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CITY OF REDLANDS

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CITY OF REDLANDS
P.O. BOX 3005
REDLANDS, CA 92373

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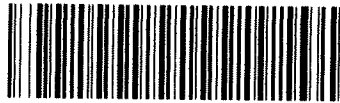


LARRY WALKER
Auditor/Controller – Recorder

3/06/2008
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Titles: 1 Pages: 18

Fees 116.00

Taxes 0.00

Other 0.00

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CITY OF REDLANDS

SUBDIVISION IMPROVEMENT AGREEMENT

THIS AGREEMENT is made this 15th day of January, 2008, by and between the City of Redlands, a municipal corporation, hereinafter referred to as "City," and Franklin Court, a General Partnership, hereinafter referred to as "Subdivider."

RECITALS

WHEREAS, Subdivider is the owner or authorized developer of property located in the City of Redlands known as Tract No. 13649 (the "Subdivision"), for which Subdivider is obligated to construct certain improvements (the "Improvements") as a condition of approval of the Subdivision; and

WHEREAS, City desires to ensure that the Improvements will be constructed in a good and workmanlike manner and in accordance with the laws of the City; and

WHEREAS, Subdivider acknowledges that it is familiar with the provisions of the Redlands Municipal Code and the State Subdivision Map Act (Government Code sections 66410 et seq.) and agrees to comply therewith; and

WHEREAS, a final map for the Subdivision has been prepared pursuant to the Redlands Municipal Code and the State Subdivision Map Act, and has been filed by Subdivider for consideration by the City Council of City;

d. Commence construction of the Improvements by the time established in Section 25 of the agreement and complete the Improvements by the deadline stated in Paragraph 3.a. above, unless a time extension is granted by the City as authorized in Section 25.

e. Install all subdivision public Improvement monuments required by law prior to formal final acceptance of the public Improvements by the City. Individual property monuments shall be installed within one year of said acceptance.

f. Install street name signs conforming to City standards. Permanent street name signs shall be installed before acceptance of the Improvements by the City.

4. Acquisition and Dedication of Property. If any of the public Improvement and land use development work contemplated by this Agreement is to be constructed or installed on land not owned by City or Subdivider, no construction or installation shall be commenced before:

a. The offer of dedication to City of appropriate rights-of-way, easements or other interests in real property, and appropriate authorization from property owner to allow construction or installation of the Improvements or work, or

b. The dedication to, and acceptance by, the City of appropriate rights-of-way easements or other interests in real property, as determined by the City Engineer, or

c. The issuance by a court of competent jurisdiction pursuant to the State Eminent Domain Law of an order of possession. Subdivider shall comply in all respects with the order of possession.

Nothing in this Section shall be construed as authorizing or granting an extension of time to the Subdivider.

5. Security. Subdivider shall at all times guarantee Subdivider's performance by furnishing to City and maintaining good and sufficient security as required by the Subdivision laws in accordance with Sections 66499 through 66499.10 of the Government Code, on forms approved by City for the purposes and in the amounts as follows:

a. To assure faithful performance of the Agreement in regard to said Improvements in an amount of 100% of the estimated cost of the improvements; and

b. To secure payment to any contractor, subcontractor, person renting equipment, or furnishing labor and materials for the Improvements required to be constructed and installed pursuant to this Agreement, Subdivider shall provide City with a bond in the amount of 100% of the estimated cost of the Improvements; and

inspected and completed in accordance with the Improvement plans. When applicable law requires an inspection to be made by the City at a particular stage of the work of constructing and installing such Improvements, City shall be given timely notice of Subdivider's readiness for such inspection and Subdivider shall not proceed with additional work until the inspection has been made and the work approved. Subdivider shall bear all costs of inspection and certification. No improvements shall be deemed completed until acceptance by the City Council pursuant to Section 18 herein.

8. Release of Securities. The securities required by this Agreement shall be released as follows:

a. Security given for faithful performance of any act, obligation, work or agreement shall be released upon the final completion and acceptance of the act or work, subject to the provisions of subsection (b) hereof.

b. The City Engineer may release a portion of the security given for faithful performance of Improvement work as the Improvement progresses upon application thereof by the Subdivider; provided, however, that no such release shall be for an amount less than 25% of the total Improvement security given for faithful performance of the Improvement work and that the security shall not be reduced to an amount less than 50% of the total Improvement given for faithful performance until final completion and acceptance of the public Improvements. In no event shall the City Engineer authorize a release of the Improvement security which would reduce the security to an amount below 125% of that required to guarantee completion for the Improvement work and any other obligation imposed by this Agreement.

c. Security given to secure payment to the contractor, subcontractors and to persons furnishing labor, materials or equipment shall, at six (6) months after the completion and acceptance of the work, be reduced to an amount equal to no less than 125% of the total claimed by all claimants for whom liens have been filed and of which notice has been given to the City, plus an amount reasonably determined by the City Engineer to be required to assure the performance of any other obligations secured by the security. The balance of the security shall be released upon the settlement of all claims and obligations for which the security was given.

d. No security given for the guarantee or warranty for work shall be released until the expiration of the warranty period and until any claims filed during the warranty period have been settled. As provided in Paragraph 12, the warranty period shall not commence until final acceptance of all the work and Improvements by the City Council.

e. The City may retain from any security released, an amount to sufficiently cover costs and reasonable expenses and fees, including reasonable attorneys' fees.

9. Injury to Improvements, Public Property or Public Utilities Facilities.

of default by Subdivider. The right of the City to draw upon or utilize the security is additional to and not in lieu of any other remedy available to City. It is specifically recognized that the estimated costs and security amounts may not reflect the actual cost of construction or installation of the Improvements and, therefore, City's damages for Subdivider's default shall be measured by the cost of completing the required Improvements. The sums provided by the Improvements security may be used by City for the completion of the public Improvements in accordance with the Improvement plans and specifications contained herein.

In the event of Subdivider's default under this Agreement, Subdivider authorizes City to perform such obligation twenty (20) days after mailing written notice of default to Subdivider and Subdivider's surety, and agrees to pay the entire cost of such performance by City.

City may take over the work and prosecute the same to completion, by contract or by any other method City may deem advisable, for the account and at the expense of Subdivider, and Subdivider's surety shall be liable to City for any excess cost of damages occasioned City thereby. In such event, City, without liability for so doing, may take possession of, and utilize in completing the work, such materials, appliances, plants and other property belonging to Subdivider as may be on the site of the work and necessary for performance of the work.

c. Failure of Subdivider to comply with the terms of this Agreement shall constitute consent to the filing by the City of a notice of violation against all the lots in the Subdivision, or to rescind the approval or otherwise revert the Subdivision to acreage. The remedy provided by this subsection is in addition to, and not in lieu of, other remedies available to City. Subdivider agrees that the choice of remedy or remedies for Subdivider's breach shall be in the discretion of City.

d. In the event that Subdivider fails to perform any obligation hereunder, Subdivider agrees to pay all costs and expenses incurred by City in securing performance of such obligations, including but not limited to fees and charges of architects, engineers, attorneys other professionals and court costs.

e. The failure of City to take enforcement action with respect to a default, or to declare a breach, shall not be construed as a waiver of that default or breach or any subsequent default or breach of Subdivider.

