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Newmeyer & Dillon
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North Tower - Sixth Floor
Newport Beach, California 92660
Attention: Michael S. Cucchisi
FA 165567M PSC

Recorded in the County of Orange, California
Gary L. Granville, Clerk/Recorder



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DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

LOS PASEOS

IN

ORANGE COUNTY, CALIFORNIA

THIS INSTRUMENT IS RECORDED IN THE
COUNTY OF ORANGE AT THE REQUEST OF
FIRST AMERICAN TITLE INSURANCE COMPANY
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First American Title Insurance Co.

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EXHIBITS

A - Initial Covered Property

B - Annexable Property

C - Association Property in Initial Covered Property

D - Side-Yard Easements in Initial Covered Property

E - Perimeter Walls in Initial Covered Property

F - Fire Lanes in Initial Covered Property

**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS**

FOR

LOS PASEOS

This Declaration of Covenants, Conditions and Restrictions (the "Declaration") is made as of March 20, 1998, by Baywood Homes-Rancho Santa Margarita, LLC (the "Declarant").

RECITALS

A. Declarant is the fee owner of certain real property located in Rancho Santa Margarita in Orange County, California, and more fully described on Exhibit A attached hereto (the "Initial Covered Property").

B. Declarant intends to create a multiphased planned development in accordance with Section 1351(k) of the California Civil Code and to establish covenants, conditions, restrictions, rights, easements, liens and charges constituting a general scheme for the management, use, occupancy and enjoyment of the Covered Property, all running with the Covered Property to enhance and protect the value, desirability and attractiveness of the Covered Property and to enhance the quality of life within the Covered Property. All terms used in these Recitals shall have the same meaning given to such terms in this Declaration unless the context clearly indicates otherwise.

C. All persons who purchase Residences within the Covered Property shall be Owners and Members.

THEREFORE, Declarant hereby covenants, agrees and declares that all of the Covered Property shall be held and conveyed subject to the following covenants, conditions, restrictions, rights, easements, liens and charges, all of which shall (1) be for the benefit of the Covered Property, the Owners and the Association, (2) be enforceable equitable servitudes, (3) inure to the benefit of and bind all Owners in accordance with California Civil Code Section 1354, (4) be binding upon all parties having or acquiring any right, title or interest in any part of the Covered Property, and (5) inure to the benefit of each Owner.

ARTICLE 1.

DEFINITIONS

Unless the context clearly indicates otherwise, the following terms used in this Declaration are defined as follows:

Section 1.1 - Allowable Charges. The costs, late charges and interest in the amounts which may be recovered by the Association when any Assessment becomes delinquent as permitted by Section 1366(d) of the California Civil Code, which, as of the date hereof, permits (1) reasonable costs incurred in collecting delinquent Assessments including reasonable attorneys' fees, (2) a late charge not exceeding ten percent (10%) of the delinquent Assessments or Ten Dollars (\$10.00), whichever is greater, and (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 twelve percent (12%) interest, commencing not sooner than thirty (30) days after the Assessment becomes due. The Association shall be exempt from compliance with the interest rate limitations imposed under Article XV of the California Constitution until and unless Section 1366(e) of the California Civil Code is amended to provide otherwise.

Section 1.2 - Annexable Property. That certain real property described on Exhibit B attached hereto. All or any portion of the Annexable Property may, from time to time, be annexed into the Covered Property.

Section 1.3 - Annexed Property. Any property described in a recorded Supplementary Declaration that has become a part of the Covered Property.

Section 1.4 - Architectural Committee. The committee or committees provided for in the Article hereof entitled "Architectural Control."

Section 1.5 - Architectural Guidelines. The architectural and landscape standards and Architectural Committee rules, collectively, adopted by the Board, as such standards and rules may be amended or supplemented from time to time, all pursuant to Article 4 of this Declaration.

Section 1.6 - Articles and Bylaws. The Articles of Incorporation and Bylaws of the Association as the same may be amended from time to time.

Section 1.7 - Assessments. Each of the following charges levied by the Board pursuant to the provisions of the Association Management Documents for the purposes indicated below:

(a) **Capital Improvement Assessment.** A charge levied against each Owner in any calendar year applicable to that year only for the purpose of defraying, in whole or in part, the cost of any installation, construction or replacement of a described capital improvement upon the Common Area to the extent the same is not covered by Reconstruction Assessments or Special Benefits Assessments, including the necessary fixtures and personal property related thereto.

(b) **Penalty Assessment.** A charge levied against an Owner either (1) as a monetary penalty as a disciplinary measure for Owner's failure to comply with the provisions of the Association Management Documents, except for the late payment of Assessments, or (2) to bring such Owner and his Residence into compliance with the Association Management Documents.

(c) **Reconstruction Assessment.** A charge levied against each Affected Owner to cover the cost to the Association for the repair, replacement or reconstruction of any portion or portions of the Insured Improvements pursuant to the provisions of the Article entitled "Destruction of Improvements" of this Declaration.

(d) **Regular Assessment.** A charge levied against each Owner and such Owner's Residence for such Owner's proportionate share of the estimated Common Expenses for the forthcoming fiscal year.

(e) **Regular Special Benefits Assessment.** A Special Benefits Assessment which is a charge levied against an Owner and such Owner's Residence within a particular Special Benefits Area representing such Owner's proportionate share of the estimated Special Benefits Expenses for the forthcoming fiscal year.

(f) **Reimbursement Assessment.** A charge levied against an Owner as a means of reimbursing the Association for costs it incurs in repairing damage to Association maintained Common Area for which the Owner or the Owner's tenants or guests were responsible.

(g) **Special Assessment.** A charge levied against all Owners to cover the cost of any action or undertaking on behalf of the Association which is not specifically covered under any other Assessment. If the Association provides materials or services which benefit a particular Owner, such Owner in accepting such materials and services agrees that the cost thereof shall also be a Special Assessment.

(h) **Special Benefits Assessment.** A charge levied against an Owner and such Owner's Residence within a particular Special Benefits Area representing such Owner's proportionate share of the Special Benefits Expenses for such Special Benefits Area.

Section 1.8 - Association. Los Paseos Maintenance Corporation, a California nonprofit mutual benefit corporation, and its successors and assigns.

Section 1.9 - Association Common Area. The portions of the Common Area (other than Exclusive Use Common Area) designated by the Association from time to time for the exclusive use of the Association or any designees of the Association for purposes consistent with the management and operation of the Covered Property (i.e., office facilities, manager's living quarters, storage rooms or areas, utility installations and structures containing utility installations and control panels, and landscape or open space areas required to be maintained by the Association that are not intended for common use by the Owners).

Section 1.10 - Association Common Area Improvements. The Improvements on the Association Common Area.

Section 1.11 - Association Management Documents. The Articles, Bylaws, Declaration, Supplementary Declarations, Architectural Guidelines, and the Association Rules, and any amendments to any of the foregoing.

Section 1.12 - Association Property. All real property and the Improvements thereon owned in fee, by easement or leased from time to time by the Association. The Association Property within the Initial Covered Property is described in Exhibit C attached hereto.

Section 1.13 - Association Rules. The rules adopted, amended and repealed from time to time by the Board pursuant to the Article entitled "Discipline of Members" of the Bylaws.

Section 1.14 - Board. The Board of Directors of the Association.

Section 1.15 - California Statutes. The Sections of the Civil Code, Business and Professions Code, Code of Civil Procedure, Corporations Code or other statutory codes of the State of California, any amendments thereto or any successor statute thereof.

Section 1.16 - Close of Escrow. The date of the recordation in the Official Records of the conveyance of a Residence within a Phase in a transaction requiring the delivery of a Final Subdivision Public Report.

Section 1.17 - Common Area. All of the Association Property within the Covered Property.

Section 1.18 - Common Expenses. The actual and estimated costs or amounts established by the Board, other than Special Benefits Expenses, which are to be allocated to all of the Owners to be paid for:

(a) Maintenance, management, operation, repair and replacement of all real property and the Improvements thereon which the Association is obligated to maintain pursuant to the provisions of the Association Management Documents;

(b) Unpaid Capital Improvement Assessments, Reconstruction Assessments, Regular Assessments, Special Assessments and Penalty Assessments levied as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to Common Area other than Exclusive Use Common Area;

(c) Management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and employees;

(d) To the extent not metered or billed to Owners, utilities, trash pickup and disposal, gardening and other services which generally benefit and enhance the value and desirability of the Covered Property;

(e) Premiums on all insurance maintained by the Association pursuant to the Article entitled "Insurance" of this Declaration (except for fidelity insurance obtained by a management agent for its officers, employees and agents);

(f) Adequate reserves to cover the deductible amounts of any insurance policies maintained by the Association and for the future repair or replacement of, or additions to, those major components which the Association is obligated to maintain pursuant to this Declaration, including reserves for replacements for structural elements and mechanical equipment of recreational or other facilities maintained by the Association;

(g) Taxes paid by the Association;

(h) Discharge of any lien or encumbrance levied against the Common Area or portions thereof;

(i) Expenses incurred by committees established by the Board;

(j) Security systems or services installed by or contracted for by the Association; and

(k) Other expenses incurred by the Association for any reason whatsoever in connection with the Common Area being maintained by the Association pursuant to the provisions of this Declaration or the costs of any other item or items designated by the Association Management Documents, or in furtherance of the purposes of the Association or in the discharge of any duties or powers of the Association.

Section 1.19 - Common Facilities. The Improvements upon the Nonexclusive Use Common Area.

Section 1.20 - County. The County of Orange, California.

Section 1.21 - Covered Property. The Initial Covered Property and the Annexed Property. "Covered Property" shall also be deemed to include any portion of a lot or parcel that by virtue of the recordation of a lot line adjustment and a grant deed or quitclaim deed in the Official Records in favor of an Owner or the Association is comprised in part of real property that was specifically encumbered by the Declaration by the recordation of the Declaration or any Supplementary Declaration and a portion of a contiguous lot or parcel that was not specifically encumbered by the Declaration or a Supplementary Declaration. The Covered Property is a common interest development as defined in Section 1351(c) of the California Civil Code which is being developed as a planned development as defined in Section 1351(k) of the California Civil Code.

Section 1.22 - Declarant.

(a) Baywood Homes-Rancho Santa Margarita, LLC, its successors and assigns, by merger, consolidation or by purchase of all or substantially all of its assets; and

(b) any person or entity, his or its successors and assigns, to which the foregoing Declarant has assigned any or all of its rights and obligations by an assignment expressed in a recorded instrument including, without limitation, a deed, lease, option agreement, land sale contract or assignment as the case may be, transferring such interest if such assignee agrees in writing with Declarant to accept such assignment.

Section 1.23 - Declaration. This Declaration of Covenants, Conditions and Restrictions, as it may be amended from time to time.

Section 1.24 - Development. The Initial Covered Property and the Annexable Property.

Section 1.25 - DRE. The California Department of Real Estate.

Section 1.26 - Exclusive Use Common Area. Those portions of the Common Area the exclusive use of which, subject to the rights of the Association and Declarant, has been granted to a particular Owner or Owners and which, when conveyed, shall be appurtenant to the Lot of any such Owner or Owners. Exclusive Use Common Areas shall be created pursuant to the Section entitled "Exclusive Use Common Areas" of the Article entitled "Easements and Rights" of this Declaration.

Section 1.27 - Exhibit. Any document so designated herein and attached hereto or so designated in a Supplementary Declaration and attached thereto. Each of such Exhibits is hereby incorporated in this Declaration or such Supplementary Declaration by this reference.

Section 1.28 - Federal Agencies. Collectively one or more of the following agencies to the extent that any such agency is a Mortgagee, Owner, or insurer or guarantor of a Mortgage within the Covered Property and the following letter designation for such agencies shall mean respectively the agency specified within the parentheses following such letter designation: FHA (Federal Housing Administration), FHLMC (Federal Home Loan Mortgage Corporation), FNMA (Federal National Mortgage Association), GNMA (Government National Mortgage Association), VA (Department of Veterans Affairs).

Section 1.29 - Fence Limitation Zones. Those portions of each Lot described as such in the Architectural Guidelines.

Section 1.30 - Final Subdivision Public Report. The report issued by the DRE pursuant to Section 11018.2 of the California Business and Professions Code on a portion of the Covered Property, as amended, if applicable.

Section 1.31 - Fire Lanes. Those portions of the Covered Property that must be kept clear for fire protection purposes. The Fire Lanes within the Initial Covered Property are depicted on Exhibit F attached hereto and the Fire Lanes within any Annexed Property shall be depicted on an Exhibit attached to the Supplementary Declaration annexing such Annexed Property to this Declaration.

Section 1.32 - Improvement. All of the following:

(a) Structures and appurtenances thereto of every type and kind, including but not limited to, buildings, out buildings, walkways, sprinkler and sewer pipes or lines, garages, carports, gazebos, swimming pools and other recreational facilities, roads, driveways, parking areas, fences, screens, screening walls, retaining walls, awnings, patio and balcony covers, stairs, decks, landscaping, hedges, slopes, windbreaks, the exterior surfaces of any visible structure, trees and shrubs, poles, signs, solar or windpowered energy systems or equipment, and water softener or heater or air conditioning and heating fixtures and equipment;

(b) The demolition or destruction by voluntary action of any structure or appurtenance thereto of every type and kind;

(c) The grading, excavation, filling, or similar disturbance to the surface of the land including, without limitation, change of grade, change of ground level, change of drainage pattern or change of stream bed;

(d) Landscaping, planting, clearing, or removing of trees, shrubs, grass, or plants; and

(e) Any change or alteration of any Improvement including any change of material, exterior appearance, color or texture.

Section 1.33 - Lot and Original Lot. A lot shown on the most recently filed tract map describing such lot or a parcel shown on the most recently filed parcel map describing such parcel covering any portion of the Covered Property and filed for record in the County, as such lot or parcel may be adjusted from time to time by any recorded lot line adjustment, to the extent that such lot or parcel is a part of the Covered Property, all of which are incorporated herein by reference. "Original Lot" shall mean each lot within the Initial Covered Property as such lot is shown on Tract Map No. 15481, and after the annexation thereof, each lot shown on the tract map or each parcel shown on the parcel map filed for record in the County and specifically referenced and described in the Supplementary Declaration by which such property was annexed to the plan of this Declaration, as such Original Lot may be adjusted from time to time by any recorded lot line adjustment. Lot or Original Lot shall not include any Association Property.

Section 1.34 - Master Declaration. That certain Amended and Restated Declaration of Covenants, Conditions and Restrictions recorded on April 24, 1986, as Instrument No. 86-162928 of Official Records of the County, and any amendments thereto.

Section 1.35 - Member. Every person or entity who is an Owner including Declarant so long as Declarant continues to be an Owner.

Section 1.36 - Mortgage and Mortgagee. Any duly recorded mortgage or deed of trust encumbering a portion of the Covered Property, and the holder of the mortgagee's or beneficiary's interest under any such Mortgage, respectively. "First Mortgage" and "First Mortgagee" shall mean a Mortgage which has priority over all other Mortgages encumbering a specific Residence, and the holder of any such First Mortgage, respectively.

Section 1.37 - Nonexclusive Use Common Area. The real property and amenities owned or managed by the Association for the common use of all Owners. The Nonexclusive Use Common Area shall consist of all of the Common Area except any Exclusive Use Common Area, Association Common Area and Special Benefits Common Area.

Section 1.38 - Official Records. The Official Records in the Office of the County Recorder of the County.

Section 1.39 - Owner. One or more persons or entities who are alone or collectively the record owner of a fee simple title to a Residence, including Declarant, excluding those having any such interest merely as security for the performance of an obligation. If a Residence has been sold under a land sale contract in which the State of California is the vendor, then the vendee shall be deemed to be the Owner of such Residence. If a Residence is leased by Declarant for a term in excess of ten (10) years and the lease or memorandum thereof is recorded, the lessee or transferee of the leasehold interest and not the Declarant shall be deemed to be the Owner. If fee title to a Residence is owned other than by Declarant, the Owner of the fee title and not the lessee of such Residence shall be deemed the Owner regardless of the term of the lease.

Section 1.40 - Perimeter Walls. Certain walls and fences surrounding or within the Covered Property. The Perimeter Walls surrounding or within the initial Covered Property are depicted on **Exhibit E** attached hereto and the Perimeter Walls surrounding or within any Annexed Property shall be depicted on an Exhibit attached to the Supplementary Declaration annexing such Annexed Property to this Declaration.

Section 1.41 - Phase. Each increment of the Covered Property covered by a Final Subdivision Public Report. "First Phase" shall mean the first increment of the Covered Property covered by a Final Subdivision Public Report.

Section 1.42 - Pro Forma Operating Budget. The budget defined in Section 1365(a) of the California Civil Code which, until such Section is amended to provide otherwise, includes the following:

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

(b) A summary of the Association's reserves based upon the most recent review or study conducted pursuant to Section 1365.5 of the California Civil Code and the Section entitled "Review of Accounts" of the Bylaws which is printed in bold type and includes all of the following:

(i) The current estimated replacement cost, estimated remaining life, and estimated useful life of each major component that the Association is obligated to maintain;

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

(A) The current estimate of the amount of cash reserves necessary to repair, replace, restore or maintain the major components that the Association is obligated to maintain;

(B) The current amount of accumulated cash reserves actually set aside to repair, replace, restore or maintain major components that the Association is obligated to maintain; and

(iii) The percentage that the amount determined for purposes of clause (B) of subparagraph (ii) above is of the amount determined for purposes of clause (A) of subparagraph (ii) above

(c) A statement as to whether the Board has determined or anticipates that the levy of one or more Special Assessments will be required to repair, replace or restore any major component that the Association is obligated to maintain or to provide adequate reserves therefor; and

(d) A general statement setting forth 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.

Section 1.43 - Public Agency. Individually and/or collectively the City, if any, the County, the State of California, and the United States of America, or any agency of any of the foregoing that has authority over all or any portion of the Covered Property or which regulates or has the authority to regulate any of the uses thereon.

Section 1.44 - Residence. A Lot together with any Exclusive Use Common Area appurtenant thereto and any Side-Yard Easement which benefits such Lot.

Section 1.45 - SAMLARC. Rancho Santa Margarita Landscape and Recreation Corporation, a nonprofit mutual benefit corporation incorporated under the laws of the State of California, its successors and assigns.

Section 1.46 - SAMLARC Management Documents. The Master Declaration, the Supplementary Master Declarations, the Articles of Incorporation and Bylaws of SAMLARC, the Architectural Standards of SAMLARC, the SAMLARC Rules, and any amendments to any of the foregoing.

Section 1.47 - Side-Yard Easement. An easement appurtenant to certain specified "Benefitted Property" as more fully described in the Section hereof entitled "Side-Yard Easements" of the Article hereof entitled "Easements and Rights."

Section 1.48 - Special Benefits Area. A particular portion of the Covered Property designated as such in this Declaration or in any Supplementary Declaration which will require particular services for which the Association shall incur expenses attributable only to Owners within such portion of the Covered Property. There is no Special Benefits Area in the Initial Covered Property. Special Benefits Areas may be created within any Annexed Property by the Supplementary Declaration applicable thereto.

Section 1.49 - Special Benefits Common Area. As to any Special Benefits Area, the portion thereof or the Improvements therein required to be maintained by the Association as a portion of the Common Area pursuant to the provisions of this Declaration or any Supplementary Declaration for the exclusive benefit of the Owners within such Special Benefits Area.

Section 1.50 - Special Benefits Expenses. The actual and estimated costs or expenses the Association incurs for the exclusive benefit of Owners within a particular Special Benefits Area, and may include, without limitation, any of the kinds of expenses described as Common Expenses hereunder but which pertain only to the Residences or Owners within such Special Benefits Area. The Special Benefits Expenses of a Special Benefits Area shall consist of the costs or expenses described below that have been incurred specifically for, or that have been allocated to, such Special Benefits Area or Special Benefits Common Area:

(a) Maintenance, management, operation, repair and replacement of all Improvements upon such Special Benefits Common Area which the Association is obligated to maintain pursuant to the provisions of the Association Management Documents;

(b) Unpaid Special Benefits Assessments for such Special Benefits Area;

(c) A reasonable charge allocated to such Special Benefits Area for the management and administration of such Special Benefits Common Area and Special Benefits Area by the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and employees;

(d) To the extent not metered or billed to Owners, utilities, trash pickup and disposal, gardening and other services which generally benefit and enhance only the value and desirability of the Special Benefits Common Area;

(e) The premiums on all insurance maintained by the Association for the Special Benefits Area or the Special Benefits Common Area pursuant to the Article entitled "insurance" of this Declaration (except for fidelity insurance obtained by a management agent for its officers, employees and agents);

(f) Adequate reserves to cover the deductible amounts of any insurance policies maintained by the Association attributable to the Special Benefits Common Area and for the future repair or replacement of, or additions to, those major components of the Improvements within the Special Benefits Common Area which the Association is obligated to maintain pursuant to this Declaration, including reserves for replacements for structural elements and mechanical equipment of recreational or other facilities maintained by the Association;

(g) Taxes paid by the Association for the Special Benefits Common Area;

(h) Discharge of any lien or encumbrance levied against the Special Benefits Common Area or portions thereof;

(i) Expenses incurred by committees established by the Board specifically for the Special Benefits Area;

(j) Security systems or services installed by or contracted for by the Association specifically for the Special Benefits Common Area; and

(k) Other expenses the Association incurs for any reason whatsoever in connection with the Special Benefits Area.

