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AMENDED AND RESTATED
DECLARATION OF ESTABLISHMENT
OF
CONDITIONS, COVENANTS AND RESTRICTIONS
FOR
KENSINGTON
A Residential Planned Development

THIS INSTRUMENT FILED FOR RECORD BY
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**AMENDED AND RESTATED
DECLARATION OF ESTABLISHMENT OF
CONDITIONS, COVENANTS AND RESTRICTIONS
FOR
KENSINGTON**

THIS AMENDED AND RESTATED DECLARATION OF ESTABLISHMENT OF CONDITIONS, COVENANTS AND RESTRICTIONS FOR KENSINGTON ("**Declaration**") is made by **BEAZER HOMES CALIFORNIA INC.**, a Delaware corporation (the "**Declarant**"), being the owner of that certain real property **subject to** this Declaration, and hereinafter more particularly described.

W I T N E S S E T H :

WHEREAS, Declarant is the owner of the following real property located in the City of Orange, County of Orange, State of California (the "Properties"), more particularly described as:

Lots 2 through 4, inclusive, Lots 41 through 47, inclusive, and Lots 81 through 88, inclusive, and Common Area Lots 89, A, E, F and G of Tract No. 14848, in the City and County of Orange, State of California, as per Map filed in Book 710, Pages 3 through 6, in the Office of the County Recorder of said County.

The development of the Properties is the first phase of a **multi-phase** planned development. Phase I will consist of eighteen (18) residential lots-and the following Common Area facilities: a recreational lot, perimeter and Common Area landscaping, perimeter walls, gates and private streets. If all phases are developed, there will be a total of eighty-eight (88) residential lots and eight (8) Common Area Lots. However, there is no guarantee that any or all of the proposed subsequent phases will be completed, or that the proposed number of Lots or the Common Area facilities and amenities in future phases will be developed.

WHEREAS, **Declarant's** predecessor-in-interest, as owner of the real property comprising the Properties and the Annexation Property, recorded that certain "Declaration of Establishment of Conditions, Covenants and Restrictions for Chaumiere, Tract **13841**" on **May 16, 1991** as Instrument No. 91-241570 (the "**Original Declaration**") covering said aforementioned real property. The Original Declaration was recorded in Book 674, Pages 23-27 inclusive, of Miscellaneous Maps, Records of Orange County California; and

WHEREAS, Declarant assumed all of the rights and obligations of Declarant pursuant to said Original Declaration in accordance with the terms of that certain ****Assignment and Assumption of Rights, Interests, Duties, Obligations, Covenants, Conditions and**

Restrictions (**Chaumiere**)" recorded on April 15, 1993 as Instrument No. 93-0248739, Official Records of Orange County, California; and

WHEREAS, said Original Declaration provides that prior to the close of the first escrow for the sale of a Lot in the covered property, the Original Declaration may be unilaterally amended by Declarant, its successors and assigns; and

WHEREAS, no Lots within the covered property have been sold and Declarant desires to amend and restate the Original Declaration to conform to its proposed plan of development for the Properties and the Project; and

WHEREAS, it is the desire and intention of Declarant to revoke and cancel the Original Declaration and to sell and convey **residential** Lots within the Properties and Project to various individuals subject to certain basic protective restrictions, limitations, easements, covenants, reservations, liens and charges between it and the purchasers or users of said Lots, as hereinafter set forth.

NOW, THEREFORE, Declarant hereby declares that the Original Declaration is hereby cancelled and revoked and that all of the real property described above, is, and shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the Properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof. The provisions of this Declaration shall be enforceable by any of the Owners of an interest in the real property above described, against any other Owner or Owners thereof, and shall also be enforceable by the Board of Directors of the Association, which shall be created for the purpose of governing this Project.

ARTICLE 1 DEFINITIONS

Section 1.1 Terms. Whenever used in this Declaration, the following terms shall have the following meanings:

1.1.1 Annexation Property shall mean all or a portion of that certain real property and all improvements thereto in the County of Orange and described in Exhibit "A" attached hereto and incorporated herein by this reference which real property **may** be annexed to this Declaration. Upon such annexation, the portion of the Annexation Property annexed hereto shall be governed by, and subject to, each and every provision of this Declaration and any amendments thereto. The procedures for annexation of property are set forth in Article 15.

1.1.2 **Articles** shall mean and refer to the Articles of Incorporation of the Association as the same may be amended from time to time.

1.1.3 **Association** shall mean and refer to the KENSINGTON VILLAGE HOMEOWNERS ASSOCIATION, a California nonprofit mutual benefit corporation, its successors and assigns.

1.1.4 **Board** or **Board of Directors** shall mean and refer to the governing body of said Association.

1.1.5 **Bylaws** shall mean the duly adopted Bylaws of the Association as the same may be amended from time to time.

1.1.6 **Common Area** shall mean all real property (including improvements thereon) owned by the Association for the common use and enjoyment of the Owners or which is (pursuant to the conditions of approval for Tentative Tract Map No. 14848) required to be maintained by the Association or which is to be maintained by the Association for the benefit of and esthetic enhancement of the Project as described in Article 4 of this Declaration. The Common Area to be owned by the Association at the time of the conveyance of the first Lot is described as follows:

Lots 89, A, **E**, F and **G** of Tract No. 14848 as per Map filed in Book 710, Pages 3 through 6, of Maps in the Office of the County Recorder of Orange County, California.

1.1.7 **Declarant** shall mean and refer to **Beazer** Homes California Inc., a Delaware corporation, its successors and assigns, if such successors or assigns should acquire more than one (1) undeveloped Lot from Declarant for the purpose of development and are designated by Declarant as the Declarant for the purpose hereof by a duly recorded written instrument.

1.1.8 **Declaration** shall mean and refer to this enabling Amended and Restated Declaration of Establishment of Conditions, Covenants and Restrictions, as the same may be amended, changed or modified, from time to time.

1.1.9 **Institutional Lender shall** mean a Mortgagee which is a bank, savings and loan association, established mortgage company, or other entity chartered under federal or **state** laws, any corporation or insurance company, or any federal or state agency.

1.1.10 **Lot** shall mean and refer to any plot of land shown upon any **recorded subdivision** map of the Properties and Project, with the exception of the Common Area.

1.1.11 **Member** shall mean an Owner with a membership in the Association.

1.1.12 Mortgage shall mean and refer to a deed of trust as well as a Mortgage.

1.1.13 Mortgagee shall mean a person or entity to whom a Mortgage is made, and shall include the beneficiary of a deed of trust.

1.1.14 Mortgagor shall mean a person or entity who mortgages his or its property to another, i.e., the maker of a Mortgage, and shall include the **trustor** of a deed of trust.

1.1.15 Owner shall mean and refer to the record **Owner(s)**, whether one (1) or more persons or entities, of fee simple title to **any** Lot which is part of the Properties or Project, including contract sellers, but excluding those having such interests merely as security for the performance of an obligation.

1.1.16 Phase shall mean one of the phases of development of this residential planned development. Declarant intends to construct certain residential dwelling units and Common Area improvements according to a phased general plan of development submitted to the California Department of Real Estate.

1.1.17 Project shall mean and refer to the Properties together with all improvements thereon and such additions thereto as may hereafter be brought within the jurisdiction of the Association through the annexation procedures set forth in Article 15.

Section 1.2 Applicability of Terms. The aforesaid definitions shall be applicable to this Declaration and to any supplements or amendments thereto (unless the context shall prohibit) recorded pursuant to the provisions of this Declaration.

ARTICLE 2 PROPERTY RIGHTS IN COMMON AREA

Section 2.1 Title to the Common Area. Declarant hereby covenants for itself, its successors and assigns, that it will convey title to the Common Area contained within any annexed Phase to the Association, free and clear of all encumbrances and liens, except easements, covenants, conditions and reservations then of record, including those set forth in this Declaration. Said conveyance for each annexed Phase shall be made to the Association prior to the conveyance of the first residential Lot in such Phase to an Owner.

Section 2.2 Owner's Easements of Enjoyment. Every Owner of a Lot shall have a right and easement of ingress, egress and of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every such Lot, subject to the following provisions:

(a) **The** right of the Association to suspend the voting rights and **right to** use of the recreational facilities by an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed thirty (30) days for any infraction of its Rules and Regulations (as defined below) after reasonable written notice and an opportunity for a hearing before the Board as set forth in the Bylaws, which notice satisfies the minimum requirements of Section 7341 of the California Corporations Code;

(b) The right of the Association to dedicate or transfer all or substantially all of its assets, including 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. Notwithstanding any contrary provision in the Articles or Bylaws, so long as there is any Common Area for which the Association is obligated to provide management, maintenance, preservation, or control, no such dedication or transfer shall be effective unless approved by the vote or written assent of **sixty-seven percent (67%)** of both classes **of Members** of the Association, or following the conversion of Class B to Class A, by the vote or written assent **of sixty-six and two-thirds (66-2/3%)** of the Members of the Association other than Declarant, and an instrument executed by both the President and Secretary of the Association affecting such dedication or transfer has been recorded;

(c) The right of the Association, in accordance with its Articles **of** Incorporation and Bylaws, to borrow money for the purpose of improving the Common Area and in aid thereof, and with the assent of two-thirds **(2/3)** of each class of Members, **to hypothecate** any or all real or personal property owned by the Association. After conversion of the Class B membership to Class A membership, the action herein requiring membership approval shall require the vote or written assent of (i) two-thirds **(2/3)** of the voting power of Members of the Association and (ii) for so long only as the Declarant holds or directly controls twenty-five percent (25%) or more of the voting power of the Association, **two-thirds (2/3)** or more of the voting power of the Members of the Association other than Declarant;

(d) Subject to a concomitant obligation to restore, Declarant and its agents, employees, contractors, subcontractors, invitees, successors and assigns, reserves unto itself, and shall have:

(i) A non-exclusive easement over the Common Area for the purpose of making repairs to the Common **Area** or to the residences provided access thereto is otherwise not reasonably available;

(ii) A nonexclusive easement in, over, under and through, and the right **to** the non-exclusive use of the Common Area, together with the right to transfer and grant **the** same without the consent of any other person or entity for the purpose of **construc-**

tion on the Lots, the Common Area or on the Annexation Property, and for maintaining model homes, sales offices and signs reasonably necessary to market the Lots, for a period of not more than five (5) years after initial conveyance of any portion of the Common Area to the Association, or the sale of all residential Lots within the Project, whichever is first to occur. The use of the Common Area by Declarant and its agents shall not unreasonably interfere with the use thereof by the Class A Members of the Association.

Section 2.3 Delegation of Use. Any Owner may delegate, in accordance with the Bylaws of the Association, his rights of enjoyment to the Common Area and facilities to the members of his family, his tenants, guests and invitees or contract purchasers who reside on his Lot.

Section 2.4 Reciprocal Easements. Upon the annexation of additional land and improvements into the Project, as provided in Article 15, the Owners of Lots in the annexed areas shall have non-exclusive easements for access, ingress, egress, and recreational use over the Common Areas within the Project. Similarly, the Owners of Lots within the original scheme of this Declaration, including previously annexed areas, shall have non-exclusive easements for access, ingress, egress, and recreational use over the Common Areas of the newly annexed areas.

Section 2.5 Utility Easements. Declarant hereby grants, reserves, and establishes non-exclusive easements over, under, and through each and every Lot and the Common Area (including the private streets) within the Project (the "**Special Easement Area**") as necessary for the installation, operation, repair and maintenance of underground utility conduits and lines for the sole purpose of providing utilities to such Lots including, but not limited to, water mains, meters and fire hydrants.

2.5.1 Each Lot which obtains electrical power or other utilities through an underground utility conduit located within a Special Easement Area of another Lot or Lots, is hereby granted and shall have the benefit of a non-exclusive easement on, over, through and under such Lot or Lots for the installation, operation and maintenance of such conduit and the utility lines therein subject to the restrictions hereinafter set forth.

2.5.2 Each Lot containing a Special Easement Area within which there lies an underground utility conduit and utility lines is hereby declared to be, and shall be conveyed subject to, a non-exclusive easement by reservation for the benefit of the Lot or Lots serviced by such conduit, and the utility lines therein, subject to the restrictions hereinafter set forth.

2.5.3 Said easements granted and reserved shall include incidental rights of installation, operation and maintenance subject to the following limitations:

(a) Repair and replacement of the utility lines within any such conduit shall, to the extent possible, be performed only at either end of the conduit;

(b) Excavation of any such conduit for any purpose is expressly prohibited except at either end thereof.

2.5.4 The easements hereinabove described shall bind and inure to the benefit of Declarant's heirs, personal representatives, successors and assigns.

