

CC&R'S

Covenants, Conditions & Restrictions

INDIAN PALMS COUNTRY CLUB ASSOCIATION

(PRESIDENTS CLUB AND RESORT)

If this document contains any restriction based on race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, genetic information, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.2 of the Government Code. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.

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WHEN RECORDED, MAIL TO:

DZIDA, CAREY & STEINMAN (SJD)
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Irvine, CA 92614

DOC # 2002-263791

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Page 1 of 5

Recorded in Official Records

County of Riverside

Gary L. Orso

Assessor, County Clerk & Recorder



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**FIRST AMENDMENT TO
DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND
RESERVATION OF EASEMENTS FOR PRESIDENTS CLUB AND RESORT**

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This First Amendment to Declaration of Covenants, Conditions, Restrictions and Reservation of Easements for Presidents Club and Resort ("Amendment") is made by DAVSHA, L.L.C., a California limited liability company ("Declarant").

P R E A M B L E:

A. Declarant is the master developer of a planned residential development located in the City of Indio, County of Riverside, State of California known as "Indian Palms Country Club" ("Properties"), pursuant to a Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for the Properties which was recorded on October 7, 1999, as Document No. 1999-446156, in Official Records of Riverside County, California ("Declaration").

B. Pursuant to the Declaration the Properties are governed by Indian Palms Country Club Association, a California nonprofit mutual benefit corporation ("Maintenance Association"), formerly known as "Presidents Club and Resort community Association."

C. In accordance with Section 12.2 of the Declaration, Declarant wishes to amend the Declaration as set forth below. By their signatures below, the undersigned officers of the Maintenance Association certify that the approvals of this Amendment by the Members, the Delegates,

First Mortgagees and the City, if any, which are required under Section 12.2 of the Declaration have been obtained.

NOW, THEREFORE, Declarant hereby declares as follows:

1. **Definitions.** Except as otherwise expressly provided herein, the capitalized terms used in this Amendment shall have the same meanings as are given such terms in the Declaration.
2. **Annexable Area.** *Exhibit "C"* of the Declaration is deleted in its entirety and the attached *Exhibit "C"* is substituted in lieu thereof.
3. **Ratification.** Except as expressly amended herein, the terms of the Declaration are ratified and confirmed.

DECLARANT:

DAVSHA, L.L.C.,
a California limited liability company

By: 

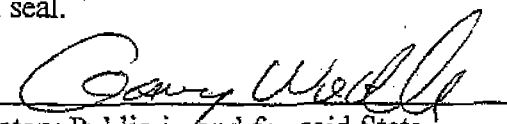
Its Manager

Right Thumb

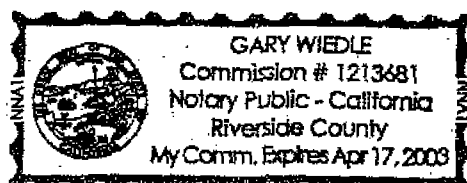
STATE OF CALIFORNIA)
) ss.
COUNTY OF Riverside)

On May 8, 2002, before me, Gary Wiedle
Notary Public in and for said State, personally appeared David L. Weimert,
personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose
name is subscribed to the within instrument and acknowledged to me that (he) (she) executed the same
in (his) (her) authorized capacity, and that by (his) (her) signature on the instrument the person, or the
entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.


Notary Public in and for said State

(SEAL)



-2-



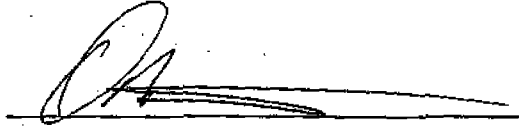
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CERTIFICATE OF OFFICERS OF MAINTENANCE ASSOCIATION

The undersigned officers of Indian Palms Country Club Association, a California nonprofit mutual benefit corporation, certify, as provided in Section 12.2 of the Declaration, that (i) the requisite number of Delegates have consented in writing to the foregoing Amendment, and (ii) this Amendment does not require the consent of the City or the holders, guarantors or insurers of first Mortgages.

Signature:



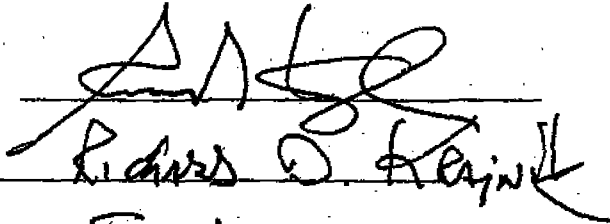
Printed Name:

David L. Weenert

Office:

President

Signature:



Printed Name:

Richard D. Kravitz

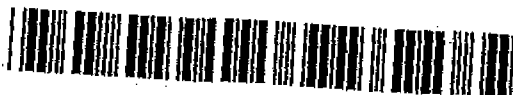
Office:

Secretary

Right Thumb



Right Thumb



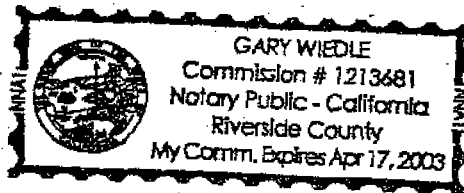
STATE OF CALIFORNIA)
) ss.
COUNTY OF Riverside)

On May 8, 2002, before me, Gary Wiedle, a
Notary Public in and for said State, personally appeared David L. Weimert,
personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose
name is subscribed to the within instrument and acknowledged to me that (he) (she) executed the same in
(his) (her) authorized capacity, and that by (his) (her) signature on the instrument the person, or the entity
upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Gary Wiedle
Notary Public in and for said State

(SEAL)



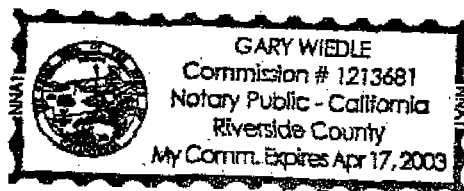
STATE OF CALIFORNIA)
) ss.
COUNTY OF Riverside)

On May 8, 2002, before me, Gary Wiedle, a
Notary Public in and for said State, personally appeared Richard D. Krajnik,
personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose
name is subscribed to the within instrument and acknowledged to me that (he) (she) executed the same in
(his) (her) authorized capacity, and that by (his) (her) signature on the instrument the person, or the entity
upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Gary Wiedle
Notary Public in and for said State

(SEAL)



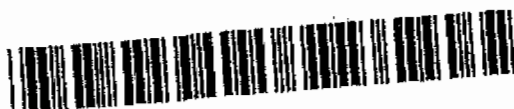
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EXHIBIT "C"

DESCRIPTION OF ANNEXABLE AREA

Section 35, Township 5 South, Range 7 East, San
Bernardino Base and Meridian, Riverside County,
California



2002-263791
05/17/2002 08:00A
5 of 5

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5/6/02

RECORDING REQUESTED BY:

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GARY L. ORSO
County Recorder
RIVERSIDE COUNTY CALIFORNIA

WHEN RECORDED RETURN TO:

DZIDA, CAREY & STEINMAN (SJD)
2 Park Plaza, Suite 1140
Irvine, CA 92614

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(Space Above For Recorder's Use)

DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS AND RESERVATION
OF EASEMENTS FOR
PRESIDENTS CLUB AND RESORT

First American Title Company has recorded this
instrument by request as an abstract
only and has not examined it for regularity and
sufficiency or as to its effect upon the title to
any real property that may be affected by it.

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AND RESERVATION OF EASEMENTS

FOR

PRESIDENTS CLUB AND RESORT

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DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS AND RESERVATION
OF EASEMENTS
FOR
PRESIDENTS CLUB AND RESORT

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND RESERVATION OF EASEMENTS ("Declaration") is made by DavSha, L.L.C., a California limited liability company ("Declarant"). Except as otherwise specified herein, the capitalized words and phrases used in this Declaration shall have the meanings specified in Article I hereof.

P R E A M B L E:

A. Declarant is the owner of certain real property (exclusive of public rights-of-way) in the City of Indio, County of Riverside, State of California, described in *Exhibit "A"* and *Exhibit "B"* hereto, which property constitutes the First Subdivision.

B. All of the Properties will be developed with certain common objectives, and Owners of Lots or Condominiums will have certain common interests. The Residential Area and the Apartment Area, if any, will be developed to preserve the value of and to benefit all the property within the Properties, even though the Residential Area and the Apartment Area, if any, are of slightly different character. The common development plan imposes reciprocal burdens and benefits on all of the Properties, such that all portions of the Properties are both burdened by the provisions of this Declaration for the benefit of the other portions of the Properties, and benefited by the burdens imposed on the other portions of the Properties.

C. Declarant wishes to have deemed it desirable to create a "master planned community" (as defined in Section 2792.32 of Title 10 of the California Code of Regulations) which is a common interest development pursuant to the Davis-Stirling Common Interest Development Act, including the Maintenance Association formed under the Nonprofit Public Mutual Benefit Corporation Law of the State of California. The Maintenance Association is delegated and assigned the powers and functions of (1) owning, maintaining and administering the Maintenance Property for the use of its Members and authorized guests, (2) administering and enforcing the Restrictions, and (3) collecting and disbursing the assessments and charges hereinafter created.

D. All of the Properties shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the easements, restrictions, covenants, conditions and equitable servitudes contained in this Declaration, all of which are for the purpose of preserving and protecting the value, attractiveness and desirability of the Properties, in furtherance of a comprehensive plan for the protection, maintenance, subdivision, improvement and sale of the Properties, or any portion thereof. The covenants, conditions, restrictions, reservations, easements, equitable servitudes, liens and charges set forth herein shall (1) run with

the Properties; (2) be binding upon all persons having any right, title or interest in the Properties, or any part thereof, their heirs, successive owners and assigns; (3) inure to the benefit of every portion of the Properties and any interest therein; (4) inure to the benefit of and be binding upon Declarant, the Merchant Builders, and their successive owners and each Owner and his or her respective successors-in-interest; and (5) may be enforced by Declarant, any Merchant Builder, any Owner or the Maintenance Association.

ARTICLE I DEFINITIONS

Unless otherwise expressly provided, the following words and phrases when used in this Declaration shall have the meanings specified below.

1.1. Annexable Area.

The real property described in *Exhibit "C,"* all or any portion of which property may be made subject to this Declaration pursuant to the provisions of Article II hereof.

1.2. Apartment Area.

All of the real property so classified as "Apartment Area" from time to time in a Supplemental Declaration, as provided in Article II hereof, which is developed or designated for development with Improvements suitable for multi-Family apartment use. Except as otherwise expressly provided in the Supplemental Declaration annexing an Apartment Area to the Properties, all Apartment Areas in the Properties are exempt from (i) the provisions of Article VII, Residential Area Use Restrictions, and (ii) except as provided in Section 8.3, the provisions of Article VIII, Residential Area Architectural Control.

1.3. Architectural Committee.

The architectural and landscaping committee created pursuant to Article VIII hereof.

1.4. Architectural Committee Rules.

The Architectural Committee design standards, procedures, rules and guidelines which may be adopted by the Board pursuant to this Declaration, as amended.

1.5. Articles.

The Articles of Incorporation of the Maintenance Association, as amended. A copy of the Articles is attached hereto as *Exhibit "D."*

1.6. Assessment Unit.

The arithmetical value allocated to each Lot and Condominium pursuant to Section 6.5.1 hereof, for purposes of calculating the share of Common Expenses attributable to such Lot or Condominium.

1.7. Beneficiary.

A Mortgagee under a Mortgage or a beneficiary under a deed of trust, as the case may be, and the assignees of such Mortgage or beneficiary.

1.8. Board or Board of Directors.

The Maintenance Association Board of Directors elected in accordance with the Maintenance Association Bylaws and this Declaration.

1.9. Budget.

A written, itemized estimate of the Maintenance Association's income and Common Expenses prepared pursuant to the Bylaws.

1.10. Bylaws.

The Maintenance Association's Bylaws adopted or to be adopted by the Board initially in the form of *Exhibit "E"* attached hereto, as amended.

1.11. Capital Improvement Assessment.

A charge against the Owners and their Lots and Condominiums, representing the Maintenance Association's costs to install or construct any Improvements on any portion of the Maintenance Property.

1.12. City.

The City of Indio, in the County of Riverside, State of California, and its various departments, divisions, employees and representatives.

1.13. Close of Escrow.

The date on which a deed or other such instrument is Recorded conveying a Lot or Condominium in the Properties pursuant to a transaction for which a Public Report is required, with the exception of (i) deeds between Declarant and (a) any successor to the rights of Declarant hereunder or (b) any Merchant Builder, or (ii) deeds between Merchant Builders.

1.14. Common Area.

The area within any portion of the Properties designated in a Project Declaration as "common area" (as defined in Section 1351(b) of the California Civil Code) for the primary benefit of or maintenance by the Owners within a particular Planned Development or Condominium Project within the Properties.

1.15. Common Assessment.

The charge against each Owner and his Lot or Condominium, representing a portion of the ordinary Common Expenses for maintaining, improving, repairing, replacing, managing and operating the Maintenance Property, which charge shall be levied among all Owners and their respective Lots and Condominiums, as provided herein. Common Assessments shall include all late payment penalties, interest charges, attorneys' fees or other costs incurred by the Maintenance Association in its efforts to collect all assessments (other than Special Assessments) authorized pursuant to this Declaration.

1.16. Common Expenses.

Subject to Article VI, the actual and estimated costs of: maintaining, managing, operating, repairing and replacing the Maintenance Property; unpaid Special Assessments, Reconstruction Assessments and Capital Improvement Assessments, including those costs not paid by the Owner responsible for payment; managing and administering the Maintenance Association including, but not limited to, compensation paid by the Maintenance Association to Managers, accountants, attorneys and other consultants and employees; all utilities, gardening, and other services benefiting the Maintenance Property; maintenance and staffing of controlled access facilities; management and maintenance of internet website(s) and related facilities, fire, casualty and liability insurance, worker's compensation insurance, and other insurance covering the Maintenance Property; maintenance of clustered mailbox structures (the mailboxes shall be the responsibility of the applicable Owner); bonding the Maintenance Association Directors, officers, agents, employees and Manager; taxes paid by the Maintenance Association; amounts paid by the Maintenance Association for discharge of any lien or encumbrance levied against the Maintenance Property, or portions thereof, including, without limitation, real property taxes or assessments, if any, levied against the Maintenance Property; all Reserves; and all other items incurred by the Maintenance Association pursuant to this Declaration.

1.17. Condominium.

A condominium as defined in Section 783 of the California Civil Code, or any similar California statute hereafter enacted. For purposes of this Declaration, the term "Condominium" shall include a Residence or other area of space which is appurtenant to one (1) or more ownership interests in a "community apartment" or "stock cooperative" project (as such terms are defined below in the definition of Condominium Project). The airspace element of any Condominium is referred to herein as the "Condominium Unit."

1.18. Condominium Project.

A "condominium project" as defined in Section 1351(f) of the California Civil Code, or any similar California statute hereafter enacted, and all property designated in the Project Declaration for such Condominium Project as additional "phases of development" if such Condominium Project is developed in phased increments. For purposes of this Declaration, the term "Condominium Project" also includes "community apartment" and "stock cooperative" projects as respectively defined in Sections 1351(d) and 1351(m) of the California Civil Code or any similar California statutes hereafter enacted.

1.19. Cost Center.

One or more Improvements or maintenance areas located on a portion or portions of the Maintenance Property, the maintenance or use of which Improvements or maintenance areas is fully or partially restricted to Owners of certain Lots or Condominiums as specified herein or in one or more Supplemental Declarations, and where the expenses of operating, maintaining and replacing such Improvements or maintenance areas are borne solely or disproportionately by such specified Owners. ****[There are no Cost Centers established in connection with the First Subdivision.]**** ****[First Subdivision Cost Centers are described on Exhibit "F" hereto. Additionally]**** Cost Centers may be designated in connection with future Phases of Development annexed to the Properties.

1.20. County.

The County of Riverside, in the State of California, and its various departments, divisions, employees and representatives.

1.21. Declarant.

DavSha, L.L.C., a California limited liability company, its successors, and any other Person to which it assigns any of its rights hereunder by an express written and Recorded assignment. Any such assignment may include only specific rights of the Declarant hereunder and may be subject to such conditions and limitations as DavSha, L.L.C., a California limited liability company, may impose in its sole and absolute discretion. As used in this Section, "successor" means any Person who acquires Declarant or substantially all of its assets, or who merges with Declarant by sale, merger, reverse merger, consolidations, sale of stock or assets, operation of law or otherwise. Declarant is a builder described in California Civil Code Section 1375.

1.22. Declarant's Delegate.

The Delegate appointed by Declarant to represent Declarant and all Merchant Builders and to cast the Class A and Class B votes of the Declarant and all Merchant Builders.

1.23. Declaration.

This Declaration of Covenants, Conditions and Restrictions and Reservation of Easements, as amended.

1.24. Dedicated Maintenance Property.

Any portion of the Maintenance Property which is subject to an unaccepted offer of dedication to a Local Governmental Agency for public access, use or maintenance. Dedicated Maintenance Property may include parks, trails, other recreational or open space amenities, landscaping areas or other Improvements. Dedicated Maintenance Property specifically excludes Public Property which is the maintenance responsibility of the Maintenance Association. Dedicated Maintenance Property shall be maintained and used by the Maintenance Association and the Owners in the same manner as all other Maintenance Property until the offer of dedication is accepted, whereupon (i) the Dedicated Maintenance Property shall be maintained by the accepting Local Governmental Agency and shall be available for use by the general public, and (ii) the Dedicated Maintenance Property shall no longer constitute a part of the Maintenance Property.

1.25. Deed of Trust.

A Mortgage as further defined herein.

1.26. Delegate.

(i) Declarant's Delegate, and (ii) a natural Person appointed to represent all of the Members (exclusive of Declarant and the Merchant Builders) within a Delegate District to vote on their behalf, as further provided in this Declaration and in the Bylaws. All provisions of this Declaration and the Bylaws pertaining to the appointment, removal, qualification or action of Delegates shall be equally applicable to all alternate Delegates.

1.27. Delegate District.

A geographical area in the Properties in which a single Delegate represents the collective voting power of all Members (other than Declarant and the Merchant Builders who shall be represented by Declarant's Delegate) owning Lots and Condominiums within such geographical area.

1.28. DRE.

The California Department of Real Estate, or such other successor governmental agency of the State of California which administers the sale of subdivided lands pursuant to Sections 11000 et seq., of the California Business and Professions Code, or any similar California statute hereafter enacted.

1.29. Family.

(i) A group of natural Persons related to each other by blood or legally related to each other by marriage or adoption, or (ii) a group of natural Persons not all so related who maintain a single common household in a Residence.

1.30. FHA.

The Federal Housing Administration of the United States Department of Housing and Urban Development and any department or agency of the United States government which succeeds to the FHA's function of insuring notes secured by Mortgages on residential real estate.

1.31. FHLMC.

The Federal Home Loan Mortgage Corporation created by Title II of the Emergency Home Finance Act of 1970, and its successors.

1.32. First Subdivision.

The real property described in *Exhibits "A" and "B"* to this Declaration. The First Subdivision is hereby designated as a portion of Delegate District No. 1.

1.33. FNMA.

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

1.34. GNMA.

The Government National Mortgage Maintenance Association administered by the United States Department of Housing and Urban Development, and its successors.

1.35. Improvement.

All structures, landscaping and appurtenances thereto, including but not limited to buildings, outbuildings, walkways, clustered mailbox structures, sprinkler pipes, irrigation systems, storm drainage systems, garages, recreational facilities, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, hedges, windbreaks, plantings, planted trees and

shrubs, fire breaks, poles, antennae, signs, exterior air conditioning and water softener fixtures or equipment.

1.36. Local Governmental Agency.

The County and City and any other local or municipal governmental entity or agency including, without limitation, any special assessment district, maintenance district or community facilities district.

1.37. Lot.

Any lot or parcel of land shown upon any Recorded subdivision map or Recorded parcel map of any portion of the Properties (as such lot or parcel may be modified by any Recorded lot line adjustment), together with the Improvements, if any, thereon, but excepting any Common Area, the Maintenance Property and any Condominium in a Condominium Project.

1.38. Maintenance Association.

PRESIDENTS CLUB AND RESORT COMMUNITY ASSOCIATION, a California nonprofit corporation (formed pursuant to the Nonprofit Mutual Benefit Corporation Law), its successors and assigns. The Maintenance Association is an "Association" as defined in Section 1351(a) of the California Civil Code.

1.39. Maintenance Funds.

The accounts created for Maintenance Association receipts and disbursements pursuant to Article VI hereof.

1.40. Maintenance Guidelines.

The guidelines for the ordinary and necessary maintenance, repair, replacement and preservation of the Maintenance Property. Among other things, the Maintenance Guidelines specify suggested maintenance levels, recommended intervals for regularly scheduled maintenance items, and the scope of required maintenance practices and procedures.

1.41. Maintenance Property.

All the real and personal property and Improvements which are owned in fee simple at any time by the Maintenance Association, or over which the Maintenance Association has an easement or authorization for the use, care or maintenance thereof, for the common benefit, use and enjoyment of Owners, as further provided in Article III of this Declaration. The Maintenance Property includes (for maintenance purposes but not necessarily fee ownership) without limitation (i) all walls, median strips, slopes, berms, landscaping, parkway areas, sidewalks, and irrigation and drainage systems in public property or public rights-of-way in or near the Properties designated for maintenance by the Maintenance Association pursuant to (a) this Declaration; (b) any Supplemental Declaration; (c) an agreement between a Local Governmental Agency and Declarant, a Merchant Builder or the Maintenance Association; or (d) on a Recorded subdivision or parcel map of the Properties, the maintenance of which is not the responsibility of a state, local or municipal governmental agency or entity, or a Project Association pursuant to a Project Declaration, (ii) the Maintenance Property Walls as hereafter defined, and (iii) areas adjacent to the Properties over which the Maintenance Association is granted a maintenance

easement. Title to all or any portion of the Maintenance Property may be subject to a prior dedication to a Local Governmental Agency.

1.42. Maintenance Property Wall.

Any wall or fence which (i) separates a Lot or Common Area from the immediately adjacent Maintenance Property or Public Property, regardless of whether such wall or fence is (a) located on the common property line separating the Maintenance Property or Public Property from the adjacent Lot or Common Area, or (b) located wholly or partially within the Maintenance Property, Public Property, Lot or Common Area immediately adjacent to such common property line, or (ii) is otherwise designated as an Maintenance Property Wall in any Supplemental Declaration. Notwithstanding the foregoing, the term Maintenance Property Wall does not include any wall or fence which is the maintenance responsibility of a Project Association or a Local Governmental Agency. Maintenance Property Wall designations pursuant to this Declaration and any Supplemental Declaration, automatically include any Maintenance Property Wall described in (i) above, in the applicable Phase of Development regardless of whether such Maintenance Property Wall is specifically described herein or in the applicable Supplemental Declaration.

1.43. Manager.

A Person, firm or agent employed as an independent contractor by the Maintenance Association to perform functions of the Maintenance Association, as provided herein.

1.44. Member.

A Person holding a Membership in the Maintenance Association. Membership means the voting and other rights and privileges of Members as provided in the Restrictions, together with the correlative duties and obligations contained therein.

1.45. Merchant Builder.

A Person who acquires a portion of the Properties for the purpose of (i) development and resale to the general public; or (ii) in the case of an Apartment Area for development of such area for sale, lease, short or long term occupancy, provided, however, that the term "Merchant Builder" shall not mean Declarant but shall include the Initial Merchant Builder.

1.46. Mortgage.

Any mortgage or deed of trust or other conveyance of a Lot, Condominium or other portion of the Properties to secure the performance of an obligation, which will be reconveyed upon the completion of such performance. The term "Deed of Trust" or "Trust Deed" is synonymous with the term "Mortgage."

1.47. Mortgagee/Mortgagor.

A Person to whom a Mortgage is made including the beneficiary of a Deed of Trust. Mortgagor means a Person who mortgages his or her property to another and including the Trustor under a Deed of Trust. The term "Trustor" is synonymous with the term "Mortgagor," and the term "Beneficiary" is synonymous with the term "Mortgagee."

1.48. Notice and Hearing.

Written notice and a hearing before the Board or the Architectural Committee, as applicable, as further provided herein or the Bylaws.

1.49. Owner.

A Person or Persons, including Declarant and Merchant Builders, holding a fee simple or long-term ground leasehold interest of Record to a Lot or a Condominium. The term "Owner" includes a seller under an executory contract of sale, but excludes Mortgagees. For purposes of this Declaration, a "long-term ground leasehold interest" means a leasehold interest having a term of ten (10) or more years.

