

ESTACIO CC&R's

Cover Sheet.

As provided for in amended [Gov. Code §12956.1](#), Estacio has placed this Page as the first page of their CC&Rs stating, the following:

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

Amend CC&Rs. In addition, [Civil Code §1352.5](#) requires that boards of directors, without the approval of homeowners, amend their governing documents to delete discriminatory restrictions. The Board has determined and believes no CC&R restrictions exist anywhere in the Estacio CC&R's, that discriminate against gender identity or gender expression.

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DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS, AND
RESERVATION OF EASEMENTS FOR
ESTACIO, A PLANNED DEVELOPMENT

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made by DESERT 49 ESTATES INC., a California corporation (the Declarant).

WITNESSETH:

A. Declarant is the owner of that certain real property located in the City of Indio, County of Riverside, State of California, more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference (Phase 1).

B. Declarant is also the owner of or has an interest in, that certain real property located in the City of Indio, County of Riverside, State of California, more particularly described in Exhibit "B" attached hereto (Annexation Property), which may, from time to time, be annexed to and become part of the Project (as hereinafter deemed), in accordance with the Article herein entitled "Annexation" of Additional Property."

C. Declarant desires to develop Phase 1 and the Annexation Property as a common interest development, more particularly described in Section 1351(k) of the California Civil Code as a Planned developments (the Project), which include facilities for the common use, benefit, and enjoyment of all Owners. The development of the Project shall be consistent with the overall plan of development submitted to and approved by the City of Indio, California.

D. Declarant intends to establish a balanced community and to develop and convey Phase I and all other property within the Project pursuant to which general plan for the care, use, and management of the Project, and subject to certain protective covenants, conditions, restrictions, reservations, easements, liens and charges, under the general plan of improvement for the benefit of all Owners of Lots in the Project.

E. Declarant deems it desirable for the efficient enforcement, protection and preservation of the desirability and attractiveness of the Project to create a corporation which shall be delegated and assigned the powers of administering and enforcing the Protective Covenants.

F. ESTACIO HOMEOWNERS ASSOCIATION, INC., a California nonprofit mutual benefit corporation, has been or will be incorporated under the laws of the State of California for the purpose of exercising the aforesaid powers.

G. Declarant intends to convey the Project subject to the Protective Covenants set forth hereinbelow.

NOW, THEREFORE, Declarant covenants, agrees and declares that it does hereby establish a general plan for the development, maintenance, care, improvement, protection, use, occupancy, management and enjoyment of the Project, and that all or any portion of the Project shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved, subject to the covenants, conditions, restrictions, limitations, easements and rights ("Protective Covenants") set forth herein, all of which are for the purpose of uniformly enhancing and protecting the attractiveness and desirability of the Project, in furtherance of said general plan for the maintenance, protection, subdivision, improvement and sale of the Project, or any portion(s) thereof. Each and all of the Protective Covenants are hereby imposed as equitable servitudes upon the Property, which shall run with and burden the Project and shall be binding upon all persons having any right, title or interest in the Project, or any portion thereof, their heirs, successors and assigns, and shall inure to the benefit of and be binding upon Declarant, its successors and assigns, all subsequent owners of all or any portion of the Project, together with their grantees, heirs, executors, administrators, devisees, successors and assigns.

ARTICLE 1
DEFINITIONS

1.1 "Annexation Property" shall mean and refer to that certain real property described in Exhibit "B" attached hereto, including all Improvements constructed thereof, all or any portion of which may be annexed into the Project as set forth in the Article herein entitled, "Annexation of Additional Property."

1.2 "Architectural Control Committee" shall mean and refer to the architectural committee created pursuant to the Article herein entitled "Architectural Controls."

1.3 "Articles" shall mean and refer to the Articles of Incorporation of the Association, filed in the Office of the Secretary of State of the State of California, as such Articles may be amended, from time to time.

1.4 "Assessments" shall be used as a generic term which shall mean and refer to the following:

a. "Regular Assessment" shall mean and refer to the annual charge against each Owner and his respective Lot representing a portion of the Common Expenses of the Association;

b. "Compliance Assessment" shall mean and refer to the personal charge against an Owner representing the costs incurred by the Association in the repair of any damage to the Association Property for which such Owner was responsible, the costs incurred by the Association in bringing such Owner and his Lot into compliance with this Declaration, any amount due the Association based upon disciplinary proceedings against an Owner in accordance with this Declaration, or any amount due the Association to reimburse the Association for administrative costs attributable to an Owner as provided herein;

c. "Special Assessment" shall mean and refer to the charge against an Owner and his respective Lot representing a portion of the cost of reconstructing any damaged or destroyed portion or portions of the Association Property, of constructing or installing any capital improvements to the Association Property, or of taking any extraordinary action for the benefit of the Association Property or the membership of the Association, pursuant to the provisions of this Declaration; and

d. "Reconstruction Assessment" shall mean and refer to a charge against each Owner and his Lot representing a portion of the cost to the Association for the repair, replacement or reconstruction of any portion or portions of Improvements within the Association Property, pursuant to the provisions of this Declaration.

1.5 "Association" shall mean and refer to Estacio Homeowners Association, Inc., a California nonprofit mutual benefit corporation, and its successors and assigns. The Association is an association as defined in Section 1351(a) of the California Civil Code.

1.6 "Association Management Documents" shall mean and refer to this Declaration, Notices of Annexation, the Articles, By-Laws, Rules and Regulations, and any Architectural Standards from time to time adopted by the Board.

1.7 "Association Property" shall mean and refer to all the real property and Improvements located thereon, including, without limitation, the private streets, controlled access gates, if any, and related facilities, entry monument signs, landscaped areas, Project perimeter walls and such other Improvements which are owned by the Association in fee, or over which the Association has an easement for maintenance purposes, or which the Association is otherwise obligated to maintain pursuant to this Declaration, any Notice of Annexation or any agreement, easement, license, permit or other similar document executed by Declarant as a condition to approval of the Project. Association Property may be designated by Declarant in Notices of Annexation recorded pursuant to the Article herein entitled Annexation of Additional Property. The Association shall have nonexclusive easements for access on, over, across and through all Lots necessary for the Association to fulfill its maintenance responsibilities hereunder, specifically including, but not limited to an easement over each Lot for front yard maintenance by the Association. Association Property owned in fee or over

which the Association maintains an easement shall include, but not necessarily be limited to that property enumerated on Exhibit "C" attached to this Declaration, and incorporated herein by this reference.

1.8 "Board" shall mean and refer to the Board of Directors of the Association, elected in accordance with the By-Laws of the Association and this Declaration.

1.9 "By-Laws" shall mean and refer to the By-Laws of the Association which have been, or will be, adopted by the Board, as such By-Laws may be amended, from time to time.

1.10 "City" shall mean and refer to the City of Indio, a municipal corporation, its successors and assigns, and its various departments, divisions, employees and representatives.

1.11 "Common Expenses" shall mean and refer to the actual and estimated costs to be paid by the Association for the following: (a) owning, maintaining, managing, operating, painting, repairing and replacing Improvements within the Association Property; (b) managing and administering the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and any Association employees; (c) providing utilities and other services to the Association Property; (d) providing insurance as provided for herein; (e) paying that portion of any Assessment attributable to Common Expenses not paid by the Owner responsible for payment; (f) paying taxes for the Association; (g) funding adequate reserves for the repair and replacement of those elements of the Association Property which must be repaired and replaced on a periodic basis and to cover the deductible amounts under any insurance policies maintained by the Association; and (h) paying for all other goals and services designated by, or in accordance with, other expenses incurred by the Association for the benefit of all Owners.

1.12 "County" shall mean and refer to the County of Riverside, California.

1.13 "Declarant" shall mean and refer to DESERT 49 ESTATES, INC., a California corporation, Merchant Builder, and to any person or entity acquiring some or all of Declarant's interest in the Project (including all of Declarant's rights and obligations as created and established herein) pursuant to a written assignment, deed or other instrument executed by Declarant which is recorded in the Office of the County Recorder. Any such instrument may include only certain specific rights and/or obligations of the Declarant, and may be subject to such conditions as Declarant may impose in its sole discretion.

1.14 "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions, and Reservation of Easements, and to all amendments to this Declaration as may be recorded, from time to time, in the Office of the County Recorder, in accordance with Section 1351(h) and Section 1353 of the California Civil Code.

1.15 "DRE" shall mean and refer to the Department of Real Estate of the State of California, and any successors thereto.

1.16 "Improvements" shall mean and refer to all structures and appurtenances thereto of every kind, including, but not limited to, Residences, swimming pools and spas, if any, parking areas, street lights, pavement, sidewalks, driveways, walls, fences, decorative or informative signs, retaining walls, if any, mail kiosks, if any, common trash receptacles, if any, screens, private utility line connections, poles, signs, and all Association Property landscaping and irrigation systems. Improvements shall also mean and refer to all additions and/or modifications to the exterior of Residences, including, but not limited to, (a) any change or alteration of any Improvement, either as originally installed and constructed or as approved by the Architectural Control Committee; (b) changing the roofing material on any Residence; and/or (c) building, constructing, installing, altering or replacing, as the case may be, any pools, spas, flooring and covers, exterior doors, screen doors, yard improvements, patio or balcony covers, gazebos, walls or fences, shades, awnings, screen doors, exterior doors, skylights, solar heating panels, exterior air conditioning and/or water softening fixtures or systems, and all hedges, windbreaks and other landscaping which left in its natural condition will grow to a height which may create a view obstruction from any other Lot.

1.17 "Lot" shall mean and refer to a plot of land as shown upon the recorded subdivision map of the Project, and to all Improvements, including the Residence, constructed thereon. Only those plots of land which are designed and intended for the construction of a Residence and ownership by an individual Owner shall be deemed Lots. Lot shall not

mean or refer to any parcel of land owned in fee by the Association as Association Property.

1.18 "Member" shall mean and refer to every person or entity who holds membership in the Association, as more particularly set forth in the Article herein entitled "The Association," and shall be synonymous with the term Owner.

1.19 "Merchant Builder" shall mean and refer to any person or entity identified herein or in any notice of annexation which has or will annex real property to the Project for the purpose of developing and improving such property for the sale or lease of residences to the general public; provided, however, that the term Merchant Builder shall not mean or refer to Declarant, or its successors. Merchant Builder shall be vested with all rights, responsibilities, benefits and burdens accorded Merchant Builders in the Association Management Documents. Declarant hereby reserves the right, in its sole and absolute discretion, to designate one or more Merchant Builders during the course of development of ESTACIO.

1.20 "Mortgage" shall mean and include any mortgage or deed of trust, or other conveyance of a Lot (or other portion of the Project) to secure the performance of an obligation, which conveyance will be reconveyed upon the completion of such performance. The term Deed of Trust, when used herein, shall be synonymous with the term Mortgage.

1.21 "Mortgagee" shall mean and refer to a person or entity to whom a Mortgage is made, and shall include the beneficiary of a Deed of Trust or the vendor under an installment land sales contract, as the case may be, and the assignees of a Mortgage, beneficiary or vendor.

1.22 "Mortgagor" shall mean and refer to a person or entity who mortgages his or its property to another, i.e., the maker of a Mortgage, and shall include a trustor of a Deed of Trust.

1.23 "Notice and Hearing" shall mean and refer to written notice and the opportunity for a hearing before the Board or the Architectural Control Committee of the Association, as applicable, or other tribunal appointed by the Board in the manner provided in the By-Laws, at which the affected Owner shall have an opportunity to be heard in the manner provided herein and in the By-Laws.

1.24 "Notice of Annexation" shall mean and refer to that certain instrument utilized to annex all or any portion of the Annexation Property, in accordance with the provisions of this Declaration, thereby subjecting said subsequent Phase to the provisions of this Declaration and to the jurisdiction of the Association.

1.25 "Owner" shall mean and refer to the record Owner, or Owners if more than one (1), or the purchaser under an installment land sales contract of fee simple interest to, or an undivided interest in, any Lot in the Project. The term Owner shall include Declarant and any Merchant Builders. The foregoing does not include persons or entities who hold an interest in a Lot merely as security for the performance of an obligation.

1.26 "Phase" shall mean and refer to: (a) Phase 1; and (b) one (1) or more Lots and Association Property within the Annexation Property which are simultaneously annexed to the Project by the recordation of a Notice of Annexation in the Office of the County Recorder and for which a Final Subdivision Public Report has been issued by the DRE.

1.27 "Phase 1" shall mean and refer to all of the real property described in Paragraph A of the Recitals of this Declaration.

1.28 "Project" shall mean and refer to Phase 1 and to all Improvements, including the Residences, constructed thereon, the Association Property and all Annexation Property which is made subject to this Declaration in accordance with the applicable provisions of this Declaration.

1.29 "Residence" shall mean and refer to the individual dwelling and the related Improvements which are constructed upon a separate Lot and which are designed and intended for use and occupancy as a single family residence.

1.30 "Rules and Regulations" shall mean and refer to the Rules and Regulations adopted by the Board pursuant to the By-Laws or this Declaration, as they may be amended, from time to time.

1.31 "Tentative Map" shall mean and refer to the plan for ESTACIO approved by the City Council of the City of Indio on September 4, 2002, as the same may be amended from time to time.

1.32 Application of Definitions. The aforesaid definitions shall be applicable throughout this Declaration, and to any supplements or amendments hereto, including, but not limited to, any Notices of Annexation filed or recorded pursuant to the provisions of this Declaration, unless otherwise indicated or the context shall prohibit such application.

ARTICLE 2 INTRODUCTION

2.1 General Plan or Development. ESTACIO was approved by the City of Indio under a Tentative Map approved by the City Council. The Tentative Map contemplate the development of approximately sixty-nine (69) single family detached Residences, together with various improvements to be owned, managed and maintained by the Association. There is no timetable for the development of all of the properties within the Tentative Map, and there can be no assurance that such properties will ever be improved with Residences. However, the Tentative Map mandates that ESTACIO be owned, operated, managed and maintained as a planned residential development subject to the Protective Covenants of this Declaration. In addition, all Owners of Residences within the Tentative Map shall become Members of the Association. Article 16 herein details the procedures for the annexation of additional properties within the Tentative Map to the scheme of this Declaration.

2.2 Membership in Association. As more particularly set forth in this Declaration, each Owner of a Lot in the Project shall automatically become a Member of the Association, and shall be obligated for the payment of Assessments to the Association. In addition, each Owner, his family members, lessees, tenants, guests and invitees, will be entitled to the use and enjoyment of the Association Property within the Project, in accordance with this Declaration, the By-Laws and Rules and Regulations adopted by the Board.

2.3 Annexation of Subsequent Phases. At such time as subsequent Phases are developed, if ever, Declarant and Merchant Builders shall annex such Phases to the Project in accordance with the provisions of the Article herein entitled "Annexation of Additional Property."

2.4 Development Control: Reservation of Rights. Nothing in this Article or elsewhere in this Declaration shall limit the right of Declarant and Merchant Builders: (a) to complete construction of any Improvements in the Project, (b) to redesign or otherwise alter the style, size, color or appearance of any Improvements in any portion of the Project owned by them, (c) to refurbish and construct additional Improvements on any portion of the Project owned by them, (d) to subdivide, re-subdivide, grade or re-grade any portion of the Project and the Annexation Property owned by them, and (e) to otherwise control all aspects of constructing the Improvements in the Project, of marketing and conveying Lots in the Project, and establishing the Project as a balanced residential community. In furtherance thereof, Declarant hereby reserves, unto itself, any Merchant Builders and their respective successors and assigns, the following:

- a. Nonexclusive easements for access, ingress and egress over the Association Property as reasonably necessary for construction, display, maintenance, sales and exhibit purposes in connection with the construction, sale and lease of Lots within the Project and the Annexation Property.
- b. Nonexclusive easements on, over and across any portions of the Project which consist of private streets, private drive, sidewalks and walkways for the purpose of ingress, egress and accommodation of vehicular and pedestrian traffic to and from the Project and the Annexation Property.
- c. The exclusive right to maintain one or more sales (and administrative) offices, model complexes, interior design and decorator centers, and parking areas for employees, agents and prospective buyers;
- d. The exclusive right to place signs, flags, banners, billboards or other forms of advertising on any portion of the Project owned or controlled by Declarant and Merchant Builders; and
- e. A nonexclusive right to utilize the Association Property and any unassigned open parking areas, if any, in connection with its sales and marketing programs.

Declarant and Merchant Builders, in exercising easement rights created and reserved herein, shall repair any damage to complete any restoration of the Association Property or elsewhere within the Project which results from or is caused by Declarant's construction, marketing, sale and other activities within the Project within a reasonable time after the occurrence of such damage or restoration, and provided further that the rights created and reserved herein in favor of Declarant, its successors and assigns, shall not unreasonably interfere with the rights of the Members in the reasonable use and enjoyment of the Project. Declarant and Merchant Builders shall be responsible for all costs of any kind associated with such use by Declarant or Merchant Builders.

The rights and reservations of Declarant and Merchant Builders set forth herein shall terminate upon the earlier to occur of: (1) the fifteenth (15th) anniversary of the first close of escrow for the sale of a Lot in the Project;

or (2) the sale by Declarant and Merchant Builders of all Lots within the Project; provided, however, in no event shall said rights terminate prior to the exoneration of any bond, set aside letter or other security device in favor of the Association described in the Article herein entitled "Enforcement of Bonded Obligations."

2.5 Purpose of Article. The purpose of this Article is merely to describe the proposed general plan of development for the Project. Without limiting the generality of the foregoing, nothing in this section or elsewhere in this Declaration shall limit the right of Declarant or Merchant Builders to complete construction of the Project, to alter same or to construct such additional Improvements as Declarant shall deem advisable prior to the completion and sale of all Lots in the Project. Declarant may assign any or all of its rights under this Declaration to any successor to all or any part of Declarant's interest in the Project by an express written assignment recorded in the Office of the County Recorder.

ARTICLE 3
RESERVATION OF EASEMENTS AND OTHER
PROPERTY RIGHTS IN THE ASSOCIATION PROPERTY

3.1 Amendment to Eliminate Easements. As long as Declarant is an Owner or has an interest in any portion of the Annexation Property, this Declaration cannot be amended to modify or eliminate any easements created, established and reserved herein in favor of Declarant without the prior written approval of Declarant, and any attempt to do so shall have no effect. Any attempt to modify or eliminate the easements created, granted and reserved herein shall likewise require the prior written approval of Declarant and the City.

3.2 Owners' Descents. Every Owner and to the extent permitted by such Owner, such Owner's family, guests, invitees, tenants and lessees, shall have a nonexclusive right and easement of access, use and enjoyment in and to the Association Property. Said right and easement shall be appurtenant to and shall pass with title to every Lot, subject to the limitations set forth in Sections 3.3 and 8.13 below.

3.3 Limitations on Owners' Easement Rights. The rights and easements of access, use and enjoyment set forth in Section 3.2 hereinabove shall be subject to the provisions of this Declaration, including, but not limited to, the following:

a. The right of the Association to reasonably limit the number of guests of Owners using the Association Property and facilities thereon;

b. The right of the Association to establish and enforce reasonable Rules and Regulations pertaining to the use of the Association Property;

c. The right of the Association, in accordance with its Articles, By-Laws and this Declaration, to borrow money with the assent of sixty-seven percent (67 %) of the voting power of the Association, excluding Declarant and any Merchant Builders, and/or to Mortgage, pledge, deed in trust or otherwise hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, for the purpose of improving or repairing the Association Property and related facilities;

d. The right of the Association to suspend the voting rights and rights and easements of any Member, (and the persons depriving such rights and easements from any Member) to use and enjoy any recreational amenities, if any, on the Association Property for the period during which any Assessment against such Member's Lot remains unpaid and delinquent; and after Notice and Hearing, to impose monetary penalties or suspend such use rights and easements for a period not to exceed thirty (30) days for any noncontinuing violation of this Declaration or Rules and Regulations, it being understood that any suspension for either nonpayment of any Assessments or breach of such Rule shall not constitute a waiver or discharge of the Member's obligations to pay Assessments as provided herein;

e. Subject to the terms and provisions of the Article herein entitled "Mortgagee Protections," the right of the Association to dedicate or transfer all or any part of the Association Property to any public agency, private party, authority or utility for such purposes and subject to such conditions as may be agreed to by the Owners. No such dedication or transfer shall be effective unless: (1) an instrument approving said dedication or transfer is signed by two authorized officers of the Association attesting that Owners representing at least sixty-seven percent (67%) of the voting power of the Association, excluding Declarant, approved such action and is recorded in the Office of the County Recorder, and (2) a written notice of the proposed dedication or transfer is sent to every Owner not less than fifteen (15) days nor more than thirty (30) days in advance; provided, however, that the dedication or transfer of easements for utilities or for other public purposes consistent with the intended use of the Association Property shall not require the prior approval of the Members of the Association;

f. The right of Declarant and Merchant Builders (and their respective sales agents, representatives, customers and prospective purchasers) to the nonexclusive use of the Association Property and facilities thereon without charge for sales, display access and exhibit purposes related to selling, marketing, showing and otherwise disposing of Lots in the Project, which right Declarant hereby reserves. Such use shall not unreasonably interfere with the rights of enjoyment of other Owners as provided herein;

g. The right of the Association, acting by and through its Architectural Control Committee, to enact uniform and reasonable Architectural Standards (as described in the Article herein entitled "Architectural Controls");

h. The right of Declarant and Merchant Builders to designate additional Association Property pursuant to the terms of the Article herein entitled Annexation of Additional Property;

i. The right of Declarant and Merchant Builders to exercise all rights and reservations of rights set forth in this Declaration.

j. The right of the Association to perform and exercise its duties and powers as set forth herein;

k. Other rights of the Association, the Architectural Control Committee, the Board, the Owners and Declarant with respect to the Association Property as may be provided for in this Declaration;

l. The right of Declarant and Merchant Builders to grant and transfer easements on, over and across all portions of the Project and the Annexation Property for the development, installation, construction and maintenance of electric, telephone, cable television, water, gas, sanitary sewer lines and drainage facilities, as shown on any recorded subdivision map covering the Project, and as may be reasonably necessary for the proper maintenance, development and conveyance of Lots and/or Association Property; and

m. Any limitations, restrictions or conditions affecting the use, enjoyment or maintenance of the Association Property imposed by Declarant or by the City, or other governmental agency having jurisdiction to impose any such limitations, restrictions or conditions, including, but not limited to, the rights of the City or such other governmental agency having jurisdiction to use their vehicles or appropriate equipment over those portions of the Association Property designed for vehicular movement to perform municipal functions or emergency or essential public services.

3.4 Delegation of Association Property Use Rights. Any Owner who resides within the Project may delegate his rights of use and enjoyment to the Association Property to the members of his immediate family and any other persons residing within his Residence. In the event an Owner has rented or leased his Residence, his rights of use and enjoyment to the Association Property shall be automatically delegated to his tenants or lessees for the duration of their tenancy, and the Owner shall forfeit any rights of use and enjoyment to the Association Property (except those portions reasonably necessary to access said Owner's Lot to perform normal functions of a landlord) for the duration of such tenancy. With respect to an installment land sales contract, the seller under the contract shall be deemed to have delegated his rights of use and enjoyment to the Association Property to the purchaser under the contract.

3.5 Easements for Public Utilities. All Lots in the Project shall be subject to permanent, nonexclusive easements for public utility purposes in favor of the City. Such easements shall extend approximately six feet (6') into the Lot, as measured from the right-of-way, and are shown on the recorded subdivision map for Tract 30523. The easements are intended to establish the right to install, maintain, inspect, repair and replace, as necessary, electricity lines, transformers and/or service junction boxes, telephone lines, cable television lines, street light standards, mailboxes, fire hydrants, utility meters or other equipment designed to serve the Project.

