



PLACER County Recorder  
JIM MCCAULEY

**DOC- 2006-0119522-00**

Acct 1-FIRST AMERICAN TITLE

Monday, NOV 06, 2006 14:30:00

MIC \$6.00:AUT \$210.00:SBS \$208.00

REC \$214.00:

Ttl Pd \$638.00

Nbr-0001565859

cat/ST/2-209

**RECORDING REQUESTED BY, AND  
WHEN RECORDED, MAIL TO:**

**SPROUL-TROST LLP  
Attn: Curtis C. Sproul, Esq.  
2424 Professional Drive  
Roseville, CA 95661**

Order #1862026

(Space Above For Recorder's Use)

**AMENDED AND RESTATED DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
  
FOR  
  
WOODLAKE VILLAGE**

**AMENDED AND RESTATED DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
WOODLAKE VILLAGE**

**TABLE OF CONTENTS**

<b>RECITALS</b>	.....	1
<b>ARTICLE I</b>	<b>Definitions.....</b>	<b>2</b>
Section 1.01.	Architectural Review Committee .....	2
Section 1.02.	Architectural Rules .....	2
Section 1.03.	Articles.....	2
Section 1.04.	Assessment .....	2
Section 1.05.	Association .....	2
Section 1.06.	Association Rules .....	3
Section 1.07.	Board of Directors or Board .....	3
Section 1.08.	Bylaws .....	3
Section 1.09.	City .....	3
Section 1.10.	Common Area.....	3
Section 1.11.	Common Expense.....	3
Section 1.12.	Common Facilities.....	3
Section 1.13.	County .....	3
Section 1.14.	Declarant.....	4
Section 1.15.	Declaration.....	4
Section 1.16.	Development.....	4
Section 1.17.	Emergency Assessment .....	4
Section 1.18.	Environmental Preserve.....	5
Section 1.19.	Governing Documents.....	5
Section 1.20.	Improvement.....	5
Section 1.21.	Lot.....	5
Section 1.22.	Maintenance Manual .....	5
Section 1.23.	Maintenance Obligations .....	6
Section 1.24.	Majority of a Quorum.....	6
Section 1.25.	Member.....	6
Section 1.26.	Mortgage.....	6
Section 1.27.	Option Agreement .....	6
Section 1.28.	Owner .....	6
Section 1.29.	Owner of Record .....	6
Section 1.30.	Property .....	7
Section 1.31.	Public Report .....	7
Section 1.32.	Record.....	7

Section 1.33.	Regular Assessment.....	7
Section 1.34.	Reserves.....	7
Section 1.35.	Residence.....	7
Section 1.36.	SHP.....	7
Section 1.37.	Single Family Residential Use .....	7
Section 1.38.	Special Assessment.....	7
Section 1.39.	Special Individual Assessment .....	7
Section 1.40.	Subdivision Map.....	8
Section 1.41.	Subsidy Agreement.....	8
Section 1.42.	Voting Power.....	8
<b>ARTICLE II</b>	<b>Property Rights and Obligations of Owners.....</b>	<b>8</b>
Section 2.01.	Declaration Regarding the Property Comprising the Development.....	8
Section 2.02.	Authority of Declarant to Approve Boundary Line Adjustments .....	9
Section 2.03.	Property Rights in Common Area .....	9
Section 2.04.	Owners' Nonexclusive Easements of Enjoyment .....	10
Section 2.05.	Delegation of Use .....	11
Section 2.06.	Obligations of Owners.....	12
<b>ARTICLE III</b>	<b>Woodlake Village Homeowners' Association.....</b>	<b>13</b>
Section 3.01.	Formation.....	13
Section 3.02.	Association Action; Board of Directors and Officers .....	14
Section 3.03.	Membership .....	14
Section 3.04.	Membership Voting .....	14
Section 3.05.	Assessments.....	15
Section 3.06.	Transfer of Memberships.....	15
Section 3.07.	Powers and Authority of the Association .....	15
Section 3.08.	Association Rules.....	17
Section 3.09.	Breach of Rules or Restrictions.....	20
Section 3.10.	Limitation on Liability of the Association's Directors and Officers .....	20
Section 3.11.	Enforcement of Bonded Obligations .....	21
<b>ARTICLE IV</b>	<b>Assessments .....</b>	<b>22</b>
Section 4.01.	Assessments Generally .....	22
Section 4.02.	Regular Assessments .....	23
Section 4.03.	Special Assessments .....	25
Section 4.04.	Special Individual Assessments.....	26
Section 4.05.	Assessments to Address Emergency Situations .....	27
Section 4.06.	Purpose and Reasonableness of Assessments .....	28
Section 4.07.	Exemption of Certain Portions of the Development From Assessments .....	28
Section 4.08.	Notice and Procedure for Member Approval Pursuant to Sections 4.02 and 4.03 .....	28
Section 4.09.	Maintenance of Assessment Funds.....	29
Section 4.10.	Collection of Assessments; Enforcement of Liens.....	31

Section 4.11.	Transfer of Lot by Sale or Foreclosure.....	36
Section 4.12.	Priorities.....	37
Section 4.13.	Unallocated Taxes .....	37
<b>ARTICLE V</b>	<b>Architectural Review and Approval of Improvement Projects .....</b>	<b>37</b>
Section 5.01.	Architectural Review Committee Approval of Improvements.....	37
Section 5.02.	Composition of the Design Review Committee .....	38
Section 5.03.	Duties.....	39
Section 5.04.	Meetings .....	39
Section 5.05.	Architectural Rules .....	39
Section 5.06.	Basis for Approval of Improvements .....	40
Section 5.07.	Inspection Fee and Deposits .....	41
Section 5.08.	Delivery of Plans and Specifications.....	41
Section 5.09.	Time Limits for Approval or Rejection.....	41
Section 5.10.	Employment of Architect or Engineer.....	42
Section 5.11.	Proceeding With Work .....	42
Section 5.12.	Failure to Complete Work .....	42
Section 5.13.	Inspection of Work by Architectural Review Committee.....	42
Section 5.14.	Landscaping.....	43
Section 5.15.	Enforcement.....	43
Section 5.16.	Variances .....	44
Section 5.17.	Compliance Certificate .....	44
Section 5.18.	Limitation on Liability.....	44
Section 5.19.	Declarant Exemption .....	45
Section 5.20.	Compliance With Governmental Regulations.....	45
Section 5.21.	Appeals .....	45
Section 5.22.	Association Funding for Architectural Review Costs .....	45
<b>ARTICLE VI</b>	<b>Minimum Improvement Standards .....</b>	<b>45</b>
Section 6.01.	Approval by Architectural Review Committee.....	46
Section 6.02.	No Temporary Structures .....	46
Section 6.03.	No Used Materials .....	46
Section 6.04.	Solar Heating Systems.....	46
Section 6.05.	Colors and Exterior Finishes .....	46
Section 6.06.	Drainage.....	46
Section 6.07.	Antennas, Aerials and Satellite Dishes.....	46
Section 6.08.	Exterior Lighting and Fixtures .....	47
Section 6.09.	Water Systems and Pools .....	47
Section 6.10.	Fences .....	47
Section 6.11.	Prohibition on Front Yard Landscape Art or Decorations .....	48
<b>ARTICLE VII</b>	<b>City of Roseville, Association and Owner Maintenance</b>	
	<b>Responsibilities.....</b>	<b>48</b>
Section 7.01.	Common Area and Certain Public Properties.....	48

Section 7.02.	Owner Maintenance Responsibilities .....	50
Section 7.03.	Cooperative Maintenance Obligations .....	52
Section 7.04.	Drainage Structures, Ditches and Swales .....	54
Section 7.05.	Association Recovery of Costs of Certain Repairs and Maintenance .....	55
Section 7.06.	Other Maintenance Obligations of the Mello-Roos District .....	55
<b>ARTICLE VIII</b>	<b>Property Use Restrictions .....</b>	<b>56</b>
Section 8.01.	Use of Lots.....	56
Section 8.02.	Common Areas .....	57
Section 8.03.	Prohibition of Noxious Activities.....	57
Section 8.04.	Household Pets .....	57
Section 8.05.	Signs .....	58
Section 8.06.	Business Activities .....	58
Section 8.07.	Garbage.....	59
Section 8.08.	Storage .....	59
Section 8.09.	Clotheslines .....	59
Section 8.10.	Burning .....	59
Section 8.11.	Sports Apparatus.....	59
Section 8.12.	Machinery and Equipment.....	60
Section 8.13.	Diseases and Pests .....	60
Section 8.14.	Vehicle and Parking Restrictions .....	60
Section 8.15.	Use of Private Streets in Common Area.....	61
Section 8.16.	Use of Garages.....	61
Section 8.17.	Children .....	61
Section 8.18.	Activities Affecting Insurance.....	61
Section 8.19.	Restriction on Further Subdivision of Lots and Lot Combinations.....	61
Section 8.20.	Variances .....	62
Section 8.21.	Enforcement of Property Use Restrictions .....	62
<b>ARTICLE IX</b>	<b>Easements .....</b>	<b>63</b>
Section 9.01.	Street Easements.....	63
Section 9.02.	Blanket Utility Easement.....	63
Section 9.03.	Maintenance Easements .....	63
Section 9.04.	Rights of Declarant Incident to Construction.....	63
Section 9.05.	Encroachment Easements .....	64
Section 9.06.	Other Easements .....	65
Section 9.07.	Priority of Easements.....	65
<b>ARTICLE X</b>	<b>Insurance .....</b>	<b>65</b>
Section 10.01.	Types of Insurance Coverage .....	65
Section 10.02.	Coverage Not Available .....	66
Section 10.03.	Copies of Policies .....	66
Section 10.04.	Trustee .....	66
Section 10.05.	Adjustment of Losses .....	67

Section 10.06.	Policies Obtained by Declarant .....	67
Section 10.07.	Annual Review of Association Insurance and Disclosure to Members .....	67
Section 10.08.	Board's Authority to Revise Insurance Coverage.....	67
<b>ARTICLE XI</b>	<b>Damage or Destruction .....</b>	<b>68</b>
Section 11.01.	Common Facilities; Bids and Determination of Available Insurance Proceeds.....	68
Section 11.02.	Common Facilities; Sufficient Insurance Proceeds.....	68
Section 11.03.	Common Facilities; Insurance Proceeds Insufficient in an Amount Exceeding Association Special Assessment Authority .....	68
Section 11.04.	Damage or Destruction of Residences.....	68
<b>ARTICLE XII</b>	<b>Condemnation .....</b>	<b>69</b>
<b>ARTICLE XIII</b>	<b>Breach and Default.....</b>	<b>70</b>
Section 13.01.	Remedy at Law Inadequate .....	70
Section 13.02.	Nuisance .....	70
Section 13.03.	Attorneys' Fees .....	70
Section 13.04.	Cumulative Remedies.....	70
Section 13.05.	Failure Not a Waiver .....	70
Section 13.06.	Rights and Remedies of the Association (Governing Document Enforcement) .....	71
Section 13.07.	Assessment Collection Remedies.....	73
Section 13.08.	Resolution of Disputes with the Declarant.....	73
<b>ARTICLE XIV</b>	<b>Protection of Mortgagees .....</b>	<b>79</b>
Section 14.01.	Assessment Lien Subordinated.....	79
Section 14.02.	Amendment of This Declaration .....	80
Section 14.03.	Default by Owner; Mortgagee's Right to Vote.....	80
Section 14.04.	Breach; Obligation After Foreclosure .....	80
Section 14.05.	Exchange of Information .....	80
Section 14.06.	Certain Restrictions Affecting the Association .....	81
Section 14.07.	Right of First Mortgagees to Make Certain Payments and Right of Reimbursement Therefor.....	81
Section 14.08.	Right to Examine Books and Records of the Association.....	82
Section 14.09.	Notices to First Mortgagees.....	82
Section 14.10.	Superiority of Mortgage to Condemnation Proceeds .....	82
Section 14.11.	Superiority of Mortgage to Insurance Proceeds .....	82
Section 14.13.	Declaration to Conform With Mortgagee Requirements .....	83
<b>ARTICLE XV</b>	<b>Declarant Privileges and Exemptions .....</b>	<b>84</b>
Section 15.01.	Interest of the Declarant; Material Actions Requiring Declarant Approval.....	84
Section 15.02.	Exemptions From Restrictions Otherwise Applicable .....	85

Section 15.03.	Rights to Use Common Areas and Common Facilities in Connection With Development and Sales Activities.....	85
Section 15.04.	Amendment of Plans .....	85
Section 15.05.	Right to Enforce Architectural Review and Approval Requirements .....	86
Section 15.06.	Termination of Any Responsibility of Declarant .....	86
<b>ARTICLE XVI</b>	<b>Notices.....</b>	<b>86</b>
Section 16.01	Mailing Addresses .....	86
Section 16.02.	Personal Service Upon Co-Owners and Others.....	87
Section 16.03.	Deposit in United States Mails .....	87
<b>ARTICLE XVII</b>	<b>No Public Rights in the Development .....</b>	<b>87</b>
<b>ARTICLE XVIII</b>	<b>Amendment of Declaration .....</b>	<b>87</b>
Section 18.01.	Amendment Before Close of First Sale .....	87
Section 18.02.	Restatements .....	87
Section 18.03.	Amendment After Close of First Sale .....	88
Section 18.04.	Department of Real Estate .....	89
Section 18.05.	Mortgagee Approval.....	89
Section 18.06.	Effective Date of Amendment .....	89
Section 18.07.	Business and Professions Code Section 11018.7 .....	89
Section 18.08.	Reliance on Amendments.....	89
<b>ARTICLE XIX</b>	<b>General Provisions.....</b>	<b>89</b>
Section 19.01.	Term.....	90
Section 19.02.	Disclosures Required by the City of Roseville.....	90
Section 19.03.	Statutory References.....	90
Section 19.04.	Construction.....	90
Section 19.05.	Declarant's and SHP's Disclaimer of Representations .....	92

**AMENDED AND RESTATED DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
WOODLAKE VILLAGE**

This Amended and Restated Declaration is made by Meritage Homes of California, Inc., a California corporation (the "Declarant") and SHP Fiddymment MP, LLC a California limited liability company ("SHP").

**RECITALS**

A. SHP is the owner of that certain real property located in the City of Roseville, County of Placer, State of California, that is more particularly described in Exhibit "A" (the "Property"). Declarant is the holder of an option to purchase the Property pursuant to the Option Agreement (as defined in Section 1.27, below). The Property is commonly known as "Woodlake Village" and is, at times, referred to herein as the "Development."

B. It is the intention of the Declarant and SHP to sell and convey residential Lots improved by single family Residences within the Development originally constructed by Declarant or other builders to Owners, subject to the protective covenants, conditions, restrictions, limitations, reservations, liens, grants of easements, rights, rights of way, charges and equitable servitudes between Declarant and such Owners as set forth in this Declaration and any duly adopted amendments thereto.

C. The Property has been subjected to that certain Declaration of Covenants, Conditions and Restrictions for Woodlake Village recorded in the Official Records of Placer County California on September 19, 2006, as Document No. 2006-0099692. (the "Original Declaration"). Pursuant to the authority conferred on the Declarant pursuant to Section 18.01 of the Original Declaration, the Declarant desires to amend and restate the Original Declaration in its entirety, by the recordation of this Amended and Restated Declaration of Covenants, Conditions and Restrictions for Woodlake Village, without, however, altering in any way the priority of the Original Declaration, as amended and restated herein, in the chain of title to the Lots within the Project.

D. Accordingly, the Declarant and SHP hereby declare that all of the real property comprising the Development shall be held, sold and conveyed subject to the following easements, restrictions, associations, reservations, covenants and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Lots and Common Areas of the Development. These covenants, easements, restrictions, conditions, associations and reservations: (i) create a general plan and scheme for the subdivision development, sale and use of the Development as a "planned development" as that term is defined in California Civil Code section 1351(k); (ii) are for the benefit and protection of the Development and its Owners and for the protection and enhancement of the desirability, value and attractiveness of all Lots, Common Areas and other parcels of property located therein;



(iii) run with the real property comprising the Development and bind all parties having or acquiring any right, title or interest in the Development or any part thereof; and (iv) inure to the benefit of the successors and assigns of each Owner of any property within the Development.

E. Finally, it is the intention of Declarant and SHP to convey to the Association the "Common Areas" and "Common Facilities" located within the Development to be owned and maintained by the Association and reserved exclusively for the use and enjoyment of the Members of the Association, their tenants, lessees, guests and invitees, subject to the terms and conditions of this Declaration and the other Governing Documents.

F. Notwithstanding the anticipated development of Woodlake Village in accordance with the plan of development contemplated by this Declaration, nothing in this Declaration shall be construed or interpreted to commit Declarant or SHP to the development of any portion of the Property in accordance with any present planning. Accordingly, nothing contained herein shall obligate Declarant or SHP to refrain from the further subdivision or resubdivision of the lands comprising the Development, and Declarant and SHP shall each be free to so further subdivide or resubdivide, subject only to the obligation to obtain any required permits and approvals from the City or other governmental agencies with jurisdiction and, in the case of Declarant, from SHP for so long as the Option Agreement remains in effect.

## **ARTICLE I**

### **Definitions**

Section 1.01. "Architectural Review Committee" means the committee created in accordance with Article V, below.

Section 1.02. "Architectural Rules" means the Architectural Rules and procedural rules of the Architectural Review Committee, adopted pursuant to Section 5.05, below.

Section 1.03. "Articles" means the Articles of Incorporation of the Association, which are filed in the Office of the California Secretary of State, as such Articles may be amended from time to time.

Section 1.04. "Assessment" means any Regular, Special or Special Individual Assessment made or assessed by the Association against an Owner and his or her Lot in accordance with the provisions of Article IV, below.

Section 1.05. "Association" means the Woodlake Village Homeowners' Association, a California nonprofit mutual benefit corporation, its successors and assigns. The Association is an "association" as defined in California Civil Code section 1351(a).

Section 1.06. "Association Rules" means the rules, regulations and policies adopted by the Board of Directors, pursuant to Section 3.08, below, as the same may be in effect from time to time. Once the Architectural Review Committee is a committee whose members are all appointed by the Association's Board of Directors (see Section 5.02, below) the Association

Rules shall also include the Architectural Rules.

Section 1.07. "Board of Directors" or "Board" means the Board of Directors of the Association.

Section 1.08. "Bylaws" means the Bylaws of the Association, as such Bylaws may be amended from time to time.

Section 1.09. "City" means the incorporated municipal City of Roseville, in the County of Placer, State of California, and its various departments, divisions, employees and representatives.

Section 1.10. "Common Area" means all real property owned, controlled or maintained by the Association for the common use and enjoyment of the Owners. The Common Areas to be owned by the Association at the time of the conveyance of the first Lot in the Development are described as Lots A, B, C, E and G, as shown on the Subdivision Map. Unless the context clearly indicates a contrary intent, any reference herein to the "Common Areas" shall also include any Common Facilities located thereon.

Section 1.11. "Common Expense" means any use of Common Funds authorized by Article IV, below, and Article IX of the Bylaws and includes, without limitation: (a) all expenses or charges incurred by or on behalf of the Association for the management, maintenance, administration, insurance, operation, repairs, additions, alterations or reconstruction of the Common Area and Common Facilities; (b) all expenses or charges reasonably incurred to procure insurance for the protection of the Association and its Board of Directors; (c) any amounts reasonably necessary for reserves for maintenance, repair and replacement of the Common Areas and Common Facilities, and for nonpayment of any Assessments; and (d) the use of such funds to defray the costs and expenses incurred by the Association in the performance of its functions or in the proper discharge of the responsibilities of the Board as provided in the Governing Documents.

Section 1.12. "Common Facilities" means the tot lot, picnic area, trail, pond and pond overlooks that are located on Lot E, as shown on the Subdivision Map, the trails within the Common Areas, the private streets, gated entries, entrance monumentation, and entrance landscaping, the pumps and motors that regulate and maintain the level of water in the pond, the cluster mail boxes within the Development, and the trees, hedges, plantings, lawns, shrubs, landscaping, fences, utilities, berms, pipes, lines, lighting fixtures, and other facilities constructed or installed, or to be constructed or installed, or currently located within the Common Area and owned and maintained by the Association.

Section 1.13. "County" means the County of Placer, State of California, and its various departments, divisions, employees and representatives.

Section 1.14. "Declarant" means Meritage Homes of California, Inc., a California corporation ("Meritage"). The term "Declarant" shall also mean any successor or assign of Declarant, if (i) a certificate, signed by Declarant and Declarant's successor or assign, has been

recorded in the County in which the successor or assign assumes the rights and duties of Declarant or (ii) such successor or assign acquires all of the Development or the remainder of the Overall Development then owned by the Declarant which must be more than one Lot. Notwithstanding the foregoing, so long as the Option Agreement remains in effect, any assignment of Declarant's rights hereunder shall require the prior written consent of SHP, which consent shall not be unreasonably withheld or delayed, and any purported assignment without such consent shall be deemed void and of no force and effect.

On the date of the recordation of this Declaration, the Lots are owned by SHP, subject to an option to purchase in favor of the Declarant pursuant to the Option Agreement and, accordingly, Declarant is considered the Owner of the Lots. In the event said option terminates prior to the Declarant's purchase of all of the Lots (excluding any Lot(s) which may subsequently be excluded from said option) as evidenced by the recordation of an instrument entitled "Notice of Termination of Option and Quit Claim Deed" executed by the Declarant, all of the rights of the Declarant hereunder shall be deemed automatically assigned to SHP and Meritage shall no longer have any rights as the Declarant hereunder, and this sentence shall constitute the express recorded assignment contemplated by this first paragraph of this Section 1.14, and SHP shall have no liability for the obligations of the Declarant that accrued prior to the effective date of the deemed assignment, including, but not limited to, Declarant's failure to pay any amounts owing or to be paid or reserved for hereunder or as may otherwise be required by statute or at law or to perform any act or obligation required to be performed by the Declarant hereunder or as otherwise required by statute or law.

Notwithstanding any other provision in this Declaration, for so long as the Option Agreement is in effect, the Declarant shall not, without the prior written consent of SHP, which consent shall not be unreasonably withheld or delayed, have the right to exercise any of the Declarant's rights under this Declaration, including, without limitation, any rights under Sections 3.04, 15.01, 15.02 and 15.04 below, in any manner that will have a material or adverse impact on the Lots that remain subject to the Option Agreement.

Section 1.15. "Declaration" "Declaration" means this instrument as it may be amended from time to time. The "Original Declaration" shall mean and refer to the instrument that is identified as such in Recital "C", above.

Section 1.16. "Development" means the common interest development that is being implemented pursuant to the plan of development set forth in this Declaration, the Subdivision Maps, and the other Governing Documents for Woodlake Village. At times herein, the terms "Development and "Woodlake Village" are used interchangeably.

Section 1.17. "Emergency Assessment" means an Assessment that the Master Association is authorized and empowered to impose under the limited circumstances defined in California Civil Code section 1366(b) and Section 4.05, below.

Section 1.18. "Environmental Preserve" means Lot D as shown on the Subdivision Map for the Development. The Environmental Preserve is subject to the permit issued by the U.S. Army Corps of Engineers pursuant to Section 404 of the Clean Water Act, 33 C.F.R. § 322.2(f).

The property designated as the Environmental Preserve shall be conveyed, in fee, to the City of Roseville and shall be maintained in accordance with Section 7.05 (c), below. There is an Operations and Management Plan for the Environmental Preserve and restrictions imposed on the access and use of the Environmental Preserve, which are set forth in the Declaration of Restrictions identified in Section 7.03(c), below, and which are attached hereto as Exhibit "B".

Section 1.19. "Governing Documents" is a collective term that means and refers to this Declaration and to the Articles, the Bylaws and the Association Rules.

Section 1.20. "Improvement" as used herein includes, without limitation any improvement or project undertaken or contemplated by an Owner (other than the Declarant) within any portion of the Development involving the construction, installation, alteration or remodeling of any Residence structures, garages, out buildings, walls, fences, swimming pools, landscaping, landscape structures, patio awnings, solar heating equipment, spas, antennas, television satellite reception equipment, utility lines or any other structure of any kind. Improvement projects are subject to Architectural Review and approval pursuant to Article V, below.

Section 1.21. "Lot" means any parcel of real property designated by a number on the Subdivision Map for the Development, excluding the Common Area. When appropriate within the context of this Declaration, the term "Lot" shall also include the Residence and other Improvements constructed or to be constructed on a Lot.

Section 1.22. "Maintenance Manual" refers to the manual or manuals that may be prepared by the Declarant or its agents, and provided to the Association and to each Owner specifying obligations for maintenance of the Common Area and Common Facilities by the Association and maintenance of Lots and Residences by the Owners, as updated and amended from time to time. The Declarant may, in its discretion, create a Maintenance Manual for the Association ("Association Maintenance Manual") relating to its maintenance obligations with respect to the Common Areas and Common Facilities and a Maintenance Manual for the Owners ("Owner Maintenance Manual") relating to their maintenance obligations with respect to Lots and Residences within the Development. "Maintenance Manual" shall also refer to any amendments or supplements to any Maintenance Manual that the Declarant may adopt and provide to the Association and/or the Owners from time to time.

Section 1.23. "Maintenance Obligations" means the obligations imposed by Civil Code section 907 on the Association and each Owner to perform: (i) all reasonable maintenance obligations and schedules identified in the Maintenance Manual that pertain to the Association's/Owner's property at the times and in a manner consistent with the terms, recommendations and requirements of the applicable Maintenance Manual; (ii) any maintenance obligations and schedules contained in any warranty offered by Declarant or any manufacturer of any products or components originally installed in a Residence or Common Facility; and (iii) any maintenance obligations and/or schedules otherwise provided, in writing, by the Declarant or a manufacturer to the Association or the Owners. "Maintenance Obligations" shall also include and refer to any commonly accepted maintenance practices to prolong the useful life of the

materials and construction of the Association's Common Areas, Environmental Preserve and Common Facilities and Residences within the Development.

Section 1.24. "Majority of a Quorum" means the vote of a majority of the votes cast at a meeting or by written ballot when the number of Members attending the meeting in person or by proxy or the number of members casting written ballots equals or exceeds the quorum requirement for Member action, as specified by the Bylaws or otherwise by statute.

Section 1.25. "Member" means every person or entity who holds a membership in the Association and whose rights as a Member are not suspended pursuant to Section 13.06, below.

Section 1.26. "Mortgage" means any security device encumbering all or any portion of the Development, including any deed of trust. "Mortgagee" shall refer to a beneficiary under a deed of trust as well as to a mortgagee in the conventional sense.

Section 1.27. "Option Agreement" means that certain Option Agreement dated as of June 28, 2005, between SHP, as optionor, and Meritage, as optionee, as evidenced by that certain Memorandum of Option recorded in the Official Records of Placer County, as Document No. 2005-0083150.

Section 1.28. "Owner" means any person, firm, corporation or other entity which owns a fee simple interest in any Lot. The term "Owner" shall include the Declarant for so long as the Declarant possesses any Lot within the Development, and, except where the context otherwise requires, the family, guests, tenants and invitees of an Owner. If a Lot is transferred or conveyed to a trust, the Owner is the trustee or the co-trustees of such trust.

Section 1.29. "Owner of Record" means any person, firm, corporation or other entity in which title to a Lot is vested as shown by the official records of the Office of the County Recorder.

Section 1.30. "Property" means and refers to the Property described in Exhibit "A" which is the site of the Development.

Section 1.31. "Public Report" means a final subdivision public report issued by the Department of Real Estate in compliance with California Business and Professions Code section 11000 et seq., or any similar California statute hereafter enacted.

Section 1.32. "Record" means, with respect to any document, the recordation or filing of such document in the Office of the County Recorder.

Section 1.33. "Regular Assessment" means an Assessment levied against an Owner and his or her Lot in accordance with Section 4.02, below.

Section 1.34. "Reserves" means those Common Expenses for which Association funds are set aside pursuant to Article IV of this Declaration and California Civil Code section 1365.5 for funding the periodic painting, maintenance, repair and replacement of the major components

of the Common Areas which would not reasonably be expected to recur on an annual or less frequent basis. The amounts required to properly fund Reserves shall be determined annually by the Board in accordance with the standards prescribed by maintenance cost guidelines prepared in accordance with California Civil Code sections 1365(a) and 1365.5(e) and prudent property management practices generally applied in "common interest developments" (as that term is defined in California Civil Code section 1351(c)) in the geographic region in which the Development are located.

Section 1.35. "Residence" means a private, single-family dwelling constructed or to be constructed on any Lot.

Section 1.36. "SHP" means SHP Fiddymont MP, LLC, a California limited liability company, and any Person to whom it may expressly assign any or all of its rights as SHP under this Declaration by an instrument Recorded with the Placer County Recorder.

Section 1.37. "Single Family Residential Use" means occupation and use of a Residence for single family dwelling purposes in conformity with this Declaration and the requirements imposed by applicable zoning or other applicable laws or governmental regulations limiting the number of persons who may occupy single family residential dwellings.

Section 1.38. "Special Assessment" means an Assessment levied against an Owner and his or her Lot in accordance with Section 4.03, below.

Section 1.39. "Special Individual Assessment" means an Assessment levied against an Owner and his or her Lot in accordance with Section 4.04, below.

Section 1.40. "Subdivision Map" means the map for any portion of the Development.

Section 1.41. "Subsidy Agreement" means a contract between the Declarant and the Association, in a form and content acceptable to the Department of Real Estate, documenting the terms of any program in which the Declarant undertakes to subsidize the cost of operating and maintaining Common Areas or Common Facilities and/or the cost of providing services to the Owners and residents of lots or units within the Development, all as more particularly specified in Department of Real Estate Regulation section 2792.10, provided that same shall not be binding on any successor Declarant.

Section 1.42. "Voting Power" means those Members who are eligible to vote for the election of directors or with respect to any other matter, issue or proposal properly presented to the Members for approval at any time a determination of voting rights is made. To be part of the Voting Power, a Member must be in good standing, as defined in the Bylaws and/or the Association Rules.

## ARTICLE II

### Property Rights and Obligations of Owners

#### Section 2.01. Declaration Regarding the Property Comprising the Development.

(a) Property Subject to Declaration. The Property comprising the Woodlake Village common interest development shall be held, conveyed, divided, encumbered, hypothecated, leased, rented, used, occupied and improved only upon compliance with and subject to the provisions of this Declaration, which is hereby declared to: (i) be in furtherance of a plan for the subdivision of the Development and the sale of residential Lots within the Development; (ii) be for the benefit and protection of the Development and to enhance the desirability, value and attractiveness of the property and improvements comprising the Development; (iii) be for the benefit of the Owners; (iv) run with the land and be binding upon all parties having or acquiring any right, title or interest in the Development or any portion thereof; (v) inure to the benefit of every portion of the Development and any interest therein; and (vi) inure to the benefit of and be binding upon each Owner, SHP, the Declarant and each successor in interest of the Declarant as long as the Declarant or any successor shall hold an interest in any portion of the Development.

(b) Binding Effect on Successors In Interest. Each conveyance, transfer, sale, assignment, lease or sublease made by Declarant of the Common Area and of any Lot shall be deemed to incorporate by reference all of the provisions of this Declaration. All present and future Owners, tenants and occupants within the Development shall be subject to, and shall comply with, each and every provision of the Governing Documents, as the same shall be amended from time to time unless a particular provision of the Governing Documents is specifically restricted to one or more classes of persons (i.e., Owners, tenants, invitees, etc.). The acceptance of a deed to any Lot, the execution of a lease, sublease or contract of sale with respect to any Lot or the entering into occupancy of any Residence shall make the provisions of this Declaration binding upon said persons and they shall thereafter be obligated to observe and comply with all Governing Documents.

Section 2.02. Authority of Declarant to Approve Boundary Line Adjustments. At any time within five (5) years from the date that the first Lot in the Development is conveyed to an Owner other than Declarant, the boundaries of any Lot or Common Area within the Development may be altered by a lot line adjustment or other change reflected on a subsequently Recorded Record of Survey, Parcel Map, or Subdivision Map, provided that the altered boundaries are approved by Declarant, SHP for so long as the Option Agreement remains in effect, the City of Roseville and all Owners of the property involved in the boundary line adjustment. In the event a boundary line adjustment involves Association property, the Board shall be authorized to grant approval on behalf of the Association. Any such alteration shall be effective upon Recordation of the Record of Survey, Parcel Map, or Subdivision Map. Upon such Recordation, the boundaries of the altered Lot or Common Area shall be altered for purposes of this Declaration to conform to the boundaries as shown on the Record of Survey, Parcel Map, or Subdivision Map.

Section 2.03. Property Rights in Common Area.

(a) Fee Title in Association. Declarant and SHP, if required, shall convey fee simple title to the Common Area of the Development to the Association, free of all encumbrances and liens, with the exception of current real property taxes (which shall be prorated as of the date of such conveyance) and any easements, conditions and reservations then of record, including those set forth in this Declaration. Such conveyance shall be made prior to, or concurrently with, the first transfer or conveyance by Declarant of the first Lot in the Development to a purchaser pursuant to a Public Report issued by the California Department of Real Estate.

(b) Rights of Owners in Common Areas. The interest of each Lot Owner in and to the use and benefit of the Common Area and the Common Facilities shall be appurtenant to the Lot owned by the Owner and shall not be sold, conveyed or otherwise transferred by the Owner separately from the ownership interest in the Lot. Any sale, transfer or conveyance of such Lot shall transfer the appurtenant right to use and enjoy the Common Area and Common Facilities. There shall be no judicial partition of the Common Area or any part thereof, and each Owner, whether by deed, gift, devise, or operation of law for his or her own benefit and for the benefit of all other Owners specifically waives and abandons all rights, interest and causes of action for a judicial partition of any ownership interest in the Common Area and does further covenant that no action for judicial partition shall be instituted, prosecuted or reduced to judgment. The rights of all Owners in the Common Area shall be further subject to the requirements and restrictions set forth in Section 2.04, below.

(c) Adjustments in Common Area Boundaries. With the exception of those portions of the Common Area designated as Open Space, the Board shall have the authority to transfer fee interests in the Common Area to an Owner when in the Board's reasonable discretion, it finds such transfer necessary to conform boundaries between Lots and Common Areas to the natural contour of the land for purposes of permitting or promoting an efficient division of maintenance responsibilities between the Owners and the Association, to accommodate rock out-croppings, significant trees or other unique topographical features, and for similar purposes.

Section 2.04. Owners' Nonexclusive Easements of Enjoyment. Every Owner shall have a nonexclusive right and easement of enjoyment in and to the Common Area, including ingress and egress to and from his or her Lot, which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) Right of Association to Regulate Common Area Uses. The right of the Association to regulate the uses that can be made of certain Common Facilities, such as the pond and the trails.

(b) Right of Association to Adopt Rules. The right of the Association to adopt Association Rules as provided in Section 3.08, below, regulating the use and enjoyment of the Development for the benefit and well-being of the Owners in common, and, in the event of the breach of such rules or any provision of any Governing Document by any Owner or tenant, to initiate disciplinary action against the violating Owner or tenant in accordance with Section 13.06, below. Such action may include the levying of fines and/or the temporary



suspension of the voting rights and/or the right to use the Common Facilities, other than roads, by any Owner and the Owner's tenants and guests.

(c) Right to Incur Indebtedness. The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Area and Common Facilities.

(d) Rights of Dedication. The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed by the Owners; provided, however, that no such dedication or transfer shall be effective unless an instrument, approved by at least two-thirds of the voting power of each class of Members and their first Mortgagees consenting to such dedication or transfer has been Recorded. Furthermore, no dedication shall be permitted that impairs the ingress and egress to any Lot. The instrument effecting the dedication may be executed in counterparts so long as each counterpart is in recordable form.

(e) Rights of Easement Holders. All easements affecting the Common Area which are described in Article IX, below.

(f) Rights of Use by Declarant. The right of Declarant and its employees, sales agents, prospective purchasers, customers and representatives, to enter upon and to use the Common Areas and Common Facilities for development and sales activities in accordance with Sections 16.02 and 16.03, below. Such use shall not unreasonably interfere with the rights of use and enjoyment of the other Owners as provided herein.

#### Section 2.05. Delegation of Use.

(a) Delegation of Use and Leasing of Residences. Any Owner may delegate his or her rights to use and enjoy the Common Area and Common Facilities to his or her family members or tenants, lessees or contract purchasers who reside in the Residence; provided, however, that any rental or lease may only be to a single family for Single Family Residential Use and for a term not less than ninety (90) days.

(b) Requirements That Must Be Observed In All Residential Leases. The following specific limitations shall apply to all leases or tenancies of a Residence within the Development: (i) no Residence may be leased or rented for a period of less than ninety (90) days; (ii) the rental shall apply to not less than an entire Residence including its appurtenant rights (except voting rights in the Association which may not be transferred to a tenant or lessee); and (iii) any rental shall be evidenced by a written lease or rental agreement which shall provide that the tenancy is subject to the terms of the Governing Documents and that any failure of the tenant to comply with the terms of any Governing Document relating to residential leases, property use restrictions or the use and enjoyment of any portion of the Common Areas and Common Facilities shall constitute a default under the lease or rental agreement and shall entitle the Owner to terminate the tenancy upon thirty (30) days' written notice. The Owner-lessor's right to terminate a lease or rental agreement on account of the tenant's violation of the Governing Documents shall in no way restrict the right of the Association, the Declarant, or any Owner to enforce the Governing

Documents in accordance with Article XIII, below, when the Owner's tenant is violating the Governing Documents.

(c) Discipline of Lessees. Subject to subparagraph (d) below, in the event that any tenant or lessee fails to honor the provisions of any Governing Document, the Association shall be entitled to take such corrective action as it deems necessary or appropriate under the circumstances in order to preserve the quiet enjoyment of other Owners and residents within the Development. Without limiting, the foregoing, the Association's actions in response to a tenant's violation of the Governing Documents may include: (i) the imposition of fines and penalties against the Owner-lessor of the Residence, subject to compliance with the disciplinary procedures set forth in Section 13.06, below.

(d) Due Process Requirements for Disciplinary Action. Except for circumstances in which immediate corrective action is necessary to prevent damage or destruction to the Development or to preserve the rights of quiet enjoyment of other Owners, the Association shall have no right to initiate disciplinary action against an Owner-lessor (or the Owner's lessee or tenant) on account of the misconduct of the Owner's lessee or tenant unless and until the following conditions have been satisfied: (i) the Owner has received written notice from the Board, the Association's property manager or an authorized committee of the Board detailing the nature of the lessee's/tenant's alleged infraction or misconduct and advising the Owner of his or her right to a hearing on the matter in the event the Owner believes that remedial or disciplinary action is unwarranted or unnecessary; (ii) the Owner has been given a reasonable opportunity to take corrective action on a voluntary basis or to appear at a hearing, if one is requested by the Owner, and (iii) the Owner has failed to prevent or correct the tenant's objectionable actions or misconduct. Any hearing requested hereunder shall be conducted in accordance with Section 13.06, below.

Section 2.06. Obligations of Owners. Owners of Lots within the Development shall be subject to the following:

(a) Owner's Duty to Notify Association of Tenants and Contract Purchasers. Each Owner shall notify the secretary of the Association or the Association's property manager, if any, of the names of any contract purchaser or tenant residing in the Owner's Lot.

(b) Contract Purchasers. A contract seller of a Lot must delegate his or her voting rights as a Member of the Association and his or her right to use and enjoy the Common Area and Common Facilities to any contract purchaser in possession of the property. Notwithstanding the foregoing, the contract seller shall remain liable for any default in the payment of Assessments by the contract purchaser until title to the property sold has been transferred to the purchaser.

(c) Notification Regarding Governing Documents.

(i) As more particularly provided in California Civil Code section 1368, as soon as practicable before transfer of title or the execution of a real property sales contract with respect to any Lot, the Owner thereof must give the prospective purchaser:

(A) A copy of the Governing Documents;

(B) A copy of the most recent documents distributed by the Association pursuant to California Civil Code section 1365 (see Article XII of the Bylaws);

(C) A true statement in writing obtained from an authorized representative of the Association as to: (1) the amount of the Association's current regular and special assessments and fees; (2) any assessments levied upon the Owner's Lot that are unpaid on the date of the statement; (3) any monetary fines or penalties levied upon the Owner's Lot and unpaid on the date of the statement; and (4) true and accurate information on late charges, interest, and costs of collection which, as of the date of the statement, are or may become a lien on the Owner's Lot pursuant to Section 4.10, below;

(D) A copy or summary of any notice previously sent to the Owner pursuant to Civil Code section 1363(h), that sets forth any alleged violations of the governing documents that remain unresolved at the time of the request; and

(E) A statement disclosing any change in the Association's current Regular and Special Assessments and fees which have been approved by the Board but have not become due and payable as of the date the information is provided.

(ii) Within ten (10) days of the mailing or delivery of a request for the information described in subparagraph (c)(i), above, the Association shall provide the Owner with copies of the requested items. The items required to be made available pursuant to this Section may be maintained in electronic form and requesting parties shall have the option of receiving them by electronic transmission or machine readable storage media if the Association maintains these items in electronic form. The Association shall be entitled to charge a reasonable fee for this service, based upon the Association's actual costs to procure, prepare, and reproduce the requested items.

(iii) The provisions of this Section, except for those provisions relating to the furnishing of a delinquency statement, shall not apply to any Owner who is subject to the requirements of California Business and Professions Code section 11018.1 (i.e., the obligation to provide prospective purchasers with a Department of Real Estate Public Report).

(d) Payment of Assessments and Compliance with Rules. Each Owner shall pay, when due, each Regular, Special and Special Individual Assessment levied against the Owner and his or her Lot and shall observe, comply with and abide by any and all rules and regulations set forth in, or promulgated by the Association pursuant to, any Governing Document for the purpose of protecting the interests of all Owners or protecting the Common Area and Common Facilities.

(e) Discharge of Assessment Liens. Each Owner shall promptly discharge any Assessment lien that may hereafter become a charge against his or her Lot.

(f) Joint Ownership of Lots. In the event of joint ownership of any Lot, the obligations and liabilities of the multiple Owners under the Governing Documents shall be joint and several. Without limiting the foregoing, this subparagraph (f) shall apply to all obligations, duties and responsibilities of Owners as set forth in this Declaration, including, without limitation, the payment of all Assessments.

### **ARTICLE III**

#### **Woodlake Village Homeowners' Association**

Section 3.01. Formation. The Woodlake Village Homeowners' Association is a California nonprofit mutual benefit corporation. On or before the first close of escrow for the sale of a Lot in the Development to an Owner, the Declarant shall convey fee simple title to the Common Area to the Association as provided in Section 15.04, below, and thereupon the Association shall be charged with the duties and invested with the powers set forth in the Governing Documents, including, but not limited to, the ownership, control, maintenance and repair of the Common Area and Common Facilities.

Section 3.02. Association Action; Board of Directors and Officers. With the exception of those matters requiring approval of Members under the Governing Documents or California law, the affairs of the Association shall be conducted and all corporate powers shall be exercised by the Board of Directors and such officers as the Board may elect or appoint. Except as otherwise provided in the Governing Documents or California law, all matters requiring the approval of Members shall be deemed approved if approved by a Majority of a Quorum of the Members.

Section 3.03. Membership.

(a) Qualifications. Each Owner of a Lot, including the Declarant, shall be a Member of the Association. An Owner shall hold one membership in the Association for each Lot that the Member owns. Sole or joint ownership of a Lot shall be the sole qualification for membership in the Association. Each Owner shall remain a Member of the Association until his or her ownership of, or ownership interest in, all Lots in the Development ceases, at which time the Owner's membership in the Association shall automatically cease. Persons or entities who hold an interest in a Lot merely as security for performance of an obligation are not Members.

(b) Members' Rights and Duties. Membership in the Association shall give rise to the rights, duties, and obligations set forth in the Governing Documents and any amendments thereto.

Section 3.04. Membership Voting.

(a) Commencement of Voting Rights. Unless the sale of Lots within the Development is subject to a subsidization plan, approved by the California Commissioner of Real Estate, which provides otherwise, voting rights attributable to the ownership of Lots shall not vest until Assessments against those Lots have been levied by the Association.

(b) Classes of Membership. The Association shall have two (2) classes of voting membership, namely a Class A Members which shall initially consist of all Owners of Lots except the Declarant or SHP and a Class B Membership which shall be held by the Declarant and SHP. The voting rights and other privileges of the two (2) classes of membership and the conversion of the Declarant's Class B membership into Class A membership shall be as set forth in Article IV of the Bylaws, provided, however, that for so long as the Option Agreement remains in effect, Declarant may not, without the prior written consent of SHP, elect to convert the Class B membership into Class A membership.

(c) Suspension of Voting Rights. Voting rights may be temporarily suspended under those circumstances described in Section 13.06, below.

(d) Intent of Provisions Imposing Limitations on Declarant Voting Rights. With the exception of any membership vote pursuant to Section 3.11, below (relating to the enforcement of bonded obligations), no provision of any Governing Document requiring approval of a prescribed majority of the voting power of the Association other than the Declarant is intended to preclude the Declarant from casting votes attributable to any Lots owned by the Declarant. Instead, what is required is the matter receive the approval of a bare majority of the Class B voting power as well as the approval of the prescribed majority of the Class A voting power. Once the Class B membership has been converted to Class A membership, the intent is to require the approval of a bare majority of the total voting power of the Association as well as the approval of the prescribed majority of the total voting power of the Association other than the Declarant.

Section 3.05. Assessments. The Association shall have the power to establish, fix and levy Assessments against the Owners of Lots within the Development and to enforce payment of such Assessments, as more particularly provided in Article IV, below. Any Assessments levied by the Association against its Members shall be levied in accordance with, and pursuant to, the provisions of this Declaration.

Section 3.06. Transfer of Memberships. Membership in the Association shall not be transferred, encumbered, pledged or alienated in any way, except upon the sale of the Lot to which it is appurtenant, and then, only to the purchaser. In the case of a sale, the membership appurtenant to the transferred Lot shall pass automatically to the purchaser upon the Recordation of a deed evidencing the transfer of title. In the case of an encumbrance recorded with respect to any Lot, the Mortgagee shall not possess any membership rights until the Mortgagee becomes an Owner by foreclosure or acceptance of a deed in lieu thereof. Tenants who are delegated rights of use pursuant to the rental or lease of a Residence (see Section 2.06, above) do not thereby become Members, although the tenant and his or her family and guests shall at all times be subject to the property use restrictions and enforcement/disciplinary provisions of the Governing Documents. If any Owner fails or refuses to transfer the membership registered in his or her name to the purchaser of his or her Lot, the Association shall have the right to record the transfer upon its books and thereupon any other membership outstanding in the name of the seller shall be null and void.

Section 3.07. Powers and Authority of the Association.

(a) Powers, Generally. The Association shall have the responsibility of owning, managing and maintaining the Common Areas and Common Facilities and discharging the other duties and responsibilities imposed on the Association by the Governing Documents. In the discharge of such responsibilities and duties, the Association shall have all of the powers of a nonprofit mutual benefit corporation organized under the laws of the State of California in the ownership and management of its properties and the discharge of its responsibilities hereunder for the benefit of its Members, subject only to such limitations upon the exercise of such powers as are expressly set forth in the Governing Documents. The Association shall have the power to do any and all lawful things which may be authorized, required or permitted to be done under and by virtue of the Governing Documents, and to do and perform any and all acts which may be necessary or proper for, or incidental to, the exercise of any of the express powers of the Association for the peace, health, comfort, safety or general welfare of the Owners. The specific powers of the Association and the limitations thereon are set forth in Article IX of the Bylaws.

(b) Association's Limited Right of Entry.

(i) Right of Entry, Generally. Without limiting the foregoing description of powers, but in addition thereto, the Association and its agents shall have the right and power to enter any Lot to perform the Association's obligations under this Declaration, including: (A) obligations to enforce the architectural review and approval requirements, minimum construction standards and/or land use restrictions of Articles V, VI and VIII, below; (B) any obligations with respect to construction, maintenance and repair of adjacent Common Facilities; or (C) to make necessary repairs that an Owner has failed to perform which, if left undone, will pose a threat to, or cause an unreasonable interference with, any portion of the Development or the Owners in common.

(ii) Limitations on Exercise of Right. The Association's right of entry pursuant to this subparagraph (b) shall be subject to the following:

(A) The right of entry may be exercised immediately and without prior notice to the Owner or resident in case of an emergency originating in or threatening the Lot where entry is required or any adjoining Lots or Common Area. The Association's work may be performed under such circumstances whether or not the Owner or his or her lessee is present.

(B) In all non-emergency situations involving routine repair and/or maintenance activities, the Association, or its agents, shall furnish the Owner or his or her lessee with at least twenty-four (24) hours prior written notice of its intent to enter the Lot, specifying the purpose and scheduled time of such entry, and shall make every reasonable effort to perform its work and schedule its entry in a manner that respects the privacy of the persons residing on the Lot.

(C) In all non-emergency situations involving access by the Association for purposes of enforcing the Governing Documents against an Owner in default, the

Association's entry shall be subject to observance of the notice and hearing requirements imposed by Section 13.06, below.

(D) In no event shall the Association's right of entry hereunder be construed to permit the Association or its agents to enter any Residence without the express permission of the Owner or tenant.

(c) Establishment and Authority of Claims Committee Established for Civil Code Section 896 Claims. The Board shall have a Claims Committee that has the sole and exclusive authority to initiate claims on behalf of the Association solely in connection with Improvements or landscaping maintained by the Association for violations of the construction standards set forth in Civil Code Sections 896 and 897. As long as Declarant has the authority to appoint or elect a majority of the members of the Board of Directors of the Association, the Claims Committee shall consist of the Board members not appointed by Declarant or not elected by votes cast by Declarant (the "Non-Declarant Member(s)") and one (1) Board member that was appointed by Declarant or elected by votes cast by Declarant (the "Declarant Member"). The Declarant shall appoint the Declarant Member, who shall serve at the will of Declarant. If Declarant fails to appoint a Declarant Member within ten (10) days after receipt of written request from the Non-Declarant member(s) of the Board to do so, the Claims Committee shall have full power and authority to act without the Declarant Member. The decision of a majority of the Claims Committee members shall control, provided that if the Claims Committee has only one Non-Declarant Member and one Declarant Member, the decision of the Non-Declarant Member shall control.

If the Claims Committee elects to initiate a claim, the authority to initiate a claim also shall require the approval of the votes cast by a majority of the Class A Members of the Association present in person or by proxy at a duly-held meeting. Any Non-Declarant Member of the Committee may call a special meeting of the Members for this purpose. The claim is subject to the provisions and procedures set forth in Article XIII, below. If the initiation of a claim is duly approved, the Association shall provide the necessary funds to pursue the claim on behalf of the Association, subject to the applicable requirements and procedures set forth in Section 9.02(c) of the Bylaws (Notice of Significant Legal Proceedings) and Article XIII, below. At such time as the Board no longer has a majority of its members appointed or elected by the Declarant, the provision of this subparagraph (c) shall be null and void and the Board shall have the authority to initiate these claims on behalf of the Association, subject to the applicable requirements and procedures set forth in Section 9.02(c) of the Bylaws and Article XIII, below.

