

PLEASE COMPLETE THIS INFORMATION

RECORDING REQUESTED BY:

AND WHEN RECORDED MAIL TO:

15260 Ventura Blvd #1400
Sherman Oaks, Ca
91403

Recorded in Official Records, County of San Bernardino



LARRY WALKER
Auditor/Controller - Recorder

P Counter

11/16/2004

2:35 PM

AR

Doc#: 2004-0833090



Titles: 1 Pages: 47

Fees	146.00
Taxes	0.00
Other	1.00
PAID	\$147.00

SPACE ABOVE FOR RECORDER'S USE ONLY

Second Amended and Restated Declaration
of Covenants, ^{Title of Document} Conditions, restrictions
of Eagle Knoll.

THIS AREA FOR
RECORDER'S
USE ONLY

THIS COVER SHEET ADDED TO PROVIDE ADEQUATE SPACE FOR RECORDING INFORMATION
(\$3.00 Additional Recording Fee Applies)

**SECOND AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF EAGLES KNOLL COMMUNITY ASSOCIATION**

I, John Riedl, certify and declare that: I am the duly elected President of the Eagles Knoll Community Association, a California non-profit, mutual benefit corporation.

Various individuals comprising the members of the association are the owners of certain property located in the County of San Bernardino, State of California, more particularly described as:

Lots 19 to 87 and Lot B of Tract No. 10693 in the County of San Bernardino, State of California, as per map recorded in book 153, pages 77-85, of maps, recorded in the office of the County Recorder and Lots 1 to 35 and Lots A and B of Tract No. 10540 in the County of San Bernardino, State of California, as per map recorded in book 153, pages 86-89, of maps, recorded in the office of the County Recorder.

The Declarant established a general plan for the protection, maintenance, improvements and development of the Property and has fixed covenants, conditions, restrictions, easements, reservations, liens and charges upon and subject to which all the Property and each portion thereof and for the benefit of the declarant and each present and future owner. Said covenants, conditions and restrictions are set forth in that certain set forth in the original Declaration of Covenants, Conditions and Restrictions recorded on August 19, 1980 as Instrument No. 80-184579, which were amended and restated in Instrument No. 81-274867 and amended in Instrument No. 2004-0274147, recorded on April 21, 2004.

Said Declaration provides that the Association has been created under the laws of the State of California for the purpose of enforcing the covenants, conditions and restrictions placed upon the Property and protecting the value, desirability and attractiveness of the Property.

The following is a true and correct copy of a resolution duly adopted by the Association pursuant to written ballots on or about October 1, 2004, and entered into the Minute Book of the Association. The resolution was adopted pursuant to Article XIV, Section 14.18 of the Declaration, with a seventy five percent majority of members voting in favor of the amendment.

The resolution is in conformity with the Articles of Incorporation, By-laws, and Declaration and the Articles of Incorporation and By-laws have never been repealed, and are now in full force and effect.

WHEREAS, amendment of the Declaration is provided for in Article XIV of the Declaration and is authorized under Civil Code Section 1355; and

WHEREAS, proof being presented that all requirements of Civil Code Section 1355 and the requisite number of owners voting approval under Article XVI; and

WHEREAS, neither the Articles of Incorporation of this Association nor the By-laws prohibit the members from amending the Declaration; and

WHEREAS, the requisite percentage of members have voted in favor of amendment of the Declaration;

NOW, THEREFORE, this Declaration shall supersede and replace in its entirety the FIRST AMENDED AND RESTATED DECLARATION and any and all amendments and supplements thereto, and the same shall be considered to be of no further force and effect following the recordation of this Declaration.

ARTICLE 1

DEFINITIONS

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

Articles shall mean and refer to the Articles of Incorporation of the Association which were filed with the California Secretary of State, as same may be amended from time to time.

Architectural Committee shall mean and refer to the committee provided for in Article 7 hereof, entitled Architectural Control.

Association shall mean and refer to EAGLES KNOLL COMMUNITY ASSOCIATION, INC., a California nonprofit mutual benefit corporation, its successors and assigns.

Assessments

Regular Assessment shall mean a charge against an Owner or Lot to pay for the obligations of the Association under the governing documents as budgeted under Civil Code Section 1365.

Special Assessments shall mean a charge against an Owner or Lot levied by the Board or the Association pursuant to Civil Code Section 1366 to pay for obligations of the Association which were not projected in the budget. Included within this category of assessment are Capital Improvement Assessments for construction of new improvements as part of the Community Facilities and Reconstruction Assessments for expenses of repairing or reconstructing Community Facilities which are not funded through the reserve funds of the Association.

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

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

Common Expenses shall mean and refer to all the expenses incurred by the Association in performing its obligations under the governing documents, including but not limited to maintenance, repair or replacement of Community Facilities, procuring insurance required hereunder, funding of reserves, taxes and other expenses deemed to be in the best interest of the membership which benefits and enhances the value of the Covered Properties.

Community Facilities shall mean and refer to the following real property: Lots B, 32, 86 and 87 of Tract No. 10693 and Lots A, B 34 and 35 of Tract No. 10540, all in the County of San Bernardino, State of California together with such other real property from time to time owned or

leased by or subject to easements in favor of the Association or for the common use and enjoyment of the Members, including, without limitation private storm drains, private streets, private utilities, private parks, open space, trails and slopes.

Covered Property shall mean and refer to Lots 19 to 87 and Lot B of Tract No. 10693 in the County of San Bernardino, State of California, as per map recorded in book 153, pages 77-85, of maps, recorded in the office of the County Recorder and Lots 1 to 35 and Lots A and B of Tract No. 10540 in the County of San Bernardino, State of California, as per map recorded in book 153, pages 86-89, of maps, recorded in the office of the County Recorder.

County shall mean and refer to the County of San Bernardino.

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

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

Lot shall mean and refer to any lot shown on any final map which is part of the Covered Property

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

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

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

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

Lake shall mean and refer to Big Bear Lake.

Lot Owner or Owner shall mean and refer to the record Owner, whether one (1) or more persons or entities, of fee simple title to any Lot which is part of the Covered Properties other than the Community Facilities, but excluding those having such interests merely as security for the performance of an obligation.

Project shall mean the Covered Properties and all improvements located thereon.

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

ARTICLE 2

RIGHTS OF USE

Section 2.1 Title to the Community Facilities. Association shall own fee simple title to the Community Facilities, free and clear of all encumbrances and liens, except easements, covenants, conditions and reservations then of record, including those set forth in this Declaration.

Section 2.2 Owner's Easements of Enjoyment. Every Owner of a Lot shall have a right and easement of ingress, egress and of enjoyment in and to the Community Facilities which shall be appurtenant to each and every Lot, subject to the following provisions:

The right of the Association to grant underground easements under the Community Facilities to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members. Notwithstanding any contrary provision in the Articles or Bylaws, so long as there is any Community Facility for which the Association is obligated to provide management, maintenance, preservation, or control, no such dedication or transfer shall be effective unless approved by the vote or written assent of sixty-six and two-thirds percent (66-2/3%) of the Members of the Association. and an instrument executed by both the President and Secretary of the Association affecting such dedication or transfer, has been recorded;

The right of the Association, in accordance with its Articles of Incorporation and Bylaws, to borrow money for the purpose of improving the Community Facilities and in aid thereof, and with the assent of two-thirds (2/3) of the Members, to hypothecate any or all real or personal property owned by the Association. The action herein requiring membership approval shall require the vote or written consent of two-thirds (2/3) of the voting power of Members of the Association.

The right of the Association to adopt and enforce reasonable rules regarding the use of the Community Facilities and the easements, including but not limited to restrictions on the number of guests and the right of the Association to suspend the rights of Owners to use Community Facilities for violations of rules pursuant to the due process provisions of Civil Code Section 1363 and Corporation Code Section 7341 as amended from time to time.

The right of the Association to assign, rent, license or otherwise designate and control the use of unassigned parking or storage areas within the Community Facilities and to charge reasonable fees for use.

The right of the Association to adopt and enforce rules concerning the control and use of any private streets, roadways or paved areas located upon the Community Facilities including the right to regulate the type of vehicles and their speed and the parking of vehicles upon such streets, roadways and paved areas. The Association is authorized to delegate to a municipality or other governmental entity or to contract with any private security company to exercise its authority in connection with said private streets, roadways and paved areas.

Section 2.3 Delegation of Use. Any Owner may delegate, in accordance with the Bylaws of the Association, his rights of enjoyment to the Community Facilities to his guests, licensees, and invitees, and to the members of his family, his tenants or contract purchasers who reside on his Lot. However, in the event an Owner leases his or her property to a tenant or sells the Lot to a contract purchaser, the Owner nor his family, guests or invitees be entitled to use or enjoy any of the rights

in the project while the Lot is occupied by the tenant or contract purchaser. Such delegation of use shall not otherwise effect the obligations of the Owner of a Lot under this Declaration.

Section 2.4 Entry or Use Rights. Each Lot and the Community Facilities shall be subject to the following rights of entry and use:

- 2.4.1 The right of the Association or its agents to enter any Lot to cure any violation or breach of the Declaration or governing documents of the Association, provided that at least thirty days prior written notice to cure has been given and the Owner has not complied with the notice to cure. Where permissible under Civil Code Section 1366, the Association may levy a special assessment against the Owner to reimburse expenses incurred to cure or correct a condition. These rights shall be immediate in the event of an emergency situation originating on or effecting any Lot or Community Facility.
- 2.4.2 The right of the Association or its agent to enter any of the Lots to perform its obligations and duties under the Declaration, including those related to construction, repairs and maintenance for the benefit of the Community Facilities or the Owners in common, such as landscaping services or the maintenance of utility lines or installations. These rights shall be immediate in the event of an emergency situation originating on or effecting any Lot or Community Facility.
- 2.4.3 The right of the Association and Owners of adjoining Lots to entry upon and access to slopes and drainage ways located upon a Lot when access is necessary for maintenance, repair or stabilization of slopes or drainage, or both, on such adjoining Lots, provided that requests are made in advance and are reasonably convenient to the Owner whose Lot is being entered upon. These rights shall be immediate in the event of an emergency situation originating on or effecting any Lot or Community Facility.

