

RECORDING REQUESTED BY:
PUBLIC WORKS DEPARTMENT
CITY OF REDLANDS

WHEN RECORDED RETURN TO:
CITY CLERK'S OFFICE
CITY OF REDLANDS
P.O. BOX 3005
REDLANDS, CA 92373

91-19384

Recorded in Official Records, County of San Bernardino

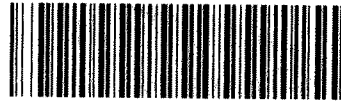


LARRY WALKER
Auditor/Controller – Recorder

740 Stewart Title Company

2/04/2008
10:38 AM
DTH

Doc#: 2008 – 0050089



Titles: 1 Pages: 17

Fees	58.00
Taxes	0.00
Other	0.00
PAID	\$58.00

CITY OF REDLANDS

SUBDIVISION IMPROVEMENT AGREEMENT

THIS AGREEMENT is made this ___ day of December 18, 2007, by and between the City of Redlands, a municipal corporation, hereinafter referred to as "City," and Mountain View Industrial Center, LLC, hereinafter referred to as "Subdivider."

RECITALS

WHEREAS, Subdivider is the owner or authorized developer of property located in the City of Redlands known as Parcel Map No. 17815 (the "Subdivision"), for which Subdivider is obligated to construct certain improvements (the "Improvements") as a condition of approval of the Subdivision; and *as more fully described in Exhibit "B" attached hereto and made a part hereof.

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;

NOW, THEREFORE, in consideration of the approval and acceptance by the City Council of the City of the final map for the Subdivision, and the mutual promises contained herein, the Parties hereto agree as follows:

1. Definition and Ownership of Improvements. The Improvements include but are not limited to the grading, paving, construction of curbs and gutters, storm drains and sanitary sewers, water lines, utilities, street lights and all appurtenant facilities associated with the Subdivision that are shown in the plans, profiles and specifications that have been prepared by Subdivider's engineer and approved by City, and which are attached hereto as Exhibit "A." No work on the Improvements shall be commenced by Subdivider until such plans, profiles and specifications have been approved by City and permits issued. The cost of plan checking and inspection incurred by City shall be paid by Subdivider. All Improvements constructed or installed pursuant to this Agreement shall become the property of City, without payment therefor, upon acceptance of those Improvements by City.

2. Time for Completion. Construction of the Improvements shall be completed within twelve (12) months from the date of Subdivider's execution of this Agreement. In the event Subdivider fails to complete construction of the Improvements within that time period, City may require Subdivider's surety to complete the Improvements, or City may complete construction of the Improvements and recoup its expenses for such work from Subdivider, or Subdivider's surety, as hereafter provided.

3. Subdivider's Obligations to Construct Improvements. Subdivider shall:

a. Complete, at Subdivider's own expense, all the public Improvement work required by City in conformance with approved Improvement Plans within one (1) year following the date of this Agreement; provided, however, that the Improvements shall not be deemed to be completed until accepted by the City Council as provided in Section 18 hereof.

b. Furnish at Subdivider's expense the necessary materials, provisions and other supplies or equipment used for Improvements and for a payment bond with respect to such work or labor, as required by Civil Code Section 3247, for the completion of the Improvements in conformity with the Improvement Plans.

c. Acquire and dedicate all rights-of-way, easements, and other interests in real property for construction and installation of the Improvements, or pay the cost of acquisition incurred by City. All rights-of-way, easements and other interests in real property shall be free and clear of liens and encumbrances. The Subdivider's obligations with regard to acquisition by City of off-site rights-of-way, easements and other interests in real property shall be the subject to a separate agreement between Subdivider and City. Subdivider shall also be responsible for obtaining any public or private sanitary sewer, drainage, and/or utility easements or authorization to accommodate the Subdivision.

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

c. To guarantee or warranty the work done pursuant to this Agreement for a period of one (1) year following acceptance thereof by City against any defective work or labor done or defective materials furnished in cash in the amount of 10% of the estimate cost of said Improvements; and

d. Subdivider shall also furnish to City good and sufficient cash security in the amount of 100% of the estimated cost of setting subdivision monuments as stated previously in this Agreement in Section 3(e) for a period of one year plus thirty (30) days from formal acceptance by the City Council.

The securities required by this Agreement shall be kept on file with the City Clerk. The terms of the security documents reference in the Agreement are incorporated into this Agreement by this reference. If any security is replaced by another approved security, the replacement shall: (1) comply with all the requirements for security in this Agreement, (2) be provided to the City Engineer to be filed with the City Clerk, and upon filing (3) be deemed to have been made a part of and incorporated into this Agreement. Upon provision of a replacement security with the City Engineer and filing of a replacement security with the City Clerk, the former security may be released.

6. Alterations to Improvement Plans.

a. Any changes, alterations or additions to the Improvement Plans, not exceeding 10% of the original estimated cost of the Improvements, which are mutually agreed upon by the City and Subdivider shall not relieve the Improvement security given for faithful performance of this Agreement. In the event such changes, alterations or additions exceed 10% of the original estimated cost of the Improvements, Subdivider shall provide Improvement security for faithful performance as required by Section 5 of the Agreement for 100% of the total estimated cost of the Improvement as changed, altered or amended, minus any completed partial releases allowed by Section 8 of this Agreement.

b. Subdivider shall construct the Improvements in accordance with City standards in effect at the time of execution of this Agreement. City reserves the right to modify the standards applicable to the Subdivision and this Agreement when necessary to protect the public safety or welfare or comply with applicable Federal or State law or City zoning ordinances. If Subdivider requests and is granted an extension of time for completion of the Improvements, City may apply the standards in effect at the time of the extension.

7. Inspection. Subdivider shall at all times maintain proper facilities and safe access for inspection of the public Improvements by City inspectors and to the shops wherein any work is in preparation. Upon completion of the work the Subdivider may request a final inspection by the City Engineer or the City Engineer's authorized representative. If the City Engineer, or the designated representative, determines that the work has been completed in accordance with this Agreement, then the City Engineer shall certify the completion of the public Improvements to the City Council. No Improvements shall be finally accepted by the City Council unless all aspects of work have been 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.

Subdivider shall replace or repair, or have replaced or repaired, as the case may be, all public Improvements, public utility facilities and surveying or subdivision monuments which are destroyed or damaged as a result of any work under this Agreement. Subdivider shall bear the entire cost of replacement or repairs of any and all public or public utility property damaged or destroyed by reason of any work done under this Agreement, whether such property is owned by the United States or any agency thereof, or the State of California, or any agency or political subdivision thereof, or by the City or any public or

private utility corporation or by any combination of such owners. Any repair or replacement shall be to the satisfaction, and subject to the approval, of the City Engineer.

Furthermore, until such time as the Improvements are accepted by City, Subdivider shall be responsible for, and bear the risk of loss to, any of the improvements constructed or installed. Until such items as all improvements required by this Agreement are fully completed and accepted by City, Subdivider shall be responsible for the care, maintenance of, and any damage to such Improvements. City shall not, nor shall any officer or employee thereof, be liable to or responsible for any accident, loss or damage, regardless of cause, happening or occurring to the work or Improvements specified in this Agreement prior to the completion and acceptance of the work or Improvements. All such risks shall be the responsibility of and are hereby assumed by Subdivider.

10. Permits. Subdivider shall at Subdivider's expense, obtain all necessary permits and licenses for the construction and installation of the Improvements, and give all necessary notices and pay all fees and taxes required by law.

11. Default of Subdivider.

a. Default of Subdivider shall include, but not be limited to:

(1) Subdivider's failure to timely commence construction of Improvements under this agreement;

(2) Subdivider's failure to timely complete construction of the Improvements;

(3) Subdivider's failure to timely cure any defect in the Improvements;

(4) Subdivider's failure to perform substantial construction work for a period of twenty (20) calendar days after commencement of the work;

(5) Subdivider's insolvency, appointment of a receiver, or the filing of any petition in bankruptcy, either voluntary or involuntary, which Subdivider fails to discharge within thirty (30) days;

(6) The commencement of a foreclosure action against the subdivision or a portion thereof, or any conveyance in lieu or in avoidance of foreclosure; or

(7) Subdivider's failure to perform any other obligation under this Agreement.

b. The City reserves to itself all remedies available to it at law or in equity for breach of Subdivider's obligations under this Agreement. The City shall have the right, subject to this Section, to draw upon or utilize the appropriate security to mitigate the City's damages in the event 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) days after mailing written notice of default to Subdivider and to Subdivider's surety, and agrees to pay the cost of such work by City. Should the City determine that an urgency requires repairs or replacements to be made before Subdivider can be notified, City may, in its sole discretion,

make the necessary repair or replacement or perform the necessary work and Subdivider shall pay to City the cost of such repairs.

13. Subdivider Not Agent or Employee of City. Neither Subdivider nor Subdivider's agents, contractors or subcontractors are or shall be considered to be agents or employees of the City in connection with the performance of Subdivider's obligations under this Agreement.

14. Environmental Warranty. Prior to the acceptance of any property dedications or Improvements by City, Subdivider shall certify and warrant that neither the property to be dedicated nor Subdivider are in violation of any environmental law and neither the property to be dedicated nor the Subdivider are subject to any existing, pending, or threatened investigation by any federal, state or local governmental authority under or in connection with environmental law. Neither Subdivider nor any third party will use, generate, manufacture, produce, or release, on, under, or about the property to be dedicated, any hazardous substance except in compliance with all applicable environmental laws. Subdivider has not caused or permitted the release of, and has no knowledge of the release or presence of, any hazardous substance on the property to be dedicated or the migration of any hazardous substance from or to any other property adjacent to, or in the vicinity of, the property to be dedicated. Subdivider's prior and present use of the property to be dedicated has not resulted in the release of any hazardous substance on the property to be dedicated. Subdivider shall give prompt written notice to City at the address set forth herein of:

a. Any proceeding or investigation by any federal, state or local governmental authority with respect to the presence of any hazardous substance on the property to be dedicated or the migration thereof from or to any other property adjacent to, or in the vicinity of, the property to be dedicated;

b. Any claims made or threatened by any third party against City or the property to be dedicated relating to any loss or injury resulting from any hazardous substance; and

c. Subdivider's discovery of any occurrence or condition on any property adjoining in the vicinity of the property to be dedicated that could cause the property to be dedicated or any part thereof to be subject to any restrictions on its ownership, occupancy, use for the purpose for which it is intended, transferability or suit under any environmental law.

15. Other Agreements. Nothing contained in this Agreement shall preclude City from expending monies pursuant to agreements concurrently or previously executed between the Parties, or from entering into agreements with other Subdividers for the apportionment of costs of water and sewer mains, or other improvements pursuant to the provisions of the City ordinances providing therefor, nor shall anything in this Agreement commit City to any such apportionment.

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 ensure that Worker's Compensation and Employer's Liability insurance will be in full 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 the obligation to indemnify, defend and hold harmless provided for in this Agreement extends to any claim brought by or on behalf of any employee of Subdivider.

This waiver is mutually negotiated by the parties. This shall not apply to any damage resulting from the sole negligence of City, its agents and employees. To the extent any of the damages referenced herein were caused by or resulted from the concurrent negligence of City, its agents or employees, the obligations provided herein to indemnify, defend and hold harmless is valid and enforceable only to the extent of the negligence of Subdivider, its officer, agents and employees.

c. Comprehensive General Liability Insurance. Subdivider shall secure and maintain in force throughout the duration of the Agreement comprehensive general liability insurance covering all work under this Agreement, including work done by subcontractors, with carriers acceptable to City. Minimum coverage of one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate for public liability, property damage and personal injury is required. 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 the City. Such insurance shall be primary and non-contributing to any insurance or self-insurance maintained by City. Certificates of insurance shall be delivered to City within fifteen (15) days of execution of this Agreement.

d. Business Auto Liability Insurance. Subdivider shall have business auto liability coverage, with minimum limits of one million (\$1,000,000) per occurrence, combined single limit for bodily injury liability and property damage liability. This coverage shall include all Subdivider owned vehicles used on the project, hired and non-owned vehicles, and employee non-ownership vehicles.

21. Indemnity/Hold Harmless. City or any officer or employee thereof shall not be liable for any injury to persons or property occasioned by reasons of the acts or omissions of Subdivider, its agents, employees, contractors and subcontractors in the performance of this Agreement. Subdivider further agrees to protect, defend, indemnify and hold harmless from any and all claims, demands, causes of action, liability or loss of any sort, because of, or arising out of, acts or omissions of Subdivider, its agents, employees, contractors and subcontractors in the performance of this Agreement, except for such claims, demands, causes of action, liability or loss arising out of the sole active negligence of the City, its officials, boards, commissions, the members thereof, agents, and employees, including all claims, demands, causes of action, liability, or loss because of or arising out of, in whole or in part, the design or construction of the Improvements. This indemnification and Agreement to hold harmless shall extend to injuries to persons and damages or taking of property resulting from the design or construction of said Subdivision, and the public Improvements as provided herein, and in addition, to adjacent property owners as a consequence of the diversion of waters from the design and construction of public drainage systems, streets and other public Improvements. Acceptance by the City of the Improvements shall not constitute an assumption by the City of any responsibility for any damage or taking covered by this Section. City shall not be responsible for the design or construction of the property to be dedicated or the Improvements pursuant to the approved improvement plans or map, regardless of any negligent action or inaction 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 judge as to whether or not good cause has been shown to entitle Subdivider to an extension. Delay, other than delay in the commencement of work, resulting from an act of City, act of God, by storm or inclement weather, strikes, boycotts or similar political actions which prevent the

conducting of work, which Subdivider could not have reasonably foreseen, and furthermore were not caused by or contributed to by Subdivider, shall constitute good cause for and extension of the time for completion. As a condition of such extension, the City Engineer may require Subdivider to furnish new security guaranteeing performance of this Agreement, as extended, in an increased amount to compensate for any increase in construction costs as determined by the City Engineer.

26. Certificate of Satisfaction. The City Manager may, upon the determination of the Public Works Director that Subdivider has fully satisfied the obligations secured by this Agreement, at the request of Subdivider, execute and record a Certificate of Satisfaction in the official records of the County of San Bernardino evidencing that Subdivider has complied with, and satisfied, all obligations under this Agreement. Subdivider shall be responsible for the payment of all City costs associated with the preparation and recordation of such a certificate.

27. No Vesting of Rights. Performance by Subdivider of this agreement shall not be construed to vest Subdivider's rights with respect to any change in any zoning or building law or ordinance.

28. Notices. All notices required or provided for under this Agreement shall be in writing and delivered in person or sent by mail, postage prepaid and addressed as provided in this section. Notice shall be effective on the date it is delivered in person, or, if mailed, on the date of deposit in the United States Mail. Notices shall be addressed as follows unless a written change is filed with the City:

Notice to City:	Public Works Director/City Engineer City of Redlands PO Box 3005 Redlands, CA 92373
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Notice to Subdivider:	Mountain View Industrial Center, LLC C/O: RREEF 101 California Street., 26 th Floor San Francisco, CA 94111
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Notice to Surety:	Bank of America 1000 W. Temple Street 7 th Floor, CA9-705-07-05 Los Angeles, CA 90012-1514
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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.