2.5.5 Subject utility easements shall be construed as covenants running with the land or equitable servitudes as necessary to achieve **Declarant's** intent. Declarant hereby acknowledges that it is its express intent to subject each Lot within the **Project which** contains an underground utility conduit, as described hereinabove, to such restrictions, covenants, conditions, easements, and servitudes as are necessary to provide for the continued operation and existence of such utility conduit and utility lines.

Section 2.6 Easement to City. There is hereby granted and reserved to the City of Orange, over the Common Area private streets within the Project, an easement for access, ingress and egress for public related functions necessary to benefit the health, safety and welfare of the Owners of Lots within the Project.

Section 2.7 Cross Lot Drainage. Declarant hereby grants, reserves and establishes (with the right to grant same to third parties), for the benefit of the adjacent properties to the east of Lots 25 through 33, a non-exclusive easement on, over and across said Lots 25 through 33, inclusive, of the Project (upon annexation of said Lots) as necessary for the purpose of accepting drainage of surface and/or other waters from said adjacent properties located easterly thereof.

Section 2.8 Right of Declarant to Modify Plan of Development. Declarant hereby reserves the right to modify, amend, change, or eliminate altogether, the multi-Phase plan of development hereinbefore described. Such right shall include, without limitation, the right to delete any and all subsequent Phases of development, and/or to divide the subsequent Phases into additional Phases. There is no guarantee by, or obligation of, Declarant to complete all or any Phases of development or to annex same into the Project. Any other change or modification of the general plan of development shall, however, require the prior approval of the Department of Real Estate.

Section 2.9 Emergency Access. That portion of the Common Area designated as Lot D of Tract No. 14848 shall, upon annexation pursuant to the provisions contained in Article 15 hereinbelow, be used solely for emergency access. General vehicular ingress/egress shall be prohibited in accordance with the policies and procedures

therefor as established by the Fire and Public Works departments of the City of Orange.

ARTICLE 3

MEMBERSHIP AND VOTING RIGHTS IN HOMEOWNERS' ASSOCIATION

Section 3.1 Formation. Declarant has, at its sole expense, formed an incorporated homeowners' association known as the Kensington Village Homeowners' Association, a California nonprofit mutual benefit corporation (the "**Association**"). The Association shall be primarily responsible for the management and maintenance of the Common Area and for the maintenance of the landscaping and other items as set forth in this Declaration.

Section 3.2 Membership. Every Owner of a Lot which is subject to assessment shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 3.3 Voting Riights. The Association shall have two (2) classes of voting membership:

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

Class B. The Class B Member shall be Declarant who shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of the earliest of the following to occur:

(a) Two (2) years from the date of the first conveyance of a subdivision interest pursuant to the original issuance of the most recent "**Final** Subdivision Public Report" for a Phase of the overall development; or

(b) Four (4) years from the date of the first conveyance of a subdivision interest pursuant to the original issuance of the Final Subdivision Public Report for the first Phase of the overall development.

Any provision in the Articles, Bylaws, or this Declaration calling for membership approval of action to be taken by the Association, except provisions with respect to the action to enforce the obligations of the Declarant under any completion bond shall, during the time that there are two outstanding classes of membership, expressly require the vote or written assent of the prescribed percentage

of each class of membership. Any requirement elsewhere in the Articles of Incorporation, the Bylaws or this Declaration, except provisions with respect to the action to enforce the obligations of Declarant under any completion bond, that the vote of Declarant shall be excluded in any such determination, shall be applicable only if there has been a conversion of the Class B Member to Class A Member, and the same shall be read as requiring the vote of the prescribed percentage of the Class A Members and the vote of the prescribed percentage of the Class A Members other than Declarant.

ARTICLE 4
POWERS OF THE ASSOCIATION AND MEMBERSHIP MEETINGS

Section 4.1 **Powers of the Association.** The Association, in its sole and absolute discretion, and as more fully set forth in its Bylaws, shall have the power and duty to perform the following acts:

4.1.1 The Association shall have the sole and exclusive right and duty to manage, operate, control, repair, maintain, replace or restore the Common Area, including, without limitation, all the improvements, trees, shrubbery, plants and grass, private streets and drives (and the storm drain system constructed in the Project), walks, gates and recreational facilities within the Common Area. In addition, the Association shall be responsible for maintaining, repairing and replacing the perimeter walls and the perimeter and parkway landscaping **outside** the perimeter walls along Prospect Street, Bond Avenue, Gravier Street and Walnut Avenue, the landscaping easement area and perimeter wall located on Lot 73 of Tract No. 14381 and on the southeast corner of the intersection of Walnut Avenue and Virage Street, entryway landscaping areas and any monumentation and other improvements located on Common Area or on easements described in any agreements which have or will be recorded in favor of the Association. All landscaping shall be maintained so as to not obstruct any required addressing or areas that are required to be illuminated. In addition to the foregoing, the existing landscaping and irrigation system dedicated to the City of Orange along the east side of Prospect Street, the south side of Bond Avenue and the north side of Walnut Avenue shall be maintained by the Association in accordance with the conditions of approval of Tract 14848. As provided in such conditions, the City of Orange shall continue to maintain the City **street trees** and tree wells along the east side of Prospect Street and south side of Bond Avenue, and the median islands at Bond Avenue and Prospect Street. The City shall also maintain the City street trees in the parkway along Walnut Avenue and Gravier Street. The Association is hereby granted an easement on, over, **across** and under those portions of the Properties which are necessary for the Association to fulfill its obligations under the Declaration.

4.1.2 The Association shall have the right and power to levy and collect assessments.

4.1.3 The Association shall pay the taxes and assessments, if any, which may be levied by any governmental authority on the Common Area of the Project or any part thereof.

4.1.4 The Association shall maintain a bank account or accounts for funds coming under the control of the Association.

4.1.5 The Association shall maintain an illuminated address directory at the entry gate at a location where such directory is not obstructed by landscaping or cars. The location of such address directory shall be approved by the Crime Prevention Bureau and Design Review Board of the City of Orange.

4.1.6 The Association shall have the right and power to promulgate, adopt and enforce architectural guidelines ("**Architectural Guidelines**") for the Project.

4.1.7 The Association shall promulgate and adopt rules and regulations ("**Rules and Regulations**") not inconsistent with the provisions of this Declaration, including, but not limited to, Rules and Regulations relating to the use of the Common Area and of the Project.

4.1.8 The Association shall have the right and power to enforce the provisions of this Declaration, and the Bylaws, Articles of Incorporation, Architectural Guidelines and Rules and Regulations of the Association; provided, however, nothing contained in this Declaration shall be construed to prohibit enforcement of same by any Owner.

4.1.9 The Association has the right and power to contract for and maintain fire, casualty, liability, worker's compensation, medical, hospital, and other insurance insuring the Association, Owners, members of the Board, officers, employees and other persons.

4.1.10 The Association has the right and power to contract, provide and pay for (i) maintenance, utilities, gardening and other services benefitting the Project; (ii) services of persons necessary to accomplish the obligations of the Association; and (iii) legal, accounting and other consulting services.

4.1.11 Notwithstanding any of the foregoing, the Association, acting through its Board, may not enter into any contract binding for a term longer than one (1) year from the effective date thereof without the vote or written assent of a majority of the voting power of the Members of the Association other than the Declarant, except as specifically authorized herein or in the Articles or Bylaws.

4.1.12 The Association has the right and power to contract for the purchase of tools, equipment, materials, supplies and other personal property and services for the maintenance and repair of the facilities and improvements within the Project.

4.1.13 The Association has the right and power to contract for and pay for reconstruction of any portion or portions **of** the Common Area of the Project which is damaged or destroyed.

4.1.14 The Association has the right and power to delegate **its** powers to others where such delegation is proper.

4.1.15 The Association has the right and power to prosecute or defend, under the name of the Association, any action affecting or relating to the Project **or the** personal property thereon, or any action in which all of the Owners have an interest in the subject matter of the action. Notwithstanding the foregoing, without the prior vote or written assent of a majority of the voting power of the Association, the Board may not institute any legal proceeding (including **any** arbitration or judicial reference proceeding) against any person or entity the cost of which could reasonably be expected to exceed Two Thousand Five Hundred Dollars (**\$2,500.00**). In estimating the costs, the Board shall include all normal and customary court costs and attorneys' fees without regard to the possibility of recovering costs and fees if the Association were to prevail.

4.1.16 Subject to the vote or written **assent therefor** from sixty-seven percent (67%) of the voting power of the Association, excluding the vote of the Declarant, the Association may borrow money, and may mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

4.1.17 The Association may do any and all things that a nonprofit mutual benefit corporation organized under the laws of the State of California may lawfully do, and generally may do and perform any and all other acts which may be either necessary for, or incidental to, the exercise of any of the foregoing powers, and any other such powers as are granted to a corporation by the provisions of the laws of the State of California.

4.1.18 The Association may acquire by gift **or** purchase or otherwise own, hold, enjoy, lease, operate, maintain, convey, sell, transfer, mortgage or otherwise encumber, dedicate for public use, or dispose of real and/or personal property in connection with the business of the Association; provided, however, that the Association shall not acquire or sell any real or personal **property** having an individual or aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year by purchase or lease without first obtaining the vote or written assent **therefor** of a majority of the voting power of the membership, excluding the vote of the Declarant, except as is provided **pursuant to** the annexation of subsequent Phases to the Project.

4.1.19 The Association shall have the right and power to suspend a Member's voting rights and the right to use the recreational facilities for any period during which any assessment

against his Lot remains unpaid and delinquent; and for a period not to exceed thirty (30) days for any single infraction of the Rules and Regulations of the Association, provided **that** any suspension of such voting rights or right to use the recreational facilities, except for failure to pay assessments, shall be made only by the Board or a duly appointed committee thereof, after notice and hearing given and held in accordance with the Bylaws of the Association.

4.1.19.1 The Association may not cause a forfeiture of an Owner's right to use and enjoy his Lot for failure of such Owner to comply with the provisions of this Declaration, or the Bylaws of or Rules-and Regulations of the Association, except (1) by judgment of a court or decision arising out of arbitration, or (2) on account of a foreclosure or sale under a power of sale for failure of the Owner to pay assessments duly levied by the Association, as set forth in Article 5 hereof.

4.1.20 The Association may take any and all lawful action which may be advisable, proper, authorized or permitted by the Association under and by virtue of any condition, covenant, restriction, reservation, charge or assessment affecting the Project, or any portion thereof, and to do and perform any and all acts which may be either necessary for or incidental to the exercise of any of the foregoing powers, or for the peace, health, comfort, safety or general welfare of its Members.

4.1.21 The Association may impose monetary penalties upon Owners as a disciplinary measure (1) for failure of an Owner to comply with the Bylaws, the Declaration or the Rules and Regulations of the Association, or (2) as a means of reimbursing the Association for costs incurred by the Association in the repair of damages to the Common Areas and facilities thereon for which the Owner is allegedly responsible, or (3) to bring an Owner or its Lot into compliance with the Declaration, Bylaws, Architectural Guidelines or Rules and Regulations of the Association.

Section 4.2 **Fidelity Bond.** The Association shall maintain a fidelity bond or insurance in an amount at least equal to the sum of three months' assessments on all Lots in the Project, which names the Association as obligee or beneficiary and insures against loss by reason of acts of members of the Board of Directors, officers and employees of the Association and any management agent and its employees, whether or not such persons are compensated for their services.

Section 4.3 **Membership Meetings.**

4.3.1 Meetings of the membership of the Association shall be conducted in accordance with a recognized system of parliamentary procedure or such parliamentary procedures as the Association may adopt. Notwithstanding any other provision of law, notice of meetings of the Members shall specify those matters the Board intends to present for action by the Members but, except as **other-**

wise provided by law, any proper matter **may** be presented at the meeting for action. Members of the Association **shall have access** to Association records in accordance with Article 3 (commencing with Section 8330) of Chapter 13 of Part 3 of Division 2 of Title 1 of the Corporations Code. Any Member of the Association may attend meetings of the Board of Directors of the Association, except when the Board adjourns to executive session to consider litigation, matters that relate to the formation of contracts with third parties or personnel matters. Any matter discussed in executive session shall be generally noted in the minutes of the Board of Directors. In any matter relating to the discipline of a Member the Board of Directors shall meet in executive session if requested by that Member and the Member shall be entitled to attend the executive session.

4.3.2 The minutes and/or minutes proposed for adoption that are marked to indicate draft status or a summary of the minutes of any meeting of the Board of Directors of the Association, other than an executive session, shall be available to Members within thirty (30) days of the meeting. The minutes, proposed minutes or summary minutes shall be distributed to any Member of the Association upon request and upon reimbursement of the Association's costs in making that distribution.