Section 2.5 Minor Encroachments. Each Lot and its Owner shall have and is granted an easement over all adjoining Lots and the Community Facility for the purpose of accommodating any encroachment due to engineering errors, original construction errors, settlement or shifting of structures or any other cause as long as the encroachment remains. No easement shall be granted in the event that the encroachment was caused by the willful misconduct of the Owner. In the event a structure on any lot is partially or totally destroyed and subsequently repaired, the Owner of each Lot agrees that minor encroachments over adjoining Lots and Community Facilities shall be permitted and there shall be a valid easement for same, including but not limited to encroachments from overhanging roofs, eaves, fireplace structures and other components which are rebuilt in accordance with the original plans and specifications.

ARTICLE 3

MEMBERSHIP AND VOTING RIGHTS IN HOMEOWNERS' ASSOCIATION

Section 3.1 Formation. The Original Declarant formed an incorporated homeowners' association known as the EAGLES KNOLL COMMUNITY ASSOCIATION, INC., a California nonprofit mutual benefit corporation (the "Association"). The Association shall be primarily responsible for the management and maintenance of the Community Facilities and for the maintenance of the landscaping and other items as set forth in this Declaration.

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

Section 3.3 Voting Rights. The Association shall have one (1) class of voting membership. Members shall be all Owners, and shall be entitled to one (1) vote for each Lot owned. When more than one (1) person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

ARTICLE 4

POWERS OF THE ASSOCIATION AND MEMBERSHIP MEETINGS

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

- 4.1.1 Except as otherwise provided herein, the Association shall have the sole and exclusive right and duty to manage, operate, control, repair, replace, or restore the Community Facilities, including but not limited to, all the improvements, trees, shrubbery, plants and grass and the walks within the Community Facilities of the Project.
- 4.1.2 The Association shall have the right and power to levy and collect assessments.
- 4.1.3 The Association shall pay the taxes and assessments, if any, which may be levied by any governmental authority on the Community Facilities of the Project or any part thereof.
- 4.1.4 The Association shall maintain a bank account or accounts for funds coming under the control of the Association.
- 4.1.5 The Association shall have the right and power to adopt and enforce architectural guidelines ("Architectural Guidelines") for the Project.
- 4.1.6 The Association shall adopt rules and regulations ("Rules and Regulations") not inconsistent with the provisions of this Declaration, including, but not limited to, Rules and Regulations relating to the use of the Community Facilities of the Project.
- 4.1.7 The Association shall have the right and power to enforce the provisions of this Declaration, the Bylaws, Articles of Incorporation and Rules and Regulations of the Association; provided, however, nothing contained in this Paragraph shall be construed to prohibit enforcement of same by any Owner.
- 4.1.8 The Association has the right and power to contract for and maintain fire, earthquake, casualty, liability, worker's compensation, medical, hospital, and other insurance insuring Owners, members of the Board, and other persons.
- 4.1.9 The Association has the right and power to contract, provide and pay for (I) maintenance, utility, gardening and other services benefitting the Project; (ii) payment of persons necessary to accomplish the obligations of the Association; and (iii) legal and accounting services.
- 4.1.10 Notwithstanding any of the foregoing, the Association, acting through its Board, may not enter into any contract binding for a term longer than one (1) year from the effective date thereof without the vote or written consent of a majority of the voting power of the Members of the Association, except as specifically authorized herein or in the Articles or Bylaws. This provision shall not apply to contracts for property-casualty or liability insurance.

- 4.1.11 The Association has the right and power to contract for the purchase of tools, equipment, materials, supplies and other personal property and services for the maintenance and repair of the facilities and improvements of the Project.
- 4.1.12 The Association has the right and power to contract for and pay for reconstruction of any portion or portions of the Community Facilities damaged or destroyed. The Association has the right to contract with the Big Bear Municipal Water District for the operation of dock facilities on the covered properties in conformity with the rules and regulations of the District and to specially assess the members who utilize such facilities to reimburse the Association for all costs incurred in connection therewith.
- 4.1.13 The Association has the right and power to delegate its powers to others where such delegation is proper, including but not limited to the hiring of a Professional Management Company to assist in the administration of the Association. Any agreement for professional management of the project shall provide that said agreement is terminable by either party, with or without cause and without payment of a termination fee on thirty (30) days written notice. The term of such agreement shall not exceed one year, but may be renewed from year to year as approved by the Board.
- 4.1.14 Subject to the vote or written consent therefor from sixty-six and two-thirds percent (66-2/3%) of the voting power of the membership, the Association may borrow money, and may mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.
- 4.1.15 The Association may do any and all things that a nonprofit mutual benefit corporation organized under the laws of the State of California may lawfully do, and generally may do and perform any and all other acts which may be either necessary for, or incidental to, the exercise of any of the foregoing powers, and any other such powers as are granted to a corporation by the provisions of the laws of the State of California.
- 4.1.16 The Association may acquire by gift, purchase or otherwise own, hold, enjoy, lease, operate, maintain, convey, sell, transfer, mortgage, or otherwise encumber, dedicate for public use, or otherwise dispose of real and/or personal property in connection with the business of the Association; provided, however, that the Association shall not acquire or sell any real or personal property having an individual or aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year by purchase or lease without first obtaining the vote or written consent therefor from a majority of the voting power of the membership.
- 4.1.17 The Association shall have the right and power to suspend a Member's voting rights for any period during which any assessment against his Lot remains unpaid and delinquent; and for a period not to exceed thirty (30) days for any single infraction of the Rules and Regulations of the Association, provided that any suspension of such voting rights, except for failure to pay assessments, shall be made only by the Association or a duly appointed committee thereof, after notice and hearing given and held in accordance with the Bylaws

of the Association.

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

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

4.1.19 If an Owner fails to accomplish any maintenance or repair required by this Declaration, the Association has the right (but not the obligation) to cause such maintenance or repair to be accomplished according to the following regulations:

(a) The Board must give the Owner a Notice of Deficiency that outlines the problem and set a date for a hearing before the Board or its appointed Committee.

(b) A hearing must be held at the next regularly scheduled meeting of the Board or Committee and in no case more than 45 days after the Notice of Deficiency's delivery date and must be conducted as follows:

(1) According to reasonable rules and procedures adopted by the Board;

(2) The Owner may present evidence and cross-examine any person offering evidence against the Owner;

(3) A decision rendered against the Owner must set a date by which the Owner is to correct the deficiency; and

(4) A committee decision may be appealed to the Board, but a decision by the Board is final.

©) If the deficiency continues after the time limit imposed by the Board, such maintenance or repair may be accomplished according to the following regulations:

(1) After a written Notice of Action by the Board, the Owner has no more than ten (10) days to select a day(s) when such maintenance or repair may be accomplished;

- (2) The Owner must select a date between fifteen (15) and forty-five (45) days from the final day of the ten (10) day Notice of Action period;
- (3) If the Owner does not select a day(s), the Board may select dates to accomplish the work, between twenty-five (25) and fifty-five (55) days from the last day of the ten (10) day Notice of Action period; and
- (4) Unless the Owner and Board otherwise agree, such maintenance or repair must take place during daylight hours Monday through Saturday, excluding national holidays.
- (d) Any Association payments for such maintenance or repair must be reimbursed by the Owner within thirty (30) days. Failure to make such payments shall entitle the Association to use any means provided herein to collect said monies from the Owner, including attorneys fees and costs of collection.

4.1.20

Penalties for Non-Compliance.

(a) In recognition of the need for a reasonable means of encouraging and insisting upon compliance with the provisions of the Governing Documents without resorting to suits for injunctive relief, the Board is authorized to do the following:

- (1) Establish a reasonable policy of reasonable penalties, including monetary penalties (which specifies the amounts of potential monetary penalties);
- (2) Assess such penalties against any Owner found to be in violation of any provision of the Governing Documents; and
- (3) Temporarily suspend an Owner's voting rights as a Member of the Association for as long as the violation continues and suspend the owner's privileges to use the recreational facilities, and other services provided by the Association which do not affect habitability or safety.

(b) Notice and Hearing relating to the imposition of any penalties in this Section must be made in the following manner and at a minimum:

- (1) Notice must be given to the relevant Owner's most recent address in the Association's records at least fifteen (15) days before the proposed effective date of the penalty;
- (2) Notice must set forth details of the violation itself, the proposed penalty, and the date, time and place of the Hearing;
- (3) The penalized Owner may be heard (either orally or in writing) at a Hearing in executive session of the Board of Directors held at least five (5) days before the effective date of the proposed penalty;
- (4) Following the Hearing, the Board must decide whether or not the Owner should in fact be penalized, and the nature of the penalty. The decision of the

Board shall be final and binding upon the owner.

©) If the Association adopts a policy imposing any monetary penalty, including any fee on any member for a violation of the Governing Documents or rules of the Association, including any monetary penalty relating to the activities of a guest or invitee of a member, the Board shall adopt and distribute to each member by personal delivery or first-class mail, a schedule of the monetary penalties that may be assessed for those violations, which shall be in accordance with authorization for member discipline contained in the Governing Documents. (The Board shall not be required to distribute any additional schedules of monetary penalties unless there are changes from the schedule that was adopted and distributed to the members.)

