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02/23/2007, 20070018970

AFTER RECORDING RETURN TO:

*Standard Pacific Corp.
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**DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
MONET AT DIAMOND CREEK**

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

**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR MONET AT DIAMOND CREEK**

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR MONET AT DIAMOND CREEK

This Declaration of Covenants, Conditions and Restrictions for Monet at Diamond Creek, dated _____, 2006 ("Declaration") is made by Standard Pacific Corp., a Delaware corporation ("Declarant").

ARTICLE 1 DECLARATION

A. Declarant owns that certain real property in the City of Roseville, County of Placer, State of California, described as follows (the "Subject Property"):

Lots 1 through 44 and Lots 102 through 115 and Lots A, H, I, J, K, L and M as shown on the Final Map of Diamond Creek Unit No. 7 Subdivision No. 05-09 filed in the Office of the Placer County Recorder in Book _____ of Maps, at Page _____

B. Declarant desires and intends to develop the Subject Property and the Additional Property as a planned development (as defined in Section 1351(k) of the California Civil Code) in order to ensure the preservation of the values and the aesthetic environment of the Project for the benefit of the Owners, and to this objective, to impose on the Project, these mutually beneficial restrictions, easements, assessments, liens, covenants and conditions under a general plan or scheme of improvement and development for the mutual benefit of all of the Owners of Lots and Common Area within The Monet at Diamond Creek planned development.

C. Declarant intends to develop the Project in multiple phases. The first phase consists of the Subject Property; subsequent phases may consist of all or any part of the real property described in the attached Exhibit A ("Additional Property"). The first phase of the Project will be subject to this Declaration upon recordation. Subsequent phases will be subject to this Declaration upon recording a Notice of Annexation for that Phase as provided in Section 3.5

D. This Declaration provides for the establishment of a mandatory homeowners association, "Monet at Diamond Creek Homeowners Association," of which each Owner of a Lot within the Project will be a Member. It shall be the responsibility and duty of the Association, among other things, to own and/or maintain certain Common Areas, including private streets, a community park and certain landscaped areas, to enforce this Declaration (and in particular the design review regulations), and to levy and collect assessments on the Members to fund such activities

E. Declarant hereby declares that the Project shall be held, transferred, sold, conveyed, leased and occupied subject to the covenants, conditions, restrictions, easements, charges and liens set forth in this Declaration.

ARTICLE 2 DEFINITIONS

As used in this Declaration, the following terms shall (unless the context dictates otherwise) have the meanings ascribed to them in this Article 2:

- 2.1 **Additional Charges.** Additional Charges shall have the meaning given in Section 5.8.
- 2.2 **Additional Property.** The real property described in Exhibit A attached, together with all Improvements situated thereon from time to time.
- 2.3 **Alterations.** Any Improvements constructed on any portion of the Property by any person or entity other than Declarant, and any modifications, renovations, expansions, reconstruction, refinishing or other changes or alterations to any existing or future Improvements performed on any portion of the Property by any Person other than Declarant.
- 2.4 **Annexation.** Execution of the process described in Section 3.5 by which all or a part of the Additional Property will be made subject to this Declaration and included in the Project.
- 2.5 **Articles.** The Articles of Incorporation of the Monet at Diamond Creek Homeowners Association, which are or shall be filed in the office of the California Secretary of State, as amended from time to time.
- 2.6 **Assessments.** Any or all Regular Assessments, Reimbursement Assessments and Special Assessments that may be levied pursuant to this Declaration or a Supplemental Declaration.
- 2.7 **Association.** The Monet at Diamond Creek Homeowners Association, a California nonprofit mutual benefit corporation, and its successors and assigns.
- 2.8 **Board.** The Board of Directors of the Association.
- 2.9 **Budget.** The annual operating budget prepared by the Association pursuant to Article 11 of this Declaration.
- 2.10 **Bylaws.** The Bylaws of the Association adopted by the Board, as amended from time to time.
- 2.11 **City.** The City of Roseville, California.
- 2.12 **Common Area.** All of the real property designated as "Common Area" in this Section 2.12 or a Notice of Annexation, together with all Improvements situated thereon from time to time. The Common Area will comprise private streets, walkways, guest parking areas and a small tot lot/community park. Common

Area also may include easements or permits held by the Association over areas owned by the City, Declarant, Owners and/or other third parties (and/or Improvements located within such areas, including without limitation the Mailboxes) for the use and/or maintenance of neighborhood entry features, landscaping areas, fences and walls, carriage light fixtures on individual garages, and and/or other Improvements. Parcels __, __ and __, as shown on the Map, are hereby designated as Common Area.

- 2.13 **County.** Placer County, California.
- 2.14 **Declarant.** Standard Pacific Corp., a Delaware corporation, and any successor or assign designated by Declarant to have the rights of a Declarant by a written instrument duly recorded in the Official Records of the County. Any purchaser of five or more Lots may be designated the Declarant with respect to such Lots. There may be more than one Declarant.
- 2.15 **Design Review Committee.** The Design Review Committee appointed pursuant to Article 10 of this Declaration.
- 2.16 **Director.** A member of the Board.
- 2.17 **DRE.** The State of California Department of Real Estate.
- 2.18 **Eligible Holder.** Any Institutional Mortgagee that has: (a) delivered a written notice to the Association containing the name and address of the Institutional Mortgagee, and the number or address of the Lot encumbered by the Mortgage; and (b) requested that the Association deliver written notice to it of any or all of the events specified in Section 13.5.
- 2.19 **First Mortgagee.** Any person or entity, including without limitation an Institutional Mortgagee, holding a Mortgage that has priority under the recording statutes of the State of California over all other Mortgages encumbering a particular Lot.
- 2.20 **Governing Documents.** The Articles, the Bylaws, this Declaration, any Notice of Annexation, and the Rules and Regulations.
- 2.21 **Improvements.** All Residences, other buildings and structures, streets, fences, walls, paving, pipes, wires, grading, landscaping, utilities and other works of improvement (as defined in Section 3106 of the California Civil Code) constructed, installed or planted within, on, under or about the Property.
- 2.22 **Institutional Mortgagee.** A First Mortgagee that is: (a) a bank, savings and loan association, insurance or mortgage company or other entity or institution that is chartered under or regulated by any federal or state law; or (b) an insurer or governmental guarantor of a First Mortgage, including without limitation the

Federal Housing Authority and the Veterans Administration.

- 2.23 **Invitee.** Any person whose presence at a particular location is approved by, permitted, suffered by or at the request of a particular person or entity, including without limitation all tenants, family members, guests, employees, agents, contractors, licensees and invitees.
- 2.24 **Lot.** Any parcel of land within the Property on which a Residence may legally be constructed, whether or not one has been constructed, together with any and all Improvements thereon.
- 2.25 **Mailbox Unit.** An integrated unit containing a group of individual mailboxes serving multiple Lots. It is anticipated that there will be ___ Mailbox Units within the Project.
- 2.26 **Maintain/Maintenance.** Those actions that are reasonable necessary to keep the Residences and other Improvements and fixtures in good and attractive condition and repair, which actions include but are not limited to regular inspections, painting, maintenance, refinishing, repairing, replacing and reconstructing the Improvements. With respect to landscaping, "Maintenance" shall include without limitation the exercise of regular fertilization, irrigation, cultivation, replacement of dead or diseased plant materials and other garden management practices necessary to promote a healthy, weed free environment for optimum plant growth.
- 2.27 **Map.** With respect to the Subject Property, that certain final subdivision map recorded in Book ___ at Pages ___ in the Official Records of the County. With respect to the Additional Property, any subdivision maps so identified in a Notice of Annexation singly or collectively. References to a "Map" also shall include without limitation any alteration shown on any subsequently recorded amended final map, certificate of correction, lot line adjustment and/or record of survey which affects the boundaries of any of the real property described in the Map.
- 2.28 **Master Declaration.** The Declaration of Covenants, Conditions and Restrictions -- Diamond Creek recorded in the Official Records of Placer County on October 27, 1994 as Instrument No. 94 075608.
- 2.29 **Member.** Any Owner
- 2.30 **Mortgage.** Any duly recorded deed of trust or mortgage encumbering one or more Lots.
- 2.31 **Mortgage Lien.** The lien, charge or security interest created by a Mortgage.
- 2.32 **Mortgagee.** A beneficiary under or holder/mortgagee of a Mortgage.
- 2.33 **Mortgagor.** A trustor under a duly recorded deed of trust, or a maker/mortgagor

under a duly recorded mortgage.

- 2.34 **Motor Courts.** Singly or collectively, those portions of the Common Areas that provide access from the private streets to the individual Lots. The Motor Courts are Parcels __, __ and __, as shown on the Map.
- 2.35 **Notice and Hearing Requirements.** The notice and hearing requirements set forth in Section 14.2.
- 2.36 **Notice of Annexation.** An instrument recorded pursuant to Section 3.5 in order to annex Additional Property into the Project.
- 2.37 **Owner.** Any Person shown by an instrument duly recorded in the County Recorder's Office to be the owner or a co owner of fee title to a Lot. The term "Owner" shall include contract purchasers and exclude contract sellers. Declarant shall be the Owner of each Lot until such time as the Lot is transferred of record by Declarant.
- 2.38 **Owner's Parties.** With respect to a particular Owner, that Owner's family members, tenants and contract purchasers, and all of their respective Invitees
- 2.39 **Party Fence.** Any wall or fence which is constructed and placed so as to physically separate one Lot from another Lot or Common Area parcel, whether the fence or wall is situated approximately along a common Lot and/or Common Area parcel boundary or an easement boundary.
- 2.40 **Person.** Any natural person, trust, partnership or other legal entity.
- 2.41 **Phase.** Any Lots and/or Common Areas that are simultaneously made subject to the provisions of this Declaration by recordation of this Declaration or a Notice of Annexation.
- 2.42 **Project.** The development and operation of the Property as a residential common interest development in accordance with the common plan of development set forth in the Governing Documents.
- 2.43 **Property.** The Subject Property, and so much of the Additional Property as at the time has been annexed into the Project and made subject to this Declaration pursuant to the provisions of Section 3.5.
- 2.44 **Public Report.** A Final Subdivision Public Report issued by the DRE for a Phase of the Property.
- 2.45 **Regular Assessment.** An Assessment levied against an Owner pursuant to Section 5 2.
- 2.46 **Reimbursement Assessment.** An Assessment levied against an Owner pursuant

to Section 5.4.

- 2.47 **Residence.** A dwelling, including any attached garage.
- 2.48 **Rules and Regulations.** Any rules and regulations promulgated by the Board from time to time pursuant to the Governing Documents, as amended.
- 2.49 **Special Assessment.** An Assessment levied against an Owner pursuant to Section 5.3.
- 2.50 **Subject Property.** The real property described in Recital A.
- 2.51 **Supplemental Declaration.** A supplemental declaration that imposes such additional covenants, conditions and restrictions upon all or any portion(s) of the Property owned by Declarant as Declarant may deem necessary or desirable. A Notice of Annexation may also be a Supplemental Declaration.
- 2.52 **Voting Power.** The phrases "voting power" and "total voting power" shall have the same meaning, and shall mean all of the votes of a class of Members which at any time could be cast at a meeting of the Members of the Association. In all circumstances in which the Members must approve a matter and the Governing Documents do not specify that approval requires a particular percentage of the voting power, the matter may be approved by a majority of a quorum of the Members. Quorum requirements shall be as set forth in the Bylaws

ARTICLE 3 DIVISION OF PROPERTY; ANNEXATION AND DEANNEXATION

- 3.1 **Division of Property.** All of the Property is hereby divided into Lots and Common Area.
- 3.2 **Ownership of Common Area.** Title to or a legal ownership interest in the Common Area within a Phase shall be conveyed by Declarant to the Association prior to or concurrently with the conveyance of the first Lot within such Phase to an Owner other than Declarant. The Association shall be deemed to have accepted title to the Common Area conveyed to it when: (a) a grant deed conveying title to the Common Area has been recorded in the Official Records of the County; and (b) Regular Assessments have commenced.
- 3.3 **Non-Severability.** The interest of each Owner in the use and benefit of the Common Area shall be appurtenant to the Lot owned by the Owner. An Owner shall not convey a Lot separately from the Owner's interest in the Common Area. Any conveyance of a Lot shall automatically transfer to the new Owner the right to use the Common Area, regardless of whether the document conveying title has expressly referenced this right. Each Owner, whether taking ownership by deed,

gift, devise, foreclosure, operation of law or otherwise, for the Owner's benefit and for the benefit of all other Owners and each of the Owner's successors, specifically waives, releases and abandons all rights, interests and causes of action for judicial partition of any interest in the Common Area and does further agree that no action for judicial partition shall be instituted, prosecuted or reduced to judgment. The ownership interest in the Common Area and Lots described in this Section 3.3 are subject to the easements described, granted and reserved in this Declaration.

- 3.4 **Ownership of Party Fences.** Each Owner of a Lot upon which a Party Fence is situated shall own to the center of the Party Fence; provided that the foregoing shall not give any Owner any interest in any other Owner's Lot.
- 3.5 **Annexation of Subsequent Phases.** The Additional Property may be annexed to the Project and made subject to this Declaration only in accordance with the provisions of this Section 3.5.
1. **Declarant's Annexation Rights.** Declarant or any other owner of the Additional Property may, but shall not be required to, annex all or any portion of the Additional Property to the Project in one or more increments from time to time without the vote or approval of any other Owners or the Association; provided, however, that the Annexation of the Additional Property shall be in substantial conformance with a detailed plan of phased development submitted to and approved by the DRE. The issuance of a Public Report for a Phase by the DRE shall be conclusive evidence that the Annexation of that Phase was in substantial conformance with an approved plan of phased development.
 2. **Annexation Pursuant to Approval.** Unless the Annexation is made pursuant to the plan of phased development approved by the DRE as provided in Section 3.5.1, Annexation shall occur only with the approval of 51% of all Eligible Holders, and of the Association pursuant to the vote or written consent of 2/3 of the Total Voting Power of the Association residing in Members other than Declarant.
 3. **Annexation Procedure.** To effectuate an Annexation, Declarant (in the case of an Annexation pursuant to Section 3.5.1) or the Board (in the case of an Annexation pursuant to Section 3.5.2) shall record a Notice of Annexation describing the real property to be annexed. The Notice of Annexation shall specify that all of the covenants, conditions and restrictions of this Declaration shall apply to the annexed property in the same manner as if it were originally part of the Property subject to the Declaration, and may provide for such additional covenants, conditions and restrictions on the annexed property as may be deemed necessary or desirable by Declarant or the Board, as the case may be; provided, however, that a Notice of Annexation may not alter or change the general

common plan or scheme created by this Declaration, nor affect the provisions hereof or thereof as covenants running with the land or equitable servitudes, it being the express desire and intention of Declarant to establish a cohesive plan of covenants and servitudes to be uniformly applicable to all portions of the Project.

4. **Effect of Annexation.** At all times after the Notice of Annexation has been recorded, the Annexed property shall be subject to this Declaration, all Owners shall be entitled to the use of all Common Area (subject to the provisions of this Declaration), and Owners of Lots situated on the Annexed property shall be subject to this Declaration and, upon commencement of assessments, shall be entitled to Membership in the Association.
5. **Prior to Annexation.** No portion of the Additional Property shall be subject to the provisions of this Declaration unless and until it is annexed; provided, however, that any provisions of this Declaration that are expressly made applicable to the Additional Property prior to Annexation shall so apply. This Declaration shall not be construed to constitute a limitation on Declarant's title or other rights to the Additional Property prior to its annexation, nor shall it impose any obligation on Declarant or any other person or entity to improve, develop or annex any portion of the Additional Property. Without limiting the generality of the foregoing, this Declaration shall not be construed to limit Declarant's right at any time prior to annexation to grant, establish or create additional licenses, easements, reservations, restrictions and rights-of-way for itself, utility companies or others as Declarant may deem necessary or desirable in connection with the ownership, operation, maintenance, development or disposition of any property owned by Declarant.

- 3.6 **Deannexation.** Declarant may deannex any previously annexed portion of the Property without the approval of any other owners or the Association provided: (a) no Common Area that is a part of the property to be deannexed has been conveyed to the Association; and (b) no proceeds from any Regular or Special Assessments have been expended for goods, services or Improvements for the property to be deannexed. Without limiting the generality of the foregoing, no Assessments shall have commenced, and no Association maintenance obligations shall have commenced with respect to the Common Area within the property to be deannexed. If Declarant desires to deannex a portion of the Property without the approval of the other Owners, as provided herein, Declarant may do so by recording a Notice of Deannexation in the same manner that a Notice of Annexation was recorded.

**ARTICLE 4
THE ASSOCIATION**

- 4.1 Organization; General Powers; Rules and Regulations.** The Association shall be established no later than the date the first Lot is sold by Declarant and shall be organized as a nonprofit mutual benefit corporation under the General Nonprofit Corporation Law of the State of California. The Association, acting through the Board, shall have the power and duty to administer and maintain the Property and the Common Area in addition to those powers and duties specifically described in the Governing Documents. The Association, acting through the Board, shall also have the general power to do all things that a corporation organized under the laws of the State of California may lawfully do, so long as such actions are for the peace, health, comfort, safety or general welfare of the Members and their guests, subject only to the limitations expressly described in the Governing Documents. The Board shall engage an experienced professional management company to manage the affairs and operations of the Association. Except as otherwise prohibited by this Declaration, the Association may delegate any of its power to committees, officers or employees of the Association as a majority of the Board deems appropriate. However, the Association may not delegate to officers or employees of the Association any power to levy fines, hold the hearings described in Section 14.2 or impose discipline on Members. Without limiting the generality of the foregoing, the Board may promulgate, modify, administer and enforce Rules and Regulations relating to the use, operation and management of the Project, so long as the Rules and Regulations are consistent with the requirements of the other Governing Documents and the provisions of California Civil Code Section 1357.100 et seq., and to the extent applicable, California Civil Code Section 1363.03. In all votes held pursuant to Civil Code Section 1357.140(d), the Class A Members shall be entitled to cast Class A votes, and the Class B Member shall be entitled to cast Class B votes.
- 4.2 Membership.** Every Owner shall be a Member of the Association, and ownership of a Lot shall be the sole qualification for membership in the Association. Association membership is appurtenant to and may not be separated from the ownership of a Lot. Association membership shall not be transferred, sold, pledged or alienated in any way except upon the transfer of title to the Owner's Lot, and then only to the transferee of title to such Lot. Any attempt to make a prohibited transfer shall be void and of no effect. Membership shall not be related to the Member's use or failure to use the Common Area and may not be renounced by a Member. The Association shall revise its membership records to reflect a change in ownership of a Lot.
- 4.3 Classes of Membership; Voting Privileges.** The Association shall have two classes of voting membership, described as follows:
1. **Class A Membership.** All of the Owners shall be Class A Members,

except that Declarant shall not be a Class A Member until the Class B membership ceases and is converted to Class A membership. Class A Members shall be entitled to one vote for each Lot owned.

2. **Class B Membership.** Declarant shall be the sole Class B Member. The Class B Member shall be entitled to three votes for each Lot owned. The Class B membership shall cease and irreversibly be converted to Class A membership upon the first to occur of the following events: (a) two years following the first conveyance of a Lot in the Phase for which a Public Report was most recently issued; or (b) four years following the first conveyance of a Lot to a residential homebuyer.
- 4.4 **Voting Rights; Threshold Required for Approval.** A Member's right to vote with respect to a Lot shall commence upon the date that the Lot becomes subject to Regular Assessments, as described in Section 5.2. Except as otherwise provided in the Bylaws and Section 14.1 of this Declaration, wherever a provision of the Governing Documents requires the approval of Members other than Declarant, it shall be deemed to mean: (a) until Class B membership has been converted to Class A membership, (i) the vote of a majority of the total voting power of the Class B Members, and (ii) the vote of the required percentage of the total voting power of the Class A Members; and (b) after the Class B membership has been converted to Class A membership, (i) the vote of a majority of the total voting power of the Association, and (ii) the vote of the required percentage of the total voting power of Members other than Declarant.
- 4.5 **Voting Procedures.** Members may vote: (a) in person or by proxy at a meeting called and noticed pursuant to the Bylaws; or (b) by written consents pursuant to the procedures described in the Bylaws.
- 4.6 **Voting by Multiple Owners.** If a Lot is owned by more than one Person, each Person shall be a Member of the Association, but there shall be only one vote for each Lot and the joint Owners of the Lot shall determine among themselves how such vote will be cast. If any Owner casts a vote attributable to a certain Lot, it will be conclusively presumed for any and all purposes that the Person casting the vote was acting with the authority and consent of all other Owners of the same Lot. If more than one Owner of a Lot attempts to cast the vote attributable to that Lot, all such votes shall be void and the vote for that Lot shall not be counted.
- 4.7 **Certificate of Approval.** The certificate of any officer or officers of the Association authorized by resolution of the Board or of the president and secretary certifying that the required voting power of the Association has approved the execution, delivery and/or recordation of an amendment to any of the Governing Documents, any Supplemental Declaration or any other document requiring the approval of the voting power of the Association shall be deemed conclusive proof of such approval.

4.8 **Transfers of Common Area.** The Board shall have the exclusive power and right to grant, convey, dedicate, mortgage, or otherwise transfer to any Owner or other person or entity, fee title, easements, exclusive use easements, security rights or other rights or licenses in, on, over or under the Common Area that, in the sole discretion of the Board, are in the best interests of the Association and its Members. Notwithstanding anything herein to the contrary, in no event shall the Board take any action authorized hereunder that would permanently and unreasonably interfere with the use, occupancy and enjoyment by any Owner of that Owner's Lot without the prior written consent of that Owner. Transfers to Owners which are subject to the provisions of California Civil Code Section 1363.07 shall require the approval of a majority of the Members in accordance with the Secret Ballot Procedure described in the Bylaws. Any sale(s) of Common Area during a fiscal year which have an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association shall require the approval of the Members. The Board may rely upon an appraisal provided to it or obtained by it at around the time of the sale.

4.9 **Insurance and Bonds.**

1. **In General.** The Association shall obtain those policies of insurance and bonds required, and may obtain those policies of insurance and bonds permitted to be obtained by the Association; provided, however, that while the Board shall make every reasonable effort to obtain and keep in full force and effect the insurance policies as provided in this Section, if the Board is unable to purchase any required coverage on commercially reasonable terms, the Board shall engage a special insurance consultant to make recommendations, and the Board may make reasonable adjustments to the requirements set forth herein, consistent with the consultant's recommendations, but only for so long as the required coverage is not available on commercially reasonable terms.
2. **Periodic Review.** The Association shall review and re-review all policies and bonds obtained by the Association at least annually. At least once every three years, the review shall include a replacement cost appraisal of all insurable Common Area Improvements without respect to depreciation. The Board shall adjust the policies to provide the amounts and types of coverage and protection that are customarily carried by prudent owners of similar property in the area in which the Project is situated.
3. **Fire and Casualty Insurance.** The Association shall maintain a "master" or "blanket" policy or policies of insurance covering the Common Area, Improvements thereto (except those Improvements normally excluded from such coverage) and the personal property owned, leased, controlled or operated by the Association. The policy or policies shall provide protection against loss or damage by fire, vandalism, malicious mischief

and other standard extended-coverage risks and all other perils customarily covered in projects similar in construction, location and use, including all perils normally covered by the standard "all risk" endorsement, if available. The policy or policies shall be in an amount or amounts necessary to provide for full replacement thereof. The policy or policies shall be issued on a comprehensive liability basis, shall provide for a full waiver of all defenses based upon acts of the insureds and shall further provide for a separate loss payable endorsement in favor of the Mortgagee of each Lot. The policy or policies shall list the Association as the "named" insured and the Owners and all Mortgagees as their respective interests may appear as additional insureds. Each Owner shall be responsible for obtaining fire and casualty insurance at full replacement cost for the Residence and other Improvements, furnishings, fixtures and other personal property located in or on its Lot.

4. **Liability Insurance.** The Association shall obtain a policy or policies of commercial general liability insurance covering all of the Common Area and all other land, Improvements or spaces owned, leased, operated or otherwise used by the Association, whether or not leased to or used by a third party. Coverage shall include without limitation liability for property damage (including deaths arising from the operation, maintenance, repair, restoration or management of the Common Area) or from personal injury (including liability arising out of litigation related to employees of the Association). Coverage shall be in amounts generally required by private institutional mortgage investors for projects similar in construction, location and use, but in any event shall be not less than \$3,000,000 for personal injury, including deaths of persons, arising out of a single occurrence, and not less than \$3,000,000 for property damage arising out of a single occurrence. The policy or policies shall list the Association as "named" insured, and the Board and the Owners as additional insureds, and shall include a cross liability endorsement or other provision of similar effect. Without limiting the foregoing, California Civil Code Section 1365.9 currently provides that any cause of action in tort against any Owner arising solely by reason of an ownership interest in the Common Area shall be brought against the Association and not against the individual Owner so long as the Association maintained and had in effect, both at the time the alleged act or omission occurred and at the time the claim is made, general liability insurance in the minimum amount of \$2,000,000. The Association shall maintain insurance in such amount as may be prescribed in order to qualify for the protections provided by California Civil Code Section 1365.9.
5. **Workers' Compensation.** The Association shall obtain such workers' compensation insurance and employee liability insurance as it may deem prudent, and in any event at least to the extent required under any

applicable law.

6. **Reimbursement of Declarant.** The premiums for any of the insurance policies procured pursuant to this Section 4.9, if paid by Declarant and not prorated between Owners and Declarant in the closing escrows for the Lots, shall be prorated between Declarant and the Association on the basis of a 360 day year as of the date on which Regular Assessments commence, and the Association shall reimburse Declarant for that portion of any premiums applicable to the period from and after said date. Nothing contained in this Section 4.9, however, shall relieve Declarant from its obligation to pay the pro rata share of insurance premiums attributable to each Lot owned by Declarant until such time as the Lot is transferred of record by Declarant.
7. **Bonds.** The Association shall obtain blanket fidelity bonds for all officers, directors, trustees and employees of the Association, and for all other persons handling or responsible for Association funds. If the Association has delegated any responsibility for the handling of funds to a management agent, a bond shall be obtained covering all management agent officers, employees and agents handling or responsible for Association funds. The amount of coverage shall be based upon the best business judgment of the Board, but shall not be less than the lesser of: (a) the estimated maximum amount of funds, including reserve funds, in the custody of the Association or the management agent at any given time during the term of the bond; or (b) the sum of three months assessments on all Lots plus reserve funds. The bonds shall name the Association as an obligee and shall contain a waiver by the issuers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions. The bonds shall also provide that they may not be canceled or substantially modified (including cancellation for non payment of premium) without at least ten days written notice to the Association and each Owner.
8. **Board Members' and Officers' Liability.** The Association shall obtain a policy or policies of insurance covering the Owners, individually or collectively, and the Directors and officers of the Association, individually or collectively, against claims arising out of or based upon negligent acts, errors, omissions or alleged breaches of duty of any Director or any officer, while acting in its capacity as such, in an amount equal to at least the minimum amount specified in Section 1365.7(a)(4) of the California Civil Code.
9. **Adjustment of Losses.** Each Owner irrevocably appoints the Board as its attorney in fact to negotiate and agree on the value and extent of any loss under a policy of insurance carried by the Association pursuant to any of

the provisions of this Section. The Board shall have full right and authority, by and on behalf of each and all Owners, to compromise any claim, enforce any claim by legal action or otherwise, and release and discharge any insurer.

10. **FNMA and FHLMC Requirements.** Notwithstanding any provision to the contrary elsewhere in this Declaration, the Association shall continuously maintain in effect such fire, casualty and liability insurance and fidelity bonds meeting the insurance and fidelity bond requirements for planned developments established by the Federal National Mortgage Association (or the Federal Home Loan Mortgage Corporation) so long as said agency(ies) has notified the Association in writing that it is a Mortgagee, Owner of a Lot, or an insurer of any Mortgage or under contract to purchase a Mortgage, except to the extent that such coverage is not available or has been waived in writing by the Federal National Mortgage Association (or the Federal Home Loan Mortgage Corporation). Such requirements may include without limitation an "Inflation Guard Endorsement."