1.50. Person.

A natural individual, a corporation, partnership or any other entity with the legal right to hold title to real property.

1.51. Phase of Development.

(i) The First Subdivision, (ii) any portion of the Properties covered by a Supplemental Declaration for which a Public Report has been issued by the DRE, unless otherwise defined in such Supplemental Declaration, (iii) any portion of the Properties designated as a Phase of Development in a Recorded Supplemental Declaration (including all amendments thereto) governing such property, and (iv) if no Public Report is issued and there is no Phase of Development designation in the Supplemental Declaration for a portion of the Properties, then all of the real property annexed pursuant to that Supplemental Declaration shall be a Phase of Development.

1.52. Planned Development.

Planned Development means an area of the Properties (other than a multi-Family apartment project in an Apartment Area or Condominium Project) developed as part of the Properties, whether or not the increment is developed in phases. For purposes of this Declaration, a Planned Development may or may not qualify as a "planned development" as defined in Section 1351(k) of the California Civil Code, or any similar California statute hereinafter enacted.

1.53. Project Association.

Any California nonprofit corporation or unincorporated Association, or its successor, established in connection with a Project Declaration, the membership of which is composed of Owners of Lots or Condominiums within a Condominium Project, Planned Development or other portion of the Properties.

1.54. Project Declaration.

Any declaration of covenants, conditions and restrictions, or similar document, which affects solely a Condominium Project or Planned Development or other specified portion of the Properties.

1.55. Properties.

The First Subdivision, together with portions of the Annexable Area which are annexed to the property which is subject to this Declaration pursuant to Article II hereof. The Properties are a "common interest development" as defined in Section 1351(c) of the California Civil Code.

1.56. Public Property.

All walls, median strips, slopes, berms, landscaping, equestrian trails, sidewalks and irrigation and drainage systems on public property designated for maintenance by a Local Government Agency pursuant to this Declaration, any Supplemental Declarations, any agreement or Recorded map.

1.57. Public Report.

A Final Subdivision Public Report issued by DRE in compliance with Sections 11000 et seq. of the California Business and Professions Code, or any similar California statute hereafter enacted.

1.58. Reconstruction Assessment.

A charge against each Owner and such Owner's Lot or Condominium, representing a portion of the Maintenance Association's cost to reconstruct any Improvements on the Maintenance Property, pursuant to the provisions of this Declaration.

1.59. Record, Filed, Recordation.

The recordation or filing of any document in the Office of the Riverside County Recorder.

1.60. Reserves.

Those Common Expenses for which Maintenance Association funds are set aside pursuant to Article VI of this Declaration and Section 1365.5 of the California Civil Code for funding the periodic painting, maintaining, repairing and replacing of the major components of the Maintenance Property which would not reasonably be expected to recur on an annual or less frequent basis. Reserves shall be determined annually by the Board pursuant to maintenance cost guidelines established in accordance with prudent property management practices generally applied for "common interest developments" (as defined in Section 1351(c) of the California Civil Code) throughout the County.

1.61. Residence.

A dwelling intended for use and occupancy by a single Family and located on or within a Lot or a Condominium Project or within an apartment building within an Apartment Area.

1.62. Residential Area.

The real property which is so classified in this Declaration or a Supplemental Declaration. The Residential Area is intended to be developed as single-Family Lots or Condominiums.

1.63. Restrictions.

This Declaration, the Supplemental Declarations, the Articles, the Bylaws, the Architectural Committee Rules, the Rules and Regulations and the Maintenance Guidelines.

1.64. Rules and Regulations.

The rules and regulations adopted by the Board as provided herein.

1.65. Special Assessment.

A charge against a particular Owner or a particular Project Association, attributable to or reimbursable by such Owner or Project Association, equal to the cost incurred by the Maintenance Association for corrective action performed pursuant to the Restrictions, or levied by the Board as a reasonable fine or penalty for noncompliance with the Restrictions, plus interest and other charges on such Special Assessment as provided for in this Declaration.

1.66. Supplemental Declaration.

Any declaration of covenants, conditions and restrictions and reservation of easements or similar document adding real property to the Properties or supplementing this Declaration which may be Recorded pursuant to Article II of this Declaration.

1.67. VA.

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

**ARTICLE II
DEVELOPMENT; LAND CLASSIFICATIONS; ANNEXATION**

2.1. Interpretation of Declarations.

As each Phase of Development is developed, Declarant or Declarant and a Merchant Builder may, with respect thereto, Record one (1) or more Project Declarations and/or Supplemental Declarations which incorporate this Declaration by reference, which shall designate the Delegate District(s) and use classifications for the Phase of Development, and which may supplement this Declaration with such additional covenants, conditions, restrictions and land uses as Declarant may deem appropriate for the real property being annexed thereby ("Annexed Territory"). The provisions of any Supplemental or Project Declaration may impose on the Annexed Territory such additional or more restrictive conditions, covenants, restrictions, land uses and limitations as Declarant or a Merchant Builder may deem advisable, taking into account the particular requirements of the Annexed Territory; and any such conditions shall not be deemed to constitute a conflict with the provisions of this Declaration to the extent they can reasonably be interpreted to be consistent. If there is any conflict between any Supplemental Declaration and the Declaration, the provisions of the Supplemental Declaration shall control with respect to the Annexed Territory described in such Supplemental Declaration, although such documents shall be construed to be consistent with one another to the extent possible. If there is any conflict between any Project Declaration and the provisions of the Declaration or applicable Supplemental Declaration, this Declaration and applicable Supplemental Declaration shall control, although such documents shall be construed to be consistent with one another to the extent possible. A Project Declaration may, but need not, provide for the establishment of a Project Association, to be comprised of Owners of Lots in a Planned Development or Condominiums in a Condominium Project.

2.2. First Subdivision Land Classifications.

2.2.1. **Residential Area.** The portion of the First Subdivision described in *Exhibit "A"* is classified as Residential Area.

2.2.2. **Maintenance Property.** The portion of the First Subdivision, if any, described in *Exhibit "B"* is classified as Maintenance Property. Maintenance Property designations pursuant to this Declaration and any Supplemental Declaration automatically include any Maintenance Property Wall in the applicable Phase of Development, regardless of whether such Maintenance Property Wall is specifically described in *Exhibit "B"* or the applicable Supplemental Declaration.

2.2.3. **Common Area.** There is no Common Area in the First Subdivision.

2.2.4. **Apartment Area.** There is no Apartment Area in the First Subdivision.

2.3. Annexation of Annexable Area.

2.3.1. **Timing.** Declarant and Merchant Builders may, but shall not be required to, at any time or from time to time, add to the Properties covered by this Declaration all or any portion of the Annexable Area by Recording a Supplemental Declaration with respect to the Annexed Territory covered thereby. Annexable Area may be added to the Properties without limitation as to time and without the approval of the Owners, Delegates, or Maintenance Association. Any proposed addition to the Properties of real property not located in the Annexable Area ("Other Area") shall require the approval of Delegates representing at least two thirds (2/3) of the voting power of the Maintenance Association.

2.3.2. **Declaration Coverage.** Upon Recording a Supplemental Declaration, the covenants, conditions and restrictions contained in this Declaration shall apply to the Annexed Territory in the same manner as if it were originally covered by this Declaration and originally constituted a portion of the Properties, subject to the provisions of the applicable Supplemental Declaration; and thereafter the rights, privileges, duties and liabilities of the Declarant with respect to the Annexed Territory shall be the same as with respect to the First Subdivision and the rights, obligations, privileges, duties and liabilities of the Owners of Lots and Condominiums within the Annexed Territory shall be the same as in the case of the Lots or Condominiums originally affected by this Declaration, subject to the provisions of the applicable Supplemental Declaration.

2.3.3. **Supplemental Declaration Content.** The Supplemental Declaration annexing Annexed Territory shall contain at least the following provisions:

(i) **Declaration Reference.** A reference to this Declaration, which reference shall state the date of Recordation hereof and the Instrument number or other relevant Recording data of the County Recorder's office;

(ii) **Extension of Comprehensive Plan.** A statement that the provisions of this Declaration shall apply to the Annexed Territory as set forth therein;

(iii) **Description.** A description of the Annexed Territory, including any Maintenance Property and Public Property; and

(iv) **Land Classifications.** The land classifications of the Annexed Territory.

2.3.4. Approval of Annexations. Each Supplemental Declaration shall be signed by Declarant and by each Record owner of the Annexed Territory. For any annexation of Other Area, each Supplemental Declaration must be signed by the Record owner of the Annexed Territory and by an officer of the Maintenance Association, certifying that the approval of the requisite percentage of Delegates has been obtained.

2.3.5. Phasing; Amendments. A Supplemental Declaration may cover one (1) or more Phases of Development, as designated in such Supplemental Declaration. A Supplemental Declaration which specifies that the Annexed Territory shall comprise a single Phase of Development may be amended prior to the commencement of Common Assessments within the Annexed Territory by an amendment to such Supplemental Declaration executed by all parties required to sign the Supplemental Declaration and thereafter Recorded, which amendment (i) specifies that the Annexed Territory shall comprise more than one (1) Phase of Development and identifies each such Phase of Development within the Annexed Territory, and (ii) identifies which portions of the Maintenance Property, if any, described in the previously Recorded Supplemental Declaration are to be included in each such designated Phase of Development.

2.3.6. Deannexation and Amendment.

(i) **By Declarant.** Declarant may unilaterally amend a Supplemental Declaration or delete all or a portion of a Phase of Development from coverage of this Declaration and the jurisdiction of the Maintenance Association, so long as Declarant is the Owner of all of such Phase of Development (other than Public Property and Dedicated Maintenance Property), and provided that (1) a Notice of Deletion of Territory or an amendment to the Supplemental Declaration, as applicable, is Recorded in the same manner as the applicable Supplemental Declaration, (2) no Class A or Class B Maintenance Association vote has been exercised with respect to any portion of such Phase of Development, (3) Common Assessments have not yet commenced with respect to any portion of such Phase of Development, (4) there has been no Close of Escrow for the sale of any Lot or Condominium in such Phase of Development, (5) the Maintenance Association has not made any expenditures or incurred any obligations with respect to any portion of such Phase of Development, and (6) if such Phase of Development consists of area as to which VA or FHA has issued a "project approval" (i.e. has agreed to guarantee or insure loans secured by Mortgages on Lots or Condominiums located in such phase of Development), VA, FHA or both, as applicable, have approved such deannexation or

amendment. Notwithstanding the foregoing, Declarant may also unilaterally amend a Supplemental Declaration as provided in Section 12.2.1 hereof.

(ii) **By Merchant Builder.** A Merchant Builder may amend a Supplemental Declaration or delete all or any portion of a Phase of Development from coverage of this Declaration and the jurisdiction of the Maintenance Association, so long as such Merchant Builder or Declarant and such Merchant Builder together are the Owners of all of such Phase of Development (with the exception of Public Property and Dedicated Maintenance Property) and provided further, that all requirements of items (1) through (5) set forth in Section 2.3.6(i) above have been satisfied, and Declarant has consented in writing to such amendment or deletion by executing a Notice of Deletion of Territory or amendment to the Supplemental Declaration, as applicable.

ARTICLE III MAINTENANCE PROPERTY; USES AND RESTRICTIONS

3.1. Owners' Rights of Enjoyment.

Every Owner and, to the extent permitted by such Owner pursuant to the Restrictions, such Owner's Family, guests, invitees, lessees, and contract purchasers who reside in such Owner's Lot or Condominium ("Owner Representatives"), shall have a right of ingress and egress and of enjoyment in, to and over the Maintenance Property which shall be appurtenant to and shall pass with title to every Lot and Condominium, subject to the Maintenance Association's right to exercise exclusive jurisdiction over and control of the Maintenance Property (other than Public Property) and the following provisions:

3.1.1. Additional Maintenance Property. The right of Declarant or any Merchant Builder to designate additional Maintenance Property pursuant to the terms of Article II hereof.

3.1.2. Rules and Regulations. The Maintenance Association's right to establish reasonable Rules and Regulations pertaining to the use of the Maintenance Property and any recreational and other facilities located thereon, including, but not limited to, the right and obligation of the Maintenance Association to enforce all parking restrictions for parking areas within the Maintenance Property as set forth in Section 3.3 below.

3.1.3. Guests. The Maintenance Association's right to reasonably limit the number of guests of Owners using the Maintenance Property and any facilities thereon. The Rules and Regulations may specify a maximum number of guests which an Owner may admit to the Maintenance Property recreational facilities at one time without first obtaining the Maintenance Association's prior written authorization. The Rules and Regulations may also require a deposit or other arrangements before Owners may use the Maintenance Property facilities for such large groups of guests.

3.1.4. Fees. The Maintenance Association's right to charge reasonable admission and other fees for the use of any facilities situated upon the Maintenance Property.

3.1.5. Borrowings. The Maintenance Association's right in accordance with the Articles, Bylaws and this Declaration, with the approval of Delegates representing at least sixty-seven percent (67%) of the Maintenance Association voting power, to borrow money for the purpose of improving, repairing or adding to the Maintenance Property and facilities and, to mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred pursuant to this subsection.

3.1.6. Suspension of Rights. The Maintenance Association's right to suspend the Membership rights and other rights and easements of any Owner and such Owner's Owner Representatives to use the Maintenance Property and the facilities and Improvements located thereon, for any period during which any assessment against such Owner's Lot or Condominium remains unpaid and delinquent; and for a period not to exceed thirty (30) days for any noncontinuing infraction of the Rules and Regulations of the Maintenance Association as more fully provided in the Bylaws. Any suspension of Membership rights or right to use any Maintenance Property facilities (i) shall be made only by the Board, after Notice and Hearing, and (ii) shall not limit or preclude pedestrian or vehicular access to such Owner's Lot or Condominium.

3.1.7. Maintenance Property Transfers. The Maintenance Association's rights set forth in Section 5.2.4 of this Declaration and Declarant's rights set forth in Article X hereof.

3.1.8. Use By Declarant and Merchant Builders. The right of Declarant and Merchant Builders (and their employees, sales agents, prospective purchasers, customers and representatives) to enter upon the Maintenance Property, for the benefit of Declarant or the Merchant Builders or the Annexable Area or any combination thereof, to complete the construction of any landscaping, utilities or other Improvements to be installed thereon, as well as the right to nonexclusive use of the Maintenance Property and the facilities thereof, without charge, for sales, display, access, ingress, egress, exhibition and occasional special events for promotional purposes, which right Declarant hereby reserves; provided, however, that such use rights shall terminate on the earlier of (i) the expiration of fifteen (15) years after the first Close of Escrow for a Lot or Condominium in the Properties, or (ii) the date on which neither Declarant nor any Merchant Builder owns a Lot or Condominium in the Properties and all of the Annexable Area has been added to the Properties. Such use shall not unreasonably interfere with the rights of enjoyment of the other Owners as provided herein.

3.1.9. Reconstruction of Improvements. The Maintenance Association's right (by action of the Board) to reconstruct, replace or refinish any Improvement or portion thereof upon the Maintenance Property, in accordance with the Maintenance Guidelines, the Architectural Committee Rules and the original design, finish or standard of construction of such Improvement or of the other Improvements within any Phase of Development, as the case may be; or, if not in accordance with the Maintenance Guidelines, the Architectural Committee Rules and the original design, finish or standard of construction, subject to Section 12.3 hereof, with the approval of Delegates representing at least sixty-seven percent (67%) of the Maintenance Association voting power.

3.1.10. Maintenance. The Maintenance Association's right to maintain and repair and replace the Maintenance Property and all Improvements located thereon.

3.1.11. Restricted Areas. The Maintenance Association's right, acting through the Board, to reasonably restrict access to slopes and other sensitive landscaped areas, maintenance facilities, open space areas and similar areas of the Maintenance Property. In addition, in the Supplemental Declaration, Declarant or Merchant Builder may designate exclusive use areas within the Maintenance Property for the exclusive use or maintenance by one or more Owners (such as common driveway areas). The Maintenance Association shall have exclusive control over all of the Maintenance Property except for Public Property and any exclusive use or maintenance area designated in a Supplemental Declaration or pursuant to Section 5.2.4 below.

3.2. Delegation of Use.

The Owner of a Lot or Condominium may delegate, in accordance with the Restrictions, the Owner's right of enjoyment of the Maintenance Property and facilities to the Owner's Owner Representatives who occupy the Owner's Lot or Condominium, subject to reasonable regulation by the Board. An Owner who does not reside in his Residence and who has delegated his right of enjoyment of the Maintenance Property to a tenant or contract purchaser who occupies the Residence shall not be entitled to the use and enjoyment of any recreational facilities located on the Maintenance Property during the term of such delegation. Each Apartment Area Owner may delegate its right of enjoyment in and to the Maintenance Property to tenants and such tenants may further delegate such rights of enjoyment to the members of the tenants' Family and the tenants' bona fide guests (subject to the Restrictions).

3.3. Parking and Traffic Control.

Temporary guest or recreational parking is permitted within the Maintenance Property only within spaces and areas clearly marked for such purpose. The Maintenance Association, through the Board, is empowered to establish "parking" and restricted "guest parking" and "no parking" areas within the Maintenance Property in accordance with Section 22658 and Section 22658.2 of the California Vehicle Code, or any similar statute hereafter enacted, as well as to enforce these parking limitations through its officers and agents by all means lawful for such enforcement on public streets, including the removal of any violating vehicle. The Board is also authorized and empowered to request that the City or other applicable agency enforce the California Vehicle Code on any private streets within the Properties, if any, including the Common Area and any Maintenance Property private streets, pursuant to applicable ordinances and provisions of the California Vehicle Code permitting governmental enforcement thereof.

3.4. Easements for Vehicular Traffic.

In addition to the general easements for use of the Maintenance Property reserved herein, Declarant hereby reserves to itself, to all future Owners within the Properties, and to every Owner and their respective Owner Representatives nonexclusive easements appurtenant to each Lot and Condominium in the Properties for vehicular and pedestrian traffic over any and all private streets and walkways, if any, within the Maintenance Property, subject to the Restrictions.

Declarant, on behalf of itself and all Merchant Builders, reserves the right to grant similar easements to owners of property in the Annexable Area whether or not annexed to the Properties.

3.5. Waiver of Use.

No Owner may exempt himself from personal liability for assessments duly levied by the Maintenance Association, nor release his Lot, Condominium or other property in the Properties from the liens and charges hereof, by waiver of the use and enjoyment of the Maintenance Property or any facilities thereon or by abandonment of his Lot, Condominium or any other property in the Properties.

3.6. Title to the Maintenance Property.

3.6.1. Transfer. As each Phase of Development is developed by Declarant or a Merchant Builder, Declarant and such Merchant Builder, as applicable, will convey or cause to be conveyed to the Maintenance Association, in fee simple or by easement, the Maintenance Property (excluding Public Property) in such Phase of Development designated by Declarant in its sole discretion, free and clear of any and all monetary encumbrances and liens (other than nondelinquent taxes and assessments), subject to reservations, easements, covenants, and conditions then of record, including those set forth in this Declaration, or as contained in the deed conveying such Maintenance Property. Such conveyance shall be completed (i) for Residential Areas, before the first Close of Escrow for a Lot or Condominium in such Phase of Development, and (ii) for an Apartment Area Phase of Development, before the first occupancy of an apartment Residence within such Phase of Development thereof; except that notwithstanding the foregoing, no such conveyance shall be required before the last day of the month during which such Apartment Area Phase of Development becomes subject to this Declaration. No Owner or Project Association shall interfere with the exercise by the Maintenance Association of its rights hereunder or its easement for maintenance over Maintenance Property which is owned in fee by such Owner or Project Association.

3.6.2. Commencement of Maintenance. Notwithstanding any conveyance of Maintenance Property to the Maintenance Association, the Maintenance Association's responsibility to maintain the Maintenance Property located in any Phase of Development shall begin on the commencement of Common Assessments in such Phase of Development; except that, if such Phase of Development consists of only Maintenance Property, the Maintenance Association's maintenance responsibility therefor shall commence on the first day of the month immediately following the month in which the deed is Recorded conveying such property to the Maintenance Association. The same Maintenance Property ("Multi-Phased Maintenance Property") may be designated for Maintenance Association ownership in connection with several different Phases of Development ("Alternative Phases"). Maintenance of Multi-Phased Maintenance Property, if any, shall commence on the earliest date that maintenance begins in any of the Alternative Phases in which such Multi-Phased Maintenance Property is designated for Maintenance Association ownership. Prior to the commencement of the Maintenance Association's maintenance responsibility, such maintenance shall be the responsibility of Declarant or the Merchant Builder, as applicable, depending on whether such Phase of Development is being developed by Declarant or a Merchant Builder. Notwithstanding the

foregoing, if the contractors or subcontractors of Declarant or a Merchant Builder are contractually obligated to maintain the landscaping or other Improvements on the Maintenance Property, the Maintenance Association shall not interfere with the performance of such warranty or other contractual maintenance obligations. Such maintenance performed by the contractors or subcontractors of Declarant or Merchant Builders shall not postpone the commencement of Common Assessments pursuant to this Declaration nor entitle an Owner to claim any offset or reduction in the amount of such assessments. If the Dedicated Maintenance Property or any other portion of the Maintenance Property is dedicated to and accepted for maintenance by a Local Governmental Agency, then the Maintenance Association may but need not maintain the area if the Local Governmental Agency either fails to maintain the area or elects to cease maintaining the area.

3.6.3. Character of Maintenance Property Improvements. The nature, design, quantity, quality and all other attributes of the Maintenance Property, and the facilities and amenities thereon, shall be determined in Declarant's sole and absolute discretion. The Maintenance Association shall be unconditionally obligated to accept title to and maintenance responsibility for the Maintenance Property when such title and maintenance responsibility is tendered by Declarant alone or together with a Merchant Builder. If a dispute arises between the Maintenance Association and Declarant or any Merchant Builder in connection with the nature, design, quantity, quality or other attributes of the Maintenance Property, the completion thereof, the state of title thereto or the acceptance of title or maintenance responsibility therefor (a "Maintenance Property Dispute"), then the Maintenance Association shall be obligated to accept title to and assume maintenance responsibility for such Maintenance Property and the Improvements and facilities thereon pending resolution of such Maintenance Property Dispute in accordance with Section 12.14.

3.7. Taxes.

Each Owner shall execute such instruments and take such action as may reasonably be specified by the Maintenance Association to obtain separate real estate tax assessment of such Owner's Lot or Condominium. If, in the Maintenance Association's opinion, any taxes or assessments constitute a lien on the Maintenance Property, or any part thereof, they may be paid by the Maintenance Association and each Owner shall be obligated to pay or to reimburse the Maintenance Association for, as the case may be, the taxes and assessments assessed by the County Assessor or other taxing authority against the Maintenance Property and attributable to such Owner's own Lot or Condominium.

3.8. Master Communications Systems Service Easement.

All of the Properties are subject to nonexclusive easements of access, ingress, and egress, for purposes of installing, operating, maintaining, repairing, inspecting, removing and replacing the community antenna television system, and other communication service lines, facilities, and equipment, for the benefit of Declarant and its subsidiaries, transferees, successors and assigns, as reserved and granted by reservations and conveyances of record and the provisions hereof. Such easements are freely transferable by Declarant to any other individual or entity and their successive owners for the purpose of providing a community antenna television system and communication services to the Properties, any portion thereof, and adjoining property. All such

community antenna television and communication lines, facilities and equipment shall remain the property of Declarant, its subsidiaries, successors, transferees and assigns, and transfer of all or any portion of the Properties does not imply the transfer of any such community antenna television and communication easements or the lines, facilities or equipment located thereon. Exercise of the easements reserved in this Section shall not unreasonably interfere with the reasonable use and enjoyment of the Properties.

3.9. Maintenance Property Wall Easements.

Declarant reserves the benefit of the Maintenance Association (i) an easement over those portions of the Lots, Condominiums and Common Areas located within three (3) feet of the common property line separating the Maintenance Property from such Lots, Condominiums and Common Area for the purpose of accommodating footings and other structural components, if any, of the Maintenance Property Wall located on or immediately adjacent to such common property a boundary line, including any encroachments thereof onto to the Lots, Condominiums and Common Area; and (ii) an easement of access, ingress and regress over the Lots, Condominiums and Common Areas reasonably necessary for the maintenance, repair and replacement of Maintenance Property Walls and related Improvements.

