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Assessor, County Clerk & Recorder



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RESTATED IN CORRECTED FORM

DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS
AND RESERVATION OF EASEMENTS
MONTAGE AT MISSION HILLS - TRACT NO. 29771
A Planned Residential Development

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CONDITIONS, RESTRICTIONS

AND RESERVATION OF EASEMENTS

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A Planned Residential Development

Recording Requested By:
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CONDITIONS, RESTRICTIONS \
AND RESERVATION OF EASEMENTS
FOR
MONTAGE AT MISSION HILLS
A Planned Residential Development

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



CERTIFICATE OF OFFICERS

The undersigned, President and Secretary of Montage at Mission Hills, Inc., certify that the Declaration of Covenants, Conditions, Restrictions and Reservation of Easements Montage at Mission Hills - Tract 29771, is restated in corrected form pursuant to Civil Code Section 4235, evidence of which is shown on the attached Resolution of the Board of Directors.

Dated:

July 18th 2014

By:

Curtis Beyer
Curtis Beyer, President

Dated:

July 18, 2014

By:

Thomas Tousignant
Thomas Tousignant, Treasurer

STATE OF CALIFORNIA

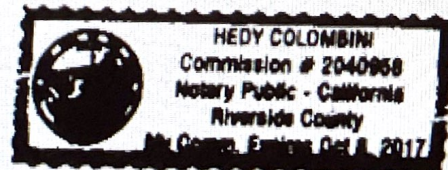
COUNTY OF RIVERSIDE

On JULY 18, 2014, before me, HEDY COLOMBINI, a Notary Public, personally appeared CURTIS BEYER AND THOMAS TOUSIGNANT who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Hedy Colombini
Notary Public



MONTAGE AT MISSION HILLS, Inc.
A California Nonprofit Mutual Benefit Corporation

Open Meeting of the Board
RESOLUTION

WHEREAS, Civil Code Section 4235 authorizes the Board of Directors to amend the Declaration of Covenants, Conditions, Restrictions and Reservation of Easements Montage at Mission Hills – Tract 29771 recorded March 18, 2002, as Instrument No. 2002-136401 in the Official Records of Riverside County ("CC&Rs") to correct cross-references to provisions of the Davis-Stirling Common Interest Development Act ("Act") that were repealed and continued in new provisions of the Act; and

WHEREAS, attached to this Resolution is a restatement of the CC&Rs in corrected form ("Restated CC&Rs"); and

WHEREAS, Civil Code Section 4235 authorizes Montage at Mission Hills, Inc. to record the Restated CC&Rs, provided that a copy of this Resolution authorizing the correction is recorded along with the Restated CC&Rs.

NOW, THEREFORE, IT IS RESOLVED, by a majority of the members of the Board of Directors that the CC&Rs shall be and are hereby corrected as set forth in the Restated CC&Rs; and

RESOLVED FURTHER, that the Restated CC&Rs shall be recorded in the Official Records of Riverside County along with a copy of this Resolution.

CERTIFICATE OF SECRETARY

I am the duly appointed and acting Secretary of Montage at Mission Hills, Inc., and hereby certify that the foregoing Resolution is a true and correct copy of the resolution adopted by the Board of Directors of the Association at a duly noticed, open meeting of the Board held on March 22, 2014, in Cathedral City, California.

Executed this 9th day of April, 2014, at Cathedral City, California.


Secretary

00349030-1



2014-0283957
08/01/2014 09:52A
4 of 79

TABLE OF CONTENTS

<u>ARTICLE</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
	DECLARATION AND RECITALS	R-1
I	DEFINITIONS	I-1
II	PROPERTY RIGHTS IN COMMON AREAS	II-1
2.01	Common Areas and Purposes	II-1
2.02	Easements of Enjoyment	II-1
2.03	Delegation of Use	II-1
III	GENERAL RESTRICTIONS	III-1
3.01	Single Family Residential Use	III-1
3.02	Business or Commercial Activity	III-1
3.03	Rights Reserved by Declarant	III-1
3.04	Temporary Structures	III-1
3.05	Signs	III-1
3.06	Debris, Trash and Refuse	III-2
3.07	Exterior Clothes Lines	III-2
3.08	Nuisance	III-2
3.09	Owner's Maintenance and Repair Obligations	III-2
3.10	Restrictions on Exploration and Removal of Minerals	III-2
3.11	Indemnity by Owner of the Association	III-3
3.12	Exterior Apparatus Regulations	III-3
3.13	Window Covers	III-3
3.14	Leasing	III-3
3.15	California Vehicle Code and Parking Regulations	III-3
3.16	Animal Limitations	III-4
3.17	Common Fences	III-5
IV	HOMEOWNERS' ASSOCIATION	IV-1
4.01	Organization	IV-1
4.02	Membership	IV-1
4.03	Transfer of Membership	IV-1
4.04	Co-Owners	IV-1
4.05	Membership Classes and Voting Rights	IV-1
4.06	Voting Requirements	IV-2



<u>ARTICLE</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
V	DUTIES AND POWERS OF THE ASSOCIATION	V-1
5.01	Duties and Powers of the Association	V-1
5.02	Maintenance Responsibilities	V-1
5.03	Insurance	V-2
5.04	Right of Entry	V-3
5.05	Budget, Financial Statements and Governing Documents	V-4
5.06	Penalties for Non-Compliance	V-4
5.07	Powers and Limitations	V-5
5.08	Commencement of the Association's Management Responsibility	V-7
VI	COVENANT FOR ASSESSMENT	VI-1
6.01	Assessments	VI-1
6.02	Commencement; Due Dates of Assessments	VI-1
6.03	Assessment Rate	VI-1
6.04	Assessment Duties of the Board of Directors	VI-2
6.05	Effect of Nonpayment of Assessments: Delinquency and Remedies of the Association	VI-2
6.06	Nonuse and Abandonment	VI-3
6.07	Waiver of Exemptions	VI-3
VII	ARCHITECTURAL CONTROL	VII-1
7.01	Approval by Architectural Committee	VII-1
7.02	Committee Approval for Construction	VII-1
7.03	Enforcement by Owners	VII-2
7.04	Architectural Committee	VII-2
7.05	Certain Procedures for the Architectural Committee	VII-2
7.06	Review Standards	VII-3
7.07	Rules and Regulations	VII-3
7.08	No Waiver	VII-3
7.09	Completion	VII-3
7.10	Variance	VII-3
7.11	Appeal	VII-4
VIII	ESTABLISHMENT AND RESERVATION OF EASEMENTS	VIII-1
8.01	Easements for Vehicular and Pedestrian Traffic	VIII-1
8.02	Establishment of Utility and Drainage Easements	VIII-1
8.03	Reservation of Utility and Drainage Easements	VIII-1
8.04	Encroachment Easements	VIII-2
8.05	Drainage System	VIII-2
8.06	Easements for Maintenance of the Common Area(s)	VIII-2
8.07	Creation of Easements	VIII-2



<u>ARTICLE</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
IX	MORTGAGEE PROTECTION	IX-1
9.01	Subordination of Lien and Foreclosure	IX-1
9.02	Mortgagees Are Not Required to Cure Certain Breaches	IX-1
9.03	Effect of Breach of Declaration	IX-1
9.04	Exemption from Right of First Refusal	IX-2
9.05	Restrictions on Certain Changes	IX-2
9.06	Inspection of Association Books and Records	IX-4
9.07	Condemnation Awards and Insurance Proceeds	IX-4
9.08	Mortgagee's Right to Attend Meetings	IX-4
9.09	Payments by Mortgagees	IX-4
9.10	Loss Payable Endorsement	IX-4
9.11	Notices to Mortgagees	IX-5
9.12	Governmental Financing Programs	IX-5
X	DAMAGE AND DESTRUCTION TO IMPROVEMENTS	X-1
10.01	Alternatives in the Event of Damage and Destruction to Common Area Improvements	X-1
10.02	Method of Paying Reconstruction Assessments for Reconstruction of the Improvements	X-1
10.03	Damage to Dwellings	X-2
XI	CONDEMNATION	XI-1
	Condemnation	XI-1
XII	ANNEXATION	XII-1
12.01	Annexation of Additional Property	XII-1
12.02	Contents of Annexation Document	XII-1
12.03	Conveyance of Common Area(s)	XII-2
12.04	Declarant Under No Obligation to Continue Development; Effect of Annexation	XII-2
12.05	Deannexation	XII-2
12.06	Association's Merger or Consolidation	XII-3
XIII	ENFORCEMENT OF DECLARANT'S OBLIGATION TO COMPLETE COMMON AREA IMPROVEMENTS	XIII-1
13.01	Enforcement of Declarant's Obligation to Complete Common Area Improvements	XIII-1



<u>ARTICLE</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
XIV	DISPUTE NOTIFICATION AND RESOLUTION PROCEDURE (DECLARANT'S DISPUTES); WAIVERS	XIV-1
14.01	Enforcement and Nonwaiver	XIV-1
14.02	Dispute Notification and Resolution Procedure (Declarant Disputes); Waivers	XIV-2
14.03	Notice	XIV-2
14.04	Right to Inspect and Right to Corrective Action	XIV-2
14.05	Civil Code Sections 5985 and 6000	XIV-3
14.06	Mediation	XIV-3
14.07	Judicial Reference	XIV-4
14.08	Agreement to Alternative Dispute Resolution; Waivers of Jury Trial and Award of Punitive Damages	XIV-7
14.09	Application of Award	XIV-7
14.10	Exceptions to Mediation and Reference; Statutes of Limitation	XIV-7
XV	GENERAL PROVISIONS	XV-1
15.01	Duration	XV-1
15.02	Amendment	XV-1
15.03	Notices	XV-2
15.04	Partial Invalidity	XV-2
15.05	Number	XV-2
15.06	Attorneys' Fees	XV-2

EXECUTION PAGE

SUBORDINATION BY LIENHOLDER

EXHIBIT A - PROPERTY

EXHIBIT B - COMMON AREA LOTS

EXHIBIT C - ADDITIONAL PROPERTY

EXHIBIT D - CALIFORNIA CIVIL CODE SECTIONS:
1354, 1365, 1365.5, 1365.7, 1366, 1368, 1368.4 and 1375



- G. Declarant intends by this document to impose upon the Original Property, and any portions of the Additional Property that will be annexed in the future and brought within the coverage of this Declaration and the jurisdiction of the Association, mutually beneficial restrictions under a general plan of improvement for the benefit of all of the Lot and the Owners thereof.

NOW, THEREFORE, Declarant hereby declares that the Original Property, and any portions of the Additional Property that will in the future be annexed and brought within the coverage of this Declaration and the jurisdiction of the Association, shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, sold, and improved, subject to the following declarations, limitations, covenants, conditions, restrictions, liens, charges and easements, all of which are for the purpose of enhancing and protecting the value and attractiveness of the Property, and every part thereof, in accordance with the plan for the improvement of the Property. All of the limitations, covenants, conditions, restrictions, and easements shall constitute equitable servitudes in accordance with Civil Code Section 5975 and shall be binding upon Declarant and its successors and assignees, Owners, and all parties having or acquiring any right, title or interest in or to any part of the Property.



ARTICLE I

DEFINITIONS

The following definitions apply unless otherwise required by the context:

"Additional Property" - The real property described in Exhibit "C", all or any part of which may be annexed as part of this Project, and made subject to this Declaration.

"Alternative Dispute Resolution" ("ADR") - Non-judicial (non-court) procedure to resolve disputes. Such procedures include Mediation, Binding Arbitration and Non-binding Arbitration. All three types of procedures (set forth below) are conducted by a neutral third party, such as an arbitrator or a retired judge.

- (a) "Mediation" is an informal settlement procedure aided by a neutral third party.
- (b) "Binding Arbitration" is a formal non-judicial procedure wherein the parties have agreed that any decision or award rendered by the arbitrator may be entered as an enforceable judgment by any party in a court having jurisdiction. The decision or award rendered in Binding Arbitration is final.
- (c) "Non-binding Arbitration" is a formal non-judicial procedure wherein after an award or decision by arbitration, the matter may be heard and decided anew by a court of law having jurisdiction.

"Approval" - Prior written approval.

"Architectural Committee" - The committee created pursuant to the Article herein entitled "Architectural Control".

"Articles" - The Articles of Incorporation of the Association, including any amendments.

"Association" - Montage at Mission Hills, Inc., a California nonprofit mutual benefit corporation formed (or to be formed) to govern the Project, its successors and assignees. The term includes its agents, the Board or any committee as applicable.

"Assessments" - All types of Association charges and Assessments levied against the Owners and their respective Lots. The three (3) types of assessments are Regular Assessments, Special Assessments, and Compliance Assessments.

"Beneficiary" - The lender on the security of a promissory note and Deed of Trust.

"Board" or "Board of Directors" - The Board of Directors of the Association.

"Bylaws" - The Bylaws of the Association, including any amendments.

"Code Section" - Any reference to "Code Section" (e.g. "Civil Code", "Vehicle Code") refers to Codes of the State of California. Reference to any specific Code Section shall include any future successor Code sections.



"Common Area(s)" and "Common Facilities" - All real property owned and maintained by the Association for the common use and enjoyment of the Owners. The Common Area(s) to be owned by the Association at the time of the conveyance to a third-party purchaser of the first residential Lot within the Property is described in Exhibit "B".

"Common Expenses" - The actual and estimated expenses of the Association in performing its duties as set forth in the Governing Documents.

"Declarant" - The person(s) or entity identified in the introductory paragraph of this Declaration; also, Declarant's successors to and assignees of special rights, preferences, or privileges designated herein.

"Declaration" - This instrument and any amendments.

"Deed of Trust" - A three party security instrument conveying title to land as security for the repayment of a loan. Also called "Trust Deed". Reference to Deed of Trust includes a Mortgage.

"DRE" - The California Department of Real Estate and any successors thereto.

"First Sale" - The date on which the first deed is recorded conveying fee title to the first buyer pursuant to a transaction requiring the issuance of a Final Subdivision Public Report by the Department of Real Estate.

"FHA" - The Federal Housing Administration of the United States Department of Housing and Urban Development and any department or agency of the United States government which succeeds to the FHA's function of insuring notes secured by Mortgages on residential real estate.

"FHLMC" - The Federal Home Loan Mortgage Corporation created by Title II of the Emergency Home Finance Act of 1970, and any successors to such corporation.

"FNMA" - The Federal National Mortgage Association, a government-sponsored private corporation established pursuant to Title VIII of the Housing and Urban Development Act of 1968, and any successors to such corporation.

"GNMA" - The Government National Mortgage Association administered by the United States Department of Housing and Urban Development, and any successors to such association.

"Governing Documents" - All documents governing the Association and Property, including this Declaration, the Bylaws, the Articles, and any Rules and Regulations.

"Grant Deed" - A written instrument transferring title to real property.

"Institutional Mortgagee" - Any bank, savings and loan association, insurance company, real estate investment trust, retirement fund trust, or other financial institution holding a recorded First Mortgage on any Lot.

"Lot" - Any of the Lots in the Property as shown on the Tract Map designed and intended for construction of a Residence. "Lot" does not include Common Area Lots.



"Manager" or "Managing Agent" - The party contractually engaged by the Association or Declarant and charged with the management of the Common Area(s) and the performance of other duties of the Association.

"Member" - Any person who is a Member of the Association based upon the provisions of the Governing Documents.

"Mortgage" - A two party security instrument pledging land as security for the performance of an obligation. Reference to Mortgage includes the Deed of Trust.

"Mortgagee" - The party entitled to performance by a Mortgagor. Reference to Mortgagee includes any beneficiary under a Deed of Trust including a Deed of Trust on any portion of the Property, recorded prior to the recording of this Declaration.

"Mortgagor" - The party executing a Mortgage. Reference to Mortgagor includes the Trustor under the Deed of Trust.

"Notice and a Hearing" - A notice of time and an opportunity for a hearing as provided for in the Governing Documents.

"Occupant" - An Owner, resident, guest, invitee, tenant, lessee, sublessee, or other person residing in a Residence.