SUBDIVIDER
Mountain View Industrial Center, LLC

By: _____

Mark A. English
Title Vice President

CITY OF REDLANDS

By: _____

N. Enrique Martinez
City Manager

By: _____

Title

Attest:

Lorrie Poyzer
Lorrie Poyzer, City Clerk

(Notary attachment and proof of authorization
for Subdivider's signatures
required and must be attached)

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 December 18, 2007, 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{ X} personally known to me - or - { } proved to me on the basis of satisfactory evidence to be the persons whose names) are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.



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 (Parcel Map No. 17815).

Date of Document: December 18, 2007

Signer(s) Other Than Named Above: Mountain View Industrial Center, LLC, by: Mark A. English, Vice-President

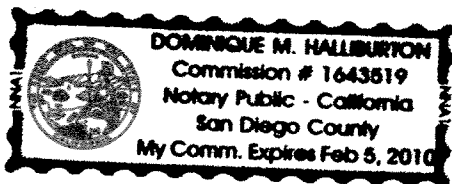
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of San Francisco

On 6/27/2007 before me, Dominique M. Halliburton Notary Public
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Mark A. English
Name(s) of Signer(s)



☒ personally known to me DMH
☒ who proved
☐ (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.

Place Notary Seal Above

Dominique M. Halliburton
Signature of Notary Public

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: N/A Number of Pages: 14

Signer(s) Other Than Named Above: none

Capacity(ies) Claimed by Signer(s)

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

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

CITY OF REDLANDS
SUBDIVISION IMPROVEMENT AGREEMENT
EXHIBIT "A"

PARCEL MAP NO. 17815
MINOR SUBDIVISION NO. 297

<u>Description</u> <u>Sheets</u>	<u>Drawing No.</u>	<u>Approval Date</u>	<u>No. of</u>
-------------------------------------	--------------------	----------------------	---------------

The following plans are on file in the office of the Public Works Director (PWD) and Municipal Utilities Department (MUD):

Street Improvement Plans (PWD)	1897-ST	05/30/07	12
Storm Drain Plans (PWD)	1897-SD	04/12/07	07
Street Light Plans (PWD)	1897-SL	04/24/07	03
Striping Plans (PWD)	1897-TS	NA	04
Street Tree Plans (PWD)	1897-TP	NA	03
Water Improvement Plans (MUD)	D-60630	05/07/07	04
Sewer Improvement Plans (MUD)	F-1761	04/26/07	02
Non-potable Water Plans (MUD)	NP-00046	04/26/07	04
Underground Off-Site Utilities Plans	NA	NA	NA

Exhibit "B"

Parcels 1 through 6 and Parcels A and B of Parcel Map No. 17815, as shown by map on file in Book 226 Pages 47 through 49, inclusive of Parcel Maps, Records of San Bernardino County, California.

RECORDING REQUESTED BY:

WHEN RECORDED, MAIL TO:

DZIDA, CAREY & STEINMAN (SJD)
3 Park Plaza, Suite 750
Irvine, CA 92614

(Space Above For Recorder's Use)

**DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS AND RESERVATION
OF EASEMENTS FOR
MOUNTAIN VIEW INDUSTRIAL CENTER**

**DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS AND RESERVATION
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MOUNTAIN VIEW INDUSTRIAL CENTER**

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**DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS AND RESERVATION
OF EASEMENTS
FOR
MOUNTAIN VIEW INDUSTRIAL CENTER**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND RESERVATION OF EASEMENTS ("***Declaration***") is made by MOUNTAIN VIEW INDUSTRIAL CENTER LLC, a Delaware limited liability company ("***Declarant***"). Except as otherwise specified herein, the capitalized words and phrases used in this Declaration shall have the meanings specified in Article I hereof.

P R E A M B L E

A. Declarant is the owner of certain real property in the City of Redlands, County of San Bernardino, State of California, more particularly described as ("***Properties***") follows:

Lots 1 through 6, inclusive, and Parcels A and B of Tract No. 17815, as shown on a subdivision map on file in Book _____, Pages ____ to ____, inclusive, of Maps, in the Office of the San Bernardino County Recorder.

B. All of the Properties will be developed as a commercial/industrial complex with certain common objectives designed to preserve the value of and to benefit all the property within the Properties. The common development plan imposes reciprocal burdens and benefits on all of the Properties, such that each portion and the entirety of the Properties are both burdened by the provisions of this Declaration for the benefit of each other portion of the Properties, and benefited by the burdens imposed on each other portion of the Properties.

C. Declarant further declares all of the Properties shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the easements, restrictions, covenants, conditions and equitable servitudes contained in this Declaration, all of which are for the purpose of preserving and protecting the value, attractiveness and desirability of the Properties, in furtherance of a comprehensive plan for the protection, maintenance, subdivision, improvement use and sale of the Properties, or any portion thereof. The covenants, conditions, restrictions, reservations, easements, equitable servitudes, liens and charges set forth herein shall (1) run with the Properties; (2) be binding upon all persons having any right, title or interest in the Properties, or any part thereof, their heirs, successive owners and assigns; (3) inure to the benefit of every portion of the Properties and any interest therein; (4) inure to the benefit of and be binding upon Declarant and their successive owners and each Owner and his or her respective successors-in-interest; and (5) may be enforced by Declarant, any Owner or the Association.

ARTICLE I DEFINITIONS

1.1. **Definitions.** Unless otherwise expressly provided, the following words and phrases when used in this Declaration shall have the meanings hereinafter specified.

1.1.1 **Articles.** Articles mean the Articles of Incorporation of the Association on file with the California Secretary of State, as amended from time to time.

1.1.2 **Assessment Unit.** Assessment Unit means the arithmetical value allocated to each Lot pursuant to Article V hereof, for purposes of calculating the share of Common Expense attributable to such Lot.

1.1.3 **Association.** Association means the California nonprofit mutual benefit corporation formed by Declaration to perform the functions of the Association hereunder, its successors and assigns. The Association will be an "Association" as defined in Section 1351(a) of the California Civil Code. The Association will be formed by Declarant prior to the first Close of Escrow for the sale of a Lot in the Properties under the name Mountain View Industrial Center Owners Association or such other name as Declarant may select.

1.1.4 **Association Property.** Association Property means all the real and personal property and Improvements which are owned in fee simple at any time by the Association, or over which the Association has an easement or encroachment permit for the use, care or maintenance thereof, for the common benefit, use and enjoyment of Owners. The initial Association Property is described and depicted on *Exhibit "A"* hereto. Additional Association Property may be designated in a Supplemental Declaration.

1.1.5 **Beneficiary.** Beneficiary means a Mortgagee under a Mortgage or a beneficiary under a deed of trust, as the case may be, and the assignees of such Mortgagee or beneficiary.

1.1.6 **Board or Board of Directors.** Board or Board of Directors means the Association Board of Directors elected in accordance with the Association Bylaws and this Declaration.

1.1.7 **Budget.** Budget means a written, itemized estimate of the Association's income and Common Expenses prepared pursuant to the Bylaws.

1.1.8 **Building Area.** Building Area means for each Lot the total floor area of the building(s) on such Lot as shown on the as-built plans for such building(s), rounded up to the nearest one thousand (1,000) square feet.

1.1.9 **Bylaws.** Bylaws means the Association's Bylaws adopted by the Board of Directors, as amended from time to time.

1.1.10 Capital Improvement Assessment. Capital Improvement Assessment means a charge against the Owners and their Lots representing the Association's costs to install or construct any Improvements on any portion of the Association Property.

1.1.11 City. City means the City of Redlands and its various departments, divisions, employees and representatives.

1.1.12 Close of Escrow. Close of Escrow means the date on which a deed is Recorded by Declarant conveying a Lot in the Properties to a third-party purchaser, with the exception of deeds between Declarant and any successor to the rights of Declarant hereunder.

1.1.13 Common Assessment. Common Assessment means the annual or supplemental charge against each Owner and his Lot, representing a portion of the ordinary Common Expenses for maintaining, improving, repairing, replacing, managing and operating the Association Property, which charge shall be levied among all Owners and their respective Lots as provided herein. Common Assessments shall include all late payment penalties, interest charges, attorneys' fees or other costs incurred by the Association in its efforts to collect all assessments authorized pursuant to this Declaration.

1.1.14 Common Expenses. Common Expenses means, subject to Article V, the actual and estimated costs of: maintaining, managing, operating, repairing and replacing the Association Property Improvements and performing the Association's other obligations under this Declaration, unpaid Special Assessments, Reconstruction Assessments and Capital Improvement Assessments, including those costs not paid by the Owner responsible for payment; managing and administering the Association including, but not limited to, compensation paid by the Association to Managers, accountants, attorneys and other consultants and employees; maintenance, repair and replacement of Improvements within or constituting a part of the Association Property; gardening, and other services benefiting the Association Property and utilities metered to the Association Property; fire, casualty and liability insurance, worker's compensation insurance, and other insurance covering the Association Property; maintenance of signage and monumentation; drainage facilities, bonding the Association Directors, officers, agents, employees and Manager; taxes paid by the Association; amounts paid by the Association for discharge of any lien or encumbrance levied against the Association Property, or portions thereof, including, without limitation, real property taxes or assessments, if any, levied against the Association Property; all Reserves; and all other items incurred by the Association pursuant to this Declaration.

1.1.15 Cost Center. Cost Center means one or more Improvements or maintenance areas located on a portion or portions of the Association Property, the maintenance or use of which Improvements or maintenance areas is fully or partially restricted to certain Owners as specified in one or more Supplemental Declarations, and where the expenses of operating, maintaining and replacing such Improvements or maintenance areas are borne solely or disproportionately by such specified Owners. There are no Cost Centers as of the date this Declaration is recorded.

1.1.16 County. County means the County of San Bernardino, in the State of California, and its various departments, divisions, employees and representatives.

1.1.17 Declarant. Declarant means MOUNTAIN VIEW INDUSTRIAL CENTER, LLC, a Delaware limited liability company, and its successors, and any other Person to which it assigns its rights hereunder by an express written and Recorded assignment. Any such assignment may include only specific rights of the Declarant hereunder and may be subject to such conditions and limitations as Declarant may impose in its sole and absolute discretion. As used in this Section, "successor" means any Person who acquires Declarant or substantially all of its assets, or who merges with Declarant by sale, merger, reverse merger, consolidations, sale of stock or assets, operation of law or otherwise.

1.1.18 Declaration. Declaration means this Declaration of Covenants, Conditions and Restrictions and Reservation of Easements, as amended from time to time.

1.1.19 Deed of Trust. Deed of Trust means a Mortgage.

1.1.20 Design Committee. Design Committee means the committee established pursuant to Section 4.6 below.

1.1.21 Design Committee Rules. Design Committee Rules means Rules means the Design Committee design standards, procedures, rules and guidelines which may be adopted by the Board pursuant to this Declaration, as amended from time to time.

1.1.22 Hazardous Materials. Hazardous Materials means any toxic substance, material or waste which is or becomes (i) regulated by any local governmental authority, the State of California or the United States Government; or (ii) defined as a "hazardous waste," "extremely hazardous waste," "restricted hazardous waste," "Non-RCRA hazardous waste," "RCRA hazardous waste" or "recyclable material" under any federal, state or local statute or regulation promulgated thereunder.

1.1.23 Improvement. Improvement means all structures, landscaping and appurtenances thereto within the Properties, including but not limited to buildings, outbuildings, walkways, irrigation systems, storm drainage systems, streets, driveways, slopes, sidewalks, curbs and gutters, storm drain lines, catch basins slope drains and appurtenances that collect and transport runoff from private property, sewer laterals, street lights, street signage and striping improvements, parking areas, fences, trash enclosures, screening walls, retaining walls, stairs, hedges, windbreaks, plantings, planted trees and shrubs, entry monumentation and fire breaks.

1.1.24 Local Governmental Agency. Local Governmental Agency means the City, the County and any other local or municipal governmental entity or agency including, without limitation, any special assessment district, maintenance district or community facilities district.

1.1.25 Lot. Lot means any lot or parcel of land shown upon any Recorded subdivision map or Recorded parcel map of any portion of the Properties (as such lot or parcel may be modified by any Recorded lot line adjustment), together with the Improvements, if any, thereon. For purposes of this Declaration, references to "Lot" shall not include any Association Property.

1.1.26 **Maintenance Funds.** Maintenance Funds means the accounts created for Association receipts and disbursements pursuant to Article V hereof.

1.1.27 **Maintenance Guidelines.** Maintenance Guidelines means the guidelines for the ordinary and necessary maintenance, repair, replacement and preservation of the Association Property Improvements. Among other things, the Maintenance Guidelines specify suggested maintenance levels, recommended intervals for regularly scheduled maintenance items, and the scope of required maintenance practices and procedures.

1.1.28 **Manager.** Manager means the Person, firm or agent employed as an independent contractor by the Association to perform functions of the Association, as limited by the Restrictions and the terms of the agreement between the Association and such Person.

1.1.29 **Member.** Member means every Person holding a Membership in the Association. Membership means the voting and other rights and privileges of Members as provided in the Restrictions, together with the correlative duties and obligations contained therein.

1.1.30 **Membership.** Membership means the voting and other rights and privileges of members of the Association, as provided in the Restrictions, together with their correlative duties.

1.1.31 **Mortgage.** Mortgage means any mortgage or deed of trust or other conveyance of a Lot or other portion of the Properties to secure the performance of an obligation, which will be reconveyed upon the completion of such performance. The term "Deed of Trust" or "Trust Deed" is synonymous with the term "Mortgage."

1.1.32 **Mortgagee/Mortgagor.** Mortgagee means a Person to whom a Mortgage is made and includes the beneficiary of a Deed of Trust. Mortgagor means a Person who mortgages property to another (i.e., the maker of a Mortgage), and includes the Trustor of a Deed of Trust. The term "Trustor" is synonymous with the term "Mortgagor," and the term "Beneficiary" is synonymous with the term "Mortgagee."

1.1.33 **Notice and Hearing.** Notice and Hearing means written notice and a hearing before the Board, as further provided in the Bylaws.

1.1.34 **Owner.** Owner means a Person or Persons, including Declarant, holding a fee simple interest of Record to a Lot. The term "Owner" includes a seller under an executory contract of sale, but excludes Mortgagees. For purposes of this Declaration, a "long-term ground leasehold interest" means a leasehold interest having a term of ten (10) or more years.

1.1.35 **Owner Representative.** Owner Representative means the partners, members officers, directors, employees, agents, patrons, guests, customers, invitees, contractors, lessees, sublessees and licensees of an Owner.

1.1.36 **Person.** Person means a natural individual, a corporation, partnership or any other entity with the legal right to hold title to real property.