3.10. Declarant Easements.

Declarant hereby reserves to itself together with the right to transfer same easements of access, ingress and egress over all Maintenance Property, Lots, Common Area and Condominiums for installation and maintenance of utilities and drainage facilities shown on a Subdivision Map or Maps for the Properties and for construction, installation, operation, replacement, repair and maintenance of all utility and service lines, systems and other devices and Improvements which may be reasonably necessary for the development and marketing of Residences within the Properties and Annexable Area, including, but limited to, water, sewer, gas, telephone, electrical, television and storm drain and water lines (collectively the "Facilities"). Each Owner by accepting a deed to a Residence expressly consents to the foregoing easements and rights of way and authorizes and appoints Declarant (so long as Declarant owns all or any portion of the Properties or Annexable Area) as attorney-in-fact of such Owner to execute any and all instruments particularly describing, locating, granting or transferring such easements or rights of way. Within the location of the Facilities' easements and rights of way, no Improvement shall be planted or placed which may interfere with the use, maintenance or operation of the Facilities or which may be in violation any ordinance or law of any applicable governmental authority. Declarant also reserves the right to grant easements over the Maintenance Property, or any portion thereof for exclusive use by any Owner or Owners of a contiguous Lot or Condominium for which Close of Escrow has already occurred, as a yard, recreational, gardening or landscape area. Any such easement will be conveyed by the Declarant prior to conveying the last Lot or Condominium in the Properties or any portion of the Annexable Area. Such conveyance must be approved in advance by the Board of Directors of the Maintenance Association.

3.11. Regular Inspection.

3.11.1. Duty to Inspect. It shall be the duty of the Board to have the Maintenance Property inspected at least once every year.

3.11.2. Purpose of Inspection. The purpose of the inspection shall be to (i) determine whether the Maintenance Property is being maintained adequately in accordance with the Maintenance Guidelines and such other prudent maintenance practices appropriate for Improvements such as those comprising the Maintenance Property, (ii) identify the condition of the Maintenance 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 (iii) recommend preventive actions (such as root pruning and tree removal) which may be taken to reduce potential maintenance costs to be incurred in the future.

3.11.3. Scope of Inspection. All of the Maintenance Property and Improvements thereon including, but not limited to, all structures, gates, walls, walkways, irrigation systems, landscaping, and drainage devices thereon shall be inspected.

3.11.4. Experts and Consultants. The Board may employ such experts and consultants as are necessary to perform the inspection and make the report required by this Section.

3.11.5. Report to Owners. The Board shall have a written report of the results of the inspection of the Maintenance Property required by this section furnished to Owners within the time set forth for furnishing Owners with the Budget. The report shall include at least the following:

- (i) a description of the condition of the Maintenance Property, including a list of items inspected, and the status of maintenance, repair and need for replacement of all such items;
- (ii) a description of all maintenance, repair and replacement planned for the ensuing fiscal year and included in the Budget;
- (iii) if any maintenance, repair or replacement is to be deferred, the reason for such deferral;
- (iv) a summary of all reports of inspections performed by any expert or consultant employed by the Board to perform inspections;
- (v) a report of the status of compliance with the maintenance, replacement and repair needs set forth in the inspection report for preceding years; and
- (vi) such other matters as the Board deems appropriate.

ARTICLE IV MAINTENANCE ASSOCIATION

4.1. Organization.

The Maintenance Association is organized as a California corporation under the Nonprofit Mutual Benefit Corporation Law charged with the duties and vested with the powers prescribed by law, subject to the limitations and provisions of the Articles, Bylaws, and this Declaration. Neither the Articles nor Bylaws shall, for any reason, be amended or otherwise changed so as to be inconsistent with this Declaration. If there is any ambiguity in any provision of the Articles or Bylaws, then such provision shall be construed, to the extent possible, so as to be consistent with the provisions of this Declaration. Nothing in this Declaration shall prevent the creation, pursuant to Project Declarations, of Project Associations to assess, regulate, maintain or manage the portions of the Properties subject to such Project Declarations, or to own or control portions thereof for the common use or benefit of the Owners of Lots or Condominiums in those portions of the Properties subject to such Project Declarations.

4.2. Membership.

Members of the Maintenance Association are Declarant, for so long as Declarant is entitled to cast a Class C vote pursuant to this Section, and each Owner (including Declarant and any Merchant Builder) of one (1) or more Residential Area or Apartment Area Lots or Condominiums in the Properties. Membership in the Maintenance Association is subject to the Restrictions. Excepting the Class C Membership, all Memberships in the Maintenance Association held by Owners are appurtenant to the Lot or Condominium owned by each Owner, and ownership of a Lot or Condominium is the sole qualification for an Owner's Membership in the Maintenance Association.

4.2.1. Classes of Membership. The Maintenance Association shall have three (3) classes of voting Membership as follows:

(i) Class A. The Class A Members are all Owners, except Declarant and Merchant Builders shall not be Class A Members for so long as there exists a Class B Membership. Class A Members are assigned one (1) vote for each Assessment Unit assigned to a Lot or Condominium owned by such Member which is subject to assessments. All votes cast by the Class A Members within a Delegate District shall be carried by the Delegate representing such Members to a meeting of the Delegates, and shall be cast by the Delegates on behalf of the Class A Members in accordance with Section 4.5.1 concerning Voting Proposals to Delegates.

(ii) Class B. The Class B Members are Declarant and the Merchant Builders. The Class B Members are assigned three (3) votes for each Assessment Unit assigned to a Lot or Condominium owned by such Member which is subject to assessment. Votes of the Class B Members shall be exercised by Declarant's Delegate on behalf of the Class B Members. The Class B Membership shall be converted to Class A Membership on the date ("Class B Termination Date") which is the earlier to occur of the following events:

(A) The Close of Escrow for the sale of Nine Hundred (900) Lots and Condominiums in the overall development composed of the Properties and Annexable Area.

(B) The fifth (5th) anniversary of the first Close of Escrow in the Phase of Development for which a Final Subdivision Public Report was most recently issued by the DRE.

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

(iii) Class C. The Class C Member shall be Declarant irrespective of whether Declarant is or is not an Owner. The Class C Membership shall not be considered a part of the voting power of the Maintenance Association and Declarant is not entitled to exercise any Class C vote except for the purpose of electing those members of the Board which the Class C Membership is entitled to elect hereunder. The Class C Member is entitled to solely elect 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:

(A) The Close of Escrow for the sale of Nine Hundred (900) Lots and Condominiums in the overall development composed of the Properties and Annexable Area.

(B) The fifth (5th) anniversary of the first Close of Escrow in the Phase of Development for which a Final Subdivision Public Report was most recently issued by the DRE.

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

Commencing on the date on which Declarant no longer has an elected or appointed representative on the Board, and continuing until the date on which Declarant no longer owns a Lot or Condominium in the Properties or any portion of the Annexable Area, the Maintenance 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.

4.2.2. **Transfer of Membership.** An Owner's Membership shall not be assigned, transferred, pledged or alienated in any way, except upon the transfer of title to the Owner's appurtenant Lot or Condominium, and then only to the purchaser or Mortgagee of such Lot or Condominium. Declarant's Class C Membership may not be transferred except to a successor to all or a part of Declarant's rights under this Declaration. Any attempt to make a prohibited Membership transfer is void and will not be reflected on the books of the Maintenance Association. Membership in the Maintenance Association is in addition to membership in any Project Association responsible for operating the Planned Development or Condominium Project

in which the Owner's Lot or Condominium is located. Notwithstanding the foregoing, a Member who has sold his Lot or Condominium to a contract purchaser under an installment land sale contract may delegate his membership rights to the contract purchaser. Such delegation shall be in writing and must be delivered to the Board before such contract purchaser may exercise Membership privileges. However, the contract seller remains liable for all charges and assessments attributable to his Lot or Condominium until fee title to the Lot or Condominium is transferred. If the Owner of any Lot or Condominium fails or refuses to transfer the Membership (registered in his name) to the purchaser of such Owner's Lot or Condominium upon transfer of fee title thereto, the Board of Directors may record the transfer on the Maintenance Association's books. The Maintenance Association may levy a reasonable transfer fee against new Owners and their Lots and Condominiums (which fee shall be added to the Common Assessments chargeable to such new Owners) to reimburse the Maintenance Association for the administrative costs of transferring the Memberships to the new Owners on the Maintenance Association's records.

4.2.3. Suspension of Membership Rights. The Board may suspend the Membership rights of any Member, including the right to vote at any meeting of the Members, for any period during which any Common Assessment, Capital Improvement Assessment or Reconstruction Assessment against such Member and the Lot or Condominium owned by such Member is delinquent. Any such suspension for nonpayment of any assessment shall not constitute a waiver or discharge of the Member's obligation to pay the assessments provided for herein.

4.3. Delegate Districts. The First Subdivision comprises a portion of Delegate District No. 1. As Annexable Area is added to the Properties the Delegate Districts within the Annexed Territory shall be established by Declarant in the respective Supplemental Declarations for the Annexed Territory.

4.4. Delegates.

4.4.1. Appointment. Delegates shall be appointed as follows:

(i) **Project Associations.** Where all of the Residences subject to a Project Declaration also comprise all of the Residences in a Delegate District, the President, Vice President, the Secretary or the Treasurer (in that order of priority) of the Project Association created pursuant to that Project Declaration shall be the Delegate and alternate Delegates for that Delegate District ("Project Association Delegate").

(ii) **Non-Project Association Area.** In all Delegate Districts other than those described in Subsection 4.4.1(i) above, the Delegate (and alternate Delegate) representing each such Delegate District ("Non-Project Association Delegate") shall be appointed and removed by the Board of Directors of the Maintenance Association or by a committee appointed by the Board for the purpose of appointing Delegates ("Delegate Committee").

(iii) **Declarant's Delegate.** Declarant is entitled to appoint one (1) Delegate ("Declarant's Delegate") to represent Declarant and the Merchant Builders at all meetings of the Maintenance Association and to cast all of the Class A and Class B votes which Declarant and the Merchant Builders are entitled to cast pursuant to this Declaration and the Bylaws. At any time in its sole discretion, Declarant may change the Person which it has appointed to serve as Declarant's Delegate and may also designate an alternate Declarant's Delegate to act in such capacity when Declarant's Delegate is absent or otherwise unable to act. Declarant must give written notice to the Board before any such appointment or change in appointment is effective.

4.4.2. **Qualification.** Delegates must be (i) an authorized agent or employee of Declarant or a Merchant Builder, or (ii) a Member of the Maintenance Association who resides in the Properties. If the Member is a corporation, partnership, or other entity, then, subject to the preceding sentence, the authorized agent of such Member shall be eligible to serve as a Delegate. Delegates must act personally at a meeting of the Delegates of the Maintenance Association or by written ballot, and may not act by proxy. If a Delegate is not present at a meeting of the Delegates, then the alternate for such absent Delegate may attend the meeting and exercise all rights, powers and votes to which the absent Delegate would be entitled. If the previously absent Delegate arrives prior to the adjournment of a meeting, the alternate is no longer entitled to act in the place of such Delegate; provided that such relinquishment of authority by the alternate does not invalidate any matter previously voted or acted upon by the alternate in his or her temporary capacity as Delegate.

4.4.3. **Term; Vacancies; Removal.** The term of office of each Project Association Delegate shall be coincident with such Delegate's term of office as an officer of the Project Association. The term of each Non-Project Association Delegate shall expire each year on the date which is ninety (90) days prior to the date of the annual meeting of Delegates. Each Delegate shall hold office until a successor has been appointed pursuant to Section 4.4.1 or until the Delegate's death, resignation, removal or judicial adjudication of mental incompetence. Delegates may serve consecutive terms (whether as a Delegate, alternate Delegate, or any combination thereof). The office of a Delegate shall be deemed vacant upon the death, resignation, removal or judicial adjudication of mental incompetence of the Delegate, or upon the Delegate's failure to satisfy all of the qualifications of Delegate as specified above. Delegate vacancies occurring for any reason other than expiration of a Delegate's term shall first be filled by the alternate Delegate, and if there is no alternate Delegate, then by the Board or the Delegate Committee, if any. Subject to the eligibility and vacancy provisions herein, each such person shall serve the remainder of the unexpired term of office of the predecessor Delegate, or until a successor is appointed as provided above. An officer of a Project Association serving as a Delegate shall be deemed removed concurrently with his or her removal as an officer of the Project Association. Delegates appointed by the Board of Directors or the Delegate Committee may be removed by action of the Board or the Delegate Committee.

4.5. **Voting By Delegates.**

Except as otherwise provided below, each Delegate shall exercise the voting power of all of the Members in such Delegate District other than Declarant and the Merchant Builders. Declarant's

Delegate shall exercise all of the Class A and Class B voting power of Declarant and the Merchant Builders. All votes represented by Declarant's Delegate shall be cast in the manner directed by Declarant. Any Class C vote shall be cast by Declarant.

4.5.1. Voting Proposals. All voting rights shall be subject to the Restrictions. Whenever a matter which the Restrictions requires to be approved by the vote of the Delegates ("Voting Proposal") is to be submitted to the Delegates for approval, the Voting Proposal shall first be submitted to a vote of the Members in each Delegate District as provided below. Delegates may not exercise any discretion whatsoever when casting the voting power represented by the Delegates. The Delegates are merely vote carriers. Accordingly, when voting on a Voting Proposal, each Delegate shall cast all of the votes which he or she represents "for" or "against" such Voting Proposal (or for individual candidates in the case of the election of Directors) as follows:

(i) **Instructed Votes.** Those votes ("Instructed Votes") actually cast, whether in person, by proxy or written ballot, shall be cast by the Delegate in the same manner as such votes were actually cast; and

(ii) **Absentee Votes.** Votes attributable to Lots or Condominiums in the Delegate District who have not been cast on such Voting Proposal ("Absentee Votes") shall be cast "for" and "against" such Voting Proposal (or for individual candidates in the case of the election of Directors) in the same proportions as the Instructed Votes for that Delegate District were cast.

4.5.2. Specified Actions. Except as provided in Sections 4.4.1(iii) and 12.12 of this Declaration and Section 4.8 of the Bylaws, as long as there exists a Class B Membership, all Voting Proposals which the Restrictions require to be approved by the vote of Delegates representing a percentage of the total voting power of the Maintenance Association ("Specified Actions") shall require the approval of Delegates casting the specified percentage of the voting power of both the Class A and the Class B Membership. Except as provided in Section 12.12 of this Declaration and Section 4.8 of the Bylaws, upon termination of the Class B Membership all Specified Actions shall require the approval of (1) the specified percentage of the voting power of all Delegates, and (2) such specified percentage of the voting power of the Delegates exclusive of votes attributable to Declarant and all Merchant Builders. The term Specified Action as used herein specifically excludes matters requiring a mere majority vote of a quorum of Delegates as defined in the Bylaws.

4.5.3. Meetings of Delegate District Members. Voting Proposals shall be submitted to a vote of the Members as follows:

(i) **Notice; Record Date.** It is the duty of the Secretary of the Maintenance Association to call a meeting of the Members in each Delegate District to vote upon each Voting Proposal. Written notice of the meeting shall be sent to each Member of record and to each first Mortgagee of a Lot or Condominium which has filed a written request for notice with the Secretary, at least thirty (30) but not more than sixty (60) days prior to such meeting.

The mailing of notice, postage prepaid, in the manner provided in this Section, shall be considered notice served forty-eight (48) hours after said notice has been deposited in a regular depository of the United States mail. The Board of Directors may fix a date as a record date for the determination of the Members entitled to notice of any meeting of Delegate District Members ("Record Date"). The Record Date shall be not less than thirty (30) nor more than sixty (60) days prior to the date of the meeting. If the Board does not fix a Record Date for notice to Delegate District Members, the Record Date for notice shall be the close of business on the fifth (5th) business day preceding the day on which notice is given. In addition, the Board may fix a date in the future as a Record Date for the determination of the Members entitled to vote at any meeting of Delegate District Members. The Record Date so fixed shall be not more than sixty (60) days prior to the date of the meeting. If the Board does not fix a Record Date for determining Members entitled to vote, Members on the day of the Delegate District meeting who are otherwise eligible to vote are entitled to vote at the meeting. Written notice of meetings shall state the place, date and time of the meeting and those Voting Proposals which are to be presented for action by the Delegate District Members. In the case of Voting Proposals for the election of Directors, the notice to Members (1) must set forth procedures for nominating candidates for the Board, (2) must specify that cumulative voting procedures shall be followed for all elections of Directors where more than one (1) vacancy is being filled, and (3) may but need not specify a date for closing nominations of candidates, which date shall be identical for all Delegate Districts and not more than thirty (30) days prior to the date of the meeting. There shall be no nominations of candidates from the floor of the meetings of Members in the Delegate Districts. Prior to commencing the meeting of Members within a Delegate District, the Secretary of the Maintenance Association shall furnish each Delegate and the Delegate District Membership meeting with a list of all Members whose names have been placed in nomination for election to the Board.

(ii) **Special Meetings.** A special meeting of the Members in a Delegate District may be called by written request (1) by a Merchant Builder for such Delegate District, for so long as the Merchant Builder is a Class B Member, (2) by Declarant, for so long as Declarant is a Class B or Class C Member, (3) by the Delegate representing such Delegate District, or (4) by the Members in the Delegate District having not less than five percent (5%) of the total voting power within such Delegate District. To be effective, such written request must be delivered to the President, a Vice President, the Secretary or the Manager of the Maintenance Association. The Board shall then cause written notice to be given to Members in such Delegate District that a meeting will be held at a time and place fixed by the Board not less than ten (10) days, nor more than forty-five (45) days after receipt of the written request. Notice of special meetings shall specify the general nature of the business to be undertaken and that no other business may be transacted.

(iii) **Proxies.** Every Member entitled to attend, vote at or exercise consents with respect to any meeting of the Members in any Delegate District may do so either in person, or by a representative, known as a proxy, duly authorized by an instrument in writing, filed with the Board prior to the meeting of which it is applicable. Any proxy may be revoked at any time by written notice to the Board or by attendance in person by such Member at the meeting for which the proxy was given. However, no proxy is valid after the expiration of

eleven (11) months from the date of the proxy, unless otherwise provided in the proxy, except that the maximum term of any proxy shall be three (3) years from the date of execution. Such powers of designation and revocation may be exercised by the guardian of a Member's estate or by his conservator, or in the case of a minor having no guardian, by the parent having custody of such minor, or during the administration of any such Member's estate, by his executor or administrator where the latter's interest in the Member's Lot or Condominium is subject to administration in his estate. Any form of proxy shall afford an opportunity therein to specify a choice between approval and disapproval of each Voting Proposal or group of related Voting Proposals intended, at the time the proxy is distributed, to be acted upon at the meeting for which the proxy is solicited, and shall provide, subject to reasonable specified conditions, that where the person solicited specifies a choice with respect to any such matter, the vote shall be cast in accordance with such specification.

(iv) **Chair; Voting Rights.** An Maintenance Association officer or a representative of the Manager shall chair the Delegate District meeting and the chairperson shall designate a secretary to transcribe minutes of the meeting. Voting by Members at Delegate District meetings shall be by secret written ballot. With the exception of the Declarant's Class C vote, the right to vote in any Delegate District may not be separated from the ownership of the Lot or Condominium to which it is appurtenant, except that any Member may give a revocable proxy in the manner described above, or may assign his voting rights to a contract purchaser, a lessee, employee or tenant actually occupying his Lot or Condominium or to the Mortgagee of the Lot or Condominium for the term of the lease or Mortgage. The transfer or conveyance of a Lot or Condominium to a new Owner or Owners automatically transfers the appurtenant vote to the new Owner, subject to (1) any Record Date established as provided above, and (2) any outstanding assignment of the right to vote to a contract purchaser, lessee or Mortgagee as provided herein. If there is more than one (1) record Owner of any Lot or Condominium, any and all of such Owners may attend any meeting of the Members, but the vote attributable to the Lot or Condominium so owned shall not be increased by reason thereof. Co-Owners owning the majority interest in a Lot or Condominium may designate in writing one (1) of their number to vote. Fractional votes shall not be allowed, and the vote for each Lot or Condominium shall be exercised, if at all, as a unit. Where no voting co-Owner is designated, or if the designation has been revoked, the vote for the Lot or Condominium shall be exercised as the co-Owners owning the majority interests in the Lot or Condominium mutually agree. However, no vote shall be cast for any Lot or Condominium if a majority of the co-Owners present in person or by proxy cannot agree to said vote or other action. Unless the Board receives a written objection in advance from a co-Owner, it shall be conclusively presumed that the voting co-Owner is acting with the consent of all other co-Owners.

(v) **Action by Written Ballot.** Any Voting Proposal which may be acted upon at a meeting of the Delegate District Members may be voted upon without a meeting by written ballot. Ballots shall be solicited in the same manner as provided herein for the giving of notice of meetings of Members. Ballot solicitations shall also specify (1) the voting power represented by Delegates necessary to meet the Delegate quorum requirements, (2) the percentage of approvals necessary to approve the action, (3) the procedures for casting Instructed and Absentee Votes by the Delegates as provided herein, and (4) the time by which ballots must

be received in order to be counted. The form of written ballot shall afford an opportunity to specify a choice between approval and disapproval of each Voting Proposal and shall provide that, where the Member specifies a choice, the vote shall be cast in accordance therewith.

4.5.4. **Voting Reports.** In order to verify compliance with the foregoing voting requirements, each ballot cast by a Delegate shall contain such Delegate's certification of the following information: (i) the total number of Class A and/or Class B votes represented by such Delegate; (ii) the total number of Class A and/or Class B "Instructed Votes" represented by the Delegate which are cast "for" and "against" the Voting Proposal (or for individual candidates in the case of the election of Directors); and (iii) the total number of "Absentee Votes" to be cast by such Delegate "for" and "against" the Voting Proposal (or for individual candidates in the case of the election of Directors). The inspector of election shall tabulate the total number of Class A and Class B votes cast by all Delegates in each of the foregoing categories in order to determine whether the necessary approvals have been obtained. It will be conclusively presumed for purposes of all Maintenance Association business that Declarant's Delegate and each Delegate casting votes on behalf of the Owners of Lots or Condominiums in his Delegate District has acted with the authority and consent of Declarant and all such Owners. All agreements and determinations lawfully made by the Maintenance Association in accordance with the voting procedures established herein and in the Bylaws are deemed to be binding upon all Members, Owners and their respective successors and assigns.

ARTICLE V¹ FUNCTIONS OF MAINTENANCE ASSOCIATION

5.1. Permitted Functions.

The Maintenance Association is formed exclusively for those social welfare purposes and activities which are specifically and directly related to (i) equipping, maintaining, operating and utilizing the Maintenance Property, including the social, recreational and other Improvements thereon, (ii) collecting assessments to finance the maintenance and utilization of the Maintenance Property, and (iii) administering and enforcing the Restrictions (collectively, the "Permitted Functions"). Notwithstanding the foregoing, Permitted Functions do *not* include (i) those activities prohibited by Section 5.4 below. The funds and resources of the Maintenance Association shall be utilized solely and exclusively for the direct costs of Permitted Functions. Nothing in this Subsection 5.1 shall be deemed to preclude the use of the Maintenance Property Facilities by Declarant or the Merchant Builders for promotional special events and other purposes as authorized by Section 3.1.8.

5.2. Powers and Duties.

The Maintenance Association has all of the powers of a California Nonprofit Mutual Benefit Corporation, subject only to such limitations upon the exercise of such powers as are expressly set forth in the Restrictions. Subject to the Restrictions, the Maintenance Association has the power to perform any and all lawful acts which may be necessary or proper for or incidental to the exercise of any of the express powers of the Maintenance Association. Subject to the foregoing provisions, the Maintenance Association, acting through the Board, has:

5.2.1. **Assessments.** The power and duty to levy assessments on the Owners of Lots or Condominiums in Phases of Development in which assessments have commenced and to collect and enforce payment of such assessments in accordance with the provisions of Article VI hereof.

5.2.2. **Repair and Maintenance.** The power and duty to accept title to and to paint, plant, maintain and repair in a neat and attractive condition, all Maintenance Property and all private streets, trails and drives, open space, slopes, private drainage facilities, streetscape architecture, landscaping, utilities, recreational facilities, Maintenance Property Walls, fences or other Improvements thereon, in a safe, sanitary and attractive condition and in good order and repair, and to pay for utilities, gardening and other necessary services for the Maintenance Property. Subject to the Restrictions, all of the foregoing obligations of the Maintenance Association shall be discharged when and in such manner as the Board determines in its judgment to be appropriate, provided that the Maintenance Association shall (i) comply with the Maintenance Guidelines, and (ii) conform with the requirements of any agreements entered into between Declarant or any Merchant Builder and a Local Governmental Agency pertaining to the Properties including, without limitation, any agreements providing for maintenance of Public Property by the Maintenance Association.

