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

THIS DECLARATION, made on the date hereinafter set forth, by PWDA Associates, a California Limited Partnership ("Declarant"), is made with reference to the following facts:

A. Declarant is the owner of certain property located in the City of Fairfield ("City"), County of Solano, State of California, more particularly described on the map entitled "LAS VILLAS DE RANCHO SOLANO," filed for record in the Office of the Recorder of the County of Solano, State of California, on April 22, 1991, in Book 60 of Maps, page 77 (the "Map").

B. The development shall be referred to as the "Project" as defined in section 1.26. The Project is expected to be developed in seven (7) phases, as provided in Exhibit "A" attached hereto.

Each Lot shall have appurtenant to it a membership in the VISTARA AT RANCHO SOLANO HOMEOWNERS ASSOCIATION a nonprofit mutual benefit corporation, which shall own the Common Area,

C. Declarant intends by this document to impose upon the Project mutually beneficial restrictions under a general plan of improvement for the benefit of all Owners of Lots. Phase I of the Project will be subject to this Declaration upon recordation hereof. Phases II through VII will each subsequently be subject to this Declaration upon recording of a Declaration of Annexation applicable to each such phase as provided in section 2.7, provided that the property in each subsequent phase is subject to section 4.12 to the extent applicable.

D. Lots 39 through 118 and Lot 70 as described on the Map are subject to the "Declaration of Covenants, Conditions and Restrictions of LAS VILLAS DE RANCHO SOLANO," recorded April 22, 1991, in Book 1991, Instrument No. 910025912, Official Records, Solano County ("Prior Declaration"). Declarant intends to rescind said Prior Declaration, and replace it with this Declaration.

NOW, THEREFORE, Declarant hereby declares that Phase I (and the property in each subsequent phase to the extent described in Recital C) described above shall be held, sold, leased, mortgaged, encumbered, rented, used, occupied, improved and conveyed subject to the following declarations, limitations, easements, restrictions, covenants, and conditions, which are imposed as equitable servitudes pursuant to a general plan for the development of the Project for the purpose of enhancing and protecting the value and desirability of the Project and every part thereof, and **which shall run with the Project** and be binding on Declarant and its successors and assigns, and on all parties having or acquiring any right, title or interest in or to the described Project or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof Declarant further declares that the Prior Declaration referred to in Clause D, above, is hereby rescinded and shall be of no further effect.

**ARTICLE I
DEFINITIONS**

1.1 "Articles" shall mean and refer to the Articles of Incorporation of the Association, as amended from time to time.

1.2 "Assess merit" shall mean that portion of the cost of maintaining improving repairing, operating and managing the Project which is to be paid by each Owner as determined by the Association, and shall include regular and special Assessments.

1-3 "Association" shall mean and refer to the VISTARA AT RANCHO SOLANO HOMEOWNER ASSOCIATION a California nonprofit mutual benefit corporation, the Members of which shall be the Owners of Lots in the Project.

1.4 "Board" or "Board of Directors" shall mean and refer to the governing body of the Association.

1.5 "Bylaws" shall mean and refer to the Bylaws of the Association, as amended from, time

1.6 "Common Area" shall mean and refer to the portions of the Project and all improvements thereon owned by the Association for the common use and enjoyment of the Owners consisting initially, upon recordation of the Map and conveyance by deed to the Association, of Lot 70, and conveyance of Lot 68 to the

Master Association, and to consist ultimately, in addition, of Lots 69, 71, 72, 74, 75, and 77, upon the annexation thereof pursuant to a recorded Declaration or Declarations of Annexation as provided in section 2.7, and conveyance by deed to the Association.

1.7 "Common Expenses" means and includes the actual and estimated expenses of operating the Common Area and any reasonable reserve for such purposes as found and determined by the Board and all sums designated Common Expenses by or pursuant to the Declaration, Articles, or Bylaws.

1.8 "Declarant" shall mean and refer to PWDA Associates, a California Limited Partnership, and any successor or assign that expressly assumes the rights and duties of the Declarant hereunder in a recorded written document.

1.9 "Declaration" shall mean and refer to this Declaration, as amended or supplemented **from** time to time.

1.10 "Eligible Holder Mortgages" shall mean mortgages held by "Eligible Mortgage Holders."

1.11 "Eligible Mortgage Holder" shall mean a First Lender who has requested notice of certain matters from the Association in accordance with section 9.5C.1.12 "Eligible Insurer or Guarantor" shall mean an insurer or governmental guarantor of a First mortgage who has requested notice of certain matters from the Association in accordance with section 8.5c.

1.13 "First Lender" shall mean any bank, savings and loan association, insurance company, or other financial institution holding a recorded first mortgage on any Lot.

1.14 "First Mortgage" shall mean and refer to any recorded mortgage made in good faith and for value on a Lot with first priority over other mortgages thereon.

1.15 "*Foreclosure*" shall mean and refer to the legal process by which the mortgaged property of a borrower in default under a mortgage is sold, and the borrower's interest in such property is sold, pursuant to California Civil Code § 2924a et seq. or sale by the Court pursuant to California Code of Civil Procedure § 725a et seq. and any other applicable law.

1.16 "Lot" shall mean and refer to each Lot or parcel shown on the Map with the exception of the Common Area.

1.17 "Map" shall mean and refer to that Map entitled "LAS VILLAS DE RANCHO SOLANO" filed for record the 22nd day of April, 1991, in Book 60 of Maps at page 77, in the records of Solano County.

1.18 "Master Association" shall mean and refer to the RANCHO SOLANO ASSOCIATION a non-profit mutual benefit corporation.

1.19 "Master Declaration" shall mean and refer to the "Master Declaration of Rancho Solano, a Planned Community, City of Fairfield, Solano County," recorded April 15, 1987, in Book 1987, Page 48,1130, as Instrument No. 24864

1.20 "Member" shall mean and refer to a person entitled to membership in the Association as provided herein.

1.21 "Mortgage" shall include a deed of trust as well as a mortgage

"Mortgagee" shall include a beneficiary or a holder of a deed of trust as well as a mortgagee.

1.23 "Mortgagor" shall include the trustor of a deed of trust as well as a mortgagor.

1.24 "Owner" or "Owners" shall mean and refer to the record Owner, whether one (1) or more persons or *entities*, of fee simple title to any Lot which is a part of the Project but excluding those persons or *entities* *having* an interest merely as security for the performance of an obligation. If a Lot is sold under a contract of sale and the contract is recorded, the purchaser, rather than the fee owner, shall be considered the "Owner" from and after the date the Association receives written notice of the recorded contract.

1.25 "Person" means a natural person, a corporation, a partnership, a trust, or other legal entity.

1.26 "Project" shall mean and refer to all of the real property in Phase I described on the Map and in Exhibit "A" and all improvements thereon. subject to this Declaration and any subsequent phase which may become annexed into the Project in accordance with section 2.7, and thereby become subject to this Declaration.

1.27 "Project Documents" shall mean and refer to this Declaration, together with the other basic documents used to create and govern the Project, including the Map, the Articles, and the Bylaws (but excluding unrecorded rules and regulations adopted by the Board or the Association).

1.28 "Rules" shall mean and refer to the rules adopted from time to time by the Association pursuant to section 5.2D.

ARTICLE 11 DESCRIPTION OF PROJECT, DIVISION OF PROPERTY, AND CREATION OF PROPERTY RIGHTS

2.1

Description of Project: _ The Project is a planned development which during Phase I shall consist of the Common Area, Lots 68 and 70, residential Lots 39-48, and all improvements thereon. Subsequent Phases, if annexed, are expected to contain additional Common Area and additional residential Lots. as provided in Exhibit "A."

2.2

Easements; Dedication of Common Area: Each of the Lots shown on the Moo shall have appurtenant to it as the dominant tenement an easement over the Common Area(s) now or hereafter owned by the Association as the servient tenement(s) for ingress and egress, and for use, occupancy and enjoyment, and where applicable, for the construction, maintenance and operation of utilities. Declarant hereby reserves to itself, and its successors and assigns, the right to, and agrees that it will, grant to, the Owners of Lots in subsequent phases of the Project, as the dominant tenement, nonexclusive easements for ingress and egress and construction activities over the Common Area of Phase I of the Project as the servient tenement and Declarant further agrees that it will reserve to itself and its successors and assigns the right to grant and agrees that when it annexes any additional phases as provided in section 2.7 it will grant. to the Owners of Lots in Phase I as the dominant tenements. nonexclusive easements for ingress and egress over the Common Area of the additional phases as the servient tenements upon annexation thereof pursuant to section 2.7. All of the foregoing easements are subject to the following:

A. The right of the Association to discipline Members and to suspend the voting rights of a Member for any period during which any Assessment against his Lot remains unpaid, and for any infraction of the Declaration, Bylaws, Articles or written Rules in accordance with the provisions of sections 4.10, 5.2.F and 9.1 hereof.

B. The right of the Association to dedicate, transfer or mortgage all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members, provided. that in the case of the borrowing of money and the mortgaging of its property as security therefore, the rights of such mortgagee shall be subordinate to the rights of the Members of the Association. No such dedication. Transfer or mortgage shall be effective unless an instrument signed or approved by two-thirds (2/3) of each class Of Members agreeing to such dedication. transfer or mortgage has been recorded.

C. The right of the Association to grant easements under, in, upon, across, over, above or through any portion of the Common Area for purposes, including, without limitation, access, utilities, and parking, which are beneficial to the development of the Project in accordance with the general plan established by this Declaration.

D. The right of the Association or Declarant to install or have installed a cable or central television antenna system. The system, if and when installed, shall be maintained by the cable television franchisee. To the extent required to effectuate the foregoing plan,

there shall be an easement in favor of each Lot for the purpose of connecting the same with the master cable television terminal, central television antenna or line. Each Lot shall be subject to an easement in favor of all other Lots and in favor of the entity holding the CATV franchise, to provide for the passage through the Lot and any structure thereon of television connections from any other Lot to the cable system, and shall be subject to a further easement For the placement and maintenance of such connections.

E. Easements for work necessary to complete development and construction of the Project, including all parcels annexed or to be annexed. as more particularly described in section 9.6.

The Foregoing easements are granted and reserved subject to the condition that their use and enjoyment shall not unreasonably interfere with the use, occupancy or enjoyment of all or any part of the Lot servient to them or to which they are appurtenant.

2-3 Easements to Accompany Conveyance of Lot: Easements that benefit or burden any Lot shall be appurtenant to that Lot and shall automatically accompany the conveyance of any Lot, even though the description in the instrument of conveyance may refer only to the fee title to the Lot.

2.4 Delegation of Use: Any Owner may delegate in accordance with the Bylaws. his right of enjoyment to the Common Area and facilities to the members of his Family, guests, tenants, or contract purchasers who reside on the Project.

2.5 Conveyance of Common Area to Association: On or before conveyance of title to the First Lot in each phase, Declarant shall deed the Common Area in that phase to the Association to be held for the benefit of the Members of the Association.

When any Common Area is conveyed by Declarant to the Association, an easement is automatically reserved over the Common Area for the benefit of the remaining phases not yet annexed, for ingress and egress, and for the construction of utilities, landscaping, residences and other improvements on Lots which have not yet been annexed to the Project (as of the date of conveyance to the Association). The easement shall continue for the period of time provided for annexation under section 2.7A(1), plus a reasonable period of time thereafter (not to exceed an additional two (2) years) to complete construction of improvements.

2.6 Owners' Rights and Easements for Utilities: The rights and duties of the Owners of Lots within the Project with respect to sanitary sewer, drainage water, electric, gas, television receiving, telephone equipment, cables and lines (hereinafter referred to, collectively, as "utilities facilities") shall be as follows:

A. Whenever utilities facilities are installed within the Project, which utilities facilities or any portion thereof lie in or upon a Lot or Lots owned by other than the Owner of a Lot served by said utilities facilities. The Owners of any Lots served by such utilities facilities shall have the right of reasonable access for themselves or for utility companies to repair, to replace and generally maintain said utilities facilities as and when the same may be necessary, due to failure or inability of the Board to take timely action to make such repairs or perform such maintenance.

B. Whenever utilities facilities are installed within the Project which serve more than one (1) Lot, the Owner of each Lot served by said utilities facilities shall be entitled to the full use and enjoyment of such portions of said utilities facilities as service his Lot.

C. In the event of a dispute between Owners with respect to the repair or rebuilding of said utilities facilities, or with respect to the sharing of the cost thereof, then, upon written request of one (1) Owner addressed to the other Owner(s), the matter shall be submitted first to the Board for mediation, and thereafter, if the dispute remains unresolved, to binding arbitration within sixty (60) days Association, or pursuant to the rules of the American Arbitration Association or to any other generally recognized system of alternative dispute resolution and the decision of the Arbitrator(s) shall be Final and conclusive on the parties, and judgment may be entered thereon in any court having jurisdiction.

2.7 Annexation of Additional Property: Additional property may be annexed to and become subject to this Declaration by any of the following methods set forth in this section. Upon annexation, the additional property shall become subject to this Declaration without the necessity of amending individual sections hereof.