4.3.3 Members of the Association shall be notified in writing, **at the time that the** "Budget" required pursuant to Section 6.2 below is distributed or at the time of any general mailing to the entire membership of the Association, of their right to have copies of the minutes of meetings of the Board of Directors and how and where those minutes may be obtained.

ARTICLE S **ASSESSMENTS**

Section 5.1 Creation of Lien and Personal Obligation of Assessments. Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of a Lot by acceptance of a grant deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay to the Association: (a) annual assessments or charges, which shall include an adequate reserve fund for the periodic maintenance, repair and replacement of the Common Area and (b) special assessments as provided in Section 5.4 below, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made, the lien to be effective upon recordation of a **"Notice of Delinquent Assessment."** Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the **assess-**

ment fell due. The personal obligation for the delinquent assessments shall not pass to an Owner's successors in title, unless expressly assumed by them.

Section 5.2 Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties, for the improvement and maintenance of the Common Area and such other purposes as set forth in this Declaration and the Bylaws.

Section 5.3 Maximum Annual Assessment. Unless adjusted, upward or downward, in accordance with the annexation of additional Phases to the Project as provided herein, until January first of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment for each Lot shall be as provided for in the budget approved by the California Department of Real Estate and disclosed in the Final Subdivision Public Report, for the particular Phase of the Project, and any amendments thereto. The Association shall maintain an adequate reserve fund for maintenance, repairs and replacement of those elements of the Common Area that must be maintained, repaired or replaced on a periodic basis, and such reserve shall be funded by annual assessments.

5.3.1 In addition to any changes occurring due to annexation of additional Phases to the Project, as provided herein from and after January first of the year immediately following the conveyance of the first **Lot** to an Owner, the maximum annual assessment may be increased effective January first of each year by the Board without a vote of the membership, provided that (i) any such increase shall not be more than twenty percent (20%) of the previous year's assessment, and (ii) the Board of Directors has complied with Section 6.2 below with **respect to** that fiscal year, including, but not limited to, the preparation and distribution of a pro forma operating statement to all members of the Association as provided in such Section 6.2, or has obtained the approval of Owners, constituting a quorum, casting a majority of the votes present at a meeting of the Association conducted in accordance with Chapter 5 (commencing with Section 7510) of Part 3 of Division 2 of Title 1 of the Corporations Code and Section 7613 of the Corporations Code. For the purposes of this section **"quorum"** means more than fifty percent (50%) of each class of Owners of the Association. Such annual assessment shall continue in effect for the following twelve (12) calendar months, which period shall be deemed to be the assessment period.

5.3.2 From and after January first of the year immediately following the conveyance of the first **Lot** to an Owner, the maximum annual assessment may be increased above the amount provided in subparagraph 5.3 .1 by the vote or written assent of at least a majority of Owners in the Association present at a meeting of Members (in person or by proxy) where a quorum (as defined below) has been established, provided that the Board of Directors has prepared and distributed a pro forma operating statement to all

Members of **the** Association as provided in Section 6.2 below. For **purposes of this** Section, quorum means more than fifty percent (50%) of the Owners of the Association. The Association shall provide notice by first-class mail to each Owner of any increase in the regular assessments of the Association not less **than thirty (30)** nor **more** than sixty (60) days prior to the increased assessment becoming due.

5.3.3 Said maximum assessment may be reduced by **maintenance or subsidy agreements approved by the California Department of Real Estate and reflected in the Final Subdivision Public Report.**

Section 5.4 **Special Assessments.** In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment(s) applicable to that year only for the purpose of defraying, in whole or in part, the cost of **any** construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, or otherwise, provided that any such assessment(s) for capital improvements to the Common Area which total, in the aggregate, more than five percent (**5%**) of the budgeted gross expenses of the Association for that fiscal year shall require the vote **or** written assent of a majority of the Owners, constituting a quorum. The Association may also levy a special assessment against any Member to reimburse the Association for costs incurred in bringing the Member and his Lot into compliance with the provisions of the Declaration, any amendments thereto, the Articles, the Bylaws, the Architectural Guidelines and the Rules and Regulations, which special assessment may be levied upon the vote of the Board after notice and an opportunity for a hearing which satisfy the requirements of Section 7341 of the California Corporations Code, as set forth in the Bylaws. The above provisions requiring the requisite vote of the membership with respect to special assessments do not apply in the case where a monetary penalty is imposed against an Owner as a disciplinary measure by the Association for the following reasons: (1) for failure of an Owner to comply with the Declaration, Bylaws or Rules and Regulations, or (2) as a means of reimbursing the Association for costs incurred by the Association in the repair of damages to Common Areas and facilities for which the Owner is allegedly responsible, or (3) to bring an Owner or its Lot into compliance with provisions of this Declaration, Articles of Incorporation, Bylaws, **Architectural Guidelines**, Rules and Regulations and any amendments thereto. The Association shall provide notice by first-class mail to each Owner of the levying of any special assessments of the Association, not less than thirty (30) nor more than sixty (60) days prior to the increased assessment becoming due.

Section 5.5 **Notice and Quorum for Any Action Authorized Under Sections 5.3 and 5.4.** Any action authorized under Sections 5.3 and 5.4 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. **A quorum** for such meeting shall be fifty-one percent (51%) of each class of Members entitled to vote on such action. If the required quorum is not present, another meeting may be called, subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (**1/2**) of the required quorum for the preceding meeting. If the proposed action is favored by a majority of the votes cast at such meeting but such vote is less than the requisite fifty-one percent (51%) of each class of Members, Members who were not present in person or by proxy may give their assent in writing, provided the same is obtained by the appropriate officer of the Association not later than thirty (30) days from the date of such meeting.

Section 5.6 Uniform Rate of Assessment Both annual and special assessments, except as may be otherwise provided in Sections 5.4 and 12.3, shall be fixed at a uniform rate for all Lots and shall be collected on a monthly basis.

Section 5.7 Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the first Lot to an Owner. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board shall fix the amount of the annual assessment against each Lot at **least thirty** (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to the Owner of each Lot within the Project. All Lots within the real property annexed into the Project under the procedure hereinafter set forth in Article 15 shall be obligated to pay annual assessments to the Association as hereinbefore provided. The annual assessments shall automatically commence as to all Lots within the annexed areas on the first day of the first month following the conveyance of the first Lot within such annexed area to an Owner. The due dates for assessments shall be established by the Board of Directors.

Section 5.8 Effect of Non-Payment of Assessments: Remedies of the Association. Any assessment made in accordance with this Declaration shall be a debt of the Owner of a Lot from the time the assessment is due. With **respect to** each assessment not received by the Association within fifteen (15) days after its due date, the Board may, at its election, require the Owner to pay a late charge in a sum to be determined by the Board, but not to exceed ten percent (10%) or Ten Dollars (**\$10.00**), whichever is greater. A late charge may not be imposed more than once on any delinquent assessment, but it shall not eliminate or supersede any charges imposed on prior delinquent assessments. If any such assessment is not paid within thirty (30) days after the date said assessment is due, the assessment shall bear interest from the due date at the rate of twelve percent (12%) per annum. The Association may bring an action at law against the Owner personally obligated to pay same, and in addition thereto, or in lieu thereof, may foreclose the lien provided hereinbelow against the Lot.

5.8.1 Any assessment not received by the Association within fifteen (15) days after the due date shall be delinquent. The amount of any such delinquent assessment or installment, together with any accompanying late charges, interest, **costs** (including reasonable attorneys' fees), and penalties, as provided for in this Declaration, shall be and become a lien on the Lot against which the assessment is levied when the Association causes to be recorded a Notice of Delinquent Assessment (herein the **"Notice"**) in the office of the County Recorder of the County in which the Lot is located. The Notice shall describe the amount of such delinquent assessment or installment and such other charges thereon as may be authorized by this Declaration, a description of the Lot against which the same has been assessed, the name of the Owner, and, if the lien is to be enforced by the power of sale under nonjudicial foreclosure proceedings, the name and address of the trustee authorized by the Association to enforce the lien by sale. Such Notice shall be signed by the president or vice-president and the secretary or assistant secretary of the Association or any employee or agent of the Association authorized to do so by the Board. Unless the Board considers the immediate recording of the Notice to be in the best interests of the Association, the Notice shall not be recorded until fifteen (15) calendar days after the Association has delivered a written "Notice of Default" and "Demand for Payment." If the delinquent assessment or installment and related charges are paid or otherwise satisfied, the Association shall record a notice of satisfaction and release of lien.

5.8.2 The Board may enforce any assessment lien provided for in this Section **5.8**, by filing an action for judicial foreclosure or, if the Notice contained the name and address of the trustee authorized by the Association to enforce the lien by nonjudicial foreclosure, by recording a notice of default in the form described in Civil Code Section **2924c(b)(1)** to commence a nonjudicial foreclosure. Any nonjudicial foreclosure shall be conducted in accordance with the requirements of Civil Code Sections 2924, **2924b**, **2924c**, **2924f**, **2924g**, and 2924h that apply to nonjudicial foreclosures of Mortgages or deeds of trust. The sale shall be conducted by the trustee named in the Notice of Delinquent Assessment or by a trustee substituted in accordance with the provisions of the California Civil Code. The Association may bid on the Lot **at the** sale, and may hold, lease, mortgage, and convey the acquired Lot. If the default is cured before the sale, or before completing a judicial foreclosure, including payment of all costs and expenses incurred by the Association, the Association shall record a "Notice of Satisfaction and Release of Lien," and on receipt of a written request **by the** Owner, a *Notice of Rescission" of the Notice of Default and Demand for Payment. Suit to recover a money judgment for unpaid assessments, rent and attorneys' fees shall be maintainable without foreclosing or waiving the **lien** securing the same.

5.8.3 A monetary penalty imposed by the Association as a disciplinary measure for (a) failure of an Owner to comply with this Declaration, and **the** Articles, Bylaws or Rules and Regulations

of the Association, or (b) as a means of reimbursing the Association for costs incurred by the Association in the repair of damages to the Common Area and facilities for which the Owner is allegedly responsible, or (c) to bring an Owner or its Lot into compliance with this Declaration, and the Articles, Bylaws or Rules and Regulations of the Association shall not be treated as an assessment which may become a lien against the Owner's Lot enforceable as provided in Section 1356 of the California Civil Code. This Paragraph shall not apply to charges imposed against an Owner which are reasonable late payment penalties for delinquent assessments nor charges to reimburse the Association for the loss of interest and for costs reasonably incurred (including attorneys' fees) in its efforts to collect delinquent assessments.

5.8.4 In addition to the lien power described hereinabove, each Owner vests in the Association or its assigns, the right and power to bring all actions at law against such Owner or other Owners for the collection of delinquent assessments. In lieu of bringing an action at law to collect delinquent assessments, the Association may submit the matter to arbitration pursuant to the Commercial Rules of the American Arbitration Association. The decision of the arbitrator on such delinquent assessment shall be binding on both the Association and the delinquent Owner and may be enforced in any court of competent jurisdiction. The fee to initiate such arbitration shall be paid by the Association and shall be recoverable as part of the arbitration award in addition to the late charges and interest on the delinquent assessment as provided above.

Section 5.9 Policies for Assessment Collection. The Board of Directors shall annually distribute, within sixty (60) days prior to the beginning of the fiscal year, a statement of the Association's policies and practices for enforcing its remedies against Members for defaults in the payment of annual and/or special assessments, including the recording and foreclosing of liens against Members' Lots.

Section 5.10 Subordination of the Lien to First Deeds of Trust and First Mortgages. The lien for the assessments provided for herein shall be subordinate to the lien of any first Mortgage upon any Lot. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to judicial or nonjudicial foreclosure of a first Mortgage or any conveyance in lieu thereof shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from lien rights for any assessments thereafter becoming due. Where the Mortgagee of a first Mortgage or other purchaser of a Lot obtains title to the same as a result of foreclosure or conveyance in lieu thereof, such acquirer of title, his successors and assigns, shall not be liable for the share of the common expenses or assessments by the Association chargeable to such Lot which became due prior to the acquisition of title to such Lot by such acquirer. Such unpaid share of common expenses or assessments shall be deemed to be

common expenses collectible from all of the Lots, pro rata, including such acquirer, his successors and assigns.

Section 5.11 Estoppel Certificate. The Association shall furnish, or cause an appropriate officer to furnish, upon demand by any person, a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 5.12 Personal Liability of Owner. No Member may exempt himself from personal liability for assessments, nor any part thereof, levied by the Association, nor release the Lot owned by him from the liens and charges hereof by waiver of the use and enjoyment of the Common Area and facilities thereon or by abandonment of his Lot.