12. Warranty. Subdivider shall guarantee or warranty the work done pursuant to this Agreement for a period of one (1) year after final formal acceptance of this subdivision by the City Council against any defective work or labor done or defective materials furnished. If within the warranty period any work or Improvement or part of any work or Improvement done, furnished, installed or constructed by Subdivider fails to fulfill any of the requirements of this Agreement or the Improvement plans or specifications referred to herein, Subdivider shall without delay and without cost to the City repair or replace or reconstruct any defective or otherwise unsatisfactory part or parts of the work or structure. Should Subdivider fail to act promptly in accordance with this requirement, Subdivider hereby authorizes City, at City's option to perform the work twenty (20)

16. Subdivider's Obligation to Warn Public During Construction. Until final acceptance of the improvements, Subdivider shall give good and adequate warning to the public of each and every dangerous condition existent in said improvements, and will take reasonable actions to protect the public from such dangerous condition.

17. Vesting of Ownership. Upon formal final acceptance of the work by City and recordation of the Final Map, ownership of the improvements constructed pursuant to this agreement shall vest in City.

18. Final Acceptance of Work. Acceptance of work on behalf of City shall be made by the Public Works Director upon recommendation of the City Engineer after final completion and inspection of all improvements. The Public Works Director shall act upon the Engineer's recommendation within sixty (60) days from the date the City Engineer certifies that the work has been finally completed, as provided in Section 7. Such acceptance shall not constitute a waiver of defects by City.

19. Compliance with Laws. Subdivider and its agents, employees, contractors and subcontractors shall comply with all applicable Federal, State and local rules, laws and regulations in the performance of the improvements and land development pursuant to this agreement including but not limited to all applicable Labor Code and prevailing wage laws.

20. Insurance.

a. Subdivider's Insurance to be Primary

All insurance required by this Agreement is to be maintained by Subdivider for the duration of this Agreement and shall be primary with respect to City and non-contributing to any insurance or self-insurance maintained by City. Subdivider shall provide City with Certificates of Insurance evidencing such insurance within fifteen (15) days of execution of this Agreement.

b. Worker's Compensation and Employer's Liability.

1. Subdivider shall have Worker's Compensation and Employer's Liability insurance in force throughout the duration of the Agreement in an amount which meets the statutory requirement with an insurance carrier acceptable to City. Such insurance shall be primary and non-contributing to any insurance or self-insurance maintained by City. City shall be named as an additional insured and the insurance policy shall include a provision prohibiting cancellation of said policy except upon thirty (30) days prior written notice to City. Certificates of Insurance shall be delivered to City within fifteen (15) days of execution of Agreement.

2. Subdivider expressly waives all rights to subrogation against the City, its officers, employees and volunteers for losses arising from work performed by Subdivider for City by expressly waiving Subdivider's immunity for injuries to Subdivider's employees and agrees that

taken by the City in approving the plans or map, unless the particular improvement design was specifically required by City over written objection by Subdivider submitted to the City Engineer before approval of the particular improvement design, which objection indicated that the particular improvement design was dangerous or defective and suggested an alternative safe and feasible design.

After acceptance of the Improvements, the Subdivider shall remain obligated to eliminate any defect in design or dangerous condition caused by the design or construction defect; however, Subdivider shall not be responsible for routine maintenance. The provisions of this paragraph shall remain in full force and effect for ten (10) years following the acceptance by the City of the Improvements. It is the intent of this section that Subdivider shall be responsible for all liability for design and construction of the Improvements installed or work done pursuant to this Agreement and that City shall not be liable for any negligence, nonfeasance, misfeasance or malfeasance in approving, reviewing, checking, or inspecting any work or construction. The Improvement security shall not be required to cover the provisions of this paragraph.

Subdivider shall reimburse the City for all costs and expenses (including but not limited to fees and charges of architects, engineers, attorneys and other professionals, and court costs) incurred by City in enforcing the provisions of this section.

22. Personal Nature of Subdivider's Obligations. All of Subdivider's obligations under this Agreement are and shall remain the personal obligations of Subdivider notwithstanding a transfer of all or any part of the property within the Subdivision subject to this Agreement, and Subdivider shall not be entitled to assign its obligations under this Agreement to any transferee of all or any part of the property within the Subdivision or any other third party without the express written consent of the City.

23. Sale or Disposition of Subdivision. Seller or other Subdivider may request a novation of this Agreement and a substitution of security. Upon approval of the novation and substitution of securities, the Subdivider may request a release or reduction of the securities required by this Agreement. Nothing in the novation shall relieve the Subdivider of the obligations under Section 22 for the work or Improvement done by Subdivider.

24. Time is of the Essence. Time is of the essence in the performance of this Agreement.

25. Time for Commencement of Work; Time Extensions. Subdivider shall commence substantial construction of the Improvements required by this Agreement not later than three (3) months after the date of this Agreement. In the event good cause exists as determined by the City Engineer, the time for commencement of construction or completion of the Improvements hereunder may be extended for a period or periods not exceeding a total of two additional years. The extension shall be executed in writing by the City Engineer. Any such extension may be granted without notice to Subdivider's surety and shall not affect the validity of this Agreement or release the surety or sureties on any security given for this Agreement. The City Engineer shall be the sole and final

Notice to Surety: 1st Centennial Bank
101 E. Redlands Blvd., Suite 106
Redlands, Ca 92373

29. Severability. The provisions of this Agreement are severable. In any portion of this Agreement is held invalid by a court of competent jurisdiction, the remainder of the Agreement shall remain in full force and effect unless amended or modified by mutual written consent of the parties.

30. Captions. The captions of this Agreement are for convenience and reference only and shall not define, explain, modify, limit, exemplify, or aid in the interpretation, construction or meaning of any provisions of this Agreement.

31. Litigation. In the event that suit is brought to enforce the terms of this Agreement, the prevailing party shall be entitled to litigation costs and reasonable attorney's fees.

32. Incorporation of Recitals. The recitals to this agreement are hereby incorporated into the terms of this Agreement.

33. Entire Agreement. This agreement constitutes the entire Agreement of the parties with respect to the subject matter. All modifications, amendments, or waivers of the terms of this Agreement must be in writing and signed by the appropriate representatives of the parties.

34. Interpretation. This Agreement shall be interpreted in accordance with the laws of the State of California.

35. Jurisdiction. Jurisdiction of all disputes over the terms of this Agreement shall be in the County of San Bernardino, State of California.

IN WITNESS WHEREOF this agreement is executed by the Parties as of the date herein above first written.

ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO) SS
CITY OF REDLANDS)

By the authority granted under Chapter 4, Article 3, Section 1181, of the California Civil Code, and Chapter 2, Division 3, Section 40814, of the California Government Code, on January 16, 2008, before me, Teresa Ballinger, Assistant City Clerk, on behalf of Lorrie Poyzer, City Clerk of the City of Redlands, California, personally appeared N. Enrique Martinez, City Manager and Lorrie Poyzer, City Clerk who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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



WITNESS my hand and official seal.
LORRIE POYZER, CITY CLERK

By: Teresa Ballinger
Teresa Ballinger, Assistant City Clerk
(909)798-7531

CAPACITY CLAIMED BY SIGNER(S)

{ } Individual(s) signing for oneself/themselves

{ } Corporate Officer(s)

Title(s) _____

Company _____

{ } Partner(s)

Partnership _____

{ } Attorney-In-Fact

Principal(s) _____

{ } Trustee(s)

Trust _____

{ x } Other

Title(s): City Manager and City Clerk

Entity Represented: City of Redlands, a municipal corporation

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED BELOW:

Title or Type of Document: Subdivision Improvement Agreement (Tract Map No. 13649).