ARTICLE 5 ASSESSMENTS AND ACCOUNTS

- 5.1 **Covenants to Pay.** Declarant and each Owner shall pay to the Association the Assessments and any Additional Charges levied pursuant to this Article 5.
 1. **Liability for Payment.** The obligation to pay Assessments shall run with the land so that each successive record Owner of a Lot shall in turn become liable to pay all such Assessments. No Owner may waive or otherwise escape personal liability for Assessments or release the Owner's Lot from the liens and charges hereof by non use of the Common Area, abandonment of the Lot or any other attempt to renounce rights in the Common Area or the facilities or services within the Property. Each Assessment shall constitute a separate assessment and shall also be a separate, distinct and personal obligation of the Owners of the Lot at the time when the Assessment was levied and shall bind the Owner's heirs, devisees, personal representatives and assigns. Any Assessment not paid when due shall be delinquent. A successor Owner shall not be liable for delinquent Assessments unless the personal obligation is expressly assumed by the successor Owner. No such assumption of personal liability by a successor Owner (including a contract purchaser under an installment land contract) shall relieve any Owner from personal liability for delinquent Assessments. After an Owner transfers fee title of record to a Lot, the Owner shall not be liable for any Assessment or Additional Charge thereafter levied against that Lot, except for Additional Charges related to delinquent Assessments previously levied. As described in

Sections 13.7 and 13.8, foreclosure of a lien for Assessment shall not impair or affect a First Mortgage lien.

2. **Funds Held in Trust; Purpose of Assessments.** The Assessments collected by the Association shall be held by the Association for and on behalf of the Owners and shall be used exclusively: (a) to promote the Owners' health, safety, recreation and welfare; (b) for the operation, care, repair, maintenance and improvement of the Common Area and any real or personal property in which the Association holds an interest as provided in this Declaration; and (c) to discharge any other Association obligations under the Governing Documents.
3. **Offsets.** No offsets against any Assessment shall be permitted for any reason, including without limitation any claim that the Association is not properly discharging its duties.
4. **Applicable Law.** All Regular and Special Assessments levied by the Board shall comply with the requirements of California Civil Code Section 1366, and to the extent applicable, California Civil Code Section 1363.03.

5.2 Regular Assessments.

1. **Date of Commencement of Regular Assessments.** Regular Assessments shall commence on all Lots in a Phase on the first day of the first calendar month following the first close of escrow for the sale by Declarant to an Owner other than Declarant of a Lot in such Phase; provided, however, that (a) Declarant may elect in its sole discretion to cause Regular Assessments for any or all Lots in a Phase to commence at any earlier date upon recordation of a Notice of Commencement of Assessments in the Official Records of the County stating such date; and (b) Regular Assessments on any Lot being used by Declarant as a model home shall not commence until the first day of the first month following termination of the use of the Lot as a model home. The Board shall fix the amount of the Regular Assessment against each Lot at least 30 days in advance of each Regular Assessment period. If, before the expiration of any fiscal year, the Association fails to fix Regular Assessments for the next fiscal year, the Regular Assessment established for the preceding year shall continue until a new Regular Assessment is fixed, and such failure to fix Regular Assessments shall not be deemed a waiver or modification of the Owners' obligation to pay Regular Assessments.
2. **Determination of Regular Assessments.** The Board shall prepare a Budget for each fiscal year; provided, however, that for the first fiscal year of the Association, the Budget shall be substantially based upon the operating budget approved by the DRE. All costs reasonably anticipated

to be paid by the Association during the fiscal year, including without limitation any administrative/management fee, any scheduled capital improvements or replacements, the continued funding of reserves, and the estimated total amount of funds to be raised from the Owners through the levy of Regular Assessments (the "Cash Requirement"), shall be identified and accounted for in the Budget. The Association shall generate the Cash Requirement for each fiscal year by levying equal Regular Assessments against all Lots in an aggregate amount equal to the Cash Requirement.

3. **Payment of Regular Assessments.** Regular Assessments for each fiscal year shall be established when the Board approves the Budget for that fiscal year. Regular Assessments shall be levied on a fiscal year basis; provided, however, that: (a) the first Regular Assessment shall be adjusted according to the number of months remaining in the Fiscal Year; and (b) each Owner may pay the Regular Assessment in 12 equal monthly installments, each installment payable on the first day of each calendar month during the fiscal year, so long as the Owner is not delinquent in the payment of any monthly installment. If an Owner fails to pay any monthly installment within 60 days after the date the installment was due, the Owner's right to continue to pay the Regular Assessment in monthly installments shall immediately terminate for that fiscal year unless otherwise determined by the Board.
4. **Exemptions from Regular Assessment.** Notwithstanding any provisions of Section 5.2.1 above to the contrary:
 - (a) **Residences.** An Owner shall be exempt from payment of that portion of the Regular Assessment which is allocated for defraying operating expenses and reserves directly attributable to the existence and use of the Owner's Residence, and any landscaping situated on the Owner's Lot, until the first to occur of the following events: (i) a notice of completion of construction of the Residence has been recorded; (ii) the Residence is occupied or otherwise used by the Owner or Person(s) authorized by the Owner; or (iii) completion of all elements of the Residences which the Association is obligated to maintain.
 - (b) **Other Common Areas.** All Owners shall be exempt from payment of that portion of the Regular Assessment which is allocated for operating expenses and reserves directly attributable to the existence and use of Improvements located on the Common Area that are not complete at the time Regular Assessments commence, until the date that: (i) a notice of completion of the Common Area Improvement(s) is recorded; or (ii) the Common Area Improvement(s) have been placed into use

Reimbursement Assessment. The Association may levy a Reimbursement Assessment against an Owner to reimburse the Association: (a) for the costs of repairing damage to the Common Area caused by that Owner or that Owner's Parties; or (b) for an expenditure of monies, including without limitation attorneys' fees, by the Association to bring the Owner or the Owner's Lot or Improvements into compliance caused by Owner's failure to comply with the Governing Documents; or (c) for a fine or penalty, so long as the Board has adopted a policy authorizing monetary fines and penalties, as described in Section 5.5. A Reimbursement Assessment shall be due and payable to the Association within 30 days after the date levied. A Reimbursement Assessment shall not be levied by the Association until Notice and Hearing Requirements in respect of an Owner have been satisfied. The limitations described in Section 5.6 shall not apply to Reimbursement Assessments. Notwithstanding any other provision in the Governing Documents expressed or implied to the contrary, Reimbursement Assessments are assessments but they may not be enforced by any lien rights provided in this Declaration, except that Reimbursement Assessments levied against an Owner under Sections 5.4(c) and 5.5 that remain unpaid may become a lien upon the affected Owner's Lot and the Association shall have all the rights

5.4

Special Assessments. Subject to the limitations set forth in Section 5.6, the Board may levy Special Assessments in addition to Regular Assessments for: (a) constructing capital improvements in the Common Area; (b) collecting any shortfall between the Association's expected income and estimated expenses for a fiscal year; (c) defraying, in whole or in part, the cost of any construction, reconstruction, unexpected repair or replacement of Improvements in the Common Area; or (d) paying such other costs as the Board may deem appropriate for the Project as a whole. Special Assessments shall be allocated equally among the Lots.

5.3

Automatic Assessment Increases for Additional Phases. Notwithstanding any other provisions of this Section 5.2, upon commencement of Assessments for each Phase after the first Phase, the Regular Assessment shall be automatically increased by the additional amount, if any, necessary to maintain the Common Area in such additional amount, so long as: (a) the Phase is permitted by the DRE; and (b) the amount of such increase does not result in the levy of a Regular Assessment which is greater than the maximum potential Regular Assessment disclosed in all Public Reports for the Project previously issued by the DRE. However, to minimize the need for frequent adjustments in the amount of the Regular Assessments during the development of the Property, the Board may stabilize the amount of the Regular Assessments invoiced to the Owners at a level amount calculated to defray the annual expenses of the Association during the time that Regular Assessments are fluctuating due to the periodic addition of Lots and Common Area.

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and remedies described in Sections 5.8 and 14.3 with respect to such Reimbursement Assessment

5.5 Monetary Penalties. The Board may adopt a policy imposing any monetary penalty on or charging any fee to any Owner for a violation of the Governing Documents by that Owner or that Owner's Parties. If the Board elects to do so, it shall adopt a schedule of the monetary penalties that may be assessed for those violations, consistent with the Governing Documents, and shall deliver a copy of the schedule either personally or by first-class mail, postage prepaid, to each Owner. Each time the schedule is modified, the Board shall again deliver a copy to each Owner, either personally or by first-class mail, postage prepaid.

5.6 Limitations on Increases.

1. **In General.** This Section 5.6 is intended to implement the limitations on increases in Regular and Special Assessments established by Section 1366 of the California Civil Code. To the extent that the limitations set forth in Section 1366 are amended or replaced, the limitations set forth in this Section 5.6 shall be automatically amended and replaced by the new statutory limitations. Further, if the limitations set forth in Section 1366 are repealed and not amended or replaced, the provisions of this Section 5.6 shall no longer have any force or effect.
2. **Limitation on Regular Assessment Increases in Excess of Twenty Percent.** Without the approval of a majority of a quorum of the Members obtained at a meeting or election of the Association, the Board shall be prohibited from levying a Regular Assessment which is more than 20% greater than the Regular Assessment for the immediately preceding fiscal year.
3. **Limitation on Special Assessment Increases in Excess of Five Percent.** Without the approval of a majority of a quorum of the Members obtained at a meeting or election of the Association, the Board shall be prohibited from levying Special Assessments within a single fiscal year which in the aggregate exceed 5% of the budgeted gross expenses for that fiscal year.
4. **Budget Distribution Limitation.** Without the approval of a majority of a quorum of the Members obtained at a meeting or election of the Association, the Board shall be prohibited from levying a Regular Assessment which is greater than the Regular Assessment per Lot for the immediately preceding fiscal year unless the Board has distributed a Budget in compliance with Section 1365(a) of the California Civil Code. The pro forma operating Budget requirements currently established by Section 1365(a) are set forth in Article 11 of this Declaration.
5. **Emergency Exceptions.** The limitations set forth in Sections 5.6.2, 5.6.3

and 5.6.4 above shall not apply to any Special Assessment or any increase in Regular Assessments necessary for: (a) extraordinary expenses required by an order of a court; (b) extraordinary expenses necessary to repair or maintain a discovered threat to personal safety in the Property or any part of it for which the Association is responsible; or (c) extraordinary expenses necessary to repair or maintain the Property or any part of it for which the Association is responsible that could not have been reasonably foreseen by the Board when it prepared and distributed the Budget or Budget summary to the Members. Prior to the imposition or collection of an assessment pursuant to clause (c) above, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expenses involved and why the expense was not or could not have been reasonably foreseen in the budgeting process. The resolution shall be distributed to the Members with the notice of increased Assessment.

6. **Quorum and Meeting.** For the purpose of this Section 5.6, a quorum means more than 50% of the Voting Power of the Association. Any meeting or election of the Association for the purposes of complying with this Section 5.6 shall be conducted in accordance with the Bylaws.
7. **Notice of Increased Assessments.** The Board shall provide notice by first class mail to the Owners of any increase in Regular Assessments or the levy of any Special Assessments not less than 30 and not more than 60 days prior to the increased Regular Assessment or Special Assessment becoming due.

5.7 Accounts.

1. **Types of Accounts.** Assessments collected by the Association shall be deposited into at least two separate accounts with a responsible federally insured financial institution, which accounts shall be clearly designated as: (a) the "Current Operation Account"; and (b) the "Reserve Account." However, these accounts may be combined for the purpose of qualifying for more favorable terms or interest rates so long as the accounting records for the Association clearly reflect deposits and disbursements to each account so the funds will be used for the proper purpose. The Board shall deposit those portions of the Assessments collected for current maintenance and operation into the Current Operation Account and shall deposit those portions of the Assessments collected as reserves for replacement and deferred maintenance of major components which the Association is obligated to repair into the Reserve Account.
2. **Reserve Account.**

- (a) Withdrawal of funds from the Reserve Account shall require the signatures of either two Directors or one Director and one officer of the Association who is not a Director
 - (b) The Board shall expend funds collected for the Reserve Account only for: (i) the repair, restoration, replacement, or maintenance of, or litigation involving the repair, restoration or maintenance of those Common Area Improvements which the Association is obligated to repair, restore, replace or maintain and for which the Reserve Account was established; and (ii) such other purposes as are expressly authorized by law or the Governing Documents.
 - (c) Notwithstanding Section 5.7.2(b) above, and so long as authorized by Civil Code Section 1365.5, the Board may authorize the temporary transfer of money from the Reserve Account to the Current Operation Account to meet short-term cash flow requirements or other expenses as long as the Board has made a written finding, recorded in the minutes, explaining the reasons why the transfer is needed and describing when and how the money will be repaid to the Reserve Account. The transferred funds shall be restored to the Reserve Account within one year of the date of the initial transfer, unless the Board makes a finding supported by documentation that a temporary delay would be in the best interests of the Property. If the Board makes such a finding, the Board may delay the restoration until the time which the Board reasonably determines is necessary. The Board shall exercise prudent fiscal management in maintaining the integrity of the Reserve Account; and if necessary, the Board shall levy a Special Assessment to recover the full amount of the expended funds within the time limits required by this Section 5.7.2. Any Special Assessment levied pursuant to the preceding sentence is subject to the limitations imposed by Section 5.6.
 - (d) When a decision is made to use Reserve Account funds or to temporarily transfer money from the Reserve Account to pay for litigation, the Association shall notify the Members of that decision, and of the availability of an accounting of these expenses, in the next mailing to the Members of a written notice or report, as defined in Section 5016 of the Corporations Code. The Association shall prepare a quarterly accounting of expenses related to the litigation. The accounting shall be available for inspection by Members at the Association's office, and the Members shall also be given notice of such availability.
3. **Current Operation Account.** All other costs properly payable by the

Association shall be paid from the Current Operation Account.

4. **Statement of Outstanding Charges.** Within ten days of a written request by an Owner, the Association shall provide to the Owner a written statement which sets forth the amounts of delinquent assessments, penalties, attorneys' fees and other charges against that Owner's Lot. The Association may charge a fee for the statement, not to exceed the reasonable costs of preparation and reproduction of the statement.

5.2 Enforcement of Assessments.

1. **Annual Statement of Policies.** The Board shall annually distribute, not more than 60 days prior to 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 Regular Assessments, Special Assessments and Reimbursement Assessments, including without limitation the recording and foreclosing of liens against Owners' Lots.
2. **Enforcement Procedures.** In addition to all other remedies provided by law, the Association, or its authorized representative, may enforce the obligations of the Owners to pay the Assessments provided for in this Declaration in any manner provided by law, and by either or both of the following procedures:
 - (a) **By Suit.** The Association may commence and maintain a suit at law against any Owner personally obligated to pay a delinquent Assessment. The suit shall be maintained in the name of the Association. Any judgment rendered in any action shall include the amount of the delinquency, Additional Charges (and any other amounts as the court may award. A proceeding to recover a judgment for unpaid Assessments may be maintained without the necessity of foreclosing or waiving the lien established herein.
 - (b) **By Lien.** The Association or a trustee nominated by the Association may commence and maintain proceedings to establish and/or foreclose assessment liens for defaults by Owners in the payment of Assessments (the Association's ability to do so with respect to Reimbursement Assessments is limited by Section 5.4). Fifteen days after the occurrence of any such default, the Association may give a courtesy notice to the defaulting Owner or Owners demanding payment.

Before the Association may record a notice of delinquent assessment ("Notice of Delinquent Assessment") and place a lien on the delinquent Owner's Lot, and provided that the Assessment has remained delinquent for at least 15 days, the Association must: (i) notify the Owner in writing by certified mail of the fee and penalty procedures and collection practices of

the Association, including the right of the Association to recover from the Owner the reasonable costs of collection; and (ii) provide the Owner with an itemized statement of the charges owed by the Owner, including separate itemizations of the principal owed, any late charges, the method of calculation and any attorney's fees. Any payment toward such debt shall be applied first against the principal owed, and only after the principal owed is paid in full shall such payments be applied to interest or collection expenses. If the amount of the delinquency plus interest and late payment charges is not paid within ten days after delivery of the notice described above, the Association may record a Notice of Delinquent Assessment against and place a lien on the Lot for which there is a delinquent assessment.

For purposes of this Section 5.8, the Owner or Owners of a Lot for which there is a delinquent Assessment shall be referred to as a "delinquent Owner" or "delinquent Owners."

No action shall be brought to foreclose a lien until the lien is created by recording a Notice of Delinquent Assessment which shall state: (A) the name or names of the delinquent Owner or Owners; (B) a legal description of the Lot against which notice of delinquent assessment is made; (C) the amount claimed to be due and owing; (D) that the notice of delinquent assessment is made by the Association pursuant to the terms of this Declaration (giving the date of execution and the date, book and page references of the recording thereof in the Office of the County Recorder); (E) the name and address of the trustee authorized by the Association through exercise of its rights of substitution of trustee pursuant to Civil Code Sections 1367(e) and 2934a to conduct a non judicial sale; and (F) that a lien is claimed against the Lot in an amount equal to the amount of the stated delinquency plus interest thereon from the date of delinquency, late payment charges, costs and reasonable attorneys' fees. The Notice of Delinquent Assessment shall be signed by an Officer of the Association, and shall be mailed to all record Owners of the Lot in the manner set forth in Civil Code Section 2924b within ten days of the date of recordation. The lien shall attach immediately upon recordation of the Notice of Delinquent Assessment subject only to the limitations hereinafter set forth. The lien shall not be affected by any sale or transfer of the Lot. Each default shall constitute a separate basis for a lien.

Provided that 30 days have passed since the recordation of the Notice of Delinquent Assessment, any such lien may be foreclosed by appropriate action in court or in the manner provided in Section 1367 of the Civil Code. In the event foreclosure is by action in court, reasonable attorneys' fees shall be allowed. In the event foreclosure is under power of sale, the Board, or any person designated by it in writing, shall be deemed to be acting as the agent of the Association for conduct of the sale and shall be entitled to expenses and such fees as may be allowed by law or as may be prevailing at the time the sale is conducted. The Association, acting on behalf of the Owners, shall have the right to bid on the Lot of the delinquent Owner or Owners at the foreclosure sale and to acquire, hold, lease, mortgage and convey for valuable consideration the Lot.

3. **Additional Charges.** In addition to any other amounts due or any other relief or remedy obtained against an Owner who is delinquent in the payment of any assessments, each Owner agrees to pay such Additional

Charges as the Association may incur or levy in the process of collecting from that Owner monies due and delinquent ("Additional Charges"). All Additional Charges shall be included in any judgment in any suit or action brought to enforce collection of delinquent Assessments or may be levied against a Lot as a Reimbursement Assessment. Additional Charges shall include, but not be limited to, the following:

- (a) **Attorneys' Fees.** Reasonable attorneys' fees and costs incurred in the event an attorney(s) is employed to collect any Assessment or sum due, including Additional Charges, whether by suit or otherwise;
 - (b) **Late Charges; Collection Costs.** Late charges and collection costs in the amounts to be fixed by the Board in accordance with Section 1366(e)(2) of the Civil Code, any successor statute or other applicable laws of the State of California; provided, however, in the absence of a statute limiting the amount of late charges, such reasonable amounts as the Board may require to compensate the Association for additional collection costs incurred in the event any assessment or other sum is not paid when due;
 - (c) **Costs of Suit.** Costs of suit and court costs incurred as are allowed by the court;
 - (d) **Interest.** Interest on the delinquent Assessment and Additional Charges at a rate fixed by the Board in accordance with Section 1366(e)(3) of the California Civil Code, any successor statute or other applicable laws of the State of California or, in the absence of such a statute or other applicable laws, such reasonable rate as the Board may set; and
 - (e) **Other.** Any such other additional costs that the Association may incur in the process of collecting delinquent Assessments or sums.
4. **Certificate of Satisfaction of Lien.** Upon payment or other satisfaction of a Delinquent Assessment for which a Notice of Delinquent Assessment was recorded, the Association shall record, at the delinquent Owner's cost, a certificate stating the satisfaction and release of the assessment lien.
 5. **Waiver of Homestead Protections.** Each Owner hereby waives, to the extent permitted by law, the protections of any declared homestead or homestead exemption or redemption laws under the laws of California as applied to any action to enforce or collect Assessments levied by the Association.

5.9 **Subordination of Lien.** Notwithstanding any provision to the contrary, the liens

for Assessments created pursuant to this Declaration shall be subject and subordinate to and shall not affect the rights of the holder of a First Mortgage made in good faith and for value. For purposes of this Section 5.9, a Mortgage may be given in good faith or for value even though the Mortgagee has constructive or actual knowledge of the Assessment lien provisions of this Declaration.

ARTICLE 6 DECLARANT'S RIGHTS

- 6.1 **Declarant Exemption.** Declarant (or its successors or assigns) intends (but is not obligated) to construct Residences and develop all of the Lots at the Property. The completion of that work, and the sale, resale, rental and other disposition of Lots, is essential to the establishment and welfare of the Project as a quality residential community. In order that development of the Property may be completed and the Project established as a fully occupied residential community as rapidly as possible, neither the Association nor any Owner shall take any action that would or could interfere with, and nothing in this Declaration shall be understood or construed to:
- (a) Prevent Declarant, its successors or assigns, or any of their contractors or subcontractors, from doing on any portion of the Property owned or controlled by them whatever they determine to be necessary or advisable in connection with the development of the Project, including without limitation altering of construction plans and designs as Declarant deems advisable in the course of development; or
 - (b) Prevent Declarant, its successors or assigns, or any of their contractors or subcontractors, from erecting and maintaining on any portion of the Property owned or controlled by them, such Improvements as may be reasonably necessary to conduct the business of completing such work and establishing the Property as a residential community and disposing of the same by sale, resale, lease or otherwise; or
 - (c) Prevent Declarant, its successors or assigns, or any of their contractors or subcontractors, from conducting on any Lot owned or controlled by them, the business of developing, altering, subdividing, grading and constructing Residences and other Improvements on the Property as a residential community and of disposing of Residences thereon by sale, lease or otherwise; or
 - (d) Prevent Declarant, its successors or assigns or any of their contractors or subcontractors, from maintaining such signs on any

portion of the Property owned or controlled by them as may be necessary or desirable in connection with the sale, lease or marketing of Lots and Residences in the Property; or

- (e) Prevent Declarant, at any time prior to acquisition of title to a Lot by a purchaser from Declarant, to create additional licenses, reservations and rights of way for the benefit of itself, utility companies, or others in, over or against the Lot, as may from time to time be reasonably necessary to the proper development and disposition of the Property; or
- (f) Prevent Declarant from unilaterally modifying its development plan for the Property and any additional Phase, including without limitation increasing the number of Lots and/or Residences, changing the exterior appearance of the Residences and/or Common Area Improvements, designating and redesignating Phases and constructing Residences of larger or smaller sizes, value or of different types.

6.2 Declarant's Rights with Respect to Construction and Notice. Declarant need not seek or obtain Design Review Committee approval of any Improvement that Declarant constructs, installs or plants on the Property. Declarant, in the exercise of its rights under this Section 6.2, may not unreasonably interfere with any other Owner's use of the Common Area. The Association shall provide Declarant with all notices and other documents to which an Owner is entitled pursuant to this Declaration, provided that Declarant shall be provided such notices and other documents without making written request therefore. Commencing on the date on which Declarant no longer has a representative on the Board, and continuing until the later to occur of the date on which Declarant: (a) no longer owns a Lot at the Property; or (b) cannot unilaterally annex Additional Property to the Property, the Association shall provide Declarant with written notice of all meetings of the Board as if Declarant were an Owner; and Declarant shall be entitled to have a representative present at all such Board meetings ("Declarant's Representative"). The Declarant's Representative shall be present in an advisory capacity only and shall not be a Board member or have any right to vote on matters coming before the Board.

6.3 Changes to Subdivision and Parcel Maps. At anytime within three (3) years from the date that the first Lot in a Phase is conveyed to homebuyer, the boundaries of any Lot or Common Area in that Phase may be modified by a lot line adjustment or other change reflected on a subsequently recorded Record of Survey, parcel map, final map or amended final map, provided that the modified boundaries are approved by Declarant and all Owners of the Property involved in the boundary adjustment (including the Board, with respect to property owned in the Association), which approval shall not be unreasonably withheld. Any such

modification shall be effective upon recordation of the Record of Survey or map and, upon such recordation, the boundaries of the modified Lot or Common Area shall be modified for purposes of this Declaration to conform to the boundaries as shown on the Record of Survey or map.

- 6.4 **Supplemental Declarations.** Declarant shall have the right to record one or more Supplemental Declarations affecting all or part of the Property.

ARTICLE 7 USE RESTRICTIONS

- 7.1 **Use of the Common Area.** The Common Area is intended for the use and enjoyment of the Owners, subject to any express limitations set forth in the Governing Documents. The Board may promulgate, administer and enforce Rules and Regulations concerning the use of the Common Area by Owners and Owner's Parties. There shall be no use of the Common Area by persons other than Owners and Owner's Parties. The Board may limit the number of Owner's Parties that may use any recreational facilities that are part of the Common Area. Owner's Parties shall abide by the terms of the Governing Documents and Rules and Regulations as each may be amended from time to time, in their use of the Common Area. Except as specifically allowed in this Declaration, neither Declarant, the Association nor any Owners or Owner's Parties may: (a) obstruct the Common Area; (b) store anything in the Common Area without the prior written consent of the Board, except by the Association in areas designated for the storage of Association property, if any; or (c) commit waste in the Common Area.
- 7.2 **Residential Use.** Each Lot shall be used exclusively for residential purposes except as otherwise provided in this Article 7. Notwithstanding any provision to the contrary herein, Declarant shall be allowed to use Residences as sales models
- 7.3 **Commercial Activity.** No commercial enterprise, trade or activity shall be conducted in or upon a Lot or Residence, either directly or indirectly unless it satisfies all of the following requirements: (a) the use shall be clearly incidental and secondary to the use of the dwelling as a Residence; (b) the use shall be conducted entirely within the Residence and carried on only by the inhabitants thereof; (c) no article shall be sold or offered for sale from the Lot or Residence; (d) the use shall not generate vehicular or pedestrian traffic in excess of that which is normally associated with single family residential use and shall require no additional parking spaces; (e) no professional equipment, apparatus or business equipment or trucks shall be kept or stored on the Lot; (f) the use shall not involve any exterior indication of the home occupation or alteration of the Residence to adopt to the home occupation; (g) the use shall not involve the use of an exterior sign, and shall not create noise, odor, dust, fumes, vibration, smoke, electrical interference, or other interference with the residential use of adjacent Lots; (h) no Person who is not a full-time resident shall be employed in the Residence or

dispatched from the Residence; and (i) the home occupation shall have no advertising of the home address in the telephone book, newspapers, world-wide web or other media of any kind. Nothing herein or elsewhere in this Declaration shall preclude any Owner from providing residential child care services in accordance with all applicable statutes, ordinances and other State and County requirements.

- 7.4 Lease.** No Owner may lease or permit subleases of less than the entire Residence. No Owner may lease a Residence for transient or hotel purposes (a rental for any period less than 30 days or a rental which includes providing the occupants with customary hotel service such as room service for food and beverage, maid service, laundry and linen service or bellhop service). Unless the Board otherwise provides, any permitted lease of a Residence shall be in writing and shall provide that: (a) its terms are subject in all respects to the Governing Documents and the resolutions of the Board; and (b) any failure of the lessee to comply with the terms of the foregoing shall be a default under the lease and a failure to perform a condition and covenant of the lease. Within ten days after commencement of a lease or sublease, the Owner shall submit to the Board a statement signed by each lessee of the Residence, on a form provided by the Board, in which each lessee agrees to abide by all of the provisions of this Declaration, the Bylaws, the rules and regulations of the Association and the resolutions of the Board. Any breach of the foregoing by a lessee shall be considered to be a breach by the Owner of the leased Residence. Other than as set forth in this Section 7.4, there is no restriction in this Declaration on the right of an Owner to lease its Residence.