#### Section 3.08. Association Rules.

(a) Rule Making Power. The Board may, from time to time and subject to the provisions of this Declaration, propose, enact and amend rules and regulations of general application to the Owners ("Association Rules"). The Association Rules may concern, but need not be limited to: (i) matters pertaining to use of the Common Area and improvements thereon; (ii) architectural control and the rules of the Architectural Review Committee under Article V, below; (iii) regulation of pet ownership, parking, signs, collection and disposal of refuse and other matters subject to regulation and restriction under Article VII, below; (iv) collection of delinquent

Assessments; (v) minimum standards of maintenance of landscaping or other Improvements on Lots within the Development; (vi) the conduct of disciplinary proceedings in accordance with Section 12.06, below, and (vii) any other subject or matter within the jurisdiction of the Association as provided in the Governing Documents.

Notwithstanding the foregoing grant of authority, the Association Rules shall not be inconsistent with or materially alter any provision of the Governing Documents or the rights, preferences and privileges of the Owners thereunder. In the event of any material conflict between any Association Rule and the provisions of any other Governing Document, the conflicting provisions contained in the other Governing Document shall prevail. All Association Rules shall be adopted, amended and repealed (as the case may be) in good faith and in substantial compliance with this Declaration and California Civil Code sections 1357.100 through 1357.150.

(b) Distribution of Rules. A copy of the Association Rules, as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner.

(c) Adoption and Amendment of Rules.

(i) Requirement of Prior Notice to the Members of Certain Operating Rules or Amendments Thereto. California Civil Code section 1357.100 defines an "Operating Rule" as an Association Rule or regulation that applies generally to the management and operation of the Development or to the conduct of the business and affairs of the Association. That Civil Code section further defines a "Rule Change" as any adoption, amendment, or repeal of an Operating Rule by the Board of Directors. Civil Code section 1357.120 identifies five types of Operating Rules (and Rule Changes involving such Operating Rules) that must first be provided to the members in writing at least thirty (30) days prior to the Board taking action to implement the Rule Change. The notice must include the text of the proposed Rule Change and a description of the purpose and effect of the proposed Rule Change. This requirement of prior notice to the Members applies only to Operating Rules that relate to one or more of the following subjects:

- (A) Use of the Common Areas of the Development;
- (B) Use of any Lot in the Development (including the adoption of Architectural Rules);
- (C) Member discipline, including any schedule of monetary penalties for violation of the Governing Documents and any procedure for the imposition of penalties;
- (D) Any standards for delinquent assessment payment plans;
- (E) Any procedures adopted by the Association for resolution of disputes;
- (F) Any procedures for reviewing and approving or disapproving a proposed Improvement project involving a physical change to an Owner's Lot, Residence, or the Common Area; and



(G) Procedures for the conduct of elections

Specifically excluded by Civil Code section 1357.120 from the requirement of prior notice to Members are the following actions of the Board, regardless of whether those actions may be construed as being Association Rules or "Operating Rules", as defined in the Civil Code: (i) any Rule Change that the Board adopts to address an imminent threat to public health or safety or imminent risk of substantial economic loss to the Association (such "emergency rules" can be adopted and remain in effect for up to 120 days); (ii) decisions regarding maintenance of the Common Areas or Common Facilities; (iii) a decision on a specific matter that is not intended to apply to all Members, generally; (iv) establishing the amount of an assessment; (v) adoption of a Rule Change that is required by law (if the Board of Directors has no discretion regarding the substantive effect of the Rule Change); and (vi) issuance of a document that merely repeats existing law or the Governing Documents.

With respect solely to Operating Rules and/or Rule Changes listed in subparagraphs (A) through (G), of paragraph (c)(i) above, Civil Code section 1357.140 gives Members owning five percent (5%) or more of the Lots in the Development the right to demand that a special meeting of the Members be called to reverse a proposed Rule Change, so long as the request for the special meeting is delivered to the Association not more than thirty (30) days after the Members are given notice of the Rule Change. If a proper and timely demand for a special meeting to vote to rescind an Operating Rule or Rule Change is tendered to the Association, the Board shall establish the date, time and location of the meeting and provide notice thereof to the Members in accordance with Corporations Code Section 7511(c).

So long as a quorum of the Members is present at any such meeting, the Rule Change can be reversed on the affirmative vote of a Majority of a Quorum of the Members, with each Member having one vote on the matter for each Lot owned. If the Members vote to reverse an Operating Rule or a Rule Change, the Board may not take action to readopt the Operating Rule or Rule Change for a period of one year after the date of the special meeting where reversal of the Operating Rule or Rule Change was approved; provided, however, that this provision is not intended to preclude the Board from adopting a different Operating Rule or Rule Change on the same subject as the Rule Change that was successfully reversed. As soon as possible following the close of voting on any proposal to reverse an Operating Rule or Rule Change, but not more than fifteen (15) days after the close of voting, the Board shall provide notice to each Member of the results of the Member vote by personal delivery or first-class mail.

(ii) Minimum Content for Election Rules. Civil Code section 1363.03 requires associations to adopt rules regarding the conduct of elections that do all of the following:

(A) Ensure that any candidate or member advocating a point of view is provided access to Association media, newsletters, or Internet Web sites during a campaign so long as the access is reasonably related to that election, equal access shall be provided to all candidates and members advocating a point of view (whether or not endorsed by the Board). The Association may not edit or redact any content from these campaign communications, but may include a

statement specifying that the candidate or Member, and not the Association, is responsible for that content.

(B) Ensure access to the Common Area meeting space, if any exists, during a campaign, at no cost, to all candidates, including those who are not incumbents, and to all Members advocating a point of view (whether or not endorsed by the Board) so long as use of the space is for a purpose that is reasonably related to the election.

(C) Specify the qualifications for candidates for election to the Board of Directors and any other elected position, and procedures for the nomination of candidates. A nomination or election procedure shall not be deemed reasonable if it disallows any Member of the Association from nominating himself or herself for election to the Board.

(D) Specify the qualifications for voting, the voting power of each membership, the authenticity, validity, and effect of proxies, and the voting period for elections, including the times at which polls will open and close.

(E) Specify a method of selecting one or three inspectors of election by the Board of Directors.

(iii) Adoption of Other Association Rules. Except as provided in subparagraph (c)(i), above, with respect to certain Operating Rules and Rule Changes that must first be distributed to the Members, any other Association Rules may be adopted or amended from time to time by majority vote of the Board; provided, however, that no Association Rule or amendment thereto shall be adopted by the Board until at least thirty (30) days after the proposed rule or rule amendment has been distributed in writing to each Member, along with a description of the purpose and effect of the proposed Association Rule or amendment thereto. The notice describing the proposed rule or amendment shall also set forth the date, time and location of the Board meeting at which action on the proposal is scheduled to be taken.

Any duly adopted rule or amendment to the Association Rules shall become effective immediately following the date of adoption thereof by the Board, or at such later date as the Board may deem appropriate. Any duly adopted rule or rule amendment shall be distributed to the Owners by mail or personal delivery.

(iv) Prohibition on Adoption of Certain Rules. In accordance with Civil Code section 1368.1, any rule or regulation of an association that arbitrarily or unreasonably restricts an Owner's ability to market his or her Lot or Residence is void. Without limiting the foregoing, in no event shall the Association be entitled to impose an Assessment or fee in connection with the marketing of an Owner's Lot in an amount that exceeds the Association's actual and direct costs (see also, Section 4.01(e), below).

Section 3.09. Breach of Rules or Restrictions. Any breach of the Association Rules or of any other Governing Document provision shall give rise to the rights and remedies set forth in Article XIII, below.

Section 3.10. Limitation on Liability of the Association's Directors and Officers.

(a) Claims Regarding Breach of Duty. No director or officer of the Association (collectively and individually referred to as the "Released Party") shall be personally liable to any of the Members, or to any other person, for any error or omission in the discharge of his or her duties and responsibilities or for his or her failure to provide any service required under the Governing Documents; provided that such Released Party has, upon the basis of such information as he or she possessed, acted in good faith, in a manner that such person believes to be in the best interests of the Association and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

Without limiting the generality of the foregoing, this standard of care and limitation of liability shall extend to such matters as the establishment of the Association's annual financial budget, the funding of Association capital replacement and reserve accounts, repair and maintenance of Common Areas and Common Facilities and enforcement of the Governing Documents.

(b) Other Claims Involving Tortious Acts and Property Damage. No person who suffers bodily injury (including, without limitation, emotional distress or wrongful death) as a result of the tortious act or omission of a volunteer member of the Board or volunteer officer of the Association shall recover damages from such Board member or officer if all of the following conditions are satisfied:

- (i) The Board member or officer owns no more than two Lots;
- (ii) The act or omission was performed within the scope of the volunteer Board member's or officer's Association duties;
- (iii) The act or omission was performed in good faith;
- (iv) The act or omission was not willful, wanton, or grossly negligent;
- (v) The Association maintained and had in effect at the time the act or omission occurred and at the time a claim is made general liability insurance with coverage of at least One Million Dollars (\$1,000,000).

The payment of actual expenses incurred by a Board member or officer in the execution of such person's Association duties shall not affect such person's status as a volunteer Board member or officer for the purposes of this section. The provisions of this subparagraph (b) are intended to reflect the protections accorded to volunteer directors and officers of Associations pursuant to California Civil Code section 1365.7. In the event said Civil Code section is amended or superseded by another, similar provision of the California statutes, this subparagraph (b) shall be deemed amended, without the necessity of further Member approval, to correspond to the amended or successor Civil Code provision.

Section 3.11. Enforcement of Bonded Obligations. If any of the Common Area improvements within the Development have not been completed when the California Real Estate Commissioner issues a final subdivision public report for the Development, and if the Association is the obligee under a bond or other arrangement ("bond") to secure performance of a commitment of the Declarant to complete such Common Area improvements, then the Board shall consider and vote on the question of action by the Association to enforce the obligations under the bond with respect to any improvements for which a notice of completion has not been filed within sixty (60) days after the completion date specified for that improvement in the "planned construction statement" appended to the bond. However, if the Association has given an extension in writing for the completion of any Common Area improvement, the Board shall consider and vote on the action to enforce the obligations under the bond only if a notice of completion has not been filed within thirty (30) days after the expiration of the extension.

If the Board fails to consider and vote on the action to enforce the obligations under the bond or decides not to initiate action to enforce the obligations under the bond, then on the petition in writing to the Board signed by Members representing not less than five percent (5%) of the total voting power of the Association other than the Declarant, the Board shall call a special membership meeting for the purpose of voting to override the decision of the Board not to initiate action or to compel the Board to take action to enforce the obligations under the bond.

The meeting shall be called by the Board by fixing a date not less than thirty-five (35) days nor more than forty-five (45) days after receipt by the Board of said petition. Notice of the meeting shall be given to all Owners entitled to vote in the manner provided in Section 5.04 of the Bylaws for notices of special membership meetings. At the meeting, the vote in person or by proxy of a majority of the Owners entitled to vote (other than Declarant) in favor of taking action to enforce the obligations under the bond shall be deemed to be the decision of the Association and the Board shall then implement the Owners' decision by initiating and pursuing appropriate action in the name of the Association.

#### **ARTICLE IV**

##### **Assessments**

##### Section 4.01. Assessments Generally.

(a) Covenant to Pay Assessments. Declarant for each Lot owned within the Development, and each Owner of a Lot by acceptance of a deed therefor (whether or not it shall be so expressed in such deed), covenants and agrees to pay to the Association: (i) Regular Assessments; (ii) Special Assessments; and (iii) Special Individual Assessments. Each such Assessment shall be established and collected as hereinafter provided. Notwithstanding anything herein to the contrary, as long as the Option Agreement remains in effect, all Assessments levied against Lots which remain subject to the Option Agreement shall be the responsibility of and payable by Meritage, and shall be deemed the debt and personal obligation of Meritage and not SHP for all purposes of this Declaration, including, without limitation, Sections 4.01, 4.03, 4.05 and 4.06.

(b) Extent of Owner's Personal Obligation for Assessments. All Assessments, together with late charges, interest, and reasonable costs (including reasonable attorneys' fees) for the collection thereof, shall be a debt and a personal obligation of the person who is the Owner of the Lot at the time the Assessment is levied. Each Owner who acquires title to a Lot (whether by conventional conveyance, at a judicial sale, trustee's sale or otherwise) shall be personally liable only for Assessments attributable to the Lot which become due and payable after the date that the person acquires title. Accordingly, when a person acquires title to a Lot, he or she shall not be personally liable for delinquent Assessments of prior Owners unless the new Owner expressly assumes the personal liability. However, if the acquired Lot is conveyed subject to a valid lien for delinquent Assessments (and related costs of collection), the Association may continue to exercise its foreclosure remedies against the Lot, regardless of the change of ownership, and/or the Association may pursue its collection remedies against the prior Owner, individually.

(c) Creation of Assessment Lien. With the exception of the limitations imposed by law on the collection of certain Special Individual Assessments by use of lien and foreclosure remedies, all Assessments, together with late charges, interest, and reasonable costs (including reasonable attorneys' fees) for the collection thereof, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which such Assessment is made. Any lien for unpaid Assessments created pursuant to the provisions of this Article may be subject to foreclosure as provided in Section 4.10(b), below.

(d) No Avoidance of Assessment Obligations. No Owner may exempt himself/herself or the Owner's Lot from liability or charge for the Owner's share of any Assessment made against the Owner or his or her share of any Regular or Special Assessment made against the Owner's Lot, by waiving or relinquishing, or offering to waive or relinquish, the Owner's right to use and enjoy all or any portion of the Common Area or Common Facilities or by the abandonment or non-use of the Owner's Lot.

(e) Improper Assessment. The Association shall not impose or collect an Assessment or fee which exceeds the amount necessary for the purpose or purposes for which it is levied.

#### Section 4.02. Regular Assessments.

(a) Preparation of Annual Budget; Establishment of Regular Assessments. Not less than forty-five (45) days nor more than sixty (60) days prior to the beginning of the Association's fiscal year, the Board shall estimate the total amount required to fund the Association's anticipated Common Expenses for the next succeeding fiscal year (including additions to any reserve fund established to defray the costs of future repairs, replacement or additions to the Common Facilities by preparing and distributing to all Members a budget satisfying the requirements of Section 12.05 of the Bylaws. If the Board fails to distribute the budget for any fiscal year within the time period specified in the first sentence of this section, the Board shall not be permitted to increase Regular Assessments for that fiscal year unless the Board first obtains the approval of the requisite percentage of the Members in accordance with Section 4.08, below.

(b) Member Approval Requirements for Certain Assessment Increases. The total Common Expenses estimated in the Association's budget (less projected income from sources other than Assessments) shall become the aggregate Regular Assessment for the next succeeding fiscal year; provided, however, that, except as provided in Section 4.05, below ("Emergency Assessments") the Board of Directors may not impose a Regular Assessment that is more than twenty percent (20%) greater than the Regular Assessment for the Association's immediately preceding fiscal year without the Members' prior approval in accordance with Section 4.08, below.

(c) Commencement Date for Regular Assessments. Regular Assessments shall commence as to each Lot in the Development upon the earlier to occur of (i) the date specified in a Notice of Commencement of Regular Assessments, Recorded by Declarant with respect to the Property comprising the Development (which date shall be after the date of Recordation of this Declaration); or (ii) to the first day of the first month following the month in which the first Close of Escrow occurs for the sale of a Lot in the Development to a person other than the Declarant. The first annual Regular Assessment shall be pro rated, if necessary, according to the number of months remaining in the fiscal year established in the Association's Bylaws.

(d) Allocation of Regular Assessment.

(i) Association Common Expenses. The total estimated Common Expenses, determined in accordance with subparagraph (a), above, shall be allocated among, assessed against, and charged to each Owner according to the ratio of the number of Lots within the Development owned by the assessed Owner to the total number of Lots subject to Assessment so that each Lot bears an equal share of the total Regular Assessment.

(ii) Partial Exemption for Uncompleted Common Facilities. All Owners, including the Declarant, shall be exempt from the payment of that portion of any Regular Assessment which is for the purpose of defraying expenses and reserves directly attributable to the existence and use of any Common Facility that is not completed at the time Assessments commence. The Assessment exemption provided by this subparagraph shall be in effect only until the earliest of the following events: (A) a notice of completion of the Common Facility has been Recorded; or (B) the Common Facility has been placed in use.

(e) Assessment Roll. That portion of the estimated Common Expenses assessed against and charged to each Owner shall be set forth and recorded in an Assessment roll which shall be maintained and available with the records of the Association and shall be open for inspection at all reasonable times by each Owner or his or her authorized representative for any purpose reasonably related to the Owner's interest as a property Owner or as a Member of the Association. The Assessment roll shall show, for each Lot, the name and address of the Owner of Record, all Regular, Special and Special Individual Assessments levied against each Owner and his or her Lot, and the amount of such Assessments which have been paid or remain unpaid. The delinquency statement required by Section 2.06(c), above, shall be conclusive upon the Association and the Owner of such Lot as to the amount of such indebtedness appearing on the Association's Assessment roll as of the date of such statement, in favor of all persons who rely thereon in good faith.

(f) Mailing Notice of Assessment. No less than forty-five (45) days prior to the beginning of the next fiscal year, the Board of Directors shall mail to each Owner (including Declarant with respect to any unsold or retained Lots), at the street address of the Owner's Lot, or at such other address as the Owner may from time to time designate in writing to the Association, a statement of the amount of the Regular Assessment for the next succeeding fiscal year.

(g) Failure to Make Estimate. If, for any reason, the Board of Directors fails to make an estimate of the Common Expenses for any fiscal year, then the Regular Assessment made for the preceding fiscal year, together with any Special Assessment made pursuant to Section 4.03(a)(i), below, for that year, shall be assessed against each Owner and his or her Lot on account of the then current fiscal year, and installment payments (as hereinafter provided) based upon such automatic Assessment shall be payable on the regular payment dates established by the Board.

(h) Installment Payment. The Regular Assessment made against each Owner shall be due and payable in advance to the Association in equal monthly installments on the first day of each month or on such other date or dates as may be established from time to time by the Association's Board of Directors. Installments of Regular Assessments shall be delinquent if not paid within fifteen (15) days of the due date as established by the Board.

#### Section 4.03. Special Assessments.

(a) Purposes for Which Special Assessments May Be Levied. Subject to the membership approval requirements set forth in subparagraph (b) below, the Board of Directors shall have the authority to levy Special Assessments against the Owners and their Lots for the following purposes:

(i) Regular Assessment Insufficient in Amount. If, at any time, the Regular Assessment for any fiscal year is insufficient in amount due to extraordinary expenses not contemplated in the budget prepared for said fiscal year, then the Board of Directors shall levy and collect a Special Assessment, applicable to the remainder of such year only, for the purpose of defraying, in whole or in part, any deficit which the Association may incur in the performance of its duties and the discharge of its obligations hereunder.

(ii) Capital Improvements. The Board may also levy Special Assessments for additional capital Improvements within the Common Area (i.e., Improvements not in existence on the date of this Declaration that are unrelated to repairs for damage to, or destruction of, the existing Common Facilities). The Special Assessment power conferred hereunder is not intended to diminish the Board's obligation to plan and budget for normal maintenance, and replacement repair of the Common Area or existing Common Facilities through Regular Assessments (including the funding of reasonable reserves) and to maintain adequate insurance on the Common Area and existing Common Facilities in accordance with Article X, below.

(b) Special Assessments Requiring Membership Approval. The following Special Assessments require prior membership approval in accordance with Section 4.08, below: (i) any Special Assessments which, in the aggregate, exceed five percent (5%) of the Association's budgeted gross expenses for the fiscal year in which the Special Assessment(s) is/are levied; and (ii) any Special Assessments imposed pursuant to subparagraph (a)(i) of this section when the Board has failed to distribute a budget to the Members within the time specified in Section 4.02(a), above. The foregoing Member approval requirements shall not apply, however, to any Special Assessment imposed to address any "emergency situation" as defined in Section 4.05, below.

(c) Allocation and Payment of Special Assessments. When levied by the Board or approved by the Members as provided above, the Special Assessment shall be divided among, assessed against and charged to each Owner and his or her Lot (including the Declarant as to any unsold or retained Lots) in the same manner prescribed for the allocation of Regular Assessments pursuant to Section 4.02(d), above. The Special Assessment so levied shall be recorded on the Association's Assessment roll and notice thereof shall be mailed to each Owner.

Special Assessments for purposes described in subparagraph (a)(i) of this Section 4.03, above, shall be due as a separate debt of the Owner and a lien against his or her Lot, and shall be payable to the Association in equal monthly installments during the remainder of the then current fiscal year. Special Assessments for purposes described in subparagraph (a)(ii) of this Section 4.03 shall be due as a separate debt of the Owner and a lien against his or her Lot, and shall be payable in full to the Association within thirty (30) days after the mailing of such notice or within such extended period as the Board shall determine to be appropriate under the circumstances giving rise to the Special Assessment.

#### Section 4.04. Special Individual Assessments.

(a) Circumstances Giving Rise to Special Individual Assessments. In addition to the Special Assessments levied against all Owners in accordance with Section 4.03, above, the Board of Directors may impose Special Individual Assessments against an Owner in any of the circumstances described in subparagraphs (i) through (iii) below; provided, however, that no Special Individual Assessments may be imposed against an Owner pursuant to this Section 4.04 until the Owner has been afforded the notice and hearing rights to which the Owner is entitled pursuant to Section 13.06, below, and, if appropriate, has been given a reasonable opportunity to comply voluntarily with the Governing Documents. Subject to the foregoing, the acts and circumstances giving rise to liability for Special Individual Assessments include the following:

(i) Damage to Common Area or Common Facilities. In the event that any damage to, or destruction of, any portion of the Common Area or the Common Facilities is caused by the willful misconduct or negligent act or omission of any Owner, any member of his or her family, or any of his or her tenants, guests, servants, employees, licensees or invitees, the Board shall cause the same to be repaired or replaced, and all costs and expenses incurred in connection therewith (to the extent not compensated by insurance proceeds) shall be assessed and charged solely to and against such Owner as a Special Individual Assessment.



(ii) Expenses Incurred in Gaining Member Compliance. In the event that the Association incurs any costs or expenses to: (A) accomplish the payment of delinquent Assessments; (B) perform any repair, maintenance or replacement to any portion of the Development that the Owner is responsible to maintain under the Governing Documents but has failed to undertake or complete in a timely fashion; or (C) otherwise bring the Owner and/or his or her Lot into compliance with any provision of the Governing Documents, the amount incurred by the Association (including reasonable fines and penalties duly imposed hereunder, title company fees, accounting fees, court costs and reasonable attorneys' fees) shall be assessed and charged solely to and against such Owner as a Special Individual Assessment.

(iii) Required Maintenance on Lots. If any Lot is maintained so as to become a nuisance, fire or safety hazard for any reason, the Association shall have the right to enter said Lot, correct the condition and recover the cost of such action through imposition of a Special Individual Assessment against the offending Owner. Any entry on the property of any Owner by the Association shall be effected in accordance with Section 3.07(b), above.

(b) Levy of Special Individual Assessment and Payment. Once a Special Individual Assessment has been levied against an Owner for any reason described, and subject to the conditions imposed, in subparagraph (a) of this section, such Special Individual Assessment shall be recorded on the Association's Assessment roll and notice thereof shall be mailed to the affected Owner. The Special Individual Assessment shall thereafter be due as a separate debt of the Owner payable in full to the Association within thirty (30) days after the mailing of notice of the Assessment. As more particularly provided in Section 4.10(b)(ii), below, only certain Special Individual Assessments may be collected through the use of lien and foreclosure remedies.

(c) Limitation on Right to Lien Lots For Special Individual Assessments. As more particularly provided in Section 4.10(b)(ix), below, the authority of the Association to collect delinquent Special Individual Assessment through the use of lien and foreclosure remedies is limited. However, Special Individual Assessments duly levied for any permissible purpose may be recovered by the Association through other legal processes (typically a small claims court action).

#### Section 4.05. Assessments to Address Emergency Situations.

(a) Authority of Board to Impose Emergency Assessments. The requirement of a membership vote to approve: (i) Regular Assessment increases in excess of twenty percent (20%) of the previous year's Regular Assessment; or (ii) Special Assessments which, in the aggregate, exceed five percent (5%) of the Association's budgeted gross expenses for the fiscal year in which the Special Assessment(s) is/are levied, shall not apply to Assessments necessary to address emergency situations ("Emergency Assessments"). For purposes of this Section, an emergency situation is any of the following:

- (i) An extraordinary expense required by an order of a court;
- (ii) An extraordinary expense necessary to repair or maintain the Common Areas or Common Facilities where a threat to personal safety is discovered; or

(iii) An extraordinary expense necessary to repair or maintain the Common Areas or Common Facilities that could not have been reasonably foreseen by the Board in preparing and distributing the budget pursuant to Section 4.02(a), above; provided, however, that prior to the imposition or collection of an assessment under this subparagraph (iii), the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process. The Board's resolution shall be distributed to the Members together with the notice of assessment.

(b) Payment of Emergency Assessments. When levied by the Board the Emergency Assessment shall be divided among, assessed against and charged to each Owner and his or her Lot (including the Declarant as to any unsold or retained Lots) in the same manner prescribed for the allocation of Regular Assessments pursuant to Section 4.02(e), above. The Emergency Assessment so levied shall be recorded on the Association's Assessment roll and notice thereof shall be mailed to each Owner. An Emergency Assessment shall be due as a separate debt of the Owner and shall be payable in full to the Association within thirty (30) days after the mailing of the notice of the Emergency Assessment or within such extended period as the Board shall determine to be appropriate under the circumstances giving rise to the Emergency Assessment. If an Emergency Assessment is not paid on or before the due date, the Assessment may be enforced in the manner provided in Section 4.10, below.

Section 4.06. Purpose and Reasonableness of Assessments. Each Assessment made in accordance with the provisions of this Declaration is hereby declared and agreed to be for use exclusively: (a) to promote the recreation, health, safety and welfare of individuals residing within the Development; (b) to promote the enjoyment and use of the Development by the Owners and their families, tenants, invitees, licensees, guests and employees; and (c) to provide for the repair, maintenance, replacement and protection of the Common Area and Common Facilities.

Each and every Assessment levied hereunder is further declared and agreed to be a reasonable Assessment, and to constitute a separate, distinct and personal obligation of the Owner of the Lot against which the Assessment is imposed that shall be binding on the Owner's heirs, successors and assigns; provided, however, that the personal obligation of each Owner for delinquent Assessments shall not pass to the Owner's successors in title unless expressly assumed by them. Subject to the limitations imposed by Section 4.10(b)(ix), below, limiting the right of the Association to impose a lien as a remedy for collecting some types of Special Individual Assessments, the Association shall also be entitled to collect delinquent Assessments through lien and foreclosure, as more particularly provided in Section 4.10, below.

Section 4.07. Exemption of Certain Portions of the Development From Assessments. The following real property subject to this Declaration shall, unless devoted to the use as a residential dwelling, be exempt from the Assessments and the lien thereof provided herein:

- (a) Any portion of the Development dedicated and accepted by the City or other local public authority (including, without limitation, the Environmental Preserve);

- (b) The Common Area and Common Facilities; and
- (c) Any Lot owned by the Association.

Section 4.08. Notice and Procedure for Member Approval Pursuant to Sections 4.02 and 4.03. In the event that Member approval is required in connection with any increase or imposition of Assessments pursuant to Sections 4.02 and 4.03, above, the affirmative vote required to approve the increase shall be a Majority of a Quorum of the Members. The quorum required for such membership action shall be a majority of the Members. Any vote on an increase in the Regular Assessment or on the imposition of a Special Assessment that requires approval of the Members must be conducted by use of a secret ballot and that balloting process shall be conducted using the same procedures for the casting of ballots in the election of directors pursuant to Section 7.05 of the Bylaws.

Section 4.09. Maintenance of Assessment Funds.

(a) Establishment and Maintenance of Association Bank Accounts. All sums received or collected by the Association from Assessments, together with any interest or late charges thereon, shall be promptly deposited in one or more insured checking, savings or money market accounts in a bank or savings and loan association selected by the Board of Directors. In addition, the Board shall be entitled to make prudent investment of reserve funds in FDIC insured certificates of deposit, money market funds or similar investments consistent with the investment standards normally observed by trustees. The Board and such officers or agents of the Association as the Board shall designate shall have exclusive control of said account(s) and investments and shall be responsible to the Owners for the maintenance at all times of accurate records thereof. The withdrawal of funds from Association accounts shall be subject to the minimum signature requirements imposed by California Civil Code section 1365.5 and Section 12.02 of the Bylaws. Any interest received on deposits shall be credited proportionately to the balances of the various Assessment fund accounts maintained on the books of the Association as provided in subparagraph (b), below.

(b) Expenditure of Assessment Funds. Except as provided below, the proceeds of each Assessment shall be used only for the purpose for which such Assessment was made, and such funds shall be received and held in trust by the Association for such purpose. Notwithstanding the foregoing, the Board, in its discretion, may make appropriate adjustments among the various line items in the Board's approved general operating budget if the Board determines that it is prudent and in the best interest of the Association and its Members to make such adjustments. If the proceeds of any Special Assessment exceed the requirement of which such Assessment was levied, such surplus may, in the Board's discretion, be: (i) returned proportionately to the contributors thereof; (ii) reallocated among the Association's reserve accounts if any such account is, in the Board's opinion, underfunded; or (iii) credited proportionately on account of the Owners' future Regular Assessment obligations.

(c) Separate Accounts; Commingling of Funds. Except as otherwise provided in subparagraph (d), below, to preclude a multiplicity of bank accounts, the proceeds of all Assessments may be commingled in one or more accounts and need not be deposited in separate accounts so long as the separate accounting records described herein are maintained. For purposes of accounting, but without requiring any physical segregation of assets, the Association shall keep a separate accounting of all funds received by the Association in payment of each Assessment and of all disbursements made therefrom; provided, however, that receipts and disbursements of Special Assessments made pursuant to Section 4.03(a)(i), above, shall be accounted for together with the receipts and disbursements of Regular Assessments, and a separate accounting shall be maintained for each capital Improvement for which reserve funds for replacement are allocated.

Unless the Association is exempt from federal or state taxes, all sums allocated to capital replacement funds shall be accounted for as contributions to the capital of the Association and as trust funds segregated from the regular income of the Association or in any other manner authorized by law or regulations of the Internal Revenue Service and the California Franchise Tax Board that will prevent such funds from being taxed as income of the Association.

(d) Reserve Funds. As more particularly provided in Article XII of the Association Bylaws, the Association Board is required by law to periodically identify the major components of the Development that the Association is obligated to repair, replace, restore or maintain which, as of the date of the study, have a remaining useful life of thirty (30) years or less. In the capital reserve analysis process, the Board is also obligated to identify the probable remaining useful life of the components identified in the study and to estimate the cost of repair, replacement, restoration, or maintenance of the components during and at the end of their useful life. The information developed in this capital reserve replacement analysis is then to be used by the Board as a component of preparing the annual budget of the Association. The Board shall not expend funds designated as reserve funds for any purpose other than the repair, restoration, replacement, or maintenance of, or for litigation involving the repair, restoration, replacement, or maintenance of, major components which the Association is obligated to repair, restore, replace, or maintain and for which the reserve fund was established. However, the Board may authorize the temporary transfer of money from a reserve fund to the Association's general operating fund to meet short-term cash-flow requirements or other expenses if the Board has provided notice of the intent to consider the transfer in a notice of meeting, which shall be provided to the Members as specified in Civil Code section 1363.05. The notice shall include the reasons why the transfer is needed, some of the options for repayment, and whether a special assessment may be considered. If the board authorizes the transfer, the Boards shall issue a written finding, recorded in the Board's minutes, explaining the reasons that the transfer is needed, and describing when and how the monies will be repaid to the reserve fund.

The transferred funds shall be restored to the reserve fund within one year of the date of the initial transfer, except that the Board may, after giving the same notice required for considering a transfer, and upon making a finding supported by documentation that a temporary delay would be in the best interests of the Development, temporarily delay the restoration. The Board shall exercise prudent fiscal management in delaying restoration of these funds and in restoring the expended funds to the reserve account, and shall, if necessary, levy a Special

Assessment to recover the full amount of the expended funds within the time limits required by this subparagraph (d). This Special Assessment is subject to the Member approval requirements of California Civil Code section 1366 and Section 4.03(b), above, if the aggregate amount of the Special Assessment exceeds five percent (5%) of the budgeted gross expenses of the Association for the year in which the Special Assessment is imposed. The Board may, at its discretion, extend the date the payment on the Special Assessment is due. Any extension shall not prevent the Board from pursuing any legal remedy to enforce the collection of an unpaid Special Assessment.

When the decision is made to use reserve funds or to temporarily transfer money from the reserve fund to pay for litigation, the Association shall notify the Members of that decision in the next available mailing to all Members pursuant to California Corporations Code section 5016, and of the availability of an accounting of those expenses. The Association shall make an accounting of expenses related to the litigation on at least a quarterly basis. The accounting shall be made available for inspection by Members at the Association's principal office.

(e) Limitations on Association's Authority to Assign or Pledge Assessment Obligations. The Association may not voluntarily assign or pledge its right to collect payments or Assessments, or to enforce or foreclosure a lien to a third party, except when the assignment or pledge is made to a financial institution or lender chartered or licensed under federal or state law, when acting within the scope of that charter or license, as security for a loan obtained by the Association.

However, the restrictions imposed by this subparagraph (e) shall not restrict the right or ability of the Association to assign any unpaid obligations to a former Member to a third party for purposes of collection.

Section 4.10. Collection of Assessments; Enforcement of Liens. Installments of Regular Assessments shall be delinquent if not paid within fifteen (15) days of the due date as established by the Board. Special Assessments, Special Individual Assessments and Emergency Assessments shall be delinquent if not paid within the times prescribed in Sections 4.03(c), 4.04(b) and 4.05(b), respectively. When an Assessment becomes delinquent, the amount thereof may, at the Board's election, bear interest at the maximum rate allowed by law commencing thirty (30) days after the due date until the same is paid. In addition to the accrual of interest, the Board of Directors is authorized and empowered to promulgate a schedule of reasonable late charges for any delinquent Assessments, subject to the limitations imposed by California Civil Code sections 1366(c) and 1366.1 or comparable successor statutes. Once an assessment becomes delinquent, the Association may elect to one or both of the following remedies:

(a) Enforcement of An Owner's Personal Obligation to Pay Assessments. The Association may bring a legal action directly against the Owner for breach of the Owner's personal obligation to pay the Assessment and in such action shall be entitled to recover the delinquent Assessment or Assessments, accompanying late charges, interest, costs and reasonable attorneys' fees. Commencement of a legal action shall not constitute a waiver of any lien rights as described in subparagraph (b), below.

(b) Imposition and Enforcement of Assessment Lien and Limitations Thereon. Except as otherwise provided in subparagraph (b)(ix), below, with respect to the limitation on the imposition of liens for Special Individual Assessments, the Association may impose a lien against the Owner's Lot for the amount of the delinquent Assessment or Assessments, plus any reasonable costs of collection (including reasonable attorneys fees), late charges and interest by taking the following steps:

(i) Issuance of Delinquency Notice; Contents. At least thirty (30) days prior to recording a lien upon the Owner's Lot to collect a delinquent Assessment, the Association shall notify the Owner in writing by certified mail of the following (the "Delinquency Notice"):

(A) A general description of the collection and lien enforcement procedures of the Association and the method of calculation of the amount, a statement that the Owner of the Lot has the right to inspect the Association records, pursuant to Section 8333 of the Corporations Code, and the following statement in 14-point boldface type, if printed, or in capital letters, if typed: "IMPORTANT NOTICE: IF YOUR LOT IS PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT ACTION."

(B) An itemized statement of the charges owed by the Owner, including items on the statement which indicate the amount of any delinquent Assessments, the fees and reasonable costs of collection, reasonable attorneys' fees, any late charges, and interest, if any.

(C) A statement that the Owner shall not be liable to pay the charges, interest, and costs of collection previously levied by the Association if it is subsequently determined that the Assessment was paid on time.

(D) The right of the notified Owner to request a meeting with the Board as provided in subparagraph (iv), below.

(E) The right to dispute the assessment debt by submitting a written request for dispute resolution to the Association pursuant to the Association's "meet and confer" program pursuant to Civil Code section 1363.810 et seq.

(F) The right of the noticed Member to request alternative dispute resolution with a neutral third party pursuant to Civil Code section 1369.510 et seq. before the Association may initiate foreclosure against the Owner's Lot, except that binding arbitration shall not be available if the Association intends to initiate a judicial foreclosure, rather than a non-judicial foreclosure.

(ii) Application of Payments. Any payments made by the Lot Owner toward the delinquent Assessment shall first be applied to the Assessments that are owed at the time the payment is made; and only after the Assessments owed are paid in full shall the payments be

applied to the fees and the costs of collection, attorneys' fees, late charges or interest. When an Owner makes a payment, the Owner may request a receipt and the Association shall provide it. The receipt shall indicate the date of payment and the person who received the payment on behalf of the Association. The Association shall provide its Members with a mailing address for overnight payment of Assessments.

(iii) Pre-Lien Offer to Meet and Confer with the Owner. Prior to recording a lien for delinquent assessments, the Association shall offer the Owner and, if so requested by the Owner, participate in dispute resolution pursuant to the Association's meet and confer program that is required by Civil Code section 1363.810 et seq.

(iv) Rights of Owners to Propose Payment Plans. An Owner may also submit a written request to meet with the Board to discuss a payment plan for the delinquent assessment. This request must also be made within fifteen (15) days of the postmark of the Delinquency Notice. The Association shall provide the Owners with the standards for payment plans, if such standards have been adopted. So long as a timely request for a meeting has been tendered, the Board shall meet with the Owner in executive session within forty-five (45) days of the postmark of the request for a meeting, unless there is no regularly-scheduled Board meeting within that period, in which case the Board may designate a committee of one or more Members to meet with the Owner. Payment plans may incorporate any assessments that accrue during the payment plan period. Payment plans shall not impede an Association's ability to record a lien on the Owner's Lot to secure payment of delinquent assessments. Additional late fees shall not accrue during the payment plan period if the Owner is in compliance with the terms of the payment plan. In the event of a default on any payment plan, the Association may resume its efforts to collect the delinquent assessments from the time prior to entering into the payment plan.

(v) Association Assessment Lien Rights. Except as provided in subparagraph (ix), below (relating to Special Individual Assessments), the amount of the Assessment, plus any costs of collection, late charges, and interest assessed in accordance with Civil Code section 1366 shall be a lien on the Owner's Lot from and after the time the Association causes to be recorded in the Office of the County Recorder a Notice of Delinquent Assessment, which shall state the amount of the Assessment and other sums imposed in accordance with Civil Code Section 1366, a legal description of the Owner's Lot against which the Assessment and other sums are levied, the name of the record owner of the Owner's Lot against which the lien is imposed. The itemized statement of the charges owed by the Owner that is required by subparagraph (b)(i)(B), of this Section 4.10 shall be recorded together with the Notice of Delinquent Assessment. The decision to record a lien for delinquent assessments shall be made only by the Board of Directors of the Association and may not be delegated to an agent of the Association. The Board shall approve the decision by a majority vote of the Board in an open meeting and the vote shall be recorded in the minutes of the meeting.

In order for the lien to be imposed by non-judicial foreclosure as provided in subparagraph (vii), below, the Notice of Delinquent Assessment shall state the name and address of the trustee authorized by the Association to enforce the lien by sale. The Notice of Delinquent Assessment shall be signed by any officer of the Association or by the person designated by the Association for that purpose or if no one is designated, by the president of the Association. A

copy of the recorded Notice of Delinquent Assessment shall be mailed by certified mail to every person whose name is shown as an Owner of the Lot in the Association's records, and the notice shall be mailed no later than ten (10) calendar days after Recordation. Upon receipt of a written request by an Owner identifying a secondary address for purposes of collection notices, the Association shall send additional copies of any notices, including Notices of Delinquent Assessments, required by Civil Code section 1367.1 to the secondary address that is specified.

(vi) Priority of Assessment Liens. A lien created pursuant to subparagraph (v), above or subparagraph (ix), below, shall be prior to all other liens recorded against the Owner's Lot subsequent to the Notice of Delinquent Assessment, except as described in Section 4.12, below.

(vii) Enforcement of Assessment Liens. Subject to the limitations of this Section 4.10(b) and in particular this subparagraph (vii), following the recording of a Notice of Delinquent Assessment, the Association's lien may be enforced in any manner permitted by law, including sale by the court, sale by the trustee designated in the Notice of Delinquent Assessment, or sale by a trustee substituted pursuant to Civil Code section 2934a. Any sale by the trustee shall be conducted in accordance with Civil Code sections 2924, 2924b and 2924c applicable to the exercise of powers of sale in mortgages and deeds of trusts. The fees of a trustee may not exceed the amounts prescribed in Civil Code sections 2924c and 2924d.

The following specific limitations shall apply to the pursuit of foreclosure remedies:

(A) The decision to initiate foreclosure of a lien for delinquent assessments that has been validly recorded shall be made only by the Board of Directors of the Association and may not be delegated to an agent of the Association. The Board shall approve the decision by a majority vote of the Board in an executive session and shall record the vote in the minutes of the next meeting of the Board that is open to attendance by the Members. The Board shall maintain the confidentiality of the Owner or Owners of the Lot by identifying the matter in the minutes by the parcel number of the property, rather than the name of the Owner or Owners. A Board vote to approve foreclosure of a lien shall take place at least thirty (30) days prior to any public sale of the Lot in question.

(B) Prior to initiating a foreclosure for delinquent assessments, the Association shall offer the Owner and, if so requested by the Owner, participate in dispute resolution pursuant to the Association's meet and confer program that is required by Civil Code section 1363.810 et seq. or alternate dispute resolution with a neutral third party pursuant to Civil Code section 1369.510 et seq. The decision to pursue dispute resolution or a particular type of alternative dispute resolution shall be the choice of the Owner, except that binding arbitration shall not be available if the Association intends to initiate judicial foreclosure, rather than non-judicial foreclosure.

(C) If the Board votes to commence foreclosure proceedings to collect delinquent assessments pursuant to this subparagraph (vii), the Board shall provide notice of that decision by personal service to an Owner of the Lot who occupies the Residence on the Lot or to the Owner's legal representative. If the Owner does not occupy the Residence and Lot that are



the subject of the foreclosure proceeding, the Board shall provide written notice to the Owner by first-class mail, postage prepaid, at the most current address for the Owner that is shown on the books of the Association. In the absence of written notification by the Owner to the Association, the address of the Owner's Lot may be treated as the Owner's mailing address.

(D) Debts for Assessments, regular or special, that arise, may not be collected through the use of judicial or non-judicial foreclosure remedies until the delinquent assessment amount, exclusive of any accelerated assessments, late charges, fees, costs of collection, attorney's fees, and interest, equals or exceeds \$1,800.00 or the assessments are more than twelve (12) months delinquent. Delinquent Assessments in a smaller amount may not be collected through the use of foreclosure remedies, but may be collected through the use of any of the following other means: (aa) a civil action in small claims court; (bb) by recording a lien on the Owner's Lot (subject to the restrictions on foreclosure of that lien); or (cc) any other manner provided by law, other than judicial or non-judicial foreclosure. If the Association elects to record a lien for delinquent Assessments, subparagraphs (b)(iii) and (b)(v), above shall continue to apply. The limitations on the use of foreclosure remedies set forth in this subparagraph (B) do not apply to assessment collection actions against the Declarant in its capacity as an Owner when the Declarant's Assessment obligations are delinquent.

(viii) Foreclosed Owner's Rights of Redemption. A non-judicial foreclosure by the Association of an Owner's interest in his or her Lot to collect a debt for delinquent Assessments shall be subject to a right of redemption. The redemption period within which the Lot may be redeemed from a foreclosure sale under this subparagraph (viii) (which reflects Civil Code section 1367.4(c)(4)) ends ninety (90) days after the sale.

(ix) Limitation on Authority to Use Lien and Foreclosure Remedies to Collect Special Individual Assessments. For so long as any Lots within the Development are being sold under authority of a Department of Real Estate Public Report, a Special Individual Assessment or other monetary charge imposed by the Association: (A) as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to Common Area Improvements or landscaping for which the Member or the Member's guests or tenants were responsible; or (B) as a disciplinary measure for failure of a Member to comply with the Governing Documents (except for reasonable late payment penalties, interest, and other reasonable costs of collection authorized by Civil Code section 1366) may not be characterized nor treated as an Assessment that may become a lien against the Owner's Lot enforceable by the sale of the interest under Civil Code sections 2924, 2924b and 2924c.

Once the Association is no longer subject to the regulatory jurisdiction of the Department of Real Estate, the following categories of Special Individual Assessments may be collected through the use of lien and foreclosure remedies in accordance with subparagraphs (v) through (viii), above: (A) Special Individual Assessments or other monetary charges imposed by the Association as a means of reimbursing the Association for costs incurred in the repair of damage to Common Areas and Common Facilities for which the Member or the Member's guests or tenants were responsible; and (B) Special Individual Assessments imposed to recover late charges, reasonable costs of collection and interest assessed in accordance with Civil Code section 1366(e).

(x) Obligation to Record Lien Releases. If it is determined that a lien previously recorded against a Lot was recorded in error, the party who recorded the lien, within twenty-one (21) calendar days, shall record or cause to be recorded in the Office of the County Recorder a lien release or notice of rescission and provide the Lot Owner with a declaration that the lien filing or recording was in error and a copy of the lien release or notice of rescission. If the determination that the lien was recorded in error is the result of dispute resolution meet and confer proceedings conducted pursuant to Civil Code section 1363.810 or alternative dispute resolution with a neutral third-party pursuant to Civil Code section 1369.510, the Association shall also be obligated to promptly reverse all late charges, fees, interest, attorney's fees, costs of collection, costs imposed for the issuance of the notices prescribed by Civil Code section 1367.1, and costs of recording the lien release and all costs incurred in the mediation or alternative dispute resolution process.

In addition, within twenty-one (21) days of the payment of the sums specified in the Notice of Delinquent Assessment, the Association shall record or cause to be recorded in the Office of the County Recorder a lien release or notice of rescission and provide the Lot Owner a copy of the lien release or notice that the delinquent Assessment has been satisfied.

(xi) Effect of Failure to Adhere to Lien Restrictions. If the Association fails to comply with the procedures set forth in this Section 4.10(b) prior to recording a lien, the Association shall recommence the required notice process prior to recording a lien. Any costs associated with recommencing the notice process shall be borne by the Association and not by the Lot Owner.

The provisions of this Section 4.10(b) are intended to comply with the requirements of Civil Code Sections 1367.1, 1367.4 and 1367.5, as in effect on January 1, 2006. If these sections of the Civil Code are amended or modified in the future in a way that is binding on the Association and causes this Section to be in conflict with applicable law, the provisions of this Section 4.10(b) automatically shall be amended or modified in the same manner by action of the Board of Directors without necessity of approval of the amendment by the Members so long as all Members are given a copy of the recorded amendment and the decision to approve the amendment is made at a duly noticed open meeting of the Board of Directors.

Section 4.11. Transfer of Lot by Sale or Foreclosure. The following rules shall govern the right of the Association to enforce its Assessment collection remedies following the sale or foreclosure of a Lot:

(a) Except as provided in subparagraph (b), below, the sale or transfer of any Lot shall not affect any Assessment lien which has been duly Recorded against the Lot prior to the sale or transfer, and the Association can continue to foreclose its lien in spite of the change in ownership.

(b) The Association's Assessment lien shall be extinguished as to all delinquent sums, late charges, interest and costs of collection incurred prior to the sale or transfer of a Lot pursuant to a foreclosure or exercise of a power of sale by the holder of a prior encumbrance (but not

pursuant to a deed-in-lieu of foreclosure). A "prior encumbrance" means any first Mortgage or other Mortgage or lien Recorded against the Lot at any time prior to Recordation of the Association's Assessment lien (see Section 4.12, below).

(c) No sale or transfer of a Lot as the result of foreclosure, exercise of a power of sale, or otherwise, shall relieve the new Owner of such Lot (whether it be the former beneficiary of the first Mortgage or other prior encumbrance or a third party acquiring an interest in the Lot) from liability for any Assessments which thereafter become due with respect to the Lot or from the lien thereof.

(d) Any Assessments, late charges, interest and associated costs of collection which are lost as a result of a sale or transfer of a Lot covered by subparagraph (b), above, shall be deemed to be a Common Expense collectible from the Owners of all of the Lots, including the person who acquires the Lot and his or her successors and assigns.

(e) No sale or transfer of a Lot as the result of foreclosure, exercise of a power of sale, or otherwise, shall affect the Association's right to maintain an action against the foreclosed previous Owner personally to collect the delinquent Assessments, late charges, interest and associated costs of collection incurred prior to and/or in connection with the sale or transfer.

Section 4.12. Priorities. When a Notice of Delinquent Assessment has been Recorded, such notice shall constitute a lien on the Lot prior and superior to all other liens except: (a) all taxes, bonds, assessments and other levies which, by law, would be superior thereto; and (b) the lien or charge of any first Mortgage of record (meaning any Recorded Mortgage with first priority over other Mortgages) made in good faith and for value; provided, however, that such subordination shall apply only to the Assessments which have become due and payable prior to the transfer of such property pursuant to the exercise of a power of sale or a judicial foreclosure involving a default under such first Mortgage or other prior encumbrance.

Section 4.13. Unallocated Taxes. In the event that any taxes are assessed against the Common Area, or the personal property of the Association, rather than being assessed to the Lots, such taxes shall be included in the Regular Assessments imposed pursuant to Section 4.02, above, and, if necessary, a Special Assessment may be levied against the Lots pursuant to Section 4.03, above, in an amount equal to such taxes to be paid in two installments, thirty (30) days prior to the due date of each tax installment.

## **ARTICLE V**

### **Architectural Review and Approval of Improvement Projects**

#### Section 5.01. Architectural Review Committee Approval of Improvements.

(a) Approval Generally. Prior to commencement of construction or installation of any Improvement within the Development (as defined in Section 1.20, above, other than the initial construction of Residences by the Declarant, the Owner planning such Improvement must

submit to the Architectural Review Committee a written request for approval. The Owner's request shall include structural plans, specifications and plot plans satisfying the minimum requirements set forth in the Architectural Rules adopted pursuant to Section 5.05, below. Unless the Committee's approval of the proposal is first obtained, no work on the Improvement shall be undertaken. The Committee shall base its decision on the criteria described in Section 5.06, below.

(b) Modifications to Approved Plans Must Also Be Approved. Once a proposed work of Improvement has been duly approved by the Architectural Review Committee, no material modifications shall be made in the approved plans and specifications therefore and no subsequent alteration, relocation, addition or modification shall be made to the work of Improvement, as approved, without a separate submittal to, and review and approval by, the Committee. If the proposed modification will have, or is likely to have, a material affect on other aspects or components of the work, the Committee, in its discretion, may order the Owner and his or her contractors and agents to cease working not only on the modified component of the Improvement, but also on any other affected component.