If insurance or any other contracts and services being provided for the Special Benefits Area or the Special Benefits Common Area are included in a contract or document that also covers other portions of the Covered Property, a reasonable portion of such costs and fees can be apportioned to the Special Benefits Common Area or Special Benefits Area.

Section 1.51 - Subdivision Map. The most recently filed or recorded tract map or parcel map filed for record in the records of the County against the Covered Property, or any portion thereof, all of which are incorporated herein and by this reference made a part hereof.

Section 1.52 - Supplementary Declaration. A written instrument annexing additional property and extending the plan of this Declaration to such additional property.

Section 1.53 - Supplementary Master Declaration. A written instrument annexing additional property and extending the plan of the Master Declaration to such additional property.

ARTICLE 2.

THE ASSOCIATION

Section 2.1 - General Duties and Powers. The Association, through the Board, shall have the duty and obligation to manage and maintain the Covered Property in accordance with the provisions of the Section entitled "Powers and Duties" of the Article entitled "Powers, Duties and Limitations" of the Bylaws and other provisions of the Association Management Documents. Subject to the limitations and restrictions enumerated in the Association Management Documents, including without limitation, the Article entitled "Mortgagee Protection" of this Declaration and the Article entitled "Powers, Duties and Limitations" of the Bylaws, the Association shall have all of the powers permitted by California law as set forth below:

(a) The powers granted to a nonprofit mutual benefit corporation permitted by California statute as set forth in Corporations Code Section 7140, Code of Civil Procedure Section 383 and Civil Code Section 1363.

(b) Standing to institute, defend, settle, or intervene in litigation, arbitration, mediation, or administrative proceedings in its own name as the real party in interest and without joining with it the individual Owners in matters pertaining to the following:

(i) Enforcement of the Association Management Documents;

(ii) Damage to the Common Area;

(iii) Damage to the Residences that the Association is obligated to maintain or repair; and

(iv) Damage to the Residences which arises out of, or is integrally related to, damage to the Common Areas or Residences that the Association is obligated to maintain or repair.

(c) The other powers granted to the Association by law.

Such powers shall include, but not be limited to, the right to designate from time to time portions of Common Area other than Exclusive Use Common Area as Association Common Area and the right to join with Declarant in the execution of any lot line adjustment and quitclaim deeds and to accept title to additional property (1) for the purpose of eliminating encroachments due to engineering errors or errors in construction of any Improvements upon any of the affected property, (2) to permit changes in the development plan in circumstances where such changes are the

result of topography, obstruction, hardship, aesthetic or other environmental conditions, (3) are the requirement of a regulatory agency, (4) do not have a significant negative impact upon the Association or the Owners, or (5) to transfer the burden of management and maintenance of any Association Property which in the reasonable judgment of the Board is generally inaccessible or is not likely to be of any particular use or benefit to the Owners.

Section 2.2 - Power to Grant Rights. The Association shall have the right to grant utility easements under, through and across any Common Area other than Exclusive Use Common Area as reasonably necessary for the ongoing development and operation of the Covered Property.

Section 2.3 - Membership. Membership of Owners shall be appurtenant to and may not be separated from the interest of such Owner in any Residence. A Member may own more than one membership in the Association by complying with the qualifications of membership as to more than one (1) Residence.

Section 2.4 - Transfer. The membership held by any Owner shall not be transferred, pledged or alienated in any way, except that such membership shall automatically be transferred to the transferee of the interest of an Owner required for membership. Any attempt to make a prohibited transfer is void and will not be reflected upon the books and records of the Association. The Association shall have the right to record the transfer upon the books of the Association without any further action or consent by the transferring Owner.

Section 2.5 - Delegation of Membership Rights. A Member who has leased or sold his Residence to a contract purchaser under an agreement to purchase shall be entitled to delegate to such lessee or contract purchaser, as applicable, his membership rights in the Association. Such delegation shall be in writing and must be delivered to the Board before such lessee or contract purchaser may vote. However, the lessor or contract seller shall remain liable for all charges and Assessments attributable to his Residence as long as such lessor or contract seller continues to be an Owner.

Section 2.6 - Classes of Membership. The Association shall have two (2) classes of voting membership.

Class A. Class A Members shall be all Owners with the exception of Declarant until the Class B membership has been converted to Class A membership, and after such conversion all Owners shall be Class A Members.

Class B. The Class B Member shall be Declarant. The Class B membership shall forever cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) the second anniversary of the first Close of Escrow to occur in the most recent Phase of the Development; or
- (b) the fourth anniversary of the first Close of Escrow to occur in the First Phase.

Section 2.7 - Voting Power. Class A Members shall be entitled to one (1) vote for each Original Lot owned and the Class B Member shall be entitled to three (3) votes for each Original Lot owned. If an Original Lot has been split into more than one Lot, the vote for such Original Lot may be allocated to the Owners of such Original Lot in an agreement approved in writing by the Board and recorded in the Official Records. When more than one person owns a portion of the interest in a Residence required for membership, each such person shall be a Member and the vote for such Residence shall be exercised as they among themselves determine, but in no event shall the total number of votes for each Original Lot exceed the total number permitted for such Original Lot as provided in this Section. The Association may, but shall not be obliged to, refuse to recognize the vote or written assent of any such co-Owner, except the vote or written assent of the co-Owner designated in a writing executed by all of such co-Owners and delivered to the Association.

Section 2.8 - Voting Rights. All voting rights shall be subject to the restrictions and limitations provided in the Association Management Documents. A Member's right to vote shall vest immediately upon the date Regular Assessments are levied against the Residence of such Member. Except as provided in the Section entitled "Enforcement of Bonded Obligations" of this Declaration, wherever a provision of the Association Management Documents requires the approval or written assent of Members other than Declarant, it shall be deemed to mean:

(a) as long as there is a Class B membership, the vote or written assent of a bare majority of the Class B voting power and the prescribed majority of the total Class A voting power; and

(b) after the Class B membership has been converted to Class A membership, the vote or written assent of a bare majority of the total voting power of the Association as well as the vote or written assent of a prescribed majority of the total voting power of Members other than Declarant.

Section 2.9 - Approval of All Members. Unless elsewhere otherwise specifically provided in the Association Management Documents, any provision of the Association Management Documents which requires the vote or written consent of either the voting power of the Association or of Members other than Declarant shall be deemed satisfied by the following:

(a) the vote in person or by proxy of the specified percentage of all of the votes which are entitled to be cast. Such vote shall be at a meeting duly called and noticed pursuant to the provisions of the Bylaws dealing with annual or special meetings of the Members; and

(b) written consents signed by the specified percentage of all of the votes which are entitled to be cast. Such vote by written consent shall be solicited pursuant to the procedures provided in the Bylaws.

Nothing in this Section or in any other provision of any of the Association Management Documents shall preclude Members from assenting to the amendment of any of the Association Management Documents by joining in the execution of, or attaching their written consent to, such amendment.

Section 2.10 - Special Benefits Area Approval. Notwithstanding any other provision of the Association Management Documents, any action expressly for the benefit of a Special Benefits Area or the Owners of Residences therein which requires a vote of the membership shall require the approval of the prescribed percentage of the class or classes of membership or the approval of Members other than Declarant of only those Owners within such Special Benefits Area.

Section 2.11 - Certificate Evidencing Approvals. The certificate of any officer or officers authorized by resolution of the Board or of the president and secretary certifying that the required voting power of the Association has approved the execution, delivery and/or recordation of an amendment to any of the Association Management Documents, any Supplementary Declaration or any other document requiring the approval of the voting power of the Association shall be deemed conclusive proof thereof.

ARTICLE 3.

ASSESSMENTS

Section 3.1 - Agreement to Pay. Subject to limitations contained in the Association Management Documents, the Association, through its Board, shall fix, establish and collect from time to time Assessments sufficient to perform its obligations under the Association Management Documents. Each Owner, including Declarant to the extent Declarant is an Owner as defined herein, is deemed to covenant and agree to pay such Assessments to the Association.

Section 3.2 - Collection and Disbursement. All Association funds may be commingled so that the Association may qualify for higher yielding accounts at banking or savings and loan institutions as long as the accounting records of the Association reflect deposits and disbursements in a manner that insures the funds collected as Capital Improvement Assessments, Reconstruction Assessments, Regular Assessments, Reimbursement Assessments, Special Assessments and Special Benefits Assessments will be used only for the purposes for which such funds were collected.

Section 3.3 - Maximum Assessments.

(a) **Generally.** Except as provided in this Section, the Board shall levy Assessments sufficient to perform its obligations under the Association Management Documents. However, annual increases in Regular

Assessments or Regular Special Benefits Assessments for any fiscal year, as authorized by Section 1366(b) of the California Civil Code, shall not be imposed unless the Board has complied with Section 1365(a) of the California Civil Code with respect to that fiscal year, or has obtained the approval of the percentage of the Owners prescribed in subsections (b) and (c) of this Section of the Declaration. The provisions of Section 1365(a) of the California Civil Code require the Association to prepare and distribute a Pro Forma Operating Budget annually within a certain prescribed period of time before the beginning of the Association's fiscal year as provided in Article 8 of the Bylaws.

(b) **Assessment Increases and Limitations.** The Board may not impose a Regular Assessment that is more than twenty percent (20%) greater than the Regular Assessment for the Association's preceding fiscal year, or impose a Regular Special Benefits Assessment for a Special Benefits Area and a Regular Assessment that are collectively more than twenty percent (20%) greater than the aggregate amount of the Regular Special Benefits Assessment for such Special Benefits Area for the Association's preceding fiscal year plus the Regular Assessment for the Association's preceding fiscal year, or impose Assessments for any other act or undertaking of the Association which in the aggregate exceed five percent (5%) of the Common 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, Division 2 of Title 1 of the California Corporations Code and Section 7613 of the California Corporations Code. A Special Assessment levied pursuant to subdivision (c) of Section 1365.5 of the California Civil Code shall not be subject to the five percent (5%) limitation contained in the preceding sentence. For the purposes of this Section, quorum means more than fifty percent (50%) of the Owners of the Association.

(c) **Special Benefits Assessment Increases and Limitations.** In addition to the foregoing, the Board may not impose a Regular Special Benefits Assessment for a Special Benefits Area that is more than twenty percent (20%) greater than the Regular Special Benefits Assessment for such Special Benefits Area for the Association's preceding fiscal year, or impose any other Special Benefits Assessments for any other act or undertaking of the Association for such Special Benefits Area which in the aggregate exceed five percent (5%) of the Special Benefits Expenses of such Special Benefits Area for that fiscal year, without the approval of Owners within such Special Benefits Area 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, Division 2 of Title 1 of the California Corporations Code and Section 7613 of the California Corporations Code. A Special Benefits Assessment levied for such Special Benefits Area pursuant to subdivision (c) of Section 1365.5 of the California Civil Code shall not be subject to the five percent (5%) limitation contained in the preceding sentence. For the purposes of this Section, quorum means more than fifty percent (50%) of the Owners of such Special Benefits Area.

(d) **Emergency Situations.** 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:

- (i) an extraordinary expense required by an order of a court;
- (ii) an extraordinary expense necessary to repair or maintain the Covered Property or any part of it for which the Association is responsible where a threat to personal safety on the property is discovered; and
- (iii) an extraordinary expense necessary to repair or maintain the Covered Property 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. However, before the imposition or collection of an Assessment under this subsection, 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.

(e) **Supplemental Regular Assessments.** If the Board determines that the estimate of total charges for the current year is, or will become, inadequate to meet all Common Expenses for any reason, it shall then immediately determine the approximate amount of such inadequacy, issue a supplemental estimate of the Common Expenses and to the extent permitted in this Section determine the revised amount of the Regular Assessment and the installments thereof, if applicable, allocable to each Residence, and the date or dates when due. The Board

shall provide notice by first-class mail to all Members of any increase in Regular Assessments not less than thirty (30) nor more than sixty (60) days before the date upon which such increased Assessment becomes due.

(f) Supplemental Regular Special Benefits Assessments. If the Board determines that the estimate of total charges for the current year is, or will become, inadequate to meet all Special Benefits Expenses for any reason, it shall then immediately determine the approximate amount of such inadequacy, issue a supplemental estimate of the Special Benefits Expenses and to the extent permitted in this Section determine the revised amount of the Regular Special Benefits Assessment and the installments thereof, if applicable, allocable to each Residence within the Special Benefits Area, and the date or dates when due. The Board shall provide notice by first-class mail to all Members within such Special Benefits Area of any increase in Regular Special Benefits Assessments not less than thirty (30) nor more than sixty (60) days before the date upon which such increased Assessment becomes due.

(g) Regular Assessment Decreases. If the amount budgeted to meet Common Expenses for the then current year proves to be excessive in light of the actual Common Expenses, the Board in its discretion may either reduce the amount of the Regular Assessment or may abate collection of Regular Assessments as it deems appropriate except that as long as Declarant is offering Residences for sale pursuant to a Final Subdivision Public Report, the Regular Assessment may not be decreased by ten percent (10%) or more without the express written consent of Declarant and the approval of the DRE.

(h) Regular Special Benefits Assessment Decreases. If the amount budgeted to meet Special Benefits Expenses in any Special Benefits Area for the then current year proves to be excessive in light of the actual Special Benefits Expenses, the Board in its discretion may either reduce the amount of the Regular Special Benefits Assessment or may abate collection of Regular Special Benefits Assessments as it deems appropriate except that as long as Declarant is offering Residences for sale pursuant to a Final Subdivision Public Report, the Regular Special Benefits Assessment may not be decreased by ten percent (10%) or more without the express written consent of Declarant and the approval of the DRE.

Notwithstanding the foregoing, an increase in the amount of an Assessment that is the result of annexing a Phase on which the DRE has issued a Final Subdivision Public Report shall not require membership approval even if such increase does result in an increase in the amount of the Assessment that is more than twenty percent (20%) greater than the Assessment for the preceding fiscal year provided that the annexation of such Phase and the maintenance of any additional improvements resulting from such annexation was reflected in the Pro Forma Operating Budget for the Association approved by the DRE, and provided further that such increase in the Assessment is permitted or not prohibited under any California Statute in effect at the time of such increase.

Section 3.4 - Assessment Allocation. Assessments shall be fixed for each Residence on which Assessments have commenced in accordance with the provisions of this Declaration as hereinafter provided in this Section.

(a) Reimbursement Assessments. Reimbursement Assessments levied against an individual Owner shall be fixed at the amount necessary to reimburse the Association for costs incurred by the Association in performing any repair and maintenance of damage for which such Owner or such Owner's tenants or guests were responsible.

(b) Penalty Assessments. Penalty Assessments levied against an individual Owner shall be fixed as determined from time to time by the Board as a disciplinary measure for failure of such Owner to comply with the provisions of the Association Management Documents.

(c) Special Assessments for Materials or Services. If an Owner accepts materials or services provided by the Association, the Special Assessment levied against such Owner shall be the amount necessary to reimburse the Association for the costs incurred in providing such materials and services.

(d) Special Benefits Assessments. Special Benefits Assessments for a particular Special Benefits Area shall be fixed at an equal amount for each Original Lot within such Special Benefits Area.

(e) Reconstruction Assessments. Reconstruction Assessments shall be fixed at an equal amount for each Original Lot of an Affected Owner pursuant to the provisions of the Article entitled "Destruction of Improvements" of this Declaration.

(f) Assessments for All Other Purposes. Regular Assessments, Capital Improvement Assessments, and Special Assessments for any other act or undertaking of the Association, shall be fixed at an equal amount for each Original Lot.

All Assessments may be collected at intervals selected by the Board except that Regular Assessments and Regular Special Benefits Assessments must be paid in regularly scheduled monthly installments.

If an Original Lot has been subdivided into more than one Lot, the Assessment for such Original Lot shall be allocated by the Board to the Owners thereof unless the Owners of such Original Lot agree upon an allocation in an agreement which is approved in writing by the Board and recorded concerning such Original Lot in the Official Records.

Section 3.5 - Certificate of Payment. The Association shall, upon demand, furnish to any Owner liable for Assessments a certificate in writing signed by an authorized agent of the Association or by the president of the Association setting forth whether the Assessments on such Owner's Residence have been paid, and the amount of delinquency, if any. A reasonable charge may be collected by the Board for the issuance of these certificates.

Section 3.6 - Exempt Property.

(a) Declarant and any other Owner of a Residence which does not include a structural Improvement for human occupancy shall be exempted from the payment of that portion of the Regular Assessment which is for the purpose of defraying expenses and reserves directly attributable to the existence and the use of such structural Improvements. The exemption may include, but shall not be limited to, the portion of such Regular Assessment attributable to (1) roof replacement, (2) exterior maintenance, (3) walkway and carport lighting, (4) refuse disposal, and (5) domestic water supplied to the Residence. Any exemption of a Residence from the payment of Regular Assessments attributable to the existence and use of such Improvements shall be in effect only until the earliest to occur of the following events:

- (i) a notice of completion of such structural Improvement has been recorded;
- (ii) the occupation or use of the dwelling unit affected by such structural Improvements; or
- (iii) completion of all elements of the residential structure which the Association is obliged to maintain.

(b) Declarant and any other Owner shall be exempted from the payment of that portion of any Assessment which is for the purpose of defraying expenses and reserves directly attributable to the existence and use of Common Facilities, Association Common Area Improvements and Special Benefits Common Area Improvements that are not complete at the time Assessments commence. Any exemption from the payment of Assessments attributable to any incomplete Common Facility, Association Common Area Improvement or Special Benefits Common Area Improvement shall be in effect only until the earliest of the following events:

- (i) a notice of completion of such Common Facility, Association Common Area Improvement or Special Benefits Common Area Improvement has been recorded; or
- (ii) the Common Facility, Association Common Area Improvement or Special Benefits Common Area Improvement has been put into use.

(c) All properties dedicated to and accepted by, or otherwise owned or acquired by, a Public Agency for nonresidential public purposes shall be exempt from the Assessments created herein.

Section 3.7 - Commencement Date.

(a) The Regular Assessments shall commence for all Residences in a Phase on the first day of the month after the first Close of Escrow to occur within such Phase.

(b) All other Assessments may be levied against an Owner when Regular Assessments have commenced against such Owner's Residence.

The first Regular Assessment and Regular Special Benefits Assessment shall be adjusted according to the number of months remaining in the fiscal year.

Section 3.8 - No Offsets. All Assessments shall be payable in the amount specified by the Assessment and no offsets against such amount shall be permitted for any reason.

Section 3.9 - Homestead Waiver. Each Owner, to the extent permitted by law, hereby waives, to the extent of any liens created pursuant to this Declaration, whether such liens are now in existence or are created at any time in the future, the benefit of any homestead or exemption laws of the State of California now in effect or in effect from time to time hereafter.

Section 3.10 - Taxation of Association. If any taxes are assessed against Common Area other than Exclusive Use Common Area, or the personal property of the Association, rather than against the individual Residences, such taxes shall be added to the annual Regular Special Benefits Assessments of a Special Benefits Area if such Common Area is Special Benefits Common Area thereof, or shall be added to the annual Regular Assessments if such Common Area is not Special Benefits Common Area, or, if necessary, a Special Assessment may be levied against the Residences in the Special Benefits Area or all Residences, as applicable, in an amount equal to such taxes, to be paid in two (2) installments thirty (30) days before the due date of each tax installment.

Section 3.11 - Delinquency. Any Assessment levied pursuant to this Declaration which is not paid shall be delinquent fifteen (15) days after such Assessment was due (the "delinquency date") and Allowable Charges may be recovered if an Assessment becomes delinquent. The Association may at its option, and without waiving the right to judicially foreclose its lien against such Owner's Residence, pursue any available remedies, including without limitation, bringing an action at law against the Owner personally obligated to pay the same, and/or upon compliance with the notice provisions set forth in the Section entitled "Personal Obligation; Lien" of this Article, to foreclose the lien against such Owner's Residence under the power of sale granted herein. Each Owner vests in the Association, or its assigns, the right and power to bring all actions at law or any lien foreclosure against such Owner or other Owners for the collection of such delinquent Assessments.

Section 3.12 - Limitation on Fees. The Association shall comply with Section 1366.1 and 1368(c) of the California Civil Code and, until such Sections are amended to provide otherwise, shall not:

(a) impose or collect an Assessment or fee that exceeds the amount necessary to defray the costs for which it is levied; and

(b) impose or collect any Assessment, penalty, or fee in connection with a transfer of title or any other interest except the Association's actual cost to change its records and that authorized in connection with Section 6.01(n) of the Bylaws to provide copies of Association Management Documents, copies of financial statements and statements of unpaid Assessments and Allowable Charges.