Date of Document: January 15, 2008

Signer(s) Other Than Named Above: Franklin Court, a General Partnership, by: Brian T. King, Managing General Partner

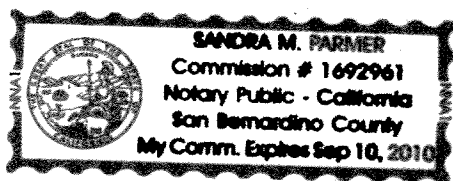
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of San Bernardino

On 1-3-08 before me, Sandra M. Parmer, Notary
Date Here Insert Name and Title of the Officer

personally appeared Brian T. King
Name(s) of Signer(s)



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

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

WITNESS my hand and official seal.

Signature

Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Subdivision Improvement Agreement

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: Brian T. King

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☒ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing:

Franklin Court LP

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

CITY OF REDLANDS
SUBDIVISION IMPROVEMENT AGREEMENT
EXHIBIT "A"

TRACT MAP NO. 13649

<u>Description</u>	<u>Drawing No.</u>	<u>Approval Date</u>	<u>No. of Sheets</u>
The following plans are on file in the office of the Public Works Director (PWD) and Municipal Utilities Director (MUD)			
Street Improvement Plans (PWD)	1956-ST	10/17/07	02
Water Improvement Plans (MUD)	D-60645	10/02/07	01
Sewer Improvement Plans (MUD)	F-1770	10/02/07	03



State of California Secretary of State

GP-1

File #

302007 254002

Document #

27050

COPY

ENDORSED - FILED
in the office of the Secretary of State
of the State of California

AUG 29 2007

STATEMENT OF PARTNERSHIP AUTHORITY

A \$70.00 filing fee must accompany this form.

IMPORTANT - Read instructions before completing this form.

This Space For Filing Use Only

PARTNERSHIP NAME

1. NAME OF PARTNERSHIP

Franklin Court Partnership

OFFICE ADDRESSES (Do not abbreviate the city. Items 2 and 3 cannot be P.O. Boxes.)

2. STREET ADDRESS OF CHIEF EXECUTIVE OFFICE

1632 Garden Street

CITY AND STATE

Redlands, CA

ZIP CODE

92373

3. STREET ADDRESS OF CALIFORNIA OFFICE, IF ANY

CITY

STATE

ZIP CODE

CA

NAMES & ADDRESSES OF PARTNERS (Complete Item 4 with the names and mailing addresses of all the partners (attach additional pages if necessary) OR leave Item 4 blank and proceed to Item 5. Any attachments to this document are incorporated herein by this reference.)

4. NAME

ADDRESS

CITY AND STATE

ZIP CODE

Brian T. King

1033 E. Palm Avenue

Redlands, CA

92374

NAME

ADDRESS

CITY AND STATE

ZIP CODE

Kenneth R. King

17888 Sintonte

San Diego, CA

92128

NAME

ADDRESS

CITY AND STATE

ZIP CODE

New Heights Construction, Inc.

1632 Garden Street

Redlands, CA

92373

APPOINTED AGENT (If Item 4 was not completed, complete Item 5 with the name and mailing address of an agent appointed and maintained by the partnership who will maintain a list of the names and mailing addresses of all the partners. If Item 4 was completed, leave Item 5 blank and proceed to Item 6.)

5. NAME

ADDRESS

CITY AND STATE

ZIP CODE

AUTHORIZED PARTNERS (Enter the name(s) of all the partners authorized to execute instruments transferring real property held in the name of the partnership. Attach additional pages if necessary. Any attachments to this document are incorporated herein by this reference.)

6. PARTNER NAME: Brian T. King

PARTNER NAME:

PARTNER NAME: Jack Nydam, New Heights Construction Inc.

President

PARTNER NAME:

PARTNER NAME:

PARTNER NAME:

ADDITIONAL INFORMATION

7. ADDITIONAL INFORMATION SET FORTH ON THE ATTACHED PAGES, IF ANY, IS INCORPORATED HEREIN BY THIS REFERENCE AND MADE PART OF THIS DOCUMENT.

EXECUTION (If additional signature space is necessary, the dated signature(s) with verification(s) may be made on an attachment to this document. Any attachments to this document are incorporated herein by this reference.)

8. I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING IS TRUE AND CORRECT OF MY OWN KNOWLEDGE.

SIGNATURE OF PARTNER

DATE

SIGNATURE OF PARTNER

DATE

TYPE OR PRINT NAME OF PARTNER

JACK NYDAM

PRESIDENT - New Heights Construction, Inc.



RECORDING REQUESTED BY:
Franklin Court Partnership

WHEN RECORDED MAIL TO:
Franklin Court Partnership
1632 Garden Street
Redlands, CA 92373

Picked up by Title Co

11/22/08

DATE

DECLARATION FOR PLANNED DEVELOPMENT

TABLE OF CONTENTS

RECITALS.

ARTICLE I. DEFINITIONS.

Section 1.01.	Articles.
Section 1.02.	Association.
Section 1.03.	Board.
Section 1.04.	Bylaws.
Section 1.05.	Common Area.
Section 1.06.	Declarant.
Section 1.07.	Declaration.
Section 1.08.	Development.
Section 1.09.	Exclusive Use Common Area.
Section 1.10.	Governing Instruments.
Section 1.11.	Lot.
Section 1.12.	Manager.
Section 1.13.	Member.
Section 1.14.	Mortgage and First Mortgage.
Section 1.15.	Mortgagee, Institutional Mortgagee and First Mortgagee.
Section 1.16.	Mortgagor.
Section 1.17.	Owner.
Section 1.18.	Person.
Section 1.19.	Property.
Section 1.20.	Rules and Regulations.
Section 1.21.	Subdivision Map

ARTICLE VI. ARCHITECTURAL AND DESIGN CONTROL.

- Section 6.01. Architectural and Design Approval.
- Section 6.02. Architectural Control Committee.
- Section 6.03. The Board of Directors.

ARTICLE VII. INSURANCE.

- Section 7.01. Fire and Casualty Insurance.
- Section 7.02. General Liability and Individual Liability Insurance.
- Section 7.03. Other Association Insurance.
- Section 7.04. Trustee for Policies.
- Section 7.05. Individual Insurance.
- Section 7.06. Insurance Premiums.

ARTICLE VIII. DAMAGE OR DESTRUCTION.

- Section 8.01. Duty to Restore and Replace.
- Section 8.02. Proceeds Justifying Automatic Restoration and Repair.
- Section 8.03. Approval by Owners of Special Assessment for
Certain Restorations and Repairs.
- Section 8.04. Ordering Reconstruction or Repair.
- Section 8.05. Election Not to Rebuild.
- Section 8.06. Minor Restoration and Repair Work.

ARTICLE IX. EMINENT DOMAIN.

- Section 9.01. Sale to Condemning Authority.
- Section 9.02. Distribution of Sales Proceeds.
- Section 9.03. Taking and Condemnation Awards.

ARTICLE X. RIGHTS OF MORTGAGEES.

