any schedule of monetary penalties for violation of the Association Governing Documents, (iv) any procedure for the imposition of penalties, (v) any standards for delinquent assessment payment plans, and (vi) any procedures adopted by the Association for resolution of assessment disputes (each, a "**Covered Rule**") may only be adopted, amended or repealed in accordance with the following procedure:

(i) The Board must provide written notice ("**Notice**") of a proposed change in a Covered Rule to the members at least thirty (30) days before making the change, except for an Emergency Rule Change (defined below). The Notice must include the text of the proposed change and a description of the purpose and effect of the proposed change

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(Notice is not required if the Board determines that an immediate change is required to address an imminent threat to public health or safety, or an imminent risk of substantial economic loss to the Association);

(ii) The decision on a proposed change shall be made at a Board meeting after consideration of comments made by the members of the Association;

(iii) The Board shall deliver Notice of the adopted change to every member of the Association within fifteen (15) days of adoption. If the change was an Emergency Rule Change, the notice shall include the text of the Emergency Rule Change, and the date on which the Emergency Rule Change expires;

(iv) If the Board determines that an immediate Rule change is required to address an imminent threat to public health or safety, or an imminent risk of substantial economic loss to the Association, it may make the change on an emergency basis ("**Emergency Rule Change**") and no Notice will be required. An Emergency Rule Change is effective for one hundred-twenty (120) days, unless the adopted change provides for a shorter effective period. Any change that is adopted as an Emergency Rule Change may not be re-adopted under authority of this subpart.

(v) A Notice required by this Section 4.2.8(d) is subject to California Civil Code Section 1350.7.

(vi) A Rule change made pursuant to this Section 4.2.8(d) may be reversed as provided in California Civil Code Section 1357.140.

The foregoing procedure does not apply to Rules that do not meet the definition of Covered Rules above, nor to decisions of the Board regarding maintenance of Common Property, a decision on a specific matter that is not intended to apply generally, a decision setting the amount of an Annual Assessment or a Special Assessment, a Rule change that is required by law if the Board has no discretion as to the substantive effect of the changes, or issuance of a document that merely repeats existing law or the governing documents.

(c) **Use of Facilities.** The Rules and Regulations may (i) specify a maximum number of guests which an Owner, tenant or other Person may admit to the Common Area recreational facilities at one time, (ii) establish rules for allowing Owners, tenants or other Persons to use Common Area facilities for private functions, or (iii) establish admission fees, deposit requirements and other fees for the use of any facilities on the Common Area.

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

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

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

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

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

(c) **Fees.** Whether the monthly fee charged to the Association by the Service Provider for the provision of the Telecommunications Services to all of the Lots represents a discount from the comparable retail fees charged by the Service Provider in the general geographic area in which the Properties are located, and, if so, the amount of such discount.

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

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

4.2.12 Indemnification.

(a) **For Association Representatives.** To the fullest extent authorized by law, the Association has the power and duty to indemnify Board members, Association officers, Architectural Review Committee members, and all other Association committee members for all damages, pay all expenses incurred, and satisfy any judgment or fine levied as a result of any action or threatened action brought because of performance of an act or omission within what such person reasonably believed to be the scope of the Person's Association duties ("**Official Act**"). Board members, Association officers, Architectural Review Committee

members, and all other Association committee members are deemed to be agents of the Association when they are performing Official Acts for purposes of obtaining indemnification from the Association pursuant to this Section. The entitlement to indemnification under this Declaration inures to the benefit of the estate, executor, administrator and heirs of any person entitled to such indemnification.

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

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

4.2.13 Annexing Additional Property. The power, but not the duty, to annex, pursuant to Section 16.2, additional property to the Properties encumbered by this Declaration.

4.2.14 Vehicle Restrictions. The power granted in Section 2.8 to identify Authorized Vehicles or Prohibited Vehicles and to modify the restrictions on vehicles.

4.2.15 License and Use Agreements. The Association may enter into agreements with Declarant or any homeowners association having jurisdiction over the Annexable Territory to share facilities located on the Common Area ("**Facility**") with the Owners of Residences in the Annexable Territory that is not annexed to the Properties. Any such agreement shall be in form and content acceptable to Declarant, the Board of Directors (without the approval of Owners) and Declarant or the board of directors of any adjacent homeowners association and shall include provisions regarding use and sharing of maintenance costs for the Facility.

4.2.16 Landscaping. The Board has the power, but not the duty, to grant Owners revocable licenses that allow Owners to replace and/or add landscaping Improvements to any portion of the Common Area, subject to the prior written approval of the Board, any reasonable restrictions or conditions the Board may impose, and the right of the Board to revoke such license, remove the Improvements and charge the Owner for the cost of such removal.

4.2.17 Prohibited Functions.

(a) **Property Manager.** The Association shall not hire any employees, furnish offices or other facilities, or use any Common Area for an "**on-site**" Manager. The Association Manager shall at all times be a professional manager employed as an independent contractor or agent working at its own place of business.

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

(c) **Political Activities.** The Association shall not conduct, sponsor, participate in or expend funds or resources toward any activity, campaign or event, including any social or political campaign, event or activity which does not directly and exclusively pertain to the authorized activities of the Association. Furthermore, the Association shall not participate in federal, state or local activities or activities intended to influence a governmental action affecting areas outside the Properties (e.g. endorsement or support of legislative or administrative actions by a local governmental authority), nor shall it support or campaign for or against candidates for elected or appointed office or ballot proposals. There shall be no amendment of this Section so long as Declarant owns any portions of the Properties.

4.2.18 Standing to Resolve Disputes. The Association shall have standing to institute, defend, settle or intervene in litigation, alternative dispute resolution or administrative proceedings (each, an "**Action**") in its own name as the real party in interest and without joining the Owners, in matters pertaining to (a) damage to the Common Area, (b) damage to portions of the Lots which the Association is obligated to maintain or repair, and (c) damage to portions of the Lots which arises out of, or is integrally related to, damage to the Common Area or portions of the Lots that the Association is obligated to maintain or repair (each, a "**Claim**"). However, the Association shall not have standing to institute, defend, settle or intervene in any Action in any matter pertaining only to an individual Lot and not included in subsections (b) and (c) above.

Upon commencement of an Action by the Association pertaining to any Claim described in subsections (a), (b) or (c) above, the Association's standing shall be exclusive, and during the pendency of such Action, the Owners shall be barred from commencing a new Action or maintaining a pending Action on the same Claim. The Association's exercise of exclusive standing as to an Action on a particular Claim shall not be deemed to give rise to any affirmative obligation on the part of the Association to maintain, settle or dismiss the Action, except in the Association's sole discretion, and subject to Section 12.4.

4.3 STANDARD OF CARE, NONLIABILITY.

4.3.1 Scope of Powers and Standard of Care.

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

(b) **Business Affairs.** This Section 4.3.1(b) applies to Board member actions in connection with management, personnel, maintenance and operations, insurance, contracts and finances, and Architectural Review Committee member actions. Each Board member shall perform the duties of a Board member in good faith, in a manner the Board member believes to be in the best interests of the Association and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar

circumstances. When performing his duties, a Board member is entitled to rely on information, opinions, reports or statements, including financial data prepared or presented by:

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

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

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

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

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

4.3.2 Nonliability.

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

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

(c) **Nonliability of Owners.** Pursuant to California Civil Code Section 1365.9, no Owner shall be liable for any cause of action in tort which can be brought

against the Owner solely because of the Owner's undivided interest in the Common Area so long as the Association keeps one (1) or more policies of insurance which include coverage for general liability of the Association in the amount required by California Civil Code Section 1365.9 and that insurance is in effect for the cause of action being brought.

4.4 MEMBERSHIP.

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

4.4.2 Transfer. The Membership of any Owner may not be transferred, pledged or alienated in any way, except on the transfer or encumbrance of such Owner's Lot, and then only to the transferee or Mortgagee of the Owner's Lot. A prohibited transfer is void and will not be reflected in the records of the Association. Any Owner who has sold his Lot to a contract purchaser under an agreement to purchase may delegate the Owner's Membership rights to the contract purchaser. The delegation must be in writing and must be delivered to the Association before the contract purchaser may vote. The contract seller shall remain liable for all Assessments attributable to the contract seller's Lot which accrue before title to the Lot is transferred. If the contract seller fails or refuses to delegate his Membership rights to the contract purchaser before the Close of Escrow, the Association may record the transfer to the contract purchaser in the Association's records. However, no contract purchaser will be entitled to vote at Association meetings during the term of a purchase contract without satisfactory evidence of the delegation of the contract seller's Membership rights to the contract purchaser. The Association may levy a reasonable transfer fee against a new Owner and such Owner's Lot (which fee shall be paid through escrow or added to the Annual Assessment chargeable to such new Owner) to reimburse the Association for the administrative cost of transferring the Membership to the new Owner on the Association's records. Such fee may not exceed the Association's actual cost involved in changing its records.

4.4.3 Classes of Membership. The Association classes of voting Membership are as follows:

(a) **Class A.** Class A members are all Owners except Declarant for so long as a Class B Membership exists. Class A members are entitled to one (1) vote for each Lot owned by such Class A members which is subject to Assessment. Declarant shall become a Class A member on conversion of Declarant's Class B Membership as provided below. The vote for each Lot shall be exercised in accordance with Section 4.5.1, but no more than one (1) Class A vote may be cast for any Lot.

(b) **Class B.** The Class B member is Declarant. The Class B member is entitled to three (3) votes for each Lot owned by Declarant which is subject to Assessment. The Class B Membership shall convert to Class A Membership on the earlier to occur of the following events:

(i) The second (2nd) anniversary of the first Close of Escrow in the most recent Phase; or

(ii) The fourth (4th) anniversary of the first Close of Escrow in Phase 1.

(c) **Class C Board Appointment Right.** Declarant shall have a Class C Board appointment right (whether or not Declarant is an Owner). The Class C Board appointment right shall not be considered a part of the voting power of the Association. The Class C Board appointment right entitles Declarant to select a majority of the members of the Board of Directors until the Class C Termination Date. The "**Class C Termination Date**" shall be the earlier to occur of the following events:

(i) The date of the ninetieth (90th) Close of Escrow in the Properties and Annexable Territory;

(ii) The fourth (4th) anniversary of the first Close of Escrow in the Phase for which a Final Subdivision Public Report was most recently issued by the DRE; or

(d) The tenth (10th) anniversary of the first Close of Escrow for the sale of a Lot in the Properties.

4.5 VOTING RIGHTS.

4.5.1 **Limits Generally.** All voting rights are subject to the Association Governing Documents. Except as provided in Sections 4.5.2 and 12.3 of this Declaration and Section 4.8 of the Bylaws, as long as there is a Class B Membership, any provision of the Association Governing Documents which expressly requires the vote or written consent of a specified percentage (instead of a majority of a quorum) of the Association's voting power before action may be undertaken shall require the approval of such specified percentage of the voting power of both the Class A and the Class B Memberships. Except as provided in Section 12.3 of this Declaration and Section 4.8 of the Bylaws, on termination of the Class B Membership, any provision of the Association Governing Documents which expressly requires the vote or written consent of Owners representing a specified percentage (instead of a majority of a quorum) of the Association's voting power before action may be undertaken shall then require the vote or written consent of Owners representing such specified percentage of both (a) the Association's total Class A voting power, and (b) the Association's Class A voting power represented by Owners other than Declarant.

4.5.2 **Vote to Initiate Construction Defect Claim.** Commencing on the date of the first annual meeting of Owners, Declarant relinquishes control over the Association's ability to decide whether to initiate a construction defect claim under the Right to Repair Law (a "**Defect Claim**"). This means that Declarant, current employees and agents of Declarant, Board members who are appointed by Declarant, Board members elected by a majority of votes cast by Declarant, and all other Persons whose vote or written consent is inconsistent with the intent of the preceding sentence, are prohibited from participating and voting in any decision of the Association or Owners to initiate a Defect Claim.

4.5.3 Joint Ownership. When more than one (1) Person holds an interest in any Lot ("*co-owners*"), each co-owner may attend any Association meeting, but only one (1) co-owner shall be entitled to exercise the single vote to which the Lot is entitled. Co-owners owning the majority interests in a Lot may designate in writing one (1) of their number to vote. Fractional votes shall not be allowed and the vote for each Lot shall be exercised, if at all, as a unit. Where no voting co-owner is designated or if the designation is revoked, the vote for the Lot shall be exercised as the co-owners owning the majority interests in the Lot agree. Unless the Association receives a written objection in advance from a co-owner, it shall be conclusively presumed that the voting co-owner is acting with his co-owners' consent. No vote may be cast for any Lot if the co-owners present in person or by proxy owning the majority interests in such Lot fail to agree to the vote or other action. The nonvoting co-owner or co-owners are jointly and severally responsible for all obligations imposed on the jointly-owned Lot and are entitled to all other benefits of ownership. All agreements and determinations lawfully made by the Association in accordance with the voting percentages established in the Association Governing Documents are binding on all Owners and their successors in interest.

ARTICLE V ARCHITECTURAL REVIEW COMMITTEE

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

5.2 POWERS AND DUTIES.

5.2.1 General Powers and Duties. The Architectural Review Committee shall consider and act upon all plans and specifications submitted for its approval, including inspection of work in progress to assure conformity with plans approved by the Architectural Review Committee, and shall perform such other duties as the Board assigns to it.

5.2.2 Issuance of Standards. The Architectural Review Committee shall issue and update its Design Guidelines and provide notice of any requirements for Association approval of proposed Improvements. The notice shall describe the types of proposed Improvements that require Association approval and shall include a copy of the procedure used to review and approve or disapprove any proposed Improvements. The Design Guidelines may require a fee to accompany each application for approval, and may identify additional factors which the Architectural Review Committee will consider in reviewing submissions. The Architectural Review Committee may provide that fees it imposes be uniform, or that fees be

determined in any other reasonable manner. The Architectural Review Committee may require such detail in plans and specifications submitted for its review as it deems proper, including landscape plans, floor plans, site plans, drainage plans, elevation drawings and descriptions or samples of exterior materials and colors.

5.2.3 Retaining Consultants. The Architectural Review Committee has the power, but not the duty, to retain licensed architects, contractors and other professionals to advise its members in connection with decisions.

5.3 REVIEW OF PLANS AND SPECIFICATIONS.

5.3.1 Improvements Requiring Approval. No construction, installation or alteration of an Improvement, including landscaping, in the Properties, and no grading, excavation, filling or other alteration to the grade or level of the land in the Properties, may be commenced until the plans and specifications therefor showing the nature, kind, shape, height, width, color, materials and location thereof are submitted to and approved in writing by the Architectural Review Committee. However, any Improvement may be repainted without Architectural Review Committee approval so long as the Improvement is repainted the identical color which it was last painted. The provisions of this Article apply to construction, installation and alteration of solar energy systems, as defined in Section 801.5 of the California Civil Code, subject to the provisions of California Civil Code Sections 714 and 714.1, the City Building Code, zoning regulations, and other laws.

5.3.2 Application Procedure. Owners who seek Architectural Review Committee approval shall submit plans and specifications showing the dimensions, exterior elevation, color, materials used and location of the proposed Improvements, along with an initial review fee of One Hundred Dollars (\$100.00) or other amount set in writing from time to time by the Architectural Review Committee, along with all other review materials required under this Article (collectively, an *"Application"*). Until changed by the Board, the address for the submission of such plans and specifications is the Association's principal office. The form of application used by the Architectural Review Committee may include spaces allowing *"Adjacent Owners"* to sign or initial the application confirming that they have been notified of the application. The Architectural Review Committee may establish a definition of *"Adjacent Owners"* in its Design Guidelines. Applications will be complete and may be approved or disapproved by the Architectural Review Committee even if all of the Adjacent Owners do not initial the applications so long as the Owner submitting plans and specifications (*"Applicant"*) certifies that the Applicant has asked the Adjacent Owners to sign the applications. The requirement that the Applicant attempt to obtain the signatures of Adjacent Owners is intended only to provide notice of the pending application to the Adjacent Owners. It does not create in the Adjacent Owners any power to approve or disapprove the application by signing or withholding a signature. Only the Architectural Review Committee may approve or disapprove an application.

The Architectural Review Committee shall deliver its written approval, disapproval or request for additional information or materials to the Applicant at the address listed in the Application no later than the date that is forty-five (45) calendar days after the date on which the Architectural Review Committee has received the complete Application (the *"Review Deadline"*). If, on the Review Deadline, the Architectural Review Committee has failed to deliver to the Applicant its written approval, disapproval or request for additional information or

materials, then the Application shall be deemed approved and the Manager or a representative of the Board or Architectural Review Committee shall execute a written approval therefor within fifteen (15) days at the request of the Applicant. A decision on a proposed Improvement shall be consistent with California law, made in good faith and may not be unreasonable, arbitrary or capricious. If disapproved, the written decision shall include both an explanation of why the proposed Improvement is disapproved and a description of the procedure for reconsideration by the Board of Directors.

5.3.3 Standard for Approval. The Architectural Review Committee shall approve plans and specifications submitted for its approval only if it determines that (a) installation, construction or alterations of the Improvements in the locations proposed will not be detrimental to the appearance of the surrounding area of the Properties as a whole, (b) the appearance of any structure affected by the proposed Improvements will be in harmony with the surrounding structures, (c) installation, construction or alteration of the proposed Improvements will not detract from the beauty, wholesomeness and attractiveness of the Properties or the enjoyment thereof by the Owners, (d) maintenance of the proposed Improvements will not become a burden on the Association, (e) the proposed Improvements are consistent with this Declaration and (f) the Improvements are consistent with the City's Design Guidelines. The Architectural Review Committee may consider the impact of views from other Residences or Lots along with other factors including reasonable privacy right claims, passage of light and air, beneficial shading and other factors in reviewing, approving or disapproving any proposed landscaping, construction or other Improvements. However, neither the Declarant nor the Association warrants that any views in the Properties are protected. No Residence or Lot is guaranteed the existence or unobstructed continuation of any particular view.

5.3.4 Conditions of Approval. The Architectural Review Committee may condition its approval of an Application for any Improvement on any one (1) or more of the following: (a) the Applicant's agreement to furnish the Association with security acceptable to the Association against any mechanic's lien or other encumbrance which may be Recorded against the Common Area or another Owner's Lot as a result of such work; (b) such changes to the Application as the Architectural Review Committee considers appropriate; (c) the Applicant's agreement to grant to the Association or other Owners such easements as are made reasonably necessary by the existence of the Improvement; (d) the Applicant's agreement to install water, gas, electrical or other utility meters to measure any increased utility consumption; (e) the Applicant's agreement to reimburse the Association for the cost of maintaining the Improvement (should the Association agree to accept maintenance responsibility for the Improvement as built); or (f) the Applicant's agreement to complete the proposed work within a stated period of time. The Committee may also require the Applicant, prior to commencing work, to deposit with the Association adequate funds to repair or restore any Common Property that may be damaged by the Applicant or the Applicant's contractors. The Architectural Review Committee will determine the actual amount of the deposit in each case, but the amount shall be at least enough to cover the cost of repairing or restoring damage that is reasonably foreseeable to the Architectural Review Committee. The deposit shall be refundable to the extent the Architectural Review Committee finds that the work of Improvement is complete, and that the Association Common Property was not damaged or was restored at least to the condition it was in prior to the commencement of work.

The Architectural Review Committee has the right to require a reasonable security deposit with each Application. The security deposit will be applied to the cost of repairing damage to Common Area as a result of the Application. The amount of the security deposit shall be specified in the Design Guidelines. The security deposit may be increased or decreased from time to time at the discretion of the Architectural Review Committee. The Architectural Review Committee may also require submission of additional plans and specifications or other information before approving or disapproving material submitted. The Applicant shall meet any review or permit requirements of the City and/or County before making any construction, installation or alterations permitted under this Declaration.

5.3.5 City's Design Review Committee. Certain Improvements made to Lots will be subject to review and approval by the City's Design Review Committee. Each Owner is solely responsible for determining whether his proposed Improvements require review and approval by the City's Design Review Committee and notifying the Architectural Review Committee as to whether the City will require such review and approval. Owners shall submit a copy of their Improvement plans and specifications to the City Planning Department and Building Department for the determination required under this Section.

5.3.6 Matters Outside Scope of Approval. The Architectural Review Committee's approval or disapproval of each Application shall be based solely on the aesthetic considerations listed in this Article. Approval of any Application does not constitute a finding by the Architectural Review Committee that the Application or any portion of the Application (a) incorporates good engineering practices, (b) complies with applicable law, ordinance, code, or regulation, including zoning laws and building and safety codes, (c) complies with the requirements of any public utility, or (d) is permissible under the terms of any easement, license, permit, mortgage, deed of trust, or other recorded or unrecorded instrument (other than the Association Governing Documents) that affects the land.

5.3.7 Exculpation of Committee. By submitting an Application, each Applicant is deemed to agree that neither the Architectural Review Committee, nor the members thereof, nor Declarant, nor their respective agents, employees, attorneys or consultants shall be liable to any Person for:

(a) any defect in any Improvement constructed by or on behalf of the Applicant pursuant to an approved Application;

(b) any loss, damage, or injury to Persons or property arising out of or in any way connected with work performed by or on behalf of the Applicant pursuant to an approved Application; or

(c) any loss, damage, or injury to Persons or property arising out of or in any way connected with the performance of the Architectural Review Committee's duties hereunder, unless due to willful misconduct or gross negligence.

5.4 MEETINGS AND ACTIONS OF THE ARCHITECTURAL REVIEW COMMITTEE. The Architectural Review Committee shall meet as necessary to perform its duties. So long as a majority of the members of the Architectural Review Committee are Declarant representatives, the Architectural Review Committee may, by resolution unanimously adopted in writing, designate a Architectural Review Committee Representative (who may, but

need not, be one of its members) to take any action or perform any duties for and on behalf of the Architectural Review Committee except the granting of variances. In the absence of such designation, the vote or written consent of a majority of the Architectural Review Committee constitutes an act of the Architectural Review Committee. All approvals issued by the Architectural Review Committee must be in writing. Verbal approvals issued by the Architectural Review Committee, any individual Architectural Review Committee member or any other representative of the Association are not valid, are not binding on the Association and may not be relied on by any Person. If within six (6) months of issuance of the approval, an Owner either does not commence work pursuant to approved plans or obtain an extension of time to commence work, the approval shall be automatically revoked and a new approval must be obtained before work can be commenced.