In the event that it comes to the knowledge and attention of the Association, its Architectural Review Committee, or the agents or employees of either that a work of Improvement, or any modification thereof, is proceeding without proper approval, the Association shall be entitled to exercise the enforcement remedies specified in Section 5.15, below, including, without limitation, ordering an immediate cessation and abatement of all aspects of the work of Improvement by "red tagging" the project until such time as proper Architectural Review Committee review and approval is obtained.

#### Section 5.02. Composition of the Architectural Review Committee.

(a) Composition of the Committee, Generally. The composition of the Committee will evolve during the development of the Property, as follows:

(i) The Declarant may appoint all of the members of the Architectural Review Committee and all replacements until the first anniversary of the issuance of the first Public Report.

(ii) Beginning with the first anniversary of the issuance of the first Public Report, Declarant may appoint a majority of the members of the Architectural Review Committee. The remaining members of the Architectural Review Committee shall be appointed by members of the Association Board other than the Declarant's representative.

(iii) At the earlier to occur of: (A) the closing of ninety percent (90%) of the Lots planned for the Overall Property; or (B) the fifth (5th) anniversary of the original issuance of the original Public Report for the Development, the Committee shall become a committee of the Association and all members of the Committee shall be appointed by the Board of Directors.

(b) Qualifications for Appointment. The appointees of Declarant need not be Owners of Lots and do not need to possess any special qualifications of any type except such as the

Declarant may, in its discretion, require. All persons appointed to the Architectural Review Committee by the Board must be Members of the Association and Owners of Lots within the Development.

(c) Terms of Office of Committee Members. With the exception of those Architectural Review Committee members appointed by the Declarant and unless the Association implements a system of staggered terms for Committee members, all members of the Architectural Review Committee shall serve for one year terms, subject to the right of the Board to reappoint incumbent Committee members to consecutive terms of office. During the period when the Declarant has the authority to appoint a majority of the members of the Committee, the Declarant shall appoint one Committee person as chair. Thereafter, the Committee members shall appoint one Committee member as chairperson. All members shall serve until the expiration of the term for which they were appointed or until they resign or are replaced.

(d) No Compensation for Services; Reimbursement of Expenses. Neither the members of the Architectural Review Committee nor its designated representatives shall be entitled to any compensation for services performed pursuant hereto. The Committee members shall be entitled to reimbursement for reasonable out-of-pocket expenses incurred by them in the performance of any Architectural Review Committee functions. Requests for reimbursement shall be supported by adequate documentation and shall be submitted to, and approved by, the Board of Directors. Nothing herein shall limit the right of the Association or the Declarant from retaining the services of a person or persons as employees or independent contractors (including an architect and/or engineer) with responsibility for assisting the Committee in such matters as: (i) the day-to-day administration of the process of Architectural Review and approval, (ii) the intake and review of plans and specifications, (iii) communications with plan applicants, (iv) making recommendations to the Committee with respect to the approval, denial or modification of submitted plans and specifications, and (v) communications with Owners and contractors during the course of construction.

Section 5.03. Duties. It shall be the duty of the Architectural Review Committee to consider and act upon the proposals and plans for Improvements submitted to it pursuant to this Declaration, to adopt Architectural Rules pursuant to Section 5.05, below, to perform other duties delegated to it by the Board of Directors and to carry out all other duties imposed upon it by this Declaration.

Section 5.04. Meetings. The Architectural Review Committee shall meet from time to time as necessary to properly perform its duties hereunder. The vote or written consent of a majority of the Committee members shall constitute an act by the Committee and the Committee shall keep and maintain a written record of all actions taken.

The Owner-Applicant shall be entitled to appear at any meeting of the Architectural Review Committee at which the Owner's proposal is scheduled for review and consideration. The Owner shall be entitled to be heard on the matter and may be accompanied by his or her architect, engineer and/or contractor.

Section 5.05. Architectural Rules. The Architectural Review Committee may, from time to time and with approval of the Board of Directors, adopt, amend and repeal rules and regulations to be known as "Architectural Rules." The Architectural Rules shall interpret and implement the provisions hereof by setting forth: (a) any standards and procedures for Architectural Review Committee review; (b) guidelines for architectural design, the placement of any work of Improvement on a Lot, or color schemes, exterior finishes and materials and similar features which are recommended or required for use in connection with particular Improvement projects within the Development; (c) the criteria and procedures for requesting variances from any minimum construction standards that would otherwise apply to the proposed Improvement under the Governing Documents (see Section 5.16 (variances) below); and (d) the minimum requirements regarding the content of plans and specifications which must be submitted with respect to any request for Architectural Review and approval. Notwithstanding the foregoing, no Architectural Rule shall be in derogation of the minimum standards required by this Declaration. Among other things, in accordance with Civil Code section 1378(a)(1), the Architectural Rules shall provide a fair, reasonable and expeditious procedures that the Committee must follow when making decisions on submitted Improvement plans and projects. The procedures shall include prompt deadlines for various actions and a maximum time for response to an application, consistent with Section 5.09, below. In the event of any conflict between the Architectural Rules and this Declaration, the provisions of the Declaration shall prevail.

Section 5.06. Basis for Approval of Improvements. When a proposed Improvement is submitted to the Architectural Review Committee for review, the Committee shall grant the requested approval only if the Committee, in its sole discretion, makes the following findings regarding the proposed project:

(a) The Owner's plans and specifications conform to this Declaration and to the Architectural Rules in effect at the time such plans are submitted to the Committee;

(b) The Improvement will be in harmony with the external design of other structures and/or landscaping within the Development;

(c) The Improvement, as a result of its appearance, location or anticipated use, will not interfere with the reasonable enjoyment of any other Owner of his or her property; and

(d) The proposed Improvement(s), if approved, will otherwise be consistent with the architectural and aesthetic standards prevailing within the Development and with the overall plan and scheme of development within the Development.

While it is recognized that the Architectural Review Committee's determination will, of necessity, be subjective to some degree, the members of the Committee shall act reasonably and in good faith and shall consider such factors as the quality of workmanship and materials proposed for the Improvement project, the harmony of its exterior design, finished materials and color with that of other existing structures, and the proposed location of the Improvement in relation to the existing topography, finished grade elevations, roads, Common Areas and other existing structures. A decision on a proposed Improvement project may not violate any

governing provision of law (including, without limitation, the California Fair Employment and Housing Act) or a building code or other applicable law governing land use or public safety.

The approval by the Architectural Review Committee of any plans, drawings or specifications for any work of Improvement done or proposed, or for any other matter requiring the approval of the Architectural Review Committee under this Declaration, or any waiver thereof, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification or matter subsequently submitted for approval by the same or some other Owner. Different locations for Improvements, the size of the structure, proximity to other Residences or Common Facilities and other factors may be taken into consideration by the Committee in reviewing a particular submittal. Accordingly, the Committee shall be entitled to determine that a proposed Improvement or component thereof is unacceptable when proposed on a particular Lot, even if the same or a similar Improvement/component has previously been approved for use at another location if factors such as drainage, topography, noise or visibility from roads, Common Areas or other Lots or prior adverse experience with the product, the design or with similar Improvements mitigate against erection of the Improvement or use of a particular component thereof on the Lot involved in the Owner's submittal.

In approving a request for construction of an Improvement, the Architectural Review Committee may condition approval upon the adoption of modifications in the plans and specifications or observance of restrictions as to location, noise abatement or similar mitigating conditions.

Section 5.07. Inspection Fee and Deposits. The Architectural Rules may require that the submission of plans and specifications be accompanied by a reasonable fee. The Architectural Rules may also provide for a cash deposit procedure to help ensure proper and timely completion of works of Improvement in accordance with approved plans and specifications and to reimburse the Association for damage to roadways and other Common Facilities resulting from the Owner's construction project.

Section 5.08. Delivery of Plans and Specifications. Plans and specifications shall be submitted to the Architectural Review Committee by personal delivery or first-class mail addressed to the Secretary of the Association or the Chairman of the Architectural Review Committee at the Association's principal office.

Section 5.09. Time Limits for Approval or Rejection. Within thirty (30) days after submission of plans and specifications satisfying the requirements of the Architectural Rules, the Architectural Review Committee shall return one set of such plans to the applicant, with either written notice of approval or disapproval or with written suggestions of changes required for approval. If written suggestions of changes required for approval accompany the returned set of plans, the applicant may implement such changes to the plans and within thirty (30) days resubmit plans incorporating such changes for approval to the Committee, which shall not unreasonably withhold its approval so long as the Owner has complied in all material respects with the requested changes. If no written notice of approval or disapproval is received by the applicant within thirty (30) days after the Owner's plans and specifications (or revisions thereto) are submitted to the Committee, the plans shall be deemed to have been approved as submitted.

Section 5.10. Employment of Architect or Engineer. If at any time the Architectural Review Committee determines that it would be in the best interests of the Association and its Members for an applicant to employ an architect, licensed building designer or engineer to design or review any proposed Improvements or component thereof, the Committee shall advise the applicant in writing of its determination whereupon all plans and specifications so designated by the Architectural Review Committee must thereafter bear appropriate evidence of such preparation or review.

Section 5.11. Proceeding With Work. Upon receipt of approval from the Architectural Review Committee, the Owner shall, as soon as practicable, satisfy all conditions thereof and diligently proceed with the commencement of construction and erection of the Improvement pursuant to said approval, said commencement to be, in all cases, within six (6) months from the date of approval (or such other completion deadline as may be established in the Committee's approval) and the project shall be diligently pursued to completion. If the Owner shall fail to comply with this Section, any approval given pursuant to this Article, shall be deemed revoked unless the Architectural Review Committee, upon written request of the Owner made prior to the expiration of the initial completion period, extends the time for commencement or completion. No such extension shall be granted except upon a finding by the Architectural Review Committee that there has been no change in the circumstances upon which the original approval was granted and that the Owner has a bona fide intention and ability to complete the project within the time specified in the extension request.

Section 5.12. Failure to Complete Work. If the Owner fails to comply with this Section 5.11, above, the Architectural Review Committee shall notify the Board of such failure, and the Board shall proceed in accordance with the provisions of Sections 5.13(c) and (d), below, as though the failure to complete the Improvement was a noncompliance with approved plans.

Section 5.13. Inspection of Work by Architectural Review Committee. Inspection of the work relating to any approved Improvement and correction of defects therein shall proceed as follows:

(a) During the course of construction, representatives of the Architectural Review Committee shall have the right to inspect the job site to confirm that the work of Improvement is proceeding in accordance with the approved plans and specifications.

(b) Upon the completion of any work of Improvement for which Architectural Review Committee approval is required under this Article, the Owner shall give the Architectural Review Committee a written notice of completion.

(c) Within thirty (30) days thereafter, the Architectural Review Committee, or its duly authorized representative, may inspect the Improvement to determine whether it was constructed, reconstructed, altered or refinished in substantial compliance with the approval plans. If the Architectural Review Committee finds that the Improvement was not erected, constructed or installed in substantial compliance with the Owner's approved plans, then within the 30-day inspection period the Committee shall give the Owner a written notice of



noncompliance detailing those aspects of the project that must be modified, completed or corrected. If the violation or nonconforming work is not corrected, the Association and the Architectural Review Committee shall have the rights and remedies set forth in Section 5.15 (enforcement), below.

(d) If for any reason the Architectural Review Committee fails to notify the Owner of any noncompliance within thirty (30) days after receipt of the Owner's notice of completion, the Improvement shall be deemed to have been constructed in accordance with the approved plans for the project, unless the Owner knows of the noncompliance and intentionally misleads the Committee with respect thereto.

Section 5.14. Landscaping. As specified in Section 6.01, below, landscaping shall be deemed to be a work of Improvement requiring Architectural Review Committee approval hereunder. Landscaping shall include lawns, hardscape, retaining walls, underground irrigation, ground cover, shrubs, trees and flowers. The use of artificial materials such as plastic plants, or flowers, astro turf, or gravel gardens will be disapproved by the Committee. Front yard landscaping will be installed by the Declarant prior to sale of the subject Lot to a third party purchaser. Owner has ninety (90) days to complete landscape plans for the remainder of the lot after occupancy. The Architectural Review Committee has thirty (30) days to review and approve or deny plans as specified in Section 5.09, above. Once the Owner receives the approval of the Architectural Review Committee, Owner has ninety (90) days to install approved landscape.

Section 5.15. Enforcement.

(a) Stop Work Orders. In addition to other enforcement remedies set forth in this Declaration, the Architectural Review Committee shall have the authority to order an abatement ("red tag") of any construction, alteration or other matter for which approval is required, to the extent that it has not been approved by the Committee or if it does not conform to the plans and specifications submitted to and approved by the Committee. If an Improvement project is red tagged, the Owner and his or her contractor shall cease all construction activity until such time as the issue giving rise to the red tag order is resolved. The red tag notice shall clearly state the reasons why the abatement has been ordered.

(b) No Waiver. No work for which approval is required shall be deemed to be approved simply because it has been completed without a complaint, notice of violation, or commencement of a suit to enjoin such work.

(c) Effect of Failure to Remedy Noncompliance. If the Owner fails to remedy any noticed noncompliance within thirty (30) days from the date of such notification, or if the Owner feels that the project has been red tagged without justification, the Committee shall notify the Board in writing of such failure. The Board shall then set a date on which a hearing before the Board shall be held regarding the alleged noncompliance. The hearing shall be conducted in accordance with Section 13.06, below.

(d) Attorneys' Fees and Costs. If any legal proceeding is initiated to enforce any of the provisions hereof, the prevailing party shall be entitled to recover reasonable attorneys' fees in addition to the costs of such proceeding.

Section 5.16. Variances. The Architectural Review Committee, in its sole discretion, shall be entitled to allow reasonable variances in any procedures specified in this Article or the minimum construction standards specified in Article VI, below, to overcome practical difficulties, avoid unnecessary expense or prevent unnecessary hardships, provided all of the following conditions are met:

(a) If the requested variance will necessitate deviation from, or modification of, a minimum construction standard or a property use restriction that would otherwise be applicable under this Declaration, the Architectural Review Committee shall have the discretion to require that the Owner-applicant provide written confirmation that neighboring Owners are not opposed to the Committee's granting of the requested variance. The notice of the requested variance shall be mailed to the interested Owners (as determined by the Committee) at least fifteen (15) days prior to the date when the Architectural Review Committee is scheduled to act on the requested variance. No decision shall be made with respect to the proposed variance until the 15-day comment period has elapsed.

(b) The Architectural Review Committee must make a good faith written determination that the variance is consistent with one or more of the following criteria: (i) the requested variance will not constitute a material deviation from any restriction contained herein or that the variance proposal allows the objectives of the violated requirement(s) to be substantially achieved despite noncompliance; or (ii) that the variance relates to a requirement land use restriction or minimum construction standard otherwise applicable hereunder that is unnecessary or burdensome under the circumstances; or (iii) that the variance, if granted, will not result in a material detriment, or create an unreasonable nuisance with respect, to any other Lot or Common Area within the Development.

Section 5.17. Compliance Certificate. Within thirty (30) days after written demand is delivered to the Architectural Review Committee by any Owner, the Architectural Review Committee shall provide the requesting Owner with a certificate, executed by any two of its members, certifying (with respect to any Lot owned by the applicant Owner) that as of the date thereof, either: (a) all Improvements made and other work completed by said Owner comply with this Declaration; or (b) such Improvements or work do not so comply, in which event the certificate shall also identify the noncomplying Improvements or work and set forth with particularity the basis of such noncompliance. Any purchaser from the Owner, or from anyone deriving any interest in said Lot through the Owner, shall be entitled to rely on the Committee's compliance certificate with respect to the matters therein set forth, such matters being conclusive as between the Association, the Committee, the Declarant, all Owners and any persons deriving any interest through them.

Section 5.18. Limitation on Liability. Architectural Review Committee approval of plans shall not constitute a representation, warranty or guarantee, whether expressed or implied, that such plans and specifications comply with good engineering design or with zoning or

building ordinances, or other governmental regulations or restrictions. By approving such plans and specifications, neither the Architectural Review Committee, the members thereof, the Association, any Member thereof, the Members of the Board nor Declarant assumes any liability or responsibility therefor, or for any defect in the structure constructed from such plans or specifications. Neither the Architectural Review Committee, nor any member thereof, the Association, the Board nor Declarant shall be liable to any Member, Owner, occupant, or other person or entity for any damage, loss, or prejudice suffered or claimed on account of: (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective; or (b) the construction or performance of any work, whether or not pursuant to the approved plans, drawings, and specifications.

Section 5.19. Declarant Exemption. The Architectural Review Committee shall have no authority, power or jurisdiction over Lots or other parcels within the Development owned by Declarant until such time as Declarant conveys title to the Lot or other parcel to a purchaser or other transferee who is not designated as a successor Declarant (see Section 1.21, above).

Section 5.20. Compliance With Governmental Regulations. Review and approval by the Architectural Review Committee of any proposals, plans or other submittals pertaining to Improvements shall in no way be deemed to constitute satisfaction of, or compliance with, any building permit process or any other governmental requirements, the responsibility for which shall lie solely with the Lot Owner who desires to construct, install, or modify the Improvement.

Section 5.21. Appeals. Once the Architectural Review Committee is a committee appointed solely by the Board of Directors, appeals from decisions of the Architectural Review Committee may be made to the Board of Directors, which may elect, in its discretion, to hear the appeal or, in the alternative, to affirm the decision of the Architectural Review Committee. The Association Rules shall contain procedures to hear, process and decide appeals pursuant to this section.

Section 5.22. Association Funding for Architectural Review Costs. It is anticipated that the Committee will require secretarial and administrative assistance, and that the Committee will incur out-of-pocket expenses in the performance of its responsibilities. The initial budget of the Association, submitted to and reviewed by the Department of Real Estate, contains projections of such costs. The Association shall provide the Committee with reasonably required secretarial and administrative assistance, or, at the option of the Board, shall reimburse the Committee therefor, and shall reimburse the Committee for out-of-pocket expenses incurred by the Committee in the performance of its responsibilities. The Committee shall remit to the Association all review fees, if any, collected by the Committee.

## **ARTICLE VI**

### **Minimum Improvement Standards**

Unless a variance is requested from, and granted by, the Architectural Review Committee in accordance with Section 5.17, above, Improvements constructed on any Lot shall conform to the following minimum improvement standards:

Section 6.01. Approval by Architectural Review Committee. No building, fence, wall or other permanent structure or Improvement shall be erected, altered or placed on any Lot until building plans, specifications and a plot plan showing the location of structures on the Lots have been submitted to the Architectural Review Committee for review and approval as described in Article V, above.

Section 6.02. No Temporary Structures. No recreational vehicle, trailer, mobile home, camper, tent, shack, used structures, structures of a temporary character, or other outbuildings shall be used on any Lot at any time as a Residence.

Section 6.03. No Used Materials. No used buildings or structures, intended for use as a Residence shall be placed on any Lot.

Section 6.04. Solar Heating Systems. Subject to limitations imposed by California law, the Architectural Review Committee shall be entitled to adopt, as part of the Architectural Rules, reasonable regulations regarding the installation of solar heating systems. These rules may include limitations on placement and design of such systems to the extent necessary to avoid an unsightly appearance from neighboring Lots or Common Area.

Section 6.05. Colors and Exterior Finishes. All exterior colors, textures and materials, including roof materials, must be adequately described in the plans and specifications (with an indication where the colors will be used upon the finish dwelling) and approved in writing by the Committee prior to initiation of construction. Color samples shall be submitted to the Committee along with the plans and specifications. The Committee is authorized to maintain a chart of approved colors.

Section 6.06. Drainage. No Owner shall do any work, construct any Improvement, place any landscaping or suffer the existence of any condition whatsoever which shall alter or interfere with the drainage pattern for the Owner's or any adjacent Lots or parcels or Common Area as established in connection with the approval of the final subdivision, Plot plans and parcel maps applicable to the Development by the County, except to the extent such alteration in drainage pattern is approved in writing by the Architectural Review Committee, and, if applicable, by the City and any other public authorities having jurisdiction.

Section 6.07. Antennas, Aerials and Satellite Dishes. No outside television antenna, aerial, satellite dish or similar device for the transmission or reception of television, radio, satellite, or other signals or any kind are prohibited, except:

(a) Declarant and the Association shall have the right, without obligation, to erect, place or install and maintain any such apparatus for the benefit of all or a portion of the Development.

(b) Antennas or satellite dishes that are one meter or less in diameter or diagonal measurement which are designed to receive video programming services via multi-point distribution services, including multi-channel multipoint distribution services, instructional

television fixed services and local multipoint distribution services (collectively "Permitted Device[s]") may be erected, placed or installed on a Lot, provided that:

(i) Any such Permitted Device is placed in the least conspicuous location on the Residence or Lot at which an acceptable quality signal can be received, as reasonably determined by the Architectural Review Committee.

(ii) Reasonable restrictions which do not significantly increase the cost of installation of a Permitted Device or significantly decrease its efficiency or performance, including, without limitation, screening material, location or complimentary-color painting of the Permitted Device, may be imposed as part of the Architectural Rules. In no event can the Association or the Architectural Review Committee impose a pre-installation Architectural Review process so long as the Owner is installing a Permitted Device.

Section 6.08. Exterior Lighting and Fixtures. No colored lights (except holiday displays and yellow insect type lights) shall be permitted at any location within the Development. All exterior fixtures that are attached to the main Residence and any post-mounted exterior fixtures shall be of compatible design and materials of the Residence. Any post mounted exterior fixtures shall be of compatible design and materials as the fixtures attached to the main Residence. No fixtures which illuminate and excessively glare onto any other Lot shall be permitted. No white plastic address type identification fixtures, or unshielded spot/floodlight fixtures are permitted.

Section 6.09. Water Systems and Pools. No individual water supply system or swimming pool shall be permitted on any Lot unless such system is designed, located and constructed in accordance with the requirements, standards and recommendations of the appropriate public health authority and the Architectural Review Committee. Approval of such systems as installed shall also be obtained, if required, by any responsible governmental agency. Elevated or "dough boy" style pools shall not be permitted under any circumstances. Residences in the Development shall include a recirculating hot water system, or similar technology to provide instantaneous hot water at each hot water faucet in the residence.

Section 6.10. Fences. All screening and fencing must be approved by the Architectural Review Committee and must be designed to conform to the design of the proposed or existing Residence; such screening must be architecturally designed and in its construction wood, rock, masonry or wrought iron or a combination thereof shall be employed. All screening and fencing must be maintained in a good sound structural manner, and painted periodically so it does not appear shabby or unkempt. Screening and fencing must be so designed as to face its most attractive side toward the street or toward any neighboring vacant Lots or Common Area.

Only open tubular steel fencing shall be permitted along any rear and side Lot lines and inside yards within the fifteen foot firebreak zone that is adjacent to the Environmental Preserve and the fence line adjacent to the Preserve cannot be modified to add any access gates. When these fences are repaired or replaced, the replacement materials shall be substantially identical to the original fencing.

The Declarant reserves the right to approve any application for installation of a fence that is submitted by an Owner pursuant to Article V, above to ensure that the restrictions imposed on fencing by this Section 6.10 are observed. Fence and wall locations have been determined by the Declarant in advance as part of the overall plan of development for Woodlake Village and may not be subsequently altered by any Owner or resident. Fencing originally installed by the Declarant or later approved for installation by the Architectural Review Committee may not subsequently be removed or modified, including, without limitation, the addition of gates in the fence or alterations of the height or components of the fence, without the prior approval of the Architectural Review Committee. Furthermore, any fence modifications, once approved by the Committee, must also be in conformance with the City of Roseville zoning and/or building requirements.

Section 6.11. Prohibition on Front Yard Landscape Art or Decorations. As stated in Section 1.23, above, landscaping projects constitute "Improvement" projects that must be approved, in advance, by the Architectural Review Committee. Under no circumstances will the Committee approve landscape plans that include garden art or lawn decorations, such as statues of people or animals, sculptures, wind chimes, or pinwheels. Bird baths, or water features will be considered so long as they are appropriate to and consistent with the balance of the landscape plan.

## **ARTICLE VII**

### **City of Roseville, Association and Owner Maintenance Responsibilities**

#### Section 7.01. Common Area and Certain Public Properties.

(a) Association Common Area Maintenance Obligations, Generally. The Association shall be solely responsible for all maintenance, repair, upkeep and replacement of the Common Areas and Common Facilities within the Development, including, without limitation, the private roads, adjacent sidewalks, tot lot and picnic area located on Lot E, within the Development, retaining walls originally constructed and installed by the Declarant either within the Common Areas or along certain Lot boundary lines that are adjacent to Common Areas, and, any entry monumentation and signage, sound walls, and/or fences and pedestrian trails located in the Common Areas. No person other than the Association or its duly authorized agents shall construct, reconstruct, refinish, alter or maintain any Improvement upon, or shall create any excavation or fill or change the natural or existing drainage of any portion of the Common Area. In addition, no person shall remove any tree, shrub or other vegetation from, or plant any tree, shrub, or other vegetation upon the Common Area without express approval of the Association.

It is further the Association's responsibility to maintain landscaped Lots within the Development. Landscaped Lots to be maintained by the Association include Lots A, B, C and E, which includes the tot lot, lake overlooks, the lake (including, without limitation, the berm that retains water in the lake), picnic areas, and the trail system.

(b) Commencement of Maintenance of Common Areas. Notwithstanding any conveyance of Common Areas to the Association, the Association's responsibility to maintain the Common Areas shall not begin until the later of the following events: (i) inspection and approval of such Common Areas by the Association, not to be unreasonably withheld or delayed, or (ii) commencement of the obligation of Owners to pay Regular Assessments to the Association. Prior to the commencement of the Association's maintenance responsibility, such maintenance shall be the responsibility of Declarant.

Notwithstanding the foregoing, if the contractors or subcontractors of the Declarant are contractually obligated to maintain the landscaping or other Improvements within the Common Areas, the Association shall not interfere with the performance of such warranty or other contractual maintenance obligations. The maintenance performed by the contractors or subcontractors of Declarant shall not postpone the commencement of Regular Assessments pursuant to this Declaration nor entitle either Declarant to claim any offset or reduction in the amount of such Assessments.

(c) Maintenance of Certain Public Parcels Within the Development. The Conditions of Approval and the Development Agreement obligate the Association to provide the following maintenance and repair services with respect to certain portions of the Development that are owned by the City of Roseville. Specifically:

(i) Fire Break Maintenance and Trash Collection within the Environmental Preserve. The Association shall be responsible for maintaining any portion of the fire break that is required by Condition of Approval No. 50 along the rear, or side yard of any Lot that abuts the Environmental Preserve or open space to the extent that the fire break is located in the Environmental Preserve, rather than on the Owner's Lot (see the discussion of the location of the fire break in Section 7.02(b), below). The Association shall also be responsible for routine trash collection within the Environmental Preserve so as to maintain the Preserve in an attractive and natural appearance.

(ii) Maintenance of Retaining Walls in the Environmental Preserve and Common Areas. The Association shall also be responsible for the maintenance, repair and eventual replacement of any retaining walls originally constructed by the Declarant and located along the common boundary lines separating certain Lots from the Preserve. In the event that any such retaining wall has been constructed in a manner that encroaches into the boundary of a Lot adjacent to the Environmental Preserve or the Common Area, the Association, rather than the Lot Owner, shall nevertheless be solely responsible for maintenance, repair and replacement of the retaining wall.

(iii) Additional Contingent Maintenance Obligations Within the Environmental Preserve. The Association may also have contingent future the maintenance obligations within the Environmental Preserve under those circumstances set forth in Section 7.05(c), below.

(iv) Enforcement by the City; Indemnification and Hold Harmless. In the event the Association fails to perform its responsibilities hereunder with respect to maintenance of fire breaks along Lots and Common Areas that abut the Environmental Preserve, or trash

collection within the Environmental Preserve, or the maintenance of retaining walls along portions of the Environmental Preserve boundaries, the City shall have the right to perform such work and to charge the Association an amount not in excess of one hundred and fifty percent (150%) of the costs incurred by the City to perform the work. Any charges imposed by the City shall be paid by the Association within thirty (30) days following tender of a written demand for payment. Prior to exercising its rights hereunder the City shall be obligated to provide the Association with at least twenty (20) days' prior written notice that the City considers the Association to be in default of its obligations hereunder.

The Association also agrees to indemnify and hold harmless the City and its various departments, officials and employees from and against any claims, demands and causes of action arising out of or related to any negligent act or omission by the Association, its agents or contractors in the performance of the Association's obligations pursuant to this subparagraph (c).

(d) Maintenance of Perimeter Wall Around Portions of the Development. As more particularly provided in Section 7.05(b), below, the Conditions of Approval for the Development impose maintenance obligations on the Association with respect to certain portions of the masonry walls along portions of the southern, western and eastern boundaries of the Development.

(e) Association Maintenance Manual. In the event that the Declarant prepares and provides the Association with an Association Maintenance Manual applicable to the repair and maintenance of Association Common Areas and Common Facilities, the Association shall be obligated to comply with all of the maintenance obligations, recommendations and schedules set forth in the Manual. However, the Board of Directors shall be authorized, from time to time, to make appropriate revisions to the Association's Maintenance Manual based on the Board's review thereof in order to update the Association Maintenance Manual to reflect current industry maintenance practices and recommendations, so long as such changes do not reduce the useful life or functionality items to which the Maintenance Manual pertains. So long as the Declarant owns any Lots in the Development, the Declarant shall also be entitled to make recommendations to the Board of Directors for the revision or supplementation of the Association Maintenance Manual.

#### Section 7.02. Owner Maintenance Responsibilities.

(a) Owner Obligations to Maintain the Owner's Residence and Lot. Each Owner shall be responsible for the maintenance and repair of his or her Residence and Lot in a first-class condition consistent with the maintenance standards prevailing in the Development and in accordance with the Maintenance Manual described in subparagraph (b), below. At a minimum, "first-class condition" means:

- (i) Painting, repairing, replacing and caring for roofs, fences, exterior building surfaces, exterior glass surfaces, exterior doors, and to maintaining all yard areas;
- (ii) Weekly mowing, trimming, edging of lawns and other ground



cover, removal of dead or dying plants and weeds. Under no circumstances shall Owners or residents deposit lawn clippings or other landscaping debris in the Environmental Preserve or initiate or permit other activities that are in violation of the Environmental Preserve Operations and Management Plan;

- (iii) Watering at intervals necessary to keep grass, shrubs and trees in an attractive condition;
- (iv) Maintenance of drainage facilities; and
- (v) Maintenance, repair and replacement of the surface of a masonry wall that on the Masonry Wall Site Plan attached hereto as Exhibit "C". Certain Lots have been improved by the Declarant with a retaining wall that separates the Lot from adjacent Common Areas or the Environmental Preserve. Any such retaining wall shall be maintained by the Association, even if the retaining wall encroaches on the Owner's Lot.

However retaining walls located on Lots that share a common boundary with Blue Oaks Boulevard shall be maintained solely by the Lot Owner.

Without limiting the generality of the foregoing, in the event that the building plans for a Residence are required by the City of Roseville to include a backwater valve on the Residence's sewer line, it shall be the obligation of the Owner of the Residence to maintain the valve and to prevent damage from occurring to the Residence and its contents due to failure of the valve to function properly. The Owner of a Lot on which a fence is located shall maintain and, as necessary, repair and replace the fence, including periodic repainting or re-staining. The maintenance of good neighbor fencing along a common boundary line between Lots is a shared obligation of the adjoining Lot Owners. Neither Owner shall use any portion of the fence located along a shared boundary line so as to interfere with the use and enjoyment of the other Owner. In the event that any portion of such fence, except the interior surface of one side, is damaged or injured from any cause, other than the act or negligence of either party, it shall be repaired at the joint expense of the adjacent Lot Owners who share the common fence. Owners of Lots that are separated from adjacent streets by a masonry wall originally constructed by the Declarant shall be responsible for the maintenance of the interior surface of that portion of the masonry wall that abuts the Owner's Lot.

(b) Fire Break Requirements. The Conditions of Approval for the Development require that Lots 12 through 16, 29 through 34 and Lots 63 and 64 abutting Lot D (the "Environmental Preserve"), must have a thirty foot (30') wide mowed fire break at the back of residential Lots in the Development that share a common boundary with the Environmental Preserve. This fire break must be maintained annually and in place by June 1 of each year. On a portion of the Environmental Preserve the fire break will be all or partially located in the backyard of the adjacent Lots. Where firebreak easements extend into the back and side yard areas of the listed Lots, no improvements shall be constructed of combustible materials (such as wood decks) within the easement area. Owners of Lots that are affected by the fire break

requirements shall be notified through deed disclosures that they will be responsible for maintaining the fire break (to the extent it is located on their Lot) in accordance with City Fire Department requirements. Figure 2 of the Fiddymment 44 Open Space Preserve Operations and Management Plan (dated August 12, 2005) depicts the approximate locations of the Environmental Preserve fire break.

(c) Maintenance of Perimeter Wall Around Portions of the Development As more particularly provided in Section 7.05(b), below, the Conditions of Approval for the Development impose maintenance obligations on Lot Owners with respect to certain portions of the masonry walls along portions of the southern, western and eastern boundaries of the Development. The locations of those walls is shown on the site plan that is attached hereto as Exhibit "C"

(d) Owner Maintenance Manuals. The Association shall maintain at its principal offices, and provide to each Owner upon request, a Maintenance Manual prepared by the Declarant which pertains to the maintenance and repair obligations of Owners under the Governing Documents. The Association shall have the right to charge the requesting Owner a fee for the Maintenance Manual equal to the actual cost to the Association of providing a copy to the Owner. By accepting a deed to any Lot in "the Development", each Owner acknowledges and agrees that the Owner is required to comply with all of the recommended maintenance obligations and schedules set forth in the Maintenance Manual and each Owner is further obligated to provide a copy of the Maintenance Manual to any successor purchaser of the Owner's Lot.

#### Section 7.03. Cooperative Maintenance Obligations.

(a) Cooperation Among Association and the Owners, Generally. To the extent necessary or desirable to accomplish the Association's maintenance obligations hereunder, individual Owners shall cooperate with the Association and the agents and maintenance personnel of the Association in the prosecution of the Association's maintenance activities.

(b) Cooperation Among the Association, the Owners, and the City With Respect to Perimeter Wall Maintenance. Attached hereto as Exhibit "C" is a masonry perimeter wall site plan. The responsibility for the maintenance of those perimeter walls shall be as follows:

(i) The Perimeter Wall Along Blue Oaks Boulevard Any Owner whose Lot abuts the perimeter wall along Blue Oaks Boulevard (Lots 85 through 102, inclusive) shall be obligated to maintain the surface of the wall that faces into the Owner's Lot. The Mello-Roos District that is more particularly identified in subparagraph (c), below, shall be responsible for the maintenance, repair and eventual replacement of the perimeter wall along Blue Oaks Boulevard and for maintenance of the exterior surface of that wall (i.e., the surface that faces Blue Oaks Boulevard). Maintenance shall include periodic painting, as necessary, and graffiti abatement.

(ii) The Perimeter Wall Along New Meadow Drive and Ringneck Drive. Any Owner whose Lot abuts the perimeter wall along New Meadow Drive and the entrance to Ringneck Drive (Lots 102 through 109, inclusive, Lots 132 through 137, inclusive, Lots 141

through 144, inclusive, Lot 148, and Lots 1 and 2) shall be obligated to maintain the surface of the wall that faces into the Owner's Lot. The Owners of the Lots listed in this subparagraph (ii) shall also have a shared responsibility to maintain, repair and replace the perimeter wall, itself, with each Owner being responsible for that portion of the perimeter wall that is located along the Owner's property line.

(iii) The Perimeter Wall Separating Lots 70, 71, 84, and 85 from Adjacent Parcel. The Owner's of Lots 70, 71, 84 and 85 shall be obligated to maintain the surface of the perimeter wall that faces into the Owner's Lot and separates the Lot from the adjacent parcel to the east of such Lots (the neighboring parcel currently being Parcel 5 as shown on the Map that is recorded in the Official Records of Placer County, California at Book "T" of Maps, Page 37). The Owners of the Lots listed in this subparagraph (iii) shall also have a shared responsibility to maintain, repair and replace the perimeter wall, itself, with each Owner being responsible for that portion of the perimeter wall that is located along the Owner's property line.

(c) Association and City Maintenance Obligations Within the Environmental Preserve. The Environmental Preserve that is Lot D within the Development is owned by the City of Roseville and the City has established a Mello-Roos Community Facilities District pursuant to the Mello Roos Community Facilities District Act of 1982 (Cal. Government Code section 53311 et seq.; the "Mello-Roos District") for the purpose of providing a source of funding to the City for the annual maintenance of the Environmental Preserve in accordance with the Preserve's Operations and Management Plan which has been filed with the City. Pursuant to that Plan, the Association remains responsible for maintaining firebreaks and for routine trash collection and clean-up within the Environmental Preserve (see Section 7.01(d)(i), above). All other maintenance in the Environmental Preserve shall be the responsibility of the City; provided, however that in the event that, if for any reason, the Mello-Roos district annual special tax to finance Environmental Preserve maintenance cannot be levied, collected or used for such purposes, the Association shall be required to fund the annual cost of maintenance of the Environmental Preserve that would have been paid by the Mello-Roos District special tax, and the maintenance expenses shall be a Common Expense of the Association to be funded from the Association's regular and special assessment authority under Article IV, above.

For both the City and the Association, if the Association becomes responsible for maintenance of the Environmental Preserve pursuant to the immediately preceding sentence, "maintenance" shall include, without limitation, all measures required by the Operations and Management Plan and all required environmental reporting and mitigation monitoring in accordance with the mitigation and monitoring plan prepared for the Development and referenced in the Development's Negative Declaration. Maintenance and use of the Environmental Preserve shall also be subject to the covenants and restrictions that are set forth in that certain Declaration of Restrictions made by SHP Fiddymment MP, LLC, a California limited liability company on September 27, 2005 and recorded in the Official Records of Placer County on September 29, 2005 as Document No. 2005-0130985. For ease of reference, the restrictions set forth in that Declaration are attached hereto as Exhibit "B".

Owners and residents are encouraged to contact the Association, rather than the City, in the event that an Owner or resident has inquiries or complaints regarding the maintenance,

operation or management of the Environmental Preserve. In that way, for so long as the City is responsible for Environmental Preserve maintenance, the City will have one principal contact and clearing house, via the Association for such Preserve maintenance issues. The Association shall also be responsible for monitoring and enforcing compliance by Owners and residents with the Operating and Maintenance Plan for the Environmental Preserve, including, without limitation, any restrictions that are part of the Operating and Maintenance Plan.

(d) Execution of Maintenance Agreements. Except as otherwise provided in this Declaration, neither Declarant nor any of its agents shall enter into any contract which would bind the Association or the Board for a period in excess of one year. Subject to this limitation on contract term, the Declarant may cause agreements, contracts, declarations or other documents ("Maintenance Agreements") to be executed which impose on portions of the Overall Property not then annexed, obligations to make contributions with respect to certain Common Expenses. If any Maintenance Agreements terminate or expire or cease to apply to particular property, the Association shall have the power and the duty, at the request of the owner of any portion of the Development theretofore obligated pursuant to the Maintenance Agreement to execute in recordable form an agreement and acknowledgment that the Maintenance Agreement has terminated, expired, or ceases to apply to a particular property, as the case may be.

The Association may also enter into Maintenance Agreements (for periods not to exceed one year) with the Declarant, the owner of the property that shares the perimeter wall described in subparagraph (b)(iii), above, the City, or other local governmental agencies in order to achieve economies of scale or to efficiently and cost effectively share maintenance equipment, maintenance personnel or contractors and other resources and to discharge responsibilities imposed on the Association, particularly with respect to perimeter wall maintenance and maintenance within the Environmental Preserve..

#### Section 7.04. Drainage Structures, Ditches and Swales.

(a) All drainage structures, culverts and canals improved by the Declarant for the major collection of storm runoff and any natural drainage courses within Common Areas shall be maintained regularly by the Association.

(b) Except as provided in subparagraph (a), above, each Owner shall keep drainage courses, ditches and swales on his or her Lot free and clear of all obstructions, and shall, in cooperation with contiguous property Owners (including the Association and the Declarant as to any contiguous parcels owned by them), maintain all such drainage ditches, swales and culverts common to their Lots in good order.

(c) No Owner or resident shall alter or obstruct a natural drainage course, or materially add to the natural water volume of said drainage course without making adequate provisions with respect to neighboring Lots and Common Areas. Any such alterations, obstructions, or additions to water volume shall be considered a work of Improvement that is subject to prior review and approval by the Architectural Review Committee.

Section 7.05. Association Recovery of Costs of Certain Repairs and Maintenance.

(a) Association Maintenance Caused by Owner Negligence. If the need for maintenance or repair, which would otherwise be the Association's responsibility hereunder is caused through the willful or negligent acts of an Owner, his or her family, guests, tenants, or invitees, and is not covered or paid for by Association insurance policies or any liability insurance maintained by the responsible Owner, the cost of such maintenance or repairs shall be subject to recovery by the Association through the imposition of a Special Individual Assessment against the offending Owner in accordance with Section 4.04, above.

(b) Owner Defaults in Maintenance Responsibilities. If an Owner or Owners fail to perform maintenance or repair functions on the Owner's Lot for which he or she is responsible, the Association may give written notice to the offending Owner with a request to correct the failure within fifteen (15) days after receipt thereof. If the Owner refuses or fails to perform any necessary repair or maintenance, the Association may exercise its rights under Section 3.07(b), above, to enter the Owner's Lot and perform the repair or maintenance so long as the Owner has been given notice and the opportunity for a hearing in accordance with 13.06, below. Without limiting the foregoing, this right of entry and enforcement shall apply with respect to the obligations of certain Owners to maintain perimeter walls pursuant to Section 7.05(b), above.

Section 7.06. Other Maintenance Obligations of the Mello-Roos District. In addition to maintenance of the Environmental Preserve, as stated in Section 7.03(c), above, the Mello-Roos District shall have the following additional responsibilities within or adjacent to the Development:

(a) funding the maintenance of the landscape setback on the northern side of Blue Oaks Boulevard and on the eastern side of New Meadow Drive, including any entry monumentation and signage, sound walls, masonry walls, or fences, and pedestrian and/or bicycle pathways located therein as well as the performance of autumn leaf cleanup;

(b) funding half of the costs of maintaining the median within New Meadow Drive;

(c) funding the maintenance of the public use easements, including any pedestrian and/or bicycle pathways located within such public easements;

(d) funding the maintenance of any bus shelters located within the Development, to the extent that the City does not obtain alternative financing for such maintenance such as through the leasing of advertising space in the shelters;

(e) funding the maintenance of all public water quality structural controls and drainage swales constructed between storm drain outfalls and receiving waters;

(f) funding any costs that the City is entitled to recover from the Association pursuant to Section 7.01(c)(iv), above, for maintenance of the Environmental Preserve performed by the City as a result of the Association's failure to diligently prosecute such maintenance.

## **ARTICLE VIII**

### **Property Use Restrictions**

In addition to the restrictions established by law or by Association Rules promulgated by the Board of Directors (consistent with this Declaration), the following restrictions are hereby imposed upon the use of Lots, Common Areas and other parcels within the Development:

#### Section 8.01. Use of Lots.

(a) All Lots within the Development shall be used solely for the construction of Residences whose occupancy and use shall be restricted to Single Family Residential Use. In no event shall a Residence be occupied by more individuals than permitted by applicable law, zoning or other local governmental regulation. The restriction is not intended to preclude construction of a "guest house" for the housing of occasional social guests or servants' quarters for the housing of servants or the domestic employees on the premises.

(b) All Residence and related structures erected on any Lot shall conform to the minimum construction standards set forth in Article VI, above, unless a variance has been granted by the Architectural Review Committee in accordance with Section 5.16, above.

(c) Notwithstanding the foregoing, Declarant and its successors or assigns shall be entitled to use Lots owned by Declarant, and the Residences located thereon, as models, sales offices or construction headquarters for the purpose of constructing Residences and marketing Lots within the Development until all Lots owned by Declarant are sold.

(d) Each Lot shall be conveyed as a separately designated and legally described fee simple estate, subject to this Declaration. All Lots and the Residences and other Improvements erected or placed thereon (including, without limitation, landscaping) shall at all times be maintained in such a manner as to prevent their becoming unsightly.

(e) The vegetation and landscaping on any Lot shall be planted or maintained by the Owner or resident in such a manner as to reduce the risk of fire, prevent or retard shifting or erosion of soils, encourage the growth of indigenous ground cover and to cause the proper diversion of water into streets and natural drainage channels.

Section 8.02. Common Areas. The Common Areas shall be preserved as open space and used for recreational and other purposes incidental and ancillary to the use of Lots. Such use shall be limited to the private use for aesthetic and recreational purposes by the Members and their tenants, families and guests, subject to the provisions of the Governing Documents. No Improvement, excavation or work which in any way alters any Common Area or Common Facility from its natural or existing state on the date such Common Area or Common Facility shall be made or done except by the Association and then only in strict compliance with the provisions of this Declaration.

Section 8.03. Prohibition of Noxious Activities. No illegal, noxious or offensive activities shall be carried out or conducted upon any Lot or Common Area nor shall anything be done within the Development which is or could become an unreasonable annoyance or nuisance to neighboring property Owners. Without limiting the foregoing, no Owner shall permit noise, including, but not limited to barking dogs, stereo amplifier systems, television systems, motor vehicles or power tools, to emanate from an Owner's Lot or from activities within the Common Area, which would unreasonably disturb any other Owner's or tenant's enjoyment of his or her Lot or the Common Area.

Section 8.04. Household Pets. The following restrictions regarding the care and maintenance of pets within the Development shall be observed by each Owner and resident:

(a) A reasonable number of common household pets may be kept on each Lot so long as the same are not kept, bred or maintained for commercial purposes. No other animals, livestock, or poultry of any kind shall be kept, bred or raised on any Lot or in any Residence.

(b) Dogs shall only be allowed on the Common Area when they are leashed and otherwise under the supervision and restraint of their Owners.

(c) No household pet shall be left chained or otherwise tethered in front of a Lot or in the Common Area. Pet owners shall be responsible for the prompt removal and disposal of pet wastes deposited by their pets in the Development.

(d) Each person bringing or keeping a pet on the Development shall be solely responsible for the conduct of the owner's pets. The Association, its Board, officers, employees and agents shall have no liability (whether by virtue of this Declaration or otherwise) to any Owners, their family members, guests, invitees, tenants and contract purchasers for any damage or injury to persons or property caused by any pet.

(e) The Board of Directors shall have the right to establish and enforce additional rules and regulations defining in a uniform and nondiscriminatory manner, what constitutes a "reasonable number" of pets depending on their size, disposition and/or maintenance requirements and imposing standards for the reasonable control and keeping of household pets in, upon and around the Development to ensure that the same do not interfere with the quiet and peaceful enjoyment of the Development by the other Owners and residents.

Section 8.05. 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:

(a) signs required by legal proceedings or otherwise specifically authorized by applicable statute;

(b) no more than one identification sign for individual Residences;

(c) no more than one "for sale" sign for the individual Lot on which the sign is located;

(d) other signs, such as open house or garage sale signs, or signs advising of the existence of security or surveillance services, or "no solicitation" signs, the nature, size, number, and location of which have been approved in advance and in writing by the Architectural Review Committee or are in accordance with written guidelines which may be developed and approved by the Architectural Review Committee;

(e) signs of the Declarant located on any Lot, on any property owned by the Declarant, on any Common Area or on any other portion of the Development; provided, however, that once a Lot has been sold by Declarant to a third party, no signs permitted by this subparagraph (e) may be erected or maintained on the Lot without the consent of its Owner;

(f) signs posted by the Association within any portion of the Common Area; and

(g) such other signs (including but not limited to builder signs) which have been approved in writing by the Architectural Review Committee as to size, quantity, colors, design, message content and location. Reasonable rules relating to time, place and manner to displaying political signs may be adopted by the Association.

Section 8.06. Business Activities. No business or commercial activities of any kind whatsoever shall be conducted in any Residence garage or out building or in any portion of any Lot without the prior written approval of the Board; provided, however, the foregoing restriction shall not apply to the activities, signs or activities of the Association in the discharge of its responsibilities under the Governing Documents or the Declarant's activities in connection with the development, sale and marketing of the Development. Furthermore, no restrictions contained herein shall be construed in such a manner so as to prohibit any Owner from: (a) maintaining his or her personal library in his or her Residence; (b) keeping his or her personal business records or accounts therein; (c) handling his or her personal or professional telephone calls or correspondence therefrom; (d) engaging in other activities related to the resident's business profession that can be conducted from a Residence using computers and other technology so long as the home or business activities generate no traffic, noise, or involve other employees or contractors in the Residence; (e) leasing or renting his or her Residence in accordance with Section 2.06, above; or (f) conducting any other activities on the Owner's Lot otherwise compatible with residential use and the provisions of this Declaration which are permitted under applicable zoning laws or regulations without the necessity of first obtaining a special use permit or specific governmental authorization. The uses described in (a) through (f), above, are expressly declared to be customarily incidental to the principal residential use and not in violation of this Section 8.06.

Section 8.07. Garbage. No rubbish, trash, or garbage shall be allowed to accumulate on Lots. Any trash that is accumulated by an Owner outside the interior walls of a Residence shall be stored entirely within appropriate covered disposal containers and facilities which shall be located in the residence or garage or at some other location on the resident's Lot that is screened



from view from any street, neighboring Lot or Common Area. Any extraordinary accumulation of rubbish, trash, garbage or debris (such as debris generated upon vacating of premises or during the construction of modifications and Improvements) shall be removed from the Development to a public dump or trash collection area by the Owner or tenant at his or her expense. The Association shall be entitled to impose reasonable fines and penalties for the collection of garbage and refuse disposed in a manner inconsistent with this section.

Section 8.08. Storage. Storage of personal property on any Lot shall be entirely within enclosed storage areas. There shall be no woodpiles nor storage piles accumulated on top, or outside, of any enclosed storage area. The Association shall have the right to establish and maintain on the premises appropriate storage yards and storage buildings for the maintenance of materials and equipment used by the Association in connection with its planting, building, repair, maintenance and preservation of the structures, gardens and other Improvements within the Common Areas which the Association is obligated to repair and maintain.

Section 8.09. Clotheslines. No exterior clothesline shall be erected or maintained and there shall be no drying or laundering of clothes on any Lot in a manner which is visible from any neighboring Lot or the Common Area.

Section 8.10. Burning. There shall be no exterior fires whatsoever except barbecue fires located only upon Lots and contained within receptacles designed for such purpose.

Section 8.11. Sports Apparatus. The erection of basketball standards or fixed sports apparatus is prohibited, except as provided by this Section 8.11. No basketball backboard or other sport apparatus shall be constructed or maintained on any Lot so as to be visible from the street fronting the Residence. The location of basketball standards and other sports apparatus is therefore a matter that must be approved by the Architectural Review Committee. Any permanent sports apparatus (meaning an apparatus affixed to a Residence, garage, or affixed to the ground of the Lot's rear yard area), including basketball standards, must be installed in the rear yard at a location that is not visible from neighboring streets, furthermore any installation of a permanent sports apparatus of any kind shall include landscape planting so as to eventually create a green screen to mitigate the visibility from any adjacent lot. Installation of basketball hoops or other fixed sports apparatus to the wall of a residence is not favored and the Architectural Review Committee may, in its discretion, require some other manner of installation and/or location. A basketball standard must be maintained in good condition and repair. Any portable basketball standard must be stored out of sight of the street or neighboring houses except when it is being used for play. The Association Rules may further define what it means for a portable standard to be "in play".