(i) **Exclusions from Maintenance.** Notwithstanding the immediately preceding Subsection, the Maintenance Association shall have no responsibility to provide the services referred to in this Subsection with respect to (a) any Dedicated Maintenance Property which is accepted by a Local Governmental Agency for maintenance, (b) any other Improvement (including without limitation parkway areas, median strips, trails and sidewalks) which is accepted for maintenance by any state or Local Governmental Agency, (c) any Improvement which is the maintenance responsibility of any Project Association pursuant to a Project Declaration, or (d) except as otherwise provided in any Supplemental Declaration the exposed surface (including stucco repairs and painting but excluding wrought iron or glass), of any wall or fence which immediately adjoins and faces any Lot, Condominium or Common Area, regardless of whether such wall is (1) located on the common property line separating the Maintenance Property or Public Property from the Lot, Condominium or Common Area, or (2) located wholly or partially within the Maintenance Property, Public Property, Lot or Common Area immediately adjacent to such common property line. Such responsibility shall be that of the applicable agency, entity, or adjacent Owner or Project Association.

(ii) **Modifications by Owners and Project Associations.** No Owner or Project Association shall place or install any sign or other Improvement or alter or remove the Improvements on the Maintenance Property (including, without limitation, any Maintenance Property Wall adjacent to a Lot, Condominium or Common Area) unless such placement, installation or alteration is first approved in writing by the Board. No Owner or Project Association shall affix any object, vegetation or device to any Maintenance Property Wall, pierce the stucco surface or otherwise expose the interior portion of an Maintenance Property Wall to the elements or install landscaping, irrigation systems or other Improvements on the Owner's Lot or the Common Area in such proximity or manner so as to undermine or otherwise impair the structural integrity of any Maintenance Property Wall or impair the weather resistant finish thereon. If any Owner or Project Association allows any object, vegetation or device to be

attached to any Maintenance Property Wall and it becomes necessary for the Maintenance Association to perform maintenance on such Maintenance Property Wall, the Maintenance Association shall be entitled to require the Owner to remove such object, vegetation or device prior to performing such maintenance and if such object, vegetation or device is not so removed, the Maintenance Association shall be entitled to remove same and the Maintenance Association shall have no liability for any loss or damage to such object, vegetation or device in connection with the removal thereof and the completion by the Maintenance Association of maintenance of the Maintenance Property Wall. There shall be no structures constructed over any portion of the Maintenance Property over which an open space, scenic or public resource easement has been dedicated to the City.

5.2.3. Utility Services. The power and duty to obtain for the benefit of the Maintenance Property, commonly metered water, gas, electric or other utility services necessary for the maintenance of the Maintenance Property. The Maintenance Association shall also be responsible for maintenance, repair and replacement of any private fire hydrant system located on the Maintenance Property.

5.2.4. Easements and Rights-of-Way. The power but not the duty to grant and convey to any Person easements, licenses or rights-of-way in, on, over or under the Maintenance Property and fee title to parcels or strips of land which comprise a portion of the Maintenance Property, for purposes consistent with the terms of this Declaration, including without limitation easements for (i) roads, streets, walks, trails, driveways, parkways, landscaping, park areas, open space areas and slope areas; (ii) overhead or underground lines, cables, wires, conduits, or other devices for the transmission of power or signals for lighting, heating, television, telephone and other similar purposes; (iii) sewers, storm water drains, retention basins and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes, (iv) exclusive easements to Owners for backyard, sideyard, and front yard purposes so long as the Board makes a finding that the use and maintenance of such area is more appropriately placed with the Owner than the Maintenance Association (the foregoing shall not apply to exclusive use easements created by Declarant or any Merchant Builder in any Supplemental Declaration); and (v) any similar Improvements, facilities or uses not inconsistent with the use of such property pursuant to this Declaration.

5.2.5. Manager. Subject to Section 5.4, the power and duty to contract with a professional Manager for the Maintenance Association. Except as otherwise approved by the DRE and as otherwise provided in this Declaration, any such management agreement, or any agreement providing for services by Declarant to the Maintenance Association, shall be for a term not in excess of one (1) year (renewable by agreement of the parties for successive one (1) year periods), and any such agreement shall be terminable by the Maintenance Association, acting through the Board, at any time without cause or the payment of a penalty or termination fee upon not more than ninety (90) days' written notice.

5.2.6. Rights of Entry and Enforcement. The power but not the duty, after Notice and Hearing, to enter any Lot or Common Area without being liable to any Owner or Project Association, except for physical damage caused by such entry, for the purpose of enforcing by peaceful means the provisions of this Declaration, or for the purpose of maintaining

or repairing any such Lot or Common Area if for any reason whatsoever the responsible Owner or Project Association fails to maintain and repair any such area as required by the Restrictions; provided that no items of construction on any such Lot or Common Area may be altered or demolished except pursuant to judicial proceedings. The cost of any enforcement action or any maintenance and repair completed in compliance with these provisions is the responsibility of the Owner or Project Association and may be assessed against the responsible Owner or Project Association, as a Special Assessment. The responsible Owner or Project Association shall pay promptly all amounts due for such work, and the costs and expenses of collection. Any physical damage caused by entry upon any Lot or Common Area shall be repaired by the entering party. The Maintenance Association may also commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of the Restrictions and to enforce, by mandatory injunctions or otherwise, all of the provisions of the Restrictions. If an action is brought by the Maintenance Association, the prevailing party is entitled to recover reasonable attorneys' fees.

5.2.7. Legal and Accounting Services. Subject to Section 5.2.10, the power but not the duty, if deemed appropriate by the Board, to retain and pay for legal and accounting services necessary or proper in operating the Maintenance Property, enforcing the Restrictions, and performing any of the other Maintenance Association duties or rights.

5.2.8. Contracts. Except as otherwise approved by the DRE and as provided in this Declaration, neither Declarant nor any of its agents shall enter any contract which would bind the Maintenance Association or the Board for a period in excess of one (1) year.

5.2.9. Audit. The power and duty to permit any Owner, who may be accompanied by an accountant or other consultant, at said Owner's sole expense to audit or inspect the Maintenance Association's books and records; provided that such audit or inspection is made during normal business hours and without unnecessary interference with the operations of the Manager or the Maintenance Association.

5.2.10. Litigation. Subject to Sections 12.5 and 12.14, the power but not the duty to initiate, defend, settle or intervene in mediation, arbitration, judicial or administrative proceedings on behalf of the Maintenance Association in matters pertaining to (i) the application or enforcement of the Restrictions and (ii) damage to the Maintenance Property. Any recovery by the Maintenance Association with respect to any damage to or defect in the Maintenance Property shall be utilized solely for the purpose of paying for the costs of obtaining the recovery and for correcting such Maintenance Property damage or defect.

5.2.11. Release Security. The power and duty to release security and exonerate bonds posted by Declarant to secure obligations to the Maintenance Association immediately upon satisfaction of the obligations giving rise to such security.

5.3. Rules and Regulations.

The Board may adopt such Rules and Regulations as it deems proper for the use, occupancy and maintenance of the Properties. To be effective, a copy of the Rules and Regulations, as adopted, amended or repealed, must be posted in a conspicuous place in the Maintenance Property or

must be mailed or otherwise delivered to each Owner. When mailed, delivered or posted, the Rules and Regulations shall have the same force and effect as if they were set forth herein; provided, however, that the Rules and Regulations shall be enforceable only to the extent that they are consistent with this Declaration, any applicable Supplemental Declaration, the Articles and the Bylaws, and may not be used to amend any of such documents.

5.4. Prohibited Activities.

Notwithstanding any other provisions of this Declaration or the other Restrictions, the Maintenance Association is expressly prohibited from undertaking or performing any of the following activities, or expending or otherwise utilizing Maintenance Association funds or resources therefor, and the following activities shall not constitute Permitted Functions of the Maintenance Association:

5.4.1. Offsite Nuisances. The Maintenance Association shall not use any assessments or expend Maintenance Association funds or resources to abate any annoyance or nuisance emanating from outside the physical boundaries of Phases of Development in which Common Assessments have commenced.

5.4.2. Political Activities. The Maintenance Association shall not (i) participate in Federal, State and local political activities or activities intended to influence a governmental action affecting areas outside the boundaries of the Properties (*e.g.*, endorsement or support of (1) legislative or administrative actions by a Local Governmental Agency which affect persons or property outside the Properties, (2) candidates for elected or appointed office, and (3) ballot proposals) or (ii) conduct, sponsor, participate in or expend funds or resources on any activity, campaign or event, including without limitation any social or political campaign, event or activity, which does not directly and exclusively pertain to a Permitted Function.

ARTICLE VI FUNDS AND ASSESSMENTS

6.1. Obligation.

Declarant and any Merchant Builder, for each Lot or Condominium owned by Declarant or such Merchant Builder which is subject to assessment, hereby covenants and every other Owner of any Lot or Condominium, by acceptance of a deed or other conveyance therefor, whether or not it shall be so expressed in such deed or such other instrument, is deemed to covenant to pay to the Maintenance Association (i) annual Common Assessments for Common Expenses, (ii) Capital Improvement Assessments, (iii) Special Assessments, and (iv) Reconstruction Assessments; such assessments to be established and collected as hereinafter provided. All assessments, together with interest, costs, and reasonable attorneys' fees for the collection thereof, shall be a charge on the land and shall be a continuing lien upon the Lot or Condominium against which such assessment is made (provided that Special Assessments liens cannot be enforced under Sections 2924, 2924(b) and 2924(c) of the California Civil Code). The personal obligation of assessments shall not pass to the successors-in-title to any Owner, unless expressly assumed by them.

6.2. Maintenance Funds.

The Board shall Budget, establish and maintain at least the following separate accounts (the "Maintenance Funds") into which shall be deposited all monies paid to the Maintenance Association, and from which disbursements shall be made, as provided herein, in the Maintenance Association's performance of its functions under the Restrictions:

6.2.1. General Operating Fund. A General Operating Fund for current expenses of the Maintenance Association, exclusive of current expenses attributable to the Improvements and maintenance responsibilities included within the Cost Centers, if any.

6.2.2. General Reserve Fund. An adequate General Reserve Fund for the deposit of Reserves attributable to Improvements within the Maintenance Property, exclusive of Reserves attributable to Improvements included in the Cost Centers, if any.

6.2.3. Cost Center Operating Fund. A Cost Center Operating Fund for current expenses of each Cost Center, if any, which has been completed and is subject to maintenance by the Maintenance Association.

6.2.4. Cost Center Reserve Fund. An adequate Cost Center Reserve Fund for the deposit of Reserves attributable to each Cost Center, if any, which has been completed and is subject to maintenance by the Maintenance Association.

6.2.5. Miscellaneous Maintenance Funds. Any other Maintenance Funds which the Board of Directors may deem necessary.

6.3. Disbursements.

All Maintenance Funds shall be used solely for the purposes authorized by the Restrictions, as amended. The Board is authorized to transfer interest and other earnings on the General Reserve Fund and Cost Center Reserve Fund into the respective Operating Fund in order to satisfy income taxes payable by the Maintenance Association attributable to such interest and earnings. The signatures of either two (2) Directors of the Maintenance Association or one (1) Director and one (1) officer of the Maintenance Association who is not also a Director of the Maintenance Association shall be required for the withdrawal of money from the Maintenance Association's Reserve funds. Disbursements from the particular Maintenance Funds shall be limited to specific purposes as follows:

6.3.1. Cost Center Reserves. Disbursements from each Cost Center Reserve Fund shall be made solely for the purpose of funding Reserve expenditures attributable to the Cost Center for which the fund was created.

6.3.2. Cost Center Operations. Disbursements from each Cost Center Operating Fund shall be made solely for the purpose of funding the current operating Common Expenses of the Cost Center for which the fund was created.

6.3.3. General Reserves. Disbursements from the General Reserve Fund shall be made solely for the purpose of funding those Reserve expenditures which are not Budgeted to a Cost Center.

6.3.4. General Operations. Disbursements from the General Operating Fund shall be made for such purposes as are necessary for the discharge of the Maintenance Association's responsibilities under the Restrictions, for the common benefit of all Owners, other than those purposes specified in Subsections 6.3.1 through 6.3.3 above. Nothing contained herein shall preclude the establishment of additional Maintenance Funds by the Maintenance Association earmarked for specified purposes authorized by the Restrictions. The Maintenance Association shall not impose or collect an assessment, penalty or fee which exceeds the amount necessary for the purpose or purposes for which it is levied. If the Maintenance Association decides to use or transfer Reserve funds to pay for litigation, the Maintenance Association must notify its Members of the decision in the next available mailing. 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, and a proposed budget for the litigation. The notice must state that the Members have a right to review an accounting for the litigation as provided in Section 1365.5 of the California Civil Code which will be available at the Maintenance Association's office. The accounting shall be updated monthly.

6.4. Maintenance Property Damage or Neglect.

If any maintenance, repair or replacement of the Maintenance Property (including, without limitation, damage to any Maintenance Property Wall or parkway adjacent to a Lot, Condominium or Common Area) is necessitated in the sole judgment of the Board as a result of the willful or negligent act or neglect of a Project Association, its members, guests or invitees, or an Owner, such Owner's Representatives, such maintenance, repairs or replacements shall be performed at the expense of such Project Association or Owner, after Notice and Hearing, and a Special Assessment therefor shall be levied against such Project Association or Owner; provided, however, that the liability of an individual Project Association or Owner for such damage to the Maintenance Property shall not be absolute, but shall only be that for which the Project Association or Owner is legally responsible under California law. The foregoing shall include, without limitation, any settlement damage to any Maintenance Property Wall and wall footings adjoining a Lot, Condominium or Common Area caused by any excavation, construction or excess irrigation occurring on such adjacent Lot, Condominium or Common Area.

6.5. Common Assessments.

Each annual Common Assessment shall constitute an aggregate of separate assessments for each of the Maintenance Funds, reflecting an itemization of the amounts assessed and attributable to prospective deposits into the General Operating and Reserve Funds, the Cost Center Operating and Reserve Funds, and any other Maintenance Fund established by the Maintenance Association. Sums sufficient to pay Common Expenses shall be assessed as Common Assessments against the Owners of Lots and Condominiums as follows:

6.5.1. Assessment Units. The Maintenance Association Common Expenses shall be allocated among the Owners and their respective Lots or Condominiums for which

Common Assessments have commenced based upon the number of Assessment Units chargeable to each such Lot or Condominium. Assessment Units are allocated as follows:

(i) **Residential Area.** Each Residential Area single-Family Lot and Condominium, and the Owner thereof, shall be allocated one (1) Assessment Unit.

(ii) **Apartment Area.** Each Apartment Area Lot developed as a multi-Family project for rental apartments, and the Owner thereof, shall be allocated one (1) Assessment Unit for every two (2) apartment unit Residences or fractions thereof located on such Apartment Area Lot for which the City or other appropriate Local Governmental Agency has issued a certificate of occupancy or other comparable final authorization permitting occupancy of such apartment Residences.

6.5.2. General Assessment Component. The Common Expenses of the Maintenance Association exclusive of Common Expenses Budgeted to the Cost Centers ("General Assessment Component") shall be allocated among all of the Residential Area and Apartment Area Lots and Condominiums and the Owners thereof based on the number of Assessment Units allocable to each Owner. The proportionate share of the General Assessment Component of Common Expenses chargeable to each Residential Area and Apartment Area Lot and Condominium and the Owner(s) thereof shall be a fraction, the numerator of which is the number of Assessment Units allocated to such Lot or Condominium, and the denominator of which is the total number of all Assessment Units allocated to all Residential Area and Apartment Area Lots and Condominiums in the Properties which are subject to assessment.

6.5.3. Cost Center Assessment Component. That portion of the Common Expenses of the Maintenance Association comprising Cost Center Operating and Reserve Funds Budgeted to any particular Cost Center ("Cost Center Assessment Component") shall be assessed equally to the Owners of Lots and Condominiums designated in a Supplemental Declaration as Lots and Condominiums to which the exclusive or disproportionate maintenance of such Cost Center has been allocated. The Supplemental Declaration covering a Lot or Condominium subject to a Cost Center Assessment Component shall: (i) Identify the Cost Center, if existing, or describe the Cost Center if proposed; (ii) Identify the Lots and Condominiums covered by the Supplemental Declaration which are entitled to use the facilities of the Cost Center or which are obligated to bear the exclusive or disproportionate maintenance of such Cost Center and which shall be obligated to pay the Cost Center Assessment Component attributable to such Cost Center; and (iii) Specify the Common Expenses comprising the Cost Center Assessment Component attributable to such Cost Center. Unless otherwise provided in such Supplemental Declaration, the proportionate share of the Cost Center Assessment Component of Common Expenses chargeable to each Lot and Condominium located in such Cost Center and the Owners thereof shall be a fraction, the numerator of which is the number of Assessment Units allocated to the Lot or Condominium in the Cost Center owned by each Owner, and the denominator of which is the total number of all Assessment Units allocated to Lots and Condominiums located in such Cost Center.

Common Assessments shall be levied against the Owners of Lots and Condominiums in the first Phase of Development in which Common Assessments commence in the amounts as set forth in the Maintenance Association Budget on file with the DRE. Thereafter, as Common Assessments commence with respect to each Phase of Development, the Common Assessments shall be adjusted, subject to the provisions of Section 6.7 below, in accordance with the combined Budget of the Maintenance Association approved by the Board from time to time, and subject to the limitations imposed by the maximum range of Common Assessments disclosed in all previous Public Reports for the Properties.

6.6. Commencement of Common Assessments.

6.6.1. Commencement Date. Common Assessments shall commence as to Lots or Condominiums in any Residential Area Phase of Development requiring the issuance of a Public Report by the DRE (or any combined Residential/Apartment Area Phase of Development) on the first day of the first month following the month in which the first Close of Escrow occurs for the sale of a Lot or Condominium in such Phase of Development. Common Assessments shall commence as to each Apartment building in an Apartment Area Phase of Development on the first day of the first month following the month in which the first residential occupancy of any portion of such Apartment Building occurs; provided that in no event shall Common Assessments commence with respect to any Apartment Area Phase of Development until Common Assessments have commenced on a Residential Area Lot or Condominium. Notwithstanding the foregoing, if the first occupancy of an Apartment building in an Apartment Area Phase of Development occurs prior to the date upon which such Phase of Development becomes subject to this Declaration, Common Assessments shall commence as to such Apartment building on the first day of the first month following the month in which such Phase of Development becomes subject to this Declaration. The first annual Common Assessment shall be adjusted according to the number of months remaining in the fiscal year established pursuant to the Bylaws.

6.6.2. Payment Procedure. Subject to Section 6.7.4, the Board shall fix the amount of the annual Common Assessment to be levied against each Lot or Condominium at least thirty (30) days in advance of each Common Assessment period. However, unless otherwise established by the Board, the initial annual Common Assessment shall be levied in accordance with the most recent Budget on file with and approved by the DRE. Written notice of any increase in the amount of the annual Common Assessment or any Capital Improvement or Reconstruction Assessment shall be sent by first class mail to every Owner subject thereto, not less than thirty (30) nor more than sixty (60) days prior to the increased assessment becoming due. All installments of Common Assessments shall be collected in advance on a regular basis by the Board, at such frequency and on such due dates as the Board determines from time to time in its sole and absolute discretion. Each installment of a Common Assessment may be paid to the Maintenance Association in one (1) check or in separate checks, as payments attributable to deposits into specified Maintenance Funds. If any payment of a Common Assessment installment is less than the amount assessed and the payment does not specify the Maintenance Fund or Funds into which it should be deposited, the payment received by the Maintenance Association from that Owner shall be credited in order of priority first to the General Operating

Fund until that portion of the Common Assessment has been satisfied, then to any applicable Cost Center Operating Fund until that portion of the Common Assessment has been satisfied, then to the General Reserve Fund until that portion of the Common Assessment has been satisfied, then to any applicable Cost Center Reserve Fund until that portion of the Common Assessment has been satisfied, then to any other Maintenance Funds established by the Maintenance Association.

6.6.3. Excess Funds. During the term of any subsidy agreement between Declarant and the Maintenance Association approved by the DRE ("Subsidy Agreement"), and during any period of time that the amount of the Common Assessments invoiced to the Owners is stabilized at a level amount pursuant to Section 6.7.4 below, all excess funds remaining in the Maintenance Funds over and above the amounts used for the operation and payment of Common Expenses of the Properties (including Reserves) shall be used by the Maintenance Association to fund future Maintenance Fund deficits. After the termination of any Subsidy Agreement and any program of stabilized Common Assessment payments pursuant to Section 6.7.4, the Board of Directors may determine that excess funds remaining in the Operating Funds, over and above the amounts used for the operation of the Properties, may be used to reduce the following year's Common Assessment attributable to such Maintenance Funds.

6.6.4. Exemption. Subject to the provisions of any Subsidy Agreement, notwithstanding any other provision of this Declaration, until (i) a notice of completion (if applicable) of a Maintenance Property Improvement has been Recorded, (ii) such Maintenance Property Improvement has been placed into use, or (iii) the completion date for such Maintenance Property Improvement specified in the Planned Construction Statement on file with the DRE with respect to such Maintenance Property Improvement, whichever occurs first, each Owner (including Declarant and the Merchant Builders) is exempt from paying that portion of any Common Assessment which is for the purpose of defraying expenses and Reserves directly attributable to the existence and use of such Maintenance Property Improvement.

6.7. Limitations on Common Assessment Increases.

Subject to Section 6.7.4 below, the Board shall not levy, for any fiscal year, an annual Common Assessment which exceeds the "Maximum Authorized Common Assessment" as determined pursuant to Sections 6.7.1 and 6.7.2 below, unless first approved by the vote of Delegates representing at least (i) in the case of an increase in the General Assessment Component, a majority of votes at a meeting or written ballot of Delegates in which more than fifty percent (50%) of the total voting power of the Maintenance Association is represented, and (ii) in the case of an increase in a Cost Center Assessment Component, a majority of votes at a meeting or written ballot of the Delegates for the Cost Center generating such Cost Center Assessment Component at which more than fifty percent (50%) of the total voting power attributable to such Cost Center is represented.

6.7.1. Maximum Authorized Common Assessment for Initial Year of Operations. Until the first day of the fiscal year immediately following the fiscal year in which Common Assessments commence, the Maximum Authorized Common Assessment per Lot or Condominium is one hundred twenty percent (120%) of the amount of Common Assessments

disclosed in the current Budget of the Maintenance Association filed with the DRE at the time Common Assessments commence. The provisions of this Subsection shall be applied separately to the General Assessment Component and the Cost Center Assessment Component, if any, of the Common Assessment. Notwithstanding the foregoing, this Section does not limit Common Assessment increases authorized pursuant to Section 6.7.4 below, or necessary to address an Emergency Situation as defined in Section 6.7.5 below.

6.7.2. Maximum Authorized Assessment for Subsequent Fiscal Years.

Beginning with the fiscal year immediately following the fiscal year in which Common Assessments commence, the Maximum Authorized Common Assessment in any fiscal year is one hundred twenty percent (120%) of the level of Common Assessments levied in the immediately preceding fiscal year; provided that distribution of the Budget for the current fiscal year in accordance with Section 1365(a) of the California Civil Code or other applicable law is a prerequisite to any increase in the Maximum Authorized Common Assessment for such fiscal year pursuant to this Subsection. The provisions of this Subsection shall be applied separately to the General Assessment Component and the Cost Center Assessment Component, if any, of the Common Assessment. Notwithstanding the foregoing, this Section does not limit Common Assessment increases authorized pursuant to Section 6.7.4 below, or necessary to address an Emergency Situation as defined in Section 6.7.5 below.

6.7.3. Supplemental Common Assessments. If the Board determines that the important and essential functions of the Maintenance Association may be properly funded by an annual Common Assessment less than the Maximum Authorized Common Assessment, it may levy such lesser Common Assessment. If the Board levies a Common Assessment in an amount less than the Maximum Authorized Common Assessment for any fiscal year and thereafter, during such fiscal year, determines that the important and essential functions of the Maintenance Association cannot be funded by such lesser Common Assessment, the Board may levy one (1) or more supplemental Common Assessments up to the Maximum Authorized Common Assessment.