(d) If an Owner fails to comply with a penalty imposed pursuant to the provisions of this Section, the Board may seek judicial enforcement of the penalty in any court of competent jurisdiction, with the Owner liable for all costs (collection costs, court costs, attorney's fees, etc.). However, such penalties and costs shall not be treated as an assessment that may become a prejudgment lien enforceable by Civil Code Section 2924.

(e) Notwithstanding the foregoing, the Owner shall be given, at a minimum, the rights set forth in Corporations Code Section 7341 or any successor statute.

Section 4.2 Duties. In addition to duties set forth in the Bylaws of the Association, the Association shall have the following duties:

- 4.2.1 The Association shall manage and maintain in good condition, and repair the Community Facilities, including the facilities, improvements, landscaping and other components of real and personal property acquired by or subject to the Association.
- 4.2.2 The Association shall maintain in good order and repair all drainage and flood control devices, improvements and equipment required by the various agencies of the County, if any.

Section 4.3 Fidelity Bond. The Association shall maintain a fidelity bond or insurance in an amount at least equal to the sum of three months' assessments on all Lots in the Project, which names the Association as obligee and insures against loss by reason of acts of members of the Board of Directors, officers and employees of the Association and any management agent and its employees, whether or not such persons are compensated for their services.

Section 4.4 Membership Meetings.

- 4.4.1 Meetings of the membership of the Association shall be conducted in accordance with a recognized system of parliamentary procedure or such parliamentary procedures as the Association may adopt. Notwithstanding any other provision of law, notice of meetings of the Members shall specify those matters the Board intends to present for action by the Members but, except as otherwise provided by law, any proper matter may be presented at the meeting for action. Members of the Association shall have access to Association

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

- 4.4.2 The minutes proposed for adoption that are marked to indicate draft status or a summary of the minutes, of any meeting of the Board of Directors of the Association, other than an executive session, shall be available to Members within thirty (30) days of the meeting. The minutes, proposed minutes, or summary minutes shall be distributed to any Member of the Association upon request and upon reimbursement of the Association's costs in making that distribution.
- 4.4.3 Members of the Association shall be notified in writing at the time that the Budget required in Section 6.2 below is distributed or at the time of any general mailing to the entire membership of the Association of their right to have copies of the minutes of meetings of the Board of Directors and how and where those minutes may be obtained, and the cost of obtaining such copies.
- 4.4.4 Association Members shall annually be provided a summary of the provisions of Section 1354, as set forth therein, which must include the following language: "Failure by any member of the association to comply with the prefiling requirements of Section 1354 of the Civil Code may result in the loss of your rights to sue the association or another member of the association regarding enforcement of the governing documents." This summary shall be provided either at the time the pro forma budget required by Section 1365 is distributed, or in the manner specified in Section 5016 of the Corporations Code.
- 4.4.5 Association Members shall annually be notified as to the amount and type of insurance coverage maintained by the Association as well as other disclosure requirements mandated by Civil Code section 1365.9.

ARTICLE 5

ASSESSMENTS

Section 5.1 Creation of Lien and Personal Obligation of Assessments. Each Owner of a Lot, covenants and agrees to pay to the Association: (a) annual assessments or charges, which shall include an adequate reserve fund for the periodic maintenance, repair and replacement of the Community Facilities, and (b) special assessments as provided in Section 5.4 below, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made, the lien to be effective upon recordation of a Notice of Delinquent Assessment. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due.

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

Section 5.3 Maximum Annual Assessment. The maximum annual assessment for each Lot shall be disclosed by the Association in the annual budget as provided under California statute. The Association shall maintain an adequate reserve fund for maintenance, repairs and replacement of those elements of the Community Facilities that must be repaired or replaced on a periodic basis, and such reserve shall be funded by annual assessments.

5.3.1 The maximum annual assessment may be increased effective January first of each year by the Board without a vote of the membership, provided that (i) any such increase shall not be more than twenty percent (20%) of the previous year's assessment, and (ii) the Board of Directors has complied with Section 6.2 below with respect to that fiscal year, including, but not limited to, the preparation and distribution of a pro forma operating budget to all members of the Association as provided in Section 6.2 below, or has obtained the approval of Owners, constituting a quorum, casting a majority of the votes at a meeting or election of the Association conducted in accordance with Chapter 5 (commencing with Section 7510) of Part 3 of Division 2 of Title 1 of the Corporations Code and Section 7613 of the Corporations Code. Such annual assessment shall continue in effect for the following twelve (12) calendar months, which period shall be deemed to be the assessment period.

5.3.2 The maximum annual assessment may be increased above the amount provided in subparagraph 5.3.1 by the vote or written assent of at least a majority of Owners in the Association, constituting a quorum (as defined below), provided that the Board of Directors has prepared and distributed a pro forma operating budget to all members of the Association as provided in Section 6.2 below. For purposes of this Declaration, "quorum" means more than fifty percent (50%) of the Owners of the Association. The Association shall provide notice by first-class mail to each Owner of any increase in the regular or special assessments of the Association, not less than thirty (30) nor more than sixty (60) days prior to the increased assessment becoming due.

5.3.3

The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

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

Section 5.5 Notice and Quorum for Any Action Authorized Under Sections 5.3 and 5.4. Any action authorized under Sections 5.3 and 5.4 shall be taken at a meeting called for that purpose, written notice of which shall be sent to all Members not less than ten (10) nor more than ninety (90) days in advance of the meeting. A quorum for such meeting shall be fifty-one percent (51%) of the Members entitled to vote on such action. If the required quorum is not present, another meeting may be called subject to the same notice requirement and the required quorum at the subsequent meeting shall be one-half (½) of the required quorum for the preceding meeting. If the proposed action is favored by a majority of the votes cast at such meeting but such vote is less than the requisite fifty-one percent (51%) of the Members, Members who were not present in person or by proxy may give their assent in writing, provided the same is obtained by the appropriate officer of the Association not later than thirty (30) days from the date of such meeting.

Section 5.6 Uniform Rate of Assessment. Both annual (regular) and special assessments, except as may be otherwise provided in Sections 5.4 and 12.3, shall be assessed on a uniform basis

Section 5.7 Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the date of conveyance of said lot. The first annual assessment to be paid by the Owners shall be adjusted according to the number of months remaining in the calendar year. The Board shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to the Owner of each Lot within the Project. The due dates for assessments shall be established by the Board of Directors.

Section 5.8 Effect of Non-Payment of Assessments; Remedies of the Association. Any

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

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

5.8.2 The Board may enforce any assessment lien provided for in Section 5.8 hereinabove, by filing an action for judicial foreclosure or, if the Notice contained the name and address of the trustee authorized by the Association to enforce the lien by nonjudicial foreclosure, by recording a notice of default in the form described in Civil Code Section 2924c(b) (1) to commence a non-judicial foreclosure. Any nonjudicial foreclosure shall be conducted in accordance with the requirements of Civil Code Sections 2924, 2924b, 2924c, 2924f, 2924 g, and 2924h that apply to nonjudicial foreclosures of Mortgages or deeds of trust. The sale shall be conducted by the trustee named in the Notice of Delinquent Assessment or by a trustee substituted in accordance with the provisions of the California Civil Code. The Association may bid on the Lot at the sale, and may hold, lease, mortgage, and convey the acquired Lot. If the default is cured before the sale, or before completing a judicial foreclosure, including payment of all costs and expenses incurred by the Association, the Association shall record a Notice of Satisfaction and Release of Lien, and on receipt of a written request by the Owner, a Notice of Rescission of the Declaration of Default and Demand for Sale. Suit to recover

a money judgment for unpaid assessments, rent and attorneys' fees shall be maintainable without foreclosing or waiving the lien securing the same.

- 5.8.3 A monetary penalty imposed by the Association as a disciplinary measure for (a) failure of an Owner to comply with this Declaration, and the Articles, Bylaws or Rules and Regulations of the Association, or (b) to bring an Owner or its Lot into compliance with this Declaration, and the Articles, Bylaws or Rules and Regulations of the Association shall not be treated as an assessment which may become a lien against the Owner's Lot enforceable by a sale of the Lot in accordance with the provisions of Sections 2924, 2924b and 2924c of the California Civil Code. This paragraph shall not apply to charges imposed against an Owner which are reasonable late payment penalties for delinquent assessments nor charges to reimburse the Association for the loss of interest and for costs reasonably incurred (including attorneys' fees) in its efforts to collect delinquent assessments. Pursuant to Civil Code Section 1367 (b) a monetary penalty imposed by the Association as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to Community Facilities for which the member or the member's guests or tenants were responsible may become a lien against the members separate interest in accordance with the provisions of Sections 2924, 2924b and 2924c of the California Civil Code.
- 5.8.4 In addition to the lien power described hereinabove, each Owner vests in the Association or its assigns, the right and power to bring all actions at law against such Owner or other Owners for the collection of delinquent assessments. In lieu of bringing an action at law to collect delinquent assessments, the Association may submit the matter to arbitration pursuant to the Rules of the American Arbitration Association. The decision of the arbitrator on such delinquent assessment shall be binding on both the Association and the delinquent Owner and may be enforced in any court of competent jurisdiction. The fee to initiate such arbitration shall be paid by the Association and shall be recoverable as part of the arbitration award, in addition to the late charges and interest on the delinquent assessment as provided above.
- 5.8.5 An Owner may elect to require the Association to follow the Alternative Dispute Resolution Procedures relative to an assessment dispute set forth in Civil Code Section 1366 and Civil Code Section 1354(b) provided the Owner complies with the provisions of said statutes. These alternative dispute resolution procedures include mediation, binding arbitration and non-binding arbitration.