Section 3.13 - Personal Obligation; Lien. An Assessment and any Allowable Charges shall be a personal obligation and debt of the Owner of the Residence at the time the Assessment or Allowable Charges are levied and shall not pass to successors in title unless assumed by the successors in title. Before the Association may place a lien upon the Residence of an Owner to collect such a debt which is past due, the Association must provide a written notice to such Owner in accordance with the requirements of Section 1367(a) of the California Civil Code. Any payments toward such a debt shall first be applied to the Assessments owed and only after the Assessments owed are paid in full shall such payments be applied to Allowable Charges. The amount of the Assessment, plus any Allowable Charges, shall be a lien on the Owner's Residence from and after the time the Association causes to be recorded in the Official Records a notice of delinquent assessment which shall state (1) the amount of the Assessment and Allowable Charges, (2) a legal description of the Owner's Residence against which the Assessment and Allowable Charges are levied, (3) the name of the record Owner of the Residence against which the lien is imposed, and (4) in order for the lien to be enforced by nonjudicial foreclosure as hereinafter provided, 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 officers or other persons authorized for such purpose by resolution of the Board

or signed by the president of the Association, and shall be mailed in the manner set forth in Section 2924b of the California Civil Code to all record owners of the Owner's Residence no later than ten (10) calendar days after recordation in the Official Records. 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 lien created pursuant to this Section shall be prior to all other liens recorded after the notice of delinquent assessment, except (1) all taxes, bonds, assessments and other levies which, by law, would be superior thereto, and (2) the lien or charge of any First Mortgage.

Section 3.14 - Not Subject to Lien. Penalty Assessments and Allowable Charges incurred in connection with delinquent Penalty Assessments may not be characterized nor treated as an Assessment which may become a lien against an Owner's Residence enforceable in accordance with the Section entitled "Foreclosure Sale" of this Article. Nothing in this Declaration, however, shall prevent the Association from bringing an action at law or in equity against an Owner to collect Penalty Assessments.

Section 3.15 - Foreclosure Sale. After the expiration of thirty (30) days following the recordation of the lien created pursuant to this Article, 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 of the California Civil Code. Any sale by a trustee provided for above is to be conducted in accordance with the provisions of Sections 2924 *et seq.* and Section 1367 of the California Civil Code, applicable to the exercise of powers of sale in mortgages and deeds of trust. Upon the affirmative vote of a majority of the voting power of the Association, the Association, through its duly authorized agents, shall have the power to bid on the Residence, using Association funds, or funds borrowed for such purpose, at the sale, and to acquire and hold, lease, mortgage and convey the same. Nothing in this Section prohibits actions against any Owner to recover sums for which a lien is created pursuant to this Article or prohibits the Association from taking a deed in lieu of foreclosure.

Section 3.16 - Subordination of Assessment Liens. The lien of the Assessments and Allowable Charges provided for in this Declaration shall be subordinate to the lien of any First Mortgage upon any Residence. The foreclosure of any lien provided for in this Article for the payment of Assessments and Allowable Charges shall not operate to affect or impair the lien of a First Mortgage and the foreclosure of the lien of a First Mortgage or the sale under a power of sale included in such First Mortgage (such events are hereinafter called "Events of Foreclosure") shall not operate to affect or impair such Assessment lien, except that any persons who obtain an interest through any of the Events of Foreclosure, and the successors in interest, shall take title free of such Assessment lien or any personal obligation for such charges as shall have accrued up to the time of any of the Events of Foreclosure, but subject to the Assessment lien for all such charges that shall accrue after the Events of Foreclosure. Notwithstanding the foregoing, any delinquent Special Benefits Assessments in a Special Benefits Area that were extinguished pursuant to this paragraph may be reallocated and assessed to all Residences within such Special Benefits Area as a Special Benefits Expense and any other delinquent Assessments that were extinguished pursuant to this paragraph may be reallocated and assessed to all Residences as a Common Expense.

A First Mortgagee's rights pursuant to this Section shall not be affected by such First Mortgagee's failure to deliver a notice to the Board.

The lien of the Assessments and Allowable Charges as aforesaid shall also be subordinate to the interests of the Department of Veterans Affairs of the State of California as the vendor under its Cal-Vet loan contracts to the same extent that such liens are made subordinate to the liens or charges of First Mortgages as provided above.

Section 3.17 - Retroactive Assessments. The Association or Board shall not invoke any of the procedures provided in the Association Management Documents for the purpose of levying an Assessment, or levy any such Assessment, against any person who or entity which, at the time the Association or Board seeks to invoke such procedure or levy such Assessment, is no longer an Owner. The Association or Board shall not invoke any of the procedures provided in the Association Management Documents for the purpose of levying an Assessment with respect to a Residence, or levy any such Assessment with respect to a Residence, against any person who or entity which, at the time the Association or Board seeks to invoke such procedure or levy such Assessment, is no longer an Owner of such Residence. Any such Assessment levied by the Association or Board shall be null, void and of no force or effect. No other provision of the Association Management Documents shall be construed to be inconsistent with or to supersede the three preceding sentences; provided, however, nothing in this Section shall

restrict or otherwise affect the power of the Board to collect from a person or entity who is no longer an Owner any Assessment which was properly levied against such person or entity while such person or entity was an Owner or to impose and collect from such person or entity any Allowable Charges pertaining to such Assessment.

ARTICLE 4.

ARCHITECTURAL CONTROL

Section 4.1 - Architectural Committee. The Architectural Committee shall consist of not fewer than three (3) nor more than five (5) persons as fixed from time to time by resolution of the Board. Declarant shall initially appoint the Architectural Committee. Declarant shall retain the right to appoint, augment or replace all members of the Architectural Committee until one (1) year after the occurrence of the first Close of Escrow within the Covered Property. Declarant shall retain the right to appoint, augment or replace a majority of the members of the Architectural Committee until (1) five (5) years after the occurrence of the first Close of Escrow within the Covered Property, or (2) Close of Escrow has occurred on ninety percent (90%) of the Residences within the Development, whichever of (1) or (2) shall first occur, at which time the right to appoint, augment or replace all members of the Architectural Committee shall automatically be transferred to the Board. As long as Declarant has the right to appoint some but not all of the members of the Architectural Committee, the Board shall have the right but not the obligation to fill the remaining vacancies on the Architectural Committee. Persons appointed to the Architectural Committee need not be Members. The address of the Architectural Committee shall be the address established for giving notice to the Association unless another address is specified for such purpose in the Architectural Guidelines. Such address shall be the place for the submittal of plans and specifications and the place where the current Architectural Guidelines shall be kept.

Section 4.2 - Architectural Guidelines. The Board may, from time to time, adopt, promulgate, amend and repeal Architectural Guidelines to be administered through the Architectural Committee. The Architectural Guidelines may include among other things those restrictions and limitations upon the Owners set forth below:

- (a) time limitations for the completion of the Improvements for which approval is required pursuant to the Architectural Guidelines;
- (b) conformity of completed Improvements to plans and specifications approved by the Architectural Committee;
- (c) the prepayment of a deposit to be applied toward the payment of any Special Assessment levied by the Board if an Owner fails to restore any portion of the Covered Property to a clean and attractive condition;
- (d) the payment of a reasonable fee, as appropriate for the type and nature of the proposed Improvements, to cover the cost of reviewing plans and specifications for such proposed Improvements and the cost of inspections necessary to insure that such proposed Improvements are installed in accordance with such plans and specifications;
- (e) procedures for approving preliminary and final plans and drawings, including without limitation the number of sets of plans to be submitted and such other detail as the Board deems proper, such as floor plans, site plans, elevation drawings, and descriptions or samples of exterior materials and colors;
- (f) such other limitations and restrictions on Improvements as the Board in its reasonable discretion shall adopt, including without limitation the regulation of the placement, kind, shape, height, materials, species and location of any Improvement;
- (g) a description of the Improvements which, if completed in conformity with the Architectural Guidelines, do not require the approval of the Architectural Committee; and
- (h) Fence Limitation Zones.

Section 4.3 - Architectural Committee Functions.

(a) The Architectural Committee shall have the duty to consider and act upon proposals or plans submitted pursuant to the terms of this Declaration or the Architectural Guidelines, and to perform such other duties delegated to it by the Board.

(b) The Architectural Committee may delegate its plan review responsibilities to one or more members of such Architectural Committee. Upon such delegation, the approval or disapproval of plans and specifications by such persons shall be equivalent to approval or disapproval by the entire Architectural Committee.

(c) The Architectural Committee may, from time to time, prepare and recommend additions, deletions and modifications to the Architectural Guidelines for approval of the Board.

(d) Unless all of the Architectural Guidelines have been complied with, such plans and specifications shall be deemed not submitted.

Section 4.4 - Approval.

(a) No Improvements shall be made upon the Covered Property except in compliance with plans and specifications therefor which have been submitted to and approved by the Architectural Committee or except as may otherwise be provided in the Architectural Guidelines or in any Supplementary Declaration.

(b) The Architectural Committee shall review plans and specifications submitted for its approval as to style, exterior design, appearance and location and shall approve such plans and specifications only if it deems that the proposed improvement will not be detrimental to the appearance of the Covered Property as a whole; that the improvement complies with the Architectural Guidelines; that the appearance of any improvements will be in harmony with the surrounding structures; that the construction of any improvement will not detract from the beauty and attractiveness of the Covered Property or the enjoyment thereof by the Owners; and that the upkeep and maintenance of any improvement will not become a burden on the Association. The Architectural Committee (1) may determine that such improvement cannot be approved because of its effect on existing drainage, utility or other easements, (2) may require submission of additional plans and specifications or other information or materials before approving or disapproving plans and specifications submitted, or (3) may condition its approval of plans and specifications for any improvement on such changes therein as it deems appropriate such as, and without limitation, the approval of such improvement by a holder of an easement which may be impaired thereby or upon approval of any such improvement by the appropriate Public Agency. Any Architectural Committee approval conditioned upon the approval by a Public Agency or an easement holder shall not imply the Association is enforcing any government codes or regulations or provisions of any easement agreement, nor shall the failure to make such conditional approval imply that any such Public Agency or easement holder approval is not required.

Section 4.5 - Nonliability for Approval. Plans and specifications are not approved for (1) engineering design, (2) compliance with zoning and building ordinances, and other applicable statutes, ordinances or governmental rules or regulations, (3) compliance with the requirements of any public utility, (4) any easements or other agreement, or (5) preservation of any view, and by approving such plans and specifications, neither the Architectural Committee, the members thereof, the Association, the Owners, the Board nor Declarant, nor agents, employees, attorneys or consultants of any of the foregoing, assume liability or responsibility therefor, or for any defect in any improvement constructed from such plans and specifications or for any obstruction or impairment of view caused or created as the result of any improvements approved by the Architectural Committee.

Section 4.6 - Appeal. If plans and specifications submitted to the Architectural Committee are disapproved thereby, the party or parties making such submission may appeal in writing to the Board within the time limitation stated in the Section entitled "Performance Dates" of this Article. The Board shall submit such request to the Architectural Committee for review, whose written recommendations are to be submitted to the Board.

Section 4.7 - Evidence of Approval.

(a) **Automatic Compliance.** As provided elsewhere in the Association Management Documents, Declarant is not subject to the provisions of the Association Management Documents pertaining to architectural

control. Any Improvements constructed by Declarant shall automatically be in compliance with the Association Management Documents and shall not be subject to further architectural control until and unless there has been a change or alteration made by a successor in title to Declarant as to any Residence in the material, texture, color or appearance of any such improvement upon such Residence. Normal maintenance, repair or reconstruction by any successor in title to Declarant in the event of a destruction, in substantial conformance with the improvements constructed by Declarant, shall not be deemed to be an improvement that requires approval pursuant to the provisions of this Article.

(b) Compliance and Noncompliance Statements. If the Improvements upon a Residence comply with the provisions of the Association Management Documents, the Architectural Committee shall, upon written request, issue a statement (hereinafter a "Compliance Statement") which will evidence such compliance. If any of the Improvements upon a Residence do not comply with the provisions of the Association Management Documents, the Architectural Committee shall, upon such request, issue a statement (hereinafter a "Noncompliance Statement") delineating the corrective action that is required to bring such Improvements into compliance with the Association Management Documents. The Compliance Statement or Noncompliance Statement, as applicable, must be provided within the time limitation set forth in the Section entitled "Performance Dates" of this Article. If the Architectural Committee has issued a Noncompliance Statement as to any Residence, the Architectural Committee shall provide a Compliance Statement, upon request, after the corrective work has been satisfactorily completed which shall then evidence that the Improvements upon such Residence comply with the provisions of the Association Management Documents. Any Compliance Statement or Noncompliance Statement issued by the Architectural Committee shall be executed by any person or persons authorized by resolution of the Board or by the president and secretary of the Association. The signatures on a Compliance Statement shall be notarized. A Compliance Statement shall be conclusive evidence of compliance with the provisions of the Association Management Documents as to the Improvements described in the Compliance Statement and further approval of any such Improvements shall not be required unless there is a change or alteration in material, exterior appearance, color or texture in such Improvements.

(c) Association Fee. The Association shall be entitled to collect a fee to cover the cost of inspections and other costs in connection with the issuance of any Compliance Statements and Noncompliance Statements in accordance with the provisions of this Declaration contained in the Section entitled "Limitation on Fees" of the Article entitled "Assessments" and the Section entitled "Functions of Architectural Committee" of this Article.

(d) Deemed Compliance. Failure to schedule an inspection or to issue a Compliance Statement or Noncompliance Statement for any reason (other than a failure by the requesting party to comply with the pertinent procedural requirements hereof or of the Architectural Guidelines) within the time limitation established herein shall be deemed to mean that all existing Improvements do comply with the Association Management Documents and any such requesting Owner, purchaser, Mortgagee or prospective Mortgagee shall be entitled to receive a Compliance Statement evidencing such compliance upon the payment of the fee required therefor.

Section 4.8 - Performance Dates. Failure to make the inspections and responses required to be made pursuant to the provisions of this Article shall have the effect indicated below in this Section.

(a) If the Architectural Committee fails to approve or disapprove plans and specifications within thirty (30) days after the same have been duly submitted in accordance with the Architectural Guidelines, such plans and specifications will be deemed approved.

(b) The written request for an appeal to the Board of a decision rendered by the Architectural Committee must be received by the Board not more than fifteen (15) days after the final decision of the Architectural Committee.

(c) The Board shall render its written decision in connection with a written appeal to the Board of a final decision of the Architectural Committee within forty-five (45) days after the request for appeal has been duly submitted in accordance with the Architectural Guidelines. The Board's failure to render such decision within such period of time shall be deemed a decision in favor of the appellant.

(d) If for any reason (other than a failure by an Owner to comply with the pertinent procedural requirements hereof or of the Architectural Guidelines) an inspection has not been made within forty-five (45) days after written notification by the Owner of the completion of an Improvement or the Owner requesting such inspection

has not been notified of any noncompliance within thirty (30) days after such inspection, the Improvement shall be deemed to be completed in substantial conformance with approved plans and specifications.

(e) The Architectural Committee shall provide to any Owner, prospective Owner, Mortgagee or prospective Mortgagee of a Residence who has submitted a written request and the fee required therefor a Compliance Statement or Noncompliance Statement, as the case may be, for the Improvements upon such Residence made by Owners other than Declarant with the provisions of the Association Management Documents provided that the Architectural Committee, after notice of not less than three (3) days delivered to the Owner of such Residence, was afforded the right to enter upon the affected Residence at a reasonable time specified by the Architectural Committee.

Section 4.9 - Nonconformity. If an Improvement was commenced without the required approval of the Architectural Committee, or, if such Improvement was not completed within the time limitation established for such Improvement in the Architectural Guidelines or in substantial conformance with the approved plans and specifications, a Noncompliance Statement shall be delivered to the violating Owner and the Architectural Committee shall correct the violation or take other appropriate action in accordance with the procedure described in the Article entitled "Discipline of Members" of the Bylaws.

Section 4.10 - Variances. The Board may authorize a variance from compliance with the architectural controls set forth in this Article when circumstances such as topography, natural obstructions, hardship, aesthetic, or environmental considerations may require; provided, however, that no variance from the use restrictions contained in the Article entitled "Use Restrictions" of this Declaration may be granted. Written evidence of such variance must be delivered to such Owner and a copy of the resolution of the Board authorizing such variance must be retained in the permanent records of the Association. If such variances are granted, no violation of the covenants, conditions and restrictions contained in the Association Management Documents shall be deemed to have occurred with respect to the matter for which the variance was granted. Granting such a variance shall not operate to waive any of the terms and provisions of the Association Management Documents for any purpose except as to the particular Residence and particular provision of this Article covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all government laws and regulations affecting the use of his Residence including, but not limited to, zoning ordinances and lot setback lines or requirements imposed by any governmental or municipal authority.

ARTICLE 5.

INSURANCE

Section 5.1 - Obligation to Insure. The Association shall obtain and maintain in effect insurance coverage in the amounts and with endorsements the Board deems adequate which shall be not less than the coverages hereinafter required in this Section and shall include coverage for the Association, the Owners and the Mortgagees as their interests may appear. All coverages must be consistent with any applicable Public Agency and Federal Agency insurance requirements.

(a) **Commercial Liability Insurance.** The commercial general liability insurance policy shall insure against any liability incident to the ownership or use of the Common Area or any other areas including any commercial spaces (even if such commercial spaces are leased to others) and public ways under the Association's supervision. The limits of such insurance shall not be less than One Million Dollars (\$1,000,000) for claims arising out of a single occurrence for personal injury, bodily injury, deaths of persons and property damage. Coverage under this policy shall include without limitation liability of the insureds for property damage, bodily injury and deaths of persons in connection with the operation, maintenance or use of the Common Area. If such policy does not include "severability of interest" in its terms, a specific endorsement will be required precluding the insurer from denying the claim of an Owner because of negligent acts of the Association or other Owners.

(b) **Commercial Property Insurance.** The commercial property insurance policy (also known as "hazard insurance") shall cover all of the insurable Improvements in the Common Area of each Phase of the Covered Property in which a Close of Escrow has occurred except improvements in Exclusive Use Common Area, including fixtures and building service equipment that are part of such Common Area as well as common personal

property and supplies belonging to the Association. The term "insurable Improvements," as used in this Article, shall mean those Improvements capable of being insured and specifically do not include items usually excluded from insurance coverage such as land, foundations, excavations, etc.

The policy shall be in an amount equal to one hundred percent (100%) of the insurable value of all such insurable Improvements and shall provide for loss or damage settlement on the current replacement cost, without deduction for depreciation or coinsurance, of all of the property covered by the policy. Such insurance must afford protection against at least loss or damage by fire and other perils normally covered by the standard extended coverage endorsement, and such other perils which are customarily covered and required by private institutional mortgage investors concerning planned development projects similar in construction, location and use, including all perils normally covered by the standard special form endorsement (also known as an "all risk" endorsement). The policy shall name as insured the Association, for the use and benefit of the Owners.

(c) **Worker's Compensation Insurance.** The Board shall purchase and maintain in force worker's compensation insurance, to the extent that the same is required by law, for all Association employees.

Section 5.2 - Notice of Cancellation or Modification. All insurance policies maintained by the Association must provide that such policies may not be canceled, reduced or substantially modified without at least ten (10) days' prior written notice to the Association.

Section 5.3 - Waiver by Owners. Concerning each of the insurance policies the Association maintains which will not be voided or impaired thereby, the Owners hereby waive and release all claims against the Association, the Board, other Owners, Declarant and agents and employees of each of the foregoing, concerning any loss covered by such insurance, whether or not caused by negligence or breach of any agreement by such persons, but to the extent of insurance proceeds received in compensation for such loss only.

Section 5.4 - Annual Insurance Review. The Board shall determine at least annually whether the amounts and types of insurance it has obtained provide adequate coverage in light of increased construction costs, inflation, practice in the area in which the Covered Property is located, or any other factor which tends to indicate that either additional insurance policies or increased coverage under existing policies are necessary or desirable to protect the interest of the Owners and of the Association. If the Board determines that increased coverage or additional insurance is appropriate, it shall obtain the same.

Section 5.5 - Requirements of Federal Agencies. Notwithstanding the foregoing provisions of this Article, the Association shall obtain and maintain in effect such insurance policies, coverages and endorsements established from time to time by any of the Federal Agencies which, as of the recordation of this Declaration, include without limitation those specifically itemized below, except to the extent that any such policies, coverages and endorsements are not available or have been waived in writing by the particular Federal Agency that imposed the requirements.

(a) **Hazard Insurance.** Each hazard insurance policy must be written by an insurance carrier that meets the requirements of the Federal Agencies. Unless a higher maximum is required by California law, the maximum deductible amount shall be the lesser of Ten Thousand Dollars (\$10,000) or one percent (1%) of the policy face amount. Funds for such deductible amounts must be included in the Association's reserves and must be so designated. The following endorsements are required:

(i) an Inflation Guard Endorsement, when it can be obtained;

(ii) Building Ordinance or Law Endorsement, if the enforcement of any building, zoning, or land-use law will result in loss or damage, increased costs of repairs or reconstruction, or additional demolition and removal costs. The endorsement must provide for contingent liability from operation of building laws, demolition costs and increased costs of reconstruction;

(iii) Steam Boiler and Machinery Coverage Endorsement, if the insurable Improvements have central heating or cooling. This coverage should provide for the insurer's minimum liability per accident to at least equal the lesser of Two Million Dollars (\$2,000,000) or the insurable value of the building(s) housing the boiler or machinery; and

(iv) **Agreed Amount Endorsement.**

The Association must also obtain any additional coverage commonly required by private mortgage investors for developments similar in construction, location and use.

