



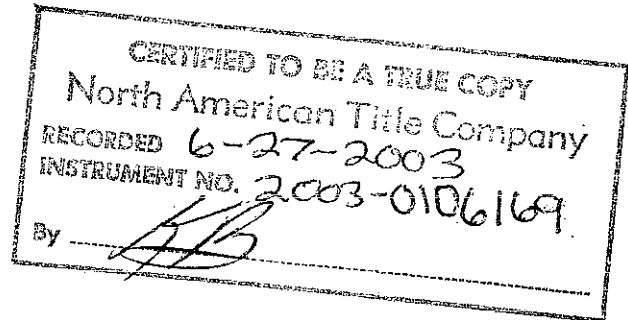
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The following information is provided to you in compliance with Senate Bill No. 1148 enacted by the California Legislature in September, 1999. That legislation requires the following disclosure to our clients receiving copies of recorded documents:

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525 University Avenue, Suite 705
Palo Alto, California 94301



DIABLO GRANDE

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR MASTER PLANNED COMMUNITY

THIS DECLARATION CONTAINS A BINDING ARBITRATION PROVISION IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT AND/OR JUDICIAL REFERENCE CLAUSE THAT APPLIES TO CONSTRUCTION DEFECT CLAIMS. ARBITRATION AND JUDICIAL REFERENCE BOTH INCLUDE A WAIVER OF THE CONSTITUTIONAL RIGHT TO A JURY. YOU MUST READ THE PROVISIONS CAREFULLY AND SHOULD CONSULT LEGAL COUNSEL WITH ANY QUESTIONS.

IF THIS DOCUMENT CONTAINS ANY RESTRICTION BASED ON RACE, COLOR, RELIGION, SEX, FAMILIAL STATUS, MARITAL STATUS, DISABILITY, NATIONAL ORIGIN, OR ANCESTRY, THAT RESTRICTION VIOLATES STATE AND FEDERAL FAIR HOUSING LAWS AND IS VOID, AND MAY BE REMOVED PURSUANT TO SECTION 12956.1 OF THE GOVERNMENT CODE. LAWFUL RESTRICTIONS UNDER STATE AND FEDERAL LAW ON THE AGE OF OCCUPANTS IN SENIOR HOUSING OR HOUSING FOR OLDER PERSONS SHALL NOT BE CONSTRUED AS RESTRICTIONS BASED ON FAMILIAL STATUS.

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DIABLO GRANDE
DECLARATION
OF COVENANTS, CONDITIONS & RESTRICTIONS
FOR MASTER PLANNED COMMUNITY

THIS DECLARATION, made on the date hereinafter set forth, by DIABLO GRANDE LIMITED PARTNERSHIP, a California limited partnership, hereinafter referred to as "Declarant," is made with reference to the following facts:

A. The Property: Declarant is the owner of property located in the County of Stanislaus ("County"), State of California, more particularly described on that certain Subdivision Map filed for record in the Office of the Recorder of Stanislaus County, California, on May 13, 2003, in Book 40 of Maps, pages 94 et seq., and further described in Exhibit "A," attached hereto.

B. Common Interest Development: Declarant intends to develop the property, which shall include commercial, residential and recreational components. The Project is a Common Interest Development within the meaning of California Civil Code § 1351(c), and other applicable provisions of the Davis-Stirling Common Interest Development Act.

C. Phased Project: The development shall be referred to as the "Project" as defined in section 1.51. The Project is expected to be developed in a number of phases. The Project is described in summary form in section 2.1.

D. General Plan of Improvement: Declarant intends by this document to impose upon the Project mutually beneficial restrictions under a general plan of improvement for the benefit of all of the Owners. Upon recordation of this Declaration, Phase I of this Project will be subject to this Declaration. Subsequent Phases will be subject to this Declaration upon the recording of a Declaration of Annexation applicable to each such Phase as provided in section 2.14. To the extent applicable, Annexation Property that is not so annexed will be subject to section 4.13 of this Declaration.