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

Section 5.10 Subordination of the Lien to First Deeds of Trust and First Mortgages. The lien for the assessments provided for herein shall be subordinate to the lien of any first Mortgage upon any Lot. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to judicial or non-judicial foreclosure of a first Mortgage or any conveyance in

lieu thereof shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from lien rights for any assessments thereafter becoming due. Where the Mortgagee of a first Mortgage of Record or other purchaser of a Lot obtains title to the same as a result of foreclosure or conveyance in lieu thereof, such acquirer of title, his successors and assigns, shall not be liable for the share of the common expenses or assessments by the Association chargeable to such Lot which became due prior to the acquisition of title to such Lot by such acquirer. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the Lots including such acquirer, his successors and assigns.

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

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

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

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

- (a) An extraordinary expense required by an order of court;
- (b) An extraordinary expense necessary to repair or maintain the Project or any part of it for which the Association is responsible where a threat to personal safety on the property is discovered; or
- (c) An extraordinary expense necessary to repair or maintain the Project or any part of it for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the pro-forma operating budget pursuant to Article 6 hereof. However, prior to the imposition or collection of an assessment under this subparagraph ©), the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolutions shall be distributed to the members with the notice of assessment.

Section 5.15 Association Statement at Transfer of Title. At the request of any Owner transferring title to such Owner's Lot, the Association shall provide (I) a true statement in writing from an authorized representative of the Association as to the amount of the Association's current regular and special assessments and fees, as well as any assessments levied upon the Owner's Lot which are

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

ARTICLE 6

ACCOUNTINGS

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

- 6.1.1 The Association shall make the following documents available for inspection and copying by a Member or his duly appointed representative at the office of the Association upon request during normal business hours or under other reasonable circumstances:
- a) The Membership register, mailing addresses, books of account and minutes of meetings of the Board for any purpose reasonably related to a Member's interest. The membership register and membership information shall only be supplied after the Board reasonably determines that the Member has complied with the provisions of California Corporations Code Section 8330(a) by stating the purpose for which the inspection is sought.
 - b) For Owners, lenders, holders, insurers and guarantors of a First Mortgage on any Unit, current copies of all Governing Documents, books, records, and financial statements of the Association;
 - c) The Association may charge a fee to the requesting party for this service which may not exceed the reasonable cost to prepare and reproduce the requested items.
 - d) Copies of relevant California Code Sections referenced in any Governing Documents.

Section 6.2 Budget .

- 6.2.1 Except as provided in Section 6.2.2, a pro forma operating statement ("Budget") for each fiscal year shall be prepared and distributed to each Owner not less than forty-five (45) days nor more than sixty (60) days prior to the beginning of the fiscal year. The Budget shall contain the following information:
- a) The estimated revenue and expenses of the Association for the upcoming fiscal year on an accrual basis;
 - b) A summary of the Association's reserves based upon the most recent review or study conducted pursuant to Section 6.2.4 below, which shall be printed in bold type and include all of the following:
 - (i) The current estimated replacement cost, estimated remaining

life, and estimated useful life of each major component within the Community Facility which the Association is responsible for repair, replacing or maintaining;

(ii) As of the end of the fiscal year for which the

- A. The current estimate of the amount of cash reserves necessary to repair, replace, restore, or maintain the major components within the Community Facility;
- B. The current amount of accumulated cash reserves actually set aside to repair, replace, restore or maintain major components within the Community Facility.

(iii) The percentage of the reserves which are funded.

- c) A statement as to whether the Board of Directors of the Association has determined or anticipates that the levy of one or more special assessments will be required to repair, replace, or restore any major component within the Community Facilities or to provide adequate reserves therefor; and a general statement setting forth the procedures used by the governing body in the calculation and establishment of reserves to defray the costs of repair, replacement or additions to major components of the Community Facilities for which the Association is responsible

6.2.2 In its sole discretion, and in lieu of the procedure set forth in Section 6.2, the Board of Directors may elect to distribute a written summary of the Budget ("Summary") to all Owners not less than forty five (45) days nor more than sixty (60) days before the beginning of the fiscal year. In addition to the Summary, the Board of Directors shall include a written notice, in at least 10 point bold type on the front page of the Summary stating that: a) the Budget is available for review at a location within the Project or at the office of the management company for the Association; and b) upon the written request of an Owner, the Association shall mail one copy of the Budget to an Owner. Such Budget shall be mailed at the Association's expense by pre-paid first class mail and shall be delivered within five (5) days from the date of the receipt of such Owner's written request.

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

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

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

- (a) Identification of the major components within the Community Facilities which the Association is obligated to repair, replace, restore, or maintain which, as of the date of the study, have a remaining useful life of less than thirty (30) years;
- (b) Identification of the probable remaining useful life of the components identified in Paragraph 6.2.4(a) as of the date of the study;
- ©) An estimate of the cost of repair, replacement, restoration, or maintenance of each major component identified in Paragraph 6.2.4(a) during and at the end of its useful life;
- (d) An estimate of the total annual contribution necessary to defray the cost to repair, replace, restore, or maintain each major component during and at the end of its useful life, after subtracting total reserve funds as of the date of the study.

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

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

Section 6.3 intentionally omitted.

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

- (a) A balance sheet as of the end of the fiscal year;
- (b) An operating (income) statement for the fiscal year;
- ©) A statement of changes in financial position for the fiscal year;
- (d) Any information required to be reported under Section 8322 of the Corporations Code; and
- (e) A review of the annual report for the Association prepared in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy, ("Independent Accountant"); and
- (f) A statement of policies and procedures employed by the Board of Directors to enforce the collection of delinquent assessments.

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

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

Section 6.7 Association Officer Statement. If the report referred to in Section 6.5 above is not prepared by an independent accountant, it shall be accompanied by the certificate of an authorized officer of the Association stating that the report was prepared without audit from the books and records of the Association.

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

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

- (a) Cause a current reconciliation of the Association's operating accounts to be made and review the same;
- (b) Cause a current reconciliation of the Association's reserve accounts to be made and review the same;
- (c) Review the current year's actual reserve revenues and expenses compared to the current year's budget;
- (d) Review the most current account statements prepared by the financial institution where the Association has its operating and reserve accounts; and
- (e) Review an income and expense statement for the Association's operating and reserve accounts.

Section 6.10 Reserve Account.

- 6.10.1 Withdrawal of funds from the Association's reserve account shall require the signatures of either: (1) two members of the Board of Directors, or (2) one member of the Board of Directors and an officer of the Association who is not also a member of the Board of Directors.
- 6.10.2 The Board of Directors shall not expend funds designated as reserve funds for any purpose other than:

- (a) the repair, restoration, replacement, or maintenance of major components which the Association is obligated to repair, restore, replace or maintain and for which the reserve fund was established, or
- (b) litigation involving the purposes set forth in (a) above;

6.10.3 Notwithstanding Section 6.10.2 above, the Board:

- (a) may authorize the temporary transfer of money from the reserve account to the Association's operating account to meet short term cash flow requirements or other expenses, provided that the Board has made a written finding, recorded in the Board's minutes, explaining the reasons that the transfer is needed, and describing when and how the money will be repaid to the reserve account .
- (b) shall cause the transferred funds to be restored to the reserve account within one (1) year of the date of initial transfer; however, the governing body may, upon making a documented finding that a temporary delay of restoration of the funds to the reserve account would be in the best interests of the development, temporarily delay the restoration until such time it reasonably determines to be necessary.
- ©) shall exercise prudent fiscal management in delaying restoration of the transferred funds to the reserve account and shall, if necessary, levy a special assessment to recover the full amount of the expended funds within the time limits specified in (b) above. Any such special assessments shall be subject to the five percent (5%) limitation specified in Section 5.4 above. The Board may, at its discretion, extend the date the payment on the special assessment is due. Any extension shall not prevent the Board from pursuing any legal remedy to enforce the collection of an unpaid special assessment. When the decision is made to use reserve funds or to temporarily transfer money from the reserve account to pay for litigation, the Board shall notify the Members of that decision in the next available mailing to all Members pursuant to Section 5016 of the Corporations Code, and of the availability of an accounting of the expenses related to litigation on at least a quarterly basis. The accounting shall be made available for inspection by Members at the Association's office.

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

ARTICLE 7

ARCHITECTURAL CONTROL COMMITTEE

Section 7.1 Submissions and Approvals Required No building, fence, wall or other structure, landscaping or improvement (collectively "Improvement") shall be commenced, erected, placed or altered upon any Lot until the location and complete plans and specifications showing the nature, kind, shape, height and materials, including the color scheme, have been submitted by personal delivery or certified mail, return receipt requested, to and approved in writing as to harmony of external design and location of surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee appointed by the Board of Directors and composed of three (3) or more, but not to exceed five (5), representatives. The architectural committee may designate an agent (i.e. an architect) for the purpose of assisting in the review of such location, plans and specifications or other requests and may charge the Owner making a submission its reasonable costs of such agent's review. Approval shall be by majority vote of the Board or its designated committee. In the event the Board or its designated committee fails to approve or disapprove such location, plans and specifications or other requests within sixty (60) days after receipt of the submission thereof to it, then the application for approval of said location, plans and specifications or other requests shall be deemed approved provided that any structure or Improvement so erected or altered, conforms to all of the conditions and restrictions herein contained, and is in harmony with similar structures erected within the Properties. Grade, level or drainage characteristics of the Lot or any portion thereof, shall not be altered without the prior written consent of the Board or its designated committee. Each Owner shall be responsible for obtaining all necessary approvals or permits from applicable governmental entities or agencies and shall comply with all laws, codes and regulations concerning the construction of any such Improvements.