Section 8.12. Machinery and Equipment. No power tools, machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot except such machinery or equipment as is usual or customary in connection with the use, maintenance or repair of a private Residence or appurtenant structures within the Development.

Section 8.13. Diseases and Pests. No Owner shall permit any thing or condition to exist upon his or her Lot which shall induce, breed, or harbor infectious plant diseases, rodents or

noxious insects.

Section 8.14. Vehicle and Parking Restrictions. The following vehicle and parking restrictions shall apply to the Property:

(a) Trucks, Trailers, Recreational Vehicles, Campers and Boats. No motor vehicle classified by manufacturer rating as exceeding one ton, recreational vehicle, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, boat, boat trailer, or other similar equipment or vehicle may be parked, maintained, constructed, reconstructed or repaired on any Lot or on any street within the Development so as to be Visible From Neighboring Property; provided, however, the provisions of this Section shall not apply to pickup trucks of one ton or less capacity with camper shells not exceeding seven feet in height measured from ground level and mini-motor homes and/or passenger vans not exceeding eight feet in height and 18 feet in length which are parked as provided in subparagraph (c) below and are used on a regular and recurring basis for basic transportation. The provisions of this subparagraph (a) shall not apply to cleaning, loading or unloading and short-term parking (not to exceed forty-eight (48) consecutive hours) of non-commercial vehicles which shall be permitted for a cumulative period not to exceed one-hundred and twenty (120) hours in any calendar month. In no circumstances will vehicles be used for overnight occupancy within the Development.

(b) Motor Vehicle Maintenance/Inoperable Vehicles. No automobile, motorcycle, motorbike or other motor vehicle shall be maintained, constructed, reconstructed or repaired upon any Lot, street or Common Area, and no inoperable vehicle may be stored or parked on any such Lot or street, so as to be Visible From Neighboring Property, provided, however, that the provisions of this subparagraph (b) shall not apply to: (i) emergency vehicle repairs or temporary construction shelters or facilities maintained during, and used exclusively in connection with, the construction of any improvement approved by the Architectural Review Committee; (ii) the parking of such vehicles during normal business hours in areas designated for parking in a non-residential Land Use Classification; and (iii) vehicles parked in garages on Lots.

(c) Parking. In order to maintain the aesthetic environment of the Development, on-street parking is prohibited over night, except for vehicles parking pursuant to the short-term parking exception described in subparagraph (a) above. Vehicles of all Owners, Residents and their guests and invitees, shall be kept in garages, and residential driveways on the Lot or in other designated parking areas. Provided, however, this subparagraph (c) shall not be construed to permit the parking in the above described areas of any vehicle whose parking within the Development is otherwise prohibited or the parking of any inoperable vehicle.

Section 8.15. Use of Private Streets in Common Area. Private streets within the Development shall not be used for recreational purposes, including "joy riding" or racing. Motorcycles, mopeds, and cars shall be allowed on such private streets only for ingress and egress.

Section 8.16. Use of Garages. Garage doors shall be maintained in a closed position with the exception of those occasions when the door(s) must be open to permit the ingress and egress of vehicles or residents, or to provide ventilation to persons who are working in the garage

area. Furthermore, garages shall not be converted to living quarters. Woodshops or work benches are permitted in garages, so long as the shop or work bench is not constructed or placed in the garage in a way that will preclude the parking of vehicles in each bay of the garage.

Section 8.17. Children. Each Owner and resident shall be accountable to the remaining Owners and residents, their families, visitors, guests and invitees, for the conduct and behavior of their children and any children temporarily residing in or visiting the Owner's/resident and for any property damage caused by such children.

Section 8.18. Activities Affecting Insurance. Nothing shall be done or kept on any Lot or within the Common Area which will increase the rate of insurance relating thereto without the prior written consent of the Association and no Owner shall permit anything to be done or kept on his or her Lot or the Common Area which would cause any Improvements to be uninsurable against loss by fire or casualty or result in the cancellation of insurance on any Residence or any part of the Common Area.

Section 8.19 Restriction on Further Subdivision of Lots and Lot Combinations. No Lot shall be further subdivided nor shall less than all of any such Lot be conveyed by an Owner thereof and no Owner of a Lot within the Development shall be entitled to sever that Lot from the Common Area portion of the Development. No Lot as shown on a final Subdivision Map for any portion of the Development shall be combined with any other Lot or parcel, although boundary line adjustments shall be permitted in accordance with Section 2.02, above.

Section 8.20. Variances. Upon application by any Owner, the Board of Directors shall be authorized and empowered to grant reasonable variances from the property use restrictions set forth in this Article VIII, if specific application of the restriction will, in the sole discretion of the Board, either cause an undue hardship to the affected Owner or fail to further or preserve the common plan and scheme of development contemplated by this Declaration. In considering and acting upon any request for a variance, the Board shall follow the procedures set forth in Section 5.16 for the granting of variances from the Architectural Rules or the minimum construction standards imposed by Article VI, above.

Section 8.21. Enforcement of Property Use Restrictions. The objective of this Declaration shall be to promote and seek voluntary compliance by Owners and tenants with the environmental standards and property use restrictions contained herein. Accordingly, in the event that the Association becomes aware of a Architectural Review or property use infraction that does not necessitate immediate corrective action under Section 13.06, below, the Owner or Tenant responsible for the violation shall receive written notice thereof and shall be given a reasonable opportunity to comply voluntarily with the pertinent Governing Document provision(s). Such notice shall describe the noncomplying condition, request that the Owner or tenant correct the condition within a reasonable time specified in the notice, and advise the Owner or tenant of his or her right to be heard on the matter.

## **ARTICLE IX**

### **Easements**

Section 9.01. Street Easements. Each Owner and the Association shall have and is hereby granted a nonexclusive easement for street, roadway and vehicular traffic purposes over and along the private streets within the Development. The nonexclusive easement granted hereby to each Owner and to the Association is subject to the offer of dedication of such streets made upon the Subdivision Map and upon complete or partial acceptance of such offer by the City, said easement shall terminate and be of no further force or effect as to those streets or portions thereof accepted by the City.

Section 9.02. Blanket Utility Easement. There is hereby created a blanket easement upon, across, over and under the Common Areas for ingress, egress, installation, replacing, repairing and maintaining all utilities, including but not limited to water, sewers, gas, telephones, drainage and electricity and the master television antenna or cable television system. By virtue of this easement, it shall be expressly permissible for the providing utility company to erect and maintain the necessary equipment and underground facilities on the Common Area at locations approved by the Architectural Review Committee. Notwithstanding the foregoing, no sewer, electrical lines, water lines, or other utilities may be installed or relocated within the Development except as initially designed and approved by the Declarant or thereafter approved by the Association's Architectural Review Committee. The easements provided for in this Section shall in no way affect any other Recorded easement on property within the Development.

Section 9.03. Maintenance Easements. An easement is hereby granted to the Declarant and the Association, their officers, agents, employees, and to any management company selected by the Declarant or the Association to enter in or to cross over the Common Area and any Lot to perform the Association's duties of maintenance and repair of the Lots, Common Areas, and Common Facilities as provided herein. Without limiting the foregoing, the grant of easement shall include and apply to any reasonable access to an Owner's Lot that may be required by the Association, and its agents and contractors in order to access any retaining walls originally constructed along the common property line separating any Lot from any Open Space or Common Area parcels within the Development.

Section 9.04. Rights of Declarant Incident to Construction. For so long as Declarant owns any Lots for sale within the Property, Declarant shall have easements and rights:

(a) To build, construct, modify and maintain any signs advertising the Development and the sale of homes by Declarant on Common Area, provided such signs comply with applicable law, and do not unreasonably interfere with the use and enjoyment of the Common Area by Owners and Residents.

(b) For ingress, egress and the installation and maintenance of public utilities over, under and across the Common Areas within the Development for the purpose of maintaining an office for sales and/or resales of Lots in the development, as provided in Article XVI, below, and for Declarant's marketing activities in connection with such offices.

(c) To use the Common Areas and Common Facilities of the Development, including any Association Recreational Facilities for up to ten (10) days per year for a period not to exceed the disposition of all Lots owned by the Declarant within the Development, to raise funds for charitable, philanthropic, political and/or marketing purposes as determined by Declarant, provided that any scheduled event shall be subject to the following:

(i) Availability of the facilities at the time the request for reservation is presented to the Association.

(ii) Declarant shall pay all costs and expenses directly associated with such events (i.e., expenses that would not arise but for the event) and shall indemnify the Association against any loss or damage caused by Declarant or its activities upon any portions of the Development used.

(iii) Declarant shall, following the exercise of its reserved rights, deliver any portions of the Common Facilities utilized by the Declarant to the Association in the same condition in which it was received prior to the scheduled event.

(iv) This right to use shall be enforceable by Declarant by means of an injunction against any other use or any violation of Declarant's rights reserved herein.

(v) Declarant shall have the right to assign its reserved rights herein to a charitable organization or foundation established or selected by Declarant to conduct and/or sponsor the events described in this Section 9.08(c), above.

Nothing in this Section shall preclude the Declarant and the Association from agreeing to extend greater access and use privileges to the Declarant, for the purposes stated herein, in the event that it is reasonably determined by the Association Board that Common Facilities, or portions of such Facilities, are available for such use by Declarant without adversely affecting the rights of use and enjoyment of the general membership.

Section 9.05. Encroachment Easements. Each Lot is hereby declared to have an easement over adjoining Lots and Common Area for the purpose of accommodating any encroachment by fences or walls that are built in accordance with the original design and plans and specifications of the Declarant, and/or due to engineering errors, errors in original construction, settlement or shifting, topography or other similar causes. There shall be valid easements for the maintenance of said encroachments as long as they shall exist, and the rights and obligations of the Owner shall not be altered in any way by said encroachment, settlement 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 occurs due to the willful misconduct of said Owner or Owners. In the event a structure is partially or totally destroyed, and is repaired or rebuilt, the Owners of each adjoining 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.

Section 9.06. Other Easements. Each Lot and its Owner, the Association and Declarant, as the case may be, is hereby declared to be subject to all the easements, dedications and rights-of-way granted or reserved in, on, over and under the Development and each Lot as shown on the Subdivision Map for any portion of the Development.

Section 9.07. Priority of Easements. Wherever easements granted to the City are, in whole or in part, coterminous with any other easements, the easements of the City shall have and are hereby granted priority over said other easements in all respects.

## **ARTICLE X**

### **Insurance**

Section 10.01. Types of Insurance Coverage. The Association shall, at the discretion of the Board of Directors, purchase, obtain and maintain, with the premiums therefor being paid out of Common Funds, the following types of insurance, if and to the extent they are available at a reasonable premium cost:

(a) Fire and Casualty Insurance. A policy of fire and casualty insurance naming as parties insured the Association and containing the standard extended coverage and replacement cost endorsements and such other or special endorsements as will afford protection and insure, for the full insurable, current replacement cost (excluding foundations and excavation, but without deduction for depreciation) as determined annually by the insurance carrier, of all Common Facilities and the personal property of the Association for or against the following:

(i) Loss or damage by fire or other risks covered by the standard extended coverage endorsement.

(ii) Loss or damage from theft, vandalism or malicious mischief.

(iii) Such other risks, perils or coverage as the Board of Directors may determine.

Such policy or the endorsement made a part thereof shall, to the extent available, provide that the insurer issuing the policy agrees to abide by the decision of the Association made in accordance with the provisions of Article XI, below, as to whether or not to repair, reconstruct or restore all or any damaged or destroyed portion of the Common Facilities.

(b) Public Liability and Property Damage Insurance. To the extent such insurance is reasonably obtainable, a policy of comprehensive public liability and property damage insurance naming as parties insured the Association, each member of the Association Board of Directors, any manager, the Owners and occupants of Lots, and such other persons as the Board may determine. The policy will insure each named party against any liability incident to the ownership and use of the Common Area and including, if obtainable, a cross-liability or severability of interest endorsement insuring each insured against liability to each other insured. The limits of such insurance shall not be less than Three Million Dollars (\$3,000,000.00)

covering all claims for death, personal injury and property damage arising out of a single occurrence. Such insurance shall include coverage against water damage liability, liability for nonowned and hired automobiles, liability for property of others and any other liability or risk customarily covered with respect to common interest development projects similar in construction, location, facilities, and use.

(c) Director's and Officer's Liability Insurance. To the extent such insurance is reasonably obtainable the Association shall maintain individual liability insurance for its directors and officers providing coverage for negligent acts or omissions in their official capacities. The minimum coverage of such insurance shall be at least One Million Dollars (\$1,000,000.00).

(d) Additional Insurance and Bonds. To the extent such insurance is reasonably obtainable, the Association may also purchase with Common Funds such additional insurance and bonds as it may, from time to time, determine to be necessary or desirable, including, without limiting the generality of this section, demolition insurance, flood insurance, and workers' compensation insurance. The Board shall also purchase and maintain fidelity bonds or insurance in an amount not less than one hundred percent (100%) of each year's estimated annual operating expenses and shall contain an endorsement of any person who may serve without compensation. The Board shall purchase and maintain such insurance on personal property owned by the Association and any other insurance, including directors and officers liability insurance, that it deems necessary or desirable.

Section 10.02. Coverage Not Available. In the event any insurance policy, or any endorsement thereof, required by Section 10.01 is for any reason unavailable, then the Association shall obtain such other or substitute policy or endorsement as may be available which provides, as nearly as possible, the coverage hereinabove described. The Board shall notify the Owners of any material adverse changes in the Association's insurance coverage.

Section 10.03. Copies of Policies. Copies of all insurance policies (or certificates thereof showing the premiums thereon have been paid) shall be retained by the Association and shall be available for inspection by Owners at any reasonable time.

Section 10.04. Trustee. All insurance proceeds payable under section 10.01, above, may, in the discretion of the Board of Directors, be paid to a trustee to be held and expended for the benefit of the Owners, Mortgagees and others, as their respective interests shall appear. Said trustee shall be a commercial bank in the City that agrees in writing to accept such trust.

Section 10.05. Adjustment of Losses. The Board is appointed attorney-in-fact by each Owner to negotiate and agree on the value and extent of any loss under any policy carried pursuant to Section 10.01, above. The Board is granted full right and authority to compromise and settle any claims or enforce any claim by legal action or otherwise and to execute releases in favor of any insured.

Section 10.06. Policies Obtained by Declarant. It is contemplated that Declarant may contract for the insurance coverage contemplated by this Article prior to or concurrently with obtaining financing for the development of the Development, and any such obligations or commitments for the payment of premiums or expenses with respect thereto shall become an obligation of the Association, shall be treated as a Common Expense, and shall be paid out of the Common Funds as provided herein.

Section 10.07. Annual Review of Association Insurance and Disclosure to Members. The Board shall review the adequacy of all insurance, including the amount of liability coverage and the amount of property damage coverage, at least once every year. At least once every three years, the review shall include a replacement cost appraisal of all insurable Common Area Improvements without respect to depreciation. The Board shall adjust the policies to provide the amounts and types of coverage and protection that are customarily carried by prudent owners' associations operating in similar common interest developments in the greater Sacramento region. In accordance with California Civil Code section 1365(e), annually the Association shall distribute to its Members a summary of the Association's property, general liability, and flood insurance (if any), such distribution to be made within sixty (60) days prior to the beginning of the Association's fiscal year.

Section 10.08. Board's Authority to Revise Insurance Coverage. The Board shall have the power and right to deviate from the insurance requirements contained in this Article X in any manner that the Board, in its reasonable business discretion, considers to be in the best interests of the Association. If the Board elects to materially reduce the coverage from the coverage required in this Article X, the Board shall make all reasonable efforts to notify the Members of the reduction in coverage and the reasons therefor at least (30) days prior to the effective date of the reduction. The Association, and its directors and officers, shall have no liability to any Owner or Mortgagee if, after a good faith effort, the Association is unable to obtain any insurance required hereunder because the insurance is no longer available; or, if available, the insurance can be obtained only at a cost that the Board, in its sole discretion, determines is unreasonable under the circumstances; or the Members fail to approve any assessment increase needed to fund the insurance premiums.

## **ARTICLE XI**

### **Damage or Destruction**

Section 11.01. Common Facilities; Bids and Determination of Available Insurance Proceeds. In the event any Common Facilities are ever damaged or destroyed, then, and in such event, as soon as practicable thereafter the Board of Directors shall: (a) obtain bids from at least two reputable, licensed contractors, which bids shall set forth in detail the work required to repair, reconstruct and restore the damaged or destroyed portions of the Common Facilities to substantially the same condition as they existed prior to the damage and the itemized price asked for such work; and (b) determine that amount of all insurance proceeds available to the Association for the purpose of effecting such repair, reconstruction and restoration.



Section 11.02. Common Facilities; Sufficient Insurance Proceeds. Subject to the provisions of section 11.01 hereof, if, in the event of damage to or destruction of any portion of any Common Facility, the insurance proceeds available to the Association are sufficient to cover the costs of repair, reconstruction and restoration, then the Association may cause such facilities to be repaired, reconstruction and restored substantially the same condition in which they existed prior to the loss.

Section 11.03. Common Facilities; Insurance Proceeds Insufficient in an Amount Exceeding Association Special Assessment Authority. In the event that any Common Facility is totally or substantially damaged or destroyed or, if, in the event of damage to or destruction of only a portion of the Common Facilities, the insurance proceeds available to the Association are insufficient in an amount exceeding five (5%) percent of the Association's budgeted gross expenses for the year in which the loss occurs, so as to require a Special Assessment to cover the estimated cost of repair, reconstruction and restoration, then the proposal for imposition of the Special Assessment shall be presented to the owners for approval in accordance with Sections 4.03 and 4.08, above. The proposition shall be presented to the Owners in a form which permits them to choose between (i) funding the Special Assessment to repair, reconstruct and restore the damaged or destroyed Common Facilities and specially assess all Owners for such additional funds as may be needed for such purpose; or (b) not to repair, reconstruct or restore the damaged or destroyed Common Facilities, but rather to utilize the insurance proceeds available for such reconstruction, together with any other sums otherwise available to the Association for such purpose, to demolish and remove the damaged or destroyed Improvements from the Common Area and to level and landscape the sites thereof and apply any balance of such proceeds and/or funds as the Members holding such voting power and their first mortgagees may determine.

Section 11.04. Damage or Destruction of Residences.

(a) Obligation to Rebuild or Clear Damaged Structures. If all or any portion of any Residence is damaged or destroyed by fire or other casualty, it shall be the duty of the Owner of said Residence to rebuild, repair or reconstruct said Residence in a manner which will restore it substantially to its appearance and condition immediately prior to the casualty or clear the Lot of all damaged or destroyed structures or portions thereof. If structural improvements other than a Residence, garage or fence are damaged or destroyed and the Owner prefers not to rebuild the improvement, the Owner shall clear his or her Lot of all damaged or destroyed materials and return the affected area to an attractive appearance.

(b) Architectural Review Committee Approval. Any Owner whose Residence or other structural improvements have been damaged or destroyed shall apply to the Architectural Review Committee for approval of plans for the reconstruction, rebuilding, or repair of the damaged or destroyed Residence or structure. Application for such approval shall be made in writing together with full and complete plans, specifications, working drawing and elevations showing the proposed reconstruction and the end result thereof. The Architectural Review Committee shall grant such approval only if the design proposed by the Owner satisfies the requirements for approval set forth in section 5.06, above.

(c) Time Limitation for Reconstruction or Removal. The Owner or Owners of any damaged Residence(s) and the Architectural Review Committee shall be obligated to proceed with all due diligence hereunder to remove damaged structures (or portions thereof), prepare and process reconstruction plans and specifications and complete the repair and restoration work. At a minimum, whenever Owners are required to prepare and submit repair or reconstruction plans to the Architectural Review Committee, said submittal shall be made within sixty (60) days following the event and reconstruction shall commence within thirty (30) days following receipt of approval from the Committee. Reconstruction shall be completed within six (6) months following receipt of Committee approval. For good cause (including, without limitation, delays caused by inclement weather or the processing of insurance claims) the Architectural Review Committee may waive or extend any of the deadlines imposed by this subparagraph (c).

## **ARTICLE XII**

### **Condemnation**

If all or part of the Common Area shall be taken or condemned by any authority having the power of eminent domain, all compensation and damages for or on account of the taking of the Common Area, exclusive of compensation for consequential damages to certain affected Lots or Parcels, shall be payable to the Association as trustee for all Owners and mortgagees according to the loss or damages to their respective interest in the Common Area. The Association, acting through its Board of Directors, shall have the right to act on behalf of the Owners with respect to the negotiation, settlement and litigation of the issues with respect to the taking and compensation affecting the Common Area. Each Owner hereby designates and appoints each Association as his or her attorney-in-fact for such purposes.

## **ARTICLE XIII**

### **Breach and Default**

Section 13.01. Remedy at Law Inadequate. Except for the nonpayment of any Assessment, it is hereby expressly declared and agreed that the remedy at law to recover damages for the breach, default or violation of any of the covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights-of-way, liens, charges or equitable servitudes contained in this Declaration are inadequate and that the failure of any Owner, tenant, occupant or user of any Lot, or any portion of the Common Area or Common Facilities, to comply with any provision of the Governing Documents may be enjoined by appropriate legal proceedings instituted by Declarant, any Owner, the Association, its officers or Board of Directors, or by their respective successors in interest.

Section 13.02. Nuisance. Without limiting the generality of the foregoing section 13.01, the result of every act or omission whereby any covenant contained in this Declaration is violated in whole or in part is hereby declared to be a nuisance, and every remedy against nuisance, either public or private, shall be applicable against every such act or omission.

Section 13.03. Attorneys' Fees. Reasonable attorneys' fees and costs shall be awarded to the prevailing party in any procedure to enforce the Governing Documents or a party's rights arising under the Governing Documents. Such enforcement procedures include an action brought in any court of competent jurisdiction as well as any alternative dispute resolution procedure implemented pursuant to the Governing Documents or pursuant to California Civil Code sections 1354 and 1369.510-1369.580 (as such sections may be renumbered or revised from time to time). In any enforcement procedure, such as mediation in which there is no agreement between all of the parties that attorneys will represent them, recoverable costs are limited to attorneys' fees and costs incurred in providing the notices required under such statute.

Section 13.04. Cumulative Remedies. The respective rights and remedies provided by this Declaration or by law shall be cumulative, and the exercise of any one or more of such rights or remedies shall not preclude or affect the exercise, at the same or at different times, of any other such rights or remedies for the same or any different default or breach or for the same or any different failure of any Owner or others to perform or observe any provision of this Declaration.

Section 13.05. Failure Not a Waiver. The failure of Declarant, any Owner, the Board of Directors, the Association or its officers or agents to enforce any of the covenants, conditions, restrictions, limitations, reservations, grants or easements, rights, rights-of-way, liens, charges or equitable servitudes contained in this Declaration shall not constitute a waiver of the right to enforce the same thereafter, nor shall such failure result in or impose any liability upon the Declarant, the Association or the Board, or any of its officers or agents.

Section 13.06. Rights and Remedies of the Association (Governing Document Enforcement)

(a) Rights Generally. Except as otherwise provided in Section 13.07, below (Assessment Collections) in the event of a breach or violation of any Association Rule or of any of the restrictions contained in any Governing Document by an Owner, his or her family, or the Owner's guests, employees, invitees, licensees, or tenants, the Board, for and on behalf of all other Owners, may enforce the obligations of each Owner to obey such Rules, covenants, or restrictions through the use of such remedies as are deemed appropriate by the Board and available in law or in equity, including but not limited to the hiring of legal counsel, the imposition of fines and monetary penalties, the pursuit of legal action, or the suspension of the Owner's right to use recreation Common Facilities or suspension of the Owner's voting rights as a Member of the Association; provided, however, the Association's right to undertake disciplinary action against its Members shall be subject to the conditions set forth in this Section.

The decision of whether it is appropriate or necessary for the Association to take enforcement or disciplinary action in any particular instance shall be within the sole discretion of the Association's Board or its duly authorized enforcement committee. If the Association declines to take action in any instance, any Owner shall have such rights of enforcement pursuant to California Civil Code sections 1354 and 1369.510-1369.580 or otherwise by law.

(b) Schedule of Fines. The Board may implement a schedule of reasonable fines and penalties for particular offenses that are common or recurring in nature and for which a uniform fine schedule is appropriate (such as fines for late payment of Assessments or illegally parked vehicles). Once imposed, a fine or penalty may be collected as a Special Individual Assessment, subject to the limitation on the use of lien and foreclosure remedies stated in Section 4.10(b)(iii), above.

(c) Definition of "Violation". A violation of the Governing Documents shall be defined as a single act or omission occurring on a single day. If the detrimental effect of a violation continues for additional days, discipline imposed by the Board may include one component for the violation and, according to the Board's discretion, a per diem component for so long as the detrimental effect continues. Similar violations on different days shall justify cumulative imposition of disciplinary measures. The Association shall take reasonable and prompt action to repair or avoid the continuing damaging effects of a violation or nuisance occurring within the Common Area at the cost of the responsible Owner.

(d) Limitations of Disciplinary Rights.

(i) Generally. The Association shall have no power to cause a forfeiture or abridgment of an Owner's right to the full use and enjoyment of his or her Lot due to the failure by the Owner (or his or her family members, tenants, guests or invitees) to comply with any provision of the Governing Documents or of any duly enacted Association Rule except where the loss or forfeiture is the result of the judgment of a court of competent jurisdiction, a decision arising out of arbitration or a foreclosure or sale under a power of sale for failure of the Owner to pay Assessments levied by the Association, or where the loss or forfeiture is limited to a temporary suspension of an Owner's rights as a Member of the Association or the imposition of monetary penalties for failure to pay Assessments or otherwise comply with any Governing Documents so long as the Association's actions satisfy the due process requirements of subparagraph (iii), below.

(ii) Monetary Penalties. Monetary penalties imposed by the Association: (A) for failure of a Member to comply with the Governing Documents; (B) as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to the Common Area or Common Facilities allegedly caused by a Member; or (C) in bringing the Member and his or her Lot into compliance with the Governing Documents, may not be characterized nor treated as an Assessment which may become a lien against the Member's Lot enforceable by a sale of the Lot in nonjudicial foreclosure; provided, however, that this limitation on the Association's lien rights shall not apply to charges imposed against an Owner consisting of reasonable late payment penalties to reimburse the Association for the loss of interest and for costs reasonably incurred (including attorneys' fees) in the Association's efforts to collect delinquent Assessments.

(iii) Hearings and Summary Enforcement Rights. No penalty or temporary suspension of rights shall be imposed pursuant to this Article unless the Member alleged to be in violation is given at least ten (10) days prior notice of the Board's intention to impose a penalty or discipline the Member (see subparagraph (iv), below). Notwithstanding the foregoing, under

circumstances involving conduct that constitutes: (A) an immediate and unreasonable infringement of, or threat to, the safety or quiet enjoyment of neighboring Owners; (B) a traffic or fire hazard; (C) a threat of material damage to, or destruction of, the Common Area or Common Facilities; or (D) a violation of the Governing Documents that is of such a nature that there is no material question regarding the identity of the violator or whether a violation has occurred (such as late payment of Assessments or parking violations), the Board of Directors, or its duly authorized agents, may undertake immediate corrective or disciplinary action and, upon request of the offending Owner (which request must be received by the Association, in writing, within five (5) days following the Association's disciplinary action), or on its own initiative, conduct a hearing on the matter.

(iv) Conduct of Hearings and Notice. Disciplinary hearings may be before the Board or its duly appointed Covenants Committee and shall be scheduled at a date which is at least ten (10) days, but no more than thirty (30) days following the date that notice of the hearing is given to the Owner. The notice shall be given by either first-class mail or by personal delivery and shall set forth the date, time and location of the hearing, a general description of the violation and a notice that the Member has a right to attend the hearing and address the Board or its duly designated Covenants Committee.

If the Board or its Covenants Committee imposes discipline on a Member, the Board shall provide the Member with a written notification of the action taken, within fifteen (15) days following the Association's action. That notice shall be given either by personal delivery or by first-class mail. In no event shall the effective date of any disciplinary action commence sooner than five (5) days following conclusion of the hearing unless: (i) the hearing merely affirms summary disciplinary action initiated pursuant to the immediately preceding paragraph; or (ii) earlier commencement is necessary to preserve the quiet enjoyment of other residents or to prevent further damage to, or destruction of, the Development or any portion thereof.

(v) Rules and Procedures. The Board shall be entitled to adopt rules that further elaborate and refine the procedures for conducting disciplinary proceedings consistent with the procedural requirements of this Section and applicable State laws. Such rules, when approved and adopted by the Board, shall become a part of the Association Rules.

(vi) Appointment of a Covenants Committee. Acting pursuant to Section 11.01 of the Bylaws, the Board of Directors may, but shall not be obligated to, establish a Covenants Committee to hear and decide cases involving alleged violations of the Governing Documents. If no committee is established, the Board shall perform this function. The Covenants Committee shall review written complaints from Lot Owners, the Association's property manager, or the Architectural Review Committee (for violations other than those relating to specific Improvement projects, which shall remain within the jurisdiction of the Architectural Review Committee) of alleged violations of the Governing Documents or Association Rules, and, when determined appropriate, conduct hearings and make findings regarding the alleged violation(s).

The decisions of the Covenants Committee, if established, shall be appealable by the affected Owner(s) to the Board of Directors within ten (10) calendar days following receipt of the Committee's decision. The Board shall have the discretion to hear any appealed matter or

decline to take the appeal and thus affirm the decision of the Covenants Committee. Any decision to decline an appeal shall be based on a reasonable determination from the record that the appeal lacks merit. Decisions of the Board shall be final. Procedures for appeal and the hearing of appeals from the Covenants Committee shall be set forth in the Association Rules.

(vii) Court Actions. Court actions to enforce the Governing Documents may only be initiated on behalf of the Association by resolution of the Board. Prior to the filing of any court action seeking declaratory or injunctive relief to interpret or enforce the Governing Documents (including either such action coupled with a claim for monetary damages not in excess of Five Thousand Dollars (\$5,000)), the Association shall first comply with the provisions of California Civil Code sections 1369.510-1369.580 relating to alternative dispute resolution. The Association's own notice and hearing procedures may be drafted to satisfy these statutory requirements

Section 13.07. Assessment Collection Remedies. The notice and hearing procedures set forth in Section 13.06 shall not apply to any actions by the Association or its duly authorized agents to collect delinquent assessments. Assessment collections shall be subject to Section 4.10, above, and any other notice, hearing and/or dispute resolution requirements or procedures as may be specifically applicable by law to Association assessment collection efforts.

Section 13.08. Resolution of Disputes with the Declarant. The purpose of this Section 13.08 is to provide an expedited means of resolving any claims, disputes and disagreements (collectively, "Claims") that may arise between (i) and Owner and/or the Association, on the one hand, and the Declarant or Declarant Parties, on the other hand, after the close of escrow or other conveyance of any portion of the Property by the Declarant concerning any category of Claims described in subparagraph (a), below, that are not resolved pursuant to any applicable statutory dispute resolution procedures. With respect to the Claims involving the Parties described in subparagraph (a), below, this Section 13.08 sets forth a process of progressive dispute resolution that has as its objective the prompt resolution of disputed Claims without the necessity of resort by any Party to civil litigation.

(a) Description of Claims That Are Subject to This Section 13.08. The provisions of this Section 13.08 shall apply to the following claims, disputes or controversies (collectively "Claims") between the Association and/or any Owner or Owners, on the one hand, and the Declarant (including any director, officer, shareholder, partner, employee or agent of the Declarant) or any builder, developer, subcontractor, material supplier, individual product manufacturer, or design professional involved in the construction or design of Units or Common Facilities within the Project, on the other hand, (collectively, the potential parties on either side of such Claims shall be collectively referred to in this Section 13.08 as the "Parties"):

(i) Claims Relating to Defects in Construction. This category of Claims includes any Claims asserted by or on behalf of an Owner against any director, officer, shareholder, partner, employee or agent of the Declarant (collectively, the "Declarant Parties"), seeking recovery of damages relating to residential construction and/or violations of the functionality standards set forth in Civil Code sections 896-897 (those Claims are referred to herein as "Title 7 Claims") and/or any Claims by the Association that are subject to Civil Code

sections 1375-1375.1 (those Claims are referred to herein as "Calderon Claims"). See subparagraph (c), below;

(ii) Claims Covered by Warranty Contracts. This category of Claims includes any Claims asserted by or on behalf of an Owner against the Declarant or any Declarant Parties relating to alleged deficiencies in the quality of workmanship or materials in the Owner's Lot, its components, or the Project that are defined as "Covered Claims" in the Declarant's Warranty Agreement or in any warranty provided by the manufacturer of a product that is installed in the Lot, such as windows, doors, roofs, plumbing products and fixtures, fireplaces, electrical fixtures, countertops, cabinets, paint, and appliances. See subparagraph (b), below; and

(iii) Other Claims and Disputes Between an Owner and the Declarant. The third category of Claims includes any other Claim asserted by or on behalf of an Owner against the Declarant and any Declarant Parties involving any purchase agreement for the Owner's Lot executed by and between the Owner and the Declarant (including, without limitation, claims for breach of contract, fraud, or misrepresentation), Claims involving alleged breaches of the Governing Documents of the Development, including, without limitations, claims alleging a breach of any covenants, conditions and restrictions or claims for fraud or breach of fiduciary duty, and any Claims involving alleged breaches of any other documents provided by the Declarant or any Declarant Parties to an Owner in connection with the purchase of a Lot in the Development. See subparagraph (e), below.

(b) Resort to Customer and Warranty Programs. If the Declarant has a customer service program in effect to respond to Owner complaints regarding matters that are identified as Claims, in subparagraph (a), above, Owners are encouraged to endeavor to resolve those Claims with the Declarant through the normal customer service procedures set forth in the customer service program or in any contractual, warranty, or other builder-generated document. As provided in Civil Code section 910(b) any requests that an Owner makes pursuant to such warranties or customer service procedures are in addition to, and shall not constitute satisfaction of, the notice requirements identified in subparagraph (c), below. **Owners are advised that if they wish to pursue Claims that are covered by any contractual warranty issued or provided by the Declarant or any manufacturer of a product or component of the Owner's Lot, the provisions of the applicable contractual warranty are not affected by the provisions of this Declaration, including this Section 13.08. In other words, if an Owner desires to enforce a contractual warranty, the notice and dispute resolution provisions of the applicable warranty must be followed, rather than the procedures set forth below.**

If the Claim cannot be resolved between the Parties through the customer service program process or applicable warranty procedures, the Claim shall first be subject to the applicable non-adversarial dispute resolution procedures identified in subparagraph (c), below, and if those procedures are unsuccessful in resolving the Claim to the satisfaction of the Parties, the Claim shall be decided through the arbitration procedure set forth in subparagraph (d), below. Alternatively, Declarant, an Owner or the Association may elect to resolve such Disputes through a small claims court proceeding.

(c) Notice of Actions Against Declarant and Compliance with Applicable Non-Adversarial Pre-Litigation Dispute Resolution Procedures. Prior to the initiation of any civil litigation to resolve disputed Claims, the Parties to any Claim shall comply with the following provisions of the Civil Code, as subsequently amended from time to time, to the extent those provisions are applicable to the Claim:

(i) Civil Code Section 1368.5 (which obligates Associations to notify their members prior to filing a civil action against the Declarant or other developer for alleged damage to the Common Areas or to those portions of any Lots that the Association is obligated to repair, maintain or replace);

(ii) Civil Code Sections 910 through 938 (which sets forth certain notice and non-adversarial pre-litigation dispute resolution procedures with respect to any Claims seeking recovery of damages relating to defects in residential construction); and

(iii) Civil Code Section 1375 (which sets forth certain notice and non-adversarial pre-litigation dispute resolution procedures prior to an Association's initiation of an action for damages against a builder of common interest development property).

The Notice requirements of this subparagraph (c) are in addition to any contractual notice requirements set forth in any limited warranty given to an Owner by the Declarant or any manufacturer of a product installed in the Owner's Lot. Furthermore, to the extent the provisions of Civil Code sections 910 through 938, inclusive, are enforced and those provisions are substantially similar to provisions in Civil Code section 1375, Civil Code section 935 provides that the Parties shall be excused from performing the substantially similar requirements under Section 1375 of the Civil Code (see Civil Code Section 935).

Initially, the Declarant will attempt to resolve any Claim asserted by an Owner or the Association of which it is given proper notice. If the Claim cannot be resolved between the Parties in this manner, it will be decided through the arbitration procedure as set forth below. Alternatively, Declarant, an Owner or the Association may elect to resolve such Claims through a small claims court proceeding. **THIS PROCESS INVOLVES WAIVER OF THE RIGHT TO A JURY TRIAL. BY EXECUTING THIS DECLARATION AND BY ACCEPTING A DEED TO ANY PORTION OF THE PROPERTY, RESPECTIVELY, DECLARANT, EACH OWNER AND THE ASSOCIATION, AGREE TO BE BOUND BY THE PROVISIONS OF THIS SECTION 13.08.**

(d) **MEDIATION OF CLAIMS.** Subject to subparagraph (e), below, and except for actions in small claims court or Claims that have already been mediated, the Parties agree that they will submit all Claims to mediation with Judicial Arbitration and Mediation Services ("JAMS") prior to commencing arbitration. The cost of mediation shall be borne equally by the Parties, and each Party shall bear its own attorneys' fees and costs.

(e) **ARBITRATION OF UNRESOLVED CLAIMS.** Subject to subparagraph (d), above, all Claims shall be resolved by neutral arbitration in accordance with the California Arbitration Act and the Federal Arbitration Act, and any inconsistency between the two acts



shall be resolved in favor of the Federal Arbitration Act. Nothing in this provision is intended to effect, modify, alter or otherwise abrogate the applicability of Basura v. U.S. Homes Corp. (2002) 98 Cal.App.4<sup>th</sup> 1205, 120 Cal. Rptr. 2d 328. EACH OWNER AND THE DECLARANT AGREE THAT THEY ARE GIVING UP THEIR RESPECTIVE JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE PURCHASE AGREEMENT THAT WAS EXECUTED BY AND BETWEEN THE DECLARANT AND THE FIRST PURCHASER OF THE OWNER'S LOT. IF EITHER THE OWNER OR THE DECLARANT REFUSES TO SUBMIT TO ARBITRATION IN ACCORDANCE WITH THIS SUBPARAGRAPH (e) AND SUBPARAGRAPHS (f) AND (g) IF APPLICABLE, AND TO THE TERMS OF THE PURCHASE AGREEMENT THAT WAS EXECUTED BY AND BETWEEN THE DECLARANT AND THE FIRST PURCHASER OF THE OWNER'S LOT, THE OWNER AND THE DECLARANT MAY BE COMPELLED TO ARBITRATE UNDER THE FEDERAL ARBITRATION ACT AND THE CALIFORNIA ARBITRATION ACT, TO THE EXTENT THE CALIFORNIA ARBITRATION ACT IS CONSISTENT WITH THE FEDERAL ARBITRATION ACT.

(i) Rules Applicable to the Arbitration Proceeding. The arbitration will be conducted by JAMS in accordance with JAMS Rules ("JAMS Rules"). The following supplemental rules shall apply to all arbitration proceedings and shall govern in the event of a conflict between these rules and the JAMS Rules:

(A) Participation by other Parties/Single Home Dispute Only. The Owner and the Declarant may opt to have all necessary and appropriate parties included as parties to the arbitration, if such party is defending a claim in the arbitration. However, no arbitration proceeding shall involve more than one (1) single family detached dwelling. Specifically, no class actions or joint actions shall be allowed in any arbitration under this subparagraph (e), since any problem or issue that may arise with respect to any Lot or Residence is separate, unique and independent of any problem or issue related to any other Lot or Residence or any other Owner of a Lot or Residence in the Development.

(B) Qualification of the Arbitrators. The arbitrator must meet the following requirements: He or she shall be neutral, impartial and either a retired judge or a member or former member of the California State Bar with at least fifteen (15) years experience as a practicing lawyer. The arbitrator shall be selected in accordance with the JAMS Rules, but no later than sixty (60) calendar days after a notice of claim is filed.

(C) Fees and Costs of the Arbitration. The Parties will share equally in paying all the JAMS and arbitrator's fees and costs associated with the arbitration. Each Party shall also bear its own attorneys' fees and costs.

(D) Preliminary Procedures. If the Owner asserting the Claim and the Declarant are required under state or federal law to take steps or procedures before commencing an action in court, then Owner or the Declarant, as the case may be, must comply with such state or federal law. For example, Claims pursuant to California Civil Code Section 895 et. seq., as hereafter amended, may be subject to the non-adversarial procedures set forth in California

Civil Code Section 910 through 938, prior to the initiation of any arbitration or small claims court proceeding against Seller. In addition, nothing contained herein shall be deemed a waiver or limitation of the provisions of California Civil Code Sections 1368.4, 1375, 1375.05 or 1375.1.

(E) Rules of Law. California substantive law shall apply to the arbitration. This includes the applicable statutes of limitations. However, the arbitrator need not be in strict compliance with the rules of evidence, except for all laws relating to privilege and work product. The arbitrator shall be authorized to provide all recognized remedies available at law or equity for any cause of action.

(f) Additional Rules for Resolution of Claims Exceeding \$250,000. If a Claim exceeds \$250,000, the following additional rules will supplement the JAMS Rules and the arbitration requirements set forth in subparagraph (e), above, and govern in the event of a conflict between the following rules and the rules set forth above, the JAMS Rules, or both.

(i) Qualifications of the Arbitrators. In addition to the requirements set forth above, the arbitrator shall be a retired judge of the California Superior Court, a California Court of Appeal, or the California Supreme Court.

(ii) Rules of Law. The California Evidence Code shall apply.

(iii) Written Decision. Within thirty (30) calendar days after the hearing is closed, the arbitrator must issue a written decision. If either Buyer or Seller requests it, the arbitrator must issue a reasoned award.

(iv) Additional Discovery Rights. The Parties shall be entitled to pursue the following additional discovery rights:

(A) Inspection; Examination and/or Test. The right to a reasonable inspection, examination and/or test of any site, defect, personal injury or property damage relevant to any claim, including, if appropriate, destructive testing;

(B) Deposition of Opposing Party. The right to take one deposition of each opposing Party for up to four (4) hours. The deposition of a person designated by an entity or organization as most knowledgeable, or an individual officer or employee of an entity or organization, shall count as the deposition of a party which is not a natural person.

(C) Deposition of Expert Witnesses. The right to take the deposition of each expert witness designated by an opposing Party for up to four (4) hours.

(D) Interrogatories. The right to serve one set of up to thirty (30) contention interrogatories on each opposing Party.

(E) Additional Discovery Permitted in Discretion of the Arbitrator. The arbitrator shall have discretion to allow additional discovery upon a showing of good cause.

(g) Additional Appeals Procedures for Claims in Excess of \$500,000. If a Claim exceeds \$500,000.00, the disputing Owner and the Declarant hereby adopt and agree to the JAMS Optional Appeal Procedure. The following additional rules will supplement the JAMS Optional Appeal Procedure and govern in the event of a conflict between the following rules and the JAMS Optional Appeal Procedure.

(i) Right to Appeal. No Party may appeal the decision of the arbitrator unless the oral evidence received by the arbitrator was preserved in a manner such that it can be converted to an accurate and reliable written transcript.

(ii) Appellate Panel. There shall be one neutral appeal arbitrator to decide the appeal, who must have prior experience as a member of an appellate panel of the California Court of Appeal. However, either Party, within the time permitted for the appointment of the appeal arbitrator, may elect to have the appeal decided by a panel of three (3) appeal arbitrators, in which case the cost of the two (2) additional appeal arbitrators shall be the responsibility of the Party requesting the two (2) additional appeal arbitrators.

(iii) Issues That May Be Appealed. The only issues that may be considered on appeal are the following: (1) the award of money was excessive; (2) the award of money was insufficient; (3) the arbitrator awarded non-monetary relief that was inappropriate; or (4) a Party who received non-monetary relief should have received other or additional relief. A majority of the appeal arbitrators may affirm the arbitration award or make any alternative award that they find to be just, but they must not reject the arbitrator's decisions: (a) that a particular Party is entitled to relief of some nature or amount; or (b) that a particular Party is responsible to provide relief of some nature or amount.

(iv) Fees and Costs of Appeal. The Parties will share equally in advancing all JAMS and appellate fees. The Party who files the appeal must, at its sole expense, provide: (i) JAMS and all non-appealing Parties with a certified copy of the hearing transcript; and (ii) JAMS with copies of all documentary evidence and all other tangible evidence received by the arbitrator. If more than one Party appeals, the appealing Parties must share equally the cost of the transcript and copies of all other documentary and tangible evidence received by the arbitrator. The appeal arbitrators may, within thirty (30) calendar days of their determination, award costs of the nature provided in the Federal Rules of Appellate Procedure. The appeal arbitrator(s) may, in his, her or their discretion and only to the extent permitted by law and JAMS Minimum Standards Of Procedural Fairness, include all or part of the JAMS fee and arbitrator's fee advanced by the prevailing party in the award of costs on appeal.

(v) New Evidence. The appeal arbitrators must not receive new evidence. The appeal arbitrators must make their decision based only on the evidence that was presented to the arbitrator, except that the appeal arbitrators may visit any site involved in the Post-Closing Claim.

(h) Exceptions to Arbitration. The procedures set forth in this Section 13.08 shall apply only to Claims and shall not apply to any action taken by the Association against the Declarant, or any Owner for delinquent assessments, which shall be covered by Section 4.10,

above, or in any action involving any bond covered by the provisions of Section 3.11 of this Declaration.

Notwithstanding anything set forth in this Declaration, in the event SHP Fiddymment MP, LLC becomes the Declarant as provided in Section 1.14, above, SHP Fiddymment MP, LLC, and its successors and assigns as Declarant, shall have the right, without the prior written consent of any Owner, to amend this Declaration in order to add a dispute resolution process for construction defect claims brought by Owners against SHP Fiddymment MP, LLC, or its successors and assigns, as the successor Declarant. Unless and until SHP Fiddymment MP, LLC or its successors and assigns as Declarant amends this Declaration as provided in the foregoing sentence, all construction defect claims, if any, against SHP Fiddymment MP, LLC, or its successors and assigns, as a successor Declarant, shall be made in accordance with this Section 13.08.

#### **ARTICLE XIV**

##### **Protection of Mortgagees**

Section 14.01. Assessment Lien Subordinated. Any lien created or claimed under the provisions of Article IV, above, shall be subject and subordinate to the lien of any first Mortgage given in good faith and for value. No such Mortgagee who acquires title to any Lot by judicial foreclosure or by exercise of power of sale contained in the Mortgage shall be obligated to cure any breach of this Declaration by a former Owner of such Lot or shall be liable for any unpaid Assessments made against the Lot which accrued prior to the date the Mortgagee acquired such title. No lien created or claimed under the provisions of Article IV, above, shall in any way defeat, invalidate or impair the rights of any Mortgagee under any such recorded Mortgage.

Section 14.02. Amendment of This Declaration. Except where an amendment has been approved in accordance with Section 14.12, below, no amendment of this Declaration shall affect any of the rights of the holder of any Mortgage described in Section 14.01, above, which is made in good faith and for value, if such Mortgage is recorded and notice of the delivery and recording thereof is given to the Association prior to the recording of such amendment.

Section 14.03. Default by Owner; Mortgagee's Right to Vote. In the event of a default by any Owner under a Mortgage encumbering such Owner's Lot, the Mortgagee under such Mortgage shall, upon: (a) giving written notice to the defaulting Owner; (b) recording a Notice of Default in accordance with California Civil Code section 2924; and (c) delivering a copy of such recorded Notice of Default to the Association, have the right to exercise the vote of the Owner at any regular or special meeting of the Association held only during such period as such default continues.

Section 14.04. Breach; Obligation After Foreclosure. No breach of any provision of this Declaration by Declarant, the Association or any Owner shall impair or invalidate the lien of any recorded Mortgage made in good faith and for value and encumbering any Lot. The Declarant, the Association or their successor and assigns shall be obligated to abide by all of the covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights-of-way, liens,

charges and equitable servitudes provided for in this Declaration as it may be amended from time to time with respect to any person who acquires title to or any beneficial interest in any Lot through foreclosure, trustee's sale or otherwise.

Section 14.05. Exchange of Information. The Association shall, at the written request of any Mortgagee, insurer or guarantor, notify such party of:

(a) Any condemnation or casualty loss that affects either a material portion of the Development or the Lot(s) securing the Mortgage;

(b) Any delinquency of sixty (60) days or more in the payment of Assessments or charges owed by the Owner(s) of the Lot(s) securing the Mortgage;

(c) A lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and

(d) Any proposed action of the Association that requires the consent of a specified percentage of Eligible Mortgagees (see section 14.12(a), below, for definition of "Eligible Mortgagee").

To be entitled to receive this information, the Mortgagee, insurer or guarantor must send a written request to the Association, stating both its name and address and the number or address of the Lot(s) securing the Mortgage. Any Mortgagee of any Lot is hereby authorized to furnish to the Board of Directors, upon written request by the Board therefor, the amount of any unpaid balance of any indebtedness secured by a lien of a Mortgage and the amount and due date of any delinquent payment or payments of such indebtedness.

Section 14.06. Certain Restrictions Affecting the Association. Notwithstanding any other provisions of this Declaration, without the prior written consent of at least sixty-seven percent (67%) of the Owners or sixty-seven percent (67%) of the first Mortgagees, such percentage to be based upon the total of number of Lots so mortgaged, with each such Mortgagee entitled to one vote for each Lot, the Association shall not:

(a) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area or any Improvements thereon (except that the granting of any easement for public utilities, or for other public purposes consistent with the intended use of the Development, shall not be deemed a "transfer" as that term is used in this subparagraph(a));

(b) Change the method provided for in this Declaration of determining the Assessments or other charges which may be assessed against an Owner, or the method of allocating distributions of hazard insurance proceeds or condemnation awards;

(c) By act or omission, change, waive or abandon the scheme of maintenance and repair of the Development, or the enforcement thereof, as provided for in this Declaration;

(d) Fail to maintain fire and extended coverage insurance on the Common Facilities

in the amount and against the risks provided for in section 10.01; and

(e) Use any insurance proceeds received as a result of the loss or damage to the Common Facilities for any purpose other than the repair, replacement or reconstruction of such Common Facilities.

Section 14.07. Right of First Mortgagees to Make Certain Payments and Right of Reimbursement Therefor. The holders of first Mortgages on the Lots shall have the right (but not the obligation), jointly or singly: (a) to pay taxes or other Assessments or charges which are in default and which may or have become a lien or charge against the Common Facilities; (b) to pay overdue premiums on casualty insurance policies for the Common Facilities; and (c) to secure and pay for new casualty insurance coverage on the Common Facilities upon the lapse of any such policy, in the amount and against the risks provided for in section 10.01, above. Any first Mortgagee making such payment shall be entitled to immediate reimbursement therefor from the Association. Upon the request of any first Mortgagee, the Association shall, by separate instrument, signed by the president or any vice president and the secretary, evidence its agreement to the provisions of this section as the same affects the Mortgage held by such Mortgagee.