"Owner(s)" - The parties (including Declarant) holding a recorded fee simple interest in a Lot, or the vendee of a Lot under an installment land sales contract. "Owner" does not include any party having an interest in a Lot merely as security for the performance of an obligation.

"Person" - A person, partnership, corporation, trustee or other legal entity.

"Phase" - That portion of the Property identified as a "Phase" in a DRE Final Subdivision Public Report.

"Project" or "Property" - The real property described in Paragraph "A" and any Additional Property which is annexed pursuant to this Declaration.

"Quorum" - Members entitled to vote (in person or by proxy) holding a majority of the Total Voting Power of the Association constitute specifically, a quorum for business transactions at all Member meetings (except as otherwise specifically provided in this Declaration or the Bylaws of the Association).

"Regular Assessments" - Assessments used to meet the Association's normal operating expenses and to establish necessary reserves.

"Residence" - Dwelling, garage and related improvements constructed on a Lot for use and occupancy as a single family residence.

"Restrictions" - All of the terms, provisions and restrictions set forth in the Governing Documents.

"Rules and Regulations" - The rules as established and adopted by the Board and/or Architectural Committee as provided for in this Declaration.



"Special Assessment" - Assessments levied on an as-needed basis to meet expenses of any extraordinary or capital nature, or imposed against a particular Owner in order to reimburse the Association for any costs incurred in connection with that Owner's violation of the Governing Documents, or a monetary penalty imposed by the Association as a disciplinary measure for failure to comply with the Governing Documents.

"Total Voting Power" - One hundred percent (100%) of the votes by Owners which may potentially be cast. (Even if any Owner's voting rights have been suspended, the number of votes constituting the Total Voting Power would include any suspended vote(s).)

"Trustor" - The borrower from a Trust Deed lender, who deeds real property securing the loan to a Trustee to be held as security for the loan.

"VA" - The Department of Veterans Affairs of the United States and any department or agency of the federal government which succeeds to VA's function of issuing guarantees of notes secured by Mortgages on residential real estate.



ARTICLE II

PROPERTY RIGHTS IN COMMON AREA(S)

2.01 Common Areas and Purposes.

- (a) Use of the Common Area(s) must be consistent with all reasonable provisions and limitations described in the Governing Documents.
- (b) Common Area(s) and related facilities and improvements exist solely for use by the Lot Owners, their families, tenants, and guests.
- (c) Common Area(s) may only be used for purposes approved by the Association and compatible with usage customarily associated with common areas located within residential developments in California.

2.02 Easements of Enjoyment.

Each Lot Owner has a nonexclusive right and easement for use of the Common Area(s) appurtenant to the Lot.

2.03 Delegation of Use

An Owner may delegate his/her rights of use and enjoyment of any Common Area facilities to the members of his/her immediate family, and guests and invitees. If an Owner has rented or leased his/her Lot, such rights shall be automatically delegated to the tenants or lessees for the duration of their tenancy, and the Owner shall forfeit any rights to use and enjoy any such facilities for the duration of such tenancy. With respect to an installment land sales contract, the seller under the contract shall be deemed to have delegated his/her rights to use and enjoy any such facilities to the purchaser under the contract.



ARTICLE III

GENERAL RESTRICTIONS

3.01 Single Family Residential Use.

A Lot may only be used for a single family dwelling.

3.02 Business or Commercial Activity.

Subject to Declarant's rights herein, occupations and businesses that do not interfere with the residential nature or character of the Property or quiet enjoyment by other Owners may be carried on within a Lot, provided that all applicable laws, ordinances, zoning regulations and rules are satisfied and that there is no external evidence of any such occupation, such as an unreasonable increase in visitors, or an increase in the sound or smell emanating from the Lot affecting other residents.

3.03 Rights Reserved by Declarant.

- (a) While any Lot remains unsold and for no longer than five (5) years from the First Sale, for the most recent phase, the Declarant may do the following:
- (1) Complete excavation, grading and construction of the Property;
 - (2) Use unsold Lots for construction, real estate sales and leasing; and
 - (3) Use any Common Area(s) as reasonably needed for ingress, egress, development, sales and construction.
- (b) In exercising any of these rights, the Declarant may not unreasonably interfere with any Owner's use of the Common Area(s) or Lots.

3.04 Temporary Structures.

A temporary structure is only permitted on a Lot with approval of the Architectural Committee and if it is incidental to construction actively in progress.

3.05 Signs.

- (a) The Declarant may erect and maintain any signs, advertising devices or structures to conduct development, and sale or leasing operations while any Lot remains unsold and for no longer than five (5) years from the date of the First Sale in the most recent phase.
- (b) An Owner may advertise a Lot for sale or lease with one (1) standard real estate sign of reasonable color and display qualities and with a maximum face area of six (6) square feet.



- (c) No other sign or advertising device may be displayed anywhere on the Property without the prior written consent of the Association.
- (d) Sign regulations are subject to California Civil Code Sections 712 and 713, and any other applicable laws.

3.06 Debris, Trash and Refuse.

- (a) Weeds, rubbish, debris, objects or materials that are unsanitary, unsightly, or offensive are not permitted on the Property.
- (b) Rubbish or storage containers, woodpiles, machinery, equipment and other unsightly objects are prohibited to be visible from other Lots or Common Area(s).
- (c) Rubbish containers may be placed temporarily for pickup (not to exceed twenty- four (24) hours before and after scheduled trash collection hours, except with Board approval).
- (d) Driveways must be kept clean and free of oil stains.

3.07 Exterior Clothes Lines.

Exterior clothes lines may not be erected and clothes may not be dried outdoors.

3.08 Nuisances.

- (a) Illegal, offensive, or obnoxious actions that interfere with an Occupant's quiet enjoyment, or may impair the structural integrity of any building, are not permitted on the Property.
- (b) Construction work on the property may only be done during hours determined by the Architectural Committee.

3.09 Owner's Maintenance and Repair Obligations.

Each Owner must maintain the Lot (including improvements) in a neat, sanitary and attractive condition, and is solely responsible for the cost of repairs and improvements.

3.10 Restrictions on Exploration and Removal of Minerals.

The surface area of the Property and to a depth of five hundred (500) feet below the surface may not be used for the exploration or removal of water, oil, natural gas, minerals, hydrocarbons, gravel or any earth substance.



3.11 Indemnity by Owner of the Association.

Each Owner shall defend and indemnify and hold the Association and other Owners harmless without limitation on any claims arising from the Owner's negligence or willful misconduct (or the Owner's family members, relatives, guests or invitees) for damages sustained on the Common Area(s), including any costs incurred.

3.12 Exterior Apparatus Regulations.

Subject to California Code Section 4725 and any applicable decisions of the Federal Communication Commission, electrical or telephone wiring, antennae, satellite dishes (or any other electronic receiving or broadcasting device), etc., are not permitted unless authorized by the Architectural Committee.

3.13 Window Covers.

Newspaper, aluminum foil or similar materials may not be used as window coverings.

3.14 Leasing.

An Owner may rent a Lot for residential purposes provided:

- (a) There is a written agreement;
- (b) The lease states it is subject to all the provisions of the Governing Documents;
- (c) Owners must give the Board the names and telephone numbers of all Occupants and tenants; and
- (d) The Association and each Owner shall have a right of action directly against any tenant/Occupant for any breach of any provision of the Governing Documents.

3.15 California Vehicle Code and Parking Regulations.

- (a) All applicable provisions of the California Vehicle Code will be enforced on any private streets on the Property in accordance with California Vehicle Code Section 22658.2 (or any successor statute regarding removal of parked cars and required warning signs).
- (b) The Association (through the Board) may establish parking Rules and Regulations.
- (c) The Association has the right and obligation to enforce all parking restrictions and to remove any violating vehicles in accordance with the California Vehicle Code, or other applicable laws.
- (d) The relevant City or County has the right (but not the duty) to enforce parking restrictions in accordance with the California Vehicle Code and all other applicable laws.

- (e) **Parking is permitted in driveways, as long as it does not obstruct free traffic flow, constitute a nuisance, violate the Rules and Regulations, or otherwise create a safety hazard.**
- (f) **Only passenger motor vehicles may be parked in the parking areas.**
- (g) **The following vehicles and actions are not permitted unless parked wholly within a garage with the doors closed or within the backyard so as not to be visible from neighboring Property:**
 - (1) Buses, trailers, campers, boats, mobile homes, recreational vehicles and the like, inoperable vehicles, or any vehicle the Association deems a nuisance.
 - (2) Restoring or repairing vehicles on the Property, or any repair activity the Association deems a nuisance.
- (h) The Association may establish "Parking" and "No Parking" areas within the Common Area(s), in accordance with California Vehicle Code Section 22658.2 (or successor statute).
- (i) Garage doors, if any, may not be left open, except as temporarily necessary or while used for entering or exiting.

3. 16 Animal Limitations.

- (a) Customary household pets may be kept in the Lot, provided they are not kept, bred or raised for commercial purposes and they are kept under reasonable control at all times.
- (b) The Board may determine the total number and size of pets kept within a Lot.
- (c) Any animals that unreasonably bother or annoy other Owners may not be kept on the Property (for example, excessive barking).
- (d) Pets are not allowed in the Common Area(s) except as permitted by the Rules of the Association.
- (e) A dog may only enter the Common Area(s) while on a leash which is held by a person capable of controlling it.
- (f) A dog whose barking unreasonably disturbs other Owners will not be permitted to remain on the Property.
- (g) Owners must prevent their pets from soiling the Common Area(s), and are responsible for any required clean-up.
- (h) Each Owner shall indemnify and hold harmless all other Owners, the management company, the Association and the Board of Directors from any and all losses, costs, and liability arising from having any pet on the Property.



3.17 Common Fences.

- (a) An easement exists appurtenant to any Lot for any "Common Fences" (fences on boundary lines between the Lots and/or Common Area(s)) originally installed by the Declarant, whether or not the fences are located precisely on the Lot boundary line.**
- (b) Owners with a Common Fence have an equal right to use the fence, with the following provisions:**

 - (1) Each Owner has exclusive right to use the interior surface of the fence facing the Residence;**
 - (2) Owners may not drive nails, screws, bolts or other objects more than half way through any Common Fence;**
 - (3) Owners may not interfere with the adjacent Owner's use and enjoyment of the Common Fence;**
 - (4) Owners may not threaten or impair the structural integrity of the Common Fence; and**
 - (5) If any portion of the fence (other than the interior surface of one (1) side) is damaged by any cause other than the act or negligence of either party, it must be repaired or rebuilt at the relevant Owners' joint expense.**



ARTICLE IV

HOMEOWNERS' ASSOCIATION

4.01 Organization.

The Association is a California nonprofit mutual benefit corporation charged with the duties and vested with the powers prescribed by law and set forth in the Restrictions.

4.02 Membership.

Every Lot Owner has an indivisible interest in a single Membership in the Association.

4.03 Transfer of Membership.

- (a) Membership of each Owner shall be appurtenant to the Lot owned, and may only be (and is automatically) transferred upon conveyance of title to a Lot to the new Owner.
- (b) In connection with any transfer or change of ownership of any Lot, the Association and each Owner must comply with Civil Code Sections 4110, 4525, 4530, 4535, 4540, 4545, 4575, and 4580.

4.04 Co-Owners.

- (a) Each Lot is entitled to one (1) vote.
- (b) Each Lot's vote is cast as a single unit, without fraction.
- (c) If Co-Owners of a Lot cannot agree about how to cast their vote, they forfeit their right to vote on the matter in question.
- (d) If a Co-Owner casts a vote representing a certain Lot, it will be presumed for all purposes to be a vote with the authority and consent of all other Owners of the Lot.

4.05 Membership Classes and Voting Rights.

- (a) A Lot Owner has voting rights when the Lot becomes subject to Assessments.
- (b) Class A Members - All Lot Owners (other than Declarant). Each Lot is entitled to one (1) vote.
- (c) Class B Member - The Declarant, entitled to three (3) votes for each Lot owned.



- (d) Class B Membership ceases and converts to Class A Membership when either of the following occurs:
- (1) Two (2) years after the First Sale in the most recent phase; or
 - (2) Four (4) years after the date of the First Sale in the Original Property.
- (e) After notice and hearing as provided herein, the Board has the right to suspend the voting rights of any Owner delinquent more than forty-five (45) days in the payment of Assessments.

4.06 Voting Requirements.

- (a) If Membership approval of a prescribed majority of the voting power is required, the following rules apply:
- (1) If both Class A and Class B Members exist, the required vote is a bare majority of Class B voting power, and the prescribed majority of Class A voting power; or
 - (2) After conversion to all Class A memberships, the required vote is a bare majority of the total voting power of the Association, and the prescribed majority of the total voting power of Members other than Declarant.
- (b) Unless otherwise specifically required, Membership approval requires the affirmative vote of a majority of a quorum of each class of Membership (after conversion, Class A only).
- (c) With the exception of the provisions of the Article herein entitled "Enforcement of Declarant's Obligation to Complete Common Area Improvements," no provision which requires the approval of a prescribed majority of the voting power of Members of the Association other than the Declarant for action to be taken by the Association is intended to preclude the Declarant from casting votes attributable to Lots which Declarant owns.



ARTICLE V

DUTIES AND POWERS OF THE ASSOCIATION

5.01 Duties and Powers of the Association.

The Association has all of the powers of a California nonprofit mutual benefit corporation, generally to act as necessary and proper for the peace, health, comfort, safety and general welfare of its Members, subject to the limitations set forth in the Restrictions.

5.02 Maintenance Responsibilities.

The Association shall:

- (a) Maintain and repair the Common Area(s) and any other real property acquired by the Association, including all related facilities, improvements and landscaping, landscaping within street parkways, landscape easements, and the ongoing maintenance of the exterior of the project's perimeter walls. Association responsibility for maintenance and repair does not extend to damage caused by a willful or negligent act by an Owner, family member, guest, tenant, or invitee. The cost and responsibility for any and all such repair must be borne by the person causing the damage, or the relevant Lot Owner.
- (b) Pay real and personal property taxes or charges assessed against any part of the Common Area(s).
- (c) Have authority to obtain refuse collection, gardening, janitorial services, water, sewer, electrical, gas and other utility services for the benefit of the Common Area(s), to be paid for by Assessments levied and collected for the services.
- (d) Have authority to discharge by payment any lien against the Common Area(s), including any property taxes and Assessments which may become liens, and assess all costs and fees to the Member(s) responsible for the lien. Such a property tax or Assessment may be contested or compromised by the Association, provided that it is paid, or a bond insuring its payment is posted prior to the disposition of any property to satisfy the payment of taxes.
- (e) Have authority to obtain management services (the "Manager") to manage the Common Area(s) and any other personnel needed to perform the duties and responsibilities deemed advisable by the Association, with the following conditions:
 - (1) The Manager must be covered by a fidelity bond equal to a three (3) month Assessment of all the Lots and provides for a ten (10) day written notice to the Association and each FNMA Mortgage servicer before the bond is cancelled or modified for any reason.
 - (2) If the Association enters into a professional management contract before the conversion of Class B to Class A memberships, the contract must include a right of termination without cause (with an advance notice of thirty (30) days and without payment of any penalty) that the Association may exercise at any time after conversion.