3.6 Easements for Public Services. In addition to the foregoing easements over the Association Property, there are hereby created, established and granted easements for public services, including, but not limited to, the right of police, fire, ambulance and other public services to enter upon any part of the Association Property for purposes of serving the health and welfare of all Owners in the Project.

3.7 Easements for Utilities. The rights and duties of the Owners of Lots within the Project with respect to sanitary sewer, water, electricity, gas, television cable (or CATV service) and telephone lines, and other facilities, shall be governed by the following:

a. Each respective utility company shall maintain all utility facilities and connections on the Project owned by such utility company; provided, however, that if any company shall fail to do so, it shall be the obligation of each Owner to maintain those facilities and connections located upon such Owner's Lot and it shall be the obligation of the Association to maintain those facilities and connections located upon the Association Property;

b. Wherever sanitary sewer, water or gas connections, television cables, electricity or telephone lines are installed within the Project and it becomes necessary to gain access to said connections, cables and/or lines through a Lot owned by someone other than the Owner of the Lot served by said connections, cables and/or lines, the Owner of the Lot served by said connections, cables and/or lines shall have the right, and is hereby granted an easement to the full extent necessary therefor, to enter upon such other Lot or to have the utility companies enter upon such other Lot to repair, replace and generally maintain said connections, cables and/or lines. In the event that any damage shall be proximately caused by such entry, said Owner or utility company shall repair the same at its respective expense;

c. Whenever sanitary sewer, water or gas connections, television cables, electricity or telephone lines are installed within the Project, and said connections, cables and/or lines serve more than one (1) Lot, the Owner of each Lot served by said connections, cables or lines shall be entitled to the full use and enjoyment of such portions of same as service his Lot;

d. In the event of a dispute between Owners respecting the repair or rebuilding of the aforesaid connections, cables and/or lines, or the sharing of the cost thereof, upon written request of one (1) of such Owners addressed to the Association the matter shall be submitted to the Board who shall decide the dispute, and the decision of the Board shall be final and conclusive on the Owners;

e. Easements over the Project for the installation and maintenance of electric and telephone lines, water, gas, drainage and sanitary sewer connections and facilities, and television antenna cables and facilities, all as shown on the recorded map of the Project and as may be hereafter required or needed to service the Project, are hereby reserved by Declarant, together with the right to grant and transfer the same; and

f. Each Lot is granted to an Owner subject to easements for utility installation and maintenance, storm drains and other purposes, as shown on the recorded subdivision map for the Project. Any installation or construction of landscaping or structures within said easement areas may be done only in accordance with the terms, conditions and provisions of said easements.

3.8 Easements Over Association Property. Declarant hereby expressly reserves for the benefit of the Association, acting through its Board, an easement on, over, across and through the Association Property (including, without limitation, any Association Property located outside the boundaries of the Project) for inspection, maintenance, repair and replacement of Improvements for which the Association is responsible. Such easement shall include the right to enter a Lot to inspect, repair and maintain any portion of the Association Property. Subject to the procedures described in the Article herein entitled "Architectural Control," no Owner shall interfere with the exercise by the Association of its rights pursuant to the easement described herein. No Owner shall alter or remove any Improvements within the Association Property.

3.9 Easements For Maintenance of Retention Basins. All property in the Project and the Annexation Property, including all Association Property, Lots and rights-of-way, shall be subject to permanent, nonexclusive easements in favor of the City for the purpose of allowing City vehicles to inspect and maintain the retention basins within the Project. Declarant and the Association hereby covenant to indemnify, protect and defend the City and its elected and appointed officers, employees and agents, and hold them free and harmless from any claim, demand or judgment for personal injury, wrongful death and/or property damage arising out of the City's inspection and maintenance of the retention basins, including damage to the rights-of-way from wear and tear caused by City vehicles which are in excess of the weight that such public rights-of-way are built to sustain.

3.10 Easements for Drainage and Irrigation Water Lines. There are hereby created and reserved over each Lot in the Project, easements for drainage according to the patterns for drainage created by the approved grading plans for the Project, as well as according to the actual, natural and existing patterns for drainage, and easements for the placement of subterranean water lines over each Lot in the Project as required for the irrigation and/or drainage system. In the event the approved grading plans make provisions for "cross drainage," whereby water runoff from one (1) or more contiguous Lots drains across another Owner's Lot, all Lots affected by such "cross-Lot drainage" shall be noted on the approved grading plans and on "as-built" plans on file in the principal office of the Association. Each Owner covenants and agrees that he shall not obstruct or otherwise interfere with said drainage patterns of waters from adjacent Lots or Association Property in the Project over his Lot or, in the alternative, that in the event it is necessary and essential to alter said drainage pattern for the protection and use of his Lot, such Owner shall make provision to preserve proper drainage according to the approved grading plans for the Project. Easements created and reserved herein shall at all times be subject to the Protective Covenants created in this Declaration, and such Rules and Regulations as may be adopted, from time to time, by the Board.

3.11 Easements for Master Antennae, Cable Television, Internet and Intranet Cabling, and Alarm System Cabling. There are hereby reserved for the benefit of Declarant and any Merchant Builder, and its successors and assigns, nonexclusive easements of access, ingress and egress to the Project for purposes of installation, operation,

maintenance, repair, inspection, replacement and removal of master antennae, cable television service lines, internet and intranet cabling, alarm system cabling and all related facilities and equipment. Such easements shall be freely transferable to any other person or entity for the purpose of providing such services. All such master antennae, cable television service lines and alarm system cabling shall remain the property of Declarant or Merchant Builders, or their successors and assigns. Declarant hereby further grants a ten foot (10') easement in favor of the Coachella Valley Water District (Bureau of Reclamation) for an irrigation line in the landscape setback on Avenue 49. The Association shall be responsible for the maintenance of the irrigation line, at the election of Coachella Valley Water District. The exercise of all rights reserved hereunder shall not unreasonably interfere with the reasonable use and enjoyment of the Project. Declarant, or the respective Merchant Builder, or their successors and assigns, shall be responsible for any damage in any way arising out of, or in connection with, the rights and activities reserved hereunder.

3.12 Easements For Maintenance of the Association Property. There is hereby created, granted and reserved a nonexclusive easement in favor of the Association for ingress, egress and access on, over and across all portions of the Project as reasonably required by the Association to perform its maintenance obligations set forth in this Declaration. In the event it becomes necessary for the Association to enter upon any Lot for purposes of: (1) maintaining the Association Property; or (b) bringing an Owner and/or his Lot into compliance with this Declaration, in accordance with the provisions set forth herein, the Association, and its duly authorized agents and employees, shall have the right, after reasonable notice to the Owner and at a reasonable hour of the day, to enter upon such Owner's Lot for the performance of such work. Such entry shall be made with as little inconvenience to the Owner as is practicable, and in the event that any damage shall be proximately caused by such entry, the Association shall repair the same at its expense. Notwithstanding the foregoing, no notice of entry is required for maintenance purposes of the Association Property in the Project in the event of an emergency.

3.13 Easement for Maintenance of Front Yard Landscaping. There is hereby created, granted and reserved a nonexclusive easement in favor of the Association for ingress, egress and access, on, over and across all portions of each Lot in the Project for front yard landscape and irrigation maintenance which may be, at the Association's election, performed by the Association on each Lot.

3.14 Easements for Clustered Mailboxes. In order to comply with the various requirements of the City and the United States Postal Service, kiosk-style mailboxes may be installed on certain Lots within the Project. Easements are hereby created on and over the affected Lots in favor of all Owners and the United States Postal Service for delivery and deposit of mail, and for reasonable access to and from such mailboxes.

3.15 Easements Over Sidewalks. Declarant hereby covenants for itself, and its successors and assigns, that each and every Owner, his tenants and invitees, shall have appurtenant nonexclusive reciprocal easements on, over and across all sidewalks located on portions of Lots, if any, immediately adjacent to streets within the Project for pedestrian access, use and enjoyment.

3.16 Public Bicycle, Golf Cart and Pedestrian Trails. There is hereby reserved to Declarant, together with the right to grant and convey the same, an easement for public ingress and egress over any bicycle, golf cart, pedestrian, equestrian or other trails depicted on the recorded final map(s) of or for the Project, or other instrument of record. The reservation of this easement shall not imply any right of public use of the Association Property or Improvements thereon.

3.17 Reservation of Construction Rights. In order that the Project be completed and established as a planned residential community, nothing in this Declaration shall limit the right of Declarant or Merchant Builders to: (a) complete construction of any Improvements in the Project; (b) redesign or otherwise modify the Improvements owned by Declarant or Merchant Builders; (c) construct such additional Improvements on any portion of the Project owned by Declarant or Merchant Builders; or (d) otherwise control all aspects of designing the Project or selling or leasing of Lots in the Project. Furthermore, nothing in this Declaration shall limit the right of Declarant to establish additional licenses, easements and right-of-way in favor of Declarant, utility companies or others as may, from time to time, be reasonably necessary for the development of the Project. The foregoing rights established and reserved by Declarant shall be subject only to the applicable regulations and requirements of the City, the County and the DRE. The foregoing rights may be assigned to any successor to all or part of Declarant's or a Merchant Builder's interest in the Project by an express assignment recorded with the County Recorder. Such rights shall terminate at such time as Declarant or any Merchant Builder no longer owns a Lot in the Project or within the Annexation Property.

3.18 Title to the Association Property.

a. Transfer of Title to Association Property. Declarant hereby covenants, for itself, its successors and assigns, that it will convey to the Association fee simple title to, or a nonexclusive easement in, the Association Property, free and clear of all liens and encumbrances, subject to the Protective Covenants set forth in this Declaration or which are of record at the time of the conveyance. Declarant will similarly convey to the Association, from time to time, in fee simple or by easement, any Association Property located in the Annexation Property which is designated in this

Declaration or in any Notice of Annexation for conveyance to the Association.

b. Completion of Association Property. In the event that Improvements proposed to be constructed on any portion of the Association Property so annexed to the Project have not been completed, as evidenced by a "Notice of Completion" recorded in the Office of the County Recorder, then the completion of such Improvements shall be assured in accordance with Section 11018.5 of the California Business and Professions Code, or any successor or companion statute.

c. Commencement of Association Responsibilities. The Association's responsibility to maintain the Association Property conveyed to the Association shall commence concurrently with the commencement of Regular Assessments in such Phase. The Association shall not interfere with the performance of any warranty or other contractual maintenance obligations which the contractor or subcontractors of Declarant or Merchant Builders may be bound to perform. Notwithstanding the foregoing, maintenance performed by such contractors or subcontractors of Declarant or any Merchant Builder shall not serve to postpone the commencement of Regular Assessments in such Phase. The Association shall not interfere with the performance of any warranty or other contractual maintenance obligations which the contractor or subcontractors of Declarant or Merchant Builders may be bound to perform. Notwithstanding the foregoing, maintenance performed by such contractors or subcontractors of Declarant or any Merchant Builder shall not serve to postpone the commencement of Regular Assessments pursuant to this Declaration, nor entitle an Owner to claim any offset or reduction in the amount of such Regular Assessments.

d. Character of Improvements to Association Property. The nature, design, quality and quantity of all Improvements to the Association Property shall be determined by Declarant, in its sole discretion. The Association shall be obligated to accept title to the Association Property and undertake all maintenance responsibilities for the Association Property when title is conveyed and maintenance responsibilities are tendered by Declarant, pursuant to Subparagraphs (a) and (c) above.

e. Disputes. In the event that a dispute arises between Declarant and the Association with respect to the nature, design, quality or quantity of the Improvements, or the acceptance of maintenance responsibilities therefor, resolution of the dispute shall be accomplished in accordance with the procedures for resolution of disputes set forth in Article 19 below.

3.19 Reservation of Association Property Easements. Declarant hereby reserves the right to grant nonexclusive easements over the Association Property in favor of Merchant Builders and the Owners of any Annexation Property which is annexed to the Project pursuant to this Declaration, and, upon the recordation of a Notice of Annexation affecting the Annexation Property, the Owners described in this Declaration shall automatically obtain nonexclusive easements over all Association Property which is a part of said Annexation Property.

ARTICLE 4

THE ASSOCIATION

4.1 Membership. Every person or entity who or which is an Owner (including Declarant and Merchant Builders) shall be a Member of the Association. The foregoing is not intended to include persons or entities who hold an interest in a Lot in the Project merely as security for the performance of an obligation. All memberships in the Association shall be appurtenant to the Lot owned by each Member, and memberships in the Association shall not be assignable, except to the person or entity to whom the title to the Lot has been transferred. Ownership of such Lot shall be the sole qualification for membership in the Association. The memberships in the Association shall not be transferred, pledged or alienated in any way, except upon the transfer of title to said Lot, and then only to the purchaser or Mortgagee of such Lot. Any attempt to make a prohibited membership transfer shall be void and will not be reflected in the books of the Association.

4.2 Classes of Membership. The Association shall have two (2) classes of voting membership, as follows:

Class A. Class A Members shall be all Owners, initially with the exception of the Declarant and any Merchant Builders, and shall be entitled to one (1) vote for each Lot owned. When more than one (1) person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

Class B. The Class B Members shall be Declarant and any Merchant Builders. Each Class B Member shall be entitled to three (3) votes for each Lot owned by Declarant or a Merchant Builder. As to each Phase annexed to the Project, the Class B membership shall terminate and be converted to Class A membership on the happening of any of the following events, whichever occurs earliest:

a. The second (2nd) anniversary of the first close of escrow for the sale of a Lot in the most recent Phase of the Project by Declarant or any Merchant Builder; or

b. The fourth (4th) anniversary of the first close of escrow for the sale of a Lot in Phase 1.

4.3 [Intentionally left blank.]

4.4 Voting Rights. All voting rights shall be subject to the provisions and limitations provided in this Declaration, the Articles and the By-Laws. Except as provided in the Article herein entitled "Enforcement of Bonded Obligations," and Article 5, Section 5.3, of the By-Laws, any provision of the Articles, the By-Laws or this Declaration which expressly requires the vote or written consent of a specified percentage of the voting power of the Association shall require the approval of such specified percentage of the voting power of each class of membership. Upon the termination of Class B membership, except as provided in the Article herein entitled "Enforcement of Bonded Obligation," and Article 5, Section 5.3, of the By-Laws, any provision of the Articles, the By-Laws or this Declaration which expressly requires the vote or written consent of a specified percentage of the voting power of the Association shall require the vote or written consent of the voting power of the Association, as well as the vote or written consent of the voting power of the Association residing in Members, other than Declarant.

4.5 Voting: Joint Owners. Those Members appearing in the official record of the Association as record Owners of Lots shall be entitled to notice of any meeting of Members. If there is more than one (1) record Owner of any Lot (joint Owners), all such joint Owners shall be Members of the Association and may attend any meetings of the Association, but only one (1) such joint Owner shall be entitled to exercise the vote to which the Lot is entitled. Fractional votes shall not be allowed. Joint Owners may, from time to time, designate in writing one (1) joint Owner to vote. Where no joint Owner is designated, a vote made by a joint Owner of such Lot shall be conclusively presumed to have been cast with full authority and consent of the joint Owners. In the event of a dispute among joint Owners as to how their vote shall be cast, the joint Owners shall lose their right to vote on the matter in question, and any attempt to cast a vote in those circumstances shall be disallowed by the Board. The Board shall have no jurisdiction to determine any matters relating to the entitlement of Declarant to vote, or the manner in which such vote is exercised. If one Owner casts the vote attributed to a Lot, the vote shall conclusively bind all owners of that Lot.

4.6 Adjustment of Voting Rights. The voting rights in the Association shall be adjusted on the first day of the month immediately following the first close of escrow for the sale of a Lot in each subsequent Phase of the Project.

4.7 Vesting of Voting Rights. The voting rights attributable to any given Lot in the Project, as provided for herein, shall not vest until the Assessments provided for hereinbelow have been levied by the Association against said Lot.

4.8 Suspension of Voting Rights. As more particularly set forth in the Article entitled "General Provisions," the Board shall have the authority, among other things, to suspend the voting rights of any Member to vote at any meeting of the Members for any period during which such Owner is delinquent in the payment of any Assessment, regardless of type, it being understood that any suspension for nonpayment of any Assessment shall not constitute a waiver or discharge of the Member's obligation to pay the Assessments provided for in this Declaration.

4.9 Transfer. The Association membership held by any Owner of a Lot shall not be transferred, pledged or alienated in any way, except as incidental to the sale of such Lot. In the event of such sale, the Association membership may only be transferred, pledged or alienated to the bona fide purchaser or purchasers of the Lot, or to the Mortgagee (or third party purchaser) of such Lot upon a foreclosure sale. Any attempt to make a prohibited transfer is void and will not be reflected upon the books and records of the Association. The Association may levy a reasonable transfer fee against new Owners (which fee shall be a Compliance Assessment chargeable to such new Owner) to reimburse the Association for the actual administrative cost of transferring the memberships to the new Owners on the records of the Association.

4.10 Proxies. Votes may be cast in person or by proxy. Proxies must be filed with the Secretary before the appointed time for each meeting. Every proxy shall be revocable and shall automatically terminate upon the earliest of the following: (a) the conveyance by the Owner of his Lot; (b) the date of automatic termination, if any, specified in the proxy, but not to exceed three (3) years from the date of issuance of the proxy; or (c) eleven (11) months from the date of issuance of the proxy, if no automatic termination date is specified in the proxy. Any form of proxy or written ballot distributed to the membership of the Association shall afford an Owner the opportunity to specify a choice between approval and disapproval of each matter or group of matters to be acted upon at the meeting for which said proxy was distributed, except it shall not be mandatory that a candidate for election to the Board be named in the proxy. A proxy or written ballot shall provide that, where the Owner specifies a choice, the vote shall be cast in accordance with that choice. In addition, the proxy shall also identify the person or persons authorized to exercise the proxy and the length of time it shall be valid.

4.11 Record Dates. For the purposes of determining Members entitled to notice of any meeting, to vote or to exercise any other rights in respect of any lawful action, the Board may fix in advance record dates as provided in the By-Laws.

ARTICLE 5
POWERS AND DUTIES OF THE ASSOCIATION

5.1 Management Body. The Association is hereby designated as the management body of the Project. The Members of the Association shall be the Owners in the Project as provided herein, and the affairs of the Association shall be managed by the Board, as more particularly set forth in the By-Laws. The initial Board shall be appointed by the incorporator or its successor. Thereafter, the Directors shall be elected as provided in the By-Laws.

5.2 Powers. The Board, for and on behalf of the Association, shall have the right and power to do all things necessary to conduct, manage and control the affairs and business of the Association. Subject to the provisions of the Articles, the By-Laws and this Declaration, the Board shall have all general powers authorized under the California Corporations Code and California Civil Code for nonprofit, mutual benefit corporations, and shall have the following specific powers:

- a. Enforce the provisions of this Declaration and all contracts or any agreements to which the Association is a party;
- b. Acquire, manage, maintain, repair and replace all Association Property and Improvements located thereon, including all personal property, in a neat, clean, safe and attractive condition at all times, and to pay all utilities, gardening and other necessary services for the Association Property, all as more specifically set forth in the Article herein entitled "Repair and Maintenance;"
- c. Maintain fire, casualty, liability and fidelity bond coverage, and other insurance coverage pursuant to the terms of the Article herein entitled "Insurance;"
- d. Obtain, for the benefit of the Association Property, all commonly metered water, gas and electric services, refuse collection and cable (or master antenna) television service;
- e. Employ and retain a professional manager and/or management company to perform all or any portion of the duties and responsibilities of the Board and engage such personnel (including attorneys and accountants) as necessary for the operation of the Project and administration of the Association;
- f. Pay all taxes and special assessments which would be a lien upon the entire Project or the Association Property, and to discharge any lien or encumbrance levied against the entire Project or the Association Property;
- g. Pay for reconstruction of any portion of the Association Property damaged or destroyed;
- h. Delegate its authority and power to committees, officers or employees of the Association, or to a manager retained by the Association;
- i. Adopt reasonable Rules and Regulations and Architectural Standards concerning the maintenance, improvement, use and/or occupancy of the Project;
- j. Enter into any Lot when necessary in connection with maintenance or construction for which the Association is responsible;

k. Retain, if deemed appropriate by the Board, and pay for legal and accounting services necessary and proper for the efficient operation of the Association, enforcement of this Declaration, the Rules and Regulations and Architectural Standards, or in performing any other duties or enforcing any other rights of the Association; and

l. Perform any and all other acts and things that a nonprofit, mutual benefit corporation organized under the laws of the State of California is empowered to do, which may be necessary, convenient or appropriate in the administration of its affairs for the specific purposes of meeting its duties as set forth in this Declaration.

5.3 Duties. The Board shall perform and execute the following duties for and on behalf of the Association:

a. Own, maintain, manage and operate the Association Property, and all Improvements located thereon, for the common use and benefit of all Owners in the Project, in accordance with the provisions of this Declaration and as required by the City;

b. Provide necessary utility services, if any, for the Association Property;

c. Provide insurance coverage for the Association and its Members in accordance with the provisions of the Article hereinbelow entitled "Insurance," and in compliance with § 1365.9 of the California Civil Code, and any successor and companion statute.

d. Maintain and repair all portions of the Association Property in a neat, clean, safe, attractive and high-quality condition at all times, according to the provisions contained herein. In the event any maintenance or repairs to the Association Property are required due to the willful or negligent acts or omissions of an Owner or Owners, the Association shall levy the cost of such maintenance and repair as a Compliance Assessment against the responsible Owner(s);

e. Pay all real and personal property taxes and Assessments which the Association is required to pay for pursuant to the terms and provisions of this Declaration or by law, unless separately assessed to Owners; provided, however, that it shall be the obligation of each Owner to pay his respective share of the tax assessment levied on the Project prior to separate assessments by the Tax Assessor pursuant to the applicable provisions of the California Revenue and Taxation Code;

f. Contract for any other material, supplies, furniture, labor, services, maintenance, repairs, structural alterations and insurance which the Association is required to pay for pursuant to the terms and provisions of this Declaration or by law;

g. Cause financial statements for the Association to be regularly prepared and distributed to each Member of the Association:

(A) A pro forma operating budget for each fiscal year shall be distributed not less than 45 days nor more than 60 days before the beginning of the fiscal year consisting of at least the following:

(1) estimated revenue and expenses on an accrual basis;

(2) a summary of the Association's reserves based on the most recent reserves review or study conducted under California Civil Code §1365.5, which shall be printed in bold type and shall include the following:

(a) the current estimated replacement cost, estimated remaining life, and estimated useful life of each Major Component that the Association is

obligated to maintain (collectively the "Major Components");

(b) as of the end of the fiscal year for which the study was prepared:

(i) the current estimate of cash reserves necessary to repair, replace, restore, or maintain the Major Components;

(ii) the current amount of accumulated cash reserves actually set aside to repair, replace, restore, or maintain the Major Components; and

(iii) if applicable, the amount of funds received from either a compensatory damage award or settlement to the Association from any Person for injuries to property, real or personal, arising out of any construction or design defects and the expenditure or disposition of funds, including the amounts expended for the direct and indirect costs of repair of construction or design defects. These amounts shall be reported at the end of the fiscal year for which the study is prepared as separate line items under cash reserves pursuant to clause (ii). In lieu of complying with the foregoing requirements, if the Association is obligated to issue a review of its financial statement, the Association may include in the review a statement containing all of the information required by this clause;

(c) the percentage of the amount in (2)a that the amount in (2)b represents;

(3) a statement as to whether the Board has determined or anticipates that the levy of one or more special assessments will be required to repair, replace, or restore any Major Component or to provide adequate reserves for them;

(4) a general statement addressing the procedures used for the calculation establishing those reserves to defray the future repair, replacement, or additions to the Major Components; and

(5) a general statement regarding the Member's right to have copies of the minutes of meetings of the Board of Directors and how and when these minutes may be obtained.