7.5 Parking and Vehicular Restrictions.

1. **Authorized Vehicles.** The following vehicles are Authorized Vehicles: standard passenger vehicles, including without limitation automobiles, passenger vans designed to accommodate ten or fewer people, motorcycles, sport utility vehicles and pick up trucks having a manufacturer's rating or payload capacity of one ton or less. Authorized Vehicles may be parked in any portion of the Property intended for parking of motorized vehicles; provided, however, that no Owner may park his or her vehicle in a manner which either restricts the passage of pedestrians or vehicles over streets or sidewalks within the Property or extends beyond the limits of the space where the vehicle is parked.
2. **Restricted Vehicles.** The following vehicles are Restricted Vehicles: (a) commercial type vehicles (e.g., stakebed trucks, tank trucks, dump trucks, step vans, concrete trucks, limousines, etc.); (b) buses or vans designed to accommodate more than ten people; (c) vehicles having more than two axles; (d) trailers, inoperable vehicles or parts of vehicles; (e) aircraft, other similar vehicles or any vehicle or vehicular equipment deemed a nuisance by the Board. Restricted Vehicles may be parked completely

within enclosed garages, but may not be parked, stored or kept on any private street within, adjacent to or visible from the Property or any other Common Area parking area except for brief periods for loading, unloading, making deliveries or emergency repairs. If a vehicle qualifies as both an Authorized Vehicle and a Restricted Vehicle, then the vehicle is presumed to be a Restricted Vehicle, unless the vehicle is expressly classified as an Authorized Vehicle in writing by the Board.

3. **General Restrictions.** All vehicles owned or operated by or within the control of an Owner or a resident of an Owner's Lot and kept within the Property must be parked in the garage of that Owner, provided that each Owner shall ensure that any such garage accommodates at least two Authorized Vehicles having four or more wheels. No repair, maintenance or restoration of any vehicles may be conducted on the Property except within an enclosed garage when the garage door is closed, 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.
4. **Parking Regulations.** Owners and Owners' Parties shall park only in areas designated by the Association for parking, and shall comply with all signs prohibiting or restricting parking or designating specified areas for parking. Without limiting the foregoing, only guests shall park in the parking areas designated for guest parking. There shall be no parking in the Motor Courts at any time. The Board may establish additional regulations regarding any parking areas not assigned to individual Lots, including without limitation designating "parking," "guest parking," and "no parking" areas thereon, and may enforce all parking and vehicle use regulations applicable to the Property, including removing violating vehicles from the Property at the sole cost of the owner of the vehicle pursuant to California Vehicle Code Section 22658.2 or other applicable ordinances or statutes.
5. **Recreational Vehicle Parking.** Recreational Vehicles such as motor homes, travel trailers, camper vans, boats or other vehicles identified by the Board as Recreational Vehicles may not be parked within the Project, except in an approved recreational vehicle parking space entirely within the back yard of a Lot and only after such space has been improved with a concrete pad to accommodate such parking in accordance with the requirements of the City. Such a space may be constructed by an Owner only with Design Review Committee approval and if allowed by applicable City ordinances. Any such parking area must be accessible from the driveway on the Lot. The Association shall monitor compliance with the requirements of this provision. The Board may also establish requirements for screening the recreational vehicle parking areas from the

view of adjacent homes and the street.

- 7.6 **Garages.** Garage doors shall be closed when garages are not in use (the fact that a vehicle is parked in a garage shall not constitute "use"). Except with respect to model homes maintained by Declarant, garages shall be kept sufficiently clear so as to permit parking of the number of vehicles for which the garage was designed, and no storage shall be permitted in any garage or covered parking space that interferes with the ability to park vehicles therein for an extended period of time.
- 7.7 **Pets and Animals.** An Owner may keep a reasonable number of uncaged household pets within that Owner's Lot as long as the animals are maintained in accordance with all applicable laws. Each Owner may also maintain a reasonable number of small caged animals, birds or fish. Unless the Rules and Regulations increase the number or type of animals which may be kept, no other animals or pets are permitted in the Project. No horses are permitted under any circumstances. The Board shall have the right to prohibit the keeping within the Project of any pet which, after Notice and Hearing, is found to be a nuisance to other Owners. No animals may be kept, bred or maintained for any commercial purposes. No dog shall be allowed in the Common Area unless it is under the control of a responsible person by leash or other means. Each Owner or Invitee shall restore the Common Area to the condition it was in immediately preceding its use by any dog for which such Owner or Invitee is responsible.
- 7.8 **Landscaping.** The Association will maintain front yard landscaping within the Lots. Each Owner shall maintain all landscaping within its Lot that is visible to other Owners and is not so maintained by the Association in a neat and attractive condition, including all necessary landscaping and gardening, and maintain and periodically replace when necessary any trees, plants, grass and other vegetation. The Board may adopt rules and regulations to regulate landscaping permitted and required on Lots. If an Owner fails to maintain landscaping in conformance with this Section, the Association may, after Notice and Hearing, either: (a) exercise any remedies at law or in equity which it may have to correct the condition; or (b) enter upon the Lot and correct the condition, whereupon the Association shall levy a Reimbursement Assessment against the Owner for reasonable charges in connection with the correction and the Owner shall immediately pay such Reimbursement Assessment.
- 7.9 **Fences, Hedges and Walls.** No fence, hedge, wall or other dividing instrumentality over six feet in height measured from the ground on which it stands shall be constructed or maintained on any Lot, unless constructed by Declarant in accordance with its architectural plans. Maintenance of fences and walls shall be performed in accordance with the requirements of Section 9.2 below. No gate shall be placed in any fence or wall lying on the boundary between a Lot and a Common Area parcel, except by Declarant in accordance with its architectural plans. Fences shall be installed in accordance with the

City's zoning regulations pertaining to fences.

7.10 Signs. No sign, advertisement, poster, bill or notice of any kind (including without limitation political and commercial signs) shall be displayed to the public view on or from any Lot or the Common Area without the prior written consent of the Board, except for: (a) Property identification signs maintained by Declarant; (b) a single sign, indicating the number of the Residence and the name of the Owner, which has been approved as to design, size and location by the Board; (c) a single sign of customary and reasonable dimensions advertising any Lot for sale, lease or rent and placed on the Lot; (d) signs required by legal proceedings; (e) signs maintained by Declarant in connection with its development and sales activities; and (f) such signs as are expressly permitted by law. The determinations of the Board shall be subject to Sections 712 and 713 of the California Civil Code and any successor or similar statutes, ordinances or other laws. All signs displayed in the Project shall be attractive and compatible with the design of the Project and shall comply with all applicable local ordinances.

7.11 Laundry. No exterior clotheslines shall be erected or maintained, and there shall be no drying or laundering of clothes on the Common Area or the open portion of any Lot. Garments, rugs or similar items shall not be hung from windows or the facades of Residences or other Improvements, and rugs, mats or similar items shall not be dusted or cleaned by beating from or against windows or facades of Residences or other Improvements.

7.12 Exterior.

1. **Antennas, Satellite Dishes, etc.** Without the prior written authorization of the Design Review Committee, no Owner shall install any television, FM, AM, or amateur radio antenna or satellite dish, air conditioning unit, electrical or telephone wiring, or similar thing on the exterior of a Residence or other Improvement or in such a manner that it protrudes through a wall or the roof of a Residence or other Improvement unless in replacement of equipment originally installed by Declarant and identical in form and function to the equipment so replaced. Subject to Section 714 of the Civil Code, installation of solar energy systems (as defined in Civil Code Section 801.5) shall require the approval of the Design Review Committee. All ground mounted equipment shall be screened from view with structures or landscaping consistent with this Declaration. Notwithstanding the foregoing, subject to such reasonable restrictions as the Association may from time to time establish (subject to Section 1376(b) of the Civil Code), an Owner may install and use a video or television antenna, including a satellite dish, that has a diameter or diagonal measurement of 36 inches or less, provided that such antenna (or satellite dish) is not visible from any Common Area. Whenever approval is required for the installation of a video or television antenna, including a

satellite dish, the application for approval shall be processed by the Design Review Committee in the same manner as an application for approval of an architectural modification to the Property as described in Article 10, and the issuance of a decision on the application shall not be willfully delayed.

2. **Sports Equipment.** No basketball standards, sports apparatus or similar equipment ("Sports Equipment") shall be attached to the exterior of any Residence or permanently installed on any Lot unless first approved by the Design Review Committee in accordance with the provision of Article 10 below. Sports Equipment may be temporarily placed (but not permanently installed) on a Lot in accordance with the Rules and Regulations.
- 7.13 **Temporary Buildings.** No outbuilding, tent, shack, shed or other temporary building or Improvement may be placed upon any portion of the Property either temporarily or permanently, without the prior written consent of the Board and approval by the Design Review Committee (except temporary Improvements constructed by Declarant in connection with its development of the Property). No garage, carport, trailer, camper, motor home, recreation vehicle or other vehicle may be used as a residence on the Property, either temporarily or permanently.
- 7.14 **No Nuisances; Plants and Pests.** No noxious or offensive activities may be carried on upon the Property or on any public street abutting or visible from the Property. No horns, whistles, bells or other sound devices, except security devices used exclusively to protect the security of a Residence and its contents, may be placed or used on any Lot. Noisy, unsightly, unusually painted or smoky vehicles, large power equipment and large power tools (excluding lawn mowers and other equipment utilized in connection with ordinary landscape maintenance), off-road motor vehicles or other 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, used or placed in the Property or on any public street abutting the Property, or exposed to the view of other Owners without the Board's prior written approval. The Board shall have discretion to determine if any noise, odor, or activity producing such notice or odor constitutes a nuisance. No Owner may: (a) permit or cause anything to be done or kept on the Property or on any public street abutting the Property which may (i) increase the rate of insurance on the Common Area, (ii) result in the cancellation of such insurance, or (iii) obstruct or interfere with the rights of other Owners; or (b) commit or permit any nuisance thereon or violate any law. No Residence shall be permanently occupied by any more than two (2) persons per bedroom. Each Owner shall comply with all requirements of the local or state health authorities and with all other applicable laws, rules and regulations regarding occupancy and use of a Residence. Each Owner shall be liable to the Association and other Owners for the conduct and behavior of all of such Owner's Parties. Any damage to the Common Area, personal property of the Association, other areas

maintained by the Association or property of another Owner caused by such Owner or Owner's Parties shall be repaired at the sole expense of the Owner of the Lot where such Persons are residing or visiting. Neither an Owner nor any Owner's Parties shall permit any thing or condition which would induce, breed or harbor infectious plant diseases or noxious insects or vermin.

7.15 Drainage.

- (a) Each Lot has certain drainage facilities and features, such as lot grades, drainage swales, underground area drains and subdrains (collectively, "Drainage Facilities"), which were installed to provide positive drainage for the Lot and transport storm waters away from the Lots for the benefit of the Lot and other Lots. Some of these Drainage Facilities are on the surface of the Lot; others may be well below the surface. If Drainage Facilities are interrupted, blocked, filled, destroyed or otherwise altered, serious damage can result. Without limiting any other provision of this Declaration, each Owner shall maintain the Drainage Facilities on its Lot in good condition and repair, and shall use due care to avoid damaging any sub-surface Drainage Facilities by properly investigating sub-surface conditions before digging or excavating, and shall promptly repair any damage that may occur to any Drainage Facilities on the Lot. If a Residence constructed by Declarant has a roof gutter system and down spouts which are directly connected to the Project's storm drainage system, the Residence shall remain connected to the Project storm drainage system at all times. The Owner of such a Residence may not alter the Residence in any manner which results in additional roof waters draining anywhere other than directly into the Project's storm drainage system.
- (b) There shall be no interference with or alteration of the established Drainage Facilities over any Lot or the Common Areas without the prior written consent of the Board and any public authority having jurisdiction, and any such alteration shall have been designed, and its implementation shall be supervised and inspected, by a qualified, licensed civil engineer. This Declaration provides notice to each Owner to devote great care and attention to grading and to establishing and maintaining positive drainage away from the entire foundation line of the Owner's Residence. Positive drainage is achieved by shaping Lot grades, establishing drainage "swales" or installing underground area drains. The swales and drains provide a receptacle and conduit to drain water away from the foundation, and the rear, side and front of the Residence to offsite drainage disposal. Swales also prevent drainage water from

moving across a Lot to another Lot, Common Area or other property. This Declaration also provides notice to each Owner that if existing drainage swales established on the Lot and around the Residence are interrupted, blocked, filled, or otherwise altered, serious damage can result. Drainage must not be allowed to pond in a yard or run against or under a Residence, foundation, garage floor, driveway or other Improvement.

- 7.16 Hydrocarbon and Mineral Exploration and Extraction; Storage Tanks.** No water drilling, oil drilling, mineral estate development or refining, and no quarrying or mining operations of any kind shall be permitted on the Property, nor shall oil wells, tanks, tunnels or mineral excavations be permitted upon the surface, or within 500 feet of the surface, of the Property, nor shall derricks or other structures designed for use in drilling for water, oil, natural gas, steam or other hydrocarbons or minerals be erected, maintained or operated upon any portion of the Property. No tank or tower, whether above or below the ground, shall be kept on any Lot, or portion of the Common Area for the storage of any petroleum substance or any other toxic or hazardous substance.
- 7.17 No Insurance Burden.** Nothing shall be done or kept in any Lot or portion of the Common Area which would increase the rate of insurance or result in the cancellation of insurance on the Common Area or any part of the Property without the prior written consent of the Board. The Board may levy a Reimbursement Assessment against any responsible Owner to reimburse the Association for any such increase in the rate of insurance, provided that the responsible Owner was given notice and opportunity to be heard in accordance with Section 14.2.
- 7.18 Trash Disposal.** Trash, garbage, or other waste shall be kept only in sanitary containers. No Owner shall permit or cause any trash or refuse to be kept within any portion of the Property other than in customary receptacles. Except on the scheduled day for trash pickup (and the night before), these receptacles shall be located only inside a Residence or its garage, or places specifically designated for such purpose that are screened from view from the street or any other Lot. If required by the refuse and recycling pickup service, each Owner shall bring its refuse and recycling receptacles to pickup areas designated by the Association. Parking in the vicinity of the refuse, recycling and trash pickup areas shall be limited (as deemed necessary by the EU Department) on refuse collection days, which are anticipated to occur on one designated day each week.
- 7.19 No Further Subdivision.** No Lot may be further subdivided without the prior written approval of the Board, except by Declarant.
- 7.20 Privacy and Views.** Notwithstanding anything in this Declaration or any other agreement or instrument to the contrary, neither Declarant nor the Association guarantees, represents or warrants any privacy or protected views within the

Property, and no Lot is assured privacy or the existence or unobstructed continuation of any particular view, and any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed. If there is a dispute between Owners concerning the obstruction of a view from a Lot, the dispute shall be a private dispute which shall be resolved between the Owners without involving the Design Review Committee, the Board, Declarant or the Association in any manner, and if the Association incurs any costs or expenses (including without limitation attorneys' fees) in connection with any such dispute, the Association may, after Notice and Hearing, levy a Reimbursement Assessment for such costs and expenses against the Owner or Owners involved.

- 7.21 **Master Declaration.** The Property is subject to the terms and conditions of the Master Declaration, including without limitation all use restrictions and other restrictive covenants set forth therein. If any provision contained in this Declaration is in direct and irreconcilable conflict with a provision of the Master Declaration then the provision in the Master Declaration shall govern. If a provision in one of the documents is merely more restrictive than the provision dealing with the same matter in the other document, then the most restrictive provision shall govern, regardless of whether found in this Declaration or the Master Declaration.
- 7.22 **Sewer Service.** In order to comply with the City of Roseville Improvement Standards, the City may condition sewer service to each Lot upon the installation of a backwater valve. In the event a backwater valve is called out in a City approved plan for the original development of a Lot, it shall be the responsibility of each Owner to maintain the backwater valve and prevent any damage to Owner's Residence or possessions.

ARTICLE 8 EASEMENTS AND RESERVATIONS

8.1 General Easements.

1. **Easements on Map.** The Common Area and Lots are subject to the easements and rights of way shown on the Map.
2. **Common Areas.** Each Owner shall have a non-exclusive easement for the use and enjoyment of the Common Area, subject to the rules and limitations imposed by the Governing Documents; provided, however, that the use and enjoyment of each Motor Court shall be limited to only those Owners and Owner's Parties whose Lots abut or are served by that Motor Court.
3. **Common Area Support and Maintenance.** The Association shall have an easement on, over, under and through each Lot for the support;

maintenance and repair of the Common Area. The exercise of such easements shall not have a material adverse impact on any Improvements existing on any such Lot, and the Association shall promptly repair, at no cost or expense to the Owner, any damage to a Lot caused by the exercise of such easements.

4. **Drainage.** Each Lot and Common Area parcel shall have an easement on, over, under, across and through the Property (except for portions of the Property on which a structure is situated) for surface and subsurface storm drainage and the flow of storm waters in accordance with the natural drainage and the drainage and Improvements installed or constructed by Declarant.
5. **Encroachment.** If, as a result of construction, reconstruction, repair, shifting, settlement or movement, any portion of a Residence, fence or other Improvement encroaches onto another Lot or Common Area, the encroaching Owner, or the Association if applicable, shall have an easement on, over, under and across such portion of the adjoining Lot or Common Area as is reasonably necessary for the maintenance of such encroachment for so long as the encroachment exists. None of the rights and obligations of the Association or any of the Owners created herein shall be altered in any way by encroachments due to settlement or shifting of structures or any other cause. Notwithstanding the foregoing, in no event shall an Owner have an encroachment easement if the encroachment occurs due to the willful conduct of the Owner.
6. **Mailboxes.** Each Owner of a Lot that is served by a Mailbox that is located on another Lot shall have a limited right of entry onto the Lot on which the Mailbox is located for the sole purpose of retrieving and/or dropping off his or her mail. Each Lot on which a Mailbox has been installed by Declarant shall be burdened by and subject to a limited non-exclusive easement for the benefit of Declarant, the Association and the U.S. Postal Service for the installation, maintenance, repair and replacement of the Mailbox, and to a limited right of entry for the benefit of all Owners served by the Mailbox for the sole purpose of retrieving and/or dropping off his or her mail.
7. **Trash and Recycling Receptacle Areas.** If Declarant or the Association designates through the Rules and Regulations, an Addendum to this Declaration, Supplemental Declaration or other means that a narrow portion of any Lot adjoining the street shall be used as an area where trash and recycling receptacles are to be brought and left for pickup, then each such Lot so designated shall be burdened by and subject to a limited non-exclusive easement for the benefit of Declarant, the Association and the refuse and recycling pickup service(s) of the Mailbox, and to a limited

right of entry for the benefit of those Owners served by the pickup area for the sole purpose of temporarily staging his or her trash and recycling receptacles.

8. **Party Fences.** Each Owner of a Party Fence shall have a reciprocal non-exclusive easement over and across such portions of the contiguous Lot as reasonably necessary to maintain the Party Fence.
 9. **Governmental Agencies.** All governmental and quasi-governmental entities, agencies and utilities and their agents are granted an easement over the private streets and other Common Area for the purposes of performing their duties within the Property.
- 8.2 **Other Owner Easements.** Each Owner shall have an easement on, over, under, across and through the Property, except for portions of the Property on which an Improvement is situated, to maintain, repair and replace, as necessary, any utility lines, pipes, wires and conduits installed by Declarant for the benefit of such Owner's Lot, and each Owner shall have a perpetual, unrestricted right of ingress and egress to such Owner's Lot.
- 8.3 **Other Association Easements.**
1. **Landscaping.** The Association shall have and enjoy rights of entry upon, under and across the Lots for the installation, maintenance, inspection, upkeep and replacement as necessary of the landscaped areas identified in Exhibit B attached.
 2. **Construction and Maintenance of Utilities.** The Association shall have and enjoy rights of entry on, over, under, across and through the Property and every part thereof (including without limitation the Lots) for the installation, repair, maintenance, inspection and replacement of water, electric, telephone, gas, sanitary sewer lines and facilities, heating and air conditioning facilities, cable or master television antenna lines, drainage facilities, fire protection, or any similar utilities, whether now existing or hereafter necessary or appropriate to service the Property or any portion thereof (including the individual Lots), together with the right to transfer the same by permit, license, easement or otherwise, for the general benefit of the Property and the Owners of Lots therein.
 3. **Association Right of Entry.** The Association shall have a right of entry upon any Lot as necessary in connection with the construction, maintenance, operation or emergency repair for the benefit of the Common Area or the Owners in common. Entry pursuant to this right shall be restricted to reasonable times, shall be exercised in a reasonable manner, and shall be preceded by notice of at least 48 hours to the occupant(s) unless entry is required by an emergency. The exercise of

such right of entry shall not have a material adverse impact on any Improvements existing on any such Lot, and the Association shall promptly repair, at no cost or expense to the individual Owner, any damage to a Lot caused by the exercise of such right of entry.

8.4 Easements Reserved By Declarant.

1. **Original Subdivision and Development Work.** Declarant expressly reserves for its own benefit: (a) easements on, over, under, across and through the Property (including without limitation the individual Lots) for the subdivision, construction, improvement and development of the Property, including without limitation installation, repair, maintenance and replacement of water, electric, telephone, gas, sanitary sewer lines and facilities, heating and air conditioning facilities, cable or master television antenna lines, drainage facilities, fire protection, or any similar utilities, whether now existing or hereafter necessary or appropriate to service the Property or any portion thereof (including the individual Lots), together with the right to transfer the same by permit, license, easement or otherwise, for the general benefit of the Property and the Owners; and (b) the right to enter upon all or any portion of the Property (including without limitation individual Lots) for the purposes of conducting therein and thereon such work of subdivision, improvement, construction and development as Declarant may deem necessary or desirable to complete the development of the Property, together with the right to grant and transfer such easements and rights of entry. Upon completion of development of the Property, or within five years after issuance of the Public Report for the final Phase of the Property, whichever is earlier, the easements and rights reserved herein to Declarant shall automatically terminate.
2. **Sales Program.** Declarant expressly reserves for its own benefit: (a) an easement on, over, across and through the Common Area for purposes of installing, relocating, replacing, repairing and maintaining such signs and sales displays as Declarant may deem necessary or desirable in connection with Declarant's sales program; and (b) an easement on, over, across and through the Common Area for the purposes of ingress, egress and parking in connection with Declarant's sales program, for use by Declarant, prospective purchasers of the Lots, sales personnel, media, suppliers and other designees of Declarant, together with the right to grant and transfer such easements. Declarant shall pay to the Association reasonable rent for any portion of the Common Area used by Declarant as a sales office or for a similar use. The easements and rights reserved herein to Declarant in the Common Area under this Section which exceed the rights of other Owners shall terminate upon the first to occur of the sale of all of the Lots, or five years after issuance of the Public Report for the final Phase of the

Property.

3. **Easement for Adjoining Property.** Declarant expressly reserves, for its own benefit, a perpetual right and easement on, over, across and through the Common Area for the purposes of reasonable ingress to and egress from, over and across the Additional Property, including without limitation roads and pathways in connection with the development and sale of the Additional Property. Such easement shall terminate if and when all of the Additional Property has been annexed to the Property.
4. **Right of Entry to Perform Work.** Declarant expressly reserves for its own benefit the right to enter upon all or any portion of the Property (including without limitation the Common Area, individual Lots, and each Residence) for the purpose of performing inspections, tests and repairs or doing other work that has been agreed to by the Owner or Association and Declarant, or that Declarant elects to perform pursuant to Section 918 of the California Civil Code (or any other provision or right available to Declarant). Declarant shall give all affected parties at least seventy two (72) hours advance notice of the dates and times any inspection, test or work will be performed (except in an emergency for which no notice is required). Notice shall be written or verbal.
5. **Right to Photograph.** Declarant expressly reserves for its own benefit the right to display, use and distribute for any and all purposes photographs, video recordings and similar reproductions of all Residences and Improvements constructed anywhere in the Project.

8.5 General Provisions.

1. **Covenants Running with the Land.** Each of the easements described, granted or reserved herein shall be established upon the recordation of this Declaration and shall be enforceable as equitable servitudes and covenants running with the land for the use and benefit of the Owners, the Association, Declarant, and their Lots.
2. **Creation of Easements.** The easements and rights reserved or created by this Declaration shall be valid upon recordation of this Declaration and shall exist whether or not they are also set forth or referenced in individual grant deeds to Lots or Common Area parcels.
3. **Nature of Easements.** All easements reserved or created by this Declaration shall be nonexclusive.
4. **Additional Easements.** Notwithstanding anything expressed or implied to the contrary, this Declaration, and the Property, shall be subject to all easements granted by Declarant for the installation and maintenance of

utilities and drainage facilities necessary for the development of the Property.

5. **Annexation of Additional Property.** Upon the recordation of a Notice of Annexation, the Lots and the Owners of Lots in the annexed Phase shall have all of the rights and easements reserved or created by this Article 8 over the Lots and Common Areas within the Property, and the Owners of Lots in the Property prior to Annexation shall have all of the rights and easements reserved or created by this Article 8 over the Lots and Common Areas in the annexed Phase as though the annexed Phase were initially part of the Property.

ARTICLE 9 MAINTENANCE AND IMPROVEMENTS

9.1 Maintenance by Association.

1. **Common Area Improvements.** The Association shall maintain, repair and, when necessary, replace and reconstruct all Common Area Improvements originally installed by Declarant or later installed, including without limitation landscaping, irrigation systems, sidewalks, private streets, guest parking areas, drainage Improvements (to the extent provided by Section 9.2.2 below), the so-called "roundabout" (until maintenance is accepted by the City), Motor Courts, Mailboxes, soundwalls and fences, and the recreational amenities within the community park. The Association also shall maintain the carriage light fixtures on individual garages, but shall not be responsible for the cost of electrical service (which cost shall be borne by the individual Owners). Such lights may be required to be left on during such hours as the Association may designate in the Rules and Regulations. The Association shall hire necessary personnel and services and do, or cause to be done, such other things as are necessary to provide for the maintenance and repair of the Common Area in good condition for the benefit of all the Owners.
2. **Landscaping.** After the initial installation of landscaping by Declarant, the Association shall maintain all shrubs, trees, grass, plantings and landscaping of every kind within the Common Area, the front yards of the Lots, and the border areas between the Lots and the Common Area in a condition neatly trimmed, properly cultivated and free of trash, weeds and other unsightly material. The landscaped areas within the Lots that are to be maintained by the Association are shown in the Landscape Maintenance Plan attached as Exhibit B. With respect to Common Area that has been offered for dedication to the County, City or some other public or quasi public recipient agency, the Association shall maintain any

dedicated landscaped buffers or other portions of the Common Area until landscaping responsibility is accepted and taken over by the recipient agency.

3. **Party Fences.** With respect to any Party Fence that lies on the boundary between a Lot and the Common Area, the Association shall be responsible for the actual repair, replacement and maintenance of the Party Fence, and one-half of the cost thereof shall be borne by the Association, and the other one-half shall be borne by the Owner(s) of the benefited Lot(s) (and a Reimbursement Assessment may be levied therefor).
4. **Limits of Association Obligations.** Notwithstanding anything in this Declaration to the contrary, the obligation of the Association shall not: (a) extend to repairs or replacements required or caused by the willful or negligent act of any Owner or Owner's Parties unless such repairs and replacements are covered by insurance carried by the Association, and then only to the extent of such insurance coverage; or (b) include the duty to repair, replace or restore public or quasi-public utility installations which are owned or operated by a public or quasi public utility or similar entity that customarily repairs, replaces or restores such installations. The repair and replacement described in clause (a) above shall be the responsibility of the Owner to whom the willful or negligent act is attributed. The Association may, at its option, perform such repair or replacement, and shall be entitled to recover all costs incurred in connection therewith from the responsible Owner as a Reimbursement Assessment in accordance with Section 5.4. The activities referred to in clause (b) above shall be by the utility or service provider.

