TABLE OF CONTENTS

FOR

DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS

AND RESERVATION OF EASEMENTS

FOR

KERRIGAN RANCH II

TABLE OF CONTENTS (Cont.)

TABLE OF CONTENTS (Cont.)

DESCRIPTION PAGE

TABLE OF CONTENTS (Cont.)

TABLE OF CONTENTS (Cont.)

TABLE OF CONTENTS (Cont.)

DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND RESERVATION OF EASEMENTS FOR KERRIGAN RANCH II

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND RESERVATION OF EASEMENTS is made by PULTE HOME CORPORATION, a Michigan corporation (*"Declarant"*). The capitalized terms used in the Preamble are defined in Article I.

P R E A M B L E:

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

> Lots 15 to 25, inclusive, and Lots 34 to 37, inclusive, of Tract No. 16320, as shown on a Subdivision Map, Filed on August 6, 2003, in Book 847, Pages 15 to 19, inclusive, of Miscellaneous Maps, in the Office of the Orange County Recorder.

B. Declarant intends to create a "planned development," as defined in Section 1351(k) of the California Civil Code, to create a "subdivision" as defined in Section 11000 of the California Business and Professions Code, and to impose mutually beneficial restrictions under a general plan for subdividing, maintaining, improving and selling the Lots in the Properties for the benefit of all the Lots pursuant to the Davis-Stirling Common Interest Development Act. The Properties are planned to constitute a "subdivision," as defined in Section 11000 of the California Business and Professions Code, containing multiple neighborhoods constructed by Declarant or by any Guest Builder (as defined herein). The general plan for development of the Properties will include a corporation formed pursuant to the California Mutual Benefit Corporation Law to which will be assigned the powers of (1) owning, maintaining and administering the Common Area, (2) administering and enforcing the Restrictions, and (3) collecting and disbursing the assessments and charges hereinafter created. Declarant will or has caused such corporation, the Members of which will be the Owners of Lots in the Properties, to be formed to exercise such powers, as required by Section 1363 of the California Civil Code.

C. Declarant intends to develop and convey all of the Properties pursuant to a general plan and subject to the protective covenants, conditions, restrictions, rights, reservations, easements, equitable servitudes, liens and charges set forth herein, pursuant to the Davis-Stirling Common Interest Development Act. Declarant alone may execute, acknowledge and Record a Supplemental Declaration affecting solely a Phase of Development, so long as Declarant owns all of the real property to be affected by such Supplemental Declaration. Such Supplemental Declaration shall not conflict with the provisions of this Declaration, but may impose further conditions, covenants and restrictions for the operation, protection and maintenance of that Phase of Development.

D. The Properties are to be held, conveyed, encumbered, leased, used and improved subject to covenants, conditions, restrictions and easements in this Declaration, all of which are in furtherance of a plan for subdividing, maintaining, improving and selling the Lots in the Properties. All provisions of this Declaration are imposed as equitable servitudes on the Properties. All covenants, conditions, restrictions and easements in this Declaration (i) shall run with and burden the Properties; (ii) shall be binding on and for the benefit of all of the Properties and all Persons acquiring any interest in the Properties; (iii) shall inure to the benefit of every portion of the Properties and any interest therein; (iv) shall inure to the benefit of and be binding upon Declarant, the Association, any Guest Builder, and their respective successors-in-interest, each Owner and each Owner's successors in interest; and (v) may be enforced by Declarant, any Guest Builder, any Owner and the Association.

ARTICLE I
DEFINITIONS AND INTERPRETATION

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

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

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

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

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

1.1.5. **Association.** Association means Kerrigan Ranch II Community Association, a California nonprofit corporation (formed pursuant to the California Nonprofit Mutual Benefit Corporation Law), its successors and assigns. The Association is an "Association" as defined in Section 1351(a) of the California Civil Code.

1.1.6. **Association Maintenance Areas.** Association Maintenance Area means certain Improvements or areas of real property located on the residential Lots over which the Association has an easement, license, or other obligation of maintenance, including certain landscaping, slope areas, fuel modification areas, mailboxes, entry monuments and certain walls located at entrances to the Properties. The Association Maintenance Areas in Phase I are shown on *Exhibit D* hereto. Additional Association Maintenance Areas may be designated in a Notice of Addition pursuant to Article XVI hereof.

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

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

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

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

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

1.1.12. **City.** City means the City of Yorba Linda, California, and its various departments, divisions, employees and representatives.

1.1.13. **Close of Escrow.** Close of Escrow means the date on which a deed is Recorded conveying a Lot pursuant to a transaction requiring the issuance of a Final Subdivision Public Report by the DRE. Among other exempt transfers, the term "Close of Escrow" herein shall not include the Recordation of a deed between Declarant and (a) any successor to any rights of Declarant hereunder or (b) any Guest Builder.

1.1.14. **Common Area.** Common Area means real property and Improvements designated by the Declarant as Common Area and therefore made subject to the restrictions on Common Area established in the Restrictions. Any references in this Declaration to Common Area are references to the Common Area as a whole and to portions thereof. There is no Common Area in Phase 1. Common Area may be annexed to the Properties pursuant to Article XVI.

1.1.15. **Common Area Easements.** Common Area Easements means real property and Improvements designated by Declarant as Common Area Easements and therefore made subject to the terms governing Common Area Easements established in the Restrictions. The Common Area Easements are real property designated for maintenance by a landscape maintenance district at the time of recording of this Declaration and include public trails located over residential Lots. The terms and provisions contained in the Restrictions concerning Common Area shall not apply to Common Area Easements unless specifically provided otherwise in the Restrictions or as designated otherwise in a Supplemental Declaration. The Common Area Easements in Phase 1 are shown on *Exhibit E* hereto.

1.1.16. **Common Expenses.** Common Expenses means those expenses for which the Association is responsible under this Declaration, and including the actual and estimated costs of and reserves for maintaining, managing and operating the Common Property. Common Expenses also include unpaid Special Assessments, Reconstruction Assessments and Capital Improvement Assessments. Common Expenses include the cost of all utilities and mechanical and electrical equipment serving the Common Area, maintaining entry monuments and certain entry landscaping, managing and administering the Association, compensating the Manager, accountants, attorneys and employees, gardening and other services benefitting the Common Area, all insurance covering the Common Property, the Common Area Easements and the Directors, officers and agents of the Association, bonding the members of the Board, taxes paid by the Association, amounts paid by the Association for discharge of any lien or encumbrance levied against the Properties, and all other expenses incurred by the Association for the Properties, for the common benefit of the Owners.

1.1.17. **Common Property.** Common Property means Common Area and Association Maintenance Areas.

1.1.18. **Declarant.** Declarant means PULTE HOME CORPORATION, a Michigan corporation, its successors and any Person to which it shall have assigned any of its rights by an express written assignment. As used in this Section, "successor" means a Person who acquires Declarant or substantially all of Declarant's assets by sale, merger, reverse merger, consolidation, sale of stock or assets, operation of law or otherwise. There may exist two or more "Declarants" simultaneously, if one or more of the rights of Declarant have been assigned to one or more Persons other than the initial Declarant. Declarant shall determine in its sole discretion the time, place and manner in which it discharges its obligations and exercises the rights reserved to it under this Declaration. Declarant is a "builder" as described in California Civil Code Section 1375.

1.1.19. **Declaration.** Declaration means this instrument as currently in effect.

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

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

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

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

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

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

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

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

1.1.28. **Guest Builder.** Guest Builder means a Person who is designated as a Guest Builder by Declarant in a Recorded document, and who acquires a portion of the Properties for the purpose of developing such portion for resale to the general public. The term "Guest Builder" shall not include Declarant.

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

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

1.1.31. **Include, Including.** Whether capitalized or not, include and including means "include without limitation, " or "including without limitation," as applicable.

1.1.32. **Lot.** Lot means any residential Lot or parcel of land shown on any Recorded subdivision map or Recorded parcel map of the Properties, except the Common Area.

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

1.1.34. **Maintenance Guidelines; Maintenance Manual.** Maintenance Guidelines means any current written guidelines, setting forth procedures and standards for the maintenance and operation of the Common Property by the Association and the Lots by the Owners, that may be provided by Declarant or a Guest Builder to the Association and to each Owner. Maintenance

Guidelines include any Maintenance Manual initially prepared at Declarant's or a Guest Builder's direction and containing recommendations concerning the frequency of inspections and maintenance recommendations pertaining to a Residence, Lot, Common Property or components thereof.

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

1.1.36. **Member, Membership.** Member means any Person holding a Membership. Membership means the voting and other rights, privileges, and duties established in the Restrictions for members of the Association.

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

1.1.38. **Mortgagee.** Mortgagee means a Person to whom a Mortgage is made, or the assignee of the Mortgagee's rights under the Mortgage by a Recorded assignment. The term Mortgagee shall include a beneficiary under deed of trust.

1.1.39. **Mortgagor.** Mortgagor means a person who has mortgaged his property. The term Mortgagor shall include a Trustor under a deed of trust.

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

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

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

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

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

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

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

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

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

1.1.49. **Reserves.** Reserves means those Common Expenses for which 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 Common Area which would not reasonably be expected to recur on an annual or more frequent basis, such amounts to be determined annually by the Board pursuant to maintenance cost guidelines established in accordance with prudent property management practices generally applied for a "common interest development" (as defined in Section 1351(c) of the California Civil Code) throughout the geographic region in which the Properties are located.

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

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

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

1.1.53. **Rules and Regulations.** Rules and Regulations means the current rules and regulations for the Properties.

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

1.1.55. **Supplemental Declaration.** Supplemental Declaration means an instrument which imposes conditions, covenants, or restrictions or reserves easements on one or more Lots in the Properties. Declarant may Record a Supplemental Declaration so long as Declarant owns all of the real property to be encumbered by the Supplemental Declaration. With the Declarant's consent, a Supplemental Declaration may modify this Declaration as it applies to the property encumbered by the Supplemental Declaration.

1.1.56. **Telecommunication Facilities.** Telecommunication Facilities means equipment, cables, conduits, inner ducts, vaults, connecting hardware, wires, poles, transmitters, towers, antennae and other facilities and structures necessary for, or used in, the provision of Telecommunication Services.

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

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

1.2. **INTERPRETATION.**

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

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

1.2.3. **Priorities and Inconsistencies.** If there are conflicts or inconsistencies between this Declaration and the Articles, Bylaws, Rules and Regulations, Supplemental Declaration, or a Notice of Addition, then the provisions of this Declaration shall prevail, subject to Section 1.1.53.

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

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

ARTICLE II
RESIDENCE AND USE RESTRICTIONS

The Properties shall be held, used and enjoyed subject to the following restrictions and the exemptions of Declarant set forth in this Declaration. Supplemental Declarations may add use restrictions or replace the use restrictions contained in this Article for the property the Supplemental Declarations encumber.

2.1.**SINGLE FAMILY RESIDENCE.** Each Lot shall be used as a dwelling for a single Family and for no other purpose. An Owner may rent his Lot to a single Family provided that the Lot is rented pursuant to a lease or rental agreement which is (a) in writing, and (b) subject to this Declaration.

2.2.**BUSINESS OR COMMERCIAL ACTIVITY.** No part of the Properties may be used for any business, commercial (including auctions or similar events), manufacturing, mercantile, storage, vending or other nonresidential purposes, including any activity for which the provider is compensated or receives any consideration, regardless of whether the activity is engaged in full or part-time, generates or does not generate a profit, or requires or does not require a license, except Declarant may use any portion of the Properties for a model home site and display and sales office in accordance with Article II hereof, and offices operated by the Association are exempt from the restrictions contained in this Section. This Section does not preclude any of the above-described activities provided that: (a) the activity complies with the law; (b) the patrons or clientele of the activity do not visit the Lot or park automobiles or other vehicles in the Properties; (c) the existence or operation of the activity is not apparent or detectable by sight, sound or smell from outside the boundaries of the Lot; (d) the activity does not increase the Association's liability or casualty insurance obligation or premium; and (e) the activity is consistent with the residential character of the Properties and this Declaration.

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

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

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

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

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

2.4.4. for each Lot, one (1) sign advertising the Lot for sale or lease that complies with the following requirements, except as may otherwise be required by the Design Review Committee:

(a) the sign is not larger than eighteen inches (18") by thirty inches (30") in size;

(i) the sign is attached to the ground by a conventional, single vertical stake which does not exceed two inches (2") by three inches (3") in diameter (i.e., posts, pillars, frames or similar arrangements are prohibited);

(ii) the top of the sign is not more than three feet (3') in height above the ground level;

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

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

2.5.PARKING AND VEHICULAR RESTRICTIONS.

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

2.5.2. **Restricted Vehicles.** The following vehicles are "Restricted Vehicles": recreational vehicles, motor homes, travel trailers, camper vans, boats, personal water craft and the like. Restricted Vehicles may be parked (i) wholly within an Owner's garage or (ii) on a side yard that is of sufficient size to contain the Restricted Vehicle wholly within the Owner's Lot without damaging the Residence or side yard fencing and which is screened from view in a manner approved by the Design Review Committee. Owners who park Restricted Vehicles on their side yard shall also be required to install a concrete pad created for the purpose of accommodating the weight of the Restricted Vehicle.

2.5.3. **Prohibited Vehicles.** The following vehicles are "Prohibited Vehicles": (a) commercial-type vehicles (e.g., stakebed trucks, tank trucks, dump trucks, step vans, concrete trucks and limousines), (b) buses or vans designed to accommodate more than ten (10) people, (c) vehicles having more than two (2) axles, (d) trailers with three (3) or more wheels, (e) inoperable vehicles or parts of vehicles, (f) aircraft, (g) any vehicle or vehicular equipment deemed a nuisance by the Board, and (i) any other vehicle not classified as an Authorized Vehicle. Prohibited Vehicles may not be parked, stored or kept on any public or private street in, adjacent to or visible from the Properties or any other Common Area parking area except for brief periods for loading, unloading, making deliveries or emergency repairs. Prohibited Vehicles may only be parked within an Owner's fully enclosed garage with the door closed, so long as their presence on the Properties does not otherwise violate the provisions of this Declaration.

2.5.4. **General Restrictions.** If a vehicle qualifies as an Authorized Vehicle or Restricted 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 or Restricted Vehicle in writing by the Board. Subject to the restriction on Prohibited Vehicles, all vehicles owned or operated by or under the control of an Owner or a resident of an Owner's Lot and kept in the Properties must be parked in the garage of that Owner to the extent of the space available; provided that each Owner shall ensure that any such garage (including tandem garages) accommodates at least the number of Authorized Vehicles for which it was originally constructed by Declarant or Guest Builder. No maintenance or restoration of any vehicle may be conducted on the Properties except in an enclosed garage, provided such activity is not undertaken as a business, and provided that such activity may be prohibited entirely by the Board if the Board determines that it constitutes a nuisance. The parking of vehicles in fire lanes is prohibited and violators may have their vehicles towed at their sole cost and expense. Use of any fire lanes located within the Properties are further subject to the restrictions established by the Orange County Fire Authority. Obstructions within fire lanes and other fire protection access easements are strictly prohibited. The approval of the Fire Chief shall be required for any modifications of any fire lanes, such as the addition of speed bumps, control gates or parking changes. The approximate location of fire lanes within the Properties is shown on *Exhibit F* attached hereto. In addition, the Properties are subject to a parking management plan approved by the City Traffic Commission to limit or restrict the parking of non-resident vehicles on streets leading to the Chino Hills State Park. Any modifications to the parking management plan must be approved in advance by the City Traffic Commission.

2.5.5. **Parking Regulations.** The Board may establish additional regulations regarding any parking areas on Common Area and any streets within the Properties, including designating "parking," "guest parking," and "no parking" areas. The Board may take all actions necessary to enforce all parking and vehicle use regulations for the Properties including removing violating vehicles from the Properties pursuant to California Vehicle Code Section 22658.2 or other applicable law. The Board shall submit a proposal of it's method of enforcing no parking rules within fire lanes in the Properties to the Orange County's Fire Chief for approval. If the Board fails to enforce any of the parking or vehicle use regulations, the City may enforce such regulations.