A. Annexation Pursuant to Plan: At the sole discretion of Declarant, any or all of the property described in Exhibit "A" as Phases I through VII ("Annexation Property") may be annexed to and become a part of the Project, subject to this Declaration, and subject to the jurisdiction of the Association, without the necessity of amending individual sections of this Declaration without the assent of the Association or its Members, and without the assent of Owners, on condition that:

1. Date for Annexation: Any annexation pursuant to this section shall be made prior to the third anniversary of the issuance of the original public report for the immediately preceding phase of the Project.

2. Plan Approved: The annexation and development of additional phases shall be in accordance with a general plan of development submitted to and approved by the Federal Housing Administration (FHA), if required, and the Department of Real Estate of the State of California.

3. Declaration or Annexation: A Declaration of Annexation shall be recorded covering the applicable portion of the property to be annexed. The Declaration may contain such complementary additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character of any of the added property, and as are not inconsistent with the scheme of this Declaration. The Declaration of Annexation shall require the payment by the Declarant to the Association, concurrently with the closing of the escrow for the first sale of a Lot in an annexed phase, of appropriate amounts for reserves for replacement or deferred maintenance of Common Area improvements in the annexed phase necessitated by or arising out of the use and occupancy of residential Lots under a rental program conducted by the Declarant which has been in effect for a period of at least one (1) year as of the date of closing of the escrow for the first sale of a residential Lot in the annexed phase.

B. Annexation Pursuant to Approval: Upon approval in writing of the Association, pursuant to vote or written consent of a two-thirds (2/3) majority of the voting power of its Members, excluding the Declarant and the approval of Eligible Mortgage Holders as may be required under section 9.6D, and the approval of FHA, if required, net of any property who desires to add it to the scheme of this Declaration and to subject it to the jurisdiction of the Association, may file of record a Declaration of Annexation in the manner described in section 2.7A(3), above.

C. Effect of Annexation: Assessments collected from Owners in the Project may be expended by the Association without regard to the particular phase from which such Assessments came. All Owners shall have

ingress and egress to all portions of the Common Area throughout the Project, subject to the provisions of this Declaration, the Bylaws and to the Rules of the Association in effect from time to time.

D. Quality or Construction: Future improvements to the Project will be consistent with initial improvements in terms of structure type -and quality of construction.

E. Failure to Annex: If -any remaining phase is riot annexed as provided above and the property in that phase requires ingress and egress access over private streets located within the Project and access to and use of common utilities, casements shall exist for reasonable vehicular and pedestrian traffic and reasonable use of the common utilities for residential developments within the Annexation Property of comparable size and density, provided however, that the properties not annexed (and the owner(s) thereof) shall be obligated to pay their equitable share of the cost of Maintenance and repair of said private streets, and utilities and shall be subject to a lien or liens for said maintenance and repair costs, as provided in-section 4.12 hereof,

F. Right of Successor Declarant to Annex: The right of unilateral annexation is provided for in section 2.7A constitutes a covenant running with the land, and is as such enforceable by any successor or assignee of Declarant who acquires tiny part of the Annexation Property, and who assumes the role of Declarant as provided in section 1.8.

2.8 Encroachment Easements: Each Lot as the dominant tenement shall have an easement over adjoining Lots and Common Area is the servient tenements for the purpose of accommodating any encroachment due to foundations, exterior wall, windows, roof overhang and fences or walls which are built in accordance with the original design, plans and specifications of Declarant, or due to engineering errors. errors or adjustments in original construction, settlement or shifting of the building or similar causes. There shall be valid casements for the maintenance of said encroachments as long as they shall exist, and the rights and obligations of Owners shall not be altered in anyway by said encroachment. settlement or shifting: provided. however, that in no event shall a valid easement for encroachment be created in favor of in Owner or Owners if said encroachment occurred due to the intentional conduct of said Owner or Owners other than adjustments by Declarant in the original construction. In the event a structure is partially or totally destroyed, and then repaired or rebuilt, the Owners of each adjoining Lot agree that minor encroachments over adjoining Lots -arid Common Area shall be permitted and that there shall be valid casements for the maintenance of said encroachments so long as they shall exist. In the event that an error in engineering, design or construction results in an encroachment of a building into the Common Area, or into or onto an adjoining Lot, or into a required setback area, a correcting modification may (at the discretion of Declarant) be made in the subdivision map. Said modification shall be in the form of a certificate of correction and shall be executed by Declarant (so long as Declarant is the sole owner of the Project) and by Declarant's engineer and by the city engineer. If the correction occurs after title to the Common Area has been conveyed to the Association, the Association shall also execute the certificate of correction The Board of Directors may, by vote or by certificate of written approval of a majority of the directors, authorize the execution of the certificate of correction.

2.9 Side Yard Easements:

A. Easements: In all cases where a structural wall of a residence that was built as part of the original construction is located on or adjacent to the boundary line between adjacent Lots, the owner of the residence as the dominant tenement shall have a nonexclusive easement over the adjacent Lot as the servient tenement for access to and use of that portion of the servient tenement as may be reasonably necessary for the maintenance of the wall, the reconstruction Or the wail in the event of the partial or total destruction of the same, and the drainage associated with the wall or the residence of which the wall is a part, and an easement to accommodate the foundation and/or roof or eave encroachment as per the original design, plans and specifications which were the basis [or the original construction of the residence or residences on the Lot or Lots. The Owner of a Lot having a Structural wall situated on the boundary line between his Lot and the adjoining Lot shall not attach anything to the outside of the wall which shall protrude across the boundary line into the adjoining Lot, and the Owner of the adjoining Lot upon which such a will is situated shall not attach anything to the outside of the wall without (in each case) the consent and permission of the Owner of the adjoining Lot upon which the residence of which the wall is a part is situated.

B. Arbitration: In the event of any dispute arising concerning the provisions of this section. upon written request of one (1) Owner addressed to the other Owner(s) the matter shall be submitted first to the Board for mediation, and thereafter, if the dispute remains unresolved, to binding arbitration within sixty (60) days pursuant to the rules of the American Arbitration Association. or tiny successor thereto, or to any other generally recognized system of alternative dispute resolution, and judgment may be entered thereon in any court having jurisdiction.

2.10 Party Walls:

A. General Rules of Law to Apply: Each wall that is built as part of the original construction of a residence, is located on the boundary line with an adjacent Lot and either is used in common with the residence on the adjacent Lot or abuts against a similar wall on the adjacent Lot shall constitute a party wall. To the extent not inconsistent with 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 thereto.

B. Sharing or Repair and Maintenance: The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

C. Destruction by Fire or Other Casualty: If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use; provided, however, that the Owner or Owners whose negligent act or omission proximately caused the damage or destruction, shall bear the full cost of **restoration that is not covered by insurance.**

D. Weatherproofing Notwithstanding any other provisions of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

E. Right to Contribution Runs with Land: The right of any Owner to contribution from any other Owner under this section shall be appurtenant to the land and shall pass to such Owner's successors in title.

F. Arbitration: In the event of any dispute arising concerning a party wall, or concerning the provisions of this section, upon written request of one (1) Owner addressed to the other Owner(s) the matter shall be submitted first to the Board for mediation, and thereafter, if the dispute remains unresolved, to binding arbitration within sixty (60) days pursuant to the rules of the American Arbitration Association, or any successor thereto, or to any other generally recognized system of alternative dispute resolution, and judgment may be entered thereon in any court having jurisdiction.

2.11 Maintenance Easement: An easement over each Lot as the servient tenement is reserved by Declarant in favor of each other Lot as the dominant tenement, and in favor of the Association, for the purpose of allowing the Association's agents to enter the Lot to perform such maintenance, if any, as the Association may do in accordance with the provisions of sections 5.1.A and section 7.20 of this Declaration.

2.12 Drainage Easements: An easement over and under each Lot as the servient tenement is reserved in favor of each other Lot as the dominant tenement for the purpose of allowing the Association's agents to enter the Lot to maintain that portion of an in-tract storm drainage system located thereon. No Owner or occupant shall commit any act that would interfere with the operation of any drainage system (including drainage swales) installed on the Owner's Lot. The Owner shall maintain the system free of debris and other obstacles at all times. Reciprocal appurtenant easements between each Lot and the Common Area and between adjoining Lots are reserved for the flow of surface water, and for the flow of water from roof gutters and downspouts.

2.13 Common Utility Meter and Irrigation Controller Easements: Easements over all Lots, as the servient tenements are reserved by Declarant in favor of each other Lot and the Common Areas, as the dominant tenements, for the purpose of installing, maintaining, repairing and replacing any common utility meters, and irrigation controllers and related apparatus, and connecting lines installed thereon by Declarant.

2.14, Sub-drain Easement: An easement for installation, maintenance, and repair of a sub-drain over Lots 23 and 24, as the servient tenements, in favor of Lot 74, as the dominant tenement, is reserved by the Declarant.

2.15 Other Easements: The Common Area and each Lot are subject to all easements, dedications, and rights of way granted or reserved in, on, over and under the Project as shown on the Map.

2.16 Rights of Entry and Use: The Lots and Common Area (including Restricted Common Area) shall be subject to the following rights of entry and use:

A. The right of the Association's agents to enter any Lot to cure any violation of this Declaration or the Bylaws, provided that the Owner has received notice in a hearing as required by the Bylaws (except in the case of an emergency - and the Owner has failed to cure the violation or take steps necessary to cure the violation within thirty (30) days after the finding of a violation by the Association:

B. The access rights of the Association to main improvements or property located in the Common Area -, is described in section 5.2E:

C. The easements described in this Article 11;

D. The right of the Association's agents to enter any Lot to perform maintenance as described in section 7.20:

E. The rights of the Declarant during the construction period as described in section 9.6.

2.17 Partition of Common Area: There shall be no subdivision or partition of the Common Area, nor shall any Owner sack any partition or subdivision thereof.

Notwithstanding any provisions to the contrary contained in this Declaration and in order to provide for a means of terminating the Project if this should become necessary or desirable, on occurrence of any of the conditions allowing an Owner of a Lot to maintain an action for partition (as such conditions are presently set forth in California Civil Code § 1359 or as such conditions in the future may be set forth in any amendment thereto or comparable provisions of law), two-thirds (2/3) of the Owners of Lots shall have the right to petition the Superior Court having jurisdiction to alter or vacate the Map under California Government Code § 66499.21, et seq., or any comparable provisions of law, and to vest title to the Project in the Owners tenants in common and order an equitable partition of the Project in accordance with the laws of the State of California. Nothing herein shall be construed to prohibit partition of a joint tenancy or co-tenancy in

Right to Deannex: Notwithstanding any other provisions of this Declaration or any declaration of annexation, notice of addition of property or amendments or supplements to this Declaration its may be hereinafter riled of record to effect nil annexation of property tinder this Article. the Declarant shall have the right at arty time after such annexation but before the close or escrow on the sale under the authority of a public report to an Owner other then the Declarant of the first Lot within the property so annexed to deannex such property or any portion thereof by filing of record a notice of deannexation (or such other instrument is may be acceptable for recordation) describing the property to be so deannexed and stating that such deannexation is undertaken in accordance with the terms and conditions of this section 2.24. Any such deannexation shall be effective upon the recordation of such notice or other instrument and such notice or other instrument need only be executed by the Declarant In any case where Declarant has sold and closed escrow on the sale of it Lot tinder authority of a public report. Declarant shall have the right to deannex a portion of tile Project. provided that no such deannexation shall be valid without the approval or by vote or written consent. of it majority of the Owners other than Declarant. and tile prior written consent of the Real Estate Commissioner if and as required under California Business and Professions Code § 11013.7. Such deannexation shall riot in such case relieve Declarant from the obligation to continue to pay its equitable share of the cost of maintenance and repair of the private streets and to continue to be subject to liens as provided in section 4.12. Any property that is deannexed under this clause. shall be included in an amended phasing schedule. and shall be subsequently re-annexed pursuant to tile revised phasing schedule.

2.19 All Easements Part of* Common Plan: Whenever any casements arc reserved or created or are to be reserved or created herein, such casements shall constitute equitable servitudes for the mutual benefit of all property in the Project, even if only certain Lots are specifically mentioned as subject to or benefiting from a particular casement, and when casements referred to herein arc subsequently created by grant deeds, such casements are part of the common plan created by this Declaration for the benefit of all property Owners within the Project.

ARTICLE III ASSOCIATION, ADMINISTRATION, MEMBERSHIP AND VOTING RIGHTS

3.1 Association to Own and Manage Common Areas: The Association shall own and manage the Common Area in accordance with the provisions of this Declaration, and the Articles and Bylaws.

3.2 Membership: The Owner of a Lot shall automatically, upon becoming the Owner of same, be a Member of the Association. and shall remain a Member thereof until such time as his ownership ceases for any reason. Membership shall be appurtenant to and may not be separated from ownership of a Lot. Membership shall be held in accordance with the Articles and Bylaws.

3-3 Transferred Membership: Membership in the Association shall not be transferred. Encumbered pledged or alienated in any way, except upon the sale or encumbrance of the Lot to which it is appurtenant. and then only to the purchaser, in the case of a sale. or mortgage in the case of an encumbrance of such Lot. by any transfer of title to an Owner's Lot, including a transfer on the death of an owner. membership passes automatically with title to the transferee. A mortgagee does not have membership rights until it obtains title to the Lot through Foreclosure or deed in lieu thereof. Any attempt to make a prohibited transfer is void. No Member may resign his membership. On notice of a transfer, the Association shall record the transfer on its books.