6.7.4. Automatic Assessment Increases. Notwithstanding any other provisions of this Declaration, upon the annexation of additional Phases of Development pursuant to Article II hereof, the Common Assessments shall be automatically increased by the amount, if any, necessary to maintain the Maintenance Property located within such additional Phases of Development in accordance with the standards prescribed by the then current DRE Operating Cost Manual or, if the Operating Cost Manual is no longer maintained by the DRE, pursuant to standards prescribed by comparable maintenance cost guidelines prepared in accordance with prudent property management practices for "common interest developments" (as defined in Section 1351(c) of the California Civil Code) consistently applied throughout the geographic region in which the Properties are located. However, such increase shall occur only if the amount of such increase does not result in the levy of a Common Assessment which exceeds the upper range of Common Assessments disclosed in all previously issued Public Reports for the Properties. If annexation of Maintenance Property results in an increase in the Common Assessment which is permissible under this Section 6.7.4, then the Maintenance Association shall be obligated to collect such increased Common Assessment and accept title to and assume

the maintenance responsibility for such Maintenance Property. However, to minimize the need for frequent adjustments in the amount of the Common Assessments during the development of the Properties, the Board may stabilize the amount of the Common Assessments invoiced to the Owners at a level amount calculated to defray the Common Expenses of the Maintenance Association during the time that Common Assessments are fluctuating due to the periodic annexation of Lots, Condominiums and Maintenance Property. By accepting title to a Lot or Condominium in the Properties, each Owner consents to the Common Assessment increases specified in this Section.

6.7.5. Emergency Situations. For purposes of Sections 6.7.1, 6.7.2 and 6.8, an "Emergency Situation" is any of the following:

(i) **Court Ordered Items.** An extraordinary expense required by an order of a court;

(ii) **Safety Items.** An extraordinary expense necessary to repair or maintain the Maintenance Property or any portion thereof for which the Maintenance Association is responsible when a threat to the safety of Persons within the Properties is discovered; and

(iii) **Reasonably Unforeseen Items.** An extraordinary expense necessary to repair or maintain the Maintenance Property or any portion thereof for which the Maintenance Association is responsible that could not have been reasonably foreseen by the Board when preparing the Budget. Prior to the imposition or collection of an assessment pursuant to this Subsection (iii), the Board must pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process. The resolution shall be distributed to the Members with the notice of the assessment.

6.8. Capital Improvement Assessments.

The Board may levy, in any fiscal year, a Capital Improvement Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a Capital Improvement upon the Maintenance Property, including fixtures and personal property related thereto; provided that all proposed Capital Improvement Assessments shall require the vote of Delegates representing at least a majority of votes at a meeting or written ballot of Delegates in which is represented more than fifty percent (50%) of the total voting power attributable to Members subject to such Capital Improvement Assessment. Notwithstanding the foregoing, the Board may levy in any fiscal year a Capital Improvement Assessment applicable to that fiscal year without the vote of the Delegates if such Capital Improvement Assessment is necessary for addressing an Emergency Situation as defined in Section 6.7.5. All Capital Improvement Assessments must be levied against all Lots and Condominiums in the same manner and in the same proportions as Common Assessments are levied, and they shall be collected in the manner and frequency determined by the Board.

6.9. Exempt Property.

The following property subject to this Declaration shall be exempt from the assessments herein: those portions of the Properties dedicated in fee and accepted by a public body, agency or authority; the Maintenance Property owned in fee by the Maintenance Association; and all Common Area owned in fee by any Project Association.

6.10. Remedies of the Maintenance Association.

Any installment of a Common Assessment, Capital Improvement Assessment, Special Assessment, or Reconstruction Assessment not paid within thirty (30) days after the due date shall bear interest from the due date of such installment at a rate determined by the Board, but in no event more than the then maximum nonusurious rate permitted by law. Additionally, the Board may levy a late charge in accordance with California Civil Code Section 1366 or any successive law or ordinance in addition to the interest charged as described above to compensate the Maintenance Association for increased bookkeeping, billing and other administrative costs. No such late charge on any delinquent installment of an assessment shall exceed the maximum amount allowable by law. If any installment of an assessment is not paid within thirty (30) days after it is due, the Maintenance Association may bring an action at law against the Owner(s) personally obligated to pay the same, or, with respect to Common Assessments, Capital Improvement Assessments, Special Assessments (except as provided below) and Reconstruction Assessments, foreclose the lien against the Lot or Condominium. Special Assessments shall not be enforced under Sections 2924, 2924(b) or 2924(c) of the California Civil Code. No Owner may escape liability for the assessments provided for herein by relinquishment of the Membership, or by nonuse of the Maintenance Property or abandonment of the Lot or Condominium. In addition to the foreclosure and other remedies granted the Maintenance Association herein, each Owner, by acceptance of a deed to such Owner's Lot or Condominium, hereby conveys to the Maintenance Association all of such Owner's right, title and interest in all rents, issues and profits derived from and appurtenant to such Lot or Condominium, subject to the right, power and authority of the Maintenance Association to collect and apply such rents, issues and profits to any delinquent assessments owed by such Owner, reserving to the Owner the right, prior to any default by the Owner in the payment of assessments, to collect and retain such right, prior to 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. Upon any such default the Maintenance Association may, upon the expiration of thirty (30) days following delivery to the Owner of the "Notice of Assessment" described herein, 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 herein, (i) enter in or upon and take possession of the Lot or Condominium or any part thereof, (ii) in the Maintenance Association's name sue for or otherwise collect such rents, issues and profits, including those part due and unpaid, and (iii) apply the same, less allowable expenses of operation, to any delinquencies of the Owner hereunder, and in such order as the Maintenance Association may determine. The entering upon and taking possession of the Lot or Condominium, the collection of rents, issues and profits and the application thereof, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

6.11. Notice of Lien.

No action may be brought to enforce any assessment lien herein, unless at least thirty (30) days have expired following the date a Notice of Lien is deposited in the United States mail, certified or registered, postage prepaid, to the Owner of the Lot or Condominium, and a copy thereof has been Recorded by the Maintenance Association. The Notice of Lien shall be in such form and shall contain such information required by Section 1367(b) of the California Civil Code, or any similar California Statute hereafter enacted, and must be signed and acknowledged by an officer of the Maintenance Association or such other Person expressly authorized by the Board to sign Notices of Liens, and such lien shall be prior to any declaration of homestead Recorded after the date on which this Declaration is Recorded. The lien shall continue until fully paid or otherwise satisfied.

6.12. Foreclosure Sale.

With the exception of Special Assessments liens (which may only be foreclosed judicially), a sale to foreclose the assessment lien may be conducted by the trustee designated in the Notice of Lien (or any successor trustee substituted therefor) in accordance with the provisions of Section 2924, 2924a, 2924b, 2924c and 2924f of the California Civil Code, or in accordance with any similar statute hereafter enacted applicable to the exercise of powers of sale in Deeds of Trust, or in any other manner permitted by law. The Maintenance Association, through duly authorized agents, may bid on the Lot or Condominium, at foreclosure sale, and may acquire and hold, lease, mortgage, and convey the same. Upon completion of the foreclosure sale, the Maintenance Association or the purchaser at the sale may file suit to secure occupancy of the Lot or Condominium, and the defaulting Owner shall be required to pay the reasonable rental value of the Lot or Condominium during any period of continued occupancy by the defaulting Owner or any persons claiming under the defaulting Owner.

6.13. Curing of Default.

Upon the timely curing of any default for which the Maintenance Association filed a Notice of Lien, the Maintenance Association shall Record an appropriate Release of Lien, upon payment by the defaulting Owner of a reasonable fee to be determined by the Board to cover the cost of preparing and Recording such release. A certificate, executed and acknowledged by any officer of the Maintenance Association, or such other person expressly authorized by the Board, stating the indebtedness secured by the liens upon any Lot or Condominium created hereunder, shall be conclusive upon the Maintenance Association and the Owners as to the amount of such indebtedness as of the date of the certificate in favor of all persons who rely thereon in good faith. Such certificate shall be furnished to any Owner upon request at a reasonable fee, to be determined by the Board.

6.14. Cumulative Remedies.

The assessment lien and the rights of foreclosure and sale thereunder are in addition to and not in substitution for all other rights and remedies which the Maintenance Association and its assigns may have against any delinquent Owner or delinquent Project Association hereunder and by law, including a suit to recover a money judgment for unpaid assessments, as above provided.

6.15. Mortgage Protection-Liens.

Subject to Section 6.16 below, no lien created under this Article VI, nor any breach of this Declaration, nor the enforcement of any provision hereof or of any Supplemental Declaration hereto defeats or renders invalid the rights of the Beneficiary under any Recorded Deed of Trust upon a Lot or Condominium, made in good faith and for value. After a Beneficiary or other Person obtains title to a Lot or Condominium by judicial foreclosure or by means of the powers set forth in such Deed of Trust, the Lot or Condominium shall remain subject to the Restrictions and the payment of all installments of assessments and other obligations, accruing after the date the Beneficiary or other Person obtains title.

6.16. Priority of Assessment Lien.

Mortgages Recorded before a Notice of Lien have lien priority over the Notice of Lien. The sale or transfer (including any "deed in lieu" of foreclosure) of any Lot or Condominium does not affect the assessment lien; except that the sale or transfer of any Lot or Condominium pursuant to judicial or nonjudicial foreclosure of a first Mortgage Recorded prior to a Notice of Lien extinguishes the lien of such assessment as to payments which became due prior to such foreclosure sale or transfer. No sale or transfer relieves such Lot or Condominium from lien rights for any assessments thereafter becoming due. No Person who obtains title to a Lot or Condominium through judicial or nonjudicial foreclosure of the first Mortgage is liable for the share of the Common Expenses or assessments chargeable to such Lot or Condominium which became due prior to the acquisition of title to such Lot or Condominium by such Person. Such unpaid share of Common Expenses and assessments is a Common Expense collectible from all of the Lots and Condominiums, including the Lot or Condominium belonging to such Person.

ARTICLE VII RESIDENTIAL AREA USE RESTRICTIONS

Subject to the exemptions of Declarant and Merchant Builder, the Residential Area shall be held, used and enjoyed subject to the following restrictions. Supplemental Declarations may establish supplementary or more restrictive use restrictions for Annexed Territory so long as the restrictions are generally consistent with the scheme of government that is established in this Declaration and any Supplemental Declaration. Supplemental Declarations may add use restrictions or replace the use restrictions contained in this Article for the Annexed Territory such Supplemental Declaration encumbers. The Apartment Area is exempt from the provisions of this Article VII.

7.1. Residential Use.

All Lots and Condominiums shall be improved and used solely for single-family residential use. This provision does not preclude any Owner in the Properties from renting or leasing all of his Lot or Condominium by means of a written lease or rental agreement subject to the Restrictions. No Lot or Condominium may ever be used in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storage, vending, or other such nonresidential purposes; except Declarant and Merchant Builders, their successors and assigns, may use any portion of the Properties owned by them for model home sites and display and sales offices during the construction and sales period, in accordance with Article X hereof. The provisions of this

Section 7.1 do not preclude professional or similar occupations without external evidence thereof, provided that all of the following conditions are fulfilled: (i) such activities are conducted in conformance with all applicable governmental ordinances; (ii) the patrons or clientele of such activities do not visit the Properties or park their vehicles within the Properties in connection with such activities; (iii) the existence or operation of such activities is not apparent or detectable by sight, smell, sound or other means from outside of the boundaries of the Lot or Condominium where it is being conducted; (iv) such activity does not increase the liability or casualty insurance obligation or premium of the Maintenance Association or any Project Association; and (v) such activities are consistent with the residential character of the Properties and conform to the provisions of the Restrictions.

7.2. Improvements.

7.2.1. Single Family Residence. No Lot may be improved except with one (1) Residence designed to accommodate no more than a Family and its domestic servants and occasional guests, plus a garage, fencing, landscaping and other Improvements as are necessary or customarily incident to a Family Residence.

7.2.2. Maximum Building Height. No portion of the construction on any Lot (exclusive of chimneys, vent stacks or other normal protuberances which in the sole opinion of the Architectural Committee, are of normal height and distribution) shall exceed the maximum height allowed by the City. Rooftop mechanical equipment shall not be permitted within the Properties, however, solar equipment or other energy savings devices shall be permitted with City approval.

7.2.3. Setbacks. Except as otherwise provided in a Supplemental Declaration, grant deed or instrument recorded by Declarant and/or Merchant Builder and with the exception of Improvements constructed by Declarant or a Merchant Builder, set back requirements for all Improvements and construction on Lots shall be the more restrictive of those required by the City or Architectural Committee Guidelines.

7.2.4. Garages. Garages shall be capable of accommodating at least two (2) automobiles.

7.2.5. Exterior Facilities. With the exception of those constructed by Declarant or Merchant Builder, no sports facility, including, without limitation, basketball backboards shall be installed unless in accordance with the applicable Architectural Committee Guidelines. With the exception of those constructed by Declarant or Merchant Builder, no patio covering, wiring or air conditioning, water softener or other device shall be installed in the exterior of the Residence or allowed to protrude through the walls or roof of a Residence without prior written approval of the Architectural Committee.

7.2.6. Fences. With the exception of those constructed by Declarant or a Merchant Builder, no fence, wall, hedge or other dividing device may be erected, painted, altered or maintained on any Lot or Common Area which borders or is visible from any public or private

sheet, any of the Maintenance Property, or any other Lot, or Common Area, unless such fence or wall is first approved in writing by the Architectural Committee. With the exception of alterations or modifications by Declarant or a Merchant Builder, all alterations or modifications of the fences or walls of any type require the prior written approval of the Architectural Committee.

7.2.7. Variances. The Architectural Committee shall be entitled to grant variances from the Restrictions in this Subsection only in hardship cases where, due to the configuration or topography of a Lot, compliance with the foregoing restrictions would be impossible or impractical.

7.3. Landscaping.

Within one hundred eighty (180) days after the Close of Escrow for the sale of a Lot or Condominium, the Owner must install and must thereafter maintain (except for any landscaping to be maintained by the Maintenance Association or a Project Association, if applicable) plants, shrubs, trees, and any other appropriate landscaping Improvements, pursuant to plans and specifications approved by the Architectural Committee, on all yard areas that are on or are assigned as exclusive use easement areas of the Lot or Condominium. Each Owner must properly maintain and periodically replace when necessary all trees, plants, grass, vegetation and other landscaping Improvements located on such Owner's Lot which are not the maintenance responsibility of a Project Association or the Maintenance Association. No plants or seeds infected with insects or plant diseases may be brought upon, grown or permitted to exist upon any part of the Properties. Subject to Article X, the Board may adopt, amend or supplement the Architectural Committee Rules to regulate landscaping permitted and required in the Properties. If an Owner fails to install and maintain landscaping in conformance with the Architectural Committee Rules, or allows his Lot or landscaping to deteriorate to a dangerous, unsafe, unsightly or unattractive condition, the Board, upon thirty (30) days' prior written notice to such Owner, may seek any remedies at law or in equity which it may have and, after Notice and Hearing, may correct such condition and enter upon such Owner's property for the purpose of doing so, and such Owner shall promptly reimburse the Maintenance Association for the cost thereof. Such cost shall be a Special Assessment enforceable in the manner as set forth in this Declaration.

7.4. Parking and Vehicular Restrictions.

The Maintenance Association may elect to delegate the responsibility for enforcing the restrictions contained in this Section 7.4 to any Project Association. If the Maintenance Association notifies a Project Association that the Maintenance Association has delegated its responsibilities, the Project Association must enforce these restrictions as they apply to the property subject to the Project Association's jurisdiction. If a Project Association fails to enforce these restrictions, the Maintenance Association may revoke the delegation or impose a Special Assessment on the Project Association.

7.4.1. Authorized Vehicles. The following vehicles are "Authorized Vehicles": standard passenger vehicles, including without limitation automobiles, passenger vans designed to accommodate ten (10) or fewer people, motorcycles and pick-up trucks having a

manufacturer's rating or payload capacity of three-quarter (3/4) ton or less. Authorized Vehicles may be parked in any portion of the Properties intended for parking of motorized vehicles, subject to the Restrictions. No Owner may park any vehicle in a manner so that the Maintenance Association determines that the vehicle unreasonably extends beyond the boundaries of a parking space or into streets or sidewalks within the Properties. The Maintenance Association has the power to identify additional vehicles as Authorized Vehicles to adapt this restriction to new types of vehicles produced by manufacturers.

7.4.2. Prohibited Vehicles. The following vehicles are Prohibited Vehicles: (i) recreational vehicles (e.g., motorhomes, travel trailers, camper vans, boats, etc.), (ii) commercial-type vehicles (e.g., stakebed trucks, tank trucks, dump trucks, step vans, concrete trucks, limousines etc.), (iii) buses or vans designed to accommodate more than ten (10) people, (iv) vehicles having more than two (2) axles, (v) trailers, inoperable vehicles or parts of vehicles, (vi) aircraft, (vii) any vehicle with a width in excess of eighty-four (84) inches; (viii) other similar vehicles, or (ix) any vehicle or vehicular equipment deemed a nuisance by the Board. Prohibited Vehicles may not be parked, stored or kept on any public or private street within, adjacent to or visible from the Properties, any other Maintenance Property parking area or any driveways, unless either (a) they are owned and used by the Maintenance Association or a Project Association in connection with management or maintenance of a part of the Properties, or (b) they are parked for brief periods for loading, unloading, deliveries or as may otherwise be defined in the Rules and Regulations. 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. Prohibited Vehicles may be parked (1) within an Owner's fully enclosed garage with the door closed, or (2) on Lots in areas completely screened from the view of other Owners so long as their presence on the Properties does not otherwise violate the provisions of the Restrictions. The Maintenance Association has the power to identify additional vehicles as Prohibited Vehicles in the Rules and Regulations to adapt this restriction to new types of vehicles produced by manufacturers.

7.4.3. General Restrictions. All vehicles owned or operated by or within the control of an Owner or Owner Representatives and kept within the Properties must be parked in the assigned parking space or garage of that Owner to the extent of the space available; provided that each Owner shall ensure that any such parking space or garage accommodates at least the number of Authorized Vehicles for which it was originally constructed by Declarant or a Merchant Builder. Garages or other parking areas must be used only for parking vehicles, and may not be used for storage, living, recreational, business or other purposes. Driveways may not be used for parking purposes if the Owner's garage is not being utilized to the maximum designed capacity for the parking of vehicles, or if to do so obstructs free traffic flow, constitutes a nuisance, violates the Rules and Regulations, or otherwise creates a safety hazard. Garage doors shall be kept closed at all times, except as reasonably required for ingress to and egress from the interiors of the garages. No repairs or restorations of any motor vehicle, boat, trailer, aircraft or other vehicle or equipment may be conducted upon any street (public or private), any portion of any Maintenance Property, Common Area, Lot or Condominium, except wholly within an enclosed garage; provided, however, that such activity within an enclosed garage may not be undertaken as a business, and provided further that such activity may be prohibited

entirely if it is determined by the Board to be a nuisance. The Board may determine, in its discretion, whether there is noncompliance with the parking and vehicular restrictions contained herein. The Board in its discretion may approve temporary variances from the provisions of this Section 7.4.3. Any such variance (i) shall be authorized only in connection with Construction Activities (as defined in Section 8.3 hereof) approved by the Architectural Committee, (ii) must be evidenced in writing signed by an authorized representative of the Maintenance Association, and (iii) must specify the limited period of time for which the variance is effective. These restrictions do not permit any activity which would be contrary to any ordinance of the City or other applicable Local Governmental Agency including without limitation the parking of vehicles on those portions of private streets prohibited by the City or applicable local governmental agency.

7.4.4. Parking Regulations. The Board may establish additional regulations regarding any parking areas not assigned to individual Lots or Condominiums, including without limitation designating "parking," "guest parking," and "no parking" areas thereon, setting time limits for parking vehicles in the Maintenance Property parking areas, and requiring registration of vehicles or use of parking permits; and may enforce all parking and vehicle use regulations applicable to the Properties, including removing violating vehicles from the Properties pursuant to California Vehicle Code Section 22658.2 or other applicable ordinances or statutes. If the Board fails to enforce any of the parking or vehicle use regulations, the City may enforce such regulations in accordance with applicable laws and ordinances. If the City fails to enforce any of its parking ordinances on public streets within or abutting the Properties, the Maintenance Association has the power but not the duty to enforce such ordinances against Owners and residents of the Properties.

7.4.5. Common Driveways. Certain groups of Lots in the Residential Area of the Properties ("*Driveway Group*") may share a common access driveway ("*Common Driveway*"), which provides access only to the Driveway Group. The Common Driveway shared by each Driveway Group is shown on the Residential Subdivision Map(s) for the Properties. Each Common Driveway is part of the Maintenance Property and will be owned and maintained by the Maintenance Association. The Owners of Lots in a Driveway Group shall each have semi-exclusive easements for vehicular and pedestrian access, ingress and egress over the Common Driveway serving such Driveway Group, subject to Maintenance Association access for maintenance of adjacent Maintenance Property. No other Owners or residents of the Properties may use such Common Driveway, which is hereby designated to be for the exclusive use of the Owners of the Driveway Group, as contemplated by Section 1351(i) of the California Civil Code. There shall be no parking on the Common Driveways. Provided, however, that the foregoing shall not preclude the parking of service and similar vehicles on Common Driveways if (i) parking space is not available in the driveway located on the Lot within the Driveway Group being serviced by such vehicles; (ii) such parking is for temporary service purposes not to exceed the amount of time necessary to complete the service, but in no event longer than eight (8) consecutive hours; and (iii) no vehicle shall be parked so as to unreasonably obstruct vehicular access to other Lots within the Driveway Group.

7.5. Antennae.

Owners are prohibited from installing any antennae on the exterior of a Residence for any purpose, except for an "Authorized Antenna," which may be installed so long as the proposed location for such installation is reviewed by the Architectural Committee before installation to ensure that the visibility of the Authorized Antenna is minimized with respect to other Owners. The Architectural Committee may require that the location of the Authorized Antenna be moved so long as such review by the Architectural Committee does not (a) unreasonably delay or prevent installation, maintenance or use of an Authorized Antenna, (b) unreasonably increase the cost of installation, maintenance or use of an Authorized Antenna, or (c) preclude acceptable quality reception.

An "Authorized Antenna" means (i) an antenna designed to receive direct broadcast satellite service, including direct-to-home satellite service, that is one meter or less in diameter, (ii) an antenna designed to receive video programming service, including multichannel multipoint distribution service, instructional television fixed service, and local multipoint distribution service, and is one meter or less in diameter or diagonal measurement, (iii) an antenna designed to receive television broadcast signals, and (iv) a mast supporting an antenna described in items (i), (ii), and (iii) above.

The Maintenance Association may adopt additional restrictions on installation or use of an Authorized Antenna on an Owner's Residence as a part of the Maintenance Association's Rules and Regulations so long as such restrictions do not (1) unreasonably delay or prevent installation, maintenance or use of an Authorized Antenna, (2) unreasonably increase the cost of installation maintenance or use of an Authorized Antenna, or (3) preclude acceptable quality reception. The Maintenance Association may prohibit the installation of an Authorized Antenna if the installation, location or maintenance of such Authorized Antenna unreasonably affects the safety of managers, agents or employees of the Maintenance Association and other Owners, or for any other safety related reason established by the Maintenance Association.

The Maintenance Association may also (A) prohibit an Owner from installing an Authorized Antenna on property which such Owner does not own or is not entitled to exclusively use or control under the Restrictions, or (B) allow an Owner to install an antenna other than an Authorized Antenna subject to the architectural standards and review by the Architectural Committee.

This Section is intended to be a restatement of the authority granted to the Maintenance Association under the law. All amendments, modifications, restatements and interpretations of the law applicable to the installation, use or maintenance of an antenna shall be interpreted to amend, modify, restate or interpret this Section.

7.6. Insurance Rates.

Nothing shall be done or kept in the Properties which will increase the rate of insurance on any Lot, Condominium, Common Area, Maintenance Property or other portion of the Properties without the approval of the Board, nor shall anything be done or kept in the Properties which would result in the cancellation of insurance on any Lot, Condominium, Common Area,

Maintenance Property or other portion of the Properties or which would be in violation of any law.

7.7. No Further Subdivision.

Except as expressly authorized in a Supplemental Declaration, no Common Area, Lot or Condominium may be further subdivided (including division into time-share estates or time-share uses) without the prior written approval of the Board. Nothing in this Section shall be deemed to prevent an Owner from, or require the approval of the Board for: (a) selling a Lot or Condominium; or (b) transferring or selling any Lot or Condominium 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; or (c) leasing or renting all of such Owner's Lot or Condominium, provided that any such lease or rental is subject to the Restrictions.