Section 5.13 Exempt Property. All properties dedicated to and accepted by a local public authority, and all properties owned by a charitable nonprofit organization exempt from taxation by the laws of the State of California shall be exempt from the assessments created herein; However, no real property or improvements devoted to dwelling use shall be exempt from said assessments.

Section 5.14 Assessment Limitation Not Applicable. The limitation on percentage increases of annual assessments shall not limit assessment increases by the Board for the following emergency situations:

(a) An extraordinary expense required by an order of court;

(b) An extraordinary expense necessary to repair or maintain the Project, or any part of it for which the Association is responsible, where a threat to personal safety on the property is discovered; or

(c) An extraordinary expense necessary to repair or maintain the Project, or 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 pursuant to Article 6 hereof. However, prior to the imposition or collection of an assessment under this subparagraph (c), the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolutions shall be distributed to the Members with the notice of assessment.

Section 5.15 Association Statement at Transfer of Title. At the request of any Owner transferring title to such Owner's Lot, the Association shall provide (i) a true statement in writing from an authorized representative of the Association as to the amount of

the Association's current regular and special assessments and fees, as well as any assessments levied upon the Owner's Lot which are unpaid on the date of the statement, **and** (ii) any change in the Association's current regular and special assessments and fees which have been approved by the Association's Board of Directors, but have not become due and payable as of the date disclosure is provided pursuant to this Section.

Section 5.16 Exemption from Assessments to Common Areas. Notwithstanding any other provisions of this Declaration, Declarant or any other Owner shall not be obligated to pay any portion of any assessments which is for the purpose of defraying expenses and establishing reserves directly attributable to the existence and use of a Common Area improvement that is not complete at the time assessments commence. Any such exemption for the payment of assessments shall be in effect only until a **"Notice of Completion"** of the Common Area improvement has been recorded or the Common Area improvement has been placed into use, whichever shall first occur.

ARTICLE 6 ACCOUNTINGS

Section 6.1 Books and Records. The Association shall maintain books of account of all its receipts and expenditures. Each Owner shall be entitled at reasonable times to inspect the books and records of the Association and to have such books and records examined at such Owner's expense by an attorney or an accountant representing such Owner, and may make excerpts or copies of such books and records or portions thereof, and each such Owner, at his own expense, shall have the right to have such books independently audited by an accountant.

Section 6.2 Budget.

6.2.1 Except as provided in Section 6.2.2, a pro forma operating statement ("**Budget**") for each fiscal year shall be prepared and distributed to each Owner not less than forty-five (45) days nor more than sixty (60) days prior to the beginning of the fiscal year. The Budget shall contain the following information:

(a) The estimated revenue and expenses of the Association for the upcoming fiscal year on an accrual basis;

(b) A summary of the Association's reserves based upon the most recent review or study conducted **pursuant to** Section 6.2.4 below, which shall be printed in bold type and include all of the following:

(i) The current estimated replacement cost, estimated remaining life, and estimated useful life of each major component within the Common Area;

(ii) As of the end of the fiscal year for which the study is prepared:

A. The current estimate of the amount of cash reserves necessary to repair, replace, restore, or maintain the major components within the Common Area;

B. The current amount of accumulated cash reserves actually set aside to repair, replace, restore or maintain major components within the Common Area;

(iii) The percentage that the amount determined for purposes of clause (ii) of subparagraph (b) above is of the amount determined for purposes of clause (i) of subparagraph (b) above;

(c) A statement as to whether the Board of Directors of the Association has determined, or anticipates, that the levy of one or more special assessments will be required to repair, replace, or restore any major component within the Common Area or to provide adequate reserves therefor;

(d) A general statement setting forth the procedures used by the governing body in the calculation and establishment of reserves to defray the costs of repair, replacement or additions to major components of the Common Areas and facilities for which the Association is responsible.

6.2.2 In its sole discretion, and in lieu of the procedure set forth in Section 6.2.1, the Board of Directors may elect to distribute a written summary of the Budget ("**Summary**") to all Owners not less than forty-five (45) days nor more than sixty (60) days before the beginning of the fiscal year. In addition to the Summary, the Board of Directors shall include a written notice, in at least 10 point bold type on the front page of the Summary stating that: a) the Budget is available for review at a location within the Project or at the office of the management company for the Association; and b) upon the written request of an Owner, the Association shall mail one copy of the Budget to said Owner. Such Budget shall be mailed at the Association's expense by pre-paid first class mail and shall be delivered within five (5) days from the date of the receipt of such Owner's written request.

6.2.3 The summary of the Association's reserves disclosed pursuant to paragraph 6.2.1 shall not be admissible in evidence to show improper financial management of the Association, provided that other relevant and competent evidence of the financial condition of the Association is not made inadmissible by this provision.

6.2.4 At least once every three (3) years the Board of Directors shall cause a study of the reserve account requirements of the Project to be conducted if the current replacement value of the major components within the Common Area which the Association is obligated to repair, replace, restore or maintain is equal to or greater than one-half ($\frac{1}{2}$) of the gross Budget of the Association

for any fiscal year. The Board shall review this study annually and shall consider and implement necessary adjustments to the Board's analysis of the reserve account requirements as a result of that review. The study required hereunder shall at a minimum include:

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

(b) Identification of the probable remaining useful life of the components identified in Paragraph 6.2.4(a) as of the date of the study;

(c) An estimate of the cost of repair, replacement, restoration, or maintenance of each major component identified in Paragraph 6.2.4(a) during and at the end of its useful life;

(d) An estimate of the total contribution necessary to defray the cost to repair, replace, restore, or maintain each major component during and at the end of its useful life, after subtracting total reserve funds as of the date of the study.

6.2.5 As used in this Article, "**reserve** accounts" means moneys **that the** Association's Board of Directors has identified for use to defray the future repair or replacement of, or additions to, those major components which the Association is obligated to maintain.

6.2.6 As used in this Article, "**reserve account requirements**" means the estimated funds which the Association's Board of Directors has determined are required to be available at a specified point in time to repair, replace, or restore those major components which the Association is obligated to maintain.

Section 6.3 Initial Financial Report. A balance sheet, as of the accounting date which is the last day of the month closest in time to six (6) months from the date of the closing of the first sale of a Lot in the Project, and an operating statement for the period from the date of the first closing to said accounting date, shall be distributed within sixty (60) days after the accounting date. The operating statement shall include a schedule of assessments received and receivable, identified by the number of the Lot and the name of the record Owner so assessed.

Section 6.4 Annual Report. An annual report consisting of the following shall be distributed to each Owner within one hundred twenty (120) days after the close of the fiscal year:

- (a) A balance sheet as of the end of the fiscal year;
- (b) An operating (income) statement for **the** fiscal year;

(c) A statement of changes in financial position for the fiscal year;

(d) Any information required to be reported under Section 8322 of the Corporations Code; and

(e) A review of the annual report for the Association prepared in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy, (hereinafter "**Independent Accountant**"), for any fiscal year in which the gross income to the Association exceeds Seventy-Five Thousand Dollars (\$75,000).

6.4.1 A statement of policies and procedures employed by the Board of Directors to enforce the collection of delinquent assessments.

Section 6.5 Independent Preparation. Ordinarily the annual report referred to in Section 6.4 above shall be prepared by an Independent Accountant for each fiscal year.

Section 6.6 Copy of Financial Statement To Prospective Buyers. Within ten (10) days of receipt of any written request therefor, the Board of Directors shall furnish any Owner or prospective Owner with a copy of this Declaration, the Articles of Incorporation, Bylaws, Architectural Guidelines and Rules and Regulations of the Association, all as amended to date, together with a copy of the Association's most recent annual financial reports as described in Section 6.4 hereof, and a true statement of any delinquent assessments, penalties, late charges, attorneys' fees or other charges under this Declaration on such Owner's Lot as of the date the statement is issued. The Board of Directors may charge a reasonable fee for providing such documents and reports not to exceed the reasonable cost to prepare and reproduce same.

Section 6.7 Association Officer Statement. If the reports referred to in Section 6.4, above, are not prepared by an independent accountant, it shall be accompanied by the certificate of an authorized officer of the Association stating that the reports were prepared without audit from the books and records of the Association.

Section 6.8 Association's Policies and Practices Statement. A statement describing the Association's policies and practices in enforcing lien rights or other legal remedies for default in payment of its assessments against its Members shall be annually delivered to the Members during the sixty (60) day period immediately preceding the beginning of the Association's fiscal year.

Section 6.9 Reconciliation of Accounts. The Board of Directors shall do the following not less frequently than quarterly:

(a) Cause a current reconciliation of the Association's operating accounts to be made and review the same;

(b) Cause a current reconciliation of the **Association's** reserve accounts to be made and review the same;

(c) Review the **current year's** actual reserve revenues and expenses compared to the current year's budget;

(d) Review the most current account statements prepared by the financial institution where the Association has its operating and reserve accounts; and

(e) Review an income and expense statement for the **Association's** operating and reserve accounts.

Section 6.10 Reserve Account.

6.10.1 Withdrawal of funds from the Association's reserve account shall require the signatures of either: (1) two members of the Board of Directors, or (2) one member of the Board of Directors and an officer of the Association who is not also a member of the Board of Directors.

6.10.2 **The Board of Directors** shall not expend funds designated as reserve funds for any purpose other than the repair, restoration, replacement, or maintenance of major components which the Association is obligated to repair, restore, replace or maintain and for which the reserve fund was established.

Section 6.11 Transfer of Title. The Board of Directors shall not impose or collect any assessment, penalty or fee in connection with the transfer of title or any other interest except the Board of Directors' actual costs to change its records and the fee for providing documents pursuant to Section 6.6.

ARTICLE 7

ARCHITECTURAL CONTROL COMMITTEE

Section 7.1 Submissions and Approvals Required. No building, fence, wall, stable or other structure, landscaping or improvement (collectively "**Improvement**") shall be commenced, erected, placed or altered upon any Lot until the location and complete plans and specifications showing the nature, kind, shape, height and materials, including the color scheme, have been submitted by personal delivery or certified mail, return **receipt requested to, and approved in writing as to harmony** of external design and location of surrounding structures and topography by, the Board of Directors of the Association, or by an architectural committee appointed by the Board of Directors and composed of three (3) or more, but not to exceed five (**5**), representatives. The architectural committee may designate an agent (i.e. an architect) for the purpose of assisting in the review of such location, plans and specifications or other requests and may charge the Owner making a submission its

reasonable costs of such agent's review. Approval shall be by majority vote of the Board or its designated committee. In the event the Board or its designated committee fails to approve or disapprove such location, plans and specifications or other requests within thirty (30) days after receipt of the submission thereof to it, then such approval will not be required; provided, that any structure or Improvement so erected **or** altered, conforms to all of the conditions and restrictions herein contained, and is in harmony with similar structures erected within the Project. Grade level or drainage characteristics of the Lot or any portion thereof shall not be altered without the prior written consent of the Board or its designated committee. This approval requirement shall not apply to the original construction of Declarant. Each Owner shall be responsible for obtaining all necessary approvals or permits from applicable governmental entities or agencies and shall comply with all laws, codes and regulations concerning the construction of any such Improvement.

Section 7.2 Appointment of Architectural Committee. Declarant may appoint all of the original members of the architectural committee and all replacements until the first anniversary of the original issuance of the Final Subdivision Public Report for the Project. Thereafter, Declarant may appoint a majority of the members of the architectural committee until ninety **percent (90%)** of the Units in the Project have been sold or until **the** fifth (5th) anniversary of the original issuance of the Final Subdivision Public Report for the initial Phase of the Project, whichever first occurs. After one year from the date of the original issuance of the Final Subdivision Public Report for the initial Phase of the Project, the Board of Directors of the Association shall have the power to appoint one member to the architectural committee until ninety percent (90%) of the Lots in the Project have been sold or until the fifth (5th) anniversary of the original issuance of the Final Subdivision Public Report for the initial Phase of the Project, whichever first occurs. Thereafter, the Board of Directors of the Association shall have the power to appoint all of the members of the architectural committee. Members appointed to the architectural committee by the Board of Directors shall be from **the** membership of the Association. Members appointed to the architectural committee by the Declarant need not be Members of the Association.