3.4 Membership and Voting Rights: Membership and voting rights shall be as set forth in the Bylaws.

ARTICLE IV MAINTENANCE AND ASSESSMENTS

4.1 Creation of the Lien and Personal Obligation of Assessments: The Declarant, for each Lot owned within the Project, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, covenants and agrees:

(1) to pay to the Association annual Assessments or charges, and special Assessments for purposes permitted herein such Assessments to be established and collected as hereinafter provided: and

(2) to allow the Association to enforce any assessment lien established hereunder by nonjudicial proceedings under a power of sale or by any other means authorized by law.

The annual and special Assessments, together with interest, late charges, collection costs, and reasonable attorney's fees, shall be a charge to the land and shall be a continuing lien upon the property against which each such Assessment is made, the lien to become effective upon recordation of a notice of delinquent Assessment. Each such Assessment, together with interest, late charges, collection costs, and reasonable attorneys' fees, shall also be the personal obligation (joint and several) of each person who was the Owner of such property at the time when the Assessment fell due. No Owner of a Lot may exempt himself from liability for his contribution towards the Common Expenses by waiver of the use or enjoyment of any of the Common Areas or by the abandonment of his Lot.

The interest of any Owner in the amounts paid pursuant to any Assessment upon the transfer of ownership shall pass to the new Owner. Upon the termination of these covenants for any reason, any amounts remaining from the collection of such Assessments after paying all amounts properly charged against such Assessments shall be distributed to the then Owners on the same pro rata basis on which the Assessments were collected.

4.2 Purpose of Assessments: The Assessments levied by the Association shall be used exclusively to promote the economic interests, recreation, health, safety, and welfare of all the residents in the Project and to enable the Association to perform its obligations hereunder.

4-3 Assessments:

A. Annual Assessments: The Board shall establish and levy annual Assessments in an amount that the Board estimates **will** be sufficient to raise the funds needed to perform the duties of the Association during each fiscal year.

The annual Assessment shall include a portion for reserves in such amounts as the Board in its discretion considers appropriate to meet the costs of tile future repair, replacement or additions to the major improvements and Fixtures that the Association is obligated to maintain and repair. Reserve funds shall be deposited in a separate account and tile signatures of at least two (2) 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 monies from the reserve account. Reserve funds may not be expended for any purpose other than repairing, restoring maintaining or replacing the

major components that tile Association is obligated to maintain without the consent of Owners holding a majority of the voting power either at a duty held meeting or by written ballot.

B. Special Assessments: The Board, at any time, may levy a special Assessment in order to raise funds for unexpected operating or other costs, insufficient operating or reserve funds, or such other purposes as the Board in its discretion considers appropriate. Special Assessments shall be allocated among the Lots in the same manner as annual Assessments, except in the case of an Assessment levied by the Board against a Member to reimburse the Association, for costs incurred in bringing the Member and his Lot into compliance with provisions of the Project Documents.

4.4 Restrictions on Increases in Annual or **Special** Assessments: The Board may not impose an annual Assessment on any Lot which is more than twenty percent (20%) greater than the annual Assessment for the immediate preceding fiscal year or levy a special Assessment to defray the cost of any action or undertaking on behalf of tile Association which in the aggregate exceeds Five percent (5%) of the budgeted gross expenses of the Association for that fiscal year. **without the vote or written assent** of Members casting a majority of the votes at a meeting of the **Association at which a quorum is present**. For purposes of this section 4.4, a "quorum" means more than **Fifty percent (50%) of the Members** of the Association. Any meeting of the Association for purposes of complying with this section 4.4 shall be conducted in accordance with Chapter 5 (commencing with §7510 of Part 3, Division 2 of Title 1 of the California Corporation Code and §7613 of the California Corporations Code. The Board

(3) an extraordinary expense necessary to repair or maintain the Project any part of it for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the pro forma operating budget, provided, however that prior to the imposition or collection of the Assessment. the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process and the resolution shall be distributed to the Members with tile notice of the Assessment.

The Association shall provide notice by First-class mail to the Owners. of any increase in the regular or special Assessments of the Association. not less than thirty (30) nor more than sixty (60) days prior to the increased Assessment becoming due.

This section 4.4 incorporates the statutory requirements of California Civil Code § 1366. If this section of the California Civil Code is amended in any manner. this section 4.4 automatically shall be amended in the same manner without tile necessity of amending this Declaration

4.5 Notice and Quorum for Any Action Authorized Under Section 4.4: Any action authorized under section 4.4. which requires a vote of the membership, shall be taken at a meeting called for that purpose, written notice of which shall be sent to all Members not less than ten (10) nor more than ninety (90) days in advance of the meeting, specifying the place, day and hour of the meeting and. in the case of a special meeting the nature of the business to be undertaken. The action may also be taken without a meeting pursuant to the provisions of California Corporations Code §7513.

4.6 Division of Assessments: All Assessments both annual and special. shall lie levied equally among the Lots except as provided in section 4.3. Annual Assessments shall be collected on a monthly basis unless the Board directs otherwise Special Assessments may be collected in one (1) payment or periodically as the Board shall direct.

4.7 Date of Commencement of Annual Assessment: Due Dates: Tile annual Assessments provided for herein shall commence as to all Lots in Phase I on the first day of the month following the First conveyance of a Lot to an Owner in Phase I under authority of a public report. In subsequent phases, the annual Assessments against all Lots in each phase shall commence on the first day of the month following the closing of the first sale in such phase, or upon the occupancy of a Lot, whichever occurs earlier.

The first annual Assessment for each added phase shall be adjusted according to tile number of months remaining in tile calendar year after annexation of said phase.

Subject to the provisions of section 4.3 hereof tile Board of Directors shall use its best efforts to fix the amount of the annual Assessment against each Lot and send written notice thereof to every Owner at least forty-five (45) days in advance of each annual Assessment period. provided that failure to comply with tile foregoing shall not affect the validity of any Assessment levied by the Board. The due date shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge furnish a certificate signed by an officer of the Association setting forth whether the Assessments on a specified Lot have been paid. Such a certificate shall be conclusive evidence of such payment.

4.8 Effect or Nonpayment of Assessments: Any Assessment not paid within Fifteen (15) days after the due date shall be delinquent. shall bear interest at the rite of twelve percent (12%) per annum from thirty (30) days after the due date until paid, and shall incur a late payment penalty in an amount to be set by the Board from time to time. not to exceed the maximum permitted by applicable law.

4.9 Transfer of Lot by Sale or Foreclosure: Sale or transfer of any Lot shall not affect the assessment lien. However, the sale of any Lot pursuant to Foreclosure of a first mortgage shall extinguish the lien of such Assessments including attorneys fees, late charges, or interest levied in connection therewith as to payments which became due prior to such sale or transfer (except for assessment liens recorded prior to the mortgage). No sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof

Where the mortgagee of a first mortgage of record or other purchaser of a Lot obtains title to the same as a result of Foreclosure of such first mortgage, such acquirer of title, and his successor and assigns, shall not be liable for the Assessment by the Association chargeable to such Lot which became due prior to the acquisition of title to such Lot by such acquirer (except for assessment liens recorded prior to the mortgage). No amendment of the preceding sentence may be made without the consent of Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association allocated, and the consent of the Eligible Mortgage Holders holding first mortgages on Lots comprising fifty-one (51%) of the Lots subject to first mortgages. The unpaid share of such Assessments shall be deemed to be Common Expenses collectible from all Owners of the Lots including such acquirer, and his successors or assigns.

If a Lot is transferred, the grantor shall remain liable to the Association for all unpaid Assessments against the Lot through and including the date of the transfer. The grantee shall be entitled to a statement from the Association, dated as of the date of transfer, setting forth the amount of the unpaid Assessments against the Lot to be transferred and the Lot shall not be subject to a lien for unpaid Assessments in excess of the amount set forth in the statement, provided, however, the grantee shall be liable for any Assessments that become due after the date of the transfer.

4.10 Priorities; Enforcement-, Remedies: If an Assessment is delinquent, the Association may record a notice of delinquent Assessment and establish a lien against the Lot of the delinquent Owner prior and superior to all other liens except (1) all taxes, bonds, Assessments and other levies which, by law, would be superior thereto, and (2) the lien or charge of any **first mortgage of record (meaning** any recorded mortgage or deeds of trust with First priority over other mortgages or deed of trust) made in good faith and for value. The notice of delinquent Assessment shall state the amount of the Assessment, collection costs, attorneys' fees, late charges and interest, a description of the Lot against which the Assessment and other sums are levied, the name of the record owner, and 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 any management agent retained by the Association.

An assessment lien may be enforced in any manner permitted by law, including sale by the court, sale by the trustee designated in the notice of delinquent Assessment, or sale by a trustee substituted pursuant to California Civil Code § 29-34(1). Any sale by the trustee shall be conducted in accordance with the provisions of §§ 2924, 2924b, 2924c, 2924f, 2924g and 2924h of the California Civil Code, including any successor statutes thereto, applicable to the exercise of powers of sale in mortgages and deeds of trust, or in any other manner permitted by law. Nothing herein shall preclude the Association from bringing an action directly against an Owner for breach of the personal obligation to pay Assessments.

Fines and penalties for violation of restrictions are not "Assessments," and are not enforceable by assessment lien, but are enforceable by court proceedings.

The Association, acting on behalf of the Owners shall have the power to bid for the Lot at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Where the purchase of a foreclosure Lot **will** result in a five percent (5%) or greater increase in Assessments, the purchase shall require the vote or written consent of a majority of the total voting power of the Association, including a majority of Members other than Declarant. During the period a Lot is owned by the Association, following Foreclosure:

(1) no right to vote shall be exercised on behalf of the Lot:

(2) no Assessment shall be assessed or levied on the Lot: and

(3) each other Lot shall be charged, in addition to its usual Assessment, its share of the Assessment that would have been charged to such Lot had it not been acquired by the Association as a result of Foreclosure.

After acquiring title to the Lot at foreclosure sale following notice and publication, the Association may execute, acknowledge and record a deed conveying title to the Lot which deed shall be binding upon the Owners, successors, and all other parties. Suit to recover a money judgment for unpaid Common Expenses, and attorneys' fees shall be maintainable without foreclosing or waiving the lien securing the same. The Board may temporarily suspend the voting rights of a Member who is in default in payment of any Assessment, after notice and hearing, as provided in the Bylaws.

4.11 Unallocated Taxes: In the event that any taxes are assessed against the Common Area, or the personal property of the Association, rather than against the Lots, said taxes shall be included in the Assessments made under the provisions of section 4.1 and, if necessary, a **special Assessment may be** levied against the Lots in an amount equal to said taxes, to be paid in **two (2) installments, thirty (30) days** prior to the due date of each tax installment.

4.12 Assessments on Lots in Subsequent Phases: In the event that Phases 11 through VII. or any of them, are not annexed to this Declaration. pursuant to section 2.7. and the property in said phases is developed. and sold or leased to persons whose use and occupancy thereof results in use of the private streets and/or utilities located within the Common Area, the property and the owner(s) thereof (including Declarant) shall be subject to annual and special Assessments pursuant to section 4.1 levied by the Board for the costs of maintenance and repair of said streets and/or utilities. The cost of maintenance and repair under such circumstances shall be prorated equitably between the properties and payment therefore shall be enforced pursuant to section 4.10. In the event of any disagreement as to the reasonableness of said annual and/or special Assessments or the division thereof, the matter shall be submitted to binding arbitration under the rules of the American Arbitration Association. Notwithstanding the foregoing, none of the other sections of this Declaration shall apply to any such phase of the Annexation Property until and unless it is annexed in accordance with section 2.7.

ARTICLE V DUTIES AND POWERS OF THE ASSOCIATION

5.1 Duties: In addition to the duties enumerated in the Articles and Bylaws, and elsewhere provided for in this Declaration, and without limiting the generality thereof. the Association shall perform the following duties:

A. Maintenance: The Association shall maintain and repair the following:

(1) Common Area Improvements. The Association shall maintain or provide for the maintenance of all Common Area improvements, including but not limited to, any recreational facilities, utility buildings, and utility laterals located within the Common Area. The Association shall also be responsible for major repair of any individual driveways located on the Common Area or an Lot 68 serving the individual Lots. Lot Owners shall be responsible for the routine maintenance of said driveways. The above notwithstanding, the primary maintenance responsibility of the private streets within Lot 68 shall be by the Smith Ranch Maintenance Assessment District. Title to Lot 68 shall be held by the Ranch Solana Master Association which shall have the secondary obligation for maintenance of the private streets and sidewalks within Lot 68. The Association shall have tertiary obligation for maintenance of Lot 68.

(2) Landscaping. The Association shall provide gardening services for all landscaping within the Common Area and the open -areas of individual Lots up to the exterior walls or fences of the Units. The sprinkling systems originally installed on the Common Area in connection with the landscaping improvements shall also be operated and maintained by the Association.

