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COUNTY RECORDER



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DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
OF  
HAZEL RIDGE POINTE

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

**HAZEL RIDGE POINTE**

**TABLE OF CONTENTS**

ARTICLE I:	PREAMBLE	PAGE
ARTICLE II:	DEFINITIONS	2
ARTICLE III:	ARCHITECTURAL CONTROL AND USE RESTRICTIONS	2
ARTICLE IV:	EASEMENTS	4
ARTICLE V:	PROPERTY RIGHTS: COMMON AREA	7
ARTICLE VI:	THE ASSOCIATION	8
ARTICLE VII:	FUNDS AND ASSESSMENTS	12
ARTICLE VIII:	LIMITATION OF RESTRICTIONS ON DECLARANT	26
ARTICLE IX:	RIGHTS OF MORTGAGZES	31
ARTICLE X:	INSURANCE, DESTRUCTION AND CONDEMNATION	32
		34
ARTICLE XI:	MISCELLANEOUS PROVISIONS	38
EXHIBIT A:	LEGAL DESCRIPTION	41

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

**HAZEL RIDGE POINTE**

**THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF HAZEL RIDGE POINTE ("Declaration") is made on JANUARY 12, 1994, by WINDING WAY ADVENTURE, a joint venture composed of Barry N. Vial, a single man and Patrick M. Byrne, a single man, each as to an undivided 1/2 interest, who acquired title as Winding Way, a Joint Venture, hereinafter referred to as "Declarant".**

**ARTICLE I  
PREAMBLE**

1.1 This Declaration is made with reference to the facts set forth in this Article.

1.2 Declarant is the owner in fee simple of that certain real property (the "Subject Property") situated in the County of SACRAMENTO, State of California, described in Exhibit A attached hereto and is incorporated by reference herein.

1.3 It is the intention of Declarant to develop all of the Subject Property, to provide for the preservation of the values and amenities in the development of the Subject Property and to create and maintain thereon common community facilities. To that objective, Declarant intends to impose on the Subject Property mutually beneficial restrictions, easements, assessments and liens under a general plan or scheme of improvement for the benefit of all of the Lots and Common Area and the future owners of said Lots and Common Area.

**ARTICLE II  
DEFINITIONS**

Unless the context otherwise specifies or requires, the terms defined in this Article II shall, for all purposes of this Declaration, have the meanings herein specified.

2.1 **ARTICLES:** The term "Articles" means Articles of Incorporation of Hazel Ridge Pointe Homeowners Association, which are or shall be filed in the Office of Secretary of State of the State of California.

2.2 **ASSOCIATION:** The term "Association" means Hazel Ridge Pointe Homeowners Association, the nonprofit mutual benefit corporation described in Article VI, including its successors and assigns.

2.3 **BOARD:** The term "Board" means the Board of Directors of the Association.

2.4 **BY-LAWS:** The Term "By-Laws" means the By-Laws of the Association, which are or shall be adopted.

2.5 **COMMON AREA:** The term "Common Area" shall mean Lot

15 as so designated and shown on that Plat of Hazel Ridge Pointe and described on EXHIBIT A, which is attached hereto and incorporated herein by this reference. The Common Area shall be owned by the Association for the use and enjoyment of the Owners and shall be conveyed to the Association prior to or at the time of the conveyance of the first Lot shown on the Subdivision Map to a member of the public. Common Area shall include Landscaping, swimming pool, entry gates and fencing excluding the boundary fencing on the Westerly and Southern boundaries of the project as shown on the Subdivision Map described herein Section 2.27.

2.6 **COUNTY:** The term "County" means the County of Sacramento, State of California.

2.7 **DECLARANT:** The term "Declarant" means WINDING WAY ADVENTURE, a joint venture composed of Barry M. Vial, a single man and Patrick M. Byrne, a single man, each as to an undivided 1/2 interest, who acquired title as Winding Way, a Joint Venture and its successors and assigns, if such successors and assigns acquire any or all of Declarant's interest in the Subject Property for the purpose of development or sale, and if Declarant has expressly transferred or assigned to such successors or assigns its rights and duties as Declarant to a portion of all of the project. For any successor or assign of "Declarant" to be deemed a Declarant under the terms hereof, Declarant shall record in the County a certificate designating said successor or assignee as Declarant.

2.8 **DECLARATION:** The term "Declaration" means the DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF HAZEL RIDGE POINTE, including amendments made from time to time.

2.9 **ELIGIBLE HOLDER:** The term "Eligible Holder" means any Institutional Mortgagee who has given written notice to the Association specifying its name, address and the Lot number or address of the property encumbered by the Mortgage and requesting written notice of any or all of the events specified in Section 9.5., herein.

2.10 **FIRST MORTGAGE:** The term "First Mortgage" means a Mortgage or Deed of Trust which has priority under the recording statutes of the State of California over all other Mortgages and Deeds of Trust encumbering a specific Lot in the project.

2.11 **FIRST MORTGAGEE:** The term "First Mortgagee" means the Mortgagee of the First Mortgage as well as the beneficiary under a Deed of Trust.

2.12 **IMPROVEMENTS:** The term "Improvements" includes buildings, outbuildings, roads, driveways, parking areas, fences, screening walls, sound attenuation, barriers, retaining walls, stairs, decks, hedges, windbreaks, plantings, planted trees and shrubs, poles, signs, and all other structures or landscaping improvements of every type and kind.

2.13 **INSTITUTIONAL MORTGAGEE:** The term "Institutional Mortgagee" means a First Mortgagee which is (i) a bank, savings and loan association, insurance or mortgage company or other entity or institution chartered under federal and/or state law; (ii) an insurer or governmental guarantor of a First Mortgage including without limitation the Federal Housing Administration and/or the

- Veterans Administration; or (iii) the State of California as the vendor under an installment land sales contract covering a Lot.
- 2.14 **LOT:** The term "Lot" means the subdivided residential Lots 1 through 14, inclusive, as shown on Exhibit A.
- 2.15 **MANAGER:** The term "Manager" means any person or entity appointed or hired as such, pursuant to Subsection 6.9(2).
- 2.16 **MEMBER:** The term "Member" means a person who is a Member of the Association pursuant to Section 6.2.
- 2.17 **MORTGAGE:** The term "Mortgage" means any recording mortgage or deed of trust encumbering a Lot in the Project.
- 2.18 **MORTGAGEE:** The term "Mortgagee" means a mortgagee under a Mortgage, as well as a beneficiary under a deed of trust.
- 2.19 **OWNER:** The term "Owner" means the record owner, or record owners, including Declarant, of the fee simple title to any Lot in the Project, excluding those having such interest merely as security for the performance of an obligation. The term "Owner" also includes the Vendee of a Lot under a contract of sale (Real Property Sales Contract).
- 2.20 **PARKING AREA:** The term "Parking Area" means those portions of the Common Area which may be established for the parking of motor vehicles.
- 2.21 **PARTY WALL:** The term "Party Wall" shall mean any portion of a wall common to two (2) residences which is constructed and placed approximately on the common boundary of two (2) lots.
- 2.22 **PROJECT:** The term "Project" means all of the real property described in Paragraph 1.2 above, with all improvements made thereon.
- 2.23 **PUBLIC REPORT:** The term "Public Report" shall mean a Final Subdivision Public Report issued by the Department of Real Estate of the State of California for the project.
- 2.24 **RESIDENCE:** The term "Residence" means a building or buildings used for residential purposes.
- 2.25 **RESIDENTIAL AREA:** The term "Residential Area" means Lots 1 through 14, inclusive, as shown on Exhibit A.
- 2.26 **RULES:** The term "Rules" means the rules adopted by the Board of the Association, as they may from time to time be in effect pursuant to the provisions of Section 6.10 (1).
- 2.27 **SUBDIVISION MAP:** The term "Subdivision Map" means that certain Subdivision, Hazel Ridge Pointe recorded in the Office of the County Recorder of Sacramento, State of California on the 26th day of October, 1993 in Book 229 of Maps, Map No.2.
- 2.28 **SUBJECT PROPERTY:** The term "Subject Property" means all the real property described in Paragraph 1.2.

#### **ARTICLE III** **ARCHITECTURAL CONTROL AND** **USE RESTRICTIONS**

- 3.1 **ARCHITECTURAL CONTROL COMMITTEE:** The Architectural Control Committee shall consist of three (3) persons. Declarant shall appoint all the original members of the Committee and all replacements until the first Anniversary of the Final Public

Report. From and after the first anniversary of the issuance of the Final Public Report, the Declarant may appoint a majority of the members of the Committee, until ninety percent (90%) of all Lots have been sold, or until the fifth (5th) anniversary of the date of the issuance of the Final Public Report, whichever occurs first. After one (1) year from the date of issuance of the Final Public Report, the Board of Directors shall have the power to appoint one Member until ninety percent (90%) of the Lots have been sold, or until the fifth (5th) anniversary date of the original issuance of the Final Public Report, whichever occurs first. Thereafter, the Board of Directors shall have the power to appoint all of the members of the Committee. Members appointed by the Board of Directors shall be members of the Association. Members appointed by Declarant need not be members of the Association.

Members of the Committee, other than those to be appointed by the Declarant, shall be appointed to the Committee by vote of the Board of Directors in the manner provided in the Bylaws of the Association.

3.2 PLAN APPROVAL: No building shall be erected, placed, improved, repaired or altered in any way or any manner which changes or alters the lot from its natural or improved state existing on the date such Lot was first conveyed in fee by Declarant to Owner, until such plan has been submitted to and approved by the Committee. All approvals by the Committee shall be in writing, and may be conditioned upon the submittal of Final Plans. However, plans, drawings and specifications which have neither been approved nor rejected within sixty (60) days from the date of submission shall be deemed rejected. The owner shall be responsible for constructing all improvements in accordance with the approved plans.

3.3 STRUCTURES FOR ANIMALS: No structure for the care, housing or confinement of any horse or yard pet shall be maintained so as to be visible from neighboring property.

3.4 ANTENNAS: No antenna or satellite dish for transmission or reception of television signals or other form of electronic radiation shall be erected, used or maintained outdoors, whether attached to a building or structure.

3.5 UTILITY SERVICE: No lines, wires or other devices for the communication or transmission of electric current or power, including telephone, television and radio signals, shall be constructed, placed or maintained anywhere in or upon any Lot unless the same shall be contained in conduits or cables constructed, placed and maintained underground or concealed in, under or on buildings or other approved structures. Nothing herein shall be deemed to forbid the erection and use of temporary power or telephone services incident to the construction of approved buildings.

3.6 TEMPORARY OCCUPANCY: No trailer, tent, shack, garage, basement or any incomplete building or temporary building or structure of any kind shall be used at any time as a Residence, either temporary or permanent, except that Declarant shall be entitled to keep and maintain a trailer or trailers on any lot or

in the Common Area for marketing purposes. Temporary buildings or structures used during the reconstruction or renovation of a Residence shall be expressly approved by the Homeowners Association and shall be removed immediately after the completion of construction.

3.7 **RESTRICTION ON COMMERCIAL VEHICLES:** No commercial vehicles of any nature shall be parked or stored on any Lot or on the streets of the Project, except for vehicles providing services to the Owners of Lots or the Association, and in that event only for the duration necessary to provide such services.

3.8 **NUISANCES:** No rubbish or debris of any kind shall be placed or permitted to accumulate on or adjacent to a Lot or on the Common Area, and no odors shall be permitted to arise therefrom which might render any Lot or portion thereof unsanitary, unsightly, harmful or detrimental to any of the property in the vicinity thereof or the occupants thereof. No nuisance shall be permitted to exist or operate upon any Lot which might be harmful or detrimental to any property in the vicinity thereof or to its occupants. Without limiting any of the foregoing, no exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on a Lot.

3.9 **TRASH CONTAINERS AND COLLECTION:** All garbage and trash shall be placed and kept in covered containers of a type and style which shall be approved by the Homeowners Association.

3.10 **CLOTHES DRYING FACILITIES:** No outside clotheslines or other outside clothes drying or airing facilities shall be maintained on any Lot.

3.11 **FENCES:** No fences, hedges or walls shall be erected or maintained on any Lot, other than as are initially installed by Declarant.

3.12 **FIRES:** There shall be no exterior fires whatsoever except barbecue fires contained within receptacles designed for such purposes.

3.13 **MAILBOXES:** There shall be no exterior newspaper tubes or freestanding mail boxes except as may have been initially installed by Declarant.

3.14 **BASKETBALL STANDARDS:** No basketball standards or fixed sports apparatus shall be attached to any Residence or Garage or be erected on any Lot.

3.15 **MINERAL EXPLORATION:** No property within the Residential Area shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth or any earth substance or other mineral of any kind.

3.16 **MACHINERY AND EQUIPMENT:** No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot within the Residential Area except such machinery or equipment as is usual and customary in connection with the use or maintenance of a Residence or appurtenant structures in the Project.

3.17 **DISEASES AND INSECTS:** No Owner shall permit any thing or condition to exist upon his Lot which shall induce, breed, or

harbor infectious plant diseases or noxious insects.

3.18 **RESTRICTIONS ON FURTHER SUBDIVISION:** No Lot shall be further subdivided nor shall less than all of any such Lot be conveyed by an Owner thereof.