(b) **Liability.** The Association shall obtain such other coverage in kinds and amounts usually required by private mortgage investors in other projects in the area including, where applicable and available, comprehensive automobile liability, bailee's liability, elevator collision liability, garage keeper's liability, host liquor liability, workers' compensation and employer's liability and contractual liability. The Association may obtain such other coverage as the Board deems advisable, including without limitation individual liability insurance for officers and directors for negligent acts or omissions of those persons acting in their capacity as officers and directors.

(c) **Fidelity Insurance.** Fidelity insurance coverage currently is not required by any Federal Agency unless the Covered Property is comprised of more than twenty (20) Residences. The blanket fidelity insurance shall cover losses resulting from dishonest or fraudulent acts on the part of anyone who handles or is responsible for funds held or administered by the Association, including directors, officers, trustees, employees or volunteers of the Association. Where the Association delegates some or all of the responsibility for the handling of funds to a management agent, fidelity insurance is required for its officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Association whether or not such persons receive compensation for services. A management agent who handles funds for the Association should also be covered by its own fidelity insurance policy which must provide the same coverage required by the Association and must submit evidence of such coverage to the Association. The Association shall be named as an additional obligee in the management agent's insurance policy. The fidelity insurance should cover the maximum funds that will be in the custody of the Association or its management agent at any time while the insurance is in force, but must be written in an amount of not less than the highest amount required by any of the Federal Agencies. Fidelity insurance policies shall name the Association as obligee and shall contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee" or similar expression. All fidelity insurance policies maintained by the Association must provide that such policies may not be canceled or substantially modified without at least ten (10) days' prior written notice to the Association and each Mortgage servicing contractor that is servicing any Federal Agency owned or securitized Mortgage.

(d) **Flood Insurance.** If any part of the Improvements in the Common Area of a Phase in which a Close of Escrow has occurred, other than Improvements within Exclusive Use Common Area, are in a Special Flood Hazard Area (designated as A, AE, AH, AO, A1-30, A-99, V, VE, or V1-30 on a Flood Insurance Rate Map), the Association shall obtain and maintain a flood insurance policy to cover any such Improvements. The amount of flood insurance should be at least equal to the lesser of one hundred percent (100%) of the insurable value of the facilities or the maximum coverage available under the appropriate National Flood Insurance Administration program. Unless a higher deductible amount is required by California law, the maximum deductible amount for policies covering such Improvements shall be the lesser of Five Thousand Dollars (\$5,000) or one percent (1%) of the policy's face amount. Funds for such deductible amounts must be included in the Association's reserves and must be so designated.

(e) **Mortgage Clause.** All policies documenting insurance for hazard and flood insurance coverages obtained by the Association must have the "standard mortgage clause" or equivalent endorsement providing that coverage of a Mortgagee under the insurance policy will not be adversely affected or diminished by an act or neglect of the Mortgagor, which is commonly accepted by private institutional mortgage investors in the area in which the Covered Property is located, unless such coverage is prohibited by applicable law. A mortgage clause in favor of Mortgagees holding Mortgages on Residences is not required on a policy insuring the Association Property.

ARTICLE 6.

OBLIGATIONS OF DECLARANT

Section 6.1 - Enforcement of Bonded Obligations. If the Improvements to the Common Area required to be completed by the Declarant have not been completed before the issuance of a Final Subdivision Public Report and the Association is obligee under a bond or other arrangement (the "Bond") to secure performance of the commitment of Declarant to complete such Improvements, the following provisions shall apply:

(a) The Board shall consider and vote on the question of action by the Association to enforce the obligations under the Bond with respect to any Improvements for which a Notice of Completion has not been filed within sixty (60) days after the completion date specified for such Improvements in the planned construction statement appended to the Bond. If the Association has given an extension in writing for the completion of any Common Area Improvement, the Board shall consider and vote on the aforesaid question if a Notice of Completion has not been filed within thirty (30) days after the expiration of such extension.

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

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

Section 6.2 - Subdivision Documents Provided by Declarant. The Board shall be responsible for causing the documents provided to the Association by the Declarant pertaining to the Covered Property to be kept with the other books and records of the Association. If the Association changes its managing agent, the Board shall be responsible for ascertaining that all of the books and records of the Association in the custody of the prior managing agent are transferred to the new managing agent.

ARTICLE 7.

REPAIR AND MAINTENANCE

Section 7.1 - By Association. Without limiting the generality of the statement of duties and powers contained in the Association Management Documents, the Association, acting through its Board and its officers, shall have the duty to accomplish the following upon the Covered Property or other land in such manner and at such times as the Board shall prescribe:

(a) manage, operate, control, maintain, repair, restore, replace and make necessary Improvements to the Common Area of any Phase in which a Close of Escrow has occurred, including without limitation the following:

(i) Private streets, sidewalks, the paseo, landscaping and the irrigation facilities appurtenant thereto, park benches and other related Improvements in the Nonexclusive Use Common Area portion of the Association Property described and depicted on Exhibit C;

(ii) Special Benefits Common Area;

(iii) Landscaping and the irrigation facilities appurtenant thereto, street lights, mail boxes and other Improvements in the Association Common Area portion of the Association Property located on certain Lots as depicted on Exhibit C;

(iv) Storm drain Improvements, sewer Improvements, vehicular entry control gate and related telephone facilities in the Association Common Area portion of the Association Property described and/or depicted on Exhibit C; and

(v) All blue reflective pavement markers indicating the locations of fire hydrants.

(b) maintain, repair, restore and replace the Perimeter Walls depicted on Exhibit E attached hereto as required to:

(i) maintain the structural integrity of all Perimeter Walls;

(ii) maintain the top and exterior surfaces of those portions of Perimeter Walls within or adjacent to Association Property;

(iii) maintain the top and exterior surfaces of those portions of Perimeter Walls which are adjacent to property outside the Covered Property which are not maintained by the owner or manager of such adjacent property; and

(iv) maintain the interior surfaces of those portions of Perimeter Walls where such interior surfaces are not within or adjacent to a Residence.

(c) maintain all street trees installed by Declarant on each Lot whether or not such trees are within the Association Common Area portion of such Lot.

(d) maintain all other areas, facilities, equipment, services or aesthetic components of whatsoever nature as may from time to time be requested by the vote or written consent of a majority of the voting power of the Association.

(e) accomplish any of the foregoing activities or any maintenance, repair, restoration or replacement of any other such Improvements that are described in a Supplementary Declaration covering any subsequent Phase of the Covered Property.

The costs of any such maintenance and repair of Special Benefits Common Area pursuant to this Section shall be Special Benefits Expenses of the Special Benefits Area that is to receive the benefit of such maintenance. The costs of any other maintenance and repair shall be Common Expenses except as otherwise specified in this Declaration for costs which are to be paid in the form of Special Assessments, Reconstruction Assessments or Capital Improvement Assessments.

Any Exhibits depicting or delineating maintenance areas or obligations of the Association are for illustrative purposes only. The "as-built" condition of all such maintenance areas and obligations as built by Declarant shall be controlling.

The Association shall be relieved of any obligation set forth above in this Section to the extent that (i) such obligation has been assumed by an Owner pursuant to an instrument recorded in the Official Records pursuant to the Section entitled "Exclusive Use Common Areas" of the Article entitled "Easements and Rights" of this Declaration, (ii) such obligation has been delegated to, or assumed by, SAMLARC pursuant to the provisions of the Master Declaration or any Supplementary Master Declaration annexing additional property thereto, or (iii) such obligation has been assumed by any Public Agency.

Section 7.2 - By Owner. Each Owner shall:

(a) maintain in good condition and repair any fence or wall on his Residence that (i) is within a Side-Yard Easement which benefits his Lot, or (ii) is within the portion of his Lot not burdened by a Side-Yard Easement, or (iii) forms the boundary between a Side-Yard Easement which burdens his Lot and the remaining portion of his Lot. An Owner shall also maintain the interior surfaces of a Perimeter Wall and any other walls or fences within or adjacent to his Residence. The maintenance of any fence or wall on the boundary between two Lots shall be performed as set forth in the Article hereof entitled "Party Walls";

(b) install yard landscaping on all portions of the yard of his Residence which are visible from a street or Common Area, and which are not burdened by a Side-Yard Easement, within six (6) months after the Close of Escrow of such Residence; and

(c) maintain, repair, replace, reconstruct and restore all portions of his Residence in good condition and repair in accordance with the Architectural Guidelines, any rules and regulations promulgated by the Board, and,

if required by such Architectural Guidelines or rules and regulations, only after approval of the Architectural Committee. All slopes and terraces on any Residence maintained by an Owner shall be maintained so as to prevent any erosion thereof upon adjacent streets or adjoining property.

An Owner shall be relieved of any obligation set forth above in this Section to the extent that (i) such obligation has been delegated to, or assumed by, the Association or another Owner pursuant to the provisions of this Declaration or any Supplementary Declaration annexing additional property hereto, including without limitation the Section hereof entitled "Side-Yard Easements" of the Article hereof "Easements and Rights," (ii) such obligation has been delegated to, or assumed by, SAMLARC pursuant to the provisions of the Master Declaration or any Supplementary Master Declaration annexing additional property thereto, or (iii) such obligation has been assumed by any Public Agency.

Section 7.3 - Repair of Damage. If the Board determines that any portion of the Covered Property required to be maintained by the Association has been damaged or destroyed by any negligent or malicious act or omission of any Owner, his family, guests, employees, tenants, or agents, such Owner shall be responsible for the cost of repairing such damage in accordance with the Article entitled "Discipline of Members" of the Bylaws. Any increase in insurance payable by the Association resulting from damage by any negligent or malicious act or omission of a particular Owner, or any of such Owner's family, guests, employees, tenants or agents, shall also be paid by such Owner. The Board shall have the power to levy a Penalty Assessment against such Owner for the cost of repair or for an amount equal to any such increase in premium.

Section 7.4 - Noncompliance by Owner. If an Owner fails to accomplish any installation, maintenance or repair required by this Article, the Board shall give to such Owner a notice describing such deficiency and give such Owner an opportunity to have a hearing as provided in the Section entitled "Enforcement" of the Article entitled "Discipline of Members" of the Bylaws.

Section 7.5 - Maintenance of Public Utilities. Nothing contained herein shall require or obligate the Association to maintain, replace or restore the underground facilities or public utilities located within easements in the Common Area owned by such public utilities.

Section 7.6 - Transfer of Association Property.

(a) The Association Property within a Phase shall be conveyed to the Association before or concurrently with the first Close of Escrow to occur within such Phase. Declarant shall convey the Association Property to the Association free of all liens and encumbrances except current real property taxes and assessments (which taxes and assessments shall be prorated as of the date of conveyance), title exceptions of record and the covenants, conditions, reservations and restrictions contained in this Declaration and the instrument which conveys the Association Property to the Association.

(b) The Association shall be deemed to have accepted the obligation to maintain the Improvements it is required to maintain within any Phase (1) when such Improvements have been completed in substantial conformance with the plans and specifications therefor, and (2) when a Close of Escrow has occurred within such Phase. The issuance of a certificate by the architect who designed any such Improvements stating that such Improvements are in substantial conformance with the original plans and specifications shall be satisfactory evidence of such completion.

The Association shall release Declarant from the Bond defined in the Section entitled "Enforcement of Bonded Obligations" of this Declaration as to any Improvements accepted for maintenance as provided above.

ARTICLE 8.

EASEMENTS AND RIGHTS

Section 8.1 - Nature of Easements. Unless otherwise set forth herein, all easements reserved to Declarant herein shall be nonexclusive.

Section 8.2 - Oil and Mineral Rights; Ingress and Egress. There is hereby reserved to Declarant, together with the right to grant and transfer the same:

(a) **Oil and Mineral Rights.** Any remaining oil, minerals, natural gas, and other hydrocarbons by whatsoever name known, geothermal resources, metalliferous or other ores, and all products derived from any of the foregoing, that may be within or under the Covered Property, and all rights associated with the foregoing, together with the perpetual right of drilling, mining, exploring and operating therefor and storing in and removing the same from the land or any other land, including the right to whipstock or directionally drill and mine from lands other than the Covered Property, oil or gas wells, tunnels and shafts into, through or across the subsurface of the Covered Property and to bottom such whipstocked or directionally drilled wells, tunnels and shafts under and beneath or beyond the exterior limits thereof, and to redrill, retunnel, equip, maintain, repair, deepen and operate any such wells or mines without, however, the right to drill, mine, store, explore and operate through the surface or the upper five hundred (500) feet of the subsurface of the Covered Property; and

(b) **Ingress and Egress.** Easements over the private streets within the Covered Property for ingress, egress, use and enjoyment for the benefit of the Annexable Property.

Section 8.3 - Easements for Construction and Marketing Activities. There is hereby reserved to Declarant, together with the right to grant and transfer the same:

(a) **Improvements.** Easements (1) over the Common Area for the purpose of constructing, erecting, operating and maintaining thereon, therein or thereunder roads, streets, walks, driveways, parkways and park areas, and (2) over the Covered Property for the installation and maintenance of electric, telephone, cable television, water, gas, irrigation lines, sanitary sewer lines and drainage facilities, including without limitation easements for access to and reading of utility meters;

(b) **Cable Television.** The right to place on, under or across the Covered Property transmission lines and other facilities for a cable television or a community antenna television system and the right to enter upon the Covered Property to service, maintain, repair, reconstruct and replace such lines or facilities;

(c) **Construction and Sales.** Easements for construction, display, maintenance, sales and exhibit purposes over the Common Area other than Exclusive Use Common Area in connection with the erection and sale or lease of Residences within the Covered Property, provided, however, that such use shall not be for a period beyond the sale by Declarant of all Residences within the Development;

(d) **Utilities Shown on Map.** Easements over the Covered Property for the installation and maintenance of electric, telephone, cable television, water, gas, sanitary sewer lines and drainage facilities as shown on any recorded final tract or parcel map covering the Covered Property;

(e) **Completing Improvements.** Easements over the Common Area for the purpose of completing Improvements required to be made by the Declarant provided that access for such purpose is not otherwise reasonably available;

(f) **Repairs.** Easements over and upon the Common Area for the purpose of making repairs; and

(g) **Redesign Improvements.** Easements and rights to redesign any portion of the Improvements which have been constructed, or are proposed to be constructed, to effect changes to the Common Area and/or to adjust the location and/or the configuration of any Improvements upon or within the Common Area, including without limitation the location of any Exclusive Use Common Area, provided that in no event shall Declarant redesign any Exclusive Use Common Area, or any Improvements thereon, in a manner that physically modifies, affects or changes any Residences which, as of the date of such redesign, are the subject of a sale or are not owned by Declarant unless the purchaser or Owner of each such Residence consents to such redesign in writing.

The easements reserved to Declarant, or granted and conveyed by Declarant, pursuant to this Section shall not unreasonably interfere with the use and enjoyment of the Covered Property by the Owners and any damage, repair or restoration necessitated by any such installation, construction or maintenance shall be completed by the holder

of the easement who has entered upon the Covered Property for any such purpose within a reasonable time after the occurrence of such damage or need for restoration.

Section 8.4 - Easements for Owners. There is hereby reserved to Declarant, together with the right to grant and transfer the same:

(a) **Ingress, Egress and Recreational Rights.** An easement on and upon the Nonexclusive Use Common Area which, when granted and conveyed by Declarant, shall be appurtenant to each Residence in each Phase of the Covered Property for ingress, egress, use and enjoyment (which includes, without limitation, the unrestricted right of ingress and egress to such Owner's Residence); and

(b) **Drainage.** An easement for the benefit of and appurtenant to the Residence receiving the benefit thereof over any contiguous portion of the Covered Property for surface drainage and drainage from such Residence over, under, through and across drainage Improvements installed by the Declarant, together with the right to maintain and repair any such drainage Improvements that are not being maintained by the Association.

Such easements when granted and conveyed by Declarant pursuant to this Section shall be subject to all of the provisions of the Association Management Documents, including any prior rights of the Association.

Section 8.5 - Easements for Association. There is hereby reserved to Declarant, together with the right to grant and transfer the same to the Association, easements over the Covered Property, or portion thereof, as follows:

(a) **Repair and Maintenance.** An easement over the Covered Property for the purpose of performing the repair and maintenance obligations described in Article 7 of this Declaration and emergency repairs or other work reasonably necessary for the proper maintenance of the Covered Property;

(b) **Discharge Obligations.** An easement over the Covered Property for the purpose of permitting the Association to discharge any other obligations and powers as described in the Association Management Documents; and

(c) **Drainage.** An easement for the benefit of and appurtenant to the Association Property receiving the benefit thereof over any contiguous portion of the Covered Property for surface drainage and drainage from such Association Property over, under, through and across drainage Improvements installed by the Declarant together with the right to maintain and repair any such drainage Improvements.

Any damage to Improvements upon the Covered Property resulting from the exercise of any of the easement rights granted pursuant to this Section shall be repaired by the entity exercising such rights within a reasonable time after the occurrence of such damage unless otherwise specified in the document by which such easement was conveyed.

Section 8.6 - Support, Settlement and Encroachment. There is hereby reserved to Declarant, together with the right to grant and transfer the same, the following reciprocal easements for the purposes set forth below:

(a) an easement appurtenant to each Lot which is contiguous to another Lot or Common Area, which Lot shall be the dominant tenement and the contiguous Lot or Common Area shall be the servient tenement; and

(b) an easement appurtenant to the Common Area contiguous to a Lot, which Common Area shall be the dominant tenement and which contiguous Lot shall be the servient tenement.

Such easements shall be for the purposes of:

(i) engineering errors, errors in construction, reconstruction, repair, support, and accommodation of the natural settlement, shifting or other movement of any portion of the Improvements and for the maintenance thereof;

(ii) minor encroachments by reason of a roof or eave overhang and for the maintenance of such roof or eave overhang by the owner of the dominant tenement; and

(iii) encroachment of fireplaces, doorsteps, foundations, footings, garage doors, utilities and other appurtenances or fixtures and the maintenance thereof by the owner of the dominant tenement, which, in the construction of the structures upon the dominant tenement or from any reconstruction or modifications of such structures, project beyond the external surface of the outer walls of such structures.

The rights and obligations of owners of the dominant tenements shall not be altered in any way by such encroachments, settlement or shifting; provided, however, that in no event shall an easement for encroachment be created in favor of an owner of the dominant tenement if such encroachment occurred due to the willful misconduct of any such owner. If any portion of a structure on the Covered Property is partially or totally destroyed and then repaired or rebuilt, any minor encroachments over adjoining Lots or Common Area shall have easements for the maintenance of such encroachments. All of the easements for encroachments and the maintenance thereof set forth in this Section shall be valid for as long as such encroachments exist.

Section 8.7 - Utilities and Cable Television. Wherever sanitary sewer house connections, water house connections, air conditioning connections or ducts, electricity, gas, telephone and cable television lines or drainage facilities are installed within the Covered Property, the Association or any Owner as the owner of any property served by such connections, lines or facilities shall have the right, and there is hereby reserved to Declarant, together with the right to grant and transfer the same to any such owner, an easement to the full extent necessary for the full use and enjoyment of such portion of such connections which service such owner's property, and to enter, or have utility or cable television companies enter, any portion of the Covered Property, including without limitation the Lot in or upon which such connections, lines or facilities or any portion thereof lie, to repair, replace and generally maintain such connections, lines and facilities as and when the same may be necessary, provided that any damage caused by such entry shall be repaired by such owner, utility or cable television company as promptly as possible after completion of work thereon.

Section 8.8 - Exclusive Use Common Areas. There is hereby reserved to Declarant, together with the right to grant and transfer the same, easements over the Common Area, or any portion thereof that is not Exclusive Use Common Area or Association Common Area, for the exclusive use by an Owner or Owners of contiguous property as a yard, recreational, gardening, and/or landscaping area, and for minor encroachment of any improvements thereon and the repair and maintenance thereof. Any such easement when conveyed shall be deemed to be Exclusive Use Common Area to the same extent as if so described in this Declaration or in any Supplementary Declaration. Such easement shall not be effective unless approved by the Board. The Board shall approve any such easement if it has determined that it would be in the best interests of the Association and the remaining Owners to create such Exclusive Use Common Areas for the benefit of any particular Owner or Owners of any such contiguous property. For example and without limitation, it would be beneficial to the Association and the remaining Owners to transfer the burden of management and maintenance of any property which in the reasonable judgment of the Board is generally inaccessible to the remaining Owners or is not likely to be used by the remaining Owners. Upon conveyance, such Exclusive Use Common Area shall be appurtenant to the property of the Owner who has the exclusive use thereof. Such easement may contain modifications of the covenants, conditions and restrictions as they pertain to such easement area and shall also be subject to any additional terms, conditions and restrictions that may be imposed by the Board.