9.2 Maintenance by Owners.

1. **Maintenance of Lots.** Subject to the requirements of Article 10, each Owner, at its sole cost and expense, shall maintain the interior and exterior of its Residence and all fixtures, fences, roofs, walls, walkways, driveways, utility laterals or conduits serving only its Residence (and not repaired or maintained by the utility company), appliances or appurtenances therein or thereto; and all other portions of the Owner's Lot or Residence not required by this Declaration to be maintained by the Association, in good and attractive condition and repair, in compliance with the provisions of the Maintenance Manual (as defined in Section 9.8), and so that the same does not deteriorate so as to be dangerous, or to present a hazard or nuisance, or to diminish the value and attractiveness of, any other Lot or the Property. Each Owner's maintenance obligations shall include the duty to promptly repair and replace any damage to the Improvements, to maintain the Residence and all other Improvements in good, attractive, safe and sanitary condition, and to maintain and cultivate

all landscaping that is not maintained by the Association, and to keep the Lot free from rubbish, litter and weeds. Exterior repainting and replacements of exterior doors, windows and other exterior materials and treatments shall be performed on an as-needed basis and shall be subject to the approval of the Design Review Committee unless the same colors, designs and materials established by Declarant are used. Owners shall maintain landscaping and any other necessary measures for slope stability to prevent mass soil movement and erosion on their Lots and shall promptly repair any slides or other earth movements in accordance with plans and specifications prepared by licensed engineers and approved by the Design Review Committee.

2. **Storm Drainage Improvements.** If a single drainage Improvement serves two (2) adjoining Lots and the drainage Improvement is situated approximately along the common boundary of those Lots, each Owner shall clear and otherwise maintain: (a) the portions of the drainage Improvement which exclusively serve that Owner's Lot; and (b) all portions of the drainage Improvement which are situated within the area the Owner is responsible for maintaining, irrespective of the fact that the drainage Improvement is used by two (or more) Lots. Each Owner shall clean and otherwise maintain all other drainage Improvements which serve only that Lot up to and including the point of connection into the portions of the storm drain system which serve other Lots in the Project, irrespective of whether the drainage Improvement is located on Common Area or on one (1) or more Lots. It is anticipated that the local flood control agency will maintain all drainage Improvements located outside of the Lots, but the Association shall maintain all drainage Improvements within the Common Areas, to the extent not maintained by the local flood control agency. Without limiting the generality of the foregoing, all inlets, catch basins and other drainage Improvements shall be cleared and otherwise maintained so that the Improvements function as they were designed

- 9.3 **Damage to Residences; Reconstruction.** If all or any portion of any Lot or Residence is damaged or destroyed by fire or other casualty, the Owner of such Lot shall rebuild, repair or reconstruct the Lot and the Residence thereon in a manner which will restore them substantially to their appearance and condition immediately prior to the casualty, or as otherwise approved by the Design Review Committee. The Owner of any damaged Lot or Residence shall proceed with all due diligence, and the Owner shall cause reconstruction to commence within six months after the damage occurs and to be completed within 12 months after damage occurs, unless prevented by causes beyond such Owner's reasonable control. A transferee of the Lot which is damaged or upon which is located a damaged Residence shall commence and complete reconstruction in the respective periods which would have remained for the performance of such

obligations if the Owner of the Lot at the time of the damage still held title to the Lot. However, no such transferee may be required to commence or complete such reconstruction in less than 30 days from the date such transferee acquired title to the Lot.

9.4 Association Right of Maintenance and Entry. If an Owner fails to perform maintenance and/or repair which that Owner is obligated to perform pursuant to this Declaration, and if the Association determines, after giving notice and an opportunity to be heard as provided in Section 14.2, that such maintenance and/or repair is necessary to preserve the attractiveness, quality, nature and/or value of the Property, the Association may cause such maintenance and/or repair to be performed and charge the costs of such maintenance and/or repair to the Owner as a Reimbursement Assessment. In order to effectuate the provisions of this Declaration, the Association (through its duly authorized agents or employees) may enter any Lot or Improvements whenever entry is necessary for the performance of any maintenance or construction which the Association is authorized to undertake. Entry within a Lot shall be made during regular business hours, with as little inconvenience to an Owner as is practicable under the circumstances, and only after reasonable advance written notice, which except for emergencies shall be not less than 48 hours, except in the case of an emergency, and then as reasonably necessary. Such entry shall not be deemed a trespass and the Owner shall not be entitled to any compensation for such entry.

9.5 Capital Improvements.

- 1. Petition; Board Approval; Owner Approval.** A majority of the Owners may from time to time petition the Board in writing for the construction, installation or acquisition of a capital improvement on the Common Area. Such petition shall be in such form and shall contain such information as the Board may require, including without limitation preliminary plans and cost estimates. Alternatively, the Association through the Board may from time to time on its own motion move for the construction, installation or acquisition of a capital improvement. Such motion shall be treated in the same manner as if it were a petition submitted by the Owners, and this Section 9.5 shall apply to both petitions and motions.
- 2. Process.** The Board may approve the petition if it determines that the proposed capital improvement is desirable for the beneficial use and enjoyment of the Common Area or the Owners, is economically feasible, is in conformance with applicable zoning and has received all required governmental approvals. Upon the approval of a petition, the Board shall obtain firm bids from responsible, licensed contractors for the total cost of constructing, installing or acquiring the proposed capital improvement. The lowest responsible bid or bids shall in the aggregate be deemed the estimated total cost of the capital improvement. The Board may, if it

elects to go forward after receipt of the bid(s), levy an assessment against the Owners to cover all costs to the Association in connection with the proposed capital improvements. After levying such assessment, the Board shall, at such time and upon such terms and conditions as the Board may deem appropriate (but not at a cost materially exceeding the estimated total cost), execute or contract for the construction, installation or acquisition of the proposed capital improvement.

3. **Capital Improvement Assessment as Special Assessment.** An assessment for capital improvements arising under this Section 9.5 shall be deemed a Special Assessment under Section 5.3 shall be subject to the limitations set forth in that Section. However, if any assessment for capital improvements shall, in itself, exceed five percent of the budgeted gross expenses of the Association for the fiscal year, or when added to all prior Special Assessments for the fiscal year cause the total thereof to exceed five percent of the budgeted gross expenses for such fiscal year, then such assessment may not be levied unless it is approved by the vote or written consent of a majority of the voting power of the Members other than the Declarant as provided in Section 5.6.
4. **Expenses for Property Not Approved.** If for any reason the construction or acquisition of the proposed capital improvement is not approved by the Board (or the Owners, if required), all expenses incurred by the Association with respect to the proposed capital improvement shall be paid proportionately by the petitioning Owners and the Board may levy a Reimbursement Assessment against said Owners for the purpose of paying such expenses. If the proposed project was initiated by the Board, such expenses shall be paid by the Association.

9.6 Party Fences.

1. **Sharing of Repair and Maintenance.** The cost of repair and maintenance of a Party Fence shall be shared equally by the Owners of the Lots that are separated by each Party Fence, except that (a) all costs of maintaining the Party Fence which are a result of the negligent or willful action of an Owner shall be borne by that Owner; and (b) each Owner shall be solely responsible for the painting or staining of the side of any Party Fence facing his or her Lot.
2. **In General.** If a fence is attached to the top of a wall, that wall shall be deemed to be part of the fence for purposes of this Section. If any portion of a Party Fence or other fence or wall extends across a Lot boundary, the adjacent Owners shall cooperate as necessary to permit each Owner to maintain the portion of the wall which is on that Owner's Lot.
3. **Destruction by Fire or Other Casualty.** Unless covered by a blanket

insurance policy maintained by the Association, if a Party Fence is destroyed or damaged by fire or other casualty, any Owner whose Lot is affected thereby may restore it, and the Owner of the other Lot which is affected thereby shall contribute equally to the cost of restoration thereof; without prejudice, however, to the right of any such Owner to call for a larger contribution from the other under any rule of law regarding liability for negligent or willful acts or omissions.

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

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

9.7 **Maintenance Manual.** Declarant will provide and/or make available to the Association and each initial Owner, respectively, maintenance manuals and/or procedures applicable to the Common Area and such Owner's Lot (and the Residence constructed thereon), which specifies the required maintenance procedures that the Association and each Owner, respectively, must follow. The Association and each Owner shall perform all required and recommended inspection and maintenance procedures in accordance with the schedules set forth in such documentation, and each Owner must provide a copy of all such documentation, as well as all other documents provided in conjunction with the original sale of the Lot (and the Residence constructed thereon), to its successor Owner.

9.8 **Warranties.** Declarant presently intends, but shall not have any obligation whatsoever, to extend to the Association and every original purchaser who purchases a home in the Project from Declarant a Home Builder's Limited Warranty in substantially the form attached as Exhibit C (the "Limited Warranty") If Declarant extends a Limited Warranty to the Association and an original purchaser, a copy of the Limited Warranty for a particular home, or for the Common Area in the case of the Association, will be available from Professional Warranty Service Corporation, P.O. Box 800 Annandale, VA 22003-0800. In such event, the Association and every original purchaser of a home and every successive Owner of such home shall be bound by and a beneficiary of the Limited Warranty during the "Warranty Period" as defined in the Limited Warranty. The Warranty Period of the Limited Warranty for a particular home or the Common Area, as the case may be, is set forth in the Limited Warranty Validation Form included with the Limited Warranty. The coverage limits under the Limited Warranty for a particular home or the Common Area, as the case may be, are set forth in the Limited Warranty Validation Form. Nothing in the Limited

Warranty or any other document provided by Declarant in conjunction with the sale of a home or the transfer of the Common Area diminishes any rights or obligations Owner, the Association, or Declarant may have under California Civil Code Sections 895 through 945.5, as hereinafter amended (the "Fix It Law" or "SB 800"). The Limited Warranty does not constitute an "enhanced protection agreement" under California Civil Code Section 901 or alternative nonadversarial contractual provisions under California Civil Code Section 914. The Limited Warranty provides Association and each Owner with separate rights from the rights provided in the Fix It Law. Declarant's election to provide and be subject to the Limited Warranty is in consideration of Declarant's, Association's, and the Owner's agreement to the ADR Provisions (as defined in Section 14.10.2 below). Notwithstanding any other provisions of this Declaration, the provisions of the Limited Warranty, including, without limitation, the binding arbitration procedure and the limitation of statutory and common law remedies described therein, and the ADR Provisions, shall control with respect to every dispute with Declarant related to or arising out of the homes or Common Area. SAID LIMITED WARRANTY, WHEN ISSUED, SHALL BE THE ONLY WARRANTY, EXPRESS OR IMPLIED, MADE BY DECLARANT WITH REGARD TO THE RESIDENCES, AND THE COMMON AREA, AND DECLARANT DISCLAIMS ALL OTHER WARRANTIES, AS MORE FULLY SET FORTH IN EXHIBIT D ATTACHED. This Section 9.8 shall apply to a particular dispute only to the extent a Limited Warranty is actually issued and in effect at the time of that particular dispute with respect to the particular Lots or Common Area at issue.

- 9.9 **Notice of SB 800.** Declarant, on behalf of itself and each affiliated contractor, notifies each Owner and the Association that Chapter 4 of Title 7 of Part 2 of Division 2 of the California Civil Code (commencing with Section 910) sets forth nonadversarial procedures and remedies that may apply to claims for construction defect that may arise in connection with the Project. The nonadversarial procedures impact the legal rights of Owners and the Association. The statute allows Declarant and its affiliated contractors, to elect not to use the nonadversarial procedures. The statute also allows Declarant and its affiliated contractors, by contract with Owners or the Association, to provide alternative nonadversarial procedures and remedies in lieu of the procedures and remedies contained in California Civil Code Section 910, et seq. Nothing in this Declaration, including, without limitation, the Limited Warranty and ADR Provisions, constitutes an "enhanced protection agreement" under California Civil Code Section 901 or alternative nonadversarial contractual provisions under California Civil Code Section 914, and nothing herein diminishes the rights and obligations of the Owners, the Association, and Declarant under the nonadversarial dispute resolution procedures set forth in California Civil Code Sections 910 through 938 with respect to any Fix It Law claim.

**ARTICLE 10
DESIGN REVIEW**

- 10.1 Applicability.** Except as expressly provided otherwise elsewhere in this Declaration, no Owner may make any Alterations to any Lot without first obtaining the approval of the Design Review Committee in accordance with the provisions of this Article 10. The provisions of this Declaration requiring design approval shall not apply to: (a) Alterations of Common Area Improvements by the Association; (b) the original construction of any Improvements on a Lot or Common Area by Declarant or its agents, contractors or employees; or (c) the Improvements of any Phase, prior to the first conveyance of a Lot in the applicable Phase to an Owner. The preceding sentence may not be amended without the consent of Declarant until all of the Lots in the Project owned by Declarant have been conveyed to homebuyers.
- 10.2 Reservation to Declarant.** Notwithstanding the power of the Board to appoint committees, Declarant hereby reserves to itself the right to appoint the Design Review Committee in accordance with the provisions of this Article 10. When the Design Review Committee no longer contains any member appointed by Declarant, the Board may appoint all members of the Design Review Committee, or may dissolve the Design Review Committee and undertake the Design Review Committee's responsibilities if it so elects.
- 10.3 Members.** The Design Review Committee shall consist of a Chair and two additional members, provided, however, that the Board at any time may increase the number of members from three to five. Persons appointed to the Design Review Committee need not be Members of the Association. All members shall serve until the expiration of the term for which they were appointed, if specified by the Board, or until they resign or are replaced. When all of the Additional Property has been annexed to the Project and all of the Lots have been conveyed by Declarant to homebuyers, the term of any remaining members appointed by Declarant shall terminate and replacement members shall be appointed by the Board. Declarant may appoint all of the original members of the Design Review Committee and all replacements until the first anniversary of the issuance of the Public Report for the first phase of the Project. After that date, the Board shall have the power to appoint one member of the Design Review Committee and Declarant may appoint the remainder of the members of the Design Review Committee until the conveyance of 90% of all Lots or the 5th anniversary of the issuance of the Public Report for the first phase of the Project, whichever first occurs. The Board may appoint a replacement for any member of the Design Review Committee originally appointed by the Board who resigns, is removed by the Board or otherwise fails to act. Declarant may appoint a replacement for any member of the Design Review Committee originally appointed by Declarant who resigns or otherwise fails to act, unless such member resigns in order to enable the Board to appoint a member as required by this Article

10.4 Duties and Powers.

1. **Duties.** The Design Review Committee shall review and approve, disapprove or conditionally approve all plans, submittals, applications and requests made or tendered to it by Owners or their agents in connection with any proposed Alterations. In connection therewith, the Design Review Committee may investigate and consider the architecture, design, layout, landscaping, energy conservation measures, water conservation measures, fence detail, and other features of the proposed Alterations.
2. **Design Guidelines.** The Design Review Committee may from time to time in its sole discretion adopt architectural rules, regulations and guidelines for the Project ("Design Guidelines"). The Design Guidelines may also impose additional specific requirements on Lots if those requirements are reasonable in light of specific Lot topography, visibility or other factors. The Design Guidelines shall be effective when they are adopted by the Design Review Committee, which shall interpret and implement the provisions of this Declaration by setting forth the standards and procedures for architectural review and guidelines for architectural design, placement of buildings, color schemes, exterior finishes and materials, landscaping, fences and similar features which may be used in the Project; provided, however, that the Design Guidelines shall be consistent with the minimum standards established by this Declaration. The Design Guidelines may include a schedule of fees for processing submittals (which shall not exceed the amount reasonably necessary to defray all costs incurred by the Design Review Committee in processing the submittals) and establish the time and manner in which such fees shall be paid. The Design Guidelines shall constitute a part of the Rules and Regulations. The Design Guidelines may impose different requirements on different Lots if those requirements are reasonable in light of topography, visibility or other physical or aesthetic factors.
3. **Powers.** The Design Guidelines may include rules and regulations for the transaction of business, scheduling of meetings, conduct of meetings and related matters. The Design Review Committee may also adopt criteria, consistent with the purpose and intent of this Declaration, to be used in making its determination to approve, disapprove or conditionally approve any matter submitted to it for decision. With the consent of the Board, the Design Review Committee may hire and pay consulting architects, landscape architects, urban designers, engineers, inspectors, and/or attorneys in order to advise and assist the Design Review Committee in performing its duties.

10.5 **Application for Approval.** Any Owner (except Declarant) who wants to make any Alteration shall notify the Design Review Committee in writing of the nature

of the proposed Alteration and shall furnish such information as may be required by the Design Guidelines or reasonably requested by the Design Review Committee. The Design Review Committee may require an application to include site plans, diagrams, photographs, sample materials or other presentation material as may be necessary for complete review and consideration of the proposed Alteration. All applications shall be submitted in writing, shall conform to the requirements set forth in the Design Guidelines and shall be accompanied by any required fees and costs. The approval process may also be divided into preliminary and final approvals if so provided in the Design Guidelines.

- 10.6 Basis for Approval of Improvements.** The Design Review Committee may approve a proposed Alteration only if the Design Review Committee finds that:
- (a) The plans and specifications for the proposed Alteration conform to this Declaration and to the applicable Design Guidelines in effect at the time the application was submitted;
 - (b) General architectural considerations, including the character, scale, and quality of the design, the architectural relationship with the site and other buildings, building materials, colors, screening of exterior appurtenances, exterior lighting and similar elements, have been incorporated in order to ensure the compatibility of the proposed Alteration with its design concept and the character of nearby buildings;
 - (c) General site considerations, including site layout, open space and topography, orientation and locations of buildings, vehicular access, circulation and parking, setbacks, height, walls, fences, and similar elements have been designed to provide a desirable environment and one which maximizes the view of the surrounding Residences, considering the location of trees, vegetation and other aesthetic and environmental factors;
 - (d) General landscape considerations, including the location, type, size, color, texture and coverage of plant materials, provision for irrigation, maintenance and protection of landscaped areas and similar elements, have been considered to ensure visual relief, complement buildings and structures and provide an attractive environment for the enjoyment of the Owners in general and the enhancement of property values in the Project generally; and
 - (e) The percentage area of the Lot to be cleared or graded and the percentage area of the Lot to be covered by the Residence or other Improvements will not cause excessive drainage or surface water run-off due to the topography, percolation rate of the soil, soil

types and conditions, vegetation cover and other environmental factors.

If the Design Review Committee makes a negative finding on one or more of the items set forth in this Section 10.6, it shall disapprove the proposed Alteration, or condition its approval of the proposed Alteration appropriately so as to allow such findings to be made.

- 10.7 Forms of Approval and Denial.** All approvals and denials shall be in writing. Any denial of an application shall state the reasons therefore in reasonable detail. Any application which has not been rejected in writing within 90 days from the date of submission shall be deemed approved. If any Alteration is made without first seeking and obtaining the approval of the Design Review Committee, it shall be deemed that the Owner of the affected Lot applied for such approval and was timely and properly denied.
- 10.8 Dispute Resolution.** If an Owner seeking approval pursuant to this Article 10 disputes the decision of the Design Review Committee, it may appeal the decision to the Board. The Board, within 30 days after the date the appeal is filed, shall convene a special meeting of the Board and at that meeting shall determine to either: (a) uphold the decision of the Design Review Committee; (b) reverse the decision of the Design Review Committee; or (c) reverse the decision of the Design Review Committee subject to the Owner's compliance with specified conditions. If the Owner disputes the decision of the Board, the matter may, at the Owner's election, be submitted to arbitration as provided in the Bylaws. At the time the Owner notifies the Board of its appeal of the decision of the Design Review Committee, it shall deliver to the Board copies of all materials used by the Owner in its submission to the Design Review Committee.
- 10.9 Commencement and Completion of Approved Work.** Upon approval by the Design Review Committee, the Owner shall promptly commence and thereafter diligently proceed with all work so approved, and the work shall be completed no later than one (1) year following the approval of the work unless the Design Review Committee grants an extension. Upon completion of any work performed by an Owner for which approval was required, the Owner shall give a written notice of completion to the Design Review Committee. Within 60 days after receipt of an Owner's notice of completion, or, if the Owner fails to give a written notice of completion than at any time after cessation of such work, a designee of the Design Review Committee may inspect the work performed and determine whether it was performed and completed in substantial compliance with the approval granted. If the Design Review Committee finds that the work was not performed or completed in substantial compliance with the approval granted, or if the Design Review Committee finds that the approval required was not obtained, the Design Review Committee shall notify the Owner in writing of the non-compliance. The notice shall specify the particulars of non-compliance and require the Owner to remedy the non-compliance.

- 10.10 Non-Compliance.** If the Design Review Committee determines that an Owner has not constructed an Alteration consistently with the specifications of the approval granted or within the time permitted for completion, and if the Owner fails to remedy such non-compliance in accordance with the provisions of the notice of non-compliance, then after the expiration of thirty (30) days from the date of such notification, the Design Review Committee shall notify the Board, and the Board shall provide Notice and Hearing to consider the Owner's continuing non-compliance. At the Hearing, if the Board finds that there is no valid reason for the continuing non-compliance, the Board shall determine the estimated costs of correcting it. The Board shall then require the Owner to remedy or remove the same within a period of not more than forty-five (45) days from the date of the Board's determination. If the Owner does not comply with the Board's ruling within such period or within any extension of such period as the Board, in its discretion, may grant, the Board may either remove the non-complying Improvement or remedy the non-compliance. The costs of such action shall be assessed against the Owner as a Reimbursement Assessment.
- 10.11 Notice of Architectural Determination.** After a determination of compliance is made pursuant to Section 10.9 above, or at the request of any Owner, or at its own instance or the instance of the Design Review Committee following an inspection of any Alterations, the Board shall issue a written Notice of Architectural Determination. A Notice of Architectural Determination shall be executed by any two (2) Directors, and shall certify that as of the date of the Notice either (a) the Alteration complies with the provisions of this Declaration and the approval(s) issued by the Design Review Committee ("Notice of Approval") or (b) the Alteration does not comply with this Declaration or the approval(s) issued by the Design Review Committee ("Notice of Disapproval"). A Notice of Disapproval shall identify the particulars of the non-compliance in reasonable detail. An Owner shall disclose to its subsequent purchaser any Notice of Disapproval unless the Owner has subsequently received a Notice of Approval for the Alteration. The Notice of Architectural Determination shall be conclusive as between the Association, the Design Review Committee, Declarant and all Owners and such persons deriving any interest through any of them. Any successor Owner shall be entitled to rely on a Notice of Architectural Determination that contains a Notice of Approval. The Board or Design Review Committee may inspect any Alteration at any time and from time to time.
- 10.12 No Liability for Architectural Review.** Neither Declarant, the Design Review Committee, the Board nor the employees, officers, partners, members or designated representatives of any of them shall be liable for damages to anyone submitting plans or specifications to them for approval, or to any owner of property affected by this Declaration by reason of any mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval of, or failure to approve or disapprove, any such application, or for any defect, whether in design or construction, in any approved Alterations

Neither Declarant, the Design Review Committee, the Board nor any member of any of them shall be responsible for reviewing or approving any plans with respect to the adequacy of engineering design in any aspect whatsoever. Every Person who submits plans or specifications to the Design Review Committee for approval agrees, by submission of such plans and specifications, and all Owners and Owner's Parties agree, that they will not bring any action, suit or claim against Declarant, the Design Review Committee, the Association or any of the members or designated representatives thereof with respect to any matters for which such persons or entities are relieved of liability pursuant to this Section. Each Owner, in addition to satisfying the requirements set forth in this Declaration, shall determine and satisfy the requirements imposed by the County, the City and any other public agency with jurisdiction in connection with its Alterations. Approval by the Committee shall not constitute a representation that the proposed Alteration will be approved by the City or any other public agency with jurisdiction, or that it conforms to the zoning, building or other requirements of any of them.

- 10.13 Master Declaration.** The provisions for Design Review Committee approval contained in this Article 10 are in addition to, and do not replace or supersede, the independent requirements for approval of certain plans by the Architectural Control Committee pursuant to the Master Declaration. Any such required approval may be obtained before or after the Design Review Committee considers any proposed Alterations, at the election of the Owner, but (a) any approval by the Design Review Committee of a proposed Alteration not constitute a representation that the proposed Alteration will be approved by the Architectural Control Committee pursuant to the Master Declaration, and (b) any approval by the Architectural Control Committee pursuant to the Master Declaration shall not be evidence of reasonableness (as and shall not be binding upon the Design Review Committee in any manner.

ARTICLE 11 BUDGETS, FINANCIAL STATEMENTS, NOTICES AND REPORTS

- 11.1 Preparation and Distribution of Budget.** The Board shall prepare, adopt and distribute a Budget each year in accordance with the requirements of California Civil Code Section 1365. A summary of the Budget may be distributed in lieu of the entire Budget if the requirements set forth in Civil Code Section 1365 are satisfied. Each Budget or summary shall be accompanied by the disclosures required by Civil Code Sections 1365.1 and 1363.850, and by a notice describing the Members' rights to have copies of the minutes of Board meetings, how and where those minutes may be obtained, and the cost of obtaining copies of such minutes. For the first fiscal year in which the Association is operating, the Budget shall be substantially based upon the operating budget accepted by the DRE. When a new Phase is annexed, the Board shall approve an updated Budget for the

remainder of the current fiscal year for use upon the commencement of Regular Assessments against Lots in the new Phase. Such updated Budget shall be based substantially upon the operating Budget accepted by the DRE in connection with the Public Report for that Phase.

- 11.2 **Annual Reports.** The Board shall prepare and distribute an annual report in accordance with the requirements California Civil Code Section 1365.
- 11.3 **Quarterly Reconciliation.** If then required by California Civil Code Section 1365, the Board shall, at least quarterly: (a) cause a current reconciliation of the Association's Operating Account(s) to be made and review the same; (b) cause a current reconciliation of the Association's Reserve Account to be made and review the same; (c) review the current year's actual reserve revenues and expenses compared to the current year's Budget; (d) review the most current account statements prepared by the financial institution where the Association has its Operation and Reserve Accounts; and (e) review an income and expense statement for the Association's Operation and Reserve Accounts.
- 11.4 **Annual Notices.** The following notices and information shall be given to the Members annually, at the same time the Budget is distributed to the Members.
 1. **Insurance.** A summary of the Association's property damage, general liability, earthquake, flood and fidelity insurance policies as required by California Civil Code Section 1365(e).
 2. **Assessments and Foreclosure.** The notice required by California Civil Code Section 1365.1.
 3. **Assessment Enforcement Procedure.** The statement of the Association's policies and practices in enforcing its remedies against Owners for defaults in the payment of Regular and Special Assessments, including the recording and foreclosing of liens against Lots, required by California Civil Code Section 1365(d).
 4. **Increase in or Levy of Assessments.** Notice of any increase in Regular Assessments or the levy of any Special Assessments in accordance with the requirements of California Civil Code Section 1366.
 5. **Informal Alternative Dispute Resolution.** A description of any internal dispute resolution process adopted by the Association or, if no such process has been adopted, a statement that the Association's informal internal dispute resolution process is as provided in California Civil Code Section 1369.540.
 6. **Formal Alternative Dispute Resolution.** A summary of the provisions of California Civil Code Sections 1369.510 through 1369.590, as required

by and in accordance with the requirements of California Civil Code Section 1369.590. The summary shall include the following language. "Failure of a member of the association to comply with the alternative dispute resolution requirements of Section 1369.520 of the Civil Code may result in the loss of your right to sue the association or another member of the association regarding enforcement of the governing documents or the applicable law."