7.8. Signs.

No sign, poster, billboard, balloon advertising device or other display of any kind ("Displays") may be displayed within the Properties except (i) such Displays (regardless of size, configuration, location or content) as may be used by Declarant or a Merchant Builder in connection with the development of the Properties and the sale, lease or other disposition of Lots and Condominiums, (ii) entry monuments and similar community identification signs maintained by the Maintenance Association and the Project Associations, (iii) subject to Architectural Committee Rules governing the location, size, materials and other such criteria, one (1) nameplate or similar Owner name identification, and a reasonable number of signs advising of the existence of security services protecting a Lot or Condominium; and (iv) one (1) sign which may be displayed on each Lot or from each Condominium advertising the Lot or Condominium for sale or lease; provided that such for sale or lease signs (a) may not be larger than eighteen inches (18") by thirty inches (30") in size; (b) may not be attached to the ground by means other than a conventional single vertical stake which may not exceed two inches (2") by three inches (3") in diameter (i.e., posts, pillars, frames or similar arrangements are prohibited); (c) may not extend more than three feet (3') above ground level; and (d) shall be of such colors and styles as are approved by the Architectural Committee.

7.9. Animals.

No animals, fowl, reptiles, poultry, fish or insects of any kind ("animals") may be raised, bred or kept on any Lot, Condominium or Common Area within the Properties, except that a reasonable number of birds, fish, dogs, cats or other customary household pets may be kept on a Lot or Condominium; provided that they are not kept, bred or maintained for any commercial purpose, nor in unreasonable quantities nor in violation of any applicable local ordinance or any other provision of the Restrictions, and such limitations as may be set forth in the Rules and Regulations. As used in this Declaration "unreasonable quantities" ordinarily means more than two (2) household pets per Residence; provided, however, that the Board of Directors may determine that a reasonable number in any instance is more or less. The Maintenance Association, acting through the Board of Directors, may prohibit maintenance of any animal which constitutes, in the opinion of the Board, a nuisance to other Owners of Lots or Condominiums in the Properties. Animals belonging to Owners, occupants or their licensees, tenants or invitees within the Properties must be kept within an enclosure or an enclosed yard or

on a leash or other restraint being held by a person capable of controlling the animal. Furthermore, to the extent permitted by law, each Owner shall be liable to each and all remaining Owners and their Owner Representatives, for any unreasonable noise or damage to person or property caused by any animals brought or kept upon the Properties by an Owner or by members of his Family, his tenants or his guests. It shall be the absolute duty and responsibility of each Owner to clean up after such animals which have used any portion of the Properties.

7.10. Nuisances.

No rubbish or debris of any kind may be placed or permitted to accumulate anywhere within the Properties, and no odor may be permitted to arise therefrom so as to render the Properties or any portion thereof unsanitary, unsightly, or offensive from any public or private street or from any other Lot or Condominium in the vicinity thereof or to its occupants. No noise or other nuisance shall be permitted to exist upon or emanate from any portion of the Maintenance Property or any portion of a Lot, Condominium or Common Area within the Properties so as to be offensive or detrimental to any other Lot, Condominium or Common Area in the Properties or to its occupants. Without limiting the generality of any of the foregoing provisions, *no horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes and commercially designed and reasonably used exterior speakers), live bands, noisy, unsightly, unusually painted or smoky vehicles, aircraft, large noisy power equipment or tools, unlicensed off-road motor vehicles, transmissions which may unreasonably interfere with television or radio reception within the Properties, or other items which may unreasonably disturb other Owners or their tenants* may be located, used or placed on any portion of the Properties without the prior written approval of the Board. No vehicles may be operated upon any portion of the Maintenance Property or Common Area not improved as a street or parking area without the prior written approval of the Board, which approval may be withheld for any reason whatsoever. *Alarm devices used exclusively to protect the security and contents of a vehicle, Lot, Condominium or Common Area,* are permitted, provided that such devices do not produce annoying sounds or conditions as a result of frequently occurring false alarms.

7.11. Exterior Maintenance and Repair.

No Improvement shall be permitted to fall into disrepair, and each such Improvement must at all times be kept in good condition and repair. It is the responsibility of the applicable Owner or Project Association to maintain and repair (including painting and stucco repairs) the surface of any Maintenance Property Wall which faces the Lot, Condominium or Common Area (excluding wrought iron or glass surfaces which shall be maintained by the Maintenance Association), regardless of whether such Maintenance Property Wall is (i) located on the common property line separating the Maintenance Property or Public Property from the Lot, Condominium or Common Area, or (ii) wholly or partially within the Maintenance Property, Public Property, Lot or Common Area immediately adjacent to such common property line. Such maintenance obligations shall include without limitation the obligation to paint, stucco patch and otherwise protect and preserve such Maintenance Property Wall surface from exposure to and deterioration by the elements. Owners shall be responsible for maintenance, repair and replacement of the individual mailboxes, however, the Maintenance Association shall be responsible for maintenance of mailbox stands and structures not maintained by a Project Association. If any Owner or Project Association permits any Improvement which is the maintenance responsibility

of such Owner or Project Association to fall into disrepair so as to create a dangerous, unsafe, unsightly or unattractive condition, the Board, after consulting with the Architectural Committee, and after affording the responsible Owner or Project Association Notice and Hearing, may, but need not, enter upon the affected Lot, Condominium, or Common Area for the purpose of correcting such condition, and the responsible Owner or Project Association shall promptly reimburse the Maintenance Association for the cost thereof. Such cost shall be a Special Assessment enforceable in the manner set forth in this Declaration, and the Owner of the offending Lot or Condominium or the Project Association which owns or maintains the Common Area, as applicable, shall be personally liable for all costs and expenses incurred by the Maintenance Association in taking such corrective acts, plus all costs incurred in collecting the amounts due. Each Owner or Project Association, as applicable, shall pay all amounts due for such work within ten (10) days after receipt of written demand therefor.

7.12. Drainage.

No one may alter or interfere with the rain gutters, downspouts, or drainage systems originally installed by Declarant or the Merchant Builders, or alter or interfere with the established drainage pattern over any Lot, Condominium or Common Area, unless an adequate alternative provision is made for proper drainage. For the purpose hereof, "established" drainage means the drainage pattern and drainage Improvements which exist at the time the Lot, Condominium or Common Area, as the case may be, is conveyed to the Owner or Project Association by Declarant or a Merchant Builder. There shall be no violation of the drainage requirements of the City or other applicable Local Governmental Agency, notwithstanding any approval by the Architectural Committee. Each Owner, by accepting a grant deed to his Lot, acknowledges and understands that in connection with the development of the Properties, Declarant may have installed one or more "subdrains" beneath the surface of such Owner's Lot. The subdrains and all appurtenant Improvements constructed or installed by Declarant ("Drainage Improvements"), if any, provide for subterranean drainage of water from and to various portions of the Properties. To ensure adequate drainage within the Properties, it is essential that the Drainage Improvements, if any, not be modified, removed or blocked without having first made alternative drainage arrangements. Therefore, any damage or injury resulting from or arising in connection with the alteration, modification, removal or replacement of any Drainage Improvements on a Lot shall be the responsibility of the Owner of such Lot.

7.13. Water and Sewer Systems.

No individual water supply system, water softener system or sewage disposal system is permitted on any Lot, Condominium or Common Area unless such system is designed, located, constructed and equipped in accordance with the requirements, standards, and recommendations of the applicable water or sewer district and any applicable governmental health authority having jurisdiction.

7.14. No Hazardous Activities.

No activities may be conducted, nor may any Improvements be constructed, anywhere in the Properties which are or might be unsafe or hazardous to any Person, Lot, Condominium, Common Area or Maintenance Property in the Properties.

7.15. Unsightly Articles.

No unsightly articles, including clotheslines and trash dumpsters (subject to Section 7.16), are permitted to remain on any portion of the Properties so as to be visible from any public or private street or from any other Lot, Condominium, Common Area or Maintenance Property. Without limiting the generality of the foregoing, at all times refuse, garbage and trash must be kept in covered, sanitary containers designed for such purpose and located within enclosed areas or areas screened from the view of any other Lot, Condominium, Common Area or Maintenance Property. Trash containers may be exposed to the view of neighboring Lots, Condominiums, Common Area or Maintenance Property only when set out for a reasonable period of time (not to exceed twelve (12) hours before and after scheduled trash collection hours). No exterior fires whatsoever are permitted within the Properties, except barbecue fires contained within receptacles commercially designed therefor, fire pits in enclosed areas designed so that they do not create a fire hazard, and other fires specifically authorized in writing by the Maintenance Association, all of which are also subject to applicable ordinances and fire regulations.

7.16. Temporary Prefabricated Structures/Dumpsters.

Unless approved in writing by the Board, and then only in connection with Construction Activities approved by the Architectural Committee, no tent, shack, trailer or any temporary building, Improvement or structure, or prefabricated building or structure may be placed upon any portion of the Properties. No trash dumpsters are allowed in any driveway or other exposed areas, or any street (public or private) within the Properties for more than four (4) consecutive calendar days, unless first approved in writing by the Architectural Committee in connection with Architectural Committee approved Construction Activities, and then subject to such conditions and requirements as may be specified by the Architectural Committee.

7.17. No Mining or 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 upon the Properties, nor are oil, water or other wells, tanks, tunnels, mineral or geothermal excavations or shafts permitted upon or within five hundred feet (500') of the surface of any portion of the Properties.

7.18. Improvements and Alterations.

No excavation, construction, painting, alteration or erection of any projection which in any way alters the exterior appearance of any Lot, Condominium or Common Area from any public or private street, or from any other Lot, Condominium or Common Area (other than minor repairs or rebuilding pursuant to Section 7.11) is permitted without the prior approval of the Architectural Committee pursuant to Article VIII hereof. All Improvements and alterations are subject to the setback, sideyard and other requirements of the County or other Local Governmental Agency, notwithstanding any approval by the Architectural Committee.

7.19. Solar Heating Systems.

Solar heating systems may be installed on individual Lots, Condominiums or Common Areas, provided that such heating systems comply with all applicable governmental requirements and

regulations and have been approved by the Architectural Committee based on reasonable architectural review standards consistent with applicable law.

7.20. Views.

There are no views in the Properties which are protected to any extent by this Declaration, and no Owner who becomes subject to the terms hereof shall thereby obtain any view rights whatsoever. Notwithstanding any other provision of any Project Declaration, each Owner and each Project Association, by accepting a deed to a Lot, Condominium or any Common Area, acknowledges that any construction or installation by Declarant or a Merchant Builder or by other Owners following Architectural Committee approval as provided in Article VIII hereof may impair the view of such Owner or of the members of such Project Association, and each Owner and each Project Association on behalf of its members hereby consent to such impairment.

7.21. Rights of Handicapped.

Subject to the provisions of Article VIII hereof, each Owner may modify his Lot or Condominium, at his sole cost and expense, in order to facilitate access to the Residence by persons who are blind, visually handicapped, deaf or physically disabled, or to alter conditions which could be hazardous to such persons, in accordance with Section 1360 of the California Civil Code or other applicable law or ordinance.

7.22. Party Walls.

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

7.22.1. Sharing of Repair and Maintenance. Unless otherwise provided in a Project Declaration, 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.

7.22.2. Destruction by Fire or Other Casualty. 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 which is affected thereby shall contribute equally to the cost of restoration thereof without prejudice, however, to the right of any such Owner to call for a larger contribution from the other under any rule of law regarding liability for negligent or willful acts or omissions.

7.22.3. Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Section 7.22 is appurtenant to the land and passes to such Owner's successors in title.

7.23. Damage to Residences-Reconstruction.

If all or any portion of any Lot or Residence is damaged or destroyed by fire or other casualty, the Owner of such Lot or Residence shall rebuild, repair or reconstruct the Lot or Residence in a manner which will restore them substantially to their appearance and condition immediately prior to 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. A transferee of the Lot which is damaged or upon which is located a damaged Residence shall commence and complete reconstruction in the respective periods which would have remained for the performance of such obligations if the Owner of the Lot at the time of the damage still held title to the Lot. However, no such transferee may be required to commence or complete such reconstruction in less than thirty (30) days from the date such transferee acquired title to the Lot.

ARTICLE VIII RESIDENTIAL AREA ARCHITECTURAL CONTROL

8.1. Members of Architectural Committee.

The Architectural and Landscaping Committee, sometimes referred to in this Declaration as the "Architectural Committee", shall consist of three (3) members; provided, however, that such number may be changed by resolution of the Board of Directors so long as the Architectural Committee never consists of greater than five (5) nor fewer than three (3) members. Members of the Architectural Committee may be removed at any time without cause by the Person appointing such member as provided herein. Unless changed by resolution of the Board, the address of the Architectural Committee for all purposes, including the submission of plans for approval, is the principal office of the Maintenance Association as designated by the Board pursuant to the Bylaws. Declarant may, in a Supplemental Declaration, create a separate architectural committee ("Separate Committee") from the area annexed to the Properties through such Supplemental Declaration ("Separate Area"). The Separate Committee shall have sole architectural control pursuant to this Article VIII over the Separate Area and the Architectural Committee shall have no control or jurisdiction over Construction Activities (as defined below) or otherwise over the Separate Area. If a Separate Committee is created, the provisions of this Article VIII shall apply to the Separate Committee which shall be deemed the "Architectural Committee" for all purposes hereunder regarding the Separate Area. However, members of the Separate Committee appointed pursuant to Subsection 8.2.2 below, shall be solely Owners of Residences in the Separate Area.

8.2. Rights of Appointment.

8.2.1. **By Declarant.** Declarant may appoint and remove a majority of the members of the Architectural Committee, which appointees need not be Members of the Maintenance Association, until the earlier to occur of (i) the date on which Close of Escrow has occurred for the sale of One Thousand Eighty (1,080) Lots and Condominiums in the Properties, or (ii) the fifth (5th) anniversary of the first Close of Escrow for the sale of a Lot or

Condominium in the Phase of Development for which a Public Report was most recently issued by the DRE, or (iii) the date on which neither Declarant nor any Merchant Builder owns a Lot or Condominium in the Properties or Annexable Area.

8.2.2. By the Board. The Board may appoint and remove those members of the Architectural Committee which Declarant is not authorized to appoint until such time as Declarant's rights of appointment shall have expired, and thereafter the Board may appoint and remove all members of the Architectural Committee. Architectural Committee members appointed by the Board must be Members of the Maintenance Association at all times during their service on the Architectural Committee, and shall serve for a term of one (1) year or until their respective successors are appointed.

8.2.3. Notice of Appointment. Whenever an Architectural Committee member is appointed or removed while both Declarant and the Board have rights of appointment, written notice of such appointment or removal must be given by the appointing party to the other party.

8.3. Review of Construction Activities.
Subject to Article X of this Declaration, no construction, development, painting, alteration, grading, addition, installation, excavation, modification, decoration, redecoration or reconstruction of an Improvement in the Residential Area of Properties (including the Common Area therein) or the Maintenance Property, or any other activity within the jurisdiction of the Architectural Committee pursuant to this Declaration (collectively "Construction Activities") may be commenced or maintained until the plans and specifications therefor showing the nature, design, kind, shape, height, width, color, materials, location and other aspects of the same have been submitted to the Architectural Committee and approved in writing by the Architectural Committee. Construction Activities include the construction, installation, alteration and modification of solar energy systems, as defined in Section 801.5 of the California Civil Code, subject to the provisions of California Civil Code Section 714 and other applicable governmental laws, ordinances and regulations. Except as provided in Section 8.3.2 below, the provisions of this Article VIII shall not apply to the Apartment Area.

8.3.1. Architectural Committee Rules. Subject to Section 10.1.5, the Board may adopt, supplement and amend Architectural Committee Rules which impose design and materials standards, submittal procedures, review criteria and other factors to be considered and followed by the Architectural Committee and the Owners in connection with Construction Activities.

8.3.2. Exemptions/Declarant Approval. Notwithstanding any other provision of the Restrictions, Declarant, Apartment Area Owners and Merchant Builders need not seek Architectural Committee approval with respect to their construction or development activities, including without limitation any activity which would be classified as a "Construction Activity." However, Merchant Builders and Apartment Area Owners must obtain Declarant's written approval of all construction and development activities as if such activities were "Construction Activities" hereunder and Declarant were the "Architectural Committee." The Declarant's approval rights in the preceding sentence are in addition to and shall not effect any other rights of

Declarant under other written agreements between Declarant and Merchant Builders and Apartment Area Owners.

8.4. Applications.

The Person submitting plans and specifications to the Architectural Committee ("Applicant") must obtain a dated, written receipt for such plans and specifications and furnish the Architectural Committee with the address to which further communications from the Architectural Committee are to be directed. The Architectural Committee may further require that all plans and specifications first be approved by any Project Association or Project Association architectural committee having jurisdiction. Conditions and requirements imposed by the Architectural Committee supersede all conflicting conditions or requirements which may be imposed by a Project Association or a Project Association architectural committee. The Architectural Committee's determination of the existence of a conflict or discrepancy between the conditions or requirements imposed by the Architectural Committee and those imposed by a Project Association or a Project Association architectural committee are binding and conclusive upon the Project Association, the Project Association architectural committee, and the Applicant. The Architectural Committee Rules may set forth procedures for the submission of plans for approval, require a fee to accompany each application for approval (or request for a certificate stating that Architectural Committee approval is not required), or establish additional factors which the Architectural Committee will take into consideration in reviewing submissions. The Architectural Committee Rules may provide that the amount of any Architectural Committee fee shall be uniform, or that it may be determined in any other reasonable manner, such as based upon the cost of the construction, alterations or installations contemplated or the reasonable cost of architectural or other professional fees incurred by the Maintenance Association in reviewing plans.

8.4.1. **Criteria.** The Architectural Committee shall consider and act upon all plans and specifications submitted for its approval under this Declaration and perform such other duties as are specified in this Declaration, including the inspection of construction in progress to assure its conformance with the plans approved by the Architectural Committee. The Architectural Committee may approve plans and specifications submitted for its approval only if it determines that (i) the Construction Activity is in conformance with the Architectural Committee Rules, (ii) the Construction Activity in the locations indicated will not be detrimental to the appearance of the surrounding area or the Properties as a whole, (iii) the appearance of any structure affected thereby will be in harmony with the surrounding structures, (iv) the Construction Activity and the product thereof will not detract from the beauty, wholesomeness and attractiveness of the Maintenance Property and the Common Area or the enjoyment thereof by the Members, and (v) the upkeep and maintenance thereof will not become a burden on the Maintenance Association.

8.4.2. **Conditions.** The Architectural Committee may condition its approval of plans and specifications for any Improvement upon any of the following: (i) the Applicant's furnishing the Maintenance Association with a bond or other security acceptable to the Architectural Committee in an amount reasonably sufficient to (a) assure the completion of such Improvement or the availability of funds adequate to remedy any nuisance or unsightly

conditions occurring as a result of the partial completion of such Improvement, and (b) to protect the Maintenance Association and the other Owners against mechanic's liens or other encumbrances which may be Recorded against their respective interests in the Properties or damage to the Maintenance Property as a result of such work, (ii) such changes therein as it deems appropriate, (iii) the grant of appropriate easements to the Maintenance Association for the maintenance of the Improvement and access to all Maintenance Property, (iv) the Applicant's agreement to reimburse the Maintenance Association for the cost of maintaining the Improvement, (v) the Applicant's agreement to complete the proposed work within a stated period of time, or (vi) all of the foregoing, and may require submission of additional plans and specifications or other information prior to approving or disapproving materials submitted.

8.4.3. Review Period. The Architectural Committee may require such detail in plans and specifications submitted for its review as it deems proper, including without limitation, site plans, lighting plans, landscaping plans, elevation drawings and descriptions or samples of exterior materials and colors. Until the Architectural Committee receives all required plans and specifications (and any Project Association approval if required as a prerequisite to plan consideration), the Architectural Committee may postpone review of any plan submitted for approval or determination of exemption. The Architectural Committee shall transmit its decision and the reasons therefore or a request for further information to the Applicant at the address furnished by the Applicant, within thirty (30) days after the date of the receipt issued by the Architectural Committee for materials submitted to the Architectural Committee. Subject to appeal procedures which may be adopted by the Board as provided in Section 8.12, any application or request for certificate of exemption submitted pursuant to this Section shall be deemed approved, unless the Architectural Committee transmits written disapproval or a request for additional information or materials to the Applicant within thirty (30) days after the date of receipt by the Architectural Committee of the Applicant's submitted materials.

8.5. Meetings of the Architectural Committee.

The Architectural Committee shall meet as necessary to perform its duties hereunder. The Architectural Committee may, by a unanimously adopted written resolution, designate one or more Architectural Committee Representative(s) (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 Committee, except the recommending of variances for Board approval pursuant to Section 8.10. In the absence of such designation, the vote or written consent of a majority of the members of the Architectural Committee constitutes an act of the Architectural Committee. Subject to the prior approval of the Board, the Architectural Committee may engage architects, landscape architects, designers, planners and such similar professionals and consultants and appoint such subcommittees as the Architectural Committee deems appropriate to assist the Architectural Committee and the Architectural Committee Representative in the evaluation of plans, specifications and other items submitted for Architectural Committee approval pursuant to the Declaration.

8.6. No Waiver of Future Approvals.

Architectural Committee approval of any proposals or plans and specifications or drawings for any Construction Activity done or proposed or in connection with any other matter requiring Architectural Committee approval does not waive any right to withhold approval of any similar

proposals, plans and specifications, drawings or matters subsequently or additionally submitted for approval or consent.

8.7. Compensation of Members.

The Architectural Committee members shall receive no compensation for services rendered, other than reimbursement by the Maintenance Association for expenses incurred by them in performing their duties. The foregoing shall not preclude payment of compensation approved by the Board to architects or similar professionals engaged to assist the Architectural Committee or the Architectural Committee Representative or to perform the function of the Architectural Committee Representative pursuant to Section 8.5 above.

8.8. Correction of Defects.

Inspection of work and correction of defects therein shall proceed as follows:

8.8.1. Notice of Completion. The Architectural Committee or its duly appointed representative may at any time inspect any Improvement or Construction Activity for which approval of plans is required under this Article. The Architectural Committee's right of inspection of Improvements for which plans have been submitted and approved shall terminate sixty (60) days after the work of Improvement has been completed and the Architectural Committee has received written notice of such completion. The Architectural Committee's rights of inspection shall not terminate pursuant to this paragraph if plans for the work of Improvement have not previously been submitted to and approved (or determined exempt) in writing by the Architectural Committee. If the Architectural Committee finds that an Improvement was done without obtaining written approval of the plans therefor or was not done in substantial compliance with the plans approved by the Architectural Committee, it shall notify the Owner in writing of failure to comply with this Article VIII, specifying the particulars of noncompliance. The Architectural Committee may require the Owner to take such action as may be necessary to remedy a noncompliance.

8.8.2. Noncompliance. If the Owner fails to remedy the noncompliance within sixty (60) days from the date the Architectural Committee's notice of noncompliance is deemed received by the Owner, the Architectural Committee shall notify the Board in writing of such failure. Upon Notice and Hearing, the Board shall determine whether there is a noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If a noncompliance exists, the Owner must remedy or remove the same within a period of not more than forty-five (45) days from 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 Board may Record a notice of noncompliance and may commence a lawsuit for damages or injunctive relief, as appropriate, to remedy the noncompliance.

8.8.3. Compliance. If the Architectural Committee fails to notify the Applicant of any noncompliance with previously submitted and approved plans within sixty (60) days after receipt of written notice of completion from the Applicant, the Construction Activity shall be deemed to be in accordance with such approved plans.

8.8.4. Prosecution of Work. The Architectural Committee approval for any particular Construction Activity expires and the plans and specifications therefor must be resubmitted for Architectural Committee approval pursuant to this Article VIII if substantial work pursuant to the approved plans and specifications is not commenced within six (6) months of the Architectural Committee's approval of such Construction Activity. All Construction Activities shall be performed as promptly and diligently as possible and, unless an earlier completion date is specified in the Architectural Committee approval, must be completed within one (1) year after the date on which the work commenced.