3.19 **SIGNS:** No signs whatsoever (including but not limited to commercial, political and similar signs) which are visible from neighboring property shall be erected or maintained on any Lot except:

- (1) Such signs as may be required by legal proceedings;
- (2) Residential identification signs, subject to the approval of the Homeowners Association;
- (3) During the time of construction of any Residence or other improvement by Declarant, job identification signs; and
- (4) Not more than one "for sale" or "for rent" sign per Lot which is of reasonable dimensions.

3.20 **CONSTRUCTION AND ALTERATION OF IMPROVEMENTS:** No construction or alteration of improvements or landscaping may be undertaken on a Residence without prior approval of the Architectural Control Committee as described herein in Section 3.1. Each Lot Owner, however, shall be permitted to landscape.

3.21 **PARTY FENCES: GENERAL RULES OF LAW TO APPLY:** Each fence which is built as a part of the original construction of the Residences in the Project and placed on the dividing line between the Lots shall constitute, respectively, a party fence, and, 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 thereto. The Owner of each Lot upon which a party fence is located shall have a reciprocal non-exclusive easement to each contiguous Lot for the purpose of maintaining the party fence. The costs of reasonable repair and maintenance of a party fence shall be shared by the Owners who make such use of the fence in proportion of such use. If a party fence is destroyed or damaged by fire or other casualty, any Owner who has used the fence may restore it, and if the other Owners thereafter make use of the fence, they shall contribute to the cost of restoration thereof in proportion to such use. Such contribution shall be made without prejudice, however, subject to the right of the Owner who originally restored the fence to call for a larger contribution from such other owners under any rule of law regarding liability for negligent or willful acts or omissions. The right of any Owner is appurtenant to the land and shall pass to such Owner's successors in title.

#### **ARTICLE IV** **EASEMENTS:**

4.1 **EASEMENT TO COMMON AREA:** Every Owner shall have a non-exclusive right and easement of use and enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, as more particularly stated in Section 5.1 and Section 5.4.

4.2 **RECIPROCAL APPURTENANT EASEMENTS:** Some Lots may be served by utilities which are located on or under another Lot or



Lots. There is hereby created appurtenant easements for the use and benefit of the respective Lots served, as dominant tenements, on, under and across the Lots burdened thereby, as servient tenements, for ingress and egress for pedestrians and vehicles, utility, telephone, sewer and drainage pipes, water and sprinkler systems, lines, conduits and culverts, and utility meters. The specific location of each such utility shall be determined by the physical location of the improvements thereon and thereunder installed, constructed and completed at the time of the first conveyance of each respective servient tenement.

4.3 EASEMENTS FOR ENCROACHMENTS: Whenever two Residences are located adjacent to each other with two separate walls, or whenever Residences are located adjacent to the Common Area, such Residences are hereby granted exclusive appurtenant easements for encroachments for overhanging eaves or roofs as originally constructed and for encroachments due to settlement or shifting of structures for cause whatsoever and encroachments due to construction, reconstruction or repair of the Residence which may so encroach, and for utility meters, lines, wires, pipes and conduits, over and on the adjoining Lot or Common Area, as servient tenement, with the contiguous Lot as dominant tenement.

4.4 EASEMENTS FOR MAINTENANCE OF COMMON WALLS AND ROOF: The Association will have the duty to maintain the common walls and roofs as described in Section 6.8 (6). The Association is granted an easement on, over and upon such adjoining Lot for such Common Wall and Roof, including the right to enter upon such adjoining Lot to service and maintain such easement and to service maintain and repair, or replace the improvements constituting the common walls and roof. Such entry shall be at reasonable times after prior notice, except that in case of emergency the right of entry shall be immediate.

#### ARTICLE V PROPERTY RIGHTS: COMMON AREA

##### 5.1 COMMON AREA OWNERSHIP:

The common area shall mean Lot as described on the Map of Hazel Ridge Pointe and all improvements located thereon. All common area shall be owned and maintained by the Association for the use, enjoyment and benefit of the Members. The Common area shall be conveyed to the Association free of money encumbrances prior to the first conveyance, under authority of a Final Public Report, of a Lot in the project. Coincident with the execution of this Declaration, Declarants have or will convey to the Association ingress, egress and access easements as shown on the Map as private roads. The Association shall maintain regulate and repair these access easements to the standards of the County of Sacramento for the use enjoyment and benefit of the Members.

Until the third (3rd) anniversary of the original issuance of the Final Subdivision Public Report, Declarant reserves the right to establish and/or grant over and across said Common Area such easements and rights of way on, over, under or across all or any

part thereof to or for the benefit of the State of California, the county and/or city in which the Project is located or any other political subdivision or public organization, or any public utility entity, for the purpose of constructing, erecting, operating and maintaining facilities and improvements thereon, therein or thereunder at that time or at any time in the future, including: (i) roads, streets, walks, driveways, parkways and park areas, (ii) poles, wires and conduits for transmission of electricity, providing telephone service and cable television service to the Project and for the necessary attachments in connection therewith, and (iii) public and private sewers, sewage disposal systems, storm water drains, land drains and pipes, water systems, sprinkler systems, water heating and gas lines or pipes and any and all equipment in connection therewith. The Common Area shall be subject to any dedication stated in the Subdivision Map for the Project of an easement for public use for installation, maintenance and operation of facilities for public utilities over all of the Common Area. Said public utilities easement shall inure and run to all franchised utility companies shall include the right of ingress and egress over the Common Area by Vehicles of such utility companies to properly install, maintain, repair, replace and otherwise service such utility facilities. The grant of said public utility easement shall not be interpreted to imply any obligation or responsibility of any such utility company for maintenance or operation of any of the Common Area or the facilities located thereon or the repair, replacement or reconstruction thereof except as occasioned by such utility companies of the utility facilities for which they are responsible. Except for lawful and proper fences, structures and facilities placed upon the Common Area by utility companies, the Common Area subject to the public utility easement shall be kept open and free from buildings and structures. The City furthermore is granted an easement across the Common Area for ingress and egress for use by emergency vehicles.

**5.2 COMMON AREA: PERMITTED USES, CONSTRUCTION AND ALTERATION OF IMPROVEMENTS:** The Common Area shall be held, maintained and used to meet the common interests of the members of the Association, their tenants and guests as provided by this Declaration.

**5.3 LIMITATION OF CONSTRUCTION:** No person other than the Association or its duly authorized agents or any entity given all or a portion of the Common Area pursuant to Section 5.1 shall construct, reconstruct, refinish, alter or maintain any improvement upon, shall make or create excavation or fill upon or shall destroy or remove any tree, shrub or other vegetation upon any Common Area. In all circumstances, Section 8.2 of this Declaration shall supersede this Section 5.3 until construction of the Project has been completed.

**5.4 OWNERS' EASEMENTS OF ENJOYMENT IN COMMON AREA:** Every Owner shall have a non-exclusive right and easement of use and enjoyment in and to the Common Area, including easements for ingress and egress to said Owner's Lot for pedestrians, utility lines, pipes, wires and conduits which shall be appurtenant to and

shall pass with the title to every lot, subject to the following provisions:

The Board, after giving notice of and an opportunity to be heard to an Owner, shall have the right to suspend the voting rights and right to use the Common Area by an Owner and his tenants and guests pursuant to Section 6.10 (4) of this Declaration.

The right of every Owner to enjoy free and unobstructed passage between every such Owner's Residence and all publicly dedicated street bordering the Project shall be subject to any restrictions imposed by any municipal, state or federal government.

The Association shall have the right to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility, or to any assessment, maintenance or other special district, or to the County of Sacramento, the State of California, or any other private open space advocacy group, for such purposes and subject to such conditions as may be agreed to by the Owners. Except for property offered for dedication prior to the Conveyance thereof to the Association, no such dedication or transfer shall be effective except with the vote or written assent of a majority of the voting power of the Association residing in members other than the subdivider.

There shall be no obstruction of any part of the Common Area and nothing shall be stored, kept or parked in the Common Area and nothing shall be stored, kept or parked in the Common Area except in the areas designated as Parking Areas without the prior written consent of the Association. Each Owner shall avoid any damage to the Common Area and shall be responsible for repairing any damage or injury to the Common Area caused by him, his tenants or guests.

Nothing shall be done or kept in the Common Area which will increase the rate of insurance on any of the Common Area without the prior written consent of the Association. No Owner shall permit anything to be done or kept in the Common Area which will result in the cancellation of insurance on the Common Area or which would be in violation of any governmental statute, ordinance, rules or regulations. No waste shall be committed in the Common Area.

Each Lot adjacent to the Common Area is hereby declared to have an easement over all adjoining Lots and the Common Area and the Common Area is hereby declared to have any easement over all adjoining Lots for the purpose of accommodating any encroachment due to engineering errors, original construction, settlement, shifting, repair or reconstruction of the building, any other similar cause or any encroachment due to building or balcony overhang or projection. There shall be valid easements for the maintenance of said encroachments so long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachments settling or shifting; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful misconduct of said Owner or Owners. In the event a structure on any Lot is partially or totally destroyed, and then repaired or rebuilt, the Owners of each Lot agree that minor encroachments over adjoining Lots shall be permitted, and that

there shall be valid easements for the maintenance of said encroachments so long as they shall exist.

There is hereby reserved to Declarant, the Association or their duly authorized agents and representatives such easements as are necessary to perform the duties and obligations of the Association as are set forth in this Declaration, or in the By-Laws, Articles, Rules.

Each of the easements provided for in this Declaration shall be deemed to be established upon the recordation of this Declaration and shall thenceforth be deemed to be covenants running with the land for the use and benefit of the Lots and the common Area, as the case may be, superior to all other encumbrances applied against or in favor of any portion of the properties which are the subject of this Declaration. In furtherance of the easements provided for in this Declaration, the individual grant deeds of Lots may, but shall not be required to, set forth said easements.

Notwithstanding anything herein to the contrary, this Declaration shall be subject to all easements heretofore or hereafter granted by Declarant for the installation and maintenance of utilities and drainage facilities that are necessary for the development of the Project.

**5.5 DELEGATION OF RIGHT OF USE:** Any Owner may delegate his rights of enjoyment in the Common area and in the privileges of the Association to the members of his family who reside within his Lot, to any of his tenants who reside therein under a leasehold interest and to his guests, subject however, to the provisions of this Declaration and to the Articles, By-Laws and Rules of the Association. The rights and privileges of such persons are subject to suspension for the same reasons and in the same manner as this Declaration provides regarding the suspension of the rights and privileges of Owners in the Project. Each Owner shall notify the Secretary of the Association in writing of the name of the family members, tenants, contract purchasers or guests staying with the Owner for period of more than five (5) days who are so authorized to use the Common Areas and facilities and of the relationship of such person to Owner.

**5.6 RESTRICTION OF SEVERABILITY OF COMMON AREA:** The interest of each Owner in the use and benefit of the Common Area owned by the Association shall be appurtenant to the Lot owned by said Owner and shall not be sold, conveyed or otherwise transferred by said Owner separately from the ownership interest in said Lot.

#### **ARTICLE VI THE ASSOCIATION**

**6.1 THE ORGANIZATION:** The Association is a non-profit mutual benefit corporation charged with the duties and empowered with the rights set forth herein and in the Articles, and its affairs shall be governed by this Declaration, the Articles and the By-Laws.

1           6.2 **MEMBERSHIP:**  
2           6.2(1) **CLASSES OF MEMBERS:** The Association shall have two  
3       (2) classes of Members: Class A Members and Class B Members.  
4           6.2(2) **CLASS A MEMBERS:** Each Owner with the exception of  
5       Declarant, by virtue of being an Owner of a Lot in Lincoln Park  
6       shall be a Class A Member of the Association, or, in the event of  
7       its dissolution, a Class A Member of the unincorporated  
8       association succeeding the Association. The membership shall be  
9       appurtenant to and may not be separated from the ownership of any  
10      Lot which is subject to assessment by the Association. Upon  
11      termination of the lot ownership, membership in the Association  
12      shall also terminate. Ownership of a Lot shall be the sole  
13      qualification for Association membership. The membership of an  
14      Owner shall not be transferred, pledged or alienated in any way  
15      except upon transfer of title to the Owner's Lot and then only to  
16      the transferee of title of such Lot. Any attempt to make a  
17      prohibited transfer is void. Declarant shall become a Class A  
18      Member upon the occurrence of the events specified in Subsection  
19      6.4(2).  
20           6.2(3) **CLASS B MEMBERS:** The sole Class B Member shall be  
21      Declarant. Declarant shall hold one Class B membership for each  
22      Lot in the Project to which Declarant has title, until the  
23      occurrence of the events specified in Subsection 6.4(2).  
24           6.3 **MEMBER'S RIGHTS AND DUTIES:** The rights, duties,  
25      privileges and obligations of all Members of the Association, or of  
26      the succeeding unincorporated association, shall be those set forth  
27      in, and shall be exercised and imposed in accordance with, the  
28      provisions of this Declaration, the Articles, By-Laws and Rules.  
29           6.3.(1) **OWNER'S TRANSFER OF TITLE:** Owners of a separate  
30      interest, other than an owner subject to the requirements of  
31      Business and Professions Code Section 11018.6, shall comply with  
32      Civil Code 1368 prior to the transfer of title or execution of a  
33      real property sales contract.  
34           6.4 **VOTING:** Only Members of the Association shall be entitled  
35      to vote. The voting privileges of each class of Members shall be  
36      provided herein. Any action by the Association which must have the  
37      approval of the Members before being undertaken shall expressly  
38      require the vote of written consent of a prescribed percentage of  
39      each class of Members during the time that there are two (2)  
40      outstanding classes of Members, as more particularly stated in this  
41      Declaration.  
42           6.4(1) **CLASS A MEMBERS:** Class A Members shall have one (1)  
43      vote for each Lot owned. When more than one person owns a Lot, all  
44      Owners shall be Members of the Association. However, the vote for  
45      each Lot must be cast as an undivided unit and fractional votes  
46      shall not be allowed. The vote, or action, for each Lot shall be as  
47      a majority of Co-Owners of the Lot agree. No vote shall be cast or  
48      action taken by the Co-Owners present and representing said Lot  
49      cannot agree.  
50           6.4(2) **CLASS B MEMBERS:** The sole Class B Member shall be  
51      Declarant. The Class B Member shall be entitled to three (3) votes  
52      for each Lot in the Project to which it holds title, provided that

1 the Class B membership shall cease and be irreversibly converted to  
2 Class A membership on the first to occur of the following:

3 (a) The total votes outstanding held by the Class A  
4 membership equal the total votes outstanding in the Class B  
5 membership.