- Section 10.01. Warranty.
- Section 10.02. Subordination.
- Section 10.03. Inapplicability of Right of First Refusal.
- Section 10.04. Notice of Default.
- Section 10.05. Unpaid Assessments.
- Section 10.06. Mortgagee Approval of Material Amendments.
- Section 10.07. Mortgagee Approval of Other Actions.
- Section 10.08. Liens.
- Section 10.09. Priority.
- Section 10.10. Reserve Fund.

DECLARATION FOR
FRANKLIN COURT
A PLANNED RESIDENTIAL DEVELOPMENT

THIS DECLARATION is made on Dec. 3, 2007, by BRIAN KING for FRANKLIN COURT PARTNERSHIP ("Declarant").

RECITALS

A. Declarant is the owner of that certain real property located in the City of Redlands, County of San Bernardino, State of California, and more particularly described as Tract No. 13649, a subdivision of a portion of Lots 2,7,8 and 9 of Block 10 per Map. No. 1 of a portion of Redlands Heights, per map recorded in Book 5 of Maps, Page 74, Records of San Bernardino County ("Property"). Being in the City of Redlands, County of San Bernardino, State of California.

B. Pursuant to the general plan set forth in this Declaration, Declarant intends to subdivide the Property into Lots and parcels, to improve the Lots and parcels, and to create a planned development subject to the provisions of the Davis-Stirling Common Interest Development Act contained in Division II, Pt. 4, Title 6 of the California Civil Code.

C. In furtherance of this intent, Declarant hereby declares that all of the Property is and shall continue to be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied, and improved subject to the declarations, limitations, covenants, conditions, restrictions, reservations, rights, and easements set forth in this Declaration, as this Declaration may be amended from time to time, all of which are declared and agreed to be in furtherance of a general plan established for the purpose of enhancing and perfecting the value, desirability, and attractiveness of the Property. All covenants and restrictions set forth in this Declaration shall constitute covenants running with the land and enforceable equitable servitudes upon the Property, and shall be binding on and for the benefit of all of the Property and all parties having or acquiring any right, title, or interest in all or any part of the Property, including the heirs, executors, administrators, and assigns of these parties and all subsequent owners and lessees of all or any part of any Lot in the Development.

ARTICLE I. DEFINITIONS

Section 1.14. Mortgage and First Mortgage. "Mortgage" means a mortgage or deed of trust encumbering a Lot or any other portion of the Development. "First Mortgage" means a mortgage that has priority over all other mortgages encumbering the same Lot or other portion of the Development.

Section 1.15. Mortgagee, Institutional Mortgagee and First Mortgagee. "Mortgagee" means a Person to whom a Mortgage is made and includes the beneficiary of a deed of trust and any guarantor or insurer of a mortgage. "Institutional Mortgagee" means a mortgagee that is a financial intermediary or depository, such as a bank, savings and loan, or mortgage company, that is chartered under federal or state law and that lends money on the security of real property or invests in such loans, or any insurance company or governmental agency or instrumentality, including the Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), and the Government National Mortgage Association (GNMA). "First Mortgagee" means a Mortgagee that has priority over all other mortgages or holders of mortgages encumbering the same Lot or other portion of the Development. The term "Beneficiary" shall be synonymous with the term "Mortgagee."

Section 1.16. Mortgagor. "Mortgagor" means a Person who mortgages his, her, or its property to another (i.e., the maker of a mortgage), and shall include the trustor of a deed of trust. The term "Trustor" shall be synonymous with the term "Mortgagor."

Section 1.17. Owner. "Owner" means the record holder or holders of record fee title to a Lot, including Declarant, and any contract sellers under recorded contracts of sale. "Owner" shall not include any persons or entities who hold an interest in a Lot merely as security for performance of an obligation.

Section 1.18. Person. "Person" means a natural individual, a corporation, or any other entity with the legal right to hold title to real property.

Section 1.19. Property. "Property" means the real property described in the Recitals.

Section 1.20. Rules and Regulations. "Rules and Regulations" means any Rules and Regulations for Franklin Court Planned Residential Development regulating the use of the Common Area and adopted by the Association pursuant to Section 3.06(b) of this Declaration.

Section 1.21. Subdivision Map. "Subdivision Map" means the recorded map described in the Recitals and any subdivision map recorded in connection with the annexation of additional real property to the Development pursuant to Article XI of this Declaration.

ARTICLE II. THE PROPERTY

(7) The right of each Owner to the exclusive use of any Exclusive Use Common Area appurtenant to the Owner's Lot.

(8) The rights of Declarant as described in this Declaration.

(9) The right of the Association to reasonably restrict access to roofs, maintenance facilities or areas, landscaped areas, and similar areas of the Development.

(10) The right of the Architectural Control Committee to approve any proposed alteration or modification to the Common Area or any Lot.

(c) Declarant hereby reserves easements for common driveway purposes, for drainage and encroachment purposes, and for ingress to and egress from the Common Area. These easements may be used to complete improvements on the Common Area and to perform necessary repair work. These easements shall remain in effect for three years from the date of closing of the first sale of a Lot in the Development.

(d) The Association may grant to third parties easements in, on, and over the Common Area for the purpose of constructing, installing, or maintaining necessary utilities and services, and each Owner, in accepting his or her deed to the Lot, expressly consents to these easements. However, no such easement can be granted if it would interfere with any exclusive easement, or with any Owner's use, occupancy, or enjoyment of his or her Lot or any Exclusive Use Common Area appurtenant to the Lot.

(e) A "Class A" Owner who has sold his or her Lot to a contract purchaser or who has leased or rented the Lot shall be entitled to delegate his or her rights to use and enjoy the Common Area to any contract purchaser, tenant, or subtenant who resides in the Owner's Lot, subject to reasonable regulation by the Board. If the Owner makes such a delegation of rights, the Owner and the Owner's family, guests, employees, and invitees shall not be entitled to use and enjoy the Common Area for so long as the delegation remains effective.

(f) Each Owner shall be liable to the Association for any damage to the Common Area or to Association-owned property, to the extent that the damage is not covered by insurance, if the damage is sustained because of the negligence, willful misconduct, or unauthorized or improper installment or maintenance of any improvement by the Owner or the Owner's family, guests, tenants, contract purchasers, tenants, or invitees. In the case of joint ownership of a Lot, the liability of the co-owners shall be joint and several, unless the co-owners and the Association have agreed in writing to an alternative allocation of liability.

Section 2.05. Non-Guest Parking Spaces to be Exclusive Use Common Areas. Each Owner shall have the exclusive right to use, for parking purposes only, any parking space or spaces that may be allocated to the Owner's Lot in the future. Each parking space shall be an Exclusive Use Common Area. Additional Exclusive Use Common Areas may be designated in the future by the Association, provided that the designation is not inconsistent with the rights of any Owner. Any

powers prescribed by law and set forth in this Declaration, the Articles of Incorporation, and the Bylaws.

Section 3.02. Membership. Every Owner, upon becoming an Owner, shall automatically become a Member of the Association. Ownership of a Lot is the sole qualification for membership. Each Member shall have the rights, duties, privileges, and obligations set forth in the Governing Instruments. Membership shall automatically cease when the Owner no longer holds an ownership interest in a Lot. All memberships shall be appurtenant to the Lot conveyed, and cannot be transferred, assigned, conveyed, hypothecated, pledged, or alienated except as part of a transfer of the Owner's entire ownership interest, and then only to the transferee. Any transfer of the Owner's title to his or her Lot shall automatically transfer the appurtenant membership to the transferee.