Section 14.08. Right to Examine Books and Records of the Association. All Mortgagees, insurers and guarantors of any Mortgages on any Lot shall have the right, upon written request to the Association, to:

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

(b) Require the Association to provide an audited statement for the preceding fiscal year: (i) at no expense to the requesting entity when the Development consist of 50 or more Lots; and (ii) at the requesting entity's expense when the Development consist of fewer than 50 Lots and no audited statement is available; and

(c) Receive a written notice of all meetings of the Association and designate a representative to attend all such meetings.

Section 14.09. Notices to First Mortgagees. The Association shall furnish to the holder of any first Mortgage on any Lot or on the Common Area, upon written request by the first Mortgagee, thirty (30) days prior written notice of: (a) abandonment or termination of the Association; (b) the effective date of any proposed material amendment to the Declaration; (c) the effectuation of any decision by the Association to terminate professional management, if any, and assume self-management of the Development; (d) any condemnation or eminent domain proceeding; and (e) any extensive damage to or destruction of any Improvements located in or on the Common Area.

Section 14.10. Superiority of Mortgage to Condemnation Proceeds. If any Lot, or portion thereof, or the Common Area, or any portion thereof, is made the subject of any condemnation or eminent domain proceeding, the lien of any first Mortgage shall be prior and superior to the claims of the Owners of said Lots or Common Area with respect to any

distribution of the proceeds of any condemnation award or settlement.

Section 14.11. Superiority of Mortgage to Insurance Proceeds. In the event of any substantial damage to or destruction of the Improvements on any Lot, or on any part of the Common Area, the lien of any first Mortgage shall be prior and superior to the claims of the Owners of said Improvements with respect to any distribution of any insurance proceeds relating to such damage or destruction.

Section 14.12. Approval of Material Amendments or Termination.

(a) Material Amendments. In addition to the approvals required by Article XIX, below (Amendments), Eligible Mortgagees who represent at least fifty-one percent (51%) of the votes of Lots that are subject to Mortgages held by Eligible Mortgagees must approve any amendment to this Declaration of a material nature. An Eligible Mortgagee is the beneficiary of a first Mortgage who has requested the Association to notify it of any proposed action that requires the consent of a specified percentage of Eligible Mortgagees. A change to any of the following would be considered as material:

- (i) voting rights;
- (ii) assessments, assessment liens or the priority of assessment liens;
- (iii) reserves and responsibility for maintenance, repair and replacement of the Common Area;
- (iv) convertibility of Lots into Common Area and vice versa;
- (v) annexation or deannexation of property to or from the Development;
- (vi) insurance or fidelity bonds;
- (vii) leasing of Lots;
- (viii) imposition of any restrictions on an Owner's right to sell or transfer his or her Lot;
- (ix) a decision by the Association to establish self-management when professional management had been required previously by the Governing Documents or by an Eligible Mortgagee;
- (x) restoration or repair of the Development (after a hazard damage or partial condemnation) in a manner other than that specified in the Governing Documents;
- (xi) any action to terminate the legal status of the Development after substantial destruction or condemnation occurs; or

(xii) any provisions that expressly benefit Mortgagees, insurers or guarantors.

(b) Termination. In addition to the approvals required by Article XIX, below, Eligible Mortgagees who represent at least sixty-seven percent (67%) of the votes of Lots that are subject to Mortgages held by Eligible Mortgagees must approve any proposed termination of the legal status of the project for reasons other than substantial destruction or condemnation of the Development.

(c) Implied Approval. Each Eligible Mortgagee which receives notice of a proposed amendment or termination of this Declaration by certified or registered mail, with a "return receipt" requested, shall be deemed to have approved the amendment or termination if the Eligible Mortgagee fails to submit a response to the notice within thirty (30) days of receiving the notice.

Section 14.13. Declaration to Conform With Mortgagee Requirements. It is the intent of this Article that this Declaration, the Articles of Incorporation, the Bylaws and the Development in general, shall now and in the future meet all requirements of any institutional Mortgagee intending to secure its Mortgage by a Lot or necessary to purchase, guarantee, insure or subsidize any Mortgage of a Lot by the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association or the Veterans' Administration.

## **ARTICLE XV**

### **Declarant Privileges and Exemptions**

Section 15.01. Interest of the Declarant; Material Actions Requiring Declarant Approval. The Property subject to this Declaration constitute a portion of the Overall Development, which Declarant is causing to be developed. Each Owner of a Lot which is part of the Development acknowledges by acceptance of a deed or other conveyance therefor, whether or not it shall be so expressed in any such deed or other instrument, that Declarant has a substantial interest to be protected with regard to assuring compliance with and enforcement of, the covenants, conditions, restrictions and reservations contained in this Declaration and any amendments thereto and any Supplemental Declarations recorded pursuant to this Declaration. Notwithstanding any other provisions of the Governing Documents, until such time as Declarant is no longer entitled to create Annexable Property by annexation without the vote of the Members, the following actions, before being undertaken by the Members or the Association, shall first be approved in writing by Declarant:

(a) Specified Approvals. Any amendment or action requiring the approval of Declarant pursuant to this Declaration, and any amendment or action requiring the approval of first Mortgagees pursuant to this Declaration (the Association shall provide Declarant with all notices and other documents to which a Mortgagee is entitled pursuant to this Declaration, provided that Declarant shall be furnished such notices and other documents without making written request);



(b) Special Assessments. The levy of a Special Assessment for the construction of new facilities by the Association not originally included in the Common Areas;

(c) Service/Maintenance Reductions. Subject to section 4.02(b), above, regarding limitations on Regular Assessment increases without Member approval, any significant reduction of Common Area maintenance or other services or entering into contracts for maintenance or other goods and services benefiting the Association or the Common Area at contract rates which are fifteen percent (15%) or more below the reasonable cost for such maintenance, goods or services; or

(d) Architectural Rules. Any supplement or amendment to the Architectural Rules (see section 5.05, above).

Section 15.02. Exemptions From Restrictions Otherwise Applicable. Nothing in the Governing Documents shall limit and no Owner, Sub-Association or the Association shall do anything to interfere with the right of Declarant, either directly or through their respective agents and representatives, to subdivide, re-subdivide, sell, resell, rent or re-rent any portion of the Development, or the right of Declarant to complete excavation, grading, construction of Improvements or other development activities to and on any portion of the Development owned by Declarant or to alter the foregoing and its construction plans and designs, or to construct such additional Improvements as Declarant deems advisable in the course of development of the Development so long as any Lot or any portion of the Overall Development is owned by Declarant. Such right shall include, but shall not be limited to, carrying on by Declarant and their respective agents and representatives of such grading work as may be approved by the County or other agency having jurisdiction, and erecting, constructing and maintaining on the Development such structures, signs and displays as may be reasonably necessary for the conduct of its business of completing the work and disposing of the same by sale, lease or otherwise. Each Owner, by accepting a deed to a Lot, hereby acknowledges that any construction or installation by Declarant may impair the view of such Owner, and hereby consents to such impairment.

Section 15.03. Rights to Use Common Areas and Common Facilities in Connection With Development and Sales Activities. Declarant may enter upon the Common Area, for the benefit of Declarant or for the benefit of portions of the Overall Development whether or not then annexed, or any combination of them, to complete the development, improvement and sale of Lots and the construction of any landscaping or other Improvement to be installed on the Common Area. Declarant shall also have the right of nonexclusive use of the Common Areas and the Common Facilities, without charge, for sales, display, access, ingress, egress, exhibition and occasional special events for promotional purposes, which right Declarant hereby reserves; provided, however, that such use rights shall terminate on the date on which Declarant no longer owns any Lots within the Development and Declarant's unilateral right to annex portions of the Overall Development has expired. Such use shall not unreasonably interfere with the rights of enjoyment of the other Owners as provided herein and all direct costs and expenses associated with Declarant sales and promotional activities (including, without limitation, any costs or expenses required to clean or repair any portion of the Common Area that are damaged or

cluttered in connection with such activities) shall be borne solely by the Declarant and any other sponsor of the activity or event. The rights reserved to the Declarant by this section shall extend to any employee, sales agents, prospective purchasers, customers and/or representatives of the Declarant.

Section 15.04. Amendment of Plans. Subject to approval, as necessary, by the County, Declarant may, from time to time as it deems fit, but only with the prior written consent of SHP for so long as the Option Agreement, amend its plans for the Overall Development, combine or split Lots or Parcels, and apply for changes in the Development Agreement, changes in zoning, use and use permits, for any property within the Overall Development.

Section 15.05. Right to Enforce Architectural Review and Approval Requirements. For so long as the Declarant has the right to appoint any members of the Architectural Review Committee, the Declarant shall have the right to initiate action to correct or prevent any activity, condition or Improvement that is not in substantial compliance with approved plans and specifications to the same extent as the Association if: (a) the Committee has issued a Notice of Noncompliance; and (b) the Association, after having a reasonable opportunity to do so, is unable or unwilling to initiate enforcement action. In the event that such action is initiated by the Declarant and it is later determined by an arbitrator or a court of competent jurisdiction that the Owner of the subject Lot was, in fact, proceeding in violation of the approved plans and specifications, any reasonable costs incurred by the Declarant in initiating enforcement action, including reasonable attorneys fees, which are not the subject of an award of fees and/or costs against the offending Owner may be charged to the Association pursuant to section 5.12, above (relating to Association funding of Architectural Review costs).

Section 15.06. Termination of Any Responsibility of Declarant. In the event the Declarant conveys all of its rights, title and interest to any partnership, limited liability company, individual or individuals, corporation or corporations, in and to the Overall Development, and the acquiring person or entity is designated as a successor Declarant as to all the property conveyed, then and in such event, Declarant shall be relieved of the performance of any further duty or obligation hereunder, and such partnership, individual or individuals, corporation or corporations, shall be obligated to perform all such duties and obligations of Declarant. This Article shall not terminate any responsibility of the Declarant for acts or omissions occurring prior to the conveyance to such partnership, individual or individuals, corporation or corporations. However, this shall not limit Declarant's right to enter into a contract or agreement dealing with such acts or omissions provided the contract or agreement is enforced by Declarant, if necessary.

## **ARTICLE XVI**

### **Notices**

Section 16.01. Mailing Addresses. Any communication or notice of any kind permitted or required herein shall be in writing and may be served, as an alternative to personal service, by mailing the same as follows:

If to Declarant:	Meritage Homes, 1544 Eureka Road, Suite 150, Roseville, California 95661 (or to such other address as Declarant may from time to time designate in writing to the Association).
If to SHP:	SHP Fiddymment MP, LLC, 37863 County Road 144, Clarksburg, California 95612 (or to such other address as SHP may from time to time designate in writing to the Association).
If to any Owner:	To the street address of his or her Lot or to such other address as he or she may from time to time designate in writing to the Association for purposes of notice.
If to the Association:	Woodlake Village Homeowners' Association, in care of VierraMoore, 2890 Gateway Oaks Drive, Suite 250, Sacramento, CA 95833 (or to such other address as the Association may from time to time designate in writing to the Owners).

Section 16.02. Personal Service Upon Co-Owners and Others. Personal service of a notice or demand to one of the co-Owners of any Lot, to any general partner of a partnership which is the Owner of Record of the Lot, or to any officer or agent for service of process of a corporation which is the Owner of Record of the Lot, shall be deemed delivered to all such co-Owners, to such partnership, or to such corporation, as the case may be.

Section 16.03. Deposit in United States Mails. All notices and demands served by mail shall be by first-class or certified mail, with postage prepaid, and shall be deemed delivered four (4) days after deposit in the United States mail in the County.

## ARTICLE XVII

### No Public Rights in the Development

Nothing contained in this Declaration shall be deemed to be gift or dedication of all or any portion of the Development to the general public or for any public use or purpose whatsoever.

## ARTICLE XVIII

### Amendment of Declaration

Section 18.01. Amendment Before Close of First Sale. Before the close of escrow for the first sale of a Lot in the Development to a purchaser other than Declarant, this Declaration

may be amended or revoked in any respect by the execution of an instrument amending or revoking the Declaration signed by Declarant, SHP and any Mortgagee of record, provided the consent or approval of the Commissioner of the California Department of Real Estate is first obtained to the extent required by California law. The amending or revoking instrument shall make appropriate reference to this Declaration and shall be Recorded.

Section 18.02. Restatements. This section describes the methods for restating the Declaration after an amendment.

(a) General. The Board has the right, by resolution without the necessity of consent by the Owners, to restate this Declaration when it has been properly amended pursuant to its requirements for amendment. Such restatement shall be effective upon execution of the restatement by any two (2) officers of the Association and its Recordation. Upon Recordation of the restatement, the restatement shall supersede the prior declaration and its amendments in their entirety, without, however, affecting the priority of the Declaration in the chain of title to all properties that are subject to the Declaration as established by the Declaration initial date of Recordation.

(b) Form of Restatement. The restatement shall restate the entire text of the original document, with these exceptions: (i) changes incorporating all amendments approved the Owners; (ii) changes made to rearrange or delete the text for consistency with the approved amendments; (iii) changes made to delete material no longer legally effective or legally required, such as the provisions described in the section entitled "Amendment of Declarant Benefit Provisions"; (iv) the addition of a statement that the Board has authorized the restatement pursuant to this section; (v) changes made to delete any provision declared illegal by constitutional or statutory enactment, by regulation, or by controlling judicial opinion; and (vi) changes needed to distinguish the restatement from the original document, such as title, section, or subsection numbering changes.

Section 18.03. Amendment After Close of First Sale. After the close of escrow for the first sale of a Lot in the Development to a purchaser other than Declarant, this Declaration may be amended or revoked in any respect upon compliance with the following provisions:

(a) Member Approval Requirements. Any amendment shall be approved by the vote or assent by written ballot of the holders of not less than fifty-one percent (51%) of the Voting Power of each class of Members. If a two-class voting structure is no longer in effect in the Association because of the conversion of Class B membership to Class A membership, as provided in the Association's Bylaws, any amendment thereof will require the vote or assent by written ballot of both: (i) fifty-one percent (51%) of the total voting power of the Association; and (ii) the vote of fifty-one percent (51%) of the total Voting Power held by Members other than the Declarant. Notwithstanding the foregoing, the percentage of the voting power necessary to amend a specific clause or provision of this Declaration shall not be less than the percentage of affirmative votes prescribed for action to be taken under that clause. Any vote to amend any provision of this Declaration shall be conducted in accordance with the procedures pertaining to the use of secret ballots that are set forth in Section 7.05, subparagraphs (c) through (i), of the Association Bylaws.

(b) Additional Approvals For Amendments to Particular Provisions:

(i) Mortgagee Approvals. Mortgagee approvals shall be required to amend any of the provisions described in section 14.12, above.

(ii) Declarant Approvals; SHP Approval. The following provisions may only be amended with the prior written consent of the Declarant for so long as the Declarant own any Lots in the Development pursuant to section 15.02, above: 1.14, 1.22, 1.23, 1.41, 2.02, 3.04(d), 3.11, 5.01, 5.02, 5.06, 5.19, 6.01, 6.05, 6.10, 7.01, 7.02, 7.05, 8.05, 9.04, 10.06, 13.08, Article XV, 18.01, and this subparagraph (b)(ii). So long as SHP owns any Lot, any amendment to this Declaration shall require the prior written approval of SHP. Any purported amendment without such approval shall be deemed void and of no force and effect unless subsequently approved by a written consent signed by SHP and recorded.

(iii) Approval by the City. The following provisions of this Declaration reflect conditions of approval for the Overall Development imposed by the City and may only be amended with the prior written consent of the City: Sections 1.10, 1.20, 1.21, 3.01, 6.10, those provisions of Sections 7.01(a), 7.01(c), 7.02(a), 7.02(b), 7.02(c), 7.04(a), and 7.05, relating to protection and maintenance of the Environmental preserve, Sections 7.06 and 13.01, this subparagraph (b)(iii), Section 19.02 and any other Sections of this Declaration that make specific reference to the City or to the Environmental Preserve.

Section 18.04. Department of Real Estate. An amendment to this Declaration, Bylaws, or other governing instruments of the Association shall require immediate notification of the California Department of Real Estate in accordance with section 2800 of the Commissioner's Regulations so long as the Development, or any portion thereof, are subject to an outstanding Final Subdivision Public Report.

Section 18.05. Mortgagee Approval. Mortgagee approval of any proposed material amendment shall be required in accordance with Section 14.12, above.

Section 18.06. Effective Date of Amendment. The amendment will be effective upon the Recording of a Certificate of Amendment, duly executed and certified by the president and secretary of the Association setting forth in full the amendment so approved and that the approval requirements of subsection (a) or (b) above have been duly met. If the consent or approval of any governmental authority, Mortgagee, or other entity is required under this Declaration to amend or revoke any provision of this Declaration, no such amendment or revocation shall become effective unless such consent or approval is obtained.

Section 18.07. Business and Professions Code Section 11018.7. All amendments or revocations of this Declaration shall comply with the provision of California Business and Professions Code section 11018.7 to the extent said section is applicable.

Section 18.08. Reliance on Amendments. Any amendments made in accordance with

the terms of this Declaration shall be presumed valid by anyone relying on them in good faith.

## **ARTICLE XIX**

### **General Provisions**

Section 19.01. Term. The covenants, conditions, restrictions, limitations, reservations, grants of easement, rights, rights-of-way, liens, charges and equitable servitudes contained in this Declaration shall run with, and shall benefit and burden the Lots and the Common Area as herein provided, and shall inure to the benefit of and be binding upon the Owners, Declarant, the Association, its Board of Directors, and its officers and agents, and their respective successors in interest, for the term of sixty (60) years from the date of the recording of this Declaration. After the expiration of the initial term, the same shall be automatically extended for successive periods of ten (10) years each unless, within six (6) months prior to the expiration of the initial 60-year term or any such 10-year extension period, a written instrument, approved by Owners entitled to vote and holding at least a majority of the voting power of the Association terminating the effectiveness of this Declaration, is Recorded.

Section 19.02. Disclosures Required by the City of Roseville. The City of Roseville requires that the following disclosures be provided to prospective purchasers of Lots in Woodlake Village:

(a) Blue Oaks Boulevard is designated as a truck route and will be widened to six lanes and may be widened to eight lanes.

(b) The area located to the north, west and south of Woodlake Village is currently planned for non-residential land uses which may involve twenty-four hour operations, including noise, lights, trucks and a wide variety of industrial uses.

(c) High pressure underground gas lines of the Pacific Gas & Electric Company run along the western and southern boundaries of Woodlake Village.

Section 19.03. Statutory References. In the event that any statute in this Declaration, whether stated by code and number, or named by body of law, is amended, repealed, renumbered, or renamed, all references to such statute or body of law shall refer to the amended, repealed, renumbered, or renamed statutory provisions.

Section 19.04. Construction.

(a) Restrictions Construed Together. All of the covenants, conditions and restrictions of this Declaration shall be liberally construed together to promote and effectuate the fundamental concepts of the development of the Development as set forth in the Recitals of this Declaration. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce that provision in a subsequent application or any other provision hereof.

(b) Restrictions Severable. Notwithstanding the provisions of subparagraph (a) above, the covenants, conditions and restrictions of this Declaration shall be deemed independent

and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

(c) Singular Includes Plural. The singular shall include the plural and the plural the singular unless the context requires the contrary, and the masculine, feminine or neuter shall each include the masculine, feminine and neuter, as the context requires.

(d) Captions. All captions or titles used in this Declaration are intended solely for convenience of reference and shall not affect the interpretation or application of that which is set forth in any of the terms or provisions of the Declaration.

(e) Exhibits. All exhibits to which reference is made herein are deemed to be incorporated herein by reference, whether or not actually attached.

(f) References to State Statutes. Any references in this Declaration to State Statutes shall be to the referenced statute as in effect on the date that this Declaration is Recorded in the Official Records of the County. In the event that any referenced statute is subsequently amended or superseded, all such references shall thereupon mean and refer to the referenced statute as so amended, modified or superseded, so long as the amended statute continues to regulate or pertain to the same subject matter.

(g) Rule Against Perpetuities. If any interest purported to be created by this Declaration is challenged under the Rule against Perpetuities or any related rule of law, the interest shall be construed as becoming void and of no effect as of the end of the applicable period of perpetuities computed from the date when the period of perpetuities starts to run on the challenged interest; the "lives in being" for computing the period of perpetuities shall be: (a) those which would be used in determining the validity of the challenged interest; plus (b) those of the issue of the Board who are living at the time the period of perpetuities starts to run on the challenged interest.

(h) Termination of Option Agreement. Notwithstanding any other provision of this Declaration, Meritage and SHP acknowledge that, upon recordation of a termination of the Option Agreement, the Option Agreement, for purposes of this Declaration, shall be deemed terminated and shall no longer be in force or have any effect hereunder.

(i) Enforcement by SHP. So long as the Option Agreement is in effect, SHP shall have the right to enforce any of the provisions of this Declaration or the Governing Documents that are intended to be for the benefit of SHP.

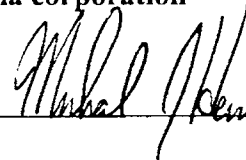
*[Balance of this page left blank intentionally]*

Section 19.05. Declarant's and SHP's Disclaimer of Representations. Anything to the contrary in this Declaration notwithstanding, and except as otherwise may be expressly set forth in a recorded instrument with the County Recorder, Declarant and SHP make no warranties or representations whatsoever that the plans presently envisioned for the complete development of the Development can or will be carried out, or that any land now owned or hereafter acquired by it is or will be subjected to this Declaration, or that any such land (whether or not it has been subjected to this Declaration) is or will be committed to or developed for a particular (or any) use, or that if such land is once used for a particular use, such use will continue in effect.

Dated: November 3, 2006

**DECLARANT:**

**MERITAGE HOMES OF CALIFORNIA, INC.,  
a California corporation**

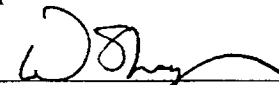
By:  *Michael J. Heim*

**SHP:**

**SHP FIDDYMENT MP, LLC, a California  
limited liability company**

By: Sheya Housing Partners, LLC, a California  
limited liability company

Its: Manager

By:   
Dennis Sheya, Manager

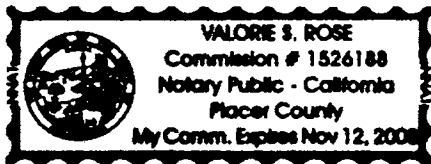


State of California )  
County of Placer )

On 11/3/06 before me, Valorie S. Rose, a Notary Public, personally appeared Michael J. Heim, 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.

Valorie S. Rose  
Notary Public

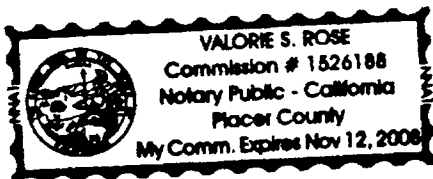


State of California )  
County of Placer )

On 11/3/06 before me, Valorie Rose, a Notary Public, personally appeared Dennis Sheya, 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.

Valorie S. Rose  
Notary Public



### SUBORDINATION

The undersigned, Wells Fargo Bank, National Association, as Beneficiary under that certain Deed of Trust dated June 24, 2005, and recorded June 28, 2005 as document No. 2005-0083151 of the Official Records of Placer County, California (the "Deed of Trust") which Deed of Trust is by and between SHP Fiddymont MP, LLC, a California limited liability company, as Trustor, American Securities Company, a California corporation, as Trustee, hereby expressly subordinates said Deed of Trust and Beneficiary's beneficial interest thereunder to the Declaration of Covenants, Conditions and Restrictions for Woodlake Village to which this Subordination is attached.

IN WITNESS WHEREOF, the undersigned Beneficiary has caused this Subordination to be executed as of November 1, 2006.  
(date)

#### **BENEFICIARY:**

#### **WELLS FARGO BANK, NATIONAL ASSOCIATION**

By: \_\_\_\_\_

Jay Rosenberg  
Jay Rosenberg, Vice President

STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

On NOVEMBER 4th, 2006 before me, CORINNE LIZA SMIT, Notary Public personally appeared JAY ROSENBERG (✓) 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.

Corinne Liza Smit

Signature of Notary Public



{Official Seal}

**EXHIBIT "A"**  
**Legal Description of the Property**  
**Comprising the Woodlake Village Development**

All that real property situated in the State of California, County of Placer, City of Roseville,  
described as follows:

**PARCEL 1:**

Lots 1 through 148 inclusive as shown on the map entitled "Final Map of Woodlake Village",  
Subdivision No. 04-07, filed in the office of the County Recorder of Placer County, California on  
July 25, 2006 in Book BB of Maps, at page 23.

**PARCEL 2:**

Lots A, B, C, E, and G as shown on the map entitled "Final Map of Woodlake Village",  
Subdivision No. 04-07, filed in the office of the County Recorder of Placer County, California on  
July 25, 2006 in Book BB of Maps, at page 23.

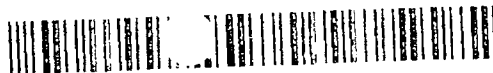
**EXHIBIT “B”**  
**Declaration of Restrictions**

*{See Attached}*

**EXHIBIT "B"**

WHEN RECORDED RETURN TO:

Meritage Homes of California, LLC  
Attention: David Lange  
1544 Eureka Road, Suite 150  
Roseville, CA 95661



PLACER, County Recorder  
JIM MCCAULEY

**DOC- 2005-0130985**

Acct 1-FIRST AMERICAN TITLE

Thursday, SEP 29, 2005 14:13:53

MIC \$3.00:AUT \$110.00:SBS \$109.00

REC \$112.00

Ttl Pd \$334.00

Nbr-0001368332

LAM/LM/1-110

THIS SPACE FOR RECORDER'S USE ONLY

**DECLARATION OF RESTRICTIONS**

THIS DECLARATION OF RESTRICTIONS is made as of 9/21/05, by SHP FIDDYMENT MP, LLC, a California Limited Liability Company ("Declarant").

WHEREAS, Declarant is the owner of certain real property located in the City of Roseville, County of Placer, California, described in Exhibit "A" and depicted on Exhibit "B", which are attached hereto and incorporated hereby by this reference (hereinafter "Preserve Area"); and

WHEREAS, Declarant intends to develop the above described property as wildlife habitat and a wetland preserve area, to be so held in perpetuity subject to restrictions in accordance with the provisions of the Section 404 Permit #200400213 (Exhibit C) (hereinafter "Permit") issued to Declarant by the U.S. Army Corps of Engineers (hereinafter "Corps") and the *Fiddymment 44 Open Space Preserve Operations and Management Plan* (Exhibit D) (hereinafter "The Plan");

WHEREAS, this Declaration of Restrictions is intended to implement the provisions of the Permit requiring a binding covenant running with the land, but shall not be construed to impose restrictions in addition to those provided for in the Permit; and

WHEREAS, the Preserve Area consists of both jurisdictional wetland features and associated natural upland areas;

WHEREAS, the Declaration will benefit all parties to the Declaration in that it will assist in preserving and maintaining the drainage and wildlife habitat in the Preserve Area;

NOW THEREFORE, Declarant declares as follows:

1. Covenant Running with Land. In consideration of the foregoing benefits flowing to all parties; in consideration of the benefits obtained by the Declarant from the Permit, and other valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Declarant does hereby covenant and agree to restrict, and does by this instrument intend to restrict, the future use of the Preserve Area as set forth below, by the establishment of this Covenant running with the land.

2. Restrictions Concerning the Preserve Area. Except for those actions necessary to accomplish preservation, maintenance, repair, fire prevention, or enhancement as has been outlined in the Plan, or in the future is authorized by the Corps, authorized by the Permit, no person shall engage in any of the following restricted activities in the Preserve Area:

(a) No planting, plowing, or cultivation of the Preserve Area or any portion of such area, shall be done or permitted except by the Declarant or its successors and assigns to the Preserve Area, in consultation with the Corps, for the purpose of enhancing the Preserve Area through the planting of local native plant species. The irrigation of these plantings will be done in a manner that does not adversely affect the hydrology of any wetlands within the Preserve Area;

(b) After construction, no materials or debris shall be stored or placed (whether temporarily or permanently) within the Preserve Area or any portion of such area without prior written approval by the Corps;

(c) No discharge of any dredged or fill material shall be done or permitted within the Preserve Area or any portion of such area except as consistent with the terms and conditions of the Permit;

(d) No discharge, dumping, disposal, storage or placement of any trash, refuse, rubbish, grass clippings, cuttings or other waste materials within the Preserve Area or any portion of such area shall be done or permitted;

(e) No leveling, grading or landscaping within the Preserve Area or any portion of such area shall be done or permitted, except as consistent with the terms and conditions of the Permit and the Plan;

(f) No pesticides, herbicides, rodenticides, or other chemicals shall be used within the Preserve Area, except as outlined in the Plan;

(g) No destruction or removal of any natural tree, shrub or other vegetation that exists upon the Preserve Area shall be done or permitted except by the Declarant or its successors and assigns to the Preserve Area, except as outlined in the Plan;

(h) No motorized vehicles shall be ridden, brought, used or permitted on any portion of the Preserve Area, except for the activities provided for in the Plan or with prior written approval by the Corps;

(i) Other than those shown in the Plan, no roads, utility lines, trails, benches, equipment storage, or other structures or activities shall occur within the Preserve Area without prior written approval by the Corps.

3. Other Easements. Easements, including emergency vehicle access easement, temporary construction easements, and easements associated with other structures and improvements outlined in the Plan may be recorded subsequent to the recordation of the deed restrictions.

4. Not An Offer to Dedicate: No Rights of Public Use. The provisions of this Declaration of Restrictions do not constitute an offer for public use. This instrument does not constitute an irrevocable offer to dedicate.

5. Successors and Assign Bound. Declarant hereby agrees and acknowledges that the Preserve Area shall be held, sold, conveyed, owned and used subject to the applicable terms, conditions and obligations imposed by this Agreement relating to the use, repair, maintenance and/or improvement of the Preserve Area, and matters incidental thereto. Such terms, conditions and obligations are a burden and restriction on the use of the Preserve Area, as applicable.

The provisions of this Agreement shall (subject to the limitations contained in this Agreement and without modifying the provisions of this Agreement) be enforceable as equitable servitudes and conditions, restrictions and covenants running with the land, and shall be binding on the Declarant and upon each and all of its respective heirs, devisees, successors, and assigns, officers, directors, employees, agents, representatives, executors, trustees, successor trustees, beneficiaries and administrators, and upon future owners of the Preserve Area and each of them.

6. Severability. The provisions of the Declaration are severable and the violation of any of the provisions of this Declaration by a Court shall not affect any of the other provisions which shall remain in full force and effect.

DECLARANT:

SHP FIDDYMENT MP, LLC  
a California limited liability company

By: SHEYA HOUSING PARTNERS, LLC  
a California Limited Liability Company  
Manager

By: [Signature]  
Dennis Sheya, Manager

Date: 9.27.05

STATE OF CALIFORNIA

County of Sacramento

On September 27, 2005, before me, Lynne M.K. Yim, Notary Public  
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

Personally appeared Dennis Sheya  
Name(s) of Signer(s)

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



Place Notary Seal Above

[Signature]  
Signature of Notary Public

**EXHIBIT A – LEGAL DESCRIPTION OF “PRESERVE AREA”**



**EXHIBIT "A"****DESCRIPTION FOR PRESERVE AREA  
LANDS OF WALAIRE INC.**

All that certain real property being a portion of Parcel 4 as shown on that certain Parcel Map filed for record in Book 20 of Parcel Maps, at Page 126, Placer County Records, lying within a portion of Section 16, Township 11 North, Range 6 East, Mount Diablo Meridian, and being more particularly described as follows:

Beginning at a the most Northerly corner of said Parcel 4; thence from the **TRUE POINT OF BEGINNING**, along the boundary of said Parcel 4, the following three (3) courses:

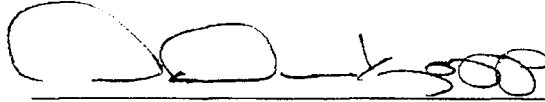
- 1) South 75°08'49" East, a distance of 398.47 feet,
- 2) South 56°16'16" East, a distance of 634.00 feet,
- 3) South 09°52'43" East, a distance of 525.00 feet;

thence leaving said boundary, North 89°58'47" West, a distance of 148.83 feet; thence North 22°09'33" West, a distance of 166.97 feet; thence North 66°37'08" East, a distance of 25.60 feet; thence North 16°24'06" East, a distance of 69.19 feet; thence North 01°05'34" West, a distance of 55.95 feet; thence North 23°04'00" West, a distance of 82.80 feet; thence North 47°54'19" West, a distance of 83.78 feet; thence North 75°35'41" West, a distance of 100.16 feet; thence North 88°32'39" West, a distance of 68.05 feet; thence South 80°20'53" West, a distance of 68.08 feet; thence North 41°57'36" West, a distance of 141.53 feet; thence North 05°00'54" West, a distance of 131.97 feet; thence North 84°36'16" West, a distance of 134.59 feet; thence South 81°14'05" West, a distance of 5.00 feet to the beginning of a non tangent curve to the left, of which the radius point lies South 81°14'05" West, a radial distance of 65.00 feet; thence northwesterly along the arc, through a central angle of 80°16'11", a distance of 91.06 feet; thence North 38°37'15" West, a distance of 26.66 feet; thence North 81°01'19" West, a distance of 143.04 feet; thence North 00°05'13" East, a distance of 91.15 feet; thence North 89°54'47" West, a distance of 40.00 feet to a point on the boundary of said Parcel 4; thence North 00°05'13" East along said boundary, a distance of 98.61 feet to the POINT OF BEGINNING.

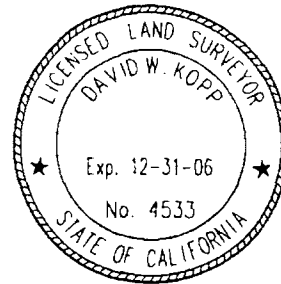
Containing 5.970 acres, more or less.

**END OF DESCRIPTION**

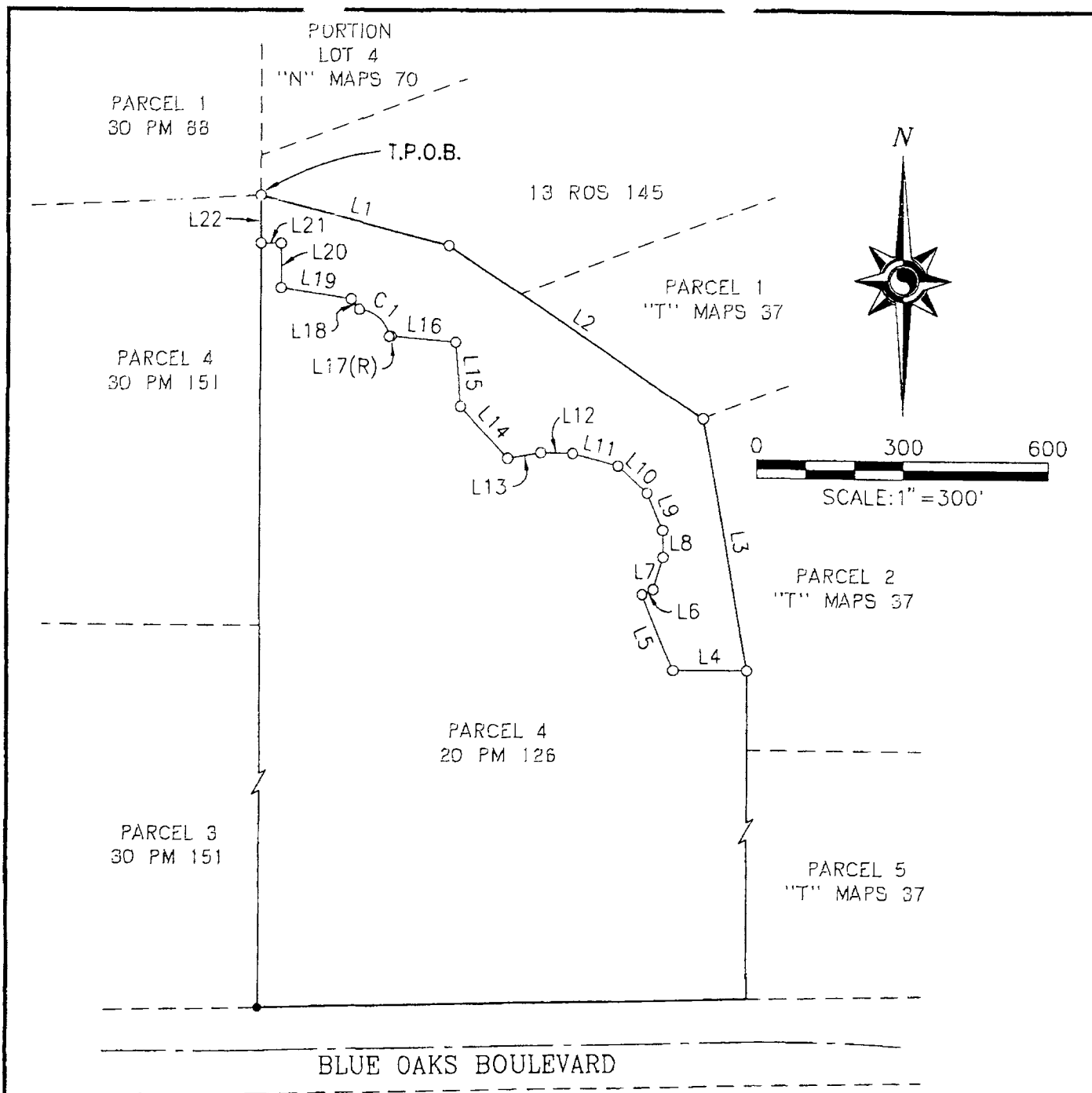
DESCRIPTION PREPARED BY:  
**MACKAY & SOMPS CIVIL ENGINEERS, INC.**  
1552 Eureka Road, Suite 100  
Roseville, California 95661-3040



David W. Kopp, P.L.S. 4533  
License Exp. Date: 12-31-06  
Date: 8/24/2005



**EXHIBIT B – MAP OF “PRESERVE AREA”**



PAGE 1 OF 2

EXHIBIT "B-1"  
PRESERVE AREA  
WOODLAKE VILLAGE  
ROSEVILLE, CALIFORNIA

**MACKEY & SOMPS**  
CIVIL ENGINEERS, INC.  
CIVIL ENGINEERING • LAND PLANNING • LAND SURVEYING  
ROSEVILLE, CALIFORNIA

THIS EXHIBIT IS FOR GRAPHIC PURPOSES ONLY.  
ANY ERRORS OR OMISSIONS ON THIS EXHIBIT  
SHALL NOT AFFECT THE DEED DESCRIPTION.

TWHH	1" = 300'	07/27/2005	18267-00
DRAWN BY	SCALE	DATE	JOB NO.

LINE TABLE		
LINE No.	BEARING	LENGTH
L1	S75°08'49"E	398.47'
L2	S56°16'16"E	634.00'
L3	S09°52'43"E	525.00'
L4	N89°58'47"W	148.83'
L5	N22°09'33"W	166.97'
L6	N66°37'08"E	25.60'
L7	N16°24'06"E	69.19'
L8	N01°05'34"W	55.95'
L9	N23°04'00"W	82.80'
L10	N47°54'19"W	83.78'
L11	N75°35'41"W	100.16'
L12	N88°32'39"W	68.05'
L13	S80°20'53"W	68.08'
L14	N41°57'36"W	141.53'
L15	N05°00'54"W	131.97'
L16	N84°36'16"W	134.59'
L17	S81°14'05"W	5.00'
L18	N38°37'15"W	26.66'
L19	N81°01'19"W	143.04'
L20	N00°05'13"E	91.15'
L21	N89°54'47"W	40.00'
L22	N00°05'13"E	98.61'

CURVE TABLE				
CURVE No.	RADIUS	DELTA	LENGTH	CHORD
C1	65.00'	80°16'11"	91.06'	N48°54'01"W 83.80'

PAGE 2 OF 2

EXHIBIT "B-2"  
PRESERVE AREA  
WOODLAKE VILLAGE  
ROSEVILLE, CALIFORNIA

**MACKEY & SOMPS**

CIVIL ENGINEERS, INC.  
CIVIL ENGINEERING • LAND PLANNING • LAND SURVEYING  
ROSEVILLE, CALIFORNIA

THIS EXHIBIT IS FOR GRAPHIC PURPOSES ONLY.  
ANY ERRORS OR OMISSIONS ON THIS EXHIBIT  
SHALL NOT AFFECT THE DEED DESCRIPTION.

TWHH	1" = 300'	07/27/2005	18267-00
DRAWN BY	SCALE	DATE	JOB NO.

**EXHIBIT C – SECTION 404 PERMIT #200400213**



REPL. TO  
ATTENTION OF

DEPARTMENT OF THE ARMY  
U.S. ARMY ENGINEER DISTRICT, SACRAMENTO  
CORPS OF ENGINEERS  
1325 J STREET  
SACRAMENTO, CALIFORNIA 95814-2922

June 14, 2005

Regulatory Branch (200400213)

Dave Lange  
Meritage Homes of California  
1544 Eureka Boulevard, Suite 150  
Roseville, California 95661

Dear Mr. Lange:

We are enclosing your copy of Department of the Army Permit 200400213. Please note you are only authorized to complete the work described in the permit.

If you sell the property associated with this permit, the terms and conditions of this permit will continue to be binding on the new owner. To validate the transfer of this permit, have the succeeding party sign the permit transfer section at the end of the permit and forward a copy to this office, along with their printed name, address, telephone number, and other contact information.

The time limit for completing the work is specified in General Condition 1. If the work will not be completed prior to that date, you may request a time extension. Your request for an extension must be received by this office for consideration at least 30 days before the time limit date.

Please refer to identification number 200400213 in any correspondence concerning this project. If you have any questions, please contact Tom Cavanaugh at our Sacramento Valley Office, 1325 J Street, Room 1480, Sacramento, California 95814-2922, email [Thomas.J.Cavanaugh@usace.army.mil](mailto:Thomas.J.Cavanaugh@usace.army.mil), or telephone 916-557-5261. You may also use our website: [www.spk.usace.army.mil/regulatory.html](http://www.spk.usace.army.mil/regulatory.html).

Sincerely,

**ORIGINAL SIGNED**

Michael S. Jewell  
Chief, Central California/Nevada  
Section

Enclosure(s)

Copy furnished without enclosure(s):

✓ Stacia Hoover, ECORP Consulting, Incorporated, 2260 Douglas Boulevard, Roseville,  
California 95661

Permittee

DEPARTMENT OF THE ARMY PERMIT

Permittee: Dave Lange  
Meritage Homes of California  
1544 Eureka Blvd., Suite 150  
Roseville, California 95661

F

Permit Number: 200400213

Issuing Office: U.S. Army Engineer District, Sacramento  
Corps of Engineers  
1325 "J" Street  
Sacramento, California 95814-2922

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below. A notice of appeal options is enclosed.

Project Description:

To discharge fill material into 1.582 acres of waters of the United States, including wetlands to develop 37.8 acres of residential (148 residential units and a park) and 5.9 acres of open space preserve. The un-named tributary of Pleasant Grove Creek, a perennial creek occupying 0.181 acres along the northern perimeter of the property, is designated for preservation.

All work is to be completed in accordance with the attached plan(s).

Project Location:

The subject property is located within portions of Section 16, Township 11 N, Range 6 E, of the "Roseville, California 7.5 minute quadrangle (U.S. Department of the Interior, Geological Survey 1992). The subject property is located along and adjacent to the floodplain of an un-named tributary of Pleasant Grove Creek, in northern Roseville. The southern border of the parcel is defined by Blue Oaks Boulevard. The Roseville Technology Park and the Foothills Business Park abut the western and eastern/northern boundaries of the site, respectively.

The Fiddymont 44 site includes Assessor's Parcel Numbers (APN) 017-250-048 and 017-205-047 comprising approximately 44 acres.

Permit Conditions:

General Conditions:

1. The time limit for completing the work authorized ends on April 30, 2005. If you find that you need

~~2005~~  
2010  
*[Signature]*



for a time

more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.

2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.
5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.
6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

Special Conditions:

1. To insure compliance, the document, entitled "Section 404 Individual Permit Application - Fiddymont 44 (Placer County, California)" dated July 7, 2004, is incorporated by reference as a condition of this authorization except as modified by the following special conditions:
2. You shall develop a final comprehensive mitigation and monitoring plan, which must be approved by the Army Corps of Engineers prior to initiation of construction activities. The plan shall include mitigation location and design drawings, vegetation plans, including target species to be planted, and final success criteria, presented in the format of the Sacramento District's Habitat Mitigation and Monitoring Proposal Guidelines, dated December 30, 2004. The purpose of this requirement is to insure replacement of functions and values of the aquatic environment that would be lost through project implementation.
3. To mitigate for the loss of 0.546 acres of waters of the United States and indirect effects to 0.058 acres of waters of the United States, you shall purchase 0.575 credits of seasonal wetlands at a Corps approved wetland mitigation bank. The selected mitigation bank shall include the area of the permitted project within its service area. Evidence of this purchase shall be provided to this office prior to proceeding with any activity otherwise authorized by this permit. A list of approved mitigation banks has been included for your reference.
4. To mitigate for the loss of 1.036 acres of waters of the United States, you shall construct 1.347 acres of vernal pool within the off-site preserve as proposed in the above document.
5. You shall construct the compensatory mitigation prescribed by this plan concurrently with, or in advance of, the start of construction of the authorized/permitted activity.

In

In no case shall initiation of the construction of compensatory mitigation be delayed beyond September 1, 2005. Construction of compensatory mitigation shall be completed no later than September 1, 2006.

2005

7. To insure that mitigation is completed as required, you shall notify the District Engineer of the start date and the completion date of the mitigation construction, in writing and no later than ten (10) calendar days after each date.

8. To provide a permanent record of the completed mitigation work, you shall provide two complete sets of as-builts of the completed work within the off-site mitigation, preservation, and avoidance areas to the Corps of Engineers. The as-builts shall indicate changes made from the original plans in indelible red ink. These as-builts shall be provided to this office no later than 60 days after the completion of construction of the mitigation area wetlands.

9. You shall establish and maintain a 5.9-acre preserve containing 0.433 acres of avoided, and preserved waters of the United States, as depicted on the exhibit entitled Fiddymment 44 Preserve/Impact Map, revised April 28, 2005, in perpetuity. The purpose of this preserve is to insure that functions and values of the aquatic environment are protected.

10. To minimize external disturbance to preserved waters of the United States, you shall establish a buffer, consisting of native upland vegetation along the entire perimeter of all created, preserved, and avoided waters of the United States, including wetlands within the proposed preserve, as depicted in the Fiddymment 44 Preserve/Impact Map, revised April 28, 2005.

11. To insure that the preserve is properly managed, you shall develop a specific and detailed preserve management plan for the on-site and off-site mitigation, preservation, and avoidance areas. This plan shall be submitted to and specifically approved, in writing, by the Corps of Engineers prior to engaging in any work authorized by this permit. This plan shall describe in detail any activities that are proposed within the preserve area(s) and the long term funding and maintenance of each of the preserve areas.

12. To protect the integrity of the preserve and avoid unanticipated future impacts, no roads, utility lines, trails, benches, equipment or fuel storage, grading, firebreaks, mowing, grazing, planting, discing, pesticide use, burning, or other structures or activities shall be constructed or occur within the on-site and off-site mitigation, preservation, and avoidance areas without specific, advance written approval from the Corps of Engineers.

13. To prevent unauthorized access and disturbance, you shall, prior to September 1, 2006, install fencing and appropriate signage around the entire perimeter of the preserve. All fencing surrounding mitigation, preservation, avoidance, and buffer areas shall allow unrestricted visibility of these areas to discourage vandalism or disposing of trash or other debris in these areas. Examples of this type of fencing include chain link and wrought iron.

14. To assure success of the preserved areas, you shall monitor on-site preservation and avoidance areas occurring for five years or until the success criteria described in the final approved management and monitoring plan are met, whichever is greater. This period shall commence upon completion of the authorized fill activity, but not later than one year after the initiation of fill activity. The primary focus of this monitoring shall be to assure that the preserve is successfully established and maintained as wetland and wildlife habitat and not adversely affected by surrounding development.

15. You shall submit monitoring reports to this office, for each year of the five-year monitoring period, by October 1 of each year.

16. This Corps permit does not authorize you to take an endangered species, in particular the vernal pool fairy

Shrimp

shrimp (*Branchinecta lynchi*), vernal pool tadpole shrimp (*Lepidurus packardii*), or designated critical habitat. In order to legally take a listed species, you must have separate authorization under the Endangered Species Act (e.g., and Endangered Species Act Section 10 permit, or a Biological Opinion under Endangered Species Act Section 7, with "incidental take" provisions with which you must comply). The enclosed Fish and Wildlife Service Biological Opinion (Number 1-1-05-F-0037, dated January 21, 2005), contains mandatory terms and conditions to implement the reasonable and prudent measures that are associated with "incidental take" that is also specified in the Biological Opinion. Your authorization under this Corps permit is conditional upon your compliance with all of the mandatory terms and conditions associated with incidental take of the attached Biological Opinion, which terms and conditions are incorporated by reference in this permit. Failure to comply with the terms and conditions associated with incidental take of the Biological Opinion, where a take of the listed species occurs, would constitute an unauthorized take, and it would also constitute non-compliance with your Corps permit. The Fish and Wildlife Service is the appropriate authority to determine compliance with the terms and conditions of its Biological Opinion, and with the Endangered Species Act. The permittee must comply with all conditions of this Biological Opinion, including those ascribed to the Corps.

17. Prior to initiating any activity authorized by this permit, you shall, to insure long-term viability of mitigation, preservation, and avoidance areas:

- a. Establish a fully-funded endowment to provide for maintenance and monitoring of on-site and off-site mitigation, preservation, and avoidance areas.
- b. Designate an appropriate conservation-oriented third part entity to function as preserve manager and to hold the required conservation easements.
- c. Record permanent conservation easements and deed restrictions maintaining all mitigation, preservation, and avoidance areas as wetland preserve and wildlife habitat in perpetuity. Copies of the proposed deed restriction and conservation easement language shall be provided to the Corps of Engineers for approval prior to recordation.
- d. Provide copies of the recorded documents to the Corps of Engineers no later than 30 days prior to the start of construction of any of the activities authorized by this permit.

18. You must allow representatives from the Corps of Engineers to inspect the authorized activity and any mitigation, preservation, or avoidance areas at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

19. To assure success of the preserved and created waters of the United States, you shall monitor off-site compensatory mitigation, avoidance, and preservation areas for five years or until the success criteria described in the approved mitigation plan are met, whichever is greater. This period shall commence upon completion of the construction of the mitigation wetlands. Additionally, continued success of the mitigation wetlands, without human intervention, must be demonstrated for three consecutive years, once the success criteria have been met. The mitigation plan will not be deemed successful until this criterion has been met.