(3) Exterior Painting. In order to preserve the exterior harmony and appearance of the Project. the Association shall perform all painting and/or staining of the exterior wall surfaces and exterior trim of each Unit and shall repair. repaint or restain the fences and/or walls within the Project, including the exterior walls of the patio enclosures. Buildings shall be repainted within the color palette approved originally by the City of Fairfield.

Roofs. The Association shall repair and replace the roof of each dwelling, as needed.

Gutters & Downspouts. All -utters and downspouts shall be maintained and replaced as necessary by the Association.

Fences and Walls. All fences and walls shall be maintained and replaced as necessary by the Association including any wrought iron or other fences separating Lots which are visible from the Common Area and the retaining walls within the Common Area on the Lots.

Parking Areas. All Common Area parking, on Lot 68 shall be maintained by the Smith Ranch Assessment District. with secondary responsibility only with the Association. Maintenance of landscaping shall include regular fertilization, irrigation and other garden management practice necessary to promote a healthy, weed free environment for optimum plant growth. Each Owner shall, at that Owner's expense. immediately remove and replace any dying or dead vegetation on the Owner's Lot. Portions of the Project are located within. and subject to. the jurisdiction of one or more Assessment Districts, having responsibility for maintenance of certain portions of the Common Areas, such as private streets. and/or the Utility Facilities therein. including private street lights, storm drains, etc. The Association's responsibility to assume maintenance of said portion of the Common Area and/or said Utility Facilities, commences only if and when the maintenance obligations of such Districts terminate. and/or in the case of abolition of any such District.

The responsibility of the Association for maintenance and repair shall not extend to repairs or replacements arising out of or caused by the willful or negligent act or omission of any Owner. or his guest. tenant. invitee or pct. Any such repairs or replacements not covered by insurance carried by the Association shall be made by the responsible Owner. provided the Board approves the person or entity actually making the repairs and the method of repair. If the responsible Owner fails to take the necessary steps to make the repairs within a reasonable time under the circumstances. the Association shall cause the repairs to be made and charge the cost thereof to the responsible

Owner which costs shall bear interest at the rate of twelve percent (12%) per annum (but no greater than the maximum rate allowed by law) until paid in full. If such repair is covered by the insurance carried by the Association, the Association shall be responsible for making the repairs, and the responsible Owner shall pay any deductible pursuant to the insurance policy. If the Owner fails to make such payment, then the Association may make such payment and shall charge the responsible Owner, which charge shall bear interest at the rate of twelve percent (12%) per annum (but no greater than the maximum rate allowed by law) until paid in full. If the Owner disputes the charge, the Owner shall be entitled to a notice and a hearing as provided in the Bylaws before the charge may be collected.

B. Insurance: Tile Association shall obtain and maintain such policy or policies of insurance as are required by section 8.1 of this Declaration:

C. Discharge of* Liens: The Association shall discharge by payment, if necessary, any lien against the Common Area and charge tile cost thereof to the Member or **Members responsible for the existence of the lien** after notice and hearing as provided in the Bylaws.

D. Assessments: Tile Association shall fix, levy, collect and enforce Assessments as set forth in Article IV hereof.

E. Payment of Expenses and Taxes: The Association shall pay all expenses and obligations incurred by the Association in the conduct of its business including without limitation, all licenses, taxes or governmental charges levied or imposed against the property of the Association.

F. Enforcement: The Association shall be responsible for the enforcement of this Declaration.

The Association shall maintain and operate the Common Area of the Project in accordance with all applicable municipal, state, and federal laws, statutes and ordinances, as the case may be. The Association shall also, as a separate and distinct responsibility, insure that third parties (including Owners and their guests) utilize the Common Area in accordance with the aforementioned regulations. The Association shall, when it becomes aware of any violation of the aforementioned regulations, expeditiously correct such violations.

G. Inspection and Maintenance Guidelines: The Board shall adopt inspection and maintenance guidelines for the periodic inspection and maintenance of the Common Area improvements and landscaping, and those portions of the residences that the Association has the responsibility to maintain, including but not limited to, foundations, gutters, down-spouts, siding, trim, roofs, balconies, window caulking, utility equipment and sanitary sewer and storm drainage facilities maintained by the Association, streets, parking areas, recreational facilities, and the irrigation system.

The Board periodically and at least once every two years shall review and update the inspection and maintenance guidelines. The Board shall take all appropriate steps to implement and comply with the inspection and maintenance guidelines.

5.2 Powers: In addition to the powers enumerated in the Articles and Bylaws, or elsewhere provided for herein, and without limiting the generality thereof, the Association shall have the following powers:

A. Utility Service: The Association shall have the authority (but not the obligation) to obtain, for the benefit of all of the Owners, all water, gas and electric service and refuse collection.

B. Easements: The Association shall have authority (by majority vote) to grant easements where necessary for utilities, cable television and sewer facilities over the Common Area to serve the Common Areas and Lot, and/or where necessary to satisfy or achieve appropriate governmental purpose or request.

C. Manager: Tile Association may employ a manager or other persons and contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association, except for the responsibility to levy fines, impose discipline, hold hearings, file suit, record or foreclose liens, or make capital expenditures, provided that any contract with a firm or person appointed as a manager or managing agent shall not exceed a one (1) year term, shall provide for the right of the Association to terminate the same at the first annual meeting of the Members of the Association, and to terminate the same without cause or payment of a termination fee on ninety (90) days' written notice, or for cause on thirty (30) days' written notice.

D. Adoption of Rules: The Association or the Board may adopt reasonable Rules not inconsistent with this Declaration relating to the use of the Common Area and all facilities thereon, and the conduct of Owners and their tenants and guests with respect to the Property and other Owners. Written copies of such Rules and any schedule of fines and penalties adopted by the Board shall be furnished to Owners.

E. Access: For the purpose of performing construction, maintenance or emergency repair for the benefit of the Common Area or the Owners in common, and/or to perform maintenance work which the Lot Owner has failed to perform as provided in section 7.20, the Association's agents or employees shall have the right, after reasonable notice (except in emergencies, not less than twenty-four (24) hours) to the Owner thereof, to enter any Lot at reasonable hours. Such entry shall be made with as little inconvenience to the Owner as practicable and any damage caused thereby shall be repaired by the Board at the expense of the Association.

F. Assessments, Liens, Penalties and Fines: The Board shall have the power to levy and collect Assessments in accordance with the provisions of Article IV hereof. The Association may impose fines or take disciplinary action against any Owner for failure to pay Assessments or for violation of any provision of the Project Documents and the unrecorded Rules adopted by the Board or the Association. Penalties may include but are not limited to fines, temporary suspension of voting rights, or other appropriate discipline, provided the Member is given notice and a hearing as provided in the Bylaws before the imposition of any fine or disciplinary action. The Board shall have the power to adopt a schedule of reasonable fines and penalties for violations of the terms of this Declaration, and for violations of any Rules adopted pursuant to section 5.2D, provided that such schedule is approved by vote or written consent of a majority of all Members. The penalties prescribed may include suspension of all rights and privileges of membership, provided, however, that suspension for failure to pay Assessments shall be for a maximum period of thirty (30) days, renewable by the Board for an additional thirty (30) day period or periods until paid; and provided further that suspension for infraction of Rules or violation of this Declaration, other than for failure to pay Assessments, shall be limited to a maximum period of thirty (30) days per infraction or violation, and shall be imposed only after a hearing before the Board. The Board may extend said period for an additional period or periods in the case of a continuing infraction or violation, and no hearing need be held for such extension. Written copies of Rules and the schedule of penalties shall be furnished to Owners. The Board shall assess fines and penalties and shall enforce such assessments in the manner provided in section 4.10.

G. Enforcement: The Board shall have the power to enforce this Declaration.

H. Acquisition and Disposition of Property: The Board shall have the power to acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, or otherwise dispose of real or personal property in connection with the affairs of the Association. Any transfer of property shall lie by document signed or approved by two-thirds (2/3) of the total voting power of the Association which shall include two-thirds (2/3) of the Members other than Declarant, or where the two (2) class voting structure is still in effect, two-thirds (2/3) of the voting power of each class of Members.

I. Loans: The Board shall have the power to borrow money, and only with the assent (by vote or written consent) of two-thirds (2/3) of the total voting power of the Association including two-thirds (2/3) of the Members other than Declarant, or where the two (2) class voting structure is still in effect two-thirds (2/3) of the voting power of each class of Members, to mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

J. Dedication: The Association shall have the power to dedicate, sell, or transfer all or any part of the Common Area to any **public** agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication shall be effective unless an instrument has been signed or approved by two-thirds (2/3) of the total voting power of the Association including two-thirds (2/3) of the Members other than Declarant, or where the two (2) class voting structure is still in effect, two-thirds (2/3) of the voting power of each class of Members, agreeing to such dedication, sale or transfer.

K. Contracts: The Board shall have the power to contract for goods and/or services for the Common Areas, facilities and interests or for the Association, subject to limitations set forth in the Bylaws, or elsewhere herein. The Board shall not enter into any contracts with an independent contractor until it meets the requirements of section 5.1B(3) herein.

L. Delegation: The Association, the Board, and the officers of the Association shall have the power to delegate their authority and powers to committees, officers or employees of the Association, or to a manager employed by the Association, provided that the Board shall not delegate its responsibility:

(1) to make expenditures for capital additions or improvements chargeable against the reserve funds-

(2) to conduct hearings concerning compliance by an Owner or his tenant, lessee, guest or invitee with the Declaration, Bylaws or Rules promulgated by the Board.

(3) to make a decision to levy monetary fines, impose special Assessments against individual Lots, temporarily suspend an Owner's rights as a Member of the Association or otherwise impose discipline:

(4) to make a decision to levy annual or special Assessments; or

(5) to make a decision to bring suit, record a claim of lien or institute Foreclosure proceedings for default in payment of Assessments.

- M. **Water and Garbage Service:** The Board shall have the authority (but not the obligation) to acquire and pay for water service and trash or garbage service for all homes situated on the Project. All funds collected from Owners for water service or trash and garbage service shall be segregated from all other funds and shall be used for no purpose other than providing water service, and trash and garbage service.
- N. **Appointment of Trustee:** Tile Association, or the Board acting on behalf of the Association, has the power to appoint or designate a trustee to enforce assessment liens by sale as provided in section 4.10 and California Civil Code § 1367(b).
- O. **Litigation/Arbitration:** The Association, subject to section 9.15 of this Declaration, shall have the power to institute, defend, settle or intervene in litigation, 7 arbitration, **mediation** or administrative proceedings on behalf of the Association pursuant to Civil Code § 383. **Except in the case** of an action to enforce the Project Documents or to collect Assessments (in which case the Board may act by majority vote), the Board of Directors has authority to file a suit, or file a demand for arbitration, or incur litigation costs, or enter into a contingent fee contract with an attorney, whether pursuant to **Civil** Code § 383, or on behalf of Members, only after getting the vote at a duly noticed and properly held membership meeting of a majority of a quorum of the Members other than Declarant. This section shall not be construed to limit the power of the Board to defend the Association and its officers, directors and members against any suit. In any case where the Board determines that the Association's claim **will** be barred by an applicable statute of limitations by reason of the delay in obtaining tile vote required above, and in any case where a quorum of Members other than Declarant was not obtained despite two (2) attempts to call a special meeting following proper notice requirements contained in applicable provisions of the Bylaws, a vote of 'Members approving the action described above shall not be required, provided that in such case a majority of the entire Board shall approve the action, and the Board shall notify the Members promptly in the manner required by section 9.9 for notices, of the action taken by the Board. In the event the Board files an action in advance of a vote by the Members, in order to avoid the running of a statute of limitations, the Board shall call a special meeting of the Members within thirty (30) days after action is taken to file the suit, for the purpose of obtaining the approval of the Members of the action taken by the Board. The vote of at least a majority of a quorum of Members shall be required to ratify the Board's action, and in the event of the failure to obtain such approval, the Board shall immediately take all possible steps, to settle any suit that has been filed and/or to cause any action that has been filed to be dismissed.
- Q. **Other Powers:** In addition to the powers contained herein, the Board may exercise the powers granted to a nonprofit mutual benefit corporation under California Corporations Code § 7140.
- R. **Common Area Improvements:** The Association shall have the authority and power to construct, improve, repair, demolish, remove and reconstruct any and all improvements on or over or under the Common Area not inconsistent with this Declaration, and appropriate for the use and benefit of the Members of the Association, and to charge for the use thereof, provided that the Association shall not include in any assessment, annual or special, the cost of any new capital improvement which exceeds \$10,000 in cost to be expended in any one calendar year, unless fifty-one percent (51%) or more of the voting power of the Association previously shall have approved said expenditure.

5-3 **Commencement of Association's Duties and Powers:** Until incorporation of the Association, all duties and powers of the Association as described herein, including all rights of consent and approval, shall be and remain the duties and powers of Declarant. From and after the date of incorporation of the Association, the Association shall assume all duties and powers.