(B) A summary of the Association's property, general liability, and, earthquake and flood insurance policies (individually and collectively referred as the "Policy" or "Policies") shall be distributed to the Members within 60 days preceding the beginning of the Association's fiscal year. The summary shall include the following information on the Policies:

- (1) the name of the insurer;
- (2) the type of insurance;
- (3) the Policy limits of the insurance; and

(4) the amount of deductibles, if any.

The Association, as soon as reasonably practicable, shall notify its Members by first class mail if any of the Policies have been canceled and not immediately renewed or restored or if there is a significant change such as a reduction in coverage or limits or an increase in the deductible for any Policy. If the Association receives any notice of nonrenewal of a Policy, the Association shall immediately notify its Members if replacement coverage will not be in effect by the date the existing coverage will lapse.

To the extent that the information required to be disclosed as described in this Section is specified in the insurance policy declaration page, the Association may meet its disclosure obligations by making copies of that page and distributing copies to all its Members.

The summary required in this Section shall contain, in at least 10-point bold-face type, the following statement:

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

(C) A balance sheet as of an accounting date which is the last day of the month closest in time to six (6) months from the date of closing for the first sale of a Lot, and an operating statement for the period from the date of the first closing to the said accounting date, shall be distributed within sixty (60) days after the accounting date. This operating statement shall include a schedule of Assessments received, and receivable, identified by the number of the Lot and the name of the person or entity assessed;

(D) An annual report consisting of the following shall be distributed within one hundred twenty (120) days after the close of the fiscal year:

- i) A balance sheet as of the last day of the Association's fiscal year;
- ii) An operating (income) statement for the fiscal year;
- iii) A statement of changes in financial position for the fiscal year; and
- iv) Any information required to be reported pursuant to Section 8322 of the California Corporations Code.

If for any reason this annual report is not prepared by a licensee of the California Board of

Accountancy, said report shall be accompanied by a certificate from an authorized officer of the Association that the statements were prepared without audit from the books and records of the Association. Notwithstanding the foregoing, in lieu of distributing the pro forma budget required hereinabove, the Board may elect to distribute a summary of the pro forma budget to all Members with a written notice that the pro forma budget is available at a suitable location in the Project;

(E) A statement of the Association's policies and practices in enforcing its remedies against Members for nonpayment of Assessments, as set forth in the Article herein entitled "Effect of Nonpayment of Assessments: Remedies of the Association," which shall be distributed annually to the Members during the sixty (60) days period immediately preceding the beginning of the Association's fiscal year;

(F) A summary of the Association's policies and procedures for implementing the procedural requirements for alternative dispute resolution required by Section 1354 of the California Civil Code, and any successor statute;

(G) The Board shall review on a quarterly basis, the following:

- i) A current reconciliation of the Association's operating accounts;
- ii) A current reconciliation of the Association's reserve accounts;
- iii) The current fiscal year's actual reserves and expenses compared to the then current year's Association budget;
- iv) An income and expense statement for the Association's operating and reserve accounts; and
- v) The most current account statements prepared by the financial institutions where the Association maintains its operating and reserve accounts.

(H) A summary of the Association's general liability, casualty and fire and other insurance policies, which shall be distributed within sixty (60) days preceding the beginning of the Association's fiscal year, and which shall include the following information about each policy:

- i) The type of insurance;
- ii) the name of the insurer;
- iii) the policy limits; and
- iv) the deductibles for each policy.

The Association shall, as soon as reasonably practical, notify the Members by first class mail if any of the policies referred to above have lapsed, been canceled and are not immediately renewed, restored or replaced, or if there is a significant change in the terms of such policies, such as a reduction in coverage or limits or an increase in the deductible. If the Association receives any notice of non-renewal of a policy, then it shall immediately notify the Members if replacement coverage will not be in effect on the date the existing coverage will lapse. The summary of the insurance policies obtained and maintained by the Association shall be prepared in accordance with the requirements of the California Civil Code Section 1365, as the same may be amended, from time to time.

h. Cause a study of the reserve account requirements of the Project to be conducted if the current replacement value of the major components which the Association is obligated to repair, replace, restore or maintain is equal to or greater than one-half (1/2) of the gross Association budget for any fiscal year of the Association. The Board shall review the reserve study annually, and shall consider and implement necessary adjustments to the Board's analysis of the reserve account requirements as a result of such review. The reserve study shall consider and include, at a minimum, the requirements set forth in Section 1365(d) of the California Civil Code, as the same may be amended, from time to time;

i. Assume and payout of the Assessments provided for hereinbelow all costs and expenses incurred by the Association in connection with the performance and execution of all of the aforesaid powers and duties, and any other powers and duties the Association may assume as provided for in Section 5.4 hereinbelow;

j. Formulate, adopt and enforce such Rules and Regulations as it may deem proper for the operation of the Association Property, as more particularly described below. Notice of adoption of any such Rules and Regulations and of any change, amendment or repeal thereof, shall be given in writing to each Member and shall be on file in the principal office of the Association. In the event of any conflict between such Rules and Regulations and this Declaration, the Declaration shall prevail;

k. Enforce all applicable provisions of this Declaration, the Articles, By-Laws and such Rules and Regulations of the Association, and of all other documents pertaining to the ownership, use, management and control of the Project; and

l. Give notices in writing to the Federal Home Loan Mortgage Corporation (hereinafter FHLMC) the Federal National Mortgage Association (hereinafter FNMA), and the Government National Mortgage Association (hereinafter GNMA), and other lenders and investors participating in the financing of the sale of Lots in the Project, as required herein.

5.4 Discretionary Powers. The Board, at its option, may assume, perform and execute the following powers and duties for and on behalf of the Association:

a. Retain the services of a manager for the Project and provide such other personnel as the Association deems necessary and proper to assist in the operation of the Association and/or management of the Association Property, regardless of whether such other personnel are employed directly by the Association or otherwise;

b. Remove or replace any Improvement that extends into the Association Property under authority of an easement when access to a utility line underneath such Improvement is requested by any utility company; provided, however, that the cost shall be assessed against the Owner of the Lot involved as a Compliance Assessment if said Owner caused the Improvement to be so placed in the Association Property without legal right to do so;

c. Incur any liability or pay any costs or expenses for a single Lot or Owner thereof; provided, however, that in the event the Association does incur any such liability or pay any such costs or expenses, the amount thereof shall be specially assessed against the Owner of such Lot as a Compliance Assessment; provided further, however, that nothing herein shall permit the Association to assess the Owners for any new Improvements to the Association Property except as otherwise provided in this Declaration;

d. Subject to the limitations set forth in this Article, contract for any other material, furniture, labor, services, maintenance, repairs, structural alterations or insurance, or pay any taxes or Assessments which, in the opinion of the Board, shall be necessary or proper for the operation of the Association Property for the benefit of the Owners or for the enforcement of this Declaration;

e. Enter into a maintenance or subsidy agreement with Declarant, at Declarant's sole discretion, or any Merchant Builder with Declarant's Consent, to reduce the financial obligations of Owners in the Project for Assessment; and

f. Unless otherwise provided by Section 1354 of the California Civil Code, and any successor statute, institute, defend, settle, or intervene in litigation, arbitration, mediation or administrative proceedings in its own name as the real property and interest and without joining with it the individual Owners in matters pertaining to:

- (1) Enforcement of the Association Management Documents;
- (2) Damage to the Association Property; and
- (3) Damage to Residences which arise out of or is proximately related to damage to the Association Property.

5.5 Limitations on Contracts. Except as otherwise provided herein, no contract entered into by the Association, or the Board acting for and on behalf of the Association, may run for a term longer than one (1) year, except with the vote or written assent of a majority of the voting power of the Association and a majority of the votes residing in Members, other than the Declarant.

5.6 Delegation of Duties. In the event that the Association shall delegate any or all of its duties, powers or functions to any person, corporation or firm to act as manager, neither the Association nor the members of its Board shall be liable for any omission or improper exercise by the manager of any such duty, power or function so delegated.

5.7 Right of Entry for Emergency. The Board, any person authorized by the Board or any Owner may enter any Lot in the event of any emergency involving illness or potential danger to life or property. Such entry shall be made with as little inconvenience to the Owner as is practicable, and in the event that any damage shall be proximately caused by or result from said entry, the Association shall repair the same at its expense.

5.8 Right of Entry for Repairs. The Board, or any person authorized by the Board, shall have the right to enter, upon reasonable notice, any Lot to effect necessary repairs which the Owner has failed to perform or which are necessary in connection with the repairs to the Association Property or an adjoining Lot. Such entry shall be made with as little inconvenience to the Owner as is practicable, and in the event that any damage shall be proximately caused by or result from said entry, the Association shall repair the same at its expense.

5.9 Limitations on Board Action. The Board shall be prohibited from taking any of the following actions, except with the written assent, by vote at a meeting of the Association, or by written ballot without a meeting pursuant to California Corporations Code Section 7513, or any successor statute, of a simple majority of the votes residing in Members, other than the Declarant and Merchant Builders, constituting a quorum consisting of more than fifty percent (50%) of the voting power of the Association residing in Members other than Declarant and Merchant Builders:

a. Entering into a contract with a third person, wherein the third person will furnish goods or services for the Association Property or the Association for a term longer than one (1) year, with the following exceptions:

- (1) A management contract, if applicable;
- (2) A contract with a public utility company if the rates charged for the materials or services are regulated by the Public Utilities Commission; provided, however, that the term of the contract shall not exceed the shortest term for which the supplier will contract at the regulated rate;

(3) Prepaid casualty and/or liability insurance policies of not to exceed three (3) years duration, provided that the policy permits for short-rate cancellation by the insured;

(4) Agreements for cable television services and equipment or satellite dish television services and equipment of not to exceed five

(5) years duration, provided that the supplier or suppliers under the agreement is not an entity in which Declarant has a direct or indirect interest of ten percent (10%) or more;

(5) Agreements for sale or lease of burglar alarm and fire alarm equipment installation, inspection and services of not to exceed five (5) years duration, provided that the supplier or suppliers are not entities in which the Declarant has a direct or indirect ownership interest of ten percent (10%) or more; and

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

b. Incurring aggregate expenditures for capital improvements to the Association Property in any fiscal year in excess of five percent (5%) of the budgeted gross expense of the Association for that fiscal year;

c. Selling during any fiscal year property of the Association having an aggregate fair market value greater than five percent (5 %) of the budgeted gross expenses of the Association for that fiscal year;

d. Paying compensation to Directors or to officers of the Association for services performed in the conduct of the Association's business; provided, however, that the Board may cause a Director or officer to be reimbursed for expenses incurred in carrying on the business of the Association; or

e. Filling a vacancy on the Board created by the removal of a Director.

5.10 Licenses, Easements and Rights-of-Way. The Board, for and on behalf of the Association, is authorized and empowered to grant such licenses, easements and rights-of-way for sewer lines, water lines, underground conduits, storm drains, roadways, and other public utility purposes over those portions of the Association Property upon which no building or other structure has been erected as may be necessary and appropriate for the orderly maintenance, preservation and enjoyment of the Association Property or for the preservation of Members to this section. Such fines or penalties may only be imposed by the Board after Notice and Hearing, as set forth in the By-Laws. All fines and penalties are personal obligations of the Owner against whom such fines and penalties are imposed, and are not enforceable by lien.

ARTICLE 6

ASSESSMENTS

6.1 Creation of the Lien and Personal Obligation of Assessment. The Declarant or any Merchant Builder, for each Lot owned within the Project, hereby covenants, and each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association; (a) Regular Assessments; (b) Special Assessments; (c) Compliance Assessments, including, but not limited to, costs incurred by the Association in the repair of damage to the Association Property for which such Owner was responsible and costs incurred by the Association in bringing such Owner and his Lot into compliance with this Declaration; (d) Reconstruction Assessments; and (e) such other assessments as the Association may periodically establish. The Regular and Special Assessments, together with a reasonable late charge as may, from time to time, be established by the Board in accordance with California law, interest, costs and reasonable attorneys' fees for the collection thereof, shall be a

charge against and a continuing lien upon the Lot against which each such Assessment is levied, and shall also be the personal obligation of the Owner of such property at the time when the Assessment came due.

6.2 Purpose of Regular Assessments: Levy and Collection. The Regular Assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of the residents in the Project and to maintain, repair, replace and improve the Association Property, and any other Improvements or areas which the Association is obligated to maintain, as provided herein. The Association, by and through its Board, shall levy and collect Assessments from the Owner of each Lot in the Project in an amount sufficient to cover all of the Common Expenses incurred by the Association in connection with the performance and execution of the powers and duties set forth in this Declaration, the By-Laws and Articles. In connection therewith, the Association shall not impose or collect assessments, penalties or fees that exceed the amount reasonably necessary for the purpose or purposes for which they were levied. The percentage rate for the Assessments levied by the Association shall be adjusted at such time as the annexation of an additional Phase becomes effective.

6.3 Regular Assessments - Basis. Except as provided hereinbelow, Regular Assessments payable to the Association shall be assessed equally against all Owners of Lots in the Project. Each Owner's proportionate share of the Common Expenses for any fiscal year of the Association shall be a fraction, the numerator of which shall be the number of Lots owned by such Owner, and the denominator of which shall be the total number of Lots in the Project which are subject to Assessment. Until the first day of the fiscal year of the Association immediately following the first close of escrow for the sale of a Lot in the Project to an Owner, the maximum total Regular Assessment shall be as set forth in the Association budget reviewed and approved by the DRE. Subject to the limitations imposed by California Civil Code Section 1366, as the same may be amended, from time to time, the Board may increase Regular Assessments subject to the following limitations:

a. Increases in Regular Assessments for any fiscal year which are less than or equal to twenty percent (20%) above the Regular Assessment against Lots in Phase I for the immediately preceding fiscal year may be approved by the Board, provided that the Board shall: (1) comply with the provisions set forth in Section 1365(a) of the California Civil Code with respect to the distribution of the pro forma operating budget of the Association for the forthcoming fiscal year; or (2) obtain the approval of Members, constituting a quorum, casting a majority of the votes at a meeting or an election of the Association conducted in accordance with California Corporations Code Sections 7610, et seq. and Sections 7613, et seq. For purposes of this section, a quorum means more than fifty percent (50%) of the Members of the Association; and

b. Increases in Regular Assessments for any fiscal year which are greater than twenty percent (20%) above Regular Assessments for the immediately preceding fiscal year may be approved by the Board only after the Board obtains the affirmative vote of Members pursuant to the provisions set forth in Subsection a.(2) above.

So long as Declarant and/or Merchant Builders are offering Lots for sale pursuant to a Final Subdivision Public Report, the Regular Assessment may not be decreased by ten percent (10%) or more without the express written consent of the Declarant and the DRE. Following the annexation of a subsequent Phase pursuant to the provisions set forth in this Declaration, Regular Assessments may be automatically increased (or decreased) for all Lots in the Project as set forth in the Association budget. Such adjustment, if any, shall occur on the first day of the month following the first close of escrow for the sale of a Lot in said Phase without any approval of the Members of the Association to the amount recommended by the DRE in connection with the DRE's review and processing of the Association budget for such Phase.

6.4 Special Assessments. In any fiscal year the Board may not, subject to the limitations of California Civil Code Section 1366, without the vote or written assent of a majority of those Owners constituting a quorum (which shall mean more than fifty percent [50 %] of Owners of the Association) casting a majority of affirmative votes at a meeting or election of the Association conducted in accordance with Section 7510, et seq., and 7613 of the Corporations Code,

levy Special Assessments to defray the costs of any action or undertaking on behalf of the Association which, in the aggregate, exceed five percent (5 %) of the budgeted gross expenses of the Association for that fiscal year. The five percent (5 %) limitation shall not apply to increases in Special Assessments related to an emergency situation, as described in Section 6.5 below. Special Assessments shall be levied among all Owners and their Lots in the same proportions as their Regular Assessments.

6.5 Emergency Situations. The limitations set forth in Sections 6.3 and 6.4 above shall not limit increases in Regular Assessments or Special Assessments which may become necessary for emergency situations. For purposes of this section, an emergency situation is anyone of the following:

- a. An extraordinary expense required by an order by a court;
- b. An extraordinary expense for the maintenance or repair of Association Property that is necessary to remedy any dangerous condition in the Project that represents a threat of damage or injury to any person or property; and
- c. An extraordinary expense necessary to repair or maintain the Association Property, or any portion thereof, that could not have been reasonably anticipated by the Board at the time the most recent Association budget was prepared. Prior to the imposition or collection of an Assessment pursuant to this Subsection c., 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 budget process. The resolution shall be distributed to the Members with the notice of Assessment.

6.6 Compliance Assessments. A Compliance Assessment is a charge against a particular Owner directly attributable to, and/or reimbursable by, the Owner, equal to the cost incurred by the Association for corrective action performed pursuant to the provisions of this Declaration, or to suspend or condition such Owner's right to use any portion of the Association Property. Any suspension or conditional suspension shall be for a period of not more than thirty (30) days for any continuing infraction, but in the case of the continuing infraction, including non-payment of any assessment after the same becomes delinquent, may be imposed for so long as the violation continues. Compliance Assessments shall not include any late payment penalties, interest charges or costs, including attorneys' fees incurred by the Association in the collection of annual or Special Assessments.

6.6.1 Limitation on Assessments. Notwithstanding any other provision in this declaration to the contrary, the board may not (1) impose a regular assessment for any fiscal year more than 20 percent above the regular assessment for the association's preceding fiscal year, or (2) impose special assessments that in the aggregate exceed 5 percent of the budgeted gross expenses of the association for that fiscal year without the approval of a majority of the votes at a meeting of the members at which a quorum is present. The foregoing restrictions on assessment increases do not apply to increases necessary for emergency situations. An emergency situation is any of the following:

- (i) An extraordinary expense required by an order of court.
- (ii) An extraordinary expense necessary to repair or maintain the project or any part of it that the association is responsible to maintain when a threat to personal safety on the property is discovered.
- (iii) An extraordinary expense necessary to repair or maintain the development or any part of it that the association is responsible to maintain that could not have been reasonably foreseen by the board in preparing and distributing the pro forma operating budget required under California Civil Code §1365, provided that before the imposition or collection of any assessment under this subparagraph the Board must pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the

budgeting process, and shall distribute the resolution to the members with the notice of assessment.

The Association shall provide notice by first-class mail to the Members of any increase in regular or special assessments not less than 30 days nor more than 60 days before the due date of the increased assessment.

6.7 Date of Commencement of Regular Assessments: Due Dates. The Regular Assessments provided for herein shall commence on the first day of the month following the close of escrow for the first sale of a Lot in a Phase. Nothing herein shall prevent Declarant from commencing Regular Assessments against Lots in future Phases on a voluntary basis. Regular Assessments shall be adjusted according to the number of months remaining in the fiscal year, as set forth in the By-Laws. The Board shall fix the amount of the Regular Assessment against each Lot at least thirty (30) days in advance of each Regular Assessment period. The Association shall provide notice by first class mail to the Owner of any increase in Regular Assessments of the Association not less than thirty (30) days nor more than sixty (60) days prior to the increased Regular Assessment becoming due.

Declarant, Merchant Builders and any other Owner shall be exempt from the payment of those portions of the Regular Assessments that are for the purpose of defraying expense and reserves directly attributable to the existence of Improvements within the Association Property that have not been completed or placed into use by the Association at the time Assessments commence. This exemption shall be in effect until the earlier to occur of: (a) the recordation of a Notice of Completion of the Association Property Improvements; or (b) the placement of such Improvements into use.

Notwithstanding any other provisions of the Association Management documents regarding the term and termination of contracts with Declarant for providing services to the Association, Declarant and/or any Merchant Builder may enter into a written maintenance and/or subsidy agreement with the Association under which Declarant and/or any Merchant Builder shall pay all or any portion of the Common Expenses, and perform all or any portion of the Association's maintenance responsibilities in exchange for a temporary suspension of Regular Assessments. Such agreement shall extend for a term and beyond such conditions as are approved by the DRE, and may require Owners to reimburse Declarant, through the Association, for a portion of the costs expended in the satisfaction of Declarant's obligations pursuant to such agreement.

6.7.1 Notwithstanding the provisions of this Article 6, any Lot having no structural improvements for human occupancy shall be exempt from the payment of that portion of any assessment that is for the purpose of defraying expenses and reserves directly attributable to the existence and use of the structural improvement.

The exemption may include, if applicable, but is not necessarily limited to:

- A. Landscaping maintenance;
- B. Exterior maintenance;
- C. Lighting; and
- D. Irrigation water.

The foregoing exemption shall be in effect until the earliest of the following events:

- (1) Recordation of a notice of completion of the structural improvements;
- (2) Occupation or use of the Lot; or
- (3) Completion of all elements of the residential structures that the Association is obligated to maintain.

The Declarant and any other owner of a Lot are exempt from the payment of that portion of any

assessment that is for the purpose of defraying expenses and reserves directly attributable to the existence and use of a common facility that is not complete at the time assessments commence. This exemption from the payment of assessments shall be in effect until the earliest of the following events:

- (1) A notice of completion of the common facility has been recorded; or
- (2) The common facility has been placed into use.

6.8 Collection of Assessments. Except as otherwise provided above, Regular and Special Assessments shall be levied at an equal and uniform rate for all Lots and may be collected on a monthly basis. Due dates shall be established by the Board at its discretion. Compliance Assessments shall be due thirty (30) days after such Assessment has been levied.

6.8.1 Delinquent Assessments. Any assessment payment, including any installment payment, shall become delinquent if payment is not received by the Association within 15 days after its due date. There shall be a late charge of not more than ten percent (10%) or \$10, whichever is greater. A late charge may not be imposed more than once on any delinquent payment, but it shall not eliminate or supersede any charges imposed on prior delinquent payments. Interest also shall accrue on any delinquent payment at the rate of ten percent (10%) per annum. Interest shall commence 30 days after the assessment becomes due.

6.9 Certification of Payment. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer or agent of the Association setting forth whether the Assessments on a specified Lot have been paid. If a certificate states that Assessments have been paid, such certificate shall be conclusive evidence of such payment.

6.9.1 Written Statement By Association Upon Request of Owner. Within ten days after the mailing or delivery of a written request by any Owner, the Board shall provide the Owner with a written statement containing the following information: (i) whether, to the knowledge of the Association, the Owner or the Owner's Lot is in violation of any of the provisions of this Declaration, the Articles, Bylaws, or Association Rules; (ii) the amount of regular and special assessments, including installment payments, paid by the Owner during the fiscal year the request is received; (iii) the amount of any assessments levied against the Owner's Lot that are unpaid as of the date of the statement, including any late charges, interest, or costs of collection that as of the date of the statement are or may be made a lien against the Owner's Lot as provided by this Declaration, the Articles, Bylaws, or Association Rules; and any change in the Association's current regular and special assessments and fees approved by the Board of Directors but not yet due and payable as of the date of the disclosure.

6.10 Reserves. Each annual regular assessment shall include a portion for reserves in such amount as the Board in its discretion considers appropriate to meet the cost of the future repair, replacement, or additions to the Major Components that the Association is obligated to maintain and repair. For all purposes in this Declaration and in the Bylaws, reserve accounts shall mean (i) the funds that the Board has identified for the foregoing purposes ("Regular Reserve Funds") and (ii) the funds received and not yet expended or disposed of from either a compensatory damage award or settlement to the Association from any Person for injuries to property, real or personal, arising from any construction or design defects (the "Construction Reserve Funds"). Construction Reserve Funds shall be separately itemized from funds designated as Regular Reserve Funds. Reserve funds shall be deposited in a separate account, and the signatures of at least two persons who shall either be Members of the Board, or one officer who is not a Member of the Board and a Member of the Board, shall be required to withdraw money from the reserve account. Reserve funds may not be expended for any purpose other the repair, restoration, replacement, or maintenance, or litigation, involving the repair, restoration, replacement, or maintenance, of Major Components that the Association is obligated to maintain.