6 (b) A prescribed date which is not later than the second  
7 anniversary of the first conveyance of a subdivision interest in  
8 the development.

9 6.4(3) VOTING UPON TERMINATION OF CLASS B: Upon the  
10 expiration of the Class B membership, each provision of this  
11 Declaration which requires the vote of each class of Members shall  
12 be read as requiring both (a) the vote of the prescribed percentage  
13 of all of the Class A Members and (b) the vote of the prescribed  
14 percentage of the Class A Members other than Declarant.

15 6.4(4) ACCRUAL OF VOTING RIGHTS: No voting rights shall  
16 accrue to any Owner until Regular Assessments have been levied  
17 against his Lot.

18 6.4(5) VOTING REQUIREMENTS: Any action by the Association  
19 which must have the approval of the Membership before being  
20 undertaken shall require the vote or written assent of the Members  
21 as follows:

22 (a) Except as provided herein, the specified percentage (or if  
23 not specified, a majority) of the Members of each class of members  
24 who are present in person or by proxy and voting at a properly  
25 noticed meeting at which a quorum is present, shall be required;

26 (b) Where a provision of the Project Documents requires the  
27 approval of the Members other than Declarant it shall be read to  
28 require, at a properly noticed meeting at which a quorum is present;

29 (i) For so long as there are two (2) classes of  
30 Membership, the vote of the prescribed percentage (or if not  
31 prescribed, a majority) of the Members of each class of Members  
32 present in person or by proxy and voting; or

33 (ii) After conversion of the Class B to Class A  
34 Membership, the vote or written assent of a bare majority of the  
35 total voting power of the Association as well as the vote or  
36 written assent of a prescribed majority of the total voting power  
37 of members other than the subdivider.

38 (c) Provisions in the Project Documents which provide for the  
39 election or removal of Special Directors or the enforcement of  
40 Declarant's completion bond, if any, shall be read to require the  
41 vote of a majority of the members other than Declarant present in  
42 person or by proxy and voting at a properly noticed meeting at  
43 which a quorum is present.

44 6.5 ASSESSMENTS AND DUES: Any assessments levied by the  
45 Association on its Members shall be levied in accordance with and  
46 pursuant to the provisions of Article VII of this Declaration and  
47 shall be enforced pursuant to the provisions of Section 7.7 of this  
48 Declaration.

49 6.6 INITIAL BOARD OF DIRECTORS: The initial Board of  
50 Directors of the Association consisting of three (3) Directors  
51 appointed by Declarant upon the incorporation of the Association  
52 and shall hold office until the first meeting of the Members.

1 The first annual meeting of members of the Association shall be  
2 held within forty-five (45) days after the closing of the sale of  
3 the subdivision interest which represents the fifty-first (51st)  
4 percentile interest authorized for sale under the first public  
5 report issued for the subdivision by the California Commissioner of  
6 Real Estate, provided that public report authorizes the sale of  
7 fifty (50) subdivision interests or more in the subdivision.  
8 However, but in no event shall the meeting be held later than six  
9 (6) months after the closing of the sale of the first subdivision  
10 interest, without regard to the number of subdivision interests  
11 authorized for sale in the first public report.

12 **6.7 SUBSEQUENT BOARD OF DIRECTORS:** At the first meeting of  
13 the Members, a new Board consisting of three (3) directors shall be  
14 elected. Such Board shall serve until the first annual meeting of  
15 the Association. At the first annual meeting, the Members of the  
16 Association shall elect a Board consisting of three (3) Directors.  
17 Each Director shall serve for the term prescribed in the By-Laws.  
18 At each subsequent annual meeting, Directors shall be elected to  
19 replace those Directors whose terms have expired. Each such  
20 Director shall be an Owner and a Member of the Association,  
21 provided that at no time shall the Board of Directors consist of  
22 less than three (3) members, unless otherwise provided by the By-  
23 Laws. The Board shall undertake all duties and responsibilities of  
24 the Association and the management and conduct of the affairs  
25 thereof, except as expressly reserved herein to a vote of the  
26 Members.

27

28 **6.8 DUTIES OF THE ASSOCIATION:** The Association shall have  
29 the obligations and duties, subject to and in accordance with this  
30 Declaration, to do and perform the following acts for the benefit  
31 of its Members and for the maintenance and improvement of the  
32 Subject Property.

33 **6.8(1) MEMBERS: THE ASSOCIATION SHALL ACCEPT ALL LOT**  
34 **OWNERS AS MEMBERS.**

35 **6.8(2) ANNUAL MEMBERSHIP MEETINGS:** The Association shall  
36 hold an annual meeting of the Members in accordance with the By-  
37 Laws of the Association.

38 **6.8(3) COMMON AREA MAINTENANCE:** The Association shall  
39 maintain, or provide for the maintenance of all Common Areas as  
40 described in Section 2.6 of this Declaration and all Improvements  
41 of whatever kind and for whatever purpose located thereon except  
42 where such maintenance obligations have been transferred to another  
43 entity.

44 **6.8(4) OPERATION OF COMMON AREA:** The Association shall  
45 operate and maintain or provide for the operation and maintenance  
46 of Common Areas as such property is conveyed or otherwise  
47 transferred to the Association. The Association shall keep all  
48 improvements of whatever kind and for whatever purpose from time to  
49 time located on the Common Areas, including all landscaping,  
50 paving, curbs, gutters and sidewalks, utility lines, pipes,  
51 conduits and facilities located thereon and owned by the  
52 Association, in good order and repair.

1 6.8(5) **MAINTENANCE OF LOTS:** The Association also may  
2 provide landscaping maintenance for that portion of Lots in the  
3 Project subject to a slope easement or a fire break; provided,  
4 however, that the maintenance of all other landscaping on any Lot  
5 shall be the responsibility of the Owner of the Lot. The  
6 Association shall have the absolute discretion to determine (a) if  
7 any landscaping maintenance for the Lots in the Project will be  
8 provided; and (b) the extent, frequency and nature of landscaping  
9 maintenance provided for the Lots.

10 6.8(6) **MAINTENANCE OF COMMON AREA LANDSCAPING:** The  
11 Association shall be responsible for maintenance for the  
12 landscaping throughout the Common Areas of the Project.

13 6.8(7) **STORM DRAINS:** The Association shall be responsible  
14 for any required storm drain improvements or facilities.

15 6.8(8) **PAYMENT OF TAXES:** The Association shall have the  
16 authority to pay all property taxes and assessments levied upon any  
17 property conveyed, leased or otherwise transferred to it, to the  
18 extent not separately assessed to the Owners. Such taxes and  
19 assessments may be contested or compromised by the Association;  
20 provided, however, that any such taxes are paid or that a bond  
21 insuring the payment is posted prior to the sale or other  
22 disposition of any property to satisfy the payment of such taxes.

23 6.8(9) **INSURANCE:** Insurance shall be obtained and  
24 maintained as provided in this Article X.

25 6.8(10) **RULE MAKING:** The Association shall have the duty to  
26 make, amend and repeal the Rules as provided in Section 6.10(1).

27 6.8(11) **ENFORCEMENT OF RESTRICTIONS AND RULES:** The  
28 Association shall have the power to take such other action, whether  
29 or not expressly authorized by this Declaration, in accordance with  
30 the procedures set forth in Article XI of this Declaration.

31 6.8(12) **BUDGET, FINANCIAL STATEMENTS AND ANNUAL REPORT:** The  
32 following financial and related information shall be regularly  
33 prepared and distributed by the Board to all members of the  
34 Association:

35 A. Budget. A pro forma operating budget for the  
36 immediately ensuing fiscal year consisting of at least the  
37 following information shall be distributed not less than forty-five  
38 (45) and not more than sixty (60) days prior to the beginning of  
39 the Association's fiscal year:

40 (1) Estimated revenue and expenses on an accrual  
41 basis;

42 (2) The amount of the total cash reserves  
43 currently available for the replacement or major repair of common  
44 facilities and for contingencies;

45 (3) An estimate of the current replacement costs  
46 of, and the estimated remaining useful life of, and the methods of  
47 funding used to defray the costs of future repair, replacement or  
48 additions to those major components which the Association is  
49 obligated to maintain;

50 (4) A general statement addressing the procedures  
51 used for the calculation and establishment of those reserves to  
52 defray the future repair, replacement, or additions to those major



1 components that the Association is obligated to maintain; and  
2  
3 B. **Balance Sheet:** A balance sheet as of an accounting date  
4 which is the last day of the month closest in time in six months  
5 from the date of closing of the first sale of a Lot in the Project,  
6 and an operating statement for the period from the date of the  
7 first closing to the said accounting date, shall be distributed  
8 within 60 days after the accounting date. This operating statement  
9 shall include a schedule of assessments received and receivable  
10 identified by the Lot number and the name of the entity assessed;  
11 C. **Report:** A report consisting of the following shall be  
12 distributed within 120 days after the close of the fiscal year:  
13 (1) A balance sheet as of the last day of the fiscal  
14 year.  
15 (2) An operating (income) statement for the fiscal year.  
16 (3) A statement of any changes in financial position for  
17 the fiscal year.  
18 For any fiscal year in which the gross income to the  
19 Association exceeds \$75,000, a copy of the review of the annual  
20 report prepared in accordance with generally accepted accounting  
21 principles by a licensee of the California State Board of  
22 Accountancy.  
23 If any report referred to above is not prepared by an  
24 independent accountant, it shall be accompanied by the certificate  
25 of an authorized officer of the Association that the statement was  
26 prepared from the books and records of the Association without  
27 independent audit or review.  
28 In lieu of the distribution of the pro forma operating budget  
29 required by Section (A), the governing body may elect to distribute  
30 a summary of the items described in Section (A) (1),(2), (3),(4),  
31 statements to members of the Association with a written notice  
32 that the budget is available at the business office of the  
33 Association or at another suitable location within the boundaries  
34 of the development and that copies will be provided by the  
35 Association. If any member requests copies of the pro forma  
36 operating budget including the items described in Section (A)  
37 (1),(2), (3),(4) to be mailed to the member, the Association shall  
38 provide such copies to the member by the first-class United States  
39 mail at the expense of the Association and mailed within five days.  
40 The written notice that is distributed to each of the association  
41 members shall be in at least 10-point bold type on the front page  
42 of the summary of the statements.  
43 D. **Rules.** In addition to financial statements, the Board  
44 shall annually distribute within sixty (60) days prior to the  
45 beginning of the Association's fiscal year, a statement describing  
46 the Association's policies and practices in enforcing its remedies  
47 against Members for defaults in the payment of Regular and Special  
48 Assessments, including actions at law against an Owner and the  
49 recording and foreclosing of liens against Members' Lots;  
50 E. **Bank Accounts.** The Board shall, no less frequently  
51 than quarterly, prepare or cause to be prepared the following:  
52 (1) Cause a current reconciliation of the  
Association's operating accounts to be made and review the same;