ARTICLE VI ARCHITECTURAL CONTROL

6.1 **Approval of Plans: No building.** fence. wall. pool. spa. obstruction. outside or exterior wiring, balcony, screen. patio, patio cover, tent. awning, carport. carport cover, trellis, improvement, or structure of any kind shall be commenced. installed, erected. painted or maintained upon the Project. nor shall any alteration or improvement of any kind be made thereto, or to the exterior of any residence, until the same has been approved in writing by the Board. or by an Architectural **Control Committee** appointed by the Board. Plans and specifications showing the nature, kind, shape. color, size, materials and location of such improvements. alterations. etc.. **shall be submitted to the Board or to the Architectural Control Committee** for approval as to quality of workmanship and design and harmony of external design with existing structures, and is to location in relation to surrounding structures. topography. and finish grade elevation. No fence or wall shall be erected. placed or altered on any Lot nearer to any street than the minimum building set back line. No permission or approval shall be required to repaint in accordance with Declarant's original color scheme, or to rebuild in accordance with Declarant's original plans and specifications. No permission or approval shall be required to repaint in accordance with a color scheme previously approved by the Committee or the Board. or to rebuild in accordance with plans and specifications previously approved by the Committee or by tile Board. Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of his residence, or to paint the interior of his residence any color desired.

6.2 Architectural Control Committee Action: The Architectural Control Committee shall consist of three (3) members. Declarant may appoint all of the original members of the Committee and all replacements until the First anniversary of the issuance of the original Final public report for the First phase of the Project. The Declarant reserves to itself the power to appoint a majority of the members to the Committee until ninety percent (90%) of all the Lots in tile Project including subsequent phases if any have been sold or until the fifth anniversary of the issuance of the final public report for the First phase of the Project, whichever first occurs. After one (1) year from the date of the issuance of the original public report for the first phase of the Project.. the Board shall have the power to appoint one (1) member lto the Architectural Control Committee until ninety percent (90%) of all of the Lots in the overall development have been sold or until the Fifth anniversary date of the issuance of the final public report for the first phase of the Project, whichever first occurs. Thereafter, the Board shall have the power to appoint all of the Architectural Control Committee. 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 need not be Members of the Association. A majority of the Architectural Control Committee may designate a representative to act for it. In the event of death or resignation of any member of the Committee. the successor shall be appointed by the person. entity or group which appointed such member until Declarant no longer has the right to appoint any members to the successor. Neither the members of the Committee nor its designated representative shall be entitled to any compensation for services performed pursuant hereto. In the event the Committee fails to approve or disapprove plans and specifications in writing within thirty (30) days after the same have been submitted to it. approval **will** not be required and the related covenants shall be deemed to have been fully complied with. Approval of plans by the Committee or the Board. shall in no way make the Committee or its members or the Board or its members responsible for or liable for the improvements built after approval of the plans and the Owner whose plans are approved shall defend, indemnify and hold the Committee and the Board, and the members thereof, harmless from any and all liability arising out of such approval.

6-3 Landscaping: No landscaping or other physical improvements or additions shall be made to any decks, balconies. patios or yards or portions of Lots which are visible from the street or from any Common Area by any Owner until plans and specifications showing the nature. kind. shape, and location of the materials shall have been submitted to and approved in writing by the Architectural Control Committee or tile Board.

6.4 Solar **Energy**: The Architectural Control Committee may impose such restrictions on the installation of solar panels as -are permitted by applicable state laws.

6.5 Governmental Approval: Before commencement of any alteration or improvements approved by the Architectural Control Committee, the Owner shall comply with all appropriate governmental laws and regulations. Approval by the Committee does not satisfy the appropriate **approvals that may** be required by any governmental entity with appropriate jurisdiction.

ARTICLE VII USE RESTRICTIONS

In addition to all of the covenants contained herein, the use of tile Project and each Lot therein is subject to the follow

7.1 Use of Lot: No Lot shall be occupied and used except for residential purposes by the Owners, their tenants, except that Declarant or its successors or assigns, may use the Project for a model homesite or sites, and for a construction office during construction until the last Lot is sold by Declarant. or, where Declarant elects to retain one (1) or more lots, until three (3) years from the date of closing of the First sale in the latest annexed phase of the Project, which use may be used as a combined residence and executive or professional office by the Owner thereof, so long as such use is consistent with the quiet enjoyment by other Lot Owners of their Lots and does not include visiting clients and such use is not visible from the Area, adjoining, Lots or streets of the Project. No tent, shack, trailer, basement, garage, outbuilding or structure of any kind shall be used on any Lot at any time as a residence, either temporarily or permanently.

No more than two (2) persons per bedroom shall be permitted as permanent residents. A permanent resident is defined as a person residing on the Lot more than sixty (60) days out of any twelve (12) consecutive month period, provided that one (1) child under the age of years of age shall be allowed in addition to the maximum number of permanent residents otherwise permitted in each Lot.

No health care facilities operating as a business or charity and serving the sick, elderly, disabled, handicapped or infirm shall be permitted in the Project.

No family day care center for children shall be permitted within the Project except as specifically authorized by the International Safety Code §1597.40 and other applicable state statutes. The owner/operator of any such day care facility shall comply with all 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 of tile day care center;
- B. Defend, indemnify and hold the Association harmless from any liability arising out of the existence and operation of the day care center;
- C. Abide by and comply with all of tile Association's Rules;
- D. Supervise and be completely responsible for children at all times while they **are within the project**;
- E. Cooperate with the Association if the Association's insurance agent or carrier requires proof of insurance, proof of assets of the owner or operator of the center to these conditions, or other reasonable requests.

No Lot or Lots or any portion thereof in the Project shall be leased, subleased, occupied, rented, let, sublet, or used in connection with any time sharing agreement, plan, program or arrangement, including, without limitation, any so called "vacation club," "extended vacation," or other membership or time interval ownership arrangement. The term "time sharing" as used herein shall be deemed to include, but shall not be limited to, any agreement, plan, program, or arrangement under which tile right to use the Lot or Lots or any portion thereof or residence thereon in the Project rotates among various persons, either individually, or otherwise, on a periodically recurring basis for value exchanged, whether monetary or like kind use to a fixed or floating interval or period of time.

This section shall not be construed to limit the personal use of any Lot or any portion thereof in the Project by any owner or its social or familial guests.

7.2 Nuisances: No noxious, illegal, or seriously offensive (to a reasonable person) use shall be carried on upon any Lot, or in any part of the Project, nor shall anything be done thereon which may be or may become a nuisance to or which may in anyway interfere with the quiet enjoyment of each of the Owners of his respective Lot.

7-3 Vehicle Restrictions and Towing: No trailer, camper, mobile home, commercial vehicle, recreational vehicle, or any other vehicle having a carrying capacity of greater than 1/2 ton, or van having seating capacity in excess of eight (8) persons, boat, inoperable equipment shall be permitted to be parked or remain upon any area within the Project. Permitted vehicles which are used for personal use are not prohibited, provided that any signs or markings of a commercial nature on such vehicle shall be removed and inoffensive as determined by the Board. No noisy or smoky vehicles shall be operated on the Project. No unlicensed motor vehicles shall be operated on the Project. The occupants of any one Lot shall not have or park more than three (3) permitted vehicles on the Project. The Association may, install a sign at each vehicular entrance to the Project containing, a statement that public parking is not permitted. All vehicles not authorized to park on tile Project will be removed at the Owner's expense. The sign shall contain tile following information: No vehicles not authorized to park on tile Project will be removed at the Owner's expense. The sign shall contain tile following information: the local traffic law enforcement agency and shall not be less than 17 x 22 inches in size with lettering not less than 2 inches in height. The Association may cause the removal of any vehicle wrongfully parked on the Project, including a vehicle owned by an owner of the registered owner of the vehicle is known or readily ascertainable, the President of tile Association or his or her authorized agent.

in a reasonable time thereafter, notify the owner of the removal in writing by personal delivery or first class mail. The removal shall be given to the local traffic law enforcement agency immediately after the vehicle has been removed. Provide a description of the vehicle, the license plate number and tile address from where the vehicle was removed. If the tile address is not known or readily ascertainable and the vehicle has not been returned to the owner within one hundred twenty (120) days of removal, the Association immediately shall send or cause to be sent a written report of the removal by mail to the Department of Justice in Sacramento, California and shall file a copy of tile notice with the proprietor of the public garage in which the vehicle is stored. The report shall be made on a form furnished by the Department of Justice and shall include a complete description of the date, time and place from which the vehicle was removed, the amount of mileage on the vehicle at the time of removal and the name of the garage or place where the vehicle is stored. **Notwithstanding the foregoing**, the Association shall remove the vehicle from the removal, without notice, of **any vehicle parked in a marked fire lane**, within fifteen (15) feet of a fire hydrant, in a fire lane designated for handicapped without proper authority or in a manner which interferes with any entrance to, or **exit from**, a fire lane, parking space or garage located thereon. The Association shall not be liable for any damages incurred by the vehicle as a result of the removal in **compliance** with this section or for any damage to the vehicle caused by the removal, unless such damage is the intentional or negligent act of the Association or any person causing the removal of or removing the vehicle. If the Association removes the vehicle, the Association shall state the grounds for the removal of the vehicle.

7.4 Parking: All Common Area parking spaces shall remain permanently available for guest parking. Parking spaces shall be for parking of permitted vehicles only and not for the permanent parking or storage of boats, trailers or non-mobile vehicles. No garage or parking space shall be converted into any use (such as a recreational room or storage room) that would reduce the number of parking spaces for the number of vehicles the space was designed to contain. All garages shall be equipped with automatic doors. Garage doors shall be kept closed when not in use. The Association may establish Rules from time to time for the use of the Common Areas.

7.5 Commercial Activity: No business, professional, or commercial activity of any kind shall be conducted in the Common Areas as provided in section 7.1.

7.6 Storage in Common Area: Nothing shall be stored in the Common Area without the prior consent of the Board.

7.7 Signs: No signs shall be displayed to the public view on any Lot or on any portion of the Project except such as may be approved by the Board or committee appointed by the Board. "For Sale" or "For Rent" or "For Exchange" signs shall be allowed. Owners may display one (1) sign within the Common Area advertising directions to the Owner's Lot which is for sale, rent, or exchange. The design, dimensions and locations are reasonable.

7.8 Animals: No animals of any kind shall be raised, bred, or kept on any Lot or in the Common Area except as may be approved by the Board. 2) usual and ordinary household pets such as dogs or cats provided they are not kept, bred, or maintained for any commercial purpose and are kept under reasonable control at all times. No pets shall be allowed in the Common Area except as may be permitted by the Board. No Owner shall allow his or her dog to enter the Common Area except on a leash. After making a reasonable effort to locate the Owner, the Association or any Owner may cause any pet found within the Common Area in violation of the Rules of the Association to be removed by the Association (or any Owner) to a pound or animal shelter under the jurisdiction of the County of Solano, by calling the appropriate authorities, whereupon the owner may, upon payment of all expenses incurred, therewith, repossess the pet. Owners shall prevent their pets from soiling the Common Area and shall promptly clean up after their pets. Owners shall be fully responsible for any damage caused by their pets.

7.9 Garbage and Refuse Disposal: All rubbish, trash and garbage shall be regularly removed from the Lots and shall not be allowed to accumulate thereon. Trash, garbage and other waste shall not be kept except in sanitary containers. All equipment used for the disposal of such materials shall be kept in a clean and sanitary condition, and shall be screened from view of neighboring Lots and streets. No toxic or hazardous materials shall be **disposed of within the Project** by dumping in the Common Area or down the drains, or otherwise. Each **Owner shall** be responsible for removal of garbage from his Lot.

7.10 Radio and Television Antennas: No antennas, towers, poles, satellite dishes or **any other structure to be used for the purpose of transmitting or receiving radio, television or related signals**, except equipment installed by Declarant shall be installed in the Common Area as to be visible to the public view or to another Owner without the consent of the Board. In considering whether to approve such installation, the Board shall consider and give great weight to considerations of aesthetics and uniformity of appearance of the Project and of any applicable laws. All fees for the use of any cable television system shall be borne by the respective Owner of the Lot.

7.11 Basketball Standards: No basketball standard or Fixed sports apparatus shall be attached to the exterior surface of a garage, nor shall any portable apparatus for basketball be permitted on any Lot. The purpose of this restriction is to maintain high aesthetic standards, and to preserve the quiet enjoyment of the respective Lots by the Owners thereof.

7.12 Clothes Lines: No exterior clothes lines shall be erected or maintained and there shall be no outside laundry. No draping of towels, carpets, or laundry over exterior railings shall be allowed.

7.13 Power Equipment and Car Maintenance: No power equipment, hobby shops, or car maintenance (including car wash work), or boat maintenance shall be permitted on the Project except with prior written approval of the Board. Approval shall be given only if the proposed activity is necessary for the proper maintenance of the Project.

onably withheld and in deciding whether to grant approval the Board shall consider the effects of noise, air pollution, hazard, interference with radio or television reception, and similar objections. All hazardous waste shall be disposed of in a proper manner.

7.14 Liability of Owners for Damage to Common Area: The Owner of each Lot shall be liable to the Association for the Common Area improvements (including landscaping) caused by such Owner or the Owner's agents, occupants, except for that portion of damage covered by insurance carried by the Association. The responsible Owner shall be charged with repairing such damage (including interest thereon) as is described in section 5.1A.