Section 3.03. Classes of Membership. The Association shall have two classes of voting membership, as follows:

(a) All Owners, other than the Declarant, shall be "Class A" members. Class A membership entitles the holder to one vote for each Lot owned. When a Lot is owned by more than one person, only one vote may be cast for the Lot, as provided in Section 3.04(b) of this Declaration.

(b) The Declarant shall be the sole "Class B" member. The Class B member shall be entitled to three votes for each Lot owned. Class B membership shall cease and be converted to Class A membership upon the occurrence of whichever of the following is first in time:

(1) The total outstanding votes of the Class A Owners equals or exceeds the total outstanding votes of the Class B member; or

(2) On a prescribed date to be established by the Board, which must not be later than the second anniversary of the first conveyance of a Lot following the original issuance of the final subdivision public report for the Development.

Section 3.04. Voting Rights. All voting rights of the Owners shall be subject to the following restrictions, limitations, and requirements:

(a) Except as provided in this Article, on each matter submitted to a vote of the Owners, each Owner shall be entitled to cast one vote for each Lot owned.

(b) Fractional votes shall not be allowed. When there is more than one record Owner of a Lot ("co-owners"), all of the co-owners shall be Members, but only one of them shall be entitled to cast the single vote attributable to the Lot. Co-owners should designate in writing one of their number to vote. If no such designation is made or if it is revoked, the co-owners shall decide among themselves, by majority vote, how that Lot's vote is to be cast. Unless the Board receives

Bylaws of the Association. It may perform all acts that may be necessary for or incidental to the performance of the obligations and duties imposed upon it by this Declaration or the other Governing Instruments. Its powers shall include, but are not limited to, the following:

(a) The Association shall have the power to establish, fix, levy, collect, and enforce the payment of assessments against the Owners in accordance with the procedures set out in Article IV of this Declaration.

(b) The Association shall have the power to adopt reasonable Rules and Regulations governing the use of the Common Area and its facilities, and of any other Association property. These Rules and Regulations may include, but are not limited to: reasonable restrictions on use by the Owners and their family, guests, employees, tenants, and invitees; rules of conduct; and the setting of reasonable fees for the use of recreational facilities. A copy of the current Rules and Regulations, if any, shall be given to each Owner and shall be posted at conspicuous places in the Common Area. If any provision of the Rules and Regulations conflicts with any provision of this Declaration, the Articles, or the Bylaws, the Declaration, Articles, or Bylaws shall control to the extent of the inconsistency.

(c) The Association shall have the right 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 Owners, in matters pertaining to the following:

(1) Enforcement of this Declaration, the Articles, Bylaws, and Rules and Regulations.

(2) Damage to the Common Area.

(3) Damage to the Lots that the Association is obligated to maintain or repair.

(4) Damage to the Lots that arises out of, or is integrally related to, damage to the Common Area or Lots that the Association is obligated to maintain or repair.

The Association shall enforce payment of assessments in accordance with the provisions of Article IV of this Declaration.

(d) In addition to the general power of enforcement described above, the Association may discipline its Owners for violation of any of the provisions of the Governing Instruments or Rules and Regulations by suspending the violator's voting rights and privileges for use of the Common Area, or by imposing monetary penalties, subject to the following limitations:

(1) The accused Owner shall be given notice and an opportunity to be heard with regard to the alleged violation in accordance with the provisions of Corporations Code Section 7341 and Civil Code Section 1363(b).

additional work shall be charged solely to the Owner of the Lot in the month in which the work is performed. Further, the Owner of a Unit shall pay the costs of any temporary relocation of any occupant of the Unit occasioned by the presence of wood-destroying pests or organisms. If the Owner does not pay for the additional work within 30 calendar days after receiving the bill, the Association shall institute appropriate collection actions and shall recover the reasonable costs of collection, including attorneys' fees and interest from the due date until paid at the rate of 12 percent per annum.

(b) The Association shall use the maintenance fund described in Section 4.01 of this Declaration to, among other things, acquire and pay for the following:

(1) Water, electrical, and other necessary utility service for the Common Area and, to the extent not separately metered and charged, for the Lots;

(2) The insurance policies described in Article VII of this Declaration;

(3) The services of any personnel that the Board determines are necessary or proper for the operation of the Common Area; and

(4) Legal and accounting services necessary or proper in the operation of the Common Area or the enforcement of this Declaration.

(c) If the Association is obligee under a bond or other arrangement to secure the performance of Declarant as to any Common Area improvements that were not completed prior to the issuance of the final public report on the Development, the following procedures shall govern the initiation of action to enforce the bond:

(1) The Board of Directors of the Association shall consider and vote on the question of action by the Association to enforce the obligations under the bond with respect to any improvement for which a Notice of Completion has not been filed within 60 days after the completion date specified for the improvement 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 above question if a Notice of Completion has not been filed within 30 days after the expiration of the extension.

(2) If the Board votes not to initiate action to enforce the obligations under the bond, or if it fails to consider and vote on the matter as required, a special meeting of the Owners of the Association shall be called for the purpose of overriding the Board's decision or for taking action on the matter, upon receipt of a petition calling for such a meeting signed by Owners representing at least 5 percent of the total voting power of the Association. The meeting shall be held not less than 35 days or more than 45 days after receipt of the petition by the Board. At the special meeting, only the Owners other than Declarant shall be allowed to vote on the matter. A vote by a majority of the voting power of the Association residing in Owners other than

(e) Within 120 days after the close of each fiscal year, the Association shall prepare and distribute to the Owners an annual report consisting of the following:

- (1) A balance sheet as of the end of the fiscal year.
- (2) An operating (income) statement for the fiscal year.
- (3) A statement of changes in financial position for the fiscal year.

(4) For any fiscal year in which the gross income to the Association exceeds \$ 75,000, a copy of the review of the annual report prepared in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy. If this report is not prepared by an independent accountant, it shall be accompanied by the certificate of an authorized officer of the Association that the statement was prepared without independent audit or review from the books and records of the Association.

(f) Within 60 days before the beginning of each fiscal year, the Association shall prepare and distribute to the Owners a statement describing the Association's policies and practices in enforcing lien rights or other legal remedies for default in payment of assessments against Owners.

(g) The Association shall prepare a balance sheet, as of an accounting date that is the last day of the month closest in time to six months from the date of closing of the first sale of a Lot in the Development, and an operating statement for the period from the date of the first closing to the foregoing accounting date. The Association shall distribute this statement to the Owners within 60 days after the accounting date. This operating statement shall include a schedule of assessments received and receivable identified by the number of the Lot and the name of the Owner assessed.

(h) Each year, the Association must provide the Owners with a summary of the provisions of Civil Code Sections 1369.510 through 1369.590. These statutes require that alternative dispute resolution be pursued before a civil action may be filed in connection with certain disputes related to enforcement of the governing documents, the Davis-Stirling Common Interest Development Act (Civ. Code § 1350 et seq.), or the Nonprofit Mutual Benefit Corporation Law (Corp. Code § 7110 et seq.). The required summary must include a specific reference to Civil Code Sections 1369.510 through 1369.590, and the statutory language set forth in Civil Code Section 1369.590(a). This summary must be provided either (1) at the time the pro forma operating budget described in Section 3.07(d) of this Declaration is distributed, or (2) in the manner specified in Corporations Code Section 5016.