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

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

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

5.7.1 Time Limit. The Architectural Review Committee's right to inspect the Work and notify the responsible Owner of any Noncompliance shall terminate sixty (60) days after the Work is completed and the Architectural Review Committee receives written notice on a form provided by the Committee from the Owner that the Work is completed. If the Architectural Review Committee fails to send a notice of Noncompliance to an Owner before this time limit expires, the Work shall be deemed to comply with the approved plans.

If an Owner fails to complete Work within one (1) year from the date the approval for the Work is issued, then a Noncompliance is deemed to exist and the Association has the right, but not the obligation, to pursue the remedies listed in this Section.

5.7.2 Remedy for Noncompliance. If an Owner fails to remedy any Noncompliance within sixty (60) days after the date of notice from the Architectural Review Committee, the Architectural Review Committee shall notify the Board in writing of such failure. After Notice and Hearing, the Board shall determine whether there is Noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If a Noncompliance exists, the Owner shall remedy or remove the same within a period of not more than forty-five (45) days after the date that notice of the Board ruling is given to the Owner. If the Owner does not comply with the Board ruling within that period, the Association may record a Notice of Noncompliance (if allowed by law), correct the Noncompliance and charge the

6.1.3 Encroachments. Declarant reserves, for its benefit and for the benefit of all Owners and their Lots, a reciprocal easement appurtenant to each Lot over the other Lots and the Common Area to accommodate (a) any existing encroachment of any wall or any other Improvement installed by Declarant or approved by the Architectural Review Committee, and (b) shifting, movement or natural settling of the Residences or other Improvements. Use of the easements may not unreasonably interfere with each Owner's use and enjoyment of the burdened Residences.

6.1.4 Completion of Improvements. Declarant reserves the right and easement to enter the Properties to complete any Improvement which Declarant considers desirable to implement Declarant's development plan.

6.1.5 Owners' Easements in Common Area. Declarant reserves, for the benefit of every Owner, and each Owner's Family, tenants and invitees, nonexclusive easements for pedestrian and vehicular access (all as applicable) over the Common Area in the Properties as reasonably necessary for the use and enjoyment of each Lot in the Properties. This easement is appurtenant to and passes with title to every Lot in the Properties.

6.1.6 Community Wall Easements. Declarant reserves for the benefit of the Association the following easements:

(a) An easement over all Lots abutting a tract boundary or Common Area, consisting of a three (3) foot wide strip of land bounded by the tract boundary or the property line separating the Lot from the Common Area (as applicable), to accommodate the footings and other structural components of any Community Wall located on or immediately adjacent to such property line, including any encroachments thereof onto the Lot; and

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

6.1.7 Private Street Access Easements. Declarant reserves for the benefit of the Association and the Owners and each Owner's Family, invitees and tenants, nonexclusive easements for pedestrian access and vehicular access and parking (as applicable), over the private street Improvements constructed on Lots A to L, inclusive, of said Tract No. 16221; provided, however, that this easement shall be subject to the right of the Declarant to block off portions of the private streets in connection with the construction of homes in the Properties and the right of Declarant to grant access easements over the streets to other Persons (which right shall continue even after the conveyance of fee title in the streets to the Association). These access easements shall not be deemed Common Area unless and until designated as such by Declarant in this Declaration, any Notice of Addition or Supplemental Declaration.

6.1.8 Easements in favor of Lot 121. Declarant hereby reserves (a) for the benefit of the Owner of Lot 121 a private sewer easement over Lot Q of Tract No. 16221 which sewer easement will be maintained by the Owner of Lot 121, and (b) for the benefit of the Owner of Lot 121 and the Association, an access easement over Lot R of Tract No. 16221 for pedestrian and vehicular access, which access easement will be maintained by the Association. These easements are both approximately shown on *Exhibit K* attached hereto.

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

6.1.10 Parkway Easements. Declarant reserves, for the benefit of certain Owners, easements over that portion of the private streets in the Properties necessary for installation, planting, irrigation and maintenance of parkway landscaping. The easement areas in Phase 1, and the benefited Lots are shown on *Exhibit H* attached hereto. The easement areas and benefited Lots in future Phases will be shown on exhibits to the applicable Notice of Addition, Supplemental Declaration or grant deed.

6.1.11 Easements for Maintenance of Association Maintenance Areas. Declarant reserves, for the benefit of the Association, nonexclusive easements over the Lots as necessary for access and maintenance of Association Maintenance Areas described herein, depicted on *Exhibit D*, or on any Notice of Addition or Supplemental Declaration. No owner may interfere with the Association's exercise of its rights under the easements reserved in this Section.

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

6.2 RIGHT TO GRANT EASEMENTS. Declarant reserves easements over the Common Area owned in fee simple by the Association for the exclusive use by an Owner or Owners of contiguous property as a yard, recreational, gardening, and landscaping area. Any such easement may be conveyed by the Declarant before the last Close of Escrow for sale of a Lot in the Properties and the Annexable Territory. If the Association owns fee title to the property subject to an exclusive use easement, the conveyance must be approved by the Board, which approval must not be unreasonably withheld. In addition, Declarant reserves the right to grant easements for access over the private streets and access gates in the Properties at any time for the benefit of the Properties, the City, the County, a utility provider, or adjacent property owners. The purpose of each easement, the portion of the Common Area affected, the Lot to

which the easement is appurtenant (if any), and any restrictions on use of the easement area shall be identified in a Recorded grant of easement.

6.3 DELEGATION OF USE. Any Owner may delegate his right to use the Common Area owned in fee simple by the Association in writing to his tenants, contract purchasers or subtenants who reside in such Owner's Residence, subject to regulation by the Board. An Owner who has delegated his rights may not use the recreational facilities on the Common Area so long as such delegation remains in effect.

6.4 RIGHT OF ENTRY.

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

6.4.2 Declarant. The Declarant has the right to enter the Lots and the Common Area (a) to comply with requirements for the recordation of subdivision maps or lot line adjustments in the Properties or Annexable Territory, (b) for repair of Improvements in accordance with the provisions of the Right to Repair Law, (c) to accommodate grading or construction activities, and (d) to comply with requirements of applicable governmental agencies. Declarant shall provide the applicable Owner reasonable notice before such entry, except for emergency situations, which shall not require notice. Any damage to the Properties that is caused by entry under this Subsection shall be repaired by the Declarant. Unless otherwise specified in the initial grant deed of a Lot from the Declarant, this right of entry shall automatically expire eleven (11) years from the last Close of Escrow in the Properties.

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

**ARTICLE VII
ASSOCIATION MAINTENANCE FUNDS AND ASSESSMENTS**

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

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

7.2 ASSOCIATION MAINTENANCE FUNDS. The Association shall establish no fewer than four (4) separate Association Maintenance Fund accounts into which shall be deposited all money paid to the Association and from which disbursements shall be made, as provided in this Declaration. The Association Maintenance Funds may be established as trust accounts at a banking or savings institution and shall include: (a) an Operating Fund for current Common Expenses, excluding NPDES Expenses, (b) a NPDES Fund for NPDES Expenses (c) an adequate Reserve Fund for the portion of Common Expenses allocated to (i) reserves for Improvements which the Board does not expect to perform on an annual or more frequent basis, and (ii) payment of deductible amounts for insurance policies which the Association obtains, (c) a Surficial Soils Subsidence Fund and (d) any other funds which the Association may establish.

7.3 PURPOSE OF ASSESSMENTS. The Assessments shall be used exclusively to (a) promote the Owners' recreation and welfare, (b) operate, improve and maintain the Common Property, and (c) discharge any other Association obligations under this Declaration. All amounts deposited into the Association Maintenance Funds must be used solely for the common benefit of all Owners for purposes authorized by this Declaration. A separate Surficial Soils Subsidence Fund shall be maintained in accordance with Article XVIII herein. Disbursements from the Operating Fund generally shall be made by the Association to discharge Association responsibilities which cannot be discharged by disbursements from the Reserve Fund. However, if the Board determines that the Operating Fund contains excess funds, the Board may transfer the excess funds to any other Association Maintenance Fund. Disbursements from the Reserve Fund shall be made by the Association only for the purposes specified in this Article and in Section 1365.5(c) of the California Civil Code.

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

7.5 LIMITS ON ANNUAL ASSESSMENT INCREASES.

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

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

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

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

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

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

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

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

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

- (a) An extraordinary expense required by an order of a court;
- (b) An extraordinary expense necessary to maintain the portion of the Properties for which the Association is responsible where a threat to personal safety on the Properties is discovered; and
- (c) An extraordinary expense necessary to maintain the portion of the Properties for which the Association is responsible that could not have been reasonably foreseen

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

7.6 ANNUAL ASSESSMENTS.

7.6.1 Commencement of Annual Assessments. Annual Assessments shall commence on all Lots in a Phase on the first day of the first calendar month following the first Close of Escrow in such Phase, except in any Phase which includes Lots with model homes ("Model Lot"), Annual Assessments shall commence on all Lots in that Phase, including each Model Lot in that Phase, on the first day of the first calendar month following the first Close of Escrow in that Phase on a Lot other than a Model Lot. Annual Assessments for fractions of a month shall be prorated. Declarant shall pay its full pro rata share of the Annual Assessments on all unsold Lots for which Annual Assessments have commenced. The Board shall fix the amount of the Annual Assessment against each Lot at least thirty (30) days in advance of each Annual Assessment period. However, unless otherwise established by the Board, the initial Annual Assessments shall be assessed in accordance with the most recent Budget on file with and approved by the DRE. Written notice of any change in the amount of any Annual Assessment, Capital Improvement Assessment or Reconstruction Assessment shall be sent via first-class mail to every Owner subject thereto not less than thirty (30) nor more than ninety (90) days before the increased Assessment becomes due.

7.6.2 Apportionment of Annual Assessments. All Annual Assessments shall be assessed uniformly and equally against the Owners and their Lots based on the number of Lots owned by each Owner. The Board may determine that funds in the Operating Fund at the end of the Fiscal Year be retained and used to reduce the following Fiscal Year's Annual Assessments. On dissolution of the Association incident to the abandonment or termination of the Properties as a planned development, any amounts remaining in any of the Association Maintenance Funds shall be distributed to or for the benefit of the Owners in the same proportions as such money was collected from the Owners.

7.6.3 Payment of Annual Assessments. Each Owner shall pay Annual Assessments in installments at such frequency, in such amounts and by such methods as are established by the Board. If the Association incurs additional expenses because of a payment method selected by an Owner, the Association shall charge the additional expenses to the Owner. Each installment of Annual Assessments may be paid to the Association in one (1) check or in separate checks as payments attributable to specified Association Maintenance Funds. If any payment of an Annual Assessment installment (a) is less than the amount assessed and (b) does not specify the Association Maintenance Fund or Funds into which it should be deposited, then the amount received shall be credited in order of priority first to the Operating Fund, until that portion of the Annual Assessment has been satisfied, and second to the Reserve Fund.

7.6.4 Exemption from Annual Assessments. Until the earlier to occur of (i) the Recordation of a notice of completion of an Improvement on the Common Area, or (ii) the placement of such Improvement into use, each Owner (including Declarant) shall be exempt from paying that portion of any Annual Assessment allocated to defraying expenses and reserves directly attributable to the existence and use of such Improvement.

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

7.8 LEVEL ASSESSMENT PROCEDURE. For so long as Annexable Territory may be added to the Properties as a Phase, the Board may elect to implement a level assessment procedure in accordance with applicable DRE guidelines ("*Level Assessment Procedure*"). Where the Level Assessment Procedure is used, the Annual Assessments for certain Phases may be less than or more than the actual Common Expenses for a given year, however, the Annual Assessment cannot be more than fifteen percent (15%) above or below the actual Common Expenses. To implement the Level Assessment Procedure, the Board must:

7.8.1 Establish and maintain a separate account for the cumulative operating surplus ("*Cumulative Surplus Fund Account*");

7.8.2 Use the Cumulative Surplus Fund Account and the funds therein only for the funding of Annual Assessments in a given Fiscal Year (as determined by the Board);

7.8.3 Include in the Inspection Report referenced in Section 2.1.7 a review of the Level Assessment Procedure, to ensure that adequate Annual Assessments are being collected; and

7.8.4 Meet any other requirements which may be imposed by the DRE.

ARTICLE VIII INSURANCE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE IX DESTRUCTION OF IMPROVEMENTS

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

9.2 **DAMAGE TO RESIDENCES-RECONSTRUCTION.** If all or any portion of any Residence or other Improvements on a Lot is damaged or destroyed by fire or other casualty, the Owner of the damaged Lot shall rebuild, repair or reconstruct the Residence and Improvements in a manner which will restore them substantially to their appearance and condition immediately before the casualty or as otherwise approved by the Architectural Review Committee. The Owner of any damaged Lot or Residence and the Architectural Review Committee shall proceed with all due diligence, and the Owner shall cause reconstruction to commence within six (6) months after the damage occurs and to be completed within twelve (12) months after damage occurs, unless prevented by causes beyond such Owner's reasonable

control. The transfer of a damaged Lot or a Lot with a damaged Residence to another Person will not extend the time allowed in this Section for commencement and completion of reconstruction by the transferee. However, no such transferee will be required to commence or complete reconstruction in less than thirty (30) days from the date the transferee acquired title to the Lot.

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

ARTICLE X EMINENT DOMAIN

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

10.1 CONDEMNATION OF COMMON AREA. If there is a taking of the Common Area owned in fee simple by the Association, then the award in condemnation shall be paid to the Association and shall be deposited in the Operating Fund.

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

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

ARTICLE XI RIGHTS OF MORTGAGEES

11.1 GENERAL PROTECTIONS. No amendment or violation of this Declaration defeats or renders invalid the rights of the Mortgagee under any Mortgage encumbering one (1) or more Lots made in good faith and for value, provided that after the foreclosure of any such Mortgage, the foreclosed Lot(s) will remain subject to this Declaration. For purposes of this Declaration, "*first Mortgage*" means a Mortgage with first priority over other Mortgages or Deeds of Trust on a Lot, and "*first Mortgagee*" means the Mortgagee of a first Mortgage. For purposes of any provisions of the Association Governing Documents which require the vote or approval of a specified percentage of first Mortgagees, such vote or approval is determined based on one (1) vote for each Lot encumbered by each such first Mortgage.

11.2 ADDITIONAL RIGHTS. In order to induce the VA, FHA Freddie Mac, Ginnie Mae and Fannie Mae to participate in the financing of the sale of Lots, the following provisions

are added hereto (and to the extent these added provisions conflict with any other provisions of the Association Governing Documents, these added provisions control):

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

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

11.2.3 Unpaid Assessments. If the first Mortgagee of a Lot obtains fee title to the Lot either by foreclosure or by any other remedy provided under the Mortgage, then the Mortgagee shall take title to the Lot free and clear of any claims for unpaid Assessments or charges against the Lot to the extent the Assessments or charges accrued before the date on which the Mortgagee acquired title to the Lot.

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

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

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

11.2.6 Intended Improvements. All intended Improvements in any Phase other than Phase I must be substantially completed or the completion of such Improvements must be secured by a bond or other arrangement acceptable to the DRE before the first Close of Escrow in such Phase. All intended Improvements in any Phase other than Phase I shall be substantially consistent with the Improvements in Phase I in structure, type and quality of construction. The requirements of this Section are for the benefit of and may be enforced only by Fannie Mae.

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

ARTICLE XII ENFORCEMENT

12.1 **ENFORCEMENT OF ASSOCIATION GOVERNING DOCUMENTS.** All violations of the Association Governing Documents, other than those described in Sections 12.2 through 12.4 or regulated by Civil Code Section 1375, shall be resolved as follows:

12.1.1 **Violations Identified by the Association.** If the Board or the Architectural Review Committee determines that there is a violation of the Association Governing Documents, other than nonpayment of any Assessment, then the Board shall give written notice to the responsible Owner identifying (a) the condition or violation complained of, and (b) the length of time the Owner has to remedy the violation including, if appropriate, the length of time the Owner has to submit plans to the Architectural Review Committee and the length of time the Owner has to complete the work proposed in the plans submitted to the Architectural Review Committee. If an Owner does not perform corrective action within the allotted time, the Board, after Notice and Hearing, may remedy such condition or violation complained of, and the cost thereof shall be charged to the Owner as a Special Assessment. If the violation involves nonpayment of any Assessment, then the Board may collect such delinquent Assessment pursuant to the procedures established in Section 12.2.

12.1.2 **Violations Identified by an Owner.** If an Owner alleges that another Person is violating the Association Governing Documents (other than nonpayment of any Assessment), the complaining Owner must first submit the matter to the Board for Notice and Hearing before the complaining Owner may resort to alternative dispute resolution, as required by Section 1369.510, and following, of the California Civil Code, or litigation for relief.

12.1.3 **Legal Proceedings.** Failure to comply with any of the terms of the Association Governing Documents by any Person is grounds for relief which may include an action to recover damages, injunctive relief, foreclosure of any lien, or any combination thereof; however, the procedures established in Sections 1363.810 and 1369.510, and following, of the California Civil Code and in Sections 12.1.1 and 12.1.2 must first be followed, if they apply.

12.1.4 **Additional Remedies.** After Notice and Hearing, the Board may impose any of the remedies provided for in the Bylaws. The Board may adopt a schedule of reasonable fines or penalties which, in its reasonable discretion, the Board may assess against a Person for the failure of such Person to comply with the Association Governing Documents. Such fines or penalties may only be assessed pursuant to Civil Code Section 1363. After Notice and Hearing, the Board may direct the officers of the Association to Record a notice of noncompliance (if allowed by law) against a Lot owned by any Owner who has violated any

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

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

12.1.6 Right to Enforce. The Board, the Association, the Declarant and any Owner may enforce the Association Governing Documents as described in this Article, subject to Sections 1363.810 and 1369.510, and following, of the California Civil Code. Each Owner has a right of action against the Association for the Association's failure to comply with the Association Governing Documents. Each remedy provided for in this Declaration is cumulative and not exclusive or exhaustive.

12.1.7 Limit on Expenditures. The Association may not incur litigation expenses, including attorneys' fees, or borrow money to fund litigation, where the Association initiates legal proceedings or is joined as a plaintiff in legal proceedings, unless the Association first obtains the consent of the Owners (excluding the voting power of any Owner who would be a defendant in such proceedings) and, if applicable, complies with the requirements of Sections 1363.810 and 1369.510, and following, of the California Civil Code. Such approval is not necessary if the legal proceedings are initiated (a) to enforce the use restrictions contained in Article II, (b) to enforce the architectural and landscaping control provisions contained in Article V, (c) to collect any unpaid Assessments levied pursuant to the Association Governing Documents, (d) for a claim, other than a Defect Claim (defined in Section 4.5.2) or a Dispute (defined in Section 12.4) the total value of which is less than Five Hundred Thousand Dollars (\$500,000), or (e) as a cross-complaint in litigation to which the Association is already a party. If the Association decides to use or transfer Reserve Funds or borrow funds to pay for any litigation, the Association must notify the Owners of the decision by mail. Such notice shall provide an explanation of why the litigation is being initiated or defended, why Operating Funds cannot be used, how and when the Reserve Funds will be replaced or the loan will be repaid, and a proposed budget for the litigation. The notice must state that the Owners have a right to review an accounting for the litigation which will be available at the Association's office. The accounting shall be updated monthly. If the Association action to incur litigation expenses or borrow money to fund litigation concerns a Defect Claim or Dispute, then the voting requirements of both Sections 4.5.2 and 12.1.7 must be met.

12.2 NONPAYMENT OF ASSESSMENTS.

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

attributable thereto. Acceptance of any such tender does not waive the Association's right to demand and receive full payment.

12.2.2 Creation and Release of Lien.

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

(b) **Prerequisite to Creating Lien.** Before the Association may place a lien on a Owner's Lot to collect a past due Assessment, the Association shall send written notice ("*Notice of Intent to Lien*"), at least thirty (30) days prior to recording of such lien, to the Owner by certified mail which contains the following information: (i) the fee and penalty procedure of the Association, (ii) an itemized statement of the charges owed by the Owner, including the principal owed, any late charges, any interest, the method of calculation, and any attorneys' fees, (iii) the collection practices used by the Association, (iv) a statement that the Association may recover reasonable costs of collecting past due Assessments, (v) a statement that the Owner has the right to inspect the Association's records, pursuant to California Corporations Code Section 8333, (vi) the following statement in 14-point boldface type or all capital letters: "IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST IS PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT ACTION," (vii) 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, and (viii) a statement that the Owner has the right to request a meeting with the Board, as provided by California Civil Code Section 1367.1(c) and Section 12.2.2(d) below.

(c) **Dispute by Owner.** An Owner may dispute the Notice of Intent to Lien by submitting to the Board a written explanation of the reasons for the Owner's dispute. The Board shall respond in writing to the Owner within fifteen (15) days of the date of the postmark of the explanation, if the explanation is mailed within fifteen (15) days of the postmark of the Notice of Intent to Lien.

(d) **Owner's Right to Request Meeting.** An Owner may submit a written request to meet with the Board to discuss a payment plan for the debt noticed in Section 12.2.2(d) above. The Association shall provide the Owner with 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 of Intent to Lien, 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.

(e) **Notice of Delinquent Assessment.** The lien becomes effective on Recordation by the Board or its authorized agent of a Notice of Delinquent Assessment ("*Notice of Delinquent Assessment*") securing the payment of any Assessment or installment thereof levied by the Association against any Lot Owner, as provided in Section 1367 or 1367.1 of the

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

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

(g) **Release of Lien.** Within twenty-one (21) days of payment of the full amount claimed in the Notice of Delinquent Assessment, or other satisfaction thereof, the Board shall cause to be Recorded a Notice of Satisfaction and Release of Lien ("**Notice of Release**") stating the satisfaction and release of the amount claimed. The Association shall provide the Owner with a copy of the Notice of Release or any other notice that the full amount claimed in the Notice of Delinquent Assessment has been satisfied. The Board may require the Owner to pay a reasonable charge for preparing and Recording the Notice of Release. Any purchaser or encumbrancer who has acted in good faith and extended value may rely on the Notice of Release as conclusive evidence of the full satisfaction of the sums identified as owed in the Notice of Delinquent Assessment.