Notwithstanding the foregoing, 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, provided the

board has made a written finding, recorded in the board's minutes, explaining the reasons that the transfer is needed, and describing when and how the money will be repaid to the reserve fund. The transferred funds shall be restored to the reserve fund within one year after the date of the initial transfer, provided that the Board, on the making of a finding supported by documentation that a temporary delay is in the best interest of the Development, may temporarily delay the restoration. The Board shall exercise prudent fiscal management in maintaining the integrity of 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. This special assessment shall be subject to the assessment increase restrictions set forth in this Declaration, and California Civil Code §1366(b). 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.

At least once every three years, the Board shall cause to be conducted a reasonably competent and diligent visual inspection of the accessible areas of the major components which the association is obligated to repair, replace, restore, or maintain as a part of the reserve account requirements of the development if the current replacement value of the Major Components that the Association is obligated to repair, replace, restore, or maintain is equal to or greater than half of the gross budget of the Association, which excludes the Association's reserve account for that period. The Board shall review this study annually and shall consider and implement necessary adjustments to the Board's analysis of the reserve account requirements as a result of that review.

The study shall, at a minimum, include:

- (i) identification of the Major Components that the Association is obligated to repair, replace, restore, or maintain that, as of the date of the study, have a remaining useful life of less than 30 years;
- (ii) identification of the probable remaining useful life of the components identified in subparagraph (i) as of the date of the study;
- (iii) an estimate of the cost of repair, replacement, restoration, or maintenance of the Components identified in subparagraph (i) during and at the end of their useful life; and
- (iv) an estimate of the total annual contribution necessary to defray the cost to repair, replace, restore, or maintain Components identified in subparagraph (i) during and at the end of their useful lives after subtracting total reserve funds as of the date of the study.

As used in this document, "reserve account" means money that the Board has identified for use to defray the future repair or replacement of, or additions to, those Major Components that the Association is obligated to maintain; and "reserve account requirements" means the estimated funds that the Board has determined are required to be available at a specified time to repair, replace, or restore those Major Components that the Association is obligated to maintain.

If the board elects to use reserve funds or to temporarily transfer money from the reserve fund to pay for litigation, the association shall, in the next available mailing to all members under California Corporations Code §5016, notify its members of that decision 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 of the association at the association's office.

6.11 Offsets and Waiver Prohibited. No Owner may waive or otherwise avoid liability for the Assessments provided for herein for any reason whatsoever, including, but not limited to, non-use of the Association Property or abandonment of his Lot, nor shall any Owner be entitled to any offset against any Assessment provided for herein for any reason whatsoever, including, but not limited to, any expenditure made by such Owner for or on behalf of the

Association.

6.12 Exempt Property. The following property subject to this Declaration shall be exempt from the Assessments herein:

- a. All property dedicated to and accepted by a local public authority; and
- b. All Association Property.

ARTICLE 7
EFFECT OF NONPAYMENT OF ASSESSMENTS:
REMEDIES OF THE ASSOCIATION

7.1 Effect of Nonpayment of Assessments: Remedies of the Association. Any Regular, Special or Compliance Assessment not paid within fifteen (15) days after the due date shall be deemed delinquent and the Owner shall be required to pay (a) reasonable costs of collection, including reasonable attorneys' fees; (b) a reasonable late charge not exceeding ten percent (10%) of the delinquent Assessment or Ten Dollars (\$10.00), whichever is greater, or as may, from time to time, be established by the Board in accordance with California law; and (c) interest on all sums imposed under this section at an annual percentage rate not to exceed twelve percent (12 %) per annum, or the maximum rate allowed by law, commencing thirty (30) days from the date the Assessment becomes due until paid in full. The Board, for and on behalf of the Association, may commence legal action against the Owner personally obligated to pay the same, or, in the case of a Regular or Special Assessment, may foreclose the lien against his Lot. Such lien may also be foreclosed by a power of sale or other non-judicial procedure provided for by the laws of the State of California. In furtherance thereof, each Owner hereby vests in the Association, its successors or assigns, the right and power to bring all actions at law or to pursue lien foreclosure against any Owner for purposes of collecting such delinquent Assessments.

7.2 Notice of Delinquent Assessments. No action shall be brought to foreclose a lien for delinquent Assessments or to proceed under the power of sale herein, unless at least thirty (30) days has expired following the date a Notice of Delinquent Assessments is deposited in the United States mail, certified or registered, postage prepaid, to the Owner of said Lot and a copy thereof is recorded by the Association in the Office of the County Recorder. Said Notice of Delinquent Assessments must recite a good and sufficient legal description of any such Lot, the record Owner or reputed Owner thereof, the total amount due and payable as provided herein, and the name and address of the principal office of the Association, and, in the event of a non-judicial foreclosure, as provided in Section 7.3 below, the name and address of the trustee authorized by the Association to enforce the lien by sale. The Notice shall be signed and acknowledged by any authorized officer of the Association. A monetary fine or penalty imposed by the Association as a disciplinary measure for failure of Owner to comply with the Association Management Documents may not become a lien enforceable by non-judicial foreclosure against such Owner's Lot. The Notice of Delinquent Assessments must be signed by an authorized officer or agent of the Association and must be mailed in the manner set forth in Section 2924(b) of the California Civil Code to the Owner of record of the Lot no later than ten (10) calendar days after recordation.

7.3 Imposition of Lien. The Association may impose a lien against the Owner's Lot for the amount of the delinquent assessment or assessments, plus any costs of collection (including attorney fees), late charges, and interest by taking the following steps:

- (1) The Association shall notify the Owner in writing by certified mail of the fee and penalty procedures of the Association, and shall provide an itemized statement of the charges owed by the

Owner, including items on the statement that indicate the principal owed, any late charges and the method of calculation, any attorney fees, and the collection practices used by the Association, including the right of the Association to the reasonable costs of collection.

(2) After compliance with the notice requirements of subparagraph (1), the Association may impose a lien against the Owner's Lot in the amount of the delinquent assessment or assessments, plus costs of collection, late charges, and interest by recording a notice of delinquent assessment with the county recorder of the county in which the Development is located. The notice shall state the amount of the assessment(s) and other sums imposed in accordance with Civil Code section 1366 or any successor statute thereto, a legal description of the Owner's interest in the Development against which the assessment(s) and other sums are levied, the name of the record owner of the Owner's interest in the Development against which the lien is imposed, and, if the lien is to be enforced by non-judicial foreclosure, the name and address of the trustee authorized by the Association to enforce the lien by sale. The notice shall be signed by any officer of the Association or an employee or agent of the Association authorized to do so by the Board and a copy mailed in the manner required by Civil Code section 2924b to all record owners of the Owner's interest in the Development no later than ten days after recordation.

Any payments made on the delinquent assessment(s) shall be applied first to the principal owed, and only after the principal owed is paid in full shall payments be applied to interest or collection costs. On payment of the sums specified in the notice of delinquent assessment, the Association shall cause to be recorded with the county recorder of the county in which the Development is located a notice stating the satisfaction and release of the lien thereof.

7.3.1 Foreclosure Sale. After the expiration of 30 days following the recording of the assessment lien, the Board may enforce any assessment lien established under this Declaration by filing an action for judicial foreclosure or, if the notice of delinquent assessment contained the name and address of the Trustee authorized by the Association to enforce the lien by non-judicial foreclosure, by recording a notice of default in the form described in California Civil Code § 2924c(b)(1) to commence a non-judicial foreclosure. Any non-judicial foreclosure shall be conducted in accordance with the requirements of Civil Code §§2924, 2924b, 2924c, 2924f, 2924g, 2924h, and 2924j that apply to non-judicial foreclosures of mortgages or deeds of trust. The sale shall be conducted by the Trustee named in the notice of delinquent assessment or by a Trustee substituted in accordance with the provisions of Civil Code § 2934a. The Association may bid on the Lot at the sale, and may hold, lease, mortgage, and convey the acquired Lot. If the default is cured before the sale, or before completing a judicial foreclosure, including payment of all costs and expenses incurred by the Association, the Association shall record a notice of satisfaction and release of lien, and, on receipt of a written request by the Owner, a notice of rescission of the declaration of default and demand for sale.

7.4 Curing of Default: Release Of Lien. Upon payment to the Association of the full amount claimed by the Association in the Notice of Delinquent Assessments, or other satisfaction thereof the Board shall, either prior to sale, or prior to completion of judicial foreclosure proceedings, cause to be recorded a Notice of Release of Lien stating the satisfaction and release of the amount claimed. The Board may demand and receive from the applicable Owner a reasonable charge, to be determined by the Board, for the preparation and recordation of the Notice of Release of Lien.

7.5 Cumulative Remedies. The Association's remedies for nonpayment of Assessments, including, but not limited to, an action to recover a money judgment, Assessment, lien and right of foreclosure and sale, are cumulative and in addition to and not in substitution of any other rights and remedies which the Association and its assigns may have hereunder or at law.

7.6 Mortgage Protection. Notwithstanding all other provisions hereof, no lien created hereunder nor any breach of the terms and provisions of this Declaration, nor the enforcement of any term or provision hereof, shall defeat or render invalid the rights of any Mortgagee under any recorded first Mortgage or deed of trust upon a Lot made in good

faith and for value; provided, that after such Mortgagee or other person or entity obtains title to such Lot by judicial or non-judicial foreclosure, such Lot shall remain subject to this Declaration and the payment of Assessments which fall due subsequent to the date of taking title.

7.7 Alternative Dispute Resolution - Assessments. Disputes between an Owner and the Association regarding the Assessment imposed by the Association may be submitted to alternative dispute resolution in accordance with Civil Code Section 1354 if such Owner pays in full (i) the amount of assessment in dispute, (ii) any late charges, (iii) any interest, and (iv) all fees and costs associated with the preparation and filing of the Notice of Delinquent Assessment (including mailing costs and attorneys fees not to exceed four hundred twenty-five dollars (\$425.00), and states by written notice that such amount is paid under protest, and the written notice is mailed by certified mail not more than thirty (30) days of a notice of delinquent assessment.

The right of any Owner to utilize alternative dispute resolution under this Section 7.7 may not be exercised more than two times in any single calendar year, and not more than three times within five calendar years. Nothing in this section shall preclude any Owner and the Association upon mutual agreement, from entering into alternative dispute resolution in excess of the limits set forth herein. An Owner may request and be awarded through alternative dispute resolution reasonable interest to be paid by the Association in the total amount paid under items (i) through (iv) above, if it is determined that the assessment levied by the Association was not correctly levied.

The provisions of this Section 7.7 are intended to satisfy the statutory provisions in Section 1366.3 of the California Civil Code. In the event of an amendment, modification, alteration or revocation of said Section 1366.3, the provisions of this Section 7.7 shall be deemed amended or terminated, as applicable, without the need to amend this Declaration.

Failure by any member of the association to comply with the prefiling requirements of section 1354 of the Civil Code may result in the loss of your rights to sue the Association or another member of the Association regarding enforcement of the governing documents.

ARTICLE 8

USE RESTRICTIONS

All real property within the Project shall be held, occupied, used and enjoyed subject to the Project Master Plan and the following restrictions, limitations and exemptions reserved by and in favor of Declarant and Merchant Builders set forth in this Declaration.

8.1 Permitted Use of Residence. Except as otherwise provided in Section 8.2 below, each Residence shall be used for private, single-family residential purposes, and for no other purpose, except such temporary uses as shall be permitted by Declarant while the Project is being developed and Lots are being sold by Declarant; provided, however, that Declarant and Merchant Builders reserve the right to carry on normal sales activity on the Project, including the operation of models, sales (and administrative) office, design center and parking area, provided Declarant shall not unreasonably interfere with any other Owner's use of the Association Property.

8.2 Business and Commercial Activity. No business, commercial, manufacturing, mercantile, storage, vending or industrial operations of any kind shall be conducted in or upon any Residence or within the Association Property, except such temporary uses as shall be permitted by Declarant while the Project is being constructed and Lots are being sold by the Declarant, its successors and assigns. Notwithstanding the foregoing, this section shall not preclude professional administrative occupations which do not create any external evidence thereof, including, but not limited to any increased impact on parking, for so long as such occupations are conducted in conformance with all applicable City ordinances, no such activity increases the liability or casualty insurance obligations of the Association and

premiums paid therefor, such activity is consistent with the residential character of the Project and such activity is consistent with the Protective Covenants set forth in this Declaration.

No family day care center for children shall be permitted within the Project except as specifically authorized by California Health and Safety Code Section 1597.40, et seq., and any successor or companion statutes. The owner/operator of any such day care facility shall comply with all local and state laws regarding the licensing and operating of a day care center and, in addition, shall:

a. Name the Association as an additional insured on the liability insurance policy or bond carried by the owner/operator of the day care center;

b. Defend, indemnify and hold harmless the Association from the liability arising out of the existence and operation of the day care center;

c. Abide by and comply with all Association Rules;

d. Supervise and be completely responsible for children at all times while they are within the Project;
and

e. Cooperate with the Association if the Association's insurance agent or carrier requires proof of insurance, proof of the agreement of the owner or operator of the center to these conditions, or other reasonable requests.

8.3 No Temporary Structures. No tent or shack, or other temporary building, improvement or structure shall be placed upon any portion of the Project, except by Declarant or Merchant Builder during the build out of all phases of the Project and in connection therewith for construction and/or marketing purposes.

8.4 Association Property Use. Use of the Association Property shall be subject to the provisions of this Declaration, the Rules and Regulations and to any additional limitations imposed by the Association. Nothing shall be done or kept in any Lot or in the Association Property which will increase the rate of insurance on the Association Property without the approval of the Association. No Owner shall permit anything to be done or kept in his Lot or in the Association Property which will result in the cancellation of insurance on the Association Property or which would be in violation of any law. If, by reason of the occupancy or use of said premises by the Owner, the rate of insurance to the Association Property shall be increased, the Owner shall become personally liable for the additional insurance premiums.

8.5 Liability for Damage to Association Property. Each Owner shall be liable to the Association, pursuant to the laws of the State of California, for any and all costs and expenses which may be incurred by the Association to repair any damage to the Association Property which may be sustained by reason of the negligence or willful misconduct of said Owner or of his family, tenant, lessees or contract purchasers, or their respective guests or invitees, whether minor or adult. After approval by a majority of the Board, any such costs and expenses shall be levied by the Board as a Compliance Assessment against such Owner.

8.6 Signs. Subject to the provisions of California Civil Code Sections 712 and 713, and any successor or companion statutes, no sign, poster, display, billboard, or other advertising device may be displayed on any portion of the Project or on any public street or thoroughfare abutting or visible from the Project, or displayed from any Residence, without prior written consent of the Architectural Control Committee, except (1) sign or notice of customary and reasonable dimension which states that the Residence is for rent or sale, so long as it is consistent with any standards which may be adopted by the Architectural Control Committee pursuant to the Article herein entitled "Architectural Control." Such sign or notice may be placed with any Unit, and also may be placed upon the Association Property within

an area specifically established by the Architectural Control Committee for such purpose. This Section does not apply to (a) any signs used by Declarant or its agents in connection with the sale of Lots or the construction or alteration of the Residences or Association Property, (b) traffic and visitor parking signs installed by Declarant, and (c) traffic and parking control signs installed with the consent of the Board. Notwithstanding the foregoing, this Section does not permit the maintenance of any sign or other display which does not conform with applicable City and County ordinances and codes.

8.7 Animals and Plants. No animals of any kind shall be raised, bred or kept in any Lot or in the Association Property, except that common household pets, including dogs, cats or birds, may be kept in each Lot; provided, however, that no animal shall be kept, bred or maintained for any commercial purpose or in unreasonable numbers. As used herein, unreasonable numbers shall ordinarily mean the maximum number of pets permitted by the City. Each Owner shall be responsible for cleaning up any excrement or other unclean or unsanitary condition by said animal on the Association Property. The Association, upon the approval of a majority of the Board, shall have the right to prohibit maintenance of any animal within the Project which constitutes a private nuisance to any other person. Every person bringing an animal upon or keeping an animal in the Project shall be liable pursuant to the laws of the State of California to each and all persons for any injury or damage to persons or property caused by such animal. All animals maintained in a Lot must be kept either within an enclosure, yard or patio, or on a leash being held by a person capable of controlling the animal. Declarant and Merchant Builders shall be fully indemnified and held harmless by virtue of any physical injury and/or property damage proximately caused by the maintenance of any animal within the Project. No plants or seed harboring noxious insects or infected with plant diseases shall be brought, grown or maintained within the Project.

8.8 Nuisances. No rubbish or debris of any kind shall be placed or permitted to accumulate anywhere within the Project, and no odor shall be permitted to arise therefrom so as to render the Project, or any portion thereof, unsanitary, unsightly or offensive. No noise or other nuisance shall be permitted to exist or operate upon any portion of a Lot so as to be offensive or detrimental to any other Lot or to occupants thereof. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes), noisy or smokey vehicles, large power equipment or large power tools, unlicensed off-road motor vehicle or other items which may unreasonably disturb other Owners or their tenants, shall be located, used or placed on any portion of the Project without the prior written approval of the Architectural Control Committee. No motorcycles, dirt bikes or other mechanized vehicles may be operated upon any portion of the Association Property not improved as a street without the prior written approval of the Architectural Control Committee, which approval may be withheld for any reason whatsoever. Alarm devices used exclusively to protect the security of a Lot and its contents shall be permitted, provided that such devices do not produce annoying sounds or conditions as a result of frequently occurring false alarms.

8.9 No Hazardous Activities. No activities shall be conducted on any portion of the Project and no Improvements shall be constructed on any portion of the Project which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged on the Project and no open fires shall be lighted or permitted on the Project, except in a contained barbecue unit while attended and in use for cooking purposes, or within an interior or exterior fireplace designed to prevent the dispersal of burning embers.

8.10 Improvements. There shall be no construction, alteration or removal of any Improvement in the Project (other than those repairs or rebuilding permitted under the Article entitled "Damage or Destruction to the Association Property") without the approval of the Architectural Control Committee, as set forth hereinbelow. No Owner or agent thereof shall attempt to obtain or obtain a building, electrical, plumbing or similar permit from the City unless and until approval for the construction, reconstruction, improvement or repair is granted by the Architectural Control Committee. Any construction, reconstruction, improvement or repair shall only be made in accordance with the applicable building and related codes adopted by the City. The Association shall have the right, upon a majority vote of the Board, to specifically enforce the provisions of this paragraph in any court of competent jurisdiction and/or obtain injunctive relief

against the Owner. If the Association prevails in such legal proceedings, the Association shall be entitled to its costs and attorneys' fees which, if remain unpaid after three (3) months of demand, shall become a lien upon such Owner's Lot. No Improvement shall be constructed upon any portion of any Association Property, other than such Improvements as shall be constructed: (a) by the Declarant (or a person or entity to whom Declarant assigns its rights as developer), or (b) by the Association as provided herein.

8.11 Windows. No window in any Residence shall be covered in whole or in part, inside or outside, with aluminum foil, newspaper, paint, reflective tint or any other material reasonably deemed inappropriate for such use by the Architectural Control Committee; provided, however, an Owner may use plain white or other neutral colored sheets to cover windows for a period not to exceed thirty (30) days after the close of escrow. The installation of drapes, curtains, shutters or other appropriate interior window coverings must be completed within three (3) months after the close of escrow.

8.12 Parking. All streets within the Project are private and are subject to all applicable laws, ordinances and regulations of all governmental agencies having jurisdiction over the Project. Except in such areas as designated by Declarant and the Board, no Owner of a Lot in the Project shall park, store or keep any vehicle except wholly within his garage. No Owner shall park, store or keep any large commercial type vehicle, any recreational vehicle (including, but not limited to, any camper, motor home, trailer, boat trailer, mobile home or other reasonably similar vehicle, boat or aircraft) or any vehicle other than a private passenger vehicle on his Lot or on any portion of the Association Property.

No Owner shall conduct major repairs or major restorations of any motor vehicle of any kind whatsoever in his garage, on his Lot, or upon the Association Property, except for emergency repairs thereto and then only to the extent necessary to enable movement thereof to a proper repair facility.

Each Owner shall maintain his garage such that it is readily available for parking. All garage doors shall remain closed at all times, except as reasonably required for entry to and exit from the garage. No inoperable vehicle shall be stored anywhere in the Project in such a manner as to be visible to neighboring property outside of the Project or any of the Lots. In any event, all vehicles shall be parked in compliance with applicable City ordinances.

8.13 Regulation of Parking. Subject to the rights of the Association, through its officers, committees and agents, the Board is hereby empowered to establish parking and no parking areas within the Association Property, in accordance with Section 22658.2 of the California Vehicle Code, or any similar statute hereafter enacted, as well as to enforce these parking limitations by all means lawful for such enforcement, including, but not limited to, the levying of fines and the citing and towing of vehicles. The Board shall have the authority to tow away and store any vehicle or similar equipment parked in violation of the above limitations whether the same shall belong to any Owner or a member of his family or to any tenant, lessee, guest or invitee of any Owner. Charges for such towing and storing shall be assessed against the Owner of the Lot which is responsible for the violation of such restrictions, and such assessment may be enforced as a Compliance Assessment.

8.14 Leasing. No Owner shall be permitted to rent or lease his Lot for transient or hotel purposes, or for a period of less than thirty (30) days, except Declarant, or an Owner doing so with the express written consent of Declarant, or within the guidelines of an approved seasonal leasing program which may be commenced by Declarant. No Owner may rent or lease less than the entire Lot. All rental and lease agreements shall be in writing and shall provide that the terms of such agreement shall be subject in all respects to the provisions of this Declaration, By-Laws, Articles, and Rules and Regulations, and that any failure by the tenant or lessee to comply with the terms of such documents shall constitute a default under such agreement.

Any Owner who rents or leases a Residence shall promptly notify the Secretary of the Association in writing of the names of all tenants, lessees, and members of such tenants or lessees' family occupying the Residence, and shall

provide the Secretary of the Association with a copy of the rental or lease agreement. All Owners shall thereafter promptly notify the Secretary of the Association of the address and telephone number where such Owner can be reached. Any failure of a tenant or lessee to comply with the Association Management Documents shall constitute a default under the lease or rental agreement, regardless of whether the lease or rental agreement so provides. In the event of any such default, the Owner shall immediately take all actions to cure the default including, if necessary, eviction of the tenant or lessee.

If any tenant or lessee is found to be in violation of the provisions of the Association Management Documents, the Association may bring an action in its own name and/or in the name of the Owner to have the tenant/lessee evicted and/or to recover damages. To the fullest extent permitted by law, the Association may recover all of its costs, including court costs and reasonable attorneys' fees incurred in prosecuting the unlawful detainee action. The Association shall give the tenant/lessee and the Owner notice in writing of the nature of the violation of the Association Management Documents, and twenty (20) days from the mailing of the notice in which to cure the violation before the Association may file for eviction.

8.15 Drilling. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot or the Association Property, nor shall oil wells, tanks, tunnels or mineral excavations be permitted upon or in any Lot or the Association Property. No derrick or other structure designed for use in boring for oil, water or natural gas shall be erected, maintained or permitted within the Project.

8.16 Trash. Trash collection shall be provided by the City or a private refuse collection company under contract with the City. Trash collection times shall be scheduled by the City and may be changed, from time to time. No rubbish, trash, garbage or other waste material shall be kept or permitted upon any portion of the Project, except in closed containers kept and maintained in designated side yard areas of each Lot, and no odor shall be permitted to arise therefrom so as to render the Project, or any portion thereof, unsanitary, unsightly offensive or detrimental to any other property in the vicinity thereof or to its occupants. Such containers shall be exposed to the view of neighboring Lots only when set out for a reasonable period of time (not to exceed twenty-four [24] hours before and after scheduled trash collection hours).