Section 7.3 Views. In granting or denying the architectural approvals required hereunder, the architectural committee shall consider the effect of any Improvement on the views of adjacent Lots. No vegetation or other obstruction shall be approved in any location of such height as to unreasonably obstruct the view from any other Lot in the vicinity thereof; nor will any vegetation be allowed to grow to such a height or density as to unreasonably obstruct such views. In the event of a dispute between Owners as to the obstruction of a view from a Lot, such dispute shall be submitted to the architectural committee, whose decision in such matters shall be binding. Any such obstruction shall, upon request of the architectural committee in their sole and absolute **discre-**

tion, be removed or otherwise altered to the satisfaction of the architectural committee by the Owner upon whose Lot said obstruction is located. If said Owner fails to **take** such action as required, the Association, architectural committee, or their authorized agents **or** employees, may, but is not obligated to, enter upon such Lot, rectify the condition and charge such Owner the cost thereof. Declarant makes no assurance whatsoever concerning the impact on views of any construction of Improvements by anyone after completion of **Declarant's** original construction, whether such construction is approved by the architectural committee or constructed on property **contiguous to the Project**.

Section 7.4 Fences and Walls. Each Owner **shall** maintain, repair and reconstruct, if necessary, fences and walls, if any, along the perimeters of his Lot, if any, in conformance with the Architectural Guidelines. Such fences and walls shall be rebuilt, if necessary, so as to straddle the boundary lines of a Lot, and only one fence or wall shall be constructed on the boundary lines of adjoining Lots. Each Owner shall obtain all necessary permits for such construction and shall comply with all local laws and ordinances in connection with such construction. The cost of construction and maintenance of the fences and **walls** shall be borne by the Owner thereof, except **that** the cost of construction and maintenance for fences and walls which straddle boundary lines of adjoining Lots shall be borne equally by such adjoining Lots as required by California Civil Code Section 841. In the event any Owner fails to maintain the fences and **walls** **as** required hereunder, then the Association or the Architectural Control Committee, after due notice to the Owner involved and opportunity to be heard, shall have the right, but not the obligation, to enter upon such Owner's Lot to conduct such maintenance as may be necessary and said Owner shall be liable for all costs incurred by the party conducting such activities.

Section 7.5 Non-Liability of Architectural Committee Members. Neither Declarant, the Association, the Board or the architectural committee, **or the** members or designated representatives thereof, shall be liable for damages to any Owner submitting plans or specifications to them for approval, or to any Owner in the Project affected by this Declaration, by reason of mistakes in judgment, negligence or nonfeasance, unless due to willful misconduct or bad faith of the architectural committee, its designated representatives or members. The architectural committee's approval or disapproval of a submission shall be based solely on the considerations set forth in this Article, and in such guidelines as may be promulgated **by the** architectural committee, and the architectural committee shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any plans or design from the standpoint of structural safety and conformance with building or other codes.

Section 7.6 Setbacks. All Improvements constructed on any Lot within the Project shall comply with the setback requirement of the municipality having jurisdiction thereof provided that front yard

setbacks shall not be altered from those established upon original construction of the residence upon the Lot unless required by governmental regulation. Additions may be constructed at the rear of the residence provided that a minimum fifteen foot (15') setback is maintained for enclosed spaces and a minimum five foot (5') setback is maintained for patios unenclosed on at least two (2) sides, such five foot (5') setback to include supports and overhangs.

Section 7.7 Front Yard Landscaping. Each Owner of a Lot in the Project, other than Declarant, shall cause the front yard area of his Lot to be landscaped within six (6) months following the close of escrow of such Lot. Such Owner shall obtain all necessary approvals and permits for installation of such landscaping as are required by this Article 7 and, if appropriate, from the City of Orange. In the event any Owner fails to complete such landscaping installation as hereinabove required, the Association shall have the right, but not the obligation, to enter upon such nonconforming Lot and install such landscaping at the Owner's expense. Payment of the cost thereof may be enforced against Owner by the levying of a special assessment therefor and the filing of a lien against the nonconforming Lot in accordance with the provisions of Article 5 above.

ARTICLE 8 USE RESTRICTIONS AND OBLIGATIONS OF OWNERS

Section 8.1 Leasing of Lots. Any Owner may lease his Lot subject to the following:

8.1.1 No Owner shall be permitted to lease his Lot for transient or hotel purposes i.e. less than thirty (30) calendar days.

8.1.2 No Owner may lease less than the entire Lot.

8.1.3 Any lease agreement is required to provide that the terms of the lease shall be subject in all respects to the provisions of the Declaration, the Bylaws and any Rules and Regulations adopted by the Association and that any failure by the lessee to comply with the terms of such documents shall constitute a default under the lease.

8.1.4 All leases are required to be in writing and copies shall be submitted to the Association.

Section 8.2 Use Restrictions. In addition to all other covenants contained herein, the use and enjoyment of the Project and each Lot therein shall be subject to the following:

8.2.1 No Lot shall be occupied and used except for residential purposes by the Owners, their tenants, and social guests except that Declarant, its successors or assigns, may use any Lot or Lots in the Project owned by Declarant for a model home site or sites and display and sales offices until the last Lot within the Project or the Annexation Property is sold by Declarant or seven (7) years following the date of the sale of the first Lot in the Project, whichever shall first occur. No tent, shack, trailer, garage, outbuilding or structure of a temporary character shall be used at any time as a residence, either temporarily or permanently.

8.2.2 Apart from the rights of Declarant as set forth in Section 8.2.1, no trade or business may be conducted in or from any Lot, except **that** an Owner or occupant residing on a Lot may conduct business activities within the Lot so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Lot; (b) the business activity conforms to all zoning requirements for the Project; (c) the business activity does not involve persons coming onto the Project who do not reside in the Project or door-to-door solicitation of residents of the Project; and (d) the business activity is consistent with the residential character of the Project and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Project, as may be determined in the sole discretion of the Board.

The terms "**business**" or "**trade,**" as used in this provision, shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefor. Notwithstanding the above, the leasing of a Lot shall not be considered a trade or business within the meaning of this section. This section shall not apply to any activity conducted by Declarant with **respect to** its development and sale of the Lots or its use of any Lots which it owns within the Project.

8.2.3 No sign or billboard of any kind (including but not limited to commercial or political signs) shall be displayed to the public view on any Lot, except for:

8.2.3.1 directional signs established by the Declarant or the Association;

8.2.3.2 such signs as may be required for legal proceedings;

8.2.3.3 signs advertising Lots "**for sale**" or "**for rent**" which signs shall be of customary and reasonable dimensions and of a professional type and dignified appearance. If at the time of

any such desired use, the Association is providing "**for sale**" or "**for rent**" signs for the use of Owners, the sign provided by the Association shall be used and only in the location designated by the Association; and

8.2.3.4 duringthetime of construction of any improvement, one job identification sign not larger than eighteen (**1a**) by twenty-four (24) inches in height and width and having a face area not larger than three (3) square feet;

8.2.3.5 signs, billboards **and otheradvertising devices** or structures used by Declarant in connection with the development, subdivision, advertising and sale of the Property, the Project and Lots therein.

8.2.4 No noxious or offensive activity **shall be** carried on in any Lot or any part of the Project, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood, or which shall in any way interfere with the quiet enjoyment of each of the Owners of his respective Lot or which shall in any way increase the rate of insurance carried by the Association.

8.2.5 No **trailer**, camper, boat, recreational vehicle, or similar equipment or inoperative automobile shall be permitted to remain upon the Project unless placed and maintained entirely within a Lot and obscured from the view of the adjoining Lots and streets. The foregoing restriction shall not be deemed to prevent washing and polishing of such motor vehicle, boat, trailer, camper or motor-driven cycle, together with those activities normally incident and necessary to such washing and polishing.

8.2.6 **An** Owner may keep and maintain in his Lot domesticated pets such as dogs, cats or other usual and ordinary household **pets**, not to exceed two (2) in number, provided that such pets shall not be allowed in the Common Area or recreational areas except as may be permitted by the Rules and Regulations which may be promulgated from time to time by the Board. Except as hereinabove provided, no animals, livestock, birds or poultry shall be brought within the Project or kept in any Lot thereof. Owners keeping pets shall be accountable to the other Owners for the acts of such pets and should any Owner be unable to control barking or other noise or acts of his pets which disturb his neighbors he shall be required to remove such pet from the Project. No pet will be allowed on **the** Common Area or recreational areas without being supervised.

8.2.7 No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted within the Project, nor shall oil wells, tanks, tunnels or mineral excavations or shafts be permitted upon the surface of or within five hundred (500) feet below **the** surface of the Project. No derrick or other structure designed for use in boring for water,

oil or natural gas shall be erected, maintained or permitted within the Project.

8.2.8 All rubbish, trash and garbage shall be regularly removed from the Project and shall not be allowed to accumulate thereon. All clotheslines, refuse containers, wood-piles, storage areas, machinery and equipment shall be prohibited within the Project unless obscured from the view of adjoining Lots and streets.

8.2.9 No roof mounted or other externally mounted radio and/or television antenna systems, shall be permitted within the Project. Each Owner may maintain individual radio or television antennae systems if located entirely within such Owner's dwelling and if such system is not visible from other Lots or the Common Area, and provided that such system does not interfere with radio and television reception of other Owners within the Project.

8.2.10 Easements for installation and maintenance of utilities, sewer pipelines and facilities and drainage facilities over each of the Lots, and all pipelines and other facilities located and to be located in said easements, are reserved where such facilities are installed and as may be shown on the recorded Maps of the Project. Within such easements, no structure, planting or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities or which may change the direction of the flow of drainage channels, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each Lot and all improvements therein shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or a utility is responsible. In addition, all sewer pipelines and other sewer facilities located or to be located within public roads, streets and highways abutting each of the Lots are reserved.

8.2.11 Each Owner of a Lot has the responsibility and duty to maintain the appearance and integrity of all slope areas and drainage devices located within his Lot.

8.2.12 Each grantee of a Lot within the Project covenants for himself, his heirs, successors and assigns, that he will permit free access by **Owners** of adjacent or adjoining Lots and by the Association, its agents and employees, to all slope areas or drainageways located on his Lot, which affect said adjacent or adjoining Lots, which access is essential for the maintenance or permanent stabilization of said slopes, or maintenance of the drainage facilities for Lots other than the Lot on which the slope or drainageway is located.

8.2.13 Each grantee of a Lot within the Project covenants for himself, his **heirs**, successors and assigns, that he will not in any way interfere with the established drainage patterns or create erosion or sliding problems over his Lot from adjoining or other

Lots within the Project, that he will accept drainage from adjacent properties and that he will make adequate provisions for proper drainage in the event it is necessary to change the established drainage over his Lot. For the purposes hereof, "**established drainage**" is defined as the drainage which occurred **at** the time the overall grading of the Project was completed by Declarant.

8.2.14 Each grantee of a Lot within the Project shall maintain the slopes within his Lot at the slope and pitch fixed by the finished grading thereof, including watering and planting of the slopes. Within slope areas no structure, planting, or other material shall be placed or permitted to remain or other activities undertaken which may damage or interfere with established slope ratios, create erosion or sliding problems, or which may change the direction of flow of drainage channels or obstruct or retard the flow of water through drainage channels. The slope areas of each Lot and all improvements thereto shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible. Declarant shall, for a period of one (1) year following sale and deed of any particular Lot, have the right but **not the** obligation to enter upon the said Lot and alter or maintain the slope areas. An easement of reasonable access for said purpose is reserved to Declarant, and the purchaser, by the acceptance of a deed from Declarant, shall take title subject to such easement for said period of one (1) year.

8.2.15 Conveyance of a substantial number of the Lots is essential to the establishment and welfare of said Project as a residential community. In order that all work necessary to complete the Project and establish a substantially occupied residential community be completed as rapidly as possible no Owner shall, and nothing in this Declaration shall be understood or construed to:

8.2.15.1 Prevent Declarant, its contractor or subcontractors, from doing work on said Project or any part thereof whenever it determines such work to be reasonably necessary or advisable in connection with the completion of the Project and its development plan; or

8.2.15.2 Prevent Declarant, or its representatives from erecting, constructing and maintaining on any part or parts of said Project owned or controlled by Declarant, its contractors, or subcontractors, such structures as may be reasonably necessary for the conduct of its business of completing said work and establishing the Project as a residential-community and disposing of the same by sale, lease, or otherwise.

8.2.15.3 Declarant, in exercising its rights hereunder, shall not unreasonably interfere with the Members' use of the Common Area.

8.2.16 All structures within the Project shall at all times be maintained by their respective Owners in a clean, first-class and properly painted condition.