- (3) **Members of the Association are not liable for any omission or improper act of the Manager.**
- (f) **Have the power to establish and maintain working capital, reserve and/or contingency funds in reasonable amounts to be determined by the Board.**
- (g) **Have the authority to borrow money with the approval of sixty-seven percent (67%) of the voting power, excluding Declarant, and/or to mortgage, pledge, or otherwise hypothecate any of its real or personal property as security for money borrowed or debts incurred.**
- (h) **Have the authority, through the Board, to enter into a maintenance agreement, as approved by DRE, with Declarant for temporary suspension of a portion of Regular Assessments.**

5.03 **Insurance.**

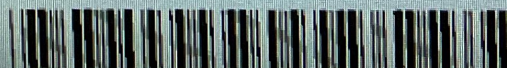
- (a) **Blanket insurance policy premiums are a Common Expense to be included in the regular Assessments.**
- (b) **The Board shall obtain and maintain the following specified (or equivalent) insurance coverages provided it is reasonably prudent to do so:**
- (1) **Fire insurance for one hundred percent (100%) of the full replacement value of all Common Area improvements, without deduction for depreciation or coinsurance:**
 - (2) **Extended coverage that includes vandalism, malicious mischief, and replacement costs.**
 - (3) **Comprehensive public liability insurance in a reasonably prudent amount specified by Civil Code Section 5800 (See Exhibit "D") that covers the Association, Board, Managing Agent, Owners, Occupants and any other agents or employees incident to the ownership or use of Common Area(s) against physical injury, death and property damage arising out of a single occurrence. The Board should consider maintaining insurance in the amount specified by Section 5800 (see Exhibit "D") and the notification requirements of that Section.**
 - (4) **If available, an extended coverage endorsement clause known as "Special Form," and a clause that permits a cash settlement to cover the full value of improvements in case of destruction and a subsequent decision not to rebuild.**
 - (5) **Each hazard insurance policy must be written by a carrier who meets FNMA requirements for a "Best Rating."**
 - (6) **Workers' compensation insurance in compliance with all applicable laws.**
 - (7) **A fidelity bond that insures the Association for the estimated maximum amount (or at least three (3) months aggregate Assessments on all Lots and reserve funds) that could be affected by the dishonest act of any person who handles funds for the Owners' benefit.**



- (c) Insurance proceeds are payable to the named insureds, except for the Owners' interests in such proceeds, which are payable to the Association as trustee for their benefit, as provided for below.
- (d) The Association is trustee of the Owners' interest in insurance proceeds paid on any policy and accordingly has full power to act.
- (e) All insurance policies must require a written thirty (30) day notice of modification or termination of coverage from the insurer to the Association, Declarant, Owners and their Mortgagees, and any interested party who requests such a notice.
- (f) Fidelity bonds must provide for a ten (10) day written notice of modification or termination to any insurance trustee, and to each FNMA servicer who has filed a written request with the carrier for such notice.
- (g) The Association is not obligated to provide intra-Lot public liability insurance or any protection against risks customarily covered under "homeowners" or "broad form homeowners" policies. Owners may individually insure against such risks.
- (h) Any insurance policy the Association deems appropriate.
- (i) At least annually, the Board must review the Association's insurance policies.
- (j) If economically feasible, prior to each annual review the Board shall obtain a current appraisal of the full replacement value of Common Area improvements (except for foundations and footings) without deduction for depreciation.
- (k) Association insurance policies shall contain the following provisions, if available:
 - (1) Statements that the policies are primary and non-contributing;
 - (2) Statements that an Owner's conduct will not constitute grounds for avoiding liability;
 - (3) Inflation Guard Endorsement (if obtainable at a reasonable cost);
 - (4) Standard Mortgagee clause, and name as Mortgagee FNMAE or servicer (if applicable).

5.04 Right of Entry.

- (a) The Board has the right to authorize entry onto any Lot to determine compliance with the Governing Documents and to perform its duties.
- (b) In case of emergency, or by Court order, a Lot may be entered immediately. Otherwise, a Lot may only be entered at reasonable hours after the Owner has received three (3) days notice, and if the entry will not result in a breach of the peace.
- (c) Entry must be made with as little inconvenience as possible to the Occupant.



5.05 Budget, Financial Statements and Governing Documents.

- (a) The Board of Directors of the Association must comply with all current requirements of California Civil Code Sections 5300, 5305, 5310, 5565, 5320, 5810, 5500, 5510, 5515, 5520, 5550, 5560, 4177, and 4178, or successor statutes pertaining to financial records, Governing Documents, etc.
- (b) In addition to the requirements of California Civil Code Sections 5300, 5305, 5310, 5565, 5320, 5810, 5500, 5510, 5515, 5520, 5550, 5560, 4177, and 4178, the Association shall make the following documents available for inspection and copying by a Member or his duly appointed representative at the office of the Association upon request during normal business hours or under other reasonable circumstances:
 - (1) Current copies of all Governing Documents, books, records and financial statements of the Association for lenders, holders, insurers and guarantors of a First Mortgage on any Lot; and
 - (2) Copies of relevant California Code Sections referenced in any Government Documents.
- (c) The Association may charge a fee to the requesting party for this service which may not exceed the reasonable cost to prepare and reproduce the requested items.
- (d) Members shall annually be provided a summary of the provisions of Section 5965, as set forth therein (current Section set forth in Exhibit "D"), which must include the following language: "Failure by any member of the association to comply with the pre filing requirements of Section 5930 of the Civil Code may result in the loss of your rights to sue the association or another member of the association regarding enforcement of the Governing Documents. This summary shall be provided either at the time to pro forma budget required by Sections 5300, 5305, 5310, 5565, 5320, 5810 is distributed, or in the manner specified in Section 5016 of the Corporations Code."

5.06 Penalties for Non-Compliance.

- (a) In recognition of the need for a reasonable means of encouraging and insisting upon compliance with the provisions of the Governing Documents without resorting to suits for injunctive relief, the Board is authorized to do the following:
 - (1) Establish a reasonable policy of reasonable penalties, including monetary penalties (which specifies the amounts of potential monetary penalties);
 - (2) Assess such penalties against any Owner found to be in violation of any provision of the Governing Documents; and
 - (3) Temporarily suspend an Owner's voting rights as a Member of the Association and/or rights to use Common Area facilities for as long as the violation continues; and
- (b) Notice and Hearing relating to the imposition of any penalties in this Section must be made in the following manner and at a minimum:
 - (1) Notice must be given to the relevant Owner's most recent address in the Association's records at least fifteen (15) days before the proposed effective date of the penalty;



- (2) Notice must set forth details of the violation itself, the proposed penalty, and the date, time and place of the Hearing;
 - (3) The Owner may be heard (either orally or in writing) at a Hearing held at least five (5) days before the effective date of the proposed penalty;
 - (4) Hearing will be held by the Board of Directors, and their decision is final and binding upon the Owner;
 - (5) The Board shall meet in executive session if requested by the Owner being disciplined, and the Owner shall be entitled to attend the executive session.
 - (6) Following the Hearing, the Board must decide whether or not the Owner should in fact be penalized, and the nature of the penalty.
- (c) If the Board establishes a policy imposing any monetary penalty, including any fee on any member for a violation of the Governing Documents or rules of the Association, including any monetary penalty relating to the activities of a guest or invitee of a member, the Board shall adopt and distribute to each member by personal delivery or first-class mail, a schedule of the monetary penalties that may be assessed for those violations, which shall be in accordance with authorization for member discipline contained in the Governing Documents. (The Board shall not be required to distribute any additional schedules of monetary penalties unless there are changes from the schedule that was adopted and distributed to the members.)
- (d) If an Owner fails to comply with a penalty imposed pursuant to the provisions of this Section, the Board may seek judicial enforcement of the penalty in any court of competent jurisdiction, with the Owner liable for all costs (collection costs, court costs, attorney's fees, etc.). However, such penalties and costs shall not be treated as an assessment that may become a prejudgment lien enforceable by Civil Code Section 2924.
- (e) Notwithstanding the foregoing, the Owner shall be given, at a minimum, the rights set forth in Corporations Code Section 7341 or any successor statute,

5.07 Board Powers and Limitations.

- (a) Except as to matters requiring the approval of Owners, the affairs of the Association shall be managed and conducted by the Board and its officers consistent with the law.
- (b) The Board is authorized to institute, defend, settle or intervene on behalf of the Association in litigation, arbitration, mediation, or administrative proceedings in matters pertaining to:
 - (1) Enforcement of the governing instruments;
 - (2) Damage to the Common Area(s);
 - (3) Damage to the separate interests which the Association is obligated to maintain or repair; or



- (4) Damage to the separate interests which arises out of, or is integrally related to, damage to the Common Area(s) or separate interests that the Association is obligated to maintain or repair.
- (c) The Board may not ordinarily take any of the following actions unless approved by a majority of Members (other than Declarant) constituting a quorum, at a meeting or by written ballot without a meeting, pursuant to Corporations Code Section 7513:
- (1) Enter into a contract for a term longer than one (1) year with a third person who furnishes goods or services for the Common Area(s) or the Association, with the following exceptions:
- (A) A management contract with terms approved by the FHA or VA;
 - (B) A contract with a public utility company if the Public Utilities Commission regulates rates charged for materials or services, provided that the contract term does not exceed the shortest term for which the supplier will contract at the regulated rate;
 - (C) Prepaid casualty and/or liability insurance policies not to exceed three (3) years' duration, provided that the policy permits short-rate cancellation by the insured;
 - (D) Lease agreements for laundry room fixtures and equipment not to exceed five years duration, provided that Declarant's ownership interest in the lessor under the agreement does not exceed ten percent (10%);
 - (E) Agreements for satellite dishes or cable television services and equipment, not to exceed five (5) years duration, provided that the Declarant's ownership interest in the entity does not exceed ten percent (10%);
 - (F) Agreements for sale, lease, installation or services of burglar and fire alarm equipment, not to exceed five (5) years duration, provided that Declarant's ownership interest in any entity involved does not exceed ten percent (10%); and
 - (G) A management contract for a term not to exceed three (3) years that is terminable by the Association after no longer than one (1) year without cause, penalty or other obligation upon ninety (90) days written notice of termination to the other party.
- (2) Incur aggregate expenditures for capital improvements to the Common Area in any fiscal year in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year.
- (3) Sell during any fiscal year property of the Association having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year.
- (4) Pay compensation to members of the Board or to officers of the Association for services performed in the conduct of the Association's business provided, however, that the Board may cause a member or officer to be reimbursed for expenses incurred in carrying on the business of the Association.



(d) The Board is authorized to:

- (1) Adopt and enforce reasonable Rules and Regulations, not inconsistent with this Declaration, concerning the Property;
- (2) Pay taxes and assessments which are, or could become, a lien on the Common Area or a portion thereof;
- (3) Contract for goods and/or services for the Common Area(s) and facilities for the Association subject to the limitations set forth above;
- (4) Delegate its powers to committees, officers or employees of the Association or outside companies or persons hired by the Association as expressly authorized by the Governing Documents;
- (5) Formulate rules of operation of the Common Area(s) and facilities owned or controlled by the Association;
- (6) Commence disciplinary proceedings against members of the Association for violations of provisions of the Governing Documents in accordance with procedures set forth in the governing instruments; and
- (7) Enter upon any privately owned Lot as necessary in connection with construction, maintenance or emergency repair for the benefit of the Common Area(s) or the Owners in common.

5.08 Commencement of Association Management Responsibility

The Association's obligations specified in this Article are effective as of the First Sale of a Lot.



ARTICLE VI

COVENANT FOR ASSESSMENTS

6.01 Assessments.

- (a) Assessments may be levied by the Association for improvement and maintenance of the Common Area(s), administration of the Property, and to promote the recreation, safety, and welfare for the common good of all the Owners.
- (b) Each Owner, by acceptance of a deed to a Lot, whether or not it shall be so expressed in any deed, covenants and agrees to pay all Assessments to the Association.
- (c) Assessments and related interest, collection costs, and reasonable attorneys' fees are the personal obligations of the Owner and binds heirs, devisees, representatives, successors and assignees, but does not pass to successors in title unless expressly assumed by them. The Lot remains subject to any Assessment liens of record, except upon foreclosure of a first Mortgage as stated in the Article entitled "Mortgagee Protection."
- (d) Pursuant to Civil Code Section 5600, the Association may not collect an assessment or fee that exceeds the amount necessary to defray the costs for which it is levied.

6.02 Commencement Due Dates of Assessments.

- (a) Except for the partial first year, Regular Assessments shall be due and payable in any reasonable manner established by the Board. Regular Assessments against the Lots within a particular DRE phase commence on the first of the month immediately after conveyance of the first Lot in that particular phase to a purchaser.
- (b) If model dwellings for sales purposes have been constructed, the closing of escrows for the sales of these Lots where the models are located will not be deemed to be a First Sale and will not start the commencement of Assessments within that phase, if Declarant is leasing back these Lots for purposes of using the Lots as models. Therefore, assessment will commence only upon the First Sale for the sale of a Lot in this phase, other than a Lot where the models are located.

6.03 Assessment Rate.

- (a) Regular Assessments and Special Assessments must be fixed at a uniform rate for all subject Lots, except as otherwise provided.
- (b) Each subject Lot is liable for a pro rata share (the fractional number one (1) over the total number of Lots subject to Assessment by the Association at that time).



6.04 Assessment Duties of the Board of Directors.

- (a) **The Board must levy Regular and Special Assessments in compliance with Civil Code Sections 5600, 5605, 5610, 5620, 5615, and 5650.**
- (b) **The Board must establish separate bank accounts for operating monies and reserve monies.**

**6.05 Effect of Nonpayment of Assessments:
Delinquency and Remedies of the Association.**

- (a) **An Assessment is delinquent ("Delinquent Assessment") if not paid within fifteen (15) days after the due date. A Delinquent Assessment includes:**
 - (1) **A late charge imposed by the Board to the maximum amount in accordance with California Civil Code Sections 5600, 5605, 5610, 5620, 5615, and 5650 (or any successor statutes);**
 - (2) **Reasonable collection costs and attorney's fees; and**
 - (3) **Interest on all costs and charges at the maximum permissible rate, commencing thirty (30) days after the Assessment is due.**
- (b) **Delinquent Assessments and related costs will be a continuing lien on the relevant Lot when a "Notice of Delinquent Assessment" is recorded against an Owners fee interest in a Lot.**
- (c) **Notwithstanding the foregoing, a Compliance Assessment imposed by the Board as a disciplinary measure for failure of an Owner to comply with the Governing Documents or as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to common areas and facilities for which the Owner was allegedly responsible or in bringing the Owner and his Lot into compliance with the Governing Documents, may not become a lien against the Owner's Lot enforceable by a sale of the interest in accordance with the provisions of Sections 2924, 2924(b) and 2924(c) of the Civil Code. However, this does not apply to charges imposed against an Owner consisting of reasonable late payment penalties for delinquent assessments and/or charges to reimburse the Association for the loss of interest or for costs reasonably incurred (including attorney's fees) in its efforts to collect other delinquent assessments.**
- (d) **In addition to all other legal rights and remedies, the Association may:**
 - (1) **Bring legal action against an Owner who is personally obligated to pay the Assessment and charges (without foreclosing or waiving any lien security);**
 - (2) **Judicially foreclose the lien against the Lot, including the Assessment, interest, collection costs and late charges;**
 - (3) **Foreclose the lien by power of sale in accordance with California Civil Code Sections 2924-2924h, or any other lawful manner;**
 - (4) **Bid on the Lot through authorized agents at the foreclosure sale, to acquire and thereafter to hold, lease, Mortgage or convey; or**



- (5) Temporarily suspend the voting rights of the Owner in accordance with the provisions of this Declaration.
- (e) Foreclosure action may not proceed until thirty (30) days after a Notice of Delinquent Assessment is duly recorded with the relevant County Recorder that meets the requirements of Civil Code Section 5675.
- (f) A copy of the Notice of Delinquent Assessment must be sent by certified or registered prepaid United States mail, addressed to the Owner or his designated agent previously given in writing to the Association at the Lot (or an address that the Owner has previously given in writing to the Association which address must be within the United States).
- (g) Upon an Owner's timely payment of a default and all related fees, Association officers may prepare and record (at the Owner's cost) a release of the Notice of Delinquent Assessment.
- (h) No transfer of an Owner's interest in a Lot as a result of a foreclosure or exercise of a power of sale shall relieve the new Owner whether it be the former beneficiary of the first mortgage or another person, from liability for any assessment thereafter becoming due or from the lien thereof.

6.06 Nonuse and Abandonment.

An Owner does not waive or otherwise avoid liability for Assessments by nonuse of the Common Area(s) or abandonment of a Lot.