1 (2) Cause a current reconciliation of the  
2 Association's reserve accounts to be made and review the same;  
3 (3) Review the current year's actual reserve  
4 revenues and expenses compared to the current year's budget;  
5 (4) Review the most current account statements  
6 prepared by the financial institution where the Association has its  
7 operating and reserve accounts;  
8 (5) Review an income and expense statement for the  
9 Association's operating and reserve accounts.  
10 Individual Board members are prohibited from withdrawing  
11 funds from the Association's reserve account without (i) the  
12 signature of at least two (2) Board Members, or (ii) the signature  
13 of one (1) Board member and an Officer of the Association who is  
14 also not a Board member.  
15 In addition to financial statements, the Board shall annually  
16 distribute within sixty (60) days prior to Association's policies  
17 and practices in enforcing its remedies against Members for  
18 defaults in the payment of Regular and Special Assessments,  
19 including actions at law against an Owner and the recording and  
20 foreclosing of liens against Members' Lots;  
21 F. Membership and Board Records. To cause to be kept adequate  
22 and correct books of account, a register of Members, minutes of  
23 Member, Board and Committee meetings, a record of all corporate  
24 acts, and other records as are reasonably necessary for the prudent  
25 management of the Project. The Membership register (including  
26 names, addresses, telephone numbers and voting rights), books of  
27 account and minutes of meetings of the Members, of the Board, and  
28 of Committees shall be made available for inspection and copying by  
29 any Member of the Association, or by his duly appointed  
30 representative, at any reasonable time and for a purpose reasonably  
31 related to his interest as a Member, at the principal office of the  
32 Association or at such other place within the Project as the Board  
33 of Directors shall prescribe. The Board shall establish reasonable  
34 rules in conformance with Corporations Code Section 8330 with  
35 respect to:  
36 (i) Notice to be given to the custodian of the  
37 records by the Member, representative or Mortgagee desiring to make  
38 the inspection;  
39 (ii) Hours and days of the week when such an  
40 inspection may be made; and  
41 (iii) Payment of the cost of reproducing copies of  
42 the documents requested by a Member, or by a representative or a  
43 mortgagee;  
44 Every Director shall have the absolute right at any reasonable  
45 time to inspect all books, records and documents of the Association  
46 and the physical properties owned or controlled by the Association.  
47 The right of inspection by a Director includes the right to make  
48 extracts and copies of documents; and  
49 G. Owner-Mortgagee Requests. To provide, within ten (10)  
50 days of the mailing or delivery of a written request from an Owner  
51 or Mortgagee, the following items:  
52 (1) A copy of the Project Documents;

1 (2) A copy of the most recent financial statement  
2 distributed pursuant to this section; and  
3 (3) A true statement in writing from an authorized  
4 representative of the Association as to the amount of any  
5 assessments levied upon the Owner's Lot which are unpaid on the  
6 date of the statement. The statement shall also include true  
7 information on late charges, interest and costs of collection  
8 which, as of the date of the statement, are or may be made a lien  
9 upon the Lot.  
10 The Association may charge a fee for this service, which  
11 shall not exceed the Association's reasonable cost to reproduce the  
12 requested items.  
13 H. Bank Accounts: The Association shall deposit all funds  
14 collected from Owners pursuant to the Section herein entitled  
15 "Assessments" and all other amounts collected by the Association as  
16 follows:  
17 (1). General: All funds shall be deposited in a separate bank  
18 account ("General Account") with a bank located in California. The  
19 Association shall keep accurate books and records regarding such  
20 account. Funds deposited in such account may be used by the  
21 Association only for the purposes for which such funds have been  
22 collected.  
23 (2) Reserve: Funds which the Association shall collect for  
24 reserves for capital expenditures relating to the repair and  
25 maintenance of the Lots and Common Area, and for such other  
26 contingencies as are required for good business practice shall,  
27 within 10 days after deposit in the General Account, be deposited  
28 into an interest bearing account with a bank or savings and loan  
29 association selected by the Association, or invested in Treasury  
30 Bills or Certificates of Deposit or otherwise prudently invested,  
31 which shall collectively be referred to as the "Reserve Account".  
32 Funds deposited into the Reserve Account shall be held in trust and  
33 may be used by the Association only for the purposes for which such  
34 amounts have been collected.  
35 I. Reserve Account Study: This Section 7.8(12) is intended  
36 to implement the reserve account study and review requirements  
37 established by Section 1365.5 of the California Civil Code. To the  
38 extent that Section 1365.5 is amended or replaced, the provisions  
39 of this Section shall be automatically amended and replaced by the  
40 new statutory provisions. Further, if the limitations set forth in  
41 Section 1365.5 are repealed, the provisions of this Section 7.8  
42 (12) I shall no longer have any force or effect.  
43 The Board of Directors shall not expend funds designated  
44 as reserve funds for any purpose other than the repair,  
45 restoration, replacement or maintenance of, or litigation involving  
46 the repair, restoration, replacement or maintenance of, major  
47 components which the Association is obligated to repair, restore,  
48 replace or maintain and for which the reserve fund was established.  
49 However, the Board may authorize the temporary transfer of money  
50 from a reserve fund to the association's general operating fund to  
51 meet short-term cash-flow requirements or other expenses. The  
52 transferred funds shall be restored to the reserve fund within

1 three years of the date of the initial transfer, except that the  
2 board may, upon making a finding supported by documentation that a  
3 delay would be in the best interests of the common interest  
4 development, delay the restoration until the time which the board  
5 reasonably determines to be necessary. The Board shall exercise  
6 prudent fiscal management in delaying restoration of these funds  
7 and in restoring the expended funds to the reserve account, and  
8 shall if necessary levy a special assessment to recover the full  
9 amount of the expended funds within the time limits required by  
10 this section. This special assessment is not subject to the  
11 limitation imposed by Section 1366 of the California Civil Code.

12 At least once every three years the board of directors  
13 shall cause a study of the reserve account requirements of the  
14 common interest development to be conducted if the current  
15 replacement value of the major components which the Association is  
16 obligated to repair, replace, restore, or maintain is equal to or  
17 greater than one-half of the gross budget of the Association for  
18 any fiscal year. The Board shall review this study annually and  
19 shall consider and implement necessary adjustments to the board's  
20 analysis of the reserve account requirements as a result of that  
21 review.

22 At a minimum, the study required by this Section shall  
23 include:

24 (a) Identification of the major components of the  
25 Common Area which the Association is obligated to repair, replace,  
26 restore or maintain which, as of the date of the study, have a  
27 remaining useful life of less than thirty (30) years;

28 (b) Identification of the probable remaining useful  
29 life of the components identified in (a) above, as of the date of  
30 the study;

31 (c) An estimate of the cost of repair, replacement  
32 , restoration, or maintenance of each major component, identified  
33 in (a) above, during and at the end of its useful life; and

34 (d) An estimate of the total annual contribution  
35 necessary to defray the cost to repair, replace, restore or  
36 maintain each major component identified in (a) above, during and  
37 at the end of its useful life, after subtracting total reserve  
38 funds as of the date of the study.

39 The term "reserve account requirements" as used in this  
40 Section 6.8 (12) I shall mean the estimated funds which the Board  
41 has determined are required to repair, replace, or restore those  
42 components which the Association is obligated to maintain.

43 6.8(13) SUBDIVIDER'S ACCOUNTING RECORDS: A subdivider shall  
44 maintain or cause to be maintained in accordance with generally  
45 accepted accounting practices, records of:

46 (a) All assessments paid by the subdivider as an owner of  
47 subdivision interests to the Association;

48 (b) All expenditures claimed by the subdivider as offsets or  
49 credits against assessments owed;

50 (c) Association receipts, expenditures and disbursements if  
51 the subdivider has not turned over such records to the association

52 Such records shall be made available for examination,

1 inspection and copying by the Commissioner or his or her designated  
2 representative upon request during regular business hours. A  
3 subdivider's obligation to maintain or cause to be maintained, the  
4 records described in 6.8(13) (a), (b) or (c) shall terminate upon  
5 the earlier of (1) the conveyance of the last subdivision interest  
6 covered by a subdivision public report or (2) three years after the  
7 expiration of the most recent public report on the subdivision.

8 6.8(13) **OTHER:** The Association shall carry out the duties  
9 of the Association as set forth in other sections of this  
10 Declaration, the Articles and By-Laws.

11 6.8(14). **SPECIFIC ENFORCEMENT RIGHTS**

12 In amplification of, and not in limitation of, the general  
13 rights specified in Section 6.1 above, the Association shall have  
14 the following rights:

15 (a) The Association shall have no power to cause a  
16 forfeiture or abridgement of an Owner's right to the full use and  
17 enjoyment of his Lot on account of a failure by the Owner to comply  
18 with provisions of the Project Documents except where the loss or  
19 forfeiture is the result of the judgment of a court or a decision  
20 arising out of arbitration or on account of a foreclosure or sale  
21 under a power of sale for failure of the Owner to pay Assessments  
22 levied by the Association.

23 (b) The Association may impose reasonable monetary  
24 penalties, temporary suspensions of reasonable duration (not to  
25 exceed thirty (30) days per violation) of an Owner's rights as a  
26 Member of the Association or other appropriate discipline for  
27 failure to comply with the Project Documents. Notwithstanding the  
28 foregoing, the Association shall have no right to interfere with an  
29 Owner's right of ingress to or egress from his Lot.

30 Before disciplinary action authorized under this sub-  
31 article may be imposed by the Association the Owner against whom  
32 such action is proposed to be taken shall be given notice and the  
33 opportunity to be heard as follows:

34 (i) The Board shall give written notice to the  
35 Owner at least fifteen (15) days prior to the meeting at which the  
36 Board will consider imposing disciplinary action. Such notice  
37 shall set forth those facts which the Board believes justify  
38 disciplinary action, and the time and place of the meeting;

39 (ii) At such meeting the Owner shall be given the  
40 opportunity to be heard, including the right to present evidence  
41 either orally or in writing, and to question witnesses; and

42 (iii) The Board shall notify the Owner in writing  
43 of its decision within three (3) days of the decision. The  
44 effective date of any disciplinary action imposed by the Board  
45 shall not be less than eight (8) days after the date of said  
46 decision.

47 (c) A suit to recover a money judgment for unpaid  
48 Assessments or unpaid Individual Charges, together with late  
49 charges, interest, costs, and reasonable attorneys' fees shall be  
50 maintainable by the Association in accordance with Article VII,  
51 Section 7.7. In the case of unpaid Assessments such suit shall be  
52 maintainable without foreclosing or waiving the lien securing such

1 unpaid Assessments.

2 6.9 **POWERS AND AUTHORITY OF THE ASSOCIATION:** The Association  
3 shall have all of the powers of a nonprofit mutual benefit  
4 corporation organized under the laws of the State of California in  
5 operating for the benefit of its Members, subject only to such  
6 limitations upon the exercise of such powers as are expressly set  
7 forth in the Articles, By-Laws and this Declaration. It shall have  
8 the power to do any and all lawful things which may be authorized,  
9 required or permitted to be done under and by virtue of said  
10 Declaration, and to do and perform any and all acts which may be  
11 necessary or proper for or incidental to the exercise of any of the  
12 express powers of the Association for the peace, health, comfort,  
13 safety or general welfare of the Owners. Without in any way  
14 limiting the generality of the foregoing, the Board of Directors,  
15 on behalf of the Association, shall have the power and authority  
16 to:

17 6.9(1) **EASEMENTS AND RIGHTS OF WAY:** Grant and convey to  
18 any third party easements and licenses for use and rights of way,  
19 on, over or under any Common Area conveyed or otherwise transferred  
20 to said Association, or under its jurisdiction. However, no such  
21 easement can be granted if it would permanently interfere with the  
22 use, occupancy, or enjoyment by any Owner of his Lot or the common  
23 area of the Project unless approved by the vote or written consent  
24 of the holders of not less than seventy-five percent (75%) of the  
25 voting rights of each class of members and their first mortgagees.  
26 Grant and convey to any third party easements and licenses for use  
27 and rights of way, on, over or under any Common Area conveyed or  
28 otherwise transferred to said Association or under its jurisdiction  
29 except with the vote or written assent of a majority of the voting  
30 power of the Association residing in members other than the  
31 subdivider.

32 6.9(2) **EMPLOYMENT OF MANAGER:** Employ the services of a  
33 manager or other employee, or management company, subject to the  
34 direction and control of the Board of Directors, to manage and  
35 carry out the affairs of the Association, and, to the extent not  
36 inconsistent with the laws of the State of California and upon such  
37 conditions as are otherwise deemed advisable by the Board, to  
38 delegate to the manager any of its powers; provided, however, that  
39 the Board may not delegate to any manager its responsibility to  
40 levy fines, hold hearings or impose discipline. Any contract with  
41 such manager or management company for a term greater than one (1)  
42 year including any compensation to be paid, must be approved by a  
43 majority of each class of Members. In no event shall any  
44 management agreement be for a term greater than three (3) years and  
45 said agreement shall provide for termination without cause and  
46 without payment of a termination fee on a maximum of ninety (90)  
47 days written notice.

48 6.9(3) **SERVICES:** Provide for or engage the services of  
49 others, to provide for the maintenance, protection and preservation  
50 of the Common Area and Lots (if and to the extent the Association  
51 has undertaken landscaping maintenance of the Lots as provided in  
52 Subsection 6.8(5) as the nature and character of the Common Area

1 and Lots may require; provided, however, that no contract for such  
2 services shall be for a duration of more than one (1) year except  
3 with the vote or written assent of a majority of the voting power  
4 of the Association residing in members other than the subdivider.  
5 In no event shall such contract be for a term greater than three  
6 (3) years. Said contract shall provide for termination without  
7 cause and without payment of a termination fee on a maximum of  
8 ninety (90) days written notice.