Section 7.2 Appointment of Architectural Committee. The Board of Directors of the Association shall have the power to appoint all of the members of the architectural committee. Members appointed to the architectural committee by the Board of Directors shall be from the membership of the Association.

Section 7.3 Views. In granting or denying the architectural approvals required hereunder, the architectural committee shall consider the effect of any Improvement on the views of adjacent Lots. No vegetation or other obstruction shall be approved in any location or of such height as to unreasonably obstruct the view from any other Lot in the vicinity thereof; nor will any vegetation be allowed to grow to such a height or density as to unreasonably obstruct such views. In the event of a dispute between Owners as to the obstruction of a view from a Lot, such dispute shall be submitted to the architectural committee, whose decision in such matters shall be binding. Any such obstruction shall, upon request of the architectural committee, be removed or otherwise altered to the satisfaction of the architectural committee, by the Owner upon whose Lot said obstruction is located. If said Owner fails to take such action as required, the Association, architectural committee, or their authorized agents or employees, may, but is not obligated to, enter upon such Lot, rectify the condition, and charge such Owner the cost thereof.

Section 7.4 Non-Liability of Architectural Committee Members. The Association, the Board or the architectural committee, or the members or designated representatives thereof, shall not be liable for damages to any Owner submitting plans or specifications to them for approval, or to any Owner in the Project affected by this Declaration by reason of mistake in judgment, negligence or nonfeasance, unless due to willful misconduct or bad faith of the architectural committee. The

architectural committee's approval or disapproval of a submission shall be based solely on the consideration set forth in this Article, and in such rules and regulations as may be promulgated by the architectural committee, and the architectural committee shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any plans or design from the standpoint of structural safety and conformance with building or other codes .

Section 7.5 Fences or Walls.

7.5.1 As to non-lakefront lots, the following provisions shall apply: No fence or wall shall be constructed, erected or installed within five (5) feet of the lot line of any Residence as depicted on the applicable Tract Map for the subdivision. No fence or wall may be constructed, erected or installed such that it extends beyond any portion or element of the front elevation of the dwelling structure on a Lot. Notwithstanding the location of any area enclosed by fencing or wall, the area so enclosed shall not exceed ten percent (10%) of the total square footage of a given Lot.

7.5.2 As to lakefront lots, the following provisions shall apply: No fence or wall shall be constructed, erected or installed within five (5) feet of the side Lot line of any Residence as depicted on the applicable Tract Map for the subdivision. No fence or wall shall be constructed, erected or installed such that it extends beyond any portion or element of the front or rear elevation of the dwelling structure on a Lot. Fences or walls shall not exceed a height of four (4) feet and shall not be of closed construction. The Architectural Committee shall not have the discretion to permit a variance as to the fence height limitation.

7.5.3 The above provisions shall be applicable to fence and wall conditions not in place as of the date of adoption of this amended provision. All fence and wall conditions in existence as of the date of adoption shall not be subject to these limitations, provided that Architectural approval was given by the Architectural Committee. The above provisions shall be applicable to modifications or additions of pre-existing fence/wall conditions sought after the adoption of this amended provision.

Section 7.6 Minimum Sizes of Residences

7.6.1 Each dwelling structure on a Lot which is constructed after April 13, 2004, shall meet or exceed the following minimum size standards: (i) a single story residential dwelling structure, exclusive of garage, shall comprise a minimum of 2,100 square feet of living space; (ii) a multi-story residential dwelling structure, exclusive of garage, shall comprise a minimum of 2,700 square feet of living space.

7.6.2 To the extent that site conditions or governmental regulations or restrictions do not permit the Owner to obtain permits for structures which meet the minimum size requirements set forth above, the minimum permissible size of the dwelling structure shall be the size that captures the maximum square footage given the existing site conditions and governmental regulations or restrictions. Owners seeking approval from the Association for a dwelling structure which is smaller than the minimum sizes described above shall have the burden of establishing to the Architectural Committee that limiting conditions do exist on the Lot and that the proposed plans capture to the maximum squared footage given the limiting conditions. Upon the Owner satisfactorily establishing these conditions and the capture of the maximum square footages, the Architectural Committee shall approve such applications, provided all other applicable requirements are met.

This provision shall not apply to rebuilding necessitated by a natural disaster or property-casualty loss. This provision shall apply to renovations or remodeling wherein at least 50 % of the existing structure is to be replaced with new construction.

Section 7.7 Appeals. In the event that the Architectural Committee denies or disapproves an application or plans submitted, the party submitting said application or plans may appeal in writing to the Board of Directors. The written appeal shall not be considered unless submitted in writing within thirty (30) days after the final decision of the Architectural Committee is received by the applicant. The written appeal shall set forth all bases for the appeal. Within forty-five (45) days after the appeal is received by the Board, a written decision granting or denying the appeal shall be provided to the applicant. Failure of the Board to provide a timely written decision shall be deemed a rejection of the appeal.

ARTICLE 8

USE RESTRICTIONS AND OBLIGATIONS OF OWNERS

Section 8.1 Use Restrictions. In addition to all other covenants contained herein, the use and enjoyment of the Properties and each Lot therein shall be subject to the following:

- 8.1.1 No Lot shall be occupied and used except for single family residential purposes by the Owners, their tenants, and social guests, and no trade or business shall be conducted therein except a private office may be maintained within a residence or in a single stall of a garage, provided that customers, clients, vendors or suppliers do not visit said office. No tent, shack, trailer, garage, outbuilding or structure of a temporary character shall be used at any time as a residence, either temporarily or permanently.

All leases, rentals, time-shares or other tenancy's or rights of occupancy shall have a duration of not less than twelve (12) consecutive calendar months. Upon request by the Association, an Owner who leases, rents or otherwise transfers rights of occupancy to a third party (other than a member of Owner's immediate family) shall provide the Association with satisfactory written proof of the twelve month duration, including identification of and contact information of the responsible person occupying the dwelling. Owner shall be responsible for providing any third party lessee or occupant of a Residence with a copy of all applicable governing documents of the Association at the commencement of the occupancy.

- 8.1.2 No part of the Project shall ever be used or caused to be used directly, or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending or other such nonresidential purposes .

- 8.1.3 Subject to Civil Code Sections 712, and 713 and any local ordinance, an Owner may advertise a Lot for sale or lease with sign(s) with a size, format, and location previously approved by the Board. No sign or billboard of any kind shall be displayed by any Owner on any portion of the Covered Property, except one sign of reasonable size, advertising that the particular Lot is for sale or rent which otherwise complies with the Rules and Guidelines of the Association as adopted from time to time.

An Owner may, pursuant to Civil Code Section 1353.6 display a non-commercial sign, poster, flag or banner. The sign, poster, flag or banner may be made of paper, cardboard, cloth, plastic or fabric and may be posted or displayed from the window, door, balcony or outside wall of the residence on the Lot. The sign, poster, flag, or banner shall not be made of lights, roofing, siding, paving materials, flora or balloons or similar materials and shall not include the painting of architectural surfaces. The signs and posters permitted hereunder shall not exceed 9 square feet in size. Flags and banners shall not exceed 15 square feet in size.

- 8.1.4 No noxious or offensive activity shall be carried on in any Lot or any part of the Project, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood, or which shall in any way interfere with the quiet enjoyment of each of the Owners of his respective Lot or which shall in any way increase the rate of insurance or otherwise violate any law, statute or regulation. Included within this category are repairs of automobiles and other motorized vehicles conducted outside the confines of garage space.
- 8.1.5 No trailer, camper, boat, recreational vehicle or similar equipment or inoperative vehicle shall be permitted to remain upon the Covered Property, including without limitation, streets or driveways, unless placed or maintained within an enclosed structure, nor permitted to be parked other than temporarily on any street, alley, or other portion of the Covered Property. No vehicles, such as minibikes or ATV's shall be permitted to be operated within the Covered Property. Temporary parking shall mean parking of vehicles belonging to guests of Owners, delivery trucks, service vehicles and other commercial vehicles being used in the furnishing of services to the Association or the Owners and parking of vehicles belonging to or being used by Owners for loading and unloading purposes. The Board may adopt rules for the regulation of the admission and parking of vehicles within the Covered Property, including the adoption of fines or penalties for the violation of said rules by Owners, their guests or tenants. In addition, the Board may designate certain parking areas for guests. In no event shall vehicles be permitted to park overnight on any private street within the Covered Property, nor shall any vehicle interfere with or block the ingress or egress of any other Owner to a driveway within the Covered Property.
- 8.1.6 An Owner may keep and maintain on his Lot domesticated pets such as dogs, cats, caged indoor birds or other usual and ordinary household pets, provided that such pets shall not be allowed in the Common Facilities except as may be permitted by the Rules and Regulations which may be promulgated from time to time by the Board. Except as hereinabove provided, no animals, livestock, miniature animals, birds or poultry shall be brought within the Covered Property or kept in any Lot thereof. Owners keeping pets shall be accountable to the other Owners for the acts of such pets, and should any Owner be unable to control barking or other noise or acts of his pets which disturb his neighbors, he shall be required to remove such pet from the Project. No dog will be allowed on the Community Facilities without being supervised. Any Owner (including such Owner's family, guests and invitees) who maintains any pet, animal, reptile, livestock or other living creature of any kind, within the Project, whether in compliance with this Declaration and the Rules and Regulations or otherwise, shall indemnify, defend and hold the Association harmless from and against any damages, claims, causes of action or losses of any kind or nature, including reasonable attorney's fees and costs, incurred by the Association as a result of any alleged damage or injury caused by such living creature to the Association, to its property, to the Community Facilities, or to the Members, their family, guests or invitees, or their property.
- 8.1.7 No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind, shall be permitted within the Project, nor shall oil

wells, tanks, tunnels or mineral excavations or shafts be permitted upon the surface of or within five hundred (500) feet below the surface of the Project. No derrick or other structure designed for use in boring for water, oil or natural gas shall be erected, maintained or permitted within the Project.