6.07 Waiver of Exemptions.

With respect to Assessment liens, each Owner waives (to the extent permitted by law) the benefit of any California homestead or exemption laws in effect when any Assessment or installment becomes delinquent or a lien is imposed.



ARTICLE VII
ARCHITECTURAL CONTROL

7.01 Approval by Architectural Committee.

- (a) Except for initial landscaping and improvements constructed by the Declarant in any phase, any exterior construction or alteration (fence, wall, grading, structure, color change) anywhere on the Property must first be approved in writing by the Architectural Committee.
- (b) Complete plans and specifications must be submitted in writing with the signature of the Owner (or authorized agent), showing plot layout, exterior elevations, materials, sizes, color, design and landscaping.
- (c) Tree or plant materials that interfere with the aesthetic enjoyment and unobstructed view of any Lot are not permitted on the Property.
- (d) Plans and specifications for placement of any tree or plant material which can reasonably be expected to exceed eight (8) feet in height must first be approved in writing by the Architectural Committee.
- (e) The Architectural Committee may withhold approval if it determines that the harmony, aesthetic beauty, or natural view of any Lot would be impeded by a proposed planting.
- (f) The Association may require the responsible party to trim or remove any plant the Architectural Committee believes detracts from the harmony and aesthetic beauty of any Lot.
- (g) Owners must comply with all applicable civil laws, codes, and regulations.

7.02 Committee Approval for Construction.

- (a) Architectural Committee approval must be obtained before any exterior improvement, alteration or structure of any kind (including any building, fence, wall, screen, patio, tent, awning, carport, spa, hot tub, jacuzzi, air conditioning unit, antennae, lighting, etc.) is erected, maintained or painted.
- (b) "Exterior" includes any outside surface, wall, roof, door, patio, balcony, deck, garage or other outside Residence structure which is visible to others.
- (c) An Owner may not landscape the Common Area(s), patios or yards visible from the street or Common Area(s) without the approval of the Architectural Committee. However, an Owner may landscape the patio with natural plants, grass, trees and/or shrubs that grow low to the ground without Architectural Committee approval.



7.03 Enforcement by Owners.

If the Association fails to take corrective action within a reasonable period of time after knowledge of a violation, an Owner may take legal action to enforce these provisions.

7.04 Architectural Committee.

Architectural Committee Members shall be appointed and replaced as follows:

- (a) Until one year after the First Sale for the Original Property, Declarant may appoint:
 - (1) All original Members of the Architectural Committee; and
 - (2) All replacements to the Architectural Committee.
- (b) Declarant may appoint a majority of Architectural Committee Members until either:
 - (1) Ninety percent (90%) of all of the Lots have been sold; or
 - (2) Five years after the First Sale for the Original Property.
- (c) One (1) year after the First Sale in the Original Property, the Board may appoint one Member to the Architectural Committee until either:
 - (1) Ninety percent (90%) of all Lots have been sold; or
 - (2) Five years after the First Sale in the Original Property.
 - (3) Thereafter, the Board may appoint all Architectural Committee Members.
- (d) Architectural Committee Members appointed by the Board must be Owners.
- (e) Architectural Committee Members appointed by Declarant need not be Owners.
- (f) The Architectural Committee shall act by majority vote.
- (g) The Architectural Committee will meet periodically to perform its duties.
- (h) The number of Architectural Committee Members shall be three (3) to five (5), as determined by the Board.

7.05 Certain Procedures for the Architectural Committee.

- (a) For any Member unable (or unwilling) to serve on the Architectural Committee, the remaining Member(s) will have authority to approve or reject any proposed construction or alteration.
- (b) If the Architectural Committee (or representative) fails to rule on a proposal within thirty (30) days after complete plans and specifications have been submitted as outlined below, the plans will be considered automatically approved.

(c) Complete plans and specifications must be either:

- (1) Personally delivered to any Architectural Committee Member; or
- (2) Mailed postage prepaid, certified mail, return receipt requested to the Committee at its current address.

7.06 Review Standards.

- (a) The Architectural Committee must approve or reject plans and specifications submitted for proposed construction or alteration based on;
- (1) Reasonable standards for the aesthetic aspects of design, placement, landscaping, color, finish, materials, and exterior harmony with existing structures; and
 - (2) Overall benefit or detriment to the Property and the area immediately surrounding the Lot involved.
- (b) The Architectural Committee is not responsible for approval of plans from the standpoint of structural safety or conformance with building codes.
- (c) Architectural Committee approval of solar heating units may not be withheld unreasonably.

7.07 Rules and Regulations.

The Architectural Committee may adopt, amend and repeal reasonable rules and regulations.

7.08 No Waiver.

Architectural Committee approval of a proposal does not limit the Committee's right to withhold approval for similar proposals.

7.09 Completion.

When work approved by the Architectural Committee begins, it must be diligently prosecuted to completion.

7.10 Variance.

- (a) The Architectural Committee may allow reasonable variances to any of the Covenants contained in this Declaration or any provisions under the rules and regulations promulgated by the Architectural Committee on terms and conditions it shall establish.

- (b) Granting any such variance does not waive any of the terms and provisions of this Declaration in any way, except for the particular Lot and provision covered by the variance.
- (c) Variance does not affect an Owner's obligation to comply with all governmental laws and regulations.

7.11 Appeal.

- (a) Only after the Declarant has lost the right to appoint a majority of Members of the Committee, decisions of the Committee are subject to review by the Board.
- (b) Unless the composition of the Membership of the Committee is identical to the Board, the Board must review and decide upon the proposal within forty-five (45) days after the decision by the Committee.



ARTICLE VIII

ESTABLISHMENT AND RESERVATION OF EASEMENTS

8.01 Easements for Vehicular and Pedestrian Traffic.

Declarant hereby reserves a nonexclusive easement appurtenant to each Lot for the benefit of each and every Owner, the members of his family, his lessees and tenants, and their respective guests and invitees, for vehicular and pedestrian traffic over all private streets, drives, walkways, and sidewalks within the Common Area(s).

8.02 Establishment of Utility and Drainage Easements.

Owner rights and duties with respect to drainage facilities, sanitary sewer, water, electricity, gas, telephone, cable television, security system lines, and other service lines and facilities ("Service Lines and Facilities") are as follows:

- (a) Easements for Service Lines and Facilities on Lots or Common Area(s) is granted in favor of the Owner of a Lot or Association served by said Service Lines and Facilities to the full extent necessary for the maintenance and repair by the Owner, Association, or servicing company;
- (b) If Service Lines and Facilities serve more than one Lot, each Owner served is entitled to reasonable use and enjoyment and access for repair, replacement and maintenance of all necessary portions of the Service Lines and Facilities. In the event of a dispute between Owners respecting the repair, replacement or maintenance of the Service Lines and Facilities, or the sharing of the cost thereof, said Owners shall first contact the appropriate utility company in an effort to resolve the dispute; provided however, if said dispute remains unsolved, the matter shall be submitted to the Board who shall decide the dispute and the decision of the Board shall be final and conclusive on the Owners.

8.03 Reservation of Utility and Drainage Easements.

- (a) Declarant reserves the right to grant and transfer easements over the Lots and Common Area(s) for installation, maintenance and repair of the Service Lines and Facilities.
- (b) Any such easement may not unreasonably interfere with an Owner's use and enjoyment of the Lots and Common Area(s).
- (c) Notwithstanding that an Owner may install improvements within said easement area with the approval of the Architectural Control Committee, each Owner acknowledges that such improvements may be removed by the respective utility or Public Agency to maintain, repair or replace any of the foregoing facilities without any liability to the Owner to repair or restore such improvements.

8.04 Encroachment Easements.

Each Lot possesses an appurtenant easement over all adjoining Property (including Lots and Common Areas) to accommodate minor encroachments due to:

- (a) Original engineering or survey errors;
- (b) Errors in original construction;
- (c) Overhanging roofs, fireplace structures, and other structural components as originally constructed by the Declarant or, if partially or totally destroyed, as subsequently rebuilt or repaired in accordance with the original plans and specifications; or
- (d) Settlement or shifting of a building, wall or structure.

8.05 Drainage System.

- (a) The Association and each Owner accept the drainage facilities and pattern for the Lots and Common Area(s) established by the final grading of the Property originally undertaken by Declarant (including "crosslot" drainage from adjacent Lots and Common Areas).
- (b) The established drainage pattern may not be altered without prior written approval by the Association and/or Architectural Committee.
- (c) If the drainage pattern must be altered, the party requesting the alteration must make reasonable and adequate provisions for proper drainage and pay for its costs.
- (d) In the event Declarant shall have installed any drainage lines or other facilities which serve two or more Lots, the Owners of said Lots shall jointly maintain and repair said lines and facilities so as to keep same in proper operating condition at all times.

8.06 Easements for Maintenance of the Common Area(s).

The Association has a nonexclusive easement for ingress, egress and access to all portions of the Property as reasonably required to perform its maintenance obligations and other duties established in this Declaration.

8.07 Creation of Easements.

- (a) Easements referred to herein are established upon the First Sale in the Project.
- (b) Individual grant deeds to Lots should state that the grant is made subject to the provisions of this Declaration, and may set forth reference to these easements, but are not required to do so.

ARTICLE IX

MORTGAGEE PROTECTION

9.01 Subordination of Lien and Foreclosure.

(a) Any lien created or claimed in this Declaration:

- (1) Is subject and subordinate to the rights of any first Mortgage that encumbers any part of the Property made for value in good faith; and
- (2) May not in any way impair or invalidate the obligation or priority of a first Mortgage unless expressly subordinated in writing by the Mortgagee. The signing of any Mortgage to the Subordination by Lienholder included in this Declaration shall not constitute said lienholder's subordination to any future Assessment lien.

(b) No breach of any provision of this Declaration shall invalidate the lien of any Mortgage made in good faith and for value; but all of the covenants, conditions and restrictions shall be binding on any Owner whose title is derived through foreclosure sale, trustee's sale, or otherwise.

(c) Upon foreclosure of a first Mortgage, the purchaser:

- (1) Will take the Lot title free of any Assessment lien accrued up to the time of the foreclosure sale (provided that nothing herein is intended to impair the rights of the Association to receive payment on any Assessment lien in the event the net sale proceeds are in excess of what is owed on all encumbrances prior to the Assessment lien);
- (2) Is only obligated to pay Assessments or other Association charges accruing after the Lot title is acquired; and
- (3) Where the Mortgagee obtains title with a deed in lieu of foreclosure, any Assessment lien will not be extinguished.

9.02 Mortgagees Are Not Required to Cure Certain Breaches.

A first Mortgagee who acquires title by foreclosure or by a deed in lieu of foreclosure or assignment in lieu of foreclosure shall not be obligated to cure an existing breach of this Declaration that is non-curable or of a type that is not practical or feasible to cure.

9.03 Effect of Breach of Declaration.

(a) Breach of this Declaration may not:

- (1) Cause any forfeiture or reversion of title; or
- (2) Bestow any right of reentry.



- (b) Breach of this Declaration may be enjoined or abated by court action by the Association, Declarant, or any Lot Owner, and damages may also be awarded provided that:

- (1) The violation does not impair or invalidate the Mortgage lien or deed of trust made for value in good faith; and
- (2) This Declaration binds any Owner whose title is derived through foreclosure, trustee's sale or otherwise.

9.04 Exemption From Right of First Refusal.

- (a) No right of first refusal or similar restriction may be placed on an Owner's right to sell, transfer, or otherwise convey a Lot, unless a Mortgagee of the Property grants written consent to the Association.
- (b) Any right of first refusal or option to purchase a Lot that may be granted to the Association (or other party) may not impair the rights of a first Mortgagee to do any of the following:
 - (1) Foreclose or take title to a Lot, pursuant to the remedies provided in the Mortgage;
 - (2) Accept a deed (or assignment) in lieu of foreclosure in the event of default under the Mortgage; or
 - (3) Sell or lease a Lot acquired by the Mortgagee.

9.05 Restrictions on Certain Changes.

At least sixty-seven percent (67%) of Owners and at least fifty-one percent (51%) of the votes of Eligible First Mortgagees must give written approval before the Association may, by act or omission, do any of the following:

- (a) Abandon, partition, subdivide, encumber, sell or transfer any portion of a Common Area (other than granting easements as specified in this Declaration).
- (b) Alter the method of determining Assessments or other charges levied against an Owner.
- (c) Partition or subdivide any Lot.
- (d) Seek to abandon or terminate the Property, (except as provided by statute in case of substantial loss to the Lots or Common Areas).
- (e) Use hazard insurance proceeds for losses to the Property (Lot or Common Area) for other than repair, replacement or reconstruction of the relevant Property (except as provided by statute in case of substantial loss to the Lots or Common Areas).
- (f) Change, waive or abandon any regulations or enforcement pertaining to the architectural design, the exterior appearance or the maintenance of the Lots or the Common Area(s).



- (g) **Fail to maintain Fire and Extended Coverage on Insurable Common Area(s) as specified in this Declaration.**
- (h) **Amend the Governing Documents concerning any material provision (which includes, but is not limited to, the following):**
- (1) **Voting rights;**
 - (2) **Rights to use the Common Area(s), and reallocation of interests in the Common Area (including Exclusive Use Common Areas);**
 - (3) **Reserves and responsibility for maintenance, repair and replacement of the Common Property;**
 - (4) **Lot boundaries;**
 - (5) **Owners' interests in the Common Area;**
 - (6) **Convertibility of Common Area into Lots or Lots into Common Area;**
 - (7) **Lot leasing;**
 - (8) **Establishment of self-management by the Association where professional management has been required by any beneficiary, insurer or guarantor of a first Mortgage;**
 - (9) **Annexation or deannexation of real property;**
 - (10) **Casualty and liability insurance (or other insurance or fidelity bonds);**
 - (11) **Imposition of a right of first refusal or similar restriction of an Owner's right to sell, transfer or otherwise convey the Lot;**
 - (12) **Restoration or repair of the Property after hazard damage or partial condemnation;**
 - (13) **Action to terminate the legal status of the Property after substantial destruction or condemnation; and**
 - (14) **Any provisions that are for the express benefit of first Mortgagees, insurers or governmental guarantors of first Mortgages.**
- (i) **Change, waive or abandon the provisions of this Declaration (and their enforcement) pertaining to architectural design and control of the exterior appearance of structures, maintenance of the Common Area(s), walks, fences, driveways, lawns and plantings on the Property.**
- (j) **When Lot Owners are considering termination of the legal status of the Project for reasons other than substantial destruction or condemnation of the Property, written approval of sixty-seven percent (67%) of Eligible First Mortgagees must be given.**
- (k) **An Eligible First Mortgagee's approval will be considered granted if a negative response is not delivered to the Board within thirty (30) days after it receives notice of the proposed amendment, provided notice was delivered personally or by certified or registered mail, return receipt requested.**



9.06 Inspection of Association Books and Records.

Any first Mortgage holder has the right to examine the books and records of the Association after notice to the Association and only during business hours.

9.07 Condemnation Awards and Insurance Proceeds.

- (a) First Mortgagees have priority over any other party (including the Owner) pursuant to their Mortgage in a case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or taking of Lots or Common Areas. Any provision to the contrary in this Declaration, the Bylaws, or other Governing Documents is to such extent void.
- (b) All applicable fire, physical loss or extended coverage insurance policy must contain loss payable clauses acceptable to the affected first Mortgagee, naming them Mortgagees as their interests may appear.

9.08 Mortgagees' Right to Attend Meetings.

Any Mortgagee may appear at Association and Board meetings, but is not eligible to vote.

9.09 Payments by Mortgagees.

- (a) First Mortgagees may pay the following jointly or severally:
 - (1) Taxes or other charges in default which may be a charge against any part of the Common Area(s); and
 - (2) Overdue premiums on hazard insurance policies, or to secure new hazard insurance coverage on the lapse of a policy for the Common Area(s).
- (b) Upon making such payments, the Association:
 - (1) Owes immediate reimbursement to first Mortgagees making such payments; and
 - (2) Must, upon Mortgagee's request, execute an agreement that reflects the first Mortgagees' entitlement to such reimbursement.