8.9. Scope of Review.

The Architectural Committee shall review and approve or disapprove all plans submitted to it for any proposed Construction Activity solely on the basis of the considerations set forth in this Declaration. The Architectural Committee is not responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any plan or design from the standpoint of structural safety or conformance with building codes or other governmental requirements. The Architectural Committee may consider reasonable privacy right claims as factors in reviewing, approving or disapproving any proposed Construction Activities. However, Declarant and the Merchant Builders do not warrant any protected views within the Properties and no Lot, Residence or Common Area is guaranteed the existence or unobstructed continuation of any particular view.

8.10. Variances.

The Architectural Committee may recommend variances from compliance with any of the architectural provisions of this Declaration or any Supplemental Declaration, including, without limitation, restrictions upon height, size, floor area or placement of structures, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations may require. Such variances must be approved by the Board, evidenced in writing, and signed by at least two (2) officers of the Maintenance Association certifying such Board approval, and are effective upon Recordation. No violation of the covenants, conditions and restrictions contained in this Declaration or any Supplemental Declaration shall exist with respect to any Construction Activity for which a variance is granted. The granting of such a variance does not waive any of the terms and provisions of this Declaration or of any Supplemental Declaration for any purpose except as to the particular property and particular provision hereof covered by the variance, nor does it affect the Owner's obligation to comply with all governmental laws and regulations.

8.11. Pre-Approvals.

Subject to Section 10.1.5, the Board may authorize the pre-approval of certain specified types or classes of Construction Activities in the Architectural Committee Rules if, in the exercise of the Board's judgment, pre-approval of such types or classes of Improvements is appropriate in carrying out the purposes of this Declaration.

8.12. Appeals.

For so long as Declarant has the right to appoint and remove a majority of the Architectural Committee members, the Architectural Committee's decisions are final, and there is no appeal to

the Board. When Declarant is no longer entitled to appoint and remove a majority of the Architectural Committee's members, the Board may adopt policies and procedures for the appeal of Architectural Committee decisions to the Board. The Board has no obligation to adopt or implement any appeal procedures, and in the absence of Board adoption of appeal procedures, all Architectural Committee decisions are final.

ARTICLE IX DESTRUCTION OR CONDEMNATION OF MAINTENANCE PROPERTY

Damage to, destruction or condemnation of all or any portion of the Maintenance Property shall be handled in the following manner:

9.1. Damages by Owners or Project Associations.

To the extent permitted by law, each Owner and Project Association is liable to the Maintenance Association for any damage to the Maintenance Property not fully reimbursed to the Maintenance Association by insurance (including any insurance policy deductible amounts) if the damage is sustained because of the negligence, neglect, willful misconduct or unauthorized or improper installation or maintenance of any Improvement by the Project Association, its members, guests or invitees, or the Owner, his Family, guests, tenants or invitees, or any other Persons deriving their right and easement of use and enjoyment of the Maintenance Property from the Project Association, the Owner, or their respective Family and guests, both minor and adult. However, the Maintenance Association, acting through the Board, may determine whether any claim will be made upon the insurance maintained by the Maintenance Association, and after Notice and Hearing the Maintenance Association may levy a Special Assessment equal to the increase, if any, in insurance premiums directly attributable to the damage caused by the Owner or the Person for whom the Owner may be liable as described above. In the case of joint ownership of a Lot or Condominium, the liability of the Owners is joint and several, except to the extent that the Maintenance Association has previously contracted in writing with the joint Owners to the contrary. After Notice and Hearing, the cost of correcting the damage, to the extent not reimbursed to the Maintenance Association by insurance, shall be a Special Assessment.

9.2. Repair of Damages.

If Maintenance Property Improvements which are the maintenance responsibility of the Maintenance Association are damaged by fire or other casualty, any insurance proceeds payable by reason thereof shall be paid to the Maintenance Association, which thereupon shall contract for the repair or replacement of all the Maintenance Property Improvements so damaged. The Maintenance Association shall levy a Reconstruction Assessment on Owners to satisfy any deficiency between insurance proceeds and the actual cost of repair or replacement in the same manner and proportion that Common Assessments are levied against and collected from Owners (for example, Owners located in a Cost Center will pay their proportionate share of any Reconstruction Assessment attributable to their Cost Center Improvements, and Owners not located in such Cost Center are exempt from such Reconstruction Assessment). Any restoration or repair of the Maintenance Property Improvements after damage due to an insurable hazard will

be performed substantially in accordance with the original plans and specifications unless other action is approved by holders of fifty-one percent (51%) of the first Mortgages on Lots and Condominiums subject to Common Assessments for the maintenance of such Maintenance Property.

9.3. Condemnation.

If all or any portion of the Maintenance Property, or any interest therein, is taken by right of eminent domain or by private purchase in lieu of eminent domain, the award in condemnation shall be paid to the Maintenance Association and deposited in the appropriate Operating Fund. No Member (other than a Person on whose Lot a Maintenance Property easement affected by a condemnation may be located) may participate as a party, or otherwise, in any proceedings relating to such condemnation. The Maintenance Association has the exclusive right to participate in such proceedings and shall, in its name alone, represent the interests of all Members.

9.4. Notice to Owners and Listed Mortgagees.

The Board of Directors immediately upon learning of any taking by eminent domain of any Maintenance Property, or any threat thereof, shall promptly notify all Owners whose Lots and Condominiums are subject to Common Assessments for the maintenance of such Maintenance Property, and all Record holders of first Mortgages on such Owners' Lots and Condominiums. The Board, immediately upon learning of any damage or destruction affecting a material portion of the Maintenance Property, shall promptly notify all Owners whose Lots and Condominiums are subject to Common Assessments for the maintenance of such Maintenance Property, and all holders, insurers, and guarantors of first Mortgages on Lots or Condominiums who have filed a written request for such notice.

ARTICLE X DECLARANT AND MERCHANT BUILDER EXEMPTION

10.1. Interest of Declarant.

The First Subdivision is a portion of a larger parcel of land which Declarant is developing into a master planned community. Declarant in cooperation with the City, has created a comprehensive plan for the development of the Properties which includes modern master-planning objectives which have been formulated for the common good and preservation of property values within the community. Each Owner of a Lot or Condominium which is part of the Properties acknowledges by acceptance of a deed or other conveyance therefor, whether or not it shall be so expressed in any such deed or other instrument, that Declarant has a substantial interest in assuring compliance with and enforcement of, the covenants, conditions, restrictions and reservations contained in this Declaration and any amendments thereto and any Supplemental Declarations Recorded pursuant to this Declaration. Notwithstanding any other provisions of the Restrictions, until the earlier to occur of (i) annexation of all of the Annexable Area and commencement of assessments therein, or (ii) the twenty-fifth (25th) anniversary of the first Close of Escrow in the Properties, the following actions, before being undertaken by the Delegates, the Members or the Maintenance Association, must first be approved in writing by Declarant:

10.1.1. Specified Approvals. Any amendment or action requiring the approval of Declarant pursuant to this Declaration, including without limitation all amendments and actions specified in Section 12.2.2, and any amendment or action requiring the approval of first Mortgagees pursuant to this Declaration, including without limitation all amendments and actions specified in Sections 12.2.3 and 12.3. The Maintenance Association must provide Declarant with all notices and other documents to which a Beneficiary is entitled pursuant to this Declaration, and Declarant shall be furnished such notices and other documents without the necessity of a written request;

10.1.2. Annexation. The annexation to the Properties of Other Area (not Annexable Area) pursuant to Section 2.3;

10.1.3. Capital Improvement Assessments. The levy of a Capital Improvement Assessment for the construction of new facilities not originally included in the Maintenance Property;

10.1.4. Service/Maintenance Reductions. Subject to Section 6.7 regarding limitations on yearly Common Assessment increases, any significant reduction of Maintenance Property maintenance or other services or entering into contracts for maintenance or other goods and services benefiting the Maintenance Association or the Maintenance Property at contract rates which are fifteen percent (15%) or more below the reasonable cost for such maintenance, goods or services as determined pursuant to the cost guidelines described in Section 6.7.4;

10.1.5. Architectural Committee Rules. The adoption of and any supplement or amendment to the Architectural Committee Rules, including any pre-approval authorization pursuant to Section 8.11; or

10.1.6. Maintenance Guidelines. Any supplement to or amendment of the Maintenance Guidelines.

10.2. Exemptions. Nothing in the Restrictions limits and no Owner, Project Association or the Maintenance Association will interfere with the right of Declarant and Merchant Builders, either directly or through their respective agents and representatives, to subdivide, resubdivide, sell, resell, rent or rereant any portion of the Properties, or the right of Declarant or a Merchant Builder to complete excavation, grading, construction of Improvements or other development activities to and on any portion of the Properties owned by Declarant or a Merchant Builder, as applicable, or to alter the foregoing and the construction plans and designs, or to construct such additional Improvements as Declarant or a Merchant Builder deems advisable in the course of developing the Properties so long as any Lot or Condominium in the Properties or any portion of the Annexable Area is owned by Declarant or a Merchant Builder. These rights include, but are not limited to, carrying on by Declarant, the Merchant Builders and their respective agents and representatives of such grading work as may be approved by the City or other Local Governmental Agency having jurisdiction, and erecting, constructing and maintaining on the Properties such structures, signs and displays reasonably necessary for the conduct of the business of completing the work and

disposing of the Properties and the Annexable Area by sale, lease or otherwise. Each Owner, by accepting a deed to a Lot or Condominium, acknowledges that any construction or installation by Declarant or a Merchant Builder may impair the view of such Owner, and each Owner consents to such impairment.

This Declaration does not limit the right of Declarant or a Merchant Builder, at any time prior to acquisition of title to a Lot or Condominium by a purchaser from Declarant or a Merchant Builder, to establish on that Lot or Condominium, as the case may be, additional licenses, easements, reservations and rights-of-way to itself, to utility companies, or to others as reasonably necessary to the proper development and disposal of the Properties and Annexable Area provided, however, if VA or FHA has issued a "project approval" (as described in Section 2.3.6(i) hereof) with regard to any Condominium Project or Planned Development in the Properties which is to be subject to any of the actions described herein, then FHA, VA or both shall have the right to approve any such grants as provided herein. Prospective purchasers, Declarant and Merchant Builders may use any and all portions of the Maintenance Property for access to the sales and leasing facilities of Declarant and Merchant Builders. Declarant and Merchant Builders may use any structures or vehicles owned, respectively, by Declarant or Merchant Builders in the Properties as model home complexes, or real estate sales or leasing offices; provided that such uses within the Properties shall terminate on the twenty-fifth (25th) anniversary of the first Close of Escrow for the sale of a Lot or Condominium on the Properties pursuant to a transaction requiring the issuance of a Public Report, at which time Declarant and Merchant Builders shall restore their respective structures to their previous appearance. Any exemption of Merchant Builders pursuant to this Section 10.2 shall not apply to any Declarant architectural approvals which are required of Merchant Builders or Apartment Area Owners pursuant to Section 8.3. All or any portion of the rights of Declarant or a Merchant Builder, as applicable, hereunder and elsewhere in these Restrictions may be assigned by Declarant or such Merchant Builder, as applicable, to any successor in interest to any portion of Declarant's or Merchant Builder's interest in any portion of the Properties or the Annexable Area (including, without limitation, to any Merchant Builder) by an express Recorded written assignment which specifies the rights of Declarant or such Merchant Builder so assigned. Notwithstanding any other provision of this Declaration, for so long as Declarant owns any portion of the Properties or the Annexable Area, Declarant's prior written approval is required before any amendment to this Article X is effective.

10.3. Easement Relocation.

Maintenance Property comprising easements over real property the fee title to which has not been made subject to the Declaration ("Interim Easement Area") may be relocated, modified or terminated by Declarant to accommodate the final plan of development for the future Phase of Development in which the Interim Easement Area is located. Such relocation, modification or termination shall be set forth in the Recorded instrument annexing fee title to the Interim Easement Area to the Declaration. Notwithstanding the foregoing, no such relocation, modification or termination shall prevent access to any Lot or Condominium.

10.4. Conversion of Apartment Area.

The Owner of an Apartment Area Lot or Lots, in its sole discretion, may convert all or any portion of its Apartment Area to a Planned Development or Condominium Project or projects, as applicable, pursuant to then applicable laws. In such event, effective upon the first day of the first month immediately following the month in which the first Close of Escrow for the sale of a Lot or Condominium in each Phase of Development of such converted Apartment Area, such Phase of Development shall be deemed Residential Area; the Owners of Lots or Condominiums in such Phase of Development of converted Apartment Area shall all be "Owners" as defined in this Declaration; such Lots or Condominiums shall be assessed in the same manner as other Residential Area Lots and Condominiums; the Owners of such Lots or Condominiums shall have the same voting rights as other Owners of the same class of Members; and such Lots and Condominiums, and the Owners thereof, shall be subject to all of the provisions of this Declaration in the same manner as the other Lots, Condominiums and Owners in the Residential Area. The conversion of Apartment Area pursuant to this Section 10.4 does not require the approval of the Delegates, the Maintenance Association or the Members, nor require modifications to existing Apartment Area Improvements in order to conform them with the Restrictions otherwise applicable to the Residential Areas.

10.5. Entry Gate Operations.

Each Owner of a Lot or Condominium which is part of the Properties acknowledges by acceptance of a deed or other conveyance therefor, whether or not it shall be so expressed in any such deed or other instrument, that Declarant has a substantial interest in assuring unrestricted access to the Properties to accommodate the construction and marketing of the Residences and development of the Properties. Therefore, notwithstanding any other provisions of the Restrictions, until the earlier to occur of (i) Close of Escrow for the sale of all Residences in the Properties, and annexation of all the Annexable Area and commencement of assessments therein, or (ii) twenty-five (25) years following the first Close of Escrow for the sale of a Lot or Condominium pursuant to a transaction requiring the issuance of a Public Report ("Marketing Period"), Declarant is entitled to control the operation of the entry gates which provide vehicular access to the Properties. During the Marketing Period Declarant may establish and change the hours of gate operation in its sole discretion without notice, and require that the entry gates be open to the general public to accommodate construction and marketing activities.

ARTICLE XI INSURANCE

11.1. Casualty Insurance.

The Board shall obtain and maintain fire and casualty insurance with extended coverage for loss or damage to all insurable Improvements installed by Declarant, any Merchant Builder or by the Maintenance Association on the Maintenance Property for the full replacement cost thereof without deduction for depreciation or coinsurance, and may obtain insurance against such other hazards and casualties as the Maintenance Association may deem desirable. The Maintenance Association may also insure any other real or personal property it owns against loss or damage by fire and such other hazards as the Maintenance Association may deem desirable, with the Maintenance Association as the owner and beneficiary of such insurance. The policies insuring

the Maintenance Property must be written in the name of, and the proceeds thereof must be payable to the Maintenance Association. Unless the applicable insurance policy provides for a different procedure for the filing of claims, all claims made under such policy must be sent to the insurance carrier or agent, as applicable, by certified mail and be clearly identified as a claim. The Maintenance Association shall keep a record of all claims made. The Maintenance Association shall use insurance proceeds to repair or replace the property for which the insurance was carried. Premiums for all insurance carried by the Maintenance Association are a Common Expense.

11.2. Insurance Obligations of Owners.

Each Owner is responsible for insuring his personal property and all other property and Improvements within his Lot or Condominium as required by this Declaration, the applicable Supplemental Declaration or applicable Project Declaration. Such policies shall not adversely affect or diminish any liability under any insurance obtained by or on behalf of the Maintenance Association, and duplicate copies of such other policies shall be deposited with the Board upon the Board's request. If any loss intended to be covered by insurance carried by or on behalf of the Maintenance Association occurs and the proceeds payable thereunder are reduced due to insurance carried by any Owner, such Owner shall assign the proceeds of such insurance to the Maintenance Association, to the extent of such reduction, for application by the Board to the same purposes as the reduced proceeds are to be applied.

11.3. Waiver of Subrogation.

All policies of physical damage insurance the Maintenance Association maintains must provide, if reasonably possible, for waiver of: (i) any defense based on coinsurance; (ii) any right of setoff, counterclaim, apportionment, proration or contribution due to other insurance not carried by the Maintenance Association; (iii) any invalidity, other adverse effect or defense due to any breach of warranty or condition caused by the Maintenance Association, any Owner or any tenant of any Owner, or arising from any act or omission of any named insured or the respective agents, contractors and employees of any insured; (iv) any rights of the insurer to repair, rebuild or replace, and, if any 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; (v) notice of the assignment of any Owner of its interest in the insurance by virtue of a conveyance of any Lot; (vi) any denial of an Owner's claim because of negligent acts by the Maintenance Association or other Owners; or (vii) prejudice of the insurance by any acts or omissions of Owners that are not under the Maintenance Association's control. As to each policy of insurance the Maintenance Association maintains which will not be voided or impaired thereby, the Maintenance Association hereby waives and releases all claims against the Board, the Owners, the Maintenance Association Manager, Declarant, the Merchant Builders and the agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence or breach of any agreement by such Persons, but only to the extent that insurance proceeds are received in compensation for such loss.

11.4. Liability and Other Insurance.

The Maintenance Association shall obtain comprehensive public liability insurance, including medical payments and malicious mischief, in such limits as it deems desirable with such

minimum limits as are set forth in Section 1365.9 of the California Civil Code, insuring against liability for bodily injury, death and property damage arising from the Maintenance Association's activities or with respect to property the Maintenance Association maintains or is required to maintain including, if obtainable, a cross-liability endorsement insuring each insured against liability to each other insured. The Maintenance Association may also obtain Worker's Compensation insurance and other liability insurance as it may deem desirable, insuring each Owner, the Maintenance Association, Board and Maintenance Association Manager, against liability in connection with the Maintenance Property, the premiums for which are a Common Expense. The Board shall review all insurance policies at least annually and adjust the limits in its discretion. The Board may also obtain such errors and omissions insurance, indemnity bonds, fidelity insurance and other insurance as it deems advisable, insuring the Board, the Maintenance Association's officers and the Maintenance Association Manager against any liability for any act or omission in carrying out their obligations hereunder, or resulting from their membership on the Board or on any committee thereof. However, fidelity insurance coverage which names the Maintenance Association as an obligee must be obtained by or on behalf of the Maintenance Association for any Person handling Maintenance Association funds, including, but not limited to, Maintenance Association officers, directors, employees and agents and Maintenance Association Manager employees, 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 Maintenance Association's or Maintenance Association Manager's custody during the term of each bond. The aggregate amount of such bonds may not be less than one-fourth (1/4) of the Common Assessments on all Lots and Condominiums in the Properties, plus reserve funds. In addition, the Maintenance Association shall continuously maintain in effect such casualty, flood and liability insurance and fidelity insurance coverage meeting the requirements for planned unit developments established by FNMA, GNMA and FHLMC, so long as any of them is a Mortgagee or an Owner of a Residence in the Properties, except to the extent such coverage is not reasonably available or has been waived in writing by FNMA, GNMA and FHLMC, as applicable.

11.5. Notice of Expiration Requirements.

If available, each insurance policy the Maintenance Association maintains must contain a provision that said policy may not be canceled, terminated, materially modified or allowed to expire by its terms, without ten (10) to thirty (30) days' prior written notice to the Board, Declarant, and to each Owner and Beneficiary, 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.

ARTICLE XII MISCELLANEOUS

12.1. Term and Termination.

This Declaration continues in full force until a Declaration of Termination satisfying the requirements of an amendment to this Declaration as set forth in Section 12.2 of this Article is Recorded.

12.2. Amendments.

12.2.1. **By Declarant.** Prior to the first Close of Escrow for the sale of a Lot or Condominium to a member of the public pursuant to a transaction requiring the issuance of a Public Report, this Declaration may be amended or terminated by Recording a written instrument signed by Declarant setting forth such amendment or termination. Notwithstanding any other provisions of this Declaration, for so long as Declarant owns any portion of the Properties or the Annexable Area, Declarant may unilaterally amend this Declaration (i) to conform this Declaration to the requirements of VA, FHA, DRE, FNMA, GNMA, FHLMC, the County, City or any other governmental agency or entity then in effect, and (ii) to update or supplement the disclosures contained in Section 12.9 below, by Recording a written instrument signed solely by Declarant.

12.2.2. **By Delegates.** The provisions of this Declaration (all of which may not be amended without the written consent of Declarant until the earlier to occur of (i) the date on which Declarant no longer owns all or a portion of the Properties as Annexable Area, or (ii) the fifteenth (15th) anniversary of the first Close of Escrow in the Properties), may be amended by Recording an instrument, signed and acknowledged by Declarant (for those amendments which must be approved by Declarant) and two (2) officers of the Maintenance Association, setting forth the amendment and certifying that such amendment has been approved by Delegates representing sixty-seven percent (67%) of the voting power of the Maintenance Association and the requisite percentage of holders and insurers of first Mortgages, in the case of those amendments which this Declaration requires to be approved by first Mortgagees. Amendments shall be effective upon Recordation.

12.2.3. **Approval of First Mortgagees.** Notwithstanding the foregoing, any of the following amendments, to be effective, must be approved by fifty-one percent (51%) of the first Mortgagees who have requested the Maintenance Association to notify them of proposed action requiring the consent of a specified percentage of first Mortgagees, based upon one (1) vote for each Assessment Unit allocated to a Lot or Condominium pledged as security for the respective first Mortgage:

(i) **Rights of Lenders.** Any amendment which affects or purports to affect the validity or priority of encumbrances or the rights or protections granted to Beneficiaries, insurers and guarantors of first Mortgages as provided in Articles II, VI, IX, X, XI, and XII hereof.

(ii) **Lien Priority.** Any amendment which would necessitate a Mortgagee after it has acquired a Lot or Condominium through foreclosure to pay more than its proportionate share of any unpaid assessment or assessments accruing after such foreclosure.

(iii) **Forfeitures and Taxes.** Any amendment which would or could result in (a) an encumbrance being cancelled by forfeiture, or (b) an individual Lot or Condominium not being separately assessed for tax purposes.

(iv) **Insurance and Condemnation.** Any amendment relating to the insurance provisions as set out in Article XI hereof, or to the application of insurance proceeds as set out in Article XI hereof, or to the disposition of any money received in any taking under condemnation proceedings.

(v) **Termination and Subdivision.** Any amendment which would or could result in termination or abandonment of the Properties or partition or subdivision of a Lot or Condominium, in any manner inconsistent with the provisions of this Declaration; provided that termination of the legal status of the Properties as a common interest development for reasons other than substantial destruction or condemnation of the Properties must be approved by the institutional Record holders of sixty-seven percent (67%) of the first Mortgages at the time of such amendment.

Any approval by a holder, insurer or guarantor of a first Mortgage required under this Section 12.2.3, or required pursuant to any other provisions of the Restrictions, must either be given in writing, or is deemed given if, within thirty (30) days after receipt of written notice of the proposed action sent via registered or certified mail, return receipt requested, the holder, insurer or guarantor does not submit a written response to the notice.

12.2.4. Veto by City. The City shall have the power to veto any purported amendment or termination of this Declaration, which affects any provision required by Conditions of Approval to development of the Properties imposed by the City. No amendment or written agreement purporting to terminate or modify such provisions of this Declaration shall take effect until thirty (30) calendar days following delivery by mail, return receipt requested, of written notice thereof, to the City Director of Planning and Community Development, with a copy thereof to the City Attorney, and if no veto is exercised by the City Planning Director within thirty (30) calendar days after the receipt of such notice, such amendment or termination shall thereafter become effective.

12.2.5. VA Approval. So long as there is a Class B membership, any amendment to this Declaration shall require the prior written approval of the VA. A draft of any proposed amendment must be submitted to the VA for its approval prior to Recordation. In addition, VA approval is required for any merger, consolidation or dissolution of the Association; dedication, conveyance or mortgage of the Association Property; annexation of property in which VA guaranteed loans will be provided; or amendments to annexation documents or amendments previously approved by VA.

12.2.6. Certification. A certificate, signed and sworn to by two (2) officers of the Maintenance Association that Delegates representing sixty-seven percent (67%) of the Lots and Condominiums have voted for any amendment adopted as provided above, when Recorded, shall be conclusive evidence of that fact. The certificate reflecting any termination or amendment which requires the consent of any of the record holders, guarantors or insurers of first Mortgages shall include a certification that the requisite approval of the City, and such holders, guarantors or insurers of first Mortgages has been obtained or waived. The certificate reflecting any termination or amendment requiring Declarant's consent shall be signed and acknowledged by

Declarant. The Maintenance Association shall maintain in its files the record of all such votes and Mortgagee consent solicitations and disapprovals for a period of at least four (4) years.