7.15 Leasing of Lots: No Owner shall be permitted to lease his Lot for any period less than thirty (30) days. Any lease shall be subject in all respects to the provisions of the Declaration, the Bylaws and all Rules adopted by the Association. Failure of the tenant to comply with the foregoing shall be a default under the lease, regardless of whether the lease so provides. In the event of such a default, the Owner immediately shall take all action to cure the default including, if necessary, eviction of the tenant. Notwithstanding the foregoing, there is no restriction in the right of any Owner to lease his Lot. All Owners leasing their Lots shall promptly advise the Association in writing of the names of all tenants and members of tenant's family occupying such Lot and of the telephone number where such Owner can be reached.

A copy of the lease agreement between an Owner and his tenant shall be given to the management agent of the Association upon execution by the parties.

7.16 Commonly Metered Utilities: The Board may establish restrictions regarding the individual use of any utility and may impose reasonable charges for **the individual use thereof**.

7.17 Flags, Pennants, Banners, Etc.: There shall be no exhibiting, flying or hanging of any flags, pennants, banners, kites, towels, etc., from any area of the Project (except **the sales office**) that would be visible from the street, Common Area, or the other Units, except under reasonable Rules adopted by the Board or the Architectural Control Committee, and except as is expressly permitted by statute.

7.18 Activities Causing Increase in Insurance Rates: Nothing shall be done or kept on any Lot or in any improvement thereon, or in the Common Area, which will increase any applicable rate of insurance or which will result in the cancellation of any policy on any Lot or any part of the Common Area, or which would be in violation of any law.

7.19 Common Area Use: Nothing shall be stored, grown, or displayed in the Common Area, including balconies and patios, except as approved in advance by the Architectural Control Committee.

7.20 Owner's Right and Obligation to Maintain and Repair: Except for the landscaping and limited exterior maintenance provided by the Association as specified above, each Owner shall be responsible for maintaining in good condition and repairing his Lot including specifically:

- a. **Doors.** Each Owner shall maintain and repair or replace the entryway door(s) to his dwelling provided the color of the painting or staining shall be in the same color as originally used unless a different color has been approved by the Board.
- b. **Glass.** All windows and sliding glass doors shall be cleaned (outside as well as inside), repaired and replaced by the individual Owners.
- c. **Appliances and Equipment** Each Owner shall be responsible for maintaining, repairing, and replacing all appliances and equipment within his dwelling, including air conditioning and heating equipment, water heaters, plumbing and lighting fixtures, and all other mechanical equipment servicing his particular dwelling.
- d. **Utility Connections.** Utility lines and connections, including sewer, electrical, plumbing and gas lines which are located within a dwelling and provide service to the dwelling, shall be maintained and repaired by the Owner of the dwelling in question and/or the utility company involved, rather than by the Association.
- e. **Private Patios, Decks and Yards.** Subject to any restrictions on planting and grading, contained elsewhere in the Declaration, each Owner shall plant, landscape and maintain the patio spaces, decks and yards which are intended for private use as part of his individual residence area.
- f. **Interior.** Each Owner shall maintain the interior of his residence and shall be entirely responsible for the decorating, cleaning and maintenance thereof, including all personal property and fixtures therein.

If an Owner fails to maintain his Lot as provided herein in a manner which the Board **reasonably deems** necessary for the safety, appearance and/or value of the Project, the **Board may notify the Owner of the work** required and request that the Owner perform such maintenance and/or repairs within a reasonable and specific period. If the Owner fails to perform such maintenance and/or repairs within said period, the Association, subject to the notice and hearing requirements set forth in the Bylaws, shall have the right to enter upon the Lot to cause and/or repair work to be performed. Cost of any **such repair or maintenance** shall be charged to the Owner. The Association shall charge as provided in Article IV.

The cost of such maintenance shall immediately be paid to the Association by the Owner of such Lot, together with interest at the rate of twelve percent (12%) per annum (but not to exceed the maximum interest rate authorized by law from the date the cost is paid by the Association until the date the cost is paid by the Owner. Notwithstanding the foregoing, in the event of an emergency of the failure of an Owner to maintain his Lot, the Board shall have the right through its agents and employees to incur the cost to abate the emergency and individually charge the cost thereof to such Owner.

7.21 Project Special Tax Districts. Prospective Owners should be aware of the fact that this Project is within or adjacent to certain Common Area facilities within a maintenance district. A special tax will appear on your property tax bill which goes to the City of Fairfield for the maintenance of certain Common Area facilities within a maintenance district. The special tax may be deceptively low during the development, when the City is not yet responsible for the full scope of maintenance activities to be performed during the development. Contact your title company or the City of Fairfield Public Works Department (707) 428-7485 for more information.

7.22 Golf Course Lots. The Owners of Lots within the Project acknowledge their Lots adjoin or are in close proximity to a municipal golf course and further acknowledge and take said Lots subject to the risk of unreasonable harm or injury to said lot resulting from flying or other golf balls which travel out of the boundaries of the municipal golf course. "Owner" shall not be limited to, any and all transferees, heirs, assigns, devisees, or other persons acquiring an interest in the Project. The Owners of all Lots in the Project shall take said Lots subject to the risk of unreasonable harm or injury to said Lots resulting from intrusion of said golf balls into the Common Area. The Owner of any Lot described above shall, in turn, take such measures to ensure that adequate notice or warning of the above-described risk or risks is given to invitees, licensees, and any such Lot at the time of any use thereof. Furthermore, the Project shall be subject to an easement in favor of the City of Fairfield, its successor, and the operator of the municipal golf course, for the errant flight and/or entry of golf balls upon or across the property described above, and the Lot Owner, by acceptance of a Deed, hereby waives and releases, Declarant, the City of Fairfield, and the golf course operator from any and all claims, liabilities, losses, damages, and attorneys' fees incurred, made or arising out of or in connection with any property damage to any property, including but not limited to the property of Lot Owner, which arises from any use of the property. The rear yard fencing, landscaping and site improvements adjoining the golf course shall conform to the requirements of the "Solano Golf Course Interface Plan, Design Guidelines" final draft dated July 13, 1987, prepared by POD, Incorporated and incorporated by reference.

ARTICLE VIII INSURANCE; DAMAGE OR DESTRUCTION; CONDEMNATION

8.1 Insurance: The Association shall obtain and maintain the following insurance:

(1) a master hazard policy insuring all improvements, equipment and fixtures in the Project (including the residential units and structures constructed);

(2) if obtainable, an occurrence version comprehensive general liability policy insuring the Association, its agents, officers, directors, and their respective family members, against liability incident to the ownership or use of the Common Area or any other real or personal property; the amount of general liability insurance which the Association shall obtain shall be not less than the minimum amounts required by California Civil Code §§ 1365.7 and 1365.9;

(3) workers' compensation insurance to the extent required by law (or such greater amount as the Board deems necessary); the Association shall obtain a Certificate of Insurance naming it as an additional insured in regard to workers' compensation coverage for any independent contractor who performs any service for the Association, if the receipt of such a certificate is practicable;

(4) fidelity bonds or insurance covering officers, directors, and employees that have access to any Association funds;

(5) flood insurance if the Project is located, in an area designated by an appropriate governmental agency as a special flood hazard area;

(6) officers and directors liability insurance in the minimum amounts required by California Civil Code §§ 1365.7 and 1365.9;

(7) water damage; liability for non-owned and hired automobiles, such other insurance as the Board in its discretion deems necessary or advisable; and

(8) earthquake insurance to the extent required by law, and if not required by law, then to the extent available at reasonable rates in the opinion of the Board.

(9) the following endorsements should be included, if applicable:

- (a) changes in building codes, and demolition coverage (sometimes referred to as “ordinance endorsement”);
- (b) inflation guard coverage;
- (c) “agreed amount” endorsement (to eliminate a coinsurance problem);
- (d) replacement cost endorsement;
- (e) primary coverage endorsement.

nt, term and coverage of any policy required hereunder (including the type of endorsements, the amount of the deductible, the loss payees, standard mortgage clauses, notices of changes or cancellations, and the insurance company requirements) shall be the **minimum requirements imposed for this type** of project by the Federal National Mortgage Association (“**FNMA**”) or the Federal Home Loan Mortgage Corporation (“**FHLMC**”) or any successor thereto (except for earthquake insurance, the type and amount of which shall be within the discretion of the Board as provided in § 8.1(8). above). If the FNMA or FHLMC requirements conflict, the more stringent requirement shall be met. If FNMA and FHLMC do not impose requirements on any policy required hereunder, the terms and conditions of such policy shall be no less than that which is customary for similar policies on similar projects in the area. Each policy shall be maintained by the Association or any insurance trustee designated by the Association to act on behalf of the Owners in connection with the project, including matters arising from any insurance policy maintained by the Association. including without limitation, representing the Association in settling, negotiation, settlement or agreement. Any insurance maintained by the Association shall contain “waiver of subrogation” in favor of the Association and its officers, directors and Members. the Owners and occupants of the

lots (including) Declarant) and mortgagees, and cross-liability and severability of interest coverage insuring each insured against the loss of each other insured. The Association shall periodically (and not less than once every three (3) years) review all insurance policies maintained by the Association to determine the adequacy of the coverage and to adjust the policies accordingly.

Each policy shall contain a waiver of subrogation as to the Association and its officers, directors and Members and occupants of the Lots and mortgagees, and all Members are deemed to have waived subrogation rights against the Association and/or other Members, whether or not their policies so provide.

Each Owner shall separately insure his or her Lot against loss by fire or other casualty covered by any insurance carried by the Association. The Association shall make available to all Members a copy of the Association’s **policy** to enable Members to insure their lots without duplicating insurance carried by the Association and inadvertently triggering a co-insurance clause in the Association’s policy as provided in Section 8.1(1). If any Owner violates this provision, any diminution in insurance proceeds otherwise payable under the Owner’s policies that results from the existence of such other insurance will be chargeable to the Owner who acquires the Lot. The insurance maintained by the Association does not cover the personal property in the residences and does not cover the liability for damages or injuries occurring in the Lots. Any Owner can insure his or her personal property against loss by fire or other casualty and personal liability insurance that he or she desires. In addition, any improvements made by an Owner within his or her Lot shall be covered by insurance insured by the Owner, but the insurance is to be limited to the type and nature of coverage commonly known as “improvements insurance”. Tile Owner shall not obtain such insurance if the policy referred to in section 8.1(1) **will** provide coverage for such improvements.

The Association shall make available to all Members a copy of the Association’s policy to enable Members to insure their lots without duplicating insurance carried by the Association and inadvertently triggering co-insurance clause in the Association’s policy as provided in section 8.1(1).

The Association, and its directors and officers, shall have no liability to any Owner or mortgagee if, after a good faith effort to obtain the insurance required hereunder, because the insurance is no longer available or, if available, can be obtained only at a cost that the **Board in its sole discretion** determines is unreasonable under the circumstances, or the Members fail to appropriate the amount of the premium increase needed to fund the insurance premiums. **In such event, the Board immediately** shall notify each Member of the situation and the Member is entitled to notice **that the insurance will not be obtained or** renewed. Each buyer of a Lot shall pay the portion of the cost of the policy attributable to the buyer’s Lot. (prorated to the date of close of escrow) for the policy or policies purchased by Declarant.

Damage or Destruction: If Project improvements (including a residence) are damaged or destroyed by fire or other casualty, the improvements shall be repaired or reconstructed substantially in accordance with the original as-built plans and specifications, or the improvements shall be repaired or reconstructed in accordance with the requirements required by applicable building codes and regulations in force at the time of such repair or reconstruction and subject to the approval of the Architectural Control Committee, or upgrades as may be approved by the Architectural Control Committee, unless either of the following occurs: (1) if the cost of such repair or reconstruction is more than fifty percent (50%) of the current replacement costs of all Common Area improvements, and the insurance proceeds are not sufficient to pay for at least eighty-five percent (85%) of the cost of such repairs or reconstruction; or (2) available insurance proceeds are not sufficient to substantially repair or reconstruct the improvement. If either of the above conditions is met, at the time as determined by the Board, a special Assessment levied to supplement the insurance fails to receive the necessary approval of the Association (if such approval is required) as provided in section 4.4. and the Board, without the requirement of approval by the

supplement the insurance by borrowing on behalf of the Association sufficient monies to enable the improvement to be repaired or reconstructed within a reasonable time.

In the case of damage or destruction of an individual home, whether by Fire, earthquake or other causes, the Owner(s) shall be responsible for the cost of reconstruction that is not covered by insurance or is within the deductible amount. If the cost of reconstruction, the Association may elect to pay for the uninsured portion of the cost and shall have the right to be reimbursed by the Owner(s) for the cost thereof and to enforce the assessment as provided in this Declaration. In any case where the cost of reconstruction is not covered by insurance or is within the deductible amount, the Association shall immediately initiate an Assessment upon said Owner's Lot equal in amount to such preemption pursuant to section 4.3, and shall enforce the same in accordance with sections 4.3 and 5.2F hereof. The proceeds of such Assessment or lien shall then be substituted for the insurance proceeds.