20. You shall submit monitoring reports to this office for each year of the five-year monitoring period, and for each additional year, if remediation is required, by October 1 of each year. You shall submit an additional monitoring report at the end of the three-year period demonstrating continued success of the mitigation program without human intervention.

21. To document pre and post-project construction conditions, you shall submit pre-construction photos of the project site prior to project implementation and post-construction photos of the project site within 30 days after

project completion.

22. All terms and conditions of the April 26, 2005, Section 401 Water Quality Certification are expressly incorporated as conditions of this permit.

23. You shall have a biologist, who is familiar with aquatic resources and the conditions listed in this permit, monitor all construction activities within 250 feet of the preserve boundary. The monitor shall ensure no unauthorized activities occur within the preserve boundary during project implementation.

Further Information:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:
  - ( ) Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).
  - (✓) Section 404 of the Clean Water Act (33 U.S.C. 1344).
  - ( ) Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).
2. Limits of this authorization.
  - a. This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.
  - b. This permit does not grant any property rights or exclusive privileges.
  - c. This permit does not authorize any injury to the property or rights of others.
  - d. This permit does not authorize interference with any existing or proposed Federal projects.
3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:
  - a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
  - b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
  - c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
  - d. Design or construction deficiencies associated with the permitted work.
  - e. Damage claims associated with any future modification, suspension, or revocation of this permit.

### Reliance

4. Reliance on Applicant's Data. The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant.

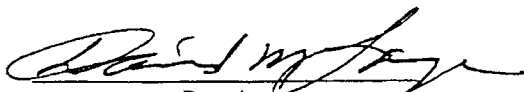
Circumstances that could require a reevaluation include, but are not limited to, the following:

- a. You fail to comply with the terms and conditions of this permit.
- b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (see 4 above).
- c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions. General Condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

  
\_\_\_\_\_  
Permittee  
David M. Lange, VP/Forward Planning  
For Meritage Homes of California, Inc.  
6-8-05  
\_\_\_\_\_  
Date

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

\_\_\_\_\_  
Michael S. Jewell, Chief,  
Central California/Nevada Section  
(For the District Engineer)

\_\_\_\_\_  
Date

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

\_\_\_\_\_  
Transferee

\_\_\_\_\_  
Date

**Figure 1.     Project Site and Vicinity Map**  
**Preserve/Impact Plan**

**This attachment contains print or graphics that do not meet the Placer County  
Recorders Office's standards for recording. It can be viewed in its entirety at  
the City of Roseville Community Development Department office at 311  
Vernon Street, Roseville, California 95678.**

**EXHIBIT D – FIDDYMENT 44 OPEN SPACE OPERATIONS AND MANAGEMENT PLAN  
FOR "PRESERVE AREA"**



OPERATIONS AND MANAGEMENT PLAN  
FOR THE  
**FIDDYMENT 44 OPEN SPACE PRESERVE**  
PLACER COUNTY, CALIFORNIA

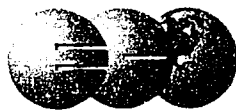
**DRAFT**

August 12, 2005

*PREPARED FOR:*

MERITAGE HOMES OF CALIFORNIA, LLC

*PREPARED BY:*



**ECORP Consulting, Inc.**  
ENVIRONMENTAL CONSULTANTS

## CONTENTS

# OPERATIONS AND MANAGEMENT PLAN FOR THE FIDDYMENT 44 OPEN SPACE PRESERVE

1.0 INTRODUCTION .....	1
1.1 Setting.....	1
1.1.1 Regulatory Background.....	1
1.1.2 Historic Uses.....	2
1.1.3 Surrounding Land Uses.....	2
1.1.4 General Preserve Description.....	2
1.2 Topography and Soils .....	3
1.3 Biological Resources .....	3
1.3.1 Upland Habitat Types and Associated Wildlife .....	3
1.3.1.1 Blue Oak Woodland.....	3
1.3.1.2 Grassland Habitat.....	4
1.3.1.3 Riparian Habitat.....	5
1.3.2 Jurisdictional Wetlands/Waters of the U.S. ....	6
1.3.2.1 Perennial Drainage.....	6
1.3.2.2 Ephemeral Drainage.....	6
1.3.2.3 Seasonal Wetland Swale .....	6
1.3.3 Special-Status Species .....	6
1.4 Plan Goal .....	6
1.5 Definitions.....	7
1.5.1 Annual Report.....	7
1.5.2 Permit.....	7
1.5.3 City.....	7
1.5.4 CDFG .....	7
1.5.5 Corps .....	7
1.5.6 Service .....	7
1.5.7 Exotic Pest Plants.....	7
1.5.8 Monitoring Biologist.....	8
1.5.9 Native Plant Species .....	8
1.5.10 Non-Native Plant Species .....	8
1.5.11 Plan .....	8
1.5.12 Preserve .....	8
1.5.13 Preserve Function.....	8
1.5.14 Preserve Manager.....	8
1.5.15 Qualified Personnel.....	9
2.0 PRESERVE MANGEMENT DURING PROJECT CONSTRUCTION AND DEDICATION OF PRESERVE PARCELS TO THE CITY .....	10
2.1 Protective Measures to be Taken During Initial Project Construction .....	10
2.1.1 Improvement Plans .....	10
2.1.2 Pre-Construction Meetings .....	10
2.1.3 Grading Within the Preserve.....	10

2.1.4	Flagging Preserved Wetlands/Water of the U.S. Adjacent to Construction Within the Preserve .....	10
2.1.5	Storm Water Pollution Prevention .....	10
2.1.6	Use of Native Grasses in Post Construction Revegetation.....	11
2.1.7	Trash Removal and Post Construction Clean-Up.....	11
2.2	Preserve Management During Project Construction.....	11
2.2.1	Biological Monitor .....	11
2.3	Dedication Process for Preserve Parcels .....	12
3.0	PRESERVE OWNERSHIP AND FUNDING MECHANISM.....	13
3.1	Preserve Owner.....	13
3.2	Funding Mechanism.....	13
3.2.1	Property Analysis Record (PAR) .....	13
3.2.2	Start-up Funding .....	13
3.2.3	Community Facilities District Funding .....	13
3.2.4	Contingency Funds .....	14
4.0	PRESERVE PERSONNEL.....	15
4.1	Preserve Manager.....	15
4.1.1	Preserve Manager Responsibilities .....	15
4.2	Use of Qualified Personnel/Monitoring Biologist.....	15
4.2.1	Qualified Personnel/Monitoring Biologist Potential Responsibilities .....	16
4.3	Changes in Personnel.....	16
5.0	LONG TERM PRESERVE INSPECTIONS AND REPORTING .....	17
5.1	Schedule.....	17
5.2	General Inspections .....	17
5.2.1	Erosion and Sedimentation.....	17
5.2.2	Fire Hazard Reduction .....	17
5.2.3	Fencing, Gates, and Signage .....	18
5.2.4	Trash Accumulation .....	18
5.2.5	Unauthorized Motor Vehicle Use .....	18
5.3	Biological Inspections.....	18
5.3.1	Biological Inspection Tasks.....	18
5.3.1.1	Habitat Function .....	18
5.3.1.2	Thatch Accumulation .....	19
5.3.1.3	Newly Introduced Non-Native Plant Species .....	19
5.3.1.4	Preserve Function .....	19
5.4	Agency Monitoring/Inspection.....	19
5.5	Annual Reporting Requirements.....	19
6.0	AGENCY NOTIFICATION .....	20
6.1	No Notification Required.....	20
6.2	Notification .....	20
6.3	Review and Approval .....	20
6.4	Activities Requiring a Permit .....	20
6.5	Emergency Situations.....	21
6.6	Changes in Notification Requirements .....	22

7.0 PROHIBITED ACTIVITIES WITHIN THE PRESERVE .....	23
7.1 Access to the Preserve .....	23
7.2 Vegetation Removal .....	23
7.3 Burning and Dumping .....	23
7.4 Disking .....	23
7.5 Additional Roads, Trails, and Utility Lines.....	23
7.6 Equipment or Fuel Storage .....	23
7.7 Topography .....	23
7.8 Pesticides and Chemical Agents .....	24
7.9 Motor Vehicle Use.....	24
7.10 Construction.....	24
7.11 Non-Native Plants .....	24
8.0 LONG TERM MANAGEMENT OF THE PRESERVE.....	25
8.1 Adaptive Management .....	25
8.2 Preserve Management Activities and Guidelines.....	25
8.2.1 Authorized Access .....	25
8.2.2 Thatch Management.....	25
8.2.2.1 Controlled Burns .....	26
8.2.2.2 Mowing .....	26
8.2.2.3 Grazing .....	26
8.2.3 Non-Native Plant Species Management .....	26
8.2.3.1 Native and Non-Native (Exotic) Plant Species Definitions .....	27
8.3.3.2 Hand/Mechanical Removal .....	28
8.3.3.3 Biological Controls.....	28
8.3.3.4 Use of Herbicides for Non-Native/Exotic Pest Plan Management .....	29
8.3.4 Tree Removal .....	29
8.3.5 Vegetation Debris Removal Within Perennial and Intermittent Drainages .....	29
8.3.6 Beaver Management.....	29
8.3.7 Mosquitoes .....	30
8.3.8 Altered Hydrology .....	30
8.3.9 Homeowner Liaison .....	30
8.3.10 Trash Removal .....	30
9.0 INSTALLATION AND LONG TERM MAINTENANCE OF STRUCTURES AND IMPROVEMENTS .....	31
9.1 Protective Measures to be Taken During Construction Within the Preserve .....	31
9.1.1 Pre-Construction Meetings .....	31
9.1.2 Temporary Construction Fencing .....	31
9.1.3 Flagging Preserved Wetlands/Waters of the U.S. Adjacent to Construction Within the Preserve .....	31
9.1.4 Stormwater Pollution Prevention .....	32
9.1.5 Use of Native Grasses in Post Construction Revegetation .....	32
9.1.6 Trash Removal and Post Construction Clean-Up .....	32
9.2 Fencing and Signage.....	32
9.2.1 Fencing .....	32
9.2.1.1 Temporary Construction Fencing .....	32

9.2.1.2 Initial Installation of Fencing and Fencing Types .....	32
9.2.1.3 Maintenance and Repair .....	33
9.2.1.4 Covenants, Conditions, and Restrictions Required .....	33
9.2.2 Preserve Signs .....	33
9.2.3 Gates .....	33
9.3 Outfalls and Drainage Swales .....	34
9.4 Fire Breaks .....	34
9.5 Easements .....	34
10.0 REMEDIATION/RESTORATION ACTIVITIES .....	35
10.1 Post-Construction Remediation/Restoration .....	35
10.2 Restoration of Declaration of Restriction Violations/Vandalism .....	35
10.3 Timing/Process for Corrective Actions .....	36
11.0 RECREATION, EDUCATION, AND RESTORATION .....	37
11.1 Educational Activities in the Preserve .....	37
11.2 Recreation .....	37
11.3 "Creek Week" or Community Clean-up Days .....	37
11.4 Future Habitat Restoration/Enhancement .....	37
12.0 REFERENCES .....	39

## **LIST OF TABLES**

Table 1 – Wetlands/Waters Impact and Preserve Acreage .....	2
---	---

## **LIST OF FIGURES**

- Figure 1 – Preserve Site and Vicinity
- Figure 2 – Preserve Detail Map
- Figure 3 – NRCS Soil Types

## **LIST OF ATTACHMENTS**

- Attachment A – U.S. Army Corps of Engineers Individual Permit
- Attachment B – U.S. Fish and Wildlife Service Biological Opinion
- Attachment C – Declaration of Restrictions (Deed Restrictions)
- Attachment D – Guidelines for Native Grass Seed Mixes, Application, and Suppliers
- Attachment E – Property Analysis Record Printouts
- Attachment F – Monitoring Timeline
- Attachment G – Preserve Data Sheets
- Attachment H – CalEPPC list
- Attachment I – Sample Preserve Sign
- Attachment J – Native Plants for Use in Restoration

## 1.0 INTRODUCTION

---

### 1.1 Setting

The proposed Fiddymment 44 project is located in the northern portion of the City of Roseville, in western Placer County, California, and occupies ±44-acres. It is west of State Highway 65, north of Blue Oaks Boulevard, east of a shared access road, and south of Pleasant Grove Creek. The property is bounded on the north side by an un-named tributary of Pleasant Grove Creek. The site was originally part of the North Industrial Roseville Specific Plan area, but the plan has since been altered and no longer includes the Fiddymment 44 site. Immediately to the west of the site, a portion of the North Industrial Roseville Specific Plan area is being re-zoned as residential. The other buildings in the area are used for industrial purposes; the site lies adjacent to Hewlett-Packard, the Roseville Technology Park, and another industrial park (Figure 1 – *Preserve Site and Vicinity*). Coordinates of the site are Latitude: 38° 47' 15" N, Longitude 121° 18' 30" W, which corresponds to Section 16, Township 11 N, Range 6 E, of the "Roseville, California" 7.5-minute quadrangle (U.S. Department of the Interior, Geological Survey 1992). The site includes Assessor's Parcel Numbers (APN) 017-250-048 and 017-205-047.

#### 1.1.1 Regulatory Background

An individual permit authorization (Permit) for the Fiddymment 44 project was obtained from the U.S. Army Corps of Engineers, dated, April 28, 2005, (Regulatory Branch #200400213) for the impacts to waters of the United States (including wetlands) anticipated as part of the project (Attachment A). Table 1 – *Wetland/Waters Impacts and Preserve Acreages*, outlines the wetland/waters impacts associated with the Fiddymment 44 project. Additionally, a Biological Opinion (Biological Opinion), dated January 21, 2005 (Service File #1-1-05-F-0037) for the project was written by the U.S. Fish and Wildlife Service (Service) as a result of a federal Endangered Species Act (ESA), Section 7 consultation between the Corps and the Service (Attachment B). A Section 7 consultation is the process by which federal agencies, permitting an otherwise legal activity, consult with the Service to authorize the "incidental take" of species listed as threatened or endangered under ESA. A special condition of the Permit, was the establishment of a long-term management plan for the portions of the project that contain preserved, and the recordation of a declaration of restrictions (deed restrictions) over these areas protecting them from further development and establishing them as wetland and wildlife habitat in perpetuity (Attachment C). This document, the *Operations and Management Plan for the Fiddymment 44 Open Space Preserve* (Plan), fulfills that requirement.

**Table 1 – Wetland/Waters Impacts and Preserve Acreages**

<b>Waters of the U.S.</b>	<b>Acreage</b>	<b>Impact</b>	<b>Preserve</b>
<u>Wetlands</u>			
Seasonal Wetland			
-Naturally Occurring Wetlands	0.842	0.842	0
-Stock Pond Wetlands	0.218	0.218	0
Seasonal Swale	0.364	0.157	0.207
Drainage Ditch	0.052	0.052	0
<u>Other Waters</u>			
Ephemeral Drainage	0.045	0	0.045
Perennial Drainage	0.181	0	0.181
Ephemeral Pond	0.313	0.313	0
<b>Total Waters</b>	<b>2.015</b>	<b>1.582</b>	<b>0.433</b>

### 1.1.2 Historic Uses

The subject property was historically used as rangeland. It is a small portion of a ranch originally comprised of 1,695 acres. The 44-acre parcel is the last parcel within the ranch that has not been converted to urban use. With the expansion of the City of Roseville northward, the Fiddymment Ranch has gradually been incorporated into the City. Historically, the 44-acre parcel supported cattle, grain, poultry, sheep, and a pasture operation with its own feed mill storage silos, and corrals along the necessary farm equipment. A stock pond was built in the 1950's and used as a water source for cattle and sheep.

### 1.1.3 Surrounding Land Uses

To the west of the site is the North Industrial Roseville Specific Plan area. The portion immediately adjacent to the Fiddymment 44 property (Roseville Technology Center) is being re-zoned to allow the construction of a residential development. To the east of the site is a recently constructed industrial/business development (Foothill Business Park). The land to the north and south of the site is used for industrial complexes.

### 1.1.4 General Preserve Description

The Preserve (Figure 2 – *Preserve Detail Map*) consists a Valley foothill riparian corridor and associated upland habitat along the perennial drainage, which is an unnamed tributary to Pleasant Grove Creek. The perennial drainage has a wetted width of about 8 feet, and high gradient banks that are eroded and sloughing in places. Riparian vegetation along the creek is patchy, with several locations exposed. Plant species include interior live oak (*Quercus wislizenii*), Valley oak (*Quercus lobata*), black willow (*Salix gooddingii*), Himalaya blackberry (*Rubus discolor*), coyote bush (*Baccharis pilularis*), and poison oak (*Toxicodendron diversilobum*). The upland area consists mostly of an annual grassland habitat comprised of naturalized non-native species such as ryegrass (*Lolium multiflorum*),

ripgut brome (*Bromus diandrus*), soft brome (*Bromus hordeaceus*), wild oats (*Avena fatua*), and filaree (*Erodium botrys*).

There is an ephemeral drainage that connects with the perennial drainage. There is a small section of oak woodland that exists along the ephemeral drainage on the northeast side of the site, and in areas around the stock pond. These patches consist largely of mature blue oaks (*Quercus douglasii*) and interior live oaks. There is little understory or shrub layer.

The south end of the Preserve contains a seasonal wetland swale. The vegetation within the swale is comprised mostly of coyote-thistle (*Eryngium yaseyi*), Sacramento mesamint (*Pogogyne zizyphoroides*), spikerush (*Eleocharis* sp.), Mediterranean barley (*Hordium marinum*), and ryegrass (*Lolium multiflorum*).

A total of 0.433 acres of waters of the U.S., including wetlands, are located throughout the Preserve. These include a seasonal wetland swale (0.207 acre), a perennial drainage (0.181 acre), and ephemeral drainages (0.045 acre).

## **1.2 Topography and Soils**

The site is comprised of flat to gently rolling terrain, and is situated at an elevation of approximately 115 feet above mean sea level. According to the *Soil Survey of Placer County Western Part, California* (U.S. Department of Agriculture, Soil conservation Service 1980), three soil units have been mapped for the Preserve area. These type are: (104) Alamo-Fiddymment complex, 0-5% slopes, (141) Cometa-Fiddymment complex, 1-5% slopes, and (162) Kilaga loam (Figure 3 – *NRCS Soil Types*)

## **1.3 Biological Resources**

The Fiddymment 44 Preserve has several habitat types that support a variety of wildlife species, some of them special-status.

### **1.3.1 Upland Habitat Types and Associated Wildlife**

The dominant habitat type within the Preserve is non-native annual grassland (and associated wetlands/waters of the U.S. – see Section 1.3.2) with smaller components of riparian and oak woodland along the ephemeral drainage and perennial drainage.

#### **1.3.1.1 Blue Oak Woodland**

Aside from the dominant blue oaks (*Quercus douglasii*), other species found in oak woodland can include hoary coffeeberry (*Rhamnus tomentella*), coyote brush (*Baccharis pilularis*), toyon (*Heteromeles arbutifolia*), and poison oak (*Toxicodendron diversilobum*). Other Herbaceous understory plants include a variety of non-native grasses such as ripgut brome (*Bromus diandrus*), medusahead grass (*Taeniatherum caput-medusae*), soft brome (*Bromus hordeaceus*), wild oats (*Avena fatua*), Mediterranean barley (*Hordeum marinum*), and Italian ryegrass (*Lolium multiflorum*). Purple needle grass (*Nassella pulchra*), a native perennial bunch grass, may be found scattered amongst the non-native species.



In areas along intermittent channels that do not support a full suite of riparian species, woody species may include interior live oak (*Q. wislizenii*), California buckeye (*Aesculus californica*), and button bush (*Cephalanthus occidentalis*).

Blue oak woodland provides a number of important wildlife resources, including food, cover, shade, roosting, and breeding sites. Acorns are preferred or essential food items in the diets of acorn woodpecker (*Melanerpes formicivorus*), western scrub-jay (*Aphelocoma californica*), western gray squirrel (*Sciurus griseus*), and many other species. Insects found in association with oak foliage and bark also attract insectivorous birds such as yellow-rumped warbler (*Dendroica coronata*) and Hutton's vireo (*Vireo huttoni*). Larger, dead, and/or decaying trees provide nesting sites for cavity-nesting birds such as American kestrel (*Falco sparverius*), western bluebird (*Sialia mexicana*), tree swallow (*Tachycineta bicolor*), and white-breasted nuthatch (*Sitta carolinensis*).

Other common wildlife species that may be found in the oak woodland include coyote (*Canis latrans*), western gray squirrel (*Sciurus griseus*), mule deer (*Odocoileus hemionus*), Mexican free-tailed bat (*Tadarida brasiliensis*), big brown bat (*Eptesicus fuscus*), pallid bat (*Antrozous pallidus*), pacific chorus frog (*Pseudacris regilla*), western fence lizard (*Sceloporus occidentalis*), California kingsnake (*Lampropeltis getulus*), sharptail snake (*Contia tenuis*), and striped racer (*Masticophis lateralis*).

#### **1.3.1.2 Grassland Habitat**

The annual grassland community is comprised primarily of non-native naturalized Mediterranean grasses. These include ripgut brome (*Bromus diandrus*), soft brome (*Bromus hordeaceus*), wild oats (*Avena fatua*), ryegrass (*Lolium multiflorum*), Mediterranean barley (*Hordeum marinum*), and medusahead grass (*Taeniatherum caput-medusae*). Other herbaceous species in this community may include bur clover (*Medicago polymorpha*), filaree (*Erodium botrys*), clover (*Trifolium* spp.), blue dicks (*Dichelostemma capitatum*), spikeweed (*Hemizonia fitchii*), and yellow-star thistle (*Centaurea solstitialis*).

The annual grassland habitat supports a modest diversity of wildlife species. Small mammals present may include California vole (*Microtus californicus*), black-tailed jackrabbit (*Lepus californicus*), deer mouse (*Peromyscus maniculatus*), and pocket gopher (*Thomomys* spp.). These mammals represent potential foraging items for predators such as northern harrier (*Circus cyaneus*), red-tailed hawk (*Buteo jamaicensis*), white-tailed kite (*Elanus leucurus*), gopher snake (*Pituophis catenifer*), western rattlesnake (*Crotalus viridis*), and coyote (*Canis latrans*). Birds that may find the grasslands suitable for nesting include the horned lark (*Eremophila alpestris*) and western meadowlark (*Sturnella neglecta*). Other birds, which do not necessarily nest within the grasslands but may forage in this habitat, include Brewer's blackbirds (*Euphagus cyanocephalus*) and tricolored blackbird (*Agelaius tricolor*).

### 1.3.1.3 Riparian Habitat

Riparian woodland is typically comprised of a canopy of mature trees, an intermediate shrub layer, and herbaceous ground-cover. The stratified community provides important elements for the completion of the life cycle of many wildlife species and provides important migration corridor for a variety of wildlife, in addition to providing forage and cover. The riparian habitat description below is indicative of a mature riparian forest. The riparian habitat on-site is patchy and would be expected to provide some of the habitat values listed below.

The canopy of the typical valley riparian forest is comprised primarily of Valley oak (*Quercus lobata*) with scattered large willows (*Salix* spp.), Fremont cottonwood (*Populus fremontii*), and California buckeye (*Aesculus californica*). The mid-level of the typical riparian habitat is made up of scrub-shrub species such as arroyo willow (*Salix lasiolepis*), button bush (*Cephalanthus occidentalis*), and other willows (*Salix* species). This understory or mid-level vegetation is missing in the majority of the Pleasant Grove Creek corridor because of cattle grazing. The herbaceous understory may include Canada thistle (*Cirsium arvense*), bull thistle (*Cirsium vulgare*), tall flatsedge (*Cyperus eragrostis*), hairy willow-herb (*Epilobium ciliatum*), willow-herb (*Epilobium* species), smilo grass (*Piptotherum miliaceum*), prickly sowthistle (*Sonchus asper*), vetch (*Vicia* species), California wild grape (*Vitis californica*), and rough cockle-bur (*Xanthium strumarium*).

The riparian communities in this region typically support a wide variety of wildlife species, including Bewick's wren (*Thryomanes bewickii*), downy woodpecker (*Picoides pubescens*), Swainson's hawk (*Buteo swainsoni*), golden-crowned sparrow (*Zonotrichia atricapilla*), wood duck (*Aix sponsa*), red-shouldered hawk (*Buteo lineatus*), great horned owl (*Bubo virginianus*), and tree swallow (*Tachycineta bicolor*). Several bat species could occur within the riparian areas. The western red bat (*Lasiurus blossevillei*) is a tree roosting bat, which prefers riparian habitat. Little is known about the local distribution of this species, but it could potentially be a resident bat or occur during annual migration periods. Mexican free-tailed bats (*Tadarida brasiliensis*), Yuma myotis (*Myotis yumanensis*), and big brown bats (*Eptesicus fuscus*) are common species that prefer bridges and other structures, but may roost in tree cavities or hollow trunks.

The understory scrub community provides nesting habitat for wrentit, Bewick's wren, song sparrow, and California towhee. Resident and migratory songbirds such as hermit thrush (*Catharus guttatus*), Bewick's wren (*Thryomanes bewickii*), fox sparrow (*Passerella iliaca*), and spotted towhee (*Pipilo maculatus*) also utilize willow scrub community for foraging and nesting cover.

Other wildlife species observed within the riparian communities include Pacific chorus frog, western gray squirrel, mule deer, striped skunk (*Mephitis mephitis*), beaver (*Castor canadensis*), common garter snake (*Thamnophis sirtalis*), and raccoon (*Procyon lotor*).

### **1.3.2 Jurisdictional Wetlands/Waters of the U.S.**

A variety of wetlands and waters of the U.S. occur in the Preserve. Each is described in detail below.

#### **1.3.2.1 Perennial Drainage**

Perennial drainages are characterized by a defined bed and bank with a distinct high-water level with a distinct high-water level, but may have water flowing in them year round (perennially) or intermittently. Scattered clumps of cattail, rush (*Juncus* spp.) and various emergent forbs and grasses inhabit sections of the drainage. Riparian vegetation is patchy, with several location exposed.

#### **1.3.2.2 Ephemeral Drainage**

Ephemeral drainages are characterized by a defined bed and bank. The ephemeral drainage on-site is a branch off of the perennial drainage and serves as an overflow drainage for the perennial drainage, carrying water only when the perennial drainage is at high flows. The ephemeral drainage is under a dense oak canopy.

#### **1.3.2.3 Seasonal Wetland Swale**

Within the Preserve, seasonal wetland swale occur within the annual grassland as shallow depressions underlain by slowly permeable soils. It is fed, in part, by rainwater passing through a culvert at the base of the stockpond. The meandering swale empties into the perennial drainage on the northern edge of the property. Vegetation growing within the drainage consists of cattail (*Typha* sp.), curly dock (*Rumex crispus*), and smartweed (*Polygonum* spp.), at the upstream end. The lower portion of the drainage consists primarily of naturalized Mediterranean grasses. When inundated, these seasonal wetland swale provide habitat for aquatic invertebrates and amphibians. For most of the remainder of the year, wildlife usage is similar to that of typical Central Valley non-native annual grassland habitat.

### **1.3.3 Special-Status Species**

There are no known occurrences of special status species within the Fiddymment 44 Preserve area.

## **1.4 Plan Goal**

The goal of this Plan is to ensure that the preserved wetland/waters of the U.S., riparian, and upland habitats within the Preserve are maintained in good condition such that they will continue to support the flora and fauna that the Preserve were established to protect (Conservation Values) in perpetuity, and to define the specific methods necessary to meet this goal. Conservation Values are defined as the physical, biological, and environmental processes needed to maintain the suitability of habitats in the Preserve. Specific management strategies and biological monitoring designed to maintain the Conservation Values are discussed in Sections 5.0 and 8.0.

In order to realize the Plan Goal, the following biological goals are established:

- To maintain in perpetuity, the suitability of the drainage ecosystems and uplands within the Preserve.
- Preserve the abundance and diversity of the native plant and animal species within the grassland, riparian, and oak woodland habitats.
- Protect the Preserve from the effects of adjacent land uses that may adversely impact the Preserve.
- Repair or restore adverse conditions within the Preserve.
- To manage the Preserve area budget in a fiscally responsible manner.

## **1.5 Definitions**

Although these terms have been defined in the text, this definition section has been provided for a quick reference.

### **1.5.1 Annual Report**

The yearly report prepared by the Monitoring Biologist in conjunction with the Preserve Manager that will be submitted to the Preserve Manager and the Corps by December 31<sup>st</sup> of each year.

### **1.5.2 Permit**

The specific U.S. Army Corps of Engineers permit issued for the Fiddymment 44 project (Regulatory Branch #200400213).

### **1.5.3 City**

The City of Roseville.

### **1.5.4 CDFG**

The California Department of Fish and Game.

### **1.5.5 Corps**

The United States Army Corps of Engineers.

### **1.5.6 Service**

The United States Fish and Wildlife Service.

### **1.5.7 Exotic Pest Plants**

Exotic pest plants are plants that are not native, and additionally are invasive, replacing native vegetation or native habitats. The Monitoring Biologist and the Preserve Manager

can refer to the species found on the California Exotic Pest Control Council (CalEPPC) List A, List B, and Red Alert List to assist them in determining if a plant is an exotic plant species of concern.

#### **1.5.8 Monitoring Biologist**

The primary consulting scientist or firm hired to assist the Preserve Manager in performing the duties and obligations required by this Plan.

#### **1.5.9 Native Plant Species**

For the purposes of this Plan, plants native to the Preserve are defined as those plants believed by the scientific community to have been present in western Placer County prior to the settlement of Europeans. The Jepson Manual (Hickman 1993) will be the primary reference for determining if a plant is native or non-native. However, because this reference is specific only as to subregions, which encompass portions of several counties, the Preserve Manager can consult with the Monitoring Biologist, local botanists, or the local chapter of the California Native Plant Society to determine if a plant should be considered native to the Preserve.

#### **1.5.10 Non-Native Plant Species**

Any plant not considered a Native Plant Species as defined above.

#### **1.5.11 Plan**

The Operations and Management Plan for the Fiddymment 44 Open Space Preserve prepared in compliance with the Permit.

#### **1.5.12 Preserve**

The Fiddymment 44 Open Space Preserve consists of a series of riparian/oak woodland corridors with accompanying perennial drainages, ephemeral drainages, and seasonal wetland swales (see Figure 2).

#### **1.5.13 Preserve Function**

Preserve function is defined as the physical, biological, and environmental processes needed to maintain the suitability of the habitats in the Preserve habitats.

#### **1.5.14 Preserve Manager**

The City of Roseville Environmental Coordinator will act as Preserve Manager and will be the contact for all matters concerning the Preserve.

#### **1.5.15 Qualified Personnel**

Professional biologists, botanists, and other specialists employed to assist the Preserve Manager in performing the duties and obligations required by this Plan.

## **2.0 PRESERVE MANAGEMENT DURING PROJECT CONSTRUCTION AND DEDICATION OF PRESERVE PARCELS TO THE CITY**

---

### **2.1 Protective Measures to be Taken During Initial Project Construction**

As the Fiddymment 44 area is built out, construction will take place along the Preserve boundary and within the Preserve. Past experience has shown that biological resources in urban preserves are vulnerable to disturbance during construction. In general, the minimum necessary construction area will be used (if within the Preserve). Construction limits will be set that do not encroach on any preserved wetlands/waters of the U.S. To avoid impacts to the Preserve and the protected resources, the following protective measures will be taken during project construction.

#### **2.1.1 Improvement Plans**

To ensure that that contractors working on projects adjacent to the Preserve are aware of it's presence, improvement plans for projects adjacent to the Preserve will show the Preserve boundary and the Preserve will be labeled.

#### **2.1.2 Pre-Construction Meetings**

Pre-construction meetings for construction occurring adjacent to or in the Preserve will address the presence of Preserve, the sensitive habitats present and minimization of disturbance to the Preserve. The City inspectors can also conduct a post-construction inspection to determine if those conducting the construction need to do any post-construction remediation.

#### **2.1.3 Grading Within the Preserve**

To achieve the appropriate grade to install pads and construct three drainage swales within and along the Preserve boundary, some grading and slopes will occur in the Preserve. This grading will not disturb or modify existing preserved waters of the U.S. Portions of the Preserve that are graded will be hydroseeded with native seed as described below in Section 2.1.6 to re-establish vegetation.

#### **2.1.4 Flagging Preserved Wetlands/Waters of the U.S. Adjacent to Construction Within the Preserve**

When construction is occurring within the Preserve, the developer or the developer's contractor will hire a professional wetland biologist to flag the preserved wetlands/waters of the U.S. within 25 feet of the limits of construction with brightly colored pin-flags so that workers are aware of the location of the protected habitat.

#### **2.1.5 Storm Water Pollution Prevention**

Storm water best management practices (BMPs) prevent pollutant discharges into the Preserve and are required by the State Water Resources Control Board for any project over one acre in size. A Storm Water Pollution Prevention Plan (SWPPP) will be prepared and

implemented to control sediment and erosion during construction. This includes preventing runoff from dust control and dewatering. Oil, soil amendments (e.g., lime) or other chemicals used in construction activities shall not be allowed to contaminate site runoff that discharges to the Preserve. For all construction related activities in and adjacent to the Preserve, perimeter BMPs shall be installed (i.e., straw wattle, silt fencing, etc.) as a minimum sediment control measure at all times (year round).

#### **2.1.6 Use of Native Grasses in Post Construction Revegetation**

When construction work disturbs soil within the Preserve, all seed used to revegetate must be native to California, preferably ecotypes from western Placer or surrounding counties. Attachment D provides guidelines for seed mixes for different revegetation situations, but the project engineer will consult with a qualified biologist and will ultimately need to approve the seed mix to ensure that the seed mix will result in revegetation that meets required performance standards. Attachment D also provides local native grass seed companies.

#### **2.1.7 Trash Removal and Post Construction Clean-Up**

During construction, paper trash, food wrappers, and other trash often blows into preserve areas from adjacent construction sites. The developer or the developer's contractor will remove trash blown into the Preserve from adjacent construction on a daily basis. After construction is complete and the temporary construction fencing has been replaced by permanent fencing, temporary fencing and posts will be removed from the Preserve. Additionally, when disturbed areas adjacent to or within the Preserve (e.g. grading for pad installation) have become revegetated and construction is complete, all temporary erosion control materials (e.g. straw bales, straw wattles and stakes, silt fencing) will be removed from the Preserve.

### **2.2 Preserve Management During Project Construction**

During project construction, prior to turning the Preserve over to the City, the developer will be responsible for the management and monitoring of the Preserve. The developer will hire a professional biologist to carry out the required monitoring activities and submit the required reports. The developer will be responsible for the first two years of monitoring/management, or until construction adjacent and within the Preserve is complete.

#### **2.2.1 Biological Monitor**

The developer shall retain a biologist, who is familiar with aquatic resources, the conditions of the Permit, and the requirements of this Plan, monitor all construction activities within 250-feet of the Preserve boundary, unless otherwise approved by the Corps. The monitor shall take pre- and post-construction photos and submit these to the Corps within 30-days of completion of construction activities authorized by the Permit.



### **2.3 Dedication Process for Preserve Parcels**

The following section outlines the Community Development Department's procedures for dedicating a Preserve parcel to the City. Other Departments in the City may have additional requirements:

Prior to dedication, the Preserve Manager or other designated City staff member will conduct a walk-through with the parcel owner. The purpose of this walk-through will be to:

- Ensure that permanent fencing has been installed according to this Plan.
- Trash and debris has been removed from the parcel.
- Ensure that any areas of erosion, sedimentation, or vandalism resulting from surrounding development have been corrected.

Additionally, these items/documents are required:

- Appropriate funding for Preserve management is available to the City.
- A title report less than 6 months old.
- Grant deed with legal description and map.
- Phase 1 Site Assessment for hazardous materials.

Upon dedication to the City, the Preserve parcel will be managed by the City according to this Plan.

## **3.0 PRESERVE OWNERSHIP AND FUNDING MECHANISM**

---

### **3.1 Preserve Owner**

The City of Roseville will ultimately become the Preserve Owner. See Section 2.3 for dedication process for open space parcels. Until that time, the developer is responsible for monitoring and maintaining the corridor according to this Plan. Upon dedication of the Parcel to the City, the City will manage and maintain each Preserve Parcel. The Preserve Manager will be responsible for implementing or overseeing the management and maintenance of this Preserve as outlined above. The following sections outline the funding sources for Preserve management and monitoring.

### **3.2 Funding Mechanism**

Funding for the perpetual maintenance of the Preserve will be provided through a Community Facilities District (CFD). The amount of funding required to carry out the tasks described in this Plan were agreed upon by the City and the Corps. A property analysis record (PAR) was used to calculate the amount needed (Attachment E).

#### **3.2.1 Property Analysis Record (PAR)**

PARs are generated through the use of a computer program written by the Center for Natural Lands Management to allow government agencies, land trusts, and preserve management foundations and organizations to better define and understand the financial obligations that come with managing natural areas. The program lists a number of activities, structures, and overhead costs associated with preserve management and allows the user to choose the tasks that apply. These costs are then tabulated and printed out for budgeting purposes.

#### **3.2.2 Start-Up Funding**

Funding of \$18,822 will be provided by the developer for the first 2 years of preserve management. It is expected that after two years, the CFD will be producing the required amount of funding.

#### **3.2.3 Community Facilities District Funding**

The long-term preserve management and maintenance funding will be provided for by a CFD. The CFD funds will be collected by the City of Roseville. A subset of the overall annual CFD assessment will be used to fund the perpetual maintenance of the Preserve. An estimate of the per-year costs of implementing this Plan has been determined using the PAR software, and the printouts are included in Attachment E. This analysis was used as a basis for determining the amount of the annual CFD assessment required to adequately maintain the Preserve in perpetuity.

#### **3.2.4 Contingency Funds**

A part of the funding for the management of the Preserve is a contingency fund as shown in the PAR. This fund is in place for emergencies such as vandalism of fencing, signage, or other unanticipated needs.

## **4.0 PRESERVE PERSONNEL**

---

The three roles outlined below make up the primary personnel that will oversee, monitor and coordinate the maintenance of the Preserve. They are intended to work together as a team to accomplish the management of the Preserve by exchanging information, problem solving and generally having a proactive relationship.

### **4.1 Preserve Manager**

The Preserve will be managed by the City of Roseville (City) pursuant to the declaration of restrictions (Attachment C) and this Plan. The City Environmental Coordinator will act as Preserve Manager. Funding for the perpetual management and care of the Preserve will be provided for by an endowment fund and a Community Facilities District annual assessment as described under Section 3.0.

#### **4.1.1 Preserve Manager Responsibilities**

The Preserve Manager's responsibilities and duties shall include but not be limited to:

- Reviewing construction activities in and adjacent to the Preserve.
- Monitoring and seeking correction for impacts to the Preserve from adjacent land uses.
- Coordinating General Inspections of the Preserve as required by this Plan.
- Assuring that gates, fencing and signage at the Preserve are maintained.
- Coordinating trash removal from the Preserve.
- Coordinating thatch or non-native (exotic) plant management.
- Coordinating Biological Inspections of the Preserve by a qualified biologist ("Monitoring Biologist").
- Reviewing monitoring data and coordinate with the Monitoring Biologist and the Corps, for any remedial action.
- Submitting an Annual Report in coordination with the Monitoring Biologist regarding the status of the Preserve to the Corps.
- Maintain a File for the Preserves. This File will contain a record of management and maintenance related activities, correspondence and determinations regarding the Preserve.
- Arrange for any corrective action necessary to ensure the performance of the habitat within the Preserve.
- Coordinate use of the Preserve for education, restoration efforts, or other tasks such as grant proposals.
- Work with the Monitoring Biologist and agency staff.

### **4.2 Use of Qualified Personnel/Monitoring Biologist**

If the Preserve Manager does not have the appropriately trained staff to carry out any of the specialized tasks required by this Plan, the City shall retain professional biologists, botanists or other types of specialists (the Qualified Personnel, including the Monitoring Biologist) to conduct specialized tasks. The Monitoring Biologist shall be familiar with California flora and fauna and their ecology.

#### **4.2.1 Qualified Personnel/Monitoring Biologist Potential Responsibilities**

Overall, duties of the Qualified Personnel may include but are not limited to:

- Wetland/waters of the U.S. function and erosion monitoring tasks.
- Evaluating the accumulation of dead vegetative matter (thatch) and recommending removal, if needed.
- Evaluate the presence of newly introduced non-native (exotic) plant species and recommend management, if needed. (This will be limited to new populations or new species. It is understood that there is an existing suite of non-native invasive plant species in the Preserve.)
- Conducting the Biological Inspection, collecting data on the Preserve and preparing reports required by this Plan.
- Evaluating site conditions and recommending remedial action to the Preserve Manager.
- Assist in reviewing or planning restoration activities, use of the Preserve for education, or other tasks such as grant proposals.
- Work with the Preserve Manager and agency staff.

#### **4.3 Changes in Personnel**

If the Preserve Manager or the Qualified Personnel are changed, the outgoing and incoming personnel will tour the Preserve together and the former will advise the latter of trends, problem areas, and any administrative difficulties.

## **5.0 LONG TERM PRESERVE INSPECTIONS AND REPORTING**

---

### **5.1 Schedule**

Monitoring of the Preserve begins when construction begins. This monitoring fulfills the requirement of the Permit for the "five-year monitoring" condition as it occurs in perpetuity. The schedule of inspections for the Preserve is as follows:

- The Monitoring Biologist shall conduct two Biological Inspections each year, one in spring and one in fall.
- The Preserve Manager shall conduct (at minimum) two General Inspections each year.

Please see Attachment F for a suggested monitoring timeline.

### **5.2 General Inspections**

The Preserve Manager shall arrange for the General Inspections to be made to ensure the integrity of the Preserve. Inspections will concentrate on an evaluation of the following factors: erosion, fire hazard reduction, fencing integrity, condition of signage, trash accumulation, and evidence of unauthorized use by motor vehicles. The entire perimeter of the Preserve should be covered, as well as meandering transects through its interior. A Preserve Inspection Sheet (Attachment G) will be utilized in order to evaluate the above criteria during each field visit. Previous inspection sheets should be reviewed before each visit in order to determine that a possible or recurring problem area is not missed. If any problems are identified, more frequent inspections will be done in order to closely track any problems as well as to ensure that remedial actions are effective. Evaluation and corrective actions for each factor are described below:

#### **5.2.1 Erosion and Sedimentation**

If it is determined during the inspection that adjacent sheet-flow drainage is causing any erosion, sedimentation or other adverse effects upon the Preserve, immediate standard erosion control measures (such as the installation wattles) will be implemented. This is most crucial during initial construction activities. If any significant erosion/sedimentation problems occur, the Corps will also be notified and a qualified erosion control specialist will be consulted. See Section 10.0 for remediation actions for sedimentation.

#### **5.2.2 Fire Hazard Reduction**

If at any time conditions at the Preserve become a fire hazard, the Preserve Manager will work with the City Fire Department to decide on the best method to reduce the fire risk at the Preserve. The City Fire Department requires a 30-foot wide mowed firebreak at the back of residential lots, however to avoid potential impacts to waters of the U.S. the firebreak has been adjusted in some areas. On a portion of the Preserve the firebreak will be all or partially located in the backyard of residential lots that are immediately adjacent to the Preserve. These residents will be notified through deed disclosures that they will be responsible for maintaining this firebreak per City Fire Department requirements. For the

approximate location of the firebreak, see Figure 2. Firebreaks in other locations within the Preserve would require Corps approval.

### **5.2.3 Fencing, Gates, and Signage**

The condition of the fencing, gates, and signage at the Preserve should be checked during the General Inspection. The City will be responsible for maintaining the fencing, gates, and signage.

### **5.2.4 Trash Accumulation**

The Preserve Manager will arrange for the removal of trash from the Preserve quarterly.

### **5.2.5 Unauthorized Motor Vehicle Use**

The perimeter of the Preserve will be inspected for evidence of unauthorized motor vehicle use/access. If necessary, corrective actions such as repairing locks and gates will be taken.

## **5.3 Biological Inspections**

In managing the Preserve, measures must be taken to help ensure that the existing conditions are maintained over the long term. Inspections by a qualified biologist will help ensure the long-term integrity of the wetland/waters of the U.S. and upland habitats.

The Biological Inspections of the Preserve will be conducted by the Monitoring Biologist twice a year in order to monitor general wetland/waters of the U.S. function, thatch accumulation, newly introduced exotic species, and overall Preserve function. The entire perimeter of the Preserve should be covered, as well as meandering transects through its interior. The goal of all these surveys is to help ensure that the various habitat types are maintained in perpetuity. The surveys are more particularly described below.

### **5.3.1 Biological Inspection Tasks**

In general, the following aspects of the Preserve should be monitored during all Biological Inspections.

#### **5.3.1.1 Habitat Function**

The purpose of assessing habitat function is to ensure that the preserved wetland/waters of the U.S. and upland habitats are continuing have the appropriate hydrologic regime for that habitat type, monitor anthropogenic influences on the different habitats, and to informally document (make a species list as meandering transects are walked) the plant species that are present and animal species that are using the Preserve.

#### **5.3.1.2 Thatch Accumulation**

The Monitoring Biologist will make an annual determination as to the extent of thatch accumulation. If excess thatch is present, the monitoring biologist will work with the Preserve Manager to determine the best removal practice for the site. Several management practices can be used to address this issue including controlled burning, mowing, or grazing as described in Section 8.2.2.

#### **5.3.1.3 Newly Introduced Non-Native Plant Species**

The Monitoring Biologist will assess the presence of any newly introduced non-native plant species and recommend corrective actions as needed. Special attention will be paid to exotic pest plants. A baseline map will be developed in the first few years and will be used in this annual assessment.

#### **5.3.1.4 Preserve Function**

The overall Preserve function should be assessed, taking into account the above factors and the purpose of the Preserve, which is to support the flora and fauna of the wetlands/waters of the U.S. and uplands in perpetuity.

### **5.4 Agency Monitoring/Inspection**

The Corps may inspect and monitor the condition of the Preserve at any time.

### **5.5 Annual Reporting Requirements**

The Monitoring Biologist will prepare an Annual Report in conjunction with the Preserve Manager, which will be submitted to the Corps by June 30<sup>th</sup> of each year. The letter report will include at minimum, a map of the Preserve, photos documenting the status of the Preserve, a description of proposed activities and maintenance or management actions as required by this Plan, a description of actions for which Corps notification or approval was not needed, but were carried out during the year, observations from the Biological Inspections, and recommendations for altered management practices as needed. The report will refer to the Corps regulatory branch number for the project, which is 200400213. The reports will be sent to the attention of Chief, Sacramento Valley Office, Regulatory Branch, at the Corps.



## **6.0 AGENCY NOTIFICATION**

---

The Corps have expressed a desire to be notified when certain management and maintenance activities are undertaken within the Preserve. It is also recognized that the Preserve Manager needs be able to carry out management and maintenance activities in a timely and responsive manner. Therefore, the following notification requirements have been defined:

### **6.1 No Notification Required**

If an activity in this Plan does not have a specific requirement for notification, is not a Prohibited Activity (see Section 7.0), review and approval or a permit is not required, then no notification is required. If an activity was not anticipated by this Plan, and therefore is not mentioned, notification is required.

### **6.2 Notification**

For those activities noted in this Plan as requiring Agency notification, the following action will be taken. All efforts will be made to outline the activities for the coming year in the annual letter report, which is submitted by June 30<sup>th</sup> of each calendar year. If this is not possible, then the Preserve Manager will submit a separate letter to the Corps. Either will include a written description of the activity, including when the activity will take place and what methodology will be used, as well as a map showing what areas will be targeted. The Corps will have 30 days to contact the Preserve Manager to discuss the activity if they do not approve. If the Preserve Manager is not contacted within 30 days, then the activity will be considered approved. Notification will be made either by fax, email, registered mail, or overnight transmittal.

### **6.3 Review and Approval**

For those activities noted in this Plan as requiring Corps review and approval, the following action will be taken. All efforts will be made to outline the activities for the coming year in the annual letter report, which is submitted by June 30<sup>th</sup> of each calendar year. If this is not possible, then the Preserve Manager will submit a separate letter to the Corps. Either will include a written description of the activity, including when the activity will take place and what methodology will be used, as well as a map showing what areas will be targeted. The Corps will have 60 days to review, discuss, and approve or disapprove the activity. For these activities, the approval from the Corps must be written. Submittal of activities for review and approval as well as written approval back from the Corps will be made either by fax, email, registered mail, or overnight transmittal.

### **6.4 Activities Requiring a Permit**

Some of the activities mentioned in this plan may have the potential to "impact" wetlands or waters of the U.S. The term "loss of waters of the U.S.", which is the closest term defined in the Federal Register to "impact", is defined on page 2094 of the Federal Register, Volume 67, No. 10 / Tuesday, January 15, 2002 / Notices, as follows:

*"Waters of the U.S. that include the filled area and other waters that are permanently adversely affected by flooding, excavation, or drainage because of*

*the regulated activity. Permanent adverse effects include permanent above-grade, at-grade, or below-grade fills that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the U.S. is the threshold measurement of the impact to the existing waters for determining whether a project may qualify for a NWP; it is not a net threshold calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and values. The loss of stream bed includes the linear feet of stream bed that is filled or excavated. Waters of the U.S. temporarily filled, flooded, excavated, or drained, but restored to preconstruction contours or elevations after construction, are not included in the acreage or linear foot measurements of loss of waters of the U.S. or loss of stream bed, for the purposes of determining compliance with the threshold limits of the NWPs."*

The purpose of this section is to clarify, that while this Plan may call out future activities as allowed in the Preserve, this does not mean that the activity does not require a separate authorization (permit) under Section 404 of the Clean Water Act if it will impact waters/wetland not previously permitted. Also, if a project will not result in the permanent loss of wetlands or waters of the U.S., only temporary loss or "impact", a permit is still required. There are several Nationwide Permits (Nationwide Permits, are permits for activities resulting in the loss of less than 0.50 acre of wetlands or waters of the U.S.) currently (2005) available for maintenance activities. These are NWP 3, *Maintenance*; NWP 7, *Outfall Structures and Maintenance*; NWP 12, *Utility Line Activities*; and NWP 31, *Maintenance of Existing Flood Control Facilities*. Issuance of a permit by the Corps may require the Corps to consult with the Service. Specific maintenance activities may also qualify for the Clean Water Act Section 404(f) exemption for maintenance. If there is a question regarding whether a maintenance activity will require a Corps permit, the Preserve Manager should seek guidance from the Corps.

Some of these activities may also need a Streambed Alteration Agreement from the CDFG. Pursuant to Section 1600- of the California Fish and Game Code, the CDFG requires entities obtain a Streambed Alteration Agreement for activities affecting the bed, bank, or channel of a lake, river, stream, or drainage, as defined by CDFG.

## **6.5 Emergency Situations**

Should an emergency situation arise that requires immediate action in an upland area, and would normally require that the Corps be notified or have review and approval authority, the Corps will be notified verbally within forty-eight (48) hours, with written confirmation of the actions taken within one (1) week. In these situations, "emergency" is a situation which would result in an unacceptable hazard to life, a significant loss of property, or an immediate, unforeseen, and significant economic hardship.