2.6.ANIMAL **REGULATIONS.** Dogs, cats, fish, birds, reptiles and other usual household pets, provided that they are not kept, bred or raised for commercial purposes, in unreasonable quantities or sizes or in violation of the Restrictions. As used in the Declaration, "unreasonable quantities" ordinarily means more than two (2) pets per Residence; however, the Association may determine that a reasonable number in any instance may be more or less, but in no case shall exceed that permitted by the City's Zoning Ordinance. In addition, horses and other animals in the equine family may be kept on Lots within the Properties that meet the requirements set forth in the City's Zoning Ordinance. The Association may limit the size of pets and may prohibit maintenance of any animal which, in the Association's opinion, constitutes a nuisance to any other Owner. Animals must be either kept in an enclosed area or on a leash held by a person capable of controlling the animal. Each Person is liable for any unreasonable noise and for damage to person or property caused by any animals brought or kept on the Properties by such Person. Each Person shall clean up after such Person's animals, and maintain the Lot and the Properties in a clean and sanitary condition at all times. Any Person who keeps any animal in the Properties shall indemnify, defend and hold harmless the Association, its officers, directors, contractors, agents and employees from any claim brought by any Person against the Association, its officers, directors, agents and employees for personal injuries or property damage caused by such animal.

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

2.7.1 **Restrictions on Installation.** The Committee may adopt reasonable restrictions on installation and use of an Authorized Antenna as part of its Design Guidelines in order to minimize visibility of the Authorized Antenna from other Lots. Such restrictions may designate one or more preferred installation locations, or require camouflage such as paint (subject to the antenna manufacturer's recommendations) or screening vegetation or other Improvements.

However, no restriction imposed by the Committee may (i) unreasonably delay or prevent the installation, maintenance or use of an Authorized Antenna, (ii) unreasonably increase the cost of installation, maintenance or use of an Authorized Antenna, or (iii) preclude acceptable quality reception.

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

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

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

2.8.**TRASH.** No trash may be kept or permitted upon the Properties or on any public street abutting or visible from the Properties except in containers located in appropriate areas screened from view. Such containers may be exposed to the view of neighboring Lots only when set out at a location approved by the Design Review Committee for a reasonable period of time (not to exceed twelve (12) hours before and after scheduled trash collection hours). No Owner may store building materials or other bulk materials in the Properties. However, if the Committee has authorized construction on a residential Lot, the Owner of such Lot may temporarily store materials used for the project in areas designated by the Committee.

2.9.**INSTALLATIONS.**

2.9.1. **Generally.** Except for subsection 2.9.4, this Section 2.9 does not apply to Improvements installed (a) as a part of the original construction of the Properties by Declarant or any Guest Builder, (b) by the Association, or (c) with the approval of the Design Review Committee. No Owner may cause or permit any mechanic's lien to be filed against the Properties for labor or materials alleged to have been furnished or delivered to the Properties or any Lot for such Owner and any Owner who does so shall immediately cause the lien to be discharged within five (5) days after notice to the Owner from the Board. If any Owner fails to remove such mechanic's lien, the Board may discharge the lien and charge the Owner a Special Assessment for such cost of discharge.

2.9.2. **Outside Installations.** Except as provided in Section 2.9.1, the following outside installations are prohibited: (a) clotheslines, wiring, water softeners, other machines and other similar Improvements, and (b) roof-mounted mechanical equipment or any Improvements protruding through the walls or roofs of buildings (subject to Section 2.7). Outdoor patio or lounge furniture, plants and barbecue equipment may be kept in accordance with the Rules and Regulations. No outdoor fires are permitted, except in barbecue grills, fire pits and fireplaces designed and used in such a manner that they do not create a fire hazard. No clothing, fabrics or unsightly articles may be hung, dried or aired on or over any Lot.

2.9.3. **Inside Installations.** The Board has the right to specify in the Design Guidelines the types and colors of window coverings that are visible to others in the Properties. Nothing may be done in any Lot or in, on or to the Common Area which may impair the structural integrity of any building in the Properties or which structurally alters any such building except as otherwise expressly provided in this Declaration.

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

2.10. **RESTRICTIONS BENEFITTING CONSERVATION EASEMENT AREAS AND ADJACENT PROPERTY.** The following restrictions are intended to benefit and protect the conservation easement areas, which are approximately shown on ***Exhibit G*** hereto ("Conservation Easement Areas"), and the adjacent Chino Hills State Park:

2.10.1. **Access.** Owners and other residents are prohibited from entering the open space areas in the Properties designated as Conservation Easement Areas. Owners and other residents are further prohibited from entering any portion of the Chino Hills State Park, except through designated trail heads or other openings made specifically for access purposes.

2.10.2. **Fencing.** Declarant and Guest Builders have installed special fencing next to Conservation Easement Areas, including fencing located on or near the boundaries of some Lots, with the intent to keep predators (such as cats and dogs) from entering the Conservation Easement Area (collectively, "Predator Fencing"). Owners are required to maintain Predator Fencing at all times so that said fencing continues to keep predators from entering the Conservation Easement Area. If Predator Fencing is ever removed, Owners and the Association are require to replace it with the same fencing originally installed on the Lot or Common Area, or other fencing that meets the specifications of Predator Fencing which are kept on file with the Association.

2.10.3. **Wildlife and Domestic Animals.** Domestic animals, such as cats and dogs, are natural predators that may kill or maim wildlife living in the Conservation Easement Areas and

Chino Hills State Park, including the California gnatcatcher, a protected species, and other sensitive species. In order to protect the wildlife, domestic cats are not permitted in yard areas adjacent to the Conservation Easement Areas and it is recommended that cats be kept indoors at all times. All pet food should be kept indoors or within the garage to avoid attracting wildlife within private yards. Owners are advised that encounters with wildlife are highly probable as they forage for food and that they should be alert for wildlife and take all necessary precautions whenever children or domestic animals are outdoors.

2.10.4. **Lighting**. Lighting on Lots and Common Area in the Properties shall be designed to prevent artificial lighting from reflecting into adjacent Conservation Easement Areas, the Chino Hills State Park and other natural areas. Any lighting installed or replaced by Owners or the Association shall meet these requirements. Methods to achieve these requirements shall include (i) the use of soft light intensity fixtures, (ii) use of shields on the back of lights, and (iii) directing exterior light away from the Chino Hills State Park.

2.10.5. **Landscaping**. Plants identified by the California Exotic Pest Plant Council ("CalEPPC") as an invasive risk in southern California ("Prohibited Plants") shall not be planted within the Properties. The Mitigation Monitoring and Reporting Program for the Properties prohibits the use of the following plants, commonly known as: (a) Tree-of-heaven; (b) Giant reed; (c) Garland chrysanthemum; (d) Pampas grass; (e) Brooms; (f) Bermuda buttercup; (g) Fountain/Kikuyu grass; (h) German ivy; and (i) Tamarisk. A current copy of the Prohibited Plants list is available from the official CalEPPC website, www.caleppc.org, and the Board may distribute a list of additional Prohibited Plants from time to time. The Association is obligated to maintain and monitor existing native vegetation in open space areas pursuant to plans approved by the City and all standards and restrictions contained within the City's "Guidelines and Specifications for Landscape Development." The Association shall also restore and protect the sycamore-mulefat scrub located within those portions of the Conservation Easement Area that have been designated for maintenance by the Association. Further, all landscaping and fuel modification plantings adjacent to Chino Hills State Park and Shell Western E&P Reserve shall conform with the current Orange County Fire Authority Recommended Fuel Modification Plant Palette for areas adjacent to reserve lands. In addition, all nonnative plants that are potentially invasive via airborne seeds, or that are particularly difficult to control once escaped, will be prohibited from all parts of the Properties. All modification and tract revegetation/landscaping plans shall be reviewed by a biologist with a working knowledge of local natural habitats and plant species, prior to plan approval, to ensure compliance with this provision.

2.10.6. **Trash**. All litter, refuse and other trash must be deposited in trash containers with lids that cannot be opened by wildlife and other animals. Trash may act as a food source that will attract wildlife to residential areas and may cause harm to the wildlife.

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

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

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

2.13. **WATER SUPPLY SYSTEM.** No individual water supply, sewage disposal or water softener system is permitted on any Lot unless such system is designed, located, constructed and equipped in accordance with the requirements of the Design Review Committee and all applicable governmental authorities.

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

2.15. **SOLAR ENERGY SYSTEMS.** Each Owner may install a solar energy system on his Lot which serves his Residence so long as (a) the design and location of the solar energy system meet the requirements of all applicable governmental ordinances, and (b) the design and location receive the prior written approval of the City Planning Department and the Design Review Committee.

2.16. **INSTALLATION OF LANDSCAPING.** Each Owner shall complete the installation of landscaping on all portions of the Lot not landscaped by Declarant or a Guest Builder within nine (9) months after the Close of Escrow and shall be required to submit plans for such area Improvements to the Design Review Committee for approval within six (6) months after the Close of Escrow. Each Owner shall obtain all permits necessary and shall comply with all requirements of the City, including all standards and restrictions contained within the City's "Guidelines and Specifications for Landscape Development."

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

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

2.19. **COMMON PROPERTY.** No Owner may alter the Common Property or place any structural encroachment on the Common Property without the prior written consent of the Board and the City.

2.20. **CITY PROPERTY OR IMPROVEMENTS**. No Person shall alter any property owned by the City in fee or by easement, including any trees, landscaping, walls or other Improvements located therein. This prohibition is also expressly intended to apply to the Common Area Easements located on residential Lots and Common Area lots that will be maintained by a City landscape maintenance district.

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

2.22. **FUEL MODIFICATION ZONES.** The Association is responsible for maintaining, in accordance with City and Orange County Fire Authority requirements, those portions of the Common Property identified herein, in a Supplemental Declaration, or in any document provided to the Association, as fuel modification zones. Construction or maintenance of any combustible structural Improvements on or adjacent to fuel modification zones and installation, maintenance or modification in fuel modification zones of any landscaping Improvements which are inconsistent with any landscape palette required by the City and/or the Orange County Fire Authority are prohibited. All Persons must comply with City fuel modification zone setback requirements. Landscaping and irrigation improvements shall be installed and maintained in conformance with the Maintenance Guidelines.

2.23. **COMBUSTIBLE RESTRICTION ZONE.** Some of the Lots may be located within Zone A (Setback Zone) as described in a fuel modification zone plan. In accordance with the City Ordinance, no combustible structures (i.e., gazebos, patio overhangs, doll houses, room additions, tool sheds or wood fences) or devices which produce flames or sparks (i.e., barbeques or gas heaters for pools or spas) may be constructed on, within or above Zone A.

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

2.25. **SINGLE STORY RESTRICTION.** Lots 13, 15, 17, 19, 20, 42, 44, 46 and 48 of Tract No. 16320 have been constructed as single story homes pursuant to the City's conditions of approval for Tract No. 16320. The homes on these Lots are restricted to a single story and may not be modified to add additional stories or other livable space, unless approved by the City.

ARTICLE III
DISCLOSURES

Because much of the information included in this Article (a) was obtained from other sources (e.g., governmental and other public agencies and public records) and (b) is subject to change for reasons beyond the control of the Declarant, Guest Builder and Association, the Declarant, Guest Builder and Association do not guarantee the accuracy or completeness of any of the information in this Article. Further, neither Declarant, nor Guest Builder, nor the Association undertakes any obligation to advise any Person of any changes affecting the disclosures in this Article.

3.1.N **O REPRESENTATIONS OR WARRANTIES.** No representations or warranties, express or implied, have been given by Declarant or by any Guest Builder, the Association or their agents regarding the Properties, the Properties' physical condition, zoning, compliance with law, fitness for intended use, subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation of the Properties as a planned unit development, except as provided in this Declaration, filed by Declarant or by any Guest Builder (with the consent of Declarant) from time to time with the DRE, provided by Declarant or any Guest Builder to the first Owner of a Lot, or provided in the standard warranty required by VA and FHA.

3.2.NATURAL HAZARD ZONES.

3.2.1. **Earthquakes.** California is subject to a wide range of earthquake activity. California has many known faults as well as yet undiscovered faults. Declarant has been advised that a portion of the Properties is located within an Earthquake Fault Zone as defined by California Public Resources Code Section 2621.9. Each Owner must evaluate the potential for future seismic activity that might seriously damage Owner's Residence. A major earthquake, which some have predicted will occur in our lifetimes, could cause very serious damage to homes and Lots, located even many miles from the epicenter of the earthquake. A more moderate earthquake occurring on a more minor fault, or on an undiscovered fault, could also cause substantial damage. Declarant makes no representations or warranties as to the degree of earthquake risk within the Properties. Please read "The Homeowner's Guide to Earthquake Safety," and consult with the City, other public agencies, and appropriate experts to evaluate the potential risk.

3.2.2. **Seismic Hazard Zone**. Many portions of Southern California are subject to risks associated with seismic activity or "earthquakes." Declarant has been informed that all or a portion of the Properties are located within a Seismic Hazard Zone. A Seismic Hazard Zone is defined in the Seismic Hazards Mapping Act (California Public Resources Code Section 2690 et seq.), and shown on maps that are released by the California Department of Conservation, Division of Mines and Geology. Copies of these maps are on file with the City. There are two types of Seismic Hazard Zones: a landslide zone and a liquefaction zone. All or a portion of the Properties are located within a landslide zone. Further investigations were conducted for the subject property to address landslide hazards. These studies include a Preliminary Geotechnical Investigation prepared by GeoSoils, Inc. for Tentative Tract No. 13127, City of Yorba Linda, Orange County, California, dated November 30, 1998 and Review of 40-Scale Grading Plans, Tract No. 13127, City of Yorba Linda Engineering Geology and Soils Engineering Review Sheet of February 2, 1989, dated September 19, 1989. The suspected landslides were investigated with a series of borings and they were found to be bedrock, not landslides. These reports are on file at the City of Yorba Linda. Declarant makes no representations or warranties as to the degree of landslide risk within the Properties. Please consult with the City, other public agencies, and appropriate experts to evaluate the potential risk. For more information concerning seismic activity and risks, read "The Homeowner's Guide to Earthquake Safety."

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

3.3. **ELECTRIC POWER LINES**. Overhead electric transmission and distribution lines and transformers, including a 66kV line, are located in and around the Properties. The lines and transformers are owned, operated and maintained by Southern California Edison Company. Power lines and transformers produce extremely low-frequency electromagnetic fields (*"ELF-EMF"*) when operating. For some time, there has been speculation in the scientific community about health risks associated with living near ELF-EMF sources. In 1992, the United States Congress authorized the Electric and Magnetic Fields Research and Public Information Dissemination Program (*"EMF-*

RAPID Program") to perform research on these issues and to analyze the existing scientific evidence in order to clarify the potential for health risks from exposure to ELF-EMF. In May of 1999, the National Institute of Environmental Health Sciences (*"NIEHS"*) issued a report to Congress summarizing its review of scientific data from over three hundred studies on ELF-EMF health risks. The ELF-EMF studies consist of both epidemiological studies (studies of exposure in human populations) and controlled laboratory experiments on animal and cell models. While some epidemiological studies suggested some link between certain health effects and exposure to ELF-EMF, the laboratory experiments did not support such a link. According to the NIEHS report, the scientific evidence shows no clear pattern of health hazards from ELF-EMF exposure, and the NIEHS report did not find evidence of any link sufficient to recommend widespread changes in the design or use of electrical transmission equipment. However, because the evidence does not clearly rule out any effect, NIEHS advocated continuing inexpensive and safe reductions in exposure to ELF-EMF and endorsed current utility practices regarding design and siting of new transmission and distribution lines. Further information on this subject is available from the Regional EMF Manager, Southern California Edison Company, 1851 West Valencia Drive, Fullerton, California 92833. Additional information on ELF-EMF and copies of the NIEHS report are available from the EMF-RAPID website at http://www.niehs.nih.gov/emfrapid/home.htm.