E. Relationship to Golf Club: Declarant intends to develop property adjacent to Common Area and Lots as a Golf Club. Declarant anticipates that the Golf Club will include, but not be limited to, two (2) eighteen hole golf courses, a driving range, putting green, golf cart paths, swimming pool, clubhouse, golf pro shop, locker room facilities, food and beverage facilities and other related facilities. Declarant is the present owner of the Golf Club and the Golf Club is not part of the Common Area or of the Project. The Golf Club is separate and distinct from the Association and the Project and is governed by its own rules, regulations and requirements. The Golf Club has rights to use portions of the Common Area pursuant to and in accordance with the terms and provisions contained in this Declaration and in each of the grant deeds by which Common Areas are conveyed to the Association. Neither the Association nor any Owner shall have any rights in or privileges to the Golf Club by virtue of this Declaration, membership in the Associations, or the location of the Golf Club. Membership in the Golf Club may be made available to Owners; however, no Owner shall be automatically entitled to a membership in the Golf Club, or any other private facility operated within the overall Project.

THE FOREGOING STATEMENTS ARE NOT MEANT TO BE A REPRESENTATION OR WARRANTY BY DECLARANT THAT ALL OR ANY PART OF THE GOLF CLUB WILL BE CONSTRUCTED OR OPERATED BY DECLARANT OR ANY OTHER PARTY.

NOW, THEREFORE, Declarant hereby declares that Phase I (and the property described as the Annexation Property to the limited extent described in Recital D) shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, sold, and improved, subject to the following declarations, limitations, covenants, conditions, restrictions and easements, all of which are imposed as equitable servitudes pursuant to a general plan for the development of the Project for the purpose of enhancing and protecting the value and attractiveness of the Project, and the Project, and every part thereof, in accordance with the plan for the improvements of the Project and the division thereof into Lots and Common Areas. All of the limitations, covenants, conditions, restrictions and easements shall constitute covenants which shall run with the land and shall be binding upon Declarant and its successors and assigns, and all parties having or acquiring any right, title or interest in or to any part of the Project.

ARTICLE I DEFINITIONS

1.1 "Annexation Property" shall mean and refer to any property described on Exhibit "A" that may be added to the Project and made subject to the Declaration by recording a Declaration of Annexation as provided in section 2.14.

1.2 "Articles" shall mean and refer to the Articles of Incorporation of the respective Associations, as amended from time to time.

1.3 "Assessment" shall mean that portion of the cost of maintaining, improving, repairing, operating and managing the Project which is to be paid by each Lot Owner as determined by the respective Associations, and shall include Regular Assessments, Special Assessments, Cost Center Assessments and Reimbursement Assessments unless otherwise stated.

1.4 "Assessment Lien" is defined in section 4.10C.

1.5 "Association(s)" shall mean and refer to either, or both, the Commercial Association or the Residential Association, hereinafter described.

1.6 "Board" or "Board of Directors" shall mean and refer to the governing body of the respective Associations.

1.7 "Budget" shall mean and refer to a pro-forma operating budget proposed by the Board of an Association, and shall include the Budgets prepared by Declarant and approved by the Department of Real Estate for use in connection with the offering of Lots for sale in the Project.

1.8 "Builder" shall mean and refer to an Owner who is designated as such by Declarant in writing delivered to the Residential Association, and who acquires Lots from Declarant for the purpose of building and selling homes.

1.9 "Building" shall mean and include any residential or commercial structure built within the Project.

1.10 "Bylaws" shall mean and refer to the Bylaws of the respective Associations, as amended from time to time.

1.11 "Commercial Area(s)" shall mean and refer to each of the Commercial Lots and Commercial Common Areas shown on Map.

1.12 "Commercial Association" shall mean and refer to the DIABLO GRANDE COMMERCIAL ASSOCIATION, a nonprofit mutual benefit corporation, the Members of which shall be the Owners of Commercial Lots in the Project.

1.13 "Commercial Common Area" shall mean and refer to all of the Commercial Area (excepting the Commercial Lots).

1.14 "Commercial Lot" shall mean and refer to the lots or parcels in the Commercial Area with the exception of the Commercial Common Area.

1.15 "Commercial Owner" shall mean and refer to the record holder(s) of title to a Commercial Lot in the Project.

