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FOUNTAINGROVE II EAST,
FOUNTAINGROVE II WEST
AND THE SUMMIT
OPEN SPACE MAINTENANCE DECLARATION

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1 - Definitions	2
1.1 Articles	2
1.2 Association	2
1.3 Association Property	2
1.4 Board	2
1.5 Bylaws	2
1.6 Declarant	2
1.7 Declaration	2
1.8 Development	2
1.9 Governing Documents	2
1.10 Improvements	2
1.11 Kleinfelder Report	2
1.12 Lot or Residential Lot	2
1.13 Map or Maps	2
1.14 Member	3
1.15 Merchant Builder	3
1.16 Mortgage	3
1.17 Mortgagee	3
1.18 Open Space Management Plan	3
1.19 Owner	3
1.20 Person	3
1.21 Property	3
1.22 Rules	3
ARTICLE 2 - Property Rights and Easements	3
2.1 Type of Development	4
2.2 Property Rights	4
2.3 Authority Over Association Property	4
2.4 Conveyance of Association Property	5
2.5 Open Space Easement	5
ARTICLE 3 - Association's Maintenance Obligations	5
3.1 Association's Maintenance Responsibilities	5
3.2 Inspection and Maintenance Guidelines	5
ARTICLE 4 - The Association	5
4.1 Formation of the Association	6
4.2 Governing Body	6
4.3 Membership	6
4.4 Membership Classes and Voting Rights	6
4.5 Joint Ownership Votes	7
4.6 Powers of the Association	7
4.7 Duties of the Association	9
4.8 Taxes and Assessments	9
4.9 Utility Service to the Association Property	9
4.10 Reporting Requirements	9
4.11 Enforcement of Bonded Obligations	11
4.12 Limitations on Authority of the Board	11

ARTICLE 5 - Assessments	12
5.1 Obligations to Pay Assessments	12
5.2 Annual Regular Assessment	13
5.3 Reserve and Reserves Study	13
5.4 Special Assessments	14
5.5 Reimbursement Assessments	14
5.6 Assessment Increase Restrictions	15
5.7 Commencement of Regular Assessments	16
5.8 Due Dates of Assessments	16
5.9 Allocation of Assessments	16
5.10 Enforcement of Delinquent Assessments	16
5.11 Estoppel Certificate	17
ARTICLE 6 - Insurance	17
6.1 Liability Insurance	17
6.2 Association Property Insurance Policy	18
6.3 Other Insurance	18
6.4 Board's Negotiation Authority	18
6.5 Insurance Review	18
ARTICLE 7 - Damage, Destruction or Condemnation	18
7.1 Destruction	18
7.2 Reconstruction Contract	19
7.3 Minor Repair and Reconstruction and Deductibles	19
7.4 Completion of Repair or Reconstruction	19
7.5 Condemnation	19
ARTICLE 8 - Rights of Mortgagees	19
8.1 Lender Definitions	19
8.2 Encumbrance	20
8.3 Rights of Institutional Mortgagees	20
8.4 Subordination	20
ARTICLE 9 - Amendments	20
9.1 Amendment Before Close of First Sale	20
9.2 Amendment After Close of First Sale	21
9.3 Required Amendments	21
9.4 Declarant's Consent	21
9.5 Consent of City	21
ARTICLE 10 - Miscellaneous Provisions	22
10.1 Headings	22
10.2 Severability	22
10.3 Cumulative Remedies	22
10.4 Discrimination	22
10.5 Access to Books	22
10.6 Number and Gender	22
10.7 Reservation or Grant of Easements	22
10.8 Enforcement Rights and Remedies	22
10.9 Term	23
10.10 Reserved Rights of Declarant	23
10.11 Assignment by Declarant	23
10.12 Attorneys' Fees	23

10.13 Notices	24
10.14 No Enforcement Waiver	24
10.15 Dispute Notification and Resolution Procedure (Declarant Disputes)	24
10.16 Counterpart Execution	27

ARTICLE 11 - Annexation	27
11.1 Automatic Annexation	27
11.2 Annexation by Approval	28

EXHIBITS

EXHIBIT "A" Legal Description of Annexable Real Property Owned by Dividend Fountaingrove Partners	
EXHIBIT "B" Legal Description of Annexable Real Property Owned by Fountaingrove Development Company LLC	
EXHIBIT "C" Legal Description of Annexable Real Property Owned by Debra Investment Corporation	

FOUNTAINGROVE II EAST,
FOUNTAINGROVE II WEST
AND THE SUMMIT
OPEN SPACE MAINTENANCE DECLARATION

THIS OPEN SPACE MAINTENANCE DECLARATION is executed by FOUNTAINGROVE VIEW PARTNERS L.P., formerly known as DIVIDEND FOUNTAINGROVE PARTNERS, a California limited partnership ("DFP"), FOUNTAINGROVE DEVELOPMENT COMPANY, LLC, a Delaware limited liability company ("FDC"), DEBRA INVESTMENT CORPORATION, a California corporation ("DIC") (FDC, DFP and DIC are sometimes hereinafter individually referred to as a "Co-Declarant" and collectively as the "Declarant"), DAVID D. BROWN and LYDIA A. BROWN, husband and wife (collectively "Brown") and WATT RESIDENTIAL PARTNERS, a California general partnership ("WRP") with reference to the following facts:

- A. Declarant is developing a residential development known collectively as "Fountaingrove II" on approximately 583 acres. Fountaingrove II consists of three separate portions of real property known as Fountaingrove II - West, Fountaingrove II - East and The Summit at Fountaingrove, which are owned respectively by DFP, FDC and DIC. Brown and WRP are merchant builders (as hereinafter defined) who have purchased portions of the real property comprising Fountaingrove II - East from FDC. The development will be constructed in phases. It is anticipated that the development, if and when completed as presently contemplated, will contain approximately 593 residential units. The first phase consists of forty-three (43) residential lots and is located on the real property described on (i) the subdivision map entitled "Fountaingrove II - East, Unit 4" filed in the records of Sonoma County, California, in Book 542 of Maps at pages 27 through 31, which real property is owned by WRP; the second phase consists of twenty-two (22) residential lots and is located on the real property described on (ii) the subdivision map entitled "Fountaingrove II - East, Unit 5" filed in the records of Sonoma County, California, in Book 542 of Maps at pages 32 through 35, which real property is owned by WRP; the third phase consists of five (5) residential lots and is located on the real property described on (iii) the subdivision map entitled "Fountaingrove II - East, Unit 1" filed in the records of Sonoma County, California, in Book 527 of Maps at pages 22 through 25, which real property is owned by Brown.
- B. As a part of the approval process for the development, Declarant is required to establish a property owners' association to own and/or maintain certain open space, buffer and landscape areas within and for the benefit of owners residing within the development.
- C. The purpose of this Declaration is to describe the association's rights and duties with respect to the maintenance of the open space, buffer and certain in-tract landscape areas and to impose certain obligations and restrictions on the residential lots in the development regarding membership in the association on the owners of residential lots and the obligation to pay a prorated share of the assessments levied by the association on the owners of residential lots to fund its maintenance obligations. The restrictions and obligations will benefit and bind each lot and owner and successive owner thereto as covenants running with the land and equitable servitudes pursuant to a common plan of development and pursuant to the authority of Civil Code section 1354.

DECLARANT DECLARES AS FOLLOWS:

ARTICLE 1 - Definitions

Unless the context indicates otherwise, the following terms shall have the following definitions:

- 1.1 Articles. The Articles of Incorporation of the Association and any amendments thereto.
- 1.2 Association. Fountaingrove II Open Space Maintenance Association, a California nonprofit mutual benefit corporation.
- 1.3 Association Property. Any additional property subsequently annexed into the Development, as described in Article 11, that is owned and/or maintained by the Association in accordance herewith or in accordance with requirements of the City of Santa Rosa. Association Property includes property owned by the Association (e.g., common open space lots within the Development as shown on the final recorded maps therefor), that portion of any Residential Lot subject to an Open Space Easement (as hereinafter defined) or an easement in favor of the Association for maintenance purposes, and any real property owned by the City or any other governmental entity which is required to be maintained by the Association pursuant to any entitlement, approval or permit applicable to the Development.
- 1.4 Board. The Board of Directors of the Association.
- 1.5 Bylaws. The Bylaws of the Association and any amendments thereto.
- 1.6 Declarant. Fountaingrove View Partners, L.P., formerly known as Dividend Fountaingrove Partners, a California limited partnership, Fountaingrove Development Company, LLC, a Delaware limited liability company, and Debra Investment Corporation, a California corporation, (each individually referred to herein as "Co-Declarant"), and any successor or assign that assumes in writing the rights and duties of a "Co-Declarant" hereunder. Unless the context indicates otherwise, the term "Declarant" shall refer collectively to the foregoing entities.
- 1.7 Declaration. This Fountaingrove II Open Space Maintenance Declaration and any amendments or corrections thereto.
- 1.8 Development. The residential development that is constructed on the Property and made subject to this Declaration by annexation in accordance with Article 11 herein, including the Residential Lots and Association Property, and all Improvements thereon.
- 1.9 Governing Documents. This Declaration, the Articles of Incorporation, and the Bylaws of the Association.
- 1.10 Improvements. Any fixtures affixed to any Association Property within the meaning of Civil Code section 660.
- 1.11 Kleinfelder Report. The Geologic Investigation and Geotechnical Analysis Report prepared by Kleinfelder, Inc., dated January 19, 1994, as Job No. 41-2134-02. Declarant shall provide the Association with a copy of the report.
- 1.12 Lot or Residential Lot. Lots 1-43 of Fountaingrove II - East, Unit 4, Lots 1-22 of Fountaingrove II - East, Unit 5 and Lots 1-5 of Fountaingrove II - East, Unit 1 as shown on the Maps and any additional residential lots that are subsequently annexed into the Development as described in Article 11.
- 1.13 Map or Maps. The subdivision map entitled "Fountaingrove II - East, Unit 1" filed for record in Sonoma County, California, in Book 527 of Maps at pages 22 through 25, the subdivision map entitled

"Fountaingrove II - East, Unit 4" filed in the records of Sonoma County, California on October 11, 1995 in Book 542 of Maps at pages 27 through 31, the subdivision map entitled "Fountaingrove II - East, Unit 5" filed in the records of Sonoma County, California on October 11, 1995 in Book 542 of Maps at pages 32 through 35 and any additional recorded final maps that describe any Residential Lots or Association Property that may be subsequently annexed into the Development as described in Article 11.