9.10 Loss Payable Endorsement.

All applicable fire, physical loss or extended coverage insurance policies must contain loss payable clauses naming the Mortgagees who encumber the Lots.



9.11 Notices to Mortgagees.

- (a) **Each Eligible First Mortgagee is entitled to timely written notice of:**
- (1) Any condemnation or casualty loss that affects a material portion of the Project or the Lot securing its mortgage;
 - (2) Any sixty-day delinquency in the payment of Assessments or charges owed by the Owner of any Lot on which it holds the mortgage;
 - (3) A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; and
 - (4) Any proposed action that requires the consent of a specified percentage of Eligible First Mortgage Holders,
- (b) To obtain the information above, the mortgage holder, insurer or guarantor must send a written request to the Association, stating both its name and address and the unit number or address of the unit it has the mortgage on.

9.12 Governmental Financing Programs.

- (a) It is the intent of Declarant that the Governing Documents and the Project in general, shall now and in the future meet all requirements necessary to purchase, guarantee, insure, or subsidize any Mortgage of a Lot in the Project by the Federal Home Loan Mortgage Corporation, and Federal National Mortgage Association or FHA/VA (if the Declarant is submitting for approval of these agencies). The Association and each Owner shall promptly take any action and/or shall adopt any resolutions required by Declarant or any Mortgagee to conform this Declaration or the Project to the requirements of any of these entities or agencies. Each Owner of a Lot in the Project, by accepting a deed to a Lot, shall be deemed to have constituted and irrevocably appointed Declarant as his Attorney-in-Fact, for himself and each of his Mortgagees, heirs, legal representatives, successors and assignees, whether voluntary or involuntary, and thereby to have conveyed a Power of Attorney coupled with an interest to Declarant as his Attorney-in-Fact for the purpose of amending the Governing Documents to conform with any new requirements issued by FNMA. This Power of Attorney shall expire two years after the recording of this Declaration.
- (b) These steps include the requirement that, when available, the Association must maintain certain types of insurance coverage issued by carriers who meet the requirements of the relevant governmental financing program.
- (c) Hazard insurance policies required by this Section must contain (or attach) the standard Mortgagee clause commonly accepted by private institutional Mortgage investors for similar properties in the locale (except when a separate policy covering the Common Area(s) is maintained).
- (d) If there are any such loans, the Association will give written notice to FHLMC (or its designated representative) of the following:
- (1) Any loss to the Common Area in excess of Ten Thousand Dollars (\$10,000.00); or
 - (2) Damage to a Lot covered by a first Mortgage purchased (in whole or in part) by the FHLMC in excess of One Thousand Dollars (\$1,000.00).



ARTICLE X

DAMAGE AND DESTRUCTION TO IMPROVEMENTS

10.01 Alternatives in the Event of Damage and Destruction to Common Area Improvements.

In case of casualty damage to Common Area improvements, the Association will repair and substantially restore the Common Area improvements to the same manner as existed before:

- (a) If insurance proceeds paid to the Association are sufficient;
- (b) If insurance proceeds cover at least eighty-five percent (85%) of repair costs, the Association will repair the damage and levy a reconstruction Assessment equally against the Owners to make up the balance of costs (according to the Article "Covenant for Assessments").
- (c) If insurance proceeds cover less than eighty-five percent (85%) of repair costs, the Association will repair the damage and levy a reconstruction Assessment equally against the Owners unless at least sixty-seven (67%) percent of the Owners (other than Declarant) determine either:
 - (1) To rebuild in a less expensive manner than substantial replacement, utilizing all available insurance proceeds. The Association will levy a reconstruction Assessment equally against the Owners to raise any rebuilding cost in excess of insurance proceeds; or
 - (2) Not to rebuild. All net insurance proceeds for the damage (after expenses of clearing debris and making the damaged area aesthetically pleasing) are at the Association's discretion to perform its functions according to the Restrictions or to distribute equally to the Owners (subject to the rights of Mortgagees of record).

10.02 Method of Paying Reconstruction Assessments for Reconstruction of the Improvements.

- (a) Reconstruction Assessments will be due:
 - (1) In a lump sum or in installments; and
 - (2) On any date(s) the Association designates within twenty (20) years.
- (b) To cover the difference between the cost of restoring damaged improvements and the available insurance proceeds, the Association may borrow money secured by:
 - (1) An assignment of its right to collect such Assessments; or
 - (2) A pledge of its interest in any assets.



10.03 Damage to Dwellings.

- (a) If a Lot Improvement (other than the Common Area) is damaged by fire or other casualty, the relevant Owner must proceed with due diligence to repair or reconstruct the improvement in accordance with the original as-built plans and specifications, modified as may be required by applicable building codes and regulations in force at the time of such repair or reconstruction or as authorized by the Architectural Committee.
- (b) Repair or reconstruction must commence within ninety (90) days after damage or destruction, and must be completed within one hundred and eighty (180) days after such date, subject to delays that are beyond the Owner's control.
- (c) Notwithstanding the foregoing, the Owner must immediately take reasonable steps as required to secure any hazardous conditions resulting from the damage or destruction.



ARTICLE XI

CONDEMNATION

11.01 Condemnation.

- (a) If any portion of a Common Area is to be condemned or sold by eminent domain, the Board (or its delegation) will:
 - (1) Represent Owners in the proceedings;
 - (2) Immediately give notice of the condemnation threat to all Beneficiaries, insurers and guarantors of first Mortgages who have filed written requests for notices; and
 - (3) Be entitled to make a voluntary sale to the condemner in lieu of engaging in a condemnation action.
- (b) Any award(s) received shall be paid to the Association.
- (c) If only part of a Common Area is affected, the rules regarding restoration and replacement of the Common Area and improvements apply as if in the case of destruction.
- (d) If any of the net condemnation award is not used to restore the remaining Common Area, the Association will handle the award in accordance with the Article entitled, "Damage and Destruction to Improvements Located Within the Property"



ARTICLE XII

ANNEXATION

12.01 Annexation of Additional Property.

Additional Property may be annexed to the Original Property and become subject to this Declaration by any of the following methods:

- (a) Declarant may annex any portion of the Additional Property without approval by the Association, Board, or Owners if the plan for phased development includes the following:
 - (1) Proof satisfactory to the DRE that no proposed annexation will result in an overburdening of common facilities;
 - (2) Proof satisfactory to the DRE that no proposed annexation will cause a substantial increase in assessments against existing Owners which was not disclosed in subdivision public reports under which pre-existing Owners purchased their interests;
 - (3) Identification of the land proposed to be annexed and the total number of residential Lots then contemplated by Declarant for the overall subdivision development; and
 - (4) A written commitment by Declarant to pay to the Association, concurrently with the closing of the escrow for the first sale of a subdivision interest in an annexed Phase, appropriate amounts for reserves for replacement or deferred maintenance of common area improvements in the annexed Phase necessitated by or arising out of the use and occupancy of residential Lots under a rental program conducted by the sub divider which has been in effect for a period of at least one year as of the date of closing of the escrow for the first sale of a residential Lot in the annexed Phase,
- (b) By majority vote of sixty-six and two-thirds percent (66 2/3%) of the voting power of the Owners (other than Declarant).

12.02 Contents of Annexation Document.

The Annexation Document may not revoke or modify the provisions of this Declaration affecting the Original Property (except as provided for in this Declaration, eg., subparagraph (d) of this section) and must contain all of the following:

- (a) Reference to this Declaration stating the recordation date and recording information contained in the Official Records of the relevant county;
- (b) A statement that this Declaration (or certain specified portions) apply to the annexed real property;
- (c) An exact description of the real property comprising the annexed real property; and



- (d) Any modification of this Declaration Declarant deems necessary to reflect the development or different character of the added property (but consistent with the general plan and scheme of this Declaration).

12.03 Conveyance of Common Area(s).

Before any Lot in the annexed property is conveyed, title to the annexed Common Area(s) must be conveyed to the Association, free and clear of any and all encumbrances and liens (except current real property taxes and reservations, easements, covenants, conditions and restrictions of record).

12.04 Declarant Under No Obligation to Continue Development:
Effect of Annexation.

- (a) Declarant is not obligated to develop or annex additional real property.
- (b) The Annexation Document must provide that Lot Owners in the annexed property will become Association members, and the Association will manage, administer and maintain the annexed Common Area(s) as provided for in this Declaration.
- (c) On becoming an Association member, each annexed Lot Owner will be assessed a pro rata share of the Association's aggregate Common Expenses for all subsequent Association projects,

12.05 Deannexation.

Declarant may deannex any portion of the annexed property from coverage of this Declaration and the jurisdiction of the Association, provided that:

- (a) Declarant owns the annexed property;
- (b) A Document of Deannexation of Territory is recorded in the same manner as the Annexation Document;
- (c) Declarant has not exercised any Association vote regarding any portion of the annexed property;
- (d) Assessments have not commenced for any portion of the annexed property;
- (e) A First Sale has not occurred for any Lot in the annexed property; and
- (f) The Association has not made expenditures or incurred obligations regarding any portion of the annexed property.



12.06 Association's Merger or Consolidation.

- (a) The Association may merge or consolidate with another homeowners' association (as permitted by law) upon approval by sixty-seven percent (67%) of the voting power of the Owners (other than Declarant).**
- (b) Association properties, rights and obligations may be:**
 - (1) Transferred to another homeowner's association; or**
 - (2) Added to a surviving corporation through a merger.**
- (c) To the extent reasonably possible, the resultant association will administer the provisions of this Declaration and the restrictions of any other property as a uniform plan.**



ARTICLE XIII

ENFORCEMENT OF DECLARANT'S OBLIGATION

TO COMPLETE COMMON AREA IMPROVEMENTS

13.01 Enforcement of Declarant's Obligation
to Complete Common Area Improvements.

- (a) The Board must consider and vote on Association action to enforce bond obligations regarding any Common Area improvement if the following factors apply:
 - (1) The Association is the obligee under a bond or other arrangement securing completion; and
 - (2) A Notice of Completion has not been filed within sixty (60) days of the completion date specified in the planned construction statement appended to the bond.
- (b) The Association may grant a written extension for a Common Area completion.
- (c) If a Notice of Completion has not been filed within thirty (30) days after the extension expires, the Board will meet and vote on enforcement options.
- (d) Owners may submit a petition signed by at least five percent (5%) of Association voting power calling for a Special Meeting to be held between thirty-five (35) and forty-five (45) days after the Board receives the petition.
- (e) At the Special Meeting, a majority vote of Owners (other than Declarant) overrides the Board's decision and causes the Board to enforce bond obligations through appropriate action in the name of the Association.



ARTICLE XIV

DISPUTE NOTIFICATION AND RESOLUTION PROCEDURE

(DECLARANT DISPUTES): WAIVERS

14.01 Enforcement and Nonwaiver.

- (a) Rights of Enforcement of Governing Documents. The Association or any Owner shall have a right of action against any Owner, and any Owner shall have a right of action against the Association, to enforce by proceedings at law or in equity, all restrictions, conditions, covenants and reservations, now or hereafter imposed by the provisions of the Governing Documents or any amendment thereto, including the right to prevent the violation of such restrictions, conditions, covenants, or reservations and the right to recover damages or other dues for such violation except that Owners shall not have any right of enforcement concerning assessment liens. The Association shall have the exclusive right to the enforcement of provisions relating to architectural control and the Rules and Regulations, unless the Association refuses or is unable to effectuate such enforcement, in which case any Owner who otherwise has standing shall have the right to undertake such enforcement. Failure of the Association, Declarant 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.
- (b) Procedure for Enforcement. Notwithstanding anything to the contrary set forth in Section 14.01(a) above, in enforcing any action under the Governing Documents for monetary damages, the parties shall comply with the provisions of California Civil Code Section 1354 or any successor statute or law. The Board shall annually provide to the Owners a summary of the provisions of California Civil Code Section 1354 or any successor statute or law, which shall include the language required and shall be delivered in the manner provided in Civil Code Section 1365. The exception for disputes related to Association assessments set forth in Section 1354 shall not apply to disputes between an Owner and the Association regarding assessments imposed by the Association, if the Owner chooses to pay in full the Association all of the assessments as specified in California Civil Code Section 1366.3 or any successor statute or law.
- (c) Notice of Actions Against Declarant. The Association shall comply with the provisions of Section 5985 of the Civil Code or any successor statute or law, prior to the filing of any civil action by the Association against Declarant or other developer of the Project for either alleged damage to the Association Property or other property within the Project that the Association is obligated to maintain or repair, or alleged damage to any other portion of the Project that arises out of, or is integrally related to, such damage to the Association Property or other property within the Project that the Association is obligated to maintain or repair. Such notice shall specify all of the matters set forth in Section 5985 or any successor statute or law.



**14.02 Dispute Notification and Resolution Procedure
(Declarant Disputes): Waivers.**

Notwithstanding any provisions of this Declaration to the contrary, any action, claim or dispute by, between or among Declarant, as the builder of the Project or any director, officer, partner, member, employee or agent of Declarant, or any contractor, subcontractor, design professional, engineer or supplier who provided labor, services or materials to the Project and who is bound or has agreed to be bound to the following dispute notification and resolution procedure (collectively, the "Declarant Parties") and either the Association or any Owner, relating to or arising out of the Project, this Declaration or other Governing Documents for the Association (except for other agreements which expressly provide for another form of dispute resolution) any other agreements between the Declarant Parties and an Owner or the Association, the sale of the Property, the use or condition of the Property or the design or construction of or any condition on or affecting the Project, including, but not limited to, construction defects, surveys, soils conditions, grading, specifications, installation of improvements or disputes which allege fraud, misrepresentation, non-disclosure or breach of implied or express warranties as to the condition of the Property or Project where the amount in controversy is greater than \$25,000.00 or in which non-monetary relief is sought that cannot be granted by a Municipal Court in the State of California as of January 01, 1998 (collectively "Dispute(s)"), shall be subject to the provisions set forth below.

14.03 Notice.

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

14.04 Right to Inspect and Right to Corrective Action.

- (a) Within a reasonable period after 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 or near the Project to discuss the claim. At such meeting or at such other mutually agreeable time, Declarant and the Declarant's representatives shall have full access to the property that is subject to the Dispute claim and shall have the right to conduct inspections, testing and/or destructive or invasive testing of the same in a manner deemed appropriate by Declarant, which right shall continue until such time as the Dispute is resolved as provided in this Article XIV.
- (b) The parties of the Dispute shall negotiate in good faith in an attempt to resolve the claim. If the Declarant elects to take any corrective action, Declarant and the Declarant's representatives and agents shall be provided full access to the Project to take and complete corrective action.



14.05 Civil Code Sections 5985 and 6000.

Nothing contained herein shall be deemed a waiver or limitation of the provisions of California Civil Code Section 5985, referenced in Section 14.01(c). If the claim is subject to the provisions of Civil Code Section 6000, as it may be amended from time to time, compliance with the procedures of Civil Code Sections 6000(b), (d), and (e) shall satisfy the requirements of Sections 14.03 and 14.04.