(i) The Association shall provide any Owner with the following documents within 10 days of the mailing or delivery of a written request therefor:

- (1) A copy of the Governing Instruments.

(d) If the parties reach agreement on a resolution of the dispute, that resolution shall be memorialized in writing and signed by the parties with the Board designee signing on behalf of the Association.

(e) An agreement reached by the parties is binding on them and may be judicially enforced provided the agreement is consistent with the authority granted by the Board of Directors to its designee, and further provided the agreement is not in conflict with law or the Association's governing documents.

(f) A member of the Association may not be charged a fee to participate in the dispute resolution procedure.

ARTICLE IV. ASSESSMENTS AND COLLECTION PROCEDURES

Section 4.01. Covenant to Pay. The Declarant covenants and agrees, for each Lot owned by it in the Development, and each Owner by acceptance of the deed to the Owner's Lot is deemed to covenant and agree, to pay to the Association the regular and special assessments levied pursuant to the provisions of this Declaration. A regular or special assessment and any late charges, reasonable costs of collection, and interest, as assessed in accordance with the provisions of this Article, shall be a debt of the Owner of the Lot at the time the assessment or other sums are levied. The Owner may not waive or otherwise escape liability for these assessments by nonuse of the Common Area or abandonment of the Owner's Lot.

Section 4.02. Exemptions From Assessments. The obligation to pay assessments shall be subject to the following exemptions:

(a) Any Owner (including Declarant) of a Lot in the Development that does not include a structural improvement for human occupancy shall be exempted from that portion of any assessment that is for the purpose of defraying expenses and reserves directly attributable to the existence and the use of those structural improvements. This exemption shall include, but is not limited to, the following:

- (1) Roof replacement;
- (2) Exterior maintenance;
- (3) Walkway and carport lighting;
- (4) Refuse disposal;
- (5) Cable television; and
- (6) Domestic water supplied to living units.

Any such exemption shall be in effect only until the occurrence of the earliest of the following events: (1) the recordation of a notice of completion of the structural improvement; (2) the

Section 4.07. Limitations on Assessments. The Board shall comply with the following requirements governing the imposition and amounts of assessments:

(a) For any fiscal year, the Board may impose a regular assessment per Lot that is as much as 20 percent greater than the regular assessment for the preceding fiscal year, provided (1) the Board has distributed the pro forma operating budget described in Section 3.07(d) for the current fiscal year or (2) the increase is approved by Owners constituting a majority of the votes at a meeting or in an election of the Association conducted in accordance with Corporations Code Sections 7510-7527 and 7613.

(b) The Board may impose, for any fiscal year, a regular assessment per Lot that is more than 20 percent greater than the regular assessment for the preceding fiscal year, or may levy special assessments that in the aggregate exceed 5 percent of the budgeted gross expenses of the Association for that fiscal year, provided the increase or levy is approved by Owners constituting a majority of the Owners of the Association and casting a majority of the votes at a meeting or election of the Association conducted in accordance with Corporations Code Sections 7510-7527 and 7613.

(c) The Board may, without complying with the foregoing requirements, make an assessment increase that is necessary for an emergency situation. An emergency situation is an extraordinary expense that is:

(1) Required by a court order.

(2) Necessary to repair or maintain the Development or any part of it for which the Association is responsible when a threat to personal safety in the Development is discovered.

(3) Necessary to repair or maintain the Development or any part of it for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the pro forma operating budget pursuant to Section 3.07(d).

(4) Incurred in making the first payment of the earthquake insurance surcharge pursuant to Insurance Code Section 5003.

Before the Board may impose or collect an assessment in the type of emergency situation described in (3), above, it shall pass a resolution containing written findings as to the necessity of the extraordinary expense and why the expense was not or could not have been reasonably foreseen in the budgeting process, and shall distribute the resolution to the Owners with the notice of assessment.

(d) The Board shall notify the Owners in writing of any increase in the amount of a regular or special assessment. The Board shall provide this notice by first-class mail not less than 30 or more than 60 days prior to the due date of the increased assessment.

An Owner also may submit a written request to meet with the Board to discuss a payment plan for the debt. The request must be mailed within 15 days of the mailing of the Board's notice. The Board must then meet with the Owner in executive session within 45 days of the mailing of the Owner's request. If there is no regularly scheduled Board meeting within that time period, the Board may designate a committee of one or more members to meet with the Owner.

Any partial payments made toward the debt will first be applied to the assessments owed, and only after the principal owed is paid in full will the payments be applied to the fees and costs of collection, attorneys' fees, late charges, or interest. When an Owner makes a payment, the Owner may request a receipt and the Association shall provide it. The receipt shall indicate the date of payment and the person who received it. The Association shall provide a mailing address for overnight payment of assessments.

A debt for a delinquent regular or special assessment and any late charges, reasonable fees and costs of collection, reasonable attorneys' fees, and interest shall become a lien on the Lot when a notice of delinquent assessment is duly recorded and mailed as provided in Section 1367.1 of the California Civil Code.

Except as provided below regarding debts arising from delinquent assessments when the debt arose on or after January 1, 2006, and the delinquent amount is less than \$1,800, any such lien may be enforced in any manner permitted by law, including judicial foreclosure or nonjudicial foreclosure. Any nonjudicial foreclosure shall be conducted by the trustee named in the notice of delinquent assessment or by a trustee substituted pursuant to Section 2934a of the California Civil Code, in accordance with the provisions of Sections 2924, 2924b, and 2924c of the California Civil Code.

If the sums specified in the notice of delinquent assessment are paid before the completion of any judicial or nonjudicial foreclosure, the Association shall record a notice of satisfaction and release of the lien. On receipt of a written request by the Owner, the Association shall also record a notice of rescission of any declaration of default and demand for sale.

In accordance with Section 1367.4 of the California Civil Code, a lien securing a debt arising from a delinquent regular or special assessment when the debt arose on or after January 1, 2006, and the delinquent amount is less than \$1,800, excluding accelerated assessments, late charges, fees and costs of collection, attorney's fees, and interest, shall not be enforced by judicial or nonjudicial foreclosure unless and until either (1) the debt equals or exceeds \$1,800, excluding accelerated assessments, late charges, fees and costs of collection, attorney's fees, and interest, or (2) the debt secured by the lien is more than 12 months delinquent.

Section 4.10. Statement Regarding Assessments. The Association shall provide any Owner, upon written request, with a statement specifying (1) the amounts of the Association's current regular and special assessments and fees, and (2) the amounts of any delinquent assessments and

(i) Alter or modify the exterior of any improvements located on a Lot without first obtaining the written consent of the Architectural Control Committee.

(j) Install a solar energy system in a Unit owned by another without first obtaining the written consent of the Architectural Control Committee.

(k) Alter, construct, or remove anything on or from the Common Area, except upon the written consent of the Board.

(l) Park any automobile or other motor vehicle in the Common Area or in any Exclusive Use Common Area except in a space designated for the Owner by the Board or the Governing Instruments.

Section 5.02. Damage Liability. Each Owner shall be liable to the Association for all damage to the Common Area or other Association property that is sustained by reason of the negligence or willful misconduct of that Owner or his or her family, guests, employees, tenants, and invitees.

Section 5.03. Exemption. Declarant shall be exempt from the restrictions of Section 5.01 to the extent necessary to complete any construction work, sales activities, or additions to or affecting the Development. This exemption includes, but is not limited to, maintaining Lots as model homes, placing advertising signs on Development property, and generally using Lots and the Common Area to carry on construction activity.