7. **Architectural Approvals.** The Association shall provide notice of the requirements for Association approval of proposed Alterations. The notice shall describe the types of Alterations that require approval and shall include a copy of (i) Article Ten of this Declaration, (ii) all sections of the Rules and Regulations that establish Architectural Guidelines or other standards, and (iii) any other provisions of the Governing Documents which include procedures used to review and approve or disapprove a proposed Alteration.
- 11.5 **Reserve Account Study.** The Board shall: (a) cause a study of the Reserve Account to be conducted, (b) review or cause the study to be reviewed annually, and (c) consider and implement necessary adjustments to the Board's analysis of the Reserve Account requirements as a result of that review in compliance with the provisions of California Civil Code Section 1365.5.
- 11.6 **Schedule of Monetary Penalties.** If the Board adopts a policy imposing any monetary penalty on or charging any fee to any Owner for a violation of the Governing Documents by that Owner or that Owner's Invitee, the Board shall adopt a schedule of the monetary penalties that may be assessed for those violations. The penalties must be consistent with the Governing Documents. A copy of the schedule shall be personally delivered or mailed by first-class mail, postage prepaid, to each Owner by the Board. Each time the schedule is modified, the Board shall again deliver a copy to each Owner, either personally or by first-class mail, postage prepaid.
- 11.7 **Civil Code Section 1368.** Upon written request by a Member, the Association shall provide the Member with a copy of any or all items described in California Civil Code Section 1368(a) within ten (10) days of the mailing or delivery of the request. The items required to be made available pursuant to Section 1368 may be kept in electronic form, and the Member shall have the option of receiving the items by electronic transmission or machine readable storage media if the Association keeps the items in electronic form. The Association may charge a reasonable fee for this service to cover the Association's actual cost to procure, prepare, and reproduce the requested items.

ARTICLE 12
DAMAGE AND RECONSTRUCTION OF COMMON AREA; DISPOSITION OF
INSURANCE PROCEEDS; CONDEMNATION

- 12.1 Association Obligation to Restore.** If any of the Common Area or other property owned, insured or maintained by the Association is damaged or destroyed by fire or other casualty ("Damaged Property"), the Association shall restore the Damaged Property pursuant to the provisions of this Article 12, unless the Members vote to not restore the Damaged Property pursuant to Section 12.6. The term "restore" or "restoration," for purposes of this Article 12, shall mean repairing, rebuilding, reconstructing or replacing the Damaged Property to the same condition and appearance in which it existed prior to the casualty. If the Damaged Property is insured by the Association, the Association shall proceed with the filing and adjustment of all claims arising under the existing insurance policies.
- 12.2 Bids.** Whenever restoration is to be performed pursuant to Section 12.1, the Board shall obtain such bids from responsible licensed contractors as the Board deems reasonable; and the Board, on behalf of the Association, shall contract with the contractor whose bid the Board decides is most beneficial to the Association. Prior to commencing the restoration, the contractor shall provide a completion bond naming the Association and each Owner as beneficiaries.
- 12.3 Proceeds for the Restoration Work.** The cost of restoring the Damaged Property shall be funded from the following sources in the priority described below (except as expressly provided in Section 12.4, no funds shall be expended unless all funds necessary to restore the entire Damaged Property are available):
- 1. Insurance Proceeds.** The first priority shall be any insurance proceeds paid or to be paid to the Association under existing insurance policies.
 - 2. Reserve Account.** If the insurance proceeds are insufficient to fully restore the Damaged Property, the second priority shall be all reserve account funds designated or available for the restoration of the Damaged Property.
 - 3. Special Assessment without Vote.** If the insurance proceeds and the reserve account funds are insufficient to fully restore the Damaged Property, the third priority shall be funds raised by a Special Assessment against all Owners levied by the Board up to the maximum amount permitted without the approval of the Members in accordance with the limitations set forth in Section 5.6.
 - 4. Special Assessment with Vote.** If the insurance proceeds, the reserve account funds and funds raised by a Special Assessment without a vote are insufficient to fully restore the Damaged Property, the fourth priority shall

be any funds raised by a Special Assessment against Owners levied by the Board pursuant to a vote of the Members pursuant to Section 5.6. Accordingly, if the total funds available to restore the Damaged Property pursuant to the first three priorities described above are insufficient to restore the Damaged Property, then a special meeting of the Members shall be called for the purpose of voting whether to impose an additional Special Assessment and deciding upon the amount thereof. The Board then shall contract for the restoration of the Common Area described above.

- 12.4 Alternative Reconstruction.** If the funds provided for the restoration work pursuant to Section 12.3 are not sufficient to fully restore the Damaged Property, then the Board shall consider and propose plans for the partial restoration of the Damaged Property, making use of whatever funds are available ("Alternative Reconstruction"). The Board shall cause the Alternative Reconstruction to be performed for any portion of the Damaged Property that the Board reasonably considers to be essential to the continued operation of the Property. By way of example only, this could include damage to or destruction of private streets, sidewalks, landscaping, parking areas or utility lines. Proposals for Alternative Construction that the Board does not reasonably consider to be essential to the continued operation of the Community shall be presented to the Members and must be approved by a majority of the total voting power of the Members other than Declarant. If the proposal is approved, the Board shall cause the approved Alternative Reconstruction to be performed, otherwise, any insurance proceeds received with respect to the Damaged Property shall be distributed to the Owners in equal shares with respect to each Lot.
- 12.5 Emergency Repairs.** In the event of a casualty to the Common Area where the Board determines that immediate emergency repairs are required to eliminate defective or dangerous conditions, and/or to comply with applicable laws, ordinances and regulations, the Board may undertake such emergency repairs as it may deem necessary or desirable, prior to settlement of any insurance claims and without obtaining bids. The cost of such emergency repairs may be recovered from the sources and in the same priority as described in Section 12.3.
- 12.6 Referendum on Restoration.** Upon the petition of 10% of the total voting power of the Members other than Declarant or upon approval of the Board, the Association shall hold a referendum to decide whether the Damaged Property should be restored. Upon approval of 75% of the total voting power of Members other than Declarant, the Damaged Property need not be restored, and any insurance proceeds remaining after any necessary clean up work shall be distributed to the Owners of the Lots in equal shares with respect to each Lot. Alternatively, pursuant to the procedure described in Section 12.4, the Members may choose to restore the Damaged Property in a manner different than originally constructed

- 12.7 Damage by Owner.** Each Owner shall be liable to the Association for any damage to the Damaged Property where the restoration cost is not fully reimbursed to the Association by insurance if the damage is sustained because of the negligence, willful misconduct or unauthorized or improper use by such Owner or its Owner's Parties. After Notice and Hearing Requirements in respect of an Owner have been satisfied, the cost of correcting the damage to the extent not reimbursed to the Association by insurance shall be a Reimbursement Assessment to such Owner and may be enforced as provided in Section 5.8. However, the Board reserves the right to determine whether any claim shall be made upon insurance maintained by the Association, and the Board may, after Notice and Hearing Requirements in respect of an Owner have been satisfied, levy a Special Assessment equal to the deductible or the increase, if any, in insurance premiums directly attributable to the damage caused by the Owner or its Owner's Parties. In case of joint ownership of a Lot, the Owners' liability to the Association shall be joint and several.
- 12.8 Condemnation.** The Board shall represent the Owners in any proceedings, negotiations, settlements or agreements relating to condemnation, destruction or liquidation of any portion of the Common Area, or relating to termination of the Project, and each Owner appoints the Association as its attorney-in-fact for this purpose. If an action for condemnation of all or a portion of the Common Area is proposed or threatened by any government agency having the right of eminent domain, then, upon the unanimous approval of all of the Owners and all Institutional Mortgagees, the Common Area subject to the action for condemnation may be sold and conveyed to the condemning authority by the Association for a price deemed to be fair and equitable by the Board. Otherwise, the court with jurisdiction over the condemnation proceeding shall determine the condemnation award. Any losses, awards or proceeds received by the Association pursuant to this Section 12.8 shall be deposited in the operating account and thereafter applied first to correct or address any severance or other like damages, second to the replacement or provision of similar facilities and amenities if feasible and, in the Board's discretion, desirable, and last distributed to all Owners in equal shares with respect to each Lot.

ARTICLE 13 MORTGAGEE PROTECTION

- 13.1 Mortgaging of Lots.** Any Owner may encumber its Lot with a Mortgage. Any lien created or claimed under the provisions of this Declaration is expressly made subject and subordinate to the rights of any First Mortgage that encumbers all or a portion of the Property or any Lot, made in good faith and for value, and no such lien shall in any way defeat, invalidate or impair the obligation or priority of such First Mortgage unless the Mortgagee expressly subordinates its interest, in writing, to such lien. Upon the foreclosure of any First Mortgage on a Lot, any

lien for Assessments which became due prior to such foreclosure shall be extinguished; provided, however, that such extinguishment shall not extinguish or otherwise affect the lien created by this Declaration to secure all Assessments against such Lot accruing after the date of such foreclosure sale, which lien shall have the same effect and shall be enforced in the same manner as provided herein. For purposes of this Section, a Mortgage may be given in good faith or for value even though the Mortgagee has constructive or actual knowledge of the assessment lien provisions of this Declaration. All taxes, assessments and charges which may become liens prior to the First Mortgage under local law shall relate only to the individual Lots and not to the Property as a whole.

13.2 **Amendments of a Material Nature.** The prior written consent of 51% of the Eligible Holders (based upon one vote for each Mortgage held) and 67% of the Total Voting Power of the members excluding the Declarant (based upon one vote for each Lot owned) shall be required to effect any material amendment to this Declaration, to the Articles or to the Bylaws. As used in this Section, the term "any material amendment" means amendments to provisions of such documents which establish, provide for or govern the following subjects:

- (a) voting rights;
- (b) increases in assessments that raise the previously assessed amount by more than 25%, assessment liens, or the priority of assessment liens;
- (c) reductions in reserves for maintenance, repair, and replacement of Common Areas;
- (d) responsibility for maintenance and repairs;
- (e) reallocation of interests in the general or limited Common Areas or rights to their use;
- (f) redefinition of any unit boundaries;
- (g) convertibility of units into common areas or vice versa;
- (h) expansion or contraction of the Project, or the addition, annexation, or withdrawal of property to or from the Property;
- (i) hazard or fidelity insurance requirements;
- (j) imposition of any restrictions on the leasing of units;
- (k) imposition of any restrictions on an Owner's right to sell or transfer his or her unit;

- (l) a decision by the Association to establish self management;
- (m) restoration or repair of the Property (after damage or partial condemnation) in a manner other than that specified in the Governing Documents; or
- (n) any provisions that expressly benefit mortgage holders, insurers or guarantors.

An addition or amendment shall not be considered material if it is for the purpose of correcting technical errors, or for clarification only.

- 13.3 Right to Examine Books and Records.** First Mortgagees, or the holder or guarantor of any first mortgage, may examine the books and records of the Association and may require the submission of financial data concerning the Association, including annual audit reports and operating statements that are furnished to the Owners. Any Owner, at the expense of such Owner, or, if no annual audit is conducted, a First Mortgagee, at its expense, may request at any time an independent audit of the Association. Any First Mortgagee, upon written request to the Association, shall be provided with the Association's audited annual financial statements within 120 days after the end of the Association's fiscal year.
- 13.4 Distribution of Insurance and Condemnation Proceeds.** No Owner or other party shall have priority over any right of First Mortgagees pursuant to their Mortgages in case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or a taking of the Common Area. Any provisions to the contrary in this Declaration or in the Bylaws or other documents relating to the Property are to such extent void. All applicable fire and all physical loss or extended coverage insurance policies shall, at the request of a First Mortgagee contain loss payable clauses acceptable to the affected First Mortgagees naming the First Mortgagees, as their interests may appear.
- 13.5 Notice to Mortgagees.** Upon written request to the Association by a First Mortgagee which includes the address of the Lot upon which the First Mortgagee has (or insures or guarantees) the Mortgage, the Association shall give each First Mortgagee of record timely written notice of:
- (a) any condemnation loss or any casualty loss which affects a material portion of the Property or any Building or Lot securing its Mortgage;
 - (b) any delinquency in the payment of assessments or charges owed by an Owner or any Building or Lot securing its Mortgage;

- (c) any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; or
- (d) any proposed action which would require the consent of a specified percentage of First Mortgagees as specified by Section 13.2.

13.6 Payments by Mortgagees. Mortgagees may, jointly or singularly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for Common Area improvements or other insured property of the Association and, upon making any such payments, such Mortgagees shall be owed immediate reimbursement therefore from the Association. This provision shall constitute an agreement by the Association for the express benefit of all Mortgagees and upon the request of any Mortgagee the Association shall execute and deliver to such Mortgagee a separate written agreement embodying the provisions of this Section 13.6.

13.7 Effect of Breach. Except as such breach shall cause a foreclosure of a lien for assessments and charges which is prior in right to the lien of a Mortgage other than a First Mortgage, no breach of any provision of this Declaration shall invalidate the lien of any First Mortgage made in good faith and for value, but all of the covenants, conditions and restrictions shall be binding on any Owner whose title is derived through foreclosure sale, trustee's sale, deed in lieu of foreclosure or assignment in lieu of foreclosure or otherwise.

13.8 Foreclosure. If any Lot subject to a monetary lien created by any provision of this Declaration shall be subject to a First Mortgage Lien: (a) the foreclosure of any lien created by anything set forth in this Declaration shall not operate to affect or impair such First Mortgage Lien; and (b) the foreclosure of said First Mortgage Lien or sale under a power of sale included in such First Mortgage (such events being hereinafter referred to as "events of foreclosure") shall not operate to affect or impair the encumbrance of this Declaration, except that any persons who obtain an interest through any of the events of foreclosure shall take title free of the lien for all assessments and charges that have accrued up to the time of any of the events of foreclosure, but subject to any lien for all Assessments, whether Regular or Special, and charges that accrue subsequent to the events of foreclosure. For purposes hereof, the obligation for any installment of a previously levied assessment which has not become payable as of the date of foreclosure shall be deemed to accrue on the date such installment becomes payable. If the events of foreclosure are with respect to a Mortgage other than a First Mortgage, the liability of the Mortgagee with respect to any assessments and charges arising prior to the events of foreclosure and the effects of a foreclosure of the lien for assessments and charges on such Mortgage shall be determined by the relative dates on which the lien of the Mortgage and the lien for such

assessments became duly perfected.

Nothing in this Section 13.8 shall be construed to release any Owner from its personal obligation to pay for any assessment or charge levied pursuant to this Declaration.

- 13.9 Non-Curable Breach.** Any Mortgagee who acquires title to a Lot by foreclosure or by deed-in-lieu of foreclosure or assignment in lieu of foreclosure shall not be obligated to cure any breach of this Declaration that is non curable or of a type that is not practical or feasible to cure.
- 13.10 Loan to Facilitate Resale of Lot.** Any First Mortgage given to secure a loan to facilitate the resale of a Lot after acquisition by foreclosure or by a deed in lieu of foreclosure or by an assignment in lieu of foreclosure shall be deemed to be a loan made in good faith and for value, and shall be entitled to all of the rights and protections of this Article 13.
- 13.11 Right to Furnish Information.** Each Owner consents and agrees that any Mortgagee may furnish information to the Board concerning the status of any Mortgage.
- 13.12 Inapplicability of Right of First Refusal to Mortgagee.** No right of first refusal or similar restriction on the right of an Owner to sell, transfer or otherwise convey an Owner's Lot shall be granted to the Association without the written consent of any Mortgagee of that Lot. Any right of first refusal or option to purchase a Lot that may be granted to the Association (or other person, firm or entity) shall not apply to any conveyance or transfer of title to such Lot whether voluntary or involuntary, to a Mortgagee which acquires title to or ownership of the Lot pursuant to the remedies provided in its Mortgage, deed in-lieu of foreclosure or assignment in lieu of foreclosure. Further, no such right shall impair the rights of a First Mortgagee to:
- (a) foreclose or take title to a Lot pursuant to the remedies provided in the Mortgage; or
 - (b) accept a deed-in-lieu of foreclosure or assignment-in-lieu of foreclosure in the event of default by a Mortgagor; or
 - (c) sell or lease a Lot acquired by the Mortgagee.
- 13.13 Contracts with Declarant; Contracts Prior to Conversion.** Any professional management agreement or any agreement between the Association and Declarant pursuant to which Declarant agrees to provide services shall have a maximum term of three years and shall provide for termination by either party without cause or penalty upon 90 days written notice. Prior to the conversion of Class B membership to Class A membership pursuant to Section 4.3, any contract or lease entered into by the Association shall include a right of termination exercisable by

the Association without penalty at any time after such conversion, upon 90 days notice.

13.14 FNMA. If any Mortgage obtained by an Owner is sold or transferred to the Federal National Mortgage Association, the Eligible Holders shall be afforded the following rights so long as at least one Mortgage is owned by the Federal National Mortgage Association, if not waived in writing by the Federal National Mortgage Association:

1. **Restoration or Repair.** Any restoration or repair of the Common Area or any building which contains multiple residential units, after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with this Declaration and the original plans and specifications, unless other action is approved by Eligible Holders who represent at least 51% of the votes of the Lots that are subject to mortgages held by Eligible Holders.
2. **Termination after Substantial Destruction.** Any election to terminate the legal status of the Property as a planned development after substantial destruction or a substantial taking in condemnation requires the approval of Eligible Holders who represent at least 51% of the votes of the Lots that are subject to Mortgages held by Eligible Holders.
3. **Termination without Destruction.** Any election to terminate the legal status of the Property area as a planned unit development for reasons other than substantial destruction or substantial taking in condemnation requires the approval of Eligible Holders who represent at least 67% of the votes of the Lots that are subject to Mortgages held by Eligible Holders.

13.15 Requests for Approval. A Mortgagee, First Mortgagee or Eligible Holder who receives a written request to approve additions or amendments to this Declaration and who does not deliver or post to the requesting party a negative response within 30 days of receipt shall be deemed to have approved such request.

13.16 Conflicts. In the event of any conflict between any of the provisions of this Article 13 and any other provisions of this Declaration, the provisions of this Article 13 shall control.

ARTICLE 14 MISCELLANEOUS

14.1 Amendment.

1. **Amendment before Closing of First Sale.** Before the close of the first sale of a Lot to a homebuyer, this Declaration and any amendments to it

may be amended in any respect, or revoked, by the execution by Declarant and any Mortgagee of an instrument amending or revoking this Declaration. The amending or revoking instrument shall make appropriate reference to this Declaration and its amendments and shall be acknowledged and recorded in the Official Records of the County.

2. **Amendment after the Close of First Sale.** After the close of the first sale of a Lot to a homebuyer, and subject to Section 13.2 of this Declaration, the provisions of this Declaration may be amended with the vote or written consent of Members entitled to exercise more than 50% of the voting power of each class of voting membership of the Association (except that where a greater percentage or different vote is required with respect to any provision hereunder, amendment of any provision shall require the vote or written consent of at least the prescribed percentage of affirmative votes of each class required for action to be taken under that section). Upon the conversion of the Class B membership rights to Class A membership rights as provided in Section 4.3.2, amendment of the provisions of this Declaration shall require the approval of more than 50% of the total voting power held by all Members, including Declarant and shall also require the vote or written consent of more than 50% of the voting power of the Association held by Members other than Declarant.
3. **Amendments to Conform to Mortgagee Requirements.** It is the intent of Declarant that this Declaration, the Articles and Bylaws of the Association, and the development in general shall now and in the future meet all requirements necessary for the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association to purchase, guarantee, insure or subsidize any Mortgage. Further, the provisions of this instrument shall be liberally interpreted so as to comply with the reasonable requirements of institutional lenders, the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association. Notwithstanding any other provisions of this Section 14.1, for so long as Declarant owns any portion of the Property, Declarant may unilaterally amend this Declaration by recording a written instrument signed by Declarant in order to conform this Declaration to the requirements of First Mortgagees.
4. **Amendments Requiring Declarant's Consent; SB 800.** Notwithstanding any other provisions of this Declaration to the contrary, (a) there shall be no amendment to Section 9.7, 9.8, 9.9, 14.10, or 14.17 of this Declaration, or Exhibits A, C, D or E attached, without Declarant's prior written consent (which consent shall be set forth on the face of the recorded amendment), regardless of whether Declarant at the time of the proposed amendment owns any portion of the Property, and such consent may be granted or withheld in Declarant's sole discretion; and (b)

Declarant may unilaterally amend this Declaration, regardless of whether Declarant at the time of the amendment owns any portion of the Property, by recording a written instrument signed by Declarant in order to conform the intent and specific provisions of this Declaration to the requirements of SB.800.

5. **Implementation.** After an amendment is duly approved in accordance with the preceding requirements, the Board may prepare and record a restatement of the Declaration which restates the entire text of the original document, with these exceptions: (a) changes incorporating all amendments approved in accordance with this Declaration; (b) changes made to rearrange or delete the text for consistency with the approved amendments; and (c) changes made to delete material no longer legally effective or legally required. Upon recordation of the restatement, the restatement shall supersede the Declaration and all prior amendments in their entirety, without, however, affecting the priority of the Declaration in the chain of title to all of the Property that is subject to the Declaration, as established by the Declaration's initial date of recordation. Any amendment to this Declaration shall be effective upon the recordation in the Official Records of the County of either (x) a restatement approved by the Board as provided above which includes a statement executed by the President and Secretary of the Association which certifies that the required percentage of Members has approved all amendments made by the restatement and that the form of the restatement was duly approved by a resolution of the Board, or (y) an amending instrument which sets forth the terms of the amendment and includes a statement executed by the President and Secretary of the Association which certifies that the required percentage of Members has approved all amendments made by the amending instrument.
6. **Approval of City Attorney.** Notwithstanding any other provision of this Declaration, no amendment may be made to section 4.1, 7.5.1, 7.1.8, 7.22, 9.1.1, or 9.1.2 of this Declaration without the prior written consent of the Roseville City Attorney.
- 14.2 **Notice and Hearing.** Any requirements elsewhere in this Declaration which require notice and hearing shall meet the minimum requirements of Section 7341 of the California Corporations Code and Section 1363(h) of the California Civil Code, and without limiting the generality of the foregoing shall provide the party who is entitled to the hearing with at least 15 days' notice of the hearing. Said notice shall set forth the reasons for imposing any proposed liability, assessment, penalty or other remedy, and shall be delivered to such person in person or by first-class or registered mail. All hearings shall be informal and rules of evidence shall not apply. All decisions shall be rendered in writing, and notice thereof shall be given to all affected Owners within not less than 15 days after the date of the

decision. No action shall be taken on any decision until at least five days after the date of the hearing.

- 14.3 Enforcement.** The provisions of this Declaration, the Bylaws, the Rules and Regulations of the Association or the resolutions of the Board, as the same may be adopted or amended from time to time, shall constitute enforceable equitable servitudes which shall bind each Owner, the Association, and their respective Invitees, and which may be enforced by Declarant, the Association, and any Owner, by any proceeding at law or in equity. Every act or omission whereby any provision of the Governing Documents or the resolutions of the Board is violated, whether in whole or in part, is hereby declared to be a nuisance, and may be abated or enjoined through an action maintained by Declarant, the Association and any Owner, whether the relief requested is for negative or affirmative action. The failure of an Owner or any of its Invitees to comply strictly with the provisions of any of the foregoing instruments, as the same may be in force and effect from time to time, shall be grounds for an action to recover sums due for damages maintainable by Declarant, the Association and any aggrieved Owner, including without limitation reasonable attorneys' fees and costs. The failure by Declarant, the Association and any Owner to enforce any covenant or restriction contained in this Declaration shall in no event be deemed a waiver of the right to do so thereafter. Each remedy set forth in this Declaration shall be in addition to all other remedies, whether available at law or in equity, and all such remedies, whether or not set forth in this Declaration, shall be cumulative and not exclusive. Excepting those powers provided by Section 5.8, the Association shall have no power to forfeit or abridge an Owner's rights to the full use and enjoyment of its Lot except where the forfeiture or abridgment is the result of the judgment of a court. The Board, pursuant to duly enacted Rules and Regulations, may temporarily suspend the rights of Owners as Members of the Association, including without limitation voting rights and the rights to use Common Area facilities, but only after Notice and Hearing as provided in Section 14.2. If any Owner believes that the Association should take action to enforce any alleged violation of this Declaration, the Owner shall notify the Board in writing of the alleged violation and the Owner's request that the Association take steps to enforce the provision which the Owner claims has been violated. Upon receipt of a request, the Board shall review the matter and shall determine what enforcement action, if any, is appropriate. Neither the Board nor the Association (including its Directors and officers) shall have any obligation to enforce the provision which the Owner claims has been violated, if the Board decides not to take any enforcement action.
- 14.4 Joint and Several Liability.** If a Lot is owned jointly by two or more persons, the liability of each Owner under this Declaration shall be joint and several.
- 14.5 Attorneys' Fees.** In any action brought by Declarant, the Association (on behalf of itself or an Owner) or an Owner to enforce the provisions hereof, whether legal

or equitable, the prevailing party shall be entitled to such reasonable legal expenses including without limitation attorneys' fees, court costs and experts' fees as may be fixed by the court or arbitrator.

- 14.6 **Severability.** The provisions of this Declaration shall be independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision shall not affect the validity or enforceability of any other provisions which shall remain in full force and effect.
- 14.7 **Interpretation.** The provisions of this Declaration shall be liberally construed to effectuate their purpose of creating a uniform plan for development and operation of the Property. Failure to enforce any provision hereof shall not constitute a waiver of the right thereafter to enforce said provision or any other provision hereof.
- 14.8 **Limitation of Liability.** The liability of any Owner for performance of any one or more of the provisions of this Declaration with respect to any Lot shall terminate upon the sale, transfer or other divestiture of such Owner's entire interest in that Lot with respect to obligations arising hereunder from and after the date of such divestiture.
- 14.9 **Special Provisions Relating to Enforcement of Declarant's Obligations to Complete Common Area Improvements.**
1. **Enforcement of Bonded Obligation.** Before the sale of any of the Lots, all Common Area Improvements shall be completed, or Declarant shall post a bond or bonds (hereinafter called the "Bond") to secure their completion, as the DRE may require. If all Common Area Improvements in the Planned Construction Statement appended to the Bond are covered by one or more recorded Notices of Completion, the Board shall execute whatever documents are required by the surety to release the Bond. With respect to any Common Area Improvement for which a Notice of Completion has not been filed within 60 days after the completion date specified for that improvement in the Planned Construction Statement appended to the Bond (or, if the Board has given an extension in writing for the completion of any such facility, within 30 days after expiration of such extension) the Board may consider and vote on the question of action by the Association to enforce the obligations under the bond.
 2. **Rights of Members.** If the Board decides not to initiate action to enforce the obligations under the Bond or if the Board fails to consider and vote on the question, the Members may call for a special meeting to consider the issue. Any such meeting shall be held not less than 35 days or more than 45 days after receipt by the Board of a petition for such a meeting signed by Members representing at least five percent of the Total Voting Power of the Association. The question of enforcement of the Bond shall be

considered and voted upon at such meeting by the Members in attendance, other than Declarant, and any proposal receiving the vote of a majority of the total voting power of the Association residing in Members other than Declarant shall be the decision of the Association. The Board shall implement any decision to enforce the obligations under the Bond made at such meeting by initiating and pursuing appropriate action in the name of the Association.

3. **Release of Bond.** On satisfaction of Declarant's obligation to complete the Common Area Improvements, the Board shall approve the release of the Bond and shall execute all documents required by the surety to release of the Bond. The Board may not condition its approval on the satisfaction of any condition other than completion of the Common Area Improvements. If the Board breaches any of the foregoing obligations, the Association will be liable to Declarant for any damages incurred thereby, including reasonable attorneys' fees. Any dispute between Declarant and the Association regarding the completion of Common Area Improvements shall be resolved in accordance with the provisions of the escrow instructions which accompany the Bond.