1.14 Member. A member of the Association.

1.15 Merchant Builder. Any Person who has acquired from Declarant any portion of the Property (including any portion of the property that subsequently is annexed into the Development) for the purpose of improving such Property with residences and related Improvements thereon for resale to the general public. Except with respect to voting rights as provided in this Declaration, a Merchant Builder shall be deemed to be an Owner of all Lots and/or Condominiums it owns and shall be subject to all of the rights and obligations of an Owner as provided for in this Declaration, the Articles, and the Bylaws, provided, however, that the term "Merchant Builder" shall not mean or refer to Declarant, its successors or assigns. Brown and WRP each shall be deemed a "Merchant Builder" under the Declaration.

1.16 Mortgage. A recorded mortgage or deed of trust against a Lot in the Development.

1.17 Mortgagee. A mortgagee under a Mortgage or a beneficiary under a deed of trust recorded against a Lot in the Development.

1.18 Open Space Management Plan. The open space management plan contained in the Fountaingrove II Design Program and any amendments thereto. A copy of the Fountaingrove II Design Program is on file with the Community Development Department of the City of Santa Rosa.

1.19 Owner. The record title owner or owners of a Lot in the Development and including Declarant and any Merchant Builder that owns a Lot.

1.20 Person. Any natural person, partnership, corporation or other legal entity.

1.21 Property. The land shown on the Maps, together with all Improvements thereon and any additional land, as is more particularly described in Exhibit(s) "A," "B," and/or "C," together with all Improvements thereon, that may be subsequently annexed into the Development in accordance with the provisions of Article 11.

1.22 Rules. Rules or regulations adopted by the Association from time to time pursuant to the authority of Section 4.6(iii).

ARTICLE 2 - Property Rights and Easements

2.1 Type of Development. This Development is a planned development within the meaning of Civil Code section 1351(k) and shall be developed in multiple phases. If all anticipated phases are developed and annexed, the Development will contain a maximum of 593 Residential Lots. Completion of the Development is anticipated to take a number of years. Declarant has no obligation to annex any additional property into the Development and makes no representation or warranty that the Development will be completed as anticipated or, if completed, will contain 593 Residential Lots. If the Development is ultimately completed with fewer than 593 Residential Lots and the anticipated number of open space parcels owned and/or maintained by the Association remains substantially unchanged, the cost of

maintaining the Association Property will be borne by fewer Lots than originally anticipated; and therefore the cost of maintenance per Lot may increase.

2.2 Property Rights. Each Owner shall own a Residential Lot(s) and shall be a Member of the Association. The Association shall own certain portions of the Association Property. In addition, portions of certain Residential Lots may be subject to easements in favor of the Association for maintenance purposes.

2.3 Authority Over Association Property. The Board or Declarant (as long as Declarant owns twenty-five percent (25%) or more of the Lots in the Development, including Lots that may be annexed into the Development as described in Article 11) shall have the power and the right in the name of the Association and all of the Owners to grant, convey or otherwise transfer to any Owner or any other Person fee title, easements, exclusive use easements or rights, rights-of-way and/or dedications in, on, over or under all or any portion of any Association Property (other than the common space lots and Open Space Easement areas defined and described in the Open Space Management Plan) owned by the Association in order to: (i) construct, erect, operate, maintain or replace lines, cables, wires, conduits or other devices for electricity, cable television, power, telephone and other purposes, public sewers, storm water drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes and any similar public or quasi-public Improvements or facilities; (ii) accommodate any encroachment or boundary line adjustment that in the sole discretion of Declarant or the Board does not unreasonably interfere with the use and enjoyment by the Members of the Association Property; (iii) satisfy condition: or requirements imposed by any governmental entity; or (iv) accomplish any other purpose that in the sole discretion of Declarant or the Board is in the best interest of the Association and its Members and does not unreasonably interfere with the use and enjoyment by the Members of the Association Property. Each Owner, in accepting a deed to a Lot, expressly consents to such action and, to the extent necessary or advisable, authorizes and appoints the Association and Declarant (as long as Declarant owns twenty-five percent (25%) or more of the Lots in the Development, including any Lots that subsequently may be annexed into the Development as described in Article 11) as attorney-in-fact of such Owner to execute and deliver all documents and interests to accomplish the action, including but not limited to, grant deeds, easements, subdivision maps, and lot-line adjustments.

Notwithstanding anything herein to the contrary, Declarant may not require the Association to convey fee title to any portion of the Association Property without the consent of Members holding a majority of the total voting power of the Association.

2.4 Conveyance of Association Property. The Association Property to be owned by the Association in each phase of the Development shall be conveyed to the Association free of all liens and encumbrances on or before the date the Declarant first conveys title to a Lot in that phase to a third-party purchaser. The Association Property owned by the Association, as the servient tenement, is subject to the rights reserved in Section 2.3 and to an easement granted and reserved in favor of each Lot, as the dominant tenement, and to Declarant, with the right to grant such easements to owners of Lots for pedestrian ingress and egress over the paths and trails situated on the servient tenement, if any, and for access to and use of any part of the servient tenement by Declarant, public or private utility providers, their subcontractors and agents to install, maintain, repair, relocate or replace any utility lines, cables, wires, pipes, meters, landscaping, paths, fences, or other equipment or Improvements installed within, on or over the servient tenement that is consistent with the development plans approved by the City of Santa Rosa, including, but not limited to, the zoning on the Association Property, the conditions of any applicable conditional use permit granted by the City of Santa Rosa, and the terms and provisions of the Open Space Management Plan. The easement rights which are to be reserved and retained by Declarant in favor of Declarant (which rights may be assigned to public or private utility providers and their subcontractors and agents without the consent of any other Person) over the Association Property following conveyance of a portion thereof to the Association include the right to temporarily restrict access to any portion of the Association Property, for safety or other reasons, by the construction of

The Association may adopt Rules regulating the use of the Association Property, provided such Rules do not unreasonably interfere with the exercise of the foregoing easement rights and are consistent with the restrictions contained in this Declaration, the zoning on the Association Property, the conditions of any applicable conditional use permit and/or the Open Space Management Plan.

ARTICLE 3 - Association's Maintenance Obligations

The Association's maintenance responsibilities over any Association Property that is part of a subsequent phase will not commence until the phase has been annexed as described in Section 11.1 and assessments have commenced against the Lots in that phase as described in Section 5.7.

The Board shall take all appropriate steps to implement and comply with the inspection and maintenance guidelines.

3.

4.1 Formation of the Association. The Association is a nonprofit mutual benefit corporation formed under the laws of the State of California. The Association shall commence operations no later than the date that assessments commence. Pending the commencement of the Association's operations, Declarant shall perform the duties and shall have the rights of the Association as described herein.

4.2 Governing Body. The governing body of the Association shall be the Board. It shall be the responsibility of the Board to ensure that the Association exercises its rights and performs its duties as described within the Declaration, the Articles, the Bylaws and any amendments thereto.

4.3 Membership. Each Owner of the fee interest in a Lot automatically shall be a Member of the Association. If there is more than one (1) fee title Owner of a Lot, each Owner shall be a Member. The holder of a security interest in a Lot shall not be a Member of the Association except and until that holder obtains both the legal and equitable interest in the Lot. If any Owner executes an installment contract of sale for the sale of that Owner's Lot, the purchaser shall become the Member if the contract is recorded in the public records and if the Association is notified in writing of the contract; and the Owner no longer shall be a Member. If the purchaser's rights are terminated under the contract without transfer of title to the purchaser, the Board, upon receipt of satisfactory evidence of the termination of the purchaser's rights, shall reinstate the Owner as the Member; and the purchaser shall no longer be a Member.

Membership shall be appurtenant to the Lot and may not be separated therefrom. Any transfer of an Owner's fee interest in a Lot (other than a security interest), by operation of law or otherwise, automatically transfers the membership to the Owner's successor in interest. No Owner may resign or revoke his or her membership for any reason.

4.4 Membership Classes and Voting Rights. The Association shall have the following three (3) classes of voting memberships:

(i) Class A. Class A Owners are all Owners except the Declarant or Merchant Builders. Class A Owners shall be entitled to one (1) vote for each Lot in which he or she owns an interest. If more than one (1) Owner owns an interest in a Lot, only one (1) vote may be cast with respect to that Lot.

(ii) Class B. The Class B Owner shall be the Declarant, who shall be entitled to three (3) votes for each Lot owned by the Declarant and the Merchant Builders. Class B membership shall cease and be irreversibly converted to Class A on the first to occur of the following:

(a) On the fourth (4th) anniversary of the first conveyance of a Lot in the most recent phase of the Development; or

(b) On the tenth (10th) anniversary of the first conveyance of a Lot in the first phase of the Development if Declarant has sold seventy-five percent (75%) of the five hundred ninety-three (593) Lots at such time or, if not, the twelfth (12th) anniversary of the first conveyance of a Lot in the first (1st) phase in the Development.

