

**“If this document contains any restriction based on age, race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, veteran or military status, genetic information, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.2 of the Government Code by submitting a “Restrictive Covenant Modification” form, together with a copy of the attached document with the unlawful provision redacted to the county recorder’s office and may be available on its internet website. The form may also be available from the party that provided you with this document. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.”**

**APPROVED**

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**DOC # 2006-0513711**  
07/13/2006

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**Larry W Ward**

County of Riverside  
Assessor, County Clerk & Recorder

**WHEN RECORDED, MAIL TO:**

DZIDA, CAREY & STEINMAN (SDH)  
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Irvine, CA 92614

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*(Space Above for Recorder's Use)*

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
AND RESERVATION OF EASEMENTS  
FOR  
MARSDEN  
A PLANNED RESIDENTIAL DEVELOPMENT**

***THIS DOCUMENT REQUIRES THAT HOMEOWNERS AND  
THE HOMEOWNERS ASSOCIATION WAIVE THEIR RIGHT  
TO A JURY TRIAL IN THE EVENT OF A DISPUTE WITH  
THE DEVELOPER INCLUDING WITHOUT LIMITATION  
CONSTRUCTION DEFECT CLAIMS.***

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**FOR**

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**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS  
AND RESERVATION OF EASEMENTS  
FOR  
MARSDEN**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND RESERVATION OF EASEMENTS is made by SCC – CANYON II, LLC, a Delaware limited liability company (“SCC”) and CAPITAL PACIFIC HOLDINGS, LLC, a Delaware limited liability company (“Declarant”). The capitalized terms used in the Preamble are defined in Article I.

**P R E A M B L E:**

A. Owner is the owner of real property (“Phase 1”) located in Riverside County, California, described as follows:

Lots 31 to 43, inclusive, 57 to 60, inclusive, and Lots 102 to 108, inclusive, of Tract No. 31724, as shown on a Subdivision Map, Filed in Book \_\_\_\_\_, Pages \_\_\_ to \_\_\_, inclusive, of Maps, in the Office of the Riverside County Recorder.

B. SCC has executed this Declaration as the Owner of Phase 1 solely as an accommodation to Declarant in connection with Declarant’s intention to develop a “planned development,” as defined in Section 1351(k) of the California Civil Code, to create a “subdivision” as defined in Section 11000 of the California Business and Professions Code, and to impose mutually beneficial restrictions under a general plan for subdividing, improving, maintaining and selling the Lots in the Properties for the benefit of all the Lots pursuant to the Davis-Sterling Common Interest Development Act. SCC is not the developer of Phase 1 and (subject to the provisions of the agreement relating to Declarant’s acquisition of Phase 1) will transfer Phase 1 unimproved (i.e., without residences) to Declarant subsequent to the recordation of this Declaration.

C. The Properties are to be held, conveyed, encumbered, leased, used and improved subject to the limits, restrictions, reservations, rights, easements, conditions and covenants in this Declaration, all of which are in furtherance of a plan for subdividing, improving, maintaining and selling the Lots in the Properties. All provisions of this Declaration are imposed as equitable servitudes on the Properties. All limits, restrictions, reservations, rights, easements, conditions and covenants in this Declaration shall run with and burden the Properties and shall be binding on and for the benefit of all of the Properties and all Persons having or acquiring any interest in the Properties and their successive owners and assigns.



**ARTICLE I**  
**DEFINITIONS AND INTERPRETATION**

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

1.1.1. **Annexable Territory.** Annexable Territory means the real property described in *Exhibit "C"* which may be made subject to this Declaration pursuant to Article XVI. Any references in this Declaration to Annexable Territory are references to the Annexable Territory as a whole and to portions thereof.

1.1.2. **Annual Assessment.** Annual Assessment means a charge levied against the Owners and their Lots, representing their share of the Common Expenses, which is to be levied as provided herein. The Annual Assessment is a regular assessment as described in California Civil Code Section 1366.

1.1.3. **Articles.** Articles means the Articles of Incorporation of the Association currently in effect, as amended from time to time in accordance with the terms of this Declaration and the other Restrictions, if applicable. A copy of the Articles is attached as *Exhibit "A."*

1.1.4. **Assessment.** Assessment means any Annual Assessment, Capital Improvement Assessment, Reconstruction Assessment and Special Assessment.

1.1.5. **Association.** Association means Marsden Community Association, a California nonprofit corporation (formed pursuant to the California Nonprofit Mutual Benefit Corporation Law), and its successors in interest. The Association is an "association" as defined in Section 1351(a) of the California Civil Code.

1.1.6. **Association Maintenance Areas.** Association Maintenance Area(s) means those portions of the Lots identified in this Declaration or in any Supplemental Declaration as "Association Maintenance Area." The Association Maintenance Areas will include (but may not be limited to) any portion of a Property Wall maintained by the Association, the project identification monument signs and associated landscaping and other Improvements, certain private storm drain and other drainage facilities within the Properties. The approximate location of the Association Maintenance Areas in Phase 1 are described and/or depicted in *Exhibit "D"* attached hereto. The precise location of such Association Maintenance Areas shall be defined by the Improvements originally constructed or installed by Declarant. The Association will have a nonexclusive easement over the Association Maintenance Areas.

1.1.7. **Association Maintenance Funds.** Association Maintenance Funds means the accounts created for Association receipts and disbursements pursuant to Article VII.

1.1.8. **Board or Board of Directors.** Board or Board of Directors means the Association's Board of Directors.

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

1.1.10. **Bylaws.** Bylaws means the Bylaws of the Association as adopted by the Board initially in the form of *Exhibit "B,"* as amended from time to time in accordance with the terms of this Declaration and the other Restrictions, if applicable.

1.1.11. **Capital Improvement Assessment.** Capital Improvement Assessment means a charge against the Owners and their Lots representing their share of the Association's cost for installing or constructing capital Improvements on the Common Property. Capital Improvements Assessments shall be levied in the same proportion as Annual Assessments. Capital Improvement Assessments are special assessments as described in California Civil Code Section 1366.

1.1.12. **Close of Escrow.** Close of Escrow means the date on which a deed is Recorded conveying a Lot pursuant to a transaction requiring the issuance of a Final Subdivision Public Report by the DRE.

1.1.13. **Common Area.** Common Area means all the real property and Improvements which are owned by the Association. The Common Area in Phase 1 is described and/or depicted on Exhibit "D" attached hereto. Additional Common Area may be annexed to the Properties pursuant to Article XVI hereof.

1.1.14. **Common Expenses.** Common Expenses means those expenses for which the Association is responsible under this Declaration, including the actual and estimated costs of and reserves for maintaining, managing and operating the Common Property; clustered mailboxes; any controlled access gates; Common Expenses also include unpaid Special Assessments, Reconstruction Assessments and Capital Improvement Assessments. Common Expenses include the cost of all utilities metered to the Common Property, other commonly metered charges for the Properties, Common Property trash collection and removal (as applicable); managing and administering the Association including compensation paid by the Association to managers, accountants attorneys and other employees; gardening and other services benefitting the Common Property, fire, casualty, liability, workers' compensation, errors and omissions and director, officer and agent liability insurance, and other insurance covering the Properties and the Directors, officers and agents of the Association; bonding the members of the Board, taxes paid by the Association, including any tax assessed against the Properties, amounts paid by the Association for discharge of any lien or encumbrance levied against the Properties, and all other expenses incurred by the Association for any reason whatsoever in connection with the Properties and/or for the common benefit of the Owners.

1.1.15. **Common Property.** Common Property means the Common Area and the Association Maintenance Area. Any references in this Declaration to Common Property are references to the Common Property as a whole and to portions thereof.

1.1.16. **County.** County means Riverside County, California, and its various departments, divisions, employees and representatives. If the Properties are annexed to an incorporated city, then the term “County” includes the city in which the Properties are located.

1.1.17. **Declarant.** Declarant means CAPITAL PACIFIC HOLDINGS, LLC, a Delaware limited liability company, its successors and any Person to which it shall have assigned any of its rights by an express written assignment. As used in this Section, “successor” means a Person who acquires Declarant or substantially all of its assets, or who merges with Declarant, by sale, merger, reverse merger, consolidation, sale of stock or assets, operation of law or otherwise. Except as expressly provided in this Declaration, Declarant shall determine in its sole discretion the time, place and manner in which it discharges its obligations and exercises the rights reserved to it under this Declaration. Declarant is a “builder” as described in California Civil Code Section 1375.

1.1.18. **Declaration.** Declaration means this instrument as currently in effect.

1.1.19. **Design Review Committee or Committee.** Design Review Committee or Committee means the Design Review Committee created in accordance with Article V.

1.1.20. **DRE.** DRE means the California Department of Real Estate and any department or agency of the California state government which succeeds to the DRE’s functions.

1.1.21. **Family.** Family means natural individuals, whether or not related, who live as a single household in a Residence.

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

1.1.23. **FHLMC.** FHLMC means the Federal Home Loan Mortgage Corporation created by Title II of the Emergency Home Finance Act of 1970, and its successors.

1.1.24. **Fiscal Year.** Fiscal Year means the fiscal accounting and reporting period of the Association selected by the Board.

1.1.25. **FNMA.** FNMA means the Federal National Mortgage Association, a government-sponsored private corporation established pursuant to Title VIII of the Housing and Urban Development Act of 1968, and its successors.

1.1.26. **GNMA.** GNMA means the Government National Mortgage Association administered by the United States Department of Housing and Urban Development, and its successors.

1.1.27. **Improvement or Improvements.** Improvement or Improvements means all structures and appurtenances thereto, including buildings, walkways, irrigation systems, garages, recreational facilities, electrical and mechanical systems and equipment, roads, driveways, parking areas, fences, all types of walls, awnings, stairs, decks, all types of landscaping and plantings, antennae, windbreaks, the exterior surfaces of any visible structure and the paint on such surfaces, poles, signs, exterior air conditioning and water softener fixtures or equipment. The Design Review Committee may identify additional items that are Improvements.

1.1.28. **Includes, Including.** Whether capitalized or not, includes and including means “includes without limitation,” and “including without limitation,” respectively.

1.1.29. **Lot.** Lot means any residential Lot or parcel of land shown on any Recorded subdivision map or Recorded parcel map of the Properties, with the exception of the Common Area.

1.1.30. **Maintain.** Whether capitalized or not, maintain means maintain, repair and replace.

1.1.31. **Manager.** Manager means the Person retained by the Association to perform management functions of the Association as limited by the Restrictions and the terms of the agreement between the Association and the Person.

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

1.1.33. **Mortgage.** Mortgage means any Recorded conveyance of one or more Lots or other portion of the Properties to secure the performance of an obligation.

1.1.34. **Mortgagee.** Mortgagee means a Person to whom a Mortgage is made, or the assignee of the Mortgagee’s rights under the Mortgage by a Recorded assignment.

1.1.35. **Mortgagor.** Mortgagor means a person who has mortgaged his property to another.

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

1.1.37. **Notice of Addition.** Notice of Addition means an instrument Recorded pursuant to Article XVI of this Declaration to annex additional real property to the Properties.

1.1.38. **Owner.** Owner means the Person or Persons, including Declarant, holding fee simple interest of record to any Lot. Each Owner has a Membership in the

Association. The term "Owner" includes a seller under an executory contract of sale but excludes Mortgagees. The term "Owner" may be expanded in a Supplemental Declaration to include other Persons.

1.1.39. **Party Wall.** Party Wall means a wall or fence placed on the boundary line between two residential Lots (but does not include the structural wall of a Residence).

1.1.40. **Person.** Person means a natural individual or any other entity with the legal capacity to hold title to real property. When the word "person" is not capitalized, the word refers only to natural persons.

1.1.41. **Phase.** Phase means each of the following: (a) Phase 1 and (b) all the real property covered by a Notice of Addition, for which a Final Subdivision Public Report has been issued by the DRE, unless "Phase" is otherwise defined in such Notice of Addition.

1.1.42. **Phase 1.** Phase 1 means all of the real property described in Paragraph A of the Preamble of this Declaration.

1.1.43. **Properties.** Properties means (a) Phase 1, and (b) each Phase described in a Notice of Addition. The Properties are a "common interest development" and a "planned development" as defined in Sections 1351(c) and 1351(k), respectively, of the California Civil Code. Any references in this Declaration to the Properties are references to the Properties as a whole and to portions thereof.

1.1.44. **Property Wall.** Property Wall means any common property wall or fence which is designated as such in either *Exhibit "D"* to this Declaration or in a Notice of Addition.

1.1.45. **Reconstruction Assessment.** Reconstruction Assessment means a charge against the Owners and their Lots representing their share of the Association's cost to reconstruct any Improvements on the Common Property. Such charge shall be levied among all Owners and their Lots in the same proportions as Annual Assessments. Reconstruction Assessments are "special assessments" as described in California Civil Code Section 1366.

1.1.46. **Record, File, Recordation.** Record, File, or Recordation means, with respect to any document, the entry of such document in the Official Records of the County Recorder.

1.1.47. **Residence.** Residence means a building located on a Lot designed and intended for use and occupancy as a residence by a single Family.

1.1.48. **Restrictions.** Restrictions means this Declaration, the Articles, the Bylaws, and the Rules and Regulations of the Association and all Supplemental Declarations and Notices of Addition.

1.1.49. **Rules and Regulations.** Rules and Regulations means the current rules and regulations adopted by the Board pursuant to this Declaration or the Bylaws, as amended from time to time.

1.1.50. **Special Assessment.** Special Assessment means either (a) a charge against an Owner to reimburse the Association for costs incurred for corrective action, or (b) a reasonable fine or penalty, plus interest and other charges on such Special Assessment as provided for in this Declaration. Special Assessments do not include any late payment penalties, interest charges or costs (including attorneys' fees) incurred by the Association in the collection of Annual, Capital Improvement or Reconstruction Assessments.

1.1.51. **Supplemental Declaration.** Supplemental Declaration means an instrument executed, acknowledged and Recorded by Declarant which imposes conditions, covenants, or restrictions or reserves easements established for a phase of addition to those established by this Declaration. A Supplemental Declaration may affect one or more Phases. A Notice of Addition may include a Supplemental Declaration. Declarant may Record a Supplemental Declaration so long as Declarant owns all of the real property to be encumbered by the Supplemental Declaration. Supplemental Declarations may modify this Declaration as it applies to the property encumbered by the Supplemental Declaration.

1.1.52. **VA.** VA means the Department of Veterans Affairs of the United States of America and any department or agency of the United States government which succeeds to VA's function of issuing guarantees of notes secured by mortgages on residential real estate.

## 1.2. **Interpretation.**

1.2.1. **General Rules.** This Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for subdividing, improving, maintaining and selling the Properties. As used in this Declaration, the singular includes the plural and the plural the singular; and the masculine, feminine and neuter each includes the other, unless the context dictates otherwise.

1.2.2. **Articles, Sections and Exhibits.** The Article and Section headings have been inserted for convenience only and may not be considered in resolving questions of interpretation or construction. Unless otherwise indicated, any references in this Declaration to articles, sections or exhibits are to Articles, Sections and exhibits of this Declaration. The exhibits attached to this Declaration are incorporated herein by this reference.

1.2.3. **Priorities and Inconsistencies.** If there are conflicts or inconsistencies between this Declaration and the Articles, Bylaws, Rules and Regulations, or a Supplemental Declaration, then the provisions of this Declaration shall prevail.

1.2.4. **Severability.** The provisions of this Declaration are independent and severable. A determination of invalidity or partial invalidity or unenforceability of any one

provision of this Declaration by a court of competent jurisdiction does not affect the validity or enforceability of any other provisions of this Declaration.

1.2.5. **Statutory References.** All references made in this Declaration to statutes are to those statutes as currently in effect or to subsequently enacted replacement statutes.

## **ARTICLE II RESIDENCE AND USE RESTRICTIONS**

The Properties shall be held, used and enjoyed subject to the following restrictions and the exemptions of Declarant set forth in this Declaration.

2.1. **Single Family Residence.** Each Lot shall be used as a dwelling for a single Family and for no other purpose. An Owner may rent his Lot to a single Family provided that the Lot is rented pursuant to a lease or rental agreement which is (a) in writing and (b) subject to all of the provisions of this Declaration.

2.2. **Business or Commercial Activity.** No part of the Properties may ever be used for any business, commercial (including auctions or similar events), manufacturing, mercantile, storage, vending or other nonresidential purposes, including any activity for which the provider is compensated or receives any consideration, regardless of whether the activity is engaged in full or part-time, generates or does not generate a profit, or requires or does not require a license; except Declarant may use any portion of the Properties for a model home site and display and sales offices in accordance with Article XV of this Declaration. This Section 2.2 does not preclude any of the above-described activities without external evidence thereof, provided that: (a) such activities comply with law; (b) the patrons or clientele of such activities do not visit the Lot or park automobiles or other vehicles in the Properties; (c) the existence or operation of such activities is not apparent or detectable by sight, sound or smell from outside the boundaries of the Lot; (d) such activities do not increase the Association's liability or casualty insurance obligation or premium; and (e) such activities are consistent with the residential character of the Properties and conform with the provisions of this Declaration.

2.3. **Nuisances.** Noxious or offensive activities are prohibited on the Properties or on any public street abutting or visible from the Properties. All horns, whistles, bells or other sound devices, except security devices used exclusively to protect the security of a Residence and its contents and/or an Owner's vehicle(s), are also prohibited. Noisy, unsightly, unusually painted or smoky vehicles, large power equipment and large power tools (excluding lawn mowers and other equipment utilized in connection with ordinary landscape maintenance), off-road motor vehicles or items which may unreasonably interfere with television or radio reception to any Lot, and objects which create or emit loud noises or noxious odors may not be located, used or placed in the Properties or on any public street abutting the Properties, or exposed to the view of other Owners without the Board's prior written approval. The Board is entitled to determine if any noise, odor, or activity producing such noise or odor constitutes a nuisance. No Owner may (a) permit or cause anything to be done or kept on the Properties or on any public street abutting the Properties which may (i) increase the rate of insurance in the Properties, (ii) result in the

cancellation of such insurance, or (iii) obstruct or interfere with the rights of other Owners, or (b) commit or permit any nuisance thereon or violate any law. Each Owner shall comply with all requirements of the local or state health authorities and with all other laws regarding occupancy and use of a Residence. Each Owner is accountable to the Association and other Owners for the conduct and behavior of persons residing in or visiting his Lot. Any damage to the Common Property or property of another Owner caused by such persons shall be repaired at the sole expense of the Owner of the Lot where such persons are residing or visiting.

2.4. **Signs.** Subject to Civil Code Sections 712 and 713 and Section 2.3 above, (a) no commercial, business or similar sign, advertising device or other display of any kind (collectively "Signs") shall be displayed in or from the Properties or any portion thereof or on any public street in or abutting the Properties other than no more than two (2) signs displayed on a Lot advising of the existence of security services protecting a Residence which complies with Design Review Committee rules and (b) non commercial Signs may be displayed on Lots if such Signs (i) are made of paper, cardboard, cloth, plastic, or fabric (no Sign may be placed, maintained, affixed or painted on any portion of the Common Property), (ii) do not include lights, balloons or any other similar decorative component, or include the painting of architectural surfaces; (iii) are not more than nine (9) square feet in size with respect to solid Signs and fifteen (15) square feet in size for flags or banners; (iv) do not endanger public health or safety or violate a local, state, or federal law. and (v) is not otherwise a nuisance under Section 2.3.

2.5. **Animal Regulations.** Animals may be raised, bred or kept on any Lot only in reasonable quantities and sizes and otherwise in compliance with the Restrictions and all applicable laws, ordinances and regulations of the County and other applicable governmental agencies. The Board shall have the right to determine what constitutes a reasonable quantity in any instance based on the size and type of animal and whether any particular number of such pets may constitute a nuisance and such other factors as the Board may reasonably consider. Owners may not keep any animal on their Lot or in their Residence which constitutes a nuisance to any other Owner. Animals must be either kept in an enclosed area or on a leash held by a person capable of controlling the animal. Each Person is liable for any unreasonable noise and for damage to person or property caused by any animals brought or kept on the Properties by such Person. Each Person shall clean up after such Person's animals. Any Person who keeps any animal in the Properties shall indemnify, defend and hold harmless the other Owners and the Association, its officers, directors, contractors, agents and employees from any claim brought by any Person against the Association, its officers, directors, agents and employees for personal injuries or property damage caused by such animal.

2.6. **Antennae.** Owners are prohibited from installing any antennae on any Lot for any purpose, except for an "Authorized Antenna," which may be installed so long as the proposed location for such installation is reviewed by the Design Review Committee before installation to ensure that the visibility of the Authorized Antenna is minimized with respect to other Owners. The Design Review Committee may require that the location of the Authorized Antenna be moved so long as such review by the Design Review Committee does not (a) unreasonably delay or prevent installation, maintenance or use of an Authorized Antenna, (b) unreasonably increase the cost of installation, maintenance or use of an Authorized Antenna, or (c) preclude acceptable



quality reception. An "Authorized Antenna" means (i) an antenna designed to receive direct broadcast satellite service, including direct-to-home satellite service, that is one meter or less in diameter, (ii) an antenna designed to receive video programming service, including multichannel multipoint distribution service, instructional television fixed service, and local multipoint distribution service, and is one meter or less in diameter or diagonal measurement, (iii) an antenna designed to receive television broadcast signals, and (iv) a mast supporting an antenna described in items (i), (ii), and (iii) above.

The Design Review Committee may adopt additional restrictions on installation or use of an Authorized Antenna on an Owner's Lot so long as such restrictions do not (1) unreasonably delay or prevent installation, maintenance or use of an Authorized Antenna, (2) unreasonably increase the cost of installation maintenance or use of an Authorized Antenna, or (3) preclude acceptable quality reception. The Design Review Committee may prohibit the installation of an Authorized Antenna if the installation, location or maintenance of such Authorized Antenna unreasonably affects the safety of managers, agents or employees of the Declarant or other Owners, or for any other safety related reason established by the Design Review Committee. The Design Review Committee may also (A) prohibit an Owner from installing an Authorized Antenna on property which such Owner does not own or is not entitled to exclusively use or control under the Restrictions, or (B) allow an Owner to install an antenna other than an Authorized Antenna subject to the architectural standards and review by the Design Review Committee.

All amendments, modifications, restatements and interpretations of the law applicable to the installation, use or maintenance of an antenna shall be interpreted to amend, modify, restate or interpret this Section.

## **2.7. Parking And Vehicular Restrictions.**

**2.7.1. Authorized Vehicles.** The following vehicles are "Authorized Vehicles:" standard passenger vehicles, including automobiles, passenger vans designed to accommodate ten (10) or fewer people, motorcycles and pick-up trucks having a manufacturer's rating or payload capacity of one (1) ton or less. Authorized Vehicles may be parked in any portion of the Properties intended for parking of motorized vehicles; however, no Owner may park a vehicle in a manner which the Association determines either restricts the passage of pedestrians or vehicles over driveways, streets or sidewalks the Properties, or extends beyond the limits of the space where the Vehicle is parked. The Association has the power to identify additional vehicles as Authorized Vehicles in the Rules and Regulations and to adapt this restriction to other types of vehicles.

**2.7.2. Restricted Vehicles.** Vehicles that are not Authorized Vehicles shall be considered "Restricted Vehicles." Restricted Vehicles include, without limitation, the following: recreational vehicles, motor homes, travel trailers, camper vans, boats and the like. Restricted Vehicles may be parked wholly within an Owner's garage or on a sideyard, screened from view in a manner approved by the Design Review Committee. Owners who park Restricted

Vehicles on a sideyard shall also be required to install a concrete pad created for the purpose of accommodating the weight of the Restricted Vehicle.

2.7.3. **General Restrictions.** Subject to the restrictions on Restricted Vehicles, all vehicles owned or operated by or under the control of an Owner or a resident of an Owner's Lot and kept in the Properties must be parked in the garage of that Owner to the extent of the space available; provided that each Owner shall ensure that any such garage accommodates at least the number of Authorized Vehicles for which it was originally constructed by Declarant.

2.8. **Trash.** No trash may be kept or permitted upon the Properties or on any public street abutting or visible from the Properties, except in containers located in appropriate areas screened from view, and no odor may be permitted to arise therefrom so as to render the Properties offensive. Such containers may be exposed to the view of neighboring Lots only when set out at a location approved by the Design Review Committee for a reasonable period of time (not to exceed twelve (12) hours before and after scheduled trash collection hours). No outdoor fires are permitted, except in barbecue grills and fire pits if designed and used in such a manner that they do not create a fire hazard. No clothing, fabrics or unsightly articles may be hung, dried or aired on or over any Lot. No plants or seeds infected with noxious insects or plant diseases may be brought upon, grown or maintained on the Properties.

## 2.9. **Installations.**

2.9.1. **Generally.** No Owner may cause or permit any mechanic's lien to be filed against the Properties for labor or materials alleged to have been furnished or delivered to the Properties or any Lot for such Owner, and any Owner who does so shall immediately cause the lien to be discharged within five (5) days after notice to the Owner from the Board. If any Owner fails to remove such mechanic's lien, the Board may discharge the lien and charge the Owner a Special Assessment for such cost of discharge.

2.9.2. **Outside Installations.** Unless approved by the Design Review Committee, the following outside installations are prohibited: (a) clotheslines, balcony, patio or deck covers, wiring, air conditioning equipment, water softeners, other machines and other Improvements, (b) Improvements protruding through the walls or roofs of buildings, and (c) other exterior additions or alterations to any Lot. Outdoor patio or lounge furniture, plants and barbecue equipment may be kept in accordance with the Rules and Regulations. No mechanical equipment shall may be installed on the roofs of any Residences or other buildings in the Properties, except that solar equipment and other energy saving devices may be installed on such roofs with the prior written approval of the Planning Department of the County and the prior written approval of the design and location of same by the Design Review Committee. The Association has the right to specify in the Rules and Regulations unsightly items that may not be kept on the Lots. All outdoor lighting shall comply with all applicable County lighting ordinances.

2.9.3. **Inside Installations.** All exposed window coverings are subject to the Design Review Committee's approval of types and color(s). The Board has the right to specify

in the Rules and Regulations the types and colors of window coverings that may be exposed in the Properties. Nothing may be done in any Lot or in, on or to the Common Area which may impair the structural integrity of any building in the Properties or which structurally alters any such building except as otherwise expressly provided in this Declaration.

Sections 2.9.2 and 2.9.3 do not apply to Improvements installed (a) as a part of the original construction of the Properties by Declarant, (b) by the Association, or (c) with the approval of the Design Review Committee.

**2.10. Further Subdivision.** Except as otherwise provided in this Declaration, no Owner may physically or legally subdivide his Lot in any manner, including any division of such Owner's Lot into time-share estates or time-share uses. This provision does not limit the right of an Owner to (a) rent or lease his entire Lot by a written lease or rental agreement subject to this Declaration; (b) sell such Owner's Lot; or (c) transfer or sell any Lot to more than one Person to be held by them as tenants-in-common, joint tenants, tenants by the entirety or as community property. Any failure by the tenant of the Lot to comply with the Restrictions constitutes a default under the lease or rental agreement.

**2.11. Drainage.** No one may interfere with or alter the established drainage pattern over any Lot without the prior written approval of the Design Review Committee and the Planning Department of the County. Without limiting the generality of the foregoing, Owners are hereby advised that no Owner shall be permitted to install any fencing or other Improvement or place any fill in any location that will alter the established drainage pattern. For the purpose of this Section, "established" drainage means, for any Phase, the drainage which exists at the time of the first Close of Escrow in such Phase. Established drainage includes drainage from the Lots onto the Common Property and from the Common Property onto the Lots.

**2.12. View Obstructions.** No vegetation or other obstruction may be installed or maintained on any Lot in such location or of such height as to unreasonably obstruct the view from any other Lot. If there is a dispute between Owners concerning the obstruction of a view from a Lot, the dispute shall be submitted to the Design Review Committee, whose decision in such matters shall be binding. Any item or vegetation maintained on any Lot which is exposed to the view of any Owner must be removed or otherwise altered to the Design Review Committee's satisfaction, if it determines that the item or vegetation in its then existing state does not comply with the purposes or provisions of this Declaration. If an Owner fails to perform necessary pruning, trimming, or thinning, the Association may, after Notice and Hearing, enter upon such Owner's Lot to perform such work. Each Owner acknowledges that (a) there are no protected views in the Properties, and no Lot is assured the existence or unobstructed continuation of any particular view, and (b) any construction, landscaping or other installation of Improvements by Declarant or other Owners may impair the view from any Lot, and each Owner hereby consents to such view impairment.

**2.13. Installation of Yard Landscaping.** Each Owner shall complete the installation of landscaping on all the yard areas of such Owner's Lot in accordance with a plan approved by

the Design Review Committee within six (6) months after the Close of Escrow. Each Owner shall obtain all permits necessary and shall comply with all requirements of the County.

2.14. **Solar Energy Systems.** Each Owner may install a solar energy system on his Lot which serves his Residence so long as (a) the design and location of the solar energy system meet the requirements of all applicable governmental ordinances and (b) said design and location receive the prior written approval of the Design Review Committee.

2.15. **Rights of Disabled.** Subject to the provisions of Article VIII of this Declaration, each Owner may modify his Residence and the route over the Lot leading to the front door of his Residence, at his sole expense, to facilitate access to his Residence by persons who are blind, visually impaired, deaf or physically disabled, or to alter conditions which could be hazardous to such persons, in accordance with California Civil Code Section 1360 or any other applicable law or ordinance.

2.16. **Common Property Facilities.** The Common Property may not be altered without the Board's prior written consent.

2.17. **Drilling.** No oil drilling, oil, gas or mineral development operations, oil refining, geothermal exploration or development, quarrying or mining operations of any kind may be conducted on the Properties, nor are oil wells, tanks, tunnels or mineral excavations or shafts permitted upon the surface of any Lot or within five hundred feet (500') below the surface of the Properties. No derrick or other structure designed for use in boring for water, oil, geothermal heat or natural gas may be erected, maintained or permitted on any Lot.

2.18. **Pollutant Control.**

2.18.1. **NPDES Requirements.** The Properties are subject to all Federal, State and local requirements of the National Pollutant Discharge Elimination System ("NPDES") adopted pursuant to the Federal Clean Water Act. Pursuant to a NPDES General Permit adopted by the State Water Resources Control Board and the County NPDES Storm Water Permit Program, Drainage Area Management Plan ("DAMP"), the County has adopted a Water Quality Management Plan for the Properties ("Water Management Plan") which identifies certain Best Management Practices ("BMP") to reduce the discharge of pollutants to storm water facilities, before, during and after construction on the Properties in completed. The Association shall comply with all BMPs and perform all maintenance imposed by DAMP and the Water Management Plan, as amended. The costs of such maintenance, if any, shall be treated as Common Expenses.

2.18.2. **BMP Guidelines.** The Association shall ensure that all landscape irrigation on the Properties is implemented in accordance with the BMPs, including without limitation (a) the provision for water sensors and programmable irrigation times allowing for short cycles, (b) the use of planting material similar to that installed by Declarant and with similar water requirements in order to reduce excess irrigation runoff and to promote surface

filtration, and (c) maintenance of all permanent slopes with required landscaping with native or other drought tolerant planting materials.

### **ARTICLE III DISCLOSURES**

Much of the information included in this Article (a) was obtained from other sources (e.g., governmental and other public agencies and public records) and (b) is subject to change for reasons beyond the control of Declarant and the Association. Therefore, the Declarant and the Association do not guarantee the accuracy or completeness of any of the information in this Article. Further, neither Declarant nor the Association undertake to advise any Person of any changes affecting the disclosures in this Article.

3.1. **No Representations or Warranties.** No representations or warranties, express or implied, have been given or made by Declarant, the Association or their agents in connection with the Properties, including physical condition, zoning, compliance with laws, or fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation of the Properties as a planned unit development, except as provided in this Declaration, filed by Declarant with the DRE and provided by Declarant to the first Owner of a Lot.

3.2. **Effect of Expansive Soil.** The soil in the Properties may be composed of materials that have "expansive" characteristics. Owners should perform soils testing, use special construction techniques and take precautions when constructing new Improvements or modifying existing Improvements because the soil expands when it is wet and can cause Improvements to lift and crack. Owners should consider the following information and recommendations prior to making or modifying any Improvements:

3.2.1. **Concrete and Masonry Improvements.** Special attention is required in designing concrete and masonry Improvements such as masonry walls and planters, concrete slabs, pools, spas and decking. For example, steel reinforcing bars may be required in lieu of steel mesh in concrete patio slabs. Block walls may require extra horizontal and vertical steel reinforcing bars. Pools and spas located at the top or bottom of a slope or on expansive soils require special design.

3.2.2. **Drainage and Irrigation.** Owners must use adequate drainage and irrigation control. The construction or modification of Improvements should not result in ponding of water. The landscape irrigation system should be designed and operated to prevent excessive saturation of soils. Water must drain away from footings and other Improvements and obstructions such as walls should not be constructed across swales unless adequate replacement drainage Improvements have been installed or created. Planters should be lined with an impervious surface and should contain outlets to drain excess water.

3.3. **Grading.** The grading and drainage design in the Properties should not be altered in the course of installing Improvements in a manner that will redirect surface water flow toward

the Residences or onto adjacent property or that will trap water so that it ponds or floods. Drainage devices such as concrete ditches, area drain lines and gutters should be carefully designed and installed with professional assistance then maintained in an unobstructed condition. Drainage devices installed by the Declarant and designed to serve more than one Lot or the Common Property should not be altered in any manner that will redirect or obstruct the drainage through these drainage devices. Grading and drainage modifications are subject to law, approval by the Board, and the terms of any drainage easements of Record.