1.16 "Common Areas" shall mean and refer to either or both of the Commercial Common Area and the Residential Common Area.

1.17 "Common Expenses" means and includes the actual and estimated expenses of the respective Associations, and any reasonable reserve as determined to be reasonable by the Board(s) and all sums designated Common Expenses by or pursuant to the Project Documents.

1.18 "Cost Center" shall mean one (1) or more areas, improvements, or facilities, located within the Project, the use or maintenance of which is substantially restricted to Owners of certain Lots, as specified in this Declaration, in a Supplemental Declaration, or Declaration of Annexation, where the expenses of operating, maintaining and replacing such areas, improvements or facilities are born solely or disproportionately by such specified Owners.

1.19 "Cost Center Assessment" shall mean the portion of Common Expenses, including operating and reserve funds, budgeted or allocated exclusively to any particular Cost Center.

1.20 "County" shall mean the County of Stanislaus, State of California.

1.21 "Declarant" shall mean and refer to Diablo Grande Limited Partnership, a California limited partnership, and any successor or assign that expressly assumes the rights and duties of the Declarant hereunder in a recorded written document. There may be more than one Declarant.

1.22 "Declaration" shall mean and refer to this Declaration, as amended or supplemented from time to time.

1.23 "Declaration of Annexation" shall mean any instrument recorded in the County which extends the provisions of this Declaration to any Annexation Property.

1.24 "Design Guidelines" shall mean the guidelines adopted initially by Declarant, and subsequently by the Design Review Committee as provided in section 7.14.

1.25 "Diablo Grande Design Review Committee" and "Design Review Committee" shall mean the Design Review Committee, for the Project, as described in section 7.14.

1.26 "Eligible Mortgages" shall mean Mortgages held by "Eligible Mortgage Holders."

1.27 "Eligible Mortgage Holder" shall mean a First Lender who has requested notice of certain matters from the Associations in accordance with section 9.6C.

1.28 "Eligible Insurer or Guarantor" shall mean an insurer or governmental guarantor of a First Mortgage who has requested notice of certain matters from the Associations in accordance with section 9.6C.

1.29 "First Lender" shall mean any person, entity, bank, savings and loan association, insurance company, or financial institution holding a recorded First Mortgage on any Lot.

1.30 "First Mortgage" shall mean and refer to any recorded Mortgage made in good faith and for value on a Lot with first priority over other Mortgages thereon.

1.31 "Foreclosure" shall mean and refer to the legal process by which the property of a borrower in default under a Mortgage is sold, and the borrower's interest in such property is sold, pursuant to California Civil Code § 2924a et seq., or sale by the Court pursuant to California Code of Civil Procedure § 725a et seq., and any other applicable law.

1.32 "Fuel Reduction Plan" shall mean and refer to the 'Fuel Reduction and Modification Plan' on file with the Stanislaus County Department of Planning and Community Development.

1.33 "Golf Club" shall mean the Legends West Club at Diablo Grande, a private facility which presently includes two (2) golf courses (the "RANCH" Course and the "LEGENDS WEST" Course), located in the vicinity of the Project as described on Exhibit "B" attached hereto. The Declarant may, at its discretion, in the future, include additional golf courses in the vicinity of the Project as part of the Golf Club. Also included as part of the Golf Club are the elements described in section 1.34. Membership and playing privileges in the Golf Club are currently open to the public, including Owners of Lots in the Project, upon terms and conditions established by the Golf Club Owner, and subject to membership policies and rules and regulations adopted by the Golf Club Owner. The Golf Club Owner reserves the right to make any golf course a "private course".

1.34 "Golf Club Owner" shall mean the owner(s) of the "Golf Club Property" or "Golf Course."

1.35 "Golf Club Property" shall mean and refer to the lands owned and operated by the Golf Club Owner which are described on Exhibit "B" attached hereto. Golf Club Property includes, without limitation, golf courses, golf practice facilities, clubhouse, tennis facilities, swimming pool, and related recreational and social facilities located within Golf Club Property. The Golf Club Property means property included from time to time in the Golf Club, consisting upon recordation of this Declaration of the property described in Exhibit "B", and including any land added to the Golf Club Property, and excluding any land removed from the Golf Club Property by Amended Subdivision Map, Certificate of Correction, lot line adjustment or record of survey which affects the boundaries of the Golf Club Property and described on an amendment to Exhibit "B" which is recorded by Declarant or the Golf Club Owner. The Golf Club Property is privately owned, and is not Common Area.