(iii) Class C. The Class C Owner shall be Fountain Grove Development Company, LLC, a Delaware limited liability company, who shall be entitled to vote as a Class C Owner as long as Declarant or any Merchant Builder owns any Lots in the Development. Upon annexation of any or all of the property described in Exhibit A, Dividend Fountain Grove Partners, a California limited partnership, and Fountain Grove Development Company, LLC, a Delaware limited liability company, shall each be Class C Owners with equal rights hereunder. The Class C Owner shall be entitled to elect a majority of the Members of the Board of Directors. With the exception of the election of directors hereunder, the Class C membership shall not be considered part of the voting power of the Association. The Class C membership shall terminate upon the last to occur of the following events:

(a) On the fourth (4th) anniversary of the first (1st) conveyance of a Lot in the most recent phase of the Development; or

(b) On the sixth (6th) anniversary of the first (1st) conveyance of a Lot in the first (1st) phase of the Development. Declarant has sold seventy-five percent (75%) of the five hundred ninety-three (593) Lots at such time or, if not, the, eight (8th) anniversary of the first (1st) conveyance of a Lot in the first (1st) phase in the Development.

As long as Classes A and B exist, any action by the Association that requires approval by the Owners shall require approval by the designated percentage of voting power in each class, except the action described in Section 4.11 of this Declaration. Voting rights shall vest at the time that assessments are levied against the Owner's Lot. Except as otherwise provided in this Declaration, the Articles or the Bylaws, and subject to the provisions of Section 4.11, all matters requiring the approval of the Owners shall be approved if: (i) approved at a duly-called regular or special meeting at which a quorum was present, either in person or by proxy, by Owners holding the majority of the total voting power of all Owners present, either in person or by proxy; (ii) approved by written ballot pursuant to the requirements of Corporations Code section 7513; or (iii) approved by unanimous written consent of all the Owners. If the vote or written consent of each Class of membership is required, any requirement that the vote of the Declarant be excluded is not applicable except as provided in Section 4.11.

Each Declarant shall have the sole and exclusive right to exercise all votes attributable to portions of the Property owned by any Merchant Builder that purchased all or any portion of the Property (including property that subsequently may be annexed into the Development) from that Declarant. Each Merchant Builder, by acceptance of a deed to any Property within the Development (including any property that may be annexed into the Development), irrevocably grants to the Declarant that conveyed the Property to the Merchant Builder a proxy to exercise the Merchant Builder's voting power. The proxy, with respect to each Residential Lot to which it relates, shall terminate, as to such Residential Lot, on the first to occur of the following: (i) the Merchant Builder conveys the Residential Lot to any Person who is not a Merchant Builder; (ii) the Merchant Builder and Declarant execute a written termination agreement; or (iii) the tenth (10th) anniversary of the date the Residential Lot is conveyed from the Declarant to the Merchant Builder.

4.5 Joint Ownership Votes. The vote that is attributed to each Lot may not be cast on a fractional basis. If the Lot has more than one (1) Owner and the Owners are unable to agree as to how the vote shall be cast, the vote shall be forfeited on the matter in question. Any vote cast by an Owner for any Lot is presumed conclusively to be the vote cast by all the Owners of that Lot. If more than one (1) Owner casts a vote attributed to a Lot on any matter on which only one (1) vote could be cast for that Lot, the votes cast by such Owners shall be counted as one (1) vote if the votes are the same; if the votes are different, the vote cast by such Owners shall not be counted and shall be forfeited.

4.6 Powers of the Association. The Association shall have all the powers of a non-profit mutual benefit corporation organized under the general nonprofit mutual benefit corporation laws of California, subject only to such limitations on the exercise of these powers as are set forth in the Articles, Bylaws and this Declaration and the zoning on the Association Property, the conditions of any applicable conditional use permit, and the terms and conditions of the Open Space Management Plan. The Association shall have the power to do any lawful thing that may be authorized, required or permitted to be done by the Association under this Declaration, the Articles and the Bylaws and to do and perform any act that may be necessary or proper for or incidental to the exercise of any of the express powers of the Association, including without limitation, each of the following:

(i) The Board shall establish, fix and levy assessments against the Lots and collect and enforce payment of such assessments in accordance with the provisions of Article 5 of this Declaration.

(ii) The Board may adopt, amend and repeal Rules as it considers appropriate, provided any such Rules shall be consistent with the general scheme of this Declaration. The Rules shall regulate the use and enjoyment of the Association Property and such other matters as are authorized herein. If any provision of this Declaration, the Articles or the Bylaws is inconsistent with or materially conflicts with any Rule, the Declaration, the Articles or the Bylaws shall control to the extent of any such inconsistency.

(iii) The Association may borrow money to meet any anticipated or unanticipated cost of the Association and, subject to the provisions of Section 4.12(v), may mortgage, encumber or pledge Association assets (including, but not limited to, assessments) as security for such borrowing.

(iv) In addition to any other enforcement rights described in this Declaration and the Bylaws or as may be authorized by law, subject to any restrictions on the Association's enforcement rights, including any due process requirements imposed by this Declaration, the Bylaws or by law, the Board may take any of the following actions against any Person or entity whose act or failure to act violates or threatens to violate any provisions of this Declaration, the Bylaws or Rules: (a) impose monetary penalties, including late charges and interest; (b) suspend voting rights in the Association; (c) suspend use privileges over any Association Property within the Development; and (d) commence any legal or equitable action for damages, injunctive relief or both. The determination of whether to impose any of the foregoing sanctions shall be within the sole discretion of the Board. Any legal action may be brought in the name of the Association on its own behalf and on behalf of any Owner who consents; and, except as otherwise provided herein, the prevailing party in such action shall be entitled to recover costs and reasonable attorneys' fees. The Board, in its sole discretion, may resolve or settle any dispute, including any legal action in which the Association is a party, under such terms and conditions as it considers appropriate.

Under no circumstances may the Association cause a forfeiture or abridgement of an Owner's right to the full use and enjoyment of the Owner's Lot on account of the failure of the Owner to comply with the provisions of the Declaration, Articles, Bylaws or Rules, except by judgment of a court or decision of an arbitrator or on account of a foreclosure or sale under power of sale for failure of the Owner to pay assessments duly levied by the Association.

Before the Board imposes any monetary penalties (other than late fees on delinquent assessments) or suspension of membership rights or Association Property use privileges against any Member for failure to comply with the Declaration, these Bylaws or the Rules, the Board must act in good faith and satisfy each of the following requirements:

(a) The Member must be given fifteen (15) calendar days' prior notice of the discipline to be imposed and the reasons for the imposition of the discipline. Notice may be given by any method reasonably calculated to give actual notice. If the notice is given by mail, it must be sent by first-class or registered mail to the last address of the Member as shown on the Association's records.

(b) The Member must be given an opportunity to be heard, orally or in writing, by the Board, not less than five (5) calendar days before the effective date of the imposition of the discipline. The Member shall have the opportunity to present witnesses on the Member's behalf and to cross-examine any witnesses that may testify against the Member.

(v) The Association may delegate any of its powers and duties to its employees, committees or agents, including a professional management agent, provided the Association may not delegate the authority to convey Association Property, borrow money, adopt Rules, levy assessments, impose penalties, or institute legal action.

4.7 Duties of the Association. In addition to the duties described in the Articles or Bylaws, or elsewhere in this Declaration, the Association shall have the duty to manage the Association Property, perform the maintenance as described in Section 3.1, prepare, periodically update, and comply with the maintenance and inspection guidelines described in Section 3.2, prepare and distribute financial statements, reports and copies of Governing Documents as described in Section 4.10, enforce bonded obligations as described in Section 4.11, levy and collect assessments as described in Article 5, prepare, when required, the reserve studies described in Section 5.3 and annually review and implement adjustments as required, and procure and maintain the insurance as described in Article 6. The Association shall perform such other acts as may be reasonably necessary to exercise its powers to perform its duties under any of the provisions of this Declaration, the Articles, Bylaws, Rules or Board resolutions.

4.8 Taxes and Assessments. The Association shall pay all real and personal property taxes and assessments and all other taxes levied against the Association, the Association Property or the personal property owned by the Association. Such taxes and assessments may be contested or compromised by the Association, provided that they are paid or that a bond insuring payment is posted before the sale or the disposition of any Property to satisfy the payment of such taxes.

4.9 Utility Service to the Association Property. The Association may acquire, provide and pay for any utility services that the Board, in its sole discretion, considers necessary or advisable for the Association Property.

4.10 Reporting Requirements. The Association shall prepare and distribute to the Members the following:

(i) A pro forma operating budget for each fiscal year shall be distributed not less than forty-five (45) days nor more than sixty (60) days before the beginning of the fiscal year consisting of at least the following:

(a) estimated revenue and expenses on an accrual basis,

(b) a summary of the Association's reserves based on the most recent reserves review or study conducted pursuant to Section 5.3, which shall be printed in bold type and shall include the following:

(1) the current estimated replacement cost, estimated remaining life and estimated useful life of each major component which the Association is obligated to maintain with a useful life of more than one year and less than 30 years and replacement cost in excess of \$1000 (collectively the "Major Components");

(2) as of the end of the fiscal year for which the study was prepared:

a. the current estimate of the amount of cash reserves necessary to repair, replace, restore or maintain the Major Components; and

b. the current amount of accumulated cash reserves actually set aside to repair, replace, restore or maintain the Major Components; and

(3) the percentage that the amount in subparagraph (2)b is to the amount in subparagraph (2)a;

(c) a statement as to whether the Board has determined or anticipates that the levy of one (1) or more special assessments will be required to repair, replace or restore any Major Component or to provide adequate reserves therefor;

(d) a general statement addressing the procedures used for the calculation establishing those reserves to defray the future repair, replacement or additions to the Major Components; and

(e) a statement describing the Members' rights to obtain copies of the minutes of meetings of the Board of Directors, including a description of how and where these minutes may be obtained.