- 8.1.8 All rubbish, trash and garbage shall be regularly removed from the Project, and shall not be allowed to accumulate thereon. Except as scheduled for pick-up, trash receptacles shall be stored out of public view from Community Facilities or the street. All clotheslines, refuse containers, wood-piles, storage areas, machinery and equipment shall be stored out of public view.
- 8.1.9 Except as provided in Civil Code Section 1376, no roof mounted or other externally mounted radio and/or television antenna systems, shall be permitted within the Covered Property; except that an antenna or satellite dish that has a diameter or diagonal measurement of thirty-six inches (36") or less and is not readily visible from any street or Community Facility, may be permitted subject to and only after application to and approval by the Architectural Committee. Each Owner may maintain individual radio or television antennae systems if located entirely within such Owner's dwelling and if such system is not visible from other Lots or the Community Facilities, and provided that such system does not interfere with radio and television reception of other Owners within the Covered Property.
- 8.1.10 The term drainage pattern and system includes, but is not necessarily limited to, underground drain pipes, above or below ground, patterns of drainage over or through Residences and roofs from and to adjoining properties and improvements. Each owner with respect to his Residence and the Association with respect to the Community Facilities shall have the right to use the established drainage pattern and system for the purpose of draining their respective Lots and improvements thereon, provided that such right of drainage shall no include th right to discharge noxious or offensive matter. Water from any Lot and improvements thereon may drain or flow onto adjacent streets.. Water shall not be allowed to drain or flow onto adjacent Lots except to the extent provided for by the established drainage pattern and system. All slopes or terraces on any Lot shall be maintained as provided herein so as to prevent the modification or erosion of the established drainage patterns and system and to prevent any erosion of the Lots upon adjacent streets or adjoining
- 8.1.11 Each Owner of a Lot has the responsibility and duty to maintain the appearance and integrity of all slope areas and drainage devices located within his Lot. Each Owner of a Lot has the responsibility and duty to determine the drainage characteristics of his or her Lot and to install and maintain appropriate drainage devices or systems to prevent damage to the Lot, Community Facilities and adjacent Lots.
- 8.1.12 Each Owner of a Lot within the Covered Property covenants for himself, his heirs, successors and assigns, that he will permit free access by Owners of adjacent or adjoining Lots and by the Association, its agents and employees, to all slope areas or drainageways located on his Lot, which affect said adjacent or adjoining Lots, which access is essential for the maintenance or

permanent stabilization of said slopes, or maintenance of the drainage facilities for Lots other than the Lot on which the slope or drainageway is located.

- 8.1.13 Each Owner of a Lot within the Covered Property covenants for himself, his heirs, successors and assigns, that he will not in any way interfere with the established drainage patterns or create erosion or sliding problems over his Lot or Community Facilities from adjoining or other Lots within the Covered Properties and that he will make adequate provisions for proper drainage in the event it is necessary to change the established drainage over his Lot. For the purposes hereof, "established drainage" is defined as the drainage which occurred at the time the Owner's Lot was graded.
- 8.1.14 Each Owner of a Lot within the Covered Properties shall maintain the slopes within his Lot at the slope and pitch fixed by the finished grading thereof, including watering and planting of the slopes. Within slope areas, no structure, planting, or other material shall be placed or permitted to remain or other activities undertaken which may damage or interfere with established slope ratios, create erosion or sliding problems, or which may change the direction of flow of drainage channels or obstruct or retard the flow of water through drainage channels. The slope areas of each Lot and all improvements thereto shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible.
- 8.1.16 All structures on a Lot within the Covered Properties shall at all times be maintained by their respective Owners in a clean and first-class condition.
- 8.1.17 Except as otherwise permitted herein with the express authorization of the Board of Directors, garages shall be used for parking automobiles and shall not be converted for residential or recreational activities. Except as approved by the Association, garage doors shall generally remain closed when not in use.
- 8.1.18 Curtains, drapes, shutters or blinds may be installed as window covers. No windows shall be covered with aluminum foil or similar material.
- 8.1.19 No motor vehicle or boat may be used as a living area while located on the Project.
- 8.1.20 None of the Lots shall be divided by subdivision map or parcel map, without the prior written consent of the Association.
- 8.1.21 The failure of any Owner to comply with any provision of this Declaration or the governing documents shall give rise to a cause of action by the Association and in any aggrieved Owner for recovery of damages or for injunctive relief, or both.
- 8.1.22 To the extent allowed by law, all Lots shall be separately assessed and taxed so that taxes, assessments and charges that may become liens prior first mortgages under local law shall attach only to individual Lots and not to the

Project as a whole. Each Owner shall be responsible for payment of all taxes and assessments against his or her Lot and against his or her personal property.

8.1.23

The Community Facilities shall not be used for residential dwelling purposes and no residential dwelling facilities shall be constructed thereon. Community Facilities shall be used only for community purposes.

ARTICLE 9

SCOPE OF ENFORCEMENT

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

The limitations, restrictions, conditions and covenants set forth in this Declaration constitute a general scheme for (I) the maintenance, protection and enhancement of the value of the Project and (ii) the benefit of all Owners. Said limitations, restrictions, conditions and covenants are and shall be covenants running with the land or equitable servitudes, as the case may be. Each remedy provided for in this Declaration shall be cumulative and not exclusive. It is expressly recognized that remedies at law are inadequate to address breaches of the provisions hereof such that injunctive relief shall be an appropriate remedy to compel compliance with the provisions hereof, regardless of a showing of irreparable harm under Civil Code Section 526. The result of or condition caused by any violation of any of the provisions of this Declaration is and shall be a nuisance, and every remedy in law or equity now or hereafter available against public or private nuisance may be exercised by any person affected thereby. Any of the foregoing to the contrary notwithstanding, no action to enforce this Declaration shall be instituted unless and until a written notice of such breach setting forth the facts of such breach has been delivered by certified mail to the Owner of such Lot. In the event the Association or any Owner(s) should commence litigation to enforce any of the provisions of this Declaration, that party, if he should prevail, shall be entitled to have judgment against and recover from any defendant in such litigation, such attorneys' fees as the court may adjudge reasonable and proper. Each Owner shall have a right of action against the Association for any failure of the Association to comply with the provisions of the Declaration, Articles of Incorporation, Bylaws, or Rules and Regulations of the Association.

ARTICLE 10

DAMAGES TO LOTS AND COMMUNITY FACILITIES

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

Section 10.2 Damage to Community Facilities. In the event the need for repair of the Community Facilities is caused through the willful or negligent acts of a Member or his guests or invitees, the Association, or their agents or employees shall have the right, but not the obligation, to make such repairs and the liability of the Member and the cost of repair shall be assessed to that Member as a special assessment as set forth in this Declaration and said assessment may become a lien against the separate interest of the Member responsible for the acts.

ARTICLE 11

INSURANCE

Section 11.1 Liability/Property Insurance A master or blanket public liability and property damage insurance policy covering the Community Facilities shall be purchased by the Board of Directors as promptly as possible following its election and shall be maintained in force at all times, the premium thereon to be paid out of the monies collected from the assessments. The minimum amount of coverage shall be Three Million Dollars (\$3,000,000) combined single limit liability for bodily injury to any one person, or property damage for any one occurrence; if written on the new occurrence form, coverage shall be Three Million Dollars (\$3,000,000) in the aggregate and Three Million Dollars (\$3,000,000) per occurrence; provided, however, that if the Project consists of more than 100 separate interests, such coverage shall be at least Three Million Dollars (\$3,000,000.00) per occurrence. The policy shall name the Association and all Owners as insureds. The manager, if any, shall also be a named insured on such policy, during such time as his agency shall continue. The insurance shall also contain a cross-liability endorsement to cover negligent injury by one Owner to another, if reasonably available. The Association shall prepare and distribute to all Members the following: (A) a summary of the Association's general liability policy, including (1) the name of the insurer, (2) the policy limits of the insurance, (3) if an insurance agent, as defined in Section 1621 of the Insurance Code, an insurance broker, as defined in Section 1623 of the Insurance Code, or an agent of an insurance agent or insurance broker has assisted the Association in the development of the general liability policy limits and if the recommendations of the insurance agent or insurance broker were followed, (4) the insurance deductible, (5) the person or entity responsible for payment of the deductible in the event of loss, and (6) whether or not the insurance coverage extends to the real property improvements to the Lots; (B) a summary of the Association's earthquake and flood insurance, if any, that states (1) the name of the insurer, (2) the policy limits of the insurance, (3) the insurance deductible, and (4) the person or entity responsible for payment of the deductible in the event of loss; ©) a summary of the liability coverage policy for the directors and officers of the Association that lists the name of the insurer and the policy limits. In addition, the Association shall, (1) as soon as reasonably practical, notify the Members by First-class mail if any of the policies have been canceled and not immediately replaced, and (2) if any policy is renewed or immediately replaced with no lapse in coverage, notify the Members of that fact in the next available mailing or newsletter to all Members. To the extent that the information required above to be disclosed to Members is specified in the insurance policy declaration page, the Association may meet its disclosure obligation by distributing copies of such declaration page to the Members.