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

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

12.2.5 Alternative Dispute Resolution. An Owner may dispute the Assessments imposed by the Association if such Owner pays in full (a) the amount of the Assessment in dispute, (b) any late charges, (c) any interest, and (d) all reasonable fees and costs associated with preparing and filing a Notice of Delinquent Assessment (including mailing costs and reasonable attorneys' fees not to exceed the maximum amount allowed by law), and states by written notice that such amount is paid under protest, and the written notice is mailed by certified mail not more than thirty (30) days after Recording the Notice of Delinquent Assessment. On receipt of the written notice, the Association shall inform the Owner in writing that the dispute may be resolved through alternative dispute resolution as established in Civil Code Sections 1363.810 and 1369.510, and following. The right of any Owner to use alternative dispute resolution under this Section may not be exercised more than two (2) times in any single calendar year, and not more than three (3) times within any five (5) calendar years unless the Owner and the Association mutually agree to use alternative dispute resolution when this limit is exceeded. An Owner may request and be awarded through alternative dispute resolution reasonable interest to be paid by the Association in the total amount paid under items (a) through (d) above, if it is determined that the Assessment levied by the Association was not correctly levied.

12.2.6 Receivers. In addition to the foreclosure and other remedies granted to the Association in this Declaration, each Owner, by acceptance of a deed to such Owner's Lot, conveys to the Association all of such Owner's right, title and interest in all rents, issues and profits derived from and appurtenant to such Lot, subject to the right of the Association to collect and apply such rents, issues and profits to any delinquent Assessments owed by such Owner, reserving to the Owner the right, before any default by the Owner in the payment of Assessments, to collect and retain such rents, issues and profits as they may become due and payable. On any such default, the Association may, on the expiration of thirty (30) days following delivery to the Owner of the "Notice of Delinquent Assessment" described in this Declaration, either in person, by agent or by receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness secured by the lien described in this Declaration, (a) enter in or on and take possession of the Lot or any part thereof, (b) in the Association's name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and (c) apply the same, less allowable expenses of operation, to any delinquencies of the Owner, and in such order as the Association may determine. The entering upon and taking possession of the Lot, the collection of rents, issues and profits and the

application thereof, shall not cure or waive any default or notice of default under this Declaration or invalidate any act done pursuant to such notice.

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

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

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

12.4 DISPUTE WITH DECLARANT PARTIES. Any dispute between the Association or any Owners, on the one hand, and the Declarant, or any director, officer, partner, shareholder, member, employee, representative, contractor, subcontractor, consultant, design professional or agent of the Declarant (each, a "**Declarant Party**," and collectively the "**Declarant Parties**"), on the other hand, which dispute:

(a) Arises under this Declaration or otherwise relates to the Properties (including disputes regarding latent or patent construction defects); and

(b) Involves neither Common Area completion bonds, nor the collection of delinquent Assessments from Declarant; and

(c) Concerns an amount in controversy that is greater than Five Thousand Dollars (\$5,000),

shall be a "**Dispute**" for purposes of this Section 12.4. All Disputes shall be resolved in accordance with the alternative dispute resolution procedures set forth in Article XIX.

ARTICLE XIII DURATION AND AMENDMENT

13.1 DURATION. This Declaration shall continue in full force unless a declaration of termination satisfying the requirements of an amendment to this Declaration established in Section 13.2 is Recorded.

13.2 TERMINATION AND AMENDMENT.

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

13.2.2 City Consent. In addition to the consents required by Section 13.2.1, any proposed amendment to this Declaration shall be submitted for review to the City Planning Director (the "Director"), and if the Director reasonably determines that such amendment affects any City regulations or requirements including the Conditions of Approval of the Project issued by Resolution No. 03-06-03-01 of the City Council, then the amendment must be approved by the City Council prior to the amendment becoming valid.

13.2.3 Mortgagee Consent. In addition to the consents required by Section 13.2.1 and 13.2.2, the Mortgagees of fifty-one percent (51%) of the first Mortgages on all the Lots in the Properties who have requested the Association notify them of proposed action requiring the consent of a specified percentage of first Mortgagees must approve any amendment to this Declaration, any Notice of Addition and any Supplemental Declaration; which is of a material nature, as follows:

- (a) Any amendment which affects or purports to affect the validity or priority of Mortgages or the rights or protection granted to Mortgagees, insurers or guarantors of first Mortgages.
- (b) Any amendment which would require a Mortgagee after it has acquired a Lot through foreclosure to pay more than its proportionate share of any unpaid Assessment or Assessments accruing before such foreclosure.
- (c) Any amendment which would or could result in a Mortgage being canceled by forfeiture, or in a Lot not being separately assessed for tax purposes.
- (d) Any amendment relating to (i) the insurance provisions in Article VIII, (ii) the application of insurance proceeds in Article IX, or (iii) the disposition of any money received in any taking under condemnation proceedings.

13.2.9 Amendment by the Board. Notwithstanding any other provisions of this Section, after the Declarant no longer own any portion of the Properties, the Board may amend this Declaration by Recording a written instrument signed by two officers of the Association certifying that the Board approved the amendment for the purposes described in Sections 13.2.8(i), (iv), (v), (vi), (vii) and (ix) above. So long as Declarant owns any portion of the Properties or the Annexable Territory, the Board must obtain Declarant's consent to any amendment the Board approves pursuant to Article XV, or pursuant to this Section.

ARTICLE XIV GENERAL PROVISIONS

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

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

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

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

ARTICLE XV DECLARANT'S RIGHTS AND RESERVATIONS

If there is a conflict between any other portion of the Association Governing Documents and this Article, this Article shall control.

15.1 CONSTRUCTION RIGHTS. Declarant has the right to (a) subdivide or resubdivide the Properties, (b) complete or modify Improvements to and on the Common Area or any portion of the Properties owned or leased solely or partially by Declarant, (c) alter Improvements and Declarant's construction plans and designs, (d) modify Declarant's development plan for the Properties and the Annexable Territory, including designating and redesignating Phases, reshaping the Lots and Common Area, and constructing Residences of larger or smaller sizes, values, and of different types, and (e) construct such additional Improvements as Declarant considers advisable in the course of development of the Properties so long as any Lot in the Properties or the Annexable Territory remains unsold. Declarant may temporarily erect barriers, close off and restrict access to portions of the Common Area as reasonably necessary to allow Declarant to exercise the rights reserved in this Section so long as an Owner's access to his or her Lot is not eliminated.

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

15.3 CREATING ADDITIONAL EASEMENTS. At any time before acquisition of title to a Lot in the Properties by a purchaser from Declarant, Declarant has the right to establish on that Lot additional licenses, easements, reservations and rights-of-way to itself, to utility companies, or to others as Declarant determines are reasonably necessary to the Properties' proper development and disposal.

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

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

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

15.7 AMENDMENT. No amendment may be made to this Article or to Sections 12.4, 19.5, 13.2.8 or 13.2.9, without the prior written approval of Declarant.

15.8 POWER OF ATTORNEY. Each Owner of a Lot in the Project, by accepting a deed to a Lot, shall be deemed to have (a) agreed and acknowledged that the Owners own no interest in the Annexable Territory which may be developed, if at all, by Declarant in its sole and

absolute discretion and (b) constituted and irrevocably appointed Declarant, for so long as Declarant owns all or any portion of the Annexable Territory, as his Attorney-in-Fact, for himself and each of his Mortgagees, optionees, grantees, licensees, trustees, receivers, lessees, tenants, judgment creditors, heirs, legatees, devisees, administrators, executors, legal representatives, successors and assigns, whether voluntary or involuntary, and thereby to have conveyed a Power of Attorney coupled with an interest to Declarant as his Attorney in Fact to prepare, execute, acknowledge and Record any instrument for all or any portion of the Annexable Territory. However, nothing set forth herein shall be deemed or construed as an agreement by Declarant that any Owner shall be entitled to any participation in or discretion over the preparation and Recordation of an instrument for all or any portion of the Annexable Territory. The acceptance or creation of any Mortgage or other encumbrance, whether or not voluntary, created in good faith, or given for value, shall be deemed to be accepted or created subject to each of the terms and conditions of the Power of Attorney described in this Section.

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

15.10 PARTICIPATION IN ASSOCIATION. The Association shall provide Declarant with written notice of the transfer of any Lot and all notices and other documents to which a Mortgagee is entitled pursuant to this Declaration, provided that Declarant shall be provided such notices and other documents without making written request therefor. Commencing on the date on which Declarant no longer has an elected representative on the Board, and continuing until the later to occur of the date on which Declarant (a) no longer owns a Lot in the Properties or (b) cannot unilaterally annex property to the Properties, the Association shall provide Declarant with written notice of all meetings of the Board as if Declarant were an Owner and Declarant shall be entitled to have a representative present at all such Board meetings ("*Declarant's Representative*"). The Declarant's Representative shall be present in an advisory capacity only and shall not be a Board member or have any right to vote on matters coming before the Board.

15.11 DECLARANT APPROVAL OF ACTIONS.

15.11.1 General Rights. Until Declarant no longer owns a portion of the Properties or the Annexable Territory, Declarant's prior written approval is required for any amendment to the Association Governing Documents which would impair or diminish Declarant's right to complete the Properties or the Annexable Territory or sell or lease dwellings therein.

15.11.2 Limit on Actions. Until Declarant no longer owns any Lots in the Properties or the Annexable Territory, the following actions, before being undertaken by the Association, must first be approved in writing by Declarant:

- (a) Any amendment or action requiring the approval of first Mortgagees;
- (b) The annexation to the Properties of real property other than the Annexable Territory pursuant to Section 16.2;
- (c) The levy of a Capital Improvement Assessment for the construction of new facilities not constructed on the Common Area by Declarant;
- (d) Any significant reduction of Association maintenance or other services; or
- (e) Any modification or termination of any provision of the Association Governing Documents benefiting Declarant.

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

ARTICLE XVI ANNEXATION OF ADDITIONAL PROPERTY

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

16.1 ADDITIONS BY DECLARANT. Declarant may add the Annexable Territory to the Properties and bring such added territory under the general plan of this Declaration without the approval of the Association, the Board, or Owners, so long as Declarant owns any portion of the Annexable Territory.

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

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

16.4 NOTICE OF ADDITION. The additions authorized under Sections 16.1 and 16.2 must be made by Recording a Notice of Addition which will extend the general plan of this Declaration to such Added Territory. The Notice of Addition for any addition under Section 16.1 must be signed by Declarant. The Notice of Addition for any addition under Section 16.2 must be signed by at least two (2) officers of the Association to certify that the Owner approval required under Section 16.2 was obtained. On Recordation of the Notice of Addition, the Added Territory will be annexed to and constitute a part of the Properties and will become subject to this Declaration; the Owners of Lots in the Added Territory will automatically acquire Membership. No Notice of Addition or Supplemental Declaration may revoke the covenants, conditions, restrictions, reservation of easements, or equitable servitudes in this Declaration as the same pertain to the real property originally covered by this Declaration.

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

ARTICLE XVII ADJACENT HOMEOWNERS

Declarant has entered into various agreements that provide certain access and use rights and that impose maintenance obligations on the Association. These agreements are more fully described in this Article XVII.

17.1 ROMAD PROPERTY.

17.1.1 Romad Access Gate/Auxiliary Access Gate. Romad Investments, L.P. ("*Romad*") is the owner of real property on the northern boundary of the Properties (the "*Romad Property*"). Declarant and Romad are parties to several agreements that give Romad the right to construct and maintain an access gate on the Common Area that will serve the Romad Property and the CAMWC Easements (the "*Romad Access Gate*"). Romad is responsible for maintaining and repairing the Romad Access Gate; however, if Romad fails to properly maintain the Romad Access Gate, the Association has the right to maintain said gate and seek reimbursement from Romad for the costs thereof. In addition, Romad has existing easement rights to access its property through the Auxiliary Access Gate located adjacent to Lot 120. Romad may also bring construction vehicles serving the Romad Property through the Auxiliary Access Gate and private streets. The Auxiliary Access Gate adjacent to Lot 120 will be maintained by the Association as an Association Maintenance Area. The approximate location of the Romad Access Gate is approximately shown on *Exhibit L* attached hereto. No Owner shall not have rights of access through either of these gates.

pedestrian and equine ingress and egress to and from the equestrian trails that run throughout the Properties.

17.2.2 Association Membership. Ortega Highway Owners are not required, nor do they have a right to become a member of the Association, they shall not be required to pay any fees or other charges assessed by the Association against its members, and they shall not be subject to any rules or regulations established by the Association, except those rules and regulations relating to the Association streets.

17.2.3 Easement Granted to Declarant. Certain Ortega Highway Owners have granted to Declarant nonexclusive easements over portions of their property that fall within Corte Montecito for purposes of vehicular and pedestrian ingress and egress and operating, removing, replacing, and repairing Corte Montecito. Corte Montecito is a part of the Association Maintenance Areas and the Association shall be responsible for its maintenance.

17.2.4 Private Gate Road. An electronically operated access gate and private gate road will be constructed by Declarant to connect Corte Montecito to Ortega Highway. The gate will be maintained by the Association as part of the Association Maintenance Areas. The private gate road will be maintained by the Ortega Highway Owners. Owners do not have access rights or any other easement rights regarding this private gate road and therefore Owners will not be allowed access through the gate or over the private gate road.

17.3 WOODS LANE OWNERS.

17.3.1 Easement Granted to Woods Lane Owners. Declarant has granted nonexclusive easements over all streets in the Properties for purposes of providing vehicular and pedestrian access to the owners of adjacent real property as approximately described on *Exhibit N* attached hereto (the "*Woods Lane Owners*"), which real property is not a part of the Properties. Each Woods Lane Owner and their successors and assigns will have the right of access over private streets in the Properties and through the main access gate to the Properties for the purpose of accessing their residences from public streets that presently, or at any future time, are located adjacent to the Properties. In addition, Declarant has granted nonexclusive easements over portions of the Common Area located adjacent to the Woods Lane Owners' property for equestrian use and rear yard access purposes (the "*Woods Lane Trail*"). The Woods Lane Trail, as shown on *Exhibit O* attached hereto, will be maintained by the Association.

17.3.2 Restrictions on Street Parking. Owners do not have access rights or any other easement rights regarding Woods Lane and therefore Owners shall not have access over or be permitted to park any vehicles on that portion of Woods Lane as approximately shown on *Exhibit O* attached hereto.

17.3.3 Maintenance of Woods Lane. Woods Lane Owners are responsible for maintaining that portion of Woods Lane as approximately shown on *Exhibit O* attached hereto at their sole cost and expense.

17.3.4 Association Membership. Woods Lane Owners are not required, nor do they have a right to become a member of the Association, they shall not be required to pay any fees or other charges assessed by the Association against its members, and they shall not be

subject to any rules or regulations established by the Association, except those rules and regulations relating to the Association streets.

17.4 SOTO PROPERTY.

17.4.1 **Easement Granted to Soto.** Ygnacio P. Soto, Jr. ("**Soto**") is the owner of real property adjacent to the northern boundary of the Properties (the "**Soto Property**"). Declarant has granted to Soto nonexclusive easements over all streets in the Properties for purposes of providing vehicular and pedestrian access to the Soto Property, as approximately described on *Exhibit N* attached hereto. Soto and its successors and assigns will have the right of access over private streets in the Properties and through the main access gate to the Properties for the purpose of accessing its residence from public streets that presently, or at any future time, are located adjacent to the Properties.

17.4.2 **Soto Access Road.** Declarant shall construct an all-weather access road (the "**Soto Access Road**") within the boundaries of a ten (10) foot wide access easement granted by Declarant to Soto located to the east of Lot 67 of Tract No. 16221, which Soto Access Road will serve the Soto Property. The approximate location of the Soto Access Road is approximately described on *Exhibit P* attached hereto. Upon completion by Declarant of the Soto Access Road, Soto shall be responsible for maintaining and repairing the Soto Access Road. Owners do not have access rights or any other easement rights regarding the Soto Access Road and therefore, Owners shall not have access over the Soto Access Road.

17.4.3 **Association Membership.** Soto is not required, nor does Soto have a right to become a member of the Association, Soto shall not be required to pay any fees or other charges assessed by the Association against its members, and Soto shall not be subject to any rules or regulations established by the Association, except those rules and regulations relating to the Association streets.

ARTICLE XVIII SURFICIAL SOILS DISPLACEMENT REMEDIATION PROGRAM

18.1 **COMPLIANCE WITH CITY REQUIREMENTS.** In compliance with the requirements of the City, Declarant has implemented a Soils Subsidence Remediation Program and established a Surficial Soils Subsidence Fund for the collection and payment of Surficial Soils Subsidence Expenses in accordance with this Article XVIII.

18.2 **DEFINITION OF SURFICIAL SOILS SUBSIDENCE COVERAGE.** "**Soils Subsidence**" is defined as displacement of a manufactured slope at a depth of up to three (3) feet with a vertical movement of one foot or more, regardless of cause. Soils Subsidence does not include surface cracking and fissures, including desiccation cracks, or erosion (defined as the wearing away of surface of the slope, as opposed to movement of the slope, resulting from the force of water, wind, persons, or vehicles moving over the surface, unless erosion ultimately results in displacement). Surficial damage shall be considered catastrophic if due to the extent of movement, sufficient funds as required under Section 18.7 herein are not available to repair the damage.

18.3 APPLICABILITY OF SOILS SUBSIDENCE REMEDIATION PROGRAM. Slopes subject to the soils subsidence remediation program are shown on *Exhibit Q* attached hereto and defined by the City as follows ("*Covered Slopes*"):

18.3.1 Common Area Slopes. All designated Common Area landscape slopes maintained by the Association pursuant to this Declaration or any Notice of Addition or Supplemental Declaration.

18.3.2 Manufactured Slopes. All manufactured slopes having a minimum height of five (5) feet in vertical height.

18.3.3 Natural Slopes Within 200 Feet of Individual Lots. All natural slopes within two hundred (200) feet of individual Lots.

18.4 RESERVED RIGHTS CLAUSE. This clause is to reserve the right of the Declarant and the Association to assert claims against any person or entity responsible in whole or in part for the displacement of soils covered by this program.

18.5 CREATION AND ACTIVATION OF GEOLOGIC HAZARD ABATEMENT DISTRICT. Declarant is required pursuant to the City conditions of approval for the Properties to create a Geologic Hazard Abatement District (as defined in Title 9, Chapter 10 of the City Municipal Code and California Public Resources Code Section 26500 et. seq.) ("*GHA District*") before the first Close of Escrow of a Lot in the Properties. The GHA District shall be activated upon a Catastrophic Soils Subsidence event as defined in Section 18.2 above.

18.6 COVERED REPAIRS (SHORT TERM). The Declarant will make or cause to be made all repairs to correct any damage to Lots, structures or public/private improvements due to soils displacement at their sole expense for the first three (3) years after the last close of escrow for all Lots within the Properties (the "*Declarant Repair Period*").

18.7 COVERED REPAIRS (LONG TERM). Damage to Lots, structures or public/private improvements due to soil displacement occurrences occurring after the Declarant Repair Period shall be corrected by the GHA District with funds from the Surficial Soils Subsidence Fund. The costs of performing the Covered Repairs shall be deemed Surficial Soils Subsidence Expenses and shall be paid from the Surficial Soils Subsidence Fund.

18.8 SURFICIAL SOILS SUBSIDENCE FUND. The Association is required to collect and maintain a restricted fund to correct damage to individual Lots, structures, or public/private improvements due to soils displacement occurrences. This restricted fund is called a Surficial Soils Subsidence Fund. Declarant is required to deposit an initial amount determined by the City into the Surficial Soils Subsidence Fund. Regulation and use of the Surficial Soils Subsidence Fund shall be in accordance with the following:

18.8.1 Use of Surficial Soils Subsidence Funds; Initial Security. Funds deposited in the Surficial Soils Subsidence Fund can only be used for actual costs associated with correcting Soils Subsidence as defined in Section 18.2 above. The initial security for the Surficial Soils Subsidence Fund shall be in such form and manner as to guarantee and secure the performance of the Declarant and shall consist of one of the following, at the option of Declarant and with the approval of the City Council:

- (a) Corporate sureties approved by the City Attorney;
- (b) A deposit, either with a responsible escrow agent or trust company, of money or negotiable bonds of the kind approved for securing deposits of public moneys; or
- (c) An instrument of credit, from one or more financial institutions subject to regulation by the state or federal government, pledging that the funds necessary to carry out the warranty program are on deposit and guaranteed for payment.

18.8.2 Special Assessments. Special Assessments shall be applied to all Lots within the Properties. Said Special Assessments shall commence on the first Close of Escrow of a Lot in the Properties pursuant to the regulations of the California Department of Real Estate. Said Special Assessments shall be collected by the Association until the Surficial Soils Subsidence Fund reaches a predetermined minimum as established by the City. Declarant shall be able to withdraw its initial deposit provided the Surficial Soils Subsidence Fund does not fall below seventy-five percent (75%) of the predetermined minimum. If a claim occurs during the period the Declarant is responsible, and the Surficial Soils Subsidence Fund drops below the seventy-five percent (75%) level, the Declarant shall restore such fund to the minimum seventy-five percent (75%) level. After the end of the Declarant Repair Period (and after any deposit required by Declarant at that time pursuant to Section 18.8.3 below), the Association shall levy Special Assessments against the Owners to restore the Surficial Soils Subsidence Fund to the minimum seventy-five percent (75%) level as often as necessary.

18.8.3 Funds at End of Declarant Repair Period. If the amount in the Surficial Soils Subsidence Fund is less than the minimum amount as specified in Section 18.8.2 at the conclusion of the Declarant Repair Period, then the Declarant shall deposit sufficient funds to meet the minimum requirements.