1.1.37 **Properties.** Properties is defined in Preamble Paragraph A above. The Properties are a "common interest development" as defined in Section 1351(c) of the California Civil Code.

1.1.38 **Reconstruction Assessment.** Reconstruction Assessment means a charge against each Owner and such Owner's Lot representing a portion of the Association's cost to reconstruct any Improvements on the Association Property, pursuant to the provisions of this Declaration.

1.1.39 **Record, Filed, Recordation.** Record, Filed or Recordation means, with respect to any document, the recordation or filing of such document in the Office of the County Recorder.

1.1.40 **Reserves.** Reserves means Common Expenses for which Association sets aside funds pursuant to Article V of this Declaration for the periodic painting, maintaining, repairing and replacing of the major components of the Association Property which would not reasonably be expected to recur on an annual or less frequent basis.

1.1.41 **Restricted Area.** Restricted Area means Parcel B of Tract No. 17815 and the vegetated bio-swale within the Association Property.

1.1.42 **Restrictions.** Restrictions mean this Declaration, the Articles, Bylaws and Rules and Regulations.

1.1.43 **Rules and Regulations.** Rules and Regulations means the rules and regulations adopted by the Board as provided herein.

1.1.44 **Sign Program.** Sign Program means the signage program for the Properties adopted by the Design Committee, as amended from time to time.

1.1.45 **Special Assessment.** Special Assessment means a charge against a particular Owner directly attributable to or reimbursable by such Owner or equal to the cost incurred by the Association for corrective action performed pursuant to the Restrictions, or levied by the Board as a reasonable fine or penalty for noncompliance with the Restrictions, plus interest and other charges on such Special Assessment as provided for in this Declaration.

1.1.46 **Supplemental Declaration.** Supplemental Declaration means any declaration of covenants, conditions and restrictions and reservation of easements or similar document supplementing this Declaration which may be Recorded by Declarant from time to time. Declarant and the Owner of any Lot may record a Supplemental Declaration which incorporates this Declaration by reference and which may supplement this Declaration with such additional covenants, conditions, restrictions as are not in conflict with this Declaration or any provision hereof, provided that a Supplemental Declaration may only encumber and apply to property covered by the Person(s) who sign the Supplemental Declaration.

1.1.47 **Water Quality Management Plan.** Water Quality Management Plan means the Water Quality Management Plan for the Properties prepared by Pardue, Cornwell &

Associates, Inc., dated August 15, 2005, revised October 21, 2005, as further revised, amended or modified with the approval of the City from time to time.

1.2. **Construction.** This Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the creation and operation of a planned development and for the maintenance of the Association Property. All references made in this Declaration to statutes are to those statutes in effect as of the date hereof, as such statutes may be amended or replaced from time to time.

ARTICLE II OWNER AND ASSOCIATION OBLIGATIONS AND ENTITLEMENTS

2.1. **Owners' Rights of Enjoyment.** Every Owner and, to the extent permitted by such Owner pursuant to the Restrictions, Owner Representative, shall have a right of ingress and egress and of enjoyment in, to and over the Association Property which shall be appurtenant to and shall pass with title to every Lot, subject to (a) the exclusive use of Cost Center Improvements reserved for the use by Owners in such Cost Center and (b) the Association's right to exercise exclusive jurisdiction over and control of the Association Property (other than dedicated to and/or maintained by a Local Governmental Authority) and the following provisions:

2.1.1 **Additional/Modification of Association Property.** The right of Declarant to designate additional Association Property or modify the Association Property by recordation of an amendment to this Declaration or a Supplemental Declaration.

2.1.2 **Rules and Regulations.** The Association's right to establish reasonable Rules and Regulations pertaining to the use of the Association Property and any facilities located thereon, including, but not limited to, the right and obligation of the Association to enforce all parking restrictions for parking areas within the Association Property as set forth in Section 4.3 below.

2.1.3 **Borrowings.** The Association's right in accordance with the Articles, Bylaws and this Declaration, to borrow money for the purpose of improving, repairing or adding to the Association Property and facilities and, to mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred pursuant to this subsection.

2.1.4 **Association Property Transfers.** The Association's rights set forth in Section 4.2.4 of this Declaration and Declarant's rights set forth in Article VII hereof.

2.1.5 **Use By Declarant.** The right of Declarant (and its employees, sales agents, prospective purchasers, customers and representatives) to enter upon the Association Property, for the benefit of Declarant or any other property owned by Declarant, or any combination thereof, to complete the construction of any landscaping or other Improvement to be installed thereon, as well as the right to nonexclusive use of the Association Property and the facilities thereof, without charge, for sales, display, access, ingress, egress, exhibition and occasional special events for promotional purposes, which right Declarant hereby reserves;

provided, however, that such use rights shall terminate on the date on which Declarant no longer owns a Lot in the Properties. Such use shall not unreasonably interfere with the rights of enjoyment of the other Owners as provided herein.

2.1.6 Reconstruction of Improvements. The Association's right (by action of the Board) to reconstruct, replace or refinish any Improvement or portion thereof upon the Association Property, in accordance the original design, finish or standard of construction of such Improvement or of the other Improvements or, if not in accordance with the original design, finish or standard of construction, only with the approval of fifty-one percent (51%) of the Association voting power.

2.1.7 Maintenance. The Association's right to maintain and repair the Association Property, including without limitation the right to plant or remove trees, shrubs, flowers, ground cover and other vegetation upon any portion of the Association Property, and to replace any such vegetation or other landscaping Improvements which have been damaged or destroyed.

2.1.8 Restricted Areas. No Owner shall enter upon or modify in any way any portion of the Restricted Area without the Association's prior written consent. In addition to the foregoing, the Association has the right to reasonably restrict access to slopes and other landscaped areas, maintenance facilities and similar areas of the Association Property. The Association shall have exclusive control over all of the Association Property.

2.1.9 Status of Association Property. All Improvements within the Association Property are private and shall be maintained by the Association, except for Improvements the maintenance of which is accepted by a Local Governmental Authority. If any portions of the Properties are subject to offers of dedication in favor of Local Governmental Agencies as shown on the Map or as otherwise reflected in the Official Records of the County and the applicable Local Governmental Agency does not accept such dedication or does not maintain the applicable area(s), the Association shall maintain same and the cost of such maintenance shall be a Common Expense.

2.2. Delegation of Use. The Owner of a Lot may delegate, in accordance with the Restrictions, the Owner's right of enjoyment of the Association Property and facilities to the Owner Representatives subject to reasonable regulation by the Board.

2.3. Parking and Traffic Control. The Association, through the Board, is empowered to (a) establish "parking" and restricted "visitor parking" and "no parking" areas within the Association Property in accordance with Section 22658 and Section 22658.2 of the California Vehicle Code, or any similar statute hereafter enacted, as well as to enforce these parking limitations; and (b) insure compliance with restrictions on obstruction of access easement areas, through its officers and agents by all means lawful for such enforcement on public streets, including the removal of any violating vehicle. The Board is also authorized and empowered to request that the City, the County or other applicable agency enforce the California Vehicle Code on any private streets within the Properties, if any, including the Association Property and any Association Property private streets, pursuant to applicable ordinances and provisions of the California Vehicle Code permitting governmental enforcement thereof. There

shall be no obstruction of walkways, driveways or streets within the Properties excluding temporary reasonable obstructions do to construction or other work and deliveries so long as such obstruction is (i) approved in advance in writing by the Association and (ii) alternative access is available to Owners during the limited term of such obstruction.

2.4. **Easements for Vehicular and Pedestrian Access.** Declarant hereby reserves to itself, to all future Owners within the Properties, and to every Owner and their respective Owner Representatives and successors nonexclusive easements appurtenant to each Lot in the Properties for vehicular and pedestrian access, ingress and egress (but not for parking) over all streets, driveways and walkways within the Association Property, subject to Section 2.3 above.

2.5. **Easements for Surface Drainage.** Declarant hereby reserves to itself, to all future Owners within the Properties, and to every Owner and their respective Owner Representatives and successors, nonexclusive easements appurtenant to each Lot in the Properties for drainage of surface water in accordance with the "established drainage" of the Properties. The term "established drainage" means the surface water drainage pattern existing as of the recordation of this Declaration and any modifications thereto shown on plans approved by the Design Committee. No Owner may alter the established drainage for the Properties unless it establishes an alternative drainage pattern that is approved in writing by the Design Committee.

2.6. **Waiver of Use.** No Owner may exempt himself from personal liability for assessments duly levied by the Association, nor release his Lot or other property in the Properties from the liens and charges hereof, by waiver of the use and enjoyment of the Association Property or any facilities thereon or by abandonment of his Lot or any other property in the Properties.

2.7. **Taxes.** Each Owner shall execute such instruments and take such action as may reasonably be specified by the Association to obtain separate real estate tax assessment of his Lot. If, in the Association's opinion, any taxes or assessments constitute a lien on the Association Property, or any part thereof, they may be paid by the Association and each Owner shall be obligated to pay or to reimburse the Association for, as the case may be, the taxes and assessments assessed by the County Assessor or other taxing authority against the Association Property and attributable to his own Lot and interest in the Association Property.

2.8. **Declarant Easements.** Declarant hereby reserves to itself together with the right to transfer same easements of access, ingress and egress over the Association Property for installation and maintenance of utilities and drainage facilities shown on a Subdivision Map or Maps for the Properties and for construction, installation, operation, replacement, repair and maintenance of all utility and service lines, systems and other devices and Improvements which may be reasonably necessary for the development and marketing of Lots within the Properties, including, but not limited to, water, sewer, gas, telephone, electrical, television and storm drain and water lines (collectively the "**Facilities**"). Within the location of the Facilities easements and rights of way, no Improvement shall be planted or placed which may interfere with the use, maintenance or operation of the Facilities or which may be in violation of any ordinance or law of any applicable governmental authority. Declarant also reserves the right to grant easements over the Association Property, or any portion thereof, for exclusive use by any Owner or Owners of a contiguous Lot for which Close of Escrow has already occurred, as a landscape, parking or

other area. Any such easement will be conveyed by the Declarant prior to conveying the last Lot in the Properties.

2.9. **Hazardous Materials.** All Hazardous Materials shall be properly used and disposed of within the Properties in compliance with applicable law, including any applicable Storm Water Pollution Prevention Plan and any program established by the Association with respect thereto. Toxic chemicals or hydrocarbon compounds such as gasoline, motor oil, anti-freeze, solvents, paints, paint thinners, wood preservatives and other such fluids shall not be discharged into any street or any storm drain or storm water conveyance system within the Properties. Use and disposal of pesticides, fungicides, herbicides, insecticides, fertilizers and other such chemical treatments shall meet Federal, State and County requirements as prescribed in their respective containers.

2.10. **Pollutant Discharge; WQMP Compliance.** The Properties are subject to all Federal, State and local requirements of the National Pollutant Discharge Elimination System (“**NPDES**”) adopted pursuant to the Federal Clean Water Act including the Water Management Plan. The Water Quality Management Plan which identifies certain Best Management Practices (“**BMP**”) to reduce the discharge of pollutants to storm water facilities, before, during and after construction on the Properties is completed.

2.10.1 **Association Obligations.** The Association shall comply with all BMPs applicable to the Association Property and shall perform all maintenance of the Association Property required under the Water Quality Management Plan and all other applicable governmental requirements, as amended from time to time. The costs of such maintenance, if any, shall be treated as Common Expenses.

2.10.2 **Owner Obligations.** Each Owner, at its sole cost and expense, shall comply with all BMPs applicable to such Owner’s Lot and shall perform all maintenance of such Owner’s Lot and Improvements thereon required under the Water Quality Management Plan and all other applicable governmental requirements, as amended from time to time.

2.11. **Use Restrictions.**

2.11.1 **Prohibited Uses.** No part of the Properties shall be used or caused to be allowed or authorized in any way directly or indirectly for any purpose not authorized for the Properties by the zoning ordinances, special use permit(s), planned industrial permit(s) and other governmental regulations applicable to the Properties. No portion of any Lot shall be used for any permanent or temporary residential purposes. No part of the Properties shall be used for the display, manufacture, production, duplication, distribution or sale of what is commonly referred to as “pornographic,” “obscene,” and/or “adult” material.

2.11.2 **Permitted Uses.** Subject to Section 2.11.1 above, the Properties shall be used only for those purposes which are in compliance with all zoning ordinances, special use permit(s), planned industrial permit(s) and other governmental regulations applicable to the Properties.

ARTICLE III ASSOCIATION

3.1. **Organization.** The Association is organized as a California corporation under the Nonprofit Mutual Benefit Corporation Law. The Association is charged with the duties and vested with the powers prescribed by law, subject to the limitations and provisions of the Articles, Bylaws, and this Declaration. Neither the Articles nor Bylaws shall, for any reason, be amended or otherwise changed so as to be inconsistent with this Declaration. If there is any ambiguity in any provision of the Articles or Bylaws, then such provision shall be construed, to the extent possible, so as to be consistent with the provisions of this Declaration.

3.2. **Membership.** Members of the Association are each Owner (including Declarant) of one (1) or more Lots in the Properties. Except for Class B Membership and Class C Membership the Membership in the Association is subject to the Restrictions. Except for Class B Membership and Class C Membership, all Memberships in the Association held by Owners are appurtenant to the Lot owned by each Owner, and ownership of a Lot is the sole qualification for Membership in the Association.

3.2.1 **Classes of Membership.** The Association shall have three (3) classes of voting Membership as follows:

(i) **Class A.** The Class A Members are all Owners, except Declarant. Class A Members are assigned one (1) vote for each Assessment Unit allocated to a Lot which is both subject to assessments and owned by such Member.

(ii) **Class B.** The Class B Member is Declarant for so long as Declarant owns any Lot in the Properties. The Class B Member is assigned two (2) votes for each Assessment Unit allocated to the Lots which are both subject to assessment and owned by such Member.

(iii) **Class C.** The Class C Member is Declarant for so long as Declarant owns any Lot in the Properties. The Class C Membership shall not be considered a part of the voting power of the Association, and Declarant is not entitled to exercise any Class C vote except for the purpose of electing those members of the Board which the Class C Membership is entitled to elect hereunder. The Class C Member is entitled to solely elect a majority of the members of the Board of Directors for so long as Declarant owns any Lot in the Properties.

3.2.2 **Transfer of Membership.** Except for the Class C Membership, an Owner's Association Membership shall not be assigned, transferred, pledged or alienated in any way, except upon the transfer of title to the Owner's appurtenant Lot, and then only to the purchaser or Mortgagee of such Lot. Any attempt to make a prohibited Membership transfer is void and will not be reflected on the books of the Association. Notwithstanding the foregoing, a Member who has sold his Lot to a contract purchaser under an installment land sale contract may delegate his membership rights to the contract purchaser. Such delegation shall be in writing and must be delivered to the Board before such contract purchaser may exercise Membership privileges. However, the contract seller remains liable for all charges and assessments

attributable to his Lot until fee title to the Lot is transferred. If the Owner of any Lot fails or refuses to transfer the Membership (registered in his name) to the purchaser of such Owner's Lot upon transfer of fee title thereto, the Board of Directors may record the transfer on the Association's books. The Association may levy a reasonable transfer fee against new Owners and their Lots (which fee shall be added to the Common Assessments chargeable to such new Owners) to reimburse the Association for the administrative costs of transferring the Memberships to the new Owners on the Association's records.