Section 11.2

Section 11.3 Individual Coverage. Each Owner shall purchase, at his own expense, and maintain fire and hazard insurance coverage as may be required by his individual lender. Any such underlying coverage shall contain a replacement cost endorsement, and to the extent available, such other endorsements as may be a part of the master policy. Such insurance shall also contain a loss-payable endorsement to the Mortgagees of individual Lots, as their interests shall appear.

Section 11.4 Board as Trustee. The Board shall be designated and considered as Trustee of any insurance proceeds payable under this Article for the repair or reconstruction of any improvements within the Community Facilities. Insurance proceeds shall be paid out in accordance with Article 12. In the event repair or reconstruction is authorized, the Board shall have the duty to contract for such work, as provided in Article 12 hereof.

Section 11.5 Other Insurance. The Board may purchase and maintain in force at all times,

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

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

Section 11.7 Right of Mortgagees. With respect to insurance coverage under Sections 11.2 and 11.3 hereof, any Mortgagee of record shall have the option to apply insurance proceeds payable to it to reduce the obligation secured by the Mortgage.

Section 11.8 Annual Review. The Board shall review the insurance carried by the Association at least annually for the purpose of determining the amount of the casualty and property insurance referred to in Section 11.1 above. The Board shall obtain current appraisal of the full replacement value of the improvements in the Community Facilities, without deduction for depreciation, by a qualified independent insurance appraiser, prior to each such annual review.

ARTICLE 12

DESTRUCTION OF IMPROVEMENTS

Section 12.1 Proceeds Greater Than Eighty-Five Percent (85%) of Cost to Repair. In the event of total or partial destruction of the improvements in the Common Facilities and if the available proceeds of the insurance carried pursuant to Article 11 are sufficient to cover not less than eighty-five (85%) percent of the cost of repair or reconstruction thereof, the same shall be promptly repaired and rebuilt, unless, within a reasonable time after the date of such destruction, seventy-five (75%) percent of the membership present and entitled to vote in person or by proxy, at a duly constituted meeting, determine that such reconstruction shall not take place. If reconstruction is to take place, the Board of Directors shall be required to execute, acknowledge, file and record, not later than one hundred eighty (180) days from the date of said destruction, a certificate declaring the intention of the Association to rebuild.

Section 12.2 Proceeds Less Than Eighty-Five Percent (85%) of Cost to Repair. If the proceeds of such insurance are less than eighty-five (85%) percent of the cost of reconstruction, such reconstruction may, nevertheless, take place, if within one hundred eighty (180) days from the date of said destruction, at least sixty-six and two-thirds percent (66-2/3%) of the membership elect to rebuild.

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

Section 12.4 Association to Contract for Rebuilding. The Board shall act reasonably and prudently to ascertain the scope of destruction and cost of repairing said damage or destruction. If a determination is made to conduct repairs of all or part of the damaged or destroyed areas which the Association controls as Community Facilities, the Board shall obtain either contract proposals or competitive bids from and interview at least two qualified contractors for consideration to perform the repair project as part of its due diligence in selecting a contractor. The Board shall select the contractor which it believes will provide the best overall value to the Association in accomplishing the repair objectives, for a reasonable price. The Board shall, after selecting a competent contractor through the above process, negotiate a contract price and other terms with the contractor using all reasonable means to accomplish the goals of the Association. The Board may, if in its discretion it is appropriate, obtain multiple bids for the scope of work sought. In appropriate circumstances, defined by the complexity and dollar amount of repairs, the Board shall be authorized to employ a qualified consultant in the selection of a contractor to assist in determining qualifications, pricing and using value engineering. The Board shall not be required or authorized to award the repair work until it has sufficient monies to fund the reconstruction. These monies may be from a combination of insurance proceeds, special assessments, government loans or other sources, including reserve funds allocated under emergency conditions of the Civil Code. The Board, upon awarding said contract shall thereafter be authorized to disburse monies to the contractor in accordance with said contract out of the combined proceeds from insurance proceeds, special assessments and government loans in accordance with this article. It shall be the obligation of the board to take all steps necessary to assure the commencement and completion of such reconstruction at the earliest possible date. All

such reconstruction shall be in accordance with the original plans of the project to the extent permitted by the applicable governmental regulations.

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

- 12.5.1 Any insurance proceeds available for such rebuilding shall be distributed pro rata among the Owners and their individual lenders by the Board, as their respective interests may appear.
- 12.5.2 The Board shall have the duty, within one hundred eighty (180) days of the date of such loss, to execute, acknowledge and record a certificate setting forth the determination of the Association not to rebuild, and shall promptly cause to be prepared and filed, such revised maps and other documents as may be necessary to show the conversion of the Community Facilities to the status of unimproved land.

Section 12.6

Section 12.7 Arbitration. In the event of a dispute among the Owners, with respect to the provisions of this Article, any Owner may cause the same to be referred to arbitration in accordance with the then prevailing rules of the American Arbitration Association. In the event of arbitration, notice thereof shall be given to the Members of the Board and all Owners as promptly as possible after reference to arbitration is made, giving all Owners an opportunity to appear in such arbitration proceedings. The decision of such arbitrator in this matter shall be final and conclusive upon all Owners. The arbitrator may include in his decision an award for costs and/or attorneys' fees against any one or more of the parties to the arbitration.

ARTICLE 13

MORTGAGE PROTECTION

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

- 13.1.1 No breach of any of the covenants, conditions and restrictions herein contained, nor the enforcement of any lien provisions herein, shall defeat or render invalid the lien of any first Mortgage (meaning a Mortgage with first priority over any other Mortgage) on any Lot made in good faith and for value, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale, or otherwise.
- 13.1.2 Each holder of first Mortgage encumbering any Lot is entitled upon request to timely written notification from the Association of any default by the mortgagor of such Lot in the performance of such Mortgagor's obligations under this Declaration, the Bylaws or Rules and Regulations of the Association which is not cured within sixty (60) days. Any Institutional Lender holding a first Mortgage on any Lot within the Project shall be entitled to prior written notice of certain proposed actions of the Association as hereinafter set forth in Paragraphs 13.1.5.1 through 13.1.5.7, inclusive, provided that such Institutional Lender furnishes the Association with a written request for notice which request sets forth the particular Institutional Lender's mailing address and identifies the Lot on which it holds an encumbrance.
- 13.1.3 Each holder of a first Mortgage encumbering any Lot which obtains title to such Lot pursuant to: (a) remedies provided in such Mortgage, or (b) by accepting a deed (or assignment) in lieu of foreclosure in the event of default by a Mortgagor, shall be exempt from any "right of first refusal," if any, contained in the Declaration or the Bylaws of the Association. Further, any such "right of first refusal" shall not impair the rights of a first Mortgagee or interfere with a subsequent sale or lease of a Lot so acquired by the Mortgagee.
- 13.1.4 Each holder of a first Mortgage or third party foreclosure purchaser which obtains title to a Lot pursuant to foreclosure of the first Mortgage, shall take the Lot free of any claim for unpaid dues, assessments or charges against the Lot which accrue prior to the time such holder obtains title to such Lot (except for claims for a share of such assessments or charges resulting from a reallocation of such dues, assessments or charges among all Lots, including the mortgaged Lot). The lien assessments provided for herein shall be subordinate to the lien of any first Mortgage now or hereafter placed upon a Lot subject to assessment; provided, however, that such subordination shall apply only to assessments which have become due and payable prior to a sale or transfer of such Lot pursuant to a decree of foreclosure or trustee sale. Such sale or transfer shall not release such Lot from liability for any

assessments thereafter becoming due, nor from the lien of any such subsequent assessment.

- 13.1.5 Unless at least two-thirds (2/3) of the Institutional Lenders holding a first Mortgage on a Lot within the Project (based upon one vote for each first Mortgage owned), or at least two-thirds (2/3) of the Owners (other than the Successor Declarant) have given their prior written approval, the Association and its Members shall not be entitled to:
- 13.1.5.1 By act or omission, waive or abandon any scheme of regulations or enforcement thereof, pertaining to the architectural design or the exterior appearance of Lots, the exterior maintenance of Lots, the maintenance of the Community Facilities.
 - 13.1.5.2 Change the pro rata interest or obligations of any Lot for purposes of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards;
 - 13.1.5.3 Partition or subdivide any Lot;
 - 13.1.5.4 By act or omission, seek to abandon, subdivide, encumber, sell or transfer the Community Facilities or partition the Community Facilities except as provided for herein. The granting of easements for public utilities or for other public purposes consistent with the intended uses of the Community Facilities shall not be deemed a transfer within the meaning of this clause;
 - 13.1.5.5 Use hazard insurance proceeds for losses to any Community Facilities for other than repair, replacement or reconstruction of such Community Facilities, except as provided by statute in case of substantial damage to the Community Facilities;
 - 13.1.5.6 Fail to maintain fire and extended coverage on insurable planned development Community Facilities on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost);
 - 13.1.5.7 Effectuate any decision of the Association to terminate professional management and assume self management of the Project; and
 - 13.1.5.8 Amend any part of this Article 13.
- 13.1.6 First Mortgagees shall have the right to examine the books and records of the Association during normal business hours.
- 13.1.7 The annual assessments shall include an adequate reserve fund for maintenance, repair and replacement of the improvements to the Community Facilities and those portions thereof that must be replaced on a periodic basis, and shall be payable in annual assessments rather than by special assessments.