18.8.4 Exclusive License for Inspection, Maintenance and Repair. Declarant hereby reserved an exclusive license for the benefit of the Association to enter onto Common Area and individual Lots to allow the Association to maintain and inspect all landscaping, irrigation and drainage devices, and all other natural and artificial conditions which affect or might affect the integrity of slopes which are subject to the provisions of this program.

18.8.5 Alterations to Covered Slopes. Any proposed alterations by Owners to the landscaping, grading, irrigation or drainage installed on Covered Slopes on individually owned Lots shall be subject to prior review and approval by the Association and the City. If Owners fail to obtain approval from the City and the Association for any proposed alterations to the landscaping, grading, irrigation or drainage installed on a Covered Slope, then the enforcement provisions set forth in this Article XVIII shall apply. If Owners damage any Covered Slopes or slope stability, then the provisions of the Agreement Establishing Soils Subsidence Remediation Program recorded on October 6, 2004, as Instrument No. 2004000896693, in the Official Records of the County of Orange, California, shall apply.

18.9 CLAIMS PROCESSING. The Association in the administration of this program shall retain the services of an independent claims adjusting service. The service shall be responsible to adjust all claims for work which are claimed to be within the coverage of this program. Claims asserted to be within the coverage of this program will be processed by forms provided by the Association and filed with the independent adjuster, who will promptly adjust

such claims after obtaining an analysis on the scope and cost of completing all necessary repairs. The Surficial Soils Subsidence Fund will compensate for the cost of the independent claims adjusting service.

18.10 AMENDMENTS TO THIS ARTICLE. City Approval is required for any modifications or amendments to this Article XVIII or any other provisions of this Declaration designed to carry out the intent of this Article XVIII.

**ARTICLE XIX
WARRANTIES, DISCLAIMER OF WARRANTIES, RIGHT TO REPAIR
ACKNOWLEDGEMENTS AND PROCEDURES, AND ALTERNATIVE DISPUTE
RESOLUTION PROCEDURES**

19.1 WARRANTIES.

19.1.1 Limited Home Warranty. Declarant presently intends, but shall not have any obligation whatsoever, to extend a Home Builder's Limited Warranty (the "*Home Warranty*") to the original purchaser from Declarant of a Lot in the Properties. If Declarant extends a Home Warranty to such original purchaser, a copy of the form of the Home Warranty for the particular Lot will be available from Professional Warranty Service Corporation, P.O. Box 800, Annandale, VA 22003-0800. Every original purchaser and every successive Owner of such Lot shall be bound by and be a beneficiary of the Home Warranty during the "*Warranty Period*" as defined in the Home Warranty (and as generally summarized below). Any Dispute (as defined in Section 12.4 above), shall be resolved as provided in subsection 18.1(d) below. Nothing in the Home Warranty or any other document provided by Declarant in conjunction with the original sale of a Lot in the Properties diminishes any rights or obligations the original purchaser (or any successive Owner) or the Declarant may have under California Civil Code Sections 895 through 945.5 (the "*Right to Repair Law*"). The Home Warranty ~~does~~ not constitute either an "enhanced protection agreement" under California Civil Code Section 901 or alternative nonadversarial contractual provisions under Civil Code Section 914.

19.1.2 Warranty Period under the Home Warranty. The Warranty Period of the Home Warranty for a particular Lot is set forth in the Limited Warranty Validation Form included with the Home Warranty. The subsequent resale of the Lot will not extend the Warranty Period.

19.1.3 Coverage Limits for Residences. The coverage limits under the Home Warranty for the Residence are set forth in the Limited Warranty Validation Form included with the Home Warranty.

19.1.4 Arbitration of Disputes Subject to a Home Warranty. Notwithstanding any other dispute resolution provisions set forth in this Declaration, all disputes during the Warranty Period between any of the Declarant Parties and the original purchaser of a Lot in the Properties, (or any successive Owner of such Lot) relating to a Lot that is subject to a Home Warranty shall be resolved by binding arbitration as provided in the Home Warranty (which is governed by the Federal Arbitration Act (9 U.S.C. §§ 1-16)), and shall be subject to the limitations on statutory and common law rights and remedies set forth in the Home Warranty. Should the binding arbitration provisions be ruled invalid, unenforceable or otherwise not applicable to a dispute between any of the Declarant Parties and the original purchaser, or any

successive Owner, the dispute shall be resolved in accordance with the alternative dispute resolution provisions set forth in Section 19.3 below.

19.1.5 DISCLAIMER AND WAIVER OF WARRANTIES AND OTHER RIGHTS. ANY HOME WARRANTY ISSUED BY DECLARANT TO THE ORIGINAL PURCHASER OF A LOT IN THE PROPERTIES IS THE ONLY WARRANTY, EXPRESS OR IMPLIED, MADE BY DECLARANT WITH REGARD TO THE RESIDENCE. DECLARANT MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES OR REPRESENTATIONS REGARDING EITHER LATENT OR PATENT DEFECTS IN THE RESIDENCES, OR ANY COMPONENTS THEREOF, OR FIXTURES OR PERSONAL PROPERTY INSTALLED THEREIN, OR AS TO THE MERCHANTABILITY, FITNESS, HABITABILITY, OR QUALITY THEREOF, AND TO THE FULLEST EXTENT ALLOWED BY LAW, EXPRESSLY DISCLAIMS ANY AND ALL OTHER EXPRESS OR IMPLIED WARRANTIES AND REPRESENTATIONS.

19.2 RIGHT TO REPAIR ACKNOWLEDGMENTS AND NON-ADVERSARIAL PRE-LITIGATION PROCEDURES.

19.2.1 Owner's Acknowledgment of Right to Repair Procedures. Declarant hereby notifies each Owner of a Lot in the Properties of the existence of the non-adversarial pre-litigation procedures set forth in California Civil Code Sections 910 through 938 (the "*Right to Repair Procedures*"), and further notifies each Owner that such procedures impact the legal rights of each Owner. Each Owner acknowledges that Declarant has notified such Owner of the name and address of the agent for notice of claims pursuant to Section 912(e) of the California Civil Code. Each Owner also acknowledges that Declarant has notified such Owner pursuant to California Civil Code Section 914(a) that Declarant intends to engage in the Right to Repair Procedures with respect to any formal claim initiated by an Owner under such procedures. Notwithstanding the forgoing, each Owner understands and agrees that pursuant to Section 915, Declarant's rights include the right not to go through the Right to Repair Procedures at any time. Each Owner covenants and agrees to comply with the provisions of the Right to Repair Procedures.

19.2.2 Application of Right to Repair Law. If a claim has been made by an Owner in compliance with California Civil Code Section 910 (a "*Right to Repair Claim*"), the dispute resolution procedures set forth in Section 19.1.4 above shall apply after application of the Right to Repair Procedures. If the parties to such dispute are unable to resolve such dispute in accordance with such pre-litigation procedures, the dispute shall be resolved in accordance with the provisions of Section 19.1.4 above and Section 19.3 below. In all cases, each party shall be solely responsible for its own attorneys' fees. Nothing herein diminishes the rights and obligations of Owner or Declarant under the Right to Repair Law Procedures with respect to any Right to Repair Law Claim.

19.2.3 Delivery of Documents. Each original Owner of a Lot in the Properties acknowledges that Declarant has instructed such Owner to provide any documents provided to such Owner in conjunction with the original purchase of such Lot to any subsequent purchaser, and each Owner hereby covenants to provide all of such documents to any subsequent purchaser of such Owner's Lot.

19.2.4 Maintenance and Preventative Maintenance Schedules and Obligations. Each Owner, as to his respective Lot, acknowledges that Declarant has provided such Owner with maintenance and preventative maintenance schedules and obligations pertaining to such Owner's Lot. Notwithstanding the foregoing, Declarant reserves the right, by written notice to each Owner, to supplement and/or amend such maintenance and preventative maintenance schedules and obligations from time to time. Each Owner also acknowledges that by law, such Owner is obligated to follow all reasonable maintenance and preventative maintenance schedules and obligations communicated in writing by Declarant as well as all commonly accepted maintenance practices. Each Owner covenants to faithfully follow all maintenance and preventative maintenance schedules and obligations applicable to their respective Lot, as the case may be (and each Owner shall require and cause any tenant or lessee of such Owner's Lot to follow all such schedules and obligations).

19.2.5 Manufactured Products Maintenance and Limited Warranty Information. Each Owner, as to his respective Lot, acknowledges that Declarant has provided such Owner with manufactured product maintenance, preventative maintenance and limited warranty information pertaining to such Owner's Lot. Notwithstanding the foregoing, Declarant reserves the right, by written notice to each Owner, to supplement and/or amend such manufactured product maintenance, preventative maintenance and limited warranty information from time to time. Each Owner also acknowledges that by law, such Owner is obligated to follow all reasonable maintenance and preventative maintenance schedules and obligations communicated in writing from Declarant as well as commonly accepted maintenance practices. Each Owner covenants to faithfully follow all such maintenance and preventative maintenance schedules and obligations contained in all such manufactured product maintenance, preventative maintenance and limited warranty information (and each Owner shall require and cause any tenant or lessee of such Owner's Lot to follow all such schedules and obligations).

19.2.6 Indemnification. Each Owner of a Lot in the Properties covenants to indemnify, defend and hold Declarant harmless from any loss, costs or damages arising from such Owner's failure or refusal to perform its respective obligations under this Section 19.2.

19.2.7 Mortgagee Protection Provision. A violation of any right of the Right to Repair Procedures set forth herein shall not affect or impair the lien or charge of any bona fide mortgage or deed of trust made in good faith and for value on the Lot; provided, however, that all persons and/or entities now or hereafter acquiring any interest in the Lot shall be bound by the Right to Repair Procedures set forth herein, without regard to whether such owner's title was acquired by foreclosure, a trustee's sale or otherwise.

19.2.8 Termination of the Right to Repair Procedures. The Right to Repair Procedures set forth in this Section 18.2 shall terminate and be of no further force or effect upon the first to occur of any of the following: (i) the repeal or judicial invalidation of the Right to Repair Law, or applicable portions thereof; (ii) the expiration of all applicable statutes of limitations for the filing of any form of legal proceedings against Declarant in any way relating to or arising out of the development, construction, sale and/or transfer of any of the Lots in the Properties, or (iii) the fifteenth (15th) anniversary of the date of the recordation of the Grant Deed conveying a specific Lot to the original purchaser in the Official Records of the County in which the Properties is located.

19.3 ALTERNATIVE DISPUTE RESOLUTION PROCEDURES. All disputes between or among (a) any Owner(s) or the Association and/or (b) any Declarant Parties which in any way arise out of, or relate to, this Declaration or the Properties, including, without limitation, (i) the interpretation and/or enforcement of this Declaration; (ii) damage to or defects in the design and/or construction of any Residence and/or other Improvements within a Lot in the Properties; or (iii) claims pursuant to a Home Warranty (the "*Subject Disputes*") shall be resolved in accordance with this Section 18.3. Each Owner of a Lot in the Properties and Declarant, for and on behalf of itself and all of the Declarant Parties, acknowledge and agree that such implementation of dispute resolution procedures pursuant to this Declaration is in accordance with the philosophy and intent of the Federal Arbitration Act (9 U.S.C. Sections 1-16) which is designed to encourage the use of alternative methods of dispute resolution that avoid costly and potentially lengthy traditional court proceedings. Parties interpreting this subsection shall follow the federal court rulings which provide, without limitation, that the Federal Arbitration Act (A) is a congressional declaration of a liberal federal policy favoring arbitration agreements, notwithstanding substantive or procedural state policies to the contrary; (B) requires that federal and state courts rigorously enforce agreements to arbitrate; (C) requires the scope of this alternative dispute resolution agreement be interpreted broadly in favor of arbitration; and (D) requires disputes over whether an issue is arbitrable be resolved in favor of arbitration. Specifically, this subsection is to be interpreted in accordance with *Allied-Bruce Terminix Companies, Inc. v. Dobson*, 115 S. Ct. 834 (1995), and other federal court rulings. References herein to California Code Sections are not intended to be, and shall not be interpreted to be, a waiver of rights created under the Federal Arbitration Act.

19.3.1 Arbitration of Disputes Subject to a Home Warranty. To the extent that a Home Warranty has been issued by Declarant for a specific Lot and the Warranty Period under such warranty is still in effect, all disputes regarding such Lot shall be resolved by binding arbitration in accordance with the provisions of such warranty, as provided in Section 19.1.4 above.

19.3.2 Unresolved and Other Disputes. Any disputes between or among any Owner(s) and the Developer Parties in the following categories shall be resolved in accordance with the judicial reference provisions of subsection 19.3.4 below: (i) disputes regarding property not subject to a Home Warranty, (ii) disputes subject to a Home Warranty where the binding arbitration procedure has been ruled to be invalid, unenforceable or otherwise not applicable, and/or (iii) disputes which are not otherwise subject to California Civil Code Section 1375 or the Right to Repair Law.

19.3.3 Judicial Reference. All disputes specified in subsection 19.3.3 above shall be submitted to *general judicial reference* pursuant to California Code of Civil Procedure Sections 638 and 641-645.1 or any successor statutes thereto. Within ten (10) days of receipt by any party of a written request to resolve any such dispute under subsection 18.3.3 above, the parties shall agree upon a single referee. If the parties are unable to agree upon a referee within such ten (10) day period, then any party may thereafter seek to have a referee appointed under the California Code of Civil Procedure Sections 638 and 640. If the referee is appointed by the Court, the referee shall be a retired judge from JAMS, the American Arbitration Association ("*AAA*") or similar mediation/arbitration entity. The proposed referee may be challenged for any of the grounds listed in Section 641 of the California Code of Civil Procedure. The parties shall cooperate in good faith to ensure that all necessary and appropriate parties are included in

the judicial reference proceeding. If a dispute involves parties other than those listed above, this provision shall be interpreted to bring those third-party disputes into the general reference procedure prescribed herein to the extent permitted by law. All 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 general reference proceeding if all parties against whom Declarant has necessary or permissive cross-claims or counterclaims, including without limitation other Declarant Parties, will not or cannot be joined in the judicial reference proceeding.

The parties shall use the procedures adopted by JAMS for judicial reference (or any other entity offering judicial reference dispute resolution procedures as may be mutually acceptable to the parties), 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 such judicial reference proceedings, any fee to initiate such proceedings shall be advanced by the Declarant; however, the fees and costs of the judicial reference proceedings (e.g., the fee for the referee and all expert witness fees and costs, etc., but excluding all attorneys' fees) shall ultimately be borne as determined by the referee. In all cases, each party shall bear its own attorneys' fees at its sole cost and expense;
- (b) The proceedings shall be heard in the County in which the Properties is located, unless all parties agree to a different location;
- (c) The referee shall have the power to decide all issues of fact and/or law, and to report a statement of decision to the court on such issues, and to issue all recognized remedies available at law or in equity for any cause of action that is before the referee;
- (d) The referee may require one or more pre-hearing conferences;
- (e) 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;
- (f) A stenographic record of the proceedings shall be made;
- (g) The referee's statement of decision shall contain findings of fact and conclusions of law to the extent applicable and shall stand as the decision of the court;
- (h) The referee shall have the authority to rule on all post-hearing motions in the same manner as a trial judge;
- (i) The parties shall promptly and diligently cooperate with one another and the referee, and shall perform such acts as may be necessary to obtain a prompt and expeditious resolution of the dispute; and
- (j) 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 in the same manner as if the action had been tried by the court. The decision of the referee shall be appealable as if rendered by the court.

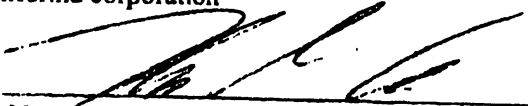
19.4 WAIVER OF COURT AND JURY TRIAL. AS TO ALL DISPUTES SUBJECT TO THE ALTERNATIVE DISPUTE RESOLUTION PROVISIONS SET FORTH OR REFERENCED IN THIS ARTICLE, EACH OWNER AND DECLARANT WAIVE ANY RIGHTS TO JURY TRIAL, APPEAL AND OTHER CIVIL LITIGATION PROCEEDINGS FOR SUCH DISPUTES, EXCEPT AS OTHERWISE EXPRESSLY SET FORTH OR REFERENCED HEREIN. IN THE EVENT ANY OF THE PROCEDURES SET FORTH OR REFERENCED HEREIN ARE DETERMINED TO BE INVALID OR UNENFORCEABLE, IN WHOLE OR IN MATERIAL PART, SUCH THAT THE RESOLUTION OF THE DISPUTE SHALL PROCEED BY WAY OF CIVIL LITIGATION PROCEEDINGS, EACH OWNER AND DECLARANT NONETHELESS WAIVE THE RIGHT TO JURY TRIAL WITH RESPECT TO SUCH DISPUTE.

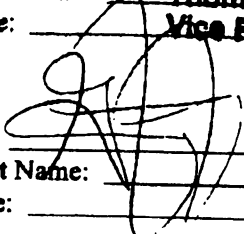
19.5 NO ENHANCED PROTECTION AGREEMENT. No language contained in this Declaration, any Notice of Addition or any Supplemental Declaration shall constitute, or be interpreted to constitute, an Enhanced Protection Agreement ("EPA"), as defined in Section 901 of the California Civil Code. Further, no express or implied representations or warranties made by Declarant in any other writing are intended to constitute, or to be interpreted to constitute, an EPA.

19.6 AMENDMENTS. The provisions of this Article may not be amended without the express written consent of Declarant.

This Declaration is dated for identification purposes August 16, 2005.

WILLIAM LYON HOMES, INC.,
a California corporation

By: 
Print Name: **Thomas G. Grable**
Title: **Vice President**

By: 
Print Name: **Gary S. Wangler**
Title: **Vice President**

Declarant

STATE OF CALIFORNIA)
) ss.
COUNTY OF ORANGE)

On _____, 2005, before me, _____,
personally appeared _____ and _____,
personally known to me (or proved to me on the basis of satisfactory evidence) to be the
person(s) whose name(s) (is) (are) subscribed to the within instrument and acknowledged to me
that (he) (she) (they) executed the same in (his) (her) (their) authorized capacity(ies), and that by
(his) (her) (their) signature(s) on the instrument the person(s), or the entity upon behalf of which
the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

(SEAL)

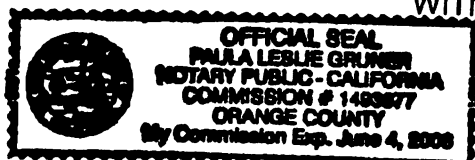
Notary Public in and for said State

STATE OF CALIFORNIA)
) ss.
COUNTY OF ORANGE)

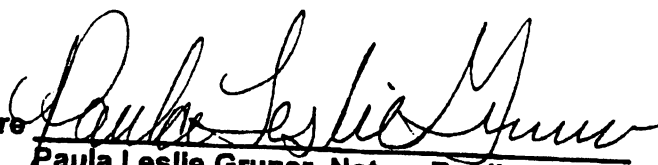


On August 16, 2005 before me, Paula Leslie Gruner, Notary Public, personally appeared, Thomas G. Grable and Gary S. Wangler, personally known to me to be the person(s) whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



Signature


Paula Leslie Gruner, Notary Public
Commission Expires June 4, 2008

SUBORDINATION

The undersigned, as Beneficiary of the beneficial interest in and under that certain Deed of Trust dated November 4, 2003, and recorded on November 6, 2003, as Instrument No. 2003001367041, in the Official Records of Orange County, California (the "**Deed of Trust**"), which Deed of Trust is by and between William Lyon Homes, Inc., a California corporation, as Trustor, and JPMorgan Chase Bank, N.A. (successor by merger to Bank One, N.A., a national banking association, with its main office in Chicago, Illinois) ("**JPMorgan**"), as Trustee, and JPMorgan, as Beneficiary, expressly subordinates said Deed of Trust and its beneficial interest thereunder to the foregoing Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Rancho Madrina, as amended or restated ("**Declaration**"), to any Notice of Addition of Territory recorded pursuant to the provisions of Article XVI of the Declaration, as amended or restated ("**Notice**"), any Supplemental Declaration, as amended or restated, and to all easements to be conveyed to the Association in accordance with the Declaration, any Notice and any Supplemental Declaration. By executing this Subordination, the undersigned agrees that should the undersigned acquire title to all or any portion of the Properties by foreclosure (whether judicial or nonjudicial), deed-in-lieu of foreclosure or any other remedy in or relating to the Deed of Trust, the undersigned will acquire title subject to the provisions of the Declaration, any applicable Notice and any applicable Supplemental Declaration, which shall remain in full force and effect.

Dated: 8/15/05

JPMorgan Chase Bank, N.A.
(successor by merger to Bank One, N.A.)
(Main Office Chicago)

By: [Signature]
Print Name: STEVEN W. STREHLWU
Title: VICE PRESIDENT

By: [Signature]
Print Name: JERRY HULL
Title: VICE PRESIDENT

[NOTARIAL ACKNOWLEDGMENT ON FOLLOWING PAGE]

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5/23/05

STATE OF ~~CALIFORNIA~~ ^{ARIZONA})
) ss.
COUNTY OF MARICOPA)

On August 15, 2005, before me, Christine A. Lukas,
personally appeared Steven D. Strehlow, VP and Jerry Hull, Vice President,
personally known to me (or proved to me on the basis of satisfactory evidence) to be the
person(s) whose name(s) (is) (are) subscribed to the within instrument and acknowledged to me
that (he) (she) (they) executed the same in (his) (her) (their) authorized capacity(ies), and that by
(his) (her) (their) signature(s) on the instrument the person(s), or the entity upon behalf of which
the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

(SEAL)



Christine A. Lukas
Notary Public in and for said State

SUBORDINATION

The undersigned, as Beneficiary of the beneficial interest in and under that certain Deed of Trust dated November 3, 2003, and recorded on November 26, 2003, as Instrument No. 2003001367042, in the Official Records of Orange County, California (the "*Deed of Trust*"), which Deed of Trust is by and between William Lyon Homes, Inc., a California corporation, as Trustor, and First American Title Insurance Company, as Trustee, and Romarco Realty Corporation, a California corporation, as Beneficiary, expressly subordinates said Deed of Trust and its beneficial interest thereunder to the foregoing Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Rancho Madrina, as amended or restated ("*Declaration*"), to any Notice of Addition of Territory recorded pursuant to the provisions of Article XVI of the Declaration, as amended or restated ("*Notice*"), any Supplemental Declaration, as amended or restated, and to all easements to be conveyed to the Association in accordance with the Declaration, any Notice and any Supplemental Declaration. By executing this Subordination, the undersigned agrees that should the undersigned acquire title to all or any portion of the Properties by foreclosure (whether judicial or nonjudicial), deed-in-lieu of foreclosure or any other remedy in or relating to the Deed of Trust, the undersigned will acquire title subject to the provisions of the Declaration, any applicable Notice and any applicable Supplemental Declaration, which shall remain in full force and effect.