9 6.9(4) **UTILITIES:** Contract, use and pay for utility  
10 services to the Common Area and its facilities; provided, however,  
11 that any such contract shall not exceed the shortest term for which  
12 the supplier will contract at the regular rate.

13 6.9(5) **OTHER PROPERTY:** Acquire and hold, as trustee for  
14 the benefit of its Members, tangible and intangible personal  
15 property and to dispose of the same by sale or otherwise.

16 6.9(6) **DEDICATION:** Dedicate any of its property to an  
17 appropriate public authority for public use, provided that any such  
18 dedication shall have the approval either by affirmative vote or  
19 written consent of two-thirds (2/3) of each class of Members.

20 6.9(7) **MAINTENANCE OF PROJECT:** Use the operating fund of  
21 the Association for the maintenance, repair, care, and preservation  
22 of the Common Area improvements and for maintenance of landscaping  
23 on the Lots, [if and to the extent the Association has undertaken  
24 such landscaping maintenance as provided in Subsection 6.8(5)], a  
25 required by Section 6.8(4) Said operating fund may also be used to  
26 pay for the purchase of such equipment, tools, supplies and other  
27 personal property as the Board deems necessary for use in such  
28 maintenance and repair.

29 6.9(8) **DELEGATION:** Delegate any of its powers, other than  
30 those established pursuant to Section 6.10(4) to any such  
31 committees, officers or employees as it deems necessary and proper.

32 6.9(9) **CAPITAL IMPROVEMENTS:** The Board may, on its own  
33 motion or acting on a petition signed by a majority of the Owners,  
34 approve the construction, installation or acquisition of a  
35 particular capital improvement of the Common Area; provided  
36 however, that if any expenditures for capital improvements approved  
37 that fiscal year it to exceed an amount equal to five percent (5%)  
38 of the total budgeted gross expenses of the Association for the  
39 most recent fiscal year, such expenditure must be approved by a  
40 majority of each class of Members. For any capital improvement so  
41 approved, the Board shall obtain firm bids on the total cost of  
42 constructing, installing or acquiring said capital improvement.  
43 The lowest acceptable bid or bids shall be deemed the estimated  
44 cost of such capital improvements. Such cost shall be levied as a  
45 capital improvement assessment pursuant to Section 7.6 The Board  
46 shall establish a capital improvements account in a financial  
47 institution selected by the Board in which the capital improvement  
48 assessments shall be deposited, separate and apart from all other  
49 funds collected by the Association.

50 6.10(1) **RULE MAKING POWER:** The Rules may also establish  
51 architectural controls and govern the use of the Common Area by  
52 Members or their invitees. After adoption, a copy of the Rules

1 shall be furnished to each Member. Members shall be responsible for  
2 distributing the Rules to their tenants.  
3 6.11 **ENUMERATED LIMITATIONS:** Individual board members are  
4 prohibited from withdrawing funds from the Association's reserve  
5 account without (i) the signature of at least two (2) Board  
6 Members, or (ii) the signature of one (1) Board member and an  
7 Officer of the Association who is also not a Board Member. Except  
8 with the approval of a majority of the Members other than  
9 Declarant, the Board shall be prohibited from taking any of the  
10 following actions:  
11 1) Entering into a contract with a third person wherein the  
12 third person will furnish goods or services for the Common Area or  
13 to the Association for a term of longer than one (1) year with the  
14 following exceptions:  
15 (a) In the event FHA or VA is a First Mortgagee of a Lot  
16 in the Project, a management contract, the terms of which have been  
17 approved by the Federal Housing Administration or Veterans  
18 Administration;  
19 (b) A contract with a public utility company if the  
20 rates are charged for the materials or services are regulated by  
21 the Public Utilities Commission; provided, however, that the term  
22 of the contract shall not exceed the shortest term for which the  
23 supplier will contract at their regulated rate;  
24 (c) Prepaid casualty insurance and/or liability  
25 insurance policies of not to exceed three (3) years duration  
26 provided that the policy permits short rate cancellation by the  
27 insured;  
28 (d) Lease agreements for laundry room fixtures and  
29 equipment of not to exceed five years' duration, provided that the  
30 lessor under the agreement is not any entity in which the Declarant  
31 has a direct or indirect ownership interest of ten percent (10%) or  
32 more.  
33 (e) Agreements for cable television services and  
34 equipment, or satellite television services and equipment of not to  
35 exceed five years' duration, provided that the lessor under the  
36 agreement is not an entity in which the Declarant has a direct or  
37 indirect ownership interest of ten percent (10%) or more.  
38 (f) Agreements for sale or lease of burglar alarm and  
39 fire alarm equipment, installation and services of not to exceed  
40 five years' duration, provided that the supplier or suppliers are  
41 not entities in which the Declarants have a direct or indirect  
42 ownership interest of ten percent (10%) or more.  
43 2) Incurring aggregate expenditures for capital improvements  
44 to the Common Area in any fiscal year in excess of five percent  
45 (5%) of the budgeted gross expenses of the Association for that  
46 fiscal year.  
47 3) Selling during any fiscal year property of the Association  
48 having an aggregate fair market value greater than five percent  
49 (5%) of the budgeted gross expenses of the Association for that  
50 fiscal year; and  
51 4) Paying compensation to Directors or to Officers of the  
52 Association for services performed on the conduct of the



1 Association's business; provided, however, that the Board may  
2 reimburse a Director or Officer for expenses incurred in carrying  
3 on the business of the Association.

4 **6.12 LIABILITY OF MEMBERS OF BOARD:** No member of the Board  
5 shall be personally liable to any Owner or to any other person,  
6 including Declarant, for any error or omission of the Association,  
7 its representatives and employees, , provided that such Board  
8 member has, upon the basis of such information as may be possessed  
9 by him, acted in good faith. The Board may purchase Director's  
10 insurance.

11 **6.13 ENFORCEMENT OF BONDED OBLIGATIONS:** When Common Area  
12 improvements have not been completed prior to the issuance of the  
13 Final Subdivision Public Report for any phase of the Project and  
14 the Association is the obligee under a bond or other arrangement  
15 (hereafter "Bond") to secure performance of the commitment of  
16 Declarant to complete the improvements, the following provisions  
17 relative to the initiation of action to enforce the obligations of  
18 Declarant and the surety under the Bond shall pertain:

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

29 If the Board decides not to initiate enforcement action,  
30 notice shall be given to all Members of such decision. Upon  
31 receipt of the petition referred to below, there shall be a special  
32 meeting of the Members for the purpose of voting to override a  
33 decision by the Board not to initiate action to enforce the  
34 obligations under the Bond or, upon the failure of the Board to  
35 consider and vote on the question, for the purpose of voting  
36 whether to enforce such obligations. The meeting shall be held not  
37 less than thirty-five (35) nor more than forty-five (45) days after  
38 receipt by the Board of a petition for such a meeting signed by  
39 Members representing not less than two-thirds(2/3) of the total  
40 voting power of the Association.

41 There shall be a vote by Members of the Association other than  
42 Declarant at the special meeting called for the purpose set forth  
43 in this section.

44 A vote of a majority of the voting power of the Association  
45 residing in Members other than Declarant to take action to enforce  
46 the obligation under the Bond shall be deemed to be the decision of  
47 the Association and the Board shall thereafter implement this  
48 decision by initiating and pursuing appropriate action in the name  
49 of the Association.

50 **6.14 DISSOLUTION OF INCORPORATED ASSOCIATION:**

51 **6.14(1) SUCCESSOR ASSOCIATION:** In the event that the  
52 Association as a corporate entity is dissolved, a non-profit,

1 unincorporated association shall forthwith and without further  
2 action or notice be formed to succeed to all the rights and duties  
3 of the Association hereunder. The affairs of such incorporated  
4 association shall be governed by the laws of the State of  
5 California and, to the extent not inconsistent therewith, by this  
6 Declaration and the By-Laws of the Association as if they were  
7 created for the purpose of governing the affairs of an  
8 unincorporated association.

9 6.14(2) **TITLE TO PROPERTY:** Immediately prior to the  
10 dissolution of the Association as a corporate entity, the  
11 Association shall convey to an independent institutional corporate  
12 trustee all real property vested in it to hold such real property  
13 in trust for the benefit of the unincorporated association formed  
14 pursuant to Section 6.1 and for the benefit of the Owners pursuant  
15 to the terms of this Declaration and the By-Laws of the  
16 Association.

17 6.14(3) **MEMBERS' RIGHTS:** Upon dissolution of the  
18 Association and the formation of an unincorporated association,  
19 each Owner in the Project shall become a Member of the  
20 unincorporated association and shall have an underlying beneficial  
21 interest in all of the property of the Association transferred to  
22 or for the account or benefit of said unincorporated association,  
23 such interest being in direct proportion to the number of Lots  
24 owned by such Member; provided, however, that there shall be no  
25 judicial partition of such property or any part thereof, nor shall  
26 any such Member or other person acquiring any interest in said  
27 property, or any part hereof, seek judicial partition, the right to  
28 do so being expressly waived.  
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#### 34 **ARTICLE VII** 35 **FUNDS AND ASSESSMENTS**

36 7.1 **FUNDS:** The Association shall maintain an operating fund  
37 (the "Maintenance and Operation Account") into which the Board  
38 shall deposit all funds paid to the Association as maintenance and  
39 operation assessments. The Association shall also maintain a  
40 reserve fund ("Reserve Account") into which the Board shall deposit  
41 all funds collected as reserves for contingencies and the repair  
42 and replacement of capital improvements. All funds shall be held  
43 in trust by the Association for the use and benefit of its  
44 individual Members and shall only be used for and applied to the  
45 common specific purposes of the Members as herein set forth.  
46

#### 47 **7.2 REGULAR ASSESSMENTS:**

48  
49 7.2(1) **BUDGETING:** Prior to the first day of the month  
50 following the closing of the first sale of a Lot by Declarant, the  
51 Board shall estimate (i) the total charges to be paid out of the  
52 Maintenance and Operation Account and (ii) reasonable reserves for

1 contingencies and the repair and replacement of capital  
2 improvements for the remainder of the fiscal year and shall assess  
3 said charges pro rata to all of the Lot Owners, including  
4 Declarant, based on the number of Lots owned. Regular assessments  
5 against all Lots in the Project shall commence for each phase in  
6 the Project on the first day of the month following the closing  
7 said first sale of a Lot in that phase.

8 Thereafter, not less than sixty (60) days prior to the  
9 beginning of each subsequent fiscal year, the Board shall again  
10 estimate the total charges to be paid out of the Maintenance and  
11 Operation Account during such year and reasonable reserves for  
12 contingencies and capital improvements. The Board shall allocate  
13 and assess said estimate by the number of Lots owned by each Lot  
14 Owner. All funds of the Association shall be budgeted, allocated,  
15 assessed and collected for the Maintenance and Operation Account or  
16 for contingencies or deferred maintenance and replacement of  
17 capital improvements and shall be designated for those specific  
18 purposes. Said funds shall then be used solely for the specific  
19 purpose for which they have been designated. An association shall  
20 not impose an assessment or collect an assessment or fee that  
21 exceeds the amount necessary to defray the costs for which it is  
22 levied.

23 Within one hundred twenty (120) days after the end of each  
24 fiscal year, the Lot Owners shall receive an accounting of  
25 assessment receipts and disbursements for the last-ended fiscal  
26 year.

27  
28 7.2(2) INCREASE IN REGULAR ASSESSMENTS: Notwithstanding  
29 more restrictive limitations placed on the Board by the governing  
30 documents, the board of directors may not, impose a regular  
31 assessment that is more than twenty percent greater than the  
32 regular assessment for the association's preceding fiscal year  
33 without the approval of owners, constituting a quorum, casting a  
34 majority if the votes at a meeting or election of the association  
35 conducted in accordance with Chapter 5 (commencing with Section  
36 7510) of Part 3 of Division 2 of Title 1 of the Corporations Code  
37 and Section 7613 of the Corporations Code. For purposes of this  
38 Section, quorum means more than fifty (50) percent of the Owners of  
39 an Association. This section does not limit assessment increases  
40 necessary for emergency situations.

41 For purposes of this section, an emergency situation is any  
42 one of the following:

43 (1) An extraordinary expense required by an order of a  
44 court.

45 (2) An extraordinary expense necessary to repair or  
46 maintain the subdivided property or any part of it for which the  
47 Association is responsible where a threat to personal safety on the  
48 property is discovered.