In lieu of the distribution of the pro forma operating budget, the Board may elect to distribute a summary of said budget to all its Members with a written notice in at least 10-point bold type on the front page of the summary that the budget is available at the Association's business office or another suitable location within the boundaries of the Development and that copies will be provided on request and at the expense of the Association. If any Member requests a copy of the pro forma operating budget to be mailed to the Member, the Association shall provide the copy to the Member by first-class United States mail at the expense of the Association, which copy shall be mailed within five (5) days of the receipt of the request.

(ii) A balance sheet rendered as of an accounting date that is the last day of the month closest in time to six months from the date of closing of the first sale of a Lot (the "Accounting Date"), and an operating statement for the period commencing with the date of the closing of the first sale and ending on the Accounting Date. The operating statement shall include a schedule of assessments, received or receivable, identified by the Lot number and the name of the Owner assessed. Copies of the balance sheet and operating statement shall be distributed to each Owner and any Mortgagee that has requested a copy within sixty (60) days after the Accounting Date.

(iii) An annual report consisting of a balance sheet rendered as of the last day of the fiscal year, an operating statement for the fiscal year, and a statement of change in its financial position for the fiscal year. A copy of the annual report shall be distributed to each Owner and any Mortgagee that has requested a copy within one-hundred twenty (120) days after the close of the fiscal year. In any fiscal year in which the gross income of the Association exceeds Seventy-five Thousand Dollars (\$75,000), a copy of the review of the annual report prepared by a licensee of the California State Board of Accountancy in accordance with generally-accepted accounting principles shall be distributed with the annual report. If the annual report is not reviewed by an independent accountant, the report shall be accompanied by the certificate of an authorized officer of the Association that the report was prepared from the books and records of the Association without independent audit or review.

(iv) A statement of the Association's policies and practices in enforcing its rules against Owners for delinquent regular or special assessments, including the recording and foreclosing of liens against a delinquent Owner's Lot. A copy of this statement shall be distributed to each Owner and any Mortgagee that has requested a copy within sixty (60) days prior to the beginning of each fiscal year.

(v) Copies of this Declaration, the Articles, Bylaws, Association Rules and a statement regarding delinquent assessments as described in Section 5.11 shall be provided any Owner within ten (10) days of the mailing or delivery of a written request. The Board may impose a fee to provide these materials but not to exceed the Association's reasonable costs in preparing and reproducing the material.

(vi) A summary of the provisions of Civil Code section 1354 which specifically references said section and which includes the following language shall be provided annually to the Members:

Failure by any member of the Association to comply with the pre-filing requirements of section 1354 of the Civil Code may result in the loss of your rights to sue the association or another member of the association regarding enforcement of the governing documents.

The summary shall be provided either at the time the pro forma budget described in Section 4.10(f) is distributed or in the manner set forth in Corporations Code section 5016.

The provisions of this Section 4.10 are intended to comply with the requirements of Civil Code sections 1354(i) and 1365. If these Civil Code sections are amended or repealed in any manner, the provisions of this Section 4.10 shall be amended or repealed in the same manner.

4.11 Enforcement of Bonded Obligations. If the Association is the obligee under a bond or other arrangement ("Bond") to secure performance of the commitment of the Declarant, or a successor or assign, to complete the applicable Association Property Improvements not completed at the time the California Commissioner of Real Estate issued a final subdivision report for the latest phase of the Development, the Board will consider a vote on the question of action by the Association to enforce the obligations under the Bond with respect to any applicable Improvement for which a notice of completion has not been filed by the later of: (i) sixty (60) days after the completion date specified for that Improvement in the "planned construction statement" appended to the Bond; or (ii) thirty (30) days after the expiration of any written extension given by the Association. If the Board fails to consider a vote on the action to enforce the obligations under the Bond, or if the Board decides not to initiate action to enforce the obligations under the Bond, then on receipt of a petition signed by Owners other than Declarant representing not less than five percent (5%) of the total voting power of the Association, the Board shall call a special meeting of Owners for the purpose of voting to override the decision of the Board not to initiate action or to compel the Board to take action to enforce the obligations under the Bond. The Board shall give written notice of the meeting to all Owners entitled to vote in the manner provided in this Declaration or in the Bylaws for notices of special meetings of Owners. The meeting shall be held not less than thirty-five (35) days nor more than forty-five (45) days after receipt of the petition. At the meeting, the vote in person or by proxy by a majority of the Owners entitled to vote (other than Declarant) in favor of taking action to enforce the obligations under the Bond shall be considered the decision of the Association; and the Board shall implement this decision by initiating and pursuing appropriate action in the name of the Association.

Upon satisfaction of the Declarant's obligation to complete the Association Property Improvements, the Board shall acknowledge in writing that it approves the release of the Bond and shall execute any other documents or instruments as may be necessary or advisable to effect the release of the Bond. The Board shall not condition its approval to release the Bond on the satisfaction of any condition other than the completion of the Association Property Improvements as described on the "planned construction statement." Any dispute between the Declarant and the Association regarding the completion of the Association Property shall be submitted to binding arbitration by the American Arbitration Association or any successor thereto for resolution in accordance with its commercial rules; and the prevailing party shall be entitled to recover costs, including reasonable attorneys' fees.

4.12 Limitations on Authority of the Board. The Board shall not take any of the following actions without the vote or written consent of Owners holding fifty-one percent (51%) of the voting rights of each class of Owners if two (2) classes exist; or, if only one (1) class exists, fifty-one percent (51%) of the voting rights of all Owners and fifty-one percent (51%) of the voting rights of all Owners other than Declarant:

(i) Incur aggregate expenditures for capital improvements to the Association Property in any fiscal year in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year;

or exercise of a power of sale under a Mortgage, deed of trust, or other lien recorded before the recordation of the notice of delinquent assessment.

5.2 Annual Regular Assessment. Not more than ninety (90) days nor less than sixty (60) days before the beginning of each fiscal year of the Association, the Board shall meet for the purpose of establishing the annual regular assessment for the forthcoming fiscal year. At such meeting, the Board shall review the preliminary, pro forma operating budget prepared in accordance with the provisions of Section 4.10(i), any written comments received from Members and Mortgagees, and such other related information that has been made available to the Board. After making any adjustments that the Board considers appropriate and subject to such Member approval as may be required by Section 5.6, the Board will establish an annual regular assessment for the forthcoming fiscal year. Each annual regular assessment shall include a portion for reserves as described in Section 5.3.

If the Board for any reason fails to take the appropriate steps to establish the annual regular assessment for the next fiscal year, the annual regular assessment for the preceding fiscal year shall continue in effect subject to the Board's right at any time during the next fiscal year to adjust the assessment pursuant to the procedures described herein.

5.3 Reserves and Reserves Study. Each annual regular assessment shall include a portion for reserves in such amount as the Board in its discretion considers appropriate to meet the cost of the future repair, replacement or additions to the drainage improvements, slope indicator casings, fences, irrigation systems and other improvements maintained by the Association with a useful life of more than one year and less than 30 years and a replacement cost in excess of \$1000 (the "Major Components"). Reserve funds shall be deposited in a separate account and the signatures of at least two (2) persons who shall either be members of the Board or one (1) officer who is not a member of the Board and a member of the Board shall be required to withdraw monies from the reserve account. Reserve funds may not be expended for any purpose other than the repair, restoration, replacement, or maintenance of, or litigation involving the repair, restoration, replacement, or maintenance of, Major Components which the Association is obligated to repair, restore, replace or maintain and for which the reserve fund was established.

Notwithstanding the foregoing, the Board may authorize the temporary transfer of money from a reserve fund to the Association's general operating fund to meet short-term cash-flow requirements or other expenses, provided the Board has made a written finding, recorded in the Board's minutes, explaining the reasons that the transfer is needed and describing when and how the money will be repaid to the reserve fund. The transferred funds shall be restored to the reserve fund within one (1) year of the date of the initial transfer, provided that the Board, on the making of a finding supported by documentation that a temporary delay is in the best interest of the Development, may delay temporarily the restoration until the time which the Board reasonably determines to be necessary. The Board shall exercise prudent fiscal management in delaying restoration of these funds and in restoring the expended funds to the reserve account, and, if necessary, shall levy a special assessment to recover the full amount of the expended funds within the time limits required herein. This special assessment is subject to the limitations imposed by Civil Code section 1366 unless the special assessment is to pay for legal costs associated with litigation involving the repair, restoration, replacement, or maintenance of Major Components which the Association is obligated to repair, restore, replace or maintain. The Board, at its discretion, may extend the due date of the special assessment. Any extension shall not prevent the Board from pursuing any legal remedy to enforce the collection of an unpaid special assessment.

When the Board, in its discretion, determines to use reserve funds or to temporarily transfer money from the reserve fund to pay for litigation, the Board shall notify the Members of that decision in the next available mailing to all Members pursuant to section 5016 of the Corporations Code and of the availability of an accounting of those expenses. The Association shall make an accounting of those

expenses. The Association shall make an accounting of expenses related to the litigation on a monthly basis and shall make such accounting available for inspection by Members at the Association's office.