Dated: July 22, 2005

ROMARCO REALTY CORPORATION, a California corporation

By: Robert A. Hendrickson
Print Name: Robert A. Hendrickson
Title: President

By: R. Stewart Honeyman, Jr.
Print Name: R. Stewart Honeyman, Jr.
Title: Vice-President

[NOTARIAL ACKNOWLEDGMENT ON FOLLOWING PAGE]

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STATE OF CALIFORNIA

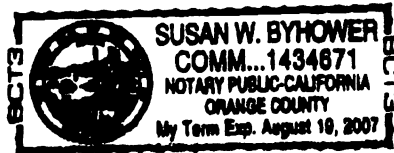
COUNTY OF Orange) ss.

On July 22, 2005 before me, Susan W. Byhower,
personally appeared Robert A. Hendricks and _____,
personally known to me (or proved to me on the basis of satisfactory evidence) to be the
person(s) whose name(s) (is) (are) subscribed to the within instrument and acknowledged to me
that (he) (she) (they) executed the same in (his) (her) (their) authorized capacity(ies), and that by
(his) (her) (their) signature(s) on the instrument the person(s), or the entity upon behalf of which
the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Susan W. Byhower
Notary Public in and for said State

(SEAL)



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5/23/05

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of

Los Angeles

ss.

On

8/11/05

Date

, before me,

Eden E. Roa

Name and Title of Officer (e.g., Notary Public)

personally appeared

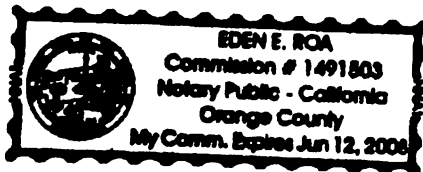
R. Stewart Honeyman, Jr.

Name(s) of Signer(s)

☒ personally known to me

☐ 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.

Eden E. Roa
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Decl. of CC&Rs & Reservation of Easements

Document Date: 5/29/05

Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer is Representing: Romarco Realty Corporation

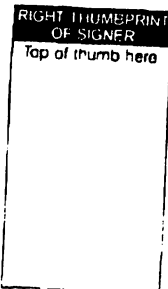


EXHIBIT A

LEGAL DESCRIPTION OF ANNEXABLE TERRITORY

All that certain real property located in the City of San Juan Capistrano, County of Orange, State of California, more particularly described as follows:

PARCEL 1

TRACT 16221, AS SHOWN ON A SUBDIVISION MAP, FILED ON OCTOBER 14, 2004, IN BOOK 861, PAGES 6 TO 20, INCLUSIVE, OF MISCELLANEOUS MAPS IN THE OFFICE OF THE ORANGE COUNTY RECORDER, EXCEPTING PHASE 1.

PARCEL 2

THAT PORTION OF SECTION 6, TOWNSHIP 8 SOUTH, RANGE 7 WEST, SAN BERNARDINO MERIDIAN, ACCORDING TO THE OFFICIAL PLAT FILED IN THE DISTRICT LAND OFFICE, OCTOBER 17, 1876, DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHEASTERLY CORNER OF THAT CERTAIN PARCEL OF LAND CONTAINING 9.095 ACRES AS SHOWN ON A MAP FILED IN BOOK 12, PAGE 6 OF RECORD OF SURVEYS, IN THE OFFICE OF THE COUNTY RECORDER OF ORANGE COUNTY, CALIFORNIA, SAID NORTHEASTERLY CORNER BEING A POINT ON A CURVE CONCAVE TO THE EAST AND HAVING A RADIUS OF 250.11 FEET AND A TOTAL CENTRAL ANGLE OF 50 DEG 59'; THENCE IN A NORTHERLY DIRECTION ALONG THE ARC OF THE ABOVE MENTIONED CURVE 93.13 FEET TO THE END OF THE CURVE; THENCE SOUTH 81 DEG 55' 00" EAST 31.04 FEET TO THE TRUE POINT OF BEGINNING; THENCE SOUTH 81 DEG 55' 00" EAST 219.22 FEET; THENCE SOUTH 44 DEG 11' 13" EAST 183.37 FEET; THENCE SOUTH 0 DEG 29' 50" WEST 56.60 FEET; THENCE SOUTH 54 DEG 23' 40" EAST 95.31 FEET TO A POINT ON A CURVE CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 330.37 FEET AND A CENTRAL ANGLE OF 6 DEG 40' 10"; THENCE IN A SOUTHERLY DIRECTION ALONG THE ARC OF THE ABOVE MENTIONED CURVE 38.46 FEET TO THE END OF THE CURVE; THENCE SOUTH 27 DEG 16' 00" WEST 52.08 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE NORTHWEST HAVING A RADIUS OF 180.00 FEET AND A TOTAL CENTRAL ANGLE OF 62 DEG 15' 00"; THENCE IN A SOUTHWESTERLY AND WESTERLY DIRECTION ALONG THE ARC OF THE ABOVE MENTIONED CURVE 195.56 FEET TO THE END OF THE CURVE; THENCE SOUTH 89 DEG 31' 00" WEST 111.38 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE NORTHEAST HAVING A RADIUS OF 15.00 FEET AND A TOTAL CENTRAL ANGLE OF 76 DEG 27' 00"; THENCE IN A WESTERLY AND NORTHWESTERLY DIRECTION ALONG THE ARC OF THE ABOVE MENTIONED CURVE 20.01 FEET TO THE END OF THE CURVE; THENCE NORTH 14 DEG 02' 00" WEST 87.99 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE SOUTHWEST HAVING A RADIUS OF 430.00 FEET AND A TOTAL CENTRAL ANGLE OF 14 DEG 00' 00"; THENCE IN A NORTHWESTERLY DIRECTION ALONG THE ARC OF THE ABOVE MENTIONED CURVE 105.07 FEET TO THE END OF THE CURVE; THENCE NORTH 28 DEG 02' 00" WEST 71.54 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE EAST HAVING A RADIUS OF 220.11 FEET AND A

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TOTAL CENTRAL ANGLE OF 50 DEG 59' 00"; THENCE IN A NORTHERLY DIRECTION
ALONG THE ARC OF THE ABOVE MENTIONED CURVE 195.86 FEET OT THE END OF
THE CURVE; THENCE NORTH 22 DEG 57' 00" EAST 7.96 FEET TO THE TRUE POINT
OF BEGINNING.

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EXHIBIT B
ARTICLES OF INCORPORATION OF THE ASSOCIATION

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5/23/05

**ARTICLES OF INCORPORATION
OF
RANCHO MADRINA COMMUNITY ASSOCIATION**

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

TWO: This corporation is a nonprofit mutual benefit corporation organized under the Nonprofit Mutual Benefit Corporation Law. The purpose of this corporation is to engage in any lawful act or activity, other than credit union business, for which a corporation may be organized under such law.

THREE: The Corporation's initial agent for service of process is Tom Grable whose business address is 4490 Von Karman, Newport Beach, CA 92660.

FOUR: The Corporation shall have and exercise any and all powers, rights and privileges which a corporation organized under the Nonprofit Mutual Benefit Corporation Law may now or hereafter have or exercise, provided that the Corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the specific purpose of the Corporation, which is to operate a homeowners Corporation within the meaning of Section 23701t of the California Revenue and Taxation Code and Section 528 of the Internal Revenue Code and to manage a common interest development under the Davis-Stirling Common Interest Development Act. The Corporation does not have a corporate office. The common interest development is near the intersection of Rancho Viejo Road and Ortega Highway, San Juan Capistrano, California 92675-0000.

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

SIX: The Corporation has no managing agent.

The undersigned, who is the incorporator of the Corporation, has executed these Articles of Incorporation on September ____, 2004.

Thomas G. Grable, Incorporator

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EXHIBIT C
BYLAWS OF THE ASSOCIATION

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**BYLAWS
OF
RANCHO MADRINA COMMUNITY ASSOCIATION**

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07/19/04

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RANCHO MADRINA COMMUNITY ASSOCIATION

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BYLAWS
OF
RANCHO MADRINA COMMUNITY ASSOCIATION

ARTICLE 1
PLAN OF OWNERSHIP

1.1. **DEFINITIONS AND INTERPRETATION.** Unless otherwise provided in these Bylaws, the capitalized terms used in these Bylaws have the same meanings as in the Declaration (defined below). These Bylaws shall be interpreted in accordance with Section 1.2 of the Declaration.

1.2. **NAME.** The name of the corporation is Ranch Madrina Community Association. The principal office of the Association shall be located in the County.

1.3. **APPLICATION.** These Bylaws apply to the planned residential development known as Rancho Madrina, located in the County. All Persons who use the facilities of the Properties in any manner, are subject to the regulations in these Bylaws and in the Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Rancho Madrina Recorded in the Official Records of the County ("**Declaration**") against the Properties. Use of any Lot in the Properties signifies acceptance and ratification of these Bylaws.

ARTICLE 2
BOARD OF DIRECTORS

2.1. **NUMBER.** The property, business and affairs of the Association shall be governed and managed by a Board of Directors composed of five (5) persons, each of whom, must be either an Owner or an agent of Declarant until Declarant no longer owns a Lot or any of the Annexable Territory. The authorized number of Directors may be changed by a duly adopted amendment to these Bylaws.

2.2. **QUALIFICATIONS FOR HOLDING OFFICE.** Directors are encouraged to satisfy the following requirements while they serve in office:

- (a) Not be absent from three (3) consecutive meetings of the Board;
- (b) Attend at least seventy five percent (75%) of the Board meetings held each year and attend the entire meeting each time;
- (c) Exhibit respect, professionalism and courteous behavior to Owners, committee members, vendors, the Manager and its staff, and any other Persons associated with or retained by the Association;
- (d) For non-Declarant Board members, be an Owner in good standing.

2.3. ELECTION.

2.3.1. General Procedure. At the first annual meeting of the Owners, and at each annual meeting thereafter, the Owners shall elect new Directors to fill vacancies on the Board. If an annual meeting is not held, or all positions on the Board are not filled at the annual meeting, Board members may be elected in accordance with the problems for filling vacancies set forth in Section 2.5.

2.3.2. Voting. Voting shall be by secret written ballot. An Owner may cumulate his votes for any candidate for the Board in any election in which more than two (2) Directors are to be elected if (a) the candidate's name has been placed in nomination before the voting, and (b) an Owner has given notice at the meeting before the voting of such Owner's intent to cumulate votes. If an Owner cumulates his votes, such Owner may cast a number of votes equal to the Owner's share of the voting power multiplied by the number of Directors to be elected.

2.3.3. Special Election Requirement. Until (a) the Class C Termination Date or (b) Declarant is no longer entitled to exercise a majority of the Association's voting power, not less than 20% of the members of the Board must be elected solely by the votes of the Owners other than Declarant.

2.4. TERM OF OFFICE. Each Director shall hold office until the earlier to occur of (a) the end of the Director's term of office after a successor has been elected, or (b) his death, resignation, removal or judicial adjudication of mental incompetence. At the first annual meeting, the term of office of the three (3) Directors appointed by Declarant shall be three (3) years and the term of office of the two (2) Directors elected by the majority of the members shall be two (2) years. The term of office of each Director elected to fill a vacancy created by expiration of a Director's term of office shall be two (2) years. The term of office of each Director elected or appointed to the Board for any other reason shall be the balance of the unserved term. Any person serving as a Director may be reelected. There is no limit on the number of terms which a Director may serve.

2.5. VACANCIES. A vacancy on the Board is deemed to exist in case of death, resignation, removal or judicial adjudication of mental incompetence of any Director or if the Owners fail to elect the full number of authorized Directors at any meeting at which a Directors election is to take place. Vacancies on the Board caused by any reason other than the removal of a Director may be filled by either (a) vote of a majority of the remaining Directors, even though they may constitute less than a quorum, or (b) by vote of the Owners at a meeting. Any vacancy caused by the removal of a Director must be filled by a vote of the Owners. Until the Class C Termination Date, a vacancy in the office of a Director who was appointed by Declarant shall be filled only by an appointee of Declarant. A Director may resign at any time by giving notice to the President, the Secretary or the Board. Any Director who ceases to be an Owner or an agent of Declarant is deemed to have resigned from the Board.

2.6. REMOVAL OF DIRECTORS. At any meeting of the Owners, any individual Director or the entire Board may be removed before the expiration of their terms of office with or without cause by the vote of Owners representing a majority of the Association's voting power (including votes attributable to Declarant).

However, if the entire Board is not removed as a group pursuant to a single vote, no individual Director may be removed if the number of votes cast against removal would be sufficient to elect such Director if voted cumulatively at an election at which the same total number of votes were cast and the entire number of Directors authorized at the time of the Director's most recent election were then being elected. Any Director whose removal has been proposed by the Owners must be given an opportunity to be heard at the meeting. If any Directors are removed, new Directors may be elected at the same meeting. However, any Director elected to office solely by the votes of Owners other than Declarant pursuant to Section 2.3.3 may be removed only by the vote of at least a simple majority of the Association's voting power represented by Owners other than Declarant. Any Director elected to office solely by votes of Declarant may only be removed by Declarant. Any Director appointed to the Board by the Class C Member may only be removed by the Class C Member until the Class C Termination Date.

2.7. COMPENSATION. Directors may not receive any compensation for their services as Directors unless such compensation is first approved by Owners representing at least a majority of the Association's voting power. However, (a) nothing in these Bylaws precludes any Director from serving the Association in some other capacity and receiving compensation therefor, and (b) any Director may be reimbursed for actual expenses incurred in performance of Association duties, and (c) no officer, employee or director of Declarant or any affiliate of Declarant may receive any compensation for service as a Director of the Association.

2.8. POWERS AND DUTIES. The Board has the powers and duties necessary to administer the Association's affairs. All the Association's powers shall be exercised by the Board except those powers specifically reserved to the Owners.

2.9. SPECIAL POWERS AND DUTIES. Without limiting the scope of the Board's general powers and duties, the Board is granted the following powers and duties:

2.9.1. Officers, Agents and Employees. The power and duty to select, appoint and remove all Association officers, agents and employees, to prescribe such powers and duties for them as may be consistent with law and with the Restrictions, to fix their compensation, to require from them such security for faithful service as the Board considers advisable, and to contract to provide them with such indemnification as the Board determines is appropriate.

2.9.2. Contracts. The power to enter into contracts. This includes contracts (a) for maintenance, landscaping, and common utilities services, (b) materials, supplies and other Common Expenses relating to the Lots, (c) employing personnel necessary to manage the Properties, including legal and accounting services, and (d) paying for Improvements on the Common Area. The Board may not enter into any contract with a term in excess of one (1) year, without the vote or written consent of Owners representing at least a majority of the Association's voting power, except for the following:

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

(b) prepaid casualty or liability insurance policies of not more than three (3) years' duration provided that the policies permit short-term cancellation by the Association;

(c) agreements for television services and equipment, satellite dish services and equipment, communication services and equipment, and comparable technology, services and equipment with terms not in excess of five (5) years, provided that Declarant does not have a direct or indirect ownership interest in the supplier of such services or equipment equal to or greater than ten percent (10%);

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

(e) a contract approved by the DRE;

(f) a contract for a term not to exceed three (3) years that is terminable by the Association after no longer than one (1) year without cause or penalty or other obligation on ninety (90) days written notice of termination to the other party; and

(g) contracts in which the Association enters into litigation or any alternative dispute resolution procedure when the Association's obligation to pay for services is set in whole or in part on a contingency basis only if they are (i) contracts for collection of assessments or other accounts receivable, (ii) or contracts involving evaluation of services, or (iii) contracts with a total amount to be paid by the Association not in excess of Forty Thousand Dollars (\$40,000.00).

2.9.3. Enforcement. The power to enforce the Association Governing Document and any agreements entered into by the Association and to impose sanctions against Owners for violating the Association Governing Document.

2.9.4. Principal Office, Place of Meetings, Seal. The power but not the duty to move the Association's principal office from one location to another in the County; to designate any place in the County for holding any meetings of Owners consistent with the provisions of Section 4.5; and to adopt and use a corporate seal and to alter the form of such seal.

2.9.5. Assessments. The power and duty to fix and levy Assessments and identify the due date for payment of Assessments. The Board may incur Common Expenses. The Association's funds shall be held in trust for the Owners.

2.9.6. Insurance. The power and duty to contract and pay for insurance in accordance with the Declaration, covering and protecting against such damages or injuries as the Board considers advisable (which coverage may include medical expenses of persons injured on the Common Area). The Board shall review, not less frequently than annually, all insurance policies and bonds obtained by the Board on the Association's behalf.

2.9.7. Delegation. The power but not the duty to delegate its powers according to law.

2.9.8. **Bylaws.** The power and duty to adopt these Bylaws.

2.9.9. **Records.** The power and duty to keep a complete record of Association acts and corporate affairs.

2.9.10. **Sale of Property.** The power but not the duty to sell property of the Association. Approval from Owners representing at least a majority of the Association's voting power must be obtained before property of the Association having an aggregate fair market value greater than five percent (5%) of the Association's budgeted gross expenses for the Fiscal Year is sold in a single Fiscal Year.

2.9.11. **Manager.** The power to engage a professional Manager for the Association at a compensation established by the Board to perform such duties and services as the Board authorizes.

2.9.12. **Agreements with Declarant.** The power but not the duty to negotiate and enter into agreements with Declarant.

2.10. **DISTRIBUTION OF INFORMATION.** The Board shall distribute the following financial information to all Owners (and any Beneficiary, insurer and guarantor of a first Mortgage on request), regardless of the number of Owners or the amount of assets of the Association:

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

(a) Estimated revenue and Common Expenses computed on an accrual basis.

(b) A summary of the Association's reserves based on the most recent review or study conducted pursuant to Section 1365.5 of the California Civil Code, which must be printed in bold type and include all of the following:

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

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

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

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

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

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

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

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

2.10.2. Financial Report. A report consisting of the following must be distributed within one hundred twenty (120) days after the close of the Fiscal Year.

- (a) A balance sheet as of the end of the Fiscal Year.
- (b) An operating (income) statement for the Fiscal Year.
- (c) A statement of changes in financial position for the Fiscal Year.
- (d) Any information required to be reported under Section 8322 of the California Corporations Code.
- (e) For any Fiscal Year in which the Association's gross income exceeds \$75,000, a copy of a review of the annual report prepared in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy.
- (f) A statement of the place where the names and addresses of the current Owners are located.

If the report referred to in Section 2.10.2 is not prepared by an independent accountant, it must be accompanied by the certificate of an authorized Association officer stating that the statement was prepared from the Association's books and records without independent audit or review.

2.10.3. Insurance Information. The Association shall distribute to all Owners a summary of the Association's property, general liability, and earthquake and flood insurance policies within sixty (60) days before the beginning of the Fiscal Year, that includes all of the following information: (i) the name of the insurer, (ii) the type of insurance, (iii) the limits of coverage, and (iv) the amount of the deductibles, if any.

(a) The Association shall, as soon as reasonably practical, notify the Owners by first-class mail if any of the policies described above have lapsed, been canceled, and are not immediately renewed, restored, or replaced, or if there is a significant change, such as a reduction in coverage or limits or an increase in the deductible, for any of those policies. If the

Association receives any notice of nonrenewal of a policy described above, the Association shall immediately notify the Owners if replacement coverage will not be in effect by the date the existing coverage will lapse.

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

(c) The summary distributed above shall contain, in at least 10-point boldface type, the following statement:

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

2.10.4. Enforcement Policies. In addition to financial statements, the Board shall annually distribute within sixty (60) days before the beginning of the Fiscal Year a statement of the Association's policies and practices in enforcing its remedies against Owners for defaults in the payment of Assessments, including the recording and foreclosing of liens against Lots.

2.10.5. Accounts. On at least a quarterly basis, the Board shall: (a) cause to be completed and review a current reconciliation of the Association's operating and reserve accounts, (b) review the current Fiscal Year's actual reserve revenues and expenses compared to the Budget for the then current Fiscal Year, (c) review the income and expense statement for the Association's operating and reserve accounts, (d) review the most current account statements prepared by the financial institutions where the Association keeps its operating and reserve accounts, and (e) fulfill any additional duties established by Civil Code Section 1365.5. The signatures of either (i) two (2) Directors, or (ii) one (1) Director and one (1) Association officer (who is not also a Director) are required for the withdrawal of money from the Association's reserve accounts. As used in this Subsection, the term "reserve accounts" means Budgeted funds that the Board has designated for use to defray the future repair and replacement of, or additions to, those major components of the Common Area which the Association is obligated to maintain.

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

2.11. MEETINGS.

2.11.1. Organization Meeting. The first regular ("organization") meeting of a newly elected Board must be held within ten (10) days of election of the Board, at such place as is fixed and announced by the Directors at the meeting at which such Directors were elected, to organize, elect officers and transact other business. No notice is necessary to the newly elected Directors to hold such meeting; provided that (a) a majority of the whole Board is present when the time and place are announced at the annual meeting and (b) the meeting is held on the same day and at the same place as the annual meeting of the Owners at which the newly constituted Board was elected.