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

3.5. **SPECIAL TAX ASSESSMENT OR MELLO-ROOS COMMUNITY FACILITIES DISTRICTS.** The Properties may lie within the boundary of special tax assessment districts or Mello-Roos Community Facilities Districts ("CFDs"), which require the levy of a special tax for repayment of bonds issued for the purpose of paying the cost of services or capital improvements. The special taxes levied for these CFDs constitute a lien on your Lot which will be added to your annual real property tax bill issued by the County of Orange. The amount of the special tax and any other information pertaining to any such districts can be obtained from the Orange County Assessor's office.

3.6. **LANDSCAPE MAINTENANCE ASSESSMENT DISTRICT/EASEMENTS.** The Properties may lie within the boundary of the City of Yorba Linda's Street Lighting and Landscape Maintenance Assessment District ("LMAD"). Each Lot may be subject to assessments for the maintenance of local landscaping and public trails within the boundaries of the citywide LMAD in addition to maintenance of traffic signals and arterial landscaping. The assessment levied by the LMAD will be collected through the real property tax bill issued by the County of Orange for each Lot (and other properties) within the LMAD's boundaries. The amount of the assessment and any other information pertaining to the LMAD can be obtained from the Orange County Assessor's office. In addition, the LMAD has or will have easements over certain Lots (shown as dedicated to the City on each tract map for Lots in the Properties) for access to and maintenance of certain landscaping and a public trail. Owners are advised to review the recorded tract map for their Lot for the location of such landscape maintenance and trail easements, as well as the Exhibits attached to this Declaration or applicable Notice of Addition for the approximate location of said easements.

Landscaping and other improvements located within a LMAD shall not be altered, trimmed or modified in any way without prior authorization from the City.

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

3.8. **PUBLIC TRAILS.** Many Lots in the Properties are subject to easements for a public trail that supports hiking, biking and equestrian uses. The trails provide access to residents and members of the public to a City-wide trail system. These trails will be maintained by the City or a landscape maintenance assessment district, and are accessible by the general public. The approximate location of the public trails in Phase 1 are shown on ***Exhibit E*** and the approximate locations of public trails in other Phases of the Properties shall be shown on exhibits to the applicable Notice of Addition. Owners and other residents are hereby advised that the location of these trails in relationship to residences may limit the privacy normally found in private yards and may subject such Owners and residents to noise, inconvenience, and other disturbances from the public's use of the trails.

3.9. **EQUESTRIAN STAGING AREA.** An equestrian staging area is planned for construction on the northeast boundary of the Properties. The equestrian staging area is planned to include a parking lot with normal parking stalls and pull-through stalls for trailers, hitching posts, a corral, seating area and public restrooms. Residents near the equestrian staging area can expect to experience noise and smell odors associated with the public's use of this facility.

3.10. **RURAL AREA/WILDLIFE/CHINO HILLS STATE PARK.** The Properties are located in a rural area near open spaces and wildlife, adjacent to the Chino Hills State Park. While there are many benefits to living in close proximity to open spaces and wildlife, Owners and residents of Lots are advised that they may be impacted by wildlife, reptiles or insect life typically found in rural areas, including noises, odors and dangers associated with such animals. For example, coyotes, bobcats, rodents, mountain lions, opossums, raccoons, bees and snakes (including rattlesnakes) are some of the wildlife typically encountered in rural areas that may be found within the Properties or within an Owner's Lot. Owners should expect to encounter insects of all types including flies, ticks, Africanized (killer) bees, mosquitos, spiders, black and red fire ants, crickets and aphids. Owners and residents are advised that it is possible for wildlife to enter the Properties and become a danger to children and pets. Owners and residents are strongly advised to (a) securely cover all food and trash located outside the home in order to avoid attracting such animals and to keep pets from straying outside of their Lot, and (b) to exercise caution and control of children and pets in their yards, the public trails and adjacent areas. Because the existence of such rodents and pests can damage graded and natural slopes by burrowing tunnels and creating habitats, Owners shall perform necessary rodent and pest abatement and control or to secure the services of a licensed rodent and pest abatement contractor for those portions of Owner's Lot that are not maintained by the Association or the City. In addition, Owners are advised that the City may use fire related management tools on the adjacent open space areas, including conducting controlled burns. Declarant, Guest Builder, and the Association are not responsible for wildlife control (except with respect to cowbirds, as described in Section 3.10) or eradication and are not responsible for the safety of any person from bites, nuisances or damage to property that may be caused by any animal.

3.11. **CALIFORNIA GNATCATCHERS AND BROWN HEADED COWBIRDS.** The California gnatcatcher, a protected species, has been found in the vicinity of the Properties. The brown-headed cowbird is a bird that has been found to cause harm to the California gnatcatcher. To protect the California gnatcatcher, the Association will be required to hire appropriate personnel to trap the brown-headed cowbirds and take them to a new location for release. Cowbird trapping shall be initiated during the first bird breeding season following completion of the first Residences within the Properties. The traps shall be placed within the Properties, conserved open space, or in close vicinity to the Properties within Chino Hills State Park and at least two traps shall be placed no more than one-fourth (1/4th) mile apart or as otherwise agreed to by the United States Department of the Interior, Fish and Wildlife Service ("Service"). The Association is required to collect sufficient funds each year to pay for the operation of two cowbird traps and to insure the operation of two cowbird traps in perpetuity, or for a period of time otherwise agreed to by the Carlsbad Fish and Wildlife Office ("Carlsbad Office") of the Service. Declarant has agreed to endow the Association with funds estimated to be sufficient to pay for the costs of trapping cowbirds for 5 years. The Association is responsible for documenting the placement and success of the cowbird trapping program to the Carlsbad Office of the Service following every season of cowbird trapping.

3.12. **WATER TANKS, PIPELINES, AND PUMP STATION.** The Southern California Water Company owns a 1 million gallon treated water reservoir, water lines and a buried service connection vault located adjacent to the Properties. The Metropolitan Water District owns and maintains water lines that run through portions of the Properties. In addition, the Yorba Linda Water District owns a buried, concrete two-bay, 3.75 million gallon domestic water tank located on the eastern portion of the Properties. The District has reserved the ability to expand the reservoir at a future date for the addition of a 3.65 million gallon third bay. Further, the Yorba Linda Water District owns and maintains a system of water transmission mains through the Properties, a booster pump station that pumps water from lower water pressure zones up to the 3.75 million gallon reservoir and a pressure reducing station on the Properties. Declarant, Guest Builder, and the Association make no representation, guaranty or warranty with regard to the impact of the current or any future water tank, the pipelines, the pump station and the pressure reducing station on any persons or property within the Properties. Owners who desire additional information concerning the water tanks and pipelines should contact the Southern California Water Company, the Metropolitan Water District or the Yorba Linda Water District.

3.13. **PUBLIC GOLF COURSE.** A public golf course is located adjacent to the Properties. Residents of the Properties may experience noise at various times of the day from use of the golf course. Neither Declarant, Guest Builder, nor the Association has any control over the operation of the golf course and are not responsible for any property damage or physical injury that may occur in the Properties due to its proximity to the golf course.

3.14. **OIL FIELDS.** Portions of the area *adjacent to* the Properties have been used in conjunction with oil and gas operations. The area is currently under remediation; however, such uses may in the future result in the emission of methane vapor or other odors and hydrocarbon or other substances, and such areas may be subject to soil contamination and/or the migration or seepage of residual methane gas, which normally is dissipated into the open air without any effect. Neither the Declarant, Guest Builder, nor the Association has any control over the remediation of such property.

3.15. **ABANDONED OIL WELL.** There are oil wells located on Lots 13 and 58 of Tract No. 16320, and within the street known as Morgan Court in front of Lots 31 and 32 of Tract No. 16321, that have been or will be abandoned in accordance with the requirements of the California Division of Oil and Gas, the Orange County Fire Authority and the Yorba Linda Building Official. Owners of these Lots and Lots in the vicinity of the affected Lots acknowledge the existence of these abandoned or soon to be abandoned oil wells and must exercise care and caution in planning construction of new Improvements, altering existing Improvements and the maintenance thereof in and around the oil well. In addition, no permanent wall or structure may be constructed within a ten (10) foot radius of the extended shaft line of said well without the prior review and approval of the Orange County's Fire Chief and City's Building Official.

3.16. **SUB-SLAB PASSIVE VENTING SYSTEM AND GAS MEMBRANE BARRIER.** In addition to the foregoing mitigation efforts, Declarant has constructed certain homes within the Properties using a methane barrier directly beneath home foundations and a passive venting system between the barrier and the soil. A pipe will extend from the sub-slab passive venting system to a point above the roofline where it is exposed to the atmosphere. The methane barrier also provides a seal around the pipes and utility wires that penetrate the home foundation. The builder has also fitted all conduits, utility wires, and utility vaults with seals in order to eliminate pathways for methane to enter homes. Owners are advised that piercing the structure of the Residence, including adding any Improvements to the exterior of the Residence, may damage the methane barrier and/or the sub-slab passive venting system reducing or eliminating the protection provided thereby. Owners are solely responsible for repairing any damage they cause to the structure of the Residence and the sub-slab passive venting system or methane barrier.

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

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

ARTICLE IV
THE KERRIGAN RANCH II COMMUNITY ASSOCIATION

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

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

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

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

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

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

4.2.5. **Insurance.** The power and duty to maintain fire insurance with respect to the Common Area and personal property, if any, owned by the Association, and the power and duty to maintain liability insurance with respect to the Common Property and the Common Area Easements as provided herein in furthering the purposes of and protecting the interests of the Association and Members and as directed by the Restrictions.

4.2.6. **Maintenance Guidelines.** The power and duty to (a) operate, maintain and inspect the Common Property and its various components in conformance with any Maintenance

Guidelines and any Maintenance Manual, and (b) review any Maintenance Manual for necessary or appropriate revisions no less than annually after the Board has prepared the Budget; provided however, that the Association shall not revise the Maintenance Manual to reduce the level of maintenance required of any Improvement without the prior written consent of Declarant until ten (10) years after the last Close of Escrow for the sale of a Lot in the Properties by Declarant or a Guest Builder.

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

4.2.8. **Landscape Maintenance.** The power but not the duty to enter into agreements with Owners for the maintenance of certain landscaping located on such Owners' Lots that are not designated as Association Maintenance Areas in this Declaration or a Notice of Addition. In addition, the Association shall have the power but not the duty to maintain any landscaped areas that Owners refuse to maintain, or fail to maintain after notice and a hearing and to charge said Owners for the cost of such maintenance as a Special Assessment.

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

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

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

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

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

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

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

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

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

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

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

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

4.2.13. **Indemnification.**

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

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

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

(d) *Public Trail/Common Area Easements Indemnification*. The Association has the power and the duty to indemnify, defend and hold harmless Owners of Lots in the Properties that contain public trails and are subject to Common Area Easements under this Declaration or any Notice of Addition or Supplemental Declaration from any claim brought by any person against such Owner for injury to person or property caused by such person's use of the public trails.

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

4.2.15. **Vehicle Restrictions.** The power granted in Section 2.5 to identify Authorized Vehicles or Prohibited Vehicles and to modify the restrictions on vehicles; provided, however, that any modifications regarding or relating to parking restrictions and/or fire lanes and access easements must first be approved by the City.

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

4.2.17. **Prohibited Functions.**

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

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

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

4.3. STANDARD OF CARE, NONLIABILITY.

4.3.1. **Scope of Powers and Standard of Care.**

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

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

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

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

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

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

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

4.3.2. **Nonliability.**

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

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

4.4. MEMBERSHIP.

4.4.1. **Generally.** Every Owner shall automatically acquire a Membership in the Association and retain the Membership until such Owner's Lot ownership ceases, at which time such Owner's Membership shall automatically cease. Ownership of a Lot is the sole qualification for

Membership. Memberships are not assignable except to the Person to whom title to the Lot is transferred, and every Membership is appurtenant to and may not be separated from the fee ownership of such Lot.

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

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

(a) *Class A*. Class A members are all Owners except Declarant and Guest Builders for so long as a Class B Membership exists. Class A members are entitled to one (1) vote for each Lot owned and subject to Assessment. Declarant and any Guest Builder shall become a Class A member on conversion of Declarant's or Guest Builder's Class B Membership. The vote for each Lot shall be exercised in accordance with Section 4.6.1, but no more than one (1) Class A vote may be cast for any Lot.

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

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

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

(c) *Class C*. The Class C member shall be Declarant (whether or not Declarant is an Owner). The Class C Membership shall not be considered a part of the voting power of the Association. The Class C member is entitled to select a majority of the members of the Board of

Directors until the Class C Termination Date. The "Class C Termination Date" shall be the earlier to occur of the following events:

(i) The Close of Escrow for the sale of one hundred seventy-six (176) Lots in the Properties and Annexable Territory; or

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

(iii) The tenth (10^{th}) anniversary of the first Close of Escrow for the sale of a Lot in the Properties.

4.5. **VOTING RIGHTS.**

4.5.1. **Limits Generally.** Except as provided in Sections 4.5.2 and 12.3 of this Declaration and Section 4.8 of the Bylaws, as long as there is a Class B Membership, any provision of the Restrictions which expressly requires the vote or written consent of a specified percentage (instead of a majority of a quorum) of the Association's voting power before action may be undertaken shall require the approval of such specified percentage of the voting power of each class of Membership. Except as provided in Sections 4.5.2 and 12.3 of this Declaration and Section 4.8 of the Bylaws, on termination of the Class B Membership, any provision of the Restrictions which expressly requires the vote or written consent of Owners representing a specified percentage (instead of a majority of a quorum) of the Association's voting power before action may be undertaken shall then require the vote or written consent of Owners representing such specified percentage of both (1) the Association's total voting power, and (2) the Association's voting power represented by Owners other than Declarant and every Guest Builder.

4.5.2. **Vote to Initiate Construction Defect Claim.** Commencing on the date of the first annual meeting of the Owners: (i) Declarant and Guest Builder, (ii) any Board member appointed by Declarant, (iii) any Board member elected by a majority of votes cast by Declarant or Guest Builder, and (iv) any Board member who is a current employee of Declarant or Guest Builder, is prohibited from voting or otherwise participating in any decision by the Association or the Owners to initiate a construction defect claim against Declarant, Guest Builder or Declarant Parties (as such term is defined in Article XVII hereof) pursuant to the Right to Repair Law.

4.5.3. **Joint Ownership.** When more than one (1) Person holds an interest in any Lot ("co-owners"), each co-owner may attend any Association meeting, but only one (1) co-owner shall be entitled to exercise the single vote to which the Lot is entitled. Co-owners owning the majority interests in a Lot may designate in writing one (1) of their number to vote. Fractional votes shall not be allowed. The vote for each Lot shall be exercised, if at all, as a unit. Where no voting co-owner is designated or if the designation is revoked, the vote for the Lot shall be exercised as the co-owners owning the majority interests in the Lot agree. Unless the Association receives a written objection in advance from a co-owner, it shall be conclusively presumed that the voting co-owner is acting with his co-owners' consent. No vote may be cast for any Lot if the co-owners present in person or by proxy owning the majority interests in such Lot fail to agree to the vote or other action.

The nonvoting co-owner or co-owners are jointly and severally responsible for all obligations imposed on the jointly-owned Lot and are entitled to all other benefits of ownership. All agreements and determinations lawfully made by the Association in accordance with the voting percentages established in the Restrictions are binding on all Owners and their successors in interest.

4.6. REPAIR AND MAINTENANCE.

4.6.1. **Maintenance Standards.** The Association shall maintain everything it is obligated to maintain in a clean, sanitary and attractive condition reasonably consistent with the level of maintenance reflected in the most current Budget, and in conformance with any Maintenance Guidelines and Maintenance Manual; provided, however, that the Association shall conform with the requirements of any agreements entered into between Declarant, Guest Builder, and any local governmental agency pertaining to the Properties. The Board shall determine, in its sole discretion, the level and frequency of maintenance of the Common Property and Improvements thereon, unless the level or frequency of maintenance are specifically set forth in any Maintenance Guidelines, Maintenance Manual or any agreement entered into between Declarant, Guest Builder, and any local governmental agency that pertains to the maintenance of the Properties. Each Owner shall maintain everything the Owner is obligated to maintain in a clean, sanitary and attractive condition, free of debris and reasonably protected from damage, and in conformance with any Maintenance Recommendations and Maintenance Manual. The City shall have the right to enter and perform any necessary maintenance in accordance with this Section 4.6.1 in the event the Association fails to perform its duties and obligations hereunder. In the event the City must perform any such maintenance, the City shall be entitled to reimbursement from the Association and/or the Owners and each of them, for any and all maintenance work performed.