At least once every three (3) years, the Board shall cause a study of the reserve account requirements to be conducted if the current replacement value of the Major Components which the Association is obligated to repair, replace, restore, or maintain is equal to or greater than one-half (1/2) of the gross budget of the Association for any fiscal year. The Board shall review this study annually and shall consider and implement necessary adjustments to the Board's analysis of the reserve account requirements as a result of that review.

The study shall, at a minimum, include:

(i) Identification of the Major Components which the Association is obligated to repair, replace, restore, or maintain which, as of the date of the study, have a remaining useful life of less than thirty (30) years;

(ii) Identification of the probable remaining useful life of the Major Components identified in subparagraph (i) as of the date of the study;

(iii) an estimate of the cost of repair, replacement, restoration, or maintenance of the Major Components identified in subparagraph (i) during and at the end of its useful life; and

(iv) an estimate of the total annual contribution necessary to defray the cost to repair, replace, restore, or maintain the Major Components during and at the end of its useful life after subtracting total reserve funds as of the date of the study.

As used herein, "reserve accounts" means moneys that the Board has identified for use to defray the future repair or replacement of, or additions to, those Major Components which the Association is obligated to maintain; and "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 which the Association is obligated to maintain.

The provisions of this Section 5.3 are intended to comply with the requirements of Civil Code sections 1365.5(c), (d) and (e). If these Civil Code sections are amended or rescinded in any manner, the provisions of this Section 5.3 automatically shall be amended or rescinded in the same manner.

5.4 Special Assessments. Subject to the restrictions described in Section 5.6, the Board may levy a special assessment if the Board in its discretion determines that the Association's available funds are or will become inadequate to meet the estimated expenses of the Association, including, but not limited to, expenses resulting from inadequate reserves, unanticipated delinquencies, costs of construction, unexpected repairs or replacements of capital improvements, inadequate insurance funds, or other unanticipated expenses. The Board may levy the entire special assessment immediately, or levy it in installments over a period the Board considers appropriate.

5.5 Reimbursement Assessments. The Board shall have the authority to levy reimbursement assessments against one (1) or more Lot Owners to reimburse the Association for any costs incurred by the Association as the result of any act or omission of any Owner or occupant of any Lot or their family members, guests or agents. The levy shall not include any portion that is paid by any insurer under a policy maintained by the Association. Payment of the deductible amount shall be the responsibility of the Owner. In addition to reimbursing the Association for costs necessary to repair any Association Property or other property that is maintained by the Association, the Association may seek reimbursement for any costs incurred by the Association, including attorneys' fees, to bring the Owner or occupant or the Owner's Lot into compliance with this Declaration, the Articles, Bylaws or Rules. A reimbursement

assessment may not be levied against any Lot until notice and hearing have been provided the Owner as described in the Bylaws; and under no circumstances may a reimbursement assessment (or a monetary penalty imposed by the Association as a disciplinary measure for violation of the Declaration or Rules) become a lien against the Owner's Lot that is enforceable by nonjudicial foreclosure proceedings under a power of sale. The foregoing restriction on enforcement is not applicable to late payment penalties for delinquent assessments or charges imposed to reimburse the Association for loss of interest or for collection costs, including reasonable attorneys' fees for delinquent assessments.

5.6 Assessment Increase Restrictions. The Association shall provide notice by first-class mail to the Owners of any increase in the regular or special assessments not less than thirty (30) days nor more than sixty (60) days prior to the due date of the increased assessment.

The Board may not: (i) impose an annual regular assessment for any fiscal year which is more than twenty percent (20%) above the annual regular assessment for the Association's preceding fiscal year, or (ii) impose special assessments which in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year without the approval of a majority of the votes of Owners at a meeting of the Members of the Association at which a quorum is present. For purposes of this section, a quorum means more than fifty percent (50%) of the Owners, and the meeting must be conducted in accordance with Corporations Code sections 7510 through 7527 and 7613. The foregoing restrictions on assessment increases do not apply to increases necessary for emergency situations. An emergency situation is any one (1) of the following:

- (i) An extraordinary expense required by an order of court;
- (ii) An extraordinary expense necessary to repair or maintain the Development or any part of it that the Association is responsible to maintain where a threat to personal safety on the Property is discovered;
- (iii) An extraordinary expense necessary to repair or maintain the Development or any part of it that the Association is responsible to maintain that could not have been reasonably foreseen by the Board in preparing and distributing the pro forma operating budget required under Civil Code section 1365, provided that before the imposition or collection of any assessment under this subparagraph the Board must pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process and shall distribute the resolution to the Members with the notice of the assessment;
- (iv) a special assessment authorized under Section 5.3 to restore reserve funds; or
- (v) an extraordinary expense in making the first payment of the earthquake insurance surcharge pursuant to section 5003 of the Insurance Code.

If the Board fails to distribute the pro forma operating statement as required by Section 4.10(i) for any fiscal year, the Association may not increase its annual regular assessment for that fiscal year, as authorized by Civil Code section 1366(b), unless the Board has obtained the approval of a majority of the votes of the Owners at a meeting of the Members at which a quorum was present. For the foregoing purposes, a quorum means more than fifty percent (50%) of the Owners of the Association; and the meeting must be conducted in accordance with Corporations Code sections 7510 through 7527 and 7613 or any successor statute thereto.

The provisions of this Section 5.6 are intended to comply with Civil Code section 1366(a) and (b). If Civil Code sections 1366(a) and/or (b) are amended in any manner, the provisions of this Section 5.6 automatically shall be amended in the same manner, provided that if Civil Code section 1366(b) is

repealed and no successor statute is enacted with respect to restrictions on assessments, the provisions of this Section 5.6 shall remain in full force and effect.

5.7 Commencement of Regular Assessments. Annual regular assessments shall commence for all Lots in a phase on the first day of the month coinciding with or immediately following the date of the first transfer of title of a Lot in that phase by the Declarant or a Merchant Builder to a purchaser under the authority of a final subdivision public report issued by the California Department of Real Estate or an earlier date at the discretion of the Declarant. No special assessment shall be levied against any Lot until annual regular assessments have commenced against the Lot.

5.8 Due Dates of Assessments. Unless otherwise directed by the Board, the annual regular assessment shall be collected in monthly installments and shall be due and payable on the first day of each month. As described in Section 5.4, special assessments shall be due on such date or dates as selected by the Board. Reimbursement assessments shall be due and payable ten (10) days after the Owner receives the notice of the reimbursement assessment. The notice shall be deemed received on the date described in Section 10.13.

Any annual regular assessment installment, special assessment, or reimbursement assessment not paid within fifteen (15) days after the due date shall be delinquent, shall bear interest at the rate of twelve percent (12%) per annum from thirty (30) days after the due date until paid, and shall incur a late penalty in an amount to be set by the Board from time to time, not to exceed the maximum amount permitted by law.

5.9 Allocation of Assessments. Regular and special assessments levied by the Board shall be allocated in equal amounts among the Lots.

5.10 Enforcement of Delinquent Assessments. The Association may elect to pursue one (1) or both of the following remedies in the event of a delinquent assessment:

(i) **Personal Obligation.** The Association may bring a legal action directly against the Owner for breach of the Owner's personal obligation to pay the assessment and in such action shall be entitled to recover the delinquent assessment or assessments, accompanying late charges, interest, costs and reasonable attorneys' fees. Commencement of a legal action shall not constitute a waiver of any lien rights as described in Section 5.10(ii).

(ii) **Assessment Lien.** The Association may impose a lien against the Owner's Lot for the amount of the delinquent assessment or assessments, together with accompanying late charges, interest, costs and reasonable attorneys' fees, by recording a notice of delinquent assessment in the records of the county in which the Development is located. The notice shall describe the amount of the delinquent assessment or assessments, the related charges authorized by this Declaration, a description of the Lot, the name of the record Owner, and, if the lien is to be enforced by power of sale under non-judicial foreclosure proceedings, the name and address of the trustee authorized by the Association to enforce the lien by sale. The notice shall be signed by any officer of the Association or an employee or agent of the Association authorized to do so by the Board.

Unless the Board considers the immediate recording of the notice of delinquent assessment to be in the best interests of the Association, the notice shall not be recorded until fifteen (15) calendar days after the Owner has received a written notice of default and a demand for payment from the Association. The notice of default and demand for payment shall be deemed received on the date described in Section 10.13. If the delinquent assessment or installment and related charges are paid or otherwise satisfied, the Association shall record a notice of satisfaction and release of lien.

The Board may enforce any assessment lien established hereunder by filing an action for judicial foreclosure or, if the notice of delinquent assessment contained the name and address of the trustee authorized by the Association to enforce the lien by nonjudicial foreclosure, by recording a notice of default in the form described in Civil Code section 2924c(b)(1) to commence a nonjudicial foreclosure. Any nonjudicial foreclosure shall be conducted in accordance with the requirements of Civil Code sections 2924, 2924b, 2924c, 2924f, 2924g, 2924h and 2924j that apply to nonjudicial foreclosure of mortgages or deeds of trust. The sale shall be conducted by the trustee named in the notice of delinquent assessment or by a trustee substituted in accordance with the provisions of Civil Code section 2934a. The Association may bid on the Lot at the sale and may hold, lease, mortgage and convey the acquired Lot. If the default is cured before the sale or before completing a judicial foreclosure, including payment of all costs and expenses incurred by the Association, the Association shall record a notice of satisfaction and release of lien and, to the extent required by Civil Code section 2924c(a)(2), a notice of rescission. In addition to the remedies described herein, the Board, pending the payment in full of all delinquent assessments and related charges, may suspend the voting rights of the Owner and the rights of the Owner or occupant, their family members or guests to use any Association Property.