1.36 "Improvement(s)" shall mean and refer to everything constructed or installed on property subjected to this Declaration, including, without limitation, buildings, streets, fences, walls, paving, pipes, wires, grading, landscaping, and other works of improvement as defined in California Civil Code Section 3106.

1.37 "Lot" shall mean and refer to a separate interest, either residential or commercial, as defined in California Civil Code Section 1351, and shall include the Lots in Phase I as described in the Map, and any subsequently annexed Lots. If and when any condominium units are annexed to the Project, the Declaration of Annexation shall include appropriate amendments to include condominium units as separate interests in the Project, and the reference herein to Lots shall be deemed to refer to such condominium units unless the context otherwise requires, or a Declaration of Annexation provides otherwise.

1.38 "Manager" shall mean and refer to the manager, management company or managing agent employed by either Association pursuant to the provisions of section 5.2B.

1.39 "Map" shall mean and refer to that Subdivision Map described in Clause A above, and any subsequently recorded final map, amended map, or certificate of correction, including a map described in a Declaration of Annexation.

1.40 "Member" shall mean and refer to a person entitled to membership in an Association as provided herein.

1.41 "Mortgage" shall mean a mortgage, deed of trust, assignment of rents, issues and profits or other proper instrument (including, without limitation, those instruments and estates created by sublease or assignment) given as security for the repayment of a loan or other financing which encumbers a Lot, made in good faith and for value.

1.42 "Mortgagee" shall mean the Person who is a holder of a Mortgage, and shall include the beneficiary of a deed of trust.

1.43 "Mortgagor" shall mean a Person who encumbers his Lot with a Mortgage, and shall include the trustor of a deed of trust.

1.44 "Notice and Hearing" shall mean the procedure by which an Owner is given notice of an alleged violation of the Project Documents and the opportunity for a hearing before a Board.

1.45 "Notice of Delinquent Assessment" shall mean a notice of delinquent assessment filed by the Association for a delinquent Assessment pursuant to section 4.10C.

1.46 "Owner" or "Owners" shall mean and refer to the record holder or holders of title to a Lot in the Project. This shall include any person having a fee simple title to any Lot, but shall exclude persons or entities having any interest merely as security for the performance of an obligation. If a Lot is sold under a contract of sale and the contract is recorded, the purchaser rather than the fee owner shall be considered the "Owner" from and after the date the respective Association receives written notice of the recorded contract.

1.47 "Party Fence" shall mean any portion of a fence or retaining wall which is constructed and placed upon the common boundary line between two contiguous Lots.

1.48 "Person" means a natural person, a corporation, limited liability company, a partnership, trust, or other legal entity.

1.49 "Phase" means any Lots and/or Common Area which are made subject to this Declaration by the recording of this Declaration or by the recording of a Declaration of Annexation.

1.50 "Phase I" of the Project includes one hundred and eighty-seven (187) Residential Lots, Residential Common Area, Commercial Lots, Commercial Common Area, and open space areas, as described in Exhibit "A" attached hereto.

1.51 "Project" shall initially mean and refer to all of the real property described on the Map and in Exhibit "A" as Phase I and, all Improvements thereon, which are subject to this Declaration and shall mean any subsequent Phase which may become annexed into the Project in accordance with section 2.14, and thereby become subject to the Declaration.

1.52 "Project Documents" shall mean this Declaration, as amended from time to time, the exhibits, if any, attached hereto, together with the other basic documents used to create and govern the Project, including the Map, the Articles, and the Bylaws (but excluding unrecorded Rules adopted by the Board of either Association.

1.53 "Public Report" shall mean a Final Subdivision Public Report issued by the Department of Real Estate of the State of California for one or more phases of the Project.

1.54 "Regular Assessments" shall mean and refer to a Regular Assessment determined and levied pursuant to section 4.3A of this Declaration.