**3.4. Electric Power Lines And Electromagnetic Fields.** Underground or overhead electric transmission and distribution lines and transformers are located in and around the Properties. The lines and transformers are owned, operated and maintained by Southern California Edison Company. Power lines and transformers produce extremely low-frequency electromagnetic fields (“*ELF-EMF*”) when operating. For some time, there has been speculation in the scientific community about health risks associated with living near ELF-EMF sources. In 1992, the United States Congress authorized the Electric and Magnetic Fields Research and Public Information Dissemination Program (“*EMF-RAPID Program*”) to perform research on these issues and to analyze the existing scientific evidence in order to clarify the potential for health risks from exposure to ELF-EMF. In May of 1999, the National Institute of Environmental Health Sciences (“*NIEHS*”) issued a report to Congress summarizing its review of scientific data from over three hundred studies on ELF-EMF health risks. The ELF-EMF studies consist of both epidemiological studies (studies of exposure in human populations) and controlled laboratory experiments on animal and cell models. While some epidemiological studies suggested some link between certain health effects and exposure to ELF-EMF, the laboratory experiments did not support such a link. According to the NIEHS report, the scientific evidence shows no clear pattern of health hazards from ELF-EMF exposure, and the NIEHS report did not find evidence of any link sufficient to recommend widespread changes in the design or use of electrical transmission equipment. However, because the evidence does not clearly rule out any effect, NIEHS advocated continuing inexpensive and safe reductions in exposure to ELF-EMF and endorsed current utility practices regarding design and siting of new transmission and distribution lines. Further information on this subject is available from the Electric and Magnetic Fields Program, California Department of Health Services, 1515 Clay Street, 17th Floor, Oakland, California 94612. Additional information on ELF-EMF and copies of the NIEHS report are available from the EMF-RAPID website at <http://www.niehs.nih.gov/emfrapid/home.htm>. Additional information on ELF-EMF is also available at the California Department of Health Services Web page: <http://www.dhs.ca.gov/ehib/emf>, and the California Public Utility Commission’s EMF Web site: [http://www.cpuc.ca.gov/static/industry/environment electromagnetic+fields/index.htm](http://www.cpuc.ca.gov/static/industry/environment%20electromagnetic+fields/index.htm).

**3.5. Rural Area; Agricultural Area.** The Properties are located in a rural area, which includes various rural and agricultural land uses. As a result of the rural character of the area in the vicinity of the Properties, Lots may be affected by wildlife, noises, odors, reptiles or insect life typically found in rural areas. Typical wildlife encountered in rural areas include rattlesnakes, rodents, mountain lions and coyotes. It can also be expected that insects of all types will be encountered including flies, bees, Africanized (killer) bees, ticks, mosquitos, spiders, black and red fire ants, crickets and aphids. Declarant and the Association are not responsible for

wildlife control or eradication. Agricultural uses in the vicinity of the Properties include farming operations. Owners may be inconvenienced by noises and odors that result from or are associated with such farming and other agricultural uses. Declarant and the Association are not responsible for any such uses or any inconveniences resulting from or associated with such uses.

3.6. **Offers of Dedication.** Portions of the Common Area are subject to irrevocable offers of dedication as shown on the Recorded tract maps for the Properties. The County may accept the offer of dedication and assume responsibility for maintaining these portions of the Common Property at any time.

3.7. **Disclaimer of Liability.** Neither the Declarant nor the Association shall be liable or responsible for any damage to Improvements constructed or modified by an Owner or that is the result of Improvements constructed or modified by an Owner. Improvements should not be installed, constructed or modified without the assistance of qualified consultants.

3.8. **Property Lines.** The boundaries of each Lot in the Properties and the Common Area are delineated on subdivision (tract) maps, lot line adjustments or parcel maps that are public records and are available at the office of the County Recorder.

3.9. **Additional Provisions.** The Association and the Owners should be aware that there may be provisions of various laws, including the Davis-Stirling Common Interest Development Act codified at Sections 1350 *et seq.* of the California Civil Code and the federal Fair Housing Act codified at Title 42 United States Code, Section 3601 *et seq.*, which may supplement or override the Restrictions. Declarant makes no representations or warranties regarding the future enforceability of any portion of the Restrictions.

#### **ARTICLE IV MARSDEN COMMUNITY ASSOCIATION**

4.1. **General Duties And Powers.** The Association has the duties and powers listed in the Restrictions and also has the general and implied powers of a nonprofit mutual benefit corporation, generally to do all things that a corporation organized under the laws of the State of California may lawfully do which are necessary or proper in operating for the peace, health, comfort, safety and general welfare of the Owners, subject only to the limits on the exercise of such powers listed in Restrictions. Unless otherwise indicated in the Articles, Bylaws or this Declaration, the powers of the Association may be exercised by the Board.

4.2. **Specific Duties And Powers.** In addition to its general powers and duties, the Association has the following specific powers and duties.

4.2.1. **Common Property.** The power and duty to accept, maintain and manage the Common Property in accordance with the Restrictions. The Association may install or remove capital Improvements on the Common Property. The Association may reconstruct, replace or refinish any Improvement on the Common Property.

4.2.2. **Utilities.** The power and duty to obtain, for the benefit of the Properties, all commonly metered water, gas and electric services, and the power but not the duty to provide for trash collection and cable or master television service.

4.2.3. **Granting Rights.** The power to grant exclusive or nonexclusive easements, licenses, rights of way or fee interests in the Common Property, to the extent any such grant is reasonably required for either (a) utilities and facilities to serve the Common Property and the Lots, (b) purposes of conformity with the as-built location of Improvements installed by Declarant, or (c) other purposes consistent with the intended use of the Properties. This power includes the right to create and convey Exclusive Use Common Areas. The Association may deannex any portion of the Properties from the encumbrance of the Declaration in connection with any lawful lot line adjustment.

4.2.4. **Employ Personnel.** The power to employ Persons necessary for the effective operation and maintenance of the Common Property, including legal, management and accounting services.

4.2.5. **Insurance.** The power and duty to maintain insurance for the Common Property in accordance with this Declaration.

4.2.6. **Sewers and Storm Drains.** The power and duty to maintain any private sewer systems, private storm drains, or private drainage facilities in the Common Property in accordance with the Restrictions.

4.2.7. **Right of Entry.** The Declarant and the Association each have a limited right of entry in and on the Lots to inspect the Properties, and may take whatever corrective action each determines to be necessary or proper, consistent with this Declaration. The Association may act under this Section 4.2.7 with the authorization of two-thirds (2/3) of the Board. Entry onto a Lot by the Association under this right of entry or by the Board, Declarant, or their representatives pursuant to Civil Code Section 1375(d) may only be made (except in an emergency) after three (3) days advance written notice to the Owner of the Lot. The Association has no duty to maintain any property or Improvements required to be maintained by the Owners. Nothing in this Article limits the right of an Owner to exclusive occupancy and control over his Lot. However, an Owner shall permit a right of entry to the Association or any person authorized by the Board to be exercised in any emergency originating in or threatening his Residence or Lot, whether the Owner is present or not. Any damage to a Residence or Lot caused by such entry shall be repaired by the Association as a Common Expense. Furthermore, each Owner shall permit other Owners, or their representatives, to enter his Lot to perform required installations, alterations or repairs to the mechanical or electrical services to a Lot if (a) requests for entry are made in advance; (b) entry is made at a time reasonably convenient to the Owner whose Lot is to be entered; and (c) the entered Lot is left in substantially the same condition as existed immediately preceding such entry. In an emergency, such right of entry is immediate. Any damage caused to a Lot by such entry by an Owner or its representatives shall be repaired by such Owner.



4.2.8. **Rules and Regulations.** The power but not the duty to establish, amend, restate, delete, and create exceptions to, the Rules and Regulations.

(a) **Effective Date.** All changes to the Rules and Regulations will become effective fifteen (15) days after they are either (i) posted in a conspicuous place in the Properties or (ii) sent to the Owners via first class mail or by any system or technology designed to record and communicate messages.

(b) **Areas of Regulation.** The Rules and Regulations may concern use of the Properties, signs, parking restrictions; minimum standards of property maintenance, and any other matter under the Association's jurisdiction; however, the Rules and Regulations are enforceable only to the extent they are consistent with the Articles, Bylaws, Declaration, any Supplemental Declarations and any Notices of Addition.

(c) **Limits on Regulation.** The Rules and Regulations must apply uniformly to all Owners. The rights of Owners to display religious and holiday signs, symbols and decorations inside their Residences of the kinds normally displayed in single family residential neighborhoods shall not be abridged, except the Association may adopt time, place and manner restrictions with respect to such displays if they are visible outside of the Residence. The Rules and Regulations shall not regulate the content of political signs; however, they may regulate the time, place and manner of posting of such signs. No modification to the Rules and Regulations may require an Owner to dispose of personal property that was on a Lot prior to the adoption of such modification if such personal property was in compliance with all rules previously in force; however, this exemption shall apply only during the period of such Owner's ownership of the Lot and shall not apply to (i) subsequent Owners who take title to the Lot after the modification is adopted, or (ii) clarifications to the Rules and Regulations.

(d) **Use of Facilities.** The Rules and Regulations may (i) specify a maximum number of guests which an Owner, tenant or other Person may admit to the Common Property recreational facilities at one time, (ii) establish rules for allowing Owners, tenants or other Persons to use Common Property facilities for private functions, or (iii) establish admission fees, deposit requirements and other fees for the use of any facilities on Common Property.

4.2.9. **Borrowings.** The power, but not the duty, to borrow money for purposes authorized by the Articles, Bylaws, Declaration, any Supplemental Declarations or any Notice of Addition, and to use the Common Property as security for the borrowing.

4.2.10. **Contracts.** The power but not the duty to enter into contracts. This includes contracts with Owners or other Persons to provide services or to maintain Improvements in the Properties and elsewhere which the Association is not otherwise required to provide or maintain pursuant to this Declaration.

#### 4.2.11. **Indemnification.**

(a) **For Association Representatives.** To the fullest extent authorized by law, the Association has the power and duty to indemnify Board members, Association officers, Design Review Committee members, and all other Association committee members for all damages, pay all expenses incurred, and satisfy any judgment or fine levied as a result of any action or threatened action brought because of performance of an act or omission within what such person reasonably believed to be the scope of the Person's Association duties ("Official Act"). Board members, Association officers, Design Review Committee members, and all other Association committee members are deemed to be agents of the Association when they are performing Official Acts for purposes of obtaining indemnification from the Association pursuant to this Section. The entitlement to indemnification under this Declaration inures to the benefit of the estate, executor, administrator and heirs of any person entitled to such indemnification.

(b) **For Other Agents of the Association.** To the fullest extent authorized by law, the Association has the power, but not the duty, to indemnify any other Person acting as an agent of the Association for damages incurred, pay expenses incurred, and satisfy any judgment or fine levied as a result of any action or threatened action because of an Official Act.

(c) **Provided by Contract.** The Association also has the power, but not the duty, to contract with any Person to provide indemnification in addition to any indemnification authorized by law on such terms and subject to such conditions as the Association may impose.

4.2.12. **Annexing Additional Property.** The power but not the duty to annex, pursuant to Article XVI, additional property to the Properties encumbered by this Declaration.

4.2.13. **Vehicle Restrictions.** The power granted in Section 2.5 to identify Authorized Vehicles or Prohibited Vehicles and to modify and enforce the restrictions on vehicles.

4.2.14. **License and Use Agreements.** The Association may enter into agreements with Declarant or any homeowners association having jurisdiction over the Annexable Territory to share recreational or other facilities located on the Common Property ("Facility") with the owners of residences on Annexable Territory that is not annexed to the Properties. Any such agreement shall be in form and content acceptable to Declarant, the Board of Directors (without the approval of Owners) and the board of directors of any adjacent homeowners association and shall include provisions regarding equal use and sharing of maintenance costs for the Facility.

#### 4.2.15. **Prohibited Functions.**

(a) **Property Manager.** The Association shall not hire any employees, furnish offices or other facilities, or use any Common Property for an “on-site” Manager. The Association Manager shall at all times be an professional manager employed as an independent contractor working at its own place of business.

(b) **Off-site Nuisances.** The Association shall not use any Association funds or resources to abate any annoyance or nuisance emanating from outside the physical boundaries of the Properties.

(c) **Political Activities.** The Association shall not (i) participate in federal, state or local political activities or activities intended to influence a governmental action affecting areas outside the boundaries of the Properties (e.g. endorsement or support of (A) legislative or administrative actions by a local governmental authority, (B) candidates for elected or appointed office, or (C) ballot proposals, or (ii) conduct, sponsor, participate in or expend funds or resources toward any activity, campaign or event, including any social or political campaign, event or activity which is not directly and exclusively pertaining to the authorized activities of the Association. There shall be no amendment of this Section so long as Declarant, owns the Properties or Annexable Territory.

#### 4.3. **Standard of Care, Nonliability.**

##### 4.3.1. **Scope of Powers and Standard of Care.**

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

(b) **Business Affairs.** This Section 4.3 applies to Board member actions in connection with management, personnel, maintenance and operations, insurance, contracts and finances and Design Review Committee member actions. Each Board member shall perform the duties of a Board member in good faith, in a manner such Board member believes to be in the best interests of the Association and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances. When

performing his duties, a Board member is entitled to rely on information, opinions, reports or statements, including financial data prepared or presented by:

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

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

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

(4) This Section 4.3.1(b) is intended to be a restatement of the business judgment rule established in applicable law as it applies to the Association. All modifications and interpretations of the business judgment rule applicable to the Association shall be interpreted to modify and interpret this Section 4.3.1(b).

(c) **Association Governance.** This Section 4.3 applies to Board actions and Design Review Committee decisions in connection with interpretation and enforcement of the Restrictions, architectural and landscaping control, regulation of uses within the Properties, rule making and oversight of committees. Actions taken or decisions made in connection with these matters shall be reasonable, fair and nondiscriminatory.

#### 4.3.2. **Nonliability.**

(a) **General Rule.** No Person is liable to any other Person (other than the Association or a party claiming in the name of the Association) for injuries or damage resulting from such Person's Official Acts, except to the extent that such injuries or damage result from the Person's willful or malicious misconduct. No Person is liable to the Association (or to any party claiming in the name of the Association) for injuries or damage resulting from such Person's Official Acts, except to the extent that such injuries or damage result from such Person's negligence or willful or malicious misconduct. The Association is not liable for damage to property in the Properties unless caused by the negligence of the Association, the Board, the Association's officers, the manager or the manager's staff.

(b) **Nonliability of Volunteer Board Members and Officers.** A volunteer Board member or volunteer Association officer shall not be personally liable to any Person who suffers injury, including bodily injury, emotional distress, wrongful death or property damage or loss as a result of the tortious act or omission of the volunteer officer or Board member if all applicable conditions specified in Section 1365.7 of the California Civil Code are met.

#### 4.4. **Membership.**

4.4.1. **Generally.** Every Owner shall automatically be a member of the Association and shall remain a member of the Association until such Owner's Lot ownership ceases, at which time such Owner's Membership shall automatically cease. Ownership of a Lot is the sole qualification for Membership. Memberships are not assignable except to the Person to whom title to the Lot is transferred, and every Membership is appurtenant to and may not be separated from the fee ownership of such Lot. The rights, duties, privileges and obligations of all Owners are as provided in the Restrictions.

4.4.2. **Transfer.** The Membership of any Owner may not be transferred, pledged or alienated in any way, except on the transfer or encumbrance of such Owner's Lot, and then only to the transferee or Mortgagee of such Lot. A prohibited transfer is void and will not be reflected in the records of the Association. Any Owner who has sold his Lot to a contract purchaser under an agreement to purchase may delegate the Owner's Membership rights to the contract purchaser. The delegation must be in writing and must be delivered to the Association before the contract purchaser may vote. The contract seller shall remain liable for all charges and Assessments attributable to the contract seller's Lot which accrue before title to the Lot is transferred. If the contract seller fails or refuses to delegate his Membership rights to the contract purchaser before the close of escrow, the Association may record the transfer to the contract purchaser in the Association's records. However, no contract purchaser will be entitled to vote at Association meetings during the term of a purchase contract without satisfactory evidence of the delegation of the contract seller's Membership rights to the contract purchaser. The Association may levy a reasonable transfer fee against a new Owner and such Owner's Lot (which fee shall be paid through escrow or added to the Annual Assessment chargeable to such new Owner) to reimburse the Association for the administrative cost of transferring the Membership to the new Owner on the Association's records. Such fee may not exceed the Association's actual cost involved in changing its records.

4.4.3. **Classes of Membership.** The Association classes of voting Membership are as follows:

**Class A.** Class A members are all Owners except Declarant for so long as there exists a Class B Membership. Class A members are entitled to one (1) vote for each Lot owned by such Class A members which is subject to assessment. Declarant shall become a Class A Member on conversion of Declarant's Class B Membership as provided below. The vote for such Lot shall be exercised in accordance with Section 4.5.1, but no more than one (1) Class A vote may be cast for any Lot.

**Class B.** The Class B member is Declarant. The Class B member is entitled to three (3) votes for each Lot owned by Declarant and subject to assessment. The Class B Membership shall convert to Class A Membership on the first to occur of the following events:

- (1) The second anniversary of the first Close of Escrow in the most recent Phase; or
- (2) The fourth anniversary of the first Close of Escrow in Phase 1.

However, if all of the Annexable Territory is annexed to the Properties within one (1) year from the first Close of Escrow in Phase 1, the Class B Membership shall convert to Class A Membership on the fourth anniversary of the first Close of Escrow in Phase 1.

#### 4.5. **Voting Rights.**

4.5.1. **Limits.** All voting rights are subject to the Restrictions. Except as provided in Section 13.2 of this Declaration and Section 4.8 of the Bylaws, as long as there is a Class B Membership, any provision of the Restrictions which expressly requires the vote or written consent of a specified percentage (instead of a majority of a quorum) of the Association's voting power before action may be undertaken shall require the approval of such specified percentage of the voting power of each class of Membership. Except as provided in Section 13.2 of this Declaration and Section 4.8 of the Bylaws, on termination of the Class B Membership, any provision of the Restrictions which expressly requires the vote or written consent of Owners representing a specified percentage (instead of a majority of a quorum) of the Association's voting power before action may be undertaken shall then require the vote or written consent of Owners representing such specified percentage of both (1) the Association's total voting power and (2) the Association's voting power represented by Owners other than Declarant.

4.5.2. **Joint Ownership.** When more than one (1) Person holds an interest in any Lot ("co-owners"), each co-owner may attend any Association meeting, but only one (1) such co-owner shall be entitled to exercise the single vote to which the Lot is entitled. Co-owners owning the majority interests in a Lot may designate in writing one (1) of their number to vote. Fractional votes shall not be allowed, and the vote for each Lot shall be exercised, if at all, as a unit. Where no voting co-owner is designated or if the designation is revoked, the vote for the Lot shall be exercised as the co-owners owning the majority interests in the Lot agree. Unless the Association receives a written objection in advance from a co-owner, it shall be conclusively presumed that the voting co-owner is acting with his co-owners' consent. No vote may be cast for any Lot if the co-owners present in person or by proxy owning the majority interests in such Lot fail to agree to the vote or other action. The nonvoting co-owner or co-owners are jointly and severally responsible for all obligations imposed on the jointly-owned Lot and are entitled to all other benefits of ownership. All agreements and determinations lawfully made by the Association in accordance with the voting percentages established in the Restrictions are binding on all Owners and their successors in interest.

#### 4.6. Repair And Maintenance.

##### 4.6.1. By Owners.

(a) **The Lot.** Each Owner shall maintain, at his sole expense and subject to the approval of the Design Review Committee, his Lot except for those portions of the Owner's Lot that are Association Property, and the Residence (including the exterior and roof thereof) and all other Improvements on the Owner's Lot including any fence or wall constructed on the Lot along the Lot Line abutting any Common Property or public property in a clean, sanitary and attractive condition, and in accordance with the original construction design of the Improvements in the Properties. Each Owner shall be obligated to pay for any damage to the Common Property or other Lots caused by such Owner. Each Owner shall pay when due all charges for any utility service which is separately metered to his Lot.

(b) **Party Walls.** Each wall or fence built as a part of the original construction of the Residences upon the Properties and placed on the dividing line between the Lots is a Party Wall, and to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions apply thereto.

(1) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a Party Wall shall be shared equally by the Owners of the Lots connected by such Party Wall. However, each Owner shall be solely responsible for repainting the side of any Party Wall facing his Lot.

(2) Destruction by Fire or Other Casualty. Unless covered by a blanket insurance policy maintained by the Association under Section 8.1, if a Party Wall is destroyed or damaged by fire or other casualty, any Owner whose Lot is affected thereby may restore it, and the Owner of the other Lot affected thereby shall contribute equally to the cost of restoration thereof without prejudice, however, to the right of any such Owner to call for a larger contribution from the other under any rule of law regarding liability for negligent or willful acts or omissions.

(3) Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes a Party Wall to be exposed to the elements or to deteriorate or require repair or replacement shall bear the whole cost of furnishing the necessary protection against such elements or the necessary repairs or replacement.

(4) Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article is appurtenant to the land and passes to such Owner's successors in title.

4.6.2. **By Association.**

(a) **Commencement of Obligations.** The Association's obligation to maintain the Common Property in any Phase commences on the date Annual Assessments commence on Lots in the Phase that includes the Common Property. Until commencement of Annual Assessments on Lots in any Phase in which a Lot is located, Declarant shall maintain the Common Property in such Phase. The Association's obligation to maintain the Common Property in a Phase composed solely of Common Property shall commence on conveyance of such Common Area to the Association.

(b) **Maintenance Standards.** Subject to Articles IX and X, the Association shall maintain the Common Property and Improvements thereon or shall contract to assure the Common Property and Improvements thereon are maintained in a clean, sanitary and attractive condition reasonably consistent with the level of maintenance reflected in the most current Budget on file with and approved by DRE. However, the Association is not responsible for performing those items of maintenance, repair or Improvement of the Lots which are the responsibility of the Owners pursuant to Section 4.6.1. The Board shall determine, in its sole discretion, the level and frequency of maintenance of the Common Property.

(c) **Maintenance Items.** The Association shall repair and pay for all centrally metered utilities and mechanical and electrical equipment serving the Common Property; pay all charges for utilities which serve individual Lots but which are subject to a common meter; pay all Common Expenses and charges for utilities serving recreational amenities; maintain all Common Property, including all walks, private driveways and other means of ingress and egress in the Properties. The Association may, but is not required to, perform all corrective janitorial, landscaping and repair work in any Residence if the Owner thereof fails to do so after Notice and Hearing. The Association is responsible for maintaining the cap and structural integrity of the Property Wall and the surface of the Property Wall which faces Murrieta Road. If the Association removes or damages any landscaping Improvements, the Association is not responsible for replacing the landscaping Improvements. No Owner shall attach or allow to be attached to any Property Wall any vine, landscaping, device, wall, fence or other Improvement. Any such items may be removed from the Property Wall by the Association at the Owner's cost.

(d) **Termite Eradication.** If the Association adopts an inspection and preventive program for the prevention and eradication of infestation by wood



destroying pests and organisms, the Association, on no less than fifteen (15) nor more than thirty (30) days' notice, may require each Owner and to the occupants of the Owner's Residence to vacate such Residence to accommodate Association efforts to eradicate such infestation. The notice must state the reason for the temporary relocation, the date and time of the beginning of treatment, the anticipated date and time of termination of treatment, and that the occupants will be responsible for their own accommodations during the temporary relocation. Any damage caused to a Residence by such entry by the Association or by any person authorized by the Association shall be repaired by the Association as a Common Expense. All costs involved in operating the inspection and preventive program as well as repairing and replacing the Common Area and Improvements thereon when the need for such maintenance, repair or replacement is the result of wood destroying pests or organisms are a Common Expense.

(e) **Pollution Control.** The Association shall manage and maintain the Common Property in accordance with the pollution control requirements set forth in Article XVII below.

(f) **Additional Items.** The Association shall also be responsible for maintaining any Improvements designated by a majority of the voting power of the Association. Such Improvements shall be deemed Association Maintenance Areas and subject to the Restrictions applicable to the Association Maintenance Areas.

(g) **Charges to Owners.** All costs of maintenance, repairs and replacements for the Properties shall be paid for as Common Expenses out of the Association Maintenance Funds as provided in this Declaration.

4.6.3. **Inspection of the Properties.** The Board shall require strict compliance with all provisions of this Declaration and cause the Properties to be inspected by the Design Review Committee for any violation thereof. The Association shall have the Common Property and all Improvements thereon inspected at least once every three (3) years to (a) determine whether the Common Property is being maintained adequately in accordance with the standards of maintenance established in Section 4.6.2, (b) identify the condition of the Common Property and any Improvements thereon, including the existence of any hazards or defects, and the need for performing additional maintenance, refurbishment, replacement, or repair, and (c) recommend preventive actions to reduce potential future maintenance costs. The Association may employ such experts and consultants it deems necessary to perform the inspection and make the report required by this Section. The Association shall prepare a report of the results of the inspection required by this Section. The report must include at least the following:

(a) a description of the condition of the Common Property, including a list of items inspected, and the status of maintenance, repair and need for replacement of all such items;

- (b) a description of all maintenance, repair and replacement planned for the ensuing Fiscal Year and included in the Budget;
- (c) if any maintenance, repair or replacement is to be deferred, the reason for such deferral;
- (d) a summary of all reports of inspections performed by any expert or consultant employed by the Association to perform inspections;
- (e) a report of the status of compliance with the maintenance, replacement and repair needs identified in the inspection report for preceding years; and
- (f) such other matters as the Board considers appropriate.

4.6.4. **Damage by Owners.** Each Owner is liable to the Association for any damage to the Common Property or the Residences caused by the act or negligence of an Owner, his guests, tenants or invitees, or any other persons deriving their right to use the Common Property from the Owner, or such Owner's family, tenants and guests. The Association may, after Notice and Hearing, (a) determine whether any claim shall be made on the Association's insurance, and (b) levy a Special Assessment equal to the cost of repairing the damage or any deductible paid and the increase, if any, in insurance premiums directly attributable to the damage caused by such Owner or the person for whom such Owner may be liable as described in this Declaration. If a Lot is jointly owned, the liability of its Owners is joint and several, except to the extent that the Association has previously contracted in writing with the joint owners to the contrary. After Notice and Hearing, the cost of correcting the damage shall be a Special Assessment against such Owner.

**ARTICLE V**  
**DESIGN REVIEW COMMITTEE**

5.1. **Members of Committee.** The Design Review Committee shall be composed of three (3) members. The initial members of the Design Review Committee shall be representatives of Declarant until one (1) year after the original issuance of the Final Subdivision Public Report ("Public Report") for the Properties ("First Anniversary"). After the First Anniversary the Board may appoint and remove one (1) member of the Design Review Committee, and Declarant may appoint and remove a majority of the members of the Design Review Committee and fill any vacancy of such majority, until the earlier to occur of (a) Close of Escrow for the sale of ninety percent (90%) of all the Lots in the Properties, or (b) the fifth (5<sup>th</sup>) anniversary of the original issuance of the Public Report for the Properties, after which the Board may appoint and remove all members of the Design Review Committee. Design Review Committee members appointed by the Board must be Owners, but Design Review Committee members appointed by Declarant need not be Owners. Board members may serve as Design Review Committee members.

5.2. **Powers And Duties.**

5.2.1. **General Powers and Duties.** The Design Review Committee shall consider and act upon all plans and specifications submitted for its approval, including inspection of work in progress to assure conformance with plans approved by the Design Review Committee, and shall perform such other duties as the Board assigns to it.

5.2.2. **Issuance of Standards.** The Design Review Committee shall issue and regularly update its design guidelines. The design guidelines shall include rules or guidelines setting forth procedures for the submission of plans for approval, may require a fee to accompany each application for approval, or may identify additional factors which the Design Review Committee will consider in reviewing submissions. The Design Review Committee may provide that fees it imposes be uniform, or that fees be determined in any other reasonable manner. The Design Review Committee may require such detail in plans and specifications submitted for its review as it deems proper, including landscape plans, floor plans, site plans, drainage plans, elevation drawings and descriptions or samples of exterior material and colors.

5.2.3. **Retaining Consultants.** The Design Review Committee has the power but not the duty to retain Persons to advise its members in connection with decisions; however, the Design Review Committee does not have the power to delegate its decision-making power.

5.3. **Review of Plans And Specifications.**

5.3.1. **Improvements Requiring Approval.** No construction, installation or alteration of an Improvement, including landscaping, in the Properties may be commenced until the plans and specifications therefor showing the nature, kind, shape, height, width, color, materials and location thereof have been submitted to and approved in writing by the Design

Review Committee; however, any Improvement may be repainted without Design Review Committee approval so long as the Improvement is repainted the identical color which it was last painted. Without limiting the generality of the foregoing, the provisions of this Article apply to the construction, installation and alteration of solar energy systems, as defined in Section 801.5 of the California Civil Code, subject to the provisions of California Civil Code Section 714, the Building Code, zoning regulations, and other laws.

**5.3.2. Application Procedure.** Until changed by the Board, the address for the submission of such plans and specifications is the Association's principal office. The form of application used by the Design Review Committee may include spaces allowing "Adjacent Owners" to sign or initial the application confirming that they have been notified of the application. The Design Review Committee shall establish a definition of "Adjacent Owners" in its design guidelines. Applications will be complete and may be approved or disapproved by the Design Review Committee even if all of the Adjacent Owners do not initial the applications so long as the Owner submitting plans and specifications ("Applicant") certifies requested that the Applicant requested that the Adjacent Owners sign the applications.

The Design Review Committee may reject the application for approval if it determines that the Applicant's plans and specifications are incomplete. The Design Review Committee shall transmit its decision and the reasons therefor to the "Applicant" at the address listed in the application for approval within forty-five (45) days after the Design Review Committee receives all required materials. Any application submitted pursuant to this Section shall be deemed approved unless the Design Review Committee transmits written disapproval or a request for additional information or materials to the Applicant within forty-five (45) days after the date the Design Review Committee receives all required materials.

**5.3.3. Standard for Approval.** The Design Review Committee shall approve plans and specifications submitted for its approval only if it determines that (a) installation, construction or alterations of the Improvements in the locations indicated will not be detrimental to the appearance of the surrounding area of the Properties as a whole, (b) the appearance of any structure affected by the proposed Improvements will be in harmony with the surrounding structures, (c) installation, construction or alteration of the proposed Improvements will not detract from the beauty, wholesomeness and attractiveness of the Properties or the enjoyment thereof by the Owners, (d) maintenance of the proposed Improvements will not become a burden on the Association, and (e) the proposed Improvements are consistent with this Declaration. The Design Review Committee may condition its approval of proposals or plans and specifications for any Improvement on any of the following: (i) the Applicant's furnishing the Association with security acceptable to the Association against any mechanic's lien or other encumbrance which may be Recorded against the Properties as a result of such work, (ii) such changes therein as it considers appropriate, (iii) the Applicant's agreement to grant appropriate easements to the Association for the maintenance of the Improvements, (iv) the Applicant's agreement to install (at its sole cost) water, gas, electrical or other utility meters to measure any increased consumption, (v) the Applicant's agreement to reimburse the Association for the cost of such maintenance, or (vi) the Applicant's agreement to complete the proposed work within a stated period of time, and may require submission of additional plans and specifications or other

information before approving or disapproving material submitted. The Applicant shall meet any review or permit requirements of the County before making any construction, installation or alterations permitted under this Declaration. The Design Review Committee's approval or disapproval shall be based solely on the considerations listed in this Article. The Design Review Committee is not responsible for reviewing, nor may its approval of any plan or design be deemed approval of, any plan or design from the standpoint of structural safety or conformance with building or other codes. The Design Review Committee may consider the impact of views from other Residences or Lots and reasonable privacy right claims as factors in reviewing, approving or disapproving any proposed landscaping, construction or other Improvement. However, neither the Declarant nor the Association warrants that any views in the Properties are protected. No Residence or Lot is guaranteed the existence or unobstructed continuation of any particular view.

**5.4. Meetings And Actions of The Design Review Committee.** The Design Review Committee shall meet as necessary to perform its duties. The vote or written consent of a majority of the Design Review Committee constitutes an act of the Design Review Committee. All approvals issued by the Design Review Committee must be in writing. Verbal approvals issued by the Design Review Committee or any individual Design Review Committee member are not valid, are not binding on the Association and may not be relied on by any Person.

**5.5. No Waiver of Future Approvals.** The Design Review Committee's approval of any proposals or plans and specifications or drawings for any work done or proposed or in connection with any other matter requiring the Design Review Committee's approval does not waive any right to withhold approval of any similar proposals, plans and specifications, drawings or matters subsequently or additionally submitted for approval.

**5.6. Compensation of Members.** The Design Review Committee's members shall receive no compensation for services rendered, other than reimbursement for expenses incurred by them in performing their duties.

**5.7. Inspection of Work.** The Design Review Committee or its duly authorized representative may inspect any work for which approval of plans is required under this Article ("Work"). The right to inspect includes the right to require any Owner to take such action as may be necessary to remedy any noncompliance with the Design Review Committee-approved plans for the Work or with the requirements of this Declaration ("Noncompliance").

**5.7.1. Time Limit.** The Design Review Committee's right to inspect the Work and notify the responsible Owner of any Noncompliance shall terminate sixty (60) days after the Work is completed and the Design Review Committee receives written notice from the Owner that the Work is completed. If the Design Review Committee fails to send a notice of Noncompliance to an Owner before this time limit expires, the Work shall be deemed to comply with the approved plans.

5.7.2. **Remedy.** If an Owner fails to remedy any Noncompliance within sixty (60) days after the date of notice from the Design Review Committee, the Design Review Committee may proceed in accordance with Section 12.1.1. below.

5.8. **Variances.** The Design Review Committee may authorize variances from compliance with any of the architectural provisions of this Declaration including restrictions on height, size, floor area or placement of structures, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental consideration require. Such variances must be evidenced in writing, must be signed by a majority of the Design Review Committee, and become effective on Recordation. After Declarant's right to appoint a majority of the Design Review Committee's members expires, the Board must approve any variance recommended by the Design Review Committee before any such variance becomes effective. If variances are granted, no violation of the covenants, conditions and restrictions in this Declaration shall be deemed to have occurred with respect to the matter for which the variances were granted. The granting of a variance does not waive any of the terms and provisions of this Declaration for any purpose except as to the particular property and particular provision of this Declaration covered by the variance, nor does it affect the Owner's obligation to comply with all laws affecting the use of his Lot.

5.9. **Pre-approvals.** The Design Review Committee may authorize pre-approval of certain specified types of construction activities if, in the exercise of the Design Review Committee's judgment such preapproval is appropriate in carrying out the purposes of the Restrictions.