8.17 Antennas: Exterior Structures. No Owner shall install, or cause to be installed, any television, radio, Citizens Band (C.B.) antenna, satellite dish or other similar electronic receiving or broadcasting device on the exterior of any Residence or within the Association Property, unless: (a) contained within the Residence or other approved structure; (b) completely obscured from view from any streets or other part of the Project; or (c) screened from view with screening materials which have been approved by the Architectural Control Committee. This Section shall not apply to a master antennae or cable television antennae system installed by Declarant or by a franchise cable television operator.

Notwithstanding the provisions of the foregoing paragraph, each Owner, by acceptance of a deed to a Unit, understands and acknowledges that California Civil Code Section 1376, as the same may be amended from time to time, sets forth certain provisions regarding the installation of television and video antennas, including satellite dishes with a diameter of one meter (1m) or less. The following restrictions may be imposed by the Association as reasonable restrictions, as defined in the foregoing Code Section:

a. The installation of a video or television antenna system, including a satellite dish with a diameter of thirty six inches (36) or less, shall be deemed an Improvement and shall require the approval of the Architectural Control Committee, which approval shall not be unreasonably withheld;

b. The Association shall be permitted to impose on an applicant, reasonable requirements pertaining to the installation of such system; and

c. Each Owner shall be liable to the Association for any property damage or financial loss related to the installation and maintenance of the system, and for any mechanic's liens and materialman's liens which may be recorded on the Association Property as a result of the installation maintenance, use and repair of such system.

8.18 Drainage. There shall be no interference with the established drainage pattern over any Lot within the Project as to affect any other Lot or the Association Property, unless adequate alternative provision is made for proper drainage and is approved in writing by the Architectural Control Committee and by the City, if necessary. For purposes hereof, established drainage is defined as the drainage which exists at the time such Lot is conveyed to a purchaser from Declarant, or later grading changes that are shown on plans approved by the Architectural Control Committee.

8.19 Exterior Maintenance and Repair. No Improvement anywhere within the Project shall be permitted to fall into disrepair, and each Improvement shall, at all times, be kept in good condition and repair, as more fully described in the Article herein entitled "Repair and Maintenance." No Owner, other than Declarant, shall install or construct any walls or fences on or along the property lines between Lots or between Lots and the Association Property without first having submitted plans and specifications therefor for review and approval by the Architectural Control Committee. No wall or fence shall exceed six feet (6') in height, measured from the established finish grade of the Lot without the approval of the Architectural Control Committee and, if required, approval from the City. The installation, construction, maintenance, repair and replacement of walls and fences may be addressed in the Architectural Standards or the Rules and Regulations.

8.20 Alteration of Walls and Fences. No Owner shall be permitted to alter, modify, relocate or remove any wall, retaining wall or fence, including the footings thereof, originally constructed by Declarant without the prior review and approval of the Architectural Control Committee and the City, if required.

8.21 Party Walls and Fences. Each wall or fence which is placed on the property line between two (2) Lots (defined to exclude Association Property) shall constitute a party wall and, to the extent not inconsistent with the provisions of this section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply. A party wall shall be considered to adjoin and abut against a property line dividing the Lots from the bottom of the foundation over the full length and height of any such wall. Those Owners who have a party wall which adjoins their Lots and effectively creates the boundary line between such Lots shall equally have the right to use such party wall, except that each shall have the exclusive right to the use of the interior surface of the party wall facing his Residence. Neither Owner shall drive nails, screws, bolts or other objects more than half way through any party wall, interfere with the adjacent Owner's use and enjoyment of the party wall, or impair, in any way, the structural integrity of the party wall. In the event that any portion of such party wall, except the interior surface of one (1) side, is damaged or destroyed from any cause, other than the act or negligence of either party, it shall be repaired or rebuilt at their joint expense.

8.22 Solar Energy Systems. All Owners shall have the right to place and maintain equipment and facilities related to the installation and maintenance of individual solar energy systems. The installation and maintenance of any solar energy system by an individual Owner shall be subject to all applicable zoning regulations, the Uniform Building Code and City associated ordinances, and reasonable review by the Architectural Control Committee for compliance with the Architectural Standards and reasonable Rules and Regulations pertaining to the installation, use, maintenance, repair and replacement of solar energy systems adopted by the Association, consistent with Sections 714 and 714.1 of the California Civil Code.

8.23 Prohibition Against Improvements Within Association Property. No Owner may install, construct or otherwise alter any Improvement within the Association Property without the express written Approval of the Architectural Control Committee and the Board.

8.24 Water Savings Devices on Dishwashers, Toilet Flushing Mechanisms and Shower and Sink Heads

Required. There shall be water saving devices on dishwashers, toilet flushing mechanisms and shower and sink heads required in all homes constructed within the Project pursuant to plans and specifications approved by the City of Indio, California.

8.25 No Easements for View Purposes: Disclaimer. The Article herein entitled "Architectural Controls" sets forth procedures for the approval of Improvements which may be constructed upon Lots in the Project which are consistent with the Architectural Standards adopted, from time to time, pursuant to said Article. The Architectural Standards may have some effect on preserving views from and insuring the passage of light and air to individual Lots. However, by promulgation and enforcement of the Architectural Standards, or otherwise, neither Declarant, the Board nor the Architectural Control Committee, or the members, employees or consultants of any of the foregoing, have made any representations whatsoever concerning the view, if any, that a particular Lot or other Improvement thereon will enjoy. There are no express or implied easements whatsoever appurtenant to any Lot for view purposes; or for the passage of light and air across any other Lot or any property not within the Project, regardless of whether such Lot is owned by Declarant or a Merchant Builder. Each Owner, by accepting a deed to a Lot, hereby expressly acknowledges and agrees that further construction within the Project and in the immediate vicinity of the Project may impair the view from such Owner's Lot, and each Owner hereby expressly consents to any such impairment. Each Owner further acknowledges and understands that properties surrounding the Project may be developed or redeveloped in accordance with City ordinances. Concerns pertaining to the future development of surrounding properties should be addressed with the City.

No Owner shall allow installation on such Owner's Lot of any plant, tree or foliage, nor shall an Owner build or install on such Owner's Lot any other thing of any kind or type which shall cause or constitute a view obstruction from any other Lot in the Project to the any view, or any portion thereof.

8.26 No Further Subdivision. No Owner shall physically or legally subdivide his/her Lot or the Residence located thereon in any manner, including, without limitation, any division of his Lot or Residence into time share estates or time share uses, as defined in Section 11003.5 of the California Business and Professions Code, or any successor statute or any so-called vacation license, travel club, or other membership or time interval ownership arrangement. This section shall not be construed to limit the right of an Owner to rent or lease his Residence, subject to the applicable provisions of this Article.

8.27 Compliance With Laws. Declarant, the Association and each Owner shall comply with all Federal, State, City laws, statutes, ordinances, rules, regulations and standards applicable to the construction, installation, use, occupancy and maintenance of Improvements within the Project.

ARTICLE 9

ARCHITECTURAL CONTROL

9.1 Exemptions From Architectural Control. Except as otherwise provided herein, all Improvements to Lots shall be subject to architectural approval by the Association in accordance with the provisions of this Declaration. Declarant and Merchant Builders shall be exempt from compliance with any provision of this Article or from any other provisions of the Association Management Documents, or any actions by the Board pertaining to architectural control; provided, however, if Declarant and Merchant Builders shall desire to construct any Improvements to the exterior of a Residence after such Residence has been completed and approved by the City, Declarant shall obtain approval for such Improvements from the City; and, provided further, if Declarant shall retain a Residence for personal use, any Improvements to the exterior of such Residence shall be subject to architectural approval pursuant to this Article.

9.2 Control. Except for the purposes of proper maintenance and repair, and except as otherwise permitted, no person shall install any Improvement or modify the exterior appearance of a Residence or appurtenant Improvement until

any and all plans and specifications required pursuant to this Article shall have been submitted to and approved, in writing, by the Architectural Control Committee. For the purposes of this section, the term exterior shall mean any outside wall, outside surface, roof, outside door, patio, balcony, deck, garage or other outside structure of said Residence which is visible to others in the Project and/or to the public.

9.3 Architectural Control Committee. The Architectural Control Committee is hereby authorized with the rights and powers set forth in this Article. Said Committee shall consist of not less than three (3) members nor more than five (5) members, and each initial member shall serve until the first election of the Board. In the event of the failure or inability of any member of the Architectural Control Committee to act, the remaining members shall designate a successor who shall serve for the remainder of the term of the member he replaces. The Declarant shall appoint all of the original members of the Architectural Control Committee, and replacements thereto. Further, Declarant reserves the power to appoint a majority of the members of the Architectural Control Committee until such time as Declarant shall have annexed, or shall have approved annexations by Merchant Builders, to the Association the last Phase to be developed in the Project or until the fifth (5th) anniversary of the issuance of the Final Subdivision Public Report for Phase 1 of the Project, whichever first occurs. After one (1) year from the date of the first close of escrow within Phase 1, the Board shall have the power to appoint one (1) member to the Architectural Control Committee until ninety percent (90%) of the Lots in the Project have been sold or until the fifth (5th) anniversary date of the issuance of the Final Subdivision Public Report for Phase 1 of the Project, whichever first occurs. Thereafter, the Board shall have the power to appoint all of the members of the Architectural Control Committee. All members appointed to the Architectural Control Committee by the Board shall be from the membership of the Association. Members appointed to the Architectural Control Committee by the Declarant, however, need not be members of the Association. No member of the Architectural Control Committee shall be liable to any person for his decisions or failure to act in making decisions as a member of the Architectural Control Committee. Declarant may, in its discretion and at any time, assign to the Association by written assignment its powers of removal and appointment with respect to the Architectural Control Committee, subject to such terms and conditions regarding the exercise thereof as Declarant may impose.

9.4 Meeting of the Architectural Control Committee. The Architectural Control Committee shall meet, from time to time, as necessary to perform its duties hereunder. The Architectural Control Committee may, by a majority vote of the members thereof, delegate any of its rights and responsibilities hereunder to one (1) or more duly licensed architects, who shall have full authority to act on behalf of the Architectural Control Committee on all matters so delegated.

9.5 Architectural Standards. The Board may, from time to time, adopt Architectural Standards to be administered through the Architectural Control Committee. The Architectural Standards may include, without limitation, those guidelines, procedures, limitations, and restrictions upon Owners set forth below:

- a. The placement, reconstruction, addition, change or alteration to a Lot or the exterior of a Residence, including the nature, kind, shape, materials, exterior color, and location of any Improvement, and the height of any Improvement, including landscaping;
- b. A description of the type of such construction, additions, changes or alterations which, if completed in conformity with the Architectural Standards, do not require approval of the Architectural Control Committee;
- c. Conformity of completed Improvements to plans and specifications approved by the Architectural Control Committee;
- d. Time limitations for the completion of the Improvements for which approval is required pursuant to the Architectural Standards;
- e. Procedures for submission of plans and specifications submitted for Architectural Control

Committee review, including, without limitation, floor plans, site plans, drainage plans, elevation drawings, landscape plans, and a description or samples of exterior colors and materials;

f. Restrictions controlling the species and placement of any trees, plants, shrubbery, ground cover, etc., to be placed, planted, irrigated, and maintained in the Project; and

g. A reasonable schedule of fees for submission of plans and specifications, as set forth below.

h. Notwithstanding the foregoing, to comply with requirements of the Planning Commission of the City of Indio, the Architectural Control Committee shall maintain the following standards and may not modify said standards, or adopt standards contrary to the following:

1. The front of each residence in the subdivision, each retention basin in the subdivision, and the entrances to the subdivision shall have and maintain adequate lighting.

2. No low level lighting shall be permitted at the entrances into the subdivision, at the retention basins, or in the community pool/spa facilities.

The Architectural Standards may be periodically updated or revised by the Board, as the Board, in its reasonable discretion, may deem appropriate. The Architectural Control Committee shall maintain a copy of the then current Architectural Standards on file at all times, and shall provide each Owner with a copy of the Architectural Standards upon written request. The Board shall establish a reasonable fee for copies of the Architectural Standards, and other related materials, to cover costs of reproduction, administration and handling.

9.6 Architectural Approval - Review of Plans and Specifications. The Architectural Control Committee shall consider and act upon any and all plans and specifications submitted for its approval under this Declaration, and perform such other duties as, from time to time, shall be assigned to it by the Board, including the inspection of construction and progress to ensure its conformance with the plans approved by the Architectural Control Committee. No construction, alteration, grading, addition, excavation, modification, decoration, redecoration or reconstruction of an Improvement shall be commenced or maintained by any Owner until the plans and specifications therefor showing the nature, kind, shape, height, width, color, materials and location of the same shall have been submitted to the Architectural Control Committee and approved in writing by the Architectural Control Committee. The Architectural Control Committee shall approve the plans and specifications submitted for its approval only if it deems that: (a) the construction, alterations or additions contemplated thereby and the locations indicated will not be detrimental to the appearance of the surrounding area of the Project as a whole; (b) the appearance of any structure affected thereby will be in harmony with surrounding structures; (c) the construction thereof will not detract from the beauty, wholesomeness and attractiveness of the Association Property, or the enjoyment thereof by the Owner; and (d) the upkeep and maintenance thereof will not become a burden on the Association. The Architectural Control Committee may condition its approval of proposals or plans and specifications for any Improvement: (a) on such changes therein as it deems appropriate, (b) upon the agreement by the person submitting the same to grant appropriate easements to the Association for the maintenance of the Improvement, or (c) upon the agreement of the person submitting the same to reimburse the Association for the cost of such maintenance, or all of the above, and may require submission of additional plans and specifications or other information prior to approving or disapproving the submission.

The Architectural Control Committee may also issue rules or guidelines setting forth procedures for submission of plans for approval, requiring a payment of a fee to the Association to accompany each submission of plans and specifications, or additional factors which it will take into consideration in reviewing submissions.

The Architectural Control Committee may require such detail in plans and specifications submitted for its

review as it deems proper, including, without limitation, floor plans, site plans, drainage plans, elevation drawings, landscape plans and description or samples of exterior material and colors.

The Architectural Control Committee shall require that any replacement or repair of roofs of Residences shall be accomplished with fire retardant materials.

9.7 Decisions of the Architectural Control Committee. Until receipt by the Architectural Control Committee of any required plans and specifications, and such other information as may be required in Section 9.6 above, the Architectural Control Committee may postpone review of any plans submitted for approval. Decisions of the Architectural Control Committee and the reasons therefor should be transmitted by the Architectural Control Committee to the applicant, at the address set forth in the application for approval, within forty-five (45) days after receipt by the Architectural Control Committee of all plans, specifications and materials required. Any application submitted pursuant to the provisions of Section 9.6 above shall be deemed approved, unless written disapproval or a request for additional information or materials by the Architectural Control Committee shall have been transmitted to the applicant within forty-five (45) days after the receipt by the Architectural Control Committee of all required materials.

9.8 Submittal to Public Agencies - Right of Architectural Control Committee to Review. Upon obtaining the written approval of the Architectural Control Committee, the Owner shall thereafter submit plans and specifications to the City, provided that the proposed Improvements require the issuance of a building or other permit or certification by the City. In the event that all approvals of the City necessary for the issuance of a building permit are not obtained within six (6) months from the date of approval by the Architectural Control Committee, the Architectural Control Committee shall have the right, but not the obligation, to review all previously approved plans and specifications. In addition, in the event that the City requires modifications to the plans and specifications previously approved by the Architectural Control Committee, the Owner shall submit to the Architectural Control Committee all modifications to the plans and specifications previously approved by the Architectural Control Committee, which shall have the right to review and to impose further conditions on any such modifications.

9.9 Approval of City. Approval of any proposed or existing Improvement, or completion of an Improvement, by the Architectural Control Committee or the Board shall not be construed to warrant or represent in any way that the Improvement was approved by or complies with the minimum standards of the City. Similarly, approval of any proposed or existing Improvement by the City shall not be construed to constitute approval of such Improvement by the Architectural Control Committee or the Board.

9.10 Conflicts Between City and Architectural Control Committee. In the event of any conflict in the conditions of approval of any proposed Improvements imposed by the City and the Architectural Control Committee, the more restrictive of such conditions shall be controlling. Further, nothing herein shall limit the Architectural Control Committee from imposing conditions of approval of any proposed Improvements which are more restrictive than conditions as may be imposed by the City.

9.11 No Waiver of Future Approvals. The approval of the Architectural Control Committee to any submissions for any work done, or proposed to be done, or in connection with any other matter requiring the approval or consent of the Architectural Control Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent of any similar proposals, plans and specifications, drawings or other matters subsequently or additionally submitted for approval.

9.12 Compensation of Members. The members of the Architectural Control Committee shall receive no compensation for services rendered, other than reimbursement by the Association for expenses incurred in the performance of such members' duties hereunder.

9.13 Variances. Where circumstances such as topography, location of buildings, location of landscaping or

other matters require, the Architectural Control Committee, by the vote or written assent of a majority of the members thereof, may allow reasonable variances as to any of the Protective Covenants contained in this Declaration or provisions under the Architectural Standards promulgated by the Architectural Control Committee, on such terms and conditions as it shall require. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose, except as to the particular Lot and particular provision hereof covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the Owner's use of his Lot, including, but not limited to, zoning ordinances, Lot setback lines or requirements imposed by the City or other governmental authority.

9.14 Inspection of Work. Upon consent of the Owner, which consent shall not be unreasonably withheld, any member or authorized representative of the Architectural Control Committee may, at any reasonable hour and upon reasonable notice, enter and inspect any Lot which has been the subject matter of an approval of a submission for an Improvement to his Lot. Such entry shall be made with as little inconvenience to the Owner as reasonably possible, and any damage caused thereby shall be repaired by the Association. If the Architectural Control Committee finds that such work was not done in substantial compliance with the approved plans and specifications, it shall notify the Owner in writing of such noncompliance, specifying the particulars of noncompliance and shall require the Owner to remedy the same within thirty (30) days from the date of notification of such noncompliance. If any evidencing noncompliance exists, the Board, after Notice and Hearing, may levy a Compliance Assessment against such Owner for the costs of removing or remedying such noncompliance.

9.15 Appeal. In the event plans and specifications submitted to the Architectural Control Committee are disapproved, the party making such submission may appeal in writing to the Board. The written request must be received by the Board not more than thirty (30) days following the final decision of the Architectural Control Committee. The Board shall submit such request to the Architectural Control Committee for review, and the written recommendations of the Architectural Control Committee will be submitted to the Board. Within forty-five (45) days following receipt of the request for appeal, the Board shall render its written decision. The failure by the Board to render a decision within said forty-five (45) day period shall be deemed a decision in favor of the party making such submission.

9.16 Non-Liability of Architectural Control Committee Members. Neither Declarant, Merchant Builders, the Association, the Board or the Architectural Control Committee, or the members or designated representatives thereof, shall be liable for damages to any Owner submitting plans or specifications to them for approval, or to any Owner in the Project affected by this Declaration by reason of mistake in judgment, negligence or non-feasance, unless due to willful misconduct or bad faith of the Architectural Control Committee. The Architectural Control Committee's approval or disapproval of a submission shall be based solely on the considerations set forth in this Article, and in such Architectural Standards as may be promulgated by the Architectural Control Committee, and the Architectural Control Committee shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any plans or design from the standpoint of structural safety and conformance with building or other codes.

ARTICLE 10

REPAIR AND MAINTENANCE

10.1 Repair and Maintenance by Association. Without limiting the generality of the Article herein entitled "Powers and Duties of the Association," the Association shall have the duty to maintain, landscape, repair, improve, restore and replace all Improvements upon the Association Property, as designated in this Declaration or in any subsequent Notice of Annexation which may be recorded, from time to time, in a neat, clean, safe, attractive and orderly condition at all times, including, without limitation, the following:

- a. Association Property. All drainage and irrigation facilities and easements within the Association

Property;

b. The water system which services the Association Property with water for landscaping and irrigation purposes;

c. Entry area monumentation located within the Association Project;

d. The exterior surfaces and structural integrity of those Project perimeter walls and fences shown on Exhibit "C" attached hereto, and additional walls and fences as may be designated in Notices of Annexation;

e. Bicycle and pedestrian paths located within the Association Property, when annexed to the Project;
and

f. All other areas, facilities, furniture, equipment, services or aesthetic components of whatsoever nature as may, from time to time, be requested by the vote or written consent of a majority of the voting power of the Association.

Any Exhibits depicting or delineating maintenance areas or obligations of the Association are for illustrative purposes only. The as-built condition of all such maintenance areas and obligations as installed and constructed by Declarant, or by Merchant Builders with Declarant's consent, shall be controlling.

The cost of any maintenance and repair by the Association which is a result of neglect, negligence or willful misconduct by an Owner, or such Owner's tenants, guests, agents and invitees, shall, after Notice and Hearing, be levied by the Board as a Compliance Assessment against such Owner. Except as otherwise provided herein, all costs and expenses for such maintenance above shall be a Common Expense and shall be paid out of the general operating fund of the Association.

10.2 Inspection of Association Property. The Board shall inspect the Association Property, and all improvements thereon, at least once every three (3) years in order to (a) determine whether the Common Area is being maintained adequately in accordance with the standards of maintenance established in Section 10.1 above, (b) identify the condition of the Association Property and any Improvements thereon, including the existence of any hazards or defects, and the need for performing additional maintenance, refurbishment, replacement or repair, and (c) recommend preventive actions which may be taken by the Board to reduce potential maintenance costs to be incurred in the future. The Board may employ such experts and consultants as necessary to perform the inspection and make the report required herein.

The Board shall prepare a written report of the results of the inspection of the Association Property and such report shall be furnished to Owners within the time set forth for furnishing Owners with the pro forma operating budget of the Association. The report must include at least the following:

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

b. a description of all maintenance, repair and replacement planned for the ensuing fiscal year of the Association;

c. if any maintenance, repair or replacement is to be deferred, then the reason for such deferral must be stated;

d. a summary of all reports of inspections performed by any expert or consultant retained by the Board

to perform inspections; and

e. recommend preventive measures which may be taken by the Association and/or the Owners, as appropriate, to reduce the possibility of damage and maintenance coats which might be incurred in the future.

10.3 Repairs and Maintenance By Owner. Except as the Association shall be obligated to maintain and repair as may be provided in this Declaration, every Owner shall:

a. Maintain his Lot and the Residence located thereon, including, without limitation, any side yard, front yard and rear yard walls and fences which may be constructed by such Owner, roofs, patios, patio covers, decks, deck covers, balconies, windows, window frames, screens, locks and doors of his Residence, landscaping, slopes, berms and irrigation improvements, irrigation lines, concrete drainage swales, sub-drain outlets, yard drains and all other Improvements located on such Owner's Lot not otherwise designated as Association Property in a neat, clean, safe and attractive condition at all times, and make all repairs as they may be required; and

b. Maintain all landscaping originally installed by Declarant in the front yard and side yards of the Residence; and

c. Install, within a reasonable period of time after conveyance of title to a Lot to an Owner, but in no event later than three (3) months after the close of escrow for the sale of such Lot, the rear yard landscaping (and side yard landscaping in the case of a corner Lot) in a neat and attractive condition, including all necessary landscaping and gardening, to properly maintain and periodically replace, when necessary, the trees, plants, grass and other vegetation originally placed on such Lot by Declarant or Merchant Builders, if any. The Board may adopt Rules and Regulations proposed by the Architectural Control Committee to regulate landscaping permitted within the Project. In the event that any Owner shall fail to install and maintain landscaping, including all slope areas within the Lot, in conformance with the Rules and Regulations, or shall allow his landscaping to deteriorate to a dangerous, unsafe, unsightly or unattractive condition, the Board, after Notice and Hearing, may enter such Owner's property for the purpose of remedying the condition, and such Owner shall promptly reimburse the Association for the cost thereof. Such cost may be levied by the Board as a Compliance Assessment.