- 13.1.8 All taxes, assessments and charges which may become liens prior to the first Mortgage under local law shall relate only to individual Lots, and not to the Project as a whole.
- 13.1.9 In the event of substantial damage to or destruction of any Lot or any element of the Community Facilities or possible condemnation or eminent domain procedure, the Institutional Lender under any first Mortgage on a Lot is entitled to timely written notice of any such damage, destruction or proposed acquisition and no provision in the Bylaws, nor in this Declaration shall be interpreted to entitle any Owner or any other party to priority over any first Mortgagee with respect to the distribution to such Owner of any insurance proceeds or condemnation awards for losses to, or a taking of, Lots and/or Community Facilities.
- 13.1.10 Any agreement for professional management of the Covered Property shall provide for termination by either party without cause or payment of a termination fee upon thirty (30) days' written notice, and that the term of any such contract shall not exceed one (1) year, renewable by agreement of the parties for successive one (1) year periods. However, lease agreements for fixtures and equipment may have terms of up to five (5) years.
- 13.1.11 The Association shall, upon the request of any Institutional Lender under a first Mortgage on a Lot: (I) give written notice of all meetings of the Association and permit the Institutional Lender to designate a representative to attend all such meetings, and (ii) transmit to such Institutional Lender an annual audited financial statement of the Project within ninety (90) days following the end of any fiscal year of the Project.
- 13.1.12 No breach of any of the foregoing covenants shall cause any forfeiture of title or reversion or bestow any right of re-entry whatsoever, but in the event that any one or more of these covenants shall be violated, the Association, or any Owner may commence a legal action in any court of competent jurisdiction to enjoin or abate said violation, and/or to recover damages; provided, that any such violation shall not defeat or render invalid the lien of any Mortgage made in good faith and for value as to said Lot or any part thereof. Said covenants shall be binding upon and effective against any Owner whose title is acquired by foreclosure, trustee's sale or otherwise.
- 13.1.13 First Mortgagees of Lots may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Community Facility and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such Community Facility and first Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association. This provision shall constitute an agreement by the Association for the express benefit of all first Mortgagees and upon request on any first Mortgagee the Association shall execute and deliver to such first Mortgagee a separate written agreement embodying this provision.

ARTICLE 14

AMENDMENTS

Section 14.1 Amendments. This Declaration may be amended by an instrument in writing signed by (I) at least sixty six 2/3 percent (66 2/3%) of the total voting power of the Association. In no event shall the percentage of the voting power necessary to amend a specific provision of this Declaration be less than the percentage of affirmative votes prescribed for action to be taken under said provision. Any amendment of this Declaration which would defeat the obligation of the Association to maintain the Community Facilities and facilities as described in this Declaration must receive the written approval of the California Department of Real Estate prior to the recordation thereof.

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

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

ARTICLE 15

GENERAL PROVISIONS

Section 15.1 Extension of Declaration. The provisions of this Declaration shall run with the land and bind the Project, and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of forty (40) years from the date this Declaration is recorded, after which time the provisions of this Declaration shall be automatically extended for successive periods of ten (10) years, unless an instrument, signed by at least sixty-six and two-thirds percent (66-2/3%) of the then Owners of Lots, has been recorded within six (6) months of the anticipated termination date. The contents of such instrument shall contain the agreement to terminate this Declaration as it may be supplemented in whole or in part.

Section 15.2 Encroachment Easement. In the event any improvement to a Lot encroaches upon the Community Facilities Area as a result of the initial construction, or as the result of repair, shifting, settlement or movement of any portion thereof, an easement for the encroachment and for the maintenance of same, shall exist so long as the encroachment exists. Further, each Owner within the Properties is hereby granted an easement over all adjoining Lots for the purpose of accommodating any minor encroachment, due to engineering errors, errors in original construction, settlement or shifting of the building, roof overhand, architectural or other appendants for so long as any such encroachment continues to exist.

Section 15.3 Ownership Interest. An ownership interest in a Lot within the Project may pass from the estate of a deceased person to more than one person; provided, however, that only one living individual shall be entitled to have membership privileges in the Association derived from such ownership.

Section 15.4 Severability. In the event any limitation, restriction, condition, covenant or provision contained in this Declaration is to be held invalid, void or unenforceable by any court of competent jurisdiction, the remaining portions of this Declaration shall, nevertheless, be and remain in full force and effect.

Section 15.5 Liberal Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a residential community.

Section 15.6 Number. Gender. The singular shall include the plural and the plural the singular unless the context requires to the contrary, and the masculine, feminine and neuter shall each include the masculine, feminine or neuter, as the context requires.

Section 15.7 Grantees Subject to This Declaration. Each grantee of a conveyance or purchaser under a contract or agreement of sale, by accepting the deed or contract of sale or agreement of purchase, accepts the same subject to all of the limitations, restrictions, conditions and covenants, and agreements set forth in this Declaration and agrees to be bound by same.

Section 15.8 Prohibition of Further Division. No single family detached residential lot may be further divided into additional parcels for sale or development.

ARTICLE 16

DISPUTE RESOLUTION

Section 16.1 Resolution of Disputes

- (a) An Owner or the Association may enforce by legal action any restrictions, conditions, covenants, reservations, liens, Assessments, fees and penalties imposed by this Declaration or other Governing Documents for violations committed by any offending party, or with respect to any dispute related to any portion of any property covered by the Declaration. This includes actions by owners against the Association and actions by owners against another owner or owners.
- (b) Failure to take action does not constitute a waiver of the right to take action.
- (c) Reference is hereby made to California Civil Code Section 1354, which sets forth pre-filing requirements, or arbitration proceedings and other procedures for certain types of enforcement actions.
- (d) It is recommended, although not required, that the Board consider diversion of the prosecution or defense of any civil action to Alternative Dispute Resolution proceedings, including, but not limited to Mediation, Non-binding Arbitration, or Binding Arbitration.
- (e) If the Board diverts any civil action to an Alternative Dispute Resolution proceeding, the Board shall agree to:
 - (1) Participate fully, and in good faith, in the resolution of any such action diverted to an Alternative Dispute Resolution proceeding; and
 - (2) Pay the costs reasonably incurred by the Association on account of those Alternative Dispute Resolution proceedings.
- (f) The Board shall, in good faith, attempt to provide reasonable advance notice of the Board's intent to initiate the prosecution of any civil action, along with the nature and basis of the claim, to every member of the Association and every entity or person who is a prospective party to the civil action, provided that notice can be given:
 - (1) More than one hundred twenty (120) days prior to the expiration of any pertinent statute of limitations, and
 - (2) Without prejudice to the Association's right to enforce the Governing Documents.
- g) No such notice need be given prior to the filing of an action in small claims court or an action solely to enforce assessment obligations.
- (h) Prior to initiating any civil action, the Board is not required to:
 - (1) Conduct inspections;
 - (2) Maintain inspection records;
 - (3) Exhaust applicable casualty insurance coverage maintained by the Association;

- (4) Provide an opportunity to cure;
- (5) Meet with Members, or obtain the consent of the Members except as provided in Civil Code Section 1368.4 concerning actions against the developer, in which case the provisions of that section shall be followed.
- (6) Submit any civil claims to Binding or Non-binding Alternative Dispute Resolution proceedings (except in compliance with the provisions of Civil Code Section 1354(b)) or Civil Code Section 1375 pertaining to construction defect litigation against the developer.
- (i) Immediately after initiating the prosecution or defense of any civil action, the Board shall make a reasonable effort, in good faith, to:
 - (1) Meet and confer with every person who is a party to the appropriate processes for resolving the civil action, including available Alternative Dispute Resolution proceedings;
 - (2) Provide an opportunity to correct any alleged defect in the Community Facilities, if this is the cause for the action, in order to avoid or reduce any costs or losses which may be incurred by the parties involved in the action;
 - (3) Provide for the scope of discovery, if any is required for the action, to be conducted prior to the inception of any Alternative Dispute Resolution procedure.

Section 16.2 Enforcement; Arbitration

- (a) Any claim or dispute referred to Binding or Non-binding Arbitration, shall be settled and determined in accordance with the rules of either the American Arbitration Association ("AAA"), or its successor, or the Judicial Arbitration and Mediation Services, Inc. ("JAMS"), or its successor, and the provisions of the California Code of Civil Procedure, Section 1283.05 (or any successor amended statute or law containing similar provisions, shall be applicable in any such arbitration).
- (b) In any case where either the American Arbitration Association or JAMS (or the successor of either) is not in existence or fails or refuses to act within a reasonably prompt period of time (but in no event exceeding 90 days from the date a request for arbitration is filed), the arbitration shall proceed in accordance with the laws relating to arbitration then in effect in the State of California (including but not limited to Section 1280 through 1294.2 of the California Code of Civil Procedure, as the same may be amended or superseded from time to time).
- (c) Any such arbitration shall be conducted by one (1) arbitrator. If the parties cannot agree on one (1) arbitrator, there shall be three, as follows:
 - (1) Each party shall choose an arbitrator and the two arbitrators shall choose the third.
 - (2) The parties shall name their respective choices within five days after demand for arbitration is made.
 - (3) If either party neglects or refuses to participate in the appointment of the arbitrator(s), or to furnish the arbitrator(s) with any papers or information demanded, the arbitrator(s) may proceed ex parte.

(4) If Binding Arbitration is chosen, the judgment upon the award rendered in any such arbitration shall be final and binding upon the parties and may be entered in any court having jurisdiction therein.

IN WITNESS WHEREOF, the undersigned, being the President of the Eagles Knoll Community Association has executed this Declaration on behalf of the Association on the day and year first written above.

EAGLES KNOLL COMMUNITY ASSOCIATION

By: John Reed
Its : President

State of California)
County of San Bernardino)

On November 1, 2004, before me, the undersigned, a Notary Public in and for said State, personally appeared:
John Reed

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

WITNESS my hand and official seal.

(SEAL)

Joan Carroll
Notary Public