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

## **ARTICLE VI PROPERTY EASEMENTS AND RIGHTS**

### **6.1. Easements.**

6.1.1. **Maintenance and Repair.** SCC and Declarant reserve for the benefit of the Association and all Association agents, officers and employees, nonexclusive easements over the Common Property as necessary to fulfill the obligations and perform the duties of the Association.

6.1.2. **Utility Easements.** SCC and Declarant reserve easements to install and maintain utilities in the Common Property for the benefit of the Owners and their Lots. Declarant reserves the right to grant additional easements and rights-of-way throughout the

Properties to utility companies and public agencies as it deems necessary for the proper development of the Properties. Declarant's right shall expire on the Close of Escrow for the sale of the last Lot in the Properties and the Annexable Territory.

6.1.3. **Encroachments.** SCC and Declarant reserve for their benefit and for the benefit of Owners and their Lots a reciprocal easement appurtenant to each Lot over the other Lots and the Common Area to accommodate (a) any existing encroachment of any wall or any other authorized Improvement, (b) any existing encroachment of any wall or any other authorized Improvement, (c) authorized construction or repair, and (d) shifting, movement or natural settling of the Residences or other Improvements. SCC and Declarant reserve for the benefit of the Properties, the Owners and the Association, reciprocal nonexclusive easements for drainage of water over, across and on the Properties. Use of the foregoing easements may not unreasonably interfere with each Owner's use and enjoyment of the burdened Lots.

6.1.4. **Completion of Improvements.** SCC and Declarant reserve the right and easement to enter the Properties to complete any Improvement which Declarant considers desirable to implement Declarant's development plan.

6.1.5. **Owners' Easements in Common Area.** SCC and Declarant reserve for the benefit of every Owner, his Family, tenants and guests, nonexclusive easements for (a) use and enjoyment of the Common Area, and (b) vehicular and pedestrian access over the Common Area. This easement is appurtenant to and passes with title to every Lot in the Properties. The foregoing easements are subject to the restrictions, rights and other easements in the Restrictions.

6.1.6. **Property Wall Easements.** SCC and Declarant reserve for the benefit of the Association the following easements:

(a) An easement over all Lots abutting the Common Area, consisting of a three (3) foot wide strip of land along the entire length of the property line separating such Lot from the Common Area, for the purpose of accommodating the footings and other structural components of any Property Wall located on or immediately adjacent to such property line, including any encroachments thereof onto the Lot; and

(b) An easement for access over such Lots reasonably necessary for maintaining the Property Walls and related Improvements.

6.1.7. **Access Easements.** SCC and Declarant reserve for their benefit and for the benefit of the owners of residences that may be constructed in the Annexable Territory (whether annexed to the Properties or not) easements for pedestrian and vehicular access over all streets and driveways located within the Property.

6.1.8. **Telecommunications Easement.** SCC and Declarant reserve blanket easements ("Telecommunications Easements") over the Properties for access and for purposes of constructing, installing, locating, altering, operating, maintaining, inspecting, upgrading, removing and enhancing Telecommunications Facilities ("Telecommunications Purposes") for

the benefit of Declarant and the Properties. Such easements are freely transferable by Declarant to any other Person and their successors and assigns. No one, except for Declarant, and Declarant's transferees may use the Properties for Telecommunications Purposes. All Telecommunications Facilities shall be owned, leased or licensed by Declarant, as determined by Declarant, in its sole discretion and business judgment. Transfer of the Properties does not imply transfer of any Telecommunications Easements or Telecommunications Facilities. Exercise of Telecommunications Easements shall not unreasonably interfere with the reasonable use and enjoyment of the Properties by the Owners. If the exercise of any Telecommunications Easement results in damage to the Properties, the holder of the Telecommunications Easement shall, within a reasonable period of time, repair such damage. If Declarant has not conveyed the Telecommunications Easements in the Properties to another Person before the first Close of Escrow, then Declarant hereby grants the Telecommunications Easements for the Properties to the Master Association effective as of the first Close of Escrow.

6.2. **Right to Grant Easements.** SCC and Declarant reserve easements over the Common Property for the exclusive use by an Owner or Owners of contiguous property as a yard, recreational, gardening, and landscaping area. Any such easement may be conveyed by the Declarant before the last Close of Escrow for sale of a Lot in the Properties and the Annexable Territory. Such conveyance must be approved by the Board, which approval must not be unreasonably withheld. The purpose of the easement, the portion of the Common Property affected, the Lot to which the easement is appurtenant, and any restrictions on use of the easement area shall be identified in a Recorded grant of easement.

6.3. **Delegation of Use.** Any Owner may delegate his right to use the Common Property in writing to his tenants, contract purchasers or subtenants who reside in such Owner's Residence, subject to regulation by the Board.

6.4. **Owners.** Each Owner shall permit other Owners, and their representatives, to enter his Lot to perform installations, alterations or repairs to the mechanical or electrical services to a Lot if (a) requests for entry are made in advance; (b) entry is made at a time reasonably convenient to the Owner whose Lot is to be entered; and (c) the entered Lot is left in substantially the same condition as existed immediately preceding such entry. Any damage to the Lot caused by entry under this Subsection shall be repaired by the entering Owner.

## ARTICLE VII ASSOCIATION MAINTENANCE FUNDS AND ASSESSMENTS

7.1. **Personal Obligation to Pay Assessments.** Each Owner is deemed to covenant to pay to the Association Assessments which are established and collected pursuant to this Declaration. The Association shall not levy or collect any Assessment that exceeds the amount necessary for the purpose for which it is levied. Except as provided in this Section, all Assessments, together with interest, costs, and reasonable attorney fees for the collection thereof, are a charge and a continuing lien on the Lot against which such Assessment is made; provided, however, that the lien for Special Assessments cannot be enforced under Section 2924, 2924(b) or 2924(c) of the California Civil Code. Each Assessment, together with interest, costs and



reasonable attorney fees, is also the personal obligation of the Person who was the Owner of the Lot when the Assessment accrued. The personal obligation for delinquent Assessments may not pass to any new Owner ("Purchaser") unless expressly assumed by the Purchaser.

7.2. **Funds of the Association.** The Association shall establish no fewer than two (2) separate Association Maintenance Fund accounts into which shall be deposited all money paid to the Association and from which disbursements shall be made, as provided in this Declaration. The Association Maintenance Funds may be established as trust accounts at a banking or savings institution and shall include: (a) an Operating Fund for current Common Expenses, (b) an adequate Reserve Fund for the portion of Common Expenses allocated to (i) reserves for Improvements which the Board does not expected to perform on an annual or more frequent basis, and (ii) payment of deductible amounts for insurance policies which the Association obtains, and (c) any other funds which the Association may establish.

7.3. **Purpose of Assessments.** The Assessments shall be deposited into the Maintenance Funds and used exclusively to (a) promote the Owners' recreation, health, safety and welfare, (b) operate, improve and maintain the Common Property, and (c) discharge any other Association obligations under the Declaration. Disbursements from the Operating Fund shall be made by the Association for such purposes as are necessary for the discharge of its responsibilities in this Declaration for the common benefit of all Owners, other than those purposes for which disbursements from the Reserve Fund are to be used. Disbursements from the Reserve Fund shall be made by the Association only for the purposes specified in this Article and in Section 1365.5(c) of the California Civil Code, as amended.

7.4. **Waiver of Use.** No Owner may exempt himself from personal liability for Assessments, nor release such Owner's Lot from the liens and charges thereof, by waiving use and enjoyment of the Common Property or by abandoning such Owner's Lot.

7.5. **Limits on Annual Assessment Increases.**

7.5.1. **Maximum Authorized Annual Assessment For Initial Year of Operations.** During the Fiscal Year in which Annual Assessments commence, the Board may levy an Annual Assessment per Lot in an amount which exceeds one hundred twenty percent (120%) of the amount of Annual Assessments disclosed for the Properties in the most current Budget filed with and approved by the DRE only if the Board first obtains the approval of Owners casting a majority of votes at a meeting or election of the Association in which more than fifty percent (50%) of the Lots are represented ("Increase Election"). This Section does not limit Annual Assessment increases necessary for addressing an "Emergency Situation" as defined in Section 7.5.5.

7.5.2. **Maximum Authorized Annual Assessment For Subsequent Fiscal Years.** During the Fiscal Years following the Fiscal Year in which Annual Assessments commence, the Board may levy Annual Assessments which exceed the Annual Assessments for the immediately preceding Fiscal Year only as follows:

(a) If the increase in Annual Assessments is less than or equal to twenty percent (20%) of the Annual Assessments for the immediately preceding Fiscal Year, then the Board must either (i) have distributed the Budget for the current Fiscal Year in accordance with Section 1365(a) of the California Civil Code, or (ii) obtain the approval of Owners casting a majority of votes in an Increase Election; or

(b) If the increase in Annual Assessments is greater than twenty percent (20%) of the Annual Assessments for the immediately preceding Fiscal Year, then the Board must obtain the approval of Owners casting a majority of votes in an Increase Election.

This Section does not limit Annual Assessment increases necessary for addressing an "Emergency Situation" as defined in Section 7.5.5.

**7.5.3. Supplemental Annual Assessments.** If the Board determines that the Association's essential functions may be properly funded by an Annual Assessment in an amount less than the maximum authorized Annual Assessment described above, it may levy such lesser Annual Assessment. If the Board determines that the estimate of total charges for the current year is or will become inadequate to meet all Common Expenses, it shall immediately determine the approximate amount of the inadequacy. Subject to the limits described in Sections 7.5.1, 7.5.2 and 7.5.5, the Board may levy a supplemental Annual Assessment reflecting a revision of the total charges to be assessed against each Lot.

**7.5.4. Automatic Assessment Increases.** Despite any other provisions of this Section 7.5, on Declarant's annexation of the Annexable Territory pursuant to Article XVI, the Annual Assessment shall be automatically increased by the additional amount, if any, necessary to maintain the Common Property in or abutting such Annexable Territory so long as (a) the annexation of such Annexable Territory is permitted by the DRE, and (b) the amount of such increase does not result in the levy of an Annual Assessment which is greater than the maximum potential Annual Assessment disclosed in all Final Subdivision Public Reports for the Properties.

**7.5.5. Emergency Situations.** For purposes of Sections 7.5.1, 7.5.2 and 7.7, an "Emergency Situation" is any one of the following:

- (a) An extraordinary expense required by an order of a court;
- (b) An extraordinary expense necessary to maintain the portion of the Properties for which the Association is responsible where a threat to personal safety on the Properties is discovered; and
- (c) An extraordinary expense necessary to maintain the portion of the Properties for which the Association is responsible that could not have been reasonably foreseen by the Board when preparing the Budget. Before imposing or

collecting an Assessment pursuant to this Subparagraph (c), the Board shall adopt a resolution containing written findings regarding the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process. The resolution shall be distributed to the Owners with the notice of the Assessment.

**7.6. Commencement and Collection of Annual Assessments.** Annual Assessments shall commence on all Lots in a Phase on the first day of the first calendar month following the first Close of Escrow in such Phase. All Annual Assessments shall be assessed uniformly and equally against the Owners and their Lots based on the number of Lots owned by each Owner. Annual Assessments for fractions of a month shall be prorated. Declarant shall pay its full pro rata share of the Annual Assessments on all unsold Lots for which Annual Assessments have commenced. 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. However, unless otherwise established by the Board, the initial Annual Assessments shall be assessed in accordance with the most recent Budget on file with and approved by DRE. Written notice of any change in the amount of any Annual Assessment, Capital Improvement Assessment or Reconstruction Assessment shall be sent via first-class mail to every Owner subject thereto not less than thirty (30) nor more than sixty (60) days before the increased Assessment becomes due.

The Board has the power to require that funds in the Operating Fund at the end of the Fiscal Year be retained and used to reduce the following Fiscal Year's Annual Assessments. On dissolution of the Association incident to the abandonment or termination of the Properties as a planned development, any amounts remaining in any of the Maintenance Funds shall be distributed to or for the benefit of the Owners in the same proportions as such money was collected from the Owners.

Despite any other provisions of this Declaration, until the earlier to occur of (i) the Recordation of a notice of completion of an Improvement on the Common Property, or (ii) the placement of such Improvement into use, each Owner (including Declarant) shall be exempt from paying that portion of any Annual Assessment which is allocated to defraying expenses and reserves directly attributable to the existence and use of such Improvement.

Each Owner shall pay Annual Assessments in installments at such frequency and in such amounts and by such methods as are established by the Board. If the Association incurs additional expenses because of a payment method selected by an Owner, the Association may charge that expense to the Owner. The Association does not have to apportion the expense among all Owners as a part of Annual Assessments. Each installment of Annual Assessments may be paid to the Association in one check or in separate checks as payments attributable to specified Association Maintenance Funds. If any payment of an Annual Assessment installment (1) is less than the amount assessed and (2) does not specify the Association Maintenance Fund or Funds into which it should be deposited, then the amount received shall be credited in order of priority first to the Operating Fund, until that portion of the Annual Assessment has been satisfied, and second to the Reserve Fund.

7.7. **Capital Improvement Assessments.** The Board may levy, in any Fiscal Year, a Capital Improvement Assessment or Reconstruction Assessment applicable to that Fiscal Year only to defray, in whole or in part, the cost of any construction, repair or replacement of a capital Improvement or other such addition to the Common Property. No Capital Improvement Assessments in any Fiscal Year which, if added to the Capital Improvement Assessments already levied during such Fiscal Year, exceed five percent (5%) of the Association's Budgeted gross expenses for such Fiscal Year, may be levied without the vote or written consent of Owners casting a majority of votes at an Increase Election. The Board may levy in any Fiscal Year, a Capital Improvement Assessment applicable to that Fiscal Year which exceeds five percent (5%) of the Association's Budgeted gross expenses for such Fiscal Year if such increase is necessary for addressing an Emergency Situation as defined in Section 7.5.5.

## ARTICLE VIII INSURANCE

8.1. **Duty to Obtain Insurance; Types.** The Association shall obtain and maintain in effect at all times the following insurance coverages:

8.1.1. **Public Liability.** Adequate public liability insurance (including coverage for medical payments), with limits acceptable to FNMA and as required by Section 1365.9 of the California Civil Code, insuring against liability for bodily injury, death and property damage arising from the activities of the Association and the Owners on the Common Property.

8.1.2. **Fire and Casualty Insurance.** Fire and casualty insurance with extended coverage, without deduction for depreciation, in an amount as near as possible to the full replacement value of all insurable Improvements installed by Declarant or by the Association or the Common Property.

8.1.3. **Fidelity Insurance.** Fidelity insurance coverage for any Person handling funds of the Association, whether or not such persons are compensated for their services, in an amount not less than the estimated maximum of funds, including reserve funds, in the custody of the Person during the term of the insurance. The aggregate amount of the fidelity insurance coverage may not be less than the sum equal to one-fourth (1/4) of the Annual Assessments on all Lots in the Properties, plus reserve funds.

8.1.4. **Insurance Required by FNMA, GNMA and FHLMC.** Casualty, flood, liability and fidelity insurance meeting the insurance requirements for planned unit developments established by FNMA, GNMA and FHLMC, so long as any of these entities is a Mortgagee or Owner of a Lot in the Properties, except to the extent such coverage is not reasonably available or has been waived in writing by the entity requiring the insurance coverage.

8.1.5. **Other Insurance.** Such other insurance insuring other risks customarily insured by associations managing planned unit developments similar in construction, location and use.

8.1.6. **Beneficiaries.** The Association's insurance shall be kept for the benefit of the Association, the Owners, and the Mortgagees, as their interests may appear as named insured, subject, however, to loss payment requirements established in this Declaration.

8.2. **Waiver of Claim Against Association.** As to all policies of insurance kept by or for the benefit of the Association and the Owners, the Association and the Owners waive and release all claims against one another, the Board and Declarant, to the extent of the insurance proceeds available, whether or not the insurable damage or injury is caused by the negligence of or breach of any agreement by any of the Persons.

8.3. **Right And Duty of Owners to Insure.** Each Owner is responsible for insuring his personal property and all other property and Improvements on his Lot for which the Association has not purchased insurance in accordance with Section 8.1. Nothing in this Declaration precludes any Owner from carrying any public liability insurance he considers desirable; however, Owners' policies may not adversely affect or diminish any coverage under any of the Association's insurance policies. Duplicate copies of Owners' insurance policies shall be deposited with the Association on request. If any loss intended to be covered by the Association's insurance occurs and the proceeds payable are reduced due to insurance carried by any Owner, such Owner shall assign the proceeds of the Owner's insurance to the Association, to the extent of such reduction, for application to the same purposes as the reduced proceeds are to be applied.

8.4. **Notice of Expiration Requirements.** If available, each of the Association's insurance policies must contain a provision that the policy may not be canceled, terminated, materially modified or allowed to expire by its terms, without at least ten (10) days' prior written notice to the Board and Declarant, and to each Owner and Mortgagee, insurer and guarantor of a first Mortgage who has filed a written request with the carrier for such notice and every other Person in interest who requests such notice of the insurer. In addition, fidelity insurance shall provide that it may not be canceled or substantially modified without at least ten (10) days' prior written notice to any insurance trustee named pursuant to Section 8.6 and to each FNMA servicer who has filed a written request with the carrier for such notice.

8.5. **Insurance Premiums.** Premiums for insurance policies obtained by the Association are Common Expenses.

8.6. **Trustee For Policies.** The Association is trustee of the interests of all named insureds under the Association's insurance policies. Unless an insurance policy provides for a different procedure for the filing of claims, all claims made under such policy must be sent to the insurance carrier or agent by certified mail and be clearly identified as a claim. The Association shall keep a record of all claims made. All insurance proceeds under any such policies provided for in Section 8.1 must be paid to the Board as trustees. The Board has the authority to negotiate loss settlements with insurance carriers, with participation, to the extent they desire, of first Mortgagees who have filed written requests within ten (10) days of receipt of notice of any damage or destruction as provided in Section 9.4. Any two (2) officers of the Association may sign a loss claim form and release form in connection with the settlement of a loss claim, and

such signatures are binding on all the named insureds. A representative chosen by the Board may be named as an insured, including a trustee with whom the Association may enter into an insurance trust agreement and any successor to such trustee, who shall have exclusive authority to negotiate losses under any insurance policy and to perform such other functions necessary to accomplish this purpose.

8.7. **Actions as Trustee.** Except as otherwise specifically provided in this Declaration, the Board has the exclusive right to bind the Association and the Owners in respect to all matters affecting insurance carried by the Association, the settlement of a loss claim, and the surrender, cancellation, and modification of all such insurance, in a manner satisfactory to Beneficiaries of seventy-five percent (75%) of the first Mortgages held by first Mortgagees who have filed requests under Section 8.4. Duplicate originals or certificates of all policies of fire and casualty insurance kept by the Association and of all renewals thereof, together with proof of payment of premiums, shall be delivered by the Association to all Owners and Mortgagees who requested them in writing.

8.8. **Annual Insurance Review.** The Board shall review the Association's insurance policies at least annually to determine the amount of the casualty and fire insurance referred to in Section 8.1. If economically feasible, the Board shall obtain a current appraisal of the full replacement value of the Improvements on the Common Property and the Properties except for foundations and footings, without deduction for depreciation, from a qualified independent insurance appraiser, before each such annual review.

8.9. **Required Waiver.** All of the Association's insurance policies insuring against physical damage must provide, if reasonably possible, for waiver of:

8.9.1. Subrogation of claims against the Owners and tenants of the Owners;

8.9.2. Any defense based on coinsurance;

8.9.3. Any right of setoff, counterclaim, apportionment, proration or contribution due to other insurance not carried by the Association;

8.9.4. Any invalidity, other adverse effect or defense due to any breach of warranty or condition caused by the Association, any Owner or any tenant of any Owner, or arising from any act or omission of any named insured or the respective agents, contractors and employees of any insured;

8.9.5. Any right of the insurer to repair, rebuild or replace, and, if the Improvement is not repaired, rebuilt or replaced following loss, any right to pay under the insurance an amount less than the replacement value of the Improvements insured;

8.9.6. Notice of the assignment of any Owner of his interest in the insurance by virtue of a conveyance of any Lot;

8.9.7. Any right to require any assignment of any Mortgage to the insurer;

8.9.8. Any denial of an Owner's claim because of negligent acts by the Association or other Owners; and

8.9.9. Prejudice of the insurance by any acts or omissions of Owners that are not under the Association's control.

## **ARTICLE IX DESTRUCTION OF IMPROVEMENTS**

9.1. **Damage to Common Property.** Except as otherwise authorized by sixty-seven percent (67%) of the voting power of the Association, if any portion of the Common Property is destroyed, the Association shall restore the same to its former condition as promptly as practical. The Association shall use the proceeds of its insurance for reconstruction or repair of the Properties unless otherwise authorized in this Declaration. The Board shall prepare or obtain the documents necessary for commencing such reconstruction as promptly as practical. The Properties shall be reconstructed or rebuilt substantially in accordance with the original construction plans if they are available, unless changes recommended by the Design Review Committee have been approved by at least sixty-seven percent (67%) of the Owners and by the Beneficiaries of at least fifty-one percent (51%) of first Mortgages on the Lots. The Board shall levy a Reconstruction Assessment to provide the additional funds necessary for such reconstruction.

9.2. **Damage to Residences-Reconstruction.** If all or any portion of any Residence or other Improvements on a Lot is damaged or destroyed by fire or other casualty, the Owner of such Lot shall rebuild, repair or reconstruct the Residence and Improvement in a manner which will restore them substantially to their appearance and condition immediately prior to the casualty or as otherwise approved by the Design Review Committee. If all or any portion of an Owner's Lot is destroyed to such an extent that it would be impractical to restore the Lot or rebuild damaged Improvements, the Owner shall install landscaping Improvements on the Lot in accordance with Design Review Committee Guidelines. The Owner of any damaged Lot or Residence and the Design Review Committee shall proceed with all due diligence, and the Owner shall cause reconstruction or installation of landscape Improvements, as applicable, to commence within six (6) months after the damage occurs and to be completed within twelve (12) months after damage occurs, unless prevented by causes beyond such Owner's reasonable control. The transfer of a damaged Lot or a Lot with a damaged Residence to another Person will not extend the time allowed in this Section for commencement and completion of reconstruction or installation of landscape Improvements by the transferee. However, no such transferee will be required to commence or complete such reconstruction or installation of landscape Improvements in less than thirty (30) days from the date the transferee acquired title to the Lot.

9.3. **Notice to Owners And Listed Mortgagees.** The Board, immediately on having knowledge of any damage or destruction affecting a material portion of the Common Area, shall

promptly notify all Owners and Beneficiaries, insurers and guarantors of first Mortgages on Lots in the Properties who have filed a written request for such notice with the Board.

## **ARTICLE X EMINENT DOMAIN**

The term “taking” as used in this Article means condemnation by exercise of the power of eminent domain or by sale under threat of the exercise of the power of eminent domain. The Board shall represent the Owners in any proceedings, negotiations, settlements, or agreements regarding takings. All takings proceeds shall be payable to the Association for the benefit of the Owners and their Mortgagees, and shall be distributed to such Owners and Mortgagees as provided in this Article.

10.1. **Condemnation of Common Property.** If there is a taking of the Common Property or any portion thereof, then the award in condemnation shall be paid to the Association and shall be deposited in the Operating Fund.

10.2. **Condemnation of Lots.** If there is a taking of a Lot (other than any portion of the Lot which is Association Maintenance Area), the award in condemnation shall be paid to the Owner of the Lot; however, such award shall first be applied to the balance then due on any Mortgages encumbering such Owner’s Lot, in order of priority.

10.3. **Notice to Owners And Mortgagees.** The Board, on learning of any condemnation proceeding affecting a material portion of the Common Area, or any threat thereof, shall promptly notify all Owners and those Beneficiaries, insurers and guarantors of Mortgages on Lots in the Properties who have filed a written request for such notice with the Association.

## **ARTICLE XI RIGHTS OF MORTGAGEES**

11.1. **General Protections.** No amendment or violation of this Declaration defeats or renders invalid the rights of the Mortgagee under any Mortgage encumbering one (1) or more Lots made in good faith and for value, provided that after the foreclosure of any such Mortgage such Lot(s) will remain subject to this Declaration. For purposes of this Declaration, “first Mortgage” means a Mortgage with first priority over other Mortgages or Deeds of Trust on a Lot, and “first Mortgagee” means the Beneficiary of a first Mortgage. For purposes of any provisions of the Restrictions which require the vote or approval of a specified percentage of first Mortgagees, such vote or approval is determined based on one (1) vote for each Lot encumbered by each such first Mortgage.

11.2. **Additional Rights.** In order to induce VA, FHA FHLMC, GNMA and FNMA to participate in the financing of the sale of Lots, the following provisions are added hereto (and to the extent these added provisions conflict with any other provisions of the Restrictions, these added provisions control):



11.2.1. **Notices.** Each Mortgagee, insurer and guarantor of a Mortgage encumbering one (1) or more Lots, upon filing a written request for notification with the Board, is entitled to written notification from the Association of: (a) any condemnation or casualty loss which affects either a material portion of the Properties or the Lot(s) securing the respective first Mortgage; (b) any delinquency of sixty (60) days or more in the performance of any obligation under the Restrictions, including the payment of Assessments or charges owed by the Owner(s) of the Lot(s) securing the Mortgage, which notice each Owner hereby consents to and authorizes; and (c) a lapse, cancellation, or material modification of any policy of insurance or fidelity bond maintained by the Association.

11.2.2. **Right of First Refusal.** Each Owner, including each first Mortgagee of a Mortgage encumbering any Lot who obtains title to such Lot pursuant to (a) the remedies provided in such Mortgage, (b) foreclosure of the Mortgage, or (c) deed or assignment in lieu of foreclosure, is exempt from any "right of first refusal" created or purported to be created by the Restrictions.

11.2.3. **Unpaid Assessments.** Each first Mortgagee of a first Mortgage encumbering any Lot who obtains title to such Lot pursuant to the remedies provided in such Mortgage or by foreclosure of such Mortgage, shall take title to such Lot free and clear of any claims for unpaid Assessments or charges against such Lot which accrued before the time such Mortgagee acquires title to such Lot.

11.2.4. **Association Records.** All Mortgagees, insurers and guarantors of first Mortgages, on written request to the Association, shall have the right to:

- (a) examine current copies of the Association's books, records and financial statements and the Restrictions during normal business hours; and
- (b) receive written notice of all meetings of Owners;  
and
- (c) designate in writing a representative who shall be authorized to attend all meetings of Owners.

11.2.5. **Payment of Taxes.** First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Property and may pay any overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for Common Property, and the Association shall immediately reimburse first Mortgagees who made such payments.

11.2.6. **Intended Improvements.** All intended Improvements in any Phase other than Phase 1 shall be substantially consistent with the Improvements in Phase 1 in structure type and quality of construction. The requirements of this Section 11.2.6 are for the benefit of and may be enforced only by FNMA.

11.2.7. **Contracts.** The Board may enter into such contracts or agreements on behalf of the Association as are required in order to satisfy the guidelines of VA, FHA, FHLMC, FNMA, GNMA or any similar entity, so as to allow for the purchase, insurance or guaranty, as the case may be, by such entities of first Mortgages encumbering Lots improved with Residences. Each Owner hereby agrees that it will benefit the Association and its Members, as a class of potential Mortgage borrowers and potential sellers of their Lots, if such agencies approve the Properties as a qualifying subdivision under their respective policies, rules and regulations. Each Owner hereby authorizes his Mortgagees to furnish information to the Board concerning the status of any Mortgage encumbering a Lot.

## **ARTICLE XII ENFORCEMENT**

12.1. **Enforcement of Restrictions.** All violations of the Restrictions, other than those described in Section 12.2 or regulated by Civil Code Section 1375, shall be resolved as follows:

12.1.1. **Violations Identified by the Association.** If the Board determines that there is a violation of the Restrictions, or the Design Review Committee determines that an Improvement which is the maintenance responsibility of an Owner needs installation, maintenance, repair, restoration or painting, then the Board shall give written notice to the responsible Owner identifying (a) the condition or violation complained of, and (b) the length of time the Owner has to remedy the violation including, if appropriate, the length of time the Owner has to submit plans to the Design Review Committee and the length of time the Owner has to complete the work proposed in the plans submitted to the Design Review Committee. If an Owner does not perform such corrective action as is required by the Board and the Design Review Committee in the allotted time, the Board, after Notice and Hearing, may remedy such condition or violation complained of, and the cost thereof shall be charged to the Owner as a Special Assessment. If the violation involves nonpayment of any Assessment, then the Board may collect such delinquent Assessment pursuant to the procedures established in Section 12.2.

12.1.2. **Violations Identified by an Owner.** If an Owner alleges that another Person is violating the Restrictions (other than nonpayment of any Assessment), the complaining Owner must first submit the matter to the Board for Notice and Hearing before the complaining Owner may resort to alternative dispute resolution, as required by Section 1354 of the California Civil Code, or litigation for relief.

12.1.3. **Legal Proceedings.** Failure to comply with any of the terms of the Restrictions by any Person is grounds for relief which may include an action to recover damages, injunctive relief, foreclosure of any lien, or any combination thereof; however, the procedures established in Section 1354 of the California Civil Code and in Sections 12.1.1 and 12.1.2 above must first be followed, if they apply.

12.1.4. **Additional Remedies.** The Board may adopt a schedule of reasonable fines or penalties which, in its reasonable discretion, the Board may assess against a Person for

the failure of such Person to comply with the Restrictions. Such fines or penalties may only be assessed after Notice and Hearing. After Notice and Hearing, the Board may direct the officers of the Association to Record a notice of noncompliance (if allowed by law) against a Lot owned by any Owner who has violated any provision of this Declaration. The notice shall include a legal description of the Lot and shall specify the provision of the Declaration that was violated, the violation committed, and the steps required to remedy the noncompliance. Once the noncompliance is remedied or the noncomplying Owner has taken such other steps as reasonably required by the Board, the Board shall direct the officers of the Association to Record a notice that the noncompliance has been remedied.

12.1.5. **No Waiver.** Failure to enforce any provision does not waive the right to enforce that provision, or any other provision of this Declaration.

12.1.6. **Right to Enforce.** The Association and any Owner may enforce the Restrictions as described in this Article, subject to Section 1354 of the California Civil Code. Each Owner has a right of action against the Association for the Association's failure to comply with the Restrictions. Each remedy provided for in this Declaration is cumulative and not exclusive or exhaustive.

12.1.7. **Limit on Expenditures.** The Association may not incur litigation expenses, including attorneys' fees, or borrow money to fund litigation, where the Association initiates legal proceedings or is joined as a plaintiff in legal proceedings, unless the Association first obtains the consent of sixty-seven percent (67%) of the Association voting power (excluding the voting power of any Owner who would be a defendant in such proceedings), and, if applicable, complies with the requirements of Section 1354 of the California Civil Code. Such approval is not necessary if the legal proceedings are initiated (a) to enforce the use restrictions contained in Article II, (b) to enforce the architectural and landscaping control provisions contained in Article V, (c) to collect any unpaid Assessments levied pursuant to the Restrictions, (d) for a claim, the total value of which is less than Five Hundred Thousand Dollars (\$500,000), or (e) as a cross-complaint in litigation to which the Association is already a party. If the Association decides to use or transfer reserve funds or borrow funds to pay for any litigation, the Association must notify the Owners of the decision by mail. Such notice shall provide an explanation of why the litigation is being initiated or defended, why operating funds cannot be used, how and when the reserve funds will be replaced or the loan will be repaid, and a proposed budget for the litigation. The notice must state that the Owners have a right to review an accounting for the litigation which will be available at the Association's office. The accounting shall be updated monthly.

## 12.2. **Nonpayment of Assessments.**

12.2.1. **Delinquency.** Assessments are delinquent if not paid within fifteen (15) days after the due date established by the Association. Assessments not paid within thirty (30) days after the due date, plus all reasonable costs of collection (including attorneys' fees) and late charges bear interest at the maximum rate permitted by law commencing thirty (30) days after the due date until paid. The Association may also require the delinquent Owner to pay a late charge

in accordance with California Civil Code Section 1366(d)(2). The Association need not accept any tender of a partial payment of an Assessment and all costs and attorneys' fees attributable thereto. Acceptance of any such tender does not waive the Association's right to demand and receive full payment.

#### 12.2.2. **Creation and Release of Lien.**

(a) **Priority of Lien.** All sums assessed in accordance with this Declaration constitute a lien on the assessed Lot prior and superior to (i) any declaration of homestead Recorded after the Recordation of this Declaration, and (ii) all other liens, except (1) all taxes, bonds, assessments and other levies which, by law, would be superior thereto, and (2) the lien or charge of any first Mortgage of Record (meaning any Recorded Mortgage with first priority or seniority over other Mortgages) made in good faith and for value and Recorded before the date on which the "Notice of Delinquent Assessment" (described in this Section) against the assessed Lot was Recorded.

(b) **Prerequisite to Creating Lien.** Before the Association may place a lien on an Owner's Lot to collect a past due Assessment, the Association shall send a written notice to the Owner by certified mail which contains the following information: (i) the fee and penalty procedure of the Association, (ii) an itemized statement of the charges owed by the Owner, including the principal owed, any late charges and the method of calculation, any attorneys' fees, (iii) the collection practices used by the Association, and (iv) a statement that the Association may recover the reasonable costs of collecting past due Assessments.

(c) **Notice of Delinquent Assessment.** The lien becomes effective on Recordation by the Board or its authorized agent of a Notice of Delinquent Assessment ("Notice of Delinquent Assessment") securing the payment of any Assessment or installment thereof levied by the Association against any Lot Owner, as provided in Section 1367 of the California Civil Code. The Notice of Delinquent Assessment must identify (i) the amount of the Assessment and other authorized charges and interest, including the cost of preparing and Recording the Notice of Delinquent Assessment, (ii) the amount of collection costs incurred, including reasonable attorneys' fees, (iii) a sufficient description of the Lot that has been assessed, (iv) the Association's name and address, (v) the name of the Owner of the Lot that has been assessed, and (vi) if the lien is to be enforced by nonjudicial foreclosure, the name and address of the trustee authorized by the Association to enforce the lien by sale. The Notice of Delinquent Assessment must be signed by an authorized Association officer or agent and must be mailed in the manner required by Section 2924b of the California Civil Code to the Owner of record of the Lot no later than (10) calendar days after Recordation. The lien relates only to the individual Lot against which the Assessment was levied and not to the Properties as a whole.