10.4 Maintenance of Public Utility. Nothing contained herein shall require or obligate the Association to maintain, replace or restore the underground facilities or public utilities which are located within easements in the Association Property owned by such public utilities. However, the Association shall take such steps as are necessary or convenient to ensure that such facilities are properly maintained, replaced or restored by such public utilities.

10.5 Damage and Destruction Affecting a Residence - Duty to Rebuild. In the event any Residence is damaged or destroyed by fire or other casualty, it shall be the duty of the Owner of such Residence to repair or reconstruct said Residence in a manner which will restore it to its condition and appearance immediately prior in time to such damage or destruction, or as otherwise approved by the Architectural Control Committee. The affected Owner shall be obligated to proceed, with all due diligence hereunder, and shall be responsible for commencing reconstruction within three (3) months after the damage occurs, and completing such reconstruction as soon as reasonably possible thereafter.

ARTICLE 11

DAMAGE OR DESTRUCTION TO THE ASSOCIATION PROPERTY

11.1 Restoration of Damaged Association Property. Damage to or destruction of all or any portion of the Association Property shall be handled in the following manner:

a. In the event of damage to or destruction of the Association Property, and the insurance proceeds are sufficient to effect total restoration, the Association shall, as promptly as is practical, cause the Association Property

to be repaired and reconstructed in a good workmanlike manner to its condition prior to such damage or destruction;

b. If the insurance proceeds available are at least ninety percent (90%) of the estimated cost of total repair and reconstruction to the Association Property, the Association shall, as promptly as practical, cause such Association Property to be repaired and reconstructed in a good workmanlike manner to its condition prior to the damage or destruction, and the difference between the insurance proceeds and the actual cost shall be levied by the Association as a Special Assessment against each of the Lots on an equal basis; and

c. If the insurance proceeds available are less than ninety percent (90%) of the estimated cost of total repair and reconstruction to the Association Property, the Owners shall, by the written consent or vote of a majority of the Owners, determine whether: (1) to restore the Association Property as promptly as practical to its condition prior to the damage or destruction, and to raise the necessary funds over and above the insurance proceeds available by levying Assessments against each of the Lots on an equal basis; or (2) to restore the Association Property in a way which utilizes all available proceeds and an additional amount not in excess of ten percent (10%) of the estimated cost of total reconstruction and repair to the Association Property, and which is assessable as provided above to all Lots, but which is less expensive than restoring the Association Property to its condition prior to the damage or destruction.

11.2 Retention of Excess Insurance Proceeds In General Fund. In the event any excess insurance proceeds remain after restoring the destroyed Association Property pursuant to this Article, the Board shall retain such sums in the general fund of the Association.

11.3 Requirements of FHLMC. and FNMA. Notwithstanding the provisions of this Article, the Board shall comply with all requirement of the Article herein entitled "Mortgage Protection."

11.4 Damage by Owners. To the extent permitted by law, each Owner shall be liable to the Association for any damage to the Association Property not fully reimbursed to the Association by insurance if the damage is sustained due to the negligence, willful misconduct, improper installation or maintenance of an Improvement by an Owner, his tenants, guests or invitees. The Board shall have the right, after Notice and Hearing, as provided in the By-Laws, to levy a Compliance Assessment for any damages so caused by an Owner, including, without limitation, the costs of any increased insurance premiums which are attributable to the damages caused by such Owner.

ARTICLE 12

CONDEMNATION

12.1 Distribution of Awards - Association Property. A condemnation award affecting all or any portion of the Association Property shall be remitted to the general fund of the Association.

12.2 Board of Directors as Attorney-in-Fact. Owners hereby appoint the Board as their special attorney-in-fact to handle the negotiations, settlements and agreements pertaining to any condemnation affecting only the Association Property.

ARTICLE 13

COVENANT AGAINST PARTITION

13.1 Covenant Against Partition. By acceptance of his deed, each Owner shall be deemed to covenant for himself, and for his heirs, representatives, successors and assigns, that he will not institute legal proceedings to effect judicial partition of his interest in the Project, unless the Project: (a) has been in existence in excess of fifty (50) years, (b) is obsolete and uneconomical, and (c) the Owners of fifty percent (50%) of the total of all Lots in the Project join in such action for partition.

ARTICLE 14

INSURANCE

14.1 Required Insurance Coverage. The Association shall obtain and maintain a master property insurance policy that satisfies each of the following conditions:

(i) Property Covered: The policy shall cover the following real and personal property:

(a) Common Area: All Common Area Improvements, including buildings and any additions or extensions thereto; all fixtures, machinery, and equipment permanently affixed to the Building, if any;

(ii) Covered Cause of Loss: The policy shall provide coverage against losses caused by fire and all other hazards normally covered by a "special form" policy or its equivalent.

(iii) Dollar Limit: The dollar limit of the policy shall not be less than the full replacement value of the covered property described in section (i) above, provided that there may be lower dollar limits for specified items as is customarily provided in property insurance policies.

(iv) Primary: The policy shall be primary and noncontributing with any other insurance policy covering the same loss.

(v) Endorsements: The policy shall contain the following endorsements or their equivalents: agreed amount, boiler and machinery (to the extent applicable), inflation guard, ordinance or law, and replacement cost, and such other endorsements as the Board in its discretion shall elect.

(vi) Waiver of Subrogation: The policy shall waive all subrogation rights against any Owner or occupant and their family members and invitees.

(vii) Cancellation: The policy shall provide 30 days' prior notice of cancellation.

(viii) Earthquake Endorsement: The Association shall not carry an earthquake endorsement without the approval of a majority of the total voting power of the Members. If the Members elect to require the Association to obtain an earthquake endorsement, the endorsement may be subsequently canceled on vote of a majority of the total voting power of the Members. If canceled, the Association shall make reasonable efforts to notify the Members of the cancellation at least 30 days' before the effective date of the cancellation.

Board's Authority To Revise Insurance Coverage. Subject to any restrictions imposed by any Mortgagees, the Board shall have the power and right to deviate from the insurance requirements contained in this Article, in any manner that the Board, in its 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, the Board shall make all reasonable efforts to notify the Members of the reduction in coverage and the reasons therefor at least 30 days' before 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, (1) the Association is unable to obtain any insurance required hereunder because the insurance is no longer available; (2) 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 (3) the Members fail to approve any assessment increase needed to fund the insurance premiums.

The Board is authorized to negotiate and agree on the value and extent of any loss under any policy carried by the Association, including, but not limited to, the right and authority to compromise and settle any claim or enforce any claim by legal action or otherwise and to execute releases in favor of any insurer.

Each Owner, by acceptance of a deed to a Lot, irrevocably appoints the Association's authorized representative as that Owner's attorney-in-fact for purposes of procuring, negotiating, accepting, compromising, releasing, settling, distributing, and taking other related actions in connection with any insurance policy maintained by the Association and any losses or claims related thereto and agrees to be bound by the actions so taken as if the Owner had personally taken the action.

Periodic Insurance Review. The Board periodically (and not less than once every 3 years) shall review the Association's insurance policies and make such adjustments to the policies' terms and conditions as the Board considers to be in the best interests of the Association. The review shall include an appraisal by a qualified appraiser of the current replacement costs of all covered property under the Association's policy unless the Board is satisfied that the current dollar limit of the property policy, coupled with the amount of actual reserves on hand, is equal to or greater than the current replacement costs.

Subject to the foregoing, the coverages shall be as follows:

a. Casualty and Fire Insurance. A policy or policies of casualty and fire insurance (special forms) with extended coverage endorsement in an amount equal to one hundred percent (100%) of the current replacement cost (without deduction for depreciation or co-insurance) of insurable improvements located on the Association Property. Said policies shall be maintained for the benefit of the Association, the Owners and their respective Mortgagees, as their interests may appear. The loss payable clause shall be in the name of the Association, or in the name of an insurance trustee for the benefit of the Owners. Unless a higher maximum amount is required by California law, the maximum amount shall be the lesser of Ten Thousand Dollars (\$10,000.00) or one percent (1%) of the policy face amount. Such policy must be written by an insurance carrier that meets the requirements of FNMA and/or FHLMC, as applicable.

b. General Liability Insurance. A comprehensive policy or policies of full coverage general liability insurance (with cross-liability endorsement, if obtainable) insuring the Association, the Board, the Owners, Declarant any Merchant Builder and the agents and employees of each of the foregoing against any liability to the public or to any Owner, his family, invitees and/or tenants, arising from or incident to the ownership, occupation, use, maintenance and/or repair of the Association Property. The limits of liability under this section shall be set by the Board and shall be reviewed at least annually by the Board and increased or decreased at the discretion of the Board; provided, however, that said limits shall not be less than Three Million Dollars (\$3,000,000.00) per occurrence for bodily injury, including deaths of persons and property damage arising out of a single occurrence; and provided further, that if FHLMC and/or FNMA participate in the financing of Lots in the Project, said limits shall not be less than the minimum limits required under the then current FHLMC and/or FNMA regulations.

c. Fidelity Bonds or Insurance. Fidelity bonds or fidelity insurance naming all persons signing checks or otherwise possessing fiscal responsibilities on behalf of the Association, including, but not limited to, officers, the Board, trustees and employees of the Association, and officers, employees and agents of any management company employed by the Association who handle or are responsible for the administration of Association funds, if obtainable against negligent or dishonest acts or omissions of the Association's officers, directors, managers (and such manager's employees), agents, representatives, employees or volunteers responsible for handling the funds of the Association. Such coverage shall be in an amount deemed reasonably appropriate by the Association, but shall not be less than the estimated minimum funds, including reserves, in the custody of the Association, or its manager at any given time during the term of such bonds or insurance. However, in no event shall the aggregate amount of such bonds or insurance be less than three (3) months' Regular Assessments (including reserves) on all Lots then subject to the payment of Assessments. The bonds or insurance shall include a provision which requires the bonding company or insurance company to provide not less than twenty (20) days prior written notice to the Association of cancellation, material modification or election not to renew said bonds or insurance.

14.2 Overriding Insurance Requirements. The Association shall obtain and continuously maintain such insurance which meets the amount, amount of the deductible term and coverage of any policy required hereunder, including the type of endorsements, amount of the deductible, the named insureds, the loss payees, notices of changes or cancellations, the insurance company rating and other requirements and standards imposed for this type of Project by FNMA, FHLMC or pursuant to California law, so long as any of which is a Mortgagee, insurer, guarantor or Owner of a Lot within the Project, except to the extent such coverage is not available or has been waived in writing by FNMA and FHLMC, as applicable. If FNMA and FHLMC requirements conflict, the more stringent requirements shall be met. If FNMA and FHLMC do not impose requirements on any policy required herein, the term, amount and coverage on any policy shall be no less than that which is customary for similar projects in the vicinity of this Project.

14.3 Other Insurance Coverage. The Board shall purchase such other insurance coverage the Board deems necessary, or as required by any first Mortgagee or by law, to protect the interests of the Association and its members, including, but not limited to, directors, officers and agents liability coverage, plate glass insurance, malicious mischief and vandalism coverage and worker's compensation insurance, or such other coverage as shall be customarily maintained in effect with respect to developments similar in construction, location and use.

14.4 Notice of Cancellation of Insurance. All policies of insurance maintained by the Association pursuant to this Article shall contain a provision that coverage under said policies may not be canceled, terminated, allowed to expire by their own terms, or be substantially modified by any party without at least twenty (20) days' prior written notice to the Board, to each Owner and to such first Mortgagees who have filed written requests with the Association for such notice. A list of the Owners and such first Mortgagees shall be made available by the Association to the insurance carrier upon request.

14.5 Annual Review of Coverage. The Board shall annually determine whether the amounts and types of insurance coverage that it has obtained pursuant to this Article shall provide adequate coverage for the Project, based upon the then current construction costs, insurance practical in the area in which the Project is located and all other factors which may indicate that either additional insurance coverage or increased coverage under the existing policies is necessary or desirable to protect the interests of the Association, the Owners and their respective Mortgagees. If the Board determines that increased coverage or additional insurance is appropriate, it shall obtain same.

The Association shall, upon issuance or renewal of insurance policies, but no less frequently than annually, notify the Members of the amount and type of insurance maintained by the Association to satisfy the insurance coverage requirements stated in § 1365.9 of the California Civil Code, and any successor and companion statutes.

14.6 Waiver by Owners. As to all policies of insurance maintained by the Association which will not be voided or impaired thereby, each Owner hereby waives and releases all claims against the Association, the Board, the Declarant

and the agents and employees of each of the foregoing, and all other Owners, with respect to any loss covered by such insurance, whether or not caused by the negligence of, or breach of, any agreement by said persons, but only to the extent of the insurance proceeds received in compensation for such loss.

14.7 Premiums, Proceeds and Settlement. Insurance premiums for all blanket insurance coverage and any other insurance coverage which the Board has determined is necessary to protect the interests of the Association, the Owners and their respective Mortgagees, shall be a Common Expense to be included in the Regular Assessments levied by the Association. All insurance proceeds paid to the Association shall be disbursed as follows: (a) in the event of any damage or destruction to the Association Property, such proceeds shall be disbursed in accordance with the provisions of the Article herein entitled "Damage or Destruction to the Association Property"; and (b) in the event of any other loss, the proceeds shall be disbursed as the Board shall deem appropriate, subject to the limitations set forth in the Article herein entitled "Mortgagee Protection." The Association is hereby granted the authority to negotiate loss settlements with the appropriate insurance carriers. Any two (2) Directors may sign a loss claim form and release form in connection with the settlement of a loss claim, and such signatures shall be binding on the Association and its Members.

14.8 Rights and Duties of Owners to Insure. Each Owner shall obtain insurance on his Lot, including the Residence and all other Improvements located thereon. Nothing herein shall preclude any Owner from carrying any public liability insurance as he may deem desirable to cover his individual liability for damage to person or property occurring inside his individual Lot or elsewhere upon the Project. If obtainable, such liability insurance coverage carried by an Owner shall contain a waiver of subrogation of claims against Declarant, Merchant Builder, the Association, the Board, their respective agents and employees, and all other Owners. Such other policies shall not adversely affect or diminish any liability under insurance obtained by the Association. If any loss intended to be covered by insurance carried by the Association shall occur and the proceeds payable thereunder shall be reduced by reason of insurance carried by any Owner, such Owner shall assign the proceeds of such insurance carried by him to the Association to the extent of such reduction for application by the Board to the same purposes as the reduced proceeds are to be applied.

14.9 Trustee for Policies. The Association is hereby appointed and shall be deemed trustee for the interests of all insureds under the policies of insurance maintained by the Association. All insurance proceeds under such policies shall be paid to the Board, as trustees, and the Board shall have full power to receive such funds on behalf of the Association, the Owners and their respective Mortgagees, and to deal therewith as provided for in this Declaration.

14.10 Mortgage Clause. All insurance policies must have the standard mortgage clause, or equivalent endorsement, providing that coverage of a Mortgagee under the insurance policy will not be adversely affected or diminished by an act or neglect of the Mortgagor, which is commonly accepted by private institutional mortgage investors in the area in which the Project is located, unless such coverage is prohibited by applicable law. Mortgages owned by FNMA must name as a Mortgagee either FNMA or the services for the Mortgages held by FNMA encumbering the Lots. When a servicer is named as the Mortgagee, its name should be followed by the phrase its successors and assigns. If the Mortgage is owned in whole by FHLMC, the name of the servicer of the Mortgage followed by the phrase its successors and assigns, beneficiary should be named as Mortgagee instead of FHLMC. The mortgage clause must be endorsed to fully protect FHLMC's interests or the interest of FHLMC and the servicer where applicable. If FHLMC must be named as Mortgagee, the endorsement should show the servicer's address in lieu of FHLMC's address. A mortgage clause in favor of Mortgagees holding Mortgages on Lots is not required on a policy insuring the Association Property.

ARTICLE 15

MORTGAGEE PROTECTION

15.1 Mortgagee Protection Provisions. Notwithstanding any other provisions in this Declaration to the contrary, in order to induce FNMA and FHLMC to participate in the financing of the sale of Lots in the Project, the following provisions contained within this Article are added hereto, and, to the extent these added provisions conflict with any other provisions in this Declaration, these added provisions shall control. This Declaration, the Articles and the By-Laws for the Association are hereinafter collectively referred to in this Article as the "constituent documents."

a. The right of an Owner to sell, transfer or otherwise convey his Lot shall not be subject to any right of first refusal or any similar restriction in favor of the Association;

b. The lien of the Assessments provided for herein shall be subordinate to the lien of any first Mortgage now or hereafter recorded upon any Lot. The sale or transfer of any Lot shall not affect the Assessment lien; however, the sale or transfer of any Lot pursuant to judicial or non-judicial foreclosure of a first Mortgage, or pursuant to any remedies provided for in the Mortgage, shall extinguish the lien of such Assessments as to payments which became due prior thereto. No sale or transfer shall relieve such Lot from liability for Assessments due thereafter. Any first Mortgagee who obtains title to a Lot pursuant to the remedies provided in the Mortgage, or foreclosure of the Mortgage, or any purchaser at a foreclosure sale of a first Mortgage, will not be liable for unpaid Assessments or charges which accrue prior to the acquisition of title to such Lot by the Mortgagee (except for claims for a share of such Assessments or charges resulting from a reallocation of such Assessments or charges to all Lots, including the mortgaged Lot);

c. Except as provided by statute in case of condemnation or substantial loss to the Lots and/or the Association Property, unless sixty-seven percent (67 %) of the Owners, other than Declarant, or sixty-seven percent (67%) of the first Mortgagees (based upon one [1] vote for each first Mortgage owned) have given their prior written approval, neither the Association nor the Owners shall be entitled to:

(1) Change the method of determining the obligations, Assessments, dues or other charges which may be levied against an Owner's Lot, or the method of allocating distributions of hazard insurance proceeds or condemnation awards;

(2) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer all or any portion of the Association Property. The granting of easements for public utilities or for other public purposes consistent with the intended uses of the Association Property shall not be deemed a transfer within the meaning of this clause;

(3) Use hazard insurance proceeds for losses to the Association Property for other than repair, replacement or reconstruction;

(4) Effect any decision of the Association to terminate professional management and assume self-management of the Project, where such professional management was previously a requirement by a holder, insurer or guarantor of any first Mortgage;

(5) By act or omission, change, waive or abandon any provisions of this Declaration, or enforcement thereof, pertaining to architectural design of the Residences situated on a Lot, or the maintenance and operation of the Association Property within the Project, including, without limitation, sidewalks, fences, driveways and landscaping within the Project;

(6) Fail to maintain fire and extended coverage on the insurable Association Property on a current replacement cost basis in an amount not less than one hundred percent (100%) of the

insurable value thereof (based on current replacement cost); and

(7) Abandon or terminate the Association, except for abandonment, partition or termination as may be provided by law.

d. All taxes, Assessments and charges which may become liens prior to the first Mortgage under local law shall relate only to individual Lots and not to the Project as a whole;

e. No provision of the constituent documents shall be interpreted to give any Owner or any other party priority over any rights of the first Mortgagee in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to or taking of all or any portion of the Association Property or such Owner's Lot. All applicable fire and casualty insurance policies contain loss payable clauses acceptable to each Mortgagee, naming the Mortgagees, as their interests appear, as additional insureds;

f. The Assessments provided for in the constituent documents shall include an adequate reserve fund for maintenance, repairs and replacement of those elements of the Association Property that must be replaced on a periodic basis, and shall be payable in regular installments rather than by Special Assessments;

g. Each holder, insurer or guarantor of a first Mortgage shall, upon filing a written request with the Association, be entitled to be given timely written notice of:

(1) Any condemnation or eminent domain proceeding, and any loss or taking resulting from such proceeding which affects the Project, or any portion thereof;

(2) Any substantial damage or destruction to the Project, or any portion thereof, when such loss exceeds Ten Thousand Dollars (\$10,000.00);

(3) Any default in the performance of obligations imposed by the constituent documents by an Owner(s) of a Lot(s) securing the respective first Mortgage, which default remains uncured for a period of sixty (60) days or more following a written request from the Board to cure such default;

(4) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

(5) Any abandonment or termination of the Project; and

(6) Any proposed action that requires the consent of a specified percentage of eligible Mortgagees.

h. Any agreement for professional management of the Project, or any contract providing for services of the Declarant may not exceed one (1) year, renewable by agreement of the parties for successive one (1) year periods. Any such agreement must provide for termination by either party without cause and without payment of a termination fee on ninety (90) days' written notice;

i. First Mortgagees of Lots may, jointly or singly, pay taxes or other charges which are in default and which may have become a lien on the Association Property, and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for the Association Property, and first Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association. Upon demand by any first Mortgagee, the Board shall execute, on behalf of the Association, an agreement establishing the

right of all first Mortgagees to such reimbursement;

j. A first Mortgagee of a Lot in the Project shall, upon filing written request with the Association, be entitled to:

- (1) Examine the books and records of the Association during normal business hours;
- (2) Require the Association to submit an annual audited financial statement if one is available, or have one prepared at the expense of the requesting entity if such statement is not otherwise prepared by the Association; provided that, upon annexation of additional Lots into the Project, such that fifty (50) or more Lots are subject to this Declaration, the Association may be required to submit such a statement without expense to the requesting entity; and
- (3) Receive written notice of all meetings of the Association and designate in writing a representative to attend all such meetings, without, however, the right to vote at such meetings.

k. Each Owner shall notify the Association in writing within ten (10) days after the close of escrow for the purchase of his Lot of the name and address of his first Mortgagee, and, thereafter, each Owner shall promptly notify the Association of any changes of name or address for his first Mortgagee;

l. Each Owner hereby authorizes a first Mortgagee on a Lot to furnish information to the Board concerning the status of any such first Mortgagee;

m. If any Lot (or portion thereof) or the Association Property (or portion thereof) is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, then the institutional holder of any first Mortgage on such Lot will be entitled to timely written notice of any such proceeding or proposed acquisition;

n. In the event any portion of the Association Property encroaches upon any Lot, or any Lot encroaches upon the Association Property as a result of the construction, reconstruction, repair, shifting, settlement or movement of any portion of the Project, a valid easement for the encroachment and for the maintenance of the same shall exist so long as the encroachment exists; and

o. All intended Improvements in Phases made subject to this Declaration shall be consistent with the Improvements in Phase 1 in terms of quality of construction. The requirements of this provision are for the benefit of and may be enforced only by FNMA.

15.2 Violation of Mortgagee Protection Provisions. No breach of any of the foregoing Protective Covenants shall cause any forfeiture of title or reversion or bestow any right of reentry whatsoever, but in the event that any one or more of these Protective Covenants shall be violated, the Declarant, its successors and assigns, the Association or any Owner in the Project may commence a legal action in any court of competent jurisdiction to enjoin or abate said violation and/or to recover damages; provided, however, that any such violation shall not defeat or render invalid the lien of any Mortgage or deed of trust made in good faith and for value. Said Protective Covenants shall be binding upon and effective against any Owner whose title is acquired by foreclosure, trustee sale or otherwise.

15.3 Effect of Amendments. Except as may otherwise be provided herein, no amendment of this Declaration or the Articles or the By-Laws of the Association shall affect the rights of any Mortgagee whose lien was created prior

to recordation of such amendment.