14.10 Special Provisions Relating to Disputes with Declarant Parties.

1. **Federal Arbitration Act.** The following dispute resolution procedure is implemented for the Lots, Residences and Common Area in accordance with the philosophy and intent of the Federal Arbitration Act (9 U.S.C. Sections 1-16) which 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 14.10 is to be interpreted and enforced as authorized by the Federal Arbitration Act. Parties interpreting this Section shall follow the federal court rulings which provide, without limitation, that the Federal Arbitration Act (a) is a congressional declaration of a liberal federal policy favoring arbitration agreements, notwithstanding substantive or procedural state policies to the contrary, (b) requires that federal and state courts rigorously enforce agreements to arbitrate, (c) requires the scope of this alternative dispute resolution agreement be interpreted broadly in favor of arbitration, and (d) requires disputes over whether an issue is arbitrable be resolved 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 14.10 to California Code Sections are not to be interpreted as a waiver of rights created under the Federal Arbitration Act.
2. **Alternative Dispute Resolution Provisions.** Any Dispute, as defined in Exhibit E attached entitled "Alternative Dispute Resolution Provisions"

(the "ADR Provisions"), shall be governed by and resolved in accordance with the ADR Provisions.

3. **Required Vote to Make a Claim.** Prior to filing a claim pursuant to the ADR Provisions, the Association must obtain the vote or written consent of Owners other than Declarant who represent not less than fifty-one percent (51%) of the Association's voting power (excluding the voting power of Declarant).
4. **Civil Code Section 1354.** This Section 14.10 governs only the resolution of Disputes with Declarant Parties (as defined in the ADR Provisions) on the one hand, and the Association or one or more Owners, on the other hand. Unless the subject matter of a Dispute expressly involves enforcement of the restrictions contained in this Declaration, such Dispute shall not be governed by the provisions of California Civil Code Section 1354, or any successor statute. Each party in a Dispute with Declarant Parties shall bear its own attorneys' fees and costs, and the prevailing party shall not be entitled to an award of attorneys' fees or costs, except to the extent provided under California Civil Code Section 1354.
5. **Agreement to Method of Resolving Disputes; WAIVER OF RIGHT TO JURY TRIAL.** DECLARANT, THE ASSOCIATION AND EACH OWNER AGREE TO USE THE PROCEDURES ESTABLISHED IN THIS SECTION 14.10 AND THE ADR PROVISIONS TO RESOLVE ALL DISPUTES, AND THEY WAIVE THEIR RIGHTS TO RESOLVE DISPUTES IN ANY OTHER MANNER. DECLARANT, THE ASSOCIATION, AND EACH OWNER ACKNOWLEDGE THAT BY AGREEING TO RESOLVE ALL DISPUTES AS PROVIDED IN THIS SECTION 14.10, THEY ARE GIVING UP THEIR RIGHT TO HAVE DISPUTES TRIED BEFORE A JUDGE OR JURY, PURSUANT TO THE FEDERAL ARBITRATION ACT.

14.11 Notification Upon Sale or Lease of a Lot or Residence.

1. **Sale.** At least ten days prior to the consummation of any sale or other transaction which will result in a change in the record ownership of the fee interest in a Lot, the transferring Owner or Owners shall provide the following information to the Association in writing: (a) the name of each transferor and transferee; (b) the Lot number and street address of the Residence to be transferred; (c) the mailing address of each transferee; (d) the name and address of the escrow holder, if any, for such transfer and the escrow number; and (e) the proposed date for consummation of the transfer
2. **Lease.** No later than five days after the execution of a lease for a Residence and in all circumstances at least three days prior to providing a

lessee with possession of a Residence, the lessor (whether an Owner or prior lessee) shall provide the Association with an executed copy of the lease and the following information in writing: (a) the name of each lessor and each lessee; (b) the Lot number and street address of the Residence to be leased; (c) the mailing address of each lessee; (d) the commencement and termination dates of the lease; and (e) the names of all persons who will occupy the Residence under the lease.

3. **Effect of Failure to Notify.** Until such time as the Association receives the notice required hereinabove, a transferee or lessee shall be deemed to have received any notice or other communication required or permitted to be given by the Association hereunder which is duly given to the transferor or lessor.

14.12 Obligations of Owners; Avoidance; Termination.

1. **Nonuse or Abandonment.** No Owner may avoid the obligations of membership in the Association or any other obligations imposed on it by this Declaration: (a) through nonuse of any Common Area; (b) by renunciation or abandonment of its Lot; (c) by any other act of renunciation or abandonment; or (d) by attempting to assign responsibility therefore to a tenant, manager or any third person.
2. **Leasing.** An Owner who leases its Residence to any person or entity shall be responsible for assuring compliance by his or her lessee with this Declaration, including all easements, reservations, assessments, liens and charges created in accordance with this Declaration, all as amended and supplemented from time to time.
3. **Conveyance or Sale.** Upon the conveyance, sale, assignment or other transfer of a Lot to a new Owner, the transferring Owner shall not be liable for any assessments accruing with respect to such Lot after the date of such transfer, and no person, after the termination of his or her status as an Owner and prior to his or her again becoming an Owner, shall incur any of the obligations or enjoy any of the benefits of an Owner under this Declaration. The voluntary conveyance of a Lot to a new Owner, however, will not extinguish any obligations for any accrued and unpaid assessments against the Lot being conveyed.
4. **No Severance.** No Owner, or other person, may by conveyance, transfer or any other action, including an action at law for partition, sever any Lot from the Common Area or from the Association and all rights to do so are expressly waived.

14.13 Non-Liability and Indemnification.

1. **Non-Liability of Officials, Volunteer Board Members and Officers, Association.**

- (a) To the fullest extent permitted by law, neither Declarant, the Board, a Director, officer or committee of the Association, nor a member of a committee of the Association, shall be liable to any Member, Owner, the Association or any other party for and on account of any decision, approval, disapproval, course of action, act, inaction, omission, error, negligence or the like made in good faith and within the scope of what such person or entity reasonably believed to be its duties (collectively, "Good Faith Actions").
- (b) A volunteer Director or volunteer Association officer shall not be personally liable to any person or entity who suffers injury, including without limitation, bodily injury, emotional distress, wrongful death or property damage or loss as a result of the tortious act or omission of the volunteer officer or Director if all of the applicable conditions specified in Section 1365.7 of the California Civil Code, as modified, amended or replaced, are met.
- (c) The Association shall not be liable for damage to property on the Property unless caused by the negligence of the Association, the Board, a Director, or the Association's officers.

2. **Indemnification.**

- (a) **Indemnification of Officials.** The Association shall, at its cost, indemnify, defend and hold harmless Declarant, the Board, each individual Director, officer or committee of the Association, and each member of a committee of the Association (including any volunteer Directors or officers or committee members) against any costs, demands, damage, loss, claim, liability or prejudice suffered or claimed as a result of any Good Faith Actions. The entitlement to indemnification hereunder inures to the benefit of the estate, executor, administrator, heirs, legatees, or devisees of any person entitled to such indemnification.
- (b) **Indemnification by Owners**
 - (i) Each Owner shall be liable to the other Owners and to the Association for any damage to the Common Area Improvements that may be sustained by reason of the negligence of Owner or Owner's Parties to the extent any such damage is not covered and paid by insurance carried by the Association, provided that the responsible Owner shall pay any deductible or related costs: Each Owner shall

defend, indemnify and hold each and every other Owner harmless from and against any claim of any person for personal injury or property damage occurring on the Lot of such Owner, unless caused by another Owner or another Owner's Parties. No decision resulting in the liability of an Owner pursuant to this Section shall be reached until Notice and Hearing Requirements in respect of an Owner have been satisfied

- (ii) Each Owner shall defend, indemnify and hold harmless each and every other Owner, and the Association, from and against all liability arising from the claim of any lien against the Lot of any other Owner or against the Common Area for construction performed, or for labor, materials, services, equipment or other products incorporated into Improvements on the Owner's Lot, at such Owner's request or with its consent. At the written request of any Owner, the Association shall enforce this indemnity by collecting from the Owner of the Lot on which the labor was performed or to which materials were furnished, through Reimbursement Assessment against the Owner of said Lot, the amount necessary to discharge any such lien, including all costs incident thereto. No decision resulting in the liability of an Owner pursuant to this Section shall be reached until Notice and Hearing Requirements in respect of an Owner have been satisfied.

14.14 Scope. Each Owner, by mere acceptance of a deed to a Lot, shall be deemed to have agreed, for any and all purposes, for Owner's Parties, to abide by, and to be bound by, each and every provision of this Declaration that subjects the Owner or other person to a contractual, fiduciary or other duty, obligation or agreement for the benefit of Declarant, the Association, the other Owners, either individually or as a class, the Property or any part thereof, including the individual Lots, or the public generally, regardless of whether the deed refers specifically to this Declaration or to any such duty, obligation or agreement.

14.15 Effective Date. This Declaration shall become effective upon its recordation in the Official Records of the County.

14.16 Notices. Except as otherwise provided herein, 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 or more co-Owners of a Lot, or to any general partner of a partnership or manager or member of a limited liability company owning a Lot constitutes delivery to all co-Owners or to the partnership or limited liability company, as the case may be. Personal delivery of such notice to any

officer or agent for the service of process on a corporation constitutes delivery to the corporation. In lieu of the foregoing, such notice may 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 business days after the time of such mailing, except for notice of a meeting of Members 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 from time to time and circulated to all Owners.

14.17 Periodic Inspections. Declarant shall have the right, but not the obligation, to conduct inspections and tests from time to time of all or any parts of the Common Areas in order to ascertain the physical condition of the Improvements and determine whether maintenance, repairs or replacements of any such Improvements are indicated. If Declarant conducts any such tests or inspections, it shall pay all costs thereof, restore the affected portion of the Property to its condition immediately prior to the inspections and tests, and shall indemnify the Association and Owner(s) of any affected Lot(s) from any damages resulting therefrom. The Association may have a representative accompany Declarant if it so elects. Declarant shall provide the Association with copies of any written reports describing the results of any such inspections or tests. Declarant shall have such rights of entry on, over, under, across and through the Property as may be reasonably necessary to exercise the rights described in this Section 14.17

14.18 Lot Line Adjustments. The Owners of adjacent Lots may adjust the common boundary between their Lots provided that they comply with all applicable laws, ordinances and codes in connection therewith. The Association and the Owner of a Lot adjacent to the Common Area may adjust the boundary between the Owner's Lot and the Common Area, provided that: (a) they comply with all the applicable laws, ordinances and codes in connection therewith; and (b) the lot line adjustment does not interfere with the intended use of or purpose for the Common Area. No lot line adjustment pursuant to this Section shall affect the amount of the Assessments to be levied against a Lot pursuant to this Declaration.

14.19 Delivery of Board Books and Records.

1. **Delivery after First Sale.** Commencing not later than 90 days after the close of escrow of the first sale of a Lot to a homebuyer, copies of the documents listed below, as soon as readily obtainable, shall be delivered by Declarant to the Board at the office of the Association, or at such other place as the Board shall prescribe. The obligation to deliver the documents listed below shall apply to any documents obtained by Declarant no matter when obtained; provided, however, such obligation

shall terminate upon the earlier of: (1) the conveyance of the last Lot covered by a Public Report for the Property; or (2) three years after the expiration of the most recent Public Report for the Property:

- (a) The recorded subdivision map or maps for the Property.
- (b) The deeds and easements executed by Declarant conveying the Common Area or other interest to the Association, to the extent applicable.
- (c) This Declaration, including all amendments and annexations thereto.
- (d) The Articles and all amendments thereto.
- (e) The Bylaws and all amendments thereto.
- (f) All architectural guidelines and all other rules regulating the use of an Owner's Lot or use of the Common Area which have been promulgated by the Association.
- (g) The plans approved by the local agency or county where the Property is located for the construction or improvement of facilities that the Association is obligated to maintain or repair; provided, however, that the plans need not be as built plans and that the plans may bear appropriate restrictions on their commercial exploitation or use and may contain appropriate disclaimers regarding their accuracy.
- (h) All notice of completion certificates issued for Common Area improvements (other than residential structures).
- (i) Any bond or other security device in which the Association is the beneficiary.
- (j) Any written warranty being transferred to the Association for Common Area equipment, fixtures or improvements.
- (k) Any insurance policy procured for the benefit of the Association, the Board or the Common Area
- (l) Any lease or contract to which the Association is a party
- (m) The membership register, including mailing addresses and telephone numbers, books of account and minutes of meetings of the Members, of the governing body and of committees of the governing body of the Association.

- (n) Any other instrument not described above which establishes or defines the common, mutual or reciprocal rights or responsibilities of Members of the Association.
2. **Delivery After Annexation.** Commencing not later than 90 days after the annexation of additional Phases to the Property, copies of those documents listed under Section 14.19.1 which are applicable to that Phase and were not previously delivered to the Board shall, as soon as readily obtainable, be delivered by Declarant to the Board at the office of the Association, or at such other place as the Board shall prescribe. The obligation to deliver the documents listed in Section 14.19.1 shall apply to any documents obtained by Declarant no matter when obtained; provided, however, such obligation shall terminate upon the earlier of: (a) the conveyance of the last Lot covered by a Public Report for the Property; or (b) three years after the expiration of the most recent Public Report for the Property.
- 14.20 **Term of Declaration.** This Declaration shall have a term of 50 years from its date of recordation. Thereafter, this Declaration shall be automatically extended for successive periods of ten years, unless and until two thirds (2/3) of the Owners approve a termination of this Declaration
- 14.21 **Construction of Provisions.** The provisions of this Declaration shall be liberally construed to effect its purpose of creating a uniform plan for the development and operation of a planned development pursuant to the provisions of Section 1350, et seq. of the California Civil Code, as amended or replaced from time to time.
- 14.22 **Binding.** This Declaration shall be for the benefit of and be binding upon all Owners, their respective heirs, legatees, devisees, executors, administrators, guardians, conservators, successors, purchasers, tenants, encumbrancers, donees, grantees, mortgagees, lienors and assigns.
- 14.23 **Gender, Number and Captions.** As used herein, the singular shall include the plural and masculine pronouns shall include feminine pronouns, where appropriate. The title and captions of each paragraph of this Declaration are not a part thereof and shall not affect the construction or interpretation of any part of this Declaration.
- 14.24 **Redistribution of Governing Documents.** Upon the resale of any Lot by any Owner, the Owner shall supply to the buyer of the Lot a copy of each of the Governing Documents.
- 14.25 **Exhibits.** All exhibits attached to this Declaration are incorporated by this reference as though fully set forth herein.
- 14.26 **Required Actions of the Association.** The Association shall at all times take all reasonable actions necessary for the Association to comply with the terms of this

Declaration or otherwise to carry out the intent of this Declaration.

14.27 **No Waiver.** Failure by the Association, any Owner or Declarant to enforce any covenant, condition, restriction or reservation contained in any of the Governing Documents in any certain instance or on any particular occasion shall not be deemed a waiver of such right upon any such future breach of the same or another covenant, condition, restriction or reservation.

14.28 **Cumulative Remedies.** All rights, options and remedies of Declarant, the Association and the Owners contained in this Declaration are cumulative, and no one of them shall be exclusive of any other. Declarant, the Association and each Owner shall have the right to pursue any one or all of such rights, options or remedies

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

IN WITNESS WHEREOF, Declarant has executed this Declaration to be effective upon recordation in the Official Records of the County.

DECLARANT:

Standard Pacific Corp., a Delaware corporation

By: _____

Name: THOMAS A. OLSON

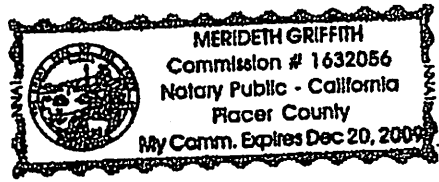
Its: AUTHORIZED REPRESENTATIVE

State of California)

County of Placer)

On February 21, 2007 before me, Merideth Griffith, Notary Public,
personally appeared Thomas A. Olson
NAME(S) OF SIGNER(S)

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 signatures(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.

Merideth Griffith
SIGNATURE OF NOTARY

CAPACITY CLAIMED BY SIGNER

- INDIVIDUAL(S)
- CORPORATE _____
OFFICER(S) _____
(Titles)
- PARTNERS(S)

- ATTORNEY-IN-FACT

- TRUSTEE(S)
- SUBSCRIBING WITNESS
- GUARDIAN/CONSERVATOR
- OTHER:

SIGNER IS REPRESENTING: STANDARD PACIFIC CORP, a Delaware corporation

EXHIBIT A
ADDITIONAL PROPERTY

to be attached

ADDITIONAL PROPERTY

Lots 45 through 101, and Lots B, C, D, E, F, G, N, O, P and Q,
as shown on the Final Map of Diamond Creek Unit No. 7. Subdivision
No. 05-09, filed in the Office of the Placer County Recorder in
Book _____ of Maps, at Page _____.

EXHIBIT B

**PLAN SHOWING SCOPE OF ASSOCIATION'S
LANDSCAPE MAINTENANCE RESPONSIBILITY**


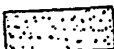

to be attached

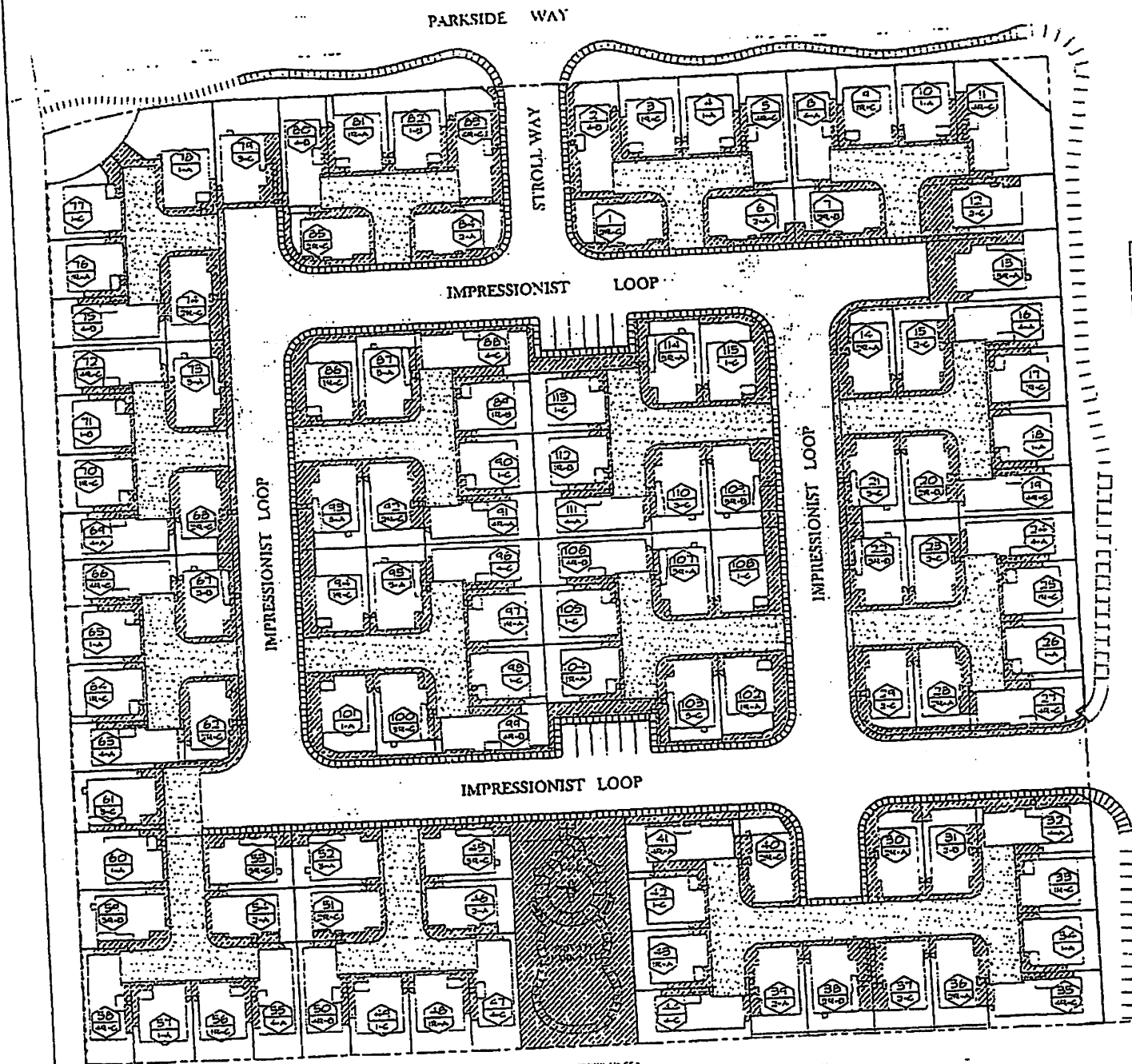
HOA MAINTENANCE EXHIBIT
MONET
 AT DIAMOND CREEK
 ROSEVILLE, CALIFORNIA



STANDARD PACIFIC
Making Your Home At Home™

HOA MAINTENANCE LEGEND:

- ROADS/RIGHT-OF-WAY 
- CONCRETE T-COURTS 
- PARKS & LANDSCAPING 



DIAMOND CREEK UNIT A
 FUNDING PLAN
 APR 07-11-03

FEBRUARY 22, 2007



TSD Engineering, Inc.
 Total Site Design
 31 Natomas Street, Suite 2110
 Folsom, CA 95630
 TEL: 916-981-0171 FAX: 916-981-0211

EXHIBIT C

HOME BUILDER'S LIMITED WARRANTY

Administered by Professional Warranty Service Corporation

Throughout this HOME BUILDER'S LIMITED WARRANTY, referred to hereinafter as the "LIMITED WARRANTY", the words "YOU" and "YOUR" refer to the HOMEOWNER and HOMEOWNERS ASSOCIATION. The words "WE", "US" and "OUR" refer to the BUILDER. The other words and phrases which appear in boldface uppercase type also have special meaning. Refer to the Section XI, Definitions so that YOU will understand the terminology applicable to this LIMITED WARRANTY.

This LIMITED WARRANTY establishes an agreed method for determining when a CONSTRUCTION DEFECT exists and a clear understanding of OUR responsibilities for remedying any such CONSTRUCTION DEFECT. This LIMITED WARRANTY also helps distinguish a CONSTRUCTION DEFECT that is OUR responsibility from those minor imperfections that can reasonably be expected in the HOME or the COMMON ELEMENTS or result from normal wear and tear or are routine HOMEOWNER or HOMEOWNERS ASSOCIATION maintenance responsibilities.

This LIMITED WARRANTY contains the procedures YOU must use to notify US of a condition in YOUR HOME or the COMMON ELEMENTS which YOU believe may constitute a CONSTRUCTION DEFECT. In the event a condition occurs in the HOME or the COMMON ELEMENTS that YOU believe may constitute a CONSTRUCTION DEFECT, YOU agree to submit a request for warranty performance under this LIMITED WARRANTY. Based on the information YOU provide and, where WE deem it necessary, information obtained from OUR onsite investigation inspection and/or testing of the HOME or the COMMON ELEMENTS, WE will determine whether WE agree with YOU that the condition constitutes a CONSTRUCTION DEFECT. If WE determine that the condition reported by YOU is a CONSTRUCTION DEFECT, WE will remedy the condition in accordance with the remedies prescribed in this LIMITED WARRANTY. WE will make this determination in accordance with the provisions contained in this LIMITED WARRANTY.

If WE determine that a condition does not constitute a CONSTRUCTION DEFECT that is OUR responsibility and therefore deny YOUR request for warranty performance, YOU have the right, subject to YOU first complying with any state law requirements that require certain procedures to be followed prior to the filing of an action relating to construction defects or warranty claims, to initiate binding arbitration that will irrevocably determine whether the condition constitutes a CONSTRUCTION DEFECT that is OUR responsibility. If this binding arbitration determines that the condition does constitute a CONSTRUCTION DEFECT that is OUR responsibility, WE will resolve the problem in accordance with the remedies prescribed in this LIMITED WARRANTY. For information on the binding arbitration process see Section IX, Binding Arbitration Procedure. The arbitrator will make a determination based on the provisions contained in this LIMITED WARRANTY.

Enclosed with this LIMITED WARRANTY, is a Limited Warranty Validation Form. It is important that this form is retained with the LIMITED WARRANTY. The Limited Warranty Validation Form provides the dates on which the specific warranty coverage periods begin and expire. Liability under this LIMITED WARRANTY is limited to the TOTAL SALES PRICE of YOUR HOME. † This LIMITED WARRANTY does not cover CONSEQUENTIAL OR INCIDENTAL DAMAGES.

There may be instances where an additional PWC administered limited warranty form is issued together with this LIMITED WARRANTY. If both of these warranties are issued to YOU, YOU agree to request warranty performance under either warranty relative to warrantable issues on the HOME or the COMMON ELEMENTS YOU may not collect twice relative to

† HOMEOWNERS and HOMEOWNERS ASSOCIATIONS in Texas, please refer to the Texas Addendum, Section XIII A

the same CONSTRUCTION DEFECT and amounts paid or expended by US for warranty performance under either warranty will reduce the limit of liability remaining under both warranties simultaneously.

WE have contracted with PWC for certain administrative services relative to this LIMITED WARRANTY PWC's sole responsibility is to provide administrative services Under no circumstances or conditions is PWC responsible for fulfilling OUR obligations under this LIMITED WARRANTY

I. Coverage Limit

The TOTAL SALES PRICE of YOUR HOME is OUR limit of liability † It is the most WE will pay or expend for all covered CONSTRUCTION DEFECTS regardless of the number of requests for warranty performance made against this LIMITED WARRANTY Once OUR limit of liability has been paid, no further requests for warranty performance can be made against this LIMITED WARRANTY or any other PWC administered warranty issued for the HOME or the COMMON ELEMENTS

II. Warranty Coverage

Coverage under this LIMITED WARRANTY changes over the course of the WARRANTY PERIOD Section A Coverage refers to coverage provided during the first year; Section B Coverage refers to coverage provided during the first and second year; and Section C Coverage refers to coverage provided during the first through tenth year

Section A Coverage:

During the first year following the WARRANTY COMMENCEMENT DATE, WE warrant that the construction of YOUR HOME (including COMMON ELEMENTS related thereto) will conform to the applicable STANDARDS OF PERFORMANCE contained in the WARRANTY MANUAL Coverage under Section A Coverage expires one year after the WARRANTY COMMENCEMENT DATE. Some items will only be repaired on one occasion during the first year after the WARRANTY COMMENCEMENT DATE, and some items will only be repaired if noted at the time of the walk-thru inspection prior to the closing. To be eligible for coverage, WE must receive written notice of the CONSTRUCTION DEFECT before the expiration date of the coverage for Section A Coverage items †

Section B Coverage:

During the first and second years following the WARRANTY COMMENCEMENT DATE, WE warrant that SYSTEMS (including the COMMON ELEMENTS related thereto) will conform to the applicable STANDARDS OF PERFORMANCE contained in the WARRANTY MANUAL Coverage under Section B Coverage expires two years after the WARRANTY COMMENCEMENT DATE. To be eligible for coverage, WE must receive written notice of the SYSTEMS CONSTRUCTION DEFECT before the expiration date of the coverage for Section B Coverage items

Section C Coverage:

During the first through tenth years following the WARRANTY COMMENCEMENT DATE, WE warrant that the structural components of YOUR HOME will conform to the applicable STANDARDS OF PERFORMANCE

† HOMEOWNERS and HOMEOWNERS ASSOCIATIONS in Texas, please refer to the Texas Addendum, Section XIII A

* HOMEOWNERS and HOMEOWNERS ASSOCIATIONS in Arizona, please refer to the Arizona Addendum, Section XIII C

contained in the WARRANTY MANUAL Coverage under Section C Coverage expires ten years after the WARRANTY COMMENCEMENT DATE. To be eligible for coverage, WE must receive written notice of the CONSTRUCTION DEFECT before the expiration date of the coverage for Section C Coverage items. However, it should be noted that YOU will not have the right to claim that WE or anyone acting on OUR behalf failed to comply with OUR obligation under this Section C Coverage unless, as provided by Section IX, YOUR Binding Arbitration Request Form is received by PWC before the expiration date of the coverage for Section C items.