Section 8.9 - Side-Yard Easements. There is hereby reserved to Declarant, together with the right to grant and transfer the same to the owners of the Lots and Association Property described as "Benefitted Property" on Exhibit D attached hereto or on any similar Exhibit attached to a Supplementary Declaration, Side-Yard Easements as shown on such Exhibit, which easements shall be appurtenant to the Lots and Association Property described on such Exhibit as "Benefitted Property" and which easements shall burden the Lots and Association Property described on such Exhibit as "Burdened Property". Unless otherwise provided in any Supplementary Declaration concerning the Annexed Property described therein, (a) the Burdened Property owner shall have no right to use the easement area except as otherwise provided in this Section, (b) such Side-Yard Easements shall extend over the portion of the Burdened Property lying between the boundary line of the Benefitted Property and the Burdened Property and any wall or fence constructed by Declarant on the Burdened Property approximately parallel to such boundary line, provided that any such wall or fence on the Burdened Property shall be deemed to run from the rear boundary of such easement area to the front boundary thereof, all as depicted on Exhibit D attached hereto or any similar Exhibit attached to a Supplementary Declaration, whether or not such wall or fence actually runs the entire length of such easement area, and (c) the Benefitted Property owner may use the easement area for the purposes

of landscaping, drainage, the establishment of a general recreational or garden area and purposes related thereto, subject to the following provisions:

(i) The owner of the Burdened Property shall have the right at all reasonable times to enter upon the easement area, including the right to cross over the Benefitted Property for such entry, to perform work related to the use and maintenance of the Burdened Property. Except in the case of an emergency, the owner of the Burdened Property shall give the owner of the Benefitted Property at least twenty-four (24) hours prior written notice of his intention to enter upon the Benefitted Property and the easement area. Under all circumstances, the owner of the Burdened Property shall use his best efforts to minimize the duration of the work and the inconvenience to the owner of the Benefitted Property;

(ii) The Burdened Property shall have the right of drainage over, across and on the easement area for water draining from any dwelling or structure on the Burdened Property, the right to maintain eaves and appurtenances thereto and the portions of any dwelling structure on the Burdened Property as originally constructed or as constructed pursuant to the Article hereof entitled "Architectural Control";

(iii) The owner of the Benefitted Property shall not attach any object to a dwelling on the Burdened Property or to a fence or wall constructed on the Burdened Property approximately parallel to the boundary line of the Benefitted Property and the Burdened Property, or disturb the grading of the easement area, or otherwise act regarding the easement area in any manner which would damage the Burdened Property;

(iv) The owner of the Benefitted Property shall not install a structure within the portion of the easement area that is closer than six inches (6") to the portion of the Burdened Property not subject to the Side-Yard Easement nor install any improvement in the easement area which unreasonably interferes with the ability of the owner of the Burdened Property to maintain such remaining portion of the Burdened Property;

(v) In exercising the right of entry on the easement area as provided for above, the owner of the Burdened Property agrees to utilize reasonable care not to damage any landscaping or other items existing in the easement area; provided, however, the owner of the Burdened Property shall not be responsible for damage to such landscaping or other items to the extent such damage could not be reasonably avoided in connection with such entry for authorized purposes;

(vi) Except for drainage from a dwelling or structure as provided above, the owner of the Burdened Property shall not have the right to concentrate drainage from the Burdened Property in, under, through or across the easement area benefitting an owner of the Benefitted Property except through drainage devices installed by Declarant in the original construction of the structures or unless the prior written approval of the Owner of the Benefitted Property is obtained in a written instrument recorded in the Official Records. The owner of the Burdened Property shall have a right of entry on such easement area for the installation (if applicable), maintenance and repair of the drainage systems permitted by the foregoing, providing that any damage caused thereby to the landscaping or other items existing in the easement area will be repaired at the sole expense of the owner of the Burdened Property as soon as reasonably possible after such installation, maintenance or repair is completed;

(vii) The owner of the Benefitted Property shall have the right, without the prior written approval of the owner of the Burdened Property, to utilize the easement area appurtenant to his Residence for the installation, repair and maintenance of underground drainage and utility systems;

(viii) The owner of the Benefitted Property shall have the right and obligation to landscape, improve and otherwise maintain the easement area in good condition and repair at his expense;

(ix) The owner of the Benefitted Property shall indemnify and hold the Burdened Property and the owner thereof harmless from and against any and all liability arising out of or otherwise resulting from any negligent act or omission of the owner of the Benefitted Property and his family, invitees, permittees and agents relating to the exercise of his rights or the performance of his obligations hereunder;

(x) The owner of the Burdened Property shall indemnify and hold the Benefitted Property and the owner thereof harmless from and against any and all liability arising out of or otherwise resulting from any negligent act or omission of the owner of the Burdened Property and his family, invitees, permittees and agents relating to the exercise of his rights or the performance of his obligations hereunder; and

(xi) Any dispute arising concerning the rights and obligations created by this Section shall be determined, at the request of either party, by arbitration conducted in the County in accordance with the then existing rules for commercial arbitration of the American Arbitration Association, and judgment upon any award rendered by the arbitrator may be entered by any State or Federal Court having jurisdiction thereof. If the parties cannot agree upon an arbitrator, one shall be appointed by the Presiding Judge of the County Superior Court. It is intended that this arbitration provision be valid and enforceable.

Such easements when granted to Owners shall be subject to the rights of the Association as set forth in the Articles entitled "The Association" and "Repair and Maintenance" of this Declaration.

Section 8.10 - Public Bicycle and Pedestrian Trails. There is hereby reserved to Declarant, together with the right to grant and transfer the same, an easement for public ingress and egress over any bicycle, pedestrian, equestrian or other trails shown on any recorded final tract or parcel map covering the Covered Property. The reservation of this easement shall not imply any right of public use of the Covered Property or Improvements.

Section 8.11 - Clustered Mailboxes. There is hereby reserved to Declarant, together with the right to grant and transfer the same, easements over the Covered Property to the extent necessary to comply with any requirements of the United States Postal Service and the appropriate Public Agency to cluster mailboxes for the delivery, deposit and pickup of United States mail, for maintenance, repair and replacement of such mailboxes and for ingress and egress to and across that portion of the Covered Property to the extent necessary for all such purposes. The easement rights and obligations of each Owner shall be limited to the mailbox that services such Owner and any appurtenances thereto and the portion of the Covered Property on which such mailbox and appurtenances are located and to the extent necessary to access such mailbox for all of the foregoing purposes.

Section 8.12 - Subordination. Except as may be otherwise provided in the grant or dedication of an easement, any easement conveyed in favor of a Public Agency shall be prior and superior to all other easements described herein, and any easement conveyed pursuant to the provisions of this Article to a utility company shall be prior and superior to all other easements described herein except any easement in favor of a Public Agency. Grantor and any grantee by acceptance of a conveyance of any easement described in this Declaration, whether or not so stated in such conveyance document, agree that such easement shall be subordinate to any such prior and superior easements and further agree to execute any document acknowledging such subordination that may be required by the holder of any such prior easement.

Section 8.13 - Delegation of Use. Any Owner may delegate his right of enjoyment to the Nonexclusive Use Common Area to the members of his family or his tenants who reside in his Residence or to a vendee under a land sales contract subject to the covenants, conditions and restrictions contained in the Association Management Documents and the rules and regulations adopted by the Board. If and for so long as an Owner delegates such rights of enjoyment to his tenants or a vendee, such Owner shall not be entitled to the use and enjoyment of any facilities or equipment belonging to or controlled by the Association for the use and enjoyment of its Members.

Section 8.14 - Waiver of Use. No Owner may exempt himself from personal liability for Assessments duly levied by the Association, or release the Residence owned by him from the liens, charges and other provisions of the Association Management Documents by waiver of the use and enjoyment of the Nonexclusive Use Common Area or the abandonment of his Residence.

ARTICLE 9.

USE RESTRICTIONS

Section 9.1 - Commercial Use. Subject to the subsection entitled "Construction and Sales" of the Section entitled "Easements for Construction and Marketing Activities" of the Article entitled "Easements and Rights" of this Declaration, no part of a Residence shall be used or caused to be used or allowed or authorized in any way, directly

or indirectly, for any nonresidential purposes except that a Residence may be used for business, commercial, manufacturing, mercantile, storing, vending, or similar nonresidential purposes provided that the existence of such nonresidential activity is not apparent or detectable by sight, sound or smell from the exterior of a Residence, and such nonresidential activity does not generate an unreasonable amount of traffic or unreasonably limit parking for other Owners and their guests, employees, or agents.

Section 9.2 - Signs. No sign or billboard of any kind shall be displayed to the public view on any portion of the Covered Property except (1) such signs as may be used by Declarant or its sales agents in connection with the development of the Covered Property and sale of the Residences, and (2) signs that are installed or displayed by the Association; provided, however, that in accordance with Section 712 of the California Civil Code, an Owner may display on his Residence, or on real property owned by others with their consent, or both, signs which are reasonably located, in plain view of the public, are of reasonable dimensions and design, do not adversely affect public safety, including traffic safety, and which advertise the property for sale, lease, or exchange, or advertise directions to the property or the Owner's or agent's address and telephone number. As provided in such Section 712 of the California Civil Code, a sign which conforms to an ordinance adopted in conformity with Section 713 of the California Civil Code shall be deemed to be of reasonable dimension and design. Declarant shall repair any damage to or complete any restoration of the Covered Property caused or necessitated by the display of signs by Declarant or its sales agents within a reasonable time after the occurrence of such damage or need for restoration.

Section 9.3 - Nuisance. No noxious or offensive trade or activity shall be permitted upon any part of the Covered Property, nor shall anything be done thereon which shall in any way interfere with the quiet enjoyment of each of the Owners of his respective Residence, or which shall in any way increase the rate of insurance on any other Residence or the Covered Property.

Section 9.4 - Temporary Residences. No garage, trailer, camper, motor home or recreational vehicle shall be used as a dwelling structure although the Board may adopt rules that would permit the temporary use of such structure or vehicles for such purpose on a limited basis under prescribed conditions such as, but not limited to, the period of time that the residential dwelling structure may be under construction or renovation.

Section 9.5 - Vehicles; Parking Restrictions.

(a) The following terms used in this Section are defined to mean as follows:

(i) "Commercial Vehicle" shall mean a truck of greater than three-quarter ton capacity;

(ii) "Recreational Vehicle" shall mean any recreational vehicle or equipment designed to be used for recreational purposes, to include, without limitation, trailers, boats, campers, trailer coaches, buses, house cars, camp cars, motor homes (if the motor homes are a size larger than seven (7) feet in height and/or greater than one hundred twenty-four (124) inches in wheel base length) or any other similar type of equipment or vehicle; and

(iii) "Temporary Parking" shall mean temporary parking for washing and polishing of vehicles and activities related thereto, temporary parking for loading and unloading of vehicles, parking of vehicles belonging to guests of Owners and temporary parking of commercial vehicles being used in the furnishing of services to the Association or the Owners.

(b) Except for Temporary Parking, no Commercial Vehicle, Recreational Vehicle or any other similar type of equipment or vehicle shall hereafter be permitted to remain upon the Covered Property unless placed or maintained within an enclosed area, or unless obscured from view of adjoining streets, Association Property and Residences by a solid wall or fence or appropriate screen.

(c) No automobile, Commercial Vehicle, Recreational Vehicle or any other motorized vehicle may be dismantled, rebuilt, repaired, serviced or repainted on the Covered Property unless performed within a completely enclosed structure located on a Residence which completely screens the sight and sound of such activity from streets, Association Property and neighboring Residences.

(d) No automobile, Commercial Vehicle, Recreational Vehicle or any other motorized vehicle may be washed or polished on the Covered Property unless performed within those portions of the Common Area designated by the Board for such purposes.

(e) Each garage is to be used primarily for the parking of the maximum number of vehicles for which it was designed. Storage of personal items may occur in the garages only to the extent that vehicles may still be able to be parked within the required garage spaces. Except for the Temporary Parking of vehicles within those portions of the Common Area designated by the Board for the washing and polishing of vehicles in connection with such activities, each Owner shall park his vehicles only within his garage and may not park his vehicles on any other portion of the Covered Property, including without limitation any parking areas designated for guest parking. If an Owner leases all or any portion of his Residence, the foregoing limitations shall apply to the tenant and the Owner, collectively. Notwithstanding the foregoing, if an Owner who leases his Residence does not reside in the Residence, the Owner may temporarily park one (1) vehicle in a guest parking space when visiting the Covered Property, subject to all of the other restrictions pertaining to the use of guest parking promulgated by the Board.

(f) Parking shall be prohibited within the Fire Lanes.

The Board is responsible for enforcing any and all parking and traffic regulations within the Covered Property, including without limitation the prohibition of all parking within the Fire Lanes. The Board shall adopt rules for the regulation of the admission and parking of vehicles within the Covered Property, which rules may include the assessment of Penalty Assessments to Owners who violate, or whose family, guests, employees, tenants or agents violate, such rules. The Board shall have the power to enter upon any Residence as necessary to enforce the parking requirements of the Association, including the power to inspect any garage to assure that the garage is being used primarily for the parking of the maximum number of vehicles for which it was designed.

Section 9.6 - Use of Common Area. The Board may establish reasonable rules and regulations as it deems appropriate in its sole discretion with regard to the use and enjoyment of any portion of the Common Area that is not Exclusive Use Common Area, including without limitation, designating portions thereof as Association Common Area, for "parking" and "guest parking" or granting the exclusive use of portions thereof for a limited period of time for parking purposes to Owners who are temporarily being denied vehicular access to their Residences because of any construction, reconstruction, repair or maintenance activity being conducted by the Board or conducted by others with the consent of the Board.

Section 9.7 - Animals. No livestock, reptiles, poultry or other animals of any kind shall be raised, bred or kept upon the Covered Property, except that dogs, cats or other household pets may be kept on the Residences, provided they are not kept, bred or maintained for any commercial purpose, or in numbers deemed unreasonable by the Board. Notwithstanding the foregoing, no animals may be kept on the Residences which in the good faith judgment of the Board result in any annoyance or are obnoxious to residents in the vicinity. All animals permitted to be kept by this Section shall be kept on a leash when on any portion of the Covered Property except when confined within a Residence.

Section 9.8 - Restrictions on Drilling Operations. No oil drilling, oil development operations, oil refining, quarrying, or mining operations of any kind shall be permitted upon or in the Covered Property nor, after this Declaration is recorded, shall oil wells, tanks, tunnels, or mineral excavations or shafts be installed upon the surface of the Covered Property or within five hundred (500) feet below the surface of such properties. No derrick or other structure designed for use in boring for water, oil or natural gas shall be erected, maintained or permitted upon the Covered Property.

Section 9.9 - Unsightly Items. All weeds, rubbish, debris, or unsightly material or objects of any kind shall be regularly removed from the Residences and shall not be allowed to accumulate thereon. Except as otherwise required or permitted by the Architectural Guidelines or the Association Rules, all clotheslines, refuse containers, trash cans, woodpiles, storage areas, machinery and equipment shall be prohibited upon any Residence unless obscured from view of adjoining streets or portions of the Covered Property from a height of six (6) feet or less.

Section 9.10 - Antennae; Roof Structures.

(a) **Antennae.** No television, radio, or other electronic towers, aerials, antennae or devices of any type for the reception or transmission of radio or television broadcasts or other means of communication shall hereafter be erected, constructed, placed or permitted to remain on the Covered Property unless they are (1) contained within a building or underground conduits, (2) completely obscured from view from any streets or any other portion of the Covered Property, (3) screened from view by an appropriate screen that has been approved in writing by the Architectural Committee, or (4) if Architectural Guidelines are adopted to govern the installation and maintenance of any such devices, in compliance with such Architectural Guidelines. Notwithstanding the foregoing, restrictions on the installation and maintenance of certain video or television antennas (including satellite dishes) and other such devices described in California Civil Code Section 1376 and/or in the federal Telecommunications Act of 1996, and any regulations promulgated pursuant thereto such as but not limited to Rule 207 of the Federal Communications Commission, shall be subject to the limitations set forth in said statutes and regulations.

(b) **Solar Energy Systems.** As provided in Section 714 of the California Civil Code, reasonable restrictions on the installation of solar energy systems that do not significantly increase the cost of the system or significantly decrease its efficiency or specified performance, or which allow for an alternative system of comparable cost, efficiency, and energy conservation benefits may be imposed by the Architectural Committee. Whenever approval is required for the installation or use of a solar energy system, the application for approval shall be processed and approved by the Architectural Committee in the same manner as an application for approval of an architectural modification to the property, and shall not be willfully avoided or delayed. "Solar energy system" as used herein shall have the meaning given to it in Section 801.5 of the California Civil Code. Failure to comply with Section 714 of the California Civil Code could result in the payment of actual damages and a civil penalty and the prevailing party in any action to enforce compliance with such Section 714 shall also be awarded reasonable attorneys fees.

(c) **Other Roof Structures.** No other appliances or installations on exterior roofs of structures including, without limitation, roof-top turbine ventilators, shall be permitted unless they are installed in such a manner that they are not visible from streets or any other portion of the Covered Property.

Section 9.11 - Drainage. All drainage of water from any Residence shall drain or flow into adjacent streets or alleys and shall not be allowed to drain or flow upon, across, or under any other portion of the Covered Property unless an easement for such purpose is granted. An Owner shall not alter the drainage of water which exists pursuant to the drainage plan originally created at the time of the initial sale of his Residence by Declarant except through the use of a positive drainage device which does not materially affect the concentration or flow direction of drainage water under such drainage plan.

Section 9.12 - Garages. No garage doors shall be permitted to remain open except for a temporary purpose, and the Board may adopt rules for the regulation of the opening of garage doors, including the assessment of Penalty Assessments to Owners whose garage doors have remained open in violation of such rules.

Section 9.13 - Window Covers. Curtains, drapes, shutters or blinds may be installed as window covers. No window shall be covered with aluminum foil, newspapers or other material not designed for use as a window cover.

Section 9.14 - California Vehicle Code. The applicable Public Agency shall be allowed to impose and enforce all provisions of the applicable California Vehicle Code sections or local ordinances on any private streets contained within the Covered Property.

Section 9.15 - Leases. Any agreement for the leasing or rental of a Residence (hereinafter in this Section called a "lease") shall be in writing and shall provide that the terms of the lease shall be subject in all respects to the provisions of the Association Management Documents and any applicable agreements between the Association and any of the Federal Agencies. Any Owner who leases his Residence shall be responsible for assuring compliance by such Owner's lessee with the Association Management Documents. No Residence shall be leased for any period less than seven (7) days. The Covered Property and the Residences shall be operated to the extent reasonably possible in a manner that will satisfy guidelines or regulations that permit the Federal Agencies to purchase, insure, or guarantee First Mortgages encumbering Residences. As long as hotel-type rentals preclude Federal Agencies from purchasing, insuring or guaranteeing First Mortgages, as aforesaid, such hotel type rentals shall not be

permitted. "Hotel-type rentals" have been defined by FNMA to mean rentals that include the presence of a registration desk, available food and telephone service, daily occupancy rates, daily cleaning services or rental pooling agreements that require Owners to either rent their Residences or give management firm control over the occupancy of the Residences.

Section 9.16 - View. Each Owner, by acceptance of a deed or other conveyance of a Residence, acknowledges that any construction or Improvement by Declarant, the Association, any other Owner, or any owner of any other property may change, impair, obstruct or otherwise affect any view that such Owner may have enjoyed at the time of the purchase of his Residence. The Association Management Documents do not contain any provisions intended to protect any view or to guarantee that any views that an Owner may have enjoyed will not be impaired or obstructed in the future by changes to other property. Each Owner further acknowledges that any rights acquired do not include the preservation of any view and further consents to such obstruction and/or impairment. No representations or warranties of any kind, express or implied, have been given by Declarant, or any partners, subsidiaries or affiliated companies of Declarant, or any officers, employees, directors or agents of any of them, in connection with the preservation of views. Each Owner and/or the Association agree to hold Declarant and all partners, subsidiaries and affiliated companies of Declarant, and all of the officers, employees, directors and agents of any of them, free of liability from such damages, costs, expenses or charges incurred in connection therewith, such as, but not limited to, attorneys' fees and court costs and costs arising from any changes, obstruction or impairment of the view from such Owner's Residence.

Section 9.17 - Wall and Fence Limitations. No wall or fence may be constructed by an Owner within any Association Common Area located on a Lot. No wall or fence constructed by an Owner within a Fence Limitation Zone of a Lot may exceed the height limitation established for such Fence Limitation Zone as set forth in the Architectural Guidelines; provided, however, the foregoing height limitation does not apply to any wall which comprises part of the dwelling constructed on the Lot nor to any landscaping installed on the Lot. The foregoing limitations are in addition to any other restrictions imposed by the Architectural Guidelines.

Section 9.18 - Street Trees. No street tree installed by Declarant on a Lot may be removed by an Owner unless it is replaced by a tree of similar size and type.

ARTICLE 10.

DESTRUCTION OF IMPROVEMENTS

Section 10.1 - Definitions. The following terms used in this Article are defined to mean as follows:

(a) **Acceptable Range of Reconstruction Cost.** A determination that the amount of the insurance proceeds paid for partially or totally destroyed Insured Improvements together with the amount of any deductible amount designated in the fire and casualty insurance policy maintained by the Association totals at least ninety percent (90%) of the estimated cost to repair, replace or reconstruct such partially or totally destroyed Insured Improvements.

(b) **Affected Insured Improvements.** Partially or totally destroyed Insured Improvements.

(c) **Affected Mortgagee.** A Mortgagee who holds a Mortgage encumbering an Affected Insured Improvement.

(d) **Affected Owner.** (1) Each Owner within a Special Benefits Area concerning Affected Insured Improvements within the Special Benefits Common Area thereof, and (2) all Owners concerning all other Affected Insured Improvements.

(e) **Insured Improvements.** The Improvements on the Covered Property insured under the commercial property insurance policy maintained by the Association and shall consist of Association Common Area Improvements, Common Facilities and Special Benefits Common Area Improvements.