15.4 Amendments to Conform With Mortgage Requirements. It is the intent of Declarant that this Declaration and the Article and By-Laws of the Association, and the Project in general, meet all requirements necessary to purchase, guarantee, insure and subsidize any Mortgage of a Lot in the Project by the FHLMC, and FNMA. In furtherance of said intent, Declarant may amend this Declaration without the consent of the Members at any time after the close of escrow for the first sale of a Lot in the Project by recording a written instrument setting forth the amendment, provided that the amendment is necessary to cause this Declaration to comply with the requirements of the DRE, FHLMC, and/or FNMA; provided further, however, that any such amendment shall be effective only if Declarant mails a copy of the amendment to all of the foregoing entities which are, or have agreed to be, a holder, insurer or guarantor of a first Mortgage, and does not, within thirty (30) days thereafter, receive a notice of disapproval from any such entity. Said amendments shall not be recorded by Declarant until after the expiration of such thirty (30) day period.

ARTICLE 16

ANNEXATION OF ADDITIONAL PROPERTY

Additional property may be annexed to and become subject to this Declaration as set forth in this Article.

16.1 Phased Development of the Project. Declarant intends to sequentially develop the Project on a phased basis, each of which shall be annexed to the Project. However, Declarant is under no obligation to continue development of the Project. In addition, Declarant may elect to annex future Phases in any given order, pursuant to the provisions of Section 16.2 hereinbelow. No annexation hereunder shall be effective unless the procedures set forth in this Article have been executed.

16.2 Annexation Pursuant to General Plan of Development. All or any portion or portions of the real property described in Exhibit "B" as Annexation Property, may be annexed to the Project and added to the scheme of this Declaration, and be subjected to the jurisdiction of the Association without the assent of the Association or its Members, provided and on condition that:

a. The development of the Annexation Property shall be in substantial conformance with the overall general plan of development for the Project originally submitted to and approved by the City, and the DRE; and

b. A Notice of Annexation, as described in Section 16.4 of this Article, shall be recorded covering the Annexation Property.

16.3 Annexation Pursuant to Approval. Upon obtaining the approval in writing of the Association, pursuant to the vote or written assent of not less than seventy-five percent (75 %) of the total votes residing in the Members, excluding Declarant and Merchant Builders, and the DRE, the owner of any property who desires to add said property to the scheme of this Declaration and to subject it to the jurisdiction of the Association may record a Notice of Annexation in the manner described in Section 16.4 of the Article.

16.4 Notice of Annexation. The annexation of additional property authorized under this Article shall be made by filing of record a Notice of Annexation, covering said additional property, and the Notice of Annexation shall expressly provide that the scheme of this Declaration shall extend to such additional property. The Notice of Annexation may contain such provisions complementary to and make modifications of the Protective Covenants set forth in this Declaration which are necessary to reflect the different character, if any, of the annexed property and which are not inconsistent with the general scheme of this Declaration. Except as set forth in this section, no Notice of Annexation shall add, delete, revoke, modify or otherwise alter the Protective Covenants set forth in this Declaration.

All Notices of Annexation for any annexation of Annexation Property under 16.2 above must be signed by Declarant and Merchant Builders who own all or any portion of the Annexation Property described in such Notice of Annexation. Any Notice of Annexation for the addition of Real Property under Section 16.3 must be signed by at least two (2) officers of the Association to certify that the requisite Member approval under Section 16.3 was obtained. The recordation of said Notice of Annexation effectuates the annexation of the Annexation Property described therein and thereupon said Annexation Property shall constitute a part of the Project, become subject to this Declaration, and encompassed within the general plan of covenants, conditions, restrictions, reservation of easements and equitable servitudes contained herein. Upon the recordation of a Notice of Annexation containing the provisions set forth in this Section, each and all of the Protective Covenants set forth in the Declaration shall apply to the real property described in the Notice of Annexation in the same manner as if it were originally covered by this Declaration. From and after the first close of escrow in the Annexation Property, all Owners of Lots, including Declarant and Merchant Builders, as applicable, shall be responsible for the payment of Assessments as otherwise provided in this Declaration. Voting rights attributable to the Lots in the Annexation Property shall vest concurrently with such Owner's obligation for the payment of Assessments.

16.5 Amendments to Notices of Annexation. Notwithstanding any other provisions of this Declaration to the contrary, a Notice of Annexation may be amended by the requisite affirmative vote of Members (and first Mortgagees, if applicable), as set forth in the Article herein entitled "General Provisions," in only the annexed property described in said Notice of Annexation, rather than all Members (and first Mortgagees, if applicable) in the Project, on the following conditions:

- a. Such amendment applies only to the annexed property described in said Notice of Annexation; and
- b. Such amendment shall in no way contradict, revoke or otherwise alter any of the Protective Covenants set forth in this Declaration.

16.6 Failure to Annex Annexation Property. If any Annexation Property is not annexed as provided herein, and the real property within the Annexation Property requires ingress, egress and access over private streets in the Project, and access to and use of the common facilities within the Project, valid easements shall exist for reasonable vehicular and pedestrian traffic and for reasonable use of the common facilities, provided, however, that the owner(s) of said property shall be obligated to pay their equitable share of the cost of maintenance and repair of said private streets and facilities, and shall be subject to a lien or liens for the maintenance and repair costs, as may be provided in a separate agreement between the Association and the owner(s) of said property.

16.7 Rights of Successor, Declarant and Merchant Builders to Annex. The right of unilateral annexation provided for in Section 16.2 constitutes a covenant running with the land, and, is as such, enforceable by any Owner of the Property described in Exhibit "B", or any part thereof, including the present owner or its successor or assignee, and Declarant and Merchant Builders and their respective successors and assignees who acquire title to the Property described in Exhibit "B" or any part thereof. Likewise, any person or entity who assumes the role of Declarant with respect to the Annexation Property shall be required to sign any Notice of Annexation recorded pursuant to Section 16.2.

ARTICLE 17

ENFORCEMENT OF BONDED OBLIGATIONS

17.1 Enforcement of Bonded Obligations. In the event that the Improvements to the Association Property have not been completed prior to the issuance of a Final Subdivision Public Report by the DRE, and the Association is obligee under a bond or other arrangement (hereinafter referred to as the "Bond") to secure a performance of the commitment of Declarant to complete such Improvements, the following provisions shall apply:

a. 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 such Improvements in the Planned Construction Statement appended to the Bond. If the Association has given an extension in writing for the completion of any Association Property Improvement, the Board shall consider and vote on the aforesaid question if a Notice of Completion has not been filed within thirty (30) days after the expiration of such extension;

b. In the event that the Board determines not to initiate action to enforce the obligation under the Bond, or in the event the Board fails to consider and vote on such question as provided above, the Board shall call a special meeting of the Members for the purpose of voting to override such decision or such failure to act by the Board. Such meeting shall be called according to the provision of the By-Laws dealing with meetings of the Members, but in any event, such meeting shall be held not less than thirty-five (35) days nor more than forty-five (45) days after receipt by the Board of a petition for such meeting signed by Members representing five percent (5 %) of the total voting power of the Association; and

c. The only Members entitled to vote at such meeting of Members shall be the Owners, other than Declarant or Merchant Builders. A vote at such meeting of a majority of the voting power of such Members, other than the Declarant, to take action to enforce the obligations under the Bond shall be deemed to be the decision of the Association, and the Board shall thereafter implement such decision by initiating and pursuing appropriate action in the name of the Association.

ARTICLE 18

INTEREST AND EXEMPTION OF DECLARANT

18.1 Exemption of Declarant and Merchant Builders. Nothing in this Declaration shall limit and no Owner, or the Association shall do anything to interfere with the right of Declarant and Merchant Builders to complete excavation and grading and construction of Improvements to and on any portion of the Project, or to alter the foregoing and its construction plans and designs, or to construct such additional Improvements as Declarant and Merchant Builders deem advisable in the course of development of the Project so long as any Lot in the Project owned by Declarant and for Merchant Builders remains unsold. Such right shall include, but not be limited to, grading work as may be approved by any agency having jurisdiction, and erecting, constructing and maintaining on the Project such structures, signs and displays as may be reasonably necessary for the conduct of its business of completing the work and selling the same. This Declaration shall not limit the right of Declarant or Merchant Builders, at any time prior to acquisition of title on a Lot by a purchaser from Declarant or Merchant Builders, to establish on that Lot additional licenses, easements, reservations and rights-of-way to itself, to utility companies, or to others as may, from time to time, be reasonably necessary to the proper development and disposal of the Project. Prospective purchasers, Declarant and Merchant Builders shall have the right to use all and any portion of the Association Property for access to the sales office of Declarant or Merchant Builders, provided that such use shall not unreasonably interfere with the rights of Members to use and enjoy the Association Property. Declarant and Merchant Builders may install structures on Lots owned by Declarant in the Project as model homes or sales offices. Notwithstanding any other provision of this Declaration, the prior written approval of Declarant (which approval may be withheld, in Declarant's sole and absolute discretion), as the master developer of the Project, will be required before any amendment to this Article shall be effective.

Notwithstanding any other provisions of the Association Management Documents, until such time as neither Declarant nor any Merchant Builders are entitled to add Annexation Property to the Project without the consent of the Owners pursuant to the Article herein entitled "Annexation of Additional Property," or neither the Declarant nor any Merchant Builder owns any Lots in the Project or within the Annexation Property, whichever occurs last, the following actions, before being undertaken by the Members or the Association, shall first be approved in writing by Declarant:

a. Any amendment or action requiring the approval of first Mortgagees, pursuant to this Declaration, or specifically requiring the approval of Declarant pursuant to the section entitled "Amendments" of the Article herein entitled "General Provisions;"

b. The annexation to the Project of real property other than the real property described as Annexation Property in Exhibit "B" to this Declaration;

c. A levy of a Special Assessment for the construction of new facilities not originally included in the Association Property; or

d. Any significant reduction of Association maintenance of Association Property or other services ordinarily contemplated in the Association budget.

18.2 Reservation of Rights. Nothing in this Declaration shall limit the right of Declarant and Merchant Builders to alter or modify the Residences still owned by Declarant or Merchant Builders, or to construct such additional Improvements as Declarant deems advisable prior to the completion of Improvements in the Project and within the Annexation Property. Such rights shall include, but shall not be limited to, erecting, constructing, maintaining and repairing within the Project model home complexes, real estate sales offices and other structures, signs, banners and displays as may be reasonably necessary for the proper development, disposition and sale of the real property and Improvements within the Project. Declarant or Merchant Builders shall repair any damage to and complete any restoration of Improvements within the Project caused or necessitated by such activities of Declarant or Merchant Builders.

18.3 Assignment of Declarant's Rights. Declarant shall have the right to assign any or all of its rights and obligations in this Declaration to any successor by an assignment expressed in a recorded instrument, including, without limitation, a deed, lease, option agreement, land sale contract or other instrument of assignment, as the case may be, transferring such interest if such assignee agrees in writing with Declarant to accept such assignment. No Merchant Builder may assign any or all of its rights and obligations in this Declaration without the prior written approval of Declarant, so long as Declarant owns one or more Lots or Association Property within the Project or the Annexation Property.

ARTICLE 19 GENERAL PROVISIONS

19.1 Enforcement.

a. The Association, pursuant to the provisions set forth in Sections 1354 and 1363(c) of the California Civil Code, and any successor or complementary statute, the City and any Owner of a Lot in the Project, including the Declarant, shall have the right to enforce, by proceedings at law or in equity, all of the Protective Covenants now or hereafter imposed by this Declaration and the By-Laws, respectively (and the Rules and Regulations duly adopted by the Association), including, without limitation, the right to prosecute a proceeding at law or in equity against the person or persons who have violated, or are attempting to violate, any of said Protective Covenants, to enjoin or prevent them from doing so, to cause said violation to be remedied and/or to recover damages for said violation. It is expressly agreed and acknowledged by Declarant, any Merchant Builder and by each Owner thereafter that the Association and not the City is responsible for enforcing the provisions of the Association Management Documents. Any judgment rendered in any action or proceeding to enforce this Declaration shall include an award of reasonable attorneys' fees and costs to the prevailing party in the action or proceeding;

b. The result of every act or omission whereby any of the Protective Covenants contained in this

Declaration or the provisions of the By-Laws are violated, in whole or in part, is hereby declared to be and constitutes a nuisance, and every remedy allowed by law or equity against a nuisance shall be applicable against every such result and may be exercised by any Owner, by the Association, or by its successors in interest;

c. The remedies herein provided for breach of the Protective Covenants contained in this Declaration or the provisions of the By-Laws shall be deemed cumulative, and none of such remedies shall be deemed exclusive;

d. The failure of the Association or any Owner to enforce any of the Protective Covenants contained in this Declaration, the provisions of the By-Laws or any Rules or Regulations shall not constitute a waiver of the right to enforce the same thereafter;

e. A breach of the Protective Covenants contained in this Declaration or of the provisions of the By-Laws shall not affect or impair the lien or charge of any bona fide Mortgage or deed of trust made in good faith and for value on any Lot; provided, however, that any subsequent Owner of such property shall be bound by said Protective Covenants and the provisions of the By-Laws, whether or not such Owner's title was acquired by foreclosure, a trustee's sale or otherwise;

f. The Board, for and on behalf of the Association, may assess monetary penalties against an Owner as a Compliance Assessment and/or temporarily suspend said Owner's voting rights and right to use any recreational facilities for the period during which any Assessment against said Owner's Lot remains unpaid; provided, however, the requirements for Notice and Hearing set forth in the By-Laws shall be followed with respect to the accused Owner before a decision to impose discipline is reached;

g. The Board, for and on behalf of the Association, may temporarily suspend an Owner's voting rights and right to use any recreational facilities for a period not to exceed thirty (30) days for any infraction of the Association's Rules and Regulations; provided, however, the requirements for Notice and Hearing set forth in the By-Laws shall be followed with respect to the accused Owner before a decision to impose discipline is reached;

h. In addition to the above general rights of enforcement, the City shall have the right, through its agents and employees, to enter upon any part of the Project for the purpose of enforcing the California Vehicle Code and its local ordinances, and is hereby granted an easement over the Project for that purpose; and

i. Without in any manner limiting or attempting to limit the rights of the parties to a dispute to initiate litigation in State or Federal courts, in order to promote the resolution of any controversy, claim or dispute ("Dispute") pertaining to the enforcement of this Declaration, or other management documents of the Association, including, without limitation, the validity, scope and enforceability of this provision, and/or Disputes which relate to the design, character, quality and condition of Association Property within the Project, the parties are hereby encouraged to resolve the dispute through alternative dispute resolution, such as an unassisted settlement conference between/among the parties, or participation in mediation or arbitration proceedings with an alternative dispute resolution service ("ADR Service"), such as Judicial Arbitration and Mediation Services, Inc., and the American Arbitration Association ("AAA"). If the parties are unable to agree upon an ADR Service, any mediation shall be conducted by AAA in accordance with AAA's commercial mediation rules, and any arbitration shall be conducted by AAA in accordance with the AAA's commercial arbitration rules. Any up-front and all progress fees paid to the ADR Service shall be paid equally by the parties to such dispute. The aforesaid requirements shall not apply if an applicable statute of limitations would expire within one hundred twenty (120) days prior to one party informing the other of a Dispute.

If so chosen by the parties, the alternative dispute resolution process shall be initiated by serving a Request for Resolution. The party receiving such Request for Resolution shall have thirty (30) days either to accept or reject the request to resolve the dispute by the ADR Service. If not accepted within the thirty (30) day period, such Request for Resolution shall be deemed rejected. If accepted, the alternative dispute resolution process shall be initiated not later

than forty-five (45) days following acceptance of the Request for Resolution and shall be completed as expeditiously as possible thereafter. In addition, if a civil action has been filed to enforce any provisions of the governing documents, on stipulation of the parties, the action may be stayed upon agreement of the parties and referred to the ADR Service.

19.2 Construction Defect Claims

19.2.1 Non-Adversarial Dispute Resolution Procedure Election. Pursuant to California Civil Code section 914(a), Declarant hereby gives notice that it has elected to engage in the non-adversarial dispute resolution procedures set forth in California Civil Code sections 910 through 938 (the "Fix-It Procedure"), copies of which were provided to each original buyer of a Lot in the Project and said original buyers were instructed to deliver said copies to all subsequent buyers of each Lot. Association shall only have the right to enforce the Fix-It Procedure against claims of defects and/or unmet standards for Association Property and not for any separate Lot(s). Immediately upon transferring title of the Association Property to Association, the Members, and not the Declarant or any successor declarant, shall have and obtain immediate control over whether to initiate a claim under the Fix-It Procedure for alleged Association Property defects and/or unmet standards.

19.2.2 Limited Contractual Warranty. As to Association Property, Declarant will provide a one-year warranty, (the "Limited Warranty"). Nothing in the Limited Warranty or any other document provided by Declarant diminishes any rights or obligations that Declarant, any successor declarant, or Owner of a Lot may have under California Civil Code sections 895 through 945.5 ("Senate Bill 800" or "SB800"), copies of which Declarant has provided to the original buyers of each Lot in the Project and said original buyers were instructed to deliver said copies to all subsequent buyers of each Lot. In addition, the fit and finish of cabinets, mirrors, flooring, interior and exterior walls, countertops, paint finishes, and trim of Association Property is warranted for one (1) year from transfer of title to Association. The Limited Warranty does not constitute an enhanced protection agreement under California Civil Code section 901 or alternative non-adversarial dispute resolution procedures.

19.2.3 Agent for Fix-It Procedure. Declarant hereby gives notice that the following individual ("Agent") is Declarant's agent for notice of claims pursuant to the non-adversarial dispute resolution procedure set forth in California Civil Code sections 910 through 938:

DESERT 49 ESTATES, INC.
Attn.: Customer Service
78-401 Highway 111, Suite G
La Quinta, CA 92253"

19.3 Right of Lienholder. A breach of any of the provisions, conditions, restrictions, covenants, easements or reservations herein contained shall not affect or impair the lien or charge of any bona fide first Mortgage made in good faith and for value, on any of the Lots, provided, however, that any subsequent Owner of the Lot shall be bound by these provisions, conditions, restrictions, covenants, easements and reservations whether such Owner's title was acquired by foreclosure, trustee's sale or otherwise.

19.4 Enforcement. In the event of a breach of any of the provisions, conditions, restrictions, easements, covenants or reservations hereby established, the Board may enforce any and all of the terms and conditions of this Declaration in equity or otherwise. It is hereby declared that damages at law for such breach are inadequate. The restrictions provided bind all Owners.

19.5 Notice of Actions Against Declarant. The Association shall comply with the provisions of Section 1368.4 of the Civil Code, or any successor statute or law, by providing written notice to each Member whose name then appears on the records of the Association, not later than thirty (30) days prior to the filing of any civil action by the Association against the Declarant or other developer of the Project for either alleged damage to the Common Area or other property

within the Project that the Association is obligated to maintain or repair, or alleged damage to any other portion of the Project that arises out of, or is integrally related to, such damage to the Common Area or other property within the Project that the Association is obligated to maintain or repair. Such notice shall specify all of the following:

- a. That a meeting of the Members will take place to discuss problems that may lead to the filing of a civil action;
- b. The options, including civil actions, that are available to address the problems;
- c. The time and place of such meeting; and
- d. A description of the nature of the claim, the basis for bringing the claim, the source of funds to process the proceedings (i.e., reserves or Special or Regular Assessments), an estimate of the cost to the Association in prosecuting any claim, a description of the agreement with the attorney representing the Association on such claim and a statement advising the members of their duty to disclose to prospective purchasers and lenders the claims of defect which the Association will assert. Such notice shall be given to the Declarant and each Member and any other person or entity with the party or prospective party to the Civil action.

Notwithstanding the foregoing, if the Association has reason to believe, after a diligent and good faith inquiry, that the applicable statute of limitations will expire before the Association files such a civil action, the Association may give the notice, described above, within thirty (30) days after the filing of the action. However, the Association shall undertake reasonably prudent steps to ascertain whether a tolling agreement can be executed with Declarant and the other parties to the civil action.

19.6 Construction Defect Actions. Any action or claim against the Declarant involving allegations or claims for defects in the design or construction of any portion of the Project, shall be brought in accordance with the requirements and procedures set forth in California Civil Code sections 910 through 945.5 and section 1375 or any successor statutes.

19.7 Dispute Notification and Resolution Procedure (Declarant Disputes): Waivers. Except as permitted or required by Senate Bill 800 and/or the Fix-It Procedures, any action or claim by, between, or among the Declarant or successor declarant, as the builder of the Project or any director, officer, partner, member, employee or agent of the Declarant or any successor declarant, or any contractor, subcontractor, design professional, engineer or supplier who provided labor, services, or materials to the Project and who is bound or has agreed to be bound to the following dispute notification and resolution procedure (collectively, the "Declarant Parties") and either the Association or any Owner, relating to or arising out of the Project, this Declaration, or other governing documents of the Association, the sale of the property, the use or condition of the Property, or the design or construction of or any condition on or affecting the Project, including, but not limited to, construction defects, surveys, soils conditions, grading, specifications, installation of improvements or dispatch which allege breach of implied or express warranties as to the condition of the Property or Project where the amount in controversy is greater than \$25,000 or in which non-monetary relief is sought that cannot be granted by the Limited Civil Division of a Superior Court in the State of California as of January 1, 2003) (collectively, "Dispute(s)"), the Disputes shall be subject to the provisions set forth in this section 19.7 and its subsections. The procedures set forth in Title 7 of Part 2 of the California Civil Code commencing at section 895 shall apply to and control the claim process for any construction defect disputes relating to the Association Property or any Lot. In the event the pre-litigation procedures do not result in resolution of a claim and Association or any Owner pursues further legal action, Declarant, Association, and Owners shall be bound by the dispute resolution procedure set forth in this section 19.7 and its subsections.

19.7.1 Notice. Any person with a Dispute claim shall notify the Declarant in writing of the claim, which writing shall describe the nature of the claim and any proposed remedy (the "Claim Notice").

19.7.2 Right to Inspect and Right to Corrective Action. Within a reasonable period after receipt of the Claim Notice, which period shall not exceed sixty (60) days, the Declarant and the claimant shall meet at a mutually-acceptable place within or near the Project to discuss the Dispute claim. At such meeting or at such other mutually-agreeable time, the Declarant and the Declarant's representatives shall have full access to the property that is subject to the claim and shall have the right to conduct inspections, testing and/or destructive or invasive testing of the same in a manner deemed appropriate by Declarant, which rights shall continue until such time as the Dispute is resolved as provided in this Section 19.7.2. The parties to the Dispute shall negotiate in good faith in an attempt to resolve the claim. If the Declarant elects to take any corrective action, the Declarant and the Declarant's representatives and agents shall be provided full access to the Project to take and complete corrective action.

19.7.3 Civil Code Sections 1368.4 and 1375. Nothing contained herein shall be deemed a waiver or limitation of the provisions of California Civil Code Section 1368.4, referenced in Section 19.6 of the Declaration. If the claim is subject to the provisions of Civil Code Section 1375 as it may be amended from time to time, compliance with the procedures of Civil Code Sections 1375 (b), (c) and (d) shall satisfy the requirements of Sections 19.7.1 and 19.7.2.