49 (3) An extraordinary expense necessary to repair or  
50 maintain the subdivided property or any part of it for which the  
51 Association is responsible that could not have been reasonably  
52 foreseen by the Board in preparing and distributing the pro forma

1 operating budget. However, prior to the imposition or collection  
2 of an assessment pursuant to this paragraph, the Board shall pass  
3 a resolution containing written findings as to the necessity of the  
4 extraordinary expense involved and why the expense was not or could  
5 not have been reasonably foreseen in the budgeting process, and the  
6 resolution shall be distributed to the members with the notice of  
7 assessment.  
8 (4) An extraordinary expense in making the first payment of  
9 earthquake insurance surcharge pursuant to Section 5003 of the  
10 Insurance Code.  
11 7.2.(3) NOTICE OF INCREASE IN ASSESSMENTS: The Association  
12 shall provide notice by first-class mail to the owners of the  
13 separate interests of any increase in the regular or special  
14 assessments of the association, not less than thirty (30) nor more  
15 than sixty (60) days prior to the increased assessment becoming  
16 due.  
17 Regular and special assessments levied pursuant to the  
18 governing documents are delinquent fifteen (15) days after they  
19 become due. If an assessment is delinquent the association may  
20 recover all of the following:  
21 (1) Reasonable costs incurred in collecting the delinquent  
22 assessment, including reasonable attorney's fees.  
23 (2) A late charge not exceeding ten (10) percent of the  
24 delinquent assessments or ten dollars (\$10.00), which ever is  
25 greater.  
26 (3) Interest on all sums imposed in accordance with this  
27 Section, including delinquent assessment, reasonable costs of  
28 collection, and late charges at an annual percentage rate not to  
29 exceed twelve percent, commencing thirty (30) days after the  
30 assessment becomes due.  
31 7.3 TIME AND MANNER OF PAYMENT OF ASSESSMENTS: Assessments  
32 shall be due and payable by the Owners to the Association during  
33 the fiscal year in equal monthly installments, on or before the  
34 first day of each month, or in such other manner as the Board shall  
35 designate. If not paid within thirty (30) days after its due date,  
36 each such charge shall thereafter bear interest at the rate of ten  
37 percent (10%) per annum until paid, but the Board may, in its  
38 discretion, waive interest in any particular instance. If any suit  
39 or action is brought to collect any such charge, there shall be  
40 added to the amount thereof costs of suit and reasonable attorneys'  
41 fees to be fixed by the court and included in any judgment in any  
42 such suit or action.  
43 7.4 SPECIAL ASSESSMENTS: The Board may levy, in any  
44 assessment year, a special assessment applicable to that year only,  
45 for the purpose of defraying, in whole or in part, the cost of any  
46 construction, reconstruction, repair or replacement of a capital  
47 improvement upon the Common Area, including fixtures and personal  
48 property related thereto, for extraordinary expenses incurred by  
49 the Association or for any authorized activity of the Association.  
50 If the special assessment exceeds in the aggregate 5% of the  
51 budgeted gross expenses of the association for that fiscal year,  
52 the vote or written consent of members constituting a quorum,

1 casting a majority of the votes at a meeting or election shall be  
2 required to approve such assessment. In addition, the Board may  
3 not impose, without the vote or written assent of a majority of  
4 members constituting a quorum, casting a majority of the votes at  
5 a duly held meeting or election, a Special Assessment which in the  
6 aggregate exceeds 5% of the budgeted gross expenses of the  
7 Association for that fiscal year; provided, however, the power of  
8 the Board shall not be with respect to Special Assessments imposed  
9 for emergency situations set forth above in Section 7.2 (2) (a).  
10 **7.5 REIMBURSEMENT ASSESSMENT:** The Board shall levy an  
11 assessment against any Owner whose failure to comply with this  
12 Declaration, the Rules, resulted in (i) the imposition of a fine  
13 and/or penalty or (ii) monies being expended by the Association  
14 from the operating fund in performing its functions under this  
15 Declaration. Such assessments shall be due and payable to the  
16 Association when levied. Reimbursement Assessments shall not be  
17 enforceable by the lien and private power of sale provisions of  
18 Section 7.7 hereof.  
19 **7.6 CAPITAL IMPROVEMENT ASSESSMENT:** Upon approval of a  
20 proposed capital improvement and the estimated total cost thereof  
21 pursuant to Section 6.9(9), such estimated total cost shall be  
22 levied and assessed equally to each Lot as a capital improvement  
23 assessment.  
24 If at any time and from time to time a capital improvement  
25 assessment proves or appears likely to prove inadequate for any  
26 reasons, including nonpayment of any Owner's share thereof, the  
27 Board may levy a Special Assessment pursuant to Section 7.4 above.  
28 Capital improvement assessments shall be due and payable by  
29 all Owners in such installments and during such period of periods  
30 as the Board shall designate.  
31 **7.7 ENFORCEMENT OF ASSESSMENTS:** The Board shall annually  
32 distribute, not more than sixty (60) and not less than forty-  
33 five(45) days prior to the beginning of the fiscal year, a  
34 statement of the Association's policies and practices in enforcing  
35 its remedies against Owners for defaults in the payment of Regular  
36 and Special Assessments, including the recording and foreclosing of  
37 liens against Owners' Lots. In addition to all other remedies  
38 provided by law, the Association, or its authorized representative  
39 may enforce the obligations of the Owners to pay each assessment  
40 provided for in this Declaration in any manner provided by law or  
41 by either or both of the following procedures:  
42 **7.7(1) BY SUIT:** The Association may commence and maintain a  
43 suit at law against any owner personally obligated to pay a  
44 delinquent assessment. The suit shall be maintained in the name of  
45 the Association. Any judgment rendered in any action shall include  
46 the amount of the delinquency, Additional Charges as stated in  
47 Section 7.7 herein, and any other Amounts as the court may award.  
48 A proceeding to recover a judgment for unpaid assessments may be  
49 maintained without the necessity of foreclosing or waiving the lien  
50 established herein.  
51 **7.7(2) BY LIEN:** The Association or a trustee nominated by  
52 the Association may commence and maintain proceedings to establish

1 and /or foreclose assessment liens. No action shall be brought to  
2 foreclose a lien until the lien is created by recording a Notice of  
3 Delinquent Assessment ("Notice"). The Notice must be authorized by  
4 the Board, signed by an authorized agent or by any owner if the  
5 Board fails or refuses to act, and recorded in the Official Records  
6 of the County. The Notice shall state the amount of the delinquent  
7 assessment(s), the Additional charges incurred to date, a  
8 description of the Lot, the name(s) of the record owner (s) thereof  
9 and the name and address of the trustee, if any, authorized by the  
10 Association to enforce the lien by sale and shall be signed by the  
11 person authorized to do so by the Board, or if no one is  
12 specifically designated, by the President or Chief Financial  
13 Officer. The lien may be foreclosed as provided in Section 1367 of  
14 the Civil Code of the State of California.

15 **7.7(3) ADDITIONAL CHARGES:** In addition to any other amounts  
16 due or any other relief or remedy obtained against an Owner who is  
17 delinquent in the payment of any assessments, each owner agrees to  
18 pay such additional charges as the Association may incur or levy in  
19 the process of collecting from that Owner monies due and  
20 delinquent. All Additional Charges shall be included in any  
21 judgment in any suit or action brought to enforce collection of  
22 delinquent assessments or may be levied against a Lot as a  
23 Reimbursement Assessment. Additional Charges shall include, but not  
24 be limited to the following:

25 a) Attorneys' Fees: Reasonable attorneys' fees and costs  
26 incurred in the event an attorney is employed to collect any  
27 assessment or sum due, whether by suit or otherwise;

28 b) Late Charges: A late charge in the amount to be fixed by  
29 the Board in accordance with the then current laws of the State of  
30 California to compensate the Association for additional collection  
31 costs incurred in the event any assessment to other sum is not paid  
32 when due or within any "grace " period established by law;

33 c) Costs of suit: Costs of suit and court costs incurred as  
34 are allowed by the Court;

35 d) Interest: Interest on the Additional Charges at a rate  
36 fixed by the Board in accordance with the then current laws of the  
37 State of California; and

38 e) Other: Any such other additional costs that the Association  
39 may incur in the process of collecting delinquent assessments or  
40 sums.

41 **7.7(4) CERTIFICATE OF SATISFACTION OF LIEN:** Upon payment or  
42 other satisfaction of a delinquent assessment for which a Notice  
43 was properly recorded, the Association shall record a certificate  
44 stating the satisfaction and release of the assessment lien.

45 **7.7(5) SUBORDINATION OF LIEN:** A lien for regular or  
46 special assessments against an Owner is expressly made subject to  
47 the rights of any First Mortgage that encumbers any Lot or other  
48 portion of the Project, made in good faith and for value, and no  
49 such lien shall in any way defeat, invalidate, or impair the  
50 obligation or priority of such First mortgage unless the First  
51 Mortgagee expressly subordinates his interest , in writing, to  
52 such lien.

1 In the case of a subordination of a lien for assessments to a  
2 first encumbrance, the transfer of a subdivision interest as the  
3 result of the exercise of a power of sale or a judicial foreclosure  
4 involving a default under the first encumbrance shall extinguish  
5 the lien of assessments which were due and payable prior to the  
6 transfer of the subdivision interests.

7 **7.8 ASSOCIATION FUNDS:** The assessments collected by the  
8 Association shall be properly deposited into two separate accounts  
9 with a savings and loan association or bank selected by the Board,  
10 which accounts shall be clearly designated as the Maintenance and  
11 Operation Account and the Reserve Account. The funds collected  
12 shall be deposited, as allocated, into the appropriate accounts  
13 and said accounts shall be separately maintained by the  
14 Association. Upon sale or transfer of any Lot by any Owner, any  
15 interest of the transferor in the funds shall be deemed  
16 automatically transferred to the transferee of such Owner. In the  
17 event the Board retains a management agent, the Board may delegate  
18 the authority to deposit or withdraw funds to responsible  
19 representatives of the management agent. Said management agent may  
20 additionally be authorized to establish a common trust account for  
21 deposit of assessments as collected. Any funds deposited in such  
22 a common trust account shall be allocated as previously specified  
23 herein.

24 **7.9 FAILURE TO FIX MAINTENANCE ASSESSMENTS:** The omission by  
25 the Board to fix the maintenance assessments hereunder before the  
26 expiration of any year, for that or the next year, shall not be  
27 deemed either a waiver or modification in any respect of the  
28 provisions of this Declaration or a release of the Owner from the  
29 obligation to pay the assessments or any installment thereof for  
30 that or any subsequent year, but the assessment fixed for the  
31 preceding year shall continue until a new assessment is fixed.

32 **7.10 PROPERTY EXEMPT FROM ASSESSMENTS:** The following property  
33 subject to this Declaration shall be exempt from the assessments,  
34 charges and liens created herein:

35 (a) That portion of any property subject to any easement  
36 or other interests dedicated and accepted by the City or other  
37 local public authority and devoted to public use; and

38 (b) All Common Areas.  
39  
40

41 **ARTICLE VIII**  
42 **LIMITATION OF RESTRICTIONS ON DECLARANT**  
43

44 **8.1 LIMITATIONS OF RESTRICTIONS:** Declarant is undertaking  
45 the work of constructing upon the Lots in the Project various  
46 Residences and other incidental improvements. The completion of  
47 that work and the sale, and other disposal of Lots is essential to  
48 the establishment and welfare of the Subject Property as a  
49 residential community. In order that the work may be completed and  
50 the property be established as a fully occupied residential  
51 community as rapidly as possible, nothing in this Declaration shall  
52 be understood or construed to deny Declarant the rights set forth

1 in this Article VIII  
2  
3 8.2 RIGHTS OF ACCESS, COMPLETION OF CONSTRUCTION: Until the  
4 third (3rd) anniversary of the original issuance of the Final  
5 Subdivision Public Report for the Project, Declarant, its  
6 contractors and subcontractors shall have the right to:  
7 Obtain reasonable access over and across the Common Area of  
8 the Project and do whatever is reasonably necessary or advisable in  
9 connection with the completion of the Project; and  
10 Erect, construct and maintain such structures as may be  
11 reasonably necessary for the conduct of its business to complete  
12 said work, establish said property as a residential community and  
13 dispose of the same in parcels by sale, lease, or otherwise.  
14 8.3 MARKETING RIGHTS: Declarant shall have the right to:  
15 1) Maintain model homes, trailer or trailers for marketing  
16 purposes, sales offices, storage facilities and related facilities  
17 on any unsold Lots within the Project, whichever is necessary or  
18 convenient, in the Opinion of Declarant, for sale or disposition of  
19 said Lots;  
20 2) Make reasonable use of the Common Areas and Common Area  
21 facilities for sale of Lots; and  
22 3) Conduct its business to dispose of the Lots by sale,  
23 lease or otherwise.  
24 Should Declarant, after the expiration of a period of three  
25 years after the close of escrow for the sale of a Lot, require  
26 access to and use of the Common Area for marketing purposes beyond  
27 that which Declarant otherwise is permitted, such use shall be  
28 permitted only if an agreement is entered into between Declarant  
29 and the Association, which agreement specifically provides for such  
30 use for a limited duration and provides for a reasonable rate of  
31 compensation to the Association by the Declarant commensurate with  
32 the nature, extent and duration of such use by Declarant.  
33 Notwithstanding any other provision hereof, however, Declarant  
34 shall under no circumstances be denied his full rights as an Owner  
35 (as provided in this Declaration) to make such use of the Common  
36 Area and any Lots owned by Declarant in the manner to which  
37 Declarant is entitled by virtue of being an Owner.  
38 8.4 NATURE OF PROJECT: Declarant shall not be prevented from  
39 increasing or decreasing the number of Lots that may be annexed to  
40 the Project from any other action directly or indirectly connected  
41 with the Project in the manner deemed desirable by Declarant,  
42 provided, however, that Declarant obtains governmental consents  
43 where required by law, including, where appropriate, the consent of  
44 the Department of Real Estate.  
45 8.5 TITLE RIGHTS: The rights of Declarant under this  
46 Declaration to all or part of Declarant's interest in the Project  
47 may be assigned to any successors(s) by an express assignment  
48 incorporated in a recorded deed or option, as the case may be,  
49 transferring such interest to such successor. This Declaration  
50 shall not limit the right of Declarant at any time prior to  
51 acquisition of title by a purchaser from Declarant to establish on  
52 any part of the Project additional licenses, reservations and  
rights-of-way to itself, to utility companies or to others as, from



1 time to time, may be reasonably necessary to the proper development  
2 and disposal of the Subject Property.  
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10 **ARTICLE IX**  
11 **RIGHTS OF MORTGAGEES**  
12

13 9.1 **CONFLICT:** Notwithstanding any contrary provision  
14 contained elsewhere in this Declaration, or in the By-Laws,  
15 Articles or Rules, the provisions of this Article shall control  
16 with respect to the rights and obligations of Institutional  
17 Mortgagees specified herein.