4.6.2. **By Owners.**

(a) *The Lot.* Each Owner shall maintain, at his sole expense, all of his Lot and the Residence and all other Improvements on the Owner's Lot, except for any Common Property and Common Area Easements located thereon, but including the entirety of any tubular steel fencing, plexiglass fencing, retaining walls and block walls (other than graffiti removal that may be performed by the Association). Each Owner shall pay when due all charges for any utility service separately metered to his Lot.

(b) *Party Walls.* Each wall or fence built on the dividing line between residential Lots (the "Party Wall") 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.

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

(ii) Destruction by Fire or Other Casualty. Unless covered by a blanket insurance policy maintained by the Association under Section 8.1, if a Party Wall is destroyed or damaged by fire or other casualty, any Owner whose Lot is affected thereby may restore it, and the Owner of the other Lot affected thereby shall contribute equally to the cost of restoration thereof without prejudice, however, 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.

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

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

(c) *Other Responsibilities.* Each Owner shall maintain the entirety of any perimeter wall that is constructed on or adjacent to the Owner's Lot, unless such wall is designated as an Association Maintenance Area in a Notice of Addition. Owners shall maintain Party Walls on such Owner's Lot in accordance with Section 4.7.1(b), and all other walls and fences constructed on the Lot in a clean, sanitary and attractive condition. If the Association does not adopt an inspection and prevention program with regard to wood-destroying pests and other organisms, then such a program is the responsibility of each Owner. Each Owner whose Lot utilizes a sewer system lateral is responsible for the maintenance and repair of that portion of the lateral which exclusively serves such Owner's Lot.

4.6.3. **By Association.**

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

(b) *Maintenance Items.* The Association shall maintain all Common Property. In addition, the Association shall maintain the conservation easement area for a period of five (5) years from the date designated by Declarant and the City and shall have an ongoing obligation to trap cowbirds for relocation in accordance with the City's requirements. The Association is also responsible for removing graffiti located on block walls that face public streets or Common Area. If the Association removes or damages any landscaping Improvements on an Owner's Lot while maintaining the Association Maintenance Areas, the Association is not responsible for replacing such landscaping Improvements.

4.6.4. **Inspection of the Properties.** The Board shall require strict compliance with all provisions of this Declaration and cause the Properties to be inspected for any violation hereof. The Board shall also cause inspections to determine the condition of the Association Common Area and all Improvements thereon ("Condition Inspections"), which shall be conducted in conformance with the applicable Maintenance Guidelines, and in the absence of inspection frequency recommendations in any applicable Maintenance Guidelines, such inspections shall occur at least once every three (3) years to (a) determine whether the Common Property is being maintained adequately in accordance with the standards of maintenance established in Sections 4.6.1 and 4.6.3, (b) identify the condition of the Common Property and any Improvements thereon, including the existence of any hazards or defects, and the need for performing additional maintenance, refurbishment, replacement, or repair, and (c) recommend preventive actions that may be taken to reduce potential maintenance costs to be incurred in the future. The Board shall, during its meetings, regularly determine whether the recommended inspections and maintenance activities set forth in any applicable Maintenance Guidelines have been followed and, if not followed, what corrective steps need to be taken to assure proper inspections and maintenance of the Common Property. The Board shall keep a record of such determinations in the Board's minutes. The Board shall keep Declarant fully informed of the Board's activities under this Section 4.6.4. The Association may employ such experts and consultants as are necessary to perform the inspection and make the report required by this Section.

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

(a) a description of the condition of the Common Property, including a list of items inspected, and the status of maintenance, repair and need for replacement of all such items;

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

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

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

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

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

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

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

ARTICLE V
DESIGN REVIEW COMMITTEE

5.1. **MEMBERS OF COMMITTEE.** The Design Review Committee shall be composed of three (3) members. The initial members of the Design Review Committee shall be representatives of Declarant until one (1) year after the original issuance of the Final Subdivision Public Report ("Public Report") for the Properties ("First Anniversary"). After the First Anniversary, the Board may appoint and remove one (1) member of the Design Review Committee, and Declarant may appoint and remove a majority of the members of the Design Review Committee and fill any vacancy of such majority, until the earlier to occur of (a) Close of Escrow for the sale of one hundred seventy-five (175) Lots in the Properties, or (b) the fifth anniversary of the original issuance of the Public Report for the Properties, after which the Board may appoint and remove all members of the Design Review Committee. Design Review Committee members appointed by the Board must be Owners, but Design Review Committee members appointed by Declarant need not be Owners. Board members may serve as Design Review Committee members.

5.2. **POWERS AND DUTIES.**

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

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

5.2.3. **Retaining Consultants.** The Design Review Committee has the power (with the consent of the Board) but not the duty to retain Persons to advise its members in connection with its decisions.

5.3. REVIEW OF PLANS AND SPECIFICATIONS.

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

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

The Design Review Committee may reject the application for approval if it determines that the Applicant's plans and specifications are incomplete. The Design Review Committee shall transmit its decision and the reasons therefor to the Applicant at the address listed in the application for approval within thirty (30) days after the Design Review Committee receives all required materials. Any application submitted shall be deemed approved unless the Design Review Committee transmits written disapproval or a request for additional information or materials to the Applicant within thirty (30) days after the date the Design Review Committee receives all required materials.

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

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

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

5.4. **MEETINGS AND ACTIONS OF THE DESIGN REVIEW COMMITTEE.** The Design Review Committee shall meet as necessary to perform its duties. So long as a majority of the members of the Design Review Committee are Declarant representatives, the Design Review Committee may, by resolution unanimously adopted in writing, designate a Design Review Committee Representative (who may, but need not, be one of its members) to take any action or perform any duties for and on behalf of the Design Review Committee except the granting of variances. In the absence of such designation, the vote or written consent of a majority of the Design Review Committee constitutes an act of the Design Review Committee. All approvals issued by the Design Review Committee must be in writing. Verbal approvals issued by the Design Review Committee, any individual Design Review Committee member or any other representative of the Association are not valid, are not binding on the Association and may not be relied on by any Person.

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

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

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

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

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

5.8. **VARIANCES.** The Design Review Committee may authorize variances from compliance with any of the architectural provisions of this Declaration or the Design Guidelines including restrictions on height, size, floor area or placement of structures, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental consideration require. Such variances must be evidenced in writing, must be signed by a majority of the Design Review Committee, and become effective on Recordation. After Declarant's right to appoint a majority of the Design Review Committee's members expires, the Board must approve any variance recommended by the Design Review Committee before any such variance becomes effective. If variances are granted, no violation of the covenants, conditions and restrictions in this Declaration shall be deemed to have occurred with respect to the matter for which the variances were granted. The granting of a variance does not waive any of the provisions of this Declaration for any purpose except as to the particular property and particular provision of this Declaration covered by the variance, nor does it affect the Owner's obligation to comply with all laws affecting the use of his Lot.

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

5.10. **APPEALS.** So long as Declarant has the right to appoint and remove a majority of the Design Review Committee's members, the Design Review Committee's decisions are final. There is no appeal to the Board. After Declarant's right to appoint a majority of the Design Review

Committee's members expires, the Board shall adopt policies and procedures for appeal of Design Review Committee decisions to the Board.

ARTICLE VI
PROPERTY EASEMENTS AND RIGHTS

6.1. EASEMENTS.

6.1.1. **Utility Easements.** Declarant reserves easements to install and maintain utilities in the Common Area for the benefit of the Owners and their Lots. Declarant reserves the right to grant additional easements and rights-of-way throughout the Properties to utility companies and public agencies as it deems necessary for the proper development of the Properties. Declarant's right shall expire on the Close of Escrow for the sale of the last Lot in the Properties and the Annexable Territory.

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

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

6.1.4. **Owners' Easements in Common Area.** Declarant reserves for the benefit of every Owner, his Family, tenants and guests, nonexclusive easements for (a) use and enjoyment of the Common Area, and (b) vehicular and pedestrian access over the Common Area. This easement is appurtenant to and passes with title to every Lot in the Properties.

6.1.5. **Easement Over Association Maintenance Areas.** Declarant and Guest Builder reserve for the benefit of the Association an easement over the Association Maintenance Areas for maintenance and over the remainder of the Lots for access, ingress and egress reasonably necessary to perform its duties with respect to the Association Maintenance Areas. No Owner may interfere with the Association's exercise of its rights under the easements reserved in this Section.

6.1.6. **Easement Over Common Area Easements.** Declarant reserves for the benefit of the Association an easement over the Common Area Easements for access, ingress and egress. In addition, if the City or landscape maintenance district ever refuses to maintain the Common Area Easements in the future, then Declarant grants the Association an easement for maintenance, repair and replacement of the trail, slopes and other Improvements located within the Common Area Easements.

6.1.7. **Drainage Easements.** Declarant reserves for the benefit of the Properties, the Owners and the Association, reciprocal nonexclusive easements for drainage of water over, across and on the Properties and through drainage facilities constructed on the Lots and on the Common Areas.

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

6.1.9. **Initial Construction Activities.** The rights and easements of Declarant and Guest Builders, and their respective contractors, agents, subcontractors and assignees to nonexclusive use of the Common Area, without cost, for access, ingress, egress, use and enjoyment, in order to construct, maintain and repair Improvements on the Properties and the Annexable Territory as provided herein, until the last Close of Escrow in the Properties and the Annexable Territory has occurred.

6.1.10. **Declarant and Guest Builders.** The rights and reservations of Declarant and Guest Builders set forth in Article XV of this Declaration.

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

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

6.4. **TITLE TO THE COMMON AREA.**

6.4.1. **Transfer.** As each Phase of Development is developed by Declarant or a Guest Builder, Declarant or such Guest Builder, as applicable, will convey or cause to be conveyed to the Association, in fee simple or by easement, the Common Area (excluding Public Property) in such Phase of Development, unless another arrangement is proposed by Declarant or Guest Builder and approved by the DRE, 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 Common Area. The Association must accept title to each and every conveyance by Declarant or by Guest Builder of Common Area, and the Association shall execute each such deed and any accompanying escrow instructions if requested to do so by Declarant or a Guest Builder. No Owner shall interfere with the exercise by the Association, Declarant or a Guest Builder of its rights hereunder.

6.4.2. **Commencement of Maintenance.** Notwithstanding any conveyance of Common Area to the Association, the Association's responsibility to maintain the Common Area located in any Phase of Development shall not begin until (i) the Common Area is completed in accordance with the plans prepared by the landscape architect and approved by the City and (ii) Annual Assessments in such Phase of Development have commenced; except that, if such Phase of Development consists of only Common Area, the Association's maintenance responsibility therefor shall commence on the later to occur of (i) completion of the Common Area in accordance with the plans therefor approved by the City, and (ii) the first day of the month immediately following the month in which the deed is Recorded conveying such property to the Association. Notwithstanding the foregoing, if the contractors or subcontractors of Declarant or a Guest Builder are contractually obligated to maintain the landscaping or other Improvements on the Common Area, the 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 Guest Builders shall not postpone the commencement of Annual Assessments pursuant to this Master Declaration nor entitle an Owner to claim any offset or reduction in the amount of such assessments. If the Dedicated Common Area or any other portion of the Common Area is dedicated to and accepted for maintenance by a Local Governmental Agency, then the 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.

6.4.3. **Character of Common Area Improvements.** The nature, design, quantity, quality and all other attributes of the Common Area, and the facilities and amenities thereon, shall be determined in Declarant's sole and absolute discretion or by a Guest Builder (with Declarant's written consent). The Association shall be unconditionally obligated to accept title to and maintenance responsibility for the Common Area when such title and maintenance responsibility is tendered by Declarant or by a Guest Builder pursuant to Sections 6.4.1 and 6.4.2 above. If a dispute arises between the Association and Declarant or any Guest Builder in connection with the nature, design, condition, quantity, quality or other attributes of the Common Area, the completion thereof, the state of title thereto or the acceptance of title or maintenance responsibility therefor, then the Association shall be obligated to accept title to and assume maintenance responsibility for such Common Area and the Improvements and facilities thereon pending resolution of such Common Area dispute. Such Common Area and Improvements in any Phase of Development shall be deemed to be completed when completed in accordance with the plans therefor approved by the City.

6.5. RIGHT OF ENTRY.

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

6.5.2 **Declarant and any Guest Builder.** The Declarant or Guest Builder has the right to enter the Lots (i) to complete and repair any Improvements or landscaping located thereon as determined necessary or proper by the Declarant and Guest builder, in its sole discretion, (ii) to comply with requirements for the recordation of the Map or the grading or construction of the Properties, and (iii) to comply with requirements of applicable governmental agencies. Declarant or any Guest Builder shall provide reasonable notice to Owner prior to entry into the Owner's Lot under this Subsection except for emergency situations, which shall not require notice. Nothing in this Subsection limits the right of an Owner to exclusive occupancy and control over the portion of his Lot that is not an Association Maintenance Area. Any damage to a Residence or Lot caused by entry under this Subsection shall be repaired by the Declarant or the Guest Builder. Unless otherwise specified in the initial grant deed of a Lot from Declarant or the Guest Builder, this right of entry shall automatically expire twelve (12) years from the Recordation of this Declaration.

ARTICLE VII
ASSOCIATION MAINTENANCE FUNDS AND ASSESSMENTS

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

7.2. **ASSOCIATION FUNDS.** The Association shall establish no fewer than two (2) separate Association Maintenance Funds into which shall be deposited all money paid to the Association and from which disbursements shall be made. The Association Maintenance Funds may be established as trust accounts at a banking or savings institution and shall include: (a) an Operating Fund for current Common Expenses, (b) an adequate Reserve Fund for the portion of Common Expenses allocated to (i) reserves for Improvements which the Board does not expect to perform on an annual or more frequent basis, and (ii) payment of deductible amounts for insurance policies which the Association obtains, and (c) any other funds which the Association may establish.

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

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

7.5. **LIMITS ON ANNUAL ASSESSMENT INCREASES.**

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

7.5.2. **Maximum Authorized Annual Assessment For Subsequent Fiscal Years.** During the Fiscal Years following the Fiscal Year in which Annual Assessments commence, the Board may levy Annual Assessments which exceed the Annual Assessments for the immediately preceding Fiscal Year only as follows:

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

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

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

7.5.3. **Supplemental Annual Assessments.** If the Board determines that the Association's essential functions may be properly funded by an Annual Assessment in an amount less than the maximum authorized Annual Assessment described above, it may levy such lesser Annual Assessment. If the Board determines that the estimate of total charges for the current year is or will become inadequate to meet all Common Expenses, it shall immediately determine the approximate amount of the inadequacy. Subject to the limits described in Sections 7.5.1, 7.5.2 and 7.5.5, the Board may levy a supplemental Annual Assessment reflecting a revision of the total charges to be assessed against each Lot.

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

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

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

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

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

7.6. COMMENCEMENT AND COLLECTION OF ANNUAL ASSESSMENTS. Annual Assessments shall commence on all Lots in a Phase on the first day of the first calendar month following the first Close of Escrow in such Phase, except Annual Assessments on any Lot being used by Declarant or Guest Builder as a model home shall not commence until the first day of the first month following Declarant's or Guest Builder's termination of use of the Lot as a model home. All Annual Assessments shall be assessed uniformly and equally against the Owners and their Lots based on the number of Lots owned by each Owner, except as may be otherwise provided in a Supplemental Declaration or a Notice of Addition. Annual Assessments for fractions of a month shall be prorated. Declarant or Guest Builder shall pay its full pro rata share of the Annual Assessments on all unsold Lots for which Annual Assessments have commenced. The Board shall fix the amount of the Annual Assessment against each Lot at least thirty (30) days in advance of each Annual Assessment period. However, unless otherwise established by the Board, the initial Annual Assessments shall be assessed in accordance with the most recent Budget on file with and approved by the DRE. Written notice of any change in the amount of any Annual Assessment, Capital Improvement Assessment or Reconstruction Assessment shall be sent via first-class mail to every Owner subject thereto not less than thirty (30) nor more than sixty (60) days before the increased Assessment becomes due.