3.2.3 Suspension of Membership Rights. The Board may suspend the Membership rights of any Member, including the right to vote at any meeting of the Members, for any period during which any Common Assessment, Capital Improvement Assessment or Reconstruction Assessment against such Member and the Lot owned by such Member is delinquent. Any such suspension for nonpayment of any assessment shall not constitute a waiver or discharge of the Member's obligation to pay the assessments provided for herein.

ARTICLE IV FUNCTIONS OF ASSOCIATION; DESIGN CONTROL; MAINTENANCE STANDARDS

4.1. Permitted Functions. The Association is formed exclusively for those social welfare purposes and activities which are specifically and directly related to (i) equipping, maintaining, operating and utilizing the Association Property, including the Improvements thereon, (ii) collecting assessments to finance the maintenance and utilization of the Association Property, and (iii) administering and enforcing the Restrictions (collectively, the "**Permitted Functions**"). Notwithstanding the foregoing, Permitted Functions do not include those activities prohibited by Section 4.4 below. The funds and resources of the Association shall be utilized solely and exclusively for the direct costs of Permitted Functions. Nothing in this Section 4.1 shall be deemed to preclude the use of the Association Property Facilities by Declarant for promotional special events and other purposes as authorized by Section 2.1.8.

4.2. Powers and Duties. The Association has all of the powers of a California Nonprofit Mutual Benefit Corporation, subject only to such limitations upon the exercise of such powers as are expressly set forth in the Restrictions. Subject to the Restrictions, the Association has the power to perform any and all lawful acts which may be necessary or proper for or incidental to the exercise of any of the express powers of the Association. Subject to the foregoing provisions, the Association, acting through the Board, has:

4.2.1 Assessments. The power and duty to levy assessments on the Owners and to collect and enforce payment of such assessments in accordance with the provisions of Article V hereof.

4.2.2 Repair and Maintenance. The power and duty to paint, plant, maintain and repair, as applicable, in a neat and attractive condition, all Association Property and all private drives, slopes, private drainage facilities, landscaping, utilities, walls, fences or other Improvements within the Association Property, in a safe, sanitary and attractive condition and in good order and repair, and to pay for utilities, gardening and other necessary services for the Association Property. Subject to the Restrictions (including without limitation, the Association's

obligation to comply with those portions of the Restrictions which were required in the conditions of approval for development of the Properties issued by the City), all of the foregoing obligations of the Association shall be discharged when and in such manner as the Board determines in its judgment to be appropriate.

4.2.3 Utility Services. The power and duty to obtain for the benefit of the Association Property, commonly metered water, gas, electric or other utility services necessary for the maintenance of the Association Property. The Association shall also be responsible for maintenance, repair and replacement of any private fire hydrant system located on the Association Property.

4.2.4 Easements and Rights-of-Way. The power but not the duty to grant and convey to any Person easements, licenses or rights-of-way in, on, over or under the Association Property and fee title to parcels or strips of land which comprise a portion of the Association Property, for purposes consistent with the terms of this Declaration, including without limitation easements for (i) driveways, parkways, landscaping, open space areas and slope areas; (ii) overhead or underground lines, cables, wires, conduits, or other devices for the transmission of power or signals for lighting, heating, television, telephone and other similar purposes; (iii) sewers, storm water drains, retention basins and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes, (iv) exclusive easements to Owners so long as the Board makes a finding that the use and maintenance of such area is more appropriately placed with the Owner than the Association; and (v) any similar Improvements, facilities or uses not inconsistent with the use of such property pursuant to this Declaration.

4.2.5 Manager. The power and duty to contract with a professional Manager for the Association.

4.2.6 Rights of Entry and Enforcement. The power but not the duty, after Notice and Hearing, to enter any Lot (seven (7) days after delivery of advance written notice to the Owner of the Lot of such entry including the reasons therefore, with the exception of circumstances involving immediate risk of injury to persons or serious damage to property in which case the right of entry shall be immediate) or Association Property without being liable to any Owner, except for physical damage caused by such entry, for the purpose of enforcing by peaceful means the Restrictions or for the purpose of maintaining or repairing the Association Property and/or performing maintenance of any Lot or the Improvements located thereon where the Owner fails to do so; provided that no items of construction on any such Lot or Association Property may be altered or demolished except pursuant to judicial proceedings. The cost of any enforcement action or any maintenance and repair completed in compliance with these provisions is the responsibility of the Owner and may be assessed against the responsible Owner as a Special Assessment. The responsible Owner shall pay promptly all amounts due for such work, and the costs and expenses of collection. Any physical damage caused by entry upon any Lot or Association Property shall be repaired by the entering party. The Association may also commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of the Restrictions and to enforce, by mandatory injunctions or otherwise, all of the provisions of the Restrictions. If an action is brought by the Association, the prevailing party is entitled to recover reasonable attorneys' fees.

4.2.7 Legal and Accounting Services. Subject to Section 4.2.9, the power but not the duty, if deemed appropriate by the Board, to retain and pay for legal and accounting services necessary or proper in operating the Association Property, enforcing the Restrictions, and performing any of the other Association duties or rights.

4.2.8 Audit. The power and duty to permit any Owner, who may be accompanied by an accountant or other consultant, at said Owner's sole expense to audit or inspect the Association's books and records; provided that such audit or inspection is made during normal business hours and without unnecessary interference with the operations of the Manager or the Association.

4.2.9 Litigation. Except as otherwise provided in this Declaration, the power but not the duty to initiate, defend, settle or intervene in mediation, arbitration, judicial or administrative proceedings on behalf of the Association in matters pertaining to (i) the application or enforcement of the Restrictions and (ii) damage to the Association Property. Any recovery by the Association with respect to any damage to or defect in the Association Property shall be utilized solely for the purpose of paying for the costs of obtaining the recovery and for correcting such Association Property damage or defect.

4.3. Rules and Regulations. The Board may adopt such Rules and Regulations as it deems proper regarding the Owners' use, occupancy and maintenance of the Properties. To be effective, a copy of the Rules and Regulations, as adopted, amended or repealed, must be posted in a conspicuous place in the Association Property or must be mailed or otherwise delivered to each Owner. When mailed, delivered or posted, the Rules and Regulations shall have the same force and effect as if they were set forth herein; provided, however, that the Rules and Regulations shall be enforceable only to the extent that they are consistent with the Restrictions.

4.4. Prohibited Activities. Notwithstanding any other provisions of this Declaration or the other Restrictions, the Association is expressly prohibited from undertaking or performing any of the following activities, or expending or otherwise utilizing Association funds or resources therefore, and the following activities shall not constitute Permitted Functions of the Association:

4.4.1 Offsite Nuisances. The Association shall not use any assessments or expend Association funds or resources to abate any annoyance or nuisance emanating from outside the physical boundaries of Properties.

4.4.2 Political Activities. Unless approved by Declarant in writing, the Association shall not (i) participate in Federal, State and local political activities or activities intended to influence a governmental action affecting areas outside the boundaries of the Properties (e.g., endorsement or support of (1) legislative or administrative actions by a Local Governmental Agency which affect persons or property outside the Properties, (2) candidates for elected or appointed office, and (3) ballot proposals) or (ii) conduct, sponsor, participate in or expend funds or resources on any activity, campaign or event, including without limitation any social or political campaign, event or activity, which does not directly and exclusively pertain to a Permitted Function.

4.5. **Violating Owner Participation.** No Owner who is in violation of the Restrictions shall be entitled to participate and/or vote as a Board or Committee member in any action to be taken by the Association to remedy, penalize or otherwise act in connection with such Owner's violation of the Restrictions.

4.6. **Design Control.**

4.6.1 **Membership; Appointment.** The Design Committee shall consist of three (3) members; provided, however, that such number may be changed by resolution of the Board of Directors so long as the Design Committee never consists of greater than five (5) nor fewer than three (3) members. Members of the Design Committee may be removed at any time without cause by the Person appointing such member as provided herein. Unless changed by resolution of the Board, the address of the Design Committee for all purposes, including the submission of plans for approval, is the principal office of the Association as designated by the Board pursuant to the Bylaws. Declarant has the right to appoint and remove all members of the Design Committee, which appointees need not be Members of the Association, until the date on which Declarant no longer owns a Lot in the Properties. The Board may appoint and remove members of the Design Committee when Declarant's rights of appointment expire. Design Committee members appointed by the Board must be Members of the Association at all times during their service on the Design Committee, and shall serve for a term of one (1) year or until their respective successors are appointed.

4.6.2 **Review of Construction Activities.** No construction, landscaping, development, painting, alteration, grading, addition, installation, excavation, modification, decoration, redecoration or reconstruction of an Improvement (including, without limitation, signs) in the Properties which is or will be externally visible (collectively "**Construction Activities**") may be commenced or maintained until the plans and specifications therefor showing the nature, design, kind, shape, height, width, color, materials, location and other aspects of the same have been submitted to the Design Committee and approved in writing by the Design Committee.

4.6.3 **Design Committee Rules.** The Board may adopt, supplement and amend Design Committee Rules imposing design and materials standards, submittal procedures, review criteria and other factors to be considered and followed by the Design Committee and the Owners in connection with Construction Activities.

4.6.4 **Exemptions/Declarant Approval.** Notwithstanding any other provision of the Restrictions, Declarant, need not seek Design Committee approval with respect to its construction or development activities of any kind, including without limitation any activity which would be classified as a "Construction Activity."

4.6.5 **Application.** The Person submitting plans and specifications to the Design Committee ("**Applicant**") must obtain a dated, written receipt for such plans and specifications and furnish the Design Committee with the address to which further communications from the Design Committee are to be directed. The Design Committee Rules may set forth application fees and deposits and procedures for the submission of plans for approval, require a fee to accompany each application for approval (or request for a certificate

stating that Design Committee approval is not required), or establish additional factors which the Design Committee will take into consideration in reviewing submissions. The Design Committee Rules may provide that the amount of any fee and/or deposit may be determined in any reasonable manner, such as based upon the cost of the construction, alterations or installations contemplated or the reasonable cost of architectural or other professional fees incurred by the Association in reviewing plans.

4.6.6 Criteria. The Design Committee shall consider and act upon all plans and specifications submitted for its approval under this Declaration and perform such other duties as are specified in this Declaration, including the inspection of construction in progress to assure its conformance with the plans approved by the Design Committee. The Design Committee may approve plans and specifications submitted for its approval only if it determines that (i) the Construction Activity is in conformance with the Design Committee Rules and, if applicable, the Sign Program, (ii) the Construction Activity in the locations indicated will not be detrimental to the appearance or use of other Lots or the Properties as a whole, (iii) the appearance of any structure affected thereby will be in harmony with the surrounding structures, (iv) the Construction Activity and the product thereof will not detract from the attractiveness of the Association Property or the use thereof by the Members, and (v) the upkeep and maintenance thereof will not become a burden on the Association.

4.6.7 Conditions. The Design Committee may condition its approval of plans and specifications for any Improvement upon any of the following: (i) the Applicant's furnishing the Association with a bond or other security acceptable to the Design Committee in an amount reasonably sufficient to (a) assure the completion of such Improvement or the availability of funds adequate to remedy any nuisance or unsightly conditions occurring as a result of the partial completion of such Improvement, and (b) to protect the Association and the other Owners against mechanic's liens or other encumbrances which may be Recorded against their respective interests in the Properties or damage to the Association Property as a result of such work, (ii) such changes therein as it deems appropriate, (iii) the grant of appropriate easements to the Association for the maintenance of the Improvement and access to all Association Property, (iv) the Applicant's agreement to reimburse the Association for the cost of maintaining the Improvement, (v) the Applicant's agreement to complete the proposed work within a stated period of time, or (vi) all of the foregoing, and may require submission of additional plans and specifications or other information prior to approving or disapproving materials submitted.

4.6.8 Review Period. The Design Committee may require such detail in plans and specifications submitted for its review as it deems proper, including without limitation, site plans, lighting plans, landscaping plans, elevation drawings and descriptions or samples of exterior materials and colors. Until the Design Committee receives all required plans and specifications, the Design Committee may postpone review of any plan submitted for approval or determination of exemption. The Design Committee shall transmit its decision and the reasons therefore or a request for further information to the Applicant at the address furnished by the Applicant, within thirty (30) days after the date of the receipt issued by the Design Committee for materials submitted to the Design Committee and the Design Committee determines that such application is complete. Subject to appeal procedures which may be adopted by the Board as provided in Section 4.6.16 below, any application or request for certificate of exemption

submitted pursuant to this Section shall be deemed approved, unless the Design Committee transmits written disapproval or a request for additional information or materials to the Applicant within thirty (30) days after the date of receipt by the Design Committee of the Applicant's submitted materials.

4.6.9 Meetings of the Design Committee. The Design Committee shall meet as necessary to perform its duties hereunder. The vote or written consent of a majority of the members of the Design Committee constitutes an act of the Design Committee. Subject to the prior approval of the Board, the Design Committee may engage architects, landscape architects, designers, planners and such similar professionals and consultants and appoint such subcommittees as the Design Committee deems appropriate to assist the Design Committee and the Design Committee Representative in the evaluation of plans, specifications and other items submitted for Design Committee approval pursuant to the Declaration.

4.6.10 No Waiver of Future Approvals. Design Committee approval of any proposals or plans and specifications or drawings for any Construction Activity done or proposed or in connection with any other matter requiring Design Committee approval does not waive any right to withhold approval of any similar proposals, plans and specifications, drawings or matters subsequently or additionally submitted for approval or consent.

4.6.11 Compensation of Members. The Design Committee members shall receive no compensation for services rendered, other than reimbursement by the Association for expenses incurred by them in performing their duties. The foregoing shall not preclude payment of compensation approved by the Board to architects or similar professionals engaged to assist the Design Committee or the Design Committee Representative or to perform the function of the Design Committee member pursuant to this Section 4.6.

4.6.12 Correction of Defects. Inspection of work and correction of defects therein shall proceed as follows:

(i) **Notice of Completion.** The Design Committee or its duly appointed representative may at any time inspect any Improvement or Construction Activity for which approval of plans is required under this Article. The Design Committee's right of inspection of Improvements for which plans have been submitted and approved shall terminate sixty (60) days after the work of Improvement has been completed and the Design Committee has received written notice of such completion. The Design Committee's rights of inspection shall not terminate pursuant to this paragraph if plans for the work of Improvement have not previously been submitted to and approved (or determined exempt) in writing by the Design Committee. If the Design Committee finds that an Improvement was done without obtaining written approval of the plans therefor or was not done in substantial compliance with the plans approved by the Design Committee, it shall notify the Owner in writing of failure to comply with this Section 4.6, specifying the particulars of noncompliance. The Design Committee may require the Owner to take such action as may be necessary to remedy a noncompliance.