18 9.2 **LIABILITY FOR UNPAID ASSESSMENTS:** Any Institutional  
19 Mortgagee who obtains title to a Lot pursuant to the remedies  
20 provided in the First Mortgage (except upon a voluntary conveyance  
21 to the Institutional Mortgagee) or by foreclosure of First  
22 Mortgage, shall take the property free of claims for unpaid  
23 assessments or charges against the Lot which accrue prior to the  
24 acquisition of title to the Lot by the Institutional Mortgagee.

25 9.3 **PAYMENT OF TAXES AND INSURANCE:** Institutional Mortgagees  
26 may, jointly and singly, pay taxes or other charges which are in  
27 default and which may or have become a charge against any Common  
28 Area or improvements thereon and may pay overdue premiums on hazard  
29 insurance policies or secure new hazard insurance coverage on the  
30 lapse of a policy for such Common Area. Institutional Mortgagees  
31 making such payments shall be owed immediate reimbursement for such  
32 expenditures from the Association and, on demand, the Association  
33 shall execute an agreement in favor of all Institutional Mortgagees  
34 reflecting entitlement to reimbursement.  
35

36 9.4 **TERMINATION OF CONTRACTS AND AGREEMENTS:** Any contract or  
37 lease, including any contract providing for the services of  
38 Declarant, entered into by the Association while Declarant controls  
39 the Association shall provide that the Association has the right to  
40 terminate such contract or lease without cause and without penalty  
41 or the payment of a termination fee at any time after the transfer  
42 of control of the Association from Declarant upon not more than  
43 ninety (90) days notice to the other party. For purpose of this  
44 Subsection, the term "control" shall mean the right of Declarant to  
45 exercise unilateral control over the Association, the Board, the  
46 Project or the Owners in any manner other than by Declarant's  
47 exercise of votes allocated to Declarant on the same basis as votes  
48 are allocated to other Owners in any manner other than by  
49 Declarant's exercise of votes allocated to Declarant on the same  
50 basis as votes are allocated to other Owners.

51 The term of any agreement for management of the Project or any  
52 agreement providing for services of the Declarant, shall not exceed

one (1) year unless the agreement and its term are approved by the vote or written assent of a majority of each class of Members; provided, however, that in no event shall such an agreement exceed (3) years. Any such agreement shall provide that the agreement may be terminated by either party without cause and without payment of a termination fee upon not more than ninety (90) days written notice.

**9.5 NOTICE TO ELIGIBLE HOLDERS:** An Eligible holder is entitled to timely written notice of:

- 1) Any condemnation loss or casualty loss which affects a material portion of the Common Area;
- 2) Any delinquency in the payment of assessments or charges owed by the Owner of a Lot which is subject to a First Mortgage held by the Eligible Holder if the delinquency is not cured within sixty (60) days after its due.
- 3) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;
- 4) Any proposal to take any action specified in this Article or in Section 10.1 below;
- 5) Any default by an Owner-mortgagor of a Lot in the performance of his obligations under this Declaration of the By-Laws, which is not cured within sixty (60) days.

**9.6 INSPECTION OF BOOKS AND RECORDS:** Upon request, any Owner or First Mortgagee shall be entitled to inspect the books, records and financial statements of the Association, this Declaration, the By-Laws, the Articles and the Rules and any amendments thereto during normal business hours or under other reasonable circumstances.

**9.7 CONSENT TO ACTION:** Unless the consent of owners of units to which at least sixty-seven percent (67%) of the votes in the Association are allocated and the approval of the Eligible Mortgage Holders holding mortgages on units which have at least fifty-one percent (51%) of the votes of the units, subject to eligible holder mortgages, the Association shall not be entitled to:

Subject to the more restrictive provisions of Section 5.3 by act or omission to abandon, partition, subdivide, encumber, sell or transfer any property or improvements owned, directly or indirectly, by the Association for the benefit of the Lots and the Owners. (The granting of easements for public utilities or for other public purposes consistent with the intended use of the property by the Association and Owners shall not be deemed a transfer within the meaning of this Subsection.)

By act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to architectural design or exterior appearance of Lots, or the upkeep of lawns, plantings or other landscaping in the Common Area.

Fail to maintain fire and extended coverage insurance on insurable portions of the Common Area on a current replacement cost basis in an amount not less than ninety percent (90%) of the

1 current replacement cost;  
2 Use hazard insurance proceeds for losses to any property or  
3 improvements owned by the Association other than for the repair,  
4 replacement or reconstruction of the property and improvements.  
5 Any election to terminate the legal status of the Project as  
6 a Planned Development Project shall require:  
7 The approval of a majority of the Eligible Holders if the  
8 election to terminate the legal status is a result of substantial  
9 destruction or substantial taking condemnation of the property  
10 within the Project; or  
11 The approval of sixty-seven percent (67%) of the total voting  
12 power of the Association and sixty-seven percent (67%) of the  
13 Eligible Holders, if Section 9.7, above, is not applicable.  
14 9.8 **MORTGAGE PROTECTION:** A breach of any of the conditions  
15 contained in this Declaration shall not defeat nor render invalid  
16 the lien of any Mortgage made in good faith and for value as to any  
17 Lot in the Project; provided, however, that the conditions  
18 contained in this Declaration shall be binding upon and effective  
19 against any Owner of a Lot if the Lot is acquired by foreclosure,  
20 trustee's sale or otherwise.  
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23  
24 **ARTICLE X**  
25 **INSURANCE, DESTRUCTION AND CONDEMNATION**  
26  
27 10.1 **GENERAL PROVISIONS AND LIMITATIONS:** The Association shall  
28 obtain insurance pursuant to Article VI Section 6.8. All insurance  
29 policies shall be subject to and, where applicable, shall contain  
30 the following provisions and limitations;  
31 10.1(1) **NAMED INSURED:** Unless otherwise provided in this  
32 Section, the named insured shall be the Association or its  
33 authorized representative.  
34 10.1(2) **AUTHORITY TO NEGOTIATE:** Exclusive authority to  
35 adjust losses under policies obtained by the Association shall be  
36 vested in the Board; provided, however, no Mortgagees having an  
37 interest in such losses may be prohibited from participating in any  
38 settlement negotiations related thereto.  
39 10.1(3) **CONTRIBUTIONS:** The insurance coverage obtained and  
40 maintained by the Association shall be separate and independent  
41 from any insurance purchased by the Owners or their Mortgagees, and  
42 in no event shall the insurance coverage obtained and maintained by  
43 the Association be brought into contribution with insurance  
44 purchased by the Owners or their Mortgagees.  
45 10.1(4) **GENERAL PROVISIONS:** To the extent possible the Board  
46 is required to make every reasonable effort to secure insurance  
47 policies providing for the following:  
48 (a) a waiver of subrogation by the insurer as to  
49 any claims against the Board, Managers, the Owners and their  
50 respective servants, agents, and guest;  
51 (b) a waiver by the insurer of its right to repair  
52 and reconstruct instead of paying cash;

1 (c) that no policy may be canceled, invalidated, or  
2 suspended on account of the acts of any one or more individual  
3 Owners;

4 (d) that no policy may be canceled, invalidated, or  
5 suspended on account of the conduct of any manager, Director,  
6 officer, or employee of the Association without prior demand in  
7 writing delivered to the Association requiring remedying of the  
8 defect and allowing a reasonable time within which the defect may  
9 be cured by the Association, its Manager, any Owner, or Mortgagees;

10 (e) that any "other insurance" clause in any policy  
11 excludes individual Owners' policies from consideration;

12 (f) that no policy may be canceled or substantially  
13 modified without at least ten (10) days prior written notice to the  
14 Association;

15 (g) that no policy may be canceled without prior  
16 notification by the insurer to any First Mortgagee who has  
17 requested such Notice at least fifteen (15) days in advance of the  
18 effective date of any reduction or cancellation of the policy.

19 (h) an agreed amount endorsement and;  
20 (i) an inflation guard endorsement.

21 10.1(5) **ANNUAL REVIEW:** The Board shall review the adequacy  
22 of all insurance at least once every year. The review shall  
23 include a replacement cost appraisal of all insurable Common Area  
24 improvements without respect to depreciation. The Board shall  
25 adjust the policies to provide coverage and protection that is  
26 customarily carried by prudent owners of similar property in the  
27 area in which the Project is situated.

28 10.1(6) **REDUCTIBLE:** The policy may contain a reasonable  
29 deductible and the amount of the deductible shall be added to the  
30 face amount of the policy in determining whether the insurance  
31 equals replacement cost.

32

33 10.2 **TYPES OF COVERAGE:** The following kinds and amounts of  
34 insurance shall be obtained:

35 10.2(1) **PROPERTY INSURANCE:** A policy or policies or all risk  
36 property insurance for all insurable Common Area improvements  
37 against loss of damage by fire or other casualty, in an amount  
38 equal to ninety percent (90%) of the current full replacement  
39 costs, without respect to depreciation, of the Common Area, and  
40 improvements exclusive of land, foundations, excavation and other  
41 items normally excluded from coverage.

42 10.2(2) **LIABILITY INSURANCE:** A combined single limit policy  
43 of public liability insurance in an amount not less than One  
44 Million Dollars (\$1,000,000.00) covering the Common Area and all  
45 damage or injury caused by the negligence of the Association, the  
46 Board or any of its agents or the Owners incident to the use of or  
47 resulting from any accident or intentional or unintentional act  
48 occurring in or about the Common Area. If available, each policy  
49 shall contain a cross liability endorsement in which the rights of  
50 the named insured shall not be prejudiced with respect to any  
51 action by one named insured against another named insured.

52 10.2(3) **WORKER'S COMPENSATION:** Worker's compensation

1 insurance to the extent necessary to comply with all applicable  
2 laws of the State of California or the regulations of any  
3 governmental body or authority having jurisdiction over the  
4 Project.

5 10.2(4) OFFICER AND DIRECTOR INSURANCE: The Association may  
6 purchase and maintain insurance on behalf of any Director, Officer,  
7 or Member of a committee of the Association (collectively the  
8 "agents"). against any liability asserted against or incurred by  
9 the agent in such capacity or arising out of the agent's status as  
10 such, whether or not the Association would have the power to  
11 indemnify the agent against such liability under applicable law.

12 10.2(5) INSURANCE PREMIUMS: Premiums on insurance maintained  
13 by the Association shall be a common expense funded by Assessments  
14 levied by the Association.

15 10.2(6) OTHER INSURANCE: Other types of insurance as the  
16 Board determines to be necessary to fully protect the interests of  
17 the Owners.

18 10.3 DESTRUCTION AFFECTING COMMON AREA: Any damage or  
19 destruction to the Common Area shall be repaired or reconstructed  
20 by the Association. It shall be the obligation of the Board to  
21 take all steps necessary to assure the commencement and completion  
22 of authorized repair and reconstruction at the earliest possible  
23 date. The Board shall have the authority to enter into a written  
24 contract with a reputable contractor for the repair and  
25 reconstruction and to compensate the contractor according to the  
26 terms of the contract. If there are insurance proceeds which  
27 exceed the costs of repair or reconstruction, the excess proceeds  
28 shall be paid to the Reserve Account(s) of the Association. If the  
29 insurance proceeds are insufficient to pay all of the costs of the  
30 repair and reconstruction and if there is an existing balance in  
31 the Reserve Account designated for the repair or reconstruction of  
32 the capital improvement which has been damaged, the Board may use  
33 the Reserve to repair or reconstruct the improvement. If the  
34 available proceeds are insufficient to pay the cost of repair or  
35 reconstruction, the Board shall levy a Special Assessment against  
36 all owners.

37 10.4 DESTRUCTION AFFECTING LOTS: If there is a total or  
38 partial destruction of a Lot, the Owner thereof shall have the  
39 following options:

40 (a) The Owner shall have the rebuild or repair the Lot in  
41 substantial conformity with its appearance, design, and structural  
42 integrity immediately prior to the damage or destruction.