Should an emergency situation arise that requires immediate action in a wetland or waters of the U.S., but would normally require that a permit be obtained from the Corps, the following applies as stated in the Code of Federal Regulations, Title 33, Chapter II, Part 325, Section 325.2 - Processing of Applications:

*"Emergency procedures - Division engineers are authorized to approve special processing procedures in emergency situations. An "emergency" is a situation which would result in an unacceptable hazard to life, a significant loss of property, or an immediate, unforeseen, and significant economic hardship if corrective action requiring a permit is not undertaken within a time period less than the normal time needed to process the application under standard procedures."*

California Fish and Game Code Section 1600- also has emergency procedures stipulations that may apply.

## **6.6 Changes in Notification Requirements**

The City and the Corps may agree to change the notification requirements for certain activities that do not require a permit. These would be cases where repeated notification or requests for approval have been made for a certain activity and a course of action has been established. To reduce staff time required from both the City and the Corps, the City would follow the approved course of action and notification would not be required.

## **7.0 PROHIBITED ACTIVITIES WITHIN THE PRESERVE**

---

This section outlines the restrictions on activities that can take place in the Preserve. **It is understood that the following activities are prohibited, except as needed to accomplish the above-mentioned management and maintenance activities or as described below. Additionally, if any of these prohibited activities must be undertaken due to special circumstances, they may be reviewed and approved by the Corps on a case-by-case basis.**

### **7.1 Access to the Preserve**

The intent of the Preserve is to maintain the habitats of the preserved habitats in perpetuity. Limited access to the Preserve will further this goal. Pedestrian access to the Preserve should be discouraged through fencing and signage. See Section 8.2.1 for a description of authorized access. All other off-trail access to the Preserve is not allowed.

### **7.2 Vegetation Removal**

No killing, removal, or alteration of any existing native vegetation will be allowed in the Preserve except as described in this Plan.

### **7.3 Burning and Dumping**

No burning or dumping of rubbish, garbage or any other wastes or fill materials will be allowed in the Preserve. The foregoing prohibition shall not be interpreted to prohibit controlled burning as a method of thatch management.

### **7.4 Disking**

No disking can occur in the Preserve.

### **7.5 Additional Roads, Trails, and Utility Lines**

Roads, trails, and utility lines not called out in this Plan will not be allowed in the Preserve without review and approval of the Corps.

### **7.6 Equipment or Fuel Storage**

There will be no equipment or fuel storage within the Preserve.

### **7.7 Topography**

Once adjacent development is complete and authorized structures (e.g., outfall and drainage swales) have been constructed, no alteration may be made to the existing topography of the Preserve. This includes leveling or grading. No exploration, development, or extraction of oil, gas or minerals may be made from the Preserve.

## **7.8 Pesticides and Chemical Agents**

Except as needed for management of the Preserve's habitat, or as approved by the Corps, there shall be no use of any pesticides, fungicides, insecticides or any other chemical agents used to kill or suppress plants, animals, or fungi in the Preserve.

## **7.9 Motor Vehicle Use**

No motorized vehicles shall be ridden, brought, used, or permitted on any portion of the Preserve with the exception of the following. Motorized vehicular use will be restricted to that required for Preserve maintenance purposes such as stream maintenance (including flood control structures), non-native (exotic) plant species management, fencing repair or replacement, for emergency or law enforcement situations requiring access by medical, fire or law enforcement vehicles, and access as necessary for utility maintenance.

## **7.10 Construction**

Once adjacent development is complete and the structures and improvements called out in this Plan are in place (e.g. outfalls and drainage swales), no construction, placement of new structures, or new roads shall be allowed in the Preserve without the review and approval of the Corps.

## **7.11 Non-Native Plants**

No non-native plants will be planted in the Preserve.

## **8.0 LONG TERM MANAGEMENT OF THE PRESERVE**

---

### **8.1 Adaptive Management**

In preparing a management plan for habitat to be preserved in perpetuity, it must be acknowledged that there will undoubtedly be future developments in habitat and species management that may affect how the Plan Goal is met. This management plan can only provide guidance for adopting new technologies or practices as they are developed. Ultimately, the Preserve Manager in coordination with the Monitoring Biologist and the Corps, must determine the appropriate management decision for a given situation. The following management strategies, approved uses, and restrictions are intended to provide a framework for the long-term management and operation of the Preserve. Before considering any management action, the Preserve Personnel must consider the Plan Goal, which is to ensure that the protected waters of the U.S. and upland habitats within the Preserve are maintained in good condition such that it will continue to support the flora and fauna of the uplands and wetlands/waters of the U.S., in perpetuity. Furthermore, this Plan cannot anticipate all possible site conditions. Therefore, if a condition arises which is not specifically addressed by this plan, the Preserve Manager may upon review and approval by the Corps, adopt techniques not described here.

### **8.2 Preserve Management Activities and Guidelines**

The following outlines management and maintenance activities that are allowed within the Preserve.

#### **8.2.1 Authorized Access**

The intent of the Preserve is to maintain the habitats of these areas in perpetuity. Limited access to the Preserve will further this goal. Public access to the Preserve is discouraged through fencing and signage. The public can learn to respect and enjoy the protected habitats if they are provided appropriate access. Pedestrian access to the Preserve will be discouraged through fencing and signage. Access to the Preserve for maintenance activities (such as utility maintenance) is allowed, but should be restricted to the immediate area where maintenance is occurring. Access to the Preserve for mosquito abatement activities, in emergency or law enforcement situations, by medical, fire or law enforcement personnel or vehicles are allowed. Approved access to the Preserve for educational, clean-up, or habitat restoration activities is allowed (See Section 11.0).

#### **8.2.2 Thatch Management**

Historically, grassland, and oak savannah/woodland habitats burned periodically due to the occasional wildfire. These fires would burn dead plant material or thatch, keeping it from building up. Native ungulates, and later cattle, have inhabited the grasslands within the Preserve. The grazing and trampling action of these animals also would have reduced the amount of dead plant material. In urban preserves, thatch has an opportunity to build up because of the lack of fires and grazing. This buildup of thatch can be detrimental to the Preserve habitats. During one of the biological surveys (as discussed below in the section titled Inspections), the Monitoring Biologist will make a determination as to the extent of

thatch accumulation and if it is adversely impacting the Preserve habitats. Three methods for managing thatch are outlined below:

#### **8.2.2.1 Controlled Burns**

Controlled burning is an excellent way to eliminate accumulated plant matter and also serves to reduce cover of non-native annual grasses (Pollak and Kan 1996). While prescribed burning is an effective tool in the long-term management of thatch accumulation, this Preserve will have residential buildings in close proximity, making controlled burns a potential public safety hazard. A controlled burn would require a burn permit and Fire Department staff. In this case, prevailing winds would carry smoke toward development. Currently (2005), controlled burns are not intended for use of thatch management. However, controlled burns are not prohibited by this Plan. When carefully planned with the local fire authorities, some controlled burns have been successfully conducted in urban areas. If a controlled burn is planned for the Preserve, the Corps will be notified.

#### **8.2.2.2 Mowing**

Another method to remove thatch is the mechanical mowing. In order for mowing to be effective for thatch removal, the cut material would need to be removed from the site. In addition, the mowing regime should be timed in order to minimize the invasion of non-native weedy upland species, particularly yellow star-thistle. To date, little research has been conducted on mowing for thatch management. However, mowing would be expected to be effective for thatch management and is probably a realistic management practice for this preserve. It is anticipated that such mowing practices would be needed, at the most, once every three years. Mowing equipment is allowed in the Preserve for thatch management. Mowing does not require agency notification.

#### **8.2.2.3 Grazing**

Grazing can be used to reduce thatch build-up in both wetland/waters of the U.S. and upland areas. Goats and sheep have been recently employed in smaller areas to effectively remove unwanted vegetation. These smaller grazers would be surrounded by an electric fence and moved periodically. If grazing is implemented residents living adjacent to the open space will be/have been notified.

### **8.2.3 Non-Native Plant Species Management**

Management of non-native plant species can be a complex and expensive task. It is important to recognize that the City can only conduct as much non-native (exotic) species management as can be accomplished with the funding provided as part of this Plan or by obtaining other funds such as grant funds (not required by this Plan).

Exotic pest plants (defined below) that are currently known within this watershed include, but are not limited to Himalayan blackberry (*Rubus discolor*), purple loosestrife (*Lythrum salicaria*), tamarisk (*Tamarix* sp.), water hyacinth (*Eichornia crassipes*), yellow star-thistle (*Centaurea solstitialis*), and Medusahead grass (*Taeniatherum caput-medusae*).

### **8.2.3.1 Native And Non-Native (Exotic) Plant Species Definitions**

Native and non-native plant species are mentioned in several sections of this Plan. The following definitions of these terms have been included to assist the Preserve Manager in determining the status of plant species found in the Preserve.

#### Native Plants

For the purposes of this Plan, plants native to the Preserve will be defined as those plants believed by the scientific community to have been present in western Placer County prior to the settlement of Europeans. The Jepson Manual can be a reference for determining if a plant is native or non-native. However, this reference only gets as specific as subregions. As a result, this reference is not necessarily specific enough, and therefore the Preserve Manager can consult with the Monitoring Biologist, local botanists, or the local chapter of the California Native Plant Society to determine if a plant should be considered native to the Preserve.

#### Non-Native (Exotic) Plants

Based on the above definition of plants considered to be native to the Preserve, there are several ways to view what a non-native plant is: there are plants that are not locally native (native to western Placer County), plants that are not regionally native (native to Northern California), and plants that are not native to California or the U.S.

#### Exotic Pest Plants

Exotic pest plants are plants that are not native, and can be invasive, replacing native vegetation or native habitats. The Monitoring Biologist and the Preserve Manager can refer to the species found on the California Exotic Pest Control Council (CalEPPC) List A, List B, and Red Alert List to assist them in determining if a plant is an exotic plant species of concern. The current lists have been included as Attachment H, however CalEPPC may update this list from time to time. The new list will be appended to this Plan as it is updated. The list can be found at <http://www.caleppc.org/>.

Under current baseline conditions (prior to project implementation), the site is known to support a number of exotic species, many of which have become naturalized. They are predominantly annual species that occur in grasslands, however tree of heaven has also been noted along Pleasant Grove Creek and it's watershed. During the first two or three years of surveys, a general map of exotic pest plants on the Cal EPPC "A-1" and "A-2" list will be mapped either through the use of aerial photographs or GPS technology. When finalized, the map can be added to this Plan. The map should be updated every 5 years or as needed. In these years and for the initial mapping, funding for mapping will be from the CFD funds set aside for non-native species management. This map can be used in subsequent years as a baseline of existing conditions. It is unreasonable to require



or expect eradication of established exotic species as identified in baseline surveys at the site. The required management of non-native plants will therefore be limited to the management of newly introduced exotic pest plants and working to contain the spread of existing exotic pest plant populations that are a threat to the Conservation Values as limited by available funding outlined in Section 8.2.3.

Beyond management activities, if the Preserve Manager would like to pursue more extensive removal of non-native species through volunteer efforts or grant funding, that is encouraged. The Monitoring Biologist and the Preserve Manager can refer to the species found on the California Exotic Pest Control Council (CalEPPC) List A, List B, and Red Alert List to assist them in determining if a plant is an exotic plant species of concern, and which species should be given priority for management. The current lists have been included as Attachment H, however CalEPPC may update this list from time to time. The new list will be appended to this Plan as it is updated.

In addition to looking for these species during the General Inspections, the Monitoring Biologist will also assess the presence of any newly introduced exotic pest plant species during the Biological Inspections and recommend removal as needed. Three methods of removing or controlling these species are outlined below:

#### **8.2.3.2 Hand/Mechanical Removal**

Hand removal or use of small hand powered or handheld equipment (such as a Weed Wrench or a chainsaw) should always be the preferred method of removing exotic pest plant species from the Preserve, if practical. If hand removal methods are tried and found to be ineffective, or the problem is too widespread for hand removal to be practical, then mechanical methods (use of larger equipment with motors such as mowers) or biological controls as described below can be implemented.

#### **8.2.3.3 Biological Controls**

Biological controls are natural parasites, predators or pathogens that are released to combat non-native species. For example, there are several natural enemies of yellow star thistle that have been introduced from Europe to act as biological controls against this invasive species. The insects begin life within the seed head of the flower and develop there, feeding on the seeds. County Agricultural Commissioner would be the point of contact for use of these biological controls within the Preserve. They currently (2005) do not have a program for providing the hairy weevil for biological control, however, they must be contacted if biological controls obtained from other sources are proposed for use.

Biological controls should be used with caution and only after contact with the Agricultural Commissioners Office. If biological control methods are tried and found to be ineffective or if biological control methods are not available for the target species, then herbicides can be used, but only as outlined below. The Corps will be notified if biological controls will be used in the Preserve.

#### **8.2.3.4 Use of Herbicides for Non-Native/Exotic Pest Plant Management**

Herbicides can be used for the management of non-native invasive plant species. Hand or mechanical removal should be the first choice for all non-native invasive plant species removal. Herbicides can be potentially harmful, however invasive species can also be extremely detrimental to native habitats. The use of chemicals should be considered carefully and the most recent research regarding the appropriate herbicide for the target plant should be consulted. The use of ALS/AHAS herbicides is prohibited due to their non-target adverse effects. Chemicals must be applied according to the label. This approval does not obviate the need for the City to obtain any other applicable approvals for the use of these chemicals.

#### **8.2.4 Tree Removal**

If any of the native trees at the Preserve become diseased and are a threat to other trees or are a danger to public safety or private property, removal will be allowed. This statement does not imply permission to undertake the removal of any tree without obtaining any appropriate tree removal permits, if applicable. Non-native tree removal is allowed, consistent with Section 8.2.3. In addition, removal will be consistent with CDFG regulations if the tree is in a riparian area. Removal may require a nesting raptor survey consistent with applicable laws. If a tree has died, is not a threat to other trees, a danger to public safety, or to private property, removal is not required. Dead trees are often important habitat elements for wildlife and should remain in the Preserve.

#### **8.2.5 Vegetation Debris Removal Within Perennial and Intermittent Drainages**

Vegetation removal for the maintenance of the intermittent and perennial drainages in the Preserve will be done according to the City's 1601/Memorandum of Understanding (MOU) with the California Department of Fish and Game. It should be noted that this type of work only be done if truly needed, to minimize disturbance to the drainages. Disturbance or removal of soil or sediment from the drainages will most likely require a Permit from the Corps. As such, written authorization or a permit will be required prior to undertaking such activities. The Preserve Manager should contact the Corps to determine what type of authorization for the maintenance work is required.

#### **8.2.6 Beaver Management**

The City will be responsible for assessing the beaver population within the Preserve. Reduction of predator populations due to development in the region has apparently lead to an increase in beavers throughout the area. If beaver dams become established, the Preserve Manager should consult with the Monitoring Biologist to determine if it is best to: leave the beavers alone as they are a natural part of the ecosystem, install beaver baffling devices and allow the beavers to remain, breach the beaver dam, or if removal of the beavers is appropriate. The use of beaver baffling devices is allowed. Situations where beaver management may be prudent are when beaver dams are causing water levels to rise such that they inundate vernal pools or oak woodland. It is likely that high water situations occurred prior to development from time to time, so care should be taken to weigh the

effects of the beaver's presence. Beaver dams can also result in positive impacts to streamside habitat. Work should be done by hand, but if the dam is too large, equipment such as backhoe with rubber tracks/tires can be used. The Preserve Manager should contact the California Department of Fish and Game (CDFG) to determine if a Streambed Alteration Agreement is needed to undertake the removal of a dam. Also, if the work requires soil movement it may require a permit from the Corps (see Section 6.4). If the Preserve Manager determines removal is appropriate, the Preserve Manager will work with the local CDFG to trap and relocate or hunt the beaver population.

#### **8.2.7 Mosquitoes**

If mosquito control within the Preserve is necessary, the local Mosquito Vector Control District will be consulted to select control mechanisms that are the least damaging to the Preserve's habitats. A plan outlining those mechanisms will be submitted to the Corps for review and approval.

#### **8.2.8 Altered Hydrology**

In order to maintain hydrology of the Preserve, the Preserve Manager will take steps to work with individual landowners or future adjacent developments adjoining the Preserve from directing unnatural flow of drainage, landscaping or backyard runoff (i.e., pool drainage), and storm water runoff from their property into the Preserve from outside the Fiddymont 44 area. This does not preclude the use of drip irrigation in the Preserve for the establishment period for native plantings if used in future restoration/enhancement.

#### **8.2.9 Homeowner Liaison**

The Preserve Manager will be responsible for informing residents whose property adjoins the Preserve if they are in violation of any of the stipulations of the Preserve's declaration of restrictions and to require remediation if needed (see Section 10.0).

#### **8.2.10 Trash Removal**

At minimum, the Preserve Manager will remove accumulations of trash and other unwanted debris from the Preserve quarterly.

## **9.0 INSTALLATION AND LONG TERM MAINTENANCE OF STRUCTURES AND IMPROVEMENTS**

---

The following paragraphs outline the allowed maintenance of structures and improvements present within the Preserve. Vegetation removal type maintenance (e.g., mowing vegetation along underground sewer line alignments) associated with these structures is not allowed unless explicitly stated below. **If maintenance or replacement activities associated with these structures will directly impact or indirectly impact (where indirect impacts have not already been mitigated) preserved wetlands or waters of the U.S., the Corps will be notified and any appropriate permits will be obtained (see Section 6.4).** If wetlands or waters of the U.S. will not be impacted by maintenance or replacement of any of these structures or improvements, then the Preserve Manager will review the plans for the activity to be sure that as little disturbance to the Preserve occurs as possible, but the Corps will not have to be notified. These activities will be described in the Annual Report. In addition, areas disturbed will be restored (see Section 10.0).

### **9.1 Protective Measures to be Taken During Construction Within the Preserve**

After the Fiddymment 44 has been built out, occasional construction may take place in the Preserve (e.g., replace or repair outfalls). Past experience has shown that biological resources in urban preserves are vulnerable to disturbance during construction. In general, the minimum necessary construction area will be used (if within the Preserve). Construction limits will be set that do not encroach on any preserved wetlands/waters of the U.S. To avoid impacts to the Preserve and the protected resources, the following protective measures will be taken during project construction.

#### **9.1.1 Pre-Construction Meetings**

Pre-construction meetings for construction occurring adjacent to or in the Preserve will address the presence of Preserve, the sensitive habitats present and minimization of disturbance to the Preserve. The City inspectors can also conduct a post-construction inspection to determine if those conducting the construction need to do any post-construction remediation.

#### **9.1.2 Temporary Construction Fencing**

After the Fiddymment 44 area has been built out, occasional construction may take place in the Preserve (e.g., replace or repair outfalls). When this occurs, temporary construction fencing and flagging will be required to define the limits of construction within the Preserve. This fencing will be maintained daily until construction is complete and the fencing is removed.

#### **9.1.3 Flagging Preserved Wetlands/Waters of the U.S. Adjacent to Construction Within the Preserve**

If construction is occurring within the Preserve, prior to installation of temporary construction fencing denoting the limits of construction, the City will hire a professional wetland biologist (or the Monitoring Biologist) to flag the preserved wetlands/waters of the

U.S. within 25 feet of the limits of construction with brightly colored pin-flags so that workers are aware of the location of the protected habitat and can install the temporary construction fencing accordingly.

#### **9.1.4 Stormwater Pollution Prevention**

Stormwater best management practices (BMPs) prevent runoff into the Preserve and are required by the State Water Resources Control board for any project over one acre in size. A Stormwater Pollution Prevention Plan (SWPPP) will be prepared and implemented to control sediment and erosion during construction. This includes preventing runoff from dust control, oil, or other chemicals used in construction activities, from entering the Preserve.

#### **9.1.5 Use of Native Grasses in Post Construction Revegetation**

When construction work disturbs soil within the Preserve, all seed used to revegetate must be native to California, preferably ecotypes from western Placer or surrounding counties. Attachment D provides guidelines for seed mixes for different revegetation situations, but the project engineer will ultimately need to approve the seed mix to ensure that the seed mix will result in revegetation that meets required performance standards. Attachment D also provides contact information for local native grass seed companies.

#### **9.1.6 Trash Removal and Post Construction Clean-Up**

During construction, paper trash, food wrappers, and other trash often blows into preserve areas from adjacent construction sites. The City or the City's contractor will remove trash blown into the Preserve from adjacent construction on a daily basis. After construction is complete and the temporary construction fencing has been replaced by permanent fencing, temporary fencing and posts will be removed from the Preserve. Additionally, when disturbed areas adjacent to the or within the Preserve (e.g. bike trail construction) have become revegetated and construction is complete, all temporary erosion control materials (e.g. straw bales, straw wattles and stakes, silt fencing) will be removed from the Preserve.

### **9.2 Fencing and Signage**

#### **9.2.1 Fencing**

##### **9.2.1.1 Temporary Construction Fencing**

See Sections 9.1.2 for information on temporary fencing required during construction.

##### **9.2.1.2 Initial Installation of Fencing and Fencing Types**

The initial installation of fencing is the responsibility of the developer. The type of fencing will vary according to the adjacent parcel land use (residential, open space, etc.), however, in all cases, fencing has been designed to prevent vehicle access and allow unrestricted visual access into the Preserve. Permanent fencing types include wrought iron (tubular steel) and chain link where the Preserve backs to residential lots. The north, west, and a portion of the east side of the Preserve is immediately adjacent

to Preserve areas under the ownership of the City. Thus to allow for the unrestricted movement of wildlife there will be no fencing in these areas. Fencing will be installed adjacent to the Preserve as shown in Figure 2.

#### **9.2.1.3 Maintenance and Repair**

Maintenance and replacement of fencing and signage must be restricted to the minimum area needed to fix the fencing. Whenever possible, maintenance and replacement of fencing should take place from outside the Preserve. The different fencing treatments, who is responsible for maintenance of each, and funding sources for the fencing are addressed below:

##### Residential Fencing

The maintenance and replacement of fencing, where the Preserve is adjacent to private property within the Fiddymment 44 area, is the responsibility of the adjacent property owner(s). The City will be responsible for enforcing the fencing requirements.

##### Adjacent Open Space Fencing

If other projects are developed adjacent to any of the Preserve parcels, and the open space of that project is adjacent to the Preserve, the fencing between the two can be taken down if it is desired or practical. The removal of common fencing could allow for wildlife passage or joint management.

#### **9.2.1.4 Covenants, Conditions, and Restrictions Required**

Each development within Fiddymment 44 will have Covenants, Conditions and Restrictions (CC&Rs) that require each landowner adjacent to a Preserve area to maintain their fencing in good repair.

#### **9.2.2 Preserve Signs**

Preserve signage will be installed to inform the public of the presence of the Preserve. A sample sign has been included as Attachment I. Approximate sign locations are shown on Figure 2. If the City feels that additional signage is warranted then more may be installed. The developer is responsible for the initial cost of installing Preserve signage. The City will be responsible for the maintenance and replacement of the signage.

#### **9.2.3 Gates**

The City will be responsible for the maintenance of authorized gates into the Preserve and for keeping them locked to prevent unauthorized motor vehicle access. Authorized gates are used for allowing access for maintenance vehicles and emergency access to the Preserve. All other gates, such as gates installed by residents or other entities allowing access into the Preserve are prohibited. The Preserve Manager will be responsible for

notifying any party that has installed an unauthorized gate into the Preserve and require its removal and replacement with the appropriate fencing.

### **9.3 Outfalls and Drainage Swales**

Storm Drain Run-off from developed areas within Fiddymont 44 will be routed through the Preserve area to the unnamed receiving water. Outlet requirements may include the installation of headwall structures, velocity attenuation devices, and rip-rap fortification. The conveyance across and through the preserve area may include drainage swales, and accompanying soft-armor. In the event that future remedial erosion control measures are necessary within the preserve area, the preserve manager shall coordinate the effort and notify the Corps of such remedial work made. Outfall locations are shown on Figure 2. Maintenance (including the removal of vegetation adjacent to outfalls) or repair activities for drainage outfalls may occur as needed. If maintenance or replacement activities will impact preserved wetlands or waters of the U.S., the Corps will be notified and any appropriate permits will be obtained.

### **9.4 Fire Breaks**

The Preserve Manager can implement up to a 30-foot firebreak, although the Corps or this Plan does not require it. To prevent potential impacts to waters of the U.S. a portion of this firebreak has been moved outside the Preserve boundary. For the approximate locations of the firebreak see Figure 2.

The Corps requires that a survey for ground nesting birds be conducted if firebreaks are to be cut before July 1<sup>st</sup> to eliminate impacts to these species. Therefore, the Preserve Manager will be responsible for arranging for a ground nesting bird survey to be conducted each year prior to the mowing of firebreaks. Firebreaks may be mowed (not disked) such that vegetation is 2 inches high or less.

### **9.5 Easements**

As depicted in Figure 2 there is one existing easement located in the far western corner of the Preserve. This easement contains an underground PG&E gas line and future overhead power lines. Access to the Preserve for the installation, maintenance, and replacement of existing and proposed utility lines is allowed and will be restricted to the minimum area needed to accomplish the task. In addition, there is an Ingress and Egress Easement in that same western corner of the Preserve. The easement use to serve as a crossing point for the property owner on the north side of the Preserve. If in the future a culvert or bridge crossing is deemed necessary, it will be allowed, provided that all necessary permits be obtained. The property owner to the north is currently planning on constructing a culvert or bridge crossing to the west of the Preserve. This crossing is not part of the project nor is it planned on impacting any portion of this Preserve.

## 10.0 REMEDIATION/RESTORATION ACTIVITIES

### 10.1 Post-Construction Remediation/Restoration

The replacement of the previously mentioned structures or improvements in the Preserve may require post-construction restoration. These structures or improvements were originally permitted as part of the project through the Corps and CDFG. For these cases, post-construction remediation/restoration means, for example, hydroseeding areas of the Preserve that were disturbed by equipment, restoring the original grade where the intent was not to alter it, cleaning up construction debris, and generally reverting the area back to pre-construction conditions. A list of native grass species and other locally native plants that can be used in revegetation/restoration is included in this plan as Attachment J.

### 10.2 Restoration of Declaration of Restrictions Violations/Vandalism

It is difficult to anticipate and provide a mitigation measure for all potential violations of the Preserve's declaration of restrictions, however, the following table outlines some potential violations and mitigation guidelines. If a particular situation is not listed here, that does not mean that restoration is not required. In these cases, determining an appropriate mitigation measure will be at the discretion of the Preserve Manager in coordination with the Monitoring Biologist.

Type of Disturbance	Mitigation Guideline
Disturbance of Grassy Upland Areas	Restoration of grassy upland areas due to disturbance resulting in bare ground should include seeding the area with appropriate native grass seed (Attachment D) and implementing the proper erosion control measures until the bare ground becomes vegetated again.
Removal of Native Tree or Shrub Habitat	Restoration for the removal native trees or shrubs should result in the replacement of the habitat. This could be in the form of planting tree/shrub seeds or seedlings in an amount sufficient to ultimately result in the survival to maturity of the same number of trees or shrubs that were removed. Monitoring of the replacement plants should be done for at least two seasons.
Wetlands/Waters of the U.S.	Restoration for fill/loss of waters of the U.S. should result in the removal of fill from the feature, potentially the minor re-grading and revegetation of the feature (if appropriate) and monitoring for at least two seasons to gauge the feature's recovery. The Preserve Manager will contact the Corps if fill/loss of wetlands or waters of the U.S. has occurred and submit for review and approval what remediation/restoration is proposed (see Section 6.3). The Corps may have to consult with the Service if the situation involves endangered species habitat. While the normal time period for the Corps to review and approve an action is 60 days, the Corps will make every effort to respond in a timely manner to requests regarding wetlands/waters of the U.S. so that restoration can be implemented at the appropriate time of year (e.g. before the rainy season).



Fencing	Restoration for the destruction or modification (e.g., installing an unauthorized gate) of Preserve fencing should include fixing or replacing the section of fencing to its original specifications.
Structures, Landscaping, Other Improvements, etc.	Any unauthorized structure, landscaping, or other improvement should be removed from the Preserve. If any of the above habitats was disturbed, mitigation will be required using the above mitigation measures as guidelines.

### 10.3 Timing/Process for Corrective Actions

Minor corrective measures not requiring notification or approval of the Corps (e.g., prevention of unexpected runoff, prevention of unauthorized access to the area by placing locks on gates, etc.) will be carried out by the Preserve Manager within sixty (60) days, unless site conditions warrant delay (i.e., if soil is saturated and equipment would damage the upland habitat in the Preserve, it may be necessary to delay work until conditions improve). All other corrective actions will take place when conditions are best suited for restoration to occur, and after the Corps have been notified or the Preserve Manager has received approval.

## **11.0 RECREATION, EDUCATION, AND RESTORATION**

---

### **11.1 Educational Activities in the Preserve**

The Preserve represents an opportunity to encourage a sense of ownership and respect for open space and wildlife habitat in local students. Use of the Preserve for education will be limited to students, parents, and faculty of the local school district, local area residents, or other persons with the consent of the Preserve Manager. Individuals or groups using the Preserve for educational purposes will coordinate their use with the Preserve Manager. If the educational activities will be passive in nature, such as an occasional walk through the Preserve to discuss plants and animals of the wetland/waters of the U.S. habitats, then the consent of the Preserve Manager is sufficient. If active use (other than restoration activities) of the Preserve is proposed, or regular, but passive use of the Preserve is proposed, review and approval of the Corps is required. To avoid repeated inquiries with the Corps, a use plan could be developed by the interested school or school district for a one-time approval. See Section 11.4, below, for review and notification information on restoration activities.

### **11.2 Recreation**

There is no recreational use planned for the Preserve.

### **11.3 "Creek Week" or Community Clean-Up Days**

Communities located in the watersheds in and around the City of Roseville currently participate in Creek Week, a week-long celebration of the local creeks that takes place in April. This event includes a clean-up day where teams of residents "adopt" a portion of creek and the adjacent open space area and pick up trash. Individuals or groups participating in the Creek Week clean-up will coordinate their use of the Preserve with the Preserve Manager, and no further approvals shall be required to undertake Creek Week cleanup activities. More extensive use of the Preserve during Creek Week, such as restoration or educational activities may require notification of the Corps and the Service, see Sections 11.1 and 11.4.

### **11.4 Future Habitat Restoration/Enhancement**

In the future, the Preserve Manager or other group/organization may want to conduct habitat restoration or enhancement within the Preserve. This could include the removal of non-native (exotic) plant species, planting native plants, or other restoration activities. A list of native plants that can be used in restoration has been included as Attachment J. This list is not all-inclusive, other locally native plants can be used in restoration. Restoration activities that involve work in wetlands or waters of the U.S. may require a permit under Section 404 of the Clean Water Act, and/or a Streambed Alteration Agreement from the California Department of Fish and Game (CDFG). Nationwide Permit (NWP) 27, *Stream and Wetland Restoration Activities*, is available from the Corps for these type of activities. An example of a restoration activity that does not require Corps approval, is planting acorns or oak seedlings in the Preserve. An example of a restoration activity that would require Corps approval is the recontouring of a creek bank and planting it with riparian species to stabilize an area of erosion. The Preserve Manager will not need to notify the Corps if restoration activities do not require a permit from the Corps, however, these activities should reviewed by the Monitoring Biologist

and will be described in the Annual Report. If there is a question regarding whether a restoration activity will require Corps approval, the Preserve Manager should seek guidance from the Corps.

## 12.0 REFERENCES

---

- California Native Plant Society (CNPS). 2001. Inventory of Rare and Endangered Vascular Plants of California. Special Publication. Number 1, 6th ed. Sacramento California. 387 pp.
- Estep, James A. 1989. Biology Movements, and Habitat Relationships of the Swainson's Hawk in the Central Valley of California 1986-87. State of California Resources Agency. 52 pp.
- Hickman, James C. *ed.* 1993. The Jepson Manual, Higher Plants of California, University of California Press, Berkeley. 1312 pp. + app.
- Pollak O., and Tamara Kan. 1996. The Use of Prescribed Fire to Control Invasive Exotic Weeds at Jepson Prairie and Vina Plains. Pp. 241-249. In Ecology, conservation, and management of vernal pool ecosystems – proceedings from a 1996 conference. C.W. Witham, E.T. Baulder, D. Belk, W.R. Ferren Jr., and R. Ornduff (editors). California Native Plant Society, Sacramento, CA.
- U.S. Department of Agriculture, Soil Conservation Service. 1980. Soil Survey of Placer County, California, Western Part. U.S. Department of Agriculture, Soil Conservation Service. Davis, California.
- United States Department of the Interior, Geological Survey. 1992. Roseville, California Quadrangle, Placer County. 7.5 Minute Series Topographic. U.S. Geological Survey. Denver, Colorado.

**FIGURE 1. Project Site and Vicinity**

**FIGURE 2. Preserve Detail Map**

**FIGURE 3. NRCS Soil Types**

**This attachment contains prints or graphics that do not meet the Placer County Records Office standards for recording. The three figures listed above can be viewed in their entirety at the City of Roseville Community Development Department office at 311 Vernon Street, Roseville, California.**

## **LIST OF ATTACHMENTS**

---

Attachment A – U.S. Army Corps of Engineers Individual Permit

Attachment B – U.S. Fish and Wildlife Service Biological Opinion

Attachment C – Declaration of Restrictions (Deed Restrictions)

Attachment D – Guidelines for Native Grass Seed Mixes, Application, and  
Suppliers

Attachment E – Property Analysis Record Printouts

Attachment F – Monitoring Timeline

Attachment G – Preserve Data Sheets

Attachment H – CalEPPC list

Attachment I – Sample Preserve Sign

Attachment J – Native Plants for Use in Restoration

## **ATTACHMENT A**

---

U.S. Army Corps of Engineers Individual Permit



REPL. TO  
ATTENTION OF

DEPARTMENT OF THE ARMY  
U.S. ARMY ENGINEER DISTRICT, SACRAMENTO  
CORPS OF ENGINEERS  
1325 J STREET  
SACRAMENTO, CALIFORNIA 95814-2922

June 14, 2005

Regulatory Branch (200400213)

Dave Lange  
Meritage Homes of California  
1544 Eureka Boulevard, Suite 150  
Roseville, California 95661

Dear Mr. Lange:

We are enclosing your copy of Department of the Army Permit 200400213. Please note you are only authorized to complete the work described in the permit.

If you sell the property associated with this permit, the terms and conditions of this permit will continue to be binding on the new owner. To validate the transfer of this permit, have the succeeding party sign the permit transfer section at the end of the permit and forward a copy to this office, along with their printed name, address, telephone number, and other contact information.

The time limit for completing the work is specified in General Condition 1. If the work will not be completed prior to that date, you may request a time extension. Your request for an extension must be received by this office for consideration at least 30 days before the time limit date.

Please refer to identification number 200400213 in any correspondence concerning this project. If you have any questions, please contact Tom Cavanaugh at our Sacramento Valley Office, 1325 J Street, Room 1480, Sacramento, California 95814-2922, email [Thomas.J.Cavanaugh@usace.army.mil](mailto:Thomas.J.Cavanaugh@usace.army.mil), or telephone 916-557-5261. You may also use our website: [www.spk.usace.army.mil/regulatory.html](http://www.spk.usace.army.mil/regulatory.html).

Sincerely,

**ORIGINAL SIGNED**

Michael S. Jewell  
Chief, Central California/Nevada  
Section

Enclosure(s)

Copy furnished without enclosure(s):

✓ Stacia Hoover, ECorp Consulting, Incorporated, 2260 Douglas Boulevard, Roseville, California 95661



DEPARTMENT OF THE ARMY PERMIT

Permittee

Permittee:

Dave Lange  
Meritage Homes of California  
1544 Eureka Blvd., Suite 150  
Roseville, California 95661

F

Permit Number: 200400213

Issuing Office: U.S. Army Engineer District, Sacramento  
Corps of Engineers  
1325 "J" Street  
Sacramento, California 95814-2922

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below. A notice of appeal options is enclosed.

Project Description:

To discharge fill material into 1.582 acres of waters of the United States, including wetlands to develop 37.8 acres of residential (148 residential units and a park) and 5.9 acres of open space preserve. The un-named tributary of Pleasant Grove Creek, a perennial creek occupying 0.181 acres along the northern perimeter of the property, is designated for preservation.

All work is to be completed in accordance with the attached plan(s).

Project Location:

The subject property is located within portions of Section 16, Township 11 N, Range 6 E, of the "Roseville, California 7.5 minute quadrangle (U.S. Department of the Interior, Geological Survey 1992). The subject property is located along and adjacent to the floodplain of an un-named tributary of Pleasant Grove Creek, in northern Roseville. The southern border of the parcel is defined by Blue Oaks Boulevard. The Roseville Technology Park and the Foothills Business Park abut the western and eastern/northern boundaries of the site, respectively.

The Fiddymont 44 site includes Assessor's Parcel Numbers (APN) 017-250-048 and 017-205-047 comprising approximately 44 acres.

Permit Conditions:

General Conditions:

1. The time limit for completing the work authorized ends on April 30, 2005. If you find that you need

2010 

more time to complete the authorized activity, submit your request <sup>for a time</sup> for a time extension to this office for consideration at least one month before the above date is reached.

2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.

3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.

5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.

6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

#### Special Conditions:

1. To insure compliance, the document, entitled "Section 404 Individual Permit Application - Fiddymont 44 (Placer County, California)" dated July 7, 2004, is incorporated by reference as a condition of this authorization except as modified by the following special conditions:

2. You shall develop a final comprehensive mitigation and monitoring plan, which must be approved by the Army Corps of Engineers prior to initiation of construction activities. The plan shall include mitigation location and design drawings, vegetation plans, including target species to be planted, and final success criteria, presented in the format of the Sacramento District's Habitat Mitigation and Monitoring Proposal Guidelines, dated December 30, 2004. The purpose of this requirement is to insure replacement of functions and values of the aquatic environment that would be lost through project implementation.

3. To mitigate for the loss of 0.546 acres of waters of the United States and indirect effects to 0.058 acres of waters of the United States, you shall purchase 0.575 credits of seasonal wetlands at a Corps approved wetland mitigation bank. The selected mitigation bank shall include the area of the permitted project within its service area. Evidence of this purchase shall be provided to this office prior to proceeding with any activity otherwise authorized by this permit. A list of approved mitigation banks has been included for your reference.

4. To mitigate for the loss of 1.036 acres of waters of the United States, you shall construct 1.347 acres of vernal pool within the off-site preserve as proposed in the above document.

5. You shall construct the compensatory mitigation prescribed by this plan concurrently with, or in advance of, the start of construction of the authorized/permitted activity.

September

In no case shall initiation of the construction of compensatory mitigation be delayed beyond September 1, 2005. Construction of compensatory mitigation shall be completed no later than September 1, 2006.

7. To insure that mitigation is completed as required, you shall notify the District Engineer of the start date and the completion date of the mitigation construction, in writing and no later than ten (10) calendar days after each date.

8. To provide a permanent record of the completed mitigation work, you shall provide two complete sets of as-builts of the completed work within the off-site mitigation, preservation, and avoidance areas to the Corps of Engineers. The as-builts shall indicate changes made from the original plans in indelible red ink. These as-builts shall be provided to this office no later than 60 days after the completion of construction of the mitigation area wetlands.

9. You shall establish and maintain a 5.9-acre preserve containing 0.433 acres of avoided, and preserved waters of the United States, as depicted on the exhibit entitled Fiddymment 44 Preserve/Impact Map, revised April 28, 2005, in perpetuity. The purpose of this preserve is to insure that functions and values of the aquatic environment are protected.

10. To minimize external disturbance to preserved waters of the United States, you shall establish a buffer, consisting of native upland vegetation along the entire perimeter of all created, preserved, and avoided waters of the United States, including wetlands within the proposed preserve, as depicted in the Fiddymment 44 Preserve/Impact Map, revised April 28, 2005.

11. To insure that the preserve is properly managed, you shall develop a specific and detailed preserve management plan for the on-site and off-site mitigation, preservation, and avoidance areas. This plan shall be submitted to and specifically approved, in writing, by the Corps of Engineers prior to engaging in any work authorized by this permit. This plan shall describe in detail any activities that are proposed within the preserve area(s) and the long term funding and maintenance of each of the preserve areas.

12. To protect the integrity of the preserve and avoid unanticipated future impacts, no roads, utility lines, trails, benches, equipment or fuel storage, grading, firebreaks, mowing, grazing, planting, discing, pesticide use, burning, or other structures or activities shall be constructed or occur within the on-site and off-site mitigation, preservation, and avoidance areas without specific, advance written approval from the Corps of Engineers.

13. To prevent unauthorized access and disturbance, you shall, prior to September 1, 2006, install fencing and appropriate signage around the entire perimeter of the preserve. All fencing surrounding mitigation, preservation, avoidance, and buffer areas shall allow unrestricted visibility of these areas to discourage vandalism or disposing of trash or other debris in these areas. Examples of this type of fencing include chain link and wrought iron.

14. To assure success of the preserved areas, you shall monitor on-site preservation and avoidance areas occurring for five years or until the success criteria described in the final approved management and monitoring plan are met, whichever is greater. This period shall commence upon completion of the authorized fill activity, but not later than one year after the initiation of fill activity. The primary focus of this monitoring shall be to assure that the preserve is successfully established and maintained as wetland and wildlife habitat and not adversely affected by surrounding development.

15. You shall submit monitoring reports to this office, for each year of the five-year monitoring period, by October 1 of each year.

16. This Corps permit does not authorize you to take an endangered species, in particular the vernal pool fairy

shrimp

shrimp (*Branchinecta lynchi*), vernal pool tadpole shrimp (*Lepidurus packardii*), or designated critical habitat. In order to legally take a listed species, you must have separate authorization under the Endangered Species Act (e.g., an Endangered Species Act Section 10 permit, or a Biological Opinion under Endangered Species Act Section 7, with "incidental take" provisions with which you must comply). The enclosed Fish and Wildlife Service Biological Opinion (Number 1-1-05-F-0037, dated January 21, 2005), contains mandatory terms and conditions to implement the reasonable and prudent measures that are associated with "incidental take" that is also specified in the Biological Opinion. Your authorization under this Corps permit is conditional upon your compliance with all of the mandatory terms and conditions associated with incidental take of the attached Biological Opinion, which terms and conditions are incorporated by reference in this permit. Failure to comply with the terms and conditions associated with incidental take of the Biological Opinion, where a take of the listed species occurs, would constitute an unauthorized take, and it would also constitute non-compliance with your Corps permit. The Fish and Wildlife Service is the appropriate authority to determine compliance with the terms and conditions of its Biological Opinion, and with the Endangered Species Act. The permittee must comply with all conditions of this Biological Opinion, including those ascribed to the Corps.

17. Prior to initiating any activity authorized by this permit, you shall, to insure long-term viability of mitigation, preservation, and avoidance areas:

- a. Establish a fully-funded endowment to provide for maintenance and monitoring of on-site and off-site mitigation, preservation, and avoidance areas.
- b. Designate an appropriate conservation-oriented third part entity to function as preserve manager and to hold the required conservation easements.
- c. Record permanent conservation easements and deed restrictions maintaining all mitigation, preservation, and avoidance areas as wetland preserve and wildlife habitat in perpetuity. Copies of the proposed deed restriction and conservation easement language shall be provided to the Corps of Engineers for approval prior to recordation.
- d. Provide copies of the recorded documents to the Corps of Engineers no later than 30 days prior to the start of construction of any of the activities authorized by this permit.

18. You must allow representatives from the Corps of Engineers to inspect the authorized activity and any mitigation, preservation, or avoidance areas at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

19. To assure success of the preserved and created waters of the United States, you shall monitor off-site compensatory mitigation, avoidance, and preservation areas for five years or until the success criteria described in the approved mitigation plan are met, whichever is greater. This period shall commence upon completion of the construction of the mitigation wetlands. Additionally, continued success of the mitigation wetlands, without human intervention, must be demonstrated for three consecutive years, once the success criteria have been met. The mitigation plan will not be deemed successful until this criterion has been met.

20. You shall submit monitoring reports to this office for each year of the five-year monitoring period, and for each additional year, if remediation is required, by October 1 of each year. You shall submit an additional monitoring report at the end of the three-year period demonstrating continued success of the mitigation program without human intervention.

21. To document pre and post-project construction conditions, you shall submit pre-construction photos of the project site prior to project implementation and post-construction photos of the project site within 30 days after

project completion.

22. All terms and conditions of the April 26, 2005, Section 401 Water Quality Certification are expressly incorporated as conditions of this permit.

23. You shall have a biologist, who is familiar with aquatic resources and the conditions listed in this permit, monitor all construction activities within 250 feet of the preserve boundary. The monitor shall ensure no unauthorized activities occur within the preserve boundary during project implementation.

Further Information:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

( ) Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).

(✓) Section 404 of the Clean Water Act (33 U.S.C. 1344).

( ) Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).

2. Limits of this authorization.

a. This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.

b. This permit does not grant any property rights or exclusive privileges.

c. This permit does not authorize any injury to the property or rights of others.

d. This permit does not authorize interference with any existing or proposed Federal projects.

3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:

a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.

b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.

c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.

d. Design or construction deficiencies associated with the permitted work.

e. Damage claims associated with any future modification, suspension, or revocation of this permit.

### Reliance

4. Reliance on Applicant's Data. The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant.

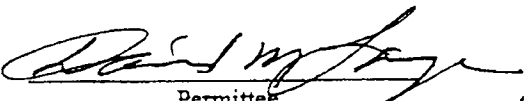
Circumstances that could require a reevaluation include, but are not limited to, the following:

- a. You fail to comply with the terms and conditions of this permit.
- b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (see 4 above).
- c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions. General Condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

  
\_\_\_\_\_  
Permittee  
David M. Lange, VP/Forward Planning  
For Meritage Homes of California, Inc  
\_\_\_\_\_  
6-8-05  
Date

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

\_\_\_\_\_  
Michael S. Jewell, Chief,  
Central California/Nevada Section  
(For the District Engineer)

\_\_\_\_\_  
Date

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

\_\_\_\_\_  
Transferee

\_\_\_\_\_  
Date

## **ATTACHMENT B**

---

U.S. Fish and Wildlife Service Biological Opinion





## United States Department of the Interior

### FISH AND WILDLIFE SERVICE

Sacramento Fish and Wildlife Office  
2800 Cottage Way, Room W-2605  
Sacramento, California 95825-1846



In reply refer to:  
1-1-05-F-0037

JAN 21 2005

Mr. Thomas J. Cavanaugh  
Chief, Sacramento Valley Office  
U.S. Army Corps of Engineers  
1325 J Street  
Sacramento, California 95814-2922

Subject: Review of the Fiddymment 44 Project (Corps # 200400213), Placer County, California, for Inclusion with the Vernal Pool Crustaceans Programmatic Consultation (Service file number 1-1-96-F-0001)

Dear Mr. Cavanaugh:

This letter responds to your December 7, 2004, request for initiation of formal consultation with the U.S. Fish and Wildlife Service (Service) on the proposed Fiddymment Project (proposed project). Although your U.S. Army Corps of Engineers (Corps) request did not include a request to append this project to the Service's *Programmatic Formal Endangered Species Act Consultation on Issuance of 404 Permits for Projects with Relatively Small Effects on Listed Vernal Pool Crustaceans within the Jurisdiction of the Sacramento Field Office, California* (Programmatic Consultation), the Service has decided that this proposed project can be appended to the Programmatic Consultation. The Service has reviewed the biological information submitted by your office describing the effects of the proposed project on the endangered vernal pool tadpole shrimp (*Lepidurus packardii*) and the threatened vernal pool fairy shrimp (*Branchinecta lynchi*). This response is in accordance with section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.) (Act).

The findings and recommendations in this formal consultation are based on: (1) the July 7, 2004, *Section 404 Individual Permit Application for Fiddymment 44 (Placer County, California)*, Regulatory Branch #200400213, prepared by ECORP Consulting, Inc.; (2) your July 7, 2004, letter requesting formal consultation on the proposed project; (3) a January 14, 2005, site visit conducted by Ken Fuller, Kelly Fitzgerald, and Rick Kuyper of the Service and Pete Balfour and Craig Hiatt of ECORP Consulting, Inc.; (4) the January 17, 2005, electronic mail correspondence from Pete Balfour of ECORP Consulting, Inc., to Rick Kuyper of the Service regarding a revised acreage amount of potential vernal pool habitat; and (5) information in the Service files.

TAKE PRIDE  
IN AMERICA 

The proposed 44-acre project site is located in the northern portion of the City of Roseville, in western Placer County, west of State Highway 65, north of Blue Oaks Boulevard, east of a shared access road, and south of Pleasant Grove Creek. The proposed project site was originally part of the North Roseville Specific Plan area, but the plan has since been altered and no longer includes the Fiddymment 44 site. The proposed project involves the development of 148 single-family residential areas. There is approximately 1.036 acres of habitat for the federally-listed vernal pool crustaceans that would be directly affected through grading, installation of utilities, paving, and construction of residential structures and associated infrastructure. There are no indirect effects to federally-listed vernal pool crustacean habitat associated with the proposed project.

The Service has determined that it is appropriate to append the proposed project to the Programmatic Consultation. This letter is an agreement by the Service to append the Proposed Project to the Programmatic Consultation and represents the Service's biological opinion on the effects of the proposed action. Conservation measures for projects appended to the Programmatic Consultation involve the use of creation and preservation banks in combination with on-site conservation options where such options are appropriate.

The Service reevaluates the effectiveness of the Programmatic Consultation at least every six (6) months to ensure that continued implementation will not result in unacceptable effects to the listed species.

The conservation measures identified in the Programmatic Consultation includes the following.

1. **Preservation component.** For every acre of habitat directly or indirectly affected, at least two vernal pool credits will be dedicated within a Service-approved ecosystem preservation bank, or, based on Service evaluation of site-specific conservation values, three acres of vernal pool habitat may be preserved on the project site or another non-bank site as approved by the Service.
2. **Creation component.** For every acre of habitat directly affected, at least one vernal pool creation credit will be dedicated within a Service-approved habitat creation bank, or, based on Service evaluation of site-specific conservation values, two acres of vernal pool habitat will be created and monitored on the project site or another non-bank site as approved by the Service.

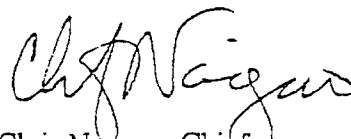
The proposed project will result in direct effects to 1.036 acres of habitat for the two federally-listed vernal pool crustaceans. The applicant has identified and agreed to purchase conservation credits at a Service-approved conservation bank or Service-approved fund. The applicant has agreed to purchase vernal pool preservation and creation credits prior to any site disturbance at a Service-approved conservation bank or fund account serving the proposed project site. Credits for both preservation and creation will be purchased prior to the fill of any vernal pool areas. The agreed upon conservation responsibilities of the applicant are as follows.

1. Prior to the start of construction, the applicant will purchase at least 2.072 vernal pool preservation credits to be dedicated within a Service-approved ecosystem vernal pool preservation bank or Service-approved fund account serving the proposed project area (1.036 acre X 2 = 2.072 acre).
2. Prior to the start of construction, the applicant will purchase at least 1.036 vernal pool creation credits within a Service-approved vernal pool creation bank or Service-approved fund account serving the proposed project area.