(ii) **Noncompliance.** If the Owner fails to remedy the noncompliance within sixty (60) days from the date the Design Committee's notice of noncompliance is deemed received by the Owner, the Design Committee shall notify the Board in writing of such failure.

Upon Notice and Hearing, the Board shall determine whether there is a noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If a noncompliance exists, the Owner must remedy or remove the same within a period of not more than forty-five (45) days from the date that notice of the Board ruling is given to the Owner. If the Owner does not comply with the Board ruling within that period, the Board may Record a notice of noncompliance and may commence a lawsuit for damages or injunctive relief, as appropriate, to remedy the noncompliance.

(iii) **Compliance.** If the Design Committee fails to notify the Applicant of any noncompliance with previously submitted and approved plans within sixty (60) days after receipt of written notice of completion from the Applicant, the Construction Activity shall be deemed to be in accordance with such approved plans.

(iv) **Prosecution of Work.** The Design Committee approval for any particular Construction Activity expires and the plans and specifications therefor must be resubmitted for Design Committee approval pursuant to this Section 4.6 if substantial work pursuant to the approved plans and specifications is not commenced within six (6) months after the Design Committee's approval of such Construction Activity. All Construction Activities shall be performed as promptly and diligently as possible and, unless an earlier completion date is specified in the Design Committee approval, must be completed within one (1) year after the date on which the work commenced.

4.6.13 **Scope of Review.** The Design Committee shall review and approve or disapprove all plans submitted to it for any proposed Construction Activity solely on the basis of the considerations set forth in this Declaration. The Design Committee is not responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any plan or design from the standpoint of structural safety or conformance with building codes or other governmental requirements.

4.6.14 **Variances.** The Design Committee may recommend variances from compliance with any of the architectural provisions of this Declaration or any Supplemental Declaration, including, without limitation, restrictions upon height, size, floor area or placement of structures, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations may require. Such variances must be approved by the Board, evidenced in writing, and signed by at least two (2) officers of the Association certifying such Board approval, and are effective upon Recordation. No violation of the covenants, conditions and restrictions contained in this Declaration or any Supplemental Declaration shall exist with respect to any Construction Activity for which a variance is granted. The granting of such a variance does not waive any of the terms and provisions of this Declaration or of any Supplemental Declaration for any purpose except as to the particular property and particular provision hereof covered by the variance, nor does it affect the Owner's obligation to comply with all governmental laws and regulations.

4.6.15 **Pre-Approvals.** The Board may authorize the pre-approval of certain specified types or classes of Construction Activities in the Design Committee Rules if, in the exercise of the Board's judgment, pre-approval of such types or classes of Improvements is appropriate in carrying out the purposes of this Declaration.

4.6.16 **Appeals.** For so long as Declarant has the right to appoint and remove a majority of the Design Committee members, the Design Committee's decisions are final, and there is no appeal to the Board. When Declarant is no longer entitled to appoint and remove a majority of the Design Committee's members, the Board may adopt policies and procedures for the appeal of Design Committee decisions to the Board. The Board has no obligation to adopt or implement any appeal procedures, and in the absence of Board adoption of appeal procedures, all Design Committee decisions are final.

4.7. **Maintenance By Owners.**

4.7.1 **Lot.** Each Owner shall repair and maintain its Lot, as applicable, and the Improvements thereon or constituting a part thereof in clean, sanitary and attractive condition and in good repair in keeping with the standards of the Association and all applicable Local Governmental Authorities (except to the extent such Improvements part of the Association Property). Owners' repair and maintenance obligations hereunder shall include, without limitation the following: (a) keeping all unimproved portions of an Owner's Lot mowed and weeded and clear of all rubbish, trash and debris, and otherwise keeping such Lot in a neatly landscaped and sightly condition; (b) maintaining the surface of any parking area located on such Owner's Lot in a clean and safe condition, including the paving and repairing or surfacing or resurfacing of such areas when necessary with the type of material originally installed therein, or such substitute therefor as shall in all respects be equal thereto in quality, appearance and durability and the painting and repainting of striping, markers and directional signs as required; (c) maintaining, repairing and replacing as necessary the exterior of all Improvements, including, without limitation, window glass, signs, roofs, walls and fences (including, without limitation, that portion of any perimeter wall located on or adjacent to a Lot); (d) the painting and repainting of exterior Improvement surfaces when necessary with paint of the same color scheme as originally painted or such other color scheme as may be approved by the Design Committee in writing; (e) the removal of debris and waste materials and the washing or sweeping of paved areas as required; (f) cleaning, maintaining and relamping of any external lighting fixtures and related fixtures located on such Lot; (g) maintaining in good working condition and repair all fire/life safety equipment on such Owner's Lot and/or serving the Improvements thereon; and (h) complying with applicable provisions of the Water Quality Management Plan and applicable BMPs identified therein.

4.7.2 **Lateral Utility/Sewer Lines.** Each Owner shall be solely responsible for all maintenance, repair and replacement of all lateral utility and sewer lines exclusively serving such Owner's Lot ("**Owner Utility Services**"), portions of which are or may be located within the Association Property. Each Owner shall be responsible for restoring any Association Property that may be affected by work performed on in connection with such Owner's Owner Utility Services. All work performed on or in connection with Owner Utility Services shall be performed (a) so as to not unreasonably interfere with the use of the Association Property by the other Owners and their respective Owner Representatives and (b) as may otherwise be required by the Design Committee.

4.7.3 **Association Right to Maintain.** If an Owner fails to perform any maintenance, repair or installation required by this Article, the Association or its delegates may, but shall not be obligated to, cause such maintenance, repair and installation to be accomplished

in accordance with the following: (a) upon finding by the Board of a deficiency in such maintenance, repair or installation, the Board shall give notice of such deficiency to the Owner (however in the case of immediate risk of injury to persons or serious damage to property no such notice shall be required). The Owner shall have no more than thirty (30) days ("**Election Period**") following the receipt thereby of written notice of such election from the Board or such committee to select a day or days upon which such maintenance, repair or installation work shall be accomplished; (b) the date which said Owner selects to cure the deficiency shall be no more than thirty (30) days from the end of the Election Period, or a reasonable time thereafter if such deficiency cannot be readily cured within such time; (c) unless the Owner and the Board otherwise agree, such maintenance or installation to cure the deficiency shall take place only during daylight hours on any day, Monday through Friday, excluding holidays; and (d) if the Association pays for all or any portion of such maintenance or installation, such amount shall be a Special Assessment against the affected Owner and his Lot. The Association shall also have the right to require that the Owner cure any deficiencies in maintenance of such Owner's Lot and/or the Improvements located thereon.

ARTICLE V FUNDS AND ASSESSMENTS

5.1. **Obligation.** By acceptance of a deed or other conveyance of a Lot, whether or not it shall be so expressed in such deed or such other instrument, every Owner is deemed to covenant to pay to the Association (i) annual Common Assessments for Common Expenses, (ii) Capital Improvement Assessments, (iii) Special Assessments, and (iv) Reconstruction Assessments; such assessments to be established and collected as hereinafter provided. All assessments other than Special Assessments, together with interest, costs, and reasonable attorneys' fees for the collection thereof, shall be a charge on the land and shall be a continuing lien upon the Lot against which such assessment is made. The personal obligation of assessments shall not pass to the successors-in-title to any Owner, unless expressly assumed by them.

5.2. **Maintenance Funds.** The Board shall Budget, establish and maintain at least the following separate accounts (the "**Maintenance Funds**") into which shall be deposited all monies paid to the Association, and from which disbursements shall be made, as provided herein, in the Association's performance of its functions under the Restrictions:

5.2.1 **General Operating Fund.** A General Operating Fund for current expenses of the Association, exclusive of current expenses attributable to the Improvements and maintenance responsibilities included within the Cost Centers, if any.

5.2.2 **General Reserve Fund.** An adequate General Reserve Fund for the deposit of Reserves attributable to Improvements within the Association Property, exclusive of reserves attributable to Improvements included in the Cost Centers, if any.

5.2.3 **Cost Center Operating Fund.** A Cost Center Operating Fund for current expenses of each Cost Center, if any, which has been completed and is subject to maintenance by the Association.

5.2.4 Cost Center Reserve Fund. An adequate Cost Center Reserve Fund for the deposit of reserves attributable to each Cost Center, if any, which has been completed and is subject to maintenance by the Association.

5.2.5 Miscellaneous Maintenance Funds. Any other Maintenance Funds which the Board of Directors may deem necessary.

5.3. Disbursements. All amounts deposited into the Maintenance Funds must be used solely for the purposes authorized by the Restrictions, as amended. The Board is authorized to transfer interest and other earnings on the General Reserve Fund and Cost Center Reserve Fund, as applicable, into the respective Operating Fund in order to satisfy income taxes payable by the Association attributable to such interest and earnings. The signatures of two (2) Directors of the Association shall be required for the withdrawal of money from the Association's Reserve funds. Disbursements from the particular Maintenance Funds shall be limited to specific purposes as follows:

5.3.1 General Reserves. Disbursements from the General Reserve Fund shall be made solely for the purpose of funding General Reserve expenditures.

5.3.2 General Operations. Disbursements from the General Operating Fund shall be made for such purposes as are necessary for the discharge of the Association's responsibilities under the Restrictions, for the common benefit of all Owners, other than those purposes specified in Sections 5.2.1 through 5.2.3 above. Nothing contained herein shall preclude the establishment of additional Maintenance Funds by the Association earmarked for specified purposes authorized by the Restrictions. If the Association decides to use or transfer Reserve funds to pay for litigation, the Association must notify its Members of the decision in the next available mailing. Such notice shall provide an explanation of why the litigation is being initiated or defended, why operating funds cannot be used, how and when the Reserve funds will be replaced, and a proposed budget for the litigation. The notice must state that the Members have a right to review an accounting for the litigation which will be available at the Association's office. The accounting shall be updated monthly.

5.3.3 Cost Center Reserves. Disbursements from each Cost Center Reserve Fund shall be made solely for the purpose of funding Reserve expenditures attributable to the Cost Center for which the fund was created.

5.3.4 Cost Center Operations. Disbursements from each Cost Center Operating Fund shall be made solely for the purpose of funding the current operating Common Expenses of the Cost Center for which the fund was created.

5.4. Association Property Damage or Neglect. If any maintenance, repair or replacement of the Association Property is necessitated in the sole judgment of the Board as a result of the willful or negligent act or neglect of an Owner or an Owner Representative of such Owner, such maintenance, repairs or replacements shall be performed at the expense of such Owner, after Notice and Hearing, and a Special Assessment therefore shall be levied against such Owner.

5.5. **Common Assessments.** Each annual Common Assessment shall constitute an aggregate of separate assessments for each of the Maintenance Funds, reflecting an itemization of the amounts assessed and attributable to prospective deposits into the General Operating and Reserve Funds, the Cost Center Operating and Reserve Funds, and any other Maintenance Fund established by the Association. Sums sufficient to pay Common Expenses shall be assessed as Common Assessments against the Owners as follows:

5.5.1 **Assessment Units.** Common Expenses shall be allocated among the Owners and their respective Lots for which Common Assessments have commenced based upon the number of Assessment Units chargeable to each such Lot. Each Lot is allocated one (1) Assessment Unit for each one thousand (1,000) square feet of Building Area of building(s) on such Owner's Lot. If Special Assessments are levied with respect to any Lot prior to the completion of a building on such Lot, for the purpose of levying Special Assessments, such Lot shall be allocated one (1) Assessment Unit for each one thousand (1,000) square feet of buildable area on such Lot (determined in accordance with the zoning requirements applicable to such Lot) rounded up to the nearest one thousand (1,000) square feet.

5.5.2 **Assessment Allocation.**

(i) **General Assessment Component.** The Common Expenses of the Association exclusive of Common Expenses budgeted to Cost Centers ("**General Assessment Component**") shall be allocated among all of the Lots and the Owners thereof based on the number of Assessment Units allocable to each Owner. The proportionate share of the General Assessment Component of Common Expenses chargeable to each Lot and the Owner(s) thereof shall be a fraction, the numerator of which is the number of Assessment Units allocated to such Lot, and the denominator of which is the total number of all Assessment Units allocated to all Lots in the Properties which are subject to assessment.

(ii) **Cost Center Assessment Component.** That portion of the Common Expenses of the Association comprising Cost Center Operating and Reserve Funds Budgeted to any particular Cost Center ("**Cost Center Assessment Component**") shall be assessed equally to the Owners of Lots designated in a Supplemental Declaration as Lots to which the exclusive or disproportionate maintenance of such Cost Center has been allocated. The Supplemental Declaration covering Cost Center shall: (i) identify the Cost Center, if existing, or describe the Cost Center if proposed; (ii) identify the Lots covered by the Supplemental Declaration which are entitled to use the facilities of the Cost Center or which are obligated to bear the exclusive or disproportionate maintenance of such Cost Center and which shall be obligated to pay the Cost Center Assessment Component attributable to such Cost Center; and (iii) specify the Common Expenses comprising the Cost Center Assessment Component attributable to such Cost Center. Unless otherwise provided in such Supplemental Declaration, the proportionate share of the Cost Center Assessment Component of Common Expenses chargeable to each Lot located in such Cost Center and the Owners thereof shall be a fraction, the numerator of which is the number of Assessment Units allocated to the Lots in the Cost Center owned by each Owner, and the denominator of which is the total number of all Assessment Units allocated to Lots located in such Cost Center.

5.6. Commencement of Common Assessments.

5.6.1 Commencement Date. Notwithstanding anything to the contrary set forth in this Declaration, no Owner shall be responsible for the payment of any Common Assessments until the first day of the month following the completion of a building on the applicable Lot; provided, however that each Owner shall be responsible for any Special Assessments from and after the date on which such Owner acquires title to such Lot.

5.6.2 Payment Procedure. Subject to Section 5.7.4, the Board shall fix the amount of the annual Common Assessment to be levied against each Lot at least thirty (30) days in advance of each Common Assessment period. However, unless otherwise established by the Board, the initial annual Common Assessment shall be levied in accordance with the most recent Budget. Written notice of any increase in the amount of the annual Common Assessment or any Capital Improvement or Reconstruction Assessment shall be sent by first class mail to every Owner subject thereto, not less than thirty (30) prior to the increased assessment becoming due. All installments of Common Assessments shall be collected in advance on a regular basis by the Board, at such frequency and on such due dates as the Board determines from time to time in its sole and absolute discretion. Each installment of a Common Assessment may be paid to the Association in one (1) check. If any payment of a Common Assessment installment is less than the amount assessed, the payment received by the Association from that Owner shall be credited in order of priority first to the General Operating Fund until that portion of the Common Assessment has been satisfied, then to the Cost Center Operating Fund (if any) applicable to such Owner until that portion of the Common Assessment has been satisfied, then to the General Reserve Fund until that portion of the Common Assessment has been satisfied, then to the Cost Center Reserve Fund (if any) applicable to such Owner until that portion of the Common Assessment has been satisfied, then to any other Maintenance Funds established by the Association.