8.2.17 In addition to the general easements provided for in this Declaration, Declarant hereby grants and reserves, as appropriate, non-exclusive easements of use and enjoyment as private **sideyard** areas ("**Sideyards**"), for the benefit of certain Lots in Phase 1 ("**Benefitted** Lots"), over other Lots in Phase I ("**Burdened** Lots") as shown and assigned on Exhibit "**B**" attached to this Declaration. Phase I contains many Lots, commonly known as "**2**" Lots, where each such Lot is entitled to a **Sideyard over an** adjacent Lot and, at the same time, gives up a **Sideyard** to another adjacent Lot. Therefore, most of the Lots in Phase I are both Benefitted Lots and Burdened Lots. The Sideyards extend approximately five feet (5') in width and of varying lengths along the common side Lot lines separating the Benefitted Lots from the Burdened Lots, across the Burdened Lots, to the fences or buildings (as the case may be) constructed on the Burdened Lots by Declarant, and are delineated by fences running perpendicular between the side Lot lines and/or the front Burdened Lot lines or the rear Burdened Lot lines. The Sideyards in Phase I are more particularly shown and described on the **Sideyard** Easement Map which is attached hereto, marked: "Exhibit "B" and" by this reference incorporated herein. Declarant further grants and reserves, for the Owner of each Benefitted Lot and each corresponding Burdened Lot, a non-exclusive easement for reasonable ingress and egress to and from the particular **Sideyard** for the respective purposes enumerated in Subparagraph 8.2.18 below. **Declarant further grants and reserves** for itself, and for Owners of Burdened Lots easements appurtenant to such Burdened Lots over the respective Sideyards created on such Burdened Lot for purposes of accommodating: (1) encroachment of overhanging eaves and other items as initially constructed on the Burdened Lot by Declarant or as constructed with Committee approval, (2) drainage over the Sideyards in accordance with the established drainage pattern, and (3) access to the rear yard of such Burdened Lots for the purpose of constructing Improvements thereon which have been approved by the architectural committee pursuant to the procedures set forth in Article 7 of this Declaration and subject to the provisions contained hereinbelow.

8.2.18 Each **Sideyard** shall be used and enjoyed subject to the following terms:

(1) The **Sideyard** shall be used only as a general recreational and garden area by the Owner of the Benefitted Lot, and each such Owner shall have the right to enter upon the **Sideyard** for such purpose. Such purpose shall include the right of each Owner to plant vegetation, install Improvements and establish an irrigation system thereon, provided such landscaping, Improvements and irrigation system shall be first approved by the architectural committee. The **Sideyard** and every part thereof, including the fence enclosing the **Sideyard** and the drainage system established by Declarant as part of the grading and original construction upon the

Burdened Lot, shall be repaired, replaced and maintained continuously in a neat and orderly condition by the Owner of the **Benefitted** Lot.

(2) The Owner of the Burdened Lot shall have the right and obligation, at reasonable times, upon reasonable notice and in a reasonable manner, to enter upon the **Sideyard** for the purposes of:

maintaining, repairing or restoring the structural wall of his building, the structure of which it is a part, the gutter and downspout attached to his building and any fence owned by him which adjoins or abuts the Sideyard; and

ingress, egress and access to the rear yard of such Burdened **Lot** to construct Improvements thereon which have been approved by the architectural committee.

Any Owner who enters upon the **Sideyard** for the above purposes shall, **as** soon as possible thereafter, restore and repair such **Sideyard** to the same condition it was in prior to such entry. Further, the Owner of such Burdened Lot shall indemnify and save the Owner of the Benefitted Lot harmless from and **against** any and all liability arising out of or otherwise resulting from any negligent act or omission of the Owner of the Burdened Lot relating to the exercise of its rights or the performance of its obligations hereunder.

(3) No storage of any kind shall be permitted in the Sideyard, nor shall the **Sideyard** be used in any way which would damage, destroy or interfere in any way with the building on the Burdened Lot or the Owner's use and **quite** enjoyment thereof, including, without limitation, the fixation of any object or device of any kind to the structural wall thereof, without the prior written consent of the Owner of that building.

(4) Except for the fences and structures established by Declarant as part of the original construction upon the Burdened Lot, and except as authorized by Subparagraph **8.2.18(1)** hereinabove, no fence or other structure of any kind **shall be** constructed within, upon or adjacent to the Sideyard, without **the** prior written approval of the architectural committee.

(5) No planting or other material or authorized structure (including patios) shall be constructed, altered, placed or permitted to remain upon the **Sideyard** which may change the direction of flow of the established drainage pattern upon the Burdened Lot, or which may obstruct, interfere or retard the flow of water through such system. The *Owners* of each Burdened Lot shall have the right to use the drainage system established within the **Sideyard** adjoining and abutting their Lots for the purpose of draining their Lots, provided that such right of drainage shall not include the right to discharge noxious or offensive matter.

(6) Each Owner of a Benefitted Lot shall indemnify and save the Owner of the applicable Burdened Lot harmless from and against any and all liability arising out of or otherwise resulting from any negligent act or omission of the Owner of the Benefitted Lot relating to the exercise of its rights or the performance of its obligations with regard to the **Sideyard** appurtenant to such Benefitted Lot.

ARTICLE 9
SCOPE OF ENFORCEMENT

Section 9.1 **Enforcement** The Declarant, the Association and any Owner shall have **the right**, but not the obligation, to enforce by any proceeding at law or in equity, all restrictions, conditions, covenants and reservations now or hereafter imposed by the provisions of this Declaration. Failure by Declarant, the Association or any Owner to enforce any covenants or restrictions herein contained shall, in no event, be deemed a waiver of the **right** to do so thereafter.

The limitations, restrictions, conditions and covenants set forth in this Declaration constitute a general scheme for (i) the maintenance, protection and enhancement of the value of the Project and (ii) the benefit of all Owners. Said limitations, restrictions, conditions and covenants are and shall be covenants running with the land or equitable servitudes, as the case may be. Each remedy provided for in this Declaration shall be cumulative and not exclusive. The result of or condition caused by any violation of any of the provisions of this Declaration is and shall be a nuisance, and every remedy in law or equity now or hereafter available against public or private nuisance may be exercised by any person affected thereby. Any of the foregoing to the contrary notwithstanding, no action to enforce this Declaration **shall be** instituted unless and until a written notice of such breach setting forth the facts of such breach has been delivered by certified mail to the Owner of such Lot. In the event the Association or any Owner(s), should commence **litigation** to enforce any of the provisions of this Declaration, that party, if he should prevail, shall be entitled to have judgment against and recover from any defendant in such litigation, such attorneys' fees (other than nominal) as the court may adjudge reasonable and proper. Each Owner shall have a right of action against the Association for any failure of the Association to comply with the provisions of the Declaration, Articles of Incorporation, Bylaws, Architectural Guidelines or Rules and Regulations of the Association.

ARTICLE 10
DAMAGE TO LOTS AND COMMON AREAS

Section 10.1 Repairs. In the event that an Owner fails to maintain or repair his Lot or the improvements thereon or otherwise comply with the provisions of this Declaration, the Bylaws or the Rules and Regulations, the Association, or their agents or employees shall have the right, but not the obligation, to bring the Lot into compliance with the provisions of this Declaration and the cost incurred **therefor** shall be assessed to that Owner as a special assessment as set forth in this Declaration.

Section 10.2 Damage to Common Areas. In the event the need for repair of the Common Area is caused through the willful or negligent acts of a Member or his guests or invitees, the Association, or their agents or employees shall **have** the right, but not the obligation, to make such repairs and the liability of the Member and the cost of repair shall be **assessed to** that Member **as a** special assessment as set forth in this Declaration.

ARTICLE 11
INSURANCE

Section 11.1 Liability/Property Insurance. A master or blanket public liability and property damage insurance policy covering the Common Area shall be purchased by the Board of Directors **as** promptly as possible following its election and **shall** be maintained in force at all times, the premium thereon to be paid out of the monies collected from the assessments. The minimum amount of coverage shall be One Million Dollars **(\$1,000,000)** combined single limit liability for bodily injury to any one person, or property damage for any one occurrence; if written on the new occurrence form, coverage shall be One Million Dollars **(\$1,000,000)** in the aggregate and One Million Dollars **(\$1,000,000)** per occurrence. The policy shall name the Association and all Owners as insureds, including Declarant, during such time as Declarant shall remain the Owner of one or more Lots. The manager, if any, shall also be a named insured on such policy, during such time as his agency shall continue. The insurance shall also contain a cross-liability endorsement to cover negligent injury by one Owner to another, if reasonably available.

Section 11.2 Hazard Insurance. The Board of Directors shall purchase a master or blanket policy of all-risk or named peril (fire, extended coverage vandalism and malicious mischief) insurance issued by a "Qualified Insurer,* as defined herein, providing coverage **equal** to one hundred percent (100%) of the current replacement cost of **all** Common Area improvements to the Project then

subject to assessments under Article 5 of the Declaration (including all service and mechanical equipment in the Project). "Qualified Insurer" means any insurance company having a Best's Insurance Reports rating of (a) a "B" general policyholder's rating and a III financial size category, or (b) an "A" general policyholder's rating and a II financial size category, and licensed in the State of California. Replacement cost may exclude land, foundations, excavation, and other items normally excluded from coverage. All hazard insurance required to be maintained by the Board hereunder shall be maintained strictly in accordance with the provisions contained in the FHLMC Seller's and Servicers' Guide. The premiums for said insurance policy shall be paid by the Board out of the monies collected from the assessments. The policy may also contain an agreed amount endorsement, a special form endorsement, and a clause to permit cash settlement covering the full value of the improvements in the event of partial destruction and a decision not to rebuild. The policy shall name as insureds all Owners and Declarant, so long as Declarant is the Owner of any Lot within the Project, and all Mortgagees of record, as their respective interests may appear. The proportionate interest of each Owner in any insurance proceeds in relation to the other Owners, shall be based upon a ratio of each Lot's "fair market value" to the "fair market value" of the entire Project. The "fair market value" in both instances, shall be determined by an independent appraiser. In the event that the insurer under said hazard insurance policy shall cease to be licensed in the State of California, or shall cease to be approved by the Federal Home Loan Mortgage Corporation (so long as insurers continue to be so approved), the Association shall exercise its best efforts to obtain from another Qualified Insurer a replacement hazard policy comparable to the prior hazard policy, including all required endorsements.

Section 11.3 Individual Coverage. Each Owner shall purchase and maintain, at his own expense, fire and hazard insurance coverage as may be required by his individual lender. Personal property of a Lot Owner and additional fixtures added by a Lot Owner should be insured separately by the Lot Owner. Such insurance shall also contain a loss-payable endorsement to the Mortgagees of individual Lots, as their interests shall appear.

Section 11.4 Board as Trustee. All insurance proceeds payable pursuant to Section 11.2 of this Article and, subject to the rights of Mortgagees under Section 11.2 hereof, shall be paid to the lending institutions holding first Mortgages on Lots within the Project, to the extent of their interests therein, and shall be applied only to the repair and restoration of the damaged premises or to the reduction of the aggregate principal amounts of the mortgage loans secured by such damaged or destroyed premises. Insurance proceeds shall be paid out in accordance with Article 12. In the event repair or reconstruction is authorized, the Board shall have the duty to contract for such work, as provided in Article 12 hereof.

Section 11.5 Other Insurance. The Board may purchase and maintain in **force** at all times, demolition insurance in adequate amounts to cover demolition in the event of destruction and a decision not to rebuild. The premium **therefor** shall be paid out of the monies collected from the assessments. Such policy, if purchased, shall contain a determinable demolition clause or similar clause, to allow for coverage of the cost of demolition in the event of destruction and a decision not to rebuild. The Board of Directors shall also purchase and maintain Worker's Compensation Insurance to the extent that the same shall be required by law for employees of the Association. The Board of Directors may also purchase and maintain insurance on commonly owned **personal property** and such other insurance as it deems necessary, the premium **thereof** to be paid out **of** the monies collected from the assessments, including, but not limited to, umbrella or **excess** liability coverage.

Section 11.6 Owners' Other Insurance. An Owner may carry such additional personal liability and property damage insurance respecting individual Lots as he may desire.

Section 11.7 Annual Review. The Board shall review **the** insurance carried by the Association at least annually for the purpose of determining the amount of the casualty and property insurance referred to in Section 11.1 above. The Board shall obtain current appraisal of the full replacement value of the improvements in the Common Area, without deduction for depreciation, by a qualified independent insurance appraiser, prior to each such annual review.

ARTICLE 12 DESTRUCTION OF IMPROVEMENTS

Section 12.1 Proceeds Greater Than Eighty-Five Percent (85%) of Cost to Repair. In the event of total or partial destruction of the improvements in the Common Area and if the available proceeds of the insurance carried pursuant to Article 11 are sufficient to cover not less than eighty-five (85%) percent of the cost of repair or reconstruction thereof, the same shall be promptly repaired and rebuilt, unless, within ninety (**90**) days from the date of such destruction, seventy-five (75%) percent of each class of membership present and entitled to vote in person or by proxy, at a duly constituted meeting, determine that such reconstruction shall not take place. If reconstruction is to take place, the Board of Directors shall be required to execute, acknowledge, file and record, not later than one hundred twenty (120) days from the date of said destruction, a certificate declaring the intention of the Association to rebuild.