(f) **Substantial Destruction.** (1) Concerning Insured Improvements that are not within any Special Benefits Common Area, a destruction of such Insured Improvements representing at least seventy-five percent (75%)

of the current replacement cost value of all such Insured Improvements on the Covered Property, and (2) concerning Insured Improvements that are within the Special Benefits Common Area of a particular Special Benefits Area, a destruction of such Insured Improvements representing at least seventy-five percent (75%) of the current replacement cost value of all of the Insured Improvements within such Special Benefits Common Area.

Section 10.2 - Board Action. If any Insured Improvements are damaged, the Board shall take the following action:

(a) **Acceptable Range of Reconstruction Cost.** The Board shall ascertain the cost of repair, replacement or reconstruction of such Insured Improvements by obtaining fixed price bids from at least two (2) reputable contractors, which bids shall include the obligation of the contractor to obtain a performance bond, if the Board deems that such bids are necessary or appropriate. The Board shall further have full authority to negotiate with representatives of the insurer and to make settlement with the insurer for less than full insurance coverage on the damage. Any settlement made by the Board in good faith shall be binding upon all Affected Owners. After the settlement has been approved by the Board, any two (2) directors of the Association may sign a loss claim form and release form in connection with the settlement of a loss claim.

(b) **Notice of Reconstruction Assessments.** The Board shall promptly cause notice to be delivered to all Affected Owners if, during the process of determining the Acceptable Range of Reconstruction Cost, it appears likely that the repair, replacement or reconstruction of a partially or totally destroyed Insured Improvement will result in the levying of Reconstruction Assessments to Affected Owners. Such notice shall specify the estimated amount of any such Reconstruction Assessment.

(c) **Vote of Affected Owners.** The Board shall call a special meeting or shall distribute written ballots to the Affected Owners for action to be taken without a meeting to determine whether not to proceed with the repair, replacement or reconstruction of partially or totally destroyed Insured Improvements upon the happening of any one of the following events:

- (i) a Substantial Destruction;
- (ii) a determination that the requirements of the Acceptable Range of Reconstruction Cost have not been met;
- (iii) receipt of a written request of Affected Owners representing at least five percent (5%) of the total voting power of the Affected Owners requesting such action; or
- (iv) failure or inability to make a determination as to the Acceptable Range of Reconstruction Cost within sixty (60) days after the date of the destruction.

Section 10.3 - Reconstruction. The repair, replacement or reconstruction of the Affected Insured Improvements shall commence as soon as practicable following either of the following events:

(a) a determination that the requirements of the Acceptable Range of Reconstruction Cost have been met, except that if Reconstruction Assessments must be levied, such work shall not commence until ten (10) days after the delivery of the notice of the Reconstruction Assessment to all Affected Owners required to pay Reconstruction Assessments. The notice of estimated Reconstruction Assessment required to be delivered to each such Affected Owner as provided in this Article above shall satisfy this condition if the actual amount of the Reconstruction Assessment does not exceed the estimated amount set forth in such notice; or

(b) approval of such action by not less than thirty-four percent (34%) of the voting power of the Affected Owners other than Declarant.

Section 10.4 - Proceeds of Insurance. All insurance proceeds covering the Affected Insured Improvements shall be paid to the Association to be used for the benefit of Affected Owners, Affected Mortgagees and others as their respective interests shall appear. If any portion of the insurance proceeds is paid to an Affected Mortgagee, an amount equal to the amount paid to such Affected Mortgagee shall be paid to the Board in equal amounts by all Affected Owners. If any Affected Owner fails to pay such amount within thirty (30) days of a written demand therefor

by the Association, the Board may levy a Special Assessment against such Affected Owner and his Residence for such amount.

Section 10.5 - Reconstruction Assessments. If necessary, the Board shall levy a Reconstruction Assessment against the Affected Owners at such time and in such amount determined necessary to cover the costs of repair, replacement or reconstruction in excess of insurance proceeds.

Section 10.6 - Compliance with Plans. Any reconstruction undertaken pursuant to this Article shall substantially conform to the original plans and specifications unless other action is approved by a majority of the voting power of the Affected Owners.

Section 10.7 - Determination of Allocable Proceeds. The amount of insurance proceeds "allocated" or "allocable" to an Affected Insured Improvement shall be determined pursuant to this Section as follows:

(a) If the insurance carrier allocates insurance proceeds among Affected Insured Improvements and such allocation is approved by the Board, that allocation shall be final and binding upon the Affected Owners, the Affected Mortgagees and the Association.

(b) If the insurance carrier fails to allocate the insurance proceeds, such allocation shall be determined by multiplying the amount of insurance proceeds available for distribution by a fraction, the denominator of which is the total decrease of M.A.I. appraised fair market value of all of the Affected Insured Improvements and the numerator of which is the decrease of M.A.I. appraised fair market value of each such Affected Insured Improvement. The appraised values shall be determined by an M.A.I. appraiser selected by the Board. Such allocation shall be final and binding on the Affected Owners, the Affected Mortgagees and the Association.

Section 10.8 - Distribution of Insurance Proceeds. If there has been a decision not to repair, replace or reconstruct any partially or totally destroyed Insured Improvements, the Board shall retain the insurance proceeds allocated to each Affected Insured Improvement in the general funds of the Association for the benefit of the Affected Owners subject to the prior rights of all Affected Mortgagees holding Mortgages encumbering the particular Affected Insured Improvement for which such insurance proceeds have been allocated. Allocable proceeds paid to Affected Mortgagees shall be paid in the order of their recorded priority on each such Affected Insured Improvement.

Section 10.9 - Payment to Mortgagees. Any insurance proceeds paid to an Affected Mortgagee pursuant to this Article shall be paid in the amount required by such Affected Mortgagee, but not to exceed (1) the outstanding indebtedness secured by such Mortgage, or (2) the insurance proceeds allocated to such Affected Insured Improvement as hereinabove provided in this Article, whichever of (1) or (2) is the lesser.

ARTICLE 11.

EMINENT DOMAIN

Any awards paid in the event of condemnation by eminent domain, or by sale under threat thereof, of all or any portion of the Covered Property owned by the Declarant that is not within a Phase in which a Close of Escrow has occurred shall be negotiated by, and paid to, the Declarant.

Section 11.1 - Definition of Taking. The term "taking" as used in this Article shall mean condemnation by eminent domain, or by sale under threat thereof, of all or part of the Association Property that is within a Phase in which a Close of Escrow has occurred.

Section 11.2 - Representation by Board. In the event of a taking, the Owners hereby appoint the Board and such persons as the Board may delegate to represent all of the Owners in the affected Phases in which a Close of Escrow has occurred in an action to recover all awards. No Owner shall challenge the good faith exercise or the discretion of the Board in fulfilling its duties under this Article. The Board shall act in its sole discretion concerning any awards made in connection with the taking and shall be entitled to make a voluntary sale to the condemnor in lieu of engaging in a condemnation action.

Section 11.3 - Award. Any awards received on account of the taking of Common Area in a Phase in which a Close of Escrow has occurred other than Special Benefits Common Area and Exclusive Use Common Area shall be paid to the Association and shall be retained in the general funds of the Association subject to the prior rights of any Mortgagee holding an encumbrance upon any such Common Area for which such award has been paid. Any awards received on account of the taking of any Special Benefits Common Area in a Phase in which a Close of Escrow has occurred shall be paid to the Association to be applied to the Special Benefits Expenses of, and otherwise for the benefit of the Owners within, the Special Benefits Area in which such Special Benefits Common Area is located subject to the prior rights of any Mortgagee holding an encumbrance upon such Special Benefits Common Area. Any awards received on account of the taking of any Exclusive Use Common Area shall be paid to the Owner and Mortgagees of the Lot to which such Exclusive Use Common Area is appurtenant after deducting therefrom allocable fees and expenses related to the condemnation proceeding, including without limitation fees for attorneys and appraisers and court costs.

Section 11.4 - Inverse Condemnation. The Board is authorized to bring an action in inverse condemnation. In such event, the provisions of this Article shall apply with equal force.

ARTICLE 12.

PARTY WALLS

Section 12.1 - Definition. Each wall or fence placed on the dividing line between two Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. A party wall shall be considered to adjoin and abut against the property line dividing the Lots from the bottom of the foundation over the full length and height of any wall or fence.

Section 12.2 - Use. Owners whose Lots are separated by a party wall shall equally have the right to use such party wall, except that each shall have the right to the exclusive use of the surface of the party wall on his side. Notwithstanding the foregoing, if such a party wall adjoins any portion of a Lot burdened by a Side-Yard Easement, then the Owner benefitted by the Side-Yard Easement rather than the Owner of the Lot burdened thereby shall have the right to the exclusive use of the surface of the party wall on his side. Neither such Owner shall use any portion of such party wall so as to interfere with the use and enjoyment of the other Owner.

Section 12.3 - Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 12.4 - Destruction. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has the use thereof may restore it, and if the other Owners thereafter make use of the party wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, subject, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 12.5 - Right to Contribution Runs With Land. The right of an Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 12.6 - Arbitration. If any dispute arises concerning a party wall, or under the provisions of this Article, that dispute shall be submitted to the Board for resolution. If the Board cannot or will not resolve such dispute, it shall employ an arbitrator for such purpose. The arbitrator shall be selected at the discretion of the Board but shall be a member of the American Arbitration Association. The arbitrator who is chosen by the Board shall resolve the dispute pursuant to the prevailing rules of the American Arbitration Association and the requirements of the law of the State of California.

ARTICLE 13.

ANNEXATIONS

Real property may be annexed to and become subject to this Declaration by any of the methods set forth hereinafter in this Article, as follows:

Section 13.1 - Plan of Development. Declarant intends to develop the Annexable Property sequentially on a phased basis; however, Declarant may elect not to develop all or any part of such real property, to annex such real property to this Declaration in increments of any size whatsoever, or to develop more than one such increment at any given time and in any given order. Moreover, Declarant reserves the right to subject all or any portion of the Annexable Property to the plan of this Declaration or one or more separate declarations of covenants, conditions and restrictions which subjects such property to the jurisdiction and powers of a homeowners association or other entity with powers and obligations similar to the Association and which is not subject to the provisions of this Declaration. Although Declarant shall have the ability to annex the Annexable Property as provided in this Article, Declarant shall not be obligated to annex all or any portion of such property, and such property shall not become subject to this Declaration unless and until a Supplementary Declaration shall have been so executed and recorded with respect thereto.

Section 13.2 - Annexation Without Approval. All or any part of the Annexable Property may be annexed to and become subject to this Declaration and subject to the jurisdiction of the Association without the approval, assent or vote of the Association or its Members, provided that the DRE has agreed to issue a Final Subdivision Public Report which shall be deemed to be evidence that Declarant has furnished proof satisfactory to the DRE that (a) no proposed annexation will result in overburdening of the common interests of the then existing Owners, and (b) no proposed annexation will cause a substantial increase in Assessments against existing Owners which was not disclosed in Final Subdivision Public Reports under which pre-existing Owners purchased their interests.

Section 13.3 - Annexation Pursuant to Approval. Upon approval in writing of the Association, pursuant to the vote or written assent of sixty-seven percent (67%) of the total voting power of Members other than Declarant as such voting power is determined pursuant to the Section entitled "Voting Rights" of the Article entitled "The Association" of this Declaration, any owner of real property who desires to add such real property to the plan of this Declaration and to subject such property to the jurisdiction of the Association may file or record a Supplementary Declaration.

Section 13.4 - Effectuation of Annexation. Upon the satisfaction of all of the conditions contained in this Article, the recording of a Supplementary Declaration in the Official Records shall constitute and effectuate the annexation of the Annexed Property described therein, making such Annexed Property subject to this Declaration and subject to the functions, powers and jurisdiction of the Association, and thereafter such Annexed Property shall be part of the Covered Property and all of the Owners of Residences in such Annexed Property shall automatically be Members. The Supplementary Declaration shall incorporate by reference all of the covenants, conditions, restrictions, easements and other provisions of this Declaration, and may contain such complementary additions or modifications of the covenants, conditions and restrictions in this Declaration as may be necessary to reflect the different character, if any, of the Annexed Property as are not inconsistent with the plan of this Declaration. In no event, however, shall any such Supplementary Declaration revoke, modify or add to the covenants established by this Declaration or by any prior Supplementary Declaration concerning property covered by this Declaration at the time of the recording of the Supplementary Declaration.

Section 13.5 - Mergers or Consolidations. Upon a merger or consolidation of the Association with another association which merger or consolidation must be approved by the vote or written assent of sixty-seven percent (67%) of the total voting power of Members other than Declarant, the Association's properties, rights and obligations may, by operation of law, be transferred to the surviving or consolidated association, or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants, conditions and restrictions established by this Declaration within the Covered Property, together with the covenants, conditions and restrictions established upon any other property, as one plan.

Section 13.6 - Deannexation. Any instrument deleting or deannexing any portion of the Covered Property from the coverage of this Declaration must be executed by Declarant, and, if any portion of such Covered Property is owned by any persons or entities other than Declarant, also by such other Owner(s) and must be recorded in the Official Records. Any portion of the Covered Property that is not within a Phase may be deleted or deannexed from the coverage of this Declaration at any time. Any other portion of the Covered Property may be deleted or deannexed from coverage of this Declaration as long as the portion of the Covered Property that is being deleted or deannexed is not a part of a Phase in which (1) a Close of Escrow has occurred, (2) Association Property has been conveyed to the Association, or (3) Assessments have commenced. Notwithstanding the foregoing, in the event that a lot line adjustment is recorded in the Official Records that adjusts a common boundary line between a Residence within the Covered Property and a contiguous lot or parcel that is not within the Covered Property, the portion of the Residence within the Covered Property that is being quitclaimed or conveyed to the owner of such contiguous lot or parcel may be deleted or deannexed from the plan of this Declaration by the recordation of a document in the Official Records executed by the owner of such contiguous lot or parcel, the Owner of the Residence within the Covered Property that is being so adjusted, and by the Association to evidence its consent.

ARTICLE 14.

MORTGAGEE PROTECTION

Section 14.1 - Mortgage Lien Priority. No breach of the covenants, conditions or restrictions, nor the enforcement of any lien provisions contained in this Declaration, shall affect, impair, defeat or render invalid the lien or charge of any Mortgage made in good faith and for value encumbering any portion of the Covered Property, but all of such covenants, conditions and restrictions shall be binding upon and effective against any owner whose title is derived through foreclosure or trustee's sale, or otherwise, concerning such portion of the Covered Property.

Section 14.2 - Curing Defaults. A Mortgagee, or the immediate transferee of such Mortgagee, who acquires title by judicial foreclosure, deed in lieu of foreclosure or trustee's sale shall not be obligated to cure any breach of the provisions of this Declaration which is noncurable or of a type which is not practical or feasible to cure. The determination of the Board made in good faith as to whether a breach is noncurable or not feasible to cure shall be final and binding on all Mortgagees.

Section 14.3 - Resale. It is intended that any Mortgage to facilitate the resale of any Residence after judicial foreclosure, deed in lieu of foreclosure or trustee's sale is a loan made in good faith and for value and the Mortgagee of such Mortgage shall be entitled to all of the rights and protections afforded to other Mortgagees.

Section 14.4 - Mortgagees Furnishing Information. Mortgagees are hereby authorized to furnish information to the Board concerning the status of any Mortgage.

Section 14.5 - Conflicts. In the event of any conflict between any of the provisions of this Article and any of the other provisions of the Association Management Documents, the provisions of this Article shall control.

Section 14.6 - Federal Agency Agreement. The Board may enter into agreements with any of the Federal Agencies as necessary to satisfy guidelines and regulations of any such Federal Agency which would permit such Federal Agency to purchase, insure or guarantee, as applicable, First Mortgages encumbering Residences.

ARTICLE 15.

GENERAL PROVISIONS

Section 15.1 - Enforcement.

(a) **Enforcement Rights.** Declarant, the Association or any Owner shall have the right of action against each other or any other Owner, to enforce by proceedings at law or in equity, all restrictions, conditions, covenants and reservations, now or hereafter imposed by the provisions of the Association Management 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 Declarant and Owners shall not have any right of enforcement with respect to Assessment obligations. Concerning architectural control and Association Rules, the Association shall have the exclusive right to the enforcement thereof unless the Association refuses or is unable to effectuate such enforcement, in which case Declarant and any Owner shall have the right to undertake such enforcement. Notwithstanding the foregoing or any other provision of the Association Management Documents, judicial proceedings must be instituted before any items of construction can be altered or demolished in connection with any summary abatement or similar means of enforcing restrictions against any Residence Improvement or its use.

(b) **Effect of Lot Line Adjustment.** Notwithstanding the foregoing, Declarant, the Association or any Owner shall also have the right of action against each other or any other Owner, to enforce by proceedings at law or in equity as aforesaid, all restrictions, conditions, covenants and reservations, now or hereafter imposed by the provisions of the Association Management Documents or any amendment thereto, against any portion of a Residence that may have been acquired by an Owner to adjust the boundaries of his Residence to be as shown on any lot line adjustment recorded in the Official Records rather than as initially acquired by such Owner notwithstanding that a portion of such Residence may be located outside of the boundaries of the Initial Covered Property and Annexed Property described in this Declaration or any Supplementary Declaration.

(c) **ARBITRATION OF DISPUTES. ANY CONTROVERSY, DISPUTE, OR CLAIM WHATSOEVER (OTHER THAN A CLAIM FOR ASSESSMENTS) BETWEEN THE ASSOCIATION AND DECLARANT ARISING OUT OF, IN CONNECTION WITH, OR IN RELATION TO THE COVERED PROPERTY OR THE PROVISIONS OF THE ASSOCIATION MANAGEMENT DOCUMENTS, INCLUDING WITHOUT LIMITATION THE VALIDITY, SCOPE AND ENFORCEABILITY OF THIS ARBITRATION PROVISION, SHALL BE SETTLED, AT THE REQUEST OF EITHER PARTY, BY BINDING ARBITRATION IN ACCORDANCE WITH THE RULES AND PROCEDURES SET FORTH BELOW. IT IS INTENDED THAT THIS ARBITRATION PROVISION BE VALID AND ENFORCEABLE. THE RULES AND PROCEDURES FOR ARBITRATION PURSUANT HERETO ARE AS FOLLOWS:**

(i) **THE PARTY SEEKING ARBITRATION SHALL SET FORTH THE PARTICULARS OF ITS CLAIMS AND SHALL STATE WITH SPECIFICITY THE ISSUE TO BE SUBMITTED TO ARBITRATION AND THE RELIEF SOUGHT.**

(ii) **THE ARBITRATION SHALL BE CONDUCTED AT THE ORANGE COUNTY OFFICE OF JUDICIAL ARBITRATION AND MEDIATION SERVICES, INC./ENDISPUTE ("JAMS") IF SUCH ENTITY IS THEN IN EXISTENCE, AND IF JAMS IS NOT THEN IN EXISTENCE, THE ARBITRATION SHALL BE CONDUCTED AT THE ORANGE COUNTY OFFICE OF THE AMERICAN ARBITRATION ASSOCIATION ("AAA"). JAMS OR AAA, AS THE CASE MAY BE, SHALL BE REFERRED TO HEREIN AS THE "ARBITRATION SERVICE." EXCEPT AS MODIFIED OR STATED TO THE CONTRARY HEREIN, THE RULES AND PROCEDURES OF THE ARBITRATION SERVICE IN EFFECT AT THE TIME OF THE ARBITRATION SHALL APPLY TO THE ARBITRATION.**

(iii) **THE ARBITRATION SHALL BE CONDUCTED BY ONE (1) ARBITRATOR SELECTED PURSUANT HERETO (THE "ARBITRATOR"). THE PARTIES SHALL MUTUALLY SELECT THE ARBITRATOR WITHIN THIRTY (30) DAYS AFTER THE DEMAND FOR ARBITRATION IS FILED FROM THE LIST OF THEN AVAILABLE ARBITRATORS OF THE ARBITRATION SERVICE WHO ARE RETIRED JUDGES OF THE SUPERIOR COURT. UNLESS SAID THIRTY (30) DAY PERIOD IS EXTENDED BY MUTUAL AGREEMENT OF THE PARTIES, IF THE PARTIES HAVE NOT SELECTED AN ARBITRATOR WITHIN SAID THIRTY (30) DAY PERIOD THEN THE ARBITRATION SERVICE SHALL DESIGNATE A RETIRED JUDGE OF THE SUPERIOR COURT AS THE ARBITRATOR TO CONDUCT THE ARBITRATION. THE PROVISIONS OF SECTION 1297.121 OF THE CALIFORNIA CODE OF CIVIL PROCEDURE SHALL APPLY WITH RESPECT TO THE SELECTION OF THE ARBITRATOR, AND AN ARBITRATOR MAY BE CHALLENGED FOR ANY OF THE GROUNDS LISTED THEREIN.**

(iv) **DECLARANT SHALL ADVANCE THE FEES NECESSARY TO INITIATE THE ARBITRATION. THE ONGOING COSTS AND FEES SHALL BE PAID AS AGREED BY DECLARANT AND THE ASSOCIATION UNLESS THEY CANNOT AGREE, IN WHICH EVENT THE ONGOING COSTS AND FEES SHALL BE PAID AS DETERMINED BY THE ARBITRATOR. THE OVERALL COSTS AND**

FEES OF THE ARBITRATION ULTIMATELY SHALL BE BORNE AS DETERMINED BY THE ARBITRATOR.