5.6.3 Excess Funds. Unless otherwise approved by a majority of the voting power of the Association, any excess funds remaining in the Operating Funds, over and above the amounts used for the operation of the Properties, shall be used to reduce the following year's Common Assessment attributable to such Maintenance Funds.

5.6.4 Exemption. Notwithstanding any other provision of this Declaration, until (i) a notice of completion (if applicable) of an Association Property Improvement has been Recorded, (ii) such Association Property Improvement has been placed into use, whichever occurs first, each Owner (including Declarant) is exempt from paying that portion of any Common Assessment which is for the purpose of defraying expenses and Reserves directly attributable to the existence and use of such Association Property Improvement.

5.7. Limitations on Common Assessment Increases. Subject to Section 5.7.4 below, the Board shall not levy, for any fiscal year, an annual Common Assessment which exceeds the "Maximum Authorized Common Assessment" as determined pursuant to Sections 5.7.1 and 5.7.2 below, unless first approved by the vote of Owners representing at least (i) in the case of an increase in the General Assessment Component, a majority of votes at a meeting or written ballot of Owners in which more than fifty percent (50%) of the total voting power of the Association is represented, and (ii) in the case of an increase in a Cost Center Assessment

Component, a majority of votes at a meeting or written ballot of the Owners for the Cost Center generating such Cost Center Assessment Component at which more than fifty percent (50%) of the total voting power attributable to such Cost Center is represented.

5.7.1 Maximum Authorized Common Assessment for Initial Year of Operations. Until the first day of the fiscal year immediately following the fiscal year in which Common Assessments commence, the Maximum Authorized Common Assessment per Lot is one hundred thirty percent (130%) of the amount of Common Assessments disclosed in the current Budget of the Association at the time Common Assessments commence. The provisions of this Subsection shall be applied separately to the General Assessment Component and the Cost Center Assessment Component, if any. Notwithstanding the foregoing, this Subsection does not limit Common Assessment increases authorized pursuant to Section 5.7.4 below, or necessary to address an Emergency Situation as defined in Section 5.7.5 below.

5.7.2 Maximum Authorized Assessment for Subsequent Fiscal Years. Beginning with the fiscal year immediately following the fiscal year in which Common Assessments commence, the Maximum Authorized Common Assessment in any fiscal year is one hundred thirty percent (130%) of the level of Common Assessments levied in the immediately preceding fiscal year. The provisions of this Subsection shall be applied separately to the General Assessment Component and the Cost Center Assessment Component, if any. Notwithstanding the foregoing, this Section does not limit Common Assessment increases authorized pursuant to Section 5.7.4 below, or necessary to address an Emergency Situation as defined in Section 5.7.5 below.

5.7.3 Supplemental Common Assessments. If the Board determines that the important and essential functions of the Association may be properly funded by an annual Common Assessment less than the Maximum Authorized Common Assessment, it may levy such lesser Common Assessment. If the Board levies a Common Assessment in an amount less than the Maximum Authorized Common Assessment for any fiscal year and thereafter, during such fiscal year, determines that the important and essential functions of the Association cannot be funded by such lesser Common Assessment, the Board may levy one (1) or more supplemental Common Assessments up to the Maximum Authorized Common Assessment.

5.7.4 Emergency Situations. For purposes of this Declaration, an "Emergency Situation" is any of the following:

- (i) **Court Ordered Items.** An extraordinary expense required by an order of a court.
- (ii) **Safety Items.** An extraordinary expense necessary to repair or maintain the Association Property or any portion thereof for which the Association is responsible when a threat to the safety of Persons within the Properties is discovered.
- (iii) **Reasonably Unforeseen Items.** An extraordinary expense necessary to repair or maintain the Association Property or any portion thereof for which the Association is responsible that could not have been reasonably foreseen by the Board when preparing the Budget. Prior to the imposition or collection of an assessment pursuant to this

Subsection (iii), the Board must 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.

5.8. Capital Improvement Assessments. The Board may levy, in any fiscal year, a Capital Improvement Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a Capital Improvement upon the Association Property, including fixtures and personal property related thereto; provided that all proposed Capital Improvement Assessments shall require (a) in the Case of a Capital Improvement Assessment with respect to Association Property Improvements (other than Cost Center Improvements), the vote of Members representing at least a majority of the voting power of the Association or (b) in the case of a Capital Improvement Assessment with respect to Cost Center Improvements, a majority of votes at a meeting or written ballot of the Owners for the applicable Cost Center at which more than fifty percent (50%) of the total voting power attributable to such Cost Center is represented. Notwithstanding the foregoing, the Board may levy in any fiscal year a Capital Improvement Assessment applicable to that fiscal year without the vote of the Members if such Capital Improvement Assessment is necessary for addressing an Emergency Situation. All Capital Improvement Assessments must be levied against all Lots in the same manner and in the same proportions as Common Assessments are levied, and they shall be collected in the manner and frequency determined by the Board.

5.9. Exempt Property. The following property subject to this Declaration shall be exempt from the assessments herein: those portions of the Properties dedicated in fee and accepted by a public body, agency or authority; the Association Property, if any, owned in fee by the Association.

5.10. Remedies of the Association. Any installment of a Common Assessment, Capital Improvement Assessment, Special Assessment, or Reconstruction Assessment not paid within thirty (30) days after the due date shall bear interest from the due date of such installment at a rate determined by the Board, but in no event more than the then maximum non-usurious rate permitted by law. Additionally, the Board may levy a late charge in accordance with California Civil Code Section 1366 or any successive law or ordinance in addition to the interest charged as described above to compensate the Association for increased bookkeeping, billing and other administrative costs. No such late charge on any delinquent installment of an assessment shall exceed the maximum amount allowable by law. If any installment of an assessment is not paid within thirty (30) days after it is due, the Association may bring an action at law against the Owner(s) personally obligated to pay the same, or, with respect to Common Assessments, Capital Improvement Assessments and Reconstruction Assessments, foreclose the lien against the Lot. No Owner may escape liability for the assessments provided for herein by relinquishment of the Membership, or by nonuse of the Association Property or abandonment of the Lot. In addition to the foreclosure and other remedies granted the Association herein, each Owner, by acceptance of a deed to such Owner's Lot, hereby conveys to the Association all of such Owner's right, title and interest in all rents, issues and profits derived from and appurtenant to such Lot, subject to the right, power and authority of the Association to collect and apply such rents, issues and profits to any delinquent assessments owed by such Owner, reserving to the Owner the right, prior to any default by the Owner in the payment of assessments, to collect and retain such right, prior to any default by the Owner in the payment of assessments, to collect and

retain such rents, issues and profits as they may become due and payable. Upon any such default the Association may, upon the expiration of thirty (30) days following delivery to the Owner of the "Notice of Assessment" described herein, either in person, by agent or by receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness secured by the lien described herein, (i) enter in or upon and take possession of the Lot or any part thereof, (ii) in the Association's name sue for or otherwise collect such rents, issues and profits, including those part due and unpaid, and (iii) apply the same, less allowable expenses of operation, to any delinquencies of the Owner hereunder, and in such order as the Association may determine. The entering upon and taking possession of the Lot, the collection of rents, issues and profits and the application thereof, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

5.11. **Notice of Lien.** No action may be brought to enforce any assessment lien herein, unless at least thirty (30) days have expired following the date a Notice of Lien is deposited in the United States mail, certified or registered, postage prepaid, to the Owner of the Lot, and a copy thereof has been Recorded by the Association. The Notice of Lien shall be in such form and shall contain such information required by Section 1367(b) of the California Civil Code, or any similar California Statute hereafter enacted, and must be signed and acknowledged by an officer of the Association or such other Person expressly authorized by the Board to sign Notices of Liens. The lien shall continue until fully paid or otherwise satisfied.

5.12. **Foreclosure Sale.** A sale to foreclose the assessment lien may be conducted by the trustee designated in the Notice of Lien (or any successor trustee substituted therefore) in accordance with the provisions of Section 2924, 2924a, 2924b, 2924c and 2924f of the California Civil Code, or in accordance with any similar statute hereafter enacted applicable to the exercise of powers of sale in Deeds of Trust, or in any other manner permitted by law. The Association, through duly authorized agents, may bid on the Lot, at foreclosure sale, and may acquire and hold, lease, mortgage, and convey the same. Upon completion of the foreclosure sale, the Association or the purchaser at the sale may file suit to secure occupancy of the Lot, and the defaulting Owner shall be required to pay the reasonable rental value of the Lot during any period of continued occupancy by the defaulting Owner or any persons claiming under the defaulting Owner.

5.13. **Curing of Default.** Upon the timely curing of any default for which the Association filed a Notice of Lien, the Association shall Record an appropriate Release of Lien, upon payment by the defaulting Owner of a reasonable fee to be determined by the Board to cover the cost of preparing and Recording such release. A certificate, executed and acknowledged by any officer of the Association, or such other person expressly authorized by the Board, stating the indebtedness secured by the liens upon any Lot created hereunder, shall be conclusive upon the Association and the Owners as to the amount of such indebtedness as of the date of the certificate in favor of all persons who rely thereon in good faith. Such certificate shall be furnished to any Owner upon request at a reasonable fee, to be determined by the Board.

5.14. **Cumulative Remedies.** The assessment lien and the rights of foreclosure and sale thereunder are in addition to and not in substitution for all other rights and remedies which the Association and its assigns may have against any delinquent Owner hereunder and by law, including a suit to recover a money judgment for unpaid assessments, as above provided.

5.15. **Mortgage Protection-Liens.** Subject to Section 5.16 below, no lien created under this Article V, nor any breach of this Declaration, nor the enforcement of any provision hereof shall defeat or render invalid the rights of the Beneficiary under any Recorded Deed of Trust upon a Lot, made in good faith and for value. After a Beneficiary or other Person obtains title to a Lot by judicial foreclosure or by means of the powers set forth in such Deed of Trust, the Lot shall remain subject to the Restrictions and the payment of all installments of assessments and other obligations, accruing after the date the Beneficiary or other Person obtains title.

5.16. **Priority of Assessment Lien.** Mortgages Recorded before a Notice of Lien have lien priority over the Notice of Lien. The sale or transfer (including any "deed in lieu" of foreclosure) of any Lot does not affect the assessment lien; except that the sale or transfer of any Lot pursuant to judicial or nonjudicial foreclosure of a first Mortgage Recorded prior to a Notice of Lien extinguishes the lien of such assessment as to payments which became due prior to such foreclosure sale or transfer. No sale or transfer relieves such Lot from lien rights for any assessments thereafter becoming due. No Person who obtains title to a Lot through judicial or nonjudicial foreclosure of the first Mortgage is liable for the share of the Common Expenses or assessments chargeable to such Lot which became due prior to the acquisition of title to such Lot by such Person. Such unpaid share of Common Expenses and assessments is a Common Expense collectible from all of the Lots, including the Lots belonging to such Person.

ARTICLE VI DESTRUCTION OR CONDEMNATION OF ASSOCIATION PROPERTY

Damage to, destruction or condemnation of all or any portion of the Association Property shall be handled in the following manner:

6.1. **Damage by Owners.** To the extent permitted by law, each Owner is liable to the Association for any damage to the Association Property not fully reimbursed to the Association by insurance (including any insurance policy deductible amounts) if the damage is sustained because of the negligence, neglect, willful misconduct or unauthorized or improper installation or maintenance of any Improvement by the Owner, and its Owner Representatives or any other Persons deriving their right and easement of use and enjoyment of the Association Property from the Owner, or Owner Representative. However, the Association, acting through the Board, may determine whether any claim will be made upon the insurance maintained by the Association, and after Notice and Hearing the Association may levy a Special Assessment equal to the increase, if any, in insurance premiums directly attributable to the damage caused by the Owner or the Person for whom the Owner may be liable as described above. In the case of joint ownership of a Lot, the liability of the Owners is joint and several, except to the extent that the Association has previously contracted in writing with the joint Owners to the contrary. After Notice and Hearing, the cost of correcting the damage, to the extent not reimbursed to the Association by insurance, shall be a Special Assessment.

6.2. **Repair of Damages.** If Association Property Improvements are damaged by fire or other casualty, any insurance proceeds payable by reason thereof shall be paid to the Association, which thereupon shall contract for the repair or replacement of all the Association

Property Improvements so damaged. The Association shall levy a Reconstruction Assessment on Owners to satisfy any deficiency between insurance proceeds and the actual cost of repair or replacement in the same manner and proportion that Common Assessments are levied against and collected from Owners. For example, Owners located in a Cost Center will pay their proportionate share of any Reconstruction Assessment (in the same proportion as the Cost Center Assessment Component applicable to such Cost Center) attributable to their Cost Center Improvements, and Owners not located in such Cost Center are exempt from such Reconstruction Assessment.

6.3. **Condemnation.** If all or any portion of the Association Property owned in fee by the Association, or any interest therein, is taken by right of eminent domain or by private purchase in lieu of eminent domain, the award in condemnation shall be paid to the Association and deposited in the appropriate Operating Fund. No Member (other than a Person on whose Lot an Association Property easement affected by a condemnation may be located) may participate as a party, or otherwise, in any proceedings relating to such condemnation. The Association has the exclusive right to participate in such proceedings and shall, in its name alone, represent the interests of all Members.

6.4. **Notice to Owners and Listed Mortgagees.** The Board of Directors immediately upon learning of any taking by eminent domain of any Association Property, or any threat thereof, shall promptly notify all Owners whose Lots are subject to Common Assessments for the maintenance of such Association Property, and all Record holders of first Mortgages on such Owners' Lots. The Board, immediately upon learning of any damage or destruction affecting a material portion of the Association Property, shall promptly notify all Owners whose Lots are subject to Common Assessments for the maintenance of such Association Property, and all holders of first Mortgages on Lots who have filed a written request for such notice.