14.06 Mediation.

- (a) If the parties to the Dispute cannot resolve the claim pursuant to the procedures described in Section 14.04 above (including, if applicable, Civil Code Section 6000 procedures), the matter shall be submitted to mediation pursuant to the mediation procedures adopted by the American Arbitration Association (except as such procedures are modified by the provisions of this Section 14.06) or any successor thereto or to any other entity offering mediation services that is acceptable to such parties.
- (b) No person shall serve as a mediator in any Dispute in which the person has any financial or personal interest in the result of the mediation, except by the written consent of all parties to the Dispute participating in the mediation.
- (c) Prior to accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or to prevent a prompt commencement of the mediation process.
- (d) Except as provided in Section 14.10 below, the Association and each Owner covenants that each shall not commence any litigation against the Declarant Parties without complying with the procedures described in this Section 14.06.
 - (1) Position Memoranda: Pre-Mediation Conference. Within ten (10) days of the selection of the mediator, each party to the Dispute participating in the mediation shall submit a brief memorandum setting forth its position with regard to the issues that need to be resolved. The mediator shall have the right to schedule a pre-mediation conference and all parties to the Dispute participating in the mediation shall attend unless otherwise agreed. The mediation shall be commenced within ten (10) days following the submittal of the memoranda and shall be concluded within fifteen (15) days from the commencement of the mediation unless the parties to the Dispute participating in the mediation mutually agree to extend the mediation period. The mediation shall be held in the county in which the Project is located or such other place as is mutually acceptable to the parties to the Dispute participating in the mediation.
 - (2) Conduct of Mediation. The mediator has discretion to conduct the mediation in the manner in which the mediator believes is most appropriate for reaching a settlement of the Dispute. The mediator is authorized to conduct joint and separate meetings with the parties to the Dispute participating in the mediation and to make oral and written recommendations for settlement. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the Dispute, provided the parties to the Dispute participating in the mediation agree and assume the expenses of obtaining such advice. The mediator does not have the authority to impose a settlement on the parties to the Dispute participating in the mediation.



- (3) **Exclusion Agreement.** Prior to the commencement of the mediation session, the mediator and all parties to the Dispute participating in the mediation shall execute an agreement pursuant to California Evidence Code Section 1115 et seq. and any successor statutes or laws in order to exclude the use of any testimony or evidence produced at the mediation in any subsequent dispute resolution forum, including, but not limited to, court proceedings, reference proceedings or arbitration hearings. Pursuant to California Evidence Code Section 1115 et seq., the agreement shall specifically state that evidence of anything said or of any admission made in the course of the mediation is not admissible evidence, and disclosure of any such evidence shall not be compelled in any civil action in which, pursuant to law, testimony can be compelled to be given. Unless the document provides otherwise, no document prepared for the purpose of, or in the course of, or pursuant to, the mediation, or copy thereof, is admissible in evidence; and disclosure of any such document shall not be compelled in any civil action in which, pursuant to law, testimony can be compelled to be given. The provisions of California Evidence Code Section 1115 through 1128 shall also be applicable to such mediation process.
- (4) **Parties Permitted at Sessions.** Persons other than the parties to the Dispute participating in the mediation, representatives and the mediator may attend mediation sessions only with the permission of the parties to the Dispute participating in the mediation and the consent of the mediator. Confidential information disclosed to a mediator by the parties to the Dispute participating in the mediation or by witnesses in the course of the mediation while serving in such capacity shall be confidential. There shall be no stenographic record of the mediation process.
- (5) **Expenses.** All expenses of the mediation, including, but not limited to, the fees to initiate mediation, fees and costs charged by the mediator and the expenses of any witnesses or the cost of any proof of expert advice produced at the direct request of the mediator, shall be borne equally by the parties to the Dispute participating in the mediation unless they agree otherwise. The expenses of witnesses for either side shall be paid by the party producing such witnesses. Each party to the mediation shall bear their own attorney's fees and costs in connection with such mediation.

14.07 **Judicial Reference.**

- (a) Should mediation pursuant to Section 14.06 above not be successful in resolving any Dispute, such Dispute shall be resolved by general judicial reference pursuant to Code of Civil Procedure Sections 638 and 641 through 645.1, and as modified or as otherwise provided in this Section 14.07.
- (b) The parties to the Dispute shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the judicial reference proceeding. Declarant shall not be required to participate in the judicial reference proceeding if:
- (1) All parties against whom Declarant would have necessary or permissive cross-claims or counterclaims cannot be joined in the judicial reference proceeding, including, but not limited to, the Declarant Parties; or



- (2) Any insurer of a Declarant Party that would be liable to provide insurance coverage to a Declarant Party for any claim arising out of the Dispute is entitled to consent to the judicial reference procedure as a condition of providing such coverage and refuses to do so.
- (c) Subject to the limitations set forth in this Section 14.07, the general referee shall have the authority to try all issues, whether of fact or law, and to report a statement of decision to the court. The judicial referee shall be the only trier of fact or law in the reference proceedings and shall have no authority to further refer any issues of fact or law to any other party, without the mutual consent of all parties to the judicial reference proceeding.
- (d) Place. The proceedings shall be heard in the county in which the Project is located.
- (e) Referee. The referee shall be an attorney or retired judge with experience in relevant real estate matters. The referee shall not have any relationship to the parties to the Dispute or interest in the Project. The parties to the Dispute participating in the judicial reference shall meet to select the referee within ten (10) days after service of the initial complaint on all defendants named therein. Any dispute regarding the selection of the referee shall be promptly resolved by the judge to whom the matter is assigned, or if there is none, to the presiding judge of the Superior Court of the County in which the Project is located, who shall select the referee.
- (f) Commencement and Timing of Proceeding. The referee shall promptly commence the proceeding at the earliest convenient date in light of all of the facts and circumstances and shall conduct the proceeding without undue delay.
- (g) Pre-hearing Conferences. The referee may require one or more pre-hearing conferences.
- (h) Discovery. The parties to the judicial reference proceeding shall be entitled only to limited discovery, consisting of the exchange between such parties of only the following matters:
- (1) Witness lists;
 - (2) Expert Witness Designations;
 - (3) Expert Witness Reports;
 - (4) Exhibits;
 - (5) Reports of testing or inspections of the property subject to the Dispute, including but not limited to, destructive or invasive testing; and
 - (6) Trial Briefs.

Such parties shall also be entitled to conduct further tests and inspections as provided in Section 14.04 above. Any other discovery provided for in the California Code of Civil Procedure shall be permitted by the referee upon a showing of good cause or based on the mutual agreement of the parties to the judicial reference proceeding. The referee shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge.



- (j) **Limitation on Remedies.** The measure of damages related in any way to alleged patent and/or latent construction defects and/or alleged failure to disclose claims shall not exceed the lesser of the actual costs of repair thereof or diminution in value. Declarant shall not be liable for punitive damages. Furthermore, the parties hereto agree that the referee shall be entitled to make a determination as to whether such repair(s) or correction(s) has been satisfactorily performed. The referee shall have the power to grant all legal and equitable remedies, not otherwise limited herein, and award compensatory damages in the judicial reference proceeding.
- (j) **Motions.** The referee shall have the power to hear and dispose of motions, including motions relating to provisional remedies, demurrers, motions to dismiss, motions for judgment on the pleadings and summary adjudication motions, in the same manner as a trial court judge, except the referee shall also have the power to adjudicate summarily issues of fact or law including the availability of remedies, whether or not the issue adjudicated could dispose of an entire cause of action or defense. Notwithstanding the foregoing, if prior to the selection of the referee, as provided herein, any provisional remedies are sought by the parties to the Dispute, such relief may be sought in the Superior Court of the County in which the Project is located.
- (k) **Rules of Law.** The referee shall apply the laws of the State of California except as expressly provided herein including the rules of evidence, unless expressly waived by all parties to the judicial reference proceeding.
- (l) **Record.** A stenographic record of the hearing shall be made, provided that the record shall remain confidential except as may be necessary for post-hearing motions and any appeals.
- (m) **Statement of Decision.** The referee's statement of decision shall contain findings of fact and conclusions of law to the extent required by law if the case were tried to a judge. The decision of the referee shall stand as the decision of the court, and upon filing of the statement of decision with the clerk of the court, judgment may be entered thereon in the same manner as if the Dispute had been tried by the court.
- (n) **Post-Hearing Motions.** The referee shall have the authority to rule on all posthearing motions in the same manner as a trial judge.
- (o) **Appeals.** The decision of the referee shall be subject to appeal in the same manner as if the Dispute had been tried by the court.
- (p) **Expenses.** All fees and costs of any judicial reference proceeding hereunder shall be equally shared by the parties to the judicial reference proceeding. Each party to the judicial reference proceeding shall bear its own attorneys' fees and costs in connection with such proceeding.



14.08 Agreement to Alternative Dispute Resolution: Waivers of Jury Trial and Award of Punitive Damages.

- (a) Declarant, and by accepting a Deed for the Association Property or a residential Unit, as the case may be, the Association and each Owner agree to have any Dispute resolved according to the provisions of this Article XIV and waive their respective rights to pursue any Dispute in any manner other than as provided in this Article XIV.
- (b) Such parties acknowledge that by agreeing to resolve all Disputes as provided in this Article XIV, they are giving up their respective rights to have such Disputes tried before a jury and further waive their respective rights to an award of punitive damages relating to such disputes, thereby giving up any rights such parties may possess to such remedies.
- (c) This Article XIV shall not be amended without Declarant's prior written consent.

14.09 Application of Award.

The net proceeds of any judgment against, or settlement entered into with Declarant, after payment of costs of litigation, including attorney's fees, may be used only for the purposes of repairing, replacing, or mitigating the defects with respect to which the judgment was entered or the settlement made.

14.10 Exceptions to Mediation and Reference: Statutes of Limitation.

- (a) The procedures set forth in this Article XIV shall apply only to Disputes and shall not apply to any action taken by the Association against Declarant or any Owner for delinquent assessments, which shall be covered by Article VI, Covenant for Assessment, or in any action involving any bond covered by the provisions of the Article entitled Enforcement of Declarant's Obligation to Complete Common Area Improvements.
- (b) Furthermore, nothing in this Article XIV shall be considered to toll, stay, reduce or extend any applicable statutes of limitation; provided, however, that the Declarant Parties, the Association or any Owner shall be entitled to commence a legal action which in the good faith determination of any Declarant Party, the Association or Owner is necessary to preserve the Declarant Parties', the Association's or Owner's rights under any applicable statute of limitations, provided that the Declarant Party, Association or Owner shall take no further steps in prosecuting the action until it has complied with the procedures described in Sections 14.06 and 14.07



ARTICLE XV

GENERAL PROVISIONS

15.01 Duration.

- (a) This Declaration is binding upon all parties for sixty (60) years after the recording date.
- (b) After sixty (60) years, the Declaration will automatically be extended for successive ten (10) year periods, unless the Owners (heirs, successors, representatives) of a majority of subject Lots record a signed, written instrument:
 - (1) At least one (1) year before the beginning of any ten (10) year period; and
 - (2) Agreeing to change or terminate this Declaration.

15.02 Amendment.

Before the First Sale, and subject to the consent of the First Mortgagee, if any, Declarant may unilaterally amend this Declaration (subject to the Article entitled "Mortgagee Protection") by recording an instrument of amendment in the relevant County Recorder's Office.

- (b) After the First Sale, this Declaration may only be amended in the following ways (and subject to the Article entitled "Mortgagee Protection"):
 - (1) If there is only one Membership Class, approval by at least sixty-seven percent (67%) of Members other than Declarant, and by at least sixty-seven percent (67%) of the total voting power, including Declarant, and an instrument signed by two (2) Association officers certifying that the amendment was approved by at least sixty-seven percent (67%) of Members other than Declarant, and also approved by at least sixty-seven percent (67%) of the total voting power, including Declarant.
 - (2) If Class B Membership exists, approval by at least sixty-seven percent (67%) of the Members of each Class, and an instrument signed by two (2) Association officers certifying that the amendment was approved by sixty-seven percent (67%) of the Members of each Class.
- (c) Any amendment must be properly recorded in the County Recorder's Office.
- (d) The percentage of Owners needed to amend this Declaration may not be less than the percentage of affirmative votes prescribed for action to be taken under the relevant provision.
- (e) An Owner or the Association may petition the Superior Court for an order reducing the percentage of affirmative votes needed to amend this Declaration (pursuant to Civil Code Section 4275, or any successor statutes).



- (f) While the Declarant holds or directly controls at least twenty-five percent (25%) of the votes, any proposed amendment to any Governing Documents must comply with Business and Professions Code Section 11018.7.
- (g) No amendments to any provisions in this Declaration or other Governing Documents which specifically benefit the Declarant as Developer, shall be made without the written consent of the Declarant.

15.03 Notices.

Any required notice must be given by:

- (a) Personal delivery to the location of the address of the recipient of the Notice; or
- (b) Mailing by first-class, registered or certified pre-paid U.S. mail (deemed given five (5) days after deposit in the mail);
- (c) Delivery by a reputable overnight courier service such as Federal Express, United Parcel Service, etc. (deemed given upon delivery to the location of the address of the recipient of the Notice); or
- (d) Facsimile transmission (deemed given upon date of transmission upon confirmation of receipt).

15.04 Partial Invalidity.

If any of this Declaration is declared invalid or in conflict with any relevant law, the validity of the remainder of this Declaration will remain in full force and effect.

15.05 Number.

As required by the context of this Declaration, a singular grammatical reference includes the plural application.

15.06 Attorneys' Fees.

In the event of any controversy or claim respecting this Declaration, or in connection with the enforcement of this Declaration, the prevailing parties shall be entitled, in addition to all expenses, costs, and damages, to reasonable attorneys' fees.



IN WITNESS WHEREOF, the undersigned, being the Declarant, has executed this Declaration for Tract No. 29771 on the day and year first written above.

DECLARANT:

FORD DAVALL GROUP, LLC,
a California Limited Liability Company

X
By:
Its:

X
By:
Its:

STATE OF CALIFORNIA }
COUNTY OF Riverside } ss.

On May 24, 2001, before me, the undersigned, a Notary Public in and for said State, personally appeared:

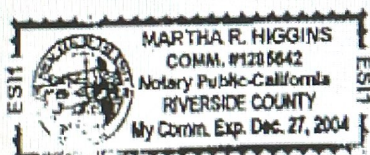
DAN B. STARK

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

WITNESS my hand and official seal.

(SEAL)

Martha R. Higgins
Notary Public



SUBORDINATION BY LIENHOLDER

BUSINESS BANK OF CALIFORNIA, as Beneficiary under the following Deed(s) of Trust which cover(s) the real property described in the Declaration of Covenants, Conditions, Restrictions and Reservation of Easements for Tract No. 29771 ("Declaration") to which this instrument is attached, hereby approves and consents to the recording of this Declaration, and agrees that the lien(s) of said Deed(s) of Trust shall be subordinated to and subject to each and every provision of the Declaration and any future amendments not affecting the beneficial interest. The signing of this Subordination by Lienholder by any Mortgagee shall not constitute said Lienholder's subordination to any future Assessment liens.

Deed of Trust recorded on November 21, 2001 as Instrument No. 2001-576598 of the Official Records of the Riverside County Recorder.

BUSINESS BANK OF CALIFORNIA

X *[Signature]*
By: Shirley Sandoz
Its: Senior Vice President

X _____
By: _____
Its: _____

STATE OF CALIFORNIA
COUNTY OF RIVERSIDE } ss.

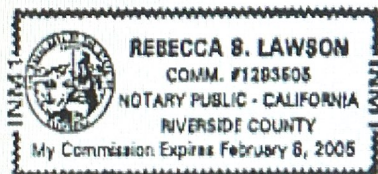
On FEBRUARY 25, 2002, before me, the undersigned, a Notary Public in and for said State, personally appeared:

STEVEN JANDA

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

WITNESS my hand and official seal.

(SEAL)



Rebecca S. Lawson
Notary Public

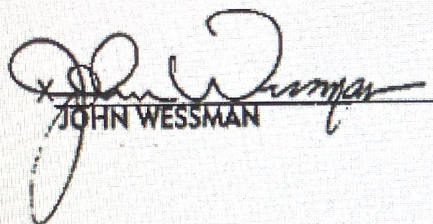


2014-0289357
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61 of 79

SUBORDINATION BY LIENHOLDER

JOHN WESSMAN, a married man as his sole and separate property, as Beneficiary under the following Deed(s) of Trust which cover(s) the real property described in the Declaration of Covenants, Conditions, Restrictions and Reservation of Easements for Tract No. 29771 ("Declaration") to which this instrument is attached, hereby approves and consents to the recording of this Declaration, and agrees that the lien(s) of said Deed(s) of Trust shall be subordinated to and subject to each and every provision of the Declaration and any future amendments not affecting the beneficial interest. The signing of this Subordination by Lienholder by any Mortgagee shall not constitute said Lienholder's subordination to any future Assessment liens.