(v) THE ARBITRATION SHALL BE TIMELY COMMENCED (A) IN ACCORDANCE WITH THE RULES OF THE ARBITRATION SERVICE, OR IF SUCH RULES DO NOT SPECIFY A DATE BY WHICH THE ARBITRATION MUST COMMENCE, THEN (B) ON A DATE AGREED TO BY THE PARTIES, OR IF THE PARTIES CANNOT SO AGREE, THEN (C) ON A DATE DETERMINED BY THE ARBITRATOR. THE ARBITRATION SHALL BE CONDUCTED BY THE ARBITRATOR IN A MANNER TO OBTAIN A TIMELY CONCLUSION THEREOF.

(vi) THE ARBITRATOR SHALL HAVE THE AUTHORITY TO MAKE ALL DECISIONS REGARDING THE RELEVANCE, MATERIALITY, AND ADMISSIBILITY OF ALL EVIDENCE OFFERED AT THE ARBITRATION, EXCEPT THAT THE CALIFORNIA EVIDENCE RULES PERTAINING TO PRIVILEGED COMMUNICATIONS AND ATTORNEY WORK PRODUCT WILL APPLY.

(vii) THE ARBITRATOR MAY ISSUE ANY REMEDY OR RELIEF, OTHER THAN PUNITIVE DAMAGES, WHICH THE COURTS OF THE STATE OF CALIFORNIA COULD ISSUE IF PRESENTED THE SAME CIRCUMSTANCES, AND THE ARBITRATOR SHALL FOLLOW AND OTHERWISE EMPLOY THE STANDARDS FOR ISSUING SUCH RELIEF AS DEFINED BY CALIFORNIA LAW. JUDGMENT UPON THE AWARD RENDERED BY THE ARBITRATOR MAY BE ENTERED IN ANY COURT OF THE STATE OF CALIFORNIA HAVING JURISDICTION THEREOF, BUT SUCH JUDGMENT SHALL BE APPEALABLE IN THE SAME MANNER AND SUBJECT TO THE SAME RULES AS ARE PROVIDED FOR APPEALS FROM THE COURT IN WHICH SUCH JUDGMENT IS ENTERED WITHOUT RESTRICTION, HOWEVER, UPON THE SCOPE OF REVIEW WHICH WOULD OTHERWISE BE APPLICABLE TO ARBITRATION AWARDS.

(viii) EITHER PARTY MAY CONDUCT DISCOVERY AS IF THE MATTER WERE PENDING BEFORE A COURT OF THE STATE OF CALIFORNIA AND THE ARBITRATOR SHALL HAVE THE FULL POWER OF THE STATE OF CALIFORNIA TO ISSUE AND ENFORCE SUBPOENAS AND TO AWARD SANCTIONS; PROVIDED, HOWEVER, THAT EITHER PARTY MAY APPLY TO EITHER THE ARBITRATOR OR THE COURTS OF THE STATE OF CALIFORNIA FOR PROTECTIVE ORDERS RELATING TO SUCH DISCOVERY.

(ix) EACH PARTY SHALL HAVE THE RIGHT TO BE REPRESENTED BY COUNSEL.

(d) Limitation of Exception for Alternative Dispute Resolution. The foregoing exception from alternative dispute resolution for disputes related to Assessments set forth in subsection (c) hereof shall not apply to the extent provided by California Civil Code Section 1366.3.

Section 15.2 - No Waiver. Failure by Declarant, the Association or by any Owner to enforce any covenant, condition, restriction or reservation contained in any of the Association Management Documents in any certain instance or on any particular occasion shall not be deemed a waiver of such right on any such future breach of the same or any other covenant, condition, restriction and reservation.

Section 15.3 - Cumulative Remedies. All rights, options and remedies of Declarant, the Association, the Owners or Mortgagees under the Association Management Documents are cumulative, and no one of them shall be exclusive of any other. Declarant, the Association, the Owners and the Mortgagees shall have the right to pursue any one or all of such rights, options and remedies or any other remedy or relief which may be provided by law, whether or not stated in the Association Management Documents.

Section 15.4 - Severability. Invalidation of any one or a portion of these covenants, conditions, restrictions or reservations by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 15.5 - Term. The covenants, conditions and restrictions of this Declaration shall run with and bind the Covered Property and shall inure to the benefit of and be enforceable by Declarant, the Association or any Owner, their respective legal representatives, heirs, successors and assigns, for a term of sixty (60) years after the date

this Declaration is recorded, after which time such covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years, unless an instrument signed by not less than sixty-seven percent (67%) of the then Owners has been recorded agreeing to terminate such covenants, conditions and restrictions in whole or in part.

Section 15.6 - Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a plan for the development of a residential community or tract and for the maintenance of the Covered Property. The Article and Section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction.

Section 15.7 - Singular Includes Plural. Whenever the context of this Declaration requires the same, the singular shall include the plural and the masculine shall include the feminine and the neuter.

Section 15.8 - Nuisance. The result of every act or omission where any provision, condition, restriction, covenant, easement, or reservation contained in this Declaration is violated in whole or in part, is hereby declared to be and constitutes a nuisance, and every remedy allowed by law or equity against a private nuisance, shall be applicable against every such result, and may be exercised by Declarant, the Association or any Owner. Such remedy shall be deemed cumulative and not exclusive.

Section 15.9 - Attorneys' Fees. If action is instituted to interpret or enforce any of the provisions contained in this Declaration, the party prevailing in such action shall be entitled to recover from the other party thereto reasonable attorneys' fees and costs of such suit as determined by the court or by arbitration as part of the judgment.

Section 15.10 - Notices. Any notice to be given to Declarant, an Owner, the Association, or a First Mortgagee, insurer or guarantor of a First Mortgage under the provisions of this Declaration shall be in writing and, except as otherwise provided in the Association Management Documents, shall be directed to such addressee at the address furnished by such addressee for the purpose of notice and may be delivered in person, or delivered by Express Mail or any private courier guaranteeing overnight delivery with charges prepaid, or placed in the first class United States mail, postage prepaid. Notice shall be deemed to have been properly delivered when personally delivered, or at 5:00 p.m. on the next business day after delivery with charges prepaid for overnight service to the U.S. Postal Service or private courier, or forty-eight (48) hours after being sent by first class mail with postage prepaid. If no address was furnished by Declarant, an Owner or the Association for the purpose of notice, the notice to Declarant may be delivered to the address of its principal place of business, the notice to an Owner other than Declarant may be delivered to the street address of such Owner's Residence, and the notice to the Association may be delivered to the address of its principal place of business. In the case of co-Owners, any such notice may be delivered or sent to any one of the co-Owners on behalf of all co-Owners and shall be deemed delivery on all such co-Owners.

The affidavit of an officer or authorized agent of the Association declaring under penalty of perjury that a notice has been mailed to Declarant, any Owner or Owners, to any Mortgagee or Mortgagees, to any insurer or guarantor or to all Owners, or all Mortgagees, or all insurers or all guarantors, to the address or addresses shown on the records of the Association, shall be deemed conclusive proof of such mailing, whether or not such notices are actually received.

Section 15.11 - Conflicts Between Documents. The terms and provisions set forth in this Declaration are not exclusive as Owners shall also be subject to the terms and provisions of the other Association Management Documents. In the event of a conflict between any provisions of any of the Association Management Documents with the provisions of another Association Management Document, the order of superiority of such documents shall be (1) Articles, (2) Declaration, (3) Supplementary Declaration, (4) Bylaws, (5) Architectural Guidelines, and (6) Association Rules and the provisions of any such document shall be superseded by the provisions of the document shown above to be superior to such document to the extent of such conflict.

Section 15.12 - Effect of Declaration. This Declaration is made for the purposes set forth in the Recitals to this Declaration and Declarant makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of this Declaration or as to the compliance of any of these provisions with public laws, ordinances and regulations applicable thereto.

Section 15.13 - Personal Covenant. To the extent the acceptance or conveyance of a Residence creates a personal covenant between the Owner of such Residence and Declarant or other Owners, such personal covenant shall terminate and be of no further force or effect from or after the date when a person or entity ceases to be an Owner except to the extent this Declaration may provide otherwise concerning the payment of money to the Association.

Section 15.14 - Nonliability of Officials. To the fullest extent permitted by law, neither the Board, the Architectural Committee, and other committees of the Association or any member of such Board or committee shall be liable to any Owner or the Association for any damage, loss or prejudice suffered or claimed on account of any decision, approval or disapproval of plans or specifications (whether or not defective), course of action, act, omission, error, negligence or the like made in good faith within which such Board, committees or persons reasonably believed to be the scope of their duties.

Section 15.15 - Construction By Declarant. Nothing in this Declaration shall limit the right of Declarant to alter any Residences still owned by Declarant or the Nonexclusive Use Common Area, or to construct such additional Improvements as Declarant deems advisable before completion of Improvements upon and sale of the entire Development. Such right shall include but shall not be limited to erecting, constructing and maintaining on the Covered Property such structures and displays as may be reasonably necessary for the conduct of the business of completing the work and disposing of the same by sale, lease or otherwise. Declarant shall repair any damage to and complete any restoration of the Covered Property caused or necessitated by such activities of Declarant within a reasonable time after the occurrence of such damage or need for restoration. This Declaration shall not limit the right of Declarant at any time before acquisition of title by a purchase from Declarant to establish on the Covered Property additional licenses, reservations and rights-of-way to itself, to utility companies, or to others as may from time to time be reasonably necessary to the proper development and disposal of the Development. Declarant reserves the right to alter its construction plans and designs as it deems appropriate. Declarant shall exercise its rights contained in this provision in such a way as not to unreasonably interfere with the Owners' rights to use and enjoy the Covered Property.

Section 15.16 - Special Rights. Declarant shall not be subject to any provisions of the Association Management Documents pertaining to architectural control and use restrictions. In addition, as long as Declarant continues to own Residences within the Covered Property and/or continues to have the right to annex the Annexable Property, or any portion thereof, without the approval of the Owners, the written approval of the Declarant shall be required to (1) annex property other than the Annexable Property to the plan of this Declaration, (2) amend the Association Management Documents to modify, limit or eliminate any right of Declarant set forth therein, (3) levy a Capital Improvement Assessment for the construction of additional Common Facilities, Association Common Area Improvements or Special Benefits Common Area Improvements not contemplated for the Covered Property by the Declarant or a Special Assessment for any other act or undertaking of the Association, and (4) decrease the standard of maintenance or services being provided for the Common Facilities, Association Common Area Improvements or Special Benefits Common Area Improvements. If the Association delivers to Declarant in accordance herewith a written request for approval of any of the foregoing and Declarant fails to respond within thirty (30) days after receipt of such request, Declarant's failure to respond shall be deemed to be Declarant's written approval for the purposes of this Section. The written request to Declarant shall contain the current mailing address of the Association and shall be mailed by first class registered or certified mail, return receipt requested, or personally delivered to Declarant.

Section 15.17 - Inapplicability to Government Property. The provisions of this Declaration shall not be applicable to any portion of the Covered Property owned by a Public Agency and held for a public purpose, but shall apply to any Residence owned by a Public Agency.

Section 15.18 - Declarant's Right to Cure Alleged Defects. It is Declarant's intent that the Common Area, the Residences, and the Improvements be built in compliance with all applicable building codes and ordinances and that they be of a quality that is consistent with good construction practices for production housing of this type. Nevertheless, due to the complex nature of construction and the subjectivity involved in evaluating such quality, disputes may arise as to whether a defect in construction exists and Declarant's responsibility therefor. It is Declarant's intent to resolve amicably all disputes and claims regarding "Alleged Defects" (as defined below) in any portion of the Common Area, any Residence, and any Improvements without the necessity of time-consuming and

costly litigation. Accordingly, the Association and all Owners shall be bound by the following claim resolution procedure.

(a) **Declarant's Right to Cure.** If the Association or any Owner or Owners (collectively "Claimant") claim, contend or allege that any portion of the Common Area, any Residence, and/or any improvements are defective or that Declarant or its agents, consultants, contractors or subcontractors were negligent in the planning, design, engineering, grading or construction thereof (collectively, an "Alleged Defect"), Declarant is hereby granted the irrevocable right to inspect, repair and/or replace such Alleged Defect as set forth herein.

(b) **Notice to Declarant.** If a Claimant discovers any Alleged Defect, Claimant shall, within a reasonable time after discovery, notify Declarant, in writing, at the address at which Declarant maintains its principal place of business, of the specific nature of such Alleged Defect ("Notice of Alleged Defect").

(c) **Right to Enter, Inspect, Repair, and/or Replace.** Within a reasonable time after the receipt by Declarant of a Notice of Alleged Defect or the independent discovery of any Alleged Defect by Declarant, Declarant shall have the irrevocable right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into, as applicable, the Common Area, any Residence, and/or any improvements for the purposes of inspecting and, if deemed necessary by Declarant, repairing and/or replacing such Alleged Defect. In conducting such inspection, repairs and/or replacement Declarant shall be entitled to take any actions as it shall deem reasonable and necessary under the circumstances.

(d) **Legal Actions.** Before or within thirty (30) days after the initiation by the Association against Declarant of any legal action, cause of action, arbitration or other proceeding alleging damages arising from any Alleged Defect ("Action"), the Association shall notify in writing all Owners of the initiation of such Action; provided, however, the failure to provide such notice in accordance herewith shall not invalidate or prejudice the claims alleged against Declarant in such Action. The notice shall include without limitation the following information:

(i) The date such Action was initiated or, if such Action has not been initiated as of the date of the notice, the approximate date that the Board intends to initiate such Action;

(ii) A brief description of the facts pertaining to the Action and the general nature of the Alleged Defects that are alleged, or intended to be alleged, in the Action as of the date of the notice;

(iii) The arrangement with the attorneys of the Association for the payment of all legal fees and other costs which are incurred with respect to the Action with a practical example of how the Association expects the arrangement to work;

(iv) Whether the Owners may need to be deposed and/or testify in connection with the Action;

(v) Whether the Owners may need to make their Residences available for inspection and destructive testing in connection with the Action;

(vi) That the initiation and maintenance of such Action may impair the Owners' ability to sell and/or refinance their Residences and may result in the imposition of one or more Special Assessments to defray the costs incurred in connection with such Action;

(vii) That unless and until all Alleged Defects are repaired, each Owner may have a legal obligation when he sells or encumbers his Residence to disclose information concerning the Action and the Alleged Defects, which Alleged Defects have been repaired and which have not yet been repaired, and if and when the Association intends to undertake those repairs which have not yet been made; and

(viii) That if funds are received from a judgment or settlement of the Action and they are insufficient to repair all of the Alleged Defects, it may result in only some of the Alleged Defects being repaired.

No proceeds from such Action initiated by the Association shall be used for any purpose other than the cure of an Alleged Defect or the payment of any fees or costs incurred in connection with such Action, including without limitation legal fees and court costs, without the vote or written assent of seventy-five percent (75%) of the Members other than Declarant except to the extent such proceeds exceed the amount required to cure all Alleged Defects and pay all fees and costs incurred in connection with such Action.

(e) **No Additional Obligations.** Nothing set forth in this Section shall be construed to impose any obligation on Declarant to inspect, repair or replace any item or Alleged Defect for which Declarant is not otherwise obligated under applicable state and federal law or any limited warranty provided by Declarant in connection with the sale of the Residences. Notwithstanding any other provision of this Declaration, this Section shall not be amended without the prior written approval of Declarant.

Section 15.19 - Conflicts with SAMLARC Management Documents. This Declaration and the Supplementary Declarations shall be and remain at all times subordinate to the Master Declaration and the Supplementary Master Declarations. In the event of any conflict between the SAMLARC Management Documents and the Association Management Documents, the SAMLARC Management Documents shall be deemed to supersede the Association Management Documents to the extent of such conflict.

ARTICLE 16.

AMENDMENT PROVISIONS

Section 16.1 - Vote of Association. Subject to the other provisions of this Declaration, including, without limitation, the rights of Mortgagees, this Declaration may be amended as follows:

(a) Until there has been a Close of Escrow, cancellations, amendments or modifications of this Declaration shall be effective when executed by Declarant, and, if any portion of the Covered Property is owned by any persons or entities other than Declarant, by such other Owner(s) of the Covered Property. Until there has been a Close of Escrow within any Annexed Property described in a Supplementary Declaration, cancellation, amendment or modification of such Supplementary Declaration shall be effective when executed by Declarant, and, if any portion of the Annexed Property described in such Supplementary Declaration is owned by any persons or entities other than Declarant, by such other Owner(s) of such Annexed Property. Thereafter, any amendments shall require the vote or written assent of a majority of the voting power of Members other than Declarant as such voting power is determined pursuant to the Section entitled "Voting Rights" of the Article entitled "The Association" of this Declaration and shall also require compliance with the provisions of this Declaration contained in the Section entitled "Special Rights" of the Article entitled "General Provisions." Such amendments shall not be effective until they are recorded in the Official Records. In addition to the foregoing, any amendment to any of the provisions of the Association Management Documents which by their terms are for the express benefit of Mortgagees, insurers or guarantors of Mortgages must also have the prior written approval of sixty-seven percent (67%) of the First Mortgagees (based on one vote for each First Mortgage owned) who have delivered a written notification to the Board stating the name and address or other identification of the Residence encumbered by such First Mortgagee.

(b) Notwithstanding the foregoing, any provision of the Association Management Documents which expressly requires the approval of a specified percentage of the voting power of the Association for action to be taken under such provision can be amended only with the affirmative vote or written assent of not less than the same percentage of the voting power of the Association.

Section 16.2 - Petition to Amend. The Association or any Owner may petition the superior court of the County for an order reducing the percentage of affirmative votes necessary to amend this Declaration pursuant to Section 1356 of the California Civil Code.

Section 16.3 - Amendments by Declarant. Notwithstanding any other provisions of this Article, for so long as Declarant owns any portion of the Covered Property or the Annexable Property, Declarant shall have the right to unilaterally amend this Declaration without the approval of the Members or any Mortgagees in order to make any modifications or additions required by any of the Public Agencies or the Federal Agencies as a condition to approving the documents or the Development, or any construction thereon.

IN WITNESS WHEREOF, Declarant has executed this Declaration on the date first written above.

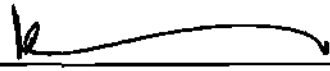
BAYWOOD HOMES - RANCHO SANTA MARGARITA, LLC

By: Baywood Development Group, Inc.,
a California corporation, managing member

By: 

Name: W.R. WATT

Title: PRES.

By: 

Name: Neal A. Pedersen

Title: Exec. V.P.

STATE OF CALIFORNIA)
)
COUNTY OF ORANGE) ss.

On _____ before me, _____, a notary public in and for said State, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that 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.

Signature _____

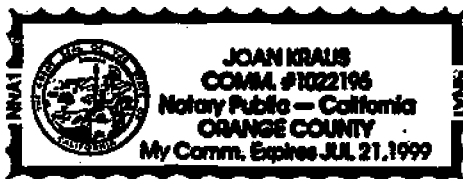
(Seal)

STATE OF CALIFORNIA)
)
COUNTY OF ORANGE) ss.

On March 20, 1998 before me, Joan Kraus, a notary public in and for said State, personally appeared W.R. Watt and Neal A. Pedersen, 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.

Signature Joan Kraus



(Seal)

SUBORDINATION

The undersigned, beneficiary under that certain deed of trust encumbering all or a portion of the real property described within as the Initial Covered Property, which deed of trust was recorded on May 21, 1997, as instrument No. 19970236825 of Official Records, hereby consents to the within Declaration of Covenants, Conditions and Restrictions and hereby subordinates the lien of such deed of trust to the provisions of this Declaration, and any Supplementary Declaration annexing additional property to this Declaration, and any amendment thereto that may be required for the purpose of complying with any law, ordinance or regulation or any requirement of any of the Public Agencies or the Federal Agencies.

RANCHO SANTA MARGARITA JOINT VENTURE,
a California general partnership

By: **RSMJV CORP.,**
a California corporation, Manager

By: *Elizabeth A. Roberts*
Name: Elizabeth A. Roberts
Title: Vice President

By: *Thomas A. Jones*
Name: Thomas A. Jones
Title: Vice President

STATE OF CALIFORNIA)
)
COUNTY OF ORANGE) ss.

On March 24, 1998 before me, Kathleen S. Metchikoff, a notary public in and for said State, personally appeared Elizabeth A. Roberts, 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.

Signature *Kathleen S. Metchikoff*



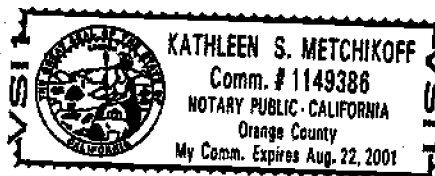
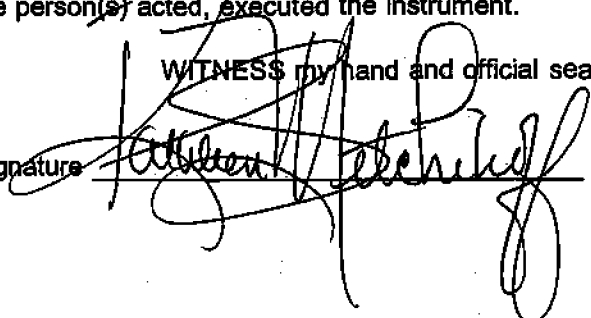
(Seal)

STATE OF CALIFORNIA)
)
COUNTY OF ORANGE) ss.