Section 12.2 Proceeds Less Than Eighty-Five Percent (85%) of Cost to Repair. If the proceeds of such insurance are less than **eighty-**

five (85%) percent of the cost of reconstruction, such reconstruction may, nevertheless, take place, if within ninety (90) days from the date of said destruction, at least sixty-six and two-thirds percent (66-2/3%) of each class of membership elect to rebuild.

Section 12.3 Additional Contributions From Owner. If the Association determines to rebuild, pursuant to either Sections 12.1 or 12.2, each Owner shall be obligated to contribute such funds as shall be necessary to pay his proportionate share of the cost of reconstruction over and above the insurance proceeds, and the proportionate share of each Owner shall be based upon the ratio of the "fair market value" of his Lot to the "fair market value" of all the Lots. In the event of failure or refusal by any Owner to pay his proportionate share after notice to him, should such failure or refusal continue for a period of sixty (60) days, the Board of Directors may levy a special assessment against such Owner, which may be enforced under the lien provisions hereinbefore set forth.

Section 12.4 Association to Contract for Rebuilding If the Owners determine to rebuild, the Board of Directors shall obtain bids from at least two (2) reputable contractors and shall award construction work to the lowest qualified bidder. The Board of Directors shall have the authority to enter into a written contract with said contractor for such reconstruction and the insurance proceeds held by the Board shall be disbursed to said contractor according to the terms of the contract. It shall be the obligation of the Board to take all steps necessary to insure the commencement and completion of such reconstruction at the earliest possible date.

Section 12.5 Insufficient Vote to Rebuild. If the vote of the Owners shall be insufficient to authorize rebuilding, either pursuant to Sections 12.1 or 12.2, above, the following shall apply:

12.5.1 Any insurance proceeds available for such rebuilding shall be distributed by the Board among the Owners and their individual lenders, as their respective interests may appear. The proportionate interests of each Owner in said proceeds in relation to other Owners shall be based upon a ratio of each Lot's "fair market value" just prior to destruction. "Fair market value" shall be determined by an independent appraiser.

12.5.2 The Board shall have the duty, within one hundred twenty (120) days of the date of such loss, to execute, acknowledge and record a certificate setting forth the determination of the Association not to rebuild, and shall promptly cause to be prepared and filed, such revised maps and other documents as may be necessary to show the conversion of the Common Area to the status of unimproved land.

Section 12.6 Arbitration. In the event of a dispute among the Owners, with respect to the provisions of this Article, any Owner

may cause the same to be referred to arbitration in accordance with the then prevailing rules of the American Arbitration Association. In the event of arbitration, notice thereof shall be given to the Members of the Board and all Owners as promptly as possible after reference to arbitration is made, giving all Owners an opportunity to appear in such arbitration proceedings. The decision of such arbitrator in this matter shall be final and conclusive upon all Owners. The arbitrator may include in his decision an award for costs and/or attorneys' fees against any one or more of the parties to the arbitration.

ARTICLE 13
MORTGAGEE PROTECTION

Section 13.1 Mortgagee Protection. Notwithstanding any other provisions in this Declaration to the contrary, in order to induce lenders and investors to participate in the financing of the sale of Lots in the Project, the following provisions are added hereto (and to the extent these added provisions conflict with any other provisions in this **Declaration**, these added provisions shall control):

13.1.1 No breach of any of the covenants, conditions and restrictions herein contained, nor the enforcement of any lien provisions herein, shall defeat or render invalid the lien of any first Mortgage (meaning a Mortgage with first priority over any other Mortgage) on any Lot made in good faith and for value, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale, or otherwise.

13.1.2 Each holder of a **first** Mortgage encumbering any Lot is entitled, upon written request, to timely written notification from the Association of any default by the Mortgagor of such Lot in the performance of such Mortgagor's obligations **under this** Declaration, the Bylaws or Rules and Regulations of the Association which is not cured within sixty (60) days. Any Institutional Lender holding a first Mortgage on any Lot within the Project shall be entitled to prior written notice of certain proposed actions of the Association as hereinafter set forth in Paragraphs **13.1.5.1 through 13.1.5.7**, inclusive, provided that such Institutional Lender furnishes the Association with a written request for notice which request sets forth the particular Institutional Lender's mailing address and identifies the Lot on which it holds an encumbrance.

13.1.3 Each holder of a first Mortgage encumbering any Lot which obtains title to such Lot **pursuant to:** (a) remedies provided in such Mortgage, or (b) by accepting a deed (or assignment) in lieu of foreclosure in the event of default by a Mortgagor, shall be exempt from any **"right** of first refusal," if any, contained in the Declaration or the Bylaws of the Association. Further, any

such **"right** of first refusal" shall not impair the rights of a first Mortgagee or interfere with a subsequent sale or lease of a Lot so acquired by the Mortgagee.

13.1.4 Each holder of a first Mortgage, or third party foreclosure purchaser, which obtains title to a Lot pursuant to foreclosure of the first Mortgage, shall take the Lot free of any claim for unpaid dues, assessments or charges against **the Lot** which accrue prior to the time such holder obtains title to such Lot (except for claims for a share of such assessments or charges resulting from a reallocation of such dues, assessments or charges among all Lots, including the mortgaged Lot). The lien assessments provided for herein shall be subordinate to the lien of any first Mortgage now or hereafter placed upon a Lot subject to assessment; provided, however, that such subordination shall apply only to assessments which have become due and payable prior to a sale or transfer of such Lot **pursuant to** a decree of foreclosure or trustee sale. Such sale or transfer shall not release such Lot from liability for any assessments thereafter becoming due, nor from **the** lien of any such subsequent assessment.

13.1.5 Unless at least seventy-five percent (75%) of the Institutional Lenders holding a first Mortgage on a Lot within the Project (based upon one vote for each first Mortgage owned), **and** at least two-thirds (**2/3**) of the Owners (other than the Declarant) have given their prior written approval, the Association and its Members shall not be entitled to:

13.1.5.1 By actor omission, 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, the maintenance of the Common Area, party walks or common fences and driveways, or the upkeep of lawns and plantings in the 'Project;

13.1.5.2 Change the pro rata interest or obligations of any Lot for purposes of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards;

13.1.5.3 Partition or subdivide any Lot;

13.1.5.4 By actor omission, **seek to** abandon, subdivide, encumber, sell or transfer the Common Area or partition the Common Area except as provided for herein. The granting of easements for public utilities or for other public purposes consistent with the intended uses of the Common Area and the Project shall not be deemed a transfer within the meaning of this clause;

13.1.5.5 Use hazard insurance proceeds for **losses to** any Common Area for other than repair, replacement or reconstruction of such Common Area, except as provided by statute in case of substantial damage to the Common Area of the Project;

13.1.5.6 Fail to maintain fire and extended coverage on insurable planned development common property within the Project on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost);

13.1.5.7 Effectuate any decision of the Association to terminate professional management and assume self management of the Project; and

13.1.5.8 Amend any part of this Article 13.

13.1.6 **First** Mortgagees **shall** have the **right** to examine the books and records of the Association during normal business hours.

13.1.7 The annual assessments shall include an adequate reserve fund for maintenance, repair and replacement of the improvements to the Common Area and those portions thereof that must be replaced on a periodic basis, and shall be payable in annual assessments rather than by special assessments.

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

13.1.9 **In the** event of **substantial** damage to or destruction of any Lot or any element of the Common Area or possible condemnation or eminent domain procedure, the Institutional Lender under any **first Mortgage** on a Lot is entitled to timely written notice of any such damage, destruction or proposed acquisition and no provision in the Bylaws, or in this Declaration shall be interpreted to entitle any Owner or any other party to priority over any first Mortgagee with respect to the distribution to such Owner of any insurance proceeds or condemnation awards for losses to, or a taking of, Lots and/or Common Areas.

13.1.10 Any agreement for professional management of the Project, or any other contract providing for services by the Declarant shall provide for termination by either party without cause or payment of a termination fee upon thirty (30) days' written notice, and that the term of any such contract shall not exceed one (1) year, renewable by agreement of the parties for successive one (1) year periods.

13.1.11 The Association shall, upon the written request of any Institutional Lender under a first Mortgage on a Lot: (i) give written notice of all meetings of the Association and permit the Institutional Lender to designate a representative to attend all such meetings, and (ii) transmit to such Institutional Lender an annual audited financial statement of the Association within ninety (90) days following the end of any fiscal year of the Association.

13.1.12 No breach of any of the foregoing covenants shall cause any forfeiture of title or reversion or bestow any right of

re-entry whatsoever, but in the event **that** any one or more of these covenants shall be violated, the Declarant, its successors and assigns, or the Association, or any Owner may commence a legal action in any court of competent jurisdiction to enjoin or abate said violation, and/or to recover damages; provided, that any such violation shall not defeat or render invalid the lien of any Mortgage made in good faith and for value as to said Lot or any part thereof. Said covenants shall be binding upon and effective against any *Owner* whose title is acquired by foreclosure, trustee's sale or otherwise.

13.1.13 First **Mortgagees** of Lots may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Area and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such Common Area and first Mortgagees making such payments shall be owed immediate reimbursement **therefor** from the Association. This provision shall constitute an agreement by the Association for the express benefit of all first Mortgagees and upon request of any first Mortgagee the Association shall execute and deliver to such first Mortgagee a separate written Agreement embodying this provision.

ARTICLE 14 AMENDMENTS

Section 14.1 Amendments. During the period of time prior to conversion of the Class B membership to Class A membership, this Declaration may be amended by an instrument in writing signed by at least seventy-five percent (75%) of the voting power of each class of Members of the Association, which amendment shall become effective upon the recording thereof by the Office of the County Recorder of Orange County, California. After the conversion of Class B membership in the Association to Class A membership, the Declaration may be amended by an instrument in writing signed by (i) at least seventy-five percent (75%) of the total voting power of the Association, and (ii) at least seventy-five percent (75%) of the voting power of the Association other than Declarant. In no event shall the percentage of the voting power necessary to amend a specific provision of this Declaration be less than the percentage of affirmative votes prescribed for action to be taken under said provision. Any amendment of this Declaration which would defeat the obligation of the Association to maintain the Common Areas and facilities as described in Article 4 hereof, must receive the written approval of the California Department of Real Estate prior to the recordation thereof.

Notwithstanding anything contained herein to the contrary, Declarant may unilaterally amend this Declaration (i) at any time prior to the first close of escrow for the sale of a Lot by an instrument in writing signed by Declarant and (ii) at any time **so**

long as Declarant owns a Lot in the Project or for purposes of conforming to the requirements of the Federal Home Loan Mortgage Corporation and/or the Federal National Mortgage Association.

Notwithstanding anything contained herein to the contrary, no amendment of this Declaration regarding any provision required by the **City of Orange** in the Conditions of Approval for this Project shall be effective without the prior written consent of the City of Orange.

Section 14.2 Effectiveness of Amendment. From and after its effective date, each amendment made pursuant to the preceding paragraph shall be as effective as to all Lots within the Project, the Owners thereof and their successors in interest.

Section 14.3 Petition the Superior Court. Nothing in this Declaration shall restrict the ability of any Owner at any time to petition the Superior Court in the county in which the Project is located to amend this Declaration as provided under **California** Civil Code Section 1356.

ARTICLE 15
ANNEXATION

Section 15.1 Annexation of Additional Property by Declarant. All or portions of the Annexation Property may be annexed to the Project by the Declarant and made subject to this **Declaration** at the written election of Declarant, without the consent of the Members of the Association, within three (3) years following the close of escrow for the sale of the first Lot pursuant to the original issuance by the California Department of Real Estate of the most recently issued Final Subdivision Public Report for a Phase of the overall development. Notwithstanding the foregoing, unless approved by the California Department of Real Estate, no Notice of Annexation (as hereinafter defined) under this Section 15.1 shall be effective unless such proposed annexation is in substantial conformance with the detailed plan of phased development submitted to and approved by the Department of Real Estate which plan includes:

(a) Proof that no proposed annexation will result in an overburdening of the Common Areas;

(b) Proof that no proposed annexation will result in a **substantial increase** in assessments against existing Lots which was not disclosed in the Final Subdivision Public Report under which the existing Owners purchased their respective Lots;

(c) Identification of the rdal property proposed to be annexed and the total number of residential units proposed then contemplated by the subdivider for the overall development; and

(d) **That** Declarant executes a written **commitment concurrently** with the closing of escrow for the first sale of a Lot in the annexed Phase to pay to the Association appropriate amounts for reserves for replacement or deferred maintenance of Common Area improvements in the annexed property necessitated by, or arising out of the use and occupancy of Lots under a rental program conducted by 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 Lot in the annexed property.