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

Each Owner shall pay Annual Assessments in installments at such frequency, in such amounts and by such methods as are established by the Board. If the Association incurs additional expenses because of a payment method selected by an Owner, the Association may charge that expense to the Owner. The Association does not have to apportion the expense among all Owners as a part of Annual Assessments. Each installment of Annual Assessments may be paid to the Association in one check or in separate checks as payments attributable to specified Association Maintenance Funds. If any payment of an Annual Assessment installment (1) is less than the amount assessed and (2) does not specify the Association Maintenance Fund or Funds into which it should be deposited, then the amount received shall be credited in order of priority first to the Operating Fund, until that portion of the Annual Assessment has been satisfied, and second to the Reserve Fund.

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

7.8. **MAINTENANCE SUBSIDY AGREEMENTS.** Notwithstanding any other provisions of this Declaration or the Bylaws regarding the term and termination of contracts with Declarant or Guest Builder for providing services to the Association, Declarant or Guest Builder may enter into one or more written maintenance agreements with the Association under which Declarant or Guest Builder shall pay all or any portion of the operating Common Expenses and perform all or any portion of the Association's maintenance responsibilities in exchange for a temporary suspension of Annual Assessments. Each such maintenance agreement shall extend for a term and shall be on such conditions as are approved by the DRE, and may require Owners to reimburse Declarant or Guest Builder, through the Association, for a portion of the costs expended in satisfaction of Common Expenses.

7.9. **EXEMPTION.**

7.9.1. **Common Area.** The Board may, at its sole discretion, exempt each Owner (including Declarant or Guest Builder) from paying that portion of any Annual Assessment allocated to defraying expenses and reserves directly attributable to the existence and use of any Improvement on Common Area, the construction of which has not yet been completed. If granted, such exemption shall continue until the earlier to occur of (i) the Recordation of a notice of completion of such Improvement, or (ii) the placement of such Improvement into use.

7.9.2. **Uniform Rate of Assessment.** Annual Assessments, Capital Improvement Assessments and Reconstruction Assessments shall be assessed equally against all Owners and their Lots, except as may be otherwise provided in a Notice of Addition. The Association may, subject to the provisions of Sections 9.2 and 10.1 hereof, levy Special Assessments against selected Owners who have caused the Association to incur special expenses due to willful or negligent acts of said Owners, their tenants, families, guests, invitees or agents. All installments of Annual Assessments shall be collected in advance on a regular basis by the Board, at such frequency as the Board shall determine.

ARTICLE VIII
INSURANCE

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

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

8.1.2. **Fire and Casualty Insurance.** Fire and casualty insurance with extended coverage, without deduction for depreciation, in an amount as near as possible to the full replacement value of all insurable Improvements on the Common Property. The casualty insurance shall not include earthquake coverage unless the Board is directed to obtain earthquake coverage by sixty-seven percent (67%) of the Association's voting power.

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

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

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

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

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

8.3. **RIGHT AND DUTY OF OWNERS TO INSURE.** Each Owner is responsible for insuring his personal property and all other property and Improvements on his Lot for which the Association has not purchased insurance in accordance with Section 8.1. Nothing in this Declaration precludes any Owner from carrying any public liability insurance he considers desirable; however, Owners' policies may not adversely affect or diminish any coverage under any of the Association's insurance policies. Duplicate copies of Owners' insurance policies shall be deposited with the Association on request. If any loss intended to be covered by the Association's insurance occurs and the proceeds payable are reduced due to insurance carried by any Owner, such Owner shall assign the proceeds of the Owner's insurance to the Association, to the extent of such reduction, for application to the same purposes as the reduced proceeds are to be applied.

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

8.5. **TRUSTEE FOR POLICIES.** The Association is trustee of the interests of all named insureds under the Association's insurance policies. Unless an insurance policy provides for a different procedure for filing claims, all claims must be sent to the insurance carrier or agent by certified mail and be clearly identified as a claim. The Association shall keep a record of all claims made. All insurance proceeds under any Association insurance policies must be paid to the Board as trustees. The Board has the authority to negotiate loss settlements with insurance carriers, with participation, to the extent the Board desires, of first Mortgagees who have filed written requests within ten (10) days of receipt of notice of any damage or destruction as provided in Section 9.3. Any two (2) officers of the Association may sign a loss claim form and release form in connection with the settlement of a loss claim, and such signatures are binding on all the named insureds. A representative chosen by the Board may be named as an insured, including a trustee with whom the Association may enter into an insurance trust agreement and any successor to such trustee, who shall have exclusive authority to negotiate losses under any insurance policy and to perform such other functions necessary to accomplish this purpose.

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

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

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

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

8.8.2. Any defense based on coinsurance;

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

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

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

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

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

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

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

ARTICLE IX
DESTRUCTION OF IMPROVEMENTS

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

9.2. **DAMAGE TO RESIDENCES-RECONSTRUCTION.** If all or any portion of any Residence or other Improvements on a Lot is damaged or destroyed by fire or other casualty, the Owner of such Lot shall rebuild, repair or reconstruct the Residence and Improvements in a manner which will restore them substantially to their appearance and condition immediately before the casualty or as otherwise approved by the Design Review Committee. If all or any portion of an Owner's Lot is destroyed to such an extent that it would be impractical to restore the Lot or rebuild damaged Improvements, the Owner shall install landscaping Improvements on the Lot in accordance with Design Review Committee Guidelines. The Owner of any damaged Lot or Residence and the Design Review Committee shall proceed with all due diligence, and the Owner shall cause reconstruction and installation of landscape Improvements (as applicable) to commence within six (6) months after the damage occurs and to be completed within twelve (12) months after damage occurs, unless prevented by causes beyond such Owner's reasonable control. The transfer of a damaged Lot or a Lot with a damaged Residence to another Person will not extend the time allowed in this Section for commencement and completion of reconstruction or installation of landscape Improvements (as applicable) by the transferee. However, no such transferee will be required to commence or complete reconstruction or installation of landscape Improvements in less than thirty (30) days from the date the transferee acquired title to the Lot.

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

ARTICLE X
EMINENT DOMAIN

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

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

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

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

ARTICLE XI
RIGHTS OF MORTGAGEES

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

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

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

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

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

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

(a) examine current copies of the Association's books, records and financial statements and the Restrictions during normal business hours; and

(b) receive written notice of all meetings of Owners; and

(c) designate in writing a representative who shall be authorized to attend all meetings of Owners.

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

11.2.6. **Intended Improvements.** All intended Improvements in any Phase other than Phase 1 shall be substantially consistent with the Improvements in Phase 1 in structure type and quality of construction. The requirements of this Section are for the benefit of and may be enforced only by FNMA.

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

ARTICLE XII
ENFORCEMENT

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

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

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

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

12.1.4. **Additional Remedies.** The Board may adopt a schedule of reasonable fines or penalties which, in its reasonable discretion, the Board may assess against a Person for the failure of such Person to comply with the Restrictions. Such fines or penalties may only be assessed after Notice and Hearing. After Notice and Hearing, the Board may direct the officers of the Association to Record a notice of noncompliance (if allowed by law) against a Lot owned by any Owner who has violated any provision of this Declaration. The notice shall include a legal description of the Lot and shall specify the provision of the Declaration that was violated, the violation committed, and the steps required to remedy the noncompliance. Once the noncompliance is remedied or the noncomplying Owner has taken such other steps as reasonably required by the Board, the Board shall direct the officers of the Association to Record a notice that the noncompliance has been remedied.

12.1.5. **No Waiver.** Failure by the Association, any Owner, or the City to enforce any covenant, condition or restriction contained herein, or any other provision of this Declaration shall in no event be deemed a waiver of the right to enforce that provision or any other provision of the Declaration thereafter.

12.1.6. **Right to Enforce.** The Association and any Owner may enforce the Restrictions as described in this Article, subject to Section 1354 of the California Civil Code. Additionally, the City shall have the right to enforce the restrictions, conditions, covenants, reservations, liens and assessments, now or hereinafter imposed by the provisions of this Declaration. The prevailing party in an action to enforce the provisions of this Declaration shall be entitled to collect their costs and attorneys' fees as set forth in Section 1354(f) of the California Civil Code. The City and each Owner have a right of action against the Association for the Association's failure to comply with or enforce the Restrictions. Each remedy provided for in this Declaration is cumulative and not exclusive or exhaustive.

12.1.7. **Limit on Expenditures.** The Association may not incur litigation expenses, including attorneys' fees, or borrow money to fund litigation, where the Association initiates legal proceedings or is joined as a plaintiff in legal proceedings, unless the Association first obtains the consent of a majority of the voting power of the Owners (excluding the voting power of any Owner who would be a defendant in such proceedings), and, if applicable, complies with the requirements of Section 1354 of the California Civil Code. Such approval is not necessary if the legal proceedings are initiated (a) to enforce the use restrictions contained in Article II, (b) to enforce the architectural and landscaping control provisions contained in Article V, (c) to collect any unpaid Assessments levied pursuant to the Restrictions, (d) for a claim, the total value of which is less than Five Hundred Thousand Dollars ($500,000), or (e) as a cross-complaint in litigation to which the Association is already a party. If the Association decides to use or transfer reserve funds or borrow funds to pay for any litigation, the Association must notify the Owners of the decision by mail. Such notice shall provide an explanation of why the litigation is being initiated or defended, why operating funds cannot be used, how and when the reserve funds will be replaced or the loan will be repaid, and a proposed budget for the litigation. The notice must state that the Owners have a right to review an accounting for the litigation which will be available at the Association's office. The accounting shall be updated monthly. If the litigation discussed in this Section 12.1.7 concerns a construction defect claim against the Declarant, Guest Builder or Declarant Parties (as such term is defined in Section Article XVII of this Declaration) pursuant to the Right to Repair Law, then the requirements of Section 4.5.2 of this Declaration must be met in addition to the requirements of this Section 12.1.7.

12.2. NONPAYMENT OF ASSESSMENTS.

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

12.2.2. Creation and Release of Lien.

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

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

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

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

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

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

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

12.2.5. **Alternative Dispute Resolution.** An Owner may dispute the Assessments imposed by the Association if such Owner pays in full (a) the amount of the Assessment in dispute, (b) any late charges, (c) any interest, and (d) all fees and costs associated with preparing and filing a Notice of Delinquent Assessment (including mailing costs and attorneys' fees not to exceed the maximum amount allowed by law), and states by written notice that such amount is paid under protest, and the written notice is mailed by certified mail not more than thirty (30) days after Recording the Notice of Delinquent Assessment. On receipt of the written notice, the Association shall inform the Owner in writing that the dispute may be resolved through alternative dispute resolution as established in Civil Code Section 1354. The right of any Owner to use alternative dispute resolution under this Section may not be exercised more than two (2) times in any single calendar year, and not more than three (3) times within any five (5) calendar years unless the Owner and the Association mutually agree to use alternative dispute resolution when this limit is exceeded. An Owner may request and be awarded through alternative dispute resolution reasonable interest to be paid by the Association in the total amount paid under items (a) through (d) above, if it is determined that the Assessment levied by the Association was not correctly levied.

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

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

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

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

ARTICLE XIII
DURATION AND AMENDMENT

13.1. **DURATION.** Subject to Article XVII, this Declaration shall continue in full force from the date of its Recordation unless a declaration of termination satisfying the requirements of an amendment to this Declaration established in Section 13.2 is Recorded.

13.2. TERMINATION AND AMENDMENT.

13.2.1. **Amendment Approval.** Notice of the subject matter of a proposed amendment to this Declaration in reasonably detailed form must be included in the notice of any

Association meeting or election at which a proposed amendment is to be considered. To be effective, a proposed amendment (other than an Amendment described in Section 15.7) must be adopted by the vote, in person or by proxy, or written consent of Owners representing not less than (i) sixty-seven percent (67%) of the voting power of each Class of the Association and (ii) sixty-seven percent (67%) of the Association's voting power represented by Owners other than Declarant, provided that the specified percentage of the Association's voting power necessary to amend a specific provision of this Declaration may not be less than the percentage of affirmative votes prescribed for action to be taken under the provision that is the subject of the proposed amendment. So long as Declarant has the right to appoint a majority of the Members of the Board and VA or FHA is making or insuring a Mortgage in the Properties, the prior approval of VA or FHA (whichever is making or insuring a Mortgage) is required for any amendment to the Declaration for the purpose of terminating the Declaration, dissolving the Association (except pursuant to merger or consolidation) or conveying all of the Common Area.

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

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

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

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

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

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

13.2.3. **Termination Approval.** Termination of this Declaration requires approval of the Owners as provided in Section 13.2.1.

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

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

13.2.6. **Amendment by the Board.** Subject only to Section 13.2.10, the Board may amend this Declaration by Recording a written instrument signed by two officers of the Association certifying that the Board approved the amendment in order to (i) conform this Declaration to applicable law, (ii) correct typographical errors, and (iii) change any exhibit to this Declaration or portion of an exhibit to conform to as-built conditions. So long as Declarant owns any portion of the Properties or the Annexable Territory, the Board must obtain Declarant's consent to any amendment the Board approves pursuant to this Section.

13.2.7. **Unilateral Amendment Before First Close of Escrow.** Notwithstanding any other provisions of this Section 13.2, at any time prior to the first Close of Escrow for a Lot, Declarant may unilaterally amend or terminate all or a portion of this Declaration by Recording a written instrument which effects the amendment or termination and is signed and acknowledged by Declarant alone and obtaining the consent of the City's Director of Planning.

13.2.8. **Unilateral Amendment.** Notwithstanding any other provisions of this Section 13.2, Declarant (for so long as Declarant owns any portion of the Properties or the Annexable Territory) may unilaterally amend all or a portion of this Declaration by Recording a written instrument signed by Declarant in order to (i) conform this Declaration to applicable law, (ii) conform this Declaration to the guidelines or requirements of VA, FHA, DRE, FNMA, GNMA, FHLMC or the City, (iii) correct typographical errors, (iv) change any exhibit to this Declaration or portion of an exhibit depicting property that is not part of a Phase for which assessments have commenced, or (v) change any exhibit to conform to as-built conditions.

13.2.9. **Amendment of Defect Claim Provisions.** Except for any amendment made by Declarant as authorized in Section 15.7, neither this Section 13.2.9 nor Sections 1.1.34, 4.2.6, 4.5.2, 4.6.1, 4.6.4, 12.1.7, or Article XVII may be amended without the vote or approval by written ballot of at least (a) sixty-seven percent (67%) of the voting power of the Members of the Association other than Declarant, and (b) Mortgagees of Mortgages encumbering sixty-seven percent (67%) of all Lots in the Properties that are then encumbered by first Mortgages.

13.2.10. **City Approval Required.** Notwithstanding any provision of this Section 13.2 (except Section 13.2.8) to the contrary, no amendment, modification or termination of or to this

Declaration shall be valid unless and until approval of or for the amendment, modification or termination has been applied for and received from the City.

ARTICLE XIV
GENERAL PROVISIONS

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

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

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

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

ARTICLE XV
DECLARANT AND GUEST BUILDER RIGHTS AND RESERVATIONS

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

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

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

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

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

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

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

15.7. **AMENDMENTS.** No amendment may be made to this Article without the prior written approval of Declarant. At any time before the first Close of Escrow in Properties, Declarant may unilaterally amend or terminate this Declaration by Recording a written instrument which effects the amendment or termination and is signed and acknowledged by Declarant. For so long as Declarant owns any portion of the Properties, Declarant may unilaterally amend this Declaration by

Recording a written instrument signed by Declarant to (a) conform this Declaration to the rules, regulations or requirements of the VA, FHA, DRE, Fannie Mae, GNMA or FHLMC, (b) amend a disclosure, (c) amend any of the Exhibits to this Declaration that depict portions of the Properties where there has not been a Close of Escrow, (d) comply with any City, County State or Federal laws or regulations, (e) correct any typographical errors, and (f) supplement this Declaration with provisions that pertain to the rights and obligations of the Declarant, Association and Owners arising under the Right to Repair Law.