ARTICLE VII DECLARANT EXEMPTION

7.1. **Interest of Declarant.** Each Owner of a Lot which is part of the Properties acknowledges by acceptance of a deed or other conveyance therefore, whether or not it shall be so expressed in any such deed or other instrument, that Declarant has a substantial interest in assuring compliance with and enforcement of, the covenants, conditions, restrictions and reservations contained in this Declaration and any amendments thereto. Notwithstanding any other provisions of the Restrictions, until Declarant no longer owns a Lot in the Properties, neither the Association nor any of its Members shall do anything to interfere with Declarant's development activities for the Properties (including without limitation those described below), and nothing in this Declaration shall be understood or construed to:

(a) Prevent Declarant or its contractors or subcontractors, from doing on any Lot owned or controlled by Declarant whatever Declarant determines to be necessary or advisable in connection with the completion of such work, including without limitation the alteration of construction plans and designs as Declarant deems advisable in the course of development; or

(b) Prevent Declarant or its representatives, from erecting, constructing and maintaining on any portion of the Properties owned or controlled by Declarant, or its contractors or subcontractors, such structures as may be reasonably necessary for the conduct of its business of completing such work and disposing of the Lots Units by sale, resale, lease or otherwise; or

(c) Prevent Declarant or its contractors or subcontractors, from conducting on any Lot owned or controlled by Declarant, its business of developing, altering, subdividing, grading and constructing Improvements to and on any portion of the Properties and of disposing thereof by sale, resale, lease or otherwise; or

(d) Prevent Declarant or its contractors or subcontractors, from maintaining such sign or signs on any portion of the Properties owned or controlled by Declarant as may be necessary in connection with the sale, resale, lease or other marketing of Lots in the Properties; or

(e) Prevent Declarant, at any time prior to acquisition of title to a Lot by a purchaser from Declarant, to establish on that Lot 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 Properties.

7.2. Capital Improvement Assessments. The Association shall not levy a Capital Improvement Assessment for the construction of new facilities not originally included in the Association Property without the approval of Declarant.

7.3. Service/Maintenance Reductions. Subject to Section 5.7 regarding limitations on yearly Common Assessment increases, any significant reduction of Association Property maintenance or other services or entering into contracts for maintenance or other goods and services benefiting the Association or the Association Property at contract rates which are fifteen percent (15%) or more below the reasonable cost for such maintenance, goods or services as determined pursuant to the cost guidelines described in Section 5.7.4 must be approved by Declarant.

7.4. Exemptions. Nothing in the Restrictions shall limit, and no Owner, or the Association will interfere with, the right of Declarant, either directly or through its employees, agents or representatives, to subdivide, resubdivide, sell, resell or lease any portion of the Properties, or the right of Declarant to complete excavation, grading, construction of Improvements or other development activities to and on any portion of the Properties owned by Declarant, as applicable, or to alter the foregoing and the construction plans and designs, or to construct such additional Improvements as Declarant deems advisable in the course of developing the Properties so long as any Lot in the Properties is owned by Declarant. These rights include, but are not limited to, carrying on by Declarant and their respective agents and representatives of such grading work as may be approved by any Local Governmental Agency having jurisdiction, and erecting, constructing and maintaining on the Properties such structures, signs and displays reasonably necessary for the conduct of the business of completing the work and disposing of the Properties by sale, lease or otherwise. This Declaration does not limit the right of Declarant at any time prior to acquisition of title to a Lot by a purchaser from Declarant, to establish on that Lot, as the case may be, additional licenses, easements, reservations and

rights-of-way to itself, to utility companies, or to others as reasonably necessary to the proper development and disposal of the Properties. Without limiting the generality of the foregoing, no approval or consent of the Association or its Members shall be required for any change by Declarant of the Improvements on the Association Property or the Association Property, including without limitation any relocation or modification of driveways or walkways thereon. Prospective purchasers and Declarant may use any and all portions of the Association Property for access to the sales and leasing facilities of Declarant. All or any portion of the rights of Declarant, hereunder and elsewhere in these Restrictions may be assigned by Declarant, to any successor in interest to any portion of Declarant's interest in any portion of the Properties by an express Recorded written assignment which specifies the rights of Declarant so assigned. Notwithstanding any other provision of this Declaration, for so long as Declarant owns any portion of the Properties, Declarant's prior written approval is required before any amendment to this Article VII is effective.

ARTICLE VIII INSURANCE

8.1. **Casualty Insurance.** The Board shall obtain and maintain fire and casualty insurance with extended coverage for loss or damage to all insurable Improvements installed by Declarant or by the Association on the Association Property for the full replacement cost thereof without deduction for depreciation or coinsurance, and may obtain insurance against such other hazards and casualties as the Association may deem desirable. The Association may also insure any other real or personal property it owns against loss or damage by fire and such other hazards as the Association may deem desirable, with the Association as the owner and beneficiary of such insurance. The policies insuring the Association Property must be written in the name of, and the proceeds thereof must be payable to the Association. Unless the applicable insurance policy provides for a different procedure for the filing of claims, all claims made under such policy must be sent to the insurance carrier or agent, as applicable, by certified mail and be clearly identified as a claim. The Association shall keep a record of all claims made. The Association shall use insurance proceeds to repair or replace the property for which the insurance was carried. Premiums for all insurance carried by the Association are a Common Expense.

8.2. **Insurance Obligations of Owners.** Each Owner is responsible for insuring his personal property and all other property and Improvements within his Lot as required by this Declaration. Such policies shall not adversely affect or diminish any liability under any insurance obtained by or on behalf of the Association, and duplicate copies of such other policies shall be deposited with the Board upon the Board's request. If any loss intended to be covered by insurance carried by or on behalf of the Association occurs and the proceeds payable thereunder are reduced due to insurance carried by any Owner, such Owner shall assign the proceeds of such insurance to the Association, to the extent of such reduction, for application by the Board to the same purposes as the reduced proceeds are to be applied.

8.3. **Waiver of Subrogation.** All policies of physical damage insurance the Association maintains must provide, if reasonably possible, for waiver of: (i) any defense based on coinsurance; (ii) any right of setoff, counterclaim, apportionment, proration or contribution due to other insurance not carried by the Association; (iii) any invalidity, other adverse effect or defense due to any breach of warranty or condition caused by the Association, any Owner or any

tenant of any Owner, or arising from any act or omission of any named insured or the respective agents, contractors and employees of any insured; (iv) any rights of the insurer to repair, rebuild or replace, and, if any Improvement is not repaired, rebuilt or replaced following loss, any right to pay under the insurance an amount less than the replacement value of the Improvements insured; (v) notice of the assignment of any Owner of its interest in the insurance by virtue of a conveyance of any Lot; (vi) any denial of an Owner's claim because of negligent acts by the Association or other Owners; or (vii) prejudice of the insurance by any acts or omissions of Owners that are not under the Association's control. As to each policy of insurance the Association maintains which will not be voided or impaired thereby, the Association hereby waives and releases all claims against the Board, the Owners, the Association Manager and Declarant, and the agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence or breach of any agreement by such Persons, but only to the extent that insurance proceeds are received in compensation for such loss.

8.4. **Liability and Other Insurance.** The Association shall obtain comprehensive public liability insurance, including medical payments and malicious mischief, in such limits as it deems desirable with such minimum limits as are set forth in Section 1365.9 of the California Civil Code, insuring against liability for bodily injury, death and property damage arising from the Association's activities or with respect to property the Association maintains or is required to maintain including, if obtainable, a cross-liability endorsement insuring each insured against liability to each other insured. The Association may also obtain Worker's Compensation insurance and other liability insurance as it may deem desirable. The Board shall review all insurance policies at least annually and adjust the limits in its discretion. The Board may also obtain such errors and omissions insurance, indemnity bonds, fidelity insurance and other insurance as it deems advisable, insuring the Board, the Association's officers and the Association Manager against any liability for any act or omission in carrying out their obligations hereunder, or resulting from their membership on the Board or on any committee thereof. However, fidelity insurance coverage which names the Association as an obligee must be obtained by or on behalf of the Association for any Person handling Association funds, including, but not limited to, Association officers, directors, employees and agents and Association Manager employees, whether or not such Persons are compensated for their services, in an amount not less than the estimated maximum of funds, including reserve funds, in the Association's or Association Manager's custody during the term of each bond. The aggregate amount of such bonds may not be less than one-fourth (1/4) of the Common Assessments on all Lots in the Properties, plus reserve funds.

ARTICLE IX MISCELLANEOUS

9.1. **Term and Termination.** This Declaration continues in full force until a Declaration of Termination satisfying the requirements of an amendment to this Declaration as set forth in Section 9.2 of this Article is Recorded.

9.2. Amendments.

9.2.1 **By Declarant.** Subject to Section 11.1 below, so long as Declarant owns all or any portion of the Properties, this Declaration may be amended by Recording a written instrument signed by Declarant setting forth such amendment. Such amendment by Declarant shall not require the approval of the other Owners.

9.2.2 **By Owners.** The provisions of this Declaration may be amended by Recording an instrument, signed and acknowledged by Declarant (for so long as Declarant owns a Lot in the Properties) and two (2) officers of the Association, setting forth the amendment and certifying that such amendment has been approved by Owners representing sixty-seven percent (67%) of the voting power of the Association and the requisite percentage of holders and insurers of first Mortgages, in the case of those amendments which this Declaration requires to be approved by first Mortgagees. Amendments shall be effective upon Recordation. So long as Declarant owns a Lot in the Properties there shall be no amendment to the Restrictions without Declarant's written approval.

9.2.3 **Approval of First Mortgagees.** Notwithstanding the foregoing, any of the following amendments, to be effective, must be approved by fifty-one percent (51%) of the first Mortgagees who have requested the Association to notify them of proposed action requiring the consent of a specified percentage of first Mortgagees, based upon one (1) vote for each Assessment Unit allocated to a Lot pledged as security for the respective first Mortgage:

(i) **Rights of Lenders.** Any amendment which affects or purports to affect the validity or priority of encumbrances or the rights or protections granted to Beneficiaries of first Mortgages.

(ii) **Lien Priority.** Any amendment which would necessitate a Mortgagee after it has acquired a Lot through foreclosure to pay more than its proportionate share of any unpaid assessment or assessments accruing after such foreclosure.

(iii) **Forfeitures and Taxes.** Any amendment which would or could result in (a) an encumbrance being cancelled by forfeiture, or (b) an individual Lot not being separately assessed for tax purposes.

(iv) **Insurance and Condemnation.** Any amendment relating to the insurance provisions of Article VIII, to the application of insurance proceeds or the disposition of any money received in any taking under condemnation proceedings.

(v) **Termination and Subdivision.** Any amendment which would or could result in termination or abandonment of the Properties or partition or subdivision of a Lot in any manner inconsistent with the provisions of this Declaration; provided that termination of the legal status of the Properties as a common interest development for reasons other than substantial destruction or condemnation of the Properties must be approved by the institutional Record holders of sixty-seven percent (67%) of the first Mortgages at the time of such amendment.

Any approval by a holder of a first Mortgage required under this Section 9.2.3, or required pursuant to any other provisions of the Restrictions, must either be given in writing, or is deemed given if, within thirty (30) days after receipt of written notice of the proposed action sent via registered or certified mail, return receipt requested, the holder does not submit a written response to the notice.

9.2.4 Certification. A certificate, signed and sworn to by two (2) officers of the Association that Members representing sixty-seven percent (67%) of the voting power of the Association have voted for any amendment adopted as provided in 9.2.2 above, when Recorded, shall be conclusive evidence of that fact. The certificate reflecting any termination or amendment which requires the consent of any of the record holders of first Mortgages shall include a certification that the requisite approval of such holders of first Mortgages has been obtained or waived. The certificate reflecting any termination or amendment requiring Declarant's consent shall be signed and acknowledged by Declarant. The Association shall maintain in its files the record of all such votes and Mortgagee consent solicitations and disapprovals for a period of at least four (4) years.

9.3. Mortgage Protection-General. Notwithstanding any other provision of this Declaration, no amendment or violation of this Declaration will defeat or render invalid the rights of the Beneficiary under any Deed of Trust made in good faith and for value, and Recorded prior to the Recordation of such amendment (or a Notice of Lien Recorded pursuant to Section 6.11). After the foreclosure of any such Deed of Trust such Lot remains subject to this Declaration, as amended. Notwithstanding any and all provisions of this Declaration to the contrary, in order to induce Lenders to participate in the financing of Lots within the Properties, the following provisions are added hereto:

9.3.1 Notice of Default. Each Beneficiary of a first Mortgage encumbering any Lot upon filing a written request for notification with the Board, is entitled to written notification from the Association of (i) any condemnation or casualty loss which affects either a material portion of the Properties or the Lot securing the respective first Mortgage; (ii) any delinquency of sixty (60) days or more in the performance by the Owner of such Lot of any obligation arising pursuant to this Declaration, including without limitation the payment of assessments or charges owed by the Owner of the Lot securing the respective first Mortgage, which notice each Owner hereby consents to and authorizes; (iii) a lapse, cancellation, or material modification of any policy of insurance or fidelity bond maintained by the Association; and (iv) any proposed action of the Association which requires consent by a specified percentage of first Mortgagees.

9.3.2 First Refusal Exemption. Every Owner, including every first Mortgagee of a Mortgage encumbering any Lot, which obtains title to such Lot pursuant to the remedies provided in such Mortgage, or pursuant to foreclosure of the Mortgage, or by deed (or assignment) in lieu of foreclosure, is exempt from any "right of first refusal."

9.3.3 Lien Priority. Each first Mortgagee of a Mortgage encumbering any Lot and Recorded prior to a Notice of Lien which obtains title to such Lot pursuant to judicial foreclosure or the powers provided in such Mortgage takes title to such Lot free and clear of any claims for unpaid assessments or charges against such Lot which accrued prior to the time such Mortgagee acquires title to such Lot in accordance with Section 6.16.

9.3.4 Books and Records. All Beneficiaries of first Mortgages on Lots, upon written request to the Association, may examine current copies of the Association's books, records and financial statements and the Restrictions during normal business hours. In addition, Beneficiaries of first Mortgages shall be entitled to receive a copy of the Association's annual financial statement within one hundred twenty (120) days after the end of each fiscal year.

9.3.5 Mortgagee Notices. All Beneficiaries of first Mortgages who have filed a written request with the Association shall be given (i) written notice prior to the effective date of any proposed, material amendment to this Declaration or the Articles or Bylaws; (ii) written notice of all meetings of the Members and the right to designate in writing a representative who shall be authorized to attend all such meetings; and (iii) immediate written notice as soon as the Board receives notice or otherwise learns of any damage to the Association Property whenever the cost of reconstruction exceeds One Hundred Thousand Dollars (\$100,000), and as soon as the Board receives notice or otherwise learns of any condemnation or eminent domain proceedings or other proposed acquisition, with respect to any portion of the Properties.

9.3.6 Association Property Taxes. First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Association Property and may pay any overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such property, and first Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

9.4. Notices. Any notice permitted or required to be delivered as provided herein shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered two (2) business days after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to any Person at the address given by such Person to the Association for the purpose of service of such notice of such Person if no address has been given to the Association. Such address may be changed from time to time by notice in writing to the Association.

9.5. Enforcement and Non-Waiver.

9.5.1 Right of Enforcement. Subject to Sections 1354 and 1375 of the California Civil Code and Sections 9.5.7, 9.5.9 and 9.14 below, the Association, the successors-in-interest of the Association, any Owner and Declarant (so long as Declarant owns a Lot in the Properties), may enforce any of the provisions of the Restrictions against any portion of the Properties which is in noncompliance, and against each Owner, the Association, or any other Person responsible for the noncompliance. Such right shall include proceedings for damages, as well as proceedings to enjoin any violation of the Restrictions. The City shall also have the right, but not the obligation, to enforce any provisions of this Declaration.