43 Notwithstanding the foregoing, any Owner of an affected Lot  
44 may apply to the Architectural Control Committee for reconstruction  
45 of his Lot in a manner which will provide for an exterior  
46 appearance and/or design which is different from that which existed  
47 prior to the date of destruction. Application for such approval  
48 shall be made in writing together with a full and complete plans,  
49 specifications, maps and working drawings showing the proposed  
50 reconstruction and the end result thereof. The Board shall grant  
51 such approval only if it finds that the reconstructed Lot will be  
52 compatible in exterior appearance and/or design with the other Lots

1 in the project. Failure of the Board to approve or reject any such  
2 proposed change within thirty days (30) after the date of  
3 submission thereof shall be conclusively deemed an approval  
4 thereof; or,  
5 (b) The Owner shall clear all structures and improvements  
6 from the Lot and shall landscape it in a manner which is approved  
7 by the Board. Board approval shall not be unreasonably withheld.  
8 Failure to rebuild the Lot shall not relieve the Lot or its Owner  
9 from any Assessment obligation.  
10 Rebuilding or landscaping shall be commenced within Ninety  
11 (90) days of the date of the damage or destruction and shall be  
12 diligently pursued to completion.  
13 If the Owner does not commence such reconstruction or repair  
14 within a reasonable time, and thereafter complete the repair or  
15 reconstruction diligently, the Association may bring suit to compel  
16 the Owner to perform said reconstruction or repair.  
17 10.5 CONDEMNATION AFFECTING COMMON AREA: The Association shall  
18 represent the interests of all Owners in any proceeding relating to  
19 condemnation of the Common Area. If an action for condemnation of  
20 all or a portion of the Common Area is proposed or threatened by an  
21 entity having the right of eminent domain, then on the unanimous  
22 written consent of all of the Owners and subject to the right of  
23 all Mortgagees, the Common Area, or a portion of it may be sold by  
24 the Board. The proceeds of the sale shall be available to the  
25 Board to establish and improve easements and roads over the Project  
26 as necessary to replace that portion of the Common Area which has  
27 been sold. Subject to Corporations Code 8724 the proceeds of the  
28 sale, if distributed, shall be distributed among the Lots on the  
29 same basis as their Regular Assessment obligations and between the  
30 Lot Owners and their Mortgagees as their respective interests shall  
31 appear.  
32 10.6 AWARD: If the Common Area or a portion of it, is not  
33 sold but is instead taken, the judgment of condemnation shall by  
34 its terms distribute the award. If the judgment of condemnation  
35 does not distribute the award, then the award shall be distributed  
36 as provided in Section 10.5.  
37 10.7 CONDEMNATION AFFECTING LOT: If an action for  
38 condemnation of all or a portion of, or otherwise affecting a Lot  
39 (except the Common Area) is proposed or threatened, the Owner and  
40 the Mortgagees of the Affected Lot, as their respective interests  
41 shall appear, shall be entitled to the proceeds of any sale or  
42 award relating to the affected Lot.  
43 If any Lot is rendered irreparably uninhabitable as a result  
44 of such a taking, the Lot shall be deemed deleted from the Project  
45 and the Owners and Mortgagees of the affected Lot, upon receiving  
46 the award and any portion of the reserve funds of the Association  
47 reserved for the Lot, shall be released from the applicability of  
48 the Project Documents and deemed divested of any interest in the  
49 Common Area.  
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**ARTICLE XI**  
**MISCELLANEOUS PROVISIONS**

11.1 **AMENDMENT:** After the conveyance of the first Lot, amendments may be made as follows:

11.1(1) **MATERIAL PROVISIONS OF DECLARATION:** The vote or written consent of sixty-seven percent (67%) of the voting power of the Association residing in members other than the subdivider shall be required to add to, amend or modify, whether by formal amendment or otherwise, any material provision of this Declaration which establishes, provides for, governs or regulates any of the following subjects:

- 1) Voting;
- 2) Assessments, assessment liens, or subordination of assessment liens;
- 3) Reserves for maintenance, repair and replacement of Common Areas;
- 4) Insurance policies or fidelity bonds;
- 5) Rights to use the Common Area;
- 6) Responsibilities for maintenance and repair of any portion of the Common Area;
- 7) Expansion or contraction of the Project or the addition or annexation of property to or withdrawal of property from Project;
- 8) The boundaries of a Lot;
- 9) Convertibility of Lots into Common Area or of Common Area into Lots;
- 10) The provisions of Section 7.7, Article IX and this Section 11.1.(1);
- 11) Any change in the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner.

11.2 **AMENDMENT AFTER FIRST CONVEYANCE:**

After the conveyance of the first Unit, under authority of a Final Public Report, of a Unit in the Project, this Declaration shall be amended only as follows:

- (a) Two Classes. So long as Class A and Class B Memberships exist, upon the vote or written assent of a majority of each class.
- (b) Single Class. After conversion of Class B members to Class A Memberships, upon the vote or written assent of members representing both:
  - (i) A majority of the total voting power of the Association which is at least fifty-one percent (51%) and not more than seventy-five percent (75%); and
  - (ii) At least a bare majority of the votes of members other than the subdivider.
- (c) Specific Provisions. The percentage of the voting power necessary to amend a specific clause or provision herein shall not be less than the percentage of affirmative votes prescribed for action to be taken under said clause or provision.

11.3 **DEPARTMENT OF REAL ESTATE APPROVAL:** As required by Business and Professions Code Section 11018.7 no amendment of the provisions of the Project Documents which would materially affect the rights of Owners in the ownership, possession or use of their Units, the Common Area shall be valid without the prior written

1 consent of the California Real Estate Commissioner during the  
2 period of time when the Declarant, or its successor-in-interest,  
3 holds or directly controls one-fourth (1/4) or more of the votes  
4 that may be cast to effect such changes.

5 11.4 RECORDATION: Any amendment shall be effective upon the  
6 recordation in the Official records of the County an instrument  
7 setting forth the terms of the amendment, and the vote or written  
8 consent by which it was adopted, duly certified and executed by the  
9 President and Secretary of the Association.

10 11.5 DURATION: The provisions of this Declaration,  
11 including the covenants, conditions and restrictions contained  
12 herein shall continue to be effective for a period of sixty (60)  
13 years from the date of recordation and shall be automatically  
14 extended for successive periods of ten (10) years or until a  
15 majority vote of the Owners of all of the Lots in the Project shall  
16 determine that they shall terminate.

17 11.6 ENFORCEMENT AND NONWAIVER:

18 11.6(1) RIGHT OF ENFORCEMENT: Except as otherwise provided  
19 herein, Declarant, the Association or any Owner or Owners shall  
20 have the right to enforce any and all of the provisions of this  
21 Declaration, the By-Laws, the Articles and the Rules, including any  
22 decisions made by the Association upon the Owners of property in  
23 the Project.

24 11.6(2) VIOLATION OF LAW: Any violation of any state,  
25 municipal or local law, ordinance or regulation pertaining to the  
26 ownership, occupation or use of any property within the Project is  
27 hereby declared to be a violation of this Declaration and subject  
28 to any or all of the enforcement procedures herein set forth.

29 11.6(3) REMEDIES CUMULATIVE: Each remedy provided by this  
30 Declaration is cumulative and not exclusive.

31 11.6(4) NONWAIVER: The failure to enforce the provisions of  
32 any covenant, condition or restriction contained in this  
33 Declaration shall not constitute a waiver of any right to enforce  
34 any such provisions or any other provisions of said Declaration.

35 11.6(5) OBLIGATIONS OF OWNERS: No owner may avoid the  
36 burdens or obligations imposed on him by this Declaration through  
37 non-use of any Common Area of the facilities located thereon or by  
38 abandonment of his Lot. Upon the conveyance, sale, assignment, or  
39 other transfer of a Lot to a new Owner, the transferring Owner  
40 shall not be liable for any assessments levied with respect to such  
41 Lot after the date of such transfer, and no person, after the  
42 termination of his status as an Owner and prior to his again  
43 becoming an Owner, shall incur any of the obligations or enjoy any  
44 of the benefits of an Owner under this Declaration.

45 11.7 CONSTRUCTION AND SEVERABILITY, SINGULAR AND PLURAL:

46 TITLES:  
47 11.7(1) RESTRICTIONS CONSTRUED TOGETHER: All of the  
48 covenants, conditions and restrictions of this Declaration shall be  
49 liberally construed together to promote and effectuate the  
50 fundamental concepts of the Project as set forth in the Preamble of  
51 this Declaration.

52 11.7(2) RESTRICTIONS SEVERABLE: Notwithstanding the



1 provisions of Section 11.3, above, the covenants, conditions and  
2 restrictions of this Declaration shall be deemed independent and  
3 severable, and the invalidity or partial invalidity of any  
4 provision or portion thereof shall not affect the validity of  
5 enforceability of any other provision.

6 11.7(3) **SINGULAR INCLUDES PLURAL:** The singular shall  
7 include the plural and the plural, the singular, unless the context  
8 requires the contrary, and the masculine, feminine or neuter shall  
9 each include the masculine, feminine and neuter, as the context  
10 requires.

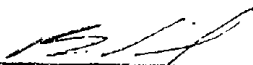
11 11.7(4) **CAPTIONS:** All captions or titles used in this  
12 Declaration are intended solely for convenience of reference and  
13 shall not affect that which is set forth in any of the terms or  
14 provisions of said Declaration.

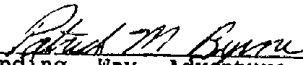
15 11.5 **BINDING:** This Declaration shall be for the benefit  
16 of and be binding upon all Owners, their respective heirs,  
17 legatees, devisees, executors, administrators, guardians,  
18 conservators, successors, tenants, encumbrances, donees, grantees,  
19 mortgagees, lienors and assigns.

20 11.8 **SUCCESSOR STATUTES:** Any reference in the Project  
21 documents to a statute shall be deemed a reference to any amended  
22 or successor statute.

23 **IN WITNESS WHEREOF.** Declarant has executed this  
24 Declaration the day and year first above written.

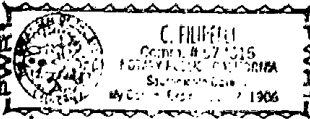
25  
26 **DECLARANT:**

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28   
29 Winding Way Adventure, A Joint  
30 Venture by Barry Vial

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33 Winding Way Adventure, A Joint  
34 Venture by Patrick M. Byrne

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**ALL-PURPOSE ACKNOWLEDGEMENT**

State of <u>California</u> County of <u>Sacramento</u> On <u>1-12-94</u> before me, <u>C. Filippelli</u> Personally appeared <u>Barry Vial &amp; Patrick M. Byrne</u> ( personally known to me - OR - V proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. Witness my hand and official seal.  <u>C. Filippelli</u> SIGNATURE OF NOTARY		<b>CAPACITY CLAIMED BY SIGNER</b> <input checked="" type="checkbox"/> INDIVIDUAL(S) CORPORATE _____ OFFICER(S) _____ PARTNER(S) _____ ATTORNEY-IN-FACT _____ TRUSTEE(S) _____ SUBSCRIBING WITNESS _____ GUARDIAN/CONSERVATOR _____ OTHER _____ <b>SIGNER IS REPRESENTING:</b> NAME OF PERSON(S) OR ENTITY(ES): _____			
<p>ATTENTION NOTARY: Although the information requested below is OPTIONAL, it could prevent fraudulent attachment of this certificate to unauthorized document.</p> <table><tr><td>THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED AT RIGHT</td><td>Type or Type of Document <u>AC &amp; RS</u> Number of Pages <u>41</u> Signer(s) Other Than Named Above _____</td><td>Date of Document _____</td></tr></table>			THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED AT RIGHT	Type or Type of Document <u>AC &amp; RS</u> Number of Pages <u>41</u> Signer(s) Other Than Named Above _____	Date of Document _____
THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED AT RIGHT	Type or Type of Document <u>AC &amp; RS</u> Number of Pages <u>41</u> Signer(s) Other Than Named Above _____	Date of Document _____			

Form 1070

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**EXHIBIT "A"**


**LEGAL DESCRIPTION OF PROJECT**

**LOTS 1 THROUGH 15, INCLUSIVE AS SO SHOWN AND DESIGNATED ON THE PLAT  
OF HAZEL RIDGE POINTE, RECORDED IN THE COUNTY OF SACRAMENTO ON  
October 26th, 1993, IN BOOK 229 OF MAPS, MAP NUMBER 2.**

CONSENT OF LIENHOLDER  
AND SUBORDINATION OF LIEN

The undersigned, CapitolBank Sacramento, a California Corporation, as beneficiary of the beneficial interest under that certain Deed of Trust recorded September 28, 1993, in Book 930928, Page 444, Official Records of Sacramento County, California, hereby expressly subordinates the Deed of Trust and its beneficial interest thereunder to the foregoing Declaration of Covenants, Conditions and Restrictions of Hazel Ridge Points Homeowners Association referred to therein, and all maintenance and other easements to be conveyed to the Association or Owners in accordance with the Declaration.

Dated: 19 Nov 93

  
CapitolBank Sacramento  
a California Corporation  
BY:  
CAPACITY:

CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of SACRAMENTO

(On 11/19/93 before me, JANICE HUNCER  
(Date) (Notary)

personally appeared SUSAN DRACK



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

Notary's Signature 