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

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

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

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

(a) Any amendment or action requiring the approval of first Mortgagees;

(b) The annexation to the Properties of real property other than the Annexable Territory pursuant to Section 16.2;

(c) The levy of a Capital Improvement Assessment for the construction of new facilities not constructed on the Common Area by Declarant;

(d) Any significant reduction of Association maintenance or other services; or

(e) Any modification or termination of any provision of the Restrictions benefitting Declarant or which would impair or diminish Declarant's rights to complete the Properties or the Annexable Territory or sell or lease dwellings therein.

15.12. **MARKETING NAME.** Phase 1 of the Properties shall be marketed under the name "Covington Heights at Kerrigan Ranch II". Declarant may change the marketing name of the Properties and Declarant or Guest Builder may designate a different marketing name for any Phase of the Properties at any time in their sole discretion. Declarant or Guest Builder, as applicable, shall notify the DRE of any change in or addition to the marketing name or names of the Properties or any Phase thereof.

ARTICLE XVI
ANNEXATION OF ADDITIONAL PROPERTY

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

16.1. **ADDITIONS BY DECLARANT AND GUEST BUILDER.** Declarant, and Guest Builder with the Declarant's written consent, may add the Annexable Territory to the Properties and bring such added territory under the general plan of this Declaration without the approval of the Association, the Board, or Owners, so long as Declarant or a Guest Builder owns any portion of the Annexable Territory, and Declarant approves such annexation.

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

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

16.4. **NOTICE OF ADDITION.** The additions authorized under Sections 16.1 and 16.2 must be made by Recording a Notice of Addition which will extend the general plan of this Declaration to such Added Territory. The Notice of Addition for any addition under Section 16.1 must be signed by Declarant and the Owner of the Added Territory, if applicable. The Notice of Addition for any addition under Section 16.2 must be signed by at least two (2) officers of the Association to certify that the Owner approval required under Section 16.2 was obtained. On Recordation of the Notice of Addition, the Added Territory will be annexed to and constitute a part of the Properties and will become subject to this Declaration; the Owners of Lots in the Added Territory will automatically acquire Membership. No Notice of Addition or Supplemental Declaration may revoke the covenants, conditions, restrictions, reservation of easements, or equitable servitudes in this Declaration as the same pertain to the real property originally covered by this Declaration. In a Notice of Addition under Section 16.1, Declarant shall have the right, if it determines in the exercise of its sole discretion that the Added Territory will not benefit from Improvements or services which are Common Expenses of the Association, to designate that such Common Expense items will not be shared by the Added Territory, provided that such designation is also identified in the current Association Budget approved by the DRE for the Added Territory annexed, and provided that such designation does not result in an increase in Common Assessments in excess of the limit set in this Declaration.

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

ARTICLE XVII
WARRANTY & DISPUTE RESOLUTION

The terms of this Article XVII shall apply to all Common Area, the Association and all Owners who purchase a Lot from the Declarant. Each Guest Builder shall be entitled to expressly adopt the terms of this Article XVII or set forth alternative warranty and dispute resolution provisions in a Notice of Addition or Supplemental Declaration affecting only those residential Lots that such Guest Builder conveys to Owners; provided, however, that no Notice of Addition or Supplemental Declaration may alter the alternative dispute resolution provisions in this Declaration with respect to Common Area or any Disputes that involve the Declarant or the Association as a party.

17.1. **WARRANTY.** As used in this Declaration, the following terms shall have the meanings described below.

17.1.1. **Definitions.**

(a) **Components:** "Components" means cabinets, mirrors, flooring, interior and exterior walls, wall coverings, countertops, paint finishes and trim constructed by Declarant or Guest Builder; provided, however, Components do not include items not manufactured by Declarant or Guest Builder, including air conditioners, water heaters, ranges, dishwashers, etc.

(b) **Deficiency:** "Deficiency" means the Fit and Finish of a Component does not meet standards of quality as measured by acceptable trade practices or applicable industry standards, subject to the terms, conditions and exclusions of the Warranty.

(c) **Fit and Finish:** "Fit and Finish" means the non-structural, cosmetic appearance or alignment of the Components, subject to the terms, conditions and exclusions of the Warranty.

(d) **Home Care Guide:** "Home Care Guide" means the maintenance manual provided by Declarant or Guest Builder to an Owner, which sets forth the obligations of the Owner for maintenance of the Residence and a schedule for such required maintenance. The Home Care Guide is a Maintenance Guideline under this Declaration.

(e) **Purchase Agreement:** "Purchase Agreement" means the Purchase Agreement signed by Declarant or Guest Builder and an Owner after January 1, 2003 for the purchase of the Residence. Each reference to "Declarant or Guest Builder" or "Declarant and Guest Builder" and any variation thereof contained in this Article XVII shall be construed to mean the party who entered into a Purchase Agreement with the Owner for the purchase of the Lot.

(f) **Unforeseen Acts of Nature:** "Unforeseen Acts of Nature" means a weather condition, earthquake, or manmade event such as war, terrorism or vandalism, in excess of the design criteria expressed by the applicable building codes, regulations and ordinances in effect at the time of original construction.

(g) **Warranty:** "Warranty" means the Fit and Finish warranty regarding the Residence as provided in Section 17.1.2 of this Declaration.

(h) **Warranty Period:** "Warranty Period" means ONE YEAR from the Close of Escrow for the sale of a Residence.

17.1.2. **Warranty.** Declarant or Guest Builder warrant the Fit and Finish of the Components to be free from Deficiencies during the Warranty Period, subject to the exclusions in Section 17.1.4 below.

17.1.3. **Scope of Warranty.**

(a) **Declarant's or Guest Builder's Performance.** During the Warranty Period, Declarant or Guest Builder shall, within a reasonable amount of time, if repair or replacement is appropriate under the Warranty, repair or replace the affected Components at no charge to Owner. The decision whether to repair or replace the Components shall be within the sole discretion of Declarant and Guest Builder.

(b) **Repair Materials/Subcontractors.** All repairs or replacements shall be made with materials or components identical to, or of an equal or better grade or quality than the materials or components used in the original construction of the Residence. Declarant and Guest Builder have the right to choose the specific materials and components that the subcontractors use for repair or replacement work in their sole discretion. It is likely that there will be color and texture variations with the new materials.

(c) **Assignment of Other Insurance and Warranties.** In the event Declarant or Guest Builder repairs, replaces or pays the cost of repairing or replacing any Deficiency covered by the Warranty for which Owner is covered by any other insurance or warranty, Owner hereby assigns to Declarant or Guest Builder all rights, proceeds or payments under such other insurance or warranty to the extent of the actual cost of repair or replacement incurred by Declarant or Guest Builder, and hereby authorizes Declarant or Guest Builder to file a claim against any insurance or warranty on Owner's behalf. Owner shall cooperate with Declarant or Guest Builder, at no out-of-pocket cost to Owner, with respect to such claim. To the extent permitted by Owner's insurance, Owner agrees to look only to such Owner's insurance coverage for covered claims and to waive any right of subrogation to the extent of such insurance.

(d) **DISCLAIMER OF IMPLIED WARRANTIES.** EXCEPT FOR THIS WARRANTY, DECLARANT OR GUEST BUILDER DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY AND ANY WARRANTY THAT THE CONSTRUCTION OR DESIGN OF THE RESIDENCE WAS COMPLETED IN A REASONABLY WORKMANLIKE MANNER.

(e) **LIMITATION OF AVAILABLE REMEDIES.** OWNER AGREES THAT THE SOLE AND EXCLUSIVE REMEDIES FOR THE BREACH OF THIS WARRANTY SHALL BE REPAIR OR REPLACEMENT OF THE COMPONENT. OWNER OTHERWISE AGREES TO ASSUME ALL RISKS ARISING FROM A BREACH OF WARRANTY, INCLUDING BUT NOT LIMITED TO, ALL ECONOMIC, CONSEQUENTIAL AND EMOTIONAL DISTRESS DAMAGES. EXCEPT FOR THE REPAIR OR REPLACEMENT OF THE COMPONENT, DECLARANT AND GUEST BUILDER SHALL NOT OTHERWISE BE LIABLE FOR ANY DAMAGE FOR BREACH OF THE WARRANTY. REPAIR OR REPLACEMENT UNDER THE WARRANTY IS EXPRESSLY CONDITIONED UPON DECLARANT AND GUEST BUILDER, OR THEIR AUTHORIZED AGENTS, BEING GRANTED A REASONABLE OPPORTUNITY TO REPAIR OR REPLACE SUCH COMPONENT AND DECLARANT AND GUEST BUILDER, OR THEIR AUTHORIZED

AGENTS, AND NOT OWNER, SHALL DETERMINE THE MATERIAL AND METHODS TO BE USED IN EFFECTING SUCH REPAIR OR REPLACEMENT.

17.1.4. **Exclusions.** The following are not covered by this Warranty:

(a) **Wear and Tear.** Damage to the Components due to ordinary wear and tear.

(b) **Owner's Failure to Properly Maintain.** Any Deficiency, loss or damage caused by lack of reasonable care and maintenance, failure to follow the Declarant's, Guest Builder's, or a manufacturer's Maintenance Guidelines, Maintenance Manual, Home Care Guide or other maintenance schedule, recommendations or commonly accepted Owner maintenance obligations. Declarant or Guest Builder has provided Owner with a description and list of suggested Owner's care and maintenance items and procedures in the Home Care Guide and a schedule for such maintenance. From time to time, Declarant or Guest Builder may perform a maintenance task for the benefit of Owner at no charge; however, performing a task on one (1) or more occasions does not imply or require that Declarant or Guest Builder will perform a similar task at a later date, nor shall such performance be deemed to extend the Warranty Period.

(c) **Casualties or Unforeseen Acts of Nature.** Any Deficiency, loss or damage caused by Unforeseen Acts of Nature, casualties normally covered by homeowner's insurance, or any other cause not under the control of Declarant or Guest Builder such as fire, smoke, explosion, water escape, fluctuations in water pressure, flood, insects, and falling trees. Damage of this sort may be covered by your homeowner's insurance. You should contact your insurance carrier within twenty-four (24) hours of the occurrence of any such damage.

(d) **Abuse of Residence or Lot.** Damage caused by the misuse, abuse, neglect or the use of the Residence or Lot in a manner for which the Residence or Lot was not designed or intended.

(e) **Materials Furnished by Owner.** Any Deficiency caused by materials furnished or work done by or at the request of Owner, including any work done by anyone other than Declarant or Guest Builder or the employees, agents or subcontractors expressly selected by Declarant or Guest Builder.

(f) **Variations in Natural Materials.** Variations in natural materials, such as stone, marble, wood grain and color of stained wood used in cabinets, paneling, siding, doors and wood trim. These variations are inherent characteristics of natural materials and are not a Deficiency.

(g) **Failure to Give Timely Notice.** Any Deficiency, loss or damage caused or exacerbated by Owner's failure to timely notify Declarant or Guest Builder of any Deficiency.

(h) **Failure to Mitigate Damages.** Any Deficiency, loss or damage caused or exacerbated by Owner's failure to minimize or prevent damages in a timely manner.

(i) **Refusal to Allow Repair.** Any Deficiency, loss or damage caused by Owner's failure to allow reasonable and timely access for inspections and repairs.

(j) **Owner or Third-Party Negligence.** Any Deficiency, loss or damage caused or exacerbated by the negligence of Owner (or Owner's agent, employee, subcontractor, independent contractor, or consultant) or a third party.

(k) **Successful Repair.** Any Deficiency which has been successfully repaired or corrected.

(l) **Released Violation.** Any Deficiency, for which liability has been released by Owner pursuant to a release agreement with Declarant, Guest Builder, a manufacturer or any other third party.

(m) **Warranty Period.** Any Deficiency that occurs after the Warranty Period.

(n) **Statutory Claims.** Any claims for Deficiencies, loss or damage governed by California Civil Code Sections 895 through 897 and Sections 910 through 938.

17.1.5. **Claims Not Covered by Warranty.** If Declarant or Guest Builder determines that a particular claim is not covered by the Warranty, Declarant or Guest Builder shall provide Owner with a notification describing why Owner's claim is not covered. Failure to send such a notice shall not be deemed evidence that a claim is a covered Deficiency. If a claim is governed by California Civil Code, Section 895, et seq., the non-adversarial procedures described in the Addendum to the Purchase Agreement (titled Functionality Standards and Non-Adversarial Procedure for Statutory Construction Claims) shall apply to such claim, instead of the procedures set forth in Section 17.1 of this Declaration.

17.2. **DISPUTE RESOLUTION.** All disputes arising under Section 17.1 of this Declaration as well as any controversy, claim, cause of action, liability or dispute arising out of or in any way related to this Declaration or any defective design or construction of the Residence, including claims for breach of contract, express or implied warranty, strict liability, negligence, nuisance, statutory violation, misrepresentation, and/or fraud (collectively, "Claims"), and involving the Declarant, Guest Builder or any director, officer, partner, shareholder, member, employee, representatives, contractor, subcontractor, design professional or agent of the Declarant or Guest Builder (collectively "Declarant Parties"), shall be resolved by binding arbitration pursuant to the Federal Arbitration Act (Title 9 of the United States Code). The Federal Arbitration Act is designed to encourage use of alternative methods of dispute resolution that avoid costly and potentially lengthy traditional court proceedings. The dispute resolution procedure in this Section 17.2 is to be interpreted and enforced as authorized by the Federal Arbitration Act. Parties interpreting this Section shall follow the federal and state court rulings that provide, without limitation, that the Federal Arbitration Act (1) is a congressional declaration of a liberal federal policy favoring arbitration agreements, notwithstanding substantive or procedural state policies to the contrary, (2) requires that federal and state courts rigorously enforce agreements to arbitrate, (3) requires the scope of this alternative dispute resolution agreement be interpreted broadly in favor of arbitration, and (4) requires disputes over whether an issue is arbitrable be resolved by a finding in favor of arbitration. Specifically, this Section is to be interpreted in accordance with Allied-Bruce Terminix Companies, Inc. v. Dobson, 115 S.Ct. 834 (1995), and other federal court rulings. References in this Section to California Code Sections are not to be interpreted as a waiver of rights created under the Federal Arbitration Act. The statutory non-adversarial procedures applicable to certain construction defect claims under California Civil Code Sections 910 through 938 shall not apply to any claims under the Warranty provided in Section 17.1 of this Declaration.

17.2.1. **Rules.** Claims shall be resolved in accordance with the construction industry arbitration rules of the AAA, the AAA's Supplementary Procedures for Consumer/Residential Construction Disputes (collectively, the "Rules") and the terms of this Declaration.

17.2.2. **Preliminary Procedures.** If state or federal law requires the Declarant Parties or Owner to take steps or procedures before commencing an action in court, then Declarant Parties or Owner must take such steps or follow such procedures, as the case may be, before commencing the arbitration. For example, any claims or disputes pursuant to California Civil Code Section 895 et seq. as hereafter amended may be subject to the non-adversarial procedures set forth in California Civil Code Sections 910 through 938, prior to the initiation of any arbitration or small claims court proceeding against Declarant Parties. In addition, nothing contained herein shall be deemed a waiver or limitation of the provisions of California Civil Code Sections 1368.4, 1375, 1375.05 or 1375.1.

17.2.3. **Arbitrator.** The dispute shall be heard and determined by a single neutral arbitrator. The arbitrator shall have expertise in the area of the dispute. Selection of the arbitrator shall comply with California Code of Civil Procedure Sections 1297.121 and 1297.124. The arbitrator shall be selected according to the Rules, but in no event more than sixty (60) days from the date the administrator receives the claims. If the parties cannot mutually agree upon an arbitration agency, the dispute shall be referred to the local office of the AAA.