(d) **Exceptions.** Special Assessments may not become a lien enforceable by nonjudicial foreclosure against such Owner's Lot.

(e) **Release of Lien.** On payment of the full amount claimed in the Notice of Delinquent Assessment, or other satisfaction thereof, the Board shall cause to be Recorded a Notice of Satisfaction and Release of Lien ("Notice of Release") stating the satisfaction and release of the amount claimed. The Board may require the Owner to pay a reasonable charge for preparing and Recording the Notice of Release. Any purchaser or encumbrancer who has acted in good faith and extended value may rely on the Notice of Release as conclusive evidence of the full satisfaction of the sums identified as owed in the Notice of Delinquent Assessment.

12.2.3. **Enforcement of Liens.** The Board shall enforce the collection of amounts due under this Declaration by one (1) or more of the alternative means of relief afforded by this Declaration. Except as otherwise provided herein, the lien on a Lot may be enforced by foreclosure and sale of the Lot by the Association, the Association's attorneys, any title insurance company authorized to do business in California, or other persons authorized to conduct the sale as a trustee, after failure of the Owner to pay any Assessment, or installment thereof, as provided in this Declaration. The sale shall be conducted in accordance with the provisions of the California Civil Code applicable to the exercise of powers of sale in Mortgages, or in any manner permitted by law. The Association (or any Owner if the Association refuses to act) may sue to foreclose the lien if (a) at least thirty (30) days have elapsed since the date on which the Notice of Delinquent Assessment was Recorded and (b) at least ten (10) days have elapsed since a copy of the Notice of Delinquent Assessment was mailed to the Owner affected thereby. The Association may bid on the Lot at foreclosure sale, and acquire and hold, lease, mortgage and convey the same. On completion of the foreclosure sale, the Association or the purchaser at the sale may file suit to secure occupancy of the defaulting Owner's Lot, and the defaulting Owner shall be required to pay the reasonable rental value for the Lot during any period of continued occupancy by the defaulting Owner or any persons claiming under the defaulting Owner. A suit to recover a money judgment for unpaid Assessments may be brought without foreclosing or waiving any lien securing the same, but this provision or any suit to recover a money judgment does not affirm the adequacy of money damages. Any recovery resulting from a suit at law or in equity initiated pursuant to this Section may include reasonable attorneys' fees as fixed by the court.

12.2.4. **Priority of Assessment Lien.** Mortgages Recorded before a Notice of Delinquent Assessment have lien priority over the Notice of Delinquent Assessment. Sale or transfer of any Lot does not affect the Assessment lien, except that the sale or transfer of any Lot pursuant to judicial or nonjudicial foreclosure of a first Mortgage extinguishes the lien of such Assessments as to payments which became due before such sale or transfer. No sale or transfer relieves such Lot from liens for any Assessments thereafter becoming due. No Person who obtains title to a Lot pursuant to a judicial or nonjudicial foreclosure of the first Mortgage is liable for the share of the Common Expenses or Assessments chargeable to such Lot which became due before the acquisition of title to the Lot by such Person. Such unpaid share of

Common Expenses or Assessments is a Common Expense collectible from all Owners including such Person. The Association may take such action as is necessary to make any Assessment lien subordinate to the interests of the Department Veterans Affairs of the State of California under its Cal-Vet loan contracts as if the Cal-Vet loan contracts were first Mortgages of record.

**12.2.5. Alternative Dispute Resolution.** An Owner may dispute the Assessments imposed by the Association if such Owner pays in full (a) the amount of the Assessment in dispute, (b) any late charges, (c) any interest, and (d) all fees and costs associated with preparing and filing a Notice of Delinquent Assessment (including mailing costs and attorneys' fees not to exceed the maximum amount allowed by law, and states by written notice that such amount is paid under protest, and the written notice is mailed by certified mail not more than thirty (30) days after Recording the Notice of Delinquent Assessment. On receipt of the written notice, the Association shall inform the Owner in writing that the dispute may be resolved through alternative dispute resolution as established in Civil Code Section 1354. The right of any Owner to use alternative dispute resolution under this Section may not be exercised more than two (2) times in any single calendar year, and not more than three (3) times within any five (5) calendar years unless the Owner and the Association mutually agree to use alternative dispute resolution when this limit is exceeded. An Owner may request and be awarded through alternative dispute resolution reasonable interest to be paid by the Association in the total amount paid under items (a) through (d) above, if it is determined that the Assessment levied by the Association was not correctly levied.

**12.2.6. Receivers.** In addition to the foreclosure and other remedies granted the Association in this Declaration, each Owner, by acceptance of a deed to such Owner's Lot, conveys to the Association all of such Owner's right, title and interest in all rents, issues and profits derived from and appurtenant to such Lot, subject to the right of the Association to collect and apply such rents, issues and profits to any delinquent Assessments owed by such Owner, reserving to the Owner the right, before any default by the Owner in the payment of Assessments, to collect and retain such rents, issues and profits as they may become due and payable. On any such default the Association may, on the expiration of thirty (30) days following delivery to the Owner of the "Notice of Delinquent Assessment" described in this Declaration, either in person, by agent or by receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness secured by the lien described in this Declaration, (a) enter in or on and take possession of the Lot or any part thereof, (b) in the Association's name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and (c) apply the same, less allowable expenses of operation, to any delinquencies of the Owner, and in such order as the Association may determine. The entering upon and taking possession of the Lot, the collection of rents, issues and profits and the application thereof, shall not cure or waive any default or notice of default under this Declaration or invalidate any act done pursuant to such notice.

**12.3. Enforcement of Bonded Obligations.** If (a) the Common Area Improvements are not completed before issuance of a Final Subdivision Public Report for the Properties by the DRE, and (b) the Association is obligee under a bond or other arrangement ("Bond") required by

the DRE to secure performance of Declarant's commitment to complete such Improvements, then the following provisions of this Section will be applicable:

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

12.3.2. A special meeting of Owners for the purpose of voting to override a decision by the Board not to initiate action to enforce the obligations under the Bond or on the Board's failure to consider and vote on the question shall be held no fewer than thirty-five (35) nor more than forty-five (45) days after the Board receives a petition for such a meeting signed by Owners representing five percent (5%) of the Association's total voting power. A vote of a majority of the Association's voting power (excluding Declarant) to take action to enforce the obligations under the Bond shall be deemed to be the decision of the Association, and the Board shall thereafter implement such decision by initiating and pursuing appropriate action in the Association's name.

### **ARTICLE XIII DURATION AND AMENDMENT**

13.1. **Duration.** Subject to Sections 13.2 and 17.3 below, this Declaration shall have an initial term of sixty (60) years and shall thereafter automatically renew for successive ten (10) year periods.

#### **13.2. Termination and Amendment.**

13.2.1. **Amendment Approval.** Notice of the subject matter of a proposed amendment to this Declaration in reasonably detailed form must be included in the notice of any Association meeting or election at which a proposed amendment is to be considered. To be effective, a proposed amendment must be adopted by the vote, in person or by proxy, or written consent of Owners representing not less than (i) sixty-seven percent (67%) of the voting power of each Class of the Association and (ii) sixty-seven percent (67%) of the Association's voting power represented by Owners other than Declarant, provided that the specified percentage of the Association's voting power necessary to amend a specific provision of this Declaration may not be less than the percentage of affirmative votes prescribed for action to be taken under the provision that is the subject of the proposed amendment. So long as there exists a Class B Membership, and VA or FHA is making or insuring a Mortgage in the Properties, the prior approval of VA or FHA (whichever is making or insuring a Mortgage) is required for any amendment to the Declaration for the purpose of terminating the Declaration, dissolving the

Association (except pursuant to merger or consolidation) or conveying all of the Common Property.

**13.2.2. Mortgagee Consent.** In addition to the notices and consents required by Section 13.2.1, the Beneficiaries of fifty-one percent (51%) of the first Mortgages on all the Lots in the Properties who have requested the Association to notify them of proposed action requiring the consent of a specified percentage of first Mortgagees must approve any amendment to this Declaration which is of a material nature, as follows:

(a) Any amendment which affects or purports to affect the validity or priority of Mortgages or the rights or protection granted to Beneficiaries, insurers or guarantors of first Mortgages.

(b) Any amendment which would require a Mortgagee after it has acquired a Lot through foreclosure to pay more than its proportionate share of any unpaid Assessment or Assessments accruing before such foreclosure.

(c) Any amendment which would or could result in a Mortgage being canceled by forfeiture, or in a Lot not being separately assessed for tax purposes.

(d) Any amendment relating to (i) the insurance provisions in Article VIII, (ii) the application of insurance proceeds in Article IX, or (iii) the disposition of any money received in any taking under condemnation proceedings.

(e) Any amendment which would subject any Owner to a right of first refusal or other such restriction, if such Lot is proposed to be transferred.

**13.2.3. Termination Approval.** Termination of this Declaration requires approval of the Owners as provided in Section 13.2.1.

**13.2.4. Notice to Mortgagees.** Each Mortgagee of a first Mortgage on a Lot in the Properties which receives proper written notice of a proposed amendment or termination of this Declaration with a return receipt requested is deemed to have approved the amendment or termination if the Mortgagee fails to submit a response to the notice within thirty (30) days after the Mortgagee receives the notice.

**13.2.5. Certificate.** A copy of each amendment must be certified by at least two (2) Association officers. The amendment becomes effective when a Certificate of Amendment is Recorded. The certificate, signed and sworn to by two (2) Association officers that the requisite number of Owners and Mortgagees have approved the amendment, when Recorded, is conclusive evidence of that fact. The Association shall keep in its files for at least four (4) years the record of all such approvals. The certificate reflecting any termination or amendment which requires the written consent of any of the Beneficiaries of first Mortgages must include a certification that the requisite approval of such first Mortgagees was obtained.



13.3. **Dispute with Declarant Parties.** Any disputes between (a) the Association or any Owners, and (b) the Declarant and/or SCC or any director, officer, partner, employee, agent, representatives, contractor, subcontractor, design professional or agent of the Declarant or SCC (collectively “Declarant Parties”) arising under this Declaration or relating to the Properties, shall be subject to the following provisions:

13.3.1. **Construction Defect Disputes.** Before the commencement of any legal action by the Association or any Owner against a Declarant Party based on a claim for defects in the design or construction of any Residence, Common Property or Improvements thereon, the Association or Owner must first comply with the requirements of Civil Code Section 1375 (even though Section 1375 does not apply to Owners by its terms). If the parties fail to resolve their dispute in accordance with the procedures established under Civil Code Section 1375, the dispute shall be resolved in accordance with subsection 13.3.3.

13.3.2. **Other Disputes.** Any other disputes arising under this Declaration or otherwise between the Association, any Owner and a Declarant Party (except for action taken by the Association against Declarant for delinquent Assessments, and any action involving any Common Property completion bonds) shall be resolved in accordance with Section 13.3.3. The dispute resolution procedure in subsection 13.3.3 for resolution of disputes under this subsection 13.3.2 shall be deemed to satisfy the alternative dispute requirements of Civil Code Section 1354.

13.3.3. **Judicial Reference.** Any unresolved disputes shall be submitted to general judicial reference pursuant to California Code of Civil Procedure Sections 638(1) and 641-645.1. The parties shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the judicial reference proceeding. Declarant shall not be required to participate in the judicial reference proceeding unless it is satisfied that all necessary and appropriate parties will participate. The parties shall each be responsible for their own attorneys’ fees but unless the referee orders otherwise share equally in the fees and costs of the referee.

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

- (a) The proceedings shall be heard in the County;
- (b) The referee must be a retired judge or a licensed attorney with substantial experience in relevant real estate matters;
- (c) Any dispute regarding the selection of the referee shall be resolved by JAMS or the entity providing the reference services, or, if no entity is involved, by the court with appropriate jurisdiction;

- (d) The referee may require one or more pre-hearing conferences;
- (e) The parties shall be entitled to discovery, and the referee shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge;
- (f) A stenographic record of the trial shall be made, provided that the record shall remain confidential except as may be necessary for post-hearing motions and any appeals;
- (g) The referee's statement of decision shall contain findings of fact and conclusions of law; and
- (h) The referee shall have the authority to rule on all post-hearing motions in the same manner as a trial judge.

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

#### **ARTICLE XIV GENERAL PROVISIONS**

14.1. **Mergers or Consolidations.** In a merger or consolidation of the Association with another association, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer and enforce the covenants, conditions and restrictions established by this Declaration governing the Properties, together with the covenants and restrictions established on any other property, as one (1) plan.

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

14.3. **Notices.** Except as otherwise provided in this Declaration, notice to be given to an Owner must be in writing and may be delivered personally to the Owner. Personal delivery of such notice to one (1) or more co-owners, or any general partner of a partnership owning a Lot, constitutes delivery to all owners. Personal delivery of such notice to any officer or agent for the service of process on a corporation or limited liability company constitutes delivery to the corporation or limited liability company. Such notice may also be delivered by regular United

States mail, postage prepaid, addressed to the Owner at the most recent address furnished by such Owner to the Association or, if no such address has been furnished, to the street address of such Owner's Lot. Such notice is deemed delivered three (3) business days after the time of such mailing, except for notice of a meeting of Owners or of the Board, in which case the notice provisions of the Bylaws control. Any notice to be given to the Association may be delivered personally to any member of the Board, or sent by United States mail, postage prepaid, addressed to the Association at such address as may be fixed and circulated to all Owners.

14.4. **Constructive Notice and Acceptance.** Every Person who owns, occupies or acquires any right, title, estate or interest in or to any Lot or other portion of the Properties does consent and agree, and shall be conclusively deemed to have consented and agreed, to every limit, restriction, easement, reservation, condition and covenant contained in this Declaration, whether or not any reference to these restrictions is in the instrument by which such person acquired an interest in the Properties.

## **ARTICLE XV DECLARANT'S RIGHTS AND RESERVATIONS**

If there is a conflict between any other portion of the Restrictions and this Article, this Article shall control.

15.1. **Construction Rights.** Declarant has the right to (a) subdivide or resubdivide the Properties, (b) complete or modify Improvements to and on the Common Property or any portion of the Properties owned solely or partially by Declarant, (c) alter Improvements and Declarant's construction plans and designs, (d) modify Declarant's development plan for the Properties and the Annexable Territory, including designating and redesignating Phases and constructing Residences of larger or smaller sizes, values, and of different types, and (e) construct such additional Improvements as Declarant considers advisable in the course of development of the Properties so long as any Lot in the Properties or the Annexable Territory remains unsold.

15.2. **Sales And Marketing Rights.** Declarant's rights under this Declaration include, but are not limited to, the right to install and maintain such structures, displays, signs, billboards, flags and sales offices as may be reasonably necessary to conduct Declarant's business of completing the work and disposing of the Lots or the Annexable Territory by sale, resale, lease or otherwise. Declarant may use any Lots owned or leased by Declarant in the Properties as model home complexes, real estate sales offices or leasing offices.

15.3. **Creating Additional Easements.** At any time before acquisition of title to a Lot in the Properties by a purchaser from Declarant, Declarant has the right to establish on that Lot additional licenses, easements, reservations and rights-of-way to itself, to utility companies, or to others as Declarant determines are reasonably necessary to the Properties' proper development and disposal.

15.4. **Architectural Rights.** Declarant and any Person to whom Declarant may assign all or a portion of its exemption under this Declaration need not seek or obtain Design Review

Committee approval of any Improvements constructed anywhere on the Properties by Declarant or such Person. Declarant may exclude portions of the Properties from jurisdiction of the Design Review Committee in the applicable Notice of Addition or Supplemental Declaration. Declarant, may, at its option, establish an additional design review committee for any area exempted from the jurisdiction of the Design Review Committee.

15.5. **Use Restriction Exemption.** Declarant and any Person to whom Declarant may assign all or a portion of its exemption under this Declaration is exempt from the restrictions established in Article II.

15.6. **Assignment of Rights.** Declarant may assign its rights under the Restrictions to any successor in interest to any portion of Declarant's interest in the Properties by a written assignment.

15.7. **Amendments.** No amendment may be made to this Article without the prior written approval of Declarant. At any time before the first Close of Escrow in Phase 1, Declarant may unilaterally amend or terminate this Declaration by Recording a written instrument which effects the amendment or termination and is signed and acknowledged by Declarant. For so long as Declarant owns any portion of the Properties or the Annexable Territory, Declarant may unilaterally amend this Declaration by Recording a written instrument signed by Declarant to (a) conform this Declaration to the rules, regulations or requirements of VA, FHA, DRE, FNMA, GNMA or FHLMC, (b) amend Article III, (c) amend any of the exhibits to this Declaration that depict portions of the Properties in a Phase in which Assessments have not commenced, (d) comply with any City, County State or Federal laws or regulations, and (e) correct any typographical errors.

15.8. **Exercise of Rights.** Each Owner grants an irrevocable, special power of attorney to Declarant to execute and Record all documents and maps necessary to allow Declarant to exercise its rights under this Article.

15.9. **Use of Properties.** Declarant and its prospective purchasers of Lots are entitled to the nonexclusive use of the Common Property and any recreational facilities thereon, without further cost for access, ingress, egress, use or enjoyment, to (a) show the Properties to prospective purchasers, (b) dispose of the Properties as provided in this Declaration, and (c) develop and sell the Annexable Territory. Declarant, and prospective purchasers, are also entitled to the nonexclusive use of any portions of the Properties which are private streets, drives and walkways for ingress, egress and accommodating vehicular and pedestrian traffic to and from the Properties and the Annexable Territory. The use of the Common Area by Declarant may not unreasonably interfere with the use thereof by the other Owners.

15.10. **Participation in Association.** The Association shall provide Declarant with written notice of the transfer of any Lot and all notices and other documents to which a Mortgagee is entitled pursuant to this Declaration, provided that Declarant shall be provided such notices and other documents without making written request therefor. Commencing on the date on which Declarant no longer has an elected representative on the Board, and continuing until the

later to occur of the date on which Declarant (a) no longer owns a Lot in the Properties or (b) cannot unilaterally annex property to the Properties, the Association shall provide Declarant with written notice of all meetings of the Board as if Declarant were an Owner and Declarant shall be entitled to have a representative present at all such Board meetings (“Declarant’s Representative”). The Declarant’s Representative shall be present in an advisory capacity only and shall not be a Board member or have any right to vote on matters coming before the Board.

**15.11. Declarant Approval of Actions.**

15.11.1. **General Rights.** Until Declarant no longer owns a portion of the Properties or the Annexable Territory, Declarant’s prior written approval is required for any amendment to the Restrictions which would impair or diminish Declarant’s rights to complete the Properties or the Annexable Territory or sell or lease dwellings therein.

15.11.2. **Limit on Actions.** Until Declarant no longer owns any Lots in the Properties, or the Annexable Territory, the following actions, before being undertaken by the Association, must first be approved in writing by Declarant:

- (a) Any amendment or action requiring the approval of first Mortgagees;
- (b) The annexation to the Properties of real property other than the Annexable Territory pursuant to Section 16.2;
- (c) The levy of a Capital Improvement Assessment for the construction of new facilities not constructed on the Common Area by Declarant;
- (d) Any significant reduction of Association maintenance or other services; or
- (e) Any modification or termination of any provision of the Restrictions benefitting Declarant.

**ARTICLE XVI  
ANNEXATION OF ADDITIONAL PROPERTY**

Additional real property may be annexed to Phase 1 and such additional real property may become subject to this Declaration by any of the following methods:

16.1. **Additions by Declarant.** Declarant may add the Annexable Territory to the Properties and bring such added territory under the general plan of this Declaration without the approval of the Association, the Board, or Members, so long as Declarant owns any portion of the Annexable Territory.

16.2. **Other Additions.** Additional real property may be annexed to the Properties and brought under the general plan of this Declaration upon the approval by vote or written consent of Members entitled to exercise no less than two-thirds (2/3) of the Association's voting power.

16.3. **Rights And Obligations-added Territory.** Subject to the provisions of Section 16.4, when a Notice of Addition containing the provisions required by this Section is Recorded, all provisions in this Declaration will apply to the real property described in such Notice of Addition (the "Added Territory") in the same manner as if the real property were originally covered by this Declaration. Thereafter, the rights, powers and responsibilities of the parties to this Declaration with respect to the Added Territory will be the same as with respect to the property originally covered by this Declaration, and the rights, powers and responsibilities of the Owners, lessees and occupants of Lots in the Added Territory, as well as in the property originally subject to this Declaration, will be the same as if the Added Territory were originally covered by this Declaration. After the first day of the month following the first Close of Escrow in the Added Territory, the Owners of Lots located in the Added Territory shall share in the payment of Assessments to the Association to meet Common Expenses of the entire Properties. Voting rights attributable to the Lots in the Added Territory do not vest until Annual Assessments have commenced on such Lots.

16.4. **Notice of Addition.** The additions authorized under Sections 16.1 and 16.2 must be made by Recording a Notice of Addition which will extend the general plan of this Declaration to such Added Territory. The Notice of Addition for any addition under Section 16.1 must be signed by Declarant. The Notice of Addition for any addition under Section 16.2 must be signed by at least two (2) officers of the Association to certify that the Owner approval required under Section 16.2 was obtained. The Recordation of said Notice of Addition effectuates the annexation of the real property described in the Notice of Addition as Added Territory. On Recordation of the Notice of Addition, the Added Territory will constitute a part of the Properties, become subject to this Declaration and covered by the general plan of covenants, conditions, restrictions, reservation of easements and equitable servitudes contained in this Declaration, and become subject to the Association's functions, powers and jurisdiction; and the Owners of Lots in the Added Territory will automatically acquire Membership. The Notice of Addition may contain a Supplemental Declaration of the covenants, conditions, restrictions, reservation of easements and equitable servitudes in this Declaration if necessary to reflect the different character, if any, of the Added Territory, or as Declarant deems appropriate in the development of the Added Territory, and as are not inconsistent with the general plan of this Declaration. In no event, however, may such Notice of Addition or Supplemental Declaration revoke, modify or add to the covenants, conditions, restrictions, reservation of easements, or equitable servitudes established by this Declaration as the same pertain to the real property originally covered by this Declaration. Concurrently with the first Close of Escrow for the sale of a Lot in any Phase annexed to the Properties in accordance herewith, Declarant shall pay to the Association an appropriate amount (as determined by DRE) for reserves for replacement or deferred maintenance of the Common Area in such Phase required by or arising out of the use and occupancy of the Residences in such Phase under a rental program conducted by Declarant if such rental program was in effect for at least one (1) year before such first Close of Escrow.

16.5. **Deannexation and Amendment.** Declarant may amend a Notice of Addition or delete all or a portion of a Phase from coverage of this Declaration and the Association's jurisdiction so long as Declarant is the owner of all of such Phase and (a) an amending instrument or a Notice of Deletion of Territory, as applicable, is Recorded in the same manner as the applicable Notice of Addition was Recorded, (b) Declarant has not exercised any Association vote with respect to any portion of such Phase, (c) Assessments have not yet commenced with respect to any portion of such Phase, (d) Close of Escrow has not occurred for the sale of any Lot in such Phase, (e) the Association has not made any expenditures or incurred any obligations with respect to any portion of such Phase.

## **ARTICLE XVII COVENANTS BENEFITTING LOCAL JURISDICTION**

17.1. **Pollution Control.** The Association shall manage and maintain the Common Property in accordance with the Storm Water Pollution Prevention Plan (SWPPP), Monitoring Programs, and Post Construction Management Plans applicable to the Properties. The Association has been provided, and shall at all times maintain in its records and make available to Members, a copy of the SWPPP applicable to the Properties. In addition, the management and maintenance of the 'common area' shall include the following best management practices (BMPs) to reduce storm water pollution:

17.1.1. **Educational Materials.** The Association shall distribute to the Members and their tenants and occupants educational materials on good housekeeping practices which contribute to the protection of storm water quality. These educational materials shall be provided by the Riverside County Flood Control and Water Conservation District. Such materials shall address good housekeeping practices associated with residential developments.

17.1.2. **Pesticide Use.** All pesticides shall be applied in strict accordance to pesticide laws as stated in the State of California Agricultural Code. All pesticide applicators shall be certified by the State as a Qualified Applicator or be directly supervised by a Qualified Applicator. All fertilizers shall be applied at the rate stipulated by the manufacturer. Fertilizer applicators shall be trained in the proper procedures of determining fertilizer rates and calibration of equipment. Fertilizer shall be applied in such a manner as to avoid application onto hardscape surfaces. Annual soil tests are recommended to advise on which fertilizer elements are needed to avoid application of unnecessary elements, or over application. The local water agency or resource conservation district can assist with detailed information concerning this BMP. (BMP N3)

17.1.3. **Catch Basins.** On an annual basis, not later than October 15 of each year, the Association shall inspect and, if necessary, clean any catch basins within the Common Property. "ONLY RAIN IN THE DRAIN" and "NO DUMPING" stencils shall be repainted on any such catch basins as necessary to maintain legibility.

17.1.4. **Water Quality Inlets.** Not later than October 15 of each year, the Association shall inspect and, if necessary clean, any “water quality inlets, oil/water separators and trash racks” within the Common Property.

17.1.5. **Common Area Streets.** The Association is required to have its privately owned streets and parking lots swept prior to the storm season, no later than October 15th of each year. (BMP N6)

17.1.6. **Litter.** The Association is required to implement trash management and litter control procedures in the common areas aimed at reducing pollution or drainage water. The Association may contract with their landscape maintenance firms to provide this service during regularly scheduled maintenance, which should consist of litter patrol, emptying trash receptacles in common areas, noting trash disposal violations by homeowners or businesses, and reporting the violations to the Association for investigation. (BMP N5)

17.1.7. **Responsible Parties.** The Association shall maintain an up-to-date list identifying the Persons hired by the Association to perform any portion of the maintenance described in this subsection. Such list shall include each such Person’s name, organization, address and telephone number, together with a description of each such Person’s particular maintenance responsibilities.

17.2. **Management and Ownership of Common Area.** Notwithstanding any provision in this Declaration to the contrary, the homeowners association established herein shall own, manage and continuously maintain the Common Area (including the park and detention basin described in *Exhibit “E”* hereto), and shall not sell or transfer the Common Area or any part thereof without the prior written consent of the Planning Department of the County of Riverside or the applicable successor governmental agency. The Association shall comply with the guidelines set forth in *Exhibits “F-1”* and *“F-2”* hereto. The homeowners association shall have the right to assess the owners of each individual lot or unit for the reasonable cost of maintaining such ‘park’ and ‘detention basin’, and shall have the right to lien the property of any such owner who defaults in the payment of the maintenance assessment. An assessment lien, once created through the recording of a notice of delinquent assessment, shall be prior to all other liens recorded subsequent to the notice of delinquent assessment or other document creating the assessment lien.

17.3. **Termination/Amendment.** Notwithstanding any provision in this Declaration to the contrary, this Declaration shall not be terminated, “substantially” amended, or property deannexed therefrom absent the prior written consent of the Planning Director of the County of Riverside or the applicable successor governmental agency. A proposed amendment shall be considered “substantial” if it affects the extent, usage or maintenance of (a) the Common Area established pursuant to this Declaration or (b) the drainage areas within the Properties and/or the Owners’ or Association’s obligations with respect thereto.



17.4. **Conflicts Among Restrictions.** Notwithstanding anything to the contrary in this Declaration, if there is any conflict between this Declaration, the Articles of Incorporation, the Bylaws, or the Association Rules and Regulations, if any, this Declaration shall control.

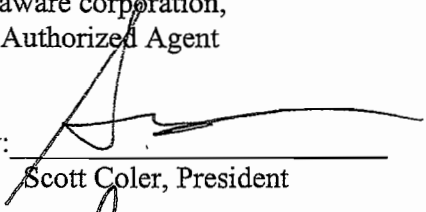
*[SIGNATURE PAGE FOLLOWS]*

This Declaration is dated for identification purposes August 5, 2005.

CAPITAL PACIFIC HOLDINGS, LLC, a  
Delaware limited liability company

By: Capital Pacific Holdings, Inc., a Delaware  
corporation, Its Managing Member

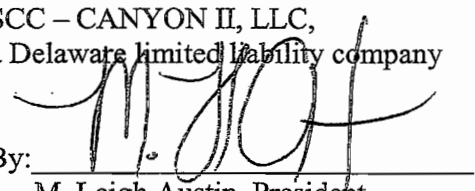
By: Capital Pacific Homes, Inc., a  
Delaware corporation,  
Its Authorized Agent

By:   
Scott Coler, President

By:   
Mark Mullin, Vice President

**"Declarant"**

SCC – CANYON II, LLC,  
a Delaware limited liability company

By:   
M. Leigh Austin, President

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT**

State of California

County of Riverside

On August 18, 2005 before me, Kerri D. Robinson, Notary Public,  
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared Scott Coler and Mark G. Mullin,  
NAME(S) OF SIGNERS

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/her/they executed the same in his/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.

Kerri D Robinson  
SIGNATURE OF NOTARY

**OPTIONAL**

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

**CAPACITY CLAIMED BY SIGNER**

**DESCRIPTION OF ATTACHED DOCUMENT**

- INDIVIDUAL
- CORPORATE OFFICER(S)  
President and Vice President  
TITLE(S)
- PARTNER(S)  LIMITED  
 GENERAL
- ATTORNEY-IN-FACT
- TRUSTEE(S)
- GUARDIAN/CONSERVATOR
- OTHER: \_\_\_\_\_

Marsden CC&R's  
TITLE OR TYPE OF DOCUMENT

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NUMBER OF PAGES

---

DATE OF DOCUMENT

---

SIGNER(S) OTHER THAN NAMED ABOVE

SIGNER IS REPRESENTING:  
NAME OF PERSON(S) OR ENTITY(IES)  
Capital Pacific Homes, Inc.

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 200\_, before me, \_\_\_\_\_,  
personally appeared \_\_\_\_\_ and \_\_\_\_\_,  
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.

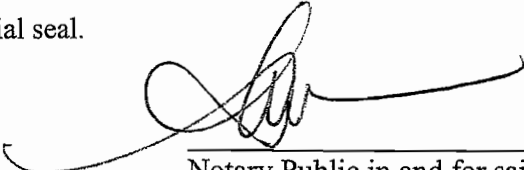
\_\_\_\_\_  
Notary Public in and for said State

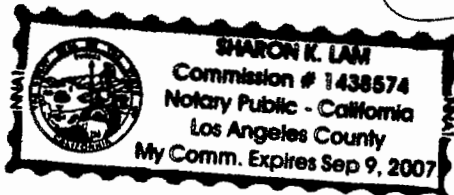
(SEAL)

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF Los Angeles )

On August 5, 2005, before me, Sharon K. Lam,  
personally appeared M. Leigh Austin, 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.

  
\_\_\_\_\_  
Notary Public in and for said State



(SEAL)

**SUBORDINATION**

The undersigned, as Beneficiary of the beneficial interest in and under that certain Deed of Trust dated March 23, 2005, and recorded on April 5, 2005, in the Official Records of Riverside County, California, as Instrument No. 2005-0264687, which Deed of Trust is between SCC – CANYON II, LLC, a Delaware limited liability company, as Trustor, FIRST AMERICAN TITLE INSURANCE COMPANY, as Trustee, and CALIFORNIA BANK & TRUST as “Agent”, as Beneficiary, hereby expressly subordinates such Deed of Trust and its beneficial interests thereunder to the foregoing Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Marsden, a planned residential community (“Declaration”), to any Notice of Addition of Territory recorded pursuant to the provisions of Article XVI of the Declaration (“Notice”), and to all easements to be conveyed to the Association in accordance with the Declaration or any Notice. By executing this Subordination, the undersigned agrees that should the undersigned acquire title to all or any portion of the Properties by foreclosure (whether judicial or nonjudicial), deed-in-lieu of foreclosure or any other remedy in or relating to the Deed of Trust, the undersigned will acquire title subject to the provisions of the Declaration and any applicable Notice, which shall remain in full force and effect.

Dated: August 5, 2005.

CALIFORNIA BANK & TRUST,  
a California banking corporation

By: Alexa Herring  
Its: Vice President

By: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF CALIFORNIA )

) ss.

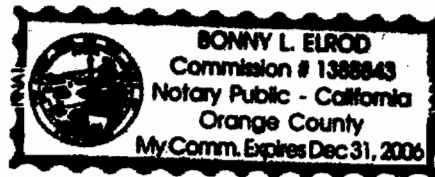
COUNTY OF Orange )

On August 5, 2005, before me, Bonny L. Elrod,  
personally appeared Debra Herring and \_\_\_\_\_  
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.

Bonny L. Elrod  
Notary Public in and for said State

(SEAL)



**EXHIBIT "A"**

**ARTICLES OF INCORPORATION OF THE ASSOCIATION**

**ARTICLES OF INCORPORATION  
OF  
MARSDEN COMMUNITY ASSOCIATION**

**ONE:** The name of this corporation (“Corporation”) is **MARSDEN COMMUNITY ASSOCIATION**.

**TWO:** This Corporation is a nonprofit mutual benefit corporation organized under the Nonprofit Mutual Benefit Corporation Law. The purpose of the Corporation is to engage in any lawful act or activity, other than credit union business, for which a corporation may be organized under such law.

**THREE:** The name and address in the state of California of the Corporation’s initial agent for service of process is: \_\_\_\_\_, c/o Capital Pacific Homes, 200 South Main Street, Suite 300, Corona, CA 92882.

**FOUR:** The Corporation shall have and exercise any and all powers, rights and privileges which a corporation organized under the Nonprofit Mutual Benefit Corporation Law may now or hereafter have or exercise, provided that the Corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the specific purpose of the Corporation, which is to operate a homeowners association within the meaning of Section 23701t of the California Revenue and Taxation Code and Section 528 of the Internal Revenue Code and to manage a common interest development under the Davis-Stirling Common Interest Development Act. The Corporation does not have a corporate office. The common interest development is near the intersection of Garbani Road and Sherman Road, Menifee, California, 92584-0000.