Section 5.04. Equitable Servitudes. The covenants and restrictions set forth in this Declaration shall be enforceable equitable servitudes and shall inure to the benefit of and bind all Owners. These servitudes may be enforced by any Owner or by the Association or by both.

ARTICLE VI. ARCHITECTURAL AND DESIGN CONTROL

Section 6.01. Architectural and Design Approval. No building, addition, wall, fence, or alteration shall be begun, constructed, maintained, or permitted to remain on any Lot, or on the Common Area, until complete plans and specifications of the proposed work have been submitted to and approved by the Architectural Control Committee. The Committee shall review the plans and specifications to determine whether they are compatible with the standards of design, construction, and quality of the Development and, if they are not, shall require that changes be made before approval.

Section 6.02. Architectural Control Committee. The Architectural Control Committee shall consist of at least three but not more than five members, formed as follows:

Section 7.02. General Liability and Individual Liability Insurance. The Association shall obtain and maintain one or more policies of insurance that must include coverage for (1) general liability of the Association and (2) individual liability of Officers and Directors of the Association for negligent acts or omissions in that capacity. Both of the above types of coverage shall not be less than \$ 1,000,000 covering all claims for death, personal injury, and property damage arising out of a single occurrence.

The limits and coverage shall be reviewed at least annually by the Board and increased in its discretion.

Section 7.03. Other Association Insurance. The Association shall purchase and maintain workers' compensation insurance to the extent necessary to comply with any applicable laws. The Association also shall purchase and maintain fidelity bond coverage that names the Association as an obligee, for any person or entity handling funds of the Association, whether or not such persons or entities are compensated for their services. This coverage shall be in an amount that is at least equal to the estimated maximum of funds, including reserve funds, in the custody of the Association [or the Manager] at any given time during the term of each bond. However, the aggregate amount of these bonds must not be less than 150 percent of each year's estimated annual operating expenses and reserves. The Association also may purchase and maintain a blanket policy of flood insurance, and demolition insurance in an amount that is sufficient to cover any demolition that occurs following the total or partial destruction of the Development and a decision not to rebuild.

Section 7.04. Trustee for Policies. The Association, acting through its Board, is hereby appointed and shall be deemed trustee of the interests of all named insureds under all insurance policies purchased and maintained by the Association. All insurance proceeds under any of those policies shall be paid to the Board as trustee. The Board shall use the proceeds for any of the purposes specified in Article VIII of this Declaration. The Board also is authorized to negotiate loss settlements with the appropriate insurance carriers, to compromise and settle any claim or enforce any claim by any lawful action, and to execute loss claim forms and release forms in connection with such settlements.

Section 7.05. Individual Insurance. Each Owner shall provide fire and casualty insurance for the improvements on his or her Lot. An Owner may separately insure his or her personal property, and may obtain and maintain personal liability and property damage liability insurance for his or her Lot, provided that the insurance contains a waiver of subrogation rights by the carrier as to the other Owners, the Association, Declarant, and the institutional First Mortgagees of the Owner's Lot.

Section 7.06. Insurance Premiums. Insurance premiums for any insurance coverage obtained by the Association shall be included in the regular assessments. That portion of the regular assessments necessary for the required insurance premiums shall be used solely for the payment of the premiums when due.

may elect to reject all of the bids and thus not to rebuild, or Owners representing at least 51 percent of the total voting power may elect to reject all bids requiring amounts exceeding the available insurance proceeds by more than \$ 500. Failure to reject all bids shall authorize the Board to accept the unrejected bid it considers most favorable. Failure to call the special meeting or to repair the casualty damage within 12 months from the date the damage occurred shall be deemed for all purposes to be a decision not to rebuild.

(c) If a bid is accepted, the Board shall let the contract to the successful bidder and distribute the insurance proceeds to the contractor as required by the contract.

(d) Levy a special assessment to make up any deficiency between the total insurance proceeds and the contract price for the repair or rebuilding, with the assessment and all insurance proceeds, whether or not subject to liens of mortgagees, to be used solely for the rebuilding. This assessment shall be apportioned equally to each Lot. If any Owner fails to pay the special assessment within 15 days after it is levied, the Board shall enforce the assessment in the manner described in Section 4.09 of this Declaration.

Section 8.05. Election Not to Rebuild. Upon an election not to rebuild, the Board, as soon as reasonably possible and as agent for the Owners, shall execute and record a certificate stating that the Association shall not rebuild. The Board shall also sell the entire Development on terms acceptable to the Board and free from the effect of this Declaration, which shall terminate upon the sale. The net proceeds shall then be distributed to the Owners and their respective Mortgagees proportionately according to the respective fair market values of the Lots at the time of the destruction as determined by an independent appraisal. That appraisal shall be performed by an independent appraiser who shall be selected by the Association and who shall be a member of, and apply the standards of, a nationally recognized appraiser organization.

All insurance proceeds available for restoration or repair shall be distributed to the Owners equally.

Section 8.06. Minor Restoration and Repair Work. The Association shall order restoration or repair work without complying with the other provisions of this Article whenever the estimated cost of the work does not exceed \$18,000 for the Common Area and \$3,000 for one or more Lots. If insurance proceeds are unavailable or insufficient, the Association shall levy a special assessment for the cost of the work. The Assessment shall be levied in the manner described in Section 4.05 of this Declaration.

ARTICLE IX. EMINENT DOMAIN

Section 9.01. Sale to Condemning Authority. If a governmental agency proposes to condemn all or a portion of the Common Area, the Association may sell all or any portion of the Common Area to the condemning authority if 75 percent of the Owners and 67 percent of all institutional First Mortgagees approve the sale in advance. Any such sale shall be made by the Association in

Section 10.05. Unpaid Assessments. Any First Mortgagee who obtains title to a Lot pursuant to the remedies provided in the Mortgage or foreclosure of the Mortgage shall not be liable for the Lot's unpaid assessments that accrue prior to the acquisition of title to the Lot by the Mortgagee.

Section 10.06. Mortgagee Approval of Material Amendments. Notwithstanding Article XII of this Declaration, any amendments governing any of the following shall require the prior written approval of at least 51 percent of the First Mortgagees and at least 67 percent of the total voting power of the Owners:

- (a) Voting;
- (b) Rights to use the Common Area;
- (c) Reserves and responsibility for maintenance, repair, and replacement of the Common Area;
- (d) Boundaries of any Lot;
- (e) Owners' interests in the Common Area;
- (f) Convertibility of Lots into Common Area or Common Area into Lots;
- (g) Leasing of Lots;
- (h) Establishment of self-management by the Association, when professional management has been previously required by any First Mortgagee or any insurer or governmental guarantor of a First Mortgage;
- (i) Annexation, addition, or withdrawal of real property to or from the Development;
- (j) Assessments, assessment liens, or the subordination of these liens;
- (k) Casualty and liability insurance or fidelity bonds; or
- (l) Any provisions expressly benefitting First Mortgagees or insurers or governmental guarantors of First Mortgages.

Notwithstanding the above, any First Mortgagee who receives a written request from the Board to approve a proposed amendment or amendments requiring consent under this Section who does not deliver a negative response to the Board within 30 days of the receipt of the request shall be deemed to have approved the proposed amendment or amendments.