17.2.4. **Joinder.** The parties may join other parties as provided in the Rules, except such Owner bringing a Claim may not join such Claim against Declarant Parties with the Claims of any other homeowners. The parties may include Declarant's or Guest Builder's subcontractors and suppliers in the arbitration to the extent they are involved in such Owner's Claim.

17.2.5. **Location.** The venue of the arbitration may be in the Residence if Owners agree, but otherwise shall be held in the County where the Residence is located unless the parties agree otherwise. The arbitration shall commence, be conducted and conclude promptly in accordance with the Rules.

17.2.6. **Award.** The arbitrator is authorized to provide all recognized remedies available in law or equity for the Claims. The award of the arbitrator shall be in compliance with the statutes and case law of the State of California then in effect and shall be accompanied by detailed written findings of fact and conclusions of law. Any award rendered by the arbitrator may be confirmed, entered and enforced, in any court having jurisdiction.

17.2.7. **Confidential.** Except as may be required by law or for confirmation of the award, neither the parties nor the arbitrator may disclose the existence, content or results of the arbitration hearing without the prior written consent of both parties.

17.2.8. **Fees.** Declarant Parties will advance the fees and costs necessary to initiate and conduct the arbitration. If a Declarant Party is the prevailing party in the arbitration, the arbitrator may, to the extent permitted by law and the Rules, direct Owner to reimburse the Declarant Party for up to one half (½) of the fees the Declarant Party has advanced. Each party shall bear their own attorney fees and costs.

17.2.9. **Small Claims Court.** This provision shall not apply to any claim that can be properly brought by Owner without legal counsel in small claims court. However, any appeal from the small claims jurisdiction to a higher court shall be governed by this provision.

17.2.10. **Statute of Limitations.** The arbitration must be filed within the applicable warranty period or within the statute of limitations applicable to the Claim.

17.2.11. **Survival.** These provisions shall survive the Close of Escrow, the termination of this Declaration, any default by Owner or any default by Declarant Parties under this Declaration.

17.2.12. **Severability.** If the arbitrator or any court determines that any provisions of this arbitration section are unenforceable for any reason, that provision shall be severed, and proceedings agreed to in this arbitration section shall be conducted under the remaining enforceable terms of this arbitration section.

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

17.3. **NO ENHANCED PROTECTION AGREEMENT.** No language contained in this Declaration or any Notice of Addition or Supplemental Declaration shall constitute, or be interpreted to constitute, an "enhanced protection agreement" ("EPA"), as defined in Section 901 of the

California Civil Code. Further, no express or implied representations or warranties made by Declarant or Guest Builder in any other writing are intended to constitute, or to be interpreted to constitute, an EPA.

[Signatures Included on Following Page]

[SIGNATURE PAGE TO DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND RESERVATION OF EASEMENTS]

This Declaration is dated for identification purposes JAN. 28, 2004.

PULTE HOME CORPORATION, a Michigan corporation

By: ______________________

Name: DARREN WARREN
Its: Attorney in Fact

"Declarant"

STATE OF CALIFORNIA)
) ss.
COUNTY OF ORANGE)

On JAN. 28, 2004 before me, GAYE WATANABE, personally appeared DARREN WARREN ~~and~~ ______, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) (is) (are) subscribed to the within instrument and acknowledged to me that (he) (she) (they) executed the same in (his) (her) (their) authorized capacity(ies), and that by (his) (her) (their) signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

GAYE WATANABE
COMM. # 1409308
NOTARY PUBLIC-CALIFORNIA
ORANGE COUNTY
COMM. EXP. APRIL 5, 2007

______________________, California
Notary Public in and for said State

(SEAL)

EXHIBIT A

LEGAL DESCRIPTION OF ANNEXABLE TERRITORY

All that certain real property located in the City of Yorba Linda, Orange County, California, more particularly described as follows:

> Tract No. 15566, as shown on a Subdivision Map, Filed on August 6, 2003, in Book 847, Pages 28 to 35, inclusive, in the Office of the Orange County Recorder;
>
> Tract No. 16320, as shown on a Subdivision Map, Filed on August 6, 2003, in Book 847, Pages 15 to 19, inclusive, in the Office of the Orange County Recorder, excepting Phase 1 therefrom; and
>
> Tract No. 16321, as shown on a Subdivision Map, Filed on August 6, 2003, in Book 847, Pages 20 to 27, inclusive, in the Office of the Orange County Recorder.

EXHIBIT B

ARTICLES OF INCORPORATION OF THE ASSOCIATION

ARTICLES OF INCORPORATION
OF
KERRIGAN RANCH II COMMUNITY ASSOCIATION

ONE: The name of this corporation is **KERRIGAN RANCH II COMMUNITY ASSOCIATION** ("Corporation" herein).

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

THREE: The Corporation's initial agent for service of process is Carol Ford, whose business address is 18401 Von Karman Avenue, Suite 200, Irvine, CA 92612.

FOUR: The Corporation shall have and exercise any and all powers, rights and privileges which a corporation organized under the Nonprofit Mutual Benefit Corporation Law may now or hereafter have or exercise, provided that the Corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the specific purpose of the Corporation, which is to operate a homeowners Corporation within the meaning of Section 23701t of the California Revenue and Taxation Code and Section 528 of the Internal Revenue Code and to manage a common interest development under the Davis-Stirling Common Interest Development Act. The Corporation does not have a corporate office. The common interest development is near the intersection of Bastanchury Road and Ohio Street, in Yorba Linda, California 92886-0000.

FIVE: The classes of Membership and the voting and other rights and privileges of Members shall be as set forth in the Bylaws. So long as there are three classes of Membership, amendment of these Articles of Incorporation shall require the assent (by vote or written consent) of (i) a bare majority of the Board of Directors of the Corporation, (ii) the Class C Member, and (iii) Members representing a bare majority of the voting power of each class of Members. After termination of the Class C Membership, amendment of these Articles of Incorporation shall require the assent (by vote or written consent) of (i) a bare majority of the Board of Directors of the Corporation, and (ii) Members representing a bare majority of the total voting power of the Members.

SIX: The Corporation has no managing agent.

The undersigned, who is the incorporator of the Corporation, has executed these Articles of Incorporation on August ___, 2003.

____
Carol Ford, Incorporator

EXHIBIT C

BYLAWS OF THE ASSOCIATION

BYLAWS

OF

KERRIGAN RANCH II COMMUNITY ASSOCIATION

TABLE OF CONTENTS

FOR BYLAWS

OF

KERRIGAN RANCH II COMMUNITY ASSOCIATION

TABLE OF CONTENTS (Cont.)

DESCRIPTION PAGE

BYLAWS

OF

KERRIGAN RANCH COMMUNITY ASSOCIATION

ARTICLE I
PLAN OF OWNERSHIP

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

1.2 **NAME.** The name of the corporation is KERRIGAN RANCH II COMMUNITY ASSOCIATION. The principal office of the Association shall be located in the County.

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

ARTICLE II
BOARD OF DIRECTORS

2.1 **NUMBER.** Until the first annual meeting of Owners, the Association's property, business and affairs shall be governed and managed by a Board of Directors composed of three (3) persons. Beginning with the first annual meeting of the Owner, the Association's property, business and affairs shall be governed and managed by a Board of Directors composed of five (5) persons, each of whom, except for those appointed and serving as first Directors, must be either an Owner or an agent of Declarant until Declarant no longer owns a Lot or any of the Annexable Territory. The authorized number of Directors may be changed by a duly adopted amendment to these Bylaws.

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

(a) Not be absent from three (3) consecutive meetings of the Board;

(b) Attend at least seventy five percent (75%) of the Board meetings held each year and attend the entire meeting each time;

(c) Exhibit respect, professionalism and courteous behavior to Owners, committee members, vendors, the Manager and its staff, and any other Persons associated with or retained by the Association;

(d) For non-Declarant Board members, be an Owner in good standing.

2.3 **ELECTION.**

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

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

2.3.3 **Special Election Requirement.** So long as either (a) Declarant is entitled to exercise a Class B or Class C vote, or (b) Declarant is entitled to exercise a majority of the Association's voting power, not less than twenty percent (20%) of the members of the Board must be elected solely by the votes of Owners other than Declarant.

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

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

2.6 **REMOVAL OF DIRECTORS.** At any meeting of the Owners, any individual Director or the entire Board may be removed before the expiration of their terms of office with or without cause as follows: (a) for so long as fewer than fifty (50) Lots are included in the Properties, by the vote of Owners representing a majority of the Association's total voting power (including votes attributable to Declarant), and (b) once fifty (50) or more Lots are included in the Properties, by the vote of Owners representing a majority of a quorum of Owners.

However, if the entire Board is not removed as a group pursuant to a single vote, no individual Director may be removed if the number of votes cast against removal would be sufficient to elect such Director if voted cumulatively at an election at which the same total number of votes were cast and the entire number of Directors authorized at the time of the Director's most recent election were then being elected. Any Director whose removal has been proposed by the Owners must be given an opportunity to be heard at the meeting. If any Directors are removed, new Directors may be elected at the same meeting. However, any Director elected to office solely by the votes of Owners other than Declarant pursuant to Section 2.3.3 may be removed only by the vote of at least a simple majority of the Association's voting power represented by Owners other than Declarant. Any Director elected to office solely by votes of Declarant may only be removed by Declarant. The Board, by a majority vote of the Directors who meet all of the required qualifications to be a Director, may declare vacant the office of any Director not appointed by Declarant who, at any time, fails to meet the qualification criteria set forth in these Bylaws. Any Director who has been elected to office solely by the votes of the holder of the Class C Membership may be removed from office prior to the expiration of his term of office only by the votes of the holder of the Class C Membership.

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

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

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

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

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

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

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

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

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

(e) a contract approved by the DRE;

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

(g) contracts in which the Association enters into litigation or any alternative dispute resolution procedure when the Association's obligation to pay for services is set in whole or in part on a contingency basis only if they are (i) contracts for collection of assessments or other accounts receivable, (ii) or contracts involving evaluation of services, or

(iii) contracts with a total amount to be paid by the Association not in excess of Forty Thousand Dollars ($40,000.00); or

(h) a management contract with a term not to exceed three (3) years, the terms of which have been approved by the VA or FHA.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) A balance sheet as of the end of the Fiscal Year.

(b) An operating (income) statement for the Fiscal Year.

(c) A statement of changes in financial position for the Fiscal Year.

(d) Any information required to be reported under Section 8322 of the California Corporations Code.

(e) For any Fiscal Year in which the Association's gross income exceeds $75,000, a copy of a review of the annual report prepared in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy.

(f) A statement of the place where the names and addresses of the current Owners are located.

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

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

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

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

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

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

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

2.10.5 **Assessment and Foreclosure Notice.**

(a) The Association shall distribute the written notice described in subsection (b) to each member of the Association during the sixty (60) day period immediately preceding the beginning of the Association's Fiscal Year. The notice shall be printed in at least 12-point type.

(b) The notice required by this Section shall read as follows:

"NOTICE
ASSESSMENTS AND FORECLOSURE

This notice outlines some of the rights and responsibilities of owners of property in common interest developments and the associations that manage them. Please refer to the sections of the Civil Code indicated for further information. A portion of the information in this notice applies only to liens recorded on or after January 1, 2003. You may wish to consult a lawyer if you dispute an assessment.

ASSESSMENTS AND NONJUDICIAL FORECLOSURE

The failure to pay association assessments may result in the loss of an owner's property without court action, often referred to as nonjudicial foreclosure. When using nonjudicial foreclosure, the association records a lien on the owner's property. The owner's property may be sold to satisfy the lien if the lien is not paid. Assessments become delinquent 15 days after they are due, unless the governing documents of the association provide for a longer time. (Sections 1366 and 1367.1 of the Civil Code)

In a nonjudicial foreclosure, the association may recover assessments, reasonable costs of collection, reasonable attorney's fees, late charges, and interest. The association may not use nonjudicial foreclosure to collect fines or penalties, except for costs to repair common areas damaged by a member or a member's guests, if the governing documents provide for this. (Sections 1366 and 1367.1 of the Civil Code)

The association must comply with the requirements of Section 1367.1 of the Civil Code when collecting delinquent assessments. If the association fails to follow these requirements, it may not record a lien on the owner's property until it has satisfied those requirements. Any additional costs that result from satisfying the requirements are the responsibility of the association. (Section 1367.1 of the Civil Code)

At least 30 days prior to recording a lien on an owner's separate interest, the association must provide the owner of record with certain documents by certified mail. Among these documents, the association must send a description of its collection and lien enforcement procedures and the method of calculating the amount. It must also provide an itemized statement of the charges owed by the owner. An owner has a right to review the association's records to verify the debt. (Section 1367.1 of the Civil Code)

If a lien is recorded against an owner's property in error, the person who recorded the lien is required to record a lien release within 21 days, and to provide an owner certain documents in this regard. (Section 1367.1 of the Civil Code)

The collection practices of the association may be governed by state and federal laws regarding fair debt collection. Penalties can be imposed for debt collection practices that violate these laws.

PAYMENTS

When an owner makes a payment, he or she may request a receipt, and the association is required to provide it. On the receipt, the association must indicate the date of payment and the person who received it. The association must inform owners of a mailing address for overnight payments. (Sections 1367 and 1367.1 of the Civil Code)

An owner may dispute an assessment debt by giving the board of the association a written explanation, and the board must respond within 15 days if certain conditions are met. An owner may pay assessments that are in dispute in full under protest, and then request alternative dispute resolution. (Sections 1366.3 and 1367.1 of the Civil Code)
An owner is not liable for charges, interest and costs of collection, if it is established that the assessment was paid properly on time. (Section 1367.1 of the Civil Code)

MEETINGS AND PAYMENT PLANS

An owner of a separate interest that is not a time-share may request the association to consider a payment plan to satisfy a delinquent assessment. The association must inform owners of the standards for payment plans, if any exist. (Section 1367.1 of the Civil Code)

The board of the directors must meet with an owner who makes a proper written request for a meeting to discuss a payment plan when the owner has received a notice of a delinquent assessment. These payment plans must conform with the payment plan standards of the association, if they exist. (Section 1367.1 of the Civil Code)."

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

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

2.11 MEETINGS.

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

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

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

2.11.4 **Executive Sessions.** The Board may convene in executive session to discuss and vote upon personnel matters, litigation, matters relating to the formation of contracts with third parties, or Owner discipline. The nature of business to be considered in executive session must first be announced in an open session and must be generally noted in the minutes of the Board. In any matter relating to the discipline of an Owner, the Board shall meet in executive session if requested by that Owner. The Owner may attend the executive session.

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

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

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

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

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

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

ARTICLE III
OFFICERS

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

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

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

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

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

3.6 **VICE PRESIDENT.** The Vice President shall take the President's place and perform the President's duties whenever the President is absent, disabled, fails or refuses to act. If neither the President nor the Vice President is available to perform the President's duties, the

Board shall appoint another member of the Board to do so on an interim basis. The Vice President has such other powers and duties as may be prescribed by the Board or these Bylaws.

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

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

ARTICLE IV
OWNERS

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

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

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

4.4 **PROXIES.** Votes may be cast in person or by proxy. Proxies must be in writing and filed with the Secretary in advance of each meeting. Every proxy is revocable and automatically ceases after completion of the meeting for which the proxy was filed. Any form of proxy or written ballot distributed by any Person to the Owners must afford the opportunity to specify a choice between approval and disapproval of each matter or group of matters to be acted on, except it is not mandatory that a candidate for election to the Board be named in the proxy or written ballot. The proxy or written ballot must provide that, when the Owner specifies a choice, the vote shall be cast in accordance with that choice. The proxy must also identify the person authorized to exercise the proxy and the length of time it will be valid. No proxy is valid with respect to a vote on any matter described in Section 7613(g) of the California Corporations Code unless the general nature of the proposal was described in the proxy.