On March 24, 1998 before me, Kathleen S. Metchikoff a notary public in and for said State, personally appeared Thomas A. Jones, 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.

Signature



(Seal)

SUBORDINATION

The undersigned, beneficiary under that certain deed of trust encumbering all or a portion of the real property described within as the Initial Covered Property, which deed of trust was recorded on October 3, 1997, as Instrument No. 19970492995 of Official Records, hereby consents to the within Declaration of Covenants, Conditions and Restrictions and hereby subordinates the lien of such deed of trust to the provisions of this Declaration, and any Supplementary Declaration annexing additional property to this Declaration, and any amendment thereto that may be required for the purpose of complying with any law, ordinance or regulation or any requirement of any of the Public Agencies or the Federal Agencies.

**HOUSING CAPITAL COMPANY,
a Minnesota Partnership**

By: **DFP FINANCIAL, INC.,
a California corporation,
managing general partner**

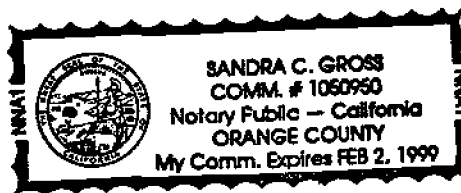
By: *Eike Heller*
Name: *Eike Heller*
Title: *Vice President*

STATE OF CALIFORNIA)
COUNTY OF Orange) ss.

On March 23, 1998 before me, Sandra C. Gross, a notary public in and for said State, personally appeared Eike Heller, 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.

Signature *Sandra C. Gross*



(Seal)

SUBORDINATION

The undersigned, beneficiary under that certain deed of trust encumbering all or a portion of the real property described within as the Initial Covered Property, which deed of trust was recorded on October 3, 1997, as Instrument No. 19970493026 of Official Records, hereby consents to the within Declaration of Covenants, Conditions and Restrictions and hereby subordinates the lien of such deed of trust to the provisions of this Declaration, and any Supplementary Declaration annexing additional property to this Declaration, and any amendment thereto that may be required for the purpose of complying with any law, ordinance or regulation or any requirement of any of the Public Agencies or the Federal Agencies.

**HOUSING CAPITAL COMPANY,
a Minnesota Partnership**

By: **DFP FINANCIAL, INC.,**
a California corporation,
managing general partner

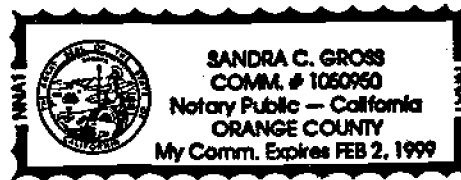
By: *Eike Heller*
Name: *Eike Heller*
Title: *Vice President*

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

On *March 23, 1998* before me, *Sandra C. Gross*, a notary public in and for said State, personally appeared *Eike Heller*, 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.

Signature *Sandra C. Gross*



(Seal)

EXHIBIT A

INITIAL COVERED PROPERTY

All that certain real property in Orange County, California, described as follows:

Lots 1 through 11, inclusive, 24 through 30, inclusive, and Lots C, D, E, L, U, V, W and X of Tract 15481 as per map filed in Book 757, Pages 25 to 28, inclusive, of Miscellaneous Maps, records of Orange County, California.

EXHIBIT B

ANNEXABLE PROPERTY

All that certain real property in Orange County, California, described as follows:

Parcels 1 and 2 as shown on Exhibit "B" attached to Lot Line Adjustment LL 97-028 recorded May 19, 1997, as Instrument No. 19970232375 of Official Records of Orange County, California.

EXCEPTING THEREFROM, all of the Initial Covered Property described in this Declaration.

EXHIBIT C

ASSOCIATION PROPERTY IN INITIAL COVERED PROPERTY

1. **Nonexclusive Use Common Area Portion.** That portion of the Association Property described as follows:

Lots C, D, E, L, U, V, W and X of Tract 15481 as per map filed in Book 757, Pages 25 to 28, inclusive, of Miscellaneous Maps, records of Orange County, California, excluding therefrom any Association Common Area therein.

2. **Association Common Area Portion.** That portion of the Association Property depicted on pages C-2 and C-3 and/or described as follows:

- (a) Maintenance easements for landscaping and other Improvements over portions of each Residence depicted on page C-2 hereof, excluding therefrom any portions of such depicted areas with buildings and hardscape installed by Declarant and those portions of such depicted areas which are within two (2) feet on either side of the entry walkway installed by Declarant, and over portions of Lots C, D, E and L of Tract 15481 depicted on page C-2 hereof;

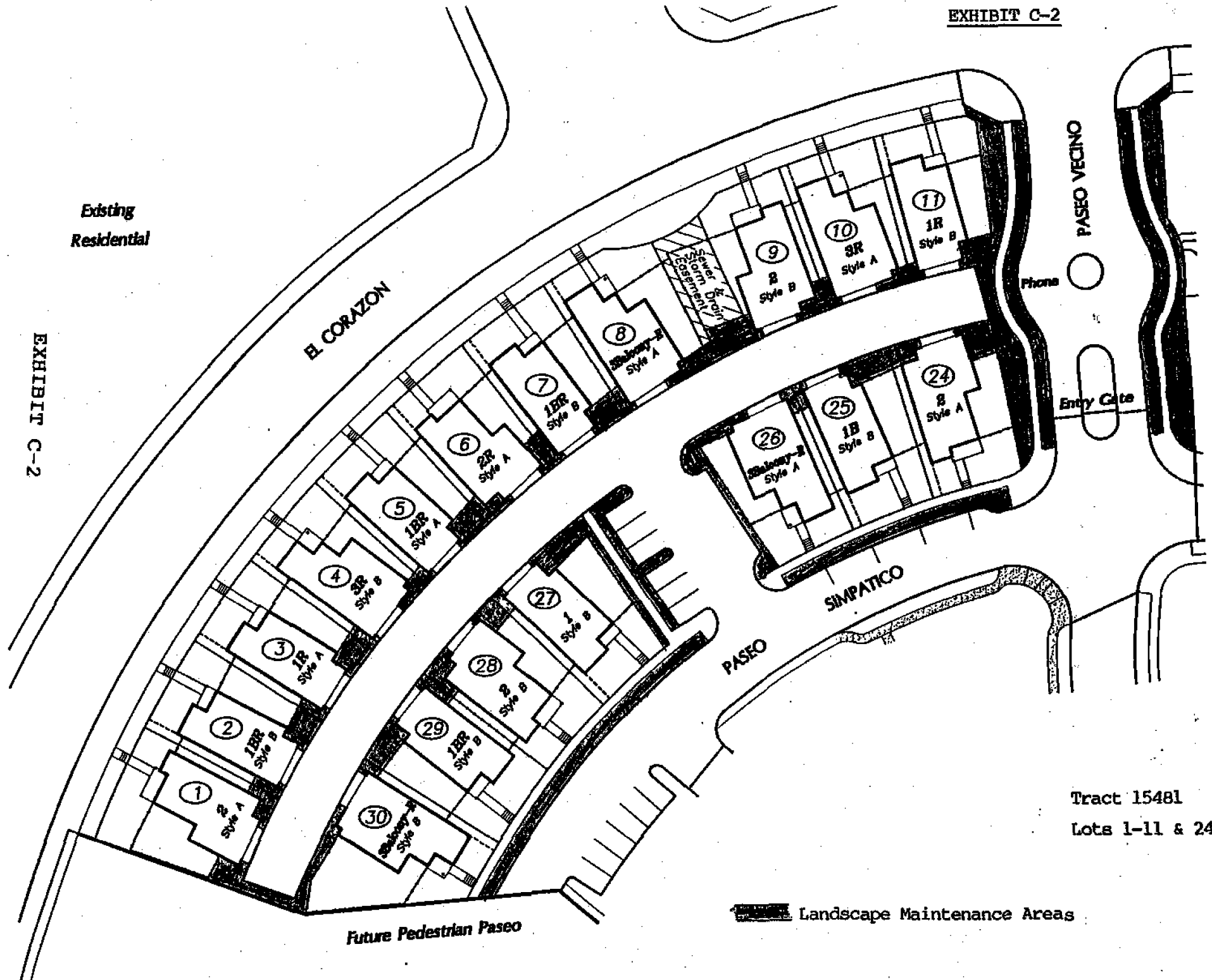
- (b) Storm drain maintenance easement covering the catch basins and storm drain facilities located in Lots 9, 26, L, U, W and X of Tract 15481, all as depicted on page C-3 hereof;

- (c) The sewer facilities located in Lots 9, U, V, W and X of Tract 15481; and

- (d) The vehicular entry control gate and related telephone facilities located in Lot X of Tract 15481, all as depicted on page C-3 hereof.

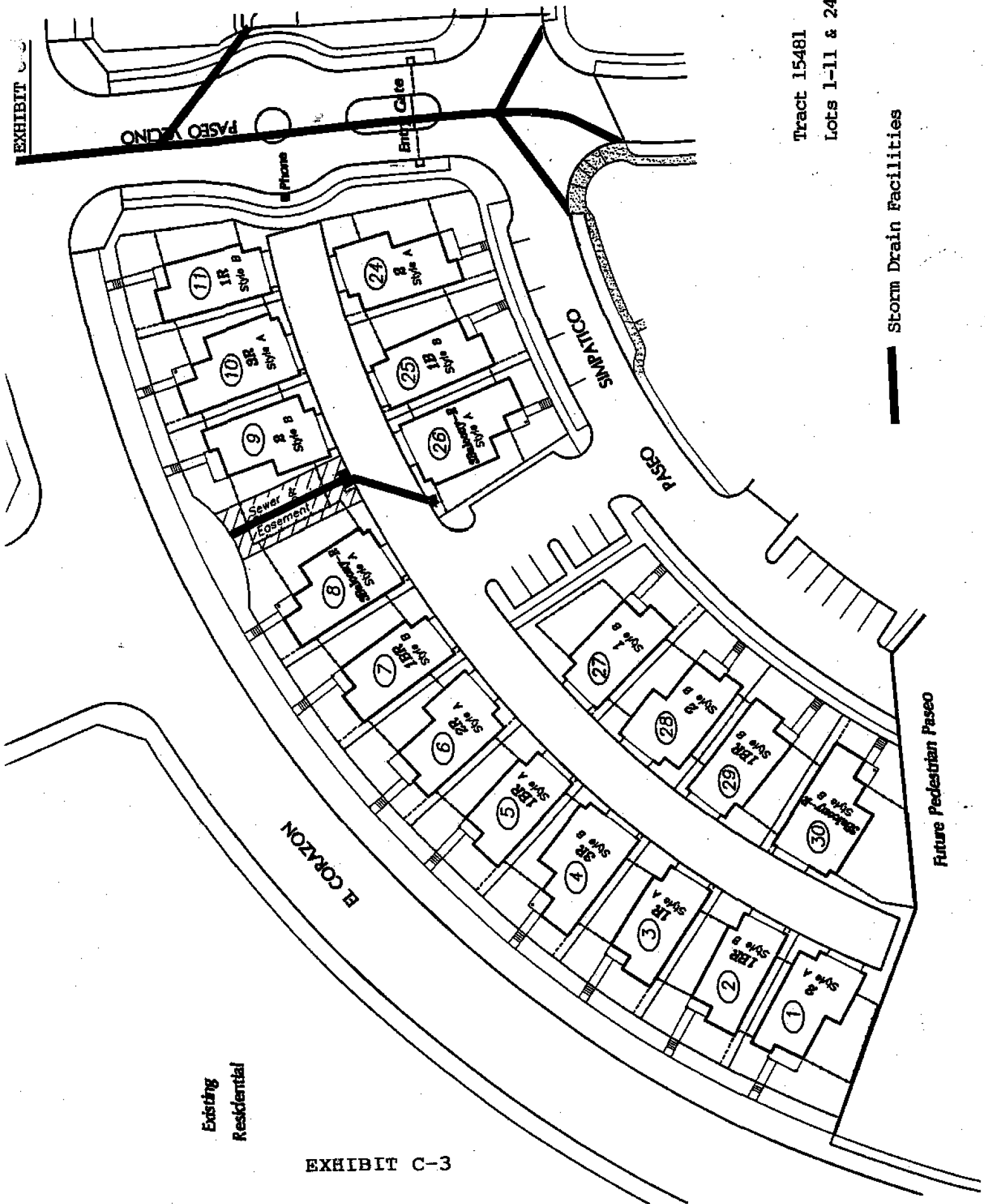
Existing Residential

EXHIBIT C-2



Tract 15481
Lots 1-11 & 24-30

█ Landscape Maintenance Areas



Tract 15481
Lots 1-11 & 24-30

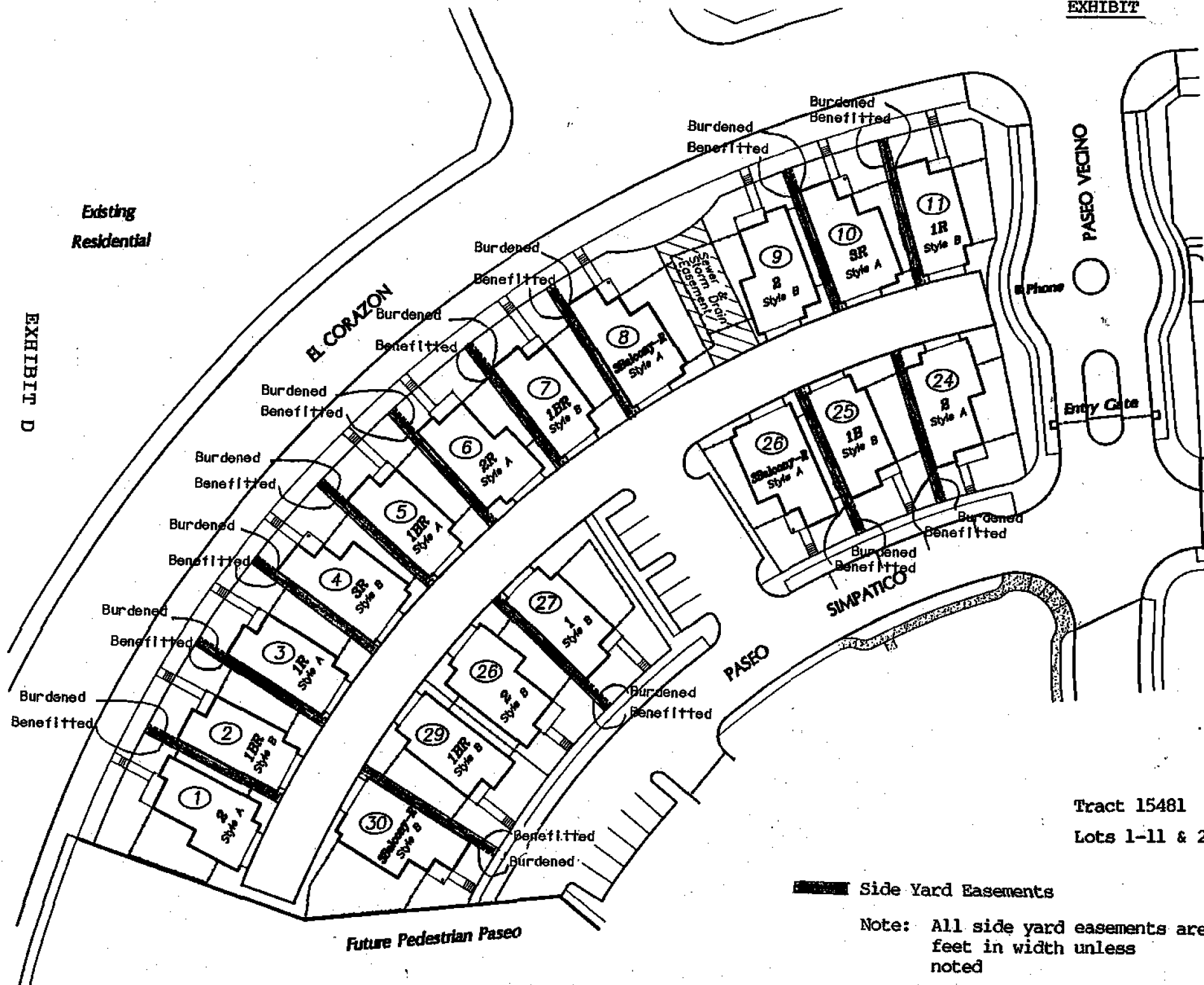
— Storm Drain Facilities

Future Pedestrian Paseo

Existing Residential

EXHIBIT D

Existing Residential



Tract 15481
Lots 1-11 & 24-30

Side Yard Easements

Note: All side yard easements are 4' feet in width unless noted

Benefitted Property*

Lot 1

Lot 2

Lot 3

Lot 4

Lot 5

Lot 6

Lot 7

Lot 9

Lot 10

Lot 25

Lot 26

Lot 28

Lot 29

Burdened Property*

Lot 2

Lot 3

Lot 4

Lot 5

Lot 6

Lot 7

Lot 8

Lot 10

Lot 11

Lot 24

Lot 25

Lot 27

Lot 30

*All Lot references are to Lots in Tract 15481

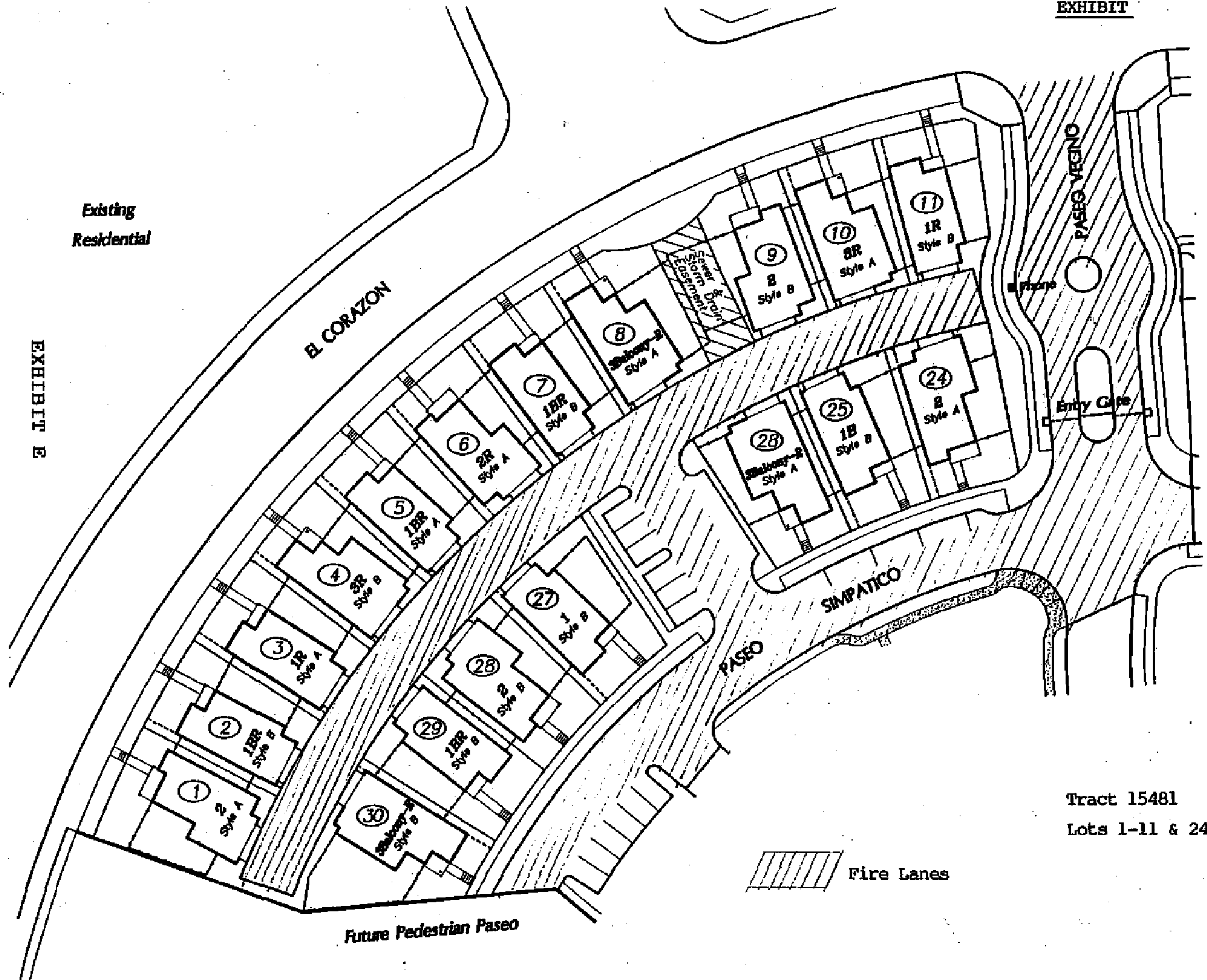
EXHIBIT E

PERIMETER WALLS IN INITIAL COVERED PROPERTY


There are no Perimeter Walls in the Initial Covered Property.

Existing Residential

EXHIBIT E



Tract 15481
Lots 1-11 & 24-30

 Fire Lanes