OUR obvious and visible failure to complete the construction of the HOME or the COMMON ELEMENTS or any portion of the HOME or the COMMON ELEMENTS because WE have agreed to complete such construction after the closing is not a CONSTRUCTION DEFECT.

III. Our Coverage Obligations

All notices of alleged CONSTRUCTION DEFECTS and complaints under this LIMITED WARRANTY must be made by YOU in writing. Telephonic or face-to-face discussion will not protect YOUR rights under this LIMITED WARRANTY (see Section VIII, Procedure to Request US To Perform Under This LIMITED WARRANTY).

In the event YOU allege a CONSTRUCTION DEFECT occurs during the WARRANTY PERIOD, upon receiving written notice from YOU, WE, or a third party designated by US or acting on OUR behalf, will inspect, investigate and/or test (including destructive testing) the alleged CONSTRUCTION DEFECT (to the extent we deem it necessary to do so) to determine if a CONSTRUCTION DEFECT exists. Upon confirmation of a CONSTRUCTION DEFECT, WE, or a third party designated by US or acting on OUR behalf, will (1) repair or replace the CONSTRUCTION DEFECT, (2) pay to YOU the actual amount it would cost US to repair or replace the CONSTRUCTION DEFECT, or (3) pay to YOU an amount equal to the diminution in fair market value of YOUR HOME caused by the CONSTRUCTION DEFECT. The decision to repair, replace, or to make payment to YOU is at OUR or OUR authorized representative's sole option.

WE will have been considered to have breached this LIMITED WARRANTY only if WE fail to resolve a CONSTRUCTION DEFECT in accordance with the terms and conditions of this LIMITED WARRANTY.

IV. Disclaimer And Waiver Of Warranties And Other Rights

All express or implied warranties other than this LIMITED WARRANTY, including any oral or written statement or representation made by US or any other person, and any implied warranty of habitability, merchantability of fitness, are hereby disclaimed by US and are waived by YOU. In addition, YOU waive the right to seek damages or other legal or equitable remedies from US, OUR subcontractors, agents, vendors, suppliers, design professionals and materialmen, under any other common law or statutory theory of liability, including but not limited to negligence and strict liability. YOUR only remedy in the event of a CONSTRUCTION DEFECT in or to the HOME or the COMMON ELEMENTS or to the real property on which the HOME or the COMMON ELEMENTS is situated is the coverage provided to YOU under this LIMITED WARRANTY † * ▲

† HOMEOWNERS and HOMEOWNERS ASSOCIATIONS in Texas, please refer to the Texas Addendum, Section XIII A

* HOMEOWNERS and HOMEOWNERS ASSOCIATIONS in California, please refer to the California Addendum, Section XIII B

▲ HOMEOWNERS and HOMEOWNERS ASSOCIATIONS in Nevada, please refer to the Nevada Addendum, Section XIII D

Some States prohibit the exclusion or limitation of certain damages or the waiver of certain warranties or other rights under state law, so all the limitations and exclusions of this LIMITED WARRANTY may not apply to YOU and will only apply to the extent allowed by the law of YOUR State. If any provision of this LIMITED WARRANTY is determined to be unenforceable, such a determination will not affect the remaining provisions, particularly the binding arbitration procedures contained in Section IX. If this LIMITED WARRANTY or any provision herein is determined to be unenforceable as to a HOMEOWNERS ASSOCIATION or a specific HOMEOWNER, such a determination will not affect the enforceability of this LIMITED WARRANTY or such provision as to any other HOMEOWNERS ASSOCIATION or any other HOMEOWNER. This issue of enforceability, as well as all other issues, will be determined by binding arbitration as provided for in this LIMITED WARRANTY

V. Homeowner Maintenance Obligations

Maintenance of the HOME and the COMMON ELEMENTS is YOUR responsibility. All HOMES and COMMON ELEMENTS require periodic maintenance to prevent premature deterioration and water intrusion and to ensure adequate performance of the SYSTEMS. WE will make a limited warranty and maintenance manual or similar publication available to YOU upon request. Whether from this document or others that are readily available to YOU, YOU must understand and perform the maintenance that the HOME and COMMON ELEMENTS require. As stated in other sections of this LIMITED WARRANTY, WE are not responsible for HOME or COMMON ELEMENTS maintenance issues or for damage that results from YOUR failure to maintain the HOME or the COMMON ELEMENTS

VI. Coverage Limitations

When WE or a third party designated by US or acting on OUR behalf repair or replace a CONSTRUCTION DEFECT, the repair or replacement will include the repair or replacement of only those surfaces, finishes and coverings that were damaged by the CONSTRUCTION DEFECT that were part of the HOME or the COMMON ELEMENTS when title was first transferred by US. Surfaces, finishes and coverings that require repair or replacement in order for US or a third party designated by US to repair or replace the CONSTRUCTION DEFECTS will be repaired or replaced. The extent of the repair and replacement of these surfaces, finishes, or coverings will be approximately the same condition they were in prior to the CONSTRUCTION DEFECT, but not necessarily to a like new condition

When repairing or replacing surfaces, finishes and coverings, the repair or replacement will attempt to achieve as close a match with the original surrounding areas as is reasonably possible, but an exact match cannot be guaranteed due to such factors as fading, aging and unavailability of the same materials

In the case where a CONSTRUCTION DEFECT exists and the HOME is rendered uninhabitable and the CONSTRUCTION DEFECT is repaired or replaced, the repair or replacement shall include the reasonable cost of the HOMEOWNER'S alternative shelter until the HOME is made habitable

VII. Exclusions

A This LIMITED WARRANTY does not require US to provide any reimbursement or make any replacement or repair based on the following items which are excluded from coverage pursuant to this LIMITED WARRANTY:

1 Any CONSTRUCTION DEFECTS or other damages resulting, either directly or indirectly, from the following causes or occurring in the following situations:

- a Fire;
- b Lightning;
- c Explosion;

- d. Riot and civil commotion;
- e. Smoke;
- f. Hail;
- g. Aircraft;
- h. Falling objects;
- i. Vehicles;
- j. Floods;
- k. Earthquake;
- l. Landslide or mudslide originating on property other than the site of the HOME or the COMMON ELEMENTS or other property developed by the BUILDER;
- m. Mine subsidence or sinkholes;
- n. Changes in the underground water table not reasonably foreseeable by the BUILDER;
- o. Volcanic eruption, explosion or effusion;
- p. Wind conditions, including but not limited to:
 - (i) Gale force winds;
 - (ii) Hurricanes;
 - (iii) Tropical storms;
 - (iv) Tornadoes;
- q. Insects, animals or vermin;
- r. Changes of the grading of the ground by anyone other than US or OUR agents or subcontractors working on OUR behalf which results in surface drainage towards the HOME or other improper drainage, or permits water to pond or become trapped in localized areas against the foundation or otherwise;
- s. Changes, additions, or alterations made to the HOME or the COMMON ELEMENTS by anyone after the WARRANTY COMMENCEMENT DATE, except those made or authorized by US;
- t. Any defect in material or workmanship supplied by anyone other than US or OUR agents or subcontractors working on OUR behalf;
- u. Improper maintenance, negligence or improper use of the HOME or the COMMON ELEMENTS by YOU or anyone other than US that results in damage, including rot, dry rot, moisture, rust, mildew;
- v. Dampness or condensation due to YOUR failure to maintain adequate ventilation;
- w. Damage resulting from the weight and/or performance of any type of waterbed or other furnishings which exceeds the load-bearing design of the HOME or the COMMON ELEMENTS;
- x. Normal wear and tear or normal deterioration of materials;
- y. Economic damages due to the failure of the HOME or the COMMON ELEMENTS to meet consumer expectations

2 Any costs arising from, or any CONSTRUCTION DEFECTS resulting from the actual, alleged or threatened discharge, dispersal, release or escape of POLLUTANTS. WE will not cover costs or expenses arising from the uninhabitability of the HOME or the COMMON ELEMENTS or health risk due to the proximity of POLLUTANTS. WE will not cover costs, or expenses resulting from the direction of any governmental entity to test, clean up, remove, treat, contain or monitor POLLUTANTS;

3 Any costs arising from, or any CONSTRUCTION DEFECTS resulting from the effects of electromagnetic fields (EMF's) or radiation;

4 Any damage to personal property that does not result from a CONSTRUCTION DEFECT;

5 Any CONSEQUENTIAL OR INCIDENTAL DAMAGES;

6 Any personal injury or bodily harm damages;

7 Any damage to CONSUMER PRODUCTS;

8 Any CONSTRUCTION DEFECTS as to which YOU have not taken timely and reasonable steps to protect and minimize damage.

9 Any damage to the extent it is incurred after or as a result of YOUR failure to notify US in a reasonably timely manner after YOU have become aware or should have become aware of the CONSTRUCTION DEFECT or condition causing such damage;

- 10 Any alternate living expenses or expenses YOU incurred for repairs that were not required by an EMERGENCY CONDITION and without notifying US and obtaining OUR written approval as required herein;
- 11 Any costs or obligations paid or incurred by YOU in violation of Section VIII. C below;
- 12 Any non-conformity with local building codes, regulations or requirements that has not resulted in a CONSTRUCTION DEFECT While WE acknowledge OUR responsibility to build in accordance with applicable building codes, this LIMITED WARRANTY does not cover building code violations in the absence of a CONSTRUCTION DEFECT;
- 13 Any deviation from plans and specifications that has not resulted in a CONSTRUCTION DEFECT;
- 14 Any claims barred by any limitations period provided by law

B OUR LIMITED WARRANTY does not cover any CONSTRUCTION DEFECT which would not have occurred in the absence of one or more of the excluded events or conditions listed in Exclusions, Section VII. A. 1 a. – A. 1.q., A.2. or A.3. above, regardless of:

- 1 the cause of the excluded event or condition; or
- 2 other causes of the loss or damage; or
- 3 whether other causes acted concurrently or in any sequence with the excluded event or condition to produce the loss or damage

VIII. Procedure To Request US To Perform Under This LIMITED WARRANTY

Subsections A through E of this Section VIII apply in all cases, except where other procedures or provisions apply pursuant to a written contract between YOU and US.

If YOU become aware of a condition that YOU believe is a CONSTRUCTION DEFECT under this LIMITED WARRANTY, YOU have the following responsibilities:

A. Notification

YOU must notify US in writing as soon as it is reasonably possible after YOU have become aware or should have become aware of a CONSTRUCTION DEFECT, but in no event may YOUR written notice of a CONSTRUCTION DEFECT or YOUR written request for warranty performance be postmarked or received by US after the warranty for the CONSTRUCTION DEFECT has expired (i.e., one year for Section A Coverage, two years for Section B Coverage, and ten years for Section C Coverage)

If the written notice is postmarked or received by US after the warranty for the alleged CONSTRUCTION DEFECT has expired, YOU will be in breach of this LIMITED WARRANTY and, in addition to any other rights and remedies WE will have under applicable law, WE shall have no obligation to make any payment to YOU or to repair or replace the alleged CONSTRUCTION DEFECT

B. Cooperate With US

YOU must give US and any third parties acting on OUR behalf reasonable help in inspecting, investigating, testing (including destructive testing), monitoring, repairing, replacing or otherwise correcting an alleged CONSTRUCTION DEFECT. Help includes, but is not limited to, granting reasonable access to the HOME or the COMMON ELEMENTS for the forgoing purposes. If YOU fail to cooperate or provide such reasonable access to the HOME or the COMMON ELEMENTS, YOU

will be in breach of this LIMITED WARRANTY and, in addition to any other rights and remedies we have under applicable law, WE will have no obligation to do any of the foregoing.

C. Do Not Make Voluntary Payments

YOU agree not to make any voluntary payments or assume any obligations or incur any expenses for the remedy of a condition YOU believe is a CONSTRUCTION DEFECT without prior written approval from US, or other parties authorized to act on OUR behalf WE will not reimburse YOU for costs incurred where YOU did not obtain prior written approval

However, YOU may incur reasonable expenses in making repairs in an EMERGENCY CONDITION without prior written approval, provided the repairs are solely for the protection of the HOME or the COMMON ELEMENTS from further damage or to prevent an unsafe living condition and provided YOU notify US as soon as is reasonably possible. To obtain reimbursement for repairs made during an EMERGENCY CONDITION, YOU must provide US with an accurate written record of the repair costs

D. Sign A Release

When WE or a third party designated by US or acting on OUR behalf have completed repairing, replacing or paying YOU as to any CONSTRUCTION DEFECT or other related damage to the HOME or the COMMON ELEMENTS covered by this LIMITED WARRANTY, YOU must sign a full release of OUR obligation for and liability with respect to the CONSTRUCTION DEFECT The release shall be applicable to the CONSTRUCTION DEFECT and shall not prevent YOU from notifying US should YOU become aware of a subsequent CONSTRUCTION DEFECT.

E. If YOU Disagree With US

If YOU believe WE have not responded to YOUR request for warranty performance to YOUR satisfaction or in a manner that YOU believe this LIMITED WARRANTY requires, YOU may provide written notice to PWC requesting mediation Upon PWC's receipt of written notice from YOU, PWC may review and mediate YOUR request by communicating with YOU, US, and any other individuals or entities that PWC believes may possess relevant information If after forty-five (45) days, PWC is unable to successfully mediate YOUR request for warranty performance, or at any earlier time when PWC determines that YOU and WE are at an impasse, PWC will notify YOU that YOUR request for warranty performance remains unresolved and that YOU may elect to initiate binding arbitration. However, it should be noted that for disputes involving Section C Coverage, YOUR Binding Arbitration Request Form must be received before the Section C Coverage expires whether or not you have provided written notice to PWC requesting mediation. Binding arbitration as described in the following section is the sole forum for the resolution of disputes between YOU and US as set forth in the following Section

Notwithstanding the foregoing or Section IX below, nothing in this LIMITED WARRANTY shall diminish any rights, obligations, or remedies YOU or WE may have with respect to any pre-litigation procedures (e.g., inspection rights, rights to repair, settlement offer and response periods, etc.) under state law, which must be followed prior to the formal filing of a lawsuit (or, in the case of this LIMITED WARRANTY, binding arbitration)

SAMPLE
IX. BINDING ARBITRATION PROCEDURE

Any disputes between YOU and US or parties acting on OUR behalf, including PWC, related to or arising from this LIMITED WARRANTY, the design or construction of the HOME or the COMMON ELEMENTS or the sale of the HOME or transfer of title to the COMMON ELEMENTS that cannot be informally resolved will be resolved by binding arbitration Binding arbitration shall be the sole forum for resolving any and all disputes between YOU and US, or OUR representatives and this Section IX shall survive the expiration of this LIMITED WARRANTY Disputes subject to binding arbitration include but are not limited to:

- A Any disagreement that a condition in the HOME or the COMMON ELEMENTS is a CONSTRUCTION DEFECT and is therefore covered by this LIMITED WARRANTY;
- B Any disagreement as to whether a CONSTRUCTION DEFECT has been corrected in compliance with this LIMITED WARRANTY;

- C Any alleged breach of this LIMITED WARRANTY;
- D Any alleged violation of consumer protection, unfair trade practice, or any other statute;
- E Any allegation of negligence, strict liability, fraud, and/or breach of duty of good faith, and any other claims arising in equity or from common law, including any subrogation claims for damages arising from CONSTRUCTION DEFECTS brought by third parties such as YOUR insurance carriers or any other subrogor;
- F Any dispute concerning the issues that should be submitted to binding arbitration or the enforceability of this arbitration provision;
- G Any dispute concerning the timeliness of OUR performance or YOUR notifications or requests under this LIMITED WARRANTY;
- H Any dispute as to whether expenses incurred by YOU resulted from an EMERGENCY CONDITION or were approved by US, or were reasonable;
- I Any dispute as to the payment or reimbursement of arbitration fees;
- J Any dispute as to whether this LIMITED WARRANTY, or any provision hereof, including, but not limited to any waiver hereunder, is unenforceable;
- K Any dispute concerning the rights or obligations of HOMEOWNER or BUILDER under any purchase and sale agreement or related document, whether such dispute arises before or after closing;
- L Any claim arising out of interaction or discussions between HOMEOWNER and BUILDER (or person acting on behalf of BUILDER) prior to the sale of the HOME;
- M Any other claim arising out of or relating to the sale, design or construction of YOUR HOME or the COMMON ELEMENTS, including, but not limited to any claim arising out of, relating to or based on any implied warranty or claim for negligence or strict liability not effectively waived by this LIMITED WARRANTY.

The binding arbitration shall be conducted by American Arbitration Association ("AAA"), pursuant to its supplementary procedures for residential construction disputes, including the optional rules for pre-closing disputes (or any other similar entity offering alternative dispute resolution procedures if the AAA is not available). However, any post-closing dispute involving a non-monetary demand or a demand exceeding \$200,000 shall be administered and resolved pursuant to the AAA's procedures for large, complex construction disputes ("Complex Procedures") by one retired judge selected pursuant to the Complex Procedures from the AAA's large, complex construction case panel. If AAA subsequently enacts new rules which are specifically designed for residential construction disputes, such subsequently enacted rules shall apply to all disputes. A copy of the applicable rules and procedures will be delivered to YOU upon request.

This arbitration agreement shall be governed by the United States Arbitration Act (9 U.S.C. §§ 1 - 6) to the exclusion of any inconsistent state law, regulation or judicial decision. The award of the arbitrator shall be final and binding and may be entered as a judgment in any court of competent jurisdiction.

Each party shall bear its own attorneys fees and costs (including expert costs) for the arbitration. Contact PWC to determine the arbitration filing fee in effect at the time arbitration is being requested.

The process for YOU to initiate arbitration is described below. WE will use the same process if WE initiate arbitration.

Step 1 Binding Arbitration Request Form and Arbitration Filing Fee. YOU must first complete a Binding Arbitration Request Form and mail it to PWC along with the appropriate arbitration filing fee. A Binding Arbitration Request Form is attached to this LIMITED WARRANTY. For disputes involving Section C Coverage, YOUR Binding Arbitration Request Form must be received before the Section C Coverage expires. For all other disputes relating to coverage under this LIMITED WARRANTY, YOUR Binding Arbitration Request Form must be received no later than ninety (90) days after the coverage for the disputed item expires. For all disputes that do not relate to coverage under this LIMITED WARRANTY, YOUR Binding Arbitration Request Form must be received before the applicable statute of limitation expires. YOU must still notify US of an alleged

CONSTRUCTION DEFECT as soon as it is reasonably possible after YOU have become aware or should have become aware of the CONSTRUCTION DEFECT, but in no event after the applicable WARRANTY PERIOD for that condition expires. Please note that while YOU have ninety (90) days after the WARRANTY PERIOD expires to file for arbitration relating to Section A Coverage or Section B Coverage, this time period does not extend the WARRANTY PERIOD for CONSTRUCTION DEFECTS. Additionally, no investigation, inspection, testing, repair, replacement, or payment, nor any promise of same by US under this LIMITED WARRANTY, nor any dispute resolution efforts, shall extend the applicable WARRANTY PERIOD for a CONSTRUCTION DEFECT or the term of this LIMITED WARRANTY or extend or toll any statutes of limitations or any of YOUR rights or remedies.

Step 2 PWC Will Arrange the Arbitration Proceeding The arbitrator or arbitration organization will notify YOU of the time, date and location of the arbitration hearing. In scheduling the hearing, the arbitrator will set a time, date and location that is reasonably convenient to all the parties.

Step 3 The Arbitration Hearing. The parties at the arbitration hearing will include the arbitrator, YOU, US and/or a third party designated by US or acting on OUR behalf. Any party to the proceeding may be represented at the hearing. All persons who are parties to the arbitration, as well as representatives and witnesses, are entitled to attend hearings.

After evidence is presented by YOU, US or either of our respective representatives, a decision will be rendered by the arbitrator. The decision is final and binding on YOU and US. With respect to CONSTRUCTION DEFECT claims, the arbitrator will first determine whether any claimed or alleged CONSTRUCTION DEFECT exists and whether it is OUR responsibility. Second, if the arbitrator finds US responsible for a CONSTRUCTION DEFECT, the arbitrator will determine the scope of any repair or replacement, OUR cost of any such repair or replacement, and the diminution in fair market value, if any, caused by such CONSTRUCTION DEFECT. Based upon the arbitrator's decision, WE shall choose whether WE shall (1) repair or replace the CONSTRUCTION DEFECT, (2) pay to YOU the actual amount it would cost US to repair or replace the CONSTRUCTION DEFECT or (3) PAY to YOU an amount equal to the diminution in fair market value caused by the CONSTRUCTION DEFECT. The decision to repair, replace, or to make payment to YOU is at OUR or OUR authorized representative's sole option. In addition, the arbitrator shall render a decision resolving any other disputed matters or issues related to or arising from this LIMITED WARRANTY, the design or construction of the HOME or the COMMON ELEMENTS or the sale of the HOME or transfer of title to the COMMON ELEMENTS.

Step 4 OUR Arbitration Performance Obligations WE will comply with the arbitrator's decision no later than sixty (60) days from the date of the award or other such date as may be specified or allowed in the decision. However, delays caused by circumstances beyond OUR or OUR representative's control shall be excused and WE shall be permitted a longer period if reasonably required to complete an ordered repair.

Step 5 IF YOU believe WE Have Failed To Comply With The Award YOU should contact PWC at its mailing address specified in this LIMITED WARRANTY if YOU believe WE have not complied with the arbitrator's award. PWC will mediate this dispute and if it cannot be resolved, will advise YOU that a compliance inspection arbitration is available to determine whether WE have performed adequately under the original arbitration award. OUR repair of any CONSTRUCTION DEFECT as ordered by an arbitrator will not initiate a new statute of limitations or extend the length of this LIMITED WARRANTY. PWC will communicate the findings to both YOU and US. If it is determined that WE have not properly performed, WE will be obligated to immediately comply. The award of the arbitrator may be entered as a judgment in any court of competent jurisdiction.

X. GENERAL CONDITIONS

A Separation of This LIMITED WARRANTY From The Contract Of Sale

This LIMITED WARRANTY is separate and independent of the contract between YOU and US for the construction and/or sale of the HOME or transfer of the COMMON ELEMENTS. Except as otherwise provided herein or in any written agreement entered between US and YOU, the provisions of this LIMITED WARRANTY shall in no way be

restricted or expanded by anything contained in the construction and/or sales contract or other documents between YOU and US

B Transfer to Subsequent HOMEOWNERS

This LIMITED WARRANTY will transfer to new owners of the HOME for the remainder of the WARRANTY PERIOD. YOU agree to provide this LIMITED WARRANTY to any subsequent purchaser of the HOME as a part of the contract of sale of the HOME. OUR duties under this LIMITED WARRANTY to the new HOMEOWNER will not exceed the limit of liability then remaining, if any

C Transfer of Manufacturer's Warranties

WE assign to YOU all the manufacturer's warranties on all appliances, fixtures and items of equipment that WE installed in the HOME. Should an appliance or item of equipment malfunction, YOU must follow the procedures set forth in that manufacturer's warranty to correct the problem. OUR obligation under this LIMITED WARRANTY is limited to the workmanlike installation of such appliances and equipment. WE have no obligation for appliances and equipment defined as CONSUMER PRODUCTS

D Recovery Rights

If WE or a third party designated by US or acting on OUR behalf repairs, replaces or pays YOU as to a CONSTRUCTION DEFECT or other related damage to the HOME or the COMMON ELEMENTS covered by this LIMITED WARRANTY, WE are entitled, to the extent of OUR payment, to take over YOUR related rights of recovery from other people and organizations, including but not limited to, other warranties and insurance. YOU have an obligation not to make it more difficult for US to enforce these rights. YOU agree to sign any papers, deliver them to US, and do anything else that is necessary to help US exercise OUR rights. If YOU or a third party (including any of YOUR insurance carriers) repairs, replaces or pays YOU as to a CONSTRUCTION DEFECT or other related damages to the HOME or the COMMON ELEMENTS covered by this LIMITED WARRANTY without prior written approval from US, WE will not reimburse YOU or any such third party except for reasonable expenses necessary to repair a EMERGENCY CONDITION as defined above in Section VIII.C.

E General Provisions

- 1 If any provision of this LIMITED WARRANTY is determined to be unenforceable, such a determination will not affect the remaining provisions. If this LIMITED WARRANTY or any provision herein is determined to be unenforceable as to a HOMEOWNERS ASSOCIATION or a specific HOMEOWNER, such a determination will not affect the enforceability of this LIMITED WARRANTY or such provision as to any other HOMEOWNERS ASSOCIATION or any other HOMEOWNER. The issue of enforceability and all other issues will be determined by binding arbitration as provided in this LIMITED WARRANTY.
- 2 This LIMITED WARRANTY and the binding arbitration process are binding on YOU and US. It is also binding on YOUR and OUR heirs, executors, administrators, successors, subrogers (including any of YOUR insurance carriers) and assigns, subject to Section X.B, General Conditions.
- 3 As may be appropriate, the use of the plural in this LIMITED WARRANTY includes the singular.

XI. DEFINITIONS

BUILDER means the individual, partnership, corporation, limited liability company or other entity which provides YOU with this LIMITED WARRANTY. Throughout this document, the BUILDER is also referred to as "WE", "US" and "OUR".

COMMON ELEMENTS means the property as specified as common area in the recorded Covenants, Conditions and Restrictions governing the HOME (or the development in which the HOME is located) and any other property as to which the HOMEOWNERS ASSOCIATION has standing under the law to make a claim. This may include, but is not limited to, streets, slopes, the structure or components of enclosure or other parts of the HOME, corridors, lobbies, vertical transportation elements, rooms, balconies, clubhouses or other spaces that are for the common use of the residents of the development in

which the HOME is located SYSTEMS serving two or more HOMES, and the outbuildings that contain parts of such SYSTEMS are also included in this definition

CONSEQUENTIAL OR INCIDENTAL DAMAGES means a loss or injury other than:

- A OUR cost to correct a CONSTRUCTION DEFECT, including the correction of those surfaces, finishes and coverings damaged by the CONSTRUCTION DEFECT
- B OUR cost of repair or replacement of furniture, carpet or personal property damaged by the CONSTRUCTION DEFECT. Should replacement be necessary, OUR obligation is limited to replacement with items providing the same or similar function and quality and that are readily available at the time the item is being replaced
- C OUR costs of removal or replacement in order to repair or replace a CONSTRUCTION DEFECT WE are not responsible for moving furniture or personal property to access an area requiring repair or replacement
- D The reasonable cost of YOUR alternative shelter (as pre-approved by US in writing, except for reasonable expenses for alternative shelter required because of an EMERGENCY CONDITION) where the HOME is uninhabitable due to a CONSTRUCTION DEFECT or where the HOME is rendered uninhabitable by the repair of the CONSTRUCTION DEFECT

Diminished fair market value is considered "CONSEQUENTIAL OR INCIDENTAL DAMAGE" and is excluded under this LIMITED WARRANTY unless WE elect this remedy in lieu of the repair, replacement or other payment as to a CONSTRUCTION DEFECT

CONSTRUCTION DEFECT(S) means a flaw in the materials or workmanship used in constructing the HOME or the COMMON ELEMENTS whereby the condition fails to conform to the STANDARDS OF PERFORMANCE set forth in the WARRANTY MANUAL

CONSUMER PRODUCT means any item of equipment, appliance or other item defined as a CONSUMER PRODUCT in the Magnuson-Moss Warranty Act (15 U S C § 2301, et seq.). Examples of Consumer Products include, but are not limited to, dishwasher, garbage disposal, gas or electric cook top, range, range hood, refrigerator or refrigerator/freezer combination, gas oven, electric oven, microwave oven, trash compactor, garage door opener, clothes washer and dryer, hot water heater and thermostat

EMERGENCY CONDITION means an event or situation that creates the imminent threat of damage to the HOME or the COMMON ELEMENTS, or results in an unsafe living condition due to CONSTRUCTION DEFECTS that YOU (or as applicable, the HOMEOWNERS ASSOCIATION) become aware of at a point in time other than OUR normal business hours and YOU were unable to obtain OUR or OUR authorized representative's prior written approval to initiate repairs to stabilize the condition or prevent further damage

HOME means a single-family residence either attached or detached covered by this LIMITED WARRANTY or a condominium or cooperative unit in a multi-unit residential structure/building covered by this LIMITED WARRANTY. HOME does not include, without limitation, the following: landscaping (including but not limited to sodding, seeding, shrubs, trees, plants)

HOME BUILDER'S LIMITED WARRANTY means only this express warranty document provided to YOU by US. Throughout this document the HOME BUILDER'S LIMITED WARRANTY is also referred to as the LIMITED WARRANTY

HOMEOWNER means the first person(s) to whom a HOME (or a unit in a multi-unit residential structure/building) is sold, or for whom such HOME is constructed, for occupancy by such person or such person's(s') family, and such person's(s') successors in title to the HOME or mortgagees in possession and any representative of such person(s) who has standing to make a claim on that person(s) behalf, including any class representative or HOMEOWNERS ASSOCIATION making a claim in a representative capacity

HOMEOWNERS ASSOCIATION means a profit or nonprofit corporation, unincorporated association, organization, partnership, assessment district, limited liability company, limited liability partnership or other entity of any kind that owns,

manages, maintains, repairs, administers, or is otherwise responsible for and has standing to make a claim as to any part of the **COMMON ELEMENTS**

POLLUTANTS means all solid, liquid, or gaseous irritants or contaminants. The term includes, but is not limited to, petroleum products, smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, radon gas and waste materials, including materials to be recycled.