**FIVE:** The classes of Membership and the voting and other rights and privileges of Members shall be as set forth in the Bylaws. So long as there are two classes of Membership, amendment of these Articles of Incorporation shall require the assent (by vote or written consent) of (i) a bare majority of the Board of Directors of the Corporation, and (ii) Members representing a bare majority of the voting power of each class of Members. After conversion of the Class B Membership to Class A Membership, amendment of these Articles of Incorporation shall require the assent (by vote or written consent) of (i) a bare majority of the Board of Directors of the Corporation, (ii) a bare majority of the total voting power of the Members, and (iii) Members representing a bare majority of the voting power of the Members other than the Subdivider of the Project (“Declarant”).

**SIX:** The Corporation has no managing agent.



The undersigned, who is the incorporator of the Corporation, has executed these Articles of Incorporation on \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
Print Name: \_\_\_\_\_

***“Incorporator”***

**EXHIBIT "B"**

**BYLAWS OF THE ASSOCIATION**

**BYLAWS**  
**OF**  
**MARSDEN COMMUNITY ASSOCIATION**

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**FOR BYLAWS**

**OF**

**MARSDEN COMMUNITY ASSOCIATION**

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**BYLAWS**  
**OF**  
**MARSDEN COMMUNITY ASSOCIATION**

**ARTICLE I**  
**PLAN OF OWNERSHIP**

1.1. **Definitions and Interpretation.** Unless otherwise provided in these Bylaws, the capitalized terms used in these Bylaws have the same meanings as in the Declaration. These Bylaws shall be interpreted in accordance with Section 1.2 of the Declaration.

1.2. **Name.** The name of the corporation is MARSDEN COMMUNITY ASSOCIATION. The principal office of the Association shall be located in the County.

1.3. **Application.** These Bylaws apply to the planned residential development project known as Marsden, located in the County. All Persons who use the facilities of the Properties in any manner, are subject to the regulations in these Bylaws and in the Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Marsden, Recorded in the Official Records of the County against the Properties. Use of any Lot in the Properties signifies acceptance and ratification of these Bylaws.

**ARTICLE II**  
**BOARD OF DIRECTORS**

2.1. **Number.** The property, business and affairs of the Association shall be governed and managed by a Board of Directors composed of three (3) persons, each of whom, except for those appointed and serving as first Directors, must be either an Owner or an agent of Declarant until Declarant no longer owns a Lot or any of the Annexable Territory. The authorized number of Directors may be changed by a duly adopted amendment to these Bylaws.

2.2. **Qualifications for Holding Office.** Directors are encouraged to satisfy the following requirements while they serve in office:

- (a) Not be absent from three (3) consecutive meetings of the Board;
- (b) Attend at least seventy five percent (75%) of the Board meetings held each year and attend the entire meeting each time;

(c) Exhibit respect, professionalism and courteous behavior to Owners, committee members, vendors, the Manager and its staff, and any other Persons associated with or retained by the Association;

(d) For non-Declarant Board members, be an Owner in good standing.

### 2.3. **Election.**

2.3.1. **General Procedure.** At the first annual meeting of the Owners, and at each annual meeting thereafter, the Owners shall elect new Directors to fill vacancies on the Board. If an annual meeting is not held, or all positions on the Board are not filled at the annual meeting, Board members may be elected at a special meeting of the Owners.

2.3.2. **Voting.** Voting shall be by secret written ballot. An Owner may cumulate his votes for any candidate for the Board in any election in which more than two (2) Directors are to be elected if (a) the candidate's name has been placed in nomination before the voting, and (b) an Owner has given notice at the meeting before the voting of such Owner's intent to cumulate votes. If an Owner cumulates his votes, such Owner may cast a number of votes equal to the Owner's share of the voting power multiplied by the number of Directors to be elected.

2.3.3. **Special Election Requirement.** So long as either (a) Declarant is entitled to exercise a Class B vote, or (b) Declarant is entitled to exercise a majority of the Association's voting power, not less than twenty percent (20%) of the members of the Board must be elected solely by the votes of Owners other than Declarant.

2.4. **Term of Office.** Each Director shall hold office until the earlier to occur of (a) the end of the Director's term of office after a successor has been elected, or (b) his death, resignation, removal or judicial adjudication of mental incompetence. At the first annual meeting, the term of office of each Director elected shall be two (2) years. The term of office of each Director elected to fill a vacancy created by expiration of a Director's term of office shall be one (1) year. The term of office of each Director elected or appointed to the Board for any other reason shall be the balance of the unserved term. Any person serving as a Director may be reelected. There is no limit on the number of terms which a Director may serve.

2.5. **Vacancies.** A vacancy on the Board is deemed to exist in case of death, resignation, removal or judicial adjudication of mental incompetence of any Director or if the Owners fail to elect the full number of authorized Directors at any meeting at which a Directors election is to take place. Vacancies on the Board caused by any reason other than the removal of a Director may be filled by either (a) vote of a majority of the remaining Directors, even though they may constitute less than a quorum, or (b) by vote of the Owners at a meeting. Any vacancy caused by the removal of a Director must be filled by a vote of the Owners. A Director may

resign at any time by giving notice to the President, the Secretary or the Board. Any Director who ceases to be an Owner or an agent of Declarant is deemed to have resigned from the Board.

2.6. **Removal of Directors.** At any meeting of the Owners, any individual Director or the entire Board may be removed before the expiration of their terms of office with or without cause as follows: (a) for so long as fewer than fifty (50) Lots are included in the Properties, by the vote of Owners representing a majority of the Association's total voting power (including votes attributable to Declarant), and (b) once fifty (50) or more Lots are included in the Properties, by the vote of Owners representing a majority of a quorum of Owners.

However, if the entire Board is not removed as a group pursuant to a single vote, no individual Director may be removed if the number of votes cast against removal would be sufficient to elect such Director if voted cumulatively at an election at which the same total number of votes were cast and the entire number of Directors authorized at the time of the Director's most recent election were then being elected. Any Director whose removal has been proposed by the Owners must be given an opportunity to be heard at the meeting. If any Directors are removed, new Directors may be elected at the same meeting. However, any Director elected to office solely by the votes of Owners other than Declarant pursuant to Section 2.3.3 may be removed only by the vote of at least a simple majority of the Association's voting power represented by Owners other than Declarant. Any Director elected to office solely by votes of Declarant may only be removed by Declarant.

2.7. **Compensation.** Directors may not receive any compensation for their services as Directors unless such compensation is first approved by Owners representing at least a majority of the Association's voting power. However, (a) nothing in these Bylaws precludes any Director from serving the Association in some other capacity and receiving compensation therefor, and (b) any Director may be reimbursed for actual expenses incurred in performance of Association duties, and (c) no officer, employee or director of Declarant or any affiliate of Declarant may receive any compensation for service as a Director of the Association.

2.8. **Powers And Duties.** The Board has the powers and duties necessary to administer the Association's affairs. All the Association's powers shall be exercised by the Board except those powers specifically reserved to the Owners.

2.9. **Special Powers and Duties.** Without limiting the scope of the Board's general powers and duties, the Board is granted the following powers and duties:

2.9.1. **Officers, Agents and Employees.** The power and duty to select, appoint and remove all Association officers, agents and employees, to prescribe such powers and duties for them as may be consistent with law and with the Restrictions, to fix their compensation, to require from them such security for faithful service as the Board considers advisable, and to contract to provide them with such indemnification as the Board determines is appropriate.



2.9.2. **Contracts.** The power to enter into contracts. This includes contracts (a) for maintenance, landscaping, and common utilities services, (b) materials, supplies and other Common Expenses relating to the Lots, (c) employing personnel necessary to manage the Properties, including legal and accounting services, and (d) paying for Improvements on the Common Property. The Board may not enter into any contract with a term in excess of one (1) year, without the vote or written consent of Owners representing at least a majority of the Association's voting power, except for the following:

(a) a contract with a public utility company for a term that does not exceed the shortest term for which the public utility company will contract at the regulated rate if the rates charged for the materials or services are regulated by the California Public Utilities Commission;

(b) prepaid casualty or liability insurance policies of not more than three (3) years' duration provided that the policies permit short-term cancellation by the Association;

(c) agreements for television services and equipment, satellite dish services and equipment, communication services and equipment, and comparable technology, services and equipment with terms not in excess of five (5) years, provided that Declarant does not have a direct or indirect ownership interest in the supplier of such services or equipment equal to or greater than ten percent (10%);

(d) agreements for sale, lease or installation of burglar alarm and fire alarm equipment and related services with terms not in excess of five (5) years, provided that Declarant does not have a direct or indirect ownership interest in the supplier of such services or equipment equal to or greater than ten percent (10%);

(e) a contract approved by the DRE;

(f) a contract for a term not to exceed three (3) years that is terminable by the Association after no longer than one (1) year without cause or penalty or other obligation on ninety (90) days written notice of termination to the other party.

2.9.3. **Enforcement.** The power to enforce the Restrictions and any agreements entered into by the Association and to impose sanctions against Owners for violating the Restrictions.

2.9.4. **Principal Office, Place of Meetings, Seal.** The power but not the duty to move the Association's principal office from one location to another in the County; to

designate any place in the County for holding any meetings of Owners consistent with the provisions of Section 4.5; and to adopt and use a corporate seal and to alter the form of such seal.

2.9.5. **Assessments.** The power and duty to fix and levy Assessments and identify the due date for payment of Assessments. The Board may incur Common Expenses. The Association's funds shall be held in trust for the Owners.

2.9.6. **Insurance.** The power and duty to contract and pay for insurance in accordance with the Declaration, covering and protecting against such damages or injuries as the Board considers advisable (which coverage may include medical expenses of persons injured on the Common Property). The Board shall review, not less frequently than annually, all insurance policies and bonds obtained by the Board on the Association's behalf.

2.9.7. **Delegation.** The power but not the duty to delegate its powers according to law.

2.9.8. **Bylaws.** The power and duty to adopt these Bylaws.

2.9.9. **Records.** The power and duty to keep a complete record of Association acts and corporate affairs.

2.9.10. **Sale of Property.** The power but not the duty to sell property of the Association. Approval from Owners representing at least a majority of the Association's voting power must be obtained before property of the Association having an aggregate fair market value greater than five percent (5%) of the Association's budgeted gross expenses for the Fiscal Year is sold in a single Fiscal Year.

2.9.11. **Manager.** The power to engage a professional Manager for the Association at a compensation established by the Board to perform such duties and services as the Board authorizes.

2.9.12. **Agreements with Declarant.** The power but not the duty to negotiate and enter into agreements with Declarant.

2.10. **Distribution of Information.** The Board shall distribute the following financial information to all Owners (and any Beneficiary, insurer and guarantor of a first Mortgage on request), regardless of the number of Owners or the amount of assets of the Association:

2.10.1. **Budget.** A pro forma operating budget for each Fiscal Year consisting of at least the following information must be distributed not less than forty-five (45) nor more than sixty (60) days before the beginning of the Fiscal Year:

(a) Estimated revenue and Common Expenses computed on an accrual basis.

(b) A summary of the Association's reserves based on the most recent review or study conducted pursuant to Section 1365.5 of the California Civil Code, which must 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 of the Common Property for which the Association is responsible.

(ii) As of the end of the Fiscal Year for which the study is prepared:

(A) The current estimate of the amount of cash reserves necessary to restore or maintain the major components of the Common Property for which the Association is responsible ("Estimated Reserves").

(B) The current amount of accumulated cash reserves actually set aside to restore or maintain the major components of the Common Property for which the Association is responsible ("Actual Reserves").

(iii) The percentage that the Actual Reserves is of the Estimated Reserves.

(c) A statement of whether the Board has determined or expects that the levy of one or more Capital Improvement or Reconstruction Assessments will be required to repair, replace, or restore any major component of the Common Property for which the Association is responsible or to provide adequate reserves therefor.

(d) A general statement setting forth the procedures used by the Board in calculating and establishing reserves to defray the costs of repair and replacement of, or additions to, major components of the Common Property and facilities for which the Association is responsible.

The Board may distribute a summary of the Budget instead of the Budget itself, so long as the Board complies with the provisions of Section 1365(c) of the California Civil Code.

2.10.2. **Financial Report.** A report consisting of the following must be distributed 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.
- (c) A statement of changes in financial position for the Fiscal Year.
- (d) Any information required to be reported under Section 8322 of the California Corporations Code.
- (e) For any Fiscal Year in which the Association's gross income exceeds \$75,000, a copy of a review of the annual report prepared in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy.
- (f) A statement of the place where the names and addresses of the current Owners are located.

If the report referred to in Section 2.10.2 is not prepared by an independent accountant, it must be accompanied by the certificate of an authorized Association officer stating that the statement was prepared from the Association's books and records without independent audit or review.

**2.10.3. Insurance Information.** The Association shall distribute to all Owners a summary of the Association's property, general liability, and earthquake and flood insurance policies within sixty (60) days before the beginning of the Fiscal Year, that includes all of the following information: (a) the name of the insurer, (b) the type of insurance, (c) the limits of coverage, and (d) the amount of the deductibles, if any.

(a) The Association shall, as soon as reasonably practical, notify the Owners by first-class mail if any of the policies described above have lapsed, been canceled, and are not immediately renewed, restored, or replaced, or if there is a significant change, such as a reduction in coverage or limits or an increase in the deductible, for any of those policies. If the Association receives any notice of nonrenewal of a policy described above, the Association shall immediately notify the Owners if replacement coverage will not be in effect by the date the existing coverage will lapse.

(b) To the extent that any of the information required to be disclosed is specified in the insurance policy declaration page, the Association may meet its obligation to disclose that information by making copies of that page and distributing it to all Owners.

(c) The summary distributed above shall contain, in at least 10-point boldface type, the following statement:

**“This summary of the Association’s policies of insurance provides only certain information, as required by subdivision (e) of Section 1365 of the Civil Code, and should not be considered a substitute for the complete policy terms and conditions in the actual policies of insurance. Any Association member may, on request and provision of reasonable notice, review the Association’s insurance policies and, on request and payment of reasonable duplication charges, obtain copies of those policies. Although the Association keeps the policies of insurance specified in this summary, the Association’s policies of insurance may not cover your property, including personal property or, real property improvements to or around your dwelling, or personal injuries or other losses that occur in or around your dwelling. Even if a loss is covered, you may nevertheless be responsible for paying all or a portion of any deductible that applies. Association members should consult with their individual insurance broker or agent for appropriate additional coverage.”**

2.10.4. **Enforcement Policies.** In addition to financial statements, the Board shall annually distribute within sixty (60) days before the beginning of the Fiscal Year a statement of the Association’s policies and practices in enforcing its remedies against Owners for defaults in the payment of Assessments, including the recording and foreclosing of liens against Lots.

2.10.5. **Accounts.** On at least a quarterly basis, the Board shall: (a) cause to be completed and review a current reconciliation of the Association’s operating and reserve accounts, (b) review the current Fiscal Year’s actual reserve revenues and expenses compared to the Budget for the then current Fiscal Year, (c) review the income and expense statement for the Association’s operating and reserve accounts, (d) review the most current account statements prepared by the financial institutions where the Association keeps its operating and reserve accounts, and (e) fulfill any additional duties established by Civil Code Section 1365.5. The signatures of either (i) two (2) Directors, or (ii) one (1) Director and one (1) Association officer (who is not also a Director) are required for the withdrawal of money from the Association’s reserve accounts. As used in this Subsection, the term “reserve accounts” means Budgeted funds

that the Board has designated for use to defray the future repair and replacement of, or additions to, those major components of the Common Property which the Association is obligated to maintain.

2.10.6. **Reserve Study.** The Board shall cause a study of the reserve account requirements of the Properties to be conducted in accordance with Section 1365.5(e) of the California Civil Code. As used in this Subsection, “reserve account requirements” means the estimated funds which the Board has determined are required to be available at a specified point in time to repair, replace or restore those major components of the Common Property which the Association is obligated to maintain.

## 2.11. **Meetings.**

2.11.1. **Organization Meeting.** The first regular (“organization”) meeting of a newly elected Board must be held within ten (10) days of election of the Board, at such place as is fixed and announced by the Directors at the meeting at which such Directors were elected, to organize, elect officers and transact other business. No notice is necessary to the newly elected Directors to hold such meeting; provided that (a) a majority of the whole Board is present when the time and place are announced at the annual meeting and (b) the meeting is held on the same day and at the same place as the annual meeting of the Owners at which the newly constituted Board was elected.

2.11.2. **Regular Meetings.** Regular meetings may be held at such time and place in the Properties as is determined by a resolution adopted by a majority of a quorum of the Directors; however, regular meetings must be held no less frequently than quarterly. Notice of the time and place of regular meetings of the Board shall be given to each Director at least four (4) days before the date of the meeting. Notices may be given personally or by telephone, including a voice messaging system or other system or technology designed to record and communicate messages, facsimile, electronic mail, or other electronic means or posted at a prominent place or places in the Common Property.

2.11.3. **Special Meetings.** Special meetings may be called by the President or by any two (2) Directors by posting notice at least four (4) days before such meeting at a prominent place or places in the Common Property or on four (4) days’ notice by first-class mail or forty-eight (48) hours’ notice delivered personally or by telephone, including a voice messaging system or other system or technology designed to record and communicate messages, telegraph, facsimile, electronic mail, or other electronic means. The notice must state the time, place and the purpose of the meeting.

2.11.4. **Executive Sessions.** The Board may convene in executive session to discuss and vote upon personnel matters, litigation, matters relating to the formation of contracts with third parties, or Owner discipline. The nature of business to be considered in executive session must first be announced in an open session and must be generally noted in the minutes of

the Board. In any matter relating to the discipline of an Owner, the Board shall meet in executive session if requested by that Owner. The Owner may attend the executive session.

2.11.5. **Other Meetings.** Any congregation of a majority of the members of the Board at the same time and place to hear, discuss, or deliberate on any item of business scheduled to be heard by the Board, except those matters that may be discussed in executive session, shall constitute a meeting of the Board. All Owners shall have the right to attend any regular, special or other meeting of the Board, except an executive session. Owners who are not Directors may not participate in any deliberation or discussion at such meetings unless authorized by a vote of a majority of a quorum of the Board. However, at each Board meeting, except for executive sessions, the Board must set aside time for Owners to speak, subject to reasonable limits imposed by the Board.

2.11.6. **Notice to Owners.** Generally, if a meeting of the Board is not a regular or special meeting, Owners shall be given notice of the time and place of the meeting at least four (4) days before the meeting. Notice required by this Section may be given by posting the notice in a prominent place or places in the Common Property, by mail or delivery of the notice to each Lot in the Properties, or by newsletter or other similar means of communication. If there are circumstances that could not have been reasonably foreseen which require immediate attention and possible action by the Board and which of necessity make it impractical to provide notice to the Owners, then an emergency meeting of the Board may be called by the President or any two other members of the Board without providing notice to the Owners.

2.11.7. **Waiver of Notice.** Before or at any meeting of the Board, any Director may, in writing, waive personal notice of such meeting. Attendance by a Director at any Board meeting waives the requirement of personal notice. If all Directors are present at a Board meeting, no notice to Directors is required and any business may be transacted at such meeting. The transactions of any Board meeting, however called and noticed or wherever held, are valid as though had at a meeting duly held after regular call and notice, if (a) a quorum is present, (b) notice to the Owners of such meeting was posted as provided in Sections 2.11.2, 2.11.3 or 2.11.6, and (c) either before or after the meeting, each of the Directors not present signs a written waiver of notice, a consent to holding such meeting, or an approval of the Minutes thereof. The Secretary shall file all such waivers, consents and approvals with the Association's records or make them a part of the Minutes of the meeting.

2.12. **Action Without Meeting.** The Board may act without a meeting if all Directors consent in writing to such action. Written consents must be filed with the minutes of the Board. Each action by written consent has the same effect as a unanimous vote of such Directors. Within three (3) days after the written consents of all Directors have been obtained, an explanation of any action taken by unanimous written consent without a meeting must be either (a) posted by the Board in a prominent place or places in the Common Property, or (b) communicated to the Owners by other means the Board determines to be appropriate.

2.13. **Quorum and Adjournment.** Except as otherwise expressly provided in these Bylaws, at all meetings of the Board, a majority of the Directors constitutes a quorum for the transaction of business, and the acts of a majority of the Directors present at a meeting at which a quorum is present are the acts of the Board. At any meeting of the Board when less than a quorum present, the majority of those present may adjourn the meeting to another time. At any such reconvened meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice if a quorum is present.

2.14. **Committees.** The Board may by resolution establish such committees as it desires, and may establish the purposes and powers of each such committee created. The resolution establishing the committee must (a) provide for the appointment of its members and a chairman, (b) state the purposes of the committee, and (c) provide for reports, termination and other administrative matters as the Board considers appropriate.

### **ARTICLE III OFFICERS**

3.1. **Designation.** The Association's principal officers are a President, a Vice President, a Secretary, and a Treasurer, all elected by the Board. The Board may appoint an Assistant Treasurer, an Assistant Secretary and such other officers as it determines to be necessary. Officers other than the President need not be Directors. Any person may hold more than one office.

3.2. **Election of Officers.** The Board shall annually elect the Association's officers at the new Board's organization meeting. Each officer shall hold his office at the pleasure of the Board, until he resigns or is removed, is otherwise disqualified to serve or a successor is elected and qualified to serve.

3.3. **Removal of Officers.** On an affirmative vote of a majority of the entire Board, any officer may be removed, either with or without cause, and a successor elected at any meeting of the Board. Any officer may resign at any time by giving written notice to the Board or to the President or Secretary. Any such resignation is effective on the date of receipt of such notice or at any later time specified therein. Unless specified in the notice, acceptance of the resignation by the Board is not necessary to make it effective.

3.4. **Compensation.** No officer may receive any compensation for services performed in the conduct of the Association's business unless such compensation is approved by the vote or written consent of Owners representing at least a majority of the Association's voting power; however (a) nothing in these Bylaws precludes any officer from serving the Association in some other capacity and receiving compensation therefor, and (b) any officer may be reimbursed for actual expenses incurred in the performance of Association duties. Appointment of any officer does not create contractual rights of compensation for services performed by such officer. No



officer, employee or director of Declarant or any affiliate of Declarant may receive any compensation for service as an officer of the Association.

3.5. **President.** The President is the chief executive officer of the Association and shall (a) preside at all Association and Board meetings, (b) have the general powers and duties which are usually vested in the office of the President of a corporation, including but not limited to the power to appoint committees from among the Owners as the President decides is appropriate to assist in the conduct of the Association's affairs, and (c) subject to the control of the Board, have general supervision, direction and control of the Association's business.

3.6. **Vice President.** The Vice President shall take the President's place and perform the President's duties whenever the President is absent, disabled, fails or refuses to act. If neither the President nor the Vice President is available to perform the President's duties, the Board shall appoint another member of the Board to do so on an interim basis. The Vice President has such other powers and duties as may be prescribed by the Board or these Bylaws.

3.7. **Secretary.** The Secretary shall (a) keep the Minutes of all meetings of the Board and of the Association at the Association's principal office or at such other place as the Board may order, (b) keep the Association's seal in safe custody, (c) have charge of such books and papers as the Board may direct, (d) in general, perform the duties incident to the office of Secretary, (e) give, or cause to be given, notices of meetings of the Owners and of the Board required by these Bylaws or by law to be given, (f) keep a record book of Owners, listing the names, mailing addresses and telephone numbers of Owners, as furnished to the Association ("Membership Register"), and (g) record in the Membership Register the termination or transfer of ownership by any Owner, together with the date of the transfer. The Secretary has such other powers and duties as may be prescribed by the Board or these Bylaws.

3.8. **Treasurer.** The Treasurer is the Association's chief financial officer and is responsible for Association funds. The Treasurer shall (a) keep, or cause to be kept, full and accurate accounts and tax and business records of the Association, including accounts of all assets, liabilities, receipts and disbursements, (b) be responsible for the deposit of all funds in the name of the Association in such depositories as the Board designates, (c) disburse the Association's funds as ordered by the Board, and (d) render to the President and Directors, on request, an account of all transactions as Treasurer and of the Association's financial condition. The Treasurer has such other powers and duties as may be prescribed by the Board or these Bylaws.

#### **ARTICLE IV OWNERS**

4.1. **Voting Rights.** The Association has two (2) classes of voting Membership, as described in the Declaration. Except as provided in Section 2.3.3, any provision of the Bylaws which requires the vote or written consent of a specified percentage of the Association's voting

power before action may be undertaken (i.e., other than actions requiring merely the vote or written consent of a majority of a quorum) requires the approval of such specified percentage of (a) each class of Membership so long as a Class B Membership exists, and (b) both the Association's total voting power and the Association's voting power represented by Owners other than Declarant.

4.2. **Majority of Quorum.** Unless otherwise provided in the Restrictions, any action which may be taken by the Association may be taken by a majority of a quorum of the Owners.

4.3. **Quorum.** Except as otherwise provided in these Bylaws, the presence in person or by proxy of at least twenty-five percent (25%) of the Association's voting power constitutes a quorum of the Membership. Owners present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, despite the withdrawal of enough Owners to leave less than a quorum, if any action taken (other than adjournment) is approved by at least a majority of a quorum. If a meeting is actually attended, in person or by proxy, by Owners having less than one-third (1/3) of the Association's voting power, then no matter may be voted on except matters which were generally described in the notice of the meeting. No action by the Owners on any matter is effective if the votes cast in favor are fewer than the minimum number of votes required by the Restrictions to approve the action.

4.4. **Proxies.** Votes may be cast in person or by proxy. Proxies must be in writing and filed with the Secretary in advance of each meeting. Every proxy is revocable and automatically ceases after completion of the meeting for which the proxy was filed. Any form of proxy or written ballot distributed by any Person to the Owners must afford the opportunity to specify a choice between approval and disapproval of each matter or group of matters to be acted on, except it is not mandatory that a candidate for election to the Board be named in the proxy or written ballot. The proxy or written ballot must provide that, when the Owner specifies a choice, the vote shall be cast in accordance with that choice. The proxy must also identify the person authorized to exercise the proxy and the length of time it will be valid. No proxy is valid with respect to a vote on any matter described in Section 7613(g) of the California Corporations Code unless the general nature of the proposal was described in the proxy.

4.5. **Place of Meetings of Owners.** Meetings of the Owners shall be held on the Properties, or such other suitable place as proximate thereto as practical and convenient to the Owners, as designated by the Board.

4.6. **Annual Meetings of Owners.** The first annual meeting of Owners shall be held within forty-five (45) days after Close of Escrow for the sale of fifty-one percent (51%) of the Lots in Phase 1 but in no event later than six (6) months after the Close of Escrow for the sale of the first Lot in Phase 1. Thereafter, the annual meetings shall be held on or about the anniversary date of the first annual meeting. Each first Mortgagee may designate a representative to attend all annual meetings.

4.7. **Special Meetings of Owners.** The Board shall call a special meeting of the Owners (a) as directed by resolution of a majority of a quorum of the Board, (b) by request of the President of the Association, or (c) on receipt of a petition signed by Owners representing at least five percent (5%) of the Association's total voting power. The Secretary shall give notice of any special meeting within twenty (20) days after adoption of such resolution or receipt of such request or petition. The notice must state the date, time and place of the special meeting and the general nature of the business to be transacted. The special meeting must be held not less than thirty-five (35) nor more than ninety (90) days after adoption of such resolution or receipt of such request or petition. No business may be transacted at a special meeting except as stated in the notice. Each first Mortgagee may designate a representative to attend all special meetings.

4.8. **Notice.** The Secretary shall send to each Owner of record, and to each first Mortgagee who has filed a written request for notice with the Secretary, a notice of each annual or special meeting. The notice must be sent by first-class mail, at least ten (10) but not more than thirty (30) days before the meeting. The notice must state the purpose for the meeting as well as the day, hour and place where it is to be held. The notice may establish time limits for speakers and nominating procedures for the meeting. The notice must specify those matters the Board intends to present for action by the Owners, but, except as otherwise provided by law, any proper matter may be presented for action at the meeting. The notice of any meeting at which Directors are to be elected must include the names of all nominees when the notice is given to the Owners. The mailing of a notice, postage prepaid, in the manner provided in this Section, shall be considered notice served, forty-eight (48) hours after the notice has been deposited in a regular depository of the United States mail. Such notice must be posted in a conspicuous place on the Common Property and is deemed served on an Owner on posting if no address for such Owner has been then furnished the Secretary.

Notwithstanding any other provision of these Bylaws, approval by the Owners of any of the following proposals, other than by unanimous approval of those Owners entitled to vote, is not valid unless the general nature of the proposal was stated in the notice or in any written waiver of the notice: (a) removing a Director without cause; (b) filling vacancies on the Board; (c) approving a contract or transaction between the Association and one or more Directors, or between the Association and any entity in which a Director has a material financial interest; (d) amendment of the Articles; or (e) electing to wind up and dissolve the Association.

4.9. **Record Dates.** The Board may fix a date in the future as a record date for determining which Owners are entitled to notice of any meeting of Owners. The record date so fixed must be not less than ten (10) nor more than sixty (60) days before the date of the meeting. If the Board does not fix a record date for notice to Owners, the record date for notice is the close of business on the business day preceding the day on which notice is given. In addition, the Board may fix a date in the future as a record date for determining the Owners entitled to vote at any meeting of Owners. The record date so fixed must be not less than ten (10) nor more than sixty (60) days before the date of the meeting. If the Board does not fix a record date for

determining Owners entitled to vote, Owners on the day of the meeting who are otherwise eligible to vote are entitled to vote at the meeting.

**4.10. Adjourned Meetings.** If a quorum is not present at the time and place established for a meeting, a majority of the Owners who are present, either in person or by proxy, may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the original meeting date, at which meeting the quorum requirement is the presence in person or by proxy of Owners holding at least twenty-five percent (25%) of the Association's voting power. Such an adjourned meeting may be held without the notice required by these Bylaws if notice thereof is given by announcement at the meeting at which such adjournment is taken.

**4.11. Order of Business.** Meetings of Owners must be conducted in accordance with a recognized system of parliamentary procedure or such parliamentary procedures as the Association may adopt. The order of business at all meetings of the Owners is as follows: (a) roll call to determine the voting power represented at the meeting; (b) proof of notice of meeting or waiver of notice; (c) reading of minutes of preceding meeting; (d) reports of officers; (e) reports of committees; (f) election of inspector of election (at annual meetings or special meetings held for such purpose); (g) election of Directors (at annual meetings or special meetings held for such purpose); (h) unfinished business; and (i) new business.

**4.12. Action Without Meeting.** Except for election of Directors, any action which may be taken at a meeting of the Owners may be taken without a meeting by written ballot of the Owners. Ballots must be solicited in the same manner as provided in these Bylaws for giving of notice of meetings to Owners. Such solicitations must specify (a) the number of responses needed to meet the quorum requirements, (b) the percentage of approvals necessary to approve the action, and (c) the time by which ballots must be received to be counted. The form of written ballot must afford an opportunity to specify a choice between approval and disapproval of each matter and must provide that, where the Owner specifies a choice, the vote shall be cast in accordance therewith. Receipt within the time period specified in the solicitation of (i) ballots which equal or exceed the quorum which would be required if the action were taken at a meeting, and (ii) approvals which equal or exceed the number of votes which would be required for approval if the action were taken at a meeting at which the total number of votes cast was the same as the total number of ballots cast, constitutes approval by written ballot.

**4.13. Consent of Absentees.** The actions taken at any meeting of Owners, however called and noticed, are valid as though taken at a meeting duly held after regular call and notice, if (a) a quorum is present either in person or by proxy, and (b) either before or after the meeting, each of the Owners not present in person or by proxy signs (i) a written waiver of notice, (ii) a consent to the holding of such meeting, or (iii) an approval of the minutes thereof. The Secretary shall file all such waivers, consents or approvals with the corporate records or make them a part of the minutes of the meeting.

4.14. **Minutes, Presumption of Notice.** Minutes or a similar record of the proceedings of meetings of Owners, when signed by the President or Secretary, shall be presumed truthfully to evidence the matters described therein. A recitation in the Minutes executed by the Secretary that proper notice of the meeting was given constitutes prima facie evidence that such notice was given.

## **ARTICLE V AMENDMENTS**

These Bylaws may be amended by the vote or written consent of Owners representing at least (a) a majority of the voting power of each class of the Owners, and (b) a majority of the Association's voting power represented by Owners other than Declarant; provided that the specified percentage of each class of Owners necessary to amend a specific provision of these Bylaws may not be less than the percentage of affirmative votes prescribed for action to be taken under that provision. These Bylaws may be amended by a majority of the entire Board, (i) at any time before the Close of Escrow for the sale of the first Lot, or (ii) if the amendment is within the Board's power to adopt without Owner approval pursuant to the California Corporations Code and either (a) the proposed amendment conforms the Bylaws to California law or the requirements of VA, FHA, DRE, FNMA, GNMA or FHLMC, or (b) the proposed amendment corrects a typographical error in the Bylaws. Any amendment to these Bylaws which materially affects matters listed in Article XII or Section 13.2 of the Declaration must be approved by the Beneficiaries of that percentage of first Mortgages on the Lots which is specified in the affected provision of Article XII or Section 13.2 of the Declaration, respectively. If an amendment to these Bylaws materially affects matters listed in both Article XII and Section 13.2 of the Declaration, the amendment must be approved pursuant to the requirements of both Article XII and Section 13.2. So long as there exists a Class B Membership, and the VA or FHA has made or is insuring a Mortgage on a Lot in the Properties, the prior approval of VA or FHA (whichever entity has made or is insuring a Mortgage) is required for any amendment to these Bylaws to (1) terminate the Bylaws, (2) dissolve the Association (except pursuant to merger or consolidation), or (3) convey the Common Property. A draft of the proposed amendment must be submitted to VA and FHA for approval before its approval by the Membership.

## **ARTICLE VI MISCELLANEOUS**

6.1. **Checks, Drafts and Documents.** All checks, drafts, orders for payment of money, notes and other evidences of indebtedness issued in the name of or payable to the Association must be signed or endorsed in the manner and by the person or persons the Board designates by resolution, subject to the requirements of Section 2.10.5 for withdrawing money from the Association's reserve accounts.

6.2. **Conflicts.** If any of these Bylaws conflict with any laws of the State of California, such conflicting Bylaws shall be void on final court determination to such effect, but all other

Bylaws shall remain in full force. In case of any conflict between the Articles of Incorporation and these Bylaws, the Articles of Incorporation shall control. In case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

6.3. **Execution of Documents.** The Board may authorize any officer or officers, agent or agents to enter into any contract or execute any instrument in the name and on behalf of the Association. Such authority may be general or confined to specific instances. Unless so authorized by the Board, no officer, agent, committee member or employee may bind the Association by any contract or pledge its credit or render it liable for any purpose in any amount.