This concludes the Service's review of the proposed Fiddymment 44 Project outlined in your request. As provided in 50 CFR 402.16, reinitiation of formal consultation is required where discretionary federal agency involvement or control over the action has been maintained (or is authorized by law) and if (1) the amount or extent of incidental take is exceeded, (2) new information reveals effects of the agency action that may affect listed species or critical habitat in a manner or to an extent not considered in this opinion, (3) the agency action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in this opinion, or (4) a new species is listed or critical habitat designated that may be affected by the action. In instances where the amount or extent of incidental take is exceeded, any operations causing such take must cease pending reinitiation.

If you have any questions regarding the proposed Fiddymment 44 Project, please contact Rick Kuyper or the Acting Sacramento Valley Branch Chief at (916) 414-6645.

Sincerely,



Chris Nagano, Chief  
Endangered Species Division

cc:

Kent Smith, California Department of Fish and Game, Rancho Cordova, California  
David Lange, Meritage Homes of California, Inc., Roseville, California  
Shannon Brown, ECORP Consulting, Inc. Roseville, California

## **ATTACHMENT C**

---

Declaration of Restrictions (Deed Restrictions)

To avoid duplication the Declaration of Restrictions is not attached here.

## **ATTACHMENT D**

---

Guidelines for Native Grass Seed Mixes, Application, and Suppliers

### **3-STEP SEED APPLICATION PROCESS**

---

USE 3-STEP APPLICATION PROCESS IN AREAS RECEIVING HYDROSEED ONLY.

STEP 1: APPLY FIBER, SEED, FERTILIZER, & INNOCULANT AS SPECIFIED BELOW:

CELLULOSE WOOD FIBER	600 LBS/ACRE
SEED	AS SPECIFIED
FERTILIZER	1000 LBS/ACRE (ORGANIC 7-2-3)
MYCORRHIZAL INOCULATE	60 LBS/ACRE
BINDER	100 LBS/ACRE

STEP 2: APPLY STRAW MULCH: 4,000 lbs. /acre  
WEED FREE RICE  
SUBSTITUTE MUST BE APPROVED

STEP 3: APPLY FIBER & BINDER:  
CELLULOSE WOOD FIBER 500 LBS/ACRE  
ORGANIC BINDER 100 LBS/ACRE

### **2-STEP SEED APPLICATION PROCESS**

---

USE 2-STEP APPLICATION PROCESS IN AREAS RECEIVING HYDROSEED UNDER TRM OR ECB.

STEP 1: APPLY FIBER, SEED, FERTILIZER, BINDER & INNOCULANT AS SPECIFIED BELOW:

CELLULOSE WOOD FIBER	600 LBS/ACRE
SEED	AS SPECIFIED
FERTILIZER	1000 LBS/ACRE (ORGANIC 7-2-3)
MYCORRHIZAL INOCULATE	60 LBS/ACRE
ORGANIC BINDER	100 LBS/ACRE

STEP 2: APPLY TRM OR ECB AS SPECIFIED IN PLANS. ALL AREAS RECEIVING BOTH HYDROSEED AND TRM OR ECB SHALL RECEIVE HYDROSEED BEFORE FABRIC.



**ECORP Consulting, Inc.**  
ENVIRONMENTAL CONSULTANTS

## SEED MIX - UPLAND

FOR UPLAND AREAS DOWN TO 2' ABOVE TOE OF SLOPE

SPECIES	PLS LBS./ACRE	MIN. GERM. %
NASELLA PULCHRA (PURPLE NEEDLEGRASS)	100	60
ELYMUS GLAUCUS (BLUE WILD RYE)	80	60
NASELLA CARNUA (NODDING NEEDLEGRASS)	60	60
MELICA CALIFORNICA (CALIFORNIA MELIC)	60	50
VULPIA MICROSTACHYS (THREE WEEKS FESCUE)	60	60
POA SECUNDA (NATIVE PINE BLUEGRASS)	30	80
TOTAL	39 LBS. PER ACRE (PLS)	

## SEED MIX - CHANNEL / WETLAND EDGES / LOWLANDS

FOR CHANNEL AREAS TO 2' ABOVE TOE OF SLOPE

SPECIES	PLS LBS./ACRE	MIN. GERM. %
ELYMUS TRACHYCAULUS (SLENDER WHEATGRASS)	120	45
HORDEUM BRACHYANTHERUM (MEADOW BARLEY)	100	40
LEYMUS TRITICOIDES 'YOLO' (CREEPING WILD RYE)	90	45
NASELLA LEPIDA (FOOTHILL NEEDLEGRASS)	30	45
DESCHAMPSIA CAESPITOSA (TUFTED HAIRGRASS)	30	40
TOTAL	34 LBS. PER ACRE (PLS)	

## SEED MIX - PATH

LOW MIX FOR AREAS WITHIN 15' OF PATHS (OR AS SPECIFIED)

SPECIES	PLS LBS./ACRE	MIN. GERM. %
FESTUCA RUBRA MOLATE (NATIVE RED FESCUE)	130	45
FESTUCA IDAHOENSIS (IDAHO FESCUE)	100	45
FESTUCA OCCIDENTALIS (WESTERN FESCUE)	100	45
VULPIA MICROSTACHYS (SIX WEEKS FESCUE)	100	45
CLARKIA AMOENA (FAREWELL TO SPRING)	0.5	45
ESCHSCHOLZIA CALIFORNICA (CALIFORNIA POPPY)	20	45
LUPINUS NANUS (SKY LUPINE)	3.5	45
NEMOPHILA MENZIESII (BABY BLUE EYES)	15	45
TOTAL	46.5 LBS.	

FERTILIZER COMPONENT	INGREDIENT %
NITROGEN	7
PHOSPHORUS	2
POTASSIUM	3

FERTILIZER SHALL BE NATURAL & SLOW RELEASE.  
ADD MYCORRHIZAL INNOCULANT AT 60 LBS/ACRE

ANY CHANGES TO THE ABOVE SEED MIXES MUST BE APPROVED BY ECorp CONSULTING  
BEFORE APPLICATION.



## HYDROSEEDING NOTES:

1. Seed shall be applied with hydroseeding equipment together with fertilizer, mulch fiber, tack (binder), and inoculate per specified quantities. Mulch fiber shall be produced from paper pulp and shall be of such character that it will disperse into an uniform slurry when mixed with water. Mulch fiber shall be colored to contrast with the area on which the seed mixture is to be applied, shall be nontoxic to plant or animal life, and shall not stain concrete or painted surfaces.
2. Mixing of materials for application with hydroseeding equipment shall be performed in a tank with a built-in continuous agitation system of sufficient operating capacity to produce a homogeneous slurry and a discharge system which will apply the slurry to the slopes at a continuous and uniform rate. The tank shall have a minimum capacity of 1,500 gallons.
3. No dispersing agent will be added to the slurry. Any material considered harmful, as determined by the owners or their representatives, shall not be used.
4. Before seeding, the Contractor shall furnish written evidence (seed label or letter) to the owners or their representatives that seed conforms to the purity and germination requirements in these specifications.
5. Seed designated without a purity or germination requirement shall be labeled to include the name, date (month and year) collected, and the name and address of the seed supplier. Seed at the time of sowing shall be from the previous or current year's harvest.
6. The legume seed shall be inoculated as per trade specifications and rate specified.
7. Seed shall be premixed by a licensed supplier and a copy of the license shall be provided to the owners or their representatives. Seed tags and a copy of the supply invoice will be provided to the owners or their representatives prior to application, and samples of the application mixture will be provided upon request.
8. Water shall be of such quality that it will promote germination and growth of seeds and plants.
9. The material shall be registered with and licensed by the State of California, Department of Food and Agriculture, as an "Auxiliary Soil Chemical".
10. Mulch fiber shall not be applied during rainy weather or when soil temperatures are below 40°F. Mulch fiber shall be applied with a binder sufficient to assure completeness of coverage. Pedestrians or equipment shall not enter hydroseeding areas after the seed mixture has been applied for 24 hours.
11. Hydroseeding work shall not commence until the rate and method of stabilizing emulsion application have been approved by the owners or their representatives.
12. The contractor shall apply the hydroseed materials at least 24 hours in advance of any reasonably predictable period of rainy weather. The Contractor shall consult the Owner's Representative at least 48 hours in advance of any hydroseeding activity, and shall not perform any work without authorization of the owners or their representatives.
13. The proportion of erosion control materials may be changed by the owners or their representatives to meet field conditions.
14. The owners or their representatives may authorize alternative methods or equipment if it is demonstrated that methods and equipment are capable of performing all operations satisfactorily.



## **NATIVE SEED SUPPLERS**

Hedgerow Farms  
21740 County Road 88  
Winters, CA 95694  
Phone: (530) 662-4570  
Fax: (530) 668-8369  
Web: [www.hedgerowfarms.com](http://www.hedgerowfarms.com)

Pacific Coast Seed, Inc.  
6144-A Industrial Way  
Livermore, CA 94551-9749  
Phone: (925) 373-4417  
Fax: (925) 373-6855  
Email: [pcseed@attglobal.net](mailto:pcseed@attglobal.net)

S&S Seeds  
P.O. Box 1275  
Carpenteria, CA 93014-1275  
Phone: (805) 684-0436  
Fax: (805) 684-2798  
Web: [www.ssseeds.com](http://www.ssseeds.com)

For more information on native seed providers contact the California Native Grass Association P.O. Box 72405, Davis, CA, 95617-6405, Phone: (530) 759-8458; [admin@cnga.org](mailto:admin@cnga.org).

## **ATTACHMENT E**

---

Property Analysis Record Printouts

## Section 9 - Ongoing Tasks and Costs

Property Title: Fiddymment 44

Dataset: CA004

PAR ID: 2004-045

06/14/2005

Budget: PAR

Task list	Specification	Unit	Number of Units	Cost / Unit	Annual Cost	Divide Years	Total Cost
<b>SITE CONSTRUCTION/MAINT.</b>							
Fence - installed	6-ft Tubular Steel	Lin. Ft.	1,619.30	25.00	40,482.50	40	1,012.06
Gate, Classic	Gate	Item	1.00	500.00	500.00	30	16.67
Lock	Padlock	Item	1.00	19.00	19.00	2	9.50
Sub-Total							1,038.23
<b>BIOTIC SURVEYS</b>							
Wetland Specialist	Field Svy. & Reports	L. Hours	8.00	75.00	600.00	1	600.00
Ornithologist	Grnd. Nesting Bird Survey	L. Hours	5.00	75.00	375.00	1	375.00
Other	General Inspection	L. Hours	8.00	60.00	480.00	1	480.00
Sub-Total							1,455.00
<b>HABITAT MAINTENANCE</b>							
Erosion Control	Labor	L. Hours	16.00	60.00	960.00	5	192.00
Exotic Plant Control	Hand Removal, Labor	L. Hours	8.00	60.00	480.00	1	480.00
Exotic Plant Control	Exotic Plant/Thatch mowing	L. Hours	8.00	80.00	640.00	1	640.00
Exotic Animal Control	Beaver Management	Item	20.00	60.00	1,200.00	5	240.00
Sub-Total							1,552.00
<b>PUBLIC SERVICES</b>							
Sign	Preserve	Item	4.00	70.00	280.00	7	40.00
Community Outreach	Homeowner Liaison	L. Hours	8.00	60.00	480.00	1	480.00
Sub-Total							520.00
<b>GENERAL MAINTENANCE</b>							
Sanitation Control	Collection and disposal	L. Hours	8.00	60.00	480.00	1	480.00
Sub-Total							480.00
<b>REPORTING</b>							
Photo Materials	Film/Process	Roll	2.00	13.00	26.00	1	26.00
Annual Reports	Draft Annual Report	L. Hours	4.00	75.00	300.00	1	300.00
Monitoring Reports	General Inspection Memo	L. Hours	2.00	60.00	120.00	1	120.00
Other	Agency Liaison	L. Hours	8.00	75.00	600.00	1	600.00
Sub-Total							1,046.00

Task list	Specificaton	Unit	Number of Units	C Unit	Annual Cost	Divide Years	Total Cost
CONTINGENCY & ADMINISTRATION							
Contingency							3,045.62
Administration							274.11
Sub-Total							3,319.73
Total							9,410.96

## Section 10 - Financial Summary

Property Title: Fiddymment 44

Dataset: CA004

PAR ID: 2004-045

06/14/2005

PAR(22 ac.)		Rate %	Total \$
INITIAL FINANCIAL REQUIREMENTS			
I & C Revenue			0
I & C Management Costs			0
I & C Contingency Expense	50.00		0
Total I & C Management Costs			0
I & C Administrative Costs of Total I & C Management Costs	3.00		0
Total I & C Costs			0
Net I & C Management and Administrative Costs			0
ANNUAL ONGOING FINANCIAL REQUIREMENTS			
Ongoing Costs			6,091
Ongoing Contingency Expense	50.00		3,046
Total Ongoing Management Costs			9,137
Ongoing Administrative Costs of Total Ongoing Management costs	3.00		274
Total Ongoing Costs			9,411
ENDOWMENT REQUIREMENTS FOR ONGOING STEWARDSHIP			
Endowment to Provide Income of \$ 9,411			188,220
Endowment per Acre is \$ 8,555.			
Ongoing Management Costs Based on 5.00% of Endowment per Year.			
Ongoing Management Funding is \$ 9,411 per Year Resulting in \$428 per Acre per Year.			
TOTAL CONTRIBUTION			188,220

## **ATTACHMENT F**

---

### Monitoring Timeline

# Fiddymment 44 Preserve Area Long-term Monitoring Timeline

January	February	March	April	May	June
			<u>Biological Inspection</u> <u>Inspection Tasks:</u> assess habitat function, thatch accumulation, newly introduced non-native plant species, and overall preserve function. (May also take place in March or May.)		Submit Annual Report to U.S. Army Corps of Engineers by June 1st.
July	August	September	October	November	December
Ground nesting bird survey to be conducted before fire break is mowed.		<u>General Inspection</u> <u>Inspection Tasks:</u> assess erosion, fire hazards, fencing integrity, signage condition, trash accumulation, unauthorized vehicle use. (May also take place in October or November.)	<u>Biological Inspection</u> <u>Inspection Tasks:</u> assess habitat function, thatch accumulation, newly introduced non-native plant species, and overall preserve function. (May also take place in September or November.)		



## **ATTACHMENT G**

---

Preserve Data Sheets

**PRESERVE INSPECTION SHEET**  
***Fiddymont 44 Open Space Preserve***

**DATE:** \_\_\_\_\_ **CITY PERSONNEL:** \_\_\_\_\_

Preserve Condition	Actions Taken (date and by whom)
Trash Accumulation?	
Fire Hazards?	
Unauthorized Construction/Fill?	
Fencing/Gates/Bollards/Signage?	
Unauthorized Motor Vehicle Use?	
Erosion/Sedimentation?	
Preserve Condition?	
Other Notes:	

## **ATTACHMENT H**

---

CalEPPC list

# The CalEPPC List: Exotic Pest Plants of Greatest Ecological Concern in California

October, 1999

**T**he CalEPPC list is based on information submitted by our members and by land managers, botanists and researchers throughout the state, and on published sources. The list highlights non-native plants that are serious problems **in wildlands** (natural areas that support native ecosystems, including national, state and local parks, ecological reserves, wildlife areas, national forests, BLM lands, etc.).

## List categories include:

**List A:** Most Invasive Wildland Pest Plants; documented as aggressive invaders that displace natives and disrupt natural habitats. Includes two sub-lists;

List A-1: Widespread pests that are invasive in more than 3 Jepson regions (see page 3), and List A-2: Regional pests invasive in 3 or fewer Jepson regions.

**List B:** Wildland Pest Plants of Lesser Invasiveness; invasive pest plants that spread less rapidly and cause a lesser degree of habitat disruption; may be widespread or regional.

**Red Alert:** Pest plants with potential to spread explosively; infestations currently small or localized. If found, alert CalEPPC, County Agricultural Commissioner or California Department of Food and Agriculture.

**Need More Information:** Plants for which current information does not adequately describe nature of threat to wildlands, distribution or invasiveness. Further information is requested from knowledgeable observers.

**Annual Grasses:** New in this edition; a preliminary list of annual grasses, abundant and widespread in California, that pose significant threats to wildlands. Information is requested to support further definition of this category in next List edition.

**Considered But Not Listed:** Plants that, after review of status, do not appear to pose a significant threat to wildlands.

## Plants that fall into the following categories are not included in the List:

- Plants found mainly or solely in disturbed areas, such as roadsides and agricultural fields.
- Plants that are established only sparingly, with minimal impact on natural habitats.



## 1999 List Review Committee:

**Dr. Lars W.J. Anderson,**  
**Research Leader**

U.S. Dept. of Agriculture-ARS  
Aquatic Weed Research Lab.

**Dr. Joe DiTomaso,**  
**Extension Weed Ecologist**

Weed Science Program  
Department of Vegetable Crops  
University of California, Davis

**Dr. G. Fred Hrusa,**  
**Senior Plant Systematist**

Plant Pest Diagnostics Center  
California Department of Food & Agriculture

**Dr. Marcel Rejmánek,**  
**Professor of Plant Ecology**

Section of Evolution and Ecology  
University of California, Davis

## CalEPPC List Committee:

**Ann Howald, Instructor**  
Santa Rosa Junior College

**Dr. John Randall,**  
**Invasive Weed Specialist**  
The Nature Conservancy

**Jake Sigg, President**  
California Native Plant Society

**Ellie Wagner, Botanist**  
California Dept. of Transportation

**Peter Warner,**  
**Restoration Coordinator**  
Golden Gate National Parks  
Association

The CalEPPC list is updated regularly. Please use the form provided to send comments, suggestions or new information to: **Peter Warner, 555 Magnolia Avenue, Petaluma, CA, 94952-2080**, or via email at **peterjwarner@earthlink.net**

*Thanks to all those who submitted comments for the 1999 list.*

# The California Exotic Pest Plant Council

## List A-1: Most Invasive Wildland Pest Plants; Widespread

Latin Name <sup>1</sup>	Common Name	Habitats of Concern and Other Comments	Distribution <sup>2</sup>
<i>Ammophila arenaria</i>	European beach grass	Coastal dunes	SCo,CCo,NCo
<i>Arundo donax</i>	giant reed, arundo	Riparian areas	cSNF,CCo,SCo,SnGb,D,GV
<i>Bromus tectorum</i>	cheat grass, downy brome	Sagebrush, pinyon-juniper, other desert communities; increases fire frequency	GB,D
<i>Carpobrotus edulis</i>	iceplant, sea fig	Many coastal communities, esp. dunes	SCo,CCo,NCo,SnFrB
<i>Centaurea solstitialis</i> <sup>C</sup>	yellow starthistle	Grasslands	CA-FP (uncommon in SoCal)
<i>Cortaderia jubata</i>	Andean pampas grass, jubatagrass	Horticultural; many coastal habitats, esp. disturbed or exposed sites incl. logged areas	NCo,NCoRO,SnFrB,CCo,WTR,SCo
<i>Cortaderia selloana</i>	pampas grass	Horticultural; coastal dunes, coastal scrub, Monterey pine forest, riparian, grasslands; wetlands in ScV; also on serpentine	SnFrB,SCo,CCo,ScV
<i>Cynara cardunculus</i> <sup>B</sup>	artichoke thistle	Coastal grasslands	CA-FP, esp. CCo,SCo
<i>Cytisus scoparius</i> <sup>C</sup>	Scotch broom	Horticultural; coastal scrub, oak woodlands, Sierra foothills	NW,CaRF,SNF,GV,SCo,CW
<i>Eucalyptus globulus</i>	Tasmanian blue gum	Riparian areas, grasslands, moist slopes	NCoRO,GV,SnFrB,CCo,SCoRO,SCo,nChl
<i>Foeniculum vulgare</i>	wild fennel	Grasslands; esp. SoCal, Channel Is.; the cultivated garden herb is not invasive	CA-FP
<i>Genista monspessulana</i> <sup>C</sup>	French broom	Horticultural; coastal scrub, oak woodlands, grasslands	NCoRO,NCoRI,SnFrB,CCo,SCoRO,sChl,WTR,PR
<i>Lepidium latifolium</i> <sup>B</sup>	perennial pepperweed, tall whitetop	Coastal, inland marshes, riparian areas, wetlands, grasslands; potential to invade montane wetlands	CA (except KR,D)
<i>Myriophyllum spicatum</i>	Eurasian watermilfoil	Horticultural; lakes, ponds, streams, aquaculture	SnFrB,SnJV,SNH(?); prob. CA
<i>Pennisetum setaceum</i>	fountain grass	Horticultural; grasslands, dunes, desert canyons; roadsides	Deltaic GV,CCo,SCo,SnFrB
<i>Rubus discolor</i>	Himalayan blackberry	Riparian areas, marshes, oak woodlands	CA-FP
<i>Senecio mikanioides</i> (= <i>Delairea odorata</i> )	Cape ivy, German ivy	Coastal, riparian areas, also SoCal (south side San Gabriel Mtns.)	SCo,CCo,NCo,SnFrB,SW
<i>Taeniatherum caput-medusae</i> <sup>C</sup>	medusa-head	Grasslands, particularly alkaline and poorly drained areas	NCoR,CaR,SNF,GV,SCo
<i>Tamarix chinensis</i> , <i>T. gallica</i> , <i>T. parviflora</i> & <i>T. ramosissima</i>	tamarisk, salt cedar	Desert washes, riparian areas, seeps and springs	SCo,D,SnFrB,GV,sNCoR,sSNF,Teh,SCoRI,SNE,WTR
<i>Ulex europaeus</i> <sup>B</sup>	gorse	North, central coastal scrub, grasslands	NCo,NCoRO,CaRF,n&cSNF,SnFrB,CCo

## <sup>1</sup>Noxious Weed Ratings

- F: Federal Noxious Weed, as designated by the USDA; targeted for federally-funded prevention, eradication or containment efforts.
- A: CA Dept. of Food & Agriculture, on "A" list of Noxious Weeds; agency policies call for eradication, containment or entry refusal.
- B: CA Dept. of Food & Agriculture, on "B" list of Noxious Weeds; includes species that are more widespread, and therefore more difficult to contain; agency allows county Agricultural Commissioners to decide if local eradication or containment is warranted.
- C: CA Dept. of Food & Agriculture, on "C" list of Noxious Weeds; includes weeds that are so widespread that the agency does not endorse state or county-funded eradication or containment efforts except in nurseries or seed lots.
- Q: CA Dept. of Food & Agriculture's designation for temporary "A" rating pending determination of a permanent rating.

For most species nomenclature follows *The Jepson Manual: Higher Plants of California* (Hickman, J., Ed., 1993).

## Exotic Pest Plants of Greatest Ecological Concern in California

### List A-2: Most Invasive Wildland Pest Plants; Regional

Latin Name <sup>1</sup>	Common Name	Habitats of Concern and Other Comments	Distribution <sup>2</sup>
<i>Ailanthus altissima</i>	tree of heaven	Riparian areas, grasslands, oak woodlands, esp. GV, SCo	CA-FP
<i>Atriplex semibaccata</i>	Australian saltbush	SoCal, coastal grasslands, scrub, "high marsh" of coastal salt marshes	CA (except CaR, c&sSN)
<i>Brassica tournefortii</i>	Moroccan or African mustard	Washes, alkaline flats, disturbed areas in Sonoran Desert	SW,D
<i>Bromus madritensis</i> ssp. <i>rubens</i>	red brome	Widespread; contributing to SoCal scrub, desert scrub type conversions; increases fire frequency	CA
<i>Cardaria draba</i> <sup>a</sup>	white-top, hoary cress	Riparian areas, marshes of central coast; also ag. lands, disturbed areas	Problem only in CCo
<i>Conicosia pugioniformis</i>	narrow-leaved iceplant, roundleaf iceplant	Coastal dunes, sandy soils near coast; best documented in San Luis Obispo and Santa Barbara cos.	CCo
<i>Cotoneaster pannosus</i> , <i>C. lacteus</i>	cotoneaster	Horticultural; many coastal communities; esp. North Coast, Big Sur; related species also invasive	CCo, SnFrB, NW
<i>Cytisus striatus</i>	striated broom	Often confused with <i>C. scoparius</i> ; coastal scrub, grassland	SnFrB, CCo, SCo, PR
<i>Egeria densa</i>	Brazilian waterweed	Streams, ponds, sloughs, lakes; Sacramento-San Joaquin Delta	n&sSNF, SnJV, SnFrB, SnJt, SNE
<i>Ehrharta calycina</i>	veldt grass	Sandy soils, esp. dunes; rapidly spreading on central coast	CCo, SCoRO, WTR
<i>Eichhornia crassipes</i>	water hyacinth	Horticultural; established in natural waterways, esp. troublesome in Sacramento-San Joaquin Delta	GV, SnFrB, SCo, PR
<i>Elaeagnus angustifolia</i>	Russian olive	Horticultural; interior riparian areas	SnJV, SnFrB, SNE, DMoj
<i>Euphorbia esula</i> <sup>a</sup>	leafy spurge	Rangelands in far no. CA, also reported from Los Angeles Co.	eKR, NCo, CaR, MP, SCo
<i>Ficus carica</i>	edible fig	Horticultural; Central Valley, foothill, South Coast and Channel Is. riparian woodlands	nSNF, GV, SnFrB, SCo
<i>Lupinus arboreus</i>	bush lupine	Native to SCo, CCo; invasive only in North Coast dunes	SCo, CCo, NCo
<i>Mentha pulegium</i>	pennyroyal	Santa Rosa Plain (Sonoma Co.) and Central Valley vernal pools; wetlands elsewhere	NW, GV, CW, SCo
<i>Myoporum laetum</i>	myoporum	Horticultural; coastal riparian areas in SCo	SCo, CCo
<i>Saponaria officinalis</i>	bouncing bet	Horticultural; meadows, riparian habitat in SNE, esp. Mono Basin	NW, CaRH, nSNF, SnFrB, SCoRO, SCo, PR, MP, SNE, GV
<i>Spartina alterniflora</i>	Atlantic or smooth cordgrass	S.F. Bay salt marshes; populations in Humboldt Bay believed extirpated	CCo(shores of S.F. Bay)

### <sup>2</sup>Distribution by geographic subdivisions per the Jepson Manual

CA=California	GV=Great Valley	ScV=Sacramento Valley
CA-FP=California Floristic Province	KR=Klamath Ranges	SnJV=San Joaquin Valley
CaR=Cascade Ranges	MP=Modoc Plateau	SN=Sierra Nevada
CaRF=Cascade Range Foothills	NCo=North Coast	SNE=East of SN
CCo=Central Coast	NCoRI=Inner NCo Ranges	SNF=SN Foothills
ChI=Channel Islands	NCoRO=Outer NCo Ranges	SNH=High SN
CW=Central Western CA	NW=Northwestern CA	SnFrB=San Francisco Bay Area
D=Deserts	PR=Peninsular Ranges	SnGb=San Gabriel Mtns
DMoj=Mojave Desert	SCo=South Coast	SW=Southwestern CA
DSon=Sonoran Desert	SCoRI=Inner SCo Ranges	Teh=Tehachapi Mtns
GB=Great Basin	SCoRO=Outer SCo Ranges	WTR=Western Transverse Ranges

# The California Exotic Pest Plant Council

## List B: Wildland Pest Plants of Lesser Invasiveness

Latin Name <sup>1</sup>	Common Name	Habitats of Concern and Other Comments	Distribution <sup>2</sup>
<i>Ageratina adenophora</i> <sup>F</sup>	eupatory	Horticultural; coastal canyons, coastal scrub, slopes, Marin to San Diego Co; San Gabriel Mtns.	CCo,SnFrB,SCo,SCoRO
<i>Bassia hyssopifolia</i>	bassia	Alkaline habitats	CA (except NW,SNH)
<i>Bellardia trixago</i>	bellardia	Grasslands, on serpentine, where a threat to rare natives	NCoRO,CCo,SnFrB
<i>Brassica nigra</i>	black mustard	Coastal communities, esp. fog-belt grasslands; disturbed areas	CA-FP
<i>Cardaria chalepensis</i> <sup>B</sup>	lens-podded white-top	Wetlands of Central Valley	CA
<i>Carduus pycnocephalus</i> <sup>C</sup>	Italian thistle	Grasslands, shrublands, oak woodlands	sNCo,sNCoR,SNF,CW,SCo,ScV
<i>Centaurea calcitrapa</i> <sup>B</sup>	purple starthistle	Grasslands	NW,sCaRF,SNF,GV,CW,SW
<i>Centaurea melitensis</i>	totalote, Malta starthistle	Widespread; sometimes misidentified as <i>C. solstitialis</i> ; perhaps a more serious invader than currently recognized	CA-FP,D
<i>Cirsium arvense</i> <sup>B</sup>	Canada thistle	Especially troublesome in riparian areas	CA-FP
<i>Cirsium vulgare</i>	bull thistle	Riparian areas, marshes, meadows	CA-FP,GB
<i>Conium maculatum</i>	poison hemlock	Mainly disturbed areas but may invade wildlands; known to poison wildlife; early expanding stage in many areas, esp. San Diego Co. riparian, oak understory	CA-FP
<i>Crataegus monogyna</i>	hawthorn	Horticultural; recent invader, colonizing healthy native forest around Crystal Springs reservoir on S.F. peninsula	SnFrB,CCo,NCo,NCoR
<i>Ehrharta erecta</i>	velvet grass	Wetlands, moist wildlands; common in urban areas; potential to spread rapidly in coastal, riparian, grassland habitats	SnFrB,CCo,SCo
<i>Erechtites glomerata</i> , <i>E. minima</i>	Australian fireweed	Coastal woodlands, scrub, NW forests, esp. redwoods	NCo,NCoRO,CCo,SnFrB,SCoRO
<i>Festuca arundinacea</i>	tall fescue	Horticultural (turf grass); coastal scrub, grasslands in NCo, CCo	CA-FP
<i>Hedera helix</i>	English ivy	Horticultural; invasive in coastal forests, riparian areas	CA-FP
<i>Holcus lanatus</i>	velvet grass	Coastal grasslands, wetlands in No. CA	CA exc. DSon
<i>Hypericum perforatum</i> <sup>C</sup>	Klamathweed, St. John's wort	Redwood forests, meadows, woodlands; invasion may occur due to lag in control by established biocontrol agents	NW,CarH,n&cSN,ScV,CCo,SnFrB,PR
<i>Ilex aquifolium</i>	English holly	Horticultural; coastal forests, riparian areas	NCoRO,SnFrB,CCo
<i>Iris pseudacorus</i>	yellow water iris, yellow flag	Horticultural; riparian, wetland areas, esp. San Diego, Los Angeles cos.	SnFrB,CCo,sSnJV,SCo
<i>Leucanthemum vulgare</i>	ox-eye daisy	Horticultural; invades grassland, coastal scrub	KR,NCoRO,n&cSNH,SnFrB,WTR,PR
<i>Mesembryanthemum crystallinum</i>	crystalline iceplant	Coastal bluffs, dunes, scrub, grasslands; concentrates salt in soil	NCo,CCo,SCo,ChI
<i>Myriophyllum aquaticum</i>	parrot's feather	Horticultural; streams, lakes, ponds	NCo,CarF,CW,SCo
<i>Olea europaea</i>	olive	Horticultural and agricultural; reported as invasive in riparian habitats in Santa Barbara, San Diego	NCoR,NCoRO,CCo,SnFrB,SCoRO,SCo
<i>Phalaris aquatica</i>	Harding grass	Coastal sites, esp. moist soils	NW,cSNF,CCo,SCo
<i>Potamogeton crispus</i>	curlyleaf pondweed	Scattered distribution in ponds, lakes, streams	NCoR,GV,CCo,SnFrB,SCo,ChI,SnGb,SnBr,DmJ
<i>Ricinus communis</i>	castor bean	SoCal coastal riparian habitats	GV,SCo,CCo
<i>Robinia pseudoacacia</i>	black locust	Horticultural; riparian areas, canyons; native to eastern U.S.	CA-FP,GB
<i>Schinus molle</i>	Peruvian pepper tree	Horticultural; invasive in riparian habitats in San Diego, Santa Cruz Is.	SNF,GV,CW,SW,Teh

# Exotic Pest Plants of Greatest Ecological Concern in California

## List B: Continued

Latin Name <sup>1</sup>	Common Name	Habitats of Concern and Other Comments	Distribution <sup>2</sup>
<i>Schinus terebinthifolius</i>	Brazilian pepper	Horticultural; riparian areas	sSCo
<i>Senecio jacobaea</i> <sup>B</sup>	tansy ragwort	Grasslands; biocontrol agents established	NCo,wKR,s&wCaR, nSNF, nScV,SW
<i>Spartium junceum</i>	Spanish broom	Coastal scrub, grassland, wetlands, oak woodland, NW forests, esp. redwoods; also roadcuts	NCoRO,ScV,SnFrB, SCoRO,SCo,sChI,WTR
<i>Verbascum thapsus</i>	woolly or common mullein	SNE meadows, sagebrush, pinyon-juniper woodlands; shores of Boggs Lake (Lake Co.)	CA
<i>Vinca major</i>	periwinkle	Horticultural; riparian, oak woodland, other coastal habitats	NCoRO,SnFrB, CCo, sSCoRO,SCo

## Red Alert: Species with potential to spread explosively; infestations currently restricted

Latin Name <sup>1</sup>	Common Name	Habitats of Concern and Other Comments	Distribution <sup>2</sup>
<i>Alhagi pseudalhagi</i> <sup>A</sup>	camel thorn	Noxious weed of arid areas; most infestations in California have been eradicated	GV,sSNE,D
<i>Arctotheca calendula</i> <sup>A</sup>	Capeweed	Seed-producing types are the problem; most are vegetative only	NCo,SnFrB,CCo
<i>Centaurea maculosa</i> <sup>A</sup>	spotted knapweed	Riparian, grassland, wet meadows, forest habitats; contact CA Food & Ag if new occurrences found	CaR,SN,nScV,nCW,MP, nSNE,sPR,NW
<i>Crupina vulgaris</i> <sup>A</sup>	bearded creeper, common crupina	Aggressively moving into wildlands, esp. grassland habitats	NCoR (Sonoma Co.),MP
<i>Halogeton glomeratus</i> <sup>A</sup>	halogeton	Noxious weed of Great Basin rangelands; report locations to CA Food & Ag; goal is exclusion from CA	GB
<i>Helichrysum petiolare</i>	licorice plant	North coastal scrub; one population on Mt. Tamalpais, w. Marin Co.	Not in Jepson
<i>Hydrilla verticillata</i> <sup>A</sup>	hydrilla	Noxious water weed; report locations to CA Food & Ag; eradication program in place; found in Clear Lake (Lake Co.) in 1994	NCoRI,n&cSNF,ScV,SCo,D
<i>Lythrum salicaria</i> <sup>B</sup>	purple loosestrife	Horticultural; noxious weed of wetlands, riparian areas	sNCo,NCoRO,nSNF,ScV, SnFrB,nwMP
<i>Ononis alopecuroides</i> <sup>B</sup>	foxtail restharrow	Eradication efforts underway in San Luis Obispo Co.; to be looked for elsewhere in CA	CCo; not in Jepson
<i>Retama monosperma</i>	bridal broom	First noted at Fallbrook Naval Weapons Station, San Diego Co; could rival other invasive brooms	San Diego Co.; not in Jepson
<i>Salvinia molesta</i> <sup>f</sup>	giant waterfern	Ponds, lakes, reservoirs, canals	Napa, Sonoma cos., lower Colorado River; not in Jepson
<i>Sapium sebiferum</i>	Chinese tallow tree	Horticultural; riparian, wetland habitats, open areas and understory	ScV,SnFrB; not in Jepson
<i>Sesbania punicea</i>	scarlet wisteria tree	Horticultural; riparian areas; American River Parkway, Sacramento Co., Suisun Marsh, San Joaquin River Parkway	ScV,SnJV; not in Jepson
<i>Spartina anglica</i>	cord grass	Scattered in S.F. Bay	Not in Jepson
<i>Spartina densiflora</i>	dense-flowered cord grass	Scattered in S.F. Bay, Humboldt Bay salt marshes	CCo,NCo
<i>Spartina patens</i>	salt-meadow cord grass	One site in S.F. Bay, also Siuslaw Estuary, OR and Puget Sound, WA	CCo



# The California Exotic Pest Plant Council

## Need More Information

Latin Name <sup>1</sup>	Common Name	Habitats of Concern and Other Comments	Distribution <sup>2</sup>
<i>Acacia dealbata</i>	silver wattle	Aggressive in natural areas?	SnFRB, SCoRO, SCoRI, CCo
<i>Acacia decurrens</i>	green wattle	Sometimes confused with <i>A. dealbata</i> ; aggressive in natural areas?	Unknown
<i>Acacia melanoxylon</i>	blackwood acacia	Reported from S.F. Bay area, central coast, Santa Cruz Is.; spreads slowly; other areas?	SnFrB, SCoRO, SCo, CCo
<i>Aeschynomene rudis</i> <sup>3</sup>	rough jointvetch	Princeton area, Colusa Co.; pest of rice crops; potential threat to riparian, wetland habitats?	ScV
<i>Agrostis avenacea</i>	Pacific bentgrass	Invading vernal pools in San Diego area; attempts at manual eradication unsuccessful so far; problem in other areas?	sNCo, sNCoR, SNF, GV, CW, nSCo
<i>Aptenia cordifolia</i>	red apple	Habitats where invasive?	CCo, SCo, sChI
<i>Asphodelus fistulosus</i>	asphodel	Common in SCo highway rights-of-way, other disturbed sites; threats to wildlands?	sSnJV, SCo
<i>Carduus acanthoides</i> <sup>4</sup>	giant plumeless thistle	Threatens wildlands?	NCoRI, nSN, SnFrB, nSCoRO, MP
<i>Cistus ladanifer</i>	gum cistus	Horticultural; invades coastal sage scrub, chaparral; areas where problematic?	sCCo, SnGb
<i>Cordyline australis</i>	New Zealand cabbage	Infestation at Salt Point State Park; bird-dispersed; other problem areas?	Not in Jepson
<i>Cotoneaster</i> spp. (exc. <i>C. pannosus</i> , <i>C. lacteus</i> )	cotoneaster	Horticultural; bird-distributed; which species are problems in wildlands?	Unknown
<i>Cupressus macrocarpa</i>	Monterey cypress	Native only to Monterey Peninsula; planted and naturalized CCo, NCo; threat to wildlands?	CCo
<i>Descurainia sophia</i>	flixweed, tansy mustard	Entering Mojave wildlands through washes; threat to wildlands?	CA
<i>Dimorphotheca sinuata</i>	African daisy, Cape marigold	Horticultural; reported as invasive in w. Riverside Co., Ventura Co.; problem elsewhere?	SnJV, SCoRO, SCo, PR
<i>Echium candicans</i> , <i>E. pininana</i>	pride of Madeira, pride of Teneriffe	Horticultural; riparian, grassland, coastal scrub communities; spreads by seed	CCo, SnFrB, SCo, sNCo
<i>Ehrharta longiflora</i>	veldt grass	Reported from San Diego	Not in Jepson
<i>Erica lusitanica</i>	heath	Threat to wildlands?	NCo (Humboldt Co.)
<i>Euphorbia lathyris</i>	caper spurge, gopher plant	Invades coastal scrub, marshes, dunes; Sonoma, Marin cos.; threat to wildlands?	NCo, CCo, GV, SCo
<i>Gazania linearis</i>	gazania	Horticultural; invades grassland in S.F., coastal scrub?	CCo, SCo
<i>Glyceria declinata</i>		Although reported from Central Valley vernal pools, genetic research is needed to confirm identity; plants that have been called <i>G. declinata</i> key in Jepson to native <i>G. occidentalis</i>	Uncertain; not in Jepson
<i>Hedera canariensis</i>	Algerian ivy	Horticultural; invasive in riparian areas in SoCal?	Not in Jepson
<i>Hirschfeldia incana</i>	Mediterranean or short-pod mustard	Increasing in western, southern Mojave; threat to wildlands?	NCo, SNF, GV, CW, SCo, DMoj
<i>Hypericum canariense</i>	Canary Island hypericum	Reported in San Diego area, coastal sage scrub, grassland; threat to wildlands?	SCo
<i>Hypochaeris radicata</i>	rough cat's-ear	Widespread in coastal grasslands, wetlands; threat to wildlands?	NW, CaRF, nSNF, ScV, CW, SCo
<i>Isatis tinctoria</i> <sup>5</sup>	dyers' woad	Well-known invader in Utah; threat to wildlands?	KR, CaR, nSNH, MP
<i>Ligustrum lucidum</i>	glossy privet	Horticultural; spreading rapidly on Mendocino coast; problem in other areas?	NCo; not in Jepson
<i>Limonium ramosissimum</i> ssp. <i>provinciale</i>	sea lavender	Reported spreading in Carpinteria Salt Marsh; problem in other areas?	Not in Jepson

# Exotic Pest Plants of Greatest Ecological Concern in California

## Need More Information: Continued

Latin Name <sup>1</sup>	Common Name	Habitats of Concern and Other Comments	Distribution <sup>2</sup>
<i>Ludwigia uruguayensis</i> (= <i>L. hexapetala</i> )	water primrose	Invasive in aquatic habitats; non-native status questioned?	NCo,sNCoRO,CCo, SnFrB,SCo
<i>Malephora crocea</i>	ice plant	Invades margins of wetlands, bluffs along SCo	CCo,SCo,sChI
<i>Maytenus boaria</i>	mayten	Horticultural; scattered in riparian forests, ScV; east SnFrB	ScV,SnFrB
<i>Mesembryanthemum nodiflorum</i>	slender-leaved iceplant	Abundant on Channel Islands; invades wetlands; habitats where problematic?	SnFrB,SCo,ChI
<i>Nicotiana glauca</i>	tree tobacco	Disturbed places; not very competitive with natives in coastal scrub, chaparral; spreading along Putah Creek (Yolo Co.); problems elsewhere?	NCoRI,c&sSNF, GV,CW,SW,D
<i>Oxalis pes-caprae</i>	Bermuda buttercup	Invades disturbed sites; invasive in undisturbed habitats?	NCo,NCoRO,CCo, SnFrB,SCoRO,SCo
<i>Parentucellia viscosa</i>		Threat to NCo (Humboldt Co.) dune swales?	NCo,NCoRO,CCo,SCo
<i>Passiflora caerulea</i>		Horticultural; reported from SoCal; threat to wildlands?	SCo; not in Jepson
<i>Pennisetum clandestinum</i> <sup>CC</sup>	Kikuyu grass	Disturbed sites, roadsides; threat to wildlands?	NCo,CCo,SnFrB,SCo, Santa Cruz Is.
<i>Phyla nodiflora</i>	mat lippia	Most varieties in CA are native; taxonomy unclear; status of plants in vernal pools, wetlands?	NW(except KR,NCoRH), GV,CCo,SnFrB,SCo, PR,Dson
<i>Pinus radiata</i> cultivars	Monterey pine	Cultivars invading native Monterey, Cambria forests, where spread of pine pitch canker is a concern	CCo
<i>Piptatherum miliaceum</i>	smilo grass	Aggressive in SoCal creeks, canyons; threats to wildlands?	NCo,GV,CW,SCo
<i>Pistacia chinensis</i>	Chinese pistache	Horticultural; invades riparian areas and woodlands in ScV	ScV
<i>Prunus cerasifera</i>	cherry plum	Oak woodland, riparian areas; esp. Marin, Sonoma cos.; bird-distributed; problems elsewhere?	SnFrB,CCo
<i>Pyracantha angustifolia</i>	pyracantha	Horticultural; spreads from seed in S.F. Bay area; bird-distributed; problem elsewhere?	sNCoRO,CCo,SnFrB,SCo
<i>Salsola soda</i>	glasswort	Threat to salt marshes?	nCCo,SnFrB
<i>Salsola tragus</i> <sup>C</sup>	Russian thistle, tumbleweed	Abundant in dry open areas in w. Mojave Desert, Great Basin; not limited to disturbed sites; threats?	CA
<i>Salvia aethiops</i> <sup>B</sup>	Mediterranean sage	Creates monocultures in E. Oregon grasslands; threat to CA wildlands?	MP
<i>Stipa capensis</i>		Distribution and threats?	Not in Jepson
<i>Tamarix aphylla</i>	athel	Spreading in Salton Sea area; threats to wildlands?	nSnJV,nSCo,D
<i>Tanacetum vulgare</i>	common tansy	Jepson reports as uncommon, escape from cultivation in urban areas; problem in wildlands?	NCo,NCoRO,CarH, SCoRO
<i>Verbena bonariensis</i> , <i>V. litoralis</i>	tall vervain	Horticultural; invades riparian forests, wetlands; extensive along ScV riparian corridors; roadsides (Yuba Co.); elsewhere?	ScV,nSnJV,nSnFrB,CCo



# The California Exotic Pest Plant Council

## Annual Grasses

Latin Name <sup>1</sup>	Common Name	Habitats of Concern and Other Comments	Distribution <sup>2</sup>
<i>Aegilops triuncialis</i> <sup>a</sup>	barbed goatgrass	Serpentine soils, grasslands	sNCoR, CaRF, n&cSNF, ScV, nCW
<i>Avena barbata</i>	slender wild oat	Lower elev. in SoCal; coastal slopes, coastal sage scrub, disturbed sites	CA-FP, MP, DMoj
<i>Avena fatua</i>	wild oat	Lower elev. in SoCal; coastal slopes, coastal sage scrub on deeper soil, disturbed sites	CA-FP, MP, DMoj
<i>Brachypodium distachyon</i>	false brome	Expanding in SoCal; common in Orange Co.	sNCoR, sCaRF, SNF, GV, CW, SCo, sChI
<i>Bromus diandrus</i>	ripgut brome	Coastal dunes, coastal sage scrub, grasslands	CA
<i>Lolium multiflorum</i>	Italian ryegrass	Wetland areas, esp. vernal pools in San Diego Co.; common in disturbed sites	CA-FP
<i>Schismus arabicus</i>	Mediterranean grass	Threat to Mojave and Colorado desert shrublands?	SnJV, CW, sChI, D
<i>Schismus barbatus</i>	Mediterranean grass	Threat to Mojave and Colorado desert shrublands?	SnJV, SW, D

## Considered, but not listed

Latin Name <sup>1</sup>	Common Name	Habitats of Concern and Other Comments
<i>Albizia lophantha</i>	plume acacia	Not invasive
<i>Anthoxanthum odoratum</i>	sweet vernal grass	Disturbed sites on coast; Marin, Sonoma, Mendocino cos.
<i>Carpobrotus chilensis</i>	sea fig	Native status in question; not a threat to wildlands
<i>Centranthus ruber</i>	red valerian	Horticultural; roadcuts in Marin Co.; not a threat to wildlands
<i>Convolvulus arvensis</i> <sup>c</sup>	field bindweed	Disturbed sites; ag lands
<i>Coprosma repens</i>	mirror plant	No evidence of wildland threat
<i>Crocosmia x crocosmiiflora</i>		Generally in disturbed coastal, urban areas, roadsides
<i>Digitalis purpurea</i>	foxglove	Horticultural; scattered in prairies, meadows, disturbed sites; not a major wildland threat
<i>Dipsacus sativus</i> , <i>D. fullonum</i>	wild teasel, Fuller's teasel	Roadsides, disturbed sites
<i>Fumaria officinalis</i> , <i>F. parviflora</i>	fumitory	S.F. Bay area, Monterey Bay salt marshes, sandy disturbed sites
<i>Medicago polymorpha</i>	California bur clover	Grasslands, moist sites; mainly restricted to disturbed sites
<i>Melilotus officinalis</i>	yellow sweet clover	Restricted to disturbed sites in CA
<i>Nerium oleander</i>	oleander	Horticultural; not invasive, although reported from riparian areas in Central Valley, San Bernardino Mtns.
<i>Picris echinoides</i>	bristly ox-tongue	Disturbed areas
<i>Silybum marianum</i>	milk thistle	Disturbed areas, especially overgrazed moist pasturelands; may interfere with restoration
<i>Xanthium spinosum</i>	spiny cocklebur	Identified as native in <i>The Jepson Manual</i> (Hickman, 1993) and <i>A California Flora</i> (Munz and Keck, 1968); restricted to disturbed areas
<i>Zantedeschia aethiopica</i>	calla lily	Horticultural; mainly a garden escape in wet coastal areas
<i>Zoysia cultivars</i>	Amazoy and others	Horticultural; no evidence of wildland threat

---

## **ATTACHMENT I**

---

Sample Preserve Sign

# Open Space Wetland Preserve

No dogs, motorized vehicles, bicycles, dumping or  
other disturbance of protected wetland habitats.

**Please respect and help  
preserve our open spaces!**

Trespassers will be prosecuted and held liable for any damages  
(California Penal Code Section 602.8)

## **ATTACHMENT J**

---

Native Plants for Use in Restoration

## Native Plants for Use in Restoration

### Scientific Name

### Common Name

#### Trees

<i>Acer negundo</i>	Box elder
<i>Aesculus californica</i>	California buckeye
<i>Alnus rhombifolia</i>	White alder
<i>Fraxinus latifolia</i>	Oregon ash
<i>Juglans californica</i>	California black walnut
<i>Platanus racemosa</i>	Western sycamore
<i>Populus fremontii</i>	Fremont cottonwood
<i>Quercus douglasii</i>	Blue oak
<i>Quercus lobata</i>	Valley oak
<i>Quercus wislizeni</i>	Interior live oak
<i>Salix exigua</i>	Narrowleaf willow
<i>Salix gooddingii</i>	Gooding's black willow
<i>Salix laevigata</i>	Red willow
<i>Salix lasiolepis</i>	Arroyo willow

#### Shrubs

<i>Baccharis pilularis</i>	Coyote brush
<i>Ceanothus cuneatus</i>	Wedgeleaf ceanothus
<i>Cephalanthus occidentalis</i>	Button-willow
<i>Cercis occidentalis</i>	Western redbud
<i>Fremontodendron californicum</i>	Flannelbush
<i>Heteromeles arbutifolia</i>	Toyon
<i>Mimulus aurantiacus</i>	Bush monkeyflower
<i>Rhamnus ilicifolia</i>	Hollyleaf redberry
<i>Rhamnus tomentella</i>	Hoary coffeeberry
<i>Rubus ursinus</i>	California blackberry
<i>Rosa californica</i>	California rose
<i>Salix exigua</i>	Narrow-leaved willow
<i>Salix lasiolepis</i>	Arroyo willow
<i>Vitis californica</i>	California wild grape

#### Grasses

<i>Bromus carinatus</i>	California brome
<i>Elymus elymoides</i>	Squirreltail
<i>Elymus glaucus</i>	Blue wildrye
<i>Festuca idahoensis</i>	Idaho fescue
<i>Hordeum branchyantherum</i>	Meadow barley
<i>Leymus triticoides</i>	Creeping wildrye
<i>Melica californica</i>	Oniongrass
<i>Muhlenbergia rigens</i>	Deer grass
<i>Nassella pulchra</i>	Purple needle grass
<i>Poa secunda</i>	One-sided bluegrass

**EXHIBIT “C”**  
**Masonry Wall Site Plan**

*{See Attached}*



# EXHIBIT "C"