5.11 Estoppel Certificate. Within ten (10) days of the mailing or delivery of a written request by any Owner, the Board shall provide the Owner with a written statement containing the following information: (i) whether, to the knowledge of the Association, the Owner or occupant of the Owner's Lot is in violation of any of the provisions of this Declaration, the Articles, Bylaws or Rules; (ii) the amount of regular and special assessments, including installment payments, paid by the Owner during the fiscal year the request is received; and (iii) the amount of any assessments levied against the Owner's Lot that are unpaid as of the date of the statement, including any late charges, interest or costs of collection and that, as of the date of the statement, are or may be made a lien against the Owner's Lot as provided by this Declaration, the Articles, Bylaws or Association Rules and any change in the Association's current regular and special assessments and fees approved by the Board but not yet due and payable as of the date of the disclosure.

ARTICLE 6 - Insurance

6.1 Liability Insurance. The Association shall obtain and maintain a comprehensive public liability insurance policy insuring the Association, any manager, Declarant, the Association's directors and officers, and the Owners and occupants of the Lots and their respective family members against any liability incident to the ownership, use or maintenance of the Association Property or any other Association owned or maintained real or personal property and including, if obtainable, a cross liability or severability of interest endorsement insuring each insured against the liability to each or' r. The limits of such insurance shall not be less than Two Million Dollars (\$2,000,000) covering all s for death, personal injury and property damage arising out of a single occurrence. Such insura shall include coverage against water damage liability, liability for non-owned and hired automobiles, liability for property of others, and other liability or risk customarily covered with respect to projects similar in construction, location and use.

The deductible amounts and any liability award in excess of available insurance proceeds arising from any liability incident to the ownership, use or maintenance of the Association Property or any other real or personal property owned or maintained by the Association shall be paid by the Association regardless of whether the Association was named as a defendant in any legal action regarding this matter. If a special assessment is necessary to pay the amount, the assessment shall be allocated equally among the Lots.

6.2 Association Property Insurance Policy. The Association may in the discretion of the Board obtain and maintain a property insurance policy covering damage or destruction to any Improvements in the Association Property or any property owned or maintained by the Association. The policy shall provide coverage against damage or destruction by fire and all other hazards that are normally covered by a "special form" policy or its equivalent. The policy may exclude from coverage those items that are normally excluded such as land, foundation and excavation. The form, content and term of the policy and endorsements, and the issuing company, shall be selected by the Board.

6.3 Other Insurance. In addition to the policies described in Sections 6.1 and 6.2, the Association shall obtain and maintain the following insurance:

- (i) Workers Compensation Insurance to the extent required by law;
- (ii) Fidelity bonds or insurance covering officers, directors and employees that have access to any Association funds;
- (iii) Officers and directors liability insurance; and
- (iv) Such other insurance as the Board in its discretion considers necessary or advisable.

6.4 Board's Negotiation Authority. The Board is authorized to negotiate and agree on the value and extent of any loss under any policy carried by the Association, including, but not limited to, the right and authority to compromise and settle any claim or enforce any claim by legal action or otherwise and to execute releases in favor of any insurer.

6.5 Insurance Review. The Board periodically (and not less than once every two (2) years) shall review the insurance policies maintained by the Association and may increase the policy amounts or extent of coverage at the Board's discretion, subject only to the assessment increase restrictions contained in Section 5.6 to the extent applicable.

ARTICLE 7 - Damage, Destruction or Condemnation

7.1 Destruction. If there is total or partial destruction of any of the Association Property Improvements, the Improvements shall be rebuilt, provided that if the proceeds of insurance are less than eighty-five percent (85%) of the costs of repair and reconstruction, the Improvements shall be rebuilt unless within ninety (90) days from the date of destruction, Owners holding at least seventy-five percent (75%) of the total voting power of each class of Owners present and entitled to vote in person or by proxy, at a duly-constituted meeting determine that repair or reconstruction shall not take place. If such a meeting is called, the Association shall solicit and obtain bids from at least two (2) reputable contractors to repair and reconstruct the Improvements in accordance with the original plans and shall present this information to the Owners at the meeting.

If Improvements are to be rebuilt, each Owner shall be obligated to contribute his or her proportionate share of the cost of reconstruction or restoration over and above the available insurance proceeds. The amount needed from the Owners over and above available insurance proceeds shall be allocated equally among the Lots. If necessary, the Board shall levy a special assessment against the Lots to collect the amount due from the Owners, pursuant to the procedures described in Article 5.

7.2 Reconstruction Contract. If the Association Property Improvements are to be rebuilt or restored, the Board shall solicit and obtain bids from at least two (2) reputable contractors to repair and reconstruct the Improvements in accordance with the original plans and specifications subject to such changes as may be approved by the Board or required by law, and shall award the repair and reconstruction work to the lowest qualified bidder unless the Board in its reasonable judgment elects to select a higher bidder. The Association shall have the authority to enter into a written contract with the contractor or contractors for the repair and reconstruction, and the insurance proceeds held by the Association or insurance trustee shall be disbursed to the contractor according to the terms of the contract. It shall be the obligation of the Association to take all steps necessary to insure the commencement and completion of authorized rebuilding at the earliest possible date.

7.3 Minor Repair and Reconstruction and Deductibles. The Association shall have the duty to repair and reconstruct the Improvements within the Association Property without the requirement of any consent of the Owners and irrespective of the amount of available insurance proceeds in all cases of partial destruction when the estimated cost of repair or reconstruction does not exceed Twenty Thousand Dollars (\$20,000), which amount shall be increased three percent (3%) per annum on a compounded basis commencing on the anniversary date of the recordation of the Declaration and each anniversary date thereafter. The Association may levy a special assessment for the cost of repairing and reconstructing Improvements to the extent insurance proceeds are unavailable pursuant to the procedures described in Article 5. The special assessment shall be allocated as described in Section 7.1.

7.4 Completion of Repair or Reconstruction. The repair or reconstruction of any Improvement shall commence no later than ninety (90) days after the date of such damage or destruction and shall be completed no later than one hundred eighty (180) days subject to extensions of like periods because of delays that are beyond the control of the Association.

7.5 Condemnation. If any action for condemnation of all or any portion of the Association Property is proposed or threatened by any governmental agency having the right of eminent domain, then, after approval by vote or written consent of Owners holding at least fifty-one percent (51%) of the total voting power of the Association and with the consent of the first mortgagees as may be required herein, the Association Property, or a portion of it, may be sold and conveyed to the condemning authority by the Association or its designees acting as the attorney-in-fact of all the Owners under an irrevocable power of attorney, which each Owner, by accepting a deed or a Lot in the Development, grants to the Board, and which shall be coupled with the interest of all other Owners, for a price deemed fair and equitable by the Board. Proceeds of any such sale shall be allocated equally among the Lots and distributed to each Owner and their Mortgagees as their respective interests may appear. If the Association Property or any portion of it is not sold but is instead taken, the award shall be apportioned among the Owners and their respective Mortgagees by the terms of the judgment of condemnation; and if not so apportioned, then the award shall be distributed equally to each Owner and their Mortgagees as their respective interests may appear.

ARTICLE 8 - Rights of Mortgagees

8.1 Lender Definitions. Unless the context indicates otherwise, the following terms as used in this Article 8 shall have the definitions contained in this Section 8.1. An "institutional" mortgagee is a first mortgagee that is a bank or savings and loan association or mortgage company or other entity chartered or licensed under federal or state laws whose principal business is lending money on the security of real property or investing in such loans, or any insurance company or any federal or state agency or instrumentality including, without limitation, the Federal National Mortgage Association and

the Federal Home Loan Mortgage Corporation and any insurer or governmental guarantor of a first mortgage including the Federal Housing Authority and the Veterans Administration. A "first mortgage" or "first mortgagee" is one having a priority as to all other Mortgages or holders of Mortgages encumbering the same Lot or other portions of the Development.

8.2 Encumbrance. Any Owner may encumber his or her Lot with a Mortgage or Mortgages.

8.3 Rights of Institutional Mortgagees. Any institutional mortgagee who obtains title to a Lot pursuant to the remedies provided in the first mortgage, including judicial foreclosure or nonjudicial foreclosure under a power of sale (but excluding voluntary conveyance to the first mortgagee) shall take the Lot free of any obligation to pay any assessments that were delinquent as of the date the institutional mortgagee acquired title to the Lot, including any interest, penalties or late charges in connection therewith. The institutional mortgagee, as Owner of the Lot, shall be obligated to pay any assessments that were not delinquent as of the date the institutional mortgagee took title to the Lot and all future assessments levied against the Lot as long as the institutional mortgagee remains in title, including any special assessments levied by the Association to raise operating or reserve funds needed because of uncollected delinquent assessments as long as the special assessment is allocated equally among all the Lots.