19.7.4 Mediation. If the parties to the Dispute cannot resolve the claim pursuant to the procedures described in Subsection 19.7.3 above (including, if applicable, Civil Code Section 1375 procedures), the matter shall be submitted to mediation pursuant to the mediation procedures adopted by the American Arbitration Association (except as such procedures are modified by the provisions of this Section 19.7.4) or any successor thereto or to any other entity offering mediation services that is acceptable to the such parties. No person shall serve as a mediator in any Dispute in which the person has any financial or personal interest in the result of the mediation except by the written consent of all parties to the Dispute participating in the mediation. Prior to accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or to prevent a prompt commencement of the mediation process. Except as provided in Section 19.7.8 below, the Association and each Owner covenants that each shall not commence any litigation against the Declarant Parties without complying with the procedure described in this Section 19.7.4.

a. Position Memoranda: Pre-Mediation Conference. Within ten (10) days of the mediation, each party to the Dispute participating in the mediation shall submit a brief memorandum setting forth its position with regard to the issues that need to be resolved. The mediator shall have the right to schedule a pre-mediation conference and all parties to the Dispute participating in the mediation shall attend unless otherwise agreed. The mediation shall be commenced within ten (10) days following the submittal of the memoranda and shall be concluded within fifteen (15) days from the commencement of the mediation unless the parties to the Dispute participating in the mediation mutually agree to extend the mediation period. The mediation shall be held in the county in which the Project are located or such other place as is mutually acceptable to the parties to the Dispute participating in the mediation.

b. Conduct of Mediation. The mediator has discretion to conduct the mediation in the manner in which the mediator believes is most appropriate for reaching a settlement of the Dispute. The mediator is authorized to conduct joint and separate meetings with the parties to the Dispute participating in the mediation and to make oral and written recommendations for settlement. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the Dispute, provided the parties to the Dispute participating in the mediation agree and assume the expenses of obtaining such advice. The mediator does not have the authority to impose a settlement on the parties to the Dispute participating in the mediation.

c. Exclusion Agreement. Prior to the commencement of the mediation session, the mediator and all parties to Dispute participating in the mediation shall execute an agreement pursuant to California Evidence Code Section 1115, et seq., or successor statute, in order to exclude the use of testimony or evidence produced at the mediation in any subsequent dispute resolution forum, including, but not limited to, court proceedings, reference proceedings or arbitration hearings. Pursuant to California Evidence Code Section 1115, et seq., the agreement shall specifically state that evidence of anything said or of any admission made in the course of the mediation is not admissible evidence, and disclosure of any such evidence shall not be compelled in any civil action in which, pursuant

to law, testimony can be compelled to be given. Unless the document provides otherwise, no document prepared for the purpose of, or in the course of, or pursuant to, the mediation, or copy thereof, is admissible in evidence; and disclosure of any such document shall not be compelled in any civil action in which, pursuant to law, testimony can be compelled to be given. The provisions of California Evidence Code Sections 1115 through 1128 shall also be applicable to such mediation process.

d. Parties Permitted at Sessions. Persons other than the parties to the Dispute participating in the mediation, the representatives and the mediator may attend mediation sessions only with the permission of the parties to the Dispute participating in the mediation and the consent of the mediator. Confidential information disclosed to a mediator by the parties to the Dispute participating in the mediation or by witnesses in the course of the mediation while serving in such capacity shall be confidential. There shall be no stenographic record of the mediation process.

e. Expenses. The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including, but not limited to, the fees and costs charged by the mediator and the expenses of any witnesses or the cost of any proof of expert advice produced at the direct request of the mediator shall be borne equally by the parties to the Dispute participating in the mediation unless they agree otherwise. Each party to the mediation shall bear their own attorneys' fees and costs in connection with such mediation.

19.7.5 Judicial Reference. Should mediation pursuant to Section 19.7.4 above not be successful in resolving any Dispute, such Dispute shall be resolved by general judicial reference pursuant to Code of Civil Procedure Sections 638 and 641 through 645.1, and as modified or as otherwise provided in this Section 19.7.5. The parties to the Dispute shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the judicial reference proceeding. Declarant shall not be required to participate in the judicial reference proceeding if all parties against whom Declarant would have necessary or permissive cross-claims or counterclaims will not or cannot be joined in the judicial reference proceeding, including, but not limited to, the Declarant Parties. Subject to the limitations set forth in this Section 19.7.5, the general referee shall have the authority to try all issues, whether of fact or law, and to report a statement of decision to the court. The referee shall be the only trier of fact or law in the reference proceeding and shall have no authority to further refer any issues of fact or law to any other party without the mutual consent of all parties to the judicial reference proceeding.

a. Place. The proceedings shall be heard in the county in which the Project is located.

b. Referee. The referee shall be an attorney or retired Judge with experience in relevant real estate matters. The referee shall not have any relationship to the parties to the Dispute or in the Project. The parties to the Dispute participating in the judicial reference shall meet to select the referee within ten (10) days after service of the initial complaint on all defendants named herein. Any dispute regarding the selection of the referee shall be promptly resolved by the judge to whom the matter is assigned, or if there is none, to the presiding judge of the Superior Court of the County in which the Project is located, who shall select the referee.

c. Commencement and Timing of Proceeding. The referee shall promptly commence the proceeding at the earliest convenient date in light of all of the facts and circumstances and shall conduct the proceeding without undue delay.

d. Pre-hearing Conferences. The referee may require one or more pre-hearing conferences.

e. Discovery. The parties to the judicial reference proceeding shall be entitled only to limited discovery, consisting of the exchange between such parties of only the following matters: (i) witness lists; (ii) expert witness designations; (iii) expert witness reports; (iv) exhibits; (v) reports of testing or inspections of the property subject to the Dispute, including but not limited to, destructive or invasive testing; and (vi) trial briefs. Such parties shall also be entitled to conduct further tests and inspections as provided in Section 19.7.2 above. Any other discovery

provided for in the California Code of Civil Procedure shall be permitted by the referee upon a showing of good cause or based on the mutual agreement of the parties to the judicial reference proceeding. The referee shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge.

f. Limitation on Remedies. The referee shall not have the power to award punitive damages. In addition, as further provided below, the right to punitive damages is waived. The referee shall have the power to grant all legal and equitable remedies and award compensatory damages in the judicial reference proceedings.

g. Motions. The referee shall have the power to hear and dispose of motions, including motions relating to provisional remedies, demurrers, motions to dismiss, motions for judgment on the pleadings and summary adjudication motions in the same manner as a trial court judge, except the referee shall also have the power to adjudicate summarily issues of fact or law including the availability of remedies, whether or not the issue adjudicated could dispose of an entire cause of action or defense. Notwithstanding the foregoing, if prior to the selection of the referee as provided herein, any provisional remedies are sought by the parties to the Dispute, such relief may be sought in the Superior Court of the County in which the Project is located.

h. Rules of Law. The referee shall apply the laws of the State of California except as expressly provided herein, including the rules of evidence, unless expressly waived by all parties to the judicial reference proceeding.

i. Record. A stenographic record of the hearing shall be made, provided that the record shall remain confidential except as may be necessary for post-hearing motions and any appeals.

j. Statement of Decision. The referee's statement of decision shall contain findings of fact and conclusions of law to the extent required by law if the cases were tried to a judge. The decision of the referee shall stand as the decision of the court, and upon filing of the statement of decision with the clerk of the court, judgment may be entered thereon in the same manner as if the Dispute had been tried by the court.

k. Post-hearing Motions. The referee shall have the authority to rule on all post-hearing motions in the same manner as a trial judge.

l. Appeals. The decision of the referee shall be subject to appeal in the same manner as if the Dispute had been tried by the court.

m. Expenses. The fees and costs of any judicial reference proceeding hereunder shall be equally shared by the parties to the judicial reference proceeding. Each party to the judicial reference proceeding shall bear its own attorneys' fees and costs in connection with such proceeding.

19.7.6 WAIVERS AND AMENDMENT. DECLARANT AND BY ACCEPTING A DEED FOR THE ASSOCIATION PROPERTY OR COMMON AREA OR A LOT, AS THE CASE MAY BE, THE ASSOCIATION AND EACH OWNER AGREE TO HAVE ANY DISPUTE RESOLVED ACCORDING TO THE PROVISIONS OF THIS SECTION 19.7 AND WAIVE THEIR RESPECTIVE RIGHTS TO PURSUE ANY DISPUTE IN ANY MANNER OTHER THAN AS PROVIDED IN THIS SECTION 19.7. SUCH PARTIES ACKNOWLEDGE THAT BY AGREEING TO RESOLVE ALL DISPUTES AS PROVIDED IN THIS SECTION 19.7, THEY ARE GIVING UP THEIR RESPECTIVE RIGHTS TO HAVE SUCH DISPUTES TRIED BEFORE A JURY AND FURTHER WAIVE THEIR RESPECTIVE RIGHTS TO AN AWARD OF PUNITIVE DAMAGES RELATING TO SUCH DISPUTES, THEREBY GIVING UP ANY RIGHTS SUCH PARTIES MAY POSSESS TO SUCH REMEDIES. THIS SECTION 19.7 SHALL NOT BE AMENDED WITHOUT DECLARANT'S PRIOR WRITTEN CONSENT.

19.7.7 Exceptions to Mediation and Reference: Statutes of Limitation. The procedures set forth in this Section

19.7 shall apply only to Disputes and shall not apply to any action taken by the Association against Declarant or any Owner for delinquent assessments, which shall be covered by this Declaration, or in any action involving any bond covered by the provisions of the By-Laws. Furthermore, nothing in this Section 19.7 shall be considered to toll, stay, reduce or extend any applicable statutes of limitation; provided, however, that the Declarant Parties, the Association or any Owner shall be entitled to commence a legal action which in the good faith determination of any Declarant Party, the Association or Owner is necessary to preserve the Declarant Parties', the Association's or Owner's rights under any applicable statute of limitations, provided that the Declarant Party, Association or Owner shall take no further steps in prosecuting the action until it has complied with the procedures described in Sections 19.7.4 and 19.7.5.

19.8 Severability. Each of the provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof by judgment or court order, shall not affect the validity or enforceability of any other provision or provisions hereof, which shall remain in full force and effect.

19.9 Term. The Protective Covenants set forth in this Declaration shall run with and bind the Project, and shall inure to the benefit of the Association and be enforceable by the Board or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of fifty (50) years from the date this Declaration is recorded, after which time said Protective Covenants shall be automatically extended for successive periods of ten (10) years, unless an instrument, signed by a majority of the then Owners agreeing to terminate said Protective Covenants, in whole or in part, has been recorded within one (1) year prior to the termination of the initial fifty (50) year term, or within one (1) year prior to the termination of any successive ten (10) year period.

19.10 Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and maintenance of the Project. The Article and section headings have been inserted for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.

19.11 Singular Includes Plural. Whenever the context of this Declaration may so require, the singular shall include the plural, and the masculine shall include the feminine and neuter.

19.12 Amendments.

a. Amendment By Declarant. Prior to the sale of a Lot to a member of the public, in accordance with a Final Subdivision Public Report issued by the DRE, this Declaration may be amended, restated or terminated by an instrument executed by Declarant.

b. Amendments By Association. This Declaration may be amended only by an affirmative vote of Owners representing not less than sixty-seven percent (67%) of the Class A voting power and the Class B voting power of the Association. At such time when the Class B membership shall cease and be converted to Class A membership, any and all amendments to this Declaration shall be enacted by requiring the vote or written assent of Owners representing both: (a) sixty-seven percent (67%) of the total voting power of the Association, and (b) sixty-seven percent (67%) of the votes of Members, other than the Declarant and Merchant Builders; provided, however, that the percentage of the voting power necessary to amend a specific provision shall not be less than the percentage of affirmative votes prescribed for action to be taken under said provision. Any Owner or the Association may petition the Superior Court of the County for an order reducing the necessary percentage required under this section to amend this Declaration. The procedure for effecting this petition is set forth in Section 1356 of the California Civil Code, as the same may be amended, from time to time.

c. Approval of Mortgagees: FNMA Requirement. In addition to the rights of first Mortgagees, as set forth in the Article herein entitled "Mortgagee Protection," in the event that FNMA participates in the financing of Lots in the Project, the written consent of not less than fifty-one percent (51%) of the first Mortgagees who/which have

requested the Association to notify them of any proposed action that requires the consent of a specified percentage of first Mortgagees shall be required for any amendment of a "material" nature. An amendment which affects or purports to affect any of the following is considered material:

- (1) The legal status of the Project as a common interest development;
- (2) Voting rights;
- (3) Increases in Regular Assessments that result in a raise from the then current Regular Assessments by more than twenty-five percent (25%), Assessment liens or the priority of Assessment liens;
- (4) Reductions in reserves for maintenance, repair and replacement of Improvements within the Association Property;
- (5) Responsibility for Association Property maintenance;
- (6) Reallocation of interests in the Association Property or rights to use the Association Property;
- (7) Redefinition of any Lot boundaries;
- (8) Encroachment by Improvements into Association Property;
- (9) Expansion or contraction of the Project, or addition, annexation or de-annexation of additional property to or from the Project;
- (10) Convertability of Lots into Association Property or Association Property into Lots;
- (11) Hazard insurance or fidelity bond requirements;
- (12) Leasing of Lots;
- (13) Restrictions on alienation, including, but not limited to, rights of first refusal;
- (14) Any decision by the Association to establish self-management, if professional management was previously required by an eligible first Mortgagee or legal documents governing the Project;
- (15) Restoration or repair of the Project (after damage or partial condemnation) in a manner other than as specified in this Declaration;
- (16) Any action to terminate the legal status of the Project after substantial destruction or condemnation occurs; and
- (17) Mortgagee protection provisions as set forth in that Article hereinabove entitled "Mortgagee Protection," and such other provisions in this Declaration for which the consent of Mortgagees shall be required or which are expressly for the benefit of Mortgagees, insurers or guarantors of Mortgages.

In the event the Association is considering termination of the legal status of the Project for reasons other than the substantial destruction or condemnation of the Project, then sixty-seven percent (67%) of the first Mortgagees must agree to said termination.

Each first Mortgagee receiving a written notice of a proposed amendment or termination of this Declaration by certified or registered mail, with return receipt requested, shall be deemed to have approved the amendment or termination if the first Mortgagee fails to deliver a written response to the Association within thirty (30) days after the first Mortgagee receives the notice.

d. Governmental Approval. The City shall have the right to review any amendment which purports to alter, modify, terminate or revoke any of the Protective Covenants set forth herein which ensure compliance with all applicable conditions of approval and City ordinances. Notwithstanding the foregoing, any amendment which would alter, modify, terminate, revoke or affect, in any manner, any condition of development or entitlement imposed pursuant to any City ordinance, rule, regulation, entitlement or approval shall also be approved in writing by the City. The failure of the City to respond to a request for approval of any amendment within thirty (30) days following receipt of written notice thereof shall constitute the City's approval of such proposed amendment.

e. Recordation of Amendments. An amendment made in accordance with the provisions set forth hereinabove shall be effective when executed by the President and Secretary of the Association, who shall certify that the amendment has been approved by the membership and, where appropriate, by the first Mortgages, in the percentages set forth hereinabove, and recorded in the Office of the County Recorder. Upon such recordation, the amendment shall be effective and binding upon all Owners and all Mortgagees, regardless of whether such Owner or such Mortgagee consented to such amendment,

19.13 Encroachments. None of the rights and obligations of the Owners created herein or by the deed shall be altered in any way by encroachments due to settlement or shifting of structures or any other cause. There shall be valid easements for the maintenance of said encroachments so long as they shall exist; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner if said encroachment occurred due to the willful conduct of said Owner.

19.14 Notices. Any notice permitted or required to be delivered as provided herein shall be in writing and may be delivered either personally or by mail. If delivery is made by registered or certified mail, it shall be deemed to have been delivered forty-eight (48) hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to any person at the address given by such person to the Association for the purpose of service of such notice, or to the Residence of such person if no address has been given to the Association. If such notice is not sent by regular or certified mail, it shall be deemed to have been delivered when received. Such address may be changed, from time to time, by notice in writing to the Association.

19.15 Delivery of Association Documents to Prospective Purchasers. Each Owner of a Lot shall, as soon as practicable prior to the transfer of title to the Lot or the execution of a real property sales contract, as defined in California Civil Code, Section 2985, provide to the prospective purchaser:

- a. Copies of the Articles, By-Laws, Declaration and Notice of Annexation (if applicable);
- b. The Rules and Regulations;
- c. A copy of the most recent financial statements of the Association distributed pursuant to California Civil Code Section 1365.5, as amended;
- d. A true written statement from an authorized Association representative stating the Association's current Regular and Special Assessments and fees and showing the amounts of unpaid Assessments and charges against the interest being sold as of the date of the statement, as well as any late charges, interest or costs of collection which have been or may be enforced by a lien upon the Owner's interest in the Project; and

e. Any change in the Association's then current Regular and Special Assessments fees which have been approved by the Board, but have not become due and payable as of the date of this disclosure.

The Association shall provide any Owner with copies of the items listed in the preceding paragraphs within ten (10) days of receiving the written request. The Board may charge a fee for this service not exceeding the Association's reasonable costs to prepare and reproduce the requested items.

19.16 Conflicts in Management Documents. In the event of any conflict between and/or among the provisions of any of the management documents for the Project, the Declaration shall be deemed to supersede the provisions of any conflicting management documents (with the express exception of the Articles), including, without limitation, the By-Laws, Architectural Standards, if any, and the Rules and Regulations, if any.

19.17 Attorneys' Fees. If any Owner defaults in making a payment of Assessments or in the performance or observance of any provision of this Declaration, and the Association has obtained the services of an attorney in connection therewith, the Owner covenants and agrees to pay to the Association any costs or fees incurred, including reasonable attorneys' fees, regardless of whether legal proceedings are instituted. In case a suit is instituted, the prevailing party shall recover the cost of the suit, in addition to the aforesaid costs and fees.

19.18 Violation as Nuisances. Every act or omission whereby any provision of this Declaration is violated in whole or in part is hereby declared to be a nuisance and every remedy allowed by law or in equity against a nuisance, either public or private, may be enjoined or abated by Declarant, any Owner or Owners, and/or the Association.

19.19 Exhibits. Any and all exhibits attached hereto shall be deemed and made a part hereof and incorporated by reference herein.

19.20 Indemnification of Corporate Agents. To the fullest extent permitted by and in accordance with the requirements and procedures of Section 7237 of the California Corporations Code, or any successor statutes, the Association shall reimburse, indemnify and hold harmless each present and future director, officer, employee or other agent of the Association (as the term "agent" is defined in said Section 7237) and each person, who, at the request of the Association, acts as a director, officer, employee or agent ("Association Representative") from and against any loss, cost, liability and expense, including attorneys' fees, which may be imposed upon or reasonably incurred by an Association Representative in such capacity.

19.21 Limitation on Liability of Officers, Directors and Committee Members. No Board member, committee member, officer of the Association or Declarant, or any agent of Declarant when acting in such capacity, shall be liable to any Owner or to any other party, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of any such person or entity, provided that such person or entity has, upon the basis of such information as may be possessed by such person or entity, acted in good faith and without willful or Intentional misconduct.

19.22 County Requirements. Notwithstanding any provision in this Declaration to the contrary, the following provisions shall apply:

a. The property owners association established herein shall manage and continuously maintain the 'common area, more particularly described on Exhibit "A," attached hereto, and shall not sell or transfer the 'common area' or any part thereof, absent the prior written consent of the Planning Department of the County of Riverside or the County's successor-in-interest.

b. The property owners association shall have the right to assess the owners of each individual lot or unit for the reasonable cost of maintaining such 'common area', and shall have the right to lien the property of any such owner

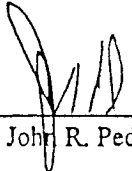
who defaults in the payment of a maintenance assessment. An assessment lien, once created, shall be prior to all other liens recorded subsequent to the notice of assessment or other documents creating an assessment lien.

c. This Declaration shall not be terminated, 'substantially' amended, or property de-annexed therefrom absent the prior written consent of the Planning Director of the County of Riverside or the County's successor-in-interest. A proposed amendment shall be considered 'substantial' if it affects the extent, usage, or maintenance of the 'common area' established pursuant to the Declaration.

IN WITNESS WHEREOF, Declarant has executed this instrument on 7/28/03.

DECLARANT

DESERT 49 ESTATES, INC., a California corporation

BY:  _____
John R. Pedalino, President

ALL PURPOSE NOTARY ACKNOWLEDGMENT

STATE OF California

COUNTY OF Riverside

On July 28, 2003 before me, Cynthia Ann Diaz, Notary Public

personally appeared **John R. Pedalino**

personally known to me OR proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and 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.



Handwritten signature of Cynthia Ann Diaz and the text 'Signature of Notary Public'.

OPTIONAL

DESCRIPTION OF ATTACHED DOCUMENT

Type or Title of Document: CC&r's

Document Date: July 28, 2003 Number of Pages

Signer(s) other than above: none

CAPACITY(IES) OF SIGNER(S)

Signer's Name:

- Individual
Corporate Officer
Partnership/LLC
Attorney in Fact
Trustee
Guardian / Conservator
Other

Signer's Name:

- Individual
Corporate Officer
Partnership/LLC
Attorney in Fact
Trustee
Guardian / Conservator
Other

Signer is Representing:

Signer is Representing:

Right Thumbprint of Signer:

Right Thumbprint of Signer:

EXHIBIT "A"

Lots 34 through 37, inclusive; Lots 46 through 59, inclusive; Lots 61 through 68, inclusive; and Lettered Lots B, C, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, X, Y, Z, AND AA of Tract No. 30523, in the City of Indio, as shown by Map on file in Book 339 Pages 22 through 28, inclusive of Maps, in the Office of the County Recorder of Riverside County, California.

EXHIBIT "B"

PARCEL A:

Lots 1 through 33, inclusive; Lots 38 through 45, inclusive; Lot 60; and Lettered Lots V and W of Tract No. 30523, in the City of Indio, as shown by Map on file in Book 339 Pages 22 through 28, inclusive of Maps, in the Office of the County Recorder of Riverside County, California.

PARCEL B:

The North half of the Southeast quarter of the Northwest quarter of Section 33, Township 5 South, Range 7 East, San Bernardino Base and Meridian, according to the Official Plat thereof. Excepting therefrom the East 30 feet for road purposes.

SUBORDINATION BY LIENHOLDER

VINEYARD BANK beneficiary, under the following Deed(s) of Trust, which cover(s) the real property described in the Declaration of Covenants, Conditions and Restrictions to which this instrument is attached, hereby approves and consents to the recording of this Declaration of Covenants, Conditions and Restrictions, and agrees that the liens of each of the Deed(s) of Trust shall be subordinated to and subject to each and every provision of the Declaration of Covenants, Conditions and Restrictions and to all easements provided for thereunder, however and whenever granted:

Deed of Trust recorded December 26, 2002, as Instrument No. 2002-777867 of the Official Records of the Riverside County Recorder.

BENEFICIARY
Vineyard Bank

David E. Clay senior V.P.
By: _____ Title
[Signature]
By: _____ Title
[Signature]

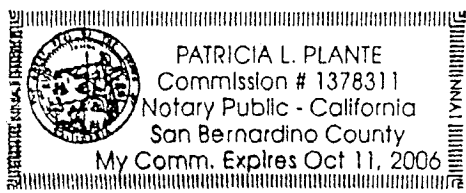
State of California) ss.
County of San Bernardino)

On August 4, 2003, before me, the undersigned, a Notary Public in and for said State, personally appeared David E. Clay and Ronald C. Zurek 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 they person(s) acted, executed the instrument.

WITNESS my hand and official seal

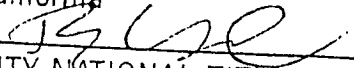
SEAL

Patricia L. Plante



Recording Requested By
DESERT 49 ESTATES, INC.

When Recorded Mail To:
THE ROVER LAW FIRM, A.P.C.
44-875 Deep Canyon Road, Suite 3
Palm Desert, CA 92260

Certified to be a true and correct
copy of Covenants, Conditions
Recorded August 6, 2003
As Instrument No. 2003-595295
of Official Records of Riverside
County, California
By 
FIDELITY NATIONAL TITLE CO.

DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND
RESERVATION OF EASEMENTS ESTACIO HOMEOWNERS ASSOCIATION, INC. -

TRACT NO. 30523

A Planned Residential Development