Section 15.2 Annexation of Additional Property by Association. Upon approval in writing by the Association, pursuant to the vote of at **least two-thirds (2/3)** of a majority of the voting power of its Members or the written assent of such Members, excluding the voting power or written assent of Declarant, the Owner of any real property who desires to add such property to the scheme of this Declaration and to subject same to the jurisdiction of the Association, may file of record a Notice of Annexation which shall extend the scheme of this Declaration to such property.

Section 15.3 Annexation Procedure. The annexation of additional real property authorized under Sections 15.1 and 15.2 shall be made by filing of record a **Notice** of Annexation, or similar instrument, covering said additional real property, which Notice of Annexation shall expressly provide that the scheme of this Declaration shall extend to such additional real property. The Notice of Annexation may contain such complementary additions to and modifications of the covenants set forth in this Declaration as are necessary to reflect the different character, if any, of the annexed property and which are not inconsistent with the general scheme of this Declaration. Except as set forth in this Section, no Notice of Annexation shall add, delete, revoke, modify or otherwise alter the covenants set forth in this Declaration.

Section 15.4 Obligations of Annexed Property Owners. The obligation of Owners in the annexed property to pay assessments levied by the Association and the right of such Owners to exercise voting rights in the Association in such annexed property shall not commence until the first day of the month following close of the first sale of a Lot by Declarant in that particular Phase of development.

Section 15.5 De-Annexation. Declarant hereby reserves the right to de-annex any Lot or Lots within the Project and to delete said Lot or Lots from the scheme of this Declaration and from the jurisdiction of the Association, provided and on condition that **the** de-annexation shall be made prior to the closing date of the sale of the first Lot in the annexed property within the Project.

ARTICLE 16
PARTY WALLS

Section 16.1 Rights and Duties. The rights and duties of the Owners of Lots with respect to party walls or fences shall be governed by the following:

16.1.1 Each wall or fence which is constructed as a part of the original construction and located between separate Lots, shall constitute a party wall or fence, and with **respect to** such wall or fence, each of the adjoining Owners shall jointly assume the burdens and share the cost of reasonable maintenance and repair in proportion to such use. Each Lot shall be subject to an easement for that portion of the party wall or fence which is necessary for support, and each such Owner shall be liable for all property damage due to negligence or willful acts or omissions in connection with such wall.

16.1.2 If any such party wall is damaged or destroyed through the act of one of the adjoining Owners, any member of his family, invitee, guest or agent (whether or not such act **is negligent** or otherwise culpable) so as to deprive the other adjoining Owner of the full use and enjoyment of such wall, the Owner responsible for the damage or destruction thereon shall be required to make any and all necessary repairs thereto, without cost to the adjoining Owner.

16.1.3 If any such party wall is damaged or destroyed by some cause other than the act of one of the adjoining Owners, his agents, invitees, guests or family (including, but not limited to, earthquake damage), each adjoining Owner shall be required to make any and all necessary repairs thereto at their joint and equal expense.

16.1.4 Any Owner proposing to modify, make additions to, or rebuild his Lot in any manner which requires the extension or alteration of any party wall or fence, shall be required to first obtain the written consent of the adjoining Owner which consent shall not be unreasonably withheld, and the consent of the Architectural Control Committee. No fence or wall within the Project shall exceed six feet (**6'**) in height and no fence located within the twenty foot (**20'**) setback area of any lot shall exceed **forty-two inches (42")** in height. He must **also** comply with all dictates of this Declaration which may be relevant.

16.1.5 The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

16.1.6 In the event of a dispute between Owners with respect to the repair of a party wall or fence or with respect to the sharing of the cost thereof, the matter shall be submitted to

the Board for resolution upon the written request of either Owner. Any decision of the Board of Directors shall be final and conclusive upon the parties.

ARTICLE 17
GENERAL PROVISIONS

Section 17.1 Extension of Declaration. The provisions of this Declaration shall run with the land and **bind** the Project, and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of forty (40) years from the date this Declaration is recorded, after which time the provisions of this Declaration shall be automatically extended for successive periods of ten (10) years, unless an instrument, signed by at least sixty-six and two-thirds percent (~~66-2/3%~~) of the then Owners of Lots, has been recorded within six (6) months of the anticipated termination date. The contents of such instrument shall contain the agreement to terminate this Declaration as it may be supplemented in whole or in part.

Section 17.2 Encroachment Easement. In the event any improvement to or upon a Lot encroaches upon the Common Area as a result of the initial construction, or as the result of repair, shifting, settlement or movement of any portion thereof, an easement for the encroachment and for the maintenance of same, shall exist so long as the encroachment exists. Further, each Owner within the Project is hereby granted an easement over all adjoining Lots for the purpose of accommodating any minor encroachment, due to engineering errors, errors in original construction, settlement or shifting of the building, roof overhang, architectural or other appurtenance for so long as any such encroachment continues to exist.

Section 17.3 Severability. In the event any limitation, restriction, condition, covenant **or** provision contained in this Declaration is to be held invalid, void or unenforceable by any court of competent jurisdiction, the remaining portions of this Declaration shall, nevertheless, be and remain in full force and effect.

Section 17.4 Liberal Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a residential community.

Section 17.5 Termination of Declarant's Obligations. In the event Declarant shall convey all of its right, title and interest in and to the Project to any partnership, individual or individuals, corporation or corporations, then and in such event, Declarant shall be relieved of the performance of any further duty or **obliga-**

tion hereunder, and such partnership, individual or individuals, corporation or corporations, shall be obligated to perform all such duties and obligations of the Declarant.

Section 17.6 Number, Gender. The singular shall include the plural and the plural the singular unless the context requires to the contrary, and the masculine, feminine and neuter shall each include the masculine, feminine or neuter, as the context **requires**.

Section 17.7 Non-Liability of Declarant. Each Owner, by acceptance of a deed, shall be deemed to have agreed that Declarant shall have no liability whatsoever resulting from any term or provision thereof having been held to be unenforceable in whole or in part.

Section 17.8 Grantees Subject to this Declaration. Each grantee of a conveyance or purchaser under a contract or agreement of sale, by accepting the deed or contract of sale or agreement of purchase, accepts the same subject to all of the limitations, restrictions, conditions and covenants, and agreements set forth in this Declaration, and agrees to be bound by the same.

Section 17.9 Bonded Obligations. In the event that improvements to the Project have not been completed prior to the issuance of the Final Subdivision Public Report for the Project, and the Association is obligee under a bond or other security device (hereinafter "**Bond**") to secure performance of the commitment of the Declarant to complete such improvements, the following provisions shall apply:

17.9.1 The Board of Directors shall consider and vote on the question of action by the Association to enforce the obligations under the Bond with respect to any improvements for which a Notice of Completion has not been filed within sixty (60) days after the completion date specified for such improvements in the Planned Construction Statement appended to the Bond. If the Association has given an extension in writing for the completion of any such improvement, the Board shall consider and vote on the aforesaid question if a Notice of Completion has not been filed within thirty (30) days after the expiration of such extension.

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

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

17.9.4 The Association shall act in a reasonably prompt manner to exonerate Declarant and its surety under any Bond in favor of the Association upon completion of the improvements.

ARTICLE 18 DISPUTE MECHANISM

Section 18.1 Disputes.

18.1.1 Notwithstanding anything contained in this Declaration to the contrary, any disputes between the Association (or any Owner) and Declarant or any director, officer, partner, employee or agent of Declarant relating to this Declaration, the use or condition of the Project and/or the construction and installation of any improvements located thereon shall be subject to the following provisions:

(a) Notice. Any person or entity ("**Claimant**") with a claim against Declarant or any director, officer, partner, employee or agent thereof (collectively, "**Declarant**" for purposes of this Section) shall notify Declarant in writing of the claim, which writing shall describe the nature of the claim and the proposed remedy (the "**Claim Notice**").

(b) Right to Inspect. Within a reasonable period after the receipt of the Claim Notice, which period shall not exceed sixty (60) days, Declarant and the Claimant shall meet at a mutually acceptable **place** within the Project to discuss the claim. At such meeting or at such other mutually agreeable time, Declarant and **Declarant's** representatives shall have full access to that portion of the **Project that is subject to** the claim for the purposes of inspecting and investigating the nature of said claim. The parties shall negotiate in good faith in an attempt to resolve the claim. If Declarant elects to take any corrective action, **Declarant and Declarant's** representatives and agents shall be provided full access to the Project to take and complete the corrective action.

(c) Alternative Dispute Mechanism. If the parties cannot resolve the claim pursuant to the procedures described in subparagraph (b) above, prior to the commencement of any litigation in any court of competent jurisdiction, they are encouraged (but

without any obligation to do so) to attempt to resolve such claim by submitting their dispute to a form of alternative dispute resolution provided, however, prior to the filing of a civil action by either the Association or an Owner within the Project solely for declaratory relief or injunctive relief, or for declaratory relief or injunctive relief in conjunction with a claim for monetary damages, other than Association assessments, not in excess of Five Thousand Dollars (**\$5,000.00**) related to the enforcement of the governing documents, the parties shall endeavor, as provided in Civil Code Section 1354, to submit their dispute to a form of alternative dispute resolution such as mediation or arbitration.

18.1.2 If the Association and/or Owner has complied with the requirements of subparagraphs (a), (b) and (c) above and Declarant denies any responsibility for the claim, accepts only partial responsibility, accepts responsibility but the parties cannot in good faith agree on an appropriate remedy or alternative dispute forum for resolving the dispute, the Association and/or Owner may bring an action in any court of competent jurisdiction to resolve the dispute. The Association and each Owner covenants that each shall forbear from commencing any litigation against Declarant without complying with the procedures described in subparagraphs (a), (b) and (c) above. If the Association or any Owner breaches the foregoing covenant, Declarant may obtain an appropriate order compelling the Association and/or Owner to comply with the procedures described in subparagraphs (a), (b) and (c).

18.1.3 Notwithstanding any other provision herein to the contrary, in any dispute between the Association and/or any Owner and Declarant, each party shall bear its own attorneys' fees.

18.1.4 Any and all communications by and between the parties, whether written or oral, which are delivered by the parties or their attorneys or other representatives in an effort to settle the claim shall be considered communications undertaken in the course of effecting a settlement or compromise and as such shall not be admissible as the admission on the part of any party or any representative or agent of that party to be utilized for any such purpose in any action or proceeding.

18.1.5 The procedures set forth in subparagraphs (a), (b) and (c) above shall not apply to any action taken by the Association against Declarant for delinquent assessments which shall be governed by Section 5.8 of this Declaration or in any actions involving any Common Area Improvement bonds which shall be governed by the provisions of Section 17.9 of this Declaration.

18.1.6 Notwithstanding anything herein to the contrary, no judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of fifty percent (50%) of the Members. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (b) the imposition and collection of assessments as **pro-**

vided in Article 5 hereof, (c) proceedings involving challenges to ad valorem taxation, or (d) counterclaims brought by the **Assciation** in proceedings instituted against it. This Section shall not be amended unless such amendment is made by the Declarant or is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

IN WITNESS WHEREOF, the undersigned hereunto executed this Declaration this 9th day of June 19 94.

"DECLARANT"

BEAZER HOMES CAL-IFORNIA INC.,
a Delaware corporation

By: Gerald A. Gates
Its: Senior Vice President

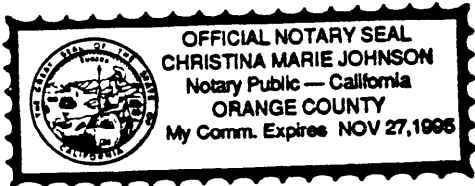
~~By: _____~~
~~Its: _____~~

ACKNOWLEDGEMENT

STATE OF CALIFORNIA)
) **ss.**
COUNTY OF Orange)

On 6/9/94, before me, Christina Marie Johnson
personally appeared Bernal A. Castro, personally
known to me (or proved to me on the basis of satisfactory evidence)
to be the person(s) whose name(s) is/are subscribed to the within
instrument, and acknowledged to me that such he/she/they executed
the same in his/her/their authorized capacity(ies), and that by
his/her/their signatures on the instrument the person(s), or the
entity upon behalf of which the person(s) acted, executed the
instrument.

WITNESS my hand and official seal.



Christ Marie Johnson
NOTARY PUBLIC

STATE OF CALIFORNIA)
) **ss.**
COUNTY OF _____)

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

WITNESS my hand and official seal.

NOTARY PUBLIC