8.4 Subordination. Any assessment lien established under the provisions of this Declaration is expressly made subject to and subordinate to the rights of any Mortgage that encumbers all or any portion of the Development or any Lot made in good faith and for value and recorded before the recordation of a notice of delinquent assessment. No assessment lien shall in any way defeat, invalidate or impair the obligation or priority of such Mortgage unless the Mortgagee expressly subordinates its interest in writing to such lien. If any Lot is encumbered by a Mortgage made in good faith and for value, the foreclosure of any assessment lien cannot operate to affect or impair the lien of any Mortgage recorded prior to the recordation of the notice of delinquent assessment. Upon the foreclosure of any prior-recorded Mortgage, any lien for delinquent assessment shall be subordinate to the Mortgage lien; and the purchaser at the foreclosure sale shall take title free of the assessment lien. By taking title, the purchaser shall be obligated to pay only assessments or other charges that were not delinquent at the time the purchaser acquired title or that were levied by the Association on or after the date the purchaser acquired title to the Lot. Any subsequently-levied assessments or other charges may include previously-unpaid assessments, provided all Owners, including the purchaser and its successors and assigns, are required to pay their proportionate share of such unpaid assessments.

ARTICLE 9 - Amendments

9.1 Amendment Before Close of First Sale. Before the close of the first sale of a Lot in the Development to a purchaser other than Declarant or a Merchant Builder, this Declaration may be amended in any respect or rescinded by Declarant by recording an instrument amending or rescinding the Declaration. Before the close of the first sale of a Lot in a second or subsequent phase of the Development to a purchaser other than Declarant, any declaration of annexation recorded pursuant to Article 11 with respect to such phase may be amended in any respect or rescinded by the Co-Declarant owning such real property subject to such declaration of annexation by recording an instrument amending or rescinding the declaration of annexation. The amending or rescinding instrument shall make appropriate reference to this Declaration and its amendments and shall be acknowledged and recorded in the office of the County Recorder of the county in which the Development is located. For purposes herein, a Person is considered controlled by Declarant if the Declarant holds fifty percent (50%)

or more of the capital and profit interests if a partnership, fifty percent (50%) or more of the shares if a corporation, and fifty percent (50%) or more of the beneficial interests if a trust.

9.2 Amendment After Close of First Sale. After the close of the first sale of a Lot in the Development to a purchaser other than Declarant, a Merchant Builder or an entity controlled by Declarant, this Declaration may be amended or revoked in any respect with the vote or written consent of the holders of not less than fifty-one percent (51%) of the voting rights of each class of Owners or, if a single class of Owners is then in effect, by the vote or written consent of not less than fifty-one percent (51%) of all votes and fifty-one percent (51%) of all votes excluding Declarant and the prior written approval of Declarant. If any provision of this Declaration requires a greater or lesser percentage of the voting rights of any class of Owners in order to take affirmative or negative action under such provision, the same percentage of such class or classes of Owners shall be required to amend or revoke such provision. Also, if the consent or approval of any governmental authority, Mortgagee or other Person, firm, agency or entity is required under this Declaration with respect to any amendment or revocation of any provision of this Declaration, no such amendment or revocation shall become effective unless such consent or approval is obtained. Notwithstanding anything herein to the contrary, the provisions of Section 10.15 may not be amended or rescinded without the prior written consent of Declarant. The amendment is effective when it has been approved by the appropriate percentage of Owners as required herein, the approval has been certified in a writing executed and acknowledged by the officer designated in the Declaration or by the Association for that purpose (or, if no one has been designated, the president of the Association) and the amendment and certification have been recorded in the county in which the Development is located. A copy of any amendment adopted pursuant to this Section 9.2 shall be distributed by first-class mail, postage-prepaid, or personal delivery, to all Owners, immediately upon its recordation.

9.3 Required Amendments. Notwithstanding anything herein to the contrary, the Declarant may amend the Declaration without the consent of any other Owner if the amendment is necessary to conform with any requirement imposed by: (i) the California Department of Real Estate or any other governmental agency with jurisdiction over the Development; (ii) the Federal National Mortgage Association ("FNMA"); (iii) the Federal Home Loan Mortgage Corporation ("FHLMC"); (iv) the Federal Housing Authority; or (v) the Veterans Administration.

9.4 Declarant's Consent. For all purposes of this Article 9, Declarant's approval of any amendment to this Declaration shall require the prior written consent of each Co-Declarant, except for the amendment or rescission of a declaration of annexation as authorized in Section 9.1. Notwithstanding the foregoing, the approval rights of either Dividend Fountaingrove Partners or Fountaingrove Development Company LLC, shall terminate on the first to occur of the following: (i) all of the properties that could be annexed into the Development by that Co-Declarant have been annexed and that Co-Declarant no longer holds title to any of these properties; (ii) that Co-Declarant has failed to annex any property into the Development within five (5) years of the recordation of this Declaration; (iii) a period of four (4) years has elapsed between the annexation of properties into the Development by that Co-Declarant. The termination of the amendment approval rights of one Co-Declarant shall not terminate the amendment approval rights of the other Co-Declarant.

9.5 Consent of City. Any amendment to this Declaration pursuant to this Article 9 which in any way affects or could affect any common open space lot as shown on any Map or the Open Space Easement, as defined and described in the Open Space Management Plan, or which affects the duties and responsibilities of the Association with respect thereto, shall require written approval of the Director of Community Development of the City of Santa Rosa, or any successor office thereto, before becoming effective.

ARTICLE 10 - Miscellaneous Provisions

10.1 Headings. The headings used in this Declaration are for convenience only and are not to be used to interpret the meaning of any of the provisions of this Declaration.

10.2 Severability. The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any provision or provisions shall not invalidate any other provision.

10.3 Cumulative Remedies. Each remedy provided for in this Declaration shall be cumulative and nonexclusive. Failure to exercise any remedy provided for in this Declaration shall not, under any circumstances, be construed as a waiver of the remedy.

10.4 Discrimination. No Owner shall execute or cause to be recorded any instrument that imposes a restriction on the sale, leasing or occupancy of the Owner's Lot on the basis of race, sex, marital status, national ancestry, color or religion.

10.5 Access to Books. Any Owner may, at any reasonable time and upon reasonable notice to the Board or manager at the Owner's expense, cause an audit or inspection to be made of the books and financial records of the Association.

10.6 Number and Gender. The singular shall include the plural and the plural the singular unless the context requires the contrary; and the masculine, feminine and neuter shall include the masculine, feminine or neuter as the context requires.

10.7 Reservation or Grant of Easements. Any easements referred to in this Declaration shall be deemed reserved or granted, or both reserved and granted, by reference to this Declaration in any deed to any Lot.

10.8 Enforcement Rights and Remedies. The covenants, restrictions, right and duties contained in this Declaration constitute covenants running with the land and equitable servitudes that benefit and bind each Lot in the Development, each Owner, and each successive Owner thereto, and may be enforced by the Association or any Owner in any legal or equitable action pursuant to the procedures described herein.

As to any term, condition or requirement contained in this Declaration which was required as a condition of the zoning, any condition of an applicable conditional use permit or of the Open Space Management Plan, the City of Santa Rosa shall have the right, but without the obligation to do so, to enforce the terms hereof in any legal or equitable action pursuant to the procedures described herein.

Each Owner acknowledges and agrees that if any Person breaches any of the restrictions contained herein, money damages may not be adequate compensation. As a result, each Owner agrees that in the event of a breach, the non-breaching party, in addition to any other remedy available at law or equity, shall be entitled to equitable relief, including, but not limited to, an order compelling the breaching party to perform an act which the party is required to perform under this Declaration or which is necessary to bring the breaching party or the breaching party's Lot into compliance with restrictions contained herein or prohibiting the breaching party from performing any act that violates the restrictions.

Notwithstanding anything herein to the contrary, the Association shall have the exclusive right to levy assessments and to take appropriate action to enforce delinquent assessments, including imposition of an assessment lien and the foreclosure of the lien.

Prior to the commencement of any civil action against the Association or any Owner, the Association or the Owner bringing the civil action shall comply with the requirements of Civil Code section 1354 to the extent applicable.

10.9 Term. The term of this Declaration shall be for a period of fifty (50) years from the date on which this Declaration is recorded in the county in which the Development is located. After that time, this Declaration and each of its restrictions and covenants and other provisions automatically shall be extended for successive ten-year periods unless this Declaration is rescinded by the written consent of Owners holding a majority of the total voting power of the Association. The rescission shall be effective on recordation of a notice of rescission in the records of the county in which the Development is located.

10.10 Reserved Rights of Declarant. Declarant is recording this Declaration as part of the construction of a residential development. No covenant or restriction contained herein shall be applied in any manner that would unreasonably interfere with Declarant's rights to complete the construction of any improvements (including homes on the Lots), any portion of the Development, or the property that may be annexed into the Development as described herein and to market and sell the Lots and Improvements. The rights retained by Declarant during the construction and sales period include, but are not limited to, the right to:

(i) maintain construction equipment, personnel and materials within the Development (including Association Property) and utilize same for construction of Lots, homes and other Improvements;

(ii) use such portions of the Development (including Association Property) as may be necessary or advisable to complete the construction or sales of Lots, homes or other Improvements thereon;

(iii) maintain construction or sales offices anywhere within the Development (including Association Property);

(iv) maintain sale signs or other appropriate advertisements anywhere within the Development (including the installation of directional signs);

(v) maintain model homes for viewing by prospective purchasers; and

(vi) allow prospective purchasers access to any portion of the Development to inspect any Association Property, Lots, or any model homes.

10.11 Assignment by Declarant. Declarant or any Co-Declarant may assign all of their respective rights and delegate all of their duties to any other Person by recording a Notice of Assignment in the Sonoma County records under which the Declarant or Co-Declarant assigns its right and delegates its duties under this Declaration and the assignee accepts the assignment of rights and delegation of duties. The assignment shall be effective as of the date the Notice is recorded in the Sonoma County records or such later date as is described in the Notice. As of the effective date, the assigning Declarant or Co-Declarant shall have no further rights and/or duties hereunder; and the assignee shall assume the rights and duties of the Declarant hereunder and thereafter shall be entitled to exercise all the rights and obligations of Declarant or Co-Declarant as applicable, provided the assignee shall not be liable in any manner for any act or omission committed or omitted by the Declarant or Co-Declarant before the effective date of the assignment.