PWC means Professional Warranty Service Corporation which administers the warranty program in which **WE** participate. As such, **PWC** assumes no other liabilities in connection with this **LIMITED WARRANTY**. The **PWC** mailing address is:

Professional Warranty Service Corporation
P O Box 800
Annandale, VA 22003-0800

STANDARDS OF PERFORMANCE means the standards and tolerances for material and workmanship that are used in this **LIMITED WARRANTY** to determine **OUR** responsibility for repairing **CONSTRUCTION DEFECTS** as identified in the **WARRANTY MANUAL**

SYSTEMS means the following:

- A. Plumbing system - gas supply lines and fittings; water supply, waste and vent pipes and their fittings; septic tanks and their drain fields; and water, gas and sewer services piping and their extensions to the tie-in of a public-utility connection or on-site well and sewage disposal system
- B. Electrical system - all wiring, electrical boxes, switches, outlets, and connections up to the public utility connection
- C. Heating, Cooling, and Ventilation system - all duct work; steam, water and refrigerant lines; and registers, connectors, radiation elements and dampers

TOTAL SALES PRICE means the total sales price of **YOUR HOME** actually paid by **YOU** to **US**.

WARRANTY COMMENCEMENT DATE means the date the **WARRANTY PERIOD** shall commence, which shall be the date the title to the **HOME** is transferred to the first **HOMEOWNER**. Notwithstanding anything to the contrary set forth in this **LIMITED WARRANTY**, the **WARRANTY PERIOD** for the **COMMON ELEMENTS** of an individual structure/building commences on the date the title for the first **HOME** in the structure/building is transferred to the first **HOMEOWNER** or as concerns clubhouses or outbuildings or other **COMMON ELEMENTS** not part of the **HOME**, the date the title to these structures or real property is transferred to the **HOMEOWNERS ASSOCIATION**

WARRANTY MANUAL means the limited warranty and maintenance manual provided to **YOU** by **US**.

WARRANTY PERIOD means the applicable warranty coverage period set forth in Section **ff**, Warranty Coverage Coverage under this **LIMITED WARRANTY** changes over the course of the **WARRANTY PERIOD**. Section A Coverage refers to coverage provided during the first year*; Section B Coverage refers to coverage provided during the first and second year; and Section C Coverage refers to coverage provided during the first through tenth year. The applicable **WARRANTY PERIOD** begins and ends on the dates that are indicated on the Limited Warranty Validation Form which is attached to and made part of this **LIMITED WARRANTY**.

WE, US, OUR means the **BUILDER**

YOU, YOUR means the **HOMEOWNER** and the **HOMEOWNERS ASSOCIATION**

XII. STANDARDS OF PERFORMANCE

* **HOMEOWNERS** and **HOMEOWNERS ASSOCIATIONS** in Arizona, please refer to the Arizona Addendum, Section XIII C

The STANDARDS OF PERFORMANCE listed in the WARRANTY MANUAL are intended to provide YOU with an understanding of OUR obligations under this LIMITED WARRANTY. The STANDARDS OF PERFORMANCE will be used to determine OUR responsibility under this LIMITED WARRANTY. It is not possible to list every component of a HOME in these standards so only the most frequent items concerning new HOMES are addressed here. To the extent a standard has not been enumerated in the WARRANTY MANUAL, for Section A Coverage (First Year) and Section B Coverage (First and Second Year) ONLY, WE will evaluate the condition in accordance with standard industry practice of materials and workmanship in the geographic area in which YOUR HOME is located.

Please note that damage that YOU cause or YOU make worse by YOUR negligence, improper maintenance or improper operation is excluded by this LIMITED WARRANTY.

XIII. State Specific Addenda

A State of Texas Addendum

- 1 Paragraph 5, Introductory Provisions – The limit of liability to the SALES PRICE of the HOME shall only apply to this LIMITED WARRANTY and shall not apply to limit liability or obligations under the statutory warranties set forth in Chapter 430 of Title 16 of the Texas Property Code or the statutory performance standards established pursuant thereto
- 2 Section I, Coverage Limit – The limit of liability to the SALES PRICE of the HOME shall only apply to this LIMITED WARRANTY and shall not apply to limit liability or obligations under the statutory warranties set forth in Chapter 430 of Title 16 of the Texas Property Code or the statutory performance standards established pursuant thereto.
- 3 Section IV, Disclaimer and Waiver of Warranties and Other Rights – Nothing in this LIMITED WARRANTY is intended to diminish the statutory warranties set forth in Chapter 430 of Title 16 of the Texas Property Code or the statutory performance standards established pursuant thereto

B State of California Addendum

- 1 Section II, Warranty Coverage (Section A Coverage) – As set forth in more detail in the WARRANTY MANUAL and as required by California Civil Code Section 900, WE warrant the "fit and finish" of cabinets, mirrors, flooring, interior and exterior walls, countertops, paint finishes and trim during the first year following the WARRANTY COMMENCEMENT DATE
- 2 Section IV, Disclaimer and Waiver of Warranties and Other Rights – Nothing in this LIMITED WARRANTY is intended to diminish any rights, obligations or remedies that YOU or WE may have under California Civil Code Sections 895 through 945

C State of Arizona Addendum

- 1 Section II, Warranty Coverage (Section A Coverage) – Except as otherwise provided in the STANDARDS OF PERFORMANCE contained in the WARRANTY MANUAL, Section A Coverage will expire two years after the WARRANTY COMMENCEMENT DATE. As set forth in the WARRANTY MANUAL, some Section A Coverage items will only be repaired during the first year after the WARRANTY COMMENCEMENT DATE, some items will only be repaired on one occasion during the first year after the WARRANTY COMMENCEMENT DATE, and some items will only be repaired if noted at the time of the walk-thru inspection prior to the closing.

D State of Nevada Addendum

- 1 Section IV, Disclaimer Waiver Of Warranties And Other Rights – Nothing in this LIMITED WARRANTY is intended to diminish any rights, obligations or remedies that YOU or WE may have under N.R.S 40 600 et seq or N R S 116 4113, et seq , including without limitation N R S 116.4115.

BINDING ARBITRATION REQUEST FORM

Dear Homeowner (Homeowners Association): Prior to requesting binding arbitration under the terms of the HOME BUILDER'S LIMITED WARRANTY, you should have sent your builder a clear and specific written request outlining the situation or condition that you are herein submitting to binding arbitration. If you have taken this step and believe the builder has not properly responded in accordance with the HOME BUILDER'S LIMITED WARRANTY, fill out this form and send it to PWC along with the arbitration filing fee. The amount of the arbitration filing fee may be obtained from PWC at 1-800/850-2799. Be sure to attach a copy of all pertinent correspondence between you and your builder relative to the issue.

The information you need to fill out this form can be found on the Limited Warranty Validation Form. However, if you do not know the answers to any questions, write "Don't Know" Please do not leave any item blank.

Your Name: _____

Address: _____

_____ CITY STATE ZIP
Home Phone: (____) _____

(a)

Business Phone: (____) _____

(b)

LIMITED WARRANTY #: _____ Date Warranty Period begins: _____

Builder's Name: _____

Address: _____

Describe the dispute that you wish to submit to binding arbitration under the terms of the HOME BUILDER'S LIMITED WARRANTY. If the dispute is relative to a construction defect, please include information regarding when the construction defect first occurred or when you first noticed the construction defect. (Attach additional sheets, if necessary).

SAMPLE

I/we are hereby requesting PWC to initiate a binding arbitration to resolve the dispute described herein above.

Signature

Date

Signature

Date

INSTRUCTIONS: Photo-copy this form and complete the fields
Send this Binding Arbitration Request Form and the arbitration filing fee to:

PROFESSIONAL WARRANTY SERVICE CORPORATION
P. O. BOX 800
ANNANDALE, VIRGINIA 22003-0800

SUBSEQUENT HOME BUYER ACKNOWLEDGMENT AND TRANSFER

Any coverage remaining under the HOME BUILDER'S LIMITED WARRANTY applicable to the home specified on the Limited Warranty Validation Form is transferred to the subsequent homeowner. Any obligations under the HOME BUILDER'S LIMITED WARRANTY to any subsequent homeowner shall not exceed the limit of liability remaining at the time of transfer, if any.

The undersigned home buyer(s) hereby acknowledge and agree:

I/we acknowledge that I have reviewed, understand and agree to all the terms of the HOME BUILDER'S LIMITED WARRANTY document (PWC Form No 127SP)

I/we acknowledge and agree to the Binding Arbitration Procedure contained in the HOME BUILDER'S LIMITED WARRANTY

Signature of Subsequent Home Buyer

Date

Print Name

Signature of Subsequent Home Buyer (if more than one)

Date

Print Name

Re-issuance of the Limited Warranty Validation Form with the name(s) of the new home buyer(s) is not necessary for you to receive the coverage remaining under the HOME BUILDER'S LIMITED WARRANTY. Upon receipt of this signed form, PWC will update its records to reflect the name(s) of the new homeowner(s). If you want PWC to issue another Limited Warranty Validation Form with your name(s) on the form, please check the box below and send a check in the amount of \$20.00 made payable to "PWC" with your submission of this form.

YES, re-issue the Limited Warranty Validation Form in the above name(s) (check box) Initial _____

Address of Home: _____

Limited Warranty No.: _____

INSTRUCTIONS: Photo-copy this form. Provide information requested, sign, fill in Limited Warranty # in the space provided (this number is provided on the Limited Warranty Validation Form), and provide a telephone number where you can be reached (_____) _____. If you want the Limited Warranty Validation Form reissued in your name, enclose your check to PWC in the amount of \$20.00 (check box above and initial). To reach PWC by phone, call: 1-800/850-2799.

Mail this form and a photocopy of applicable settlement/closing documents indicating transfer of title, to:

PROFESSIONAL WARRANTY SERVICE CORPORATION
P.O. BOX 800 ANNANDALE, VA 22003-0800

EXHIBIT D

DISCLAIMER AND WAIVER OF WARRANTIES AND OTHER RIGHTS

DECLARANT SHALL CAUSE TO BE ISSUED AND DELIVERED TO ASSOCIATION AND EACH ORIGINAL PURCHASER WHO PURCHASES A LOT/RESIDENCE IN THE PROJECT A WRITTEN HOME BUILDER'S LIMITED WARRANTY ("LIMITED WARRANTY"). ASSOCIATION AND OWNERS UNDERSTAND AND AGREE THAT THE LIMITED WARRANTY TO BE ISSUED TO ASSOCIATION AND OWNERS IS THE ONLY WARRANTY, EXPRESS OR IMPLIED, MADE BY DECLARANT OR ANY MERCHANT BUILDER WITH REGARD TO THE LOTS/RESIDENCES/COMMON AREA/PROJECT. DECLARANT MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES OR REPRESENTATIONS REGARDING EITHER LATENT OR PATENT DEFECTS IN THE LOTS/RESIDENCES/COMMON AREA/PROJECT, OR ANY COMPONENTS THEREOF, OR FIXTURES OR PERSONAL PROPERTY INSTALLED THEREIN, OR AS TO THE MERCHANTABILITY, FITNESS, HABITABILITY, OR QUALITY THEREOF, AND DISCLAIMS ANY SUCH WARRANTIES AND REPRESENTATIONS, TO THE FULLEST EXTENT ALLOWED BY LAW

SPECIFICALLY, AND NOT BY WAY OF LIMITATION, DECLARANT HAS NOT MADE ANY REPRESENTATION REGARDING VIEWS, THE FUTURE USE, APPEARANCE, OR HEIGHT OF SURROUNDING PROPERTY, SELLING PRICE OF OTHER HOMES, FUTURE USE, APPEARANCE, OR HEIGHT OF ADJOINING PROPERTY, OR DESIRABILITY OF ANY PARTICULAR LOCATION. DECLARANT MAKES NO WARRANTY OR REPRESENTATION AS TO THE PRESENCE OR NON-PRESENCE OF RADON, METHANE, OR OTHER NATURALLY OCCURRING HAZARDOUS ENVIRONMENTAL CONDITIONS, OR TO THE EFFECT OF ANY SUCH CONDITION ON THE LOTS/RESIDENCES/COMMON AREA/PROJECT, OR THE ASSOCIATION OR OWNERS

NOTWITHSTANDING THE FOREGOING, THE LIMITED WARRANTY SHALL IN NO EVENT EXTEND TO ANY CONSUMER PRODUCT, APPLIANCES, AIR CONDITIONING UNITS, FURNACES, WATER HEATERS, AND OTHER PRODUCTS INCLUDED IN THE LOTS/RESIDENCES/COMMON AREA/PROJECT THAT ARE CONSIDERED "CONSUMER PRODUCTS" AS DEFINED BY THE FEDERAL TRADE COMMISSION FOR THE PURPOSES OF THE MAGNUSON MOSS ACT (15 U.S.C. 2301, ET SEQ.). THE MANUFACTURERS OF SOME PRODUCTS USED IN THE HOUSE MAY PROVIDE A MANUFACTURER'S WARRANTY. DECLARANT HAS NO OBLIGATION OR RESPONSIBILITY FOR THE MANUFACTURER'S PERFORMANCE, AND DECLARANT DOES NOT WARRANT ANY OF THESE ITEMS FOR ANY USE, FITNESS FOR USE, WORKMANSHIP, QUALITY, OR ANY OTHER PURPOSE.

ASSOCIATION AND OWNERS HAVE CONDUCTED THEIR OWN RESPECTIVE INVESTIGATIONS WITH RESPECT TO THESE AND ALL OTHER MATTERS TO THE FULLEST EXTENT ALLOWED BY LAW, ASSOCIATION AND OWNERS WAIVE ALL IMPLIED WARRANTIES RELATING TO THE LOTS/RESIDENCES/COMMON AREA/PROJECT, OR ANY COMPONENTS THEREOF, OR FIXTURES OR PERSONAL PROPERTY INSTALLED THEREIN, INCLUDING ALL IMPLIED WARRANTIES REGARDING EITHER LATENT OR PATENT DEFECTS IN THE LOTS/RESIDENCES/COMMON AREA/PROJECT OR AS TO THE MERCHANTABILITY, FITNESS, HABITABILITY, OR QUALITY THEREOF. ASSOCIATION AND OWNERS ALSO WAIVE THE RIGHT TO SEEK DAMAGES OR OTHER LEGAL OR EQUITABLE REMEDIES AGAINST DECLARANT UNDER ANY OTHER COMMON LAW OR STATUTORY THEORY OF LIABILITY, INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE AND STRICT LIABILITY. NOTWITHSTANDING THE FOREGOING PROVISIONS OF THIS PARAGRAPH, CERTAIN WAIVERS OF RIGHTS MAY BE UNENFORCEABLE.

NO SALESPERSON, EMPLOYEE OR AGENT OF DECLARANT HAS AUTHORITY TO MODIFY THE TERMS OF THIS EXHIBIT. THIS EXHIBIT SUPERSEDES ANY PROMISES, AGREEMENTS, OR OTHER REPRESENTATIONS MADE BY ANY SALESPERSON, EMPLOYEE, OR AGENT OF DECLARANT, WHETHER ORAL OR WRITTEN, WITH RESPECT TO THE MATTERS SET FORTH IN THIS EXHIBIT, AND ASSOCIATION AND OWNERS HAVE NOR RELIED AND SHALL NOT RELY ON ANY SUCH PROMISES, AGREEMENTS, OR OTHER REPRESENTATIONS WITH RESPECT TO THE MATTERS SET FORTH IN THIS EXHIBIT.

NOTHING IN THIS DISCLAIMER AND WAIVER OF WARRANTIES AND OTHER RIGHTS EXHIBIT OR THE LIMITED WARRANTY DIMINISHES ANY RIGHTS OR OBLIGATIONS DECLARANT, ASSOCIATION, OR OWNERS MAY HAVE UNDER CALIFORNIA CIVIL CODE SECTIONS 895 THROUGH 945.5.

EXHIBIT E

ALTERNATIVE DISPUTE RESOLUTION PROVISIONS

1. **DEFINITIONS.** For purposes of this Exhibit E ("ADR Provisions") only: (i) "Declarant" or "Declarant Parties" means and includes Declarant, any director, officer, partner, member, employee, agent, or representative of Declarant, and any contractor, subcontractor, design professional, engineer, or supplier who provided labor, services or materials to the Project and who is bound or has agreed to be bound to the following or similar dispute notification and resolution procedures; (ii) "Dispute" means any and all actions or claims between any Declarant party on the one hand and any Owner and/or Association on the other hand arising out of or in any way relating to the Project, any Lots/Residences or Improvements in the Project, the Declaration, a purchase and sale contract between an Owner and Declarant for the purchase and sale of a Lot/Residence ("Contract"), liquidated damages issues under a Contract, the Limited Warranty (as defined in Section 9.8 of this Declaration), and/or any other agreements or duties or liabilities as between any Declarant party and an Owner and/or Association relating to the sale or transfer of the Lot/Residence or Common Area, or regarding the use or condition of the Lot/Residence and/or Common Area, or the design or construction of (or any condition on or affecting) the Project and/or any Lot/Residence and/or Common Area in the Project, including without limitation construction defects, surveys, soils conditions, grading, specifications, installation of improvements, or disputes which allege strict liability, negligence or breach of implied or express warranties as to the condition of the Lot/Residence, Common Area or other portions of the Project; (iii) "Owner" means each Owner (as defined in the Declaration), any individual or entities comprising such Owner, any representative of Owner acting with respect to Owner's rights (including without limitation any class representative or homeowners' association so acting), and any successor or assign of Owner with respect to such Owner's Lot/Residence, the Contract, the Limited Warranty, or any other agreements or obligations with respect to Declarant, the Property or the Project and (iv) "Fix It Law Claim" means any claim by an Owner and/or Association made in compliance with California Civil Code Section 910 that Declarant contributed to or is otherwise responsible for a violation of the standards set forth in California Civil Code Sections 896 through 897. Disputes do not include actions taken by the Association against Declarant to collect delinquent Assessments or any action involving any Common Area completion bonds.

2. **FIX IT LAW NONADVERSARIAL DISPUTE RESOLUTION PROCEDURES.** These ADR Provisions set forth dispute resolution procedures which apply after application of any "nonadversarial dispute resolution" procedures required for Fix It Law Claims, as set forth in California Civil Code Sections 910 through 938. Nothing herein diminishes the rights and obligations of Owner, Association and Declarant under the nonadversarial dispute resolution procedures set forth in California Civil Code Sections 910 through 938 with respect to any Fix It Law Claim.

3. **ARBITRATION OF DISPUTES.**

(A) **BINDING ARBITRATION.** WITH RESPECT TO ALL DISPUTES, DECLARANT, OWNER, AND ASSOCIATION (COLLECTIVELY, THE

"PARTIES") SHALL COMPLY WITH THE DISPUTE RESOLUTION AND ARBITRATION PROCEDURES AND PROVISIONS SPECIFIED IN THE LIMITED WARRANTY (WHETHER OR NOT RELATING TO THE LIMITED WARRANTY). THE LIMITED WARRANTY GENERALLY PROVIDES THAT ALL DISPUTES BE SUBMITTED FOR RESOLUTION BY BINDING ARBITRATION TO AMERICAN ARBITRATION ASSOCIATION ("AAA"), PURSUANT TO ITS SUPPLEMENTARY PROCEDURES FOR RESIDENTIAL CONSTRUCTION DISPUTES (OR ANY OTHER SIMILAR ENTITY OFFERING ALTERNATIVE DISPUTE RESOLUTION PROCEDURES IF THE AAA IS NOT AVAILABLE). HOWEVER, ANY DISPUTE INVOLVING A NON-MONETARY DEMAND OR A DEMAND EXCEEDING \$200,000 SHALL BE ADMINISTERED AND RESOLVED PURSUANT TO THE AAA'S PROCEDURES FOR LARGE, COMPLEX CONSTRUCTION DISPUTES ("COMPLEX PROCEDURES") BY ONE RETIRED JUDGE SELECTED PURSUANT TO THE COMPLEX PROCEDURES FROM THE AAA'S LARGE, COMPLEX CONSTRUCTION CASE PANEL. THE LIMITED WARRANTY FURTHER PROVIDES THAT IF AAA SUBSEQUENTLY ENACTS NEW RULES WHICH ARE SPECIFICALLY DESIGNED FOR RESIDENTIAL CONSTRUCTION DISPUTES, SUCH SUBSEQUENTLY ENACTED RULES SHALL APPLY TO ALL DISPUTES.

(B) WAIVER OF LITIGATION RIGHTS. THE PARTIES ACKNOWLEDGE AND AGREE THAT BY AGREEING TO BINDING ARBITRATION AS PROVIDED HEREIN: (i) EACH PARTY IS GIVING UP THE RIGHTS SUCH PARTY MIGHT POSSESS TO HAVE A DISPUTE LITIGATED IN A COURT OR JURY TRIAL; (ii) EACH PARTY'S DISCOVERY AND APPEAL RIGHTS WILL BE LIMITED AND (iii) EACH PARTY'S AGREEMENT TO THESE ADR PROVISIONS IS VOLUNTARY AND SUCH PARTY UNDERSTANDS ITS PROVISIONS. THE PARTIES FURTHER ACKNOWLEDGE THAT THEY HAVE HAD THE OPPORTUNITY TO BE ADVISED BY INDEPENDENT LEGAL COUNSEL IN CONNECTION WITH THESE ADR PROVISIONS AND IN MAKING THESE WAIVERS. THE PARTIES FURTHER ACKNOWLEDGE HAVING READ AND UNDERSTOOD THE MEANING AND RAMIFICATIONS OF THESE WAIVERS, AND INTEND THESE WAIVERS BE READ AS BROADLY AS POSSIBLE AND TO EXTEND TO ALL DISPUTES EXCEPT AS OTHERWISE PROVIDED HEREIN. HOWEVER, THESE ADR PROVISIONS SHALL IN NO WAY BE CONSTRUED TO LIMIT THE RIGHT OF ANY PARTY TO BE REPRESENTED BY COUNSEL IN ANY PROCEDURES PURSUANT TO THESE ADR PROVISIONS.

(C) CHOICE OF LAW AND SCOPE OF ARBITRATOR'S AUTHORITY. ALL DISPUTES SHALL BE GOVERNED, INTERPRETED AND ENFORCED ACCORDING TO THE FEDERAL ARBITRATION ACT (9 U.S.C. §§ 1-16), WHICH IS DESIGNED TO

ENCOURAGE USE OF ALTERNATIVE METHODS OF DISPUTE RESOLUTION THAT AVOID COSTLY AND POTENTIALLY LENGTHY COURT PROCEEDINGS. INTERPRETATION AND APPLICATION OF THESE PROCEDURES SHALL CONFORM TO FEDERAL COURT RULINGS INTERPRETING AND APPLYING THE FEDERAL ARBITRATION ACT. REFERENCES TO CALIFORNIA LAW SHALL NOT BE CONSTRUED AS A WAIVER OF ANY RIGHTS OF THE PARTIES UNDER THE FEDERAL ARBITRATION ACT OR THE RIGHT OF THE PARTIES TO HAVE THE PROCEDURES SET FORTH IN THE LIMITED WARRANTY AND ELSEWHERE WITHIN THESE ADR PROVISIONS INTERPRETED AND ENFORCED UNDER THE FEDERAL ARBITRATION ACT. HOWEVER, TO THE EXTENT NECESSARY, AND WHENEVER SUCH LAWS ARE NOT IN CONFLICT WITH OTHER PROVISIONS OF THESE ADR PROVISIONS OR THE PROCEDURES OF ANY SELECTED ALTERNATIVE DISPUTE RESOLUTION SERVICE, THE ARBITRATOR SHALL APPLY THE LAWS OF THE STATE OF CALIFORNIA, AND THE ARBITRATOR'S AWARD MAY BE ENFORCED IN ANY COURT OF COMPETENT JURISDICTION. THE ARBITRATOR SHALL HAVE THE AUTHORITY TO TRY AND SHALL TRY ALL ISSUES, WHETHER OF FACT OR LAW, INCLUDING WITHOUT LIMITATION, THE VALIDITY, SCOPE AND ENFORCEABILITY OF THESE ADR PROVISIONS, AND MAY ISSUE ANY REMEDY OR RELIEF THAT THE COURTS OF THE STATE OF CALIFORNIA COULD ISSUE IF PRESENTED THE SAME CIRCUMSTANCES. IN THE EVENT OF ANY INCONSISTENCY BETWEEN THESE ADR PROVISIONS AND THE DISPUTE RESOLUTION PROCEDURES SPECIFIED IN THE LIMITED WARRANTY (AS REFERENCED IN PARAGRAPH 3(a)), THE TERMS OF THESE ADR PROVISIONS WILL CONTROL.

4. SURVIVAL OF PROVISIONS. As contemplated by California Civil Code Section 1670.5 and case law applying that statute, if any provision or part of these ADR Provisions is for any reason held to be invalid, unconscionable, contrary to any public policy, law, statute and/or ordinance, or unenforceable for any other reason, then such unenforceable provision(s) or part(s) shall be deemed severed and the remainder of these ADR Provisions shall not be affected thereby and shall remain valid and fully enforceable.

5. WAIVER OF JURY TRIAL. IN THE EVENT THAT THE PROCEDURES SET FORTH OR REFERENCED HEREIN ARE DETERMINED TO BE INVALID OR UNENFORCEABLE IN WHOLE OR IN PART, SUCH THAT THE DISPUTE PROCEEDS BY WAY OF CIVIL LITIGATION PROCEEDINGS IN ANY COURT, THE PARTIES NONETHELESS WAIVE ANY AND ALL RIGHTS TO A JURY TRIAL TO THE EXTENT SUCH WAIVER IS OR MAY BECOME PERMISSIBLE UNDER CALIFORNIA LAW. THE PARTIES MAKE THESE WAIVERS KNOWINGLY, INTENTIONALLY AND VOLUNTARILY.

9. **CHOICE OF FORUM CLAUSE.** In the event any party to a Dispute subject to these ADR Provisions seeks review by a court of the enforceability of any of the ADR Provisions set forth or referenced herein (despite the provisions herein making that issue one to be resolved by the arbitrator or general referee), the exclusive jurisdiction and venue for any such review shall be the Federal District Court for the county in which the Project is located