2.11.2. Regular Meetings. Regular meetings may be held at such time and place in the Properties as is determined by a resolution adopted by a majority of a quorum of the Directors; however, regular meetings must be held no less frequently than quarterly. Notice of the time and place of regular meetings of the Board shall be given to each Director at least four (4) days before the date of the meeting. Notices may be given personally or by telephone, including a voice messaging system or other system or technology designed to record and communicate messages, facsimile, electronic mail, or other electronic means or posted at a prominent place or places in the Common Area.

2.11.3. Special Meetings. Special meetings may be called by the President or by any two (2) Directors by posting notice at least four (4) days before such meeting at a prominent place or places in the Common Area or on four (4) days' notice by first-class mail or forty-eight (48) hours' notice delivered personally or by telephone, including a voice messaging system or other system or technology designed to record and communicate messages, telegraph, facsimile, electronic mail, or other electronic means. The notice must state the time, place and the purpose of the meeting.

2.11.4. Executive Sessions. The Board may convene in executive session to discuss and vote upon personnel matters, litigation, matters relating to the formation of contracts with third parties, Owner discipline or to meet with an Owner, upon the Owner's request, regarding the Owner's payment of Assessments, as specified in Civil Code Section 1367 or 1367.1. The nature of business to be considered in executive session must first be announced in an open session and must be generally noted in the minutes of the immediately following meeting that is open to the entire membership.

2.11.5. Other Meetings. Any congregation of a majority of the members of the Board at the same time and place to hear, discuss, or deliberate on any item of business scheduled to be heard by the Board, except those matters that may be discussed in executive session, shall constitute a meeting of the Board. All Owners shall have the right to attend any regular, special or other meeting of the Board, except an executive session. Owners who are not Directors may not participate in any deliberation or discussion at such meetings unless authorized by a vote of a majority of a quorum of the Board. However, at each Board meeting, except for executive sessions, the Board must set aside time for Owners to speak, subject to reasonable limits imposed by the Board.

2.11.6. Notice to Owners. Generally, if a meeting of the Board is not a regular or special meeting, Owners shall be given notice of the time and place of the meeting at least four

(4) days before the meeting. Notice required by this Section may be given by posting the notice in a prominent place or places in the Common Area, by mail or delivery of the notice to each Lot in the Properties, or by newsletter or other similar means of communication. If there are circumstances that could not have been reasonably foreseen which require immediate attention and possible action by the Board and which of necessity make it impractical to provide notice to the Owners, then an emergency meeting of the Board may be called by the President or any two other members of the Board without providing notice to the Owners.

2.11.7. Waiver of Notice. Before or at any meeting of the Board, any Director may, in writing, waive personal notice of such meeting. Attendance by a Director at any Board meeting waives the requirement of personal notice. If all Directors are present at a Board meeting, no notice to Directors is required and any business may be transacted at such meeting. The transactions of any Board meeting, however called and noticed or wherever held, are valid as though had at a meeting duly held after regular call and notice, if (a) a quorum is present, (b) notice to the Owners of such meeting was posted as provided in Sections 2.11.2, 2.11.3, or 2.11.6, and (c) either before or after the meeting, each of the Directors not present signs a written waiver of notice, a consent to holding such meeting, or an approval of the Minutes thereof. The Secretary shall file all such waivers, consents and approvals with the Association's records or make them a part of the Minutes of the meeting.

2.12. ACTION WITHOUT MEETING. The Board may act without a meeting if all Directors consent in writing to such action. Written consents must be filed with the minutes of the Board. Each action by written consent has the same effect as a unanimous vote of such Directors. Within three (3) days after the written consents of all Directors have been obtained, an explanation of any action taken by unanimous written consent without a meeting must be either (a) posted by the Board in a prominent place or places in the Common Area, or (b) communicated to the Owners by other means the Board determines to be appropriate.

2.13. QUORUM AND ADJOURNMENT. Except as otherwise expressly provided in these Bylaws, at all meetings of the Board, a majority of the Directors constitutes a quorum for the transaction of business, and the acts of a majority of the Directors present at a meeting at which a quorum is present are the acts of the Board. At any meeting of the Board when less than a quorum present, the majority of those present may adjourn the meeting to another time. At any such reconvened meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice if a quorum is present.

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

ARTICLE 3 OFFICERS

3.1. DESIGNATION. The Association's principal officers are a President, a Vice President, a Secretary, and a Treasurer, all elected by the Board. The Board may appoint an Assistant Treasurer, an Assistant Secretary and such other officers as it determines to be

necessary. Officers other than the President need not be Directors. Any person may hold more than one office.

3.2. ELECTION OF OFFICERS. The Board shall annually elect the Association's officers at the new Board's organization meeting. Each officer shall hold his office at the pleasure of the Board, until he resigns or is removed, is otherwise disqualified to serve or a successor is elected and qualified to serve.

3.3. REMOVAL OF OFFICERS. On an affirmative vote of a majority of the entire Board, any officer may be removed, either with or without cause, and a successor elected at any meeting of the Board. Any officer may resign at any time by giving written notice to the Board or to the President or Secretary. Any such resignation is effective on the date of receipt of such notice or at any later time specified therein. Unless specified in the notice, acceptance of the resignation by the Board is not necessary to make it effective.

3.4. COMPENSATION. No officer may receive any compensation for services performed in the conduct of the Association's business unless such compensation is approved by the vote or written consent of Owners representing at least a majority of the Association's voting power; however (a) nothing in these Bylaws precludes any officer from serving the Association in some other capacity and receiving compensation therefor, and (b) any officer may be reimbursed for actual expenses incurred in the performance of Association duties. Appointment of any officer does not create contractual rights of compensation for services performed by such officer. No officer, employee or director of Declarant or any affiliate of Declarant may receive any compensation for service as an officer of the Association.

3.5. PRESIDENT. The President is the chief executive officer of the Association and shall (a) preside at all Association and Board meetings, (b) have the general powers and duties which are usually vested in the office of the President of a corporation, including but not limited to the power to appoint committees from among the Owners as the President decides is appropriate to assist in the conduct of the Association's affairs, and (c) subject to the control of the Board, have general supervision, direction and control of the Association's business. The President is ex officio a member of all standing committees and has such other powers and duties as may be prescribed by the Board or these Bylaws.

3.6. VICE PRESIDENT. The Vice President shall take the President's place and perform the President's duties whenever the President is absent, disabled, fails or refuses to act. If neither the President nor the Vice President is available to perform the President's duties, the Board shall appoint another member of the Board to do so on an interim basis. The Vice President has such other powers and duties as may be prescribed by the Board or these Bylaws.

3.7. SECRETARY. The Secretary shall (a) keep the Minutes of all meetings of the Board and of the Association at the Association's principal office or at such other place as the Board may order, (b) keep the Association's seal in safe custody, (c) have charge of such books and papers as the Board may direct, (d) in general, perform the duties incident to the office of Secretary, (e) give, or cause to be given, notices of meetings of the Owners and of the Board required by these Bylaws or by law to be given, (f) keep a record book of Owners, listing the names, mailing addresses and telephone numbers of Owners, as furnished to the Association ("Membership Register"), and (g) record in the Membership Register the termination or transfer

of ownership by any Owner, together with the date of the transfer. The Secretary has such other powers and duties as may be prescribed by the Board or these Bylaws.

3.8. **TREASURER.** The Treasurer is the Association's chief financial officer and is responsible for Association funds. The Treasurer shall (a) keep, or cause to be kept, full and accurate accounts and tax and business records of the Association, including accounts of all assets, liabilities, receipts and disbursements, (b) be responsible for the deposit of all funds in the name of the Association in such depositories as the Board designates, (c) disburse the Association's funds as ordered by the Board, and (d) render to the President and Directors, on request, an account of all transactions as Treasurer and of the Association's financial condition. The Treasurer has such other powers and duties as may be prescribed by the Board or these Bylaws.

ARTICLE 4 OWNERS

4.1. **VOTING RIGHTS.** The Association has three (3) classes of Membership, as described in the Declaration. The Class A and Class B Memberships are voting Memberships. The Class C Membership gives the Declarant the right to appoint the majority of the Board until the Class C Termination Date. Except as provided in Section 2.3.3, any provision of the Bylaws which requires the vote or written consent of a specified percentage of the Association's voting power before action may be undertaken (i.e., other than actions requiring merely the vote or written consent of a majority of a quorum) requires the approval of such specified percentage of (a) the Class A Membership and Class B Membership (so long as a Class B Membership exists), and (b) both the Association's total voting power and the Association's voting power represented by Owners other than Declarant.

4.2. **MAJORITY OF QUORUM.** Unless otherwise provided in the Restrictions, any action which may be taken by the Association may be taken by a majority of a quorum of the Owners.

4.3. **QUORUM.** Except as otherwise provided in these Bylaws, the presence in person or by proxy of at least twenty-five percent (25%) of the Association's voting power constitutes a quorum of the Membership. Owners present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, despite the withdrawal of enough Owners to leave less than a quorum, if any action taken (other than adjournment) is approved by at least a majority of a quorum. If a meeting is actually attended, in person or by proxy, by Owners having less than one-third (1/3) of the Association's voting power, then no matter may be voted on except matters which were generally described in the notice of the meeting. No action by the Owners on any matter is effective if the votes cast in favor are fewer than the minimum number of votes required by the Restrictions to approve the action.

4.4. **PROXIES.** Votes may be cast in person or by proxy. Proxies must be in writing and filed with the Secretary in advance of each meeting. Every proxy is revocable and automatically ceases after completion of the meeting for which the proxy was filed. Any form of proxy or written ballot distributed by any Person to the Owners must afford the opportunity to specify a choice between approval and disapproval of each matter or group of matters to be acted

on, except it is not mandatory that a candidate for election to the Board be named in the proxy or written ballot. The proxy or written ballot must provide that, when the Owner specifies a choice, the vote shall be cast in accordance with that choice. The proxy must also identify the person authorized to exercise the proxy and the length of time it will be valid. No proxy is valid with respect to a vote on any matter described in Section 7613(g) of the California Corporations Code unless the general nature of the proposal was described in the proxy.

4.5. PLACE OF MEETINGS OF OWNERS. Meetings of the Owners shall be held on the Properties, or such other suitable place as proximate thereto as practical and convenient to the Owners, as designated by the Board.

4.6. ANNUAL MEETINGS OF OWNERS. The first annual meeting of Owners shall be held no later than the earlier to occur of (i) forty-five (45) days after the Close of Escrow for the sale of fifty-one percent (51%) of the Lots in Phase I, or (ii) within six (6) months after the Close of Escrow for the sale of the first Lot in Phase I. Thereafter, the annual meetings shall be held on or about the anniversary date of the first annual meeting. Each first Mortgagee may designate a representative to attend all annual meetings.

4.7. SPECIAL MEETINGS OF OWNERS. The Board shall call a special meeting of the Owners (a) as directed by resolution of a majority of a quorum of the Board, (b) by request of the President of the Association, or (c) on receipt of a petition signed by Owners representing at least five percent (5%) of the Association's total voting power. The Secretary shall give notice of any special meeting within twenty (20) days after adoption of such resolution or receipt of such request or petition. The notice must state the date, time and place of the special meeting and the general nature of the business to be transacted. The special meeting must be held not less than thirty-five (35) nor more than ninety (90) days after adoption of such resolution or receipt of such request or petition. No business may be transacted at a special meeting except as stated in the notice. Each first Mortgagee may designate a representative to attend all special meetings.

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

Notwithstanding any other provision of these Bylaws, approval by the Owners of any of the following proposals, other than by unanimous approval of those Owners entitled to vote, is not valid unless the general nature of the proposal was stated in the notice or in any written

waiver of the notice: (a) removing a Director without cause; (b) filling vacancies on the Board; (c) approving a contract or transaction between the Association and one or more Directors, or between the Association and any entity in which a Director has a material financial interest; (d) amendment of the Articles; or (e) electing to wind up and dissolve the Association.

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

4.10. ADJOURNED MEETINGS. If a quorum is not present at the time and place established for a meeting, a majority of the Owners who are present, either in person or by proxy, may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the original meeting date, at which meeting the quorum requirement is the presence in person or by proxy of Owners holding at least twenty-five percent (25%) of the Association's voting power. Such an adjourned meeting may be held without the notice required by these Bylaws if notice thereof is given by announcement at the meeting at which such adjournment is taken.

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

4.12. ACTION WITHOUT MEETING. Except for election of Directors, any action which may be taken at a meeting of the Owners may be taken without a meeting by written ballot of the Owners. Ballots must be solicited in the same manner as provided in these Bylaws for giving of notice of meetings to Owners. Such solicitations must specify (a) the number of responses needed to meet the quorum requirements, (b) the percentage of approvals necessary to approve the action, and (c) the time by which ballots must be received to be counted. The form of written ballot must afford an opportunity to specify a choice between approval and disapproval of each matter and must provide that, where the Owner specifies a choice, the vote shall be cast in accordance therewith. Receipt within the time period specified in the solicitation of (i) ballots which equal or exceed the quorum which would be required if the action were taken at a meeting, and (ii) approvals which equal or exceed the number of votes which would be required for approval if the action were taken at a meeting at which the total number of votes cast was the same as the total number of ballots cast, constitutes approval by written ballot.

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

4.14. MINUTES, PRESUMPTION OF NOTICE. Minutes or a similar record of the proceedings of meetings of Owners, when signed by the President or Secretary, shall be presumed truthfully to evidence the matters described therein. A recitation in the Minutes executed by the Secretary that proper notice of the meeting was given constitutes prima facie evidence that such notice was given.

ARTICLE 5 AMENDMENTS

These Bylaws may be amended by the vote or written consent of Owners representing at least (a) a majority of the voting power of each class of the Owners, and (b) a majority of the Association's voting power represented by Owners other than Declarant; provided that the specified percentage of each class of Owners necessary to amend a specific provision of these Bylaws may not be less than the percentage of affirmative votes prescribed for action to be taken under that provision. These Bylaws may be amended by a majority of the entire Board, (i) at any time before the Close of Escrow for the sale of the first Lot, or (ii) if the amendment is within the Board's power to adopt without Owner approval pursuant to the California Corporations Code and either (a) the proposed amendment conforms the Bylaws to California law or the requirements of VA, FHA, DRE, FNMA, GNMA or FHLMC, or (b) the proposed amendment corrects a typographical error in the Bylaws. Any amendment to these Bylaws which materially affects matters listed in Article XII or Section 13.2 of the Declaration must be approved by the Beneficiaries of that percentage of first Mortgages on the Lots which is specified in the affected provision of Article XII or Section 13.2 of the Declaration, respectively. If an amendment to these Bylaws materially affects matters listed in both Article XII and Section 13.2 of the Declaration, the amendment must be approved pursuant to the requirements of both Article XII and Section 13.2.

ARTICLE 6 MISCELLANEOUS

6.1. CHECKS, DRAFTS AND DOCUMENTS. All checks, drafts, orders for payment of money, notes and other evidences of indebtedness issued in the name of or payable to the Association must be signed or endorsed in the manner and by the person or persons the Board designates by resolution, subject to the requirements of Section 2.10.5 for withdrawing money from the Association's reserve accounts.

6.2. CONFLICTS. If any of these Bylaws conflict with any laws of the State of California, such conflicting Bylaws shall be void on final court determination to such effect, but all other Bylaws shall remain in full force. In case of any conflict between the Articles of

Incorporation and these Bylaws, the Articles of Incorporation shall control. In case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

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

6.4. AVAILABILITY OF ASSOCIATION DOCUMENTS.

6.4.1. Records To Be Maintained. The Association shall keep at its principal office (or at such other place in or near the Properties as the Board may prescribe) the Restrictions and the Association's books of account; minutes of meetings of Owners, the Board and committees; and the Membership Register (collectively, the "Association Documents"), each of which shall be made available for inspection and copying by any Owner or the Owner's duly appointed representative for a purpose reasonably related to the Owner's interest as an Owner.

6.4.2. Limits on Availability. The Board may establish reasonable rules regarding (a) notice to be given to the custodian of the Association Documents by the Owner desiring to make the inspection, (b) hours and days of the week when such an inspection may be made, and (c) payment of the cost of copying any of the Association Documents requested by an Owner; provided that every Director may at any reasonable time inspect all Association Documents and the physical properties owned or controlled by the Association, and make extracts and copies of documents.

6.4.3. Time of Availability. The minutes, minutes that are proposed for adoption that are marked to indicate draft status, or a summary of the minutes, of any meeting of the Board (other than an executive session) must be available to Owners within thirty (30) days of the meeting. The minutes, proposed minutes or summary minutes must be distributed to any Owner on request and on reimbursement of the Association's cost in making that distribution.

6.4.4. Distribution to Owners. No later than ten (10) days after the Association receives written request from any Owner, the Association shall provide to that Owner a copy of each of the documents listed in California Civil Code Section 1368(a) that have been requested by the Owner. Owners must be notified in writing when the budget required in Section 2.10.1 is distributed or at the time of any general mailing to the entire Association Membership of their right to have copies of the minutes of meetings of the Board and how and where those minutes may be obtained.

6.5. FISCAL YEAR. The Board shall select the Association's Fiscal Year. The Fiscal Year is subject to change as the Board determines.

**ARTICLE 7
NOTICE AND HEARING PROCEDURE**

7.1. INITIAL COMPLAINT. Persons who believe a violation of the Restrictions has occurred may file a complaint with a Person designated by the Board on a form approved by

the Board. The Board will commence the enforcement process. In its discretion, the Board may issue one or two violation letters to the Person alleged to have committed the violation ("respondent") or set a hearing described in Section 7.2 below. The Board may direct the Manager to assist the Board in any of the steps the Board chooses to take in enforcing the Restrictions except that decisions made at hearings must be made by the Board.

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

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

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

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

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

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

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

7.4. IMPOSITION OF SANCTIONS. After affording the respondent an opportunity for a hearing before the Board, the Board may impose any one or more of the following sanctions: (a) levy a Special Assessment as authorized in the Declaration; (b) suspend or condition the respondent's right to use any recreational facilities the Association owns, operates or maintains commencing on a date in the future selected by the Board; (c) suspend the respondent's voting privileges established under the Declaration; (d) enter upon a Lot to perform maintenance which, according to the Declaration, is the responsibility of the respondent; or (e) record a notice of noncompliance if allowed by law. Any suspension of Membership privileges may not be for a period of more than thirty (30) days for any noncontinuing infraction, but in the case of a continuing infraction (including nonpayment of any assessment after the same becomes delinquent) may be imposed for so long as the violation continues. Written notice of any sanctions to be imposed must be delivered to the respondent personally, by any system or technology designed to record and communicate messages, facsimile, electronic mail, or other electronic means, via first class mail or certified mail return receipt requested, or any

combination of the foregoing. No action against the respondent arising from the alleged violation may take effect prior to five (5) days after the hearing.

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

CERTIFICATE OF SECRETARY

I, the undersigned, certify that:

1. I am the duly elected and acting Secretary of RANCHO MADRINA COMMUNITY ASSOCIATION, a California nonprofit corporation ("Association"); and
2. The foregoing Bylaws comprising 18 pages including this page constitute the Bylaws of the Association duly adopted by Consent of Directors in Lieu of First Meeting dated September 30, 2004.

IN WITNESS WHEREOF, I have hereunto subscribed my hand and affixed the seal of the Association effective this 30th day of September, 2004.