9.5.2 Violations are Nuisance. Every act or omission whereby any provision of the Restrictions is violated in whole or in part is declared a nuisance and every remedy allowed by law or equity against a nuisance, either public or private, is applicable against every such violation and may be exercised as provided in Section 9.5.1 above.

9.5.3 Violation of Law. Any violation of any state, municipal or local law, ordinance or regulation pertaining to the ownership, occupation or use of any of the Properties is a violation of the Restrictions and subject to all of the enforcement procedures set forth in the Restrictions.

9.5.4 Remedies Cumulative. Each remedy provided by the Restrictions is cumulative and not exclusive. The Association may, without waiving the right to enforce its lien against the Lot, bring a suit at law to enforce each assessment obligation.

9.5.5 No Waiver. Failure to enforce any provision of the Restrictions does not waive the right to enforce that provision, or any other provision thereof.

9.5.6 Special Assessment. If any Owner violates the Restrictions, the Board may, after Notice and Hearing and in addition to the other remedies available, impose a reasonable Special Assessment upon such Owner for each violation and may as further provided in the Bylaws. The Board may also adopt a schedule of reasonable fines or penalties which, in its reasonable discretion, it may assess against an Owner for failure of the Owner or such Owner Representatives, to comply with any provision of the Restrictions, other than Article V hereof. Such fines or penalties may only be assessed by the Board after Notice and Hearing.

9.5.7 Alternative Dispute Resolution of Assessment Disputes. Disputes between an Owner and the Association regarding the assessments imposed by the Association may be submitted to alternative dispute resolution in accordance with Civil Code Section 1354 if such Owner pays in full (i) the amount of the assessment in dispute, (ii) any late charges, (iii) any interest, and (iv) all fees and costs associated with the preparation and filing of a Notice of Delinquent Assessment (including mailing costs and attorneys fees not to exceed the maximum amount allowed by law), and states by written notice that such amount is paid under protest, and the written notice is mailed by certified mail not more than thirty (30) days from the Recording of a Notice of Delinquent Assessment. Upon receipt of such written notice, the Association shall inform the Owner in writing that the dispute may be resolved through alternative dispute resolution as set forth in Civil Code Section 1354. The right of any Owner to utilize alternative dispute resolution under this Section may not be exercised more than two times in any single calendar year, and not more than three times within any five (5) calendar years. Nothing within this Section shall preclude any Owner and the Association, upon mutual agreement, from entering into alternative dispute resolution in excess of the limits set forth herein. An Owner may request and be awarded through alternative dispute resolution reasonable interest to be paid by the Association in the total amount paid under items (i) through (iv) above, if it is determined that the assessment levied by the Association was not correctly levied.

9.5.8 Notice of Noncompliance. After notice and hearing, the Board may direct the officers of the Association to Record a notice of noncompliance against a Lot owned by any Member of the Association who has violated any provision of this Declaration. The notice shall include a legal description of the Lot and shall specify the provision of this Declaration that was violated, the violation committed, and the steps required to remedy the noncompliance. Once the noncompliance is remedied or the noncomplying Owner has taken such other steps as reasonably required by the Board, the Board shall direct the officers of the Association to Record a notice that the noncompliance has been remedied.

9.5.9 **Limitation on Expenditures.** The Association may not incur litigation expenses, including without limitation attorneys' fees, or borrow money to fund litigation, where the Association initiates legal proceedings or is joined as a plaintiff in legal proceedings, unless the Association first obtains the approval of the Members (excluding the voting power of any Owner who would be a defendant in such proceedings), and, if applicable, complies with the requirements of Section 1354 of the California Civil Code. Such approval is not necessary if the legal proceedings are initiated (i) to enforce the design control provisions contained in Article IV, (ii) to collect any unpaid assessments levied pursuant to this Declaration, (iii) for a claim, the total value of which is less than one hundred thousand dollars (\$100,000), or (iv) as a cross-complaint in litigation to which the Association is already a party. If the Association decides to use or transfer Reserve funds or borrow funds to pay for any litigation, such notice shall provide an explanation of why the litigation is being initiated or defended, why operating funds cannot be used, how and when the reserve funds will be replaced or the loan will be repaid, and a proposed budget for the litigation. The notice must state that the Members have a right to review an accounting for the litigation which will be available at the Association's office. The accounting shall be updated monthly.

9.6. **Interpretation.**

9.6.1 **Restrictions Construed Together.** The Restrictions shall be liberally construed to effectuate the fundamental concepts of the Properties as set forth in the Preamble to this Declaration. The Restrictions shall be interpreted so as to be consistent with applicable laws and regulations, including ordinances and regulations of the City, the County and other applicable governmental entities. The Restrictions shall be construed and governed by the laws of the State of California.

9.6.2 **Restrictions Severable.** Notwithstanding the provisions of Section 9.6.1, each of the provisions of the Restrictions is independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

9.6.3 **Singular Includes Plural.** Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall each include the masculine, feminine and neuter.

9.6.4 **Captions.** All captions and titles in this Declaration are solely for convenience of reference and do not affect that which is set forth in any of the provisions hereof.

9.6.5 **Time Periods.** Except as otherwise expressly provided herein, any reference in this Declaration to time for performance of obligations or to elapsed time means consecutive calendar days, months, or years, as applicable.

9.7. **Reservation of Easements.** Declarant hereby reserves for the benefit of all of the Properties reciprocal easements over the Properties for access, ingress and egress for all Owners to and from their respective Lots; for installation and repair of utility services; for encroachments of Improvements constructed by Declarant over the Association Property; for drainage of water over, across and upon adjacent Lots, and Association Property resulting from the normal use of

adjoining Lots or Association Property; for necessary maintenance and repair of any Improvement constructed by Declarant; easements as may be shown on any Recorded subdivision map or Recorded parcel map of any portion of the Properties; and for such other purposes specified in this Declaration. Such easements may be used by Declarant, its successors, invitees and purchasers, the Association, and all Owners, their Owner Representatives for pedestrian walkways, vehicular access and such other purposes specified herein or reasonably necessary for the use, maintenance and enjoyment of a Lot or the Association Property.

9.8. **No Public Right of Dedication.** Nothing in this Declaration is a gift or dedication of all or any part of the Properties to the public, or for any public use.

9.9. **Disclosures.** Every person who owns, occupies or acquires any right, title, estate or interest in or to any Lot or other portion of the Properties agrees to every limitation, restriction, easement, reservation, condition and covenant contained herein, whether or not any reference to this Declaration is contained in the instrument by which such person acquired an interest in the Properties.

9.10. **No Representations or Warranties.** No representations or warranties of any kind, express or implied, have been given or made by Declarant or its agents or employees in connection with the Properties or any portion of the Properties, or any Improvement thereon, its physical conditions, zoning, compliance with applicable laws, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof, except as specifically and expressly set forth in this Declaration.

9.11. **Standard of Care, Nonliability.**

9.11.1 **Scope of Powers and Standard of Care.**

(i) **General Scope of Powers.** Rights and powers conferred on the Board or other Committees or representatives of the Association by the Restrictions are not duties, obligations or disabilities charged upon those Persons unless the rights and powers are explicitly identified as including duties, obligations or disabilities in the Restrictions or in applicable law. Unless a duty to act is imposed on the Board, or other Committees or representatives of the Association by the Restrictions or applicable law, the Board and the committees have the right to decide to act or not act. Any decision to not act is not a waiver of the right to act in the future.

(ii) **Business Affairs.** This Subsection 9.11.1(ii) applies to Board member actions in connection with management, personnel, maintenance and operations, insurance, contracts and finances. Each Board member shall perform the duties of a Board member in good faith, in a manner such Board member believes to be in the best interests of the Association and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances. When performing his duties, a Board member is entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by:

(1) One or more officers or employees of the Association whom the Board member believes to be reliable and competent in the matters presented;

(2) Counsel, independent accountants or other Persons as to matters which the Board member believes to be within such Person's professional or expert competence; or

(3) A Committee of the Board upon which the Board member does not serve, as to matters within its designated authority, which committee the director believes to merit confidence, so long as, in any such case, the director acts in good faith, after reasonable inquiry when the need therefore is indicated by the circumstances and without knowledge that would cause such reliance to be unwarranted.

(4) This Subsection 9.11.1(ii) is intended to be a restatement of the business judgment rule established in applicable law as it applies to the Association. All amendments, modifications, restatements and interpretations of the business judgment rule applicable to the Association shall be interpreted to amend, modify, restate or interpret this Subsection 9.11.1(ii).

(iii) **Association Governance.** This Subsection 9.11.1(iii) applies to Board actions and committee decisions in connection with interpretation and enforcement of the Restrictions, architectural and landscaping control, regulation of uses within the Properties, rule making and oversight of committees. Actions taken or decisions made in connection with these matters shall be reasonable, fair and nondiscriminatory.

9.11.2 Nonliability.

(i) **General Rule.** No Person is liable to any other Person (other than the Association or a party claiming in the name of the Association) for injuries or damage resulting from such Person's acts or omissions when the acts or omissions are within what the Person reasonably believed to be the scope of the Person's Association duties ("**Official Acts**"), except to the extent that injuries or damage result from the Person's willful or malicious misconduct. No Person is liable to the Association (or to any party claiming in the name of the Association) for injuries or damage resulting from such Person's Official Acts, except to the extent that such injuries or damage result from such Person's willful or malicious misconduct. The Association is not liable for damage to property in the Properties unless caused by the negligence of the Association, the Board, the Association's officers, the Manager or the Manager's staff.

(ii) **Nonliability of Volunteer Board Members and Officers.** A volunteer Board member or volunteer Association officer shall not be personally liable to any Person who suffers injury, including without limitation bodily injury, emotional distress, wrongful death or property damage or loss as a result of the tortious act or omission of the volunteer officer or Board member if all of the applicable conditions specified in Section 1365.7 of the California Civil Code, as modified, amended, or replaced, are met.

9.12. **Priorities and Inconsistencies.** If there are conflicts or inconsistencies between this Declaration and either the Articles of Incorporation or the Bylaws of the Association, the terms and provisions of this Declaration shall prevail. In addition, if there are any conflicts or inconsistencies between this Declaration or any of the Restrictions, and any documentation

executed by an Owner and Declarant in connection with the sale of any property in the Properties to the Owner (collectively, "**Development Documents**"), as between and Declarant, the terms and provisions of the Development Documents shall control.

9.13. **Dispute Resolution.** Any disputes between all or any of the Association, Owner(s) and the Declarant or any director, officer, partner, employer, contractor, subcontractor, design professional, consultant or agent of the Declarant (collectively, "**Declarant Parties**") arising under this Declaration or relating to the Properties (excluding disputes solely between Declarant and any other Declarant Party or Parties), shall be subject to the following provisions:

(a) **Construction Defect Disputes.** Prior to the commencement of any legal action by the Association or any Owner(s) against the Declarant or Declarant Party based upon a claim for defects in the design or construction of any Lot, Association Property or Improvements thereon, the Association, or Owner must first comply with the requirements of Civil Code Section 1375 (notwithstanding the fact that Section 1375 does not apply to Owners by its terms). If the parties are unable to resolve their dispute in accordance with the procedures established under Civil Code Section 1375, the dispute shall be resolved in accordance with subsection (c) below and the Parties shall each be responsible for their own attorneys' fees.

(b) **Other Disputes.** Any other disputes arising under this Declaration or otherwise between the Association, any Owner and the Declarant or a Declarant Party (except for action taken by the Association against Declarant for delinquent assessments), shall be resolved in accordance with Subsection (c) below. The dispute resolution procedure in Subsection (c) as it applies solely to the dispute under this Subsection (b) shall be deemed to satisfy the alternative dispute requirements of Civil Code Section 1354, as applicable.

(c) **Judicial Reference.** Any unresolved disputes under subsections (a) and (b) above, shall be submitted to general judicial reference pursuant to California Code of Civil Procedure Sections 638(1) and 641-645 or any successor statutes thereto. The parties shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the judicial reference proceeding. The parties shall share equally in the fees and costs of the referee, unless the referee orders otherwise but shall each be responsible for their own attorneys' fees.

The general referee shall have the authority to try all issues, whether of fact or law, and to report a statement of decision to the court. The parties shall use the procedures adopted by Judicial Arbitration and Mediation Services ("**JAMS**") for judicial reference and selection of a referee (or any other entity offering judicial reference dispute resolution procedures as may be mutually acceptable to the parties), provided that the following rules and procedures shall apply in all cases unless the parties agree otherwise:

- (1) The proceedings shall be heard in the county in which the Properties are located;
- (2) The referee must be a retired judge or a licensed attorney with substantial experience in relevant real estate matters;

- (3) Any dispute regarding the selection of the referee shall be resolved by JAMS or the entity providing the reference services, or, if no entity is involved, by the court with appropriate jurisdiction;
- (4) The referee may require one or more pre-hearing conferences;
- (5) The parties shall be entitled to discovery, and the referee shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge;
- (6) A stenographic record of the trial shall be made, provided that the record shall remain confidential except as may be necessary for post-hearing motions and any appeals;
- (7) The referee's statement of decision shall contain findings of fact and conclusions of law to the extent applicable; and
- (8) The referee shall have the authority to rule on all post-hearing motions in the same manner as a trial judge.

The statement of decision of the referee upon all of the issues considered by the referee is binding upon the Parties, and upon filing of the statement of decision with the clerk of the court, or with the judge where there is no clerk, judgment may be entered thereon. The decision of the referee shall be appealable as if rendered by the court. This provision shall in no way be construed to limit any valid cause of action which may be brought by any of the parties. The parties acknowledge and accept that they are waiving their right to a jury trial.

ARTICLE X PROVISIONS BENEFITING LOCAL JURISDICTION

10.1. City Approval of Modification of Water Quality Management Plan Requirements. Notwithstanding anything to the contrary in this Declaration, the obligations of the Association and the Owners to comply with the requirements of the Water Quality Management Plan as provided in this Declaration shall not be amended or terminated without the prior consent of the City.

10.2. City Approval of Termination and/or Certain Amendments. Notwithstanding anything to the contrary in this Declaration, (a) this Declaration may not be terminated without the advance written consent of the City, and (b) no provision of this Declaration which was required by the conditions of approval for Tract No. 17815 may be amended unless such amendment is approved in writing in advance by the City.

[SIGNATURES ON FOLLOWING PAGE]

EXHIBIT "A"

ASSOCIATION PROPERTY

The Association Property includes the following:

Parcels A and B of Tract No. 17815, as shown on a subdivision map on file in Book _____, Pages ____ to ____, inclusive, of Maps, in the Office of the San Bernardino County Recorder

The landscaped areas within the Properties (as generally shown on the drawing(s) attached hereto), including the vegetated bio-swale located therein, and all utilities, irrigation and drainage improvements serving the foregoing.

The landscaped area within a public right of way adjacent to the Properties (as generally shown on the drawing(s) attached hereto).