A. Process For Repair or Reconstruction: If the improvement is to be repaired or reconstructed and the cost of reconstruction is in excess of twenty-five percent (25%) of the current replacement cost of all the Project improvements, the Board shall employ a construction consultant, a general contractor, and an architect for the repair or reconstruction. All insurance monies allocated for the repair or reconstruction, and any borrowings by the Association for the repair or reconstruction shall be held in a depository institution experienced in the disbursement of construction loan funds (the "depository") as determined by the Board. Funds shall be disbursed in accordance with the normal construction loan practices of the depository that shall be approved by the Board. The construction consultant, general contractor and architect shall certify within ten (10) days prior to any disbursement the following:

- (1) that all of the work completed as of the date of such request for disbursement has been done in compliance with the approved plans and specifications;
- (2) that such disbursement request represents monies which either have been paid by or on behalf of the construction consultant, the general contractor or the architect and/or are justly due to contractors, subcontractors, material suppliers, engineers, or other persons (whose **name and** address shall be stated) who have rendered or furnished certain services or materials for the work and giving a brief description of such services and materials and the principal subdivisions or categories thereof and the respective amounts paid or due to each person in respect thereof and stating the progress of the work up to the date of said certificate;
- (3) that the sum then requested to be disbursed plus all sums previously disbursed does not exceed the cost of reconstruction insofar as actually accomplished up to the date of such certificate;
- (4) that no part of the cost of the services and materials described in the foregoing paragraph 8.2A(I) has been made the basis for the disbursement of any funds in any previous or then pending application; and
- (5) that the amount held by the depository, after payment of the amount requested in the pending disbursement application, **will** be sufficient to pay in full the costs necessary to complete the repair or reconstruction.

If the cost of repair or reconstruction is less than twenty-five percent (25%) of the current replacement cost of all the improvements, the Board **shall** disburse the available* funds for the repair and reconstruction under such procedures as the Board may determine under the circumstances.

The repair or reconstruction shall commence no later than ninety (90) days after the date of such damage or destruction and shall be completed no later than one hundred eighty (180) days after commencement of reconstruction, subject to delays that are the responsibility of the party responsible for making the repairs. The Owner of the damaged or destroyed improvement shall immediately take such actions as may be reasonably necessary to secure any hazardous condition and to screen any unsightly views resulting from the destruction.

In the event the work required to maintain or to repair or restore damage or destruction involves work that is the responsibility of Owner and the Association as provided in-sections 7.20 and 5.1A, then all of such work shall be directed by the Board. The expense to be allocated between Owner and the Association pursuant to sections 7.20 and 5.1 A. If more than one Owner is involved, the expense to be paid by each Owner shall be apportioned by the Board. If the Association is involved in a dispute with an Owner over the amount of such expenses, then the dispute shall be settled by arbitration pursuant to any appropriate alternative dispute procedure.

If the Association undertakes any work which section 7.20 requires an Owner to undertake, or any work which is required to be undertaken at the expense of the Owner, the Board shall assess the Lot of the Owner for such work and the amount thereof in writing; provided, however, that the Assessment shall be reduced by the amount of any insurance proceeds received by the Association as a result of damage to or destruction of the residence or the Lot involved. Such Assessment shall be enforceable against the Owner and may be foreclosed, as set forth in section 4.10.

B. If Repair or Reconstruction Not Undertaken: If the Project **improvement is not repaired** or reconstructed in accordance with the provisions of this Declaration, all **available insurance proceeds** shall be disbursed to the Owner of the improvement. **Subject to the right of the Association to foreclose its mortgages.** provided that if the improvement is a Common Area improvement, the proceeds shall be disbursed to the Association.

and their respective mortgagees in the same proportion that the Owners are assessed, subject to the rights of **the es, after first** applying the proceeds to the cost of mitigating hazardous conditions on the Project, making provision of public liability insurance to protect the interests of the Owners until the property can be sold, and complying with requirements of governmental agencies.

If the failure to repair or reconstruct results in a material alteration of the use of the Project from its use in tile damage or destruction as determined by the Board (a material alteration shall be conclusively presumed if tion costs exceed twenty-five percent (25%) of the current replacement cost of all Project improvements), the Project entirely under such terms and conditions as the Board deems appropriate. If any Owner or First Lender disputes th ion as* to a material alteration, the dispute shall be submitted to arbitration pursuant to the rules of the American 7, and the decision of the arbitrator shall be conclusive and binding on all Owners and their mortgagees.

If the Project is sold, the sales proceeds shall be distributed to all Owners and their respective mortgagees in pr ctive fair market values of their Lots as of the date immediately preceding the date of damage or destruction as deterr ndependent appraiser selected by the Board. For the purpose of effecting a sale under this section 8.2B, each Owne ation an irrevocable* power Of attorney to sell the entire Project for the benefit of the Owners, to terminate the Declara ie Association. In the event the Association fails to take the necessary steps to sell the entire Project as required y (60) days following 7 the date of a determination by the Board or arbitrator of a material alteration, or if within on 0) days following the date of damage or destruction, the Board has failed to make a determination is to a material alte y file an action in a court of appropriate jurisdiction for an order requiring the sale of the Project and distribution of the nce with this section 8.2B

Notwithstanding anything herein to the contrary, any Owner or group of Owners shall have a right of first refusa and conditions of any offer made to the Association in the event of a sale of the Project under this section 8.2 B. pr cised within ten (10) days of receipt by the Owners of a notice from the Association containing the terms and conditi s received. If the Owner or group of Owners subsequently default on their offer to purchase, they shall be liable to id their respective mortgagees for any damages resulting from the default. If more than one (1) Owner or group elects t he-Board shall accept the offer that in its determination is the best offer.

8-3 Condemnation: If all or any part of a Lot (except the Common Area) is taken by eminent domain, the awar to tile Owner of the Lot, subject to the rights of the Owner's mortgagees. If the taking renders the Lot uninhabitable, ived of any" further intrest in the Project, including membership in the Association. and the interest of the remainir djusted accordingly. If ill or any part of the Common Area is taken by eminent domain. the proceeds of condemnat store or replace the portion of the Common Area affected by condemnation. if restoration or replacement is impossibl funds, after payment of any and all fees and expenses incurred by the Association relating to such condemnation among the Owners in the same proportion as **such Owners are assessed**, subject to the rights of mortgagees. If r ing portion **of the Project shall be resurveyed** to reflect such taking. The Association shall participate in the negoti ose the method of division of the proceeds of condemnation, where Lots are not valued separately by the condemnin court. Tile Association shall represent the Owners in any condemnation proceedings or in negotiations. settler s with the condemning authority for acquisition of the Common Area. or part thereof.

ARTICLE IX GENERAL PROVISIONS

9.1 Enforcement: The Association, or any Owner. shall have the right to enforce, by any proceeding at law or in s, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Decla id the Bylaws, and in such action shall be entitled to recover reasonable attorneys' fees as are ordered by the (n has the right to record a Notice of Violation against the Lot of in Owner who is not in compliance with the provisi cuments. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in n waiver of the right to do so thereafter.

9.2 Invalidity of Any Provision: Should any provision or portion hereof be declared invalid or in conflict with any where this Project is situated. the validity of all other provisions and portions hereof shall remain unaffected and in full

9-3. Term: The covenants and restrictions of this Declaration shall run with and bind the Project, and shall in and shall be enforceable by the Association or the Owner of any property subject to this Declaration. their respe tives, heirs, successors and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after y be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by a majo rs of the Lots, has been recorded within the year preceding the beginning of each successive period of ten (10) years said covenants and restrictions in whole or in part. or to terminate the same.

9.4 Amendments: Prior to close of escrow on the sale of the first Lot. Declarant may amend this Declaration. A ot. this Declaration may be amended only by the affirmative vote (in person or by proxy) or written consent of ng a majority of the total voting, power of the Association. and a majority of the affirmative votes or written consent of

the Declarant. or where the two (2) class voting structure is still in effect, a majority of each class of membership. Ho 3 of voting power necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative action to be taken under that clause. Any amendment must be certified in a writing executed and acknowledged by the President or Vice President of the Association and recorded in the Recorder's Office of the County of Solano. No amendment shall affect the rights of the holder of any mortgage of record prior to the recordation of such amendment.

9.5 Rights of First Lenders: No breach of any of the covenants, conditions and restrictions contained herein or of any lien provisions herein, shall render invalid the lien of any first mortgage (meaning a mortgage with first priority) on any Lot made in good faith and for value. but all of said covenants, conditions and restrictions shall be binding against any Owner whose title is derived through foreclosure or trustee's sale, or otherwise. Notwithstanding any provision to the contrary, First Lenders shall have the following rights:

A. Copies of Project Documents: The Association shall make available to Owners and First Lenders, and to insurers or guarantors of any first mortgage, current copies of the Declaration, Bylaws, Articles or other Rules of the Project and the books, records and financial statements of the Association. "Available" means available for inspection and copying, upon request, during normal business hours or under other reasonable circumstances. The Board may charge a fee for providing the foregoing which may not exceed the reasonable cost to prepare and reproduce the documents.

B. Audited Statement: Any holder of a first mortgage shall be entitled, upon written request, to have an audited statement for the immediately preceding fiscal year prepared at its expense if one is not otherwise available. Such statement shall be furnished within one hundred twenty (120) days of the Association's fiscal year-end.

C. Notice of Action: Upon written request to the Association, identifying the name and address of the Eligible Mortgage Holder or Eligible Insurer or Guarantor, and the Lot number or address, such Eligible Mortgage Holder or Eligible Insurer or Guarantor will be entitled to timely written notice of: (1) any condemnation loss or any casualty loss which affects all or a portion of the Project or any Lot on which there is a first mortgage held, insured, or guaranteed by such Eligible Mortgage Holder or Eligible Insurer or Guarantor, as applicable; (2) any default in performance of obligations under the Project Documents or delinquency in the payment of Assessments or charges owed by an Owner of a Lot subject to a first mortgage held, insured or guaranteed by such Eligible Mortgage Holder or Eligible Insurer or Guarantor, which has remained uncured for a period of sixty (60) days; (3) any lapse, cancellation or material modification of any insurance policy or bond maintained by the Association; (4) any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders as specified in section 9.5D. The Association shall discharge its obligation to notify Eligible Mortgage Holders or Eligible Insurers or Guarantors by sending written notices required herein to such party at the address given on the current request for notice, in the manner prescribed by section 9.9.

D. Consent to Action:

(1) Except as provided by statute or by other provision of the Project Documents in case of substantial destruction or condemnation of the Project, and further excepting any reallocation of interests in the Common Area(s) which may be necessary pursuant to any plan of expansion or phased development contained in the original Project Documents:

(a) the consent of Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated and the approval of Eligible Mortgage Holders holding mortgages on Lots which have at least fifty-one percent (51%) of the votes of Lots subject to Eligible Holder Mortgages, shall be required to terminate the legal status of the Project as a planned unit development project; provided, however, that termination is for reasons other than substantial destruction or condemnation the agreement of the Eligible Mortgage Holders representing least sixty-seven percent (67%) of the votes of the mortgaged Lot is required.

(b) the consent of Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated and the approval of Eligible Mortgage Holders holding mortgages on Lots which have at least fifty-one percent (51%) of the votes of the Lots subject to Eligible Holder Mortgages, shall be required to amend any material **provisions of the Project Documents** which establish, provide for, govern or modify any of the following: (i) voting rights; (ii) increases in Assessments that raise the previously assessed amount by **more than twenty-five percent (25%)**, assessment liens, or the priority of assessment liens; (iii) **reductions in reserves for maintenance**, repair, and replacement of Common Areas; (iv) responsibility for maintenance and repairs; (v) reallocation of interests in (lie general or **Restricted Common Areas**); (vi) their use; (vi) convertibility of Lots into Common Areas or vice versa; (vii) expansion or contraction of the Project, or the addition, annexation, or withdrawal of property to or from the Project; (viii) hazard insurance requirements; (ix) imposition or any restrictions on the leasing of Lots; (x) imposition of any restrictions on an Owner's right to sell or transfer his or her Lot; (xi) restoration or repair of the Project or damage or partial condemnation in a manner other than that specified in the Project Documents; (c) any provisions that expressly benefit mortgage holders, insurers, or guarantors:

(c) an Eligible Mortgage Holder who receives a written request to approve additions or amendments to the Project Documents shall not deliver or post to the requesting party a negative response within thirty (30) days after the no-

proposed addition or amendment shall be deemed to have approved such request, provided the been delivered to the mortgage holder by certified or registered mail. return receipt requested.

(2) unless tile holder(s) of at least two-thirds (2/3) of the first mortgages (based upon one (1) vote for each first mortgage deed of trust owned), or two-thirds (2/3) of the Owners (other than Declarant) of the individual Lots in the Project obtain their prior written approval, the Association and/or the Owners shall not be entitled to:

(a) by act or omission seek to abandon or terminate the Project, or abandon, partition, subdivide, encumber, or transfer the Common Area or property owned directly or indirectly, by the Association (the granting of easements for public utilities or for other public purposes consistent with the intended use of such property shall not be considered a transfer within the meaning of this clause) except for abandonment or termination provided by law in the event of substantial destruction by fire or other casualty, or in the case of a taking by condemnation or eminent domain; or

(b) change the method of determining the obligations. Assessments or dues or other charges which may be levied against an Owner: or

(c) by act or omission change, waive or abandon any scheme of regulations, or enforcement thereof. pertaining to the architectural design or the exterior appearance of Lots, the exterior maintenance of Lots, tile maintenance of Common Area walks or fences and driveways, or the upkeep of landscaping in the Common Area: or

(d) fail to maintain Fire and extended coverage on insurable Association Common Area improvements or replacements on a replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (less current replacement costs); or

(e) use hazard insurance proceeds for losses to any Common Area property for other than the repair, replacement or reconstruction of such Common Area property.