Deed of Trust recorded on November 21, 2001 as Instrument No. 2001-576600 of the Official Records of the Riverside County Recorder.


JOHN WESSMAN

STATE OF CALIFORNIA
COUNTY OF

} ss.

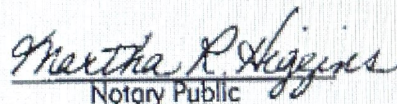
On February 25, 2002, before me, the undersigned, a Notary Public in and for said State, personally appeared:

JOHN WESSMAN

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

WITNESS my hand and official seal.

(SEAL)


Notary Public



2014-0289957
08/01/2014 09:52A
62 of 79

EXHIBIT 'A'

PROPERTY

Lots 20 through 32, inclusive, 73 through 75, inclusive, 102 through 105, inclusive, and Lettered Lots I, K, N, O, P, and Q of Tract No. 29771, in Cathedral City, as per Map filed in Book 311, Pages 46 through 53, inclusive, of Maps, in the Office of the County Recorder of Riverside County.



EXHIBIT "B"

**COMMON AREA LOT(S)
(PHASE I)**

Lettered Lots I, K, N, O, P, and Q of Tract No. 29771, in
Cathedral City, as per Map filed in Book 311, Pages 46
through 53, inclusive, of Maps, in the Office of the County
Recorder of Riverside County.



2014-0289957
08/01/2014 09:52A
64 of 79

EXHIBIT "C"
ADDITIONAL PROPERTY

Lots 1 through 19, inclusive, 33 through 72, inclusive, 76 through 101, inclusive, 106 through 128, inclusive, and Lettered Lots C through G, inclusive, and J, L, M, and R of Tract No. 29771, in the Cathedral City, as per Map filed in Book 311, Pages 46 through 53, inclusive, of Maps, in the Office of the County Recorder of Riverside County.



EXHIBIT "D"

**CALIFORNIA CIVIL CODE SECTIONS
1354, 1365, 1365.5, 1365.7, 1365.9, 1366, 1367, 1368, 1368.4 and 1375
Current as of 01/02
[Page 1 of 14]**

§ 1354. Covenants and restrictions in declaration as equitable servitudes; enforcement

(a) The covenants and restrictions in the declaration shall be enforceable equitable servitudes, unless unreasonable, and shall inure to the benefit of and bind all owners of separate interests in the development. Unless the declaration states otherwise, these servitudes may be enforced by any owner of a separate interest or by the association, or by both.

(b) Unless the applicable time limitation for commencing the action would run within 120 days, prior to the filing of a civil action by either an association or an owner or a member of a common interest development 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), related to the enforcement of the governing documents, the parties shall endeavor, as provided in this subdivision, to submit their dispute to a form of alternative dispute resolution such as mediation or arbitration. The form of alternative dispute resolution chosen may be binding or nonbinding at the option of the parties. Any party to such a dispute may initiate this process by serving on another party to the dispute a request for resolution. The request for resolution shall include:

- (1) A brief description of the dispute between the parties,
- (2) A request for alternative dispute resolution, and
- (3) A notice that the party receiving the request for resolution is required to respond thereto within 30 days of receipt or it will be deemed rejected. Service of the request for resolution shall be in the same manner as prescribed for service in a small claims action as provided in Section 116.340 of the Code of Civil Procedure. Parties receiving a request for resolution shall have 30 days following service of the request for resolution to accept or reject alternative dispute resolution and, if not accepted within the 30-day period by a party, shall be deemed rejected by that party. If alternative dispute resolution is accepted by the party upon whom the request for resolution is served, the alternative dispute resolution shall be completed within 90 days of receipt of the acceptance by the party initiating the request for resolution, unless extended by written stipulation signed by both parties. The costs of the alternative dispute resolution shall be borne by the parties.

(c) At the time of filing a civil action by either an association or an owner or a member of a common interest development 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), related to the enforcement of the governing documents, the party filing the action shall file with the complaint a certificate stating that alternative dispute resolution has been completed in compliance with subdivision (b). The failure to file a certificate as required by subdivision (b) shall be grounds for a demurrer pursuant to Section 430.10 Of the code of civil procedure or a motion to strike pursuant to Section 435 of the Code of Civil Procedure unless the filing party certifies in writing that one of the other parties to the dispute refused alternative dispute resolution prior to the filing of the complaint, that preliminary or temporary injunctive relief is necessary, or that alternative dispute resolution is not required by subdivision (b), because the limitation period for bringing the action would have run within the 120-day period next following the filing of the action, or the court finds that dismissal of the action for failure to comply with subdivision (b) would result in substantial prejudice to one of the parties.



EXHIBIT "D"

CALIFORNIA CIVIL CODE SECTIONS

Current as of 01/02

[Page 2 of 14]

(d) Once a civil action specified in subdivision (a) to enforce the governing documents has been filed by either an association or an owner or member of a common interest development, upon written stipulation of the parties the matter may be referred to alternative dispute resolution and stayed. The costs of the alternative dispute resolution shall be borne by the parties. During this referral, the action shall not be subject to the rules implementing subdivision (c) of Section 68603 of the Government Code.

(e) The requirements of subdivisions (b) and (c) shall not apply to the filing of a cross-complaint.

(f) In any action specified in subdivision (a) to enforce the governing documents, the prevailing party shall be awarded reasonable attorney's fees and costs. Upon motion by any party for attorney's fees and costs to be awarded to the prevailing party in these actions, the court, in determining the amount of the award, may consider a party's refusal to participate in alternative dispute resolution prior to the filing of the action.

(g) Unless consented to by both parties to alternative dispute resolution that is initiated by a request for resolution under subdivision (b), evidence of anything said or of admissions made in the course of the alternative dispute resolution process shall not be admissible in evidence, and testimony or disclosure of such a statement or admission may not be compelled, in any civil action in which, pursuant to law, testimony can be compelled to be given.

(h) Unless consented to by both parties to alternative dispute resolution that is initiated by a request for resolution under subdivision (b), documents prepared for the purpose or in the course of, or pursuant to, the alternative dispute resolution shall not be admissible in evidence, and disclosure of these documents may not be compelled, in any civil action in which, pursuant to law, testimony can be compelled to be given.

(i) Members of the association shall annually be provided a summary of the provisions of this Section, which specifically references this Section. The summary shall include the following language:

"Failure by any member of the association to comply with the prefilling requirements of Section 1354 of the civil code may result in the loss of your rights to sue the association or another member of the association regarding enforcement of the governing documents."

The summary shall be provided either at the time the pro forma budget required by Section 1365 is distributed or in the manner specified in Section 5016 of the corporations code.

(j) Any request for resolution sent to the owner of a separate interest pursuant to subdivision (b) shall include a copy of this Section.

§ 1365. Documents prepared and distributed by associations

Unless the governing documents impose more stringent standards, the association shall prepare and distribute to all its members the following documents:

- (a) A pro forma operating budget, which shall include all of the following:
 - (1) The estimated revenue and expenses on an accrual basis.
 - (2) A summary of the association's reserves based upon the most recent review or study conducted pursuant to Section 1365.5, which shall be printed in bold type and include all of the following:
 - (A) The current estimated replacement cost, estimated remaining life, and estimated useful life of each major component.
 - (B) As of the end of the fiscal year for which the study is prepared:



EXHIBIT "D"

CALIFORNIA CIVIL CODE SECTIONS

Current as of 01/02

[Page 3 of 14]

- (i) The current estimate of the amount of cash reserves necessary to repair, replace, restore, or maintain the major components.
- (ii) The current amount of accumulated cash reserves actually set aside to repair, replace, restore, or maintain major components.
- (iii) If applicable, the amount of funds received from either a compensatory damage award or settlement to an association from any person or entity for injuries to property, real or personal, arising out of any construction or design defects, and the expenditure or disposition of funds, including the amounts expended for the direct and indirect costs of repair of construction or design defects. These amounts shall be reported at the end of the fiscal year for which the study is prepared as separate line items under cash reserves pursuant to clause (ii). In lieu of complying with the requirements set forth in this clause, an association that is obligated to issue a review of their financial statement pursuant to subdivision (b) may include in the review a statement containing all of the information required by this clause.
- (C) The percentage that the amount determined for purposes of clause (ii) subparagraph (B) equals of the amount determined for purposes of clause (i) of subparagraph (B).
- (3) 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 or to provide adequate reserves therefor.
- (4) A general statement addressing the procedures used for the calculation and establishment of those reserves to defray the future repair, replacement, or additions to those major components that the association is obligated to maintain.

The summary of the association's reserves disclosed pursuant to paragraph (2) shall not be admissible in evidence to show improper financial management of an association, provided that other relevant and competent evidence of the financial condition of the association is not made inadmissible by this provision.

A copy of the operating budget shall be annually distributed not less than 45 days nor more than 60 days prior to the beginning of the association's fiscal year.

(b) A review of the financial statement of the association shall be prepared in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy for any fiscal year in which the gross income to the association exceeds seventy-five thousand dollars (\$75,000). A copy of the review of the financial statement shall be distributed within 120 days after the close of each fiscal year.

(c) In lieu of the distribution of the pro forma operating budget required by subdivision (a), the board of directors may elect to distribute a summary of the pro forma operating budget to all its members with a written notice that the pro forma operating budget is available at the business office of the association or at another suitable location within the boundaries of the development and that copies will be provided upon request and at the expense of the association. If any member requests that a copy of the pro forma operating budget required by subdivision (a) be mailed to the member, the association shall provide the copy to the member by first-class United States mail at the expense of the association and delivered within five days. The written notice that is distributed to each of the association members shall be in at least 10-point boldface type on the front page of the summary of the budget.

(d) 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 60-day period immediately preceding the beginning of the association's fiscal year.

(e)(1) A summary of the association's property, general liability, and earthquake and flood insurance policies, which shall be distributed within 60 days preceding the beginning of the association's fiscal year, that includes all of the following information about each policy:

- (A) The name of the insurer.
- (B) The type of insurance.
- (C) The policy limits of the insurance.



EXHIBIT "D"

CALIFORNIA CIVIL CODE SECTIONS

Current as of 01/02

[Page 5 of 14]

(c)(2) However, the board may authorize the temporary transfer of money from a reserve fund to the association's general operating fund to meet short-term cash-flow requirements or other expenses, provided the board has made a written finding, recorded in the board's minutes, explaining the reasons that the transfer is needed and describing when and how the money will be repaid to the reserve fund. The transferred funds shall be restored to the reserve fund within one year of the date of the initial transfer, except that the board may, upon making a finding supported by documentation that a temporary delay would be in the best interests of the common interest development, temporarily delay the restoration. The board shall exercise prudent fiscal management in maintaining the integrity of the reserve account, and shall, if necessary, levy a special assessment to recover the full amount of the expended funds within the time limits required by this section. This special assessment is subject to the limitation imposed by Section 1366. The board may, at its discretion, extend the date the payment on the special assessment is due. Any extension shall not prevent the board from pursuing any legal remedy to enforce the collection of an unpaid special assessment.

(d) When the decision is made to use reserve funds or to temporarily transfer money from the reserve fund to pay for litigation, the association shall notify the members of the association of that decision in the next available mailing to all members pursuant to Section 5016 of the Corporations Code, and of the availability of an accounting of those expenses. Unless the governing documents impose more stringent standards, the association shall make an accounting of expenses related to the litigation on at least a quarterly basis. The accounting shall be made available for inspection by members of the association at the association's office.

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

The study required by this subdivision shall at a minimum include:

- (1) Identification of the major components 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 30 years.
- (2) Identification of the probable remaining useful life of the components identified in paragraph (1) as of the date of the study.
- (3) An estimate of the cost of repair, replacement, restoration, or maintenance of the components identified in paragraph (1) during and at the end of their useful life.
- (4) An estimate of the total annual contribution necessary to defray the cost to repair, replace, restore, or maintain the components identified in paragraph (1) during and at the end of their useful life, after subtracting total reserve funds as of the date of the study.

(f) As used in this section, "reserve accounts" means both of the following:

- (1) 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.
- (2) The funds received and not yet expended or disposed from either a compensatory damage award or settlement to an association from any person or entity for injuries to property, real or personal, arising from any construction or design defects. These funds shall be separately itemized from funds described in paragraph (1).



EXHIBIT "D"

CALIFORNIA CIVIL CODE SECTIONS

Current as of 01/02

[Page 6 of 14]

(g) As used in this section, "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.

(h) This section does not apply to an association that does not have a "common area" as defined in Section 1351.

§ 1365.7. Tortious act or omission of volunteer officer or director of association managing residential development; liability; criteria; limitations

(a) A volunteer officer or volunteer director of an association, as defined in subdivision (a) of Section 1351, which manages a common interest development that is exclusively residential, shall not be personally liable in excess of the coverage of insurance specified in paragraph (4) to any person who suffers injury, including, but not limited to, bodily injury, emotional distress, wrongful death, or property damage or loss as a result of the tortious act or omission of the volunteer officer or volunteer director if all of the following criteria are met:

(1) The act or omission was performed within the scope of the officer's or director's association duties.

(2) The act or omission was performed in good faith.

(3) The act or omission was not willful, wanton, or grossly negligent.

(4) The association maintained and had in effect at the time the act or omission occurred and at the time a claim is made one or more policies of insurance which shall include coverage for (A) general liability of the association and (B) individual liability of officers and directors of the association for negligent acts or omissions in that capacity; provided, that both types of coverage are in the following minimum amount:

(A) At least five hundred thousand dollars (\$500,000) if the common interest development consists of 100 or fewer separate interests.

(B) At least one million dollars (\$1,000,000) if the common interest development consists of more than 100 separate interests.

(b) The payment of actual expenses incurred by a director or officer in the execution of the duties of that position does not affect the director's or officer's status as a volunteer within the meaning of this section.

(c) An officer or director who at the time of the act or omission was a declarant, as defined in subdivision (g) of Section 1351, or who received either direct or indirect compensation as an employee from the declarant, or from a financial institution that purchased a separate interest, as defined in subdivision (l) of Section 1351, at a judicial or nonjudicial foreclosure of a mortgage or deed of trust on real property, is not a volunteer for the purposes of this section.

(d) Nothing in this section shall be construed to limit the liability of the association for its negligent act or omission or for any negligent act or omission of an officer or director of the association.

(e) This section shall only apply to a volunteer officer or director who is a tenant of a separate interest in the common interest development or is an owner of no more than two separate interests in the common interest development.

(f)(1) For purposes of paragraph (1) of subdivision (a), the scope of the officer's or director's association duties shall include, but shall not be limited to, both of the following decisions:

(A) Whether to conduct an investigation of the common interest development for latent deficiencies prior to the expiration of the applicable statute of limitations.

(B) Whether to commence a civil action against the builder for defects in design or construction.



EXHIBIT "D"

CALIFORNIA CIVIL CODE SECTIONS

Current as of 01/02

[Page 7 of 14]

(2) It is the intent of the Legislature that this section clarify the scope of association duties to which the protections against personal liability in this section apply. It is not the intent of the Legislature that these clarifications be construed to expand, or limit, the fiduciary duties owed by the directors or officers.

§ 1365.9. Owner limitation liability; insurance

(a) It is the intent of the Legislature to offer civil liability protection to owners of the separate interest in a common interest development that have common areas owned in tenancy-in-common if the association carries a certain level of prescribed insurance that covers a cause of action in tort.

(b) Any cause of action in tort against any owner of a separate interest arising solely by reason of an ownership interest as a tenant in common in the common area of a common interest development shall be brought only against the association and not against the individual owners of the separate interests, as defined in subdivision (f) of Section 1351, if both of the insurance requirements in paragraphs (1) and (2) are met:

- (1) The association maintained and has in effect for this cause of action, one or more policies of insurance which include coverage for general liability of the association.
- (2) The coverage described in paragraph (1) is in the following minimum amounts:
 - (A) At least two million dollars (\$2,000,000) if the common interest development consists of 100 or fewer separate interests.
 - (B) At least three million dollars (\$3,000,000) if the common interest development consists of more than 100 separate interests.