6.4. **Availability of Association Documents.**

6.4.1. **Records To Be Maintained.** The Association shall keep at its principal office (or at such other place in or near the Properties as the Board may prescribe) the Restrictions and the Association's books of account; minutes of meetings of Owners, the Board and committees; and the Membership Register (collectively, the "Association Documents"), each of which shall be made available for inspection and copying by any Owner or the Owner's duly appointed representative for a purpose reasonably related to the Owner's interest as an Owner.

6.4.2. **Limits on Availability.** The Board may establish reasonable rules regarding (a) notice to be given to the custodian of the Association Documents by the Owner desiring to make the inspection, (b) hours and days of the week when such an inspection may be made, and (c) payment of the cost of copying any of the Association Documents requested by an Owner; provided that every Director may at any reasonable time inspect all Association Documents and the physical properties owned or controlled by the Association, and make extracts and copies of documents.

6.4.3. **Time of Availability.** The minutes, minutes that are proposed for adoption that are marked to indicate draft status, or a summary of the minutes, of any meeting of the Board (other than an executive session) must be available to Owners within thirty (30) days of the meeting. The minutes, proposed minutes or summary minutes must be distributed to any Owner on request and on reimbursement of the Association's cost in making that distribution.

6.4.4. **Distribution to Owners.** No later than ten (10) days after the Association receives written request from any Owner, the Association shall provide to that Owner a copy of each of the documents listed in California Civil Code Section 1368(a) that have been requested by the Owner. Owners must be notified in writing when the budget required in Section 2.10.1 is distributed or at the time of any general mailing to the entire Association Membership of their right to have copies of the minutes of meetings of the Board and how and where those minutes may be obtained.

6.5. **Fiscal Year.** The Board shall select the Association's Fiscal Year. The Fiscal Year is subject to change as the Board determines.

**ARTICLE VII  
NOTICE AND HEARING PROCEDURE**

7.1. **Initial Complaint.** Persons who believe a violation of the Restrictions has occurred may file a complaint with a Person designated by the Board on a form approved by the Board. The Board will commence the enforcement process. In its discretion, the Board may issue one or two violation letters to the Person alleged to have committed the violation (“respondent”) or set a hearing described in Section 7.2 below. The Board may direct the Manager to assist the Board in any of the steps the Board chooses to take in enforcing the Restrictions except that decisions made at hearings must be made by the Board.

7.2. **Scheduling Hearings.** A hearing before the Board to determine whether a sanction should be imposed may be initiated by the Board after receipt of at least one complaint. To initiate a hearing, the Board must deliver to the respondent a notice which includes the following:

7.2.1. **Complaint.** A written statement setting forth in ordinary and concise language the acts or omissions with which the respondent is charged,

7.2.2. **Basis for Violation.** A reference to the specific provisions of the Restrictions which the respondent is alleged to have violated,

7.2.3. **Hearing Schedule.** The date, time and place of the scheduled hearing,

7.2.4. **Sanctions.** A list of sanctions which may be imposed at the hearing.

The date for the hearing may be no less than fifteen (15) days after the date the notice of hearing is mailed or delivered to the respondent. The respondent is entitled to attend the hearing, submit a statement of defense to the Board in advance of the hearing, or present a statement of defense and supporting witnesses at the hearing. If the respondent does not attend the hearing, the respondent waives these rights.

7.3. **Conduct of Hearing.** The Board shall conduct the hearing in executive session, affording the respondent a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of notice and the invitation to be heard must be placed in the minutes of the meeting. Such proof is adequate if a copy of the notice together with a statement of the date and manner of delivery is entered by the Association officer or Board member who mailed or delivered such notice. The record of the meeting must contain a written statement of the results of the hearing and the sanction, if any, imposed.

7.4. **Imposition of Sanctions.** After affording the respondent an opportunity for a hearing before the Board, the Board may impose any one or more of the following sanctions:

(a) levy a Special Assessment as authorized in the Declaration; (b) suspend or condition the respondent's right to use any recreational facilities the Association owns, operates or maintains commencing on a date in the future selected by the Board; (c) suspend the respondent's voting privileges established under the Declaration; (d) enter upon a Lot to perform maintenance which, according to the Declaration, is the responsibility of the respondent; or (e) record a notice of noncompliance if allowed by law. Any suspension of Membership privileges may not be for a period of more than thirty (30) days for any noncontinuing infraction, but in the case of a continuing infraction (including nonpayment of any assessment after the same becomes delinquent) may be imposed for so long as the violation continues. Written notice of any sanctions to be imposed must be delivered to the respondent personally, by any system or technology designed to record and communicate messages, facsimile, electronic mail, or other electronic means, via first class mail or certified mail return receipt requested, or any combination of the foregoing. No action against the respondent arising from the alleged violation may take effect prior to five (5) days after the hearing.

7.5. **Limits on Remedies.** The Board's failure to enforce the Restrictions does not waive the right to enforce them. The remedies provided by the Restrictions are cumulative and not exclusive. However, any individual Owner must exhaust all available internal Association remedies prescribed by the Restrictions before that Owner may resort to a court of law for relief with respect to any alleged violation of the Restrictions by another Owner.



**CERTIFICATE OF SECRETARY**

I, the undersigned, certify that:

1. I am the duly elected and acting Secretary of MARSDEN COMMUNITY ASSOCIATION, a California nonprofit corporation ("Association"); and

2. The foregoing Bylaws comprising 19 pages including this page constitute the Bylaws of the Association duly adopted by Consent of Directors in Lieu of First Meeting dated \_\_\_\_\_, 200\_.

IN WITNESS WHEREOF, I have hereunto subscribed my hand and affixed the seal of the Association this 6 day of July, 2006

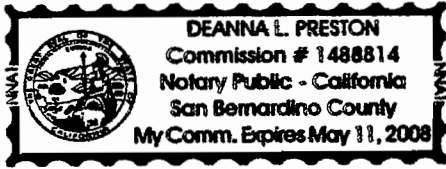
  
Secretary

(SEAL)

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California }  
County of RIVERSIDE } ss.

On JULY 6, 2006 before me, DEANNA L. PRESTON, NOTARY PUBLIC,  
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")  
personally appeared KERRI ROBINSON  
Name(s) of Signer(s)



personally known to me  
 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.  
Deanna L. Preston  
Signature of Notary Public

**OPTIONAL**

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

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer**

Signer's Name: \_\_\_\_\_

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

Signer Is Representing: \_\_\_\_\_



**EXHIBIT "C"**

**LEGAL DESCRIPTION OF ANNEXABLE TERRITORY**

The real property located in the County of Riverside, California, described as follows:

All of Tract No. 31724, as shown on a Subdivision Map, Filed in Book \_\_\_\_\_, Pages \_\_\_ to \_\_\_, inclusive, of Maps, in the Office of the Riverside County Recorder, excluding Phase 1.

**EXHIBIT "D"**

**PHASE 1 COMMON AREA AND  
ASSOCIATION MAINTENANCE AREAS**

**Phase 1 Common Area:**

There is no Common Area in Phase 1.

**Phase 1 Association Maintenance Areas:**

There are no Association Maintenance Areas in Phase 1.

**EXHIBIT "E"**

**PARK AND DETENTION BASIN LOTS**

**Park Lot:** Lot 130 of Tract No. 31724, as shown on a Subdivision Map, Filed in Book 406, Pages 87 to 94, inclusive, of Maps, in the Office of the Riverside County Recorder (which shall be a part of Phase 4).

**Detention Basin Lot:** Lot 129 of Tract No. 31724, as shown on a Subdivision Map, Filed in Book 406, Pages 87 to 94, inclusive, of Maps, in the Office of the Riverside County Recorder (which shall be a part of Phase 5).

The Common Expenses associated with the foregoing Lots shall will be assessed uniformly and equally against the Owners and their Lots based on the number of Lots owned by each Owner, as provided in Section 7.6 of the Declaration to which this Exhibit is attached.

**EXHIBIT "F-1"**

**BEST MANAGEMENT PRACTICES**

**Trash and Debris** – Trash (such as paper, plastic, polystyrene packing foam, and aluminum materials) and biodegradable organic matter (such as leaves, grass cuttings, and food waste) are general waste products on the landscape. The presence of trash and debris may have a significant impact on the recreational value of a water body and aquatic habitat. Excess organic matter can create a high biochemical oxygen demand in a stream and thereby lower its water quality. In addition, in areas where stagnant water exists, the presence of excess organic matter can promote septic conditions resulting in the growth of undesirable organisms and the release of odorous and hazardous compounds such as hydrogen sulfide.

**Oxygen-Demanding Substances** – This category includes biodegradable organic material as well as chemicals that react with dissolved oxygen in water to form other compounds. Proteins, carbohydrates, and fats are examples of biodegradable organic compounds. Compounds such as ammonia and hydrogen sulfide are examples of oxygen-demanding compounds. The oxygen demand of a substance can lead to depletion of dissolved oxygen in a water body and possibly the development of septic conditions.

**Oil and Grease** – Oil and grease are characterized as high-molecular weight organic compounds. Primary sources of oil and grease are petroleum hydrocarbon products, motor products from leaking vehicles, esters, oils, fats, waxes, and high molecular-weight fatty acids. Introduction of these pollutants to the water bodies are very possible due to the wide uses and applications of some of these products in municipal, residential, commercial, industrial, and construction areas. Elevated oil and grease content can decrease the aesthetic value of the water body, as well as the water quality.

## IV. Best Management Practices

### IV.1 SITE DESIGN

In an effort to minimize the discharge of pollutants into downstream waters, nuisance flows and “first-flush” discharges will be treated in a detention facility constructed on-site which utilize three (3) treatment control BMPs: Detention/Settling, Filtration, and Biofiltration.

**Detention/Settling:** Dry extended detention ponds are basins whose outlets have been designed to detain stormwater runoff for some minimum amount of time that allows particles and associated pollutants to settle. This treatment control has medium to high removal effectiveness for the pollutants of concern listed above.

**Filtration:** Katchall™ curb inlet filters which pre-treat discharges into the basin.

**Biofiltration:** Two vegetated swales will be constructed within the bottom of the detention basin. These swales have shallow slopes in order to allow maximum contact time with the vegetation. Contact time with the vegetation improves water quality by plant uptake of pollutants, removal of sediment, and an increase in filtration. A thick cover of vegetation is required for the swales to function properly. The number of vegetated swales within the basin relates to the size of the basin. The effectiveness of the vegetated swales is limited; hence this treatment mechanism is used in conjunction with the other two (2) BMPs. The design, maintenance, and inspection specifications and requirements for the vegetated swales are discussed in the sections below.

## IV.2 SWALE DESIGN SPECIFICATIONS

### Design and Sizing Guidelines

Appendix C of this project-specific DIPVS includes the site-specific sizing calculations and design details of the vegetated swales, as well as grass swale design criteria and design procedures. A diverse selection of low growing, plants that thrive under the specific site, climatic, and watering conditions is specified in Appendix C (Native Plant Pallet for Basin for TR31724). Vegetation whose growing season corresponds to the wet season is preferred. Drought tolerant vegetation should be considered especially for swales that are not part of a regularly irrigated landscaped area. An aerial diagram and cross section of a conceptual vegetated swale is shown in a figure adapted from the Riverside County Stormwater Quality Best Management Practice Design Handbook (Appendix C). A copy of the site-specific grading plan for the basin and swale is also shown as "TC-30 Vegetated Swale Concept" (Appendix C).

### Construction/Implementation Considerations

- Install swales at the time of the year when there is a reasonable chance of successful establishment without irrigation; however, it is recognized that rainfall in a given year may not be sufficient and temporary irrigation may be used until grass cover is established.
- The swales should remain un-vegetated until roads, curbs, and filters are all in place.
- Hydroseed application method for the vegetation specified in Appendix C ("Native Plant Pallet for Basin for TR31724") may be used. The basin plant palette was designed to utilize native plants so that fertilizer and soil amendments will not be needed. Where seeds are used, erosion controls will be necessary to protect seeds for at least 75 days after the first rainfall of the season.
- As previously stated, a thick cover of vegetation is required for the swales to function properly. Vegetation should achieve >90% cover throughout the swale surfaces. Supplemental seeding may be necessary to achieve this density. Examples of percent of area covered is provided in Appendix C.

## IV.3 SWALE INSPECTION AND MAINTENANCE FREQUENCY

### Performance

The literature suggests that vegetated swales represent a practical and potentially effective technique for controlling urban runoff quality. While limited quantitative performance data exists for vegetated swales, it is known that check dams, slight slopes, permeable soils, dense grass cover, increased contact time, and small storm events all contribute to successful pollutant removal by the swale system. Factors decreasing the effectiveness of swales include compacted soils, short runoff contact time, large storm events, frozen ground, short grass heights, steep slopes, and high runoff velocities and discharge rates. A thick vegetative cover is needed for the vegetated swales to function properly. Swales are more susceptible to failure if they are not properly maintained than the other Treatment Control BMPs on the Site.



### Maintenance

The useful life of a vegetated swale system is directly proportional to its maintenance frequency. If properly designed and regularly maintained, vegetated swales can last indefinitely. The maintenance objectives for vegetated swale systems include keeping up the hydraulic and removal efficiency of the channel and maintaining a dense, healthy grass cover (>90 percent; see Appendix C for Examples of Percent Area Covered diagram).

Maintenance activities should include periodic mowing (with grass never cut shorter than the design flow depth), weed control, watering during drought conditions, reseeding of bare areas, and clearing of debris and blockages from inlets, outlets, and swale areas. Cuttings from periodic mowing should be removed from the channel and disposed in a local composting facility. Accumulated sediment should also be removed manually to avoid concentrated flows in the swale. The application of fertilizers and pesticides should be minimal.

Another aspect of a good maintenance plan is repairing damaged areas within a channel. For example, if the channel develops ruts or holes, it should be repaired utilizing a suitable soil that is properly tamped and seeded. The grass cover should be thick; if it is not, reseed as necessary. Any standing water removed during the maintenance operation must be disposed to a sanitary sewer at an approved discharge location. Residuals (e.g., silt, grass cuttings) must be disposed in accordance with local or State requirements. Maintenance of grassed swales mostly involves maintenance of the grass or wetland plant cover. Typical maintenance activities are summarized below:

- Inspect swales **on or about 15 October annually and then quarterly thereafter** for erosion, damage to vegetation, and sediment and debris accumulation. Schedule maintenance for the summer and before major fall runoff to be sure the swale is ready for winter. However, additional inspection after periods of heavy runoff may be necessary. The swale, as well as inlet and outlets, should be checked for debris and litter, and areas of sediment accumulation.
- Grass height and mowing frequency may not have a large impact on pollutant removal. Consequently, mowing may only be necessary once or twice a year for safety or aesthetics or to suppress weeds and woody vegetation. Grass should be maintained at a minimum height of 6 inches; more importantly, grass must be maintained at a height above the operating depth for a 1.5 inch rain. In general, the mowed height of the grass should be 2-4 inches taller than the maximum flow depth, but a minimum of 6 inches.
- Trash tends to accumulate in swale areas, particularly along highways. The need for litter removal is determined through periodic inspection, but litter should always be removed prior to mowing.
- Sediment accumulating near culverts and in channels should be removed when it builds up to 75 mm (3 in.) at any spot, or covers vegetation.
- Regularly inspect swales for pools of standing water. Swales can become a nuisance due to mosquito breeding in standing water if obstructions develop (e.g. debris accumulation, invasive vegetation) and/or if proper drainage slopes are not implemented and maintained. Channels and low spots should be re-graded and seeded.
- Because of the slow design flow velocities designed primarily for water quality improvement and infiltration, sediment may accumulate in the bottom. Sediment removal may be necessary, but take care to minimize serious disturbance of the vegetation. After sediment is removed, re-seed bare spots immediately.

**Design and Implementation Plan for Vegetated Swales (DIPVS)**

- If salt is a problem and a vigorous grass mat has not developed, the area may need to be stripped and a different seed mixture may need to be used.

<b>Summary of Vegetated Swale Maintenance</b>		
<b>Vegetation Care</b>	Maintain native grass at 6-8 inches tall. Collect cuttings and dispose of them off-site.	Routine—as needed.
<b>Debris and Litter Removal</b>	Keep the area clean for aesthetic reasons, which also reduces float-ables being flushed downstream.	Routine—as needed by inspection, but no less than two times per year.
<b>Sediment Removal</b>	Remove accumulated sediment near culverts and in channels to maintain flow capacity. Replace the grass areas damaged in the process.	Routine—as needed by inspection.
<b>Grass Re-seeding</b>	Maintain a healthy dense cover of native grass in channel and side slope.	Nonroutine— As needed by annual inspection.
<b>Inspections</b>	Check the grass for uniformity of cover, sediment accumulation in the swale, and near culverts	Routine— Annual inspection is suggested
<b>Nuisance Control</b>	Address odor and/or insect issues associated with stagnant or standing water in the channel. Odor nuisance may be indicative of hazardous conditions in the soil, and the soil may need to be tested.	Nonroutine – Handle as necessary per inspection or local complaints

#### IV.4 KATCHALL™ CURB INLET FILTER INSPECTION AND MAINTENANCE FREQUENCY

Suggested maintenance procedures are outlined below and also included in Appendix D (BMP Resource Information). A routine maintenance schedule must be established and rigidly followed to prevent the unwanted build up of obstructions that may inhibit the function of the filtration system that pre-treats stormwater discharges into the basin.

##### ▪ DRY WEATHER PROCEDURES

- Perform a visual inspection of all filtration devices not less than once a month.
- Remove all obstructions present in filters, i.e. trash and debris, toys, etc.
- Remove and rinse off all filter media materials in a vegetated area.
- Let filtration media “drip-dry” for approximately one-hour before re-installing.

##### ▪ WET WEATHER PROCEDURES

- Perform visual inspection not less than once a month.
- Inspect all inlet filters after each rain event has occurred.
- Remove all obstructions present in filters or blocking inlet structures.
- Not less than once a month, remove filters, flush off in vegetated areas and re-install filter media/materials.

##### ▪ OIL SPILLS AND OTHER POLLUTANTS

- Should an oil spill occur, (or other contaminants such as gasoline or cleaning solvents) enter the filtration inlets, immediately remove all filtration materials and replace filtration fabric with new fabric.
- Dispose of the contaminated (hazardous) materials in a manner approved by EPA or ask your local fire department for assistance.

## V. Funding

Funding for the Operation and Management of the inlet filters and vegetated swales in the bottom of the detention basin as specified in the project-specific DIPVS is the responsibility of the homeowners association. Maintenance costs associated with the vegetated swales on-site are estimated to be approximately \$0.75/linear foot/year (California Stormwater BMP Handbook, 2003). These costs include mowing, general vegetation care, debris and litter removal, reseeding, program administration and inspection (4x a year). By certifying the project-specific DIPVS, the Project applicant is certifying that the funding responsibilities have been addressed and will be transferred to future owners. One example of how to adhere to the requirement to transfer O&M responsibilities is to record the project-specific DIPVS against the title to the property.

**EXHIBIT F-2**

**MAINTENANCE PROGRAM**

# Program for Maintenance, Inspection, and Repair of Construction Site BMPs

This form outlines the maintenance, inspection and repair program described in SWPPP Section 500

## Best Management Practices (BMP's)

## Inspection Frequency (all controls)

## Maintenance/Repair Program

### TEMPORARY SOIL STABILIZATION BMP'S

SS-2 Preservation of Existing Vegetation	Bi-Weekly	Inspect protective fencing as necessary Repair damaged roots or compacted soils in the root zone
SS-4 Hydroseeding	Bi-Weekly within planting season Prior to forecast storms After a rain event that caused runoff within the construction site	Inspect for failures and reseed when appropriate Repair damaged roots or compacted soils in the root zone

### TEMPORARY SEDIMENT CONTROL BMP'S

SC-1 Silt Fence	Prior to forecast storms After a rain event that caused runoff within the construction site At 24-hour intervals during extended rain events	Repair split, torn slumping or weathered silt fence Remove accumulated sediment after it reaches 1/3 of fence height Remove BMP's when no longer needed, repair slopes/surfaces damaged by the BMP removal
SC-1 Desilting Basin	Inspect before and after rainfall events Weekly during rainy season	Examine banks for seepage Check inlet and outlet for obstructions, Check outlet for erosion Remove sediments when 1/3 full
SC-7 Street Sweeping and Vacuuming	Daily at Ingress/Egress points	

SC-8 Sand Bag Barriers	Inspect before and after rainfall events Weekly during rainy season	Reshape/replace bags as needed Replace washouts Remove accumulated sediment after it reaches 1/3 of fence height Remove BMP's when no longer needed, repair slopes/surfaces damaged by the BMP removal
SC-10 Storm Drain Inlet Protection-	Inspect before and after rainfall events Weekly during rainy season	Check stormdrain for by-passed materials Remove all inlet protection devices within 30 days of site stabilization

### WIND EROSION CONTROL BEST MANAGEMENT PRACTICES

WE-1 Wind Erosion Control	Routinely	Check Protected areas to ensure coverage
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### TRACKING CONTROL BEST MANAGEMENT PRACTICES

TC-1 Stabilized Construction Entrance	Routinely	Repair if access is clogged with sediment Check effectiveness, repair as needed Sweep tracked sediment
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**NON-STORM WATER MANAGEMENT BEST MANAGEMENT PRACTICES**

NS-1 Water Conservation Practices	Weekly	fix leaks immediately
NS-3 Paving and Grinding Operations	As Implemented	Inspect machinery for leaks, fix immediately
NS-6 Illicit Connection/Illegal Discharge Detection and Reporting	Weekly	Observe site perimeter for evidence or potential of illicitly discharged materials Inspect site during project execution for evidence of illicit discharges or illegal dumping Notify Owner of Illicit Discharge
NS-8 Vehicle and Equipment Cleaning	Weekly	Remove, dispose and replace damaged, deteriorated, or otherwise unsuitable BMP's Remove vehicles or equipment that leak
NS-9 Vehicle and Equipment Fueling	Weekly	Remove, dispose and replace damaged, deteriorated, or otherwise unsuitable BMP's Remove vehicles or equipment that leak Keep ample supply of spill clean up material on site
NS-10 Vehicle and Equipment Maintenance	Each day of use	Remove, dispose and replace damaged, deteriorated, or otherwise unsuitable BMP's Remove vehicles or equipment that leak

**JD MATERIALS POLLUTION BEST MANAGEMENT PRACTICES**

WM-1 Material Delivery and Storage	Weekly Before and after rainfall events	Keep storage area clean Repair covers, liners, and containment structures as needed
WM-2 Material Use	Monthly	Check contractors and subcontractors for compliance
WM-4 Spill Prevention and Control	Weekly	Verify that clean up materials are on site Update clean-up materials to match on-site chemicals
WM-5 Solid Waste Management	Weekly	Police site for litter and debris Maintain dumpster capacity
WM-8 Concrete Waste Management	Weekly	Monitor concrete activities to ensure proper methods are utilized Concrete Washout must be emptied when 75% full
WM-9 Sanitary/Septic Waste Management	Weekly	

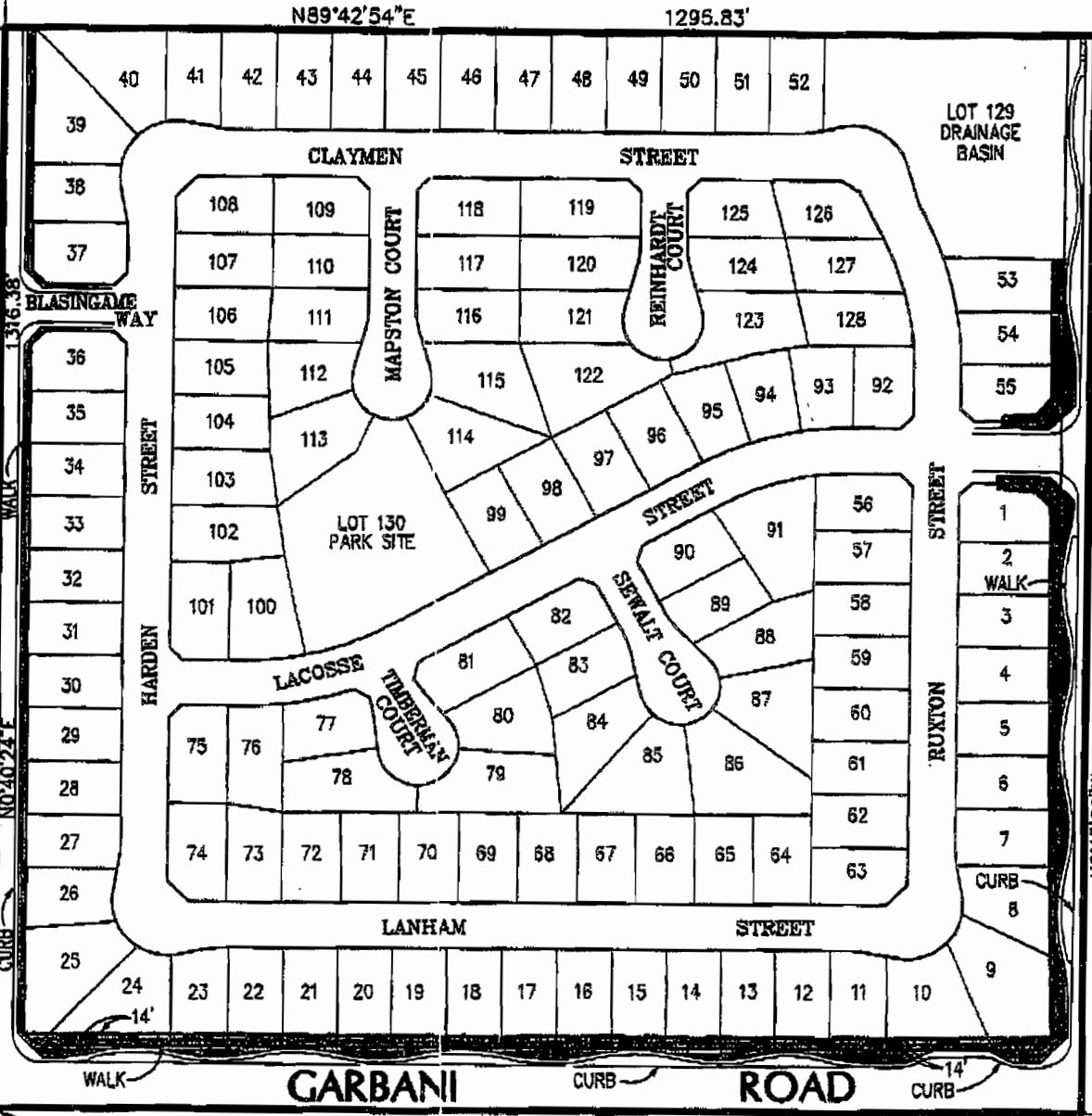
# EXHIBIT

SKETCH TO ACCOMPANY LEGAL DESCRIPTION  
SCALE 1"=200'

TUPELO STREET

SHERMAN ROAD

HAUN ROAD



S'LY 1/4 CORNER SECTION 10  
TOWNSHIP 6 SOUTH, RANGE 3 WEST

- INDICATES LANDSCAPE MAINTENANCE DISTRICT (LMD) AREA
- INDICATES 14' WIDE TRAIL EASEMENT



RECORDING REQUESTED BY:

**COPY** of Document Recorded  
on 8/7/06 as No. 2006-0607133  
has not been compared with  
original.  
**LARRY W. WARD**  
County Recorder  
RIVERSIDE COUNTY CALIFORNIA

WHEN RECORDED MAIL TO:

CAPITAL PACIFIC HOLDINGS, LLC  
200 S. Main Street, Suite 300  
Corona, California 92882  
Attention: Joanie Madrid

(Space Above For Recorder's Use)

**MARSDEN**

**NOTICE OF EXISTENCE OF NONADVERSARIAL  
PRELITIGATION PROCEDURES  
(CALIFORNIA CIVIL CODE SECTION 912(f))**

This Notice of Existence of Nonadversarial Prelitigation Procedures ("Notice") is executed on August 4, 2006 by Capital Pacific Holdings, LLC, a Delaware limited liability company ("Declarant") and SCC-Canyon II, LLC, a Delaware limited liability company ("SCC").

**P R E A M B L E:**

A. SCC and/or Declarant own the lots comprising that certain real property ("Property") in the unincorporated area of the County of Riverside, State of California, which is more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference. The Property is being developed by Declarant as the "Marsden" residential housing project.

B. Declarant and SCC desire to record this Notice with respect to the Property in order to satisfy the requirements of California Civil Code Section 912(f).

NOW, THEREFORE, Declarant and SCC hereby advise each owner of any portion of the Property (including the homeowners association for the Property) of the following:

1. California Civil Code Sections 910 to 938, inclusive contain certain "nonadversarial prelitigation procedures" that impact the legal rights of each owner. Each owner is advised to become familiar with such procedures.
2. Declarant shall have the right, but not the obligation, to unilaterally amend this Notice at any time with respect to any portion of the Property which is then owned by Declarant and/or SCC. In addition, Declarant shall have the right, but not the obligation, to unilaterally amend this Notice at any time in order to comply with the requirements of applicable law.
3. This Notice is recorded against the Property in compliance with California Civil Code Section 912(f) and runs with, burdens and binds the Property and the heirs, administrators, executors, successors, assigns and grantees of each owner.



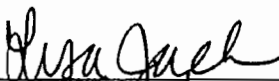
This Notice has been executed by Declarant and SCC on the date set forth above.

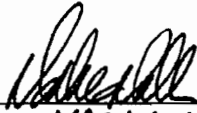
**"Declarant"**

CAPITAL PACIFIC HOLDINGS, LLC,  
a Delaware limited liability company

By: CAPITAL PACIFIC HOLDINGS, INC.,  
a Delaware corporation,  
Its Managing Member

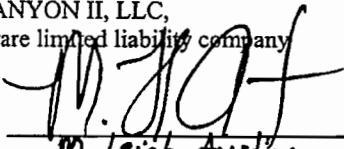
By: CAPITAL PACIFIC HOMES, INC.,  
a Delaware corporation,  
Its Authorized Agent

By:   
Name: Lisa Jack  
Its: CFO-Social DIVISION

By:   
Name: MARK G MULLEN  
Its: VICE PRESIDENT

**"SCC"**

SCC-CANYON II, LLC,  
a Delaware limited liability company

By:   
Name: M. Leigh Austin  
Its: President

State of California  
County of Los Angeles

On August 4, 2006 before me, Marcia E. Connelly Notary Public, personally appeared M. Leigh Austin personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature Marcia E. Connelly (Seal)

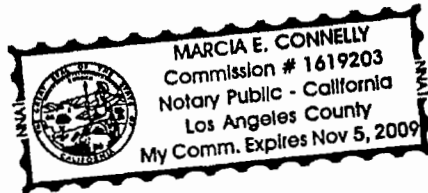


EXHIBIT "A"

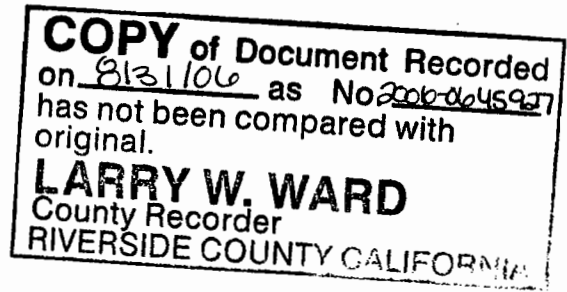
LEGAL DESCRIPTION OF PROPERTY

Lots 1 through 130, inclusive, of Tract 31724 in the County of Riverside, State of California, as per Map recorded in Book 406 at Pages 87 through 94, inclusive, in the Office of the County Recorder of Riverside County.

Recording Requested By  
First American Title NHS

RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

Dzida, Carey & Steinman (SDH)  
3 Park Plaza, Suite 750  
Irvine, CA 92614



SPACE ABOVE THIS LINE FOR RECORDER'S USE

DOCUMENTARY TRANSFER TAX \$None (Consideration less than \$100)

Computed on the consideration or value of property conveyed;  
OR

Computed on the consideration or value less liens or encumbrances remaining at time of sale

The Undersigned

Signature of Declarant or Agent determining tax - Firm Name

**EASEMENT DEED**  
**(Access Easement for Completion of Recreational Facilities)**

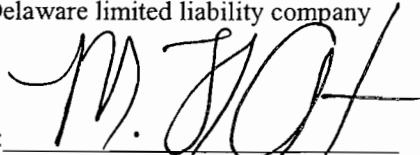
SCC – CANYON II, LLC, a Delaware limited liability company (“Grantor”), is the owner of the real property located in the in the County of Riverside, State of California, more particularly described as Lot 130 of Tract No. 31724, as shown on a Subdivision Map, Filed in Book 406, Pages 87 to 94, inclusive, of Maps, in the Office of the Riverside County Recorder (“Property”).

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, Grantor does hereby GRANT to MARSDEN COMMUNITY ASSOCIATION, a California nonprofit mutual benefit corporation (“Grantee”), an easement for access, ingress and egress over, through and across Property for the purpose of permitting Grantee to complete the construction of certain recreational facilities on the Property (“Facilities”), as described in the Common Area Completion and Security Agreement (“Agreement”) between Grantee and Capital Pacific Holdings, LLC, a Delaware limited liability company (“Subdivider”), if Subdivider fails to timely complete the Facilities in accordance with the terms of the Agreement.

Grantor has executed this Easement Deed as of the 10<sup>th</sup> day of August   , 2006.

**"GRANTOR"**

SCC – CANYON II, LLC,  
a Delaware limited liability company

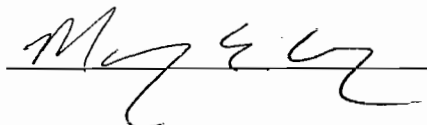
By:   
M. Leigh Austin, President

STATE OF CALIFORNIA            )  
  ) ss  
COUNTY OF Los Angeles )

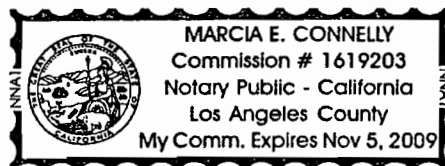
On August 10, 2006, before me, Marcia E. Connelly, a Notary Public,  
personally appeared M. Leigh Austin

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

WITNESS my hand and official seal.