12.3. Mortgage Protection-General.

Notwithstanding any other provision of this Declaration, no amendment or violation of this Declaration will defeat or render invalid the rights of the Beneficiary under any Deed of Trust made in good faith and for value, and Recorded prior to the Recordation of such amendment (or a Notice of Lien Recorded pursuant to Section 6.11). After the foreclosure of any such Deed of Trust such Lot or Condominium remains subject to this Declaration, as amended.

Notwithstanding any and all provisions of this Declaration to the contrary, in order to induce FHLMC, GNMA, FNMA, VA and FHA to participate in the financing of Lots and Condominiums within the Properties, the following provisions are added hereto (and to the extent these added provisions, pertaining to the rights of Mortgagees, FHLMC, FNMA, GNMA, VA and FHA, conflict with any other provisions of this Declaration or any other of the Restrictions, these added restrictions shall control):

12.3.1. Notice of Default. Each Beneficiary, insurer and guarantor of a first Mortgage encumbering any Lot or Condominium, upon filing a written request for notification with the Board, is entitled to written notification from the Maintenance Association of (i) any condemnation or casualty loss which affects either a material portion of the Properties or the Lot or Condominium securing the respective first Mortgage; (ii) any delinquency of sixty (60) days or more in the performance by the Owner of such Lot or Condominium of any obligation arising pursuant to this Declaration, including without limitation the payment of assessments or charges owed by the Owner of the Lot or Condominium securing the respective first Mortgage, which notice each Owner hereby consents to and authorizes; (iii) a lapse, cancellation, or material modification of any policy of insurance or fidelity bond maintained by the Maintenance Association; and (iv) any proposed action of the Maintenance Association which requires consent by a specified percentage of first Mortgagees.

12.3.2. First Refusal Exemption. Every Owner, including every first Mortgagee of a Mortgage encumbering any Lot or Condominium, which obtains title to such Lot or Condominium pursuant to the remedies provided in such Mortgage, or pursuant to foreclosure of the Mortgage, or by deed (or assignment) in lieu of foreclosure, is exempt from any "right of first refusal."

12.3.3. Lien Priority. Each first Mortgagee of a Mortgage encumbering any Lot or Condominium and Recorded prior to a Notice of Lien which obtains title to such Lot or Condominium pursuant to judicial foreclosure or the powers provided in such Mortgage takes title to such Lot or Condominium free and clear of any claims for unpaid assessments or charges against such Lot or Condominium which accrued prior to the time such Mortgagee acquires title to such Lot or Condominium in accordance with Section 6.16.

12.3.4. Books and Records. All Beneficiaries, insurers and guarantors of first Mortgages on Lots or Condominiums, upon written request to the Maintenance Association, may examine current copies of the Maintenance Association's books, records and financial

statements and the Restrictions during normal business hours, and may require the Maintenance Association to submit an annual audited financial statement for the preceding fiscal year without expense to the entity requesting the statement within one hundred twenty (120) days of the end of the fiscal year.

12.3.5. Mortgage Notices. All Beneficiaries, insurers and guarantors of first Mortgages of Lots or Condominiums who have filed a written request with the Maintenance Association shall be given (i) thirty (30) days' written notice prior to the effective date of any proposed, material amendment to this Declaration or the Articles or Bylaws, and prior to the effective date of any termination of an agreement for professional management of the Properties following a decision of the Owners to assume self-management of the Properties; (ii) written notice of all meetings of the Delegates and Delegate District Members and the right to designate in writing a representative who shall be authorized to attend all such meetings; and (iii) immediate written notice as soon as the Board receives notice or otherwise learns of any damage to the Maintenance Property whenever the cost of reconstruction exceeds Ten Thousand Dollars (\$10,000), and as soon as the Board receives notice or otherwise learns of any condemnation or eminent domain proceedings or other proposed acquisition, with respect to any portion of the Properties.

12.3.6. Maintenance Property 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 Maintenance Property and may pay any overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such property, and first Mortgagees making such payments shall be owed immediate reimbursement therefor from the Maintenance Association.

12.4. Notices.

Any notice permitted or required to be delivered as provided herein shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered two (2) business days after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to any Person at the address given by such Person to the Maintenance Association for the purpose of service of such notice, or to the Residence (or principal place of business in the case of a Project Association) of such Person if no address has been given to the Maintenance Association. Such address may be changed from time to time by notice in writing to the Maintenance Association.

12.5. Enforcement and Non-Waiver.

12.5.1. Right of Enforcement. Subject to Sections 1354 and 1375 of the California Civil Code and Sections 12.5.8, 12.5.10 and 12.14 below, the Maintenance Association, the successors-in-interest of the Maintenance Association, any Owner, Project Association, Declarant and Merchant Builders (so long as Declarant or a Merchant Builder owns a Lot or Condominium in the Properties or is entitled to add Annexable Area to the Properties), may enforce any of the provisions of the Restrictions against any portion of the Properties which is in noncompliance, and against each Owner, the Maintenance Association, any Project

Association, or any other Person responsible for the noncompliance. Such right shall include proceedings for damages, as well as proceedings to enjoin any violation of the Restrictions. The City shall be entitled but not obligated to enforce all provisions of this Declaration required by the City as conditions to approval of development of the Properties.

12.5.2. Project Declaration Enforcement. Subject to Sections 1354 of the California Civil Code and Sections 5.2.10, 12.5.8, 12.5.10 and 12.14 below, the Maintenance Association may commence and maintain actions and proceedings to restrain and enjoin any breach or threatened breach of the provisions of any applicable Project Declaration and to enforce, by mandatory injunctions or otherwise, all of the provisions of any applicable Project Declaration.

12.5.3. Violations are Nuisance. Every act or omission whereby any provision of the Restrictions is violated in whole or in part is declared a nuisance and every remedy allowed by law or equity against a nuisance, either public or private, is applicable against every such violation and may be exercised as provided in Section 12.5.1 above.

12.5.4. Violation of Law. Any violation of any state, municipal or local law, ordinance or regulation pertaining to the ownership, occupation or use of any of the Properties is a violation of the Restrictions and subject to all of the enforcement procedures set forth in the Restrictions.

12.5.5. Remedies Cumulative. Each remedy provided by the Restrictions is cumulative and not exclusive. The Maintenance Association may, without waiving the right to enforce its lien against the Lot or Condominium, bring a suit at law to enforce each assessment obligation.

12.5.6. No Waiver. Failure to enforce any provision of the Restrictions does not waive the right to enforce that provision, or any other provision thereof.

12.5.7. Special Assessment. If any Owner, his Family, guests, licensees, tenants or invitees, or any Project Association violates the Restrictions, the Board may, after Notice and Hearing and in addition to the other remedies available, impose a reasonable Special Assessment upon such Owner or Project Association for each violation and may as further provided in the Bylaws, suspend or condition such Owner's right (and the right of his Family, guests, licensees, tenants and invitees) to use any portion of the Maintenance Property (other than streets and driveways providing access to such Owner's Lot or Condominium). Any such suspension or conditional suspension shall be for a period of not more than thirty (30) days for any noncontinuing infraction, but in the case of a continuing infraction (including nonpayment of any delinquent assessment) may be imposed for so long as the violation continues. The Board may also adopt a schedule of reasonable fines or penalties which, in its reasonable discretion, it may assess against an Owner or Project Association for failure of the Project Association or Owner, his Family or a resident of or visitor to his Lot or Condominium, to comply with any provision of the Restrictions, other than Article VI hereof. Such fines or penalties may only be assessed by the Board after Notice and Hearing.

12.5.8. Alternative Dispute Resolution of Assessment Disputes. Disputes between an Owner and the Maintenance Association regarding the assessments imposed by the Maintenance Association may be submitted to alternative dispute resolution in accordance with Civil Code Section 1354 if such Owner pays in full (i) the amount of the assessment in dispute, (ii) any late charges, (iii) any interest, and (iv) all fees and costs associated with the preparation and filing of a Notice of Delinquent Assessment (including mailing costs and attorneys fees not to exceed the maximum amount allowed by law), and states by written notice that such amount is paid under protest, and the written notice is mailed by certified mail not more than thirty (30) days from the Recording of a Notice of Delinquent Assessment. Upon receipt of such written notice, the Maintenance Association shall inform the Owner in writing that the dispute may be resolved through alternative dispute resolution as set forth in Civil Code Section 1354. The right of any Owner to utilize alternative dispute resolution under this Section may not be exercised more than two times in any single calendar year, and not more than three times within any five (5) calendar years. Nothing within this Section shall preclude any Owner and the Maintenance Association, upon mutual agreement, from entering into alternative dispute resolution in excess of the limits set forth herein. An Owner may request and be awarded through alternative dispute resolution reasonable interest to be paid by the Maintenance Association in the total amount paid under items (i) through (iv) above, if it is determined that the assessment levied by the Maintenance Association was not correctly levied.

12.5.9. Notice of Noncompliance.

After notice and hearing, the Board may direct the officers of the Maintenance Association to Record a notice of noncompliance against a Residence owned by any Member of the Maintenance Association who has violated any provision of this Declaration. The notice shall include a legal description of the Residence 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 Maintenance Association to Record a notice that the noncompliance has been remedied.

12.5.10. Limitation on Expenditures. The Maintenance Association may not incur litigation expenses, including without limitation attorneys' fees, or borrow money to fund litigation, where the Maintenance Association initiates legal proceedings or is joined as a plaintiff in legal proceedings, unless the Maintenance Association first obtains the approval of the Members (excluding the voting power of any Owner who would be a defendant in such proceedings), and, if applicable, complies with the requirements of Section 1354 of the California Civil Code. Such approval is not necessary if the legal proceedings are initiated (i) to enforce the use restrictions contained in Article VII, (ii) to enforce the architectural and landscaping control provisions contained in Article VIII, (iii) to collect any unpaid assessments levied pursuant to this Declaration, (iv) for a claim, the total value of which is less than five hundred thousand dollars (\$500,000), or (v) as a cross-complaint in litigation to which the Maintenance Association is already a party. If the Maintenance Association decides to use or transfer Reserve funds or borrow funds to pay for any litigation, 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 Members have a right to review an accounting for the litigation which will be available at the Maintenance Association's office. The accounting shall be updated monthly.

12.6. Interpretation.

12.6.1. Restrictions Construed Together. The Restrictions shall be liberally construed to effectuate the fundamental concepts of the Properties as set forth in the Preamble to this Declaration. The Restrictions shall be interpreted so as to be consistent with applicable laws and regulations, including ordinances and regulations of the County and other applicable governmental entities. The Restrictions shall be construed and governed by the laws of the State of California.

12.6.2. Restrictions Severable. Notwithstanding the provisions of Section 12.6.1, each of the provisions of the Restrictions is independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

12.6.3. Singular Includes Plural. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall each include the masculine, feminine and neuter.

12.6.4. Captions. All captions and titles in this Declaration are solely for convenience of reference and do not affect that which is set forth in any of the provisions hereof.

12.6.5. Time Periods. Except as otherwise expressly provided herein, any reference in this Declaration to time for performance of obligations or to elapsed time means consecutive calendar days, months, or years, as applicable.

12.7. Reservation of Easements.

Declarant and the Merchant Builders hereby reserve for the benefit of all of the Properties reciprocal easements for access, ingress and egress for all Owners to and from their respective Lots and Condominiums; for installation and repair of utility services; for encroachments of Improvements constructed by Declarant and Merchant Builders or authorized by the Architectural Committee over the Maintenance Property; for drainage of water over, across and upon adjacent Lots, Common Areas and Maintenance Property resulting from the normal use of adjoining Lots, Common Areas or Maintenance Property; for necessary maintenance and repair of any Improvement constructed by Declarant or a Merchant Builder; easements as may be shown on any Recorded subdivision map or Recorded parcel map of any portion of the Properties; and for such other purposes specified in this Declaration. Such easements may be used by Declarant and the Merchant Builders, their successors, invitees and purchasers, the Maintenance Association, and all Owners, their guests, tenants and invitees, residing on or temporarily visiting the Properties, for pedestrian walkways, vehicular access and such other purposes specified herein or reasonably necessary for the use, maintenance and enjoyment of a

Lot, Condominium, Common Areas or the Maintenance Property. Declarant hereby reserves easements for the installation and maintenance of master antenna or master cable television antenna service, as provided in Section 3.8.

12.8. No Public Right of 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.

12.9. Disclosures.

Every person who owns, occupies or acquires any right, title, estate or interest in or to any Lot or Condominium or other portion of the Properties agrees to every limitation, restriction, easement, reservation, condition and covenant contained herein, whether or not any reference to this Declaration is contained in the instrument by which such person acquired an interest in the Properties. Each Owner, by acceptance of a deed or other conveyance of a Lot or Condominium, whether or not it shall be so expressed in any such deed or other instrument, acknowledges and understands the following:

12.9.1. Entry Gates. Vehicular access into the Properties may be controlled by electronically operated entry gates located at the private street entrances into the Properties, which facilities will have pedestrian gates that will not be controlled in any way, and will be open to the general public. There may be additional controlled access pedestrian gates at other locations within the Properties. There are no assurances that entry gates will be staffed. If staffing is provided, the schedule for commencing gate staffing operations and the hours of staffing will be subject to change as development progresses and will be affected by the construction and marketing access requirements of Declarant and the Merchant Builders and the commencement of Common Assessments in future Phases of Development. Interim staffing may be provided by Declarant or the Merchant Builders at their sole cost and discretion as a part of development operations at the Properties. Interim gate staffing may be modified or eliminated at any time without notice.

12.9.2. Gate Operations During Marketing Period. Declarant reserves the right to limit the operation of any vehicular entry gates during the "Marketing Period" (as defined in Section 10.5) when Declarant or Merchant Builders are constructing and/or offering Residences for sale. During the Marketing Period the entry gates will be open to the general public including Declarant and Merchant Builder construction and model home traffic from the earlier to occur of 7 a.m. or dawn to the later to occur of 7 p.m. or dusk seven days a week. Declarant may change the hours of gate operation in its sole discretion and without notice to accommodate construction and marketing activities.

12.9.3. Security and Privacy Disclaimer. Entry gates and entry gate staffing services are not intended to provide security for persons, personal property or Residences within the Properties. Declarant, the Merchant Builders and the Maintenance Association do not undertake to provide security for the Properties nor do they make any representations or warranties whatsoever concerning the effect the gates or gate staffing may have on vehicular and pedestrian access through the Properties or the privacy and safety of the Properties.

12.10. No Representations or Warranties.

No representations or warranties of any kind, express or implied, have been given or made by Declarant or its agents or employees in connection with the Properties or any portion of the Properties, or any Improvement thereon, its physical conditions, zoning, compliance with applicable laws, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof, except as specifically and expressly set forth in this Declaration and except as may be filed from time to time with the DRE or with any other governmental authority.

12.11. Standard of Care, Nonliability.

12.11.1. Scope of Powers and Standard of Care.

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

(ii) **Business Affairs.** This Subsection 12.11.1(ii) 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 such Board member believes to be in the best interests of the Maintenance 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 statements and other financial data, in each case prepared or presented by:

- (1) One or more officers or employees of the Maintenance Association whom the Board member believes to be reliable and competent in the matters presented;
- (2) Counsel, independent accountants or other Persons as to matters which the Board member believes to be within such Person's professional or expert competence; or
- (3) A Committee of the Board upon which the Board member does not serve, as to matters within its designated authority, which committee the director believes to merit confidence,

so long as, in any such case, the director 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.

- (4) This Subsection 12.11.1(ii) is intended to be a restatement of the business judgement rule established in applicable law as it applies to the Maintenance Association. All amendments, modifications, restatements and interpretations of the business judgment rule applicable to the Maintenance Association shall be interpreted to amend, modify, restate or interpret this Subsection 12.11.1(ii).

(iii) **Maintenance Association Governance.** This Subsection 12.11.1(iii) applies to Board actions, Architectural Review Committee decisions and Covenant Committee decisions in connection with interpretation and enforcement of the Restrictions, architectural and landscaping control, regulation of uses within the Properties, rule making and oversight of committees. Actions taken or decisions made in connection with these matters shall be reasonable, fair and nondiscriminatory.

12.11.2. **Nonliability.**

(i) **General Rule.** No Person is liable to any other Person (other than the Maintenance Association or a party claiming in the name of the Maintenance Association) for injuries or damage resulting from such Person's acts or omissions when the acts or omissions are within what the Person reasonably believed to be the scope of the Person's Maintenance Association duties ("Official Acts"), except to the extent that injuries or damage result from the Person's willful or malicious misconduct. No Person is liable to the Maintenance Association (or to any party claiming in the name of the Maintenance 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 willful or malicious misconduct. The Maintenance Association is not liable for damage to property in the Properties unless caused by the negligence of the Maintenance Association, the Board, the Delegates, the Maintenance Association's officers, the Manager or the Manager's staff.

(ii) **Nonliability of Volunteer Board Members and Officers.** A volunteer Board member or volunteer Maintenance Association officer shall not be personally liable to any Person who suffers injury, including without limitation 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 of the applicable conditions specified in Section 1365.7 of the California Civil Code, as modified, amended, or replaced, are met.

12.12. **Enforcement of Certain Bonded Obligations.**

If (i) the Maintenance Property Improvements located on any Phase of Development of the Properties are not completed by the developer (Merchant Builder or Declarant, as the case may

be) of such Phase of Development of the Properties (herein the "Developer"), prior to the issuance of a Final Subdivision Public Report for that Phase of Development by the DRE, and (ii) the Maintenance Association is obligee under a bond, letter of credit or other arrangement ("Bond") required by the DRE to secure performance of the Developer's commitment to complete the Improvements, the following provisions of this Section will be applicable:

12.12.1. Board Action. The Board shall consider and vote on the question of Maintenance Association action 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 Maintenance Association has given an extension in writing for the completion of any Maintenance Property Improvement, the Board shall consider and vote on the aforesaid question if a Notice of Completion has not been filed, within thirty (30) days after the expiration of the extension.

12.12.2. Delegate Action. A special meeting of Delegates, 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) days nor more than forty-five (45) days after receipt by the Board of a petition for such a meeting signed by not less than two (2) Delegates representing in the aggregate not less than five percent (5%) of the Maintenance Association total voting power. A vote of Delegates representing a majority of the Maintenance Association voting power, disregarding any votes attributable to Lots or Condominiums owned by the Developer, to take action to enforce the obligations under the Bond shall be deemed the Maintenance Association's decision, and the Board must thereafter implement this decision by initiating and pursuing appropriate action in the Maintenance Association's name.

12.13. Priorities and Inconsistencies.

If there are conflicts or inconsistencies between this Declaration and either the Articles of Incorporation or the Bylaws of the Maintenance Association, the terms and provisions of this Declaration shall prevail. In addition, if there are any conflicts or inconsistencies between this Declaration or any of the Restrictions, and any documentation executed by a Merchant Builder and Declarant in connection with the sale of any property in the Properties to the Merchant Builder (collectively "Development Documents"), as between Merchant Builder and Declarant, the terms and provisions of the Development Documents shall control.

12.14. Dispute Resolution.

Any disputes between all or any of the Maintenance Association, Merchant Builders, Project Association, Owner(s) and the Declarant or any director, officer, partner, employer, contractor, subcontractor, design professional, consultant or agent of the Declarant (collectively "Declarant Parties") arising under this Declaration or relating to the Properties (excluding disputes solely between Declarant and any other Declarant Party or Parties), shall be subject to the following provisions:

(a) **Construction Defect Disputes.** Prior to the commencement of any legal action by the Maintenance Association, Project Association or any Owner(s) against a Merchant Builder, the Declarant or Declarant Party based upon a claim for defects in the design or construction of any Residence, Maintenance Property or Improvements thereon, the Maintenance Association, Project Association or Owner must first comply with the requirements of Civil Code Section 1375 (notwithstanding the fact that Section 1375 does not apply to Owners by its terms). If the parties are unable to resolve their dispute in accordance with the procedures established under Civil Code Section 1375, the dispute shall be resolved in accordance with subsection (c) below and the Parties shall each be responsible for their own attorneys' fees.

(b) **Other Disputes.** Any other disputes arising under this Declaration or otherwise between the Maintenance Association, Project Association, any Owner, a Merchant Builder and the Declarant or a Declarant Party (except for action taken by the Maintenance Association against Declarant for delinquent assessments, and any action involving any Maintenance Property completion bonds) (excluding disputes between Declarant and any Merchant Builder) shall be resolved in accordance with subsection (c) below. The dispute resolution procedure in subsection (c) as it applies solely to the dispute under this subsection (b) shall be deemed to satisfy the alternative dispute requirements of Civil Code Section 1354, as applicable.

(c) **Judicial Reference.** Any unresolved disputes under subsections (a) and (b) above, shall be submitted to general judicial reference pursuant to California Code of Civil Procedure Sections 638(1) and 641-645 or any successor statutes thereto. The parties shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the judicial reference proceeding. The parties shall share equally in the fees and costs of the referee, unless the referee orders otherwise but shall each be responsible for their own attorneys' fees.

The general referee shall have the authority to try all issues, whether of fact or law, and to report a statement of decision to the court. The parties shall use the procedures adopted by Judicial Arbitration and Mediation Services ("JAMS") for judicial reference and selection of a referee (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:

- (1) The proceedings shall be heard in the county in which the Project is located;
- (2) The referee must be a retired judge or a licensed attorney with substantial experience in relevant real estate matters;
- (3) Any dispute regarding the selection of the referee shall be resolved by JAMS or the entity providing the reference services, or, if no entity is involved, by the court with appropriate jurisdiction;
- (4) The referee may require one or more pre-hearing conferences;

- (5) 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;
- (6) A stenographic record of the trial shall be made, provided that the record shall remain confidential except as may be necessary for post-hearing motions and any appeals;
- (7) The referee's statement of decision shall contain findings of fact and conclusions of law to the extent applicable; and
- (8) The referee shall have the authority to rule on all post-hearing motions in the same manner as a trial judge.

The statement of decision of the referee upon all of the issues considered by the referee is binding upon the Parties, and upon filing of the statement of decision with the clerk of the court, or with the judge where there is no clerk, judgment may be entered thereon. The decision of the referee shall be appealable as if rendered by the court. This provision shall in no way be construed to limit any valid cause of action which may be brought by any of the parties. The parties acknowledge and accept that they are waiving their right to a jury trial.

Declarant has executed this Declaration as of the date set forth below.

Dated: SEPT 30, 1999

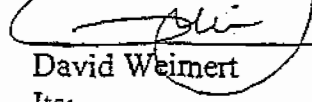
"DECLARANT"

DavSha,
a California limited liability company

By: BP Westcoast Properties, L.L.C., a Texas
limited liability company
Its Managing Member

By:  agent
Shaul C. Baruch
Its Manager

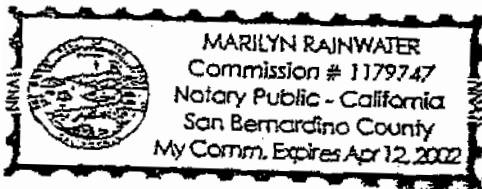
By: Investment Directions, Inc., a Wisconsin
corporation
Its Member

By:  agent
David Weimert
Its: _____

STATE OF CALIFORNIA)
) ss.
COUNTY OF San Bernardino)

On September 30, 1999, before me, Marilyn Rainwater, a Notary Public in and for said State, personally appeared David J. Miller, agent ~~and~~ for Shaul C. Baruch, 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)

Marilyn Rainwater
Notary Public in and for said State

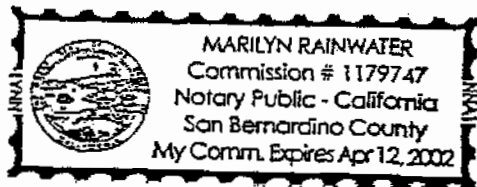
State of California

County of San Bernardino

On September 30, 1999 before me, Marilyn Rainwater, Notary Public

personally appeared David J. Miller, agent for David Weimert

☐ 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.

Marilyn Rainwater
Signature of Notary Public

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: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

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

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer Is Representing: _____

Signer's Name: _____

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

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer Is Representing: _____

EXHIBIT "A"

Legal Description

Lots 1 to 38, inclusive, of Tract No. 9490-1, located in the County of Riverside, State of California, as per map recorded in Book 95, pages 3 to 4, inclusive, of maps in the office of the County Recorder of Riverside County.

Lots 1 through 43, inclusive, of Tract 9490, located in the County of Riverside, State of California, as per map recorded in Book 99, pages 70 and 71, inclusive, of maps in the office of the County Recorder of Riverside County.