Section 10.11. Management. Any agreement for professional management of the Development shall not exceed three years and shall provide that either party may terminate the agreement, with or without cause and without the imposition of a termination fee, on 90 days written notice. The approval of holders of at least 75 percent of First Mortgages shall be obtained before the Association terminates a professional management agreement.

Section 10.12. Right to Inspect Books and Records. Institutional First Mortgagees, upon written request, shall have the right to (1) examine the books and records of the Association during normal business hours; and (2) require the submission of any financial data furnished to the Owners by the Association.

Section 10.13. Payments by Mortgagees. First Mortgagees may, jointly or severally, pay taxes or other charges that are in default and that may or have become a charge against the Common Area, and may pay any overdue premiums on hazard insurance policies, or secure new hazard insurance coverage upon the lapse of a policy, for the Common Area, and First Mortgagees making these payments shall be entitled to immediate reimbursement from the Association.

Section 10.14. Right to Furnish Mortgage Information. Each Owner hereby authorizes the First Mortgagee of a First Mortgage on the Owner's Lot to furnish information to the Board concerning the status of the First Mortgage and the loan that it secures.

ARTICLE XI. ANNEXATION OF ADDITIONAL PROPERTY

Section 11.01. Additions by Declarant. Declarant shall have the right to add real property to the Development, pursuant to a plan of phased development submitted to the California Real Estate Commissioner along with the application for the public report for the first phase of the Development, at any time before the third anniversary of the original issuance of the most recently issued final subdivision public report for the most recent phase of the Development. This election shall be made by the recordation of a supplemental declaration ("Supplemental Declaration"). The Supplemental Declaration shall describe the real property to be annexed, and shall state that the property described in it is being annexed to the Development pursuant to Article XI of this Declaration. The Supplemental Declaration may also set forth any additional covenants, conditions, restrictions, reservations, and easements that Declarant deems appropriate for that phase of development.

Section 11.02. Other Additions. In addition to real property annexed by the Declarant, real property may be annexed to the Development and brought within the general plan and scheme of this Declaration by the approval by vote or written consent of at least 67 percent of the total voting power of the Association.

President of the Association , and (3) that writing has been recorded in the county in which this Development is located.

Section 12.03. Amendments Pursuant to Court Order. If this Declaration requires a proposed amendment to be approved by the affirmative vote of a specified percentage (exceeding 50 percent) of the votes in the Association or of Owners having a specified percentage (exceeding 50 percent) of the votes in more than one class (a "supermajority"), and more than 50 percent but less than the required supermajority of the votes approve the amendment, the Association or any Owner may petition the Superior Court of San Bernardino County, subject to the requirements, limitations, and exceptions set forth in Civil Code Section 1356, for an order reducing the percentage of the affirmative votes necessary for the amendment or approving the amendment. If such an order is issued, the amendment shall be acknowledged by any person designated by the Association for that purpose or, if no such designation is made, by the President of the Association, and that person shall have the amendment and the court order recorded in San Bernardino County. Upon recordation, the amended provision or provisions of this Declaration shall have the same force and effect as if the amendment were adopted in compliance with every requirement imposed by this Declaration and the other governing documents. Within a reasonable time after recordation, the Association shall mail a copy of the amendment and a statement regarding the amendment to each Owner.

Section 12.04. Deletion of Construction or Marketing Provisions. Notwithstanding any other provision of this Declaration, the Board may, under the circumstances described in this Section, adopt an amendment deleting from this Declaration any provision that was unequivocally designed and intended, or that by its nature could only have been designed or intended, to facilitate Declarant in completing the construction or marketing of the Development. To be subject to this amendment procedure, the provision must provide for access by Declarant over or across the Common Area for the purposes of (1) completion of construction of the Development and (2) the erection, construction, or maintenance of structures or other facilities designed to facilitate the completion of construction or marketing of Lots or improvements on them. Such an amendment may be adopted only after Declarant has completed construction of the Development, has terminated construction activities, and has terminated its marketing activities for the sale of the Lots. At least 30 days prior to taking action to adopt such an amendment, the Board must mail to all Owners, by first-class mail, the following: a copy of the proposed amendment; and a notice of the time, date, and place of the meeting at which the Board will consider adoption of the amendment. All deliberations of the Board on the proposed amendment must be conducted at that meeting. The meeting must be open to all Owners, and the Owners must be given an opportunity at the meeting to comment on the proposed amendment. The Board may not adopt the amendment unless (1) a quorum is present at the meeting, (2) the meeting is conducted in accordance with certain provisions (identified in Civil Code Section 1355.5) of the Nonprofit Mutual Benefit Corporation Law, and (3) Owners casting a majority of the votes at the meeting approve the amendment. For these purposes, "quorum" means more than 50 percent of the Owners who own no more than two Lots in the Development.

divestment of the Owner's entire interest in his or her Lot with respect to obligations arising from and after the date of the divestment.

Section 13.08. Fair Housing. Neither Declarant nor any Owner shall, either directly or indirectly, forbid the conveyance, encumbrance, renting, leasing, or occupancy of the Owner's Lot to any person on the basis of race, color, sex, religion, ancestry, or national origin.

Section 13.09. Right of City to enforce Declaration. The City of Redlands shall have the right, but not the obligation, to enforce compliance with the provisions of this declaration.

Section 13.10. Number and Headings. As used in this Declaration, the singular shall include the plural, unless the context requires the contrary. The headings are not a part of this Declaration, and shall not affect the interpretation of any provision.

EXECUTED on Dec. 3, 2007, at Redlands, California.

DECLARANT

FRANKLIN COURT PARTNERSHIP
A California General Partnership

By: Brian King
Brian King, General Partner

SUBORDINATION AGREEMENT

1st Centennial Bank, being the beneficiary under that certain Deed of Trust recorded September 19, 2007, as Instrument No. 2007-0537056 of Official Records of San Bernardino County, California ("Deed of Trust"), hereby declares that the liens and charges of said Deed of Trust are and shall be subordinate and inferior to the Declaration of Covenants, Conditions and Restrictions for Franklin Court, a general partnership, Franklin Court Homeowners Association, a non-profit mutual benefit corporation, and Tract 13649, to which this Subordination Agreement is attached, as amended or restated. By executing this Subordination Agreement, the undersigned agrees that should the undersigned acquire title to all or any portion of the project by foreclosure (whether judicial or non-judicial), deed-in-lieu of foreclosure or any other remedy in or relating to the Deed of Trust, the undersigned will acquire title subject to the provisions of the Declaration, as amended or restated, which shall remain in full force and effect.

DATED: December 3, 2007

LIENHOLDER:

1st Centennial Bank

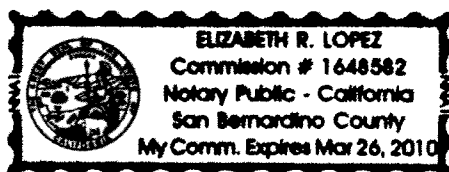
By: 
Clifford N. Schoonover
Sr. Vice President

ACKNOWLEDGMENT

STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO

On December 3, 2007, before me, Elizabeth R Lopez, a **Notary Public** in and for the State of California, personally appeared **Clifford N. Schoonover**, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument, and acknowledged to me that he/~~she~~ executed the same in his/~~her~~ authorized capacity, and that by his/~~her~~ signature on the instrument the person, or the entity upon behalf of which such person acted, executed the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



Elizabeth Lopez
Notary Public