Signature 

(Seal)





**State of California**  
Secretary of State

I, BRUCE McPHERSON, Secretary of State of the State of California, hereby certify:

That the attached transcript of 2 page(s) has been compared with the record on file in this office, of which it purports to be a copy, and that it is full, true and correct.



IN WITNESS WHEREOF, I execute this certificate and affix the Great Seal of the State of California this day of

MAR 14 2006

BRUCE McPHERSON  
Secretary of State

2858501

**ENDORSED - FILED**  
In the office of the Secretary of State  
of the State of California

MAR - 7 2006

ARTICLES OF INCORPORATION  
OF  
MARSDEN COMMUNITY ASSOCIATION

ONE: The name of this corporation ("Corporation") is **MARSDEN COMMUNITY ASSOCIATION**.

TWO: This Corporation is a nonprofit mutual benefit corporation organized under the Nonprofit Mutual Benefit Corporation Law. The purpose of the Corporation is to engage in any lawful act or activity, other than credit union business, for which a corporation may be organized under such law.

THREE: The name and address in the state of California of the Corporation's initial agent for service of process is: Dag Wilkinson, Esq., whose business address is c/o Capital Pacific Homes, Inc., 4100 MacArthur Boulevard, Suite 200, Newport Beach, CA 92660.

FOUR: The Corporation shall have and exercise any and all powers, rights and privileges which a corporation organized under the Nonprofit Mutual Benefit Corporation Law may now or hereafter have or exercise, provided that the Corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the specific purpose of the Corporation, which is to operate a homeowners association within the meaning of Section 23701t of the California Revenue and Taxation Code and Section 528 of the Internal Revenue Code and to manage a common interest development under the Davis-Stirling Common Interest Development Act. The Corporation does not have a corporate office. The common interest development is near the intersection of Garbani Road and Sherman Road, Menifee, California, 92584-0000.

FIVE: The classes of Membership and the voting and other rights and privileges of Members shall be as set forth in the Bylaws. So long as there are two classes of Membership, amendment of these Articles of Incorporation shall require the assent (by vote or written consent) of (i) a bare majority of the Board of Directors of the Corporation, and (ii) Members representing a bare majority of the voting power of each class of Members. After conversion of the Class B Membership to Class A Membership, amendment of these Articles of Incorporation shall require the assent (by vote or written consent) of (i) a bare majority of the Board of Directors of the Corporation, (ii) a bare majority of the total voting power of the Members, and (iii) Members representing a bare majority of the voting power of the Members other than the Subdivider of the Project ("Declarant").

SIX: The Corporation has no managing agent.

The undersigned, who is the incorporator of the Corporation, has executed these  
Articles of Incorporation on March 7<sup>th</sup>, 2006.

*L. Burleson*

Print Name: LETICIA BURLESON

*"Incorporator"*





**ASSESSMENT SECURITY AGREEMENT AND  
INSTRUCTIONS TO ESCROW DEPOSITORY — Reg. 2792.9**

RE 643 (Rev. 5/98)

<b>ASSOCIATION</b>		
NAME OF OWNERS ASSOCIATION		
<b>MARSDEN COMMUNITY ASSOCIATION</b>		<b>PHASE 1</b>
ADDRESS, CITY, STATE, ZIP CODE		
<b>C/O CAPITAL PACIFIC HOMES, 200 SOUTH MAIN STREET, STE 300, CORONA, CA 92882</b>		
<b>SUBDIVIDER</b>		
NAME OF SUBDIVIDER		
<b>CAPITAL PACIFIC HOLDINGS, LLC, A DELAWARE LIMITED LIABILITY COMPANY</b>		
ADDRESS, CITY, STATE, ZIP CODE		
<b>200 SOUTH MAIN STREET, STE 300, CORONA, CA 92882</b>		
<b>SUBDIVISION</b>		
NAME OF SUBDIVISION		
<b>MARSDEN</b>		
COUNTY	TYPE OF SUBDIVISION	DRE FILE NUMBER
<b>RIVERSIDE</b>	<b>PLANNED DEVELOPMENT</b>	<b>121107LA-F00</b>
<b>ESCROW HOLDER</b>		
NAME OF ESCROW-HOLDER		
<b>FIRST AMERICAN TITLE</b>		
ADDRESS, CITY, STATE, ZIP CODE		
<b>8105 IRVINE CENTER DRIVE #450, IRVINE, CA 92618</b>		
ESCROW ACCOUNT NUMBER		

**PART ONE — ASSESSMENT SECURITY AGREEMENT**

1. This Assessment Security Agreement ("Agreement") is made this 12 day of October, 2005, by and between the Subdivider and the Association identified above.

2. **Recitals.**

WE HEREBY CERTIFY THIS TO BE  
A TRUE AND CORRECT COPY  
FIRST AMERICAN TITLE INSURANCE COMPANY

A. **Property to Which Agreement Applies.** (Interests to be covered by the ~~Public Report~~ Subdivider is the owner of certain real property described as: LOTS 31-43, 57-60 & 102-108 OF TRACT 31724

Records of RIVERSIDE County, California (herein "the Subdivision").

B. **Public Report.** Subdivider has applied for a California Department of Real Estate Public Report ("Public Report") covering the Subdivision. Prior to obtaining the Public Report, the Subdivider is required pursuant to the provisions of Section 2792.9 of Chapter 6, Title 10, California Code of Regulations to make and retain in full force and effect arrangements securing Subdivider's obligations as an owner of separate interests covered by the public report to pay regular and special assessments.

3. **Secured Obligation.** Subdivider shall pay, as and when due, all regular and special assessments which are levied by the Association against separate interests owned by the Subdivider in the Subdivision from the date hereof until title to 80% of the separate interests in the Subdivision have been conveyed.

4. **Security.** To secure the performance of the obligation described in Part One, Paragraph 3, above, the Subdivider has procured the issuance of the:

Surety bond in the sum of NINE THOUSAND, SEVENTY-TWO Dollars (\$ 9,072.00), to the Association, as obligee,

Letter of credit in the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), to the Escrow Holder identified above, for the benefit of the Association,

Set-aside letter in the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) to the Escrow Holder, for the benefit of the Association,

a copy of which instrument is attached to this Agreement as an Exhibit, or

cash deposit in the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) has been deposited with Escrow Holder for the benefit of the Association.

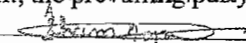
The term "Security" as used in this Agreement refers to the cash deposit, surety bond, letter of credit, or set-aside letter identified above, together with any funds drawn thereunder held by the Escrow Holder.

5. **Set-Aside Letter.** If the Security is a set-aside letter, funds in the sum specified above ("Funds") will be retained in a separate account controlled and administered by the Issuer until full and final performance by Subdivider of Subdivider's obligations under Part One, Paragraph 3 of this Agreement, or until disbursed in accordance with the terms of the set-aside letter. The Subdivider hereby grants the Association a security interest in the Funds to secure the performance of the obligation described in Part One, Paragraph 3, above.

6. **Enforcement and Release of the Security.** If the Subdivider fails to perform the Subdivider's obligation under Part One, Paragraph 3 of this Agreement, the Association shall have the right, whether through enforcement of the Security, demand upon funds drawn thereunder held by the Escrow Holder, or otherwise, to receive such sums as may be required to satisfy the obligation of the Subdivider under Part One, Paragraph 3 of this Agreement, and the Subdivider shall, without regard to any other disputes or negotiations then existing, immediately take any and all actions and execute any and all documents as may be required to cause such sums to be paid to the Association. Any amount received by the Association directly from the Subdivider or from proceeds of the Security shall be credited against any claim by the Association arising out of the Subdivider's failure to perform the Subdivider's obligations under this Agreement. Upon full and final performance by Subdivider of Subdivider's obligations under this Agreement, the Association shall, without regard to any other disputes or negotiations then existing, immediately take any and all actions and execute any and all documents reasonably necessary to cause the Security to be released and exonerated.

7. **Provisions for Arbitration of Conflicts.** In the event there is a dispute between the Subdivider and the Association with respect to this Agreement, or the enforcement, exoneration, or release of the Security, the issue or issues shall, at the request of either Subdivider or Association, be submitted to arbitration, in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA") before an arbitrator selected from the panels of the arbitrators of said AAA. In the event of referral to arbitration, Subdivider will remit the fee to initiate the arbitration. The parties agree, however, that the costs of arbitration shall ultimately be borne as determined by the arbitrator. The parties further agree to abide by the determination of the arbitrator with respect to the enforcement, exoneration or release of the Security and with respect to payment of the costs of arbitration.

8. **Attorney's Fees.** In any action or proceeding arising out this Agreement, the prevailing party or parties shall be entitled to reasonable attorney's fees.

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A TRUE AND CORRECT COPY  
FIRST AMERICAN TITLE INSURANCE CO. OF CALIF.  
BY 

9. **Obligations of Parties; Assignment.** This Agreement and the rights and obligations of each of the parties are personal to such parties and may not be transferred or assigned without the prior written consent of the other, except that Subdivider may assign its rights under this Agreement to a successor in interest as part of a transfer of the Subdivision in its entirety. Subdivider may also assign its rights under this Agreement to the Issuer of the Security. Such assignment does not make the assignee liable for any of Subdivider's obligations pursuant to this Agreement, unless such obligations have been specifically assumed by the assignee in writing. Any assignment in violation of this Section shall be void.

10. **Binding Upon Successors.** This Agreement and the rights and duties of the parties shall be binding upon and shall inure to the benefit of the successors in interest, and assigns of the respective parties.

11. **Laws of California.** This Agreement shall be construed and governed by the laws of the State of California.

12. **Delivery of Agreement.** Subdivider shall furnish the Association with an executed copy of this Agreement and the Instructions to Escrow Depository along with evidence of the Security deposited with Escrow no later than ten (10) days

after the closing of the first sale of a separate interest in the Subdivision owned by the Subdivider.

13. **Complete Agreement.** This Agreement contains the entire agreement between the parties with respect to the subject matter covered in this Agreement.

**PART TWO — INSTRUCTIONS TO ESCROW DEPOSITORY**

This constitutes joint escrow instructions of the Subdivider and the Association, which instructions are irrevocable except as modified by written supplemental instructions executed by the Subdivider and the Association. The Subdivider and the Association are the only principals in this escrow.

Escrow Holder hereby acknowledges receipt of the cash deposit, surety bond, letter of credit, or set-aside letter described in Part One, Paragraph 4 of the foregoing Assessment Security Agreement. Unless otherwise specifically stated herein, the capitalized terms in these instructions shall have the same meaning as set forth in the foregoing Agreement.

Nothing contained in these instructions imposes any duty on the Escrow Holder to interpret Section 2792.9 of Chapter 6, Title 10, California Code of Regulations, to audit in any way the Subdivider’s discharge of its duties or obligations thereunder, or to verify the truth of the statements made in any notices given to the Escrow Holder by the Subdivider or the Association. Except as otherwise provided by law, the duties of the Escrow Holder are to receive, hold, release, or draw upon the Security in accordance with the following instructions. These instructions may be modified by the written joint or mutual instructions of the principals. Escrow Holder hereby agrees to comply with the terms and provisions of these instructions.

**1. Return Of The Security To The Subdivider.**

- A. If the Escrow Holder receives a written demand from the Subdivider for the return of the Security, which demand is accompanied by Subdivider’s written statement that (1) the Subdivider has paid as and when due all regular and special assessments which have been levied by the Association against separate interests owned by the Subdivider in the Subdivision, and (2) title to 80% of the separate interests in the Subdivision have been conveyed by the Subdivider, then, within fifteen (15) calendar days of receipt of the demand and statement, the Escrow Holder shall deliver a copy of the demand and statement to the Association, or its authorized agent, together with a written notice to the Association that the Association’s written objection to return of the Security to the Subdivider must be received by the Escrow Holder within forty (40) days after delivery of the demand and statement to the Association.
- B. If within forty (40) calendar days after such delivery, the Association delivers to the Escrow Holder the Association’s written objection to the return of the Security to the Subdivider, then the Escrow Holder shall continue to hold, release, or draw upon the Security in accordance with these instructions. If within forty (40) calendar days after the Escrow Holder delivers the demand and statement to the Association, or its authorized agents, the Association does not deliver to the Escrow Holder the Association’s written objection to the return of the Security to the Subdivider, then the Escrow Holder shall promptly deliver the Security to the Subdivider.

**2. Remittance Of The Security To The Association.**

- A. If the Escrow Holder receives a demand from the Association for the remittance of the Security, or some specified portion thereof, which demand is accompanied by a written statement signed by an officer of the Association that the Subdivider is delinquent in the payment of regular or special assessments which have been levied by the Association against separate interests owned by the Subdivider in the Subdivision, then, within fifteen (15) calendar days of receipt of the demand and statement, the Escrow Holder shall deliver a copy of the demand and the statement to the Subdivider, together with a statement notifying the Subdivider that the Subdivider’s written objection to remittance of the Security to the Association must be received by the Escrow Holder within forty (40) days after delivery of the demand, and statement to the Subdivider.
- B. If within forty (40) calendar days after such delivery, the Subdivider delivers to the Escrow Holder the Subdivider’s written objection to the remittance of the Security to the Association, then the Escrow Holder shall continue to hold, release, or draw upon the Security in accordance with these instructions. If within forty (40) calendar days after the Escrow Holder delivers the demand, certificate and notice to the Subdivider, the Subdivider does not deliver to the Escrow Holder the Subdivider’s written objection to the remittance of the Security to the Association, then:
  - 1) If the Security is a surety bond, the Escrow Holder shall promptly deliver the Security to the Association;
  - 2) If the Security is a letter of credit, the Escrow Holder shall promptly present the Security for payment of that portion of the Security specified in Association’s demand by presenting the Security and a sight draft drawn under and

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 BY \_\_\_\_\_

in compliance with the letter of credit to the issuer of the letter of credit, and upon receipt of payment promptly remit to the Association that portion of the Security specified in the Association's demand;

- 3) If the Security is a set-aside letter, the Escrow Holder shall promptly make demand in compliance with the set-aside letter to the issuer of the set-aside letter for payment of that portion of the Security specified in the Association's demand, and upon receipt of payment promptly remit to the Association that portion of the Security specified in the Association's demand;
- 4) If the Security is or has become a cash deposit, the Escrow Holder shall promptly remit to the Association that portion of the Security specified in the Association's demand.

### 3. Release Of The Security Upon Joint Instructions.

If the Escrow Holder receives written instructions from both the Subdivider and the Association directing the Escrow Holder to return the Security to the Subdivider or to remit the Security, its proceeds or some portion of the proceeds to the Association, the Escrow Holder shall promptly comply with the instructions.

### 4. Conflicting Instructions.

In any of the circumstances described in subparagraphs A through E, below, the Escrow Holder shall, at its sole discretion, either (1) interplead the Security, (2) retain the Security until the Security is returned to the Subdivider or remitted to the Association in accordance with these instructions, or (3) retain the Security until the Security is disposed of in accordance with written supplemental instructions executed by the Subdivider and the Association, the order of a court of competent jurisdiction, or in accordance with the final binding decision rendered in an alternative dispute resolution proceeding:

- A. The Association timely objects in writing to a demand by the Subdivider for the return of the Security;
- B. The Subdivider's demand for the return of the Security is not accompanied by the statement described in Part Two, Paragraph 1-A, above;
- C. The Subdivider timely objects in writing to a demand by the Association for remittance of all or any portion of the Security;
- D. The Association's demand for remittance of the Security is not accompanied by the statement described in Part Two, Paragraph 2-A, above; or
- E. The Escrow Holder receives conflicting instructions from the parties to this escrow.

### 5. Pending Return Or Remittance Of The Security.

- A. If the Security is a letter of credit, and if the issuer of the letter of credit has not extended the time for drawing upon the letter of credit by extending or reissuing the letter of credit and depositing the extension or reissued letter of credit with the Escrow Holder, then fifteen (15) calendar days prior to the expiration of the time for drawing upon the letter of credit, the Escrow Holder shall present the Security for payment in full by presenting the Security and a sight draft drawn under and in compliance with the letter of credit to the issuer of the letter of credit, and upon receipt of payment handle the proceeds of the Security as a cash deposit. The Escrow Holder shall notify the Association and the Subdivider upon receipt of proceeds of a draw on the letter of credit.
- B. If the Security is or has become a cash deposit, the Escrow Holder is hereby instructed to deposit all funds deposited in the above-numbered escrow in a federally insured interest-bearing account or accounts, in the name of the Escrow Holder for the benefit of the Association. The parties hereto agree and understand that said funds are under the control of Escrow Holder and that no withdrawals or additions may be made by anyone other than Escrow Holder. The interest earned on said account, if any, is for the benefit of the Subdivider only, and the Escrow Holder shall cause said interest to be paid to the Subdivider. Taxpayer Identification Number shall be furnished by Subdivider in order for Escrow Holder to open an account for a cash deposit. Escrow shall furnish the parties with account information within five days of opening.
- C. If the Security is a surety bond or set aside letter, the Escrow Holder shall retain the Security until the Security is disposed of in accordance with these instructions or the order of a court of competent jurisdiction.

THIS ESCROW CERTIFY THIS TO BE  
A TRUE AND CORRECT COPY  
FIRST AMERICAN TITLE INSURANCE COMPANY

6. Notices.

Delivery of all notices and other documents described in these Instructions to Escrow Depository or in the foregoing Assessment Security Agreement shall be made by overnight or same-day commercial delivery service or by United States mail, certified or registered, postage prepaid. All such notices and documents shall be deemed delivered, given and received: (a) the day of sending via same-day commercial delivery service; (b) the following business day after sending via overnight commercial delivery service; or (c) three (3) calendar days after deposit in the United States mail. All such notices shall be addressed as set forth on page 1 of this Assessment Security Agreement and Instructions to Escrow Depository; provided that the Association, the Subdivider and the Escrow Holder may at any time change their respective address for notices and other documents described herein by sending to the other two parties a written notice specifying the new address.

7. Counterparts.

This Assessment Security Agreement and Instructions to Escrow Depository may be executed in counterparts, and all counterparts together shall be construed as one document.

Dated: 10/12/05

Capital Pacific Holdings, LLC, a Delaware limited liability company By: Capital Pacific Holdings, Inc., a Delaware corporation, its managing member By: Capital Pacific Homes, Inc., A Delaware Corporation, its authorized agent

Subdivider [Signature] By Scott Coler - President

Dated: 12/1/05

MARSDEN COMMUNITY ASSOCIATION

Association [Signature] By

Dated:

FIRST AMERICAN TITLE

[Signature] Escrow Holder

By FATCO

WE HEREBY CERTIFY THIS TO BE A TRUE AND CORRECT COPY FIRST AMERICAN TITLE INSURANCE COMPANY [Signature]

**SURETY BOND**

(Regulation 2792.9)

Bond No. 08765852

Premium: \$100,000

**Marsden Lots Lots 31-41, 57-60 & 102-108 of Tract 31724**

KNOW ALL MEN BY THESE PRESENTS:

That we Capital Pacific Holdings, LLC, a Delaware limited liability company, as Principal, and Fidelity and Deposit Company of Maryland, a corporation organized and doing business under and by virtue of the laws of the State of Maryland and duly licensed to conduct a general Surety business in the State of California as Surety, are held and firmly bound unto Marsden Community Association a community association described in Civil Code Section 1363, as Obligee, in the penal sum of Nine Thousand Seventy Two and 00/100ths Dollars (\$9,072.00) for the payment of which we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally firmly by these presents.

WHEREAS, this bond is executed, issued, furnished, and otherwise given on behalf of the Principal, an applicant for a public report applied for or to be issued by the California Department of Real Estate, in compliance with Section 2792.9 of Chapter 6, Title 10, California Code of Regulations, to secure the prompt and faithful performance of Principal's obligation to Obligee under the Assessment Security Agreement provisions of the Assessment Security Agreement and Instructions to Escrow Depository (herein "the Contract") dated \_\_\_\_\_ attached hereto and made a part hereof.

NOW, THEREFORE, the condition of this obligation is such, that, if the said Principal shall promptly and faithfully perform said Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

Surety, for value received, does hereby waive the right granted to Surety under California Civil Code Section 2845 to require that Obligee proceed independently against Principal to enforce this obligation, but reserves to itself any right under said Section 2845 to require that Obligee proceed jointly against Principal and Surety in any such action.

IN WITNESS WHEREOF, the seal and signature of said Principal is hereto affixed and the corporate seal and the name of the said Surety is hereto affixed and attested by its duly authorized Attorney-in-Fact at Irvine, California, this 27th day of September, 2005

Capital Pacific Holdings, LLC, a Delaware limited liability company

*Name of Principal*

By: see signature block attached

Fidelity and Deposit Company of Maryland

*Name of Surety*

By: Jane Kepner  
*Signature of Surety*

Jane Kepner, Attorney-in-Fact

WE HEREBY CERTIFY THIS TO BE  
A TRUE AND CORRECT COPY  
FIRST AMERICAN TITLE INSURANCE COMPANY  
BY [Signature]

Signature Block for "Marsden Community Association Bond"

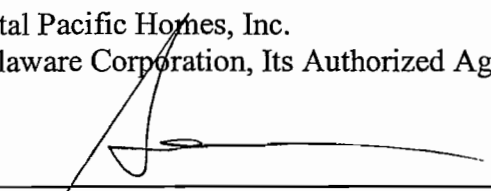
Land Division:

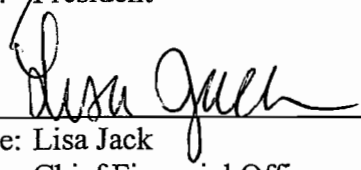
Tract Number: 31724  
Bond Number: 8765852

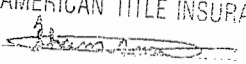
Capital Pacific Holdings, LLC  
a Delaware Limited Liability Company

By: Capital Pacific Holdings, Inc.  
a Delaware Corporation, Its Managing Member

By: Capital Pacific Homes, Inc.  
a Delaware Corporation, Its Authorized Agent

By:   
Name: Scott Coler  
Title: President

By:   
Name: Lisa Jack  
Title: Chief Financial Officer

WE HEREBY CERTIFY THIS TO BE  
A TRUE AND CORRECT COPY  
FIRST AMERICAN TITLE INSURANCE COMPANY  
BY 

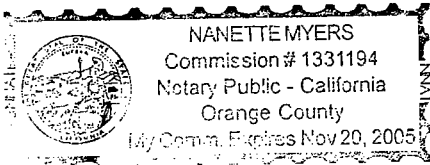
State of California

County of Orange

On 9/27/05 before me, Nanette Myers, Notary Public,  
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared Jane Kepner,  
NAME(S) OF SIGNER(S)

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.

Nanette Myers  
SIGNATURE OF NOTARY

**OPTIONAL**

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

**CAPACITY CLAIMED BY SIGNER**

**DESCRIPTION OF ATTACHED DOCUMENT**

- INDIVIDUAL
- CORPORATE OFFICER

TITLE OR TYPE OF DOCUMENT

TITLE(S)

- PARTNER(S)
- ATTORNEY-IN-FACT
- TRUSTEE(S)
- GUARDIAN/CONSERVATOR
- OTHER: \_\_\_\_\_

LIMITED  
 GENERAL  
 WE HEREBY CERTIFY THIS TO BE  
 A TRUE AND CORRECT COPY  
 FIRST AMERICAN TITLE INSURANCE COMPANY  
 BY [Signature]

NUMBER OF PAGES

**SIGNER IS REPRESENTING:**

DATE OF DOCUMENT

NAME OF PERSON(S) OR ENTITY(IES)

SIGNER(S) OTHER THAN NAMED ABOVE



**CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT**

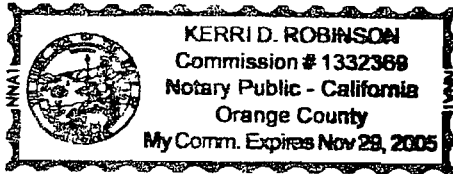
State of California

County of Riverside

On October 12, 2005 before me, Kerri D. Robinson, Notary Public,  
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared Scott Coler and Lisa Jack,  
NAME(S) OF SIGNERS

~~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/her/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.

*Kerri D. Robinson*

SIGNATURE OF NOTARY

**OPTIONAL**

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

**CAPACITY CLAIMED BY SIGNER**

**DESCRIPTION OF ATTACHED DOCUMENT**

- INDIVIDUAL
- CORPORATE OFFICER(S)  
President and CFO

TITLE(S)

- PARTNER(S)  LIMITED
- GENERAL

- ATTORNEY-IN-FACT
- TRUSTEE(S)
- GUARDIAN/CONSERVATOR
- OTHER: \_\_\_\_\_

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FIRST AMERICAN TITLE INSURANCE COMPANY

Marsden Community Association Bond  
Bond # 08765852

TITLE OR TYPE OF DOCUMENT

NUMBER OF PAGES

DATE OF DOCUMENT

SIGNER IS REPRESENTING:  
NAME OF PERSON(S) OR ENTITY(IES)

SIGNER(S) OTHER THAN NAMED ABOVE

Capital Pacific Homes, Inc.

**Power of Attorney**  
**FIDELITY AND DEPOSIT COMPANY OF MARYLAND**

KNOW ALL MEN BY THESE PRESENTS: That the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a corporation of the State of Maryland, by WILLIAM J. MILLS, Vice President, and ERIC D. BARNES, Assistant Secretary, in pursuance of authority granted by Article VI, Section 2, of the By-Laws of said Company, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, does hereby nominate, constitute and appoint **Jane KEPNER, of Irvine, California**, its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed, ~~any and all bonds and undertakings~~, and the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Company, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the Company at its office in Baltimore, Md., in their own proper persons. This power of attorney revokes that issued on behalf of Jane Kepner, dated November 7, 2002.

The said Assistant Secretary does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article VI, Section 2, of the By-Laws of said Company, and is now in force.

IN WITNESS WHEREOF, the said Vice-President and Assistant Secretary have hereunto subscribed their names and affixed the Corporate Seal of the said FIDELITY AND DEPOSIT COMPANY OF MARYLAND, this 26th day of April, A.D. 2005.

ATTEST:

**FIDELITY AND DEPOSIT COMPANY OF MARYLAND**



*Eric D. Barnes*

*Eric D. Barnes*      Assistant Secretary

*William J. Mills*

By:      *William J. Mills*      Vice President

State of Maryland }  
City of Baltimore } ss:

On this 26th day of April, A.D. 2005, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, came WILLIAM J. MILLS, Vice President, and ERIC D. BARNES, Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and they each acknowledged the execution of the same, and being by me duly sworn, severally and each for himself depose and saith, that they are the said officers of the Company aforesaid, and that the seal affixed to the preceding instrument is the Corporate Seal of said Company, and that the said Corporate Seal and their signatures as such officers were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.



WE HEREBY CERTIFY THIS TO BE  
A TRUE AND CORRECT COPY  
FIRST AMERICAN TITLE INSURANCE CO.  
BY \_\_\_\_\_

*Constance A. Dunn*

*Constance A. Dunn*      Notary Public  
My Commission Expires: July 14, 2007

**SUPPLEMENTAL INSTRUCTIONS**  
**[§11018.5(a)]**

RE 621A (Rev. 1/97)

These instructions supplement original escrow instructions heretofore furnished to FIRST AMERICAN  
TITLE COMPANY (hereafter Escrow Depository)

on RE 621 for the subdivision (hereafter The Subdivision) identified as MARSDEN TRACT # 31724  
County of RIVERSIDE

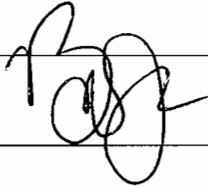
Department of Real Estate File No. 121107LA-F00

Subdivider has transmitted herewith to Escrow Depository as trustee, a  Surety Bond  Cash Deposit  
 Letter of Credit  Other: \_\_\_\_\_

along with an applicable agreement and escrow instructions in the amount of ONE HUNDRED AND NINETY-  
SIX THOUSAND, EIGHT HUNDRED, NINETY-FOUR AND 98/100 Dollars (\$ 196,894.98).

A copy of said security or evidence of said cash deposit is attached hereto. This security is being provided by subdivider pursuant to  Section 11018.5 (a)(2)(A)  Section 11018.5 (a)(2)(E) of the Business and Professions Code for the purpose of assuring the lien-free completion of the subdivision improvements in The Subdivision for which assurance of lien-free completion is not otherwise provided as of the date of furnishing of this security.

Any security instrument shall remain in the custody or subject to the control of Escrow Depository until the expiration of all applicable lien periods after receipt of notification by escrow from the \_\_\_\_\_ homeowners association that all of the common area improvements and any cluster building(s) designated in the Planned Construction Statement have been completed.

SIGNATURE OF SUBDIVIDER 		DATE <u>10/4/06</u>
PRINTED NAME OF SUBDIVIDER <b>SEE BELOW</b>	TITLE <u>WE HEREBY CERTIFY THIS TO BE A TRUE AND CORRECT COPY</u> <u>V.P. FIRST AMERICAN TITLE COMPANY</u>	
ADDRESS <b>200 SOUTH MAIN STREET, STE 300</b>	CITY <b>CORONA</b>	BY <u>Sarah S. [Signature]</u>

Capital Pacific Holdings, LLC, a Delaware limited liability company By: Capital Pacific Holdings, Inc., a Delaware corporation, its managing member  
By: Capital Pacific Homes, Inc., A Delaware Corporation, its authorized agent

**DEPARTMENT OF REAL ESTATE**

Based upon evidence submitted by subdivider, these supplemental escrow instructions and the form and amount of the security instrument referred to above are acceptable by the Department of Real Estate of the State of California as a reasonable arrangement within the meaning of Section 11018.5(a) to assure completion of The Subdivision and all improvements for which the financial security is provided.

SIGNATURE OF DEPUTY COMMISSIONER  )		DATE
PRINTED NAME OF DEPUTY COMMISSIONER <b>TONY FAN</b>	TITLE <b>DEPUTY COMMISSIONER</b>	
ADDRESS <b>320 W. FOURTH STREET, STE 350</b>	CITY <b>LOS ANGELES</b>	STATE <b>CALIFORNIA</b>

**ESCROW DEPOSITORY**

Escrow Depository acknowledges that it holds the above security and acknowledges receipt of an executed copy of the above supplemental instructions and agrees to carry out the terms thereof.

SIGNATURE OF ESCROW HOLDER  ) <i>Shawn Gonzales</i>		DATE <i>10/6/06</i>
PRINTED NAME OF ESCROW HOLDER <b>FIRST AMERICAN TITLE COMPANY</b>	TITLE <i>Branch manager Escrow Officer</i>	
ADDRESS <b>1250 CORONA POINTE COURT, STE 200</b>	CITY <b>CORONA</b>	STATE <b>CALIFORNIA</b>

WE HEREBY CERTIFY THIS TO BE  
A TRUE AND CORRECT COPY  
FIRST AMERICAN TITLE COMPANY  
BY *Sarah B. Mey*

**COMMON AREA COMPLETION SECURITY AGREEMENT**  
**[§11018.5(a)(2) or 11230]**

RE 613 (Rev. 6/05)

**ASSOCIATION**

NAME OF OWNERS ASSOCIATION

**MARSDEN COMMUNITY ASSOCIATION**

ADDRESS, CITY, STATE, ZIP CODE

**C/O CAPITAL PACIFIC HOMES, 200 SOUTH MAIN STREET, STE 300, CORONA, CA 92882**

**SUBDIVIDER/DEVELOPER**

NAME OF SUBDIVIDER/DEVELOPER

**CAPITAL PACIFIC HOLDINGS, LLC, A DELAWARE LIMITED LIABILITY COMPANY**

ADDRESS, CITY, STATE, ZIP CODE

**200 SOUTH MAIN STREET, STE 300, CORONA, CA 92882**

**SUBDIVISION**

NAME OF SUBDIVISION

**MARSDEN**

COUNTY

**RIVERSIDE**

TYPE OF SUBDIVISION

**PLANNED DEVELOPMENT**

DRE FILE NUMBER

**121107LA-F00**

**ESCROW HOLDER**

NAME OF ESCROW-HOLDER

**FIRST AMERICAN TITLE COMPANY**

ADDRESS, CITY, STATE, ZIP CODE

**1250 CORONA POINTE COURT, STE 200**

ESCROW ACCOUNT NUMBER

**PART ONE — COMMON AREA COMPLETION SECURITY AGREEMENT**

1. This Common Area Completion Security Agreement ("Agreement") is made this 4th day of October, 2006, by and between the Subdivider/Developer and the Association identified above.

2. **Recitals.**

A. **Property to Which Agreement Applies.** Subdivider/Developer is the owner of certain real property described as: **LOT 130 OF TRACT 31724**

Records of RIVERSIDE County, California (herein "the Subdivision").

B. **Public Report.** Subdivider/Developer has applied for a California Department of Real Estate Public Report ("Public Report") covering the Subdivision. Prior to obtaining the Public Report, the Subdivider/Developer is required pursuant to the provisions of Business and Professions Code §11018.5(a)(2) or 11230 to make and retain in full force and effect arrangements assuring completion, free of all liens and claims, of certain common area improvements listed on the Planned Construction Statement attached to this Agreement as Exhibit "A" ("Improvements").

3. **Secured Obligation.** Subdivider/Developer shall complete or cause to be completed, at Subdivider's/Developer's sole expense, the Improvements, free of all liens and claims, on or before the latest completion date specified on Exhibit "A", or an extension thereof given in writing by the Association to the Subdivider/Developer. The Improvements shall be completed substantially in accordance with the plans and specifications for the Improvements identified as \_\_\_\_\_ on file with \_\_\_\_\_, as the same may be modified from time to time pursuant to Part One, Paragraph 7, below.