Brian Doyle, Secretary

(SEAL)

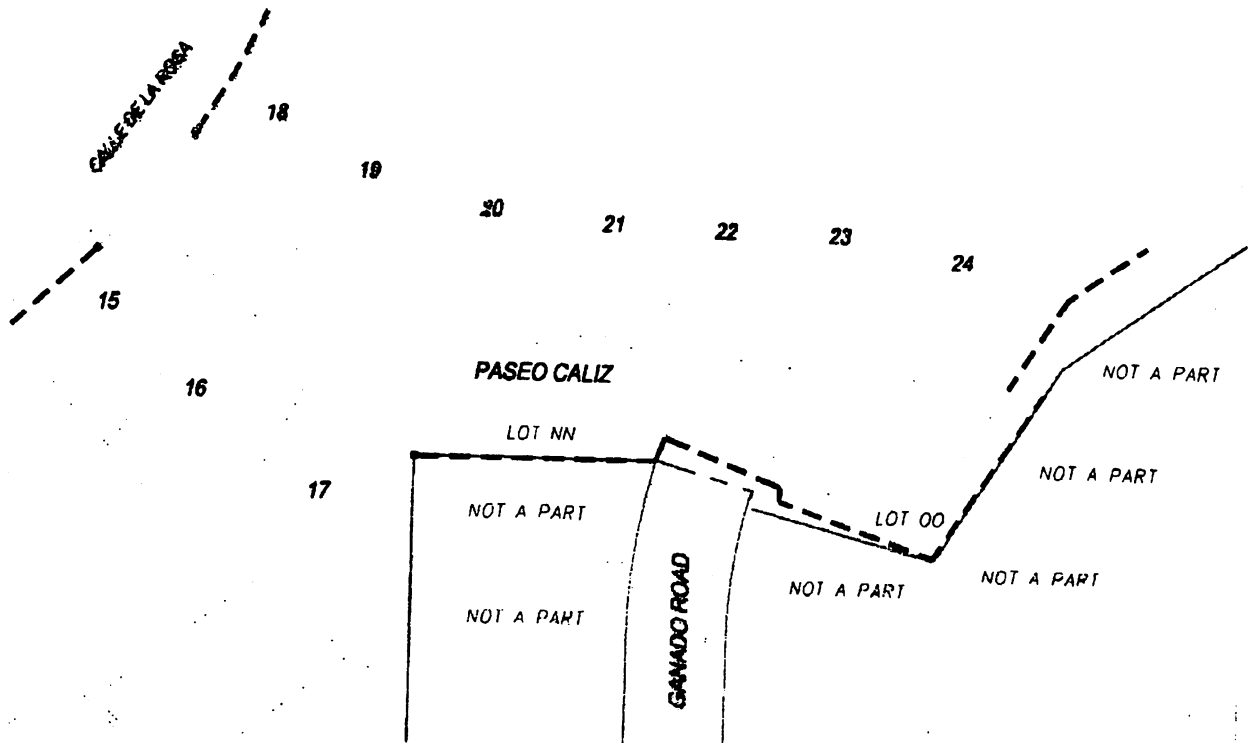
EXHIBIT D

**APPROXIMATE LOCATIONS OF
ASSOCIATION MAINTENANCE AREAS IN PHASE 1**

2609-31705\SLM294\CCRB\ 528155.7
5/23/05

EXHIBIT D

APPROXIMATE LOCATIONS OF ASSOCIATION MAINTENANCE AREAS IN PHASE 1



LEGEND

--- COMMUNITY WALL



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PLANNING • DESIGN • CONSTRUCTION

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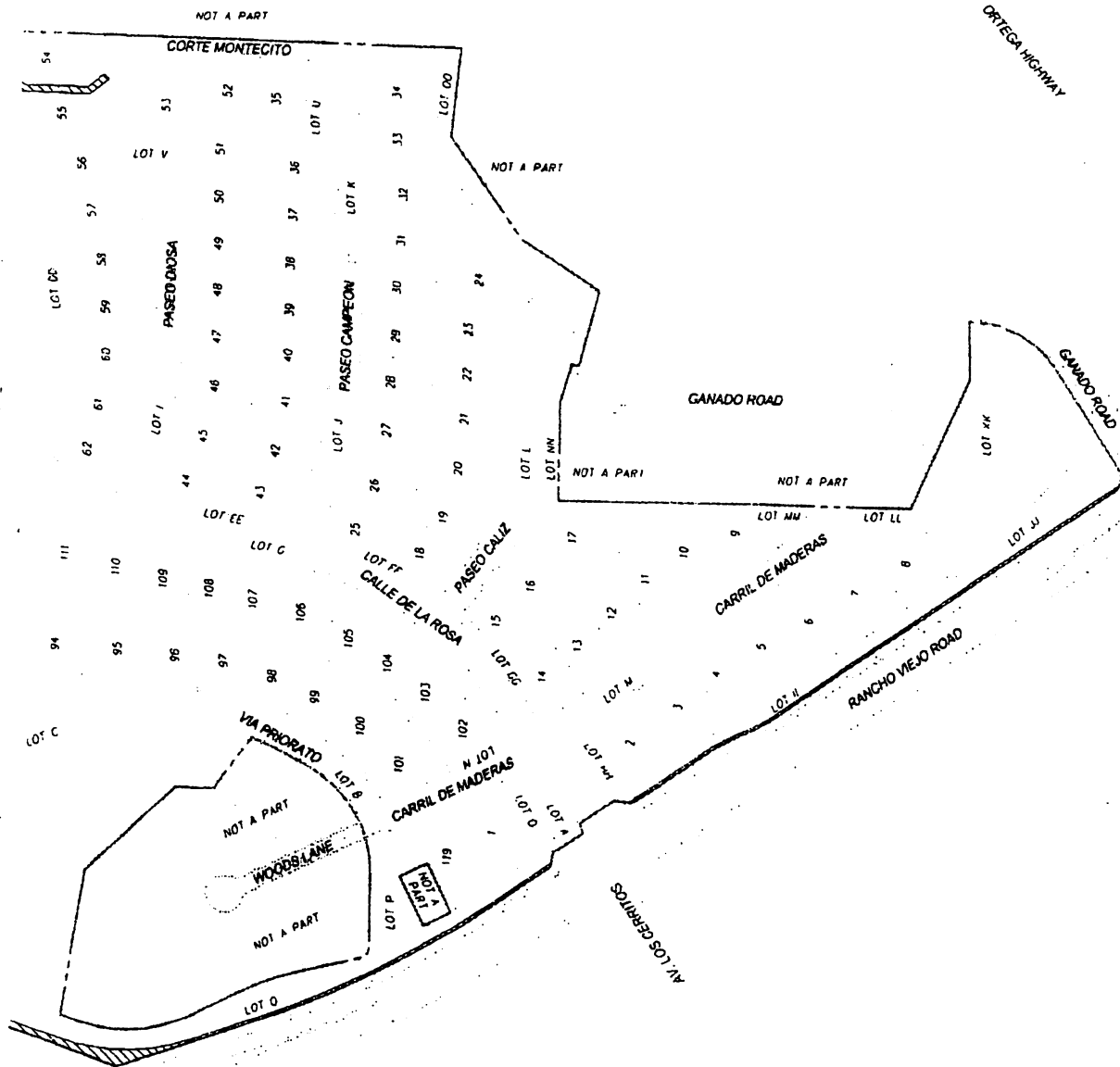
DATE: 10/11

EXHIBIT E-1 AND EXHIBIT E-2
APPROXIMATE LOCATION OF
BELFORD/MARBELLA GENERAL PLAN TRAIL

2609-31705\SLM294\CCRS\ 528155.7
5/23/05

EXHIBIT E-1

APPROXIMATE LOCATION OF BELFORD/MARBELLA GENERAL PLAN TRAIL



LEGEND



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IRVINE, CALIFORNIA 92618-2027
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14725 ALTON PARKWAY
PINE CALIFORNIA 92618-2027
949.472.3505 • FAX 949.472.8373 • www.RBF.com

EXHIBIT F
APPROXIMATE LOCATION OF
OPEN SPACE

2609-31705\SLM294\CCRS\ 528155.7
5/23/05

EXHIBIT G
NPDES PERMIT REQUIREMENTS

2609-31705\SLM294\CCRS\ 528155.7
5/23/05

**Did you know that dumping
one quart of motor oil down
a storm drain contaminates
250,000 gallons of water?**

Storm Water Quality Management Programs have been developed by the Orange County Public Facilities & Resources Department, local cities, and other agencies which participate in the National Pollutant Discharge Elimination System (NPDES). Their responsibilities involve encouraging the public to help protect water quality, monitoring runoff in the storm drain system, managing NPDES permit process for municipalities, investigating illegal disposals and maintaining storm drains.

The support of Orange County residents, businesses and industries is needed to improve water quality and reduce the threat of Storm Water & Urban Runoff Pollution (SWURP). Proper use and disposal of materials we use everyday will help stop this form of pollution before it reaches the storm drain and the ocean.



**A Cooperative Project between
the County of Orange, its Cities
and the Public Facilities &
Resources Department**

The Public Facilities & Resources Department would like to thank the Santa Clara Valley Water District and artist John Finger for the artwork and concept of this brochure. Funding by Orange County Flood Control District and Orange County Storm Water Program.



Orange County Storm Water Program Participants:

Anaheim Public Works/Engineering	(714) 765-5176
Brea Engineering	(714) 990-7666
Buena Park Public Works	(714) 562-3655
Costa Mesa Public Works	(714) 754-5248
Cypress Public Works	(714) 229-6740
Dana Point Public Works	(949) 248-3562
Fountain Valley Public Works	(714) 593-4400 x347
Fullerton Engineering Dept	(714) 738-6853
Garden Grove Public Works	(714) 741-5554
Huntington Beach Public Works	(714) 536-5432
Irvine Public Works	(949) 724-6315
La Habra Public Services	(562) 905-9792
La Palma Public Works	(714) 890-3310
Laguna Beach Public Works	(949) 497-0390
Laguna Hills Engineering	(949) 707-2600
Laguna Niguel Public Works	(949) 362-4337
Laguna Woods Public Works	(949) 452-0600
Lake Forest Public Works	(949) 461-3480
Los Alamitos Community Dev	(562) 431-3538 x301
Mission Viejo Public Works	(949) 470-3095
Newport Beach Public Works	(949) 644-3311
Orange Public Works	(714) 744-5551
Placentia Engineering	(714) 993-8131
Rancho Santa Margarita	(949) 635-8000
San Clemente Engineering	(949) 361-6118
San Juan Capistrano Engineering	(949) 493-1171
Santa Ana Public Works	(714) 647-3380
Seal Beach Engineering	(562) 431-2527 x318
Stanton Public Works	(714) 379-9222 x204
Tustin Public Works Engineering	(714) 573-3150
Villa Park Engineering	(714) 998-1500
Westminster Public Works Eng.	(714) 898-3311 x229
Yorba Linda Engineering	(714) 961-7170 x174
Orange County Storm Water Program	(714) 567-6363
24 Hour Water Pollution	(714) 567-6363 or
Problem Reporting Hotline	E-mail information to ashbyk@pfwd.co.orange.ca.us
American Oceans Campaign	www.americancoceans.org

Other Important Phone Numbers:
For Additional Brochures

(714) 567-6363

For Recycling Tips

www.oc.ca.ciwmmb.ca.gov/wmprog.htm

O. C. Household Hazardous Waste Information

(714) 634-6732 or www.oc.ca.gov/HWMD

Chemical and Hazardous Materials Spill Emergencies

911

Locations that accept used motor oil, California Integrated
Waste Management Board

(800) 553-2962 or
www.CIWMB.ca.gov

Agriculture chemicals, pesticides and possible alternatives:

O.C. Agriculture Commissioner

(714) 447-7100

Industries regarding Hazardous Waste and Underground
Storage Tank Requirements: O.C. Health Care Agency/

Environmental Health Division/ Hazardous Materials Management
Section

(714) 667-3700

The Ocean begins at your front door!



**Storm Water & Urban Runoff Pollution (SWURP)
And What You Can Do To Stop It**

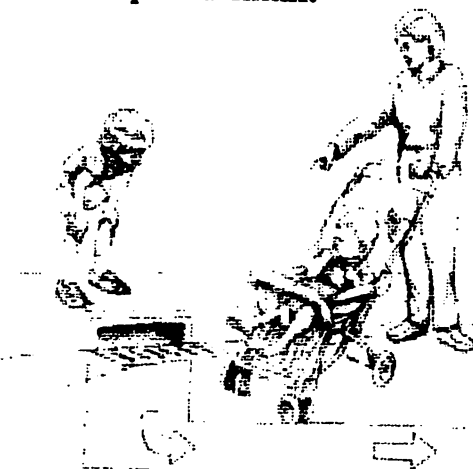
Even though you live miles from the Pacific Ocean, you may be polluting it without knowing it.

Did You Know...

Anything we use in our home, car and business like motor oil, paint, pesticides, fertilizers and cleaners can wind up in the street.

A little water from rain or a garden hose can carry automotive and house hold materials through the storm drain polluting bays, wetlands and the ocean. Storm drains are there to drain water off the street-not for disposal of hazardous materials.

Before you pour anything into the gutter or down the drain, stop and think!



Because storm drains are separate from our sewer system, SWURP can flow into the ocean without treatment.

Where Does It Go?

These pollutants flow together on a journey from the storm drain to the flood control channel where it can eventually empty into the ocean. This type of pollution is called Storm Water & Urban Runoff Pollution (SWURP) and is a serious threat to the beaches and ocean of Southern California.

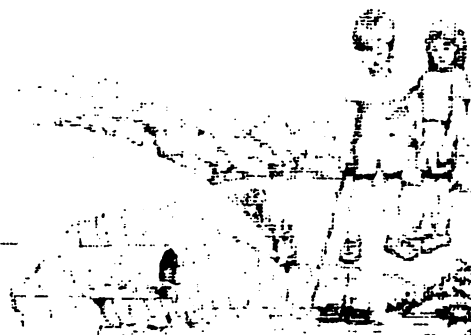
What Is Storm Water & Urban Runoff Pollution (SWURP)

Storm water runoff refers to seasonal rainfall flows. It is very noticeable during a heavy rain storm when large volumes of water drain off paved areas. Urban runoff can happen anytime of the year when excessive water use from irrigation, car washing and other sources carries litter, lawn clippings and other urban pollutants into storm drains. Even an automobile leaking motor oil 20 miles inland can still pollute the ocean.

How Is It Different From Other Forms of Water Pollution?

SWURP can include anything that washes into the storm drain from the community. Unlike water pollution linked to factories or sewage treatment plants, SWURP can come from city streets, neighborhoods, farms, construction sites and parking lots.

Storm drains go directly into channels and creeks...



Storm Water & Urban Runoff Pollution Comes From:

- ☐ Automotive leaks and spills.
- ☐ Improper disposal of used oil and other engine fluids down the storm drain.
- ☐ Metals found in vehicle exhaust, weathered paint, rust, metal plating and tires.
- ☐ Pesticides, herbicides and fertilizers from lawns, gardens and farms.
- ☐ Improper disposal of cleaners, paint and paint removers.
- ☐ Soil erosion and dust debris from landscape and construction activities.
- ☐ Litter, lawn clippings, animal waste and other organic matter.
- ☐ Oil stains on parking lots and paved surfaces.

Storm Water & Urban Runoff Pollution And The Ocean

SWURP may have a serious impact on water quality in Orange County. Pollutants from the storm drain system can harm marine life as well as coastal and wetland habitats. It can also degrade recreation areas such as beaches, harbors and bays.

...and through wetlands and bays to the ocean.



PROPER DISPOSAL OF FATS, OILS AND GREASE

Where does it come from? Most of us know grease as a byproduct of cooking. Grease is found in such things as:

- Meat Fats
- Lard
- Cooking Oil
- Shortening
- Butter and Margarine
- Food Scraps
- Baking Goods
- Sauces
- Dairy Products

Too often, grease is washed into the plumbing system, usually through the kitchen sink. Grease sticks to the inside of sewer pipes (both on your property and in the streets). Over time, the grease can build up and block the entire pipe.

Home garbage disposals do not keep grease out of the plumbing system. These units only shred solid material into smaller pieces and do not prevent grease from going down the drain.

Commercial additives, including detergents, that claim to dissolve grease may pass grease down the line and cause problems in other areas.

The results of a grease blocked sewer pipe can be:

- Raw sewage overflowing in your home or your neighbor's home;
- An expensive and unpleasant cleanup that often must be paid for by you, the homeowner;
- Potential contact with disease-causing organisms;
- An increase in operation and maintenance costs for the City sewer department, which causes higher sewer bills for customers.

What we can do to help:

The easiest way to solve the grease problem and help prevent overflows of raw sewage is to keep this material out of the sewer system in the first place.

- Never pour grease down sink drains or into toilets;
- Scrape grease and food scraps from trays, plates, pots, pans, utensils, and grills and cooking surfaces into a can or the trash for disposal (or recycling)
- Do not put grease down garbage disposals. Put baskets/strainers in sink drains to catch food scraps and other solids, and empty the drain baskets/strainers into the trash for disposal;
- Speak with your friends and neighbors about the problem of grease in the sewer system and how to keep it out.



City of San Juan Capistrano
32400 Paseo Adelanto
San Juan Capistrano, CA
92675(949) 493-1171
(949) 493-1053 (FAX)
www.sanjuancapistrano.org

WASTE OIL COLLECTION CENTERS

The County of Orange and all the Cities in Orange County are committed through a cooperative Stormwater Program to controlling the discharge of pollutants in to the storm drain system. As part of this effort, a comprehensive list of waste oil collection centers has been compiled by region so residents may conveniently dispose of their waste motor oil.

The following locations within each city will accept waste motor oil in quantities of up to five gallons. Since locations, volume limits, business hours and fees change, please contact the facility prior to taking waste oil to that locations. Waste oil filters may not be disposed of with regular household trash and must be taken to a hazardous waste collection or recycling center in Anaheim, Huntington Beach, Irvine or San Juan Capistrano. The listing of companies in this flyer does not constitute a recommendation or endorsement of the company.

This information was provided by the County of Orange Integrated Waste Management Department and the California Integrated Waste Management Board (CIWMB). For additional information about the proper disposal of household hazardous waste call the Household Waste Hotline at (714) 834-6752. For additional information about the nearest oil recycling center call the CIWMB Recycling Hotline at 1-800-533-2962.

San Juan Capistrano

Saturn of San Juan Capistrano
33033 Camino Capistrano (949) 248-5411

Texaco Xpress Lube
27201 Ortega Highway (949) 489-8008

Dana Point

Dana Point Fuel Dock
34661 Puerto Pl. (949) 496-6113

EZ Lube Inc.
34242 Doheny Park Rd. (949) 477-7408

Laguna Niguel

Econo Lube N Tune
27912 Forbes Road (949) 364-5833

Laguna Niguel Services Center
26042 Cape Drive #12 (949) 582-2191

Suspension Plus
27972 Forbes Road #C (949) 365-1070

Laguna Hills

Alicia Mobil Services
25491 Alicia Parkway (949) 472-9692

David J. Phillips Buick
24888 Alicia Parkway (949) 831-0434

EZ Lube
24281 Moulton Parkway (949) 830-9840

Kragen Auto Parts
26562 Moulton Avenue (949) 831-0434

Tire Station
24196 Laguna Hills Mall (949) 581-4700

Mission Viejo

AAA Complete Auto Care & Tire
27913 Center Street (949) 347-8200

Autobahn West
27210 La Paz Road (949) 770-2312

Darrell Williams Chevron
27650 Santa Margarita (949) 586-7319

Direct Performance LLC
23662 Via Fabricante #B (949) 837-1988

Econo Lube & Tune
25902 El Paseo (949) 582-5483

Jiffy Lube
27240 La Paz Road (949) 455-0470

Kragen Auto Parts
24510 Alicia Parkway (949) 951-9175

Mission Viejo Chevron
27742 Crown Valley Pkwy (949) 364-0137

Oilmax 10 Minute Lube
25800 Jeronimo Rd. #300 (949) 259-3069

Purrfect Auto Service
23255 Madero, Suite B (949) 452-0645

Ramona Auto Services
27210 La Paz Road (949) 583-1233

San Clemente

Big O Tire
927 N. El Camino Real (949) 443-4155

Kragen Auto Parts
1113 S. El Camino Real (949) 492-9850



What you know...

- ⌚ The activities you carry out around your home could affect local streams, rivers, and lakes even though you may live miles away from those types of wildlife areas.
- ⌚ Water from a garden hose or a storm can carry automotive and household materials, such as motor oil, fertilizers, household cleaners, and garbage, to local streams, rivers, and lakes through a storm drain.
- ⌚ One quart of motor oil spilled down a storm drain can contaminate 250,000 gallons of water.
- ⌚ Lawn clippings and other yard waste deposited in storm drains can affect water quality of creeks and streams.
- ⌚ Over-application of fertilizer can wash down into a storm drain and enter creeks and streams making algae grow, which deprives fish of oxygen.
- ⌚ Over-watering lawns can cause soil erosion that could eventually obstruct flood control channels and create seepage problems for your neighbors. Plus, it's a waste of water.



Californians measure their quality of life by the homes they live in, the communities they work and reside in, and the natural environment they rest and recreate in.

As a California home builder, we've gone to great lengths to protect the environment during the construction of your new home.

We would like to thank you for doing your part in maintaining a quality of life we can all be proud of for generations to come.

Provided by:



For more information, contact the California Building Industry Association at 916/443-7933 or check out our web site at www.cbia.org



your home.

your community.

Simple things you can do in and around your new home to protect and preserve clean water.



congratulations on the purchase of your new home!

As you begin to work on making your new house your home, California's home builders want to remind you of the important role you can play in protecting and preserving our state's valuable water resources and environment.

How you perform the special and routine activities designed to maintain the beauty and comfort of your home - from painting a room to caring for your lawn and garden - can have a significant impact on the quality of California's water resources and the region's environment.

When your home was built, extensive precautions were taken by home builders to prevent the local creeks, streams, and waterways from being polluted by water runoff and debris at the construction site. The low plastic fences and hay bales you may have seen in the construction areas represent the types of environmental management measures used to limit erosion and storm water runoff.

Now it is your turn. Here are several simple suggestions for you to follow to do your part in keeping water clean for your community and the environment.

what you can do to help keep the water clean...

Properly use and store all toxic products, including solvents, paints and cleaners. Use completely paint cleaners and other products or share leftovers with a neighbor.



Take household hazardous materials containers, such as pesticides and used motor oil to a hazardous material collection center. Contact the County for the nearest location.

Use kitty litter or other absorbent materials to clean spills, rather than hosing down spills. Depending on the substance, dispose used absorbent materials in the trash can or at a hazardous materials collection center.

Rinse water-based paint brushes in the sink. Filter and reuse paint thinner or brush cleaners. Dispose of used thinner, oil and latex paint at a hazardous materials collection center.



Use pesticides, herbicides and fertilizers in accordance with label instructions. Do not apply before rain and always dispose of leftovers at a hazardous materials collection center.



Control erosion during landscaping projects to prevent dirt and debris from entering storm drains.

...and preserve the environment.

Conserve water by using landscaping materials that are suited to your climate.

Throw all rubbish in tightly sealed trash cans. Recycle reusable materials, but be sure materials won't blow out of the recycling bin before they are collected. Pick up and properly dispose of litter in your neighborhood.



Use a broom rather than a hose to clean up garden clippings. Put leaves and clippings in a trash can or a compost pile.

Divert rain spouts and garden hoses away from paved surfaces and onto grass to allow water to filter through the soil.



Program your watering system to water less during the rainy season, and remember to turn the sprinklers off on expected rainy days.



Conserve water when washing your car. Wash engines at a 'Wax It Yourself Car Wash' where the drainage is not connected to the storm drain.

Pick up animal waste and dispose in the trash can.



For More Information...

Questions regarding this brochure may be directed to:

The Orange County Public Facilities and
Resources Department's
Stormwater Section at (714) 567-6363

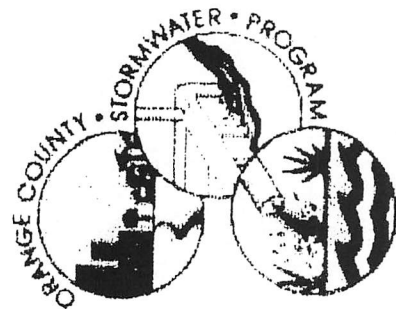
Pool Maintenance and the Water Quality Act



July 2000

This brochure has been prepared to inform the public of the guidelines that have been established regarding the discharge of pool water in Orange County in order to protect storm drains, channels, creeks and bays.