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

4.6 **ANNUAL MEETINGS OF OWNERS.** The first annual meeting of Owners shall be held within six (6) months after the Close of Escrow for the sale of the first Lot in Phase 1. Thereafter, the annual meetings shall be held on or about the anniversary date of the first annual meeting. Each first Mortgagee may designate a representative to attend all annual meetings.

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

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

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

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

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

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

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

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

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

ARTICLE V
AMENDMENTS

These Bylaws may be amended by the vote or written consent of Owners representing at least (a) a majority of the voting power of each class of the Owners, and (b) a majority of the Association's voting power represented by Owners other than Declarant; provided that the specified percentage of each class of Owners necessary to amend a specific provision of these Bylaws may not be less than the percentage of affirmative votes prescribed for action to be taken under that provision. These Bylaws may be amended by a majority of the entire Board, (i) at any time before the Close of Escrow for the sale of the first Lot, or (ii) if the amendment is within the Board's power to adopt without Owner approval pursuant to the California Corporations Code and either (a) the proposed amendment conforms the Bylaws to California law or the requirements of VA, FHA, DRE, FNMA, GNMA or FHLMC, or (b) the proposed amendment corrects a typographical error in the Bylaws. Any amendment to these Bylaws which materially affects matters listed in Article XII or Section 13.2 of the Declaration must be approved by the Beneficiaries of that percentage of first Mortgages on the Lots which is specified in the affected provision of Article XII or Section 13.2 of the Declaration, respectively. If an amendment to these Bylaws materially affects matters listed in both Article XII and Section 13.2 of the Declaration, the amendment must be approved pursuant to the requirements of both Article XII and Section 13.2. So long as there exists a Class B Membership, and the VA or FHA has made or is insuring a Mortgage on a Lot in the Properties, the prior approval of VA or FHA (whichever entity has made or is insuring a Mortgage) is required for any amendment to these Bylaws to (1) terminate the Bylaws, (2) dissolve the Association (except pursuant to merger or consolidation), or (3) convey the Common Area. A draft of the proposed amendment must be submitted to VA and FHA for approval before its approval by the Membership.

ARTICLE VI
MISCELLANEOUS

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

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

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

6.4 AVAILABILITY OF ASSOCIATION DOCUMENTS.

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

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

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

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

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

ARTICLE VII
NOTICE AND HEARING PROCEDURE

7.1 **INITIAL COMPLAINT.** Persons who believe a violation of the Restrictions has occurred may file a complaint with a Person designated by the Board on a form approved by the Board. The Board will commence the enforcement process. In its discretion, the Board may issue one or two violation letters to the Person alleged to have committed the violation ("respondent") or set a hearing described in Section 7.2 below. The Board may direct the Manager to assist the Board in any of the steps the Board chooses to take in enforcing the Restrictions except that decisions made at hearings must be made by the Board.

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

7.2.1 **Complaint.** A written statement setting forth in ordinary and concise language the acts or omissions with which the respondent is charged, 7.2.2 **Basis for Violation.** A reference to the specific provisions of the Restrictions which the respondent is alleged to have violated,

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

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

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

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

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

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

<u>CERTIFICATE OF SECRETARY</u>

I, the undersigned, certify that:

1. I am the duly elected and acting Secretary of KERRIGAN RANCH II COMMUNITY ASSOCIATION, a California nonprofit corporation ("Association"); and

2. The foregoing Bylaws comprising 19 pages including this page constitute the Bylaws of the Association duly adopted by Consent of Directors in Lieu of First Meeting dated July 31, 2002.

IN WITNESS WHEREOF, I have hereunto subscribed my hand and affixed the seal of the Association this 31st day of July, 2002.

____
Gaye Watanabe, Secretary

(SEAL)

EXHIBIT D

DEPICTION OF ASSOCIATION MAINTENANCE AREAS IN PHASE 1

EXHIBIT D

ASSOCIATION MAINTENANCE AREAS IN PHASE 1

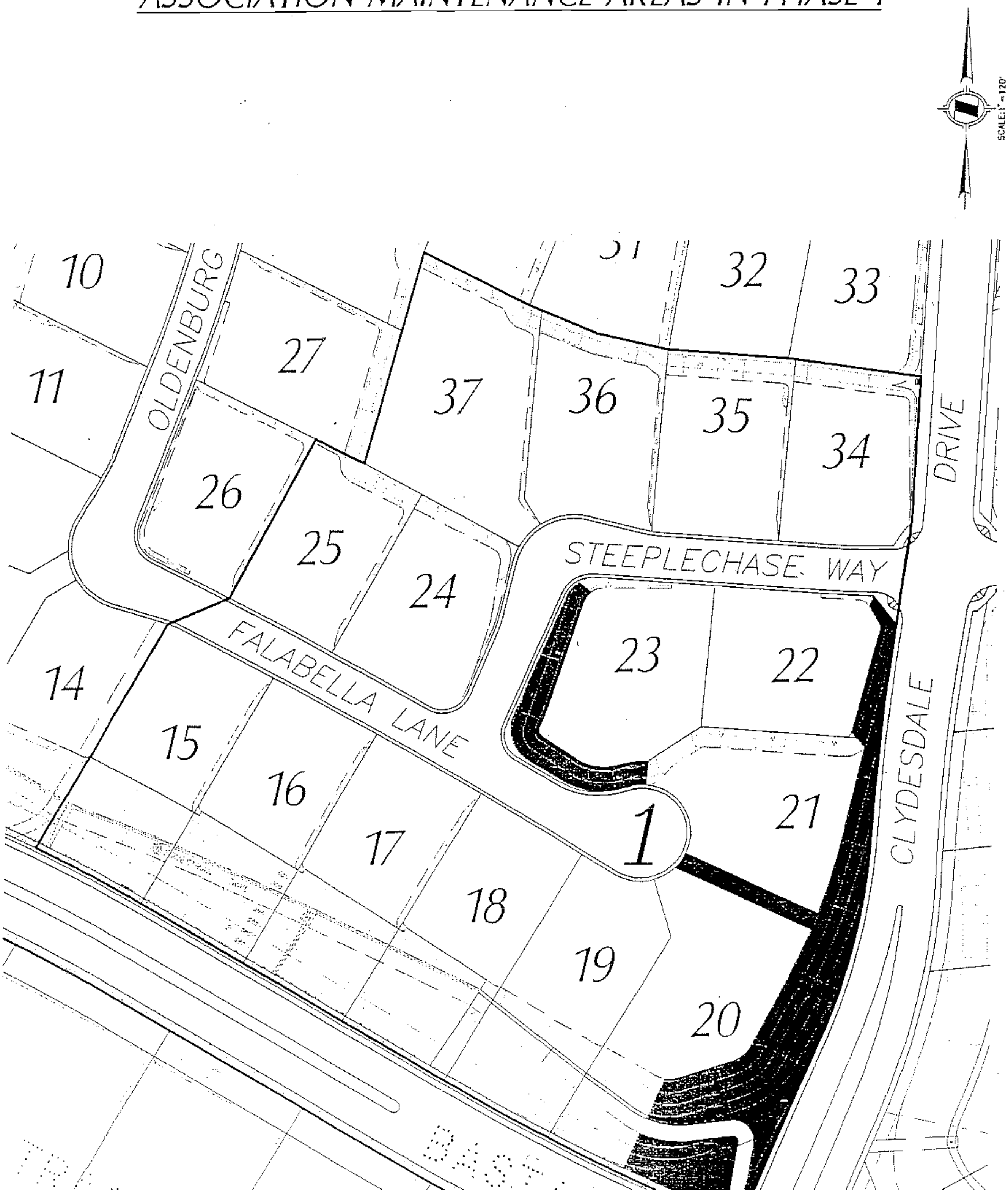
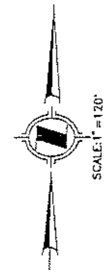


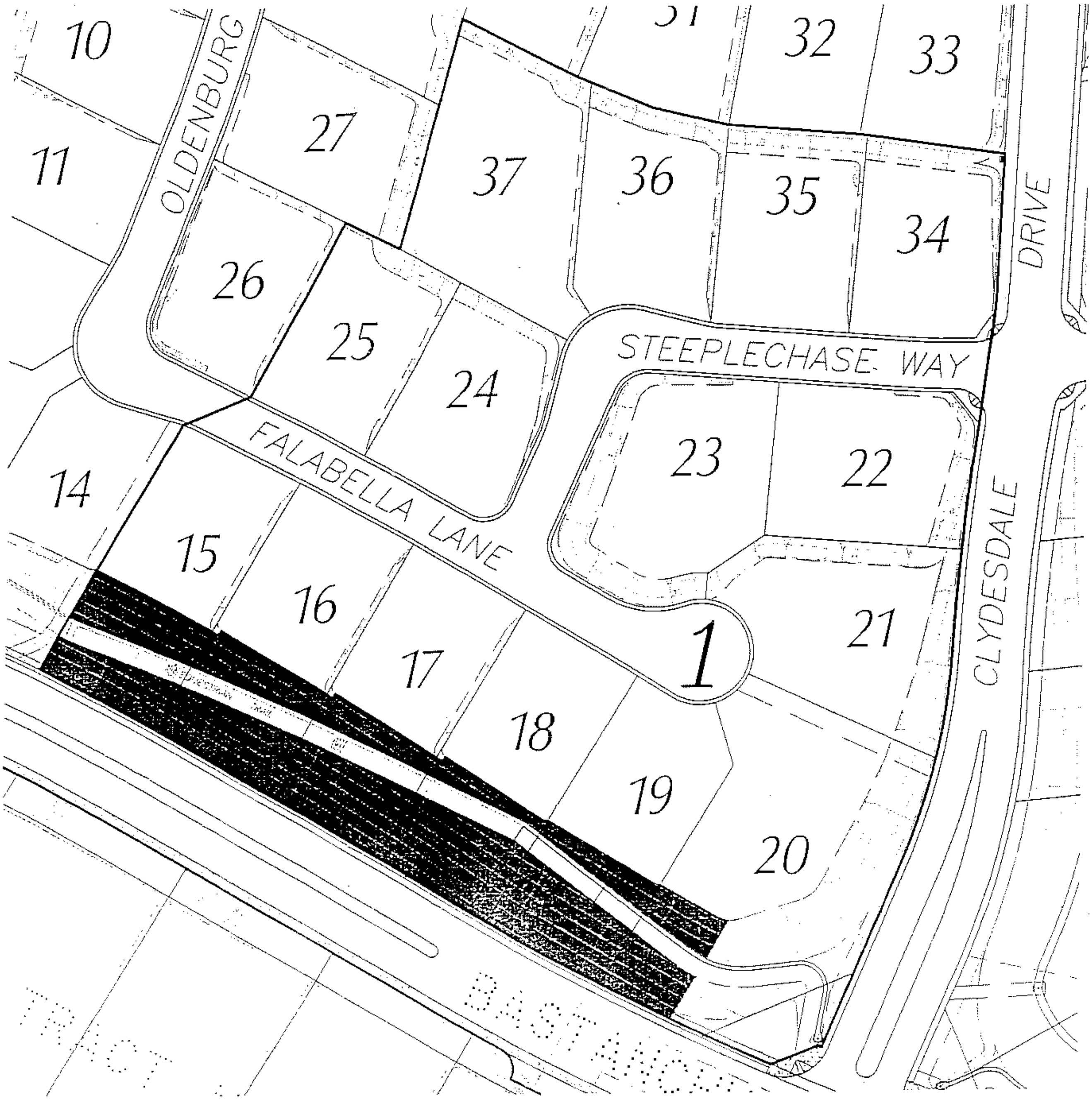
EXHIBIT E

DEPICTION OF COMMON AREA EASEMENTS IN PHASE 1

EXHIBIT E

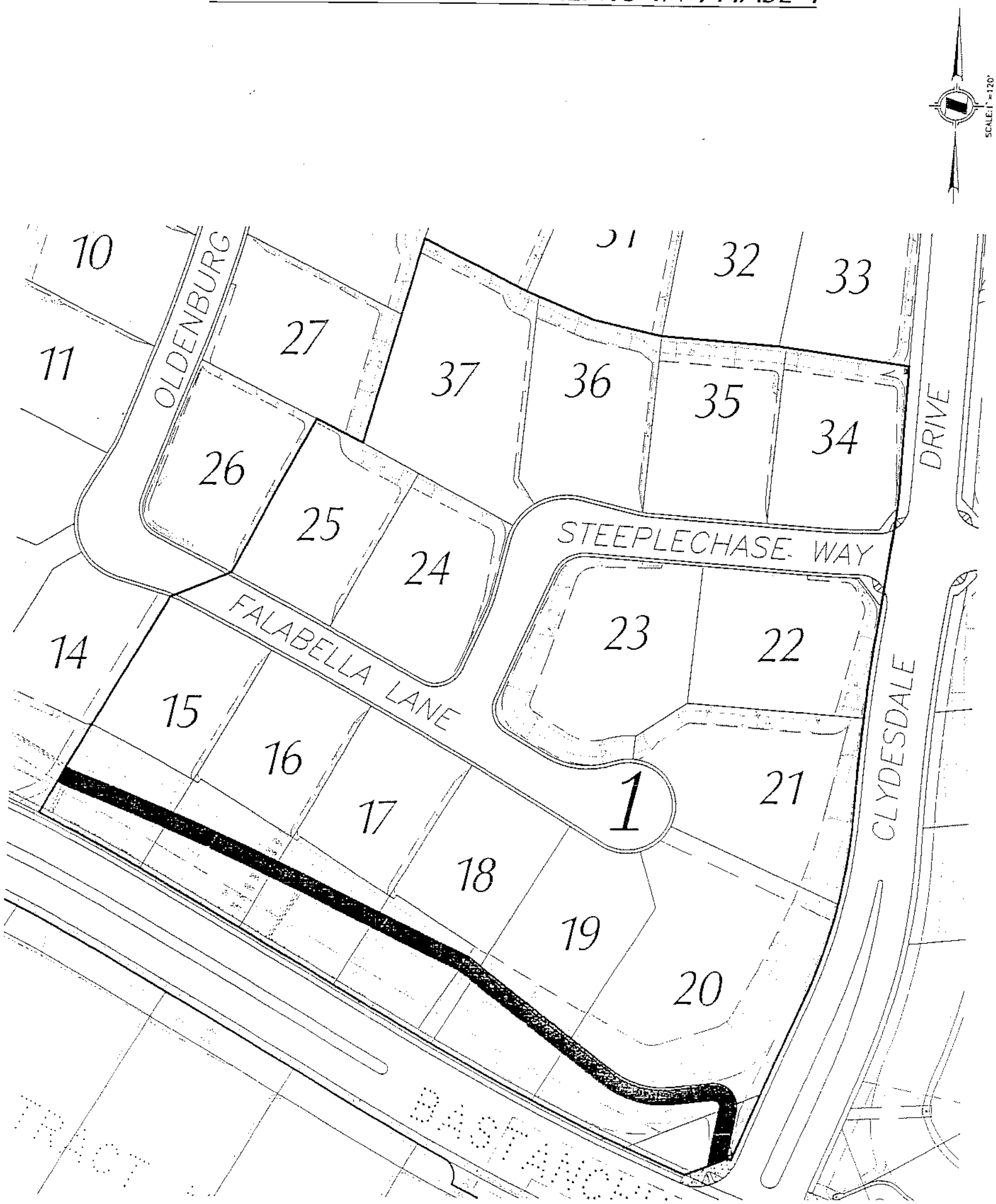
COMMON AREA EASEMENTS IN PHASE 1





SHT. 1 OF 2

EXHIBIT E
COMMON AREA EASEMENTS IN PHASE 1



SHT. 2 OF 2

EXHIBIT F

DEPICTION OF APPROXIMATE LOCATION OF FIRE LANES IN THE PROPERTIES

EXHIBIT "F"

FIRE LANE DISCLOSURE

TRACT 16320

LEGEND

- - - - - - FIRE LANE

1 LOT NUMBER

EXHIBIT G

DEPICTION OF APPROXIMATE LOCATION OF
CONSERVATION EASEMENT AREAS IN THE PROPERTIES