4. **Security.** To secure the timely completion of the Improvements free of all liens and claims, the Subdivider/Developer has procured the issuance of the:

Surety bond in the sum of One hundred and ninety-six thousand, eight hundred, ninety-four and 98/100 Dollars (\$ 196,894.98), to the Association, as obligee, \_\_\_\_\_

WE HEREBY CERTIFY THIS TO BE  
A TRUE AND CORRECT COPY  
FIRST AMERICAN TITLE COMPANY  
*[Signature]*

Letter of credit in the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), to the Escrow Holder identified above, for the benefit of the Association,

Set-aside letter in the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) ("Funds") to the Escrow Holder, for the benefit of the Association,

A copy of which is attached to this Agreement as Exhibit "B", or

Cash deposit in the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) has been deposited with the Escrow Holder for the benefit of the Association.

The term "Security" as used in this Agreement refers to the cash deposit, surety bond, letter of credit, or set-aside letter identified above, together with any funds drawn thereunder held by the Escrow Holder. Subdivider/Developer warrants that, as of the date hereof, the amount set out in Exhibit "A" for each Improvement suffices for completion of the Improvement free of all liens and claims.

5. **Improvements Account.** If the Security is a set-aside letter, the funds set aside by the Issuer thereof ("Funds") will be retained in an account controlled and administered by the Issuer. The Subdivider/Developer hereby grants the Association a security interest in the Funds to secure the Subdivider's/Developer's performance of its obligations to the Association under this Agreement. Without the express written consent of the Association, the Subdivider/Developer shall not request or receive disbursement of any installment from the Improvements Account except for labor and materials actually performed or used in the construction of the Improvements for which the installment is requested. Ten percent (10%) or more of each installment or ten percent (10%) or more of the funds set-aside ("retention") shall be retained in the Improvements Account. Without the express written consent of the Association, the Subdivider/Developer shall not request or receive the disbursement of any portion of the retention until all of the Improvements have been completed, free of all liens and claims and (i) the statutory period for recording mechanics lien claims for the Improvements has expired, or (ii) the Association has been provided with a policy of title insurance, in an amount not less than the cost of the completed Improvements, insuring that the Improvements as completed are free of liens and claims. If at any time the funds in the Improvements Account are or become insufficient for completion of the Improvements, free of all liens and claims, sufficient additional funds to complete the Improvements lien free shall be deposited by or on behalf of Subdivider/Developer into the Improvements Account.
6. **Delay in Completion.** The Subdivider/Developer may extend for up to six months the time to complete the improvements as a result of delays caused by acts of God, of Independent contractors, inclement weather, labor trouble, acts of public utilities, public bodies, or inspectors (but not related to possible defects in contractor's performance), or other contingencies unforeseen by Subdivider/Developer and beyond Subdivider's/Developer's reasonable control. The Subdivider/Developer shall notify in writing the Commissioner, the Association and any escrow holder of such extension. The Subdivider/Developer may extend completion for longer periods of time upon approval of the Association. No extension under this section shall be effective unless the Subdivider/Developer assures that a security arrangement exists to cover such extension.
7. **Plan Modifications.** Subdivider/Developer shall have the right without the consent of the Association to make alteration to the plans and specifications and to the Improvements (i) to meet the requirements of building codes and other government regulation of construction; (ii) to meet the requirements of the government agencies having jurisdiction over the construction; and (iii) to make minor changes, including, without limitation changes in fixtures, electrical outlets and switches, hardware, and surface finishes, provided such changes or alterations do not result in an Improvement of lesser quality and value than was provided for in the original plans and specifications. Except as provided by this Section, Subdivider/Developer shall not alter the plans and specifications applicable to any improvement without Association's consent, and shall construct the Improvements in conformity with such plans and specifications, unless Subdivider/Developer has obtained the written consent of the Association to make such alterations, which consent shall not be unreasonably withheld by the Association.
8. **Insurance.** Subdivider/Developer bears the risk of loss for each Improvement until lien-free completion of that Improvement. Subdivider/Developer shall, at all times until completion of the Improvements, maintain in full force and effect a policy or policies of property insurance containing the usual terms and restrictions on coverage which protects the Subdivider/Developer against loss or damage to the Improvements from loss or other casualty covered under course of construction insurance. Subdivider/Developer shall, at all times until completion of the Improvements, maintain in full force and effect a policy or policies of Worker's Compensation insurance to protect the Subdivider/Developer from claims and damages from Worker's Compensation claims arising from the completion of the Improvements.

9. **Performance of Obligations.** If the Subdivider/Developer fails to perform the Subdivider's/Developer's obligation under Part One, Paragraph 3 of this Agreement, the Association shall have the right, whether through enforcement of the Security, demand upon funds drawn thereunder held by the Escrow Holder, or otherwise, to receive such sums as may be required to satisfy the obligation of the Subdivider/Developer under Part One, Paragraph 3 of this Agreement, and the Subdivider/Developer shall, without regard to any other disputes or negotiations then existing, immediately take any and all actions and execute any and all documents as may be required to cause such sums to be paid to the Association. Any amount received by the Association directly from the Subdivider/Developer or from proceeds of the Security shall be credited against any claim by the Association arising out of the Subdivider's/Developer's failure to perform the Subdivider's/Developer's obligations under this Agreement. Upon full and final performance by Subdivider/Developer of Subdivider's/Developer's obligations under this Agreement, the Association shall, without regard to any other disputes or negotiations then existing, immediately take any and all actions and execute any and all documents reasonably necessary to cause the Security to be released and exonerated.
10. **Provisions for Arbitration of Conflicts.** In the event there is a dispute between the Subdivider/Developer and the Association with respect to this Agreement, of the enforcement, exoneration, or release of the security, the issue or issues shall, at the request of either Subdivider/Developer or Association, be submitted to arbitration, in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA") before an arbitrator selected from the panels of the arbitrators of said AAA. In the event of referral to arbitration, Subdivider/Developer will remit the fee to initiate the arbitration. The parties agree, however, that the costs of arbitration shall ultimately be borne as determined by the arbitrator. The parties further agree to abide by the determination of the arbitrator with respect to the enforcement, exoneration or release of the Security and with respect to payment of the costs of arbitration.
11. **Attorney's Fees.** In any action or proceeding arising out this Agreement, the prevailing party or parties shall be entitled to reasonable attorney's fees.
12. **Obligations of Parties; Assignment.** This Agreement and the rights and obligations of each of the parties are personal to such parties and may not be transferred or assigned without the prior written consent of the other, except that Subdivider/Developer may assign its rights under this Agreement to a successor in interest as part of a transfer of the Subdivision in its entirety. Subdivider/Developer may also assign its rights under this Agreement to the Issuer of the Security. Such assignment does not make the assignee liable for any of Subdivider's/Developer's obligations pursuant to this Agreement, unless such obligations have been specifically assumed by the assignee in writing. Any assignment in violation of this Section shall be void.
13. **Binding Upon Successors.** This Agreement and the rights and duties of the parties shall be binding upon and shall inure to the benefit of the successors in interest, and assigns of the respective parties.
14. **Laws of California.** This Agreement shall be construed and governed by the laws of the State of California.
15. **Delivery of Agreement.** Subdivider/Developer shall furnish the Association with an executed copy of this Agreement and the Instructions to Escrow Depository along with evidence of the security deposited with Escrow no later than ten (10) days after the closing of the first sale of a lot in the Subdivision owned by the Subdivider/Developer.
16. **Complete Agreement.** This Agreement contains the entire agreement between the parties with respect to the subject matter covered in this Agreement.

## PART TWO — INSTRUCTIONS TO ESCROW DEPOSITORY

This constitutes joint escrow instructions of the Subdivider/Developer and the Association, which instructions are irrevocable except as modified by written supplemental instructions executed by the Subdivider/Developer and the Association. The Subdivider/Developer and the Association are the only principals in this escrow.

Escrow Holder hereby acknowledges receipt of the cash deposit, surety bond, letter of credit, or set-aside letter described in Part One, Paragraph 4 of the foregoing Common Area Completion Security Agreement. Unless otherwise specifically stated herein, the capitalized terms in these instructions shall have the same meaning as set forth in the foregoing agreement.

Nothing contained in these instructions imposes any duty on the Escrow Holder to interpret Business and Professions Code §11018.5(a)(2) or 11230, to audit in any way the Subdivider's/Developer's discharge of its duties or obligations with respect to the Improvements, or to verify the truth of the statements made in any notices given to the Escrow Holder by the Subdivider/Developer or the Association. Except as otherwise provided by law, the duties of the Escrow Holder are to receive, hold, release, or draw upon the Security in accordance with the following instructions. These instructions may be modified by the written joint or mutual instructions of the principals. Escrow Holder hereby agrees to comply with the terms and provisions of these instructions.

**1. Return Of The Security To The Subdivider/Developer.**

- A. If the Escrow Holder receives a demand from the Subdivider/Developer for the return of the Security, which demand is accompanied by the Subdivider's/Developer's statement that all of the Improvements have been completed, free of all liens and claims and (i) the statutory period for recording mechanics lien claims for the Improvements has expired, or (ii) the Association has been provided with a policy of title insurance, in an amount not less than the cost of the completed Improvements, insuring that the Improvements as completed are free of liens and claims, then, within fifteen (15) calendar days of receipt of the demand and statement, the Escrow Holder shall deliver a copy of the demand and the certificate to the Association, or its authorized agent, together with a statement notifying the Association that the Association's written objection to return of the Security to the Subdivider/Developer must be received by the Escrow Holder within forty (40) days after delivery of the demand and statement to the Association.
- B. If within forty (40) calendar days after such delivery, the Association delivers to the Escrow Holder the Association's written objection to the return of the Security to the Subdivider/Developer, then the Escrow Holder shall continue to hold, release, or draw upon the Security in accordance with these instructions. If within forty (40) calendar days after the Escrow Holder delivers the demand and statement to the Association, or its authorized agent, the Association does not deliver to the Escrow Holder the Association's written objection to the return of the Security to the Subdivider/Developer, then the Escrow Holder shall promptly deliver the Security to the Subdivider/Developer.

**2. Remittance Of The Security To The Association.**

- A. If the Escrow Holder receives a demand from the Association for the remittance of the Security, or some specified portion thereof, which demand is accompanied by a written statement signed by an officer of the association that, as of forty (40) days following the latest completion date specified in the Planned Construction Statement attached to this Agreement as Exhibit "A," or an extension thereof given in writing by the Association to the Subdivider/Developer, the Improvements have not been completed free of all liens and claims, then, within fifteen (15) calendar days of receipt of the demand and statement, the Escrow Holder shall deliver a copy of the demand and the statement to the Subdivider/Developer, together with a statement notifying the Subdivider/Developer that the Subdivider's/Developer's written objection to remittance of the Security to the Association must be received by the escrow holder within forty (40) days after delivery of the demand and statement to the Subdivider/Developer.
- B. If within forty (40) calendar days after such delivery, the Subdivider/Developer delivers to the Escrow Holder the Subdivider's/Developer's written objection to the remittance of the Security to the Association, then the Escrow Holder shall continue to hold, release, or draw upon the Security in accordance with these instructions. If within forty (40) calendar days after the Escrow Holder delivers the demand and statement to the Subdivider/Developer, the Subdivider/Developer does not deliver to the Escrow Holder the Subdivider's/Developer's written objection to the remittance of the Security to the Association, then:
  - 1) If the Security is a surety bond, the Escrow Holder shall promptly deliver the Security to the Association;
  - 2) If the Security is a letter of credit, the Escrow Holder shall promptly present the Security for payment of that portion of the Security specified in Association's demand by presenting the Security and a sight draft drawn under and in compliance with the letter of credit to the issuer of the letter of credit, and upon receipt of payment promptly remit to the Association that portion of the Security specified in the Association's demand.
  - 3) If the Security is a set-aside letter, the Escrow Holder shall promptly make demand in compliance with the set-aside letter to the issuer of the set-aside letter for payment of that portion of the Security specified in the Association's demand, and upon receipt of payment promptly remit to the Association that portion of the Security specified in the Association's demand;
  - 4) If the Security is or has become a cash deposit, the Escrow Holder shall promptly remit to the Association that portion of the Security specified in the Association's demand.

**3. Release Of The Security Upon Joint Instructions.**

If the Escrow Holder receives written instructions from both the Subdivider/Developer and the Association directing the Escrow Holder to return the Security to the Subdivider/Developer or to remit the Security, its proceeds or some portion of the proceeds to the Association, the Escrow Holder shall promptly comply with the instructions.



**4. Conflicting Instructions.**

In any of the circumstances described in subparagraphs A through E, below, the Escrow Holder shall, at its sole discretion, either (1) interplead the Security, (2) retain the Security until the Security is returned to the Subdivider/Developer or remitted to the Association in accordance with these instructions, or (3) retain the Security until the Security is disposed of in accordance with written supplemental instructions executed by the Subdivider/Developer and the Association or the order of a court of competent jurisdiction:

- A. The Association timely objects in writing to a demand by the Subdivider/Developer for the return of the Security;
- B. The Subdivider's/Developer's demand for the return of the Security is not accompanied by the statement described in Part Two, Paragraph 1-A, above;
- C. The Subdivider/Developer timely objects in writing to a demand by the Association for remittance of all or any portion of the Security;
- D. The Association's demand for remittance of the Security is not accompanied by the statement described in Part Two, Paragraph 2-A, above; or
- E. The Escrow Holder receives conflicting instructions from the parties to this escrow.

**5. Pending Return Or Remittance Of The Security.**

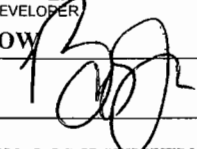
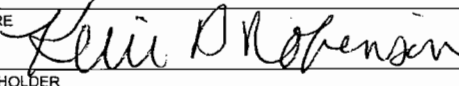
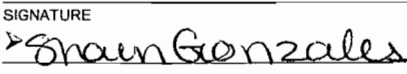
- A. If the Security is a letter of credit, and if the issuer of the letter of credit has not extended the time for drawing upon the letter of credit by extending or reissuing the letter of credit and depositing the extension or reissued letter of credit with the Escrow Holder, then fifteen (15) calendar days prior to the expiration of the time for drawing upon the letter of credit, the Escrow Holder shall present the Security for payment in full by presenting the Security and a sight draft drawn under and in compliance with the letter of credit to the issuer of the letter of credit, and upon receipt of payment handle the proceeds of the Security as a cash deposit. The Escrow Holder shall notify the Association and the Subdivider/Developer upon receipt of proceeds of a draw on the letter of credit.
- B. If the Security is or has become a cash deposit, the Escrow Holder is hereby instructed to deposit all funds deposited in the above - numbered escrow in a federally insured interest-bearing account or accounts, in the name of the Escrow Holder for the benefit of the Association. The parties hereto agree and understand that said funds are under the control of Escrow Holder and that no withdrawals or additions may be made by anyone other than Escrow Holder. The interest earned on said account is for the benefit of the Subdivider/Developer only, and the Escrow Holder shall cause the interest earned on said account to be paid to the Subdivider/Developer. Taxpayer Identification Number shall be furnished by Subdivider/Developer in order for Escrow Holder to open an account for a cash deposit. Escrow shall furnish the parties with account information within five days of opening.
- C. If the Security is a surety bond, the Escrow Holder shall retain the Security until the Security is returned to the Subdivider/Developer in accordance with these instructions or disposed of in accordance with the order of a court of competent jurisdiction.
- D. If the Security is a set-aside letter, the Subdivider/Developer has granted the Association a security interest in the funds set aside to secure the Subdivider's/Developer's obligations to the Association to complete the Improvements, and the Escrow Holder hereby acknowledges such security interest.

**6. Notices.**


Delivery of all notices and other documents described in these Instructions to Escrow Depository or in the foregoing Common Area Completion Security Agreement shall be made by overnight or same-day commercial delivery service or by United States mail, certified or registered, postage prepaid. All such notices and documents shall be deemed delivered, given and received: (a) the day of sending via same-day commercial delivery service; (b) the following business day after sending via overnight commercial delivery service; or (c) three (3) calendar days after deposit in the United States mail. All such notices shall be addressed as set forth on page 1 of this Common Area Completion Security Agreement and Instructions to Escrow Depository; provided that the Association, the Subdivider/Developer and the Escrow Holder may at any time change their respective address for notices and other documents described herein by sending to the other two parties a written notice specifying the new address.

7. Counterparts.

This Common Area Completion Security Agreement and Instructions to Escrow Depository may be executed in counterparts, and all counterparts together shall be construed as one document.

SUBDIVIDER/DEVELOPER		
<b>SEE BELOW</b>		
SIGNATURE > 	TITLE VP Forward Planning	DATE 10/4/06
ASSOCIATION		
MARSDEN COMMUNITY ASSOCIATION		
SIGNATURE > 	TITLE	DATE 10/4/06
ESCROW HOLDER		
FIRST AMERICAN TITLE COMPANY		
SIGNATURE > 	TITLE Branch manager Escrow officer	DATE 10/6/06

Capital Pacific Holdings, LLC, a Delaware limited liability company By: Capital Pacific Holdings, Inc., a Delaware corporation, its managing member  
By: Capital Pacific Homes, Inc., A Delaware Corporation, its authorized agent

WE HEREBY CERTIFY THIS TO BE  
A TRUE AND CORRECT COPY  
FIRST AMERICAN TITLE COMPANY  
BY 

**BOND (Completion of Common Facilities)**

RE 611 (Rev. 2/99)

Bond Number: 08847537

Premium: \$ \$2,363.00

**Know all men by these presents:**

That we Capital Pacific Holdings, LLC, a Delaware limited liability company (Name of Subdivider) as Principal, and Fidelity and Deposit Company of Maryland (Name of Surety) a corporation organized under the laws of the State of Maryland, and authorized to transact the business of surety in the State of California as Surety, are firmly held and bound unto Mardsen Community Association (Name of Homeowners' Association), (hereinafter referred to as Obligee) in the penal sum of One Hundred Ninety Six Thousand Eight Hundred Ninety Four and 98/100 Dollars (\$ 196,894.98) for which sum, well and truly to be paid, we bind ourselves, our heirs, administrators, successors and assigns, jointly and severally, firmly by these presents.

This bond is given pursuant to §11018.5(a)(2)(A) of the California Business and Professions Code to assure lien-free completion of the improvements described in Principal's "Planned Construction Statement", a copy of which is attached hereto and incorporated herein by reference, for the subdivision development known as Marsden Tract No. 31724

situated in the County of Riverside, State of California.

Surety, for value received, hereby agrees that the matters set forth in California Civil Code §3225, or similar acts or omissions which might release the Surety pursuant to law, shall not in any way release Surety from the obligation of this bond or reduce Surety's obligation thereunder.

Surety, for value received, does hereby waive the right granted to Surety under California Civil Code §2845 to require that Obligee proceed independently against Principal to enforce this obligation, but reserves to itself any right under said §2845 to require that Obligee proceed jointly against Principal and Surety in any such action.

The condition of this obligation is such that if Principal shall complete or cause to be completed said improvements free of liens and claims on or before the latest completion date specified in said "Planned Construction Statement", or an extension thereof given in writing by Obligee to Principal and assented to in writing by Surety, then this obligation shall be null and void; otherwise, it shall remain in full force and effect.

A suit or action of this bond must be filed within two (2) years after the latest completion date set forth in the Planned Construction Statement or any extension thereof given in writing by Obligee to Principal and assented to in writing by Surety.

The terms, conditions and coverage of this bond have been approved by the Real Estate Commissioner of the State of California.

In Witness Whereof, Principal and Surety have caused these presents to be duly signed and sealed this 15 day of September, 2006.

Capital Pacific Holdings, Inc.  
SEE ATTACHED SIGNATURE BLOCK  
*Signature of Principal*

Fidelity and Deposit Company of America  
Jane Kepner  
*Signature of Surety*

By: \_\_\_\_\_

By: Jane Kepner, Attorney-in-Fact  
WE HEREBY CERTIFY THIS TO BE  
A TRUE AND CORRECT COPY  
FIRST AMERICAN TITLE COMPANY  
BY Saraw B. Mey

\* Bond must bear corporate seal of Surety. If name of state and date of incorporation are specified in seal, Surety's signature need not bear Notary's acknowledgment. Otherwise, Notary's acknowledgment is required.

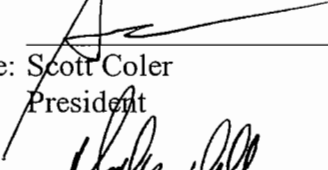
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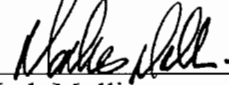
Land Division:

Project: Marsden -128  
Tract#: 31724

SCC- Canyon II, LLC,  
a Delaware Limited Liability Company

By: Capital Pacific Homes, Inc.,  
a Delaware Corporation, Its Authorized Agent

By:   
Name: Scott Coler  
Title: President

By:   
Name: Mark Mullin  
Title: Vice President

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT**

State of California

County of Riverside

On September 25, 2006 before me, Mayra R. Martinez, Notary Public,  
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared Scott Coler and Mark G. Mullin,  
NAME(S) OF SIGNERS

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/her/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.

*Mayra R. Martinez*  
SIGNATURE OF NOTARY

**OPTIONAL**

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

**CAPACITY CLAIMED BY SIGNER**

**DESCRIPTION OF ATTACHED DOCUMENT**

- INDIVIDUAL
- CORPORATE OFFICER(S)
- President and Vice President  
TITLE(S)
- PARTNER(S)  LIMITED  GENERAL
- ATTORNEY-IN-FACT
- TRUSTEE(S)
- GUARDIAN/CONSERVATOR
- OTHER: \_\_\_\_\_

Completion of Common Facilities  
 Marsden  
 Tract No. 31724

\_\_\_\_\_  
TITLE OR TYPE OF DOCUMENT

\_\_\_\_\_  
NUMBER OF PAGES

**DATE OF DOCUMENT**  
**WITNESS I IDENTIFY THIS TO BE A TRUE AND CORRECT COPY**  
**FIRST AMERICAN TITLE COMPANY**

SIGNER IS REPRESENTING:  
 NAME OF PERSON(S) OR ENTITY(IES)

BY *Sarah B. Mey*  
SIGNER(S) OTHER THAN NAMED ABOVE

Capital Pacific Homes, Inc.

# ACKNOWLEDGEMENT

State of California  
County of Orange

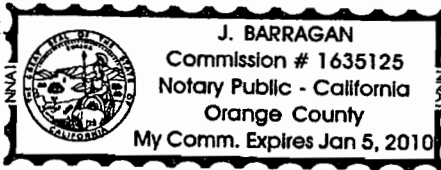
On September 15, 2006 before me, J. Barragan, Notary Public  
(here insert name and title of the officer)

personally appeared Jane Kepner

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 acknowledge to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature 



(Seal)

## OPTIONAL

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

### CAPACITY CLAIMED BY SIGNER

### DESCRIPTION OF ATTACHED DOCUMENT

- INDIVIDUAL
  - CORPORATE OFFICER
- \_\_\_\_\_ TITLE(S)
- PARTNER(S)       LIMITED
  - ATTORNEY-IN-FACT       GENERAL
  - TRUSTEE(S)
  - GUARDIAN/CONSERVATOR
  - OTHER: \_\_\_\_\_

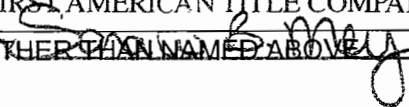
\_\_\_\_\_ TITLE OR TYPE OF DOCUMENT

\_\_\_\_\_ NUMBER OF PAGES

**SIGNER IS REPRESENTING:**  
NAME OF PERSON(S) OR ENTITY(IES)

\_\_\_\_\_ DATE OF DOCUMENT

WE HEREBY CERTIFY THIS TO BE  
A TRUE AND CORRECT COPY  
FIRST AMERICAN TITLE COMPANY

SIGNER(S)  OTHER THAN NAMED ABOVE

**Power of Attorney**  
**FIDELITY AND DEPOSIT COMPANY OF MARYLAND**

KNOW ALL MEN BY THESE PRESENTS: That the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a corporation of the State of Maryland, by WILLIAM J. MILLS, Vice President, and ERIC D. BARNES, Assistant Secretary, in pursuance of authority granted by Article VI, Section 2, of the By-Laws of said Company, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, does hereby nominate, constitute and appoint **Jane KEPNER, of Irvine, California**, its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed, ~~any and all bonds and undertakings~~, and the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Company, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the Company at its office in Baltimore, Md., in their own proper persons. This power of attorney revokes that issued on behalf of Jane Kepner, dated November 7, 2002.

The said Assistant Secretary does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article VI, Section 2, of the By-Laws of said Company, and is now in force.

IN WITNESS WHEREOF, the said Vice-President and Assistant Secretary have hereunto subscribed their names and affixed the Corporate Seal of the said FIDELITY AND DEPOSIT COMPANY OF MARYLAND, this 26th day of April, A.D. 2005.

ATTEST:

**FIDELITY AND DEPOSIT COMPANY OF MARYLAND**



*Eric D. Barnes*

*Eric D. Barnes*

*William J. Mills*

By:

*William J. Mills*

*William J. Mills*  
Vice President

State of Maryland }  
City of Baltimore } ss:

On this 26th day of April, A.D. 2005, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, came WILLIAM J. MILLS, Vice President, and ERIC D. BARNES, Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and they each acknowledged the execution of the same, and being by me duly sworn, severally and each for himself depose and saith, that they are the said officers of the Company aforesaid, and that the seal affixed to the preceding instrument is the Corporate Seal of said Company, and that the said Corporate Seal and their signatures as such officers were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.



*Constance A. Dunn*

*Constance A. Dunn*

*Constance A. Dunn*  
Notary Public

My Commission Expires: July 14, 2007

WE HEREBY CERTIFY THIS TO BE  
A TRUE AND CORRECT COPY  
FIRST AMERICAN TITLE COMPANY

BY *Sarah B. Mey*

**EXTRACT FROM BY-LAWS OF FIDELITY AND DEPOSIT COMPANY OF MARYLAND**

"Article VI, Section 2. The Chairman of the Board, or the President, or any Executive Vice-President, or any of the Senior Vice-Presidents or Vice-Presidents specially authorized so to do by the Board of Directors or by the Executive Committee, shall have power, by and with the concurrence of the Secretary or any one of the Assistant Secretaries, to appoint Resident Vice-Presidents, Assistant Vice-Presidents and Attorneys-in-Fact as the business of the Company may require, or to authorize any person or persons to execute on behalf of the Company any bonds, undertakings, recognizances, stipulations, policies, contracts, agreements, deeds, and releases and assignments of judgements, decrees, mortgages and instruments in the nature of mortgages,...and to affix the seal of the Company thereto."

**CERTIFICATE**

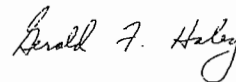
I, the undersigned, Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the foregoing Power of Attorney is still in full force and effect on the date of this certificate; and I do further certify that the Vice-President who executed the said Power of Attorney was one of the additional Vice-Presidents specially authorized by the Board of Directors to appoint any Attorney-in-Fact as provided in Article VI, Section 2, of the By-Laws of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND.

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at a meeting duly called and held on the 10th day of May, 1990.

RESOLVED: "That the facsimile or mechanically reproduced seal of the company and facsimile or mechanically reproduced signature of any Vice-President, Secretary, or Assistant Secretary of the Company, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power of attorney issued by the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed."

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seal of the said Company,

this 15th day of September, 2006.



*Assistant Secretary*



RECORDING REQUESTED BY:

WHEN RECORDED MAIL TO:

THIS SPACE FOR RECORDER'S USE ONLY

**RESTRICTIVE COVENANT MODIFICATION**  
**(Racial or Otherwise Unlawfully Restrictive Covenant Modification)**

**Unlawful Restrictive language review requested by:**

- I(We)\_\_\_\_\_have an ownership or are acquiring interest in the property that is covered by the document described below.
- Title Company, Escrow Company, Real Estate Broker, Real Estate Agent, or other party\_\_\_\_\_ Individual/Company Name
- Riverside County Recorder

The following referenced document contains a restrictive covenant based on age, race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, veteran or military status, genetic information, national origin, source of income as defined in Section 12955, of the Government Code or ancestry that violates state and federal fair housing laws, and that restriction is void. Pursuant to Section 12956.2 of the Government Code, this document is being recorded solely for the purpose of redacting and eliminating that restrictive covenant as shown on page(s)\_\_\_\_\_of the document recorded on\_\_\_\_\_ in book\_\_\_\_\_ and page\_\_\_\_\_ or instrument number\_\_\_\_\_ of the official records of the County of Riverside.

Attached hereto is a true, correct, and complete copy of the document referenced above, with the unlawful restrictive covenant redacted.

This modification document shall be indexed in the same manner as the original document being modified, pursuant to subdivision (d) of section 12956 of the Government Code.

The effective date of the terms and conditions of this modification document shall be the same as the effective date of the original document referenced above.

\_\_\_\_\_  
Signature of submitting party

\_\_\_\_\_  
Printed name of submitting party

\_\_\_\_\_ County Counsel, or their designee, pursuant to paragraph (1) of subdivision (b) of Section 12956.2 of the Government Code, hereby states that it has determined that the original document referenced above contains an unlawful restriction modification may be recorded.

Or

\_\_\_\_\_ County Counsel, or their designee, pursuant to paragraph (1) of subdivision (b) of Section 12956.2 of the Government Code, finds that the original document does not contain an unlawful restriction, or the modification document contains modifications not authorized, and this modification may not be recorded.

County Counsel

By:\_\_\_\_\_

Date:\_\_\_\_\_

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County of Riverside (/)

ASSESSOR-COUNTY CLERK-RECORDER (/)



https://www.facebook.com/riversideacr



https://www.youtube.com/channel/UC1mFEtE-t1F2dz1LmeOjW9w

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## RESTRICTIVE COVENANT MODIFICATION

Services (<https://www.rivcoacr.org/Services>) / Recording Services - ALL (<https://www.rivcoacr.org/RecordingServices>) / Record A Document (<https://www.rivcoacr.org/RecordADocument>) / Restrictive Covenant Modification (<https://www.rivcoacr.org/RestrictiveCovenantModification>)

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## Removal of Unlawful Discriminatory Covenants from Property Documents

### RESTRICTIVE COVENANT MODIFICATION

Under current state law, including AB1466 ([https://leginfo.ca.gov/faces/billNavClient.xhtml?bill\\_id=202120220AB1466](https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB1466)) effective January 1, 2022, homeowners can request to modify property documents that contain unlawful discriminatory covenants. Government Code Section 12956.2 ([http://leginfo.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=GOV&ionNum=12956.2](http://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV&ionNum=12956.2)) allows anyone who believes the property is the subject of an unlawfully restrictive covenant to record a Restrictive Covenant Modification document to have the illegal language redacted. Unlawful restrictions include those restrictions based on age, race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, veteran or military status, national origin, source of income as defined in Government Code Section 12955 ([https://leginfo.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=GOV&ionNum=12955](https://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV&ionNum=12955)) subdivision (p), ancestry, or genetic information.

#### To Record a Restrictive Covenant Modification, you must:

- Complete a Restrictive Covenant Modification Form ([https://www.rivcoacr.org/media/Forms/Recorder/Recorder\\_Sample\\_Documents/Restrictive%20Covenant%20Modification%20-%20ACR608.pdf](https://www.rivcoacr.org/media/Forms/Recorder/Recorder_Sample_Documents/Restrictive%20Covenant%20Modification%20-%20ACR608.pdf))
- Attach a copy of the original document containing the unlawful restrictive language with the unlawful language Redacted.
- Submit the completed document to the County Recorder. There is no fee to record this document in Riverside County.

Upon receipt, the Recorder's office will submit the document to County Counsel who will determine whether the original document contains any unlawful restrictions, as defined in Government Code Section 12956.2 subdivision (b). Only those determined to be in violation of the law will be recorded and those that are not, will be returned to the submitter unrecorded.

Please note that the County Recorder is not liable for modification not authorized by law. This is the sole responsibility of the holder of ownership interest who caused the modified recordation per Government Code Section 12956.2 subdivision (f).

Pursuant to the requirements of AB1466, and no later than July 1, 2022, the Assessor-County Clerk-Recorder will post an implementation plan outlining our strategy to identify records with discriminatory restrictions.

### RESTRICTIVE COVENANT MODIFICATION-AFFORDABLE HOUSING

Under state law, pursuant to AB 721 effective January 1, 2022, the owner of an affordable housing development can request to modify property documents that restricts the number or size of residences that may be built on a property or that restricts the number of persons that may reside on a property to the extent necessary to allow the affordable housing development to proceed as defined in Government Code 12956.2 and Civil Code 714.6

#### To Record a Restrictive Covenant Modification-Affordable Housing, you must:

- Complete a Restrictive Covenant Modification-Affordable Housing Form ([https://www.rivcoacr.org/media/Forms/Recorder/Recorder\\_Sample\\_Documents/ACR%201003-%20Restrictive%20Covenant%20Modification-Affordable%20Housing%2012\\_14\\_2021%20\(005\).pdf](https://www.rivcoacr.org/media/Forms/Recorder/Recorder_Sample_Documents/ACR%201003-%20Restrictive%20Covenant%20Modification-Affordable%20Housing%2012_14_2021%20(005).pdf)); this must be signed in front of a notary public.
- Attach a copy of the original document containing the unlawful restrictive language with the unlawful language Redacted.
- Submit the completed document to the County Recorder. There is a fee to record this document in Riverside County.

Upon receipt, the Recorder's office will submit the document to County Counsel who will determine whether the original document contains any unlawful restrictions, as defined in Government Code Section 12956.2 subdivision (b). Only those determined to be in violation of the law will be recorded and those that are not, will be returned to the submitter unrecorded.

Please note that the County Recorder is not liable for modification not authorized by law. This is the sole responsibility of the holder of ownership interest who caused the modified recordation per Government Code Section 12956.2 subdivision (f).

Riverside County Assessor-County Clerk-Recorder



(/)

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(<https://www.surveymonkey.com/r/MFDHB2D>)

### Helpful Links

Auditor-Controller (<https://www.auditorcontroller.org/>)

Clerk of the Board (<https://www.rivcocob.org/>)

County of Riverside (<https://rivco.org/>)

Property Tax Portal (<http://riversidetaxinfo.com/>)

State of California Board of Equalization (<https://www.boe.ca.gov/>)

Treasurer-Tax Collector (<https://www.countytreasurer.org/>)

Office Hours & Locations (</locations-and-hours>)

Phone: (951) 955-6200 (tel:9519556200)

Live Agents from 8 am - 5 pm, M-F

Website By EvoGov (<https://www.evogov.com/>)