E. Right of First Refusal: The right of an Owner to sell, transfer, or otherwise convey his or her Lot shall not be subject to any right of first refusal or similar restriction.

F. Contracts: Any agreement for professional management of the Project, or **lease or any other** contract for professional services of tile developer, sponsor, or builder, may not **exceed one (1) year**. Any such agreement, contract or lease, **including a management contract entered into** prior to passage of control of tile Board to lot purchasers must include a **termination** by either party for cause on thirty (30) days* written notice, or without cause and without payment of termination fee or penalty on ninety (90) days' or less written notice.

G. Reserves: Association dues or charges shall include an adequate reserve fund for maintenance, repair, and replacement of those improvements which the Association is obligated to maintain and that must be replaced on a pro rata basis, and the Assessments therefore shall be payable in regular installments rather than by special Assessments.

H. **Priority of Liens** Any First Lender who obtains title to a Lot pursuant to the remedies provided in the mortgage shall **will** not be liable for such Lot's mortgage or Foreclosed unpaid Assessments and Fees, late charge interest levied in connection therewith which accrue prior to the acquisition of title to such Lot by the mortgagee (including claims for a pro rata share of such Assessments or charges resulting from a pro rata reallocation of such Assessments charges to all project Lots including the mortgaged Lot, and except for assessment liens recorded prior to the mortgage).

I. Distribution of Insurance or Condemnation Proceeds: No Owner or any other, party shall have priority over any First Lenders pursuant to their mortgages in the case of a distribution to lot Owners of insurance proceeds or condemnation awards for losses to or taking of Common Area property or of individual Lots.

J. Termination or Professional Management: When professional management has been previously required by the documents or by any Eligible Mortgage Holder or Eligible Insurer or Guarantor, whether such entity became a Mortgage Holder or Eligible Insurer or Guarantor at that time or later, any decision to establish self management by the Association shall require the prior consent of Owners of Lots to which at least sixty-seven percent (67%) of the votes of the Association are allocated and the approval of Eligible Mortgage Holders holding mortgages on Lots which have fifty-one percent (51%) of the votes of Lots subject to Eligible Holder Mortgages.

K. Payment of Taxes or Insurance by Lenders: First Lenders may, Jointly or singly, pay taxes or other charges with respect to the property in default and which may or have become a charge against the Common Area property and may pay overdue pre-foreclosure hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such Common Area property and First Lenders making such payment shall be owed immediate reimbursement therefore from the Association provided that said lender(s) have given notice to the Association prior to the making of such payment(s) and the Association has Called to pay the same.

Limitation of Restrictions (in Declarant: Declarant is undertaking the work of construction of a planned development and improvements upon the Project. The completion of that work and the sale, rental, and other disposal of said Lots is essential to the development and welfare of the Project. In order that said work may be completed and said Project is a fully occupied residential community as rapidly as possible, nothing in this Declaration shall be understood or construed to:

- A. Prevent Declarant, its contractors, or subcontractors from going on the Project or any Lot, whatever is necessary or advisable in connection with the completion of said work; or
- B. Prevent Declarant or its representatives from erecting, **constructing and maintaining on the Project** (except those owned by others), such structures as may be reasonable and necessary for developing said Project as a Community and disposing of the same by sale, lease or otherwise; or C. Prevent Declarant from conducting on the Project (except upon Lots owned by others) its business of completing said work and of establishing a plan of residential development and of disposing of said Project in Lots by sale, lease or otherwise; or
- D. Prevent Declarant from maintaining or displaying such signs, pennants and flag(s) on the Project (except those owned by others) as may be necessary for the sale, lease or disposition thereof, or
- E. Subject Declarant to the architectural control provisions of Article VI for the construction of any residential improvement on the Project.

The foregoing rights of Declarant shall terminate upon sale of Declarant's entire interest in the Project.

So long as Declarant, or its successors and assigns, owns one (1) or more of the Lots described herein, Declarant, its successors and assigns, shall be subject to the provisions of this Declaration. Declarant shall make reasonable efforts to avoid disturbing the use and enjoyment of Lots and the Common Area by their owners, while completing any work on said Lots or Common Area.

Termination of Any Responsibility of Declarant: In the event Declarant shall convey all of its rights, title and interest in the Project to any successor person or entity, then in such event, Declarant shall be relieved of the performance of any further obligations hereunder, and such successor person or entity shall be obligated to perform all such duties and obligations of the Declarant to the City contained in the conditions of approval for the Project, which obligations are intended to be binding on Declarant as sold its interest in the Project, shall become the obligations of the Association, and the Association shall be liable against any liability arising out of the performance or non-performance of those obligations after Declarant has sold its interest in the Project and/or turned over the maintenance and management of the Project to the Association.

Owners' Compliance: Each Owner, tenant or occupant of a Lot shall comply with the provisions of this Declaration, and any other rules (which are not in conflict with the Declaration) the Articles and Bylaws, and the decisions and resolutions of the Association, as lawfully amended from time to time. Failure to comply with any such provisions, decisions, or resolutions shall be grounds for recovery of sums due, (2) for damages, (3) for injunctive relief, (4) for costs and attorneys fees, or (5) any combination thereof.

In the event of a violation of the Project Documents, the Association may record a Notice of Violation against the Lot of the non-complying Owner. Recording of a Notice of Violation. The Association shall have complete discretion in deciding whether, when a Notice of Violation is recorded, it shall be recorded with **enforcement**, and any delay after recording a Notice of Violation shall not give rise to a defense of waiver or estoppel by a non-complying Owner. The Association may take action to enforce compliance against a subsequent Owner who acquires the Lot after recording a Notice of Violation. **The right** of the Association to record a Notice of Violation shall be **in addition to all other rights** of the Association that it may have at law or under the Project Documents. All agreements and determinations lawfully made by the Association in accordance with the voting percentages established in this Declaration, or in the Articles or the Bylaws, shall be binding on all Owners, their successors and assigns.

Notice: Any notice permitted or required by the Declaration, Articles or Bylaws may be delivered either personally or by mail. If delivered by mail, it shall be deemed to have been delivered seventy-two (72) hours after a copy of the same has been deposited in the United States mail, first class or registered, postage prepaid, addressed to the person to be notified at the current address given to the Secretary of the Board or addressed to the Lot of such person if no address has been given to the Secretary.

Special Provisions Relating to Enforcement of Declarant's Obligation to Complete Common Area Improvements: Where the Project includes Common Area improvements which have not been completed prior to the close of escrow on the Project, and where the Association is obligee under a bond or other arrangement (hereafter "bond") to secure the performance of Declarant to complete said improvements, the Board shall consider and vote on the question of action to enforce the obligations under the bond with respect to any improvement for which a notice of completion has not been filed within sixty (60) days after the completion date specified for that improvement in the planned construction statement appended to the Declaration. If the Association has given an extension in writing for the completion of any Common Area improvement, the Board shall consider the aforesaid question if a notice of completion has not been filed within thirty (30) days after the expiration of the extension. The purpose of voting to override a decision by the Board not to initiate action to enforce the obligations under the bond or on the failure of the Board to consider and vote on the question shall be held in effect for less than thirty (30) days.

more than forty-five (45) days after receipt by the Board of a petition for such a meeting signed by Members representing five percent (5%) or more of the total voting power of the Association. At such special meeting a vote of a majority of Members other than the Declarant shall be required to take action to enforce the obligations under the bond and a vote of a majority of the voting power of the Association, excluding Declarant, shall be deemed to be the decision of the Association. and the Board shall implement this decision by initiating- and pursuing appropriate -action in the name of the Association.

On satisfaction of the Declarant's obligation to complete the Common Area improvements, the Association shall execute in writing that it approves the release of the bond and shall execute any other documents as may be necessary to effect the release of the bond. The Association shall not condition its approval of the release of the bond on the satisfaction of any condition other than the completion of the Common Area improvements as described on the planned construction statement. Any dispute between the Declarant and the Association regarding the completion of the Common Area shall be submitted to binding arbitration under the commercial rules of the American Arbitration Association and the prevailing party shall be entitled to recover costs, including reasonable attorneys' fees.

1 Special Provisions Relating to Enforcement of Declarant's Obligation to Pay Assessments: Where the Association has entered into a bond or other arrangement (hereafter "bond") to secure performance of the commitment of Declarant to pay assessments, the Board shall consider and vote on the question of action by the Association to enforce the obligations under the bond to any of **Declarant's assessments which are delinquent for thirty (30) days**. A special meeting of Members for the purpose of voting to override a decision by the Board not to initiate action to enforce the obligations under the bond shall be held not less than ten (10) days nor more than twenty (20) days after the date of the Board's decision. A petition by the Board of a petition for such a meeting signed by Members representing five percent (5%) or more of the total voting power of the Association. At such special meeting a vote of a majority of Members of the Association other than the Declarant shall be deemed to be the decision of the Association, and the Board shall thereafter implement this decision by initiating appropriate action in the name of the Association.

2 Satisfaction of the Declarant's obligation to assure the availability of funds to pay assessments upon unsold Lots as set forth in Section 2792.9, the Association shall acknowledge in writing that the Declarant is not delinquent in payment of its assessments. The Association shall execute in writing that it approves the release of the bond and shall execute any other documents as may be necessary to effect the release of the bond. The Association shall not condition its approval of the release of the bond on the satisfaction of any condition other than the completion of the Common Area improvements as described on the planned construction statement. Any dispute between the Declarant and the Association regarding the payment of assessments shall be submitted to binding arbitration under the commercial rules of the American Arbitration Association and the prevailing party shall be entitled to recover costs, including reasonable attorneys' fees.

3 Fair Housing. No Owner shall, either directly or indirectly, forbid or restrict the conveyance, encumbrance, use, enjoyment, or occupancy of his Lot to any person of a specified race, sex, adulthood, marital status, color, religion, ancestry, or national origin.

4 FHA/DVA Approval: So long as the Federal Housing Administration (FHA) or the Department of Veterans Affairs approves any loan secured by a deed of trust on any lot in the Project, and as long as there is a Class B membership, the Board shall not require the prior approval of the FHA or the DVA: Annexation of additional properties dedication of Common Area shall not be subject to this Declaration.

5 Alternative Dispute Resolution: The Board is authorized to resolve any civil claim or action through alternative dispute resolution proceedings such as mediation, binding arbitration, or non-binding arbitration proceedings. The Board may provide, in its bylaws, to provide, one hundred twenty (120) days advance notice of the Board's intent to initiate the prosecution of any civil claim or action, of the nature and basis of the claim, to every member of the Association and every entity or person who is a prospective party to the action, provided that such notice can be given more than one hundred twenty (120) days prior to the expiration of any pertinent statute of limitations, and such notice can be given without prejudice to the Association's right to enforce **the Project Documents**. That no such notice need be given prior to the filing of an action in small claims court or an action solely to enforce a claim for declaratory relief or injunctive relief to enforce the Project Documents in conjunction with a claim for monetary damages of five thousand dollars (\$5000), the Board shall endeavor to submit the matter to alternative dispute resolution in accordance with the provisions of Section 1354(b) of the California Civil Code.

Prior to initiating the Prosecution of a civil action solely for declaratory relief or injunctive relief to enforce the Project Documents in conjunction with a claim for monetary damages of five thousand dollars (\$5000), the Board shall endeavor to submit the matter to alternative dispute resolution in accordance with the provisions of Section 1354(b) of the California Civil Code.

Immediately after initiating the prosecution or defense of any civil action, the Board shall make a reasonable effort and confer **with every person who is a party concerning appropriate** processes for resolving the civil action or alternative dispute resolution proceedings; concerning appropriate processes for avoiding or reducing costs or losses associated with the action; providing an opportunity to cure any alleged defect in the Common Areas or facilities which is the subject of the action; and providing, for the scope of discovery, if any, to be conducted prior to the inception of any alternative dispute resolution proceedings. The Board is authorized to consider diversion of the prosecution or defense of any civil action to alternative dispute resolution proceedings.

js such as mediation, non-binding arbitration, or binding arbitration and is authorized to agree to participate and to parti
d faith in the resolution of any civil action through any alternative dispute resolution proceedings, including but not
non-binding arbitration, and binding arbitration, and paying costs reasonably incurred by the Association on accou
dispute resolution proceedings.

The Board shall comply with the requirements of California Civil Code Section 1354(i) by providing Memb
n annually with a summary of the provisions of California Civil Code Section 1354, including the following language:
er of the Association to comply with the pr~~o~~ filing requirements of Section 1354 of the Civil Code may result in the loss
ie the Association or another Member of the Association regarding enforcement of the governing documents.”

5 Number; Gender. The singular and plural number and the masculine, feminine and neuter gender shall each i
e the context requires.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has executed this
Declaration this SEVENTH day of NOVEMBER, 1995

PWDA Associates
A California Limited Partnership

West Development Corp.
California Corporation, General Partner