§ 1366. Levy of assessments; limitation on increases; delinquent assessments; interest

(a) Except as provided in this section, the association shall levy regular and special assessments sufficient to perform its obligations under the governing documents and this title. However, annual increases in regular assessments for any fiscal year, as authorized by subdivision (b), shall not be imposed unless the board has complied with subdivision (a) of Section 1365 with respect to that fiscal year, or has obtained the approval of owners, constituting a quorum, casting a majority of the votes at a meeting or election 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 50 percent of the owners of an association.

(b) Notwithstanding more restrictive limitations placed on the board by the governing documents, the board of directors may not impose a regular assessment that is more than 20 percent greater than the regular assessment for the association's preceding fiscal year or impose special assessments which in the aggregate exceed 5 percent of the budgeted gross expenses of the association for that fiscal year without the approval of owners, constituting a quorum, casting a majority of the votes at a meeting or election 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 50 percent of the owners of an association. This section does not limit assessment increases necessary for emergency situations. For purposes of this section, an emergency situation is any one of the following:



EXHIBIT 'D'

CALIFORNIA CIVIL CODE SECTIONS

Current as of 01/02

[Page 8 of 14]

- (1) An extraordinary expense required by an order of a court.
- (2) An extraordinary expense necessary to repair or maintain the common interest development or any part of it for which the association is responsible where a threat to personal safety on the property is discovered.
- (3) An extraordinary expense necessary to repair or maintain the common interest development 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 under Section 1365. However, prior to the imposition or collection of an assessment under this subdivision, the board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to the members with the notice of assessment.
- (4) An extraordinary expense in making the first payment of the earthquake insurance surcharge pursuant to Section 5003 of the Insurance Code.
- (c) The association shall provide notice by first-class mail to the owners of the separate interests of any increase in the regular or special assessments of the association, not less than 30 nor more than 60 days prior to the increased assessment becoming due.
- (d) Regular and special assessments levied pursuant to the governing documents are delinquent 15 days after they become due. If an assessment is delinquent the association may recover all of the following:
 - (1) Reasonable costs incurred in collecting the delinquent assessment, including reasonable attorney's fees.
 - (2) A late charge not exceeding 10 percent of the delinquent assessment or ten dollars (\$10), whichever is greater, unless the declaration specifies a late charge in a smaller amount, in which case any late charge imposed shall not exceed the amount specified in the declaration.
 - (3) Interest on all sums imposed in accordance with this section, including the delinquent assessment, reasonable costs of collection, and late charges, at an annual percentage rate not to exceed 12 percent interest, commencing 30 days after the assessment becomes due.
- (e) Associations are hereby exempted from interest-rate limitations imposed by Article XV of the California Constitution, subject to the limitations of this section.

§ 1367. Assessments; debt of owner; lien; notice; enforcement of lien; application of section

- (a) A regular or special assessment and any late charges, reasonable costs of collection, and interest, as assessed in accordance with Section 1366, shall be a debt of the owner of the separate interest at the time the assessment or other sums are levied. Before an association may place a lien upon the separate interest of an owner to collect a debt which is past due under this subdivision, the association shall notify the owner in writing by certified mail of the fee and penalty procedures of the association, provide an itemized statement of the charges owed by the owner, including items on the statement which indicate the principal owed, any late charges and the method of calculation, any attorney's fees, and the collection practices used by the association, including the right of the association to the reasonable costs of collection. In addition, any payments toward such a debt shall first be applied to the principal owed, and only after the principal owed is paid in full shall such payments be applied to interest or collection expenses.
- (b) The amount of the assessment, plus any costs of collection, late charges, and interest assessed in accordance with Section 1366, shall be a lien on the owner's interest in the common interest development from and after the time the association causes to be recorded with the county



EXHIBIT "D"

CALIFORNIA CIVIL CODE SECTIONS

Current as of 01/02

[Page 9 of 14]

recorder of the county in which the separate interest is located, a notice of delinquent assessment, which shall state the amount of the assessment and other sums imposed in accordance with Section 1366, a legal description of the owner's interest in the common interest development against which the assessment and other sums are levied, the name of the record owner of the owner's interest in the common interest development against which the lien is imposed, and, in order for the lien to be enforced by nonjudicial foreclosure as provided in subdivision (d) the name and address of the trustee authorized by the association to enforce the lien by sale. The notice of delinquent assessment shall be signed by the person designated in the declaration or by the association for that purpose, or if no one is designated, by the president of the association, and mailed in the manner set forth in Section 2924b, to all record owners of the owner's interest in the common interest development no later than 10 calendar days after recordation. Upon payment of the sums specified in the notice of delinquent assessment, the association shall cause to be recorded a further notice stating the satisfaction and release of the lien thereof. A monetary penalty imposed by the association as a means of reimbursing the association for costs incurred by the association in the repair of damage to common areas and facilities for which the member or the member's guests or tenants were responsible may become a lien against the member's separate interest enforceable by the sale of the interest under Sections 2924, 2924b, and 2924c, provided the authority to impose a lien is set forth in the governing documents. It is the intent of the Legislature not to contravene Section 2792.26 of Title 10 of the California Code of Regulations, as that section appeared on January 1, 1996, for associations of subdivisions that are being sold under authority of a subdivision public report, pursuant to Part 2 (commencing with Section 11000) of Division 4 of the Business and Professions Code.

(c) Except as indicated in subdivision (b), a monetary penalty imposed by the association as a disciplinary measure for failure of a member to comply with the governing instruments, except for the late payments, may not be characterized nor treated in the governing instruments as an assessment which may become a lien against the member's subdivision interest enforceable by the sale of the interest under Sections 2924, 2924b, and 2924c.

(d) A lien created pursuant to subdivision (b) shall be prior to all other liens recorded subsequent to the notice of assessment, except that the declaration may provide for the subordination thereof to any other liens and encumbrances.

(e) After the expiration of 30 days following the recording of a lien created pursuant to subdivision (b), the lien may be enforced in any manner permitted by law, including sale by the court, sale by the trustee designated in the notice of delinquent assessment, or sale by a trustee substituted pursuant to Section 2934a. Any sale by the trustee shall be conducted in accordance with the provisions of Sections 2924, 2924b, and 2924c applicable to the exercise of powers of sale in mortgages and deeds of trusts.

(f) Nothing in this section or in subdivision (a) of Section 726 of the Code of Civil Procedure prohibits actions against the owner of a separate interest to recover sums for which a lien is created pursuant to this section or prohibits an association from taking a deed in lieu of foreclosure.

(g) This section only applies to liens recorded on or after January 1, 1986.

§ 1368. Sale or title transfer; provision of specified items to prospective purchasers; copies; fees; violations; penalty and attorney fees; validity of title transferred in violation; additional requirements

(a) The owner of a separate interest, other than an owner subject to the requirements of Section 11018.6 of the Business and Professions Code, shall, as soon as practicable before transfer of title to the separate interest or execution of a real property sales contract therefor, as defined in Section 2985, provide the following to the prospective purchaser:

(1) A copy of the governing documents of the common interest development.



EXHIBIT "D"

CALIFORNIA CIVIL CODE SECTIONS

Current as of 01/02

[Page 10 of 14]

- (2) If there is a restriction in the governing documents limiting the occupancy, residency, or use of a separate interest on the basis of age in a manner different from that provided in Section 51.3, a statement that the restriction is only enforceable to the extent permitted by Section 51.3 and a statement specifying the applicable provisions of Section 51.3.
 - (3) A copy of the most recent documents distributed pursuant to Section 1365.
 - (4) 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 interest in the common interest development which are unpaid on the date of the statement. The statement shall also include true information on late charges, interest, and costs of collection which, as of the date of the statement, are or may be made a lien upon the owner's interest in a common interest development pursuant to Section 1367.
 - (5) 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 subdivision.
- (b) Upon written request, an association shall, within 10 days of the mailing or delivery of the request, provide the owner of a separate interest with a copy of the requested items specified in paragraphs (1), (2), (3), and (4) of subdivision (a). The association may charge a fee for this service, which shall not exceed the association's reasonable cost to prepare and reproduce the requested items.
- (c) An association shall not impose or collect any assessment, penalty, or fee in connection with a transfer of title or any other interest except the association's actual costs to change its records and that authorized by subdivision (b).
- (d) Any person or entity who willfully violates this section shall be liable to the purchaser of a separate interest which is subject to this section for actual damages occasioned thereby and, in addition, shall pay a civil penalty in an amount not to exceed five hundred dollars (\$500). In an action to enforce this liability, the prevailing party shall be awarded reasonable attorneys' fees.
- (e) Nothing in this section affects the validity of title to real property transferred in violation of this section.
- (f) In addition to the requirements of this section, an owner transferring title to a separate interest shall comply with applicable requirements of Sections 1133 and 1134.

§ 1368.4. Damage claim against developer; pre-filing notice to members

- (a) Not later than 30 days prior to the filing of any civil action by the association against the declarant or other developer of a common interest development for alleged damage to the common areas, alleged damage to the separate interests that the association is obligated to maintain or repair, or alleged damage to the separate interests that arises out of, or is integrally related to, damage to the common areas or separate interests that the association is obligated to maintain or repair, the board of directors of the association shall provide written notice to each member of the association who appears on the records of the association when the notice is provided. This notice shall specify all of the following:
- (1) That a meeting will take place to discuss problems that may lead to the filing of a civil action;
 - (2) The options, including civil actions, that are available to address the problems; and
 - (3) The time and place of this meeting.
- (b) Notwithstanding subdivision (a), if the association has reason to believe that the applicable statute of limitations will expire before the association file the civil action, the association may give the notice, as described above, within 30 days after the filing of the action.



EXHIBIT "D"

CALIFORNIA CIVIL CODE SECTIONS

Current as of 01/02

[Page 11 of 14]

§ 1375. Damage claim against developer; notice to developer; other requirements

(a) Before an association commences an action for damages against a builder of a common interest development based upon a claim for defects in the design or construction of the common interest development, all of the requirements of subdivisions (b) to (g), inclusive, shall be met, except as otherwise provided in this section.

(b)(1) The association shall give written notice to the builder against whom the claim is made. This notice shall include all of the following:

- (A) A preliminary list of defects;
- (B) A summary of the result of a survey or questionnaire distributed to homeowners to determine the nature and extent of defects, if this survey has been conducted or a questionnaire has been distributed; and
- (C) Either a summary of the results of testing conducted to determine the nature and extent of defects or the actual test results, if this testing has been conducted.

(b)(2) The association's notice shall, upon delivery of the notice to the builder, commence a period of time not to exceed 90 days, unless the association and builder agree to a longer period, during which the association and builder shall either, in accordance with the requirements of this section, attempt to settle the dispute or attempt to agree to submit it to alternative dispute resolution.

(b)(3) (A) Except as provided in this section and notwithstanding any other provision of law, the notice by the association shall, upon mailing, toll all statutory and contractual limitations on actions against all parties who may be responsible for the damages claimed, whether named in the notice or not, including claims for indemnity applicable to the claim, for a period of 150 days or a longer period agreed to in writing by the association and the builder.

(b)(3) (B) At any time, the builder may give written notice to cancel the tolling of the statute of limitations provided in this section. Upon delivery of this written cancellation notice, the association shall be relieved of any further obligations to satisfy the requirements of this subdivision and subdivisions (c) to (e), inclusive. The tolling of all applicable statutes of limitations shall cease 60 days after the written notice of cancellation by the builder is delivered to the association.

(b)(3) (B)(1) Within 25 days of the date the association delivers the notice required by subdivision (b), the builder may request in writing to meet and confer with the board of directors of the association, and to inspect the project and conduct testing, including testing that may cause physical damage to any property in the development, in order to evaluate the claim. If the builder does not make a timely request to meet and confer with the board of directors of the association, or to conduct inspection and testing, the association shall be relieved of any further obligations to satisfy the requirements of this subdivision and subdivisions (d) and (e). Unless the builder and association otherwise agree, the meeting shall take place no later than 10 days from the date of the builder's written request, at a mutually agreeable time and place. The meeting shall be subject to subdivision (g) of Section 1363. The discussions at the meeting are privileged communications and are not admissible in evidence in any civil action, unless the association and builder consent to their admission. The meeting shall be for the purpose of discussing all of the following:

- (A) The nature and extent of the claimed defects;
- (B) Proposed methods of repair, to the extent there is sufficient information;
- (C) Proposals for submitting the dispute to alternative dispute resolution; and
- (D) Requests from the builder to inspect the project and conduct testing.



EXHIBIT "D"

CALIFORNIA CIVIL CODE SECTIONS

Current as of 01/02

[Page 12 of 14]

(b)(3) (B)(2) If the builder requests in writing to meet and confer with the board of directors of the association pursuant to paragraph (1) of this subdivision, the builder shall deliver the notice provided by the association to the builder pursuant to subdivision (b) to any insurer that has issued a policy to the builder which imposes upon the insurer a duty to defend the insured or indemnify the insured for losses resulting from the defects identified in the notice required by subdivision (b). The notice by the builder shall, upon receipt, impose upon that insurer any obligation which would be imposed under the terms of the policy if the insured had been served with a summons and complaint for damages. The builder shall inform the association when the builder delivers the notice to each insurer pursuant to this paragraph.

(d)(1) If the association conducted inspection and testing prior to the date it sent the written notice pursuant to subdivision (b), the association shall, at the earliest practicable date after the meeting held pursuant to subdivision (c), make available for inspection and testing at least those areas inspected or tested by the association. The inspection and testing shall be completed within 15 days from the date the association makes these areas available for inspection and testing, unless the association and builder agree to a longer period. If the builder does not timely complete the inspection and testing, the association shall be relieved for any further obligations to satisfy the requirements of this subdivision and subdivision (e). The manner in which the inspection and testing shall be conducted, and the extent of any inspection and testing to be conducted beyond that which was conducted by the association prior to sending the notice, shall be set by agreement of the association and builder.

(d)(2) The builder shall pay all costs of inspection and testing that is requested by the builder, shall restore the property to the condition which existed immediately prior to the testing, and shall indemnify the association and owner of the separate interest for any damages resulting from the testing.

(d)(3) Interior inspections of occupied separate interests and destructive testing of any interior of a separate interest shall be conducted in accordance with the governing documents of the association, unless otherwise agreed to by the owner of the separate interest. If the governing documents of the association do not provide for inspection or testing of separate interests, this inspection or testing shall be conducted in a manner and at a time agreed to by the owner of the separate interest.

(d)(4) The results of the inspection and testing shall not be inadmissible in evidence in any civil action solely because the inspection and testing was conducted pursuant to this section.

(e)(1) Within 30 days of the completion of inspection and testing or within 30 days of a meeting held pursuant to subdivision (c) if no inspection and testing is conducted pursuant to subdivision (d), the builder shall submit to the association all of the following:

- (e)(1) (A) A request to meet with the board to discuss a written settlement offer;
- (e)(1) (B) A written settlement offer, and a concise explanation of the specific reasons for the terms of the offer. This offer may include an offer to submit the dispute to alternative dispute resolution;
- (e)(1) (C) A statement that the builder has access to sufficient funds to satisfy the conditions of the settlement offer; and
- (e)(1) (D) A summary of the results of testing conducted for the purpose of determining the nature and extent of defects, if this testing has been conducted, unless the association provided the builder with actual test results pursuant to subdivision (b), in which case the builder shall provide the association with actual test results.

(e)(2) If the builder does not timely submit the items required by this subdivision, the association shall be relieved of any further obligations to satisfy the requirements of this subdivision only.

(e)(3) No less than 10 days after the builder submits the items required by this paragraph, the builder and the board of directors of the association shall meet and confer about the builder's settlement offer, including any offer to submit the dispute to alternative dispute resolution.