10.12 Attorneys' Fees. Except as provided in Section 12.15, in the event of any litigation or arbitration regarding the rights or obligations of the Association or any Person subject to this Declaration,

the prevailing party in such litigation or arbitration proceeding shall, in the discretion of the judge or the arbitrator, be entitled to recover costs, including reasonable attorneys' fees.

10.13 Notices. Any notice permitted or required by this Declaration, the Articles, Bylaws or Rules shall be considered received on the date the notice is personally delivered to the recipient or forty-eight (48) hours after the notice is deposited in the United States mail, first-class, registered or certified, postage prepaid and addressed to the recipient at the address that the recipient has provided the Association for receipt of notice or, if no such address was provided, at the recipient's Lot address in the Development.

10.14 No Enforcement Waiver. Failure to enforce a restriction in the past shall not, in and of itself, constitute a defense to any action brought against any Owner for violation of any restriction contained herein. Each Owner, by acceptance of a deed to a Lot in the Development, acknowledges that the enforcement of these restrictions may vary as a result of different Owners or Boards, changing conditions, or other reasons, and agrees that the failure of Declarant, any Owner or Board to enforce any particular restriction, even if such failure is for an extended period of time, shall not in any manner restrict the right of, or estop, any Owner or Board to enforce these restrictions at any future time.

10.15 Dispute Notification and Resolution Procedure (Declarant Disputes). Any disputes between the Association (or any Owners) and the Declarant or any director, officer, partner, employer, subcontractor or agent of the Declarant relating to this Declaration, the use or condition of the Association Property, and/or the construction and installation of any Improvements located thereon shall be subject to the following provisions:

(i) Notice: Any Person with a claim (the "Claimant") against the Declarant or any director, officer, partner, employer, subcontractor or agent thereof (collectively the "Declarant" for purposes of this section) shall notify the Declarant in writing of the claim, which writing shall describe the nature of the claim and the proposed remedy (the "Claim Notice").

(ii) Right to Inspect and Right to Corrective Action: Within a reasonable period after receipt of the Claim Notice, which period shall not exceed sixty (60) days, the Declarant and the Claimant shall meet at a mutually-acceptable place within the Development to discuss the claim. At such meeting or at such other mutually-agreeable time, Declarant and Declarant's representatives shall have full access to the Association Property that is subject to the claim for the purposes of inspecting the Association Property. The parties shall negotiate in good faith in an attempt to resolve the claim. If the Declarant elects to take any corrective action, Declarant and Declarant's representatives and agents shall be provided full access to the Development to take and complete corrective action.

(iii) Non-Binding Mediation: If the parties cannot resolve the claim pursuant to the procedures described in subparagraph (ii) above, the matter shall be submitted to non-binding mediation pursuant to the mediation procedures adopted by the American Arbitration Association or any successor thereto or to any other entity offering mediation services that is acceptable to the parties. No Person shall serve as a mediator in any dispute in which the Person has any financial or personal interest in the result of the mediation, except by the written consent of all parties. Prior to accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or prevent a prompt commencement of the mediation process.

Within ten (10) days of the selection of the mediator, each party shall submit a brief memorandum setting forth its position with regard to the issues that need to be resolved. The mediator shall have the right to schedule a pre-mediation conference and all parties shall attend unless otherwise agreed. The mediation shall be commenced within ten (10) days following the submittal of the memorandum and shall be concluded within fifteen (15) days from the commencement of the mediation unless the parties

The mediator has discretion to conduct the mediation in the manner which the mediator believes is most appropriate for reaching a settlement of the dispute. The mediator is authorized to conduct joint and separate meetings with the parties and to make oral and written recommendations for settlement. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the dispute, providing the parties agree and assume the expenses of obtaining such advice. The mediator does not have the authority to impose a settlement on the parties.

Evidence of anything said or of any admission made in the course of the mediation is not admissible evidence, and disclosure of any such evidence shall not be compelled in any civil action in which, pursuant to law, testimony can be compelled to be given. Unless the document provides otherwise, no document prepared for the purpose of, or in the course of, or pursuant to, the mediation, or copy thereof, is admissible in evidence; and disclosure of any such document shall not be compelled, in any civil action in which, pursuant to law, testimony can be compelled to be given.

The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including required traveling and other expenses of the mediator, and the expenses of any witnesses, or the cost of any proofs or expert advice produced at the direct request of the mediator, shall be borne equally by the parties unless they agree otherwise.

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

- 25.**

- (b) The referee shall be an attorney or retired judge unless the parties agree otherwise;
- (c) Any dispute regarding the selection of the referee shall be resolved by the entity providing the reference services or, if no entity is involved, by the court with appropriate jurisdiction;
- (d) The referee may require one (1) 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) The referee shall have the power to hear and dispose of motions in the same manner as a trial court judge;
- (g) The referee shall apply the rules of law, including the rules of evidence, unless expressly waived by both parties;
- (h) A stenographic record of the hearing shall be made, provided that the record shall remain confidential except as may be necessary for post-hearing motions and any appeals;
- (i) The referee's statement of decision shall contain findings of fact and conclusions of law to the extent applicable; and
- (j) The referee shall have the authority to rule on all post-hearing motions in the same manner as a trial judge.

If the Association and/or Owner has complied with the requirements of subparagraphs (i), (ii), (iii) and (iv) above and the Declarant denies any responsibility for the claim, accepts only partial responsibility, accepts responsibility but the parties cannot in good faith agree on an appropriate remedy or the Declarant has elected not to participate in the judicial reference proceeding because all necessary and appropriate parties will not participate, any party to the dispute may bring an action in any court of competent jurisdiction to resolve the dispute. The parties covenant that each shall forbear from commencing any litigation against the Declarant without complying with the procedures described in subparagraphs (i), (ii), (iii) and (iv) above. If the Association or any Owner breaches the foregoing covenant, Declarant may obtain an appropriate order compelling the Association and/or Owner to comply with the procedures described in subparagraphs (i), (ii), (iii) and (iv). The procedures set forth in subparagraphs (i), (ii), (iii) and (iv) above shall not apply to any action taken by the Association against Declarant for delinquent assessments, which shall be governed by Section 5.10. Furthermore, nothing herein shall prevent the Association or any Owner from commencing any legal action which in the good faith determination of the Board or Owner is necessary to preserve any Association's or Owner's rights under any applicable statute of limitations, provided that the Association or Owner shall take no further steps in prosecuting the action until it has complied with the procedures described in subparagraphs (i), (ii), (iii) and (iv).

Notwithstanding any other provision herein to the contrary, in any dispute between the Association and/or any Owner and the Declarant, each party shall bear its own attorneys' fees.

Any and all communications by and between the parties, whether written or oral, which are delivered by the parties or their attorneys or other representatives in an effort to settle the claim shall be considered communications undertaken in the course of effecting a settlement or compromise as such shall not be admissible as the admission on the part of any party or any representative or agent of that party to be utilized for any such purpose in any action or proceeding.

ARTICLE 11 - Annexation

Each Co-Declarant or their respective successors or assigns shall have the right, at its sole discretion and without the consent of any other Co-Declarant, to execute and record declarations of annexation annexing all or any portion of the property owned by it respectively, as shown in Exhibits A, B and C, as applicable, within the time periods authorized herein, provided the declaration of annexation does not materially alter any right or duty of any other Co-Declarant under this Declaration or materially alter any right or duty of the Owners in the annexed property to the detriment of any other Owners in the Development and does not result in an increase in the regular annual assessment attributable to each Lot in the Development in excess of twenty percent (20%) when combined with any proposed annexations by any Co-Declarant for the same assessment year without the approval of the Members under the provisions of Section 5.6 If such approval is required.

By:

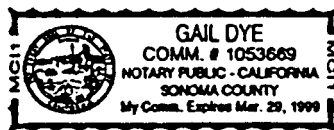
DAVID D. BROWN

04/12/76
TYPED BY: VAST-11 .REV. 371. 1025

STATE OF CALIFORNIA)
COUNTY OF Sonoma) ss.

On 4-30-96, before me, Gail Dye
personally appeared Ronald S. Hanks
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.

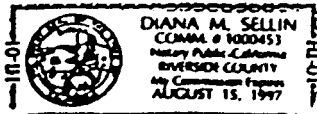


Gail Dye
Signature

STATE OF CALIFORNIA)
COUNTY OF Riverside) ss.

On May 21, 1996, before me, Diana M. Sellin, Notary Public
personally appeared David D. Brown
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.

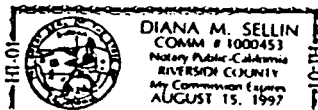


Diana M. Sellin
Signature

STATE OF CALIFORNIA)
COUNTY OF Riverside) ss.

on May 21, 1996, before me, Diana M. Sellin, Notary Public, personally appeared Ludie A. Brown, 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.

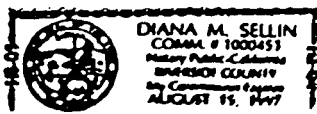


Diana M. Sellin
Signature

STATE OF CALIFORNIA)
COUNTY OF Riverside) ss.

on May 21, 1996, before me, Diana M. Sellin, Notary Public, personally appeared David D. Brown, 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.



Diana M. Sellin
Signature