Orange County Stormwater Program
10852 Douglass Road
Anaheim, CA 92806



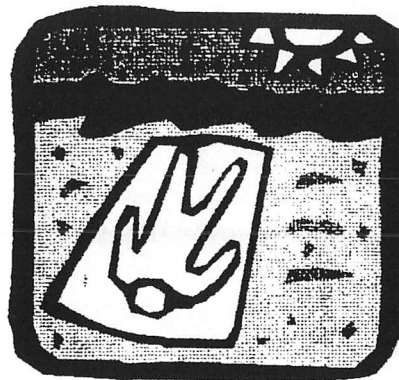
Pool Maintenance and the Water Quality Act

This brochure is presented to you to explain the regulatory issues regarding the discharge of pool water and the two methods by which it may be discharged.

Many pools are plumbed to allow the discharge to go directly to the sanitary sewer. This is an acceptable and preferred method of disposal.

Where the discharge of pool water to the sanitary sewer is not feasible, federal law allows the release of dechlorinated swimming pool water. In Orange County the guidelines for such releases requires pool owners to ensure that all the following criteria are met:

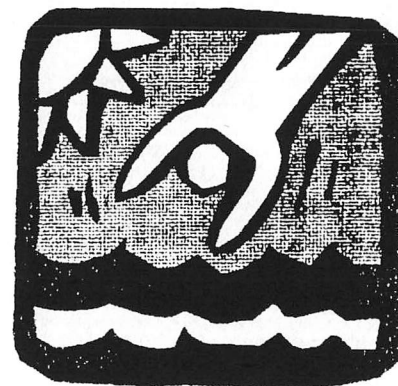
- The residential chlorine does not exceed 0.1 mg/l (parts per million);
- The pH is between 6.5 and 8.5;
- The water is free of any unusual coloration;
- There is no discharge of filter media;
- There is no discharge of acid cleaning wastes; and
- Any pipe connection to the stormdrain system has permits from the city or county having jurisdiction.



Compliance with this guidance can be verified using a pool testing kit. Excess chlorine can be removed by removing the chlorine tablets for a couple of days prior to discharge or by purchasing dechlorinating chemicals from local pool supply companies.



By ensuring compliance with these criteria, you will make a significant contribution toward keeping pollutants out of Orange County's creeks, streams and receiving waters and help to protect organisms that are sensitive to pool chemicals.



Before you allow anything to go into the gutter or storm drain, stop to think.

Storm drains run directly into channels and creeks, through wetlands and to the ocean.

Remember the ocean begins at your front door.

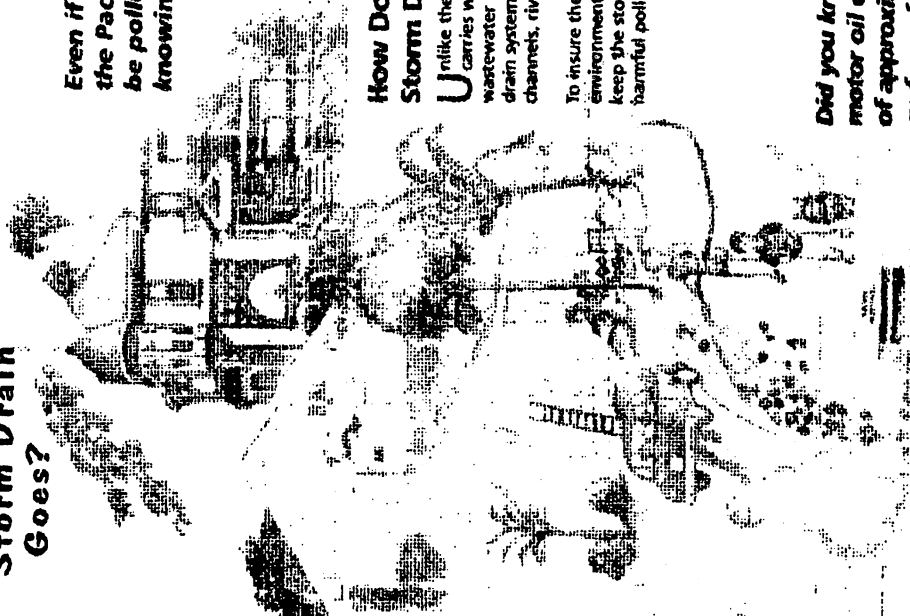
Orange County Storm Water Program

Participants:

Anaheim Public Works/Engineering	(714) 765-5176
Brea Engineering	(714) 990-7666
Buena Park Public Works	(714) 562-3655
Costa Mesa Public Services	(714) 754-5248
Cypress Public Works	(714) 225-8740
Dana Point Public Works	(949) 246-3562
Fountain Valley Public Works	(714) 593-4400 x347
Fullerton Engineering Dept	(714) 738-6853
Garden Grove Public Works	(714) 741-5554
Huntington Beach Public Works	(714) 538-5432
Irvine Public Works	(949) 724-8315
La Habra Public Services	(562) 905-9792
La Palma Public Works	(714) 690-3310
Laguna Beach Public Works	(949) 497-0830
Laguna Hills Engineering	(949) 707-2600
Laguna Niguel Public Works	(949) 362-4337
Laguna Woods Public Works	(949) 452-0600
Lake Forest Public Works	(949) 461-3480
Los Alamitos Community Dev	(562) 431-3539 x301
Mission Viejo Public Works	(949) 470-3985
Newport Beach Public Works	(949) 644-3311
Orange Public Works	(714) 744-5551
Placentia Engineering	(714) 993-8131
Rancho Santa Margarita Public Works	(949) 635-1800
San Clemente Engineering	(949) 361-6116
San Juan Capistrano Engineering	(949) 493-1171
Santa Ana Public Works	(714) 647-3380
Seal Beach Engineering	(562) 431-2527 x318
Stanton Public Works	(714) 379-9229 x204
Tustin Public Works Engineering	(714) 573-3150
Villa Park Engineering	(714) 998-1500
Westminster Public Works Eng.	(714) 698-3311 x229
Yorba Linda Engineering	(714) 961-7170 x174
O. C. Storm Water Program	(714) 567-6363
O. C. Urban Runoff Plan Review	(714) 834-3528
24 Hour Water Pollution Problem Reporting Hotline	(714) 567-6363 or E-mail information to ashbyk@pfdrisn.orange.ca.us
American Oceans Campaign	www.americoceans.org
Other Important Phone Numbers:	
For Additional Brochures	(714) 567-6363
For Recycling Tips	www.ciweb.ca.gov/usingbrn
*O. C. Household Hazardous Waste Information	(714) 834-6752 or www.oc.ca.gov/HAZ
Chemical and Hazardous Material Spill Emergencies 911	
Information on locations that accept used motor oil	
California Integrated Waste Management Board	(800) 555-2962 or www.CIWMB.ca.gov
Information on agriculture chemicals, pesticides and possible alternatives, O.C. Agriculture Commissioner	(714) 447-7100
Information for industries regarding Hazardous Waste And Underground Storage Tank Requirements:	
O.C. Health Care Agency / Environmental Health Division/ Hazardous Materials Management Section	(714) 687-9700

Do You Know Where The Water In Your Storm Drain Goes?

Even if you live miles from
the Pacific Ocean you may
be polluting it without
knowing it.



How Does Orange County's Storm Drain System Work?

Unlike the sewer system, which carries water from your indoor drains to wastewater treatment plants, the storm drain system releases untreated water into channels, rivers and ultimately the ocean.

To insure the safety and enjoyment of our environment, everyone's help is needed to keep the storm drain system free from harmful pollutants...

Did you know that one pint of
motor oil can produce an oil slick
of approximately one acre on the
surface of water?

Orange County Urban Storm Water Pollution Prevention Program

COMMON STORM DRAIN POLLUTANTS

HOME MAINTENANCE

- Detergents, Cleaners and Solvents
- Oil and Latex Paint
- Swimming Pool Chemicals
- Outdoor Trash and Litter

LAWN AND GARDEN

- Pet and Animal Waste
- Pesticides, Insecticides, and Herbicides
- Clippings, Leaves and Soil
- Fertilizer

AUTOMOBILE

- Oil and Grease
- Radiator Fluids and Antifreeze
- Cleaning Chemicals
- Brake pad dust



Things You Can Do To Protect The Water In Your Storm Drain System

SWIMMING POOL AND SPA

Water containing chlorine is harmful to aquatic life. Whenever possible, drain water into the sewer system. There are established guidelines on the amount of residual chlorine, acceptable pH range, coloration, filter media and acid cleaning wastes when draining into the storm drain system, and some areas may require a permit. Check with your city or call the county at 714-567-6363 for a copy of the guidelines.

LAWN AND GARDEN

Use a broom or rake to clean up yard debris and place in trash bins; lawn clippings and leaves should be placed in recycling containers if available - or better yet, leave your grass clippings on the lawn. Follow directions carefully when using pesticides and fertilizers; don't over water or use before a rain. Pesticides and fertilizers may adversely impact our waterways.

TRASH

Place trash and litter that cannot be recycled or reused in trash cans. Call your city to find out if your city has a recycling program. Whenever possible, turn trash into useful products and buy recycled products.

Remember: Reduce - Reuse - Recycle

PET CARE

Pick-up pet waste as soon as possible and put it in the trash. Pet waste has harmful bacteria that can get into our waterways. Also, follow label directions for disposal on pet care products like flea shampoo, they can be toxic.

...and through wetlands
...and bays...

...to the ocean.

It's Up To You

Together, you and your neighbors can make a difference to keep gutters, storm drains and waterways clean. To learn more, contact your city or one of the program participants listed in this brochure.

This brochure has been developed as part of the Orange County Storm Water Management Program. Participants include the County of Orange, local cities, and agencies listed in this brochure. You may contact one of them for additional brochures and information.

HOUSEHOLD

Some household products, such as cleaners, insect spray and weed killers, can cause pollution if allowed to drain into a storm drain. Buy household products labeled "nontoxic" whenever possible. Clean up spills with an absorbent material such as kitty litter and check with your disposal carrier or a household hazardous waste collection center for disposal recommendations.

PAINT AND SOLVENTS

Clean water-based paints from rollers, pans and brushes in links that go into the sewer system. Use paint thinner to remove oil-based paint from brushes and rollers, then take used thinner and left over paint to a household hazardous waste collection center, or keep the paint for touch ups, or give it to a friend.

AUTOMOTIVE

Keep your autos in good repair and watch for possible leaks. Take left over or used fluids to your household hazardous waste collection center. Clean up leaks and spills with an absorbent material such as kitty litter and check with your disposal carrier or a household hazardous waste collection center for disposal recommendations.

Storm drain water goes
directly into channels and
creeks...

Did you know that dumping
anything in the storm drain
system is illegal and harmful
to the environment?

Before you let anything
go into the gutter or
the storm drain,
stop and think!



City of San Juan Capistrano



FF-2

BUILDING MAINTENANCE AND REPAIR

Stormwater runoff from building repair, remodeling, and other maintenance activities can be contaminated with toxic hydrocarbons in solvents, other toxic organic compounds, suspended solids, heavy metals, abnormal pH, and oils and greases. The attached BMPs are recommended to be used on an as needed and on a case by case basis. Some BMP might not apply in certain situations and will not be used. The provided BMPs are potential measures that could be used, individually or collectively, as the situation requires, and as determined by staff. Specific activities may involve one or more of the following:

1. Building Maintenance
2. Material Storage
3. Building Cleaning
4. Graffiti Cleaning
5. Painting

POLLUTION PREVENTION:

Pollution prevention measures have been considered and incorporated in the model procedures. Implementation of these measures may be more effective and reduce or eliminate the need to implement other more complicated or costly procedures. Possible pollution prevention measures for building maintenance and repair include:

- Use dry cleaning methods whenever feasible.
- Use a waterless and non-toxic chemical cleaning method for graffiti removal.
- Once per year, educate municipal staff on pollution prevention measures.

MODEL PROCEDURES:

1. Building Maintenance

General Guidelines

See Minor Construction procedure sheet

- ✓ Review maintenance activities to verify that they minimize the amount of pollutants discharged. Keep accurate maintenance logs to evaluate materials removed and improvements made.
- ✓ If when repairing roofs, small particles have accumulated in the gutter, either sweep out the gutter or wash the gutter and trap the particles at the outlet of the downspout. A sock or geofabric placed over the outlet may effectively trap the materials. If the downspout is tight lined, place a temporary plug at the first convenient point in the storm drain and pump out the water with a vacor truck and clean the storm drain inlet where you placed the plug if necessary.
- ✓ If water is used for cleaning out gutters, seal storm drain inlets to prevent water from entering. Either direct the water to a landscaped area or dispose of properly.
- ✓ When the work involves exposing large areas of soil, employ the appropriate soil erosion and control techniques.
- ✓ Clean storm drain inlets in the immediate vicinity of the construction activity after it is completed, if necessary.

Good Housekeeping

- ✓ Keep the work site clean and orderly. Remove debris in a timely fashion. Sweep the area.
- ✓ Cover materials of particular concern that must be left out, particularly during the rainy season.
- ✓ Do not dump waste liquids down the storm drain.
- ✓ Properly dispose of wash water, sweepings, and sediments; do not allow these materials to enter the storm drain.

Spill Response

Also see Spill Prevention and Control procedure sheet

- ✓ Clean up spills immediately.
- ✓ If a spill occurs on dirt, excavate and remove the contaminated (stained) soil.

2. Material Storage

Also see Material Storage/ Handling/ Disposal procedure sheet

- ✓ Properly store and cover materials that are normally used in repair and remodeling such as paints and solvents, to protect them from rain.
- ✓ Properly store and dispose waste generated from the activity.

3 Building Cleaning

General Guidelines

→ *Note: Permission must be obtained for any discharge of wash water to the sanitary sewer from the local sewerage agency.*

- ✓ When cleaning building exteriors and walls composed of glass, steel, or painted surfaces with no lead or mercury:
 - Do not allow wash water to enter the storm drain, without appropriate BMP.
 - When washing without soap, discharges can be directed to landscaped or dirt areas.
 - When washing with soap, use bio-degradable soap, direct discharges to the sanitary sewer if permitted to do so or vacuum/pump water to a tank and dispose of properly
- ✓ When washing building exteriors painted with lead-based or mercury additive paint:
 - Do not allow discharges to enter storm drain.
 - Vacuum/pump discharges to a tank
 - Dispose of as a hazardous waste as needed
- ✓ When acid washing mineral deposits:
 - Do not allow discharges to enter storm drain.
 - Rinse treated area with alkaline soap and direct washwater to a landscaped or dirt area
 - Alternatively, washwater may be collected and neutralized to a pH between 6 and 8, and disposed of properly.

4. Graffiti Cleaning

Graffiti Removal

Also see Roads, Streets, and Highways Operation and Maintenance procedure sheet.

- ✓ Avoid graffiti abatement activities during rain events.
- ✓ When graffiti is removed by painting over, implement the procedures under Painting and Paint Removal in the *Roads, Streets, and Highway Operation and Maintenance* procedure sheet.
- ✓ Protect nearby storm drain inlets prior to removing graffiti from walls, signs, sidewalks, or other structures needing graffiti abatement. Clean up afterwards by sweeping or vacuuming thoroughly, and/or by using absorbent and properly disposing of the absorbent.
- ✓ Note that care should be taken when disposing of waste since it may need to be disposed of as hazardous waste.

5. Painting

General Guidelines

- ✓ Develop paint handling procedures for proper use, storage, and disposal of paints.
- ✓ Painting operations should be properly enclosed or covered to avoid drift.
- ✓ If transporting paint and materials to and from job sites, use containers with secure lids and tie down to the transport vehicle.
- ✓ Test and inspect spray equipment prior to starting to paint. Tighten all hoses and connections and do not overfill paint container.
- ✓ Mix paint indoors before using so that any spill will not be exposed to rain. Do so even during dry weather because cleanup of a spill will never be 100% effective.
- ✓ Transfer and load paint and hot thermoplastic away from storm drain inlets.
- ✓ Replace paints containing lead or tributyltin with less toxic alternatives.
- ✓ Where there is significant risk of a spill reaching storm drains, plug nearby storm drain inlets prior to starting painting and remove plugs when job is complete.
- ✓ If sand blasting is used to remove paint, cover nearby storm drain inlets prior to starting work and collect wash water and dispose of properly.
- ✓ If painting requires scraping or sand blasting of the existing surface, use a ground cloth to collect the chips. Dispose of the residue properly.
- ✓ If using water based paints, clean the application equipment in a sink that is connected to the sanitary sewer.
- ✓ Brushes and tools covered with non-water-based paints, finishes, or other materials must be cleaned in a manner that enables collection of used solvents (e.g., paint thinner, turpentine, etc.) for recycling or proper disposal. Waste solvents or oil based paints must be disposed of as hazardous waste.

Paint Disposal

- ✓ Paints containing lead or tributyl tin are considered a hazardous waste and must be disposed of at an appropriate hazardous waste facility.
 - ✓ Properly store leftover paints if they are to be kept for the next job.
-

LIMITATIONS:

Safer alternative products may not be available, suitable, or effective in every case.

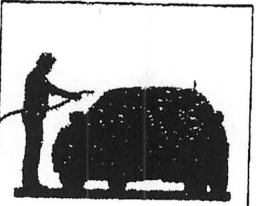
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California Storm Water Best Management Practice Handbooks. Municipal Best Management Practice Handbook. Prepared by Camp Dresser & McKee, Larry Walker Associates, Uribe and Associates, Resources Planning Associates for Stormwater Quality Task Force. March 1993.

Model Urban Runoff Program: A How-To Guide for Developing Urban Runoff Programs for Small Municipalities. Prepared by City of Monterey, City of Santa Cruz, California Coastal Commission, Monterey Bay National Marine Sanctuary, Association of Monterey Bay Area Governments, Woodward-Clyde, Central Coast Regional Water Quality Control Board. July. 1998.

Oregon Association of Clean Water Agencies. Oregon Municipal Stormwater Toolbox for Maintenance Practices. June 1998.

Santa Clara Valley Urban Runoff Pollution Prevention Program. 1997 Urban Runoff Management Plan. September 1997, updated October 2000.

	City of San Juan Capistrano
	FF-11
	VEHICLE AND EQUIPMENT CLEANING

Vehicle and equipment cleaning activities can contribute toxic hydrocarbons and other organic compounds, oils and greases, nutrients, heavy metals, and suspended solids to stormwater runoff. The attached BMPs are recommended to be used on an as needed and on a case by case basis. Some BMP might not apply in certain situations and will not be used. The provided BMPs are potential measures that could be used, individually or collectively, as the situation requires, and as determined by staff. Use of the procedures outlined below can prevent or reduce the discharge of pollutants to stormwater during vehicle and equipment cleaning.

1. Inspection and Cleaning of Stormwater Conveyance Structures
2. Controlling Illicit Connections and Discharges
3. Controlling Illegal Dumping

POLLUTION PREVENTION:

Pollution prevention measures have been considered and incorporated in the model procedures. Implementation of these measures may be more effective and reduce or eliminate the need to implement other more complicated or costly procedures. Possible pollution prevention measures for vehicle and equipment cleaning include:

- Use outside service agencies to clean vehicles and equipment.
- Once per year, educate municipal staff on pollution prevention measures.

MODEL PROCEDURES:

If your facility washes or steam cleans a large number of vehicles or pieces of equipment, consider contracting out this work to a commercial business. These businesses are better equipped to handle and dispose of the wash waters properly. Contracting out this work can also be economical by eliminating the need for a separate washing/cleaning operation at your facility.

If washing/cleaning must occur on-site follow these procedures:

→ **Note:** Permission must be obtained for any discharge of wash water to the sanitary sewer from the local sewerage agency.

- ✓ Use designated, covered, wash areas to prevent contact with stormwater and bermed to contain wash water.
- ✓ Designated wash areas must be well marked with signs indicating where and how washing must be done.
- ✓ Water may be discharged to the sanitary sewer after flowing through a clarifier. If the above conditions are not met, other pre-treatment may be required.
- ✓ Do not permit steam cleaning or engine degreasing at the wash out area.
- ✓ Washing operations should be conducted in a designated wash area having the following characteristics:
 - Paved with Portland cement concrete
 - Covered or bermed to prevent contact with storm water
 - Sloped for wash water collection
 - Connected to the sanitary sewer – upon approval.
 - Clearly designated

LIMITATIONS

Steam cleaning can generate significant pollutant concentrations requiring permitting, monitoring, pretreatment, and inspections. The measures outlined in this procedure sheet are insufficient to address all the environmental impacts and compliance issues related to steam cleaning.

REFERENCES:

California Storm Water Best Management Practice Handbooks. Municipal Best Management Practice Handbook. Prepared by Camp Dresser & McKee, Larry Walker Associates, Uribe and Associates, Resources Planning Associates for Stormwater Quality Task Force. March 1993.

The Stormwater Mangers Resource Center (<http://www.stormwatercenter.net/>)

Model Urban Runoff Program: A How-To Guide for Developing Urban Runoff Programs for Small Municipalities. Prepared by City of Monterey, City of Santa Cruz, California Coastal Commission, Monterey Bay National Marine Sanctuary, Association of Monterey Bay Area Governments, Woodward-Clyde, Central Coast Regional Water Quality Control Board. July. 1998.

	City of San Juan Capistrano
	FF-13 WASTE HANDLING AND DISPOSAL

Improper storage of solid wastes can allow toxic compounds, oils and greases, heavy metals, nutrients, suspended solids, and other pollutants to enter stormwater runoff. The discharge of pollutants to stormwater from waste handling and disposal can be prevented and reduced by tracking waste generation, storage, and disposal; reducing waste generation and disposal through source reduction and recycling; and preventing run-on and runoff. The attached BMPs are recommended to be used on an as needed and on a case by case basis. Some BMP might not apply in certain situations and will not be used. The provided BMPs are potential measures that could be used, individually or collectively, as the situation requires, and as determined by staff. Proper waste handling and disposal activities include the following:

1. Litter Control
2. Waste Collection
3. Spill/Leak Control
4. Run-on/Runoff Prevention

POLLUTION PREVENTION:

Pollution prevention measures have been considered and incorporated in the model procedures. Implementation of these measures may be more effective and reduce or eliminate the need to implement other more complicated or costly procedures. Possible pollution prevention measures for waste handling and disposal include:

- Reuse products when possible.
- Recycle leftover products that are recyclable.
- Once per year, educate municipal staff on pollution prevention measures.