1.55 "Reimbursement Assessments" shall mean and refer to an Assessment levied by the Board against an Owner to reimburse the Association for costs and expenses incurred in bringing the Owner and/or his or her Lot into compliance with the provisions of this Declaration, determined and levied pursuant to section 4.3C of this Declaration.

1.56 "Residence" shall mean a dwelling structure situated upon a Lot in the Residential Area.

1.57 "Residential Area" shall mean and refer to each of the Residential Lots and Residential Common Areas shown on the Map.

1.58 "Residential Association" shall mean and refer to the DIABLO GRANDE RESIDENTIAL ASSOCIATION, a California nonprofit mutual benefit corporation, the Members of which shall be the Owners of residential Lots in the Project.

1.59 "Residential Common Area" shall mean and refer to all of the Residential Area (excepting the Residential Lots).

1.60 "Residential Lot" shall mean and refer to all of the Lots in a Residential Area, excepting the Residential Common Area.

1.61 "Residential Owner(s)" shall mean and refer to the record holder(s) of title to a Residential Lot in the Project.

1.62 "Riparian Areas" shall mean and refer to creek areas and abutting banks, including Salado Creek, North Salado Creek, and other lesser wetlands.

1.63 "Rules" shall mean and refer to the rules adopted from time to time by either Association pursuant to section 5.2C and the Design Guidelines.

1.64 "Special Assessment" shall mean and refer to a Special Assessment determined and levied pursuant to section 4.3B of this Declaration.

1.65 "Supplemental Declaration" shall mean a Declaration, or similar instrument, which is recorded in conjunction with the addition of Annexation Property to the Project and which makes certain modifications to the Declaration which are necessary to accommodate the annexation, as provided in section 2.14A(2).

1.66 "Utility Facilities" shall mean and refer to the following utility systems and facilities within the Project: sanitary sewer, drainage, storm drain systems, retention ponds, water, electric, gas, television signal receiving, telephone equipment, and cables and lines.

**ARTICLE II
DESCRIPTION OF PROJECT, DIVISION OF PROPERTY,
AND CREATION OF PROPERTY RIGHTS**

2.1 Description of Project. The Project is a master planned community, including Residential Areas, Commercial Areas, and open space areas. Phase I of the Project includes one hundred and eighty-seven (187) Residential Lots, Residential Common Area, Commercial Lots, Commercial Common Area, and open space areas, as described in Exhibit "A" attached hereto. Subsequent Phases, if and when annexed pursuant to section 2.14, may include additional Residential Areas, Commercial Areas, and open space areas. ANNEXATION AND DEVELOPMENT OF SUBSEQUENT PHASES IS INTENDED, BUT NOT ASSURED. ONLY THOSE LOTS AND COMMON AREA PARCELS INCLUDED IN A PHASE FOR WHICH A PUBLIC REPORT HAS BEEN ISSUED BY THE DEPARTMENT OF REAL ESTATE OF THE STATE OF CALIFORNIA ARE ASSURED TO BE DEVELOPED AND OFFERED FOR SALE. Future annexed property may include detached housing and Lots, attached housing and Lots, and may include sub-associations under the jurisdiction of the Residential Association or Commercial Association. Two existing Golf Clubs are located near the Project, and may share common boundaries with portions of the Project. Other golf courses may be developed in the future and may share common boundaries with portions of the Project. The Golf Clubs are intended to be privately owned, and are subject to this Declaration to a limited extent, only as provided in this Declaration.

2.2 Division of Property. The Project is hereby divided as follows:

A. Commercial Area. The Commercial Area consists of Commercial Lots and Commercial Common Area.

B. Commercial Lots. Each of the Commercial Lots as designated in this Declaration or a Declaration of Annexation as Commercial Lots.

C. Commercial Common Area. That portion of the Commercial Area not including the Commercial Lots.

D. Residential Area. The Residential Area consists of the Residential Lots and the Residential Common Area.

E. Residential Common Area. The portions of the Residential Area that are not included as Residential Lots, unless a Declaration of Annexation or a Map ascribes some other designation for such portion of the Residential Area.

F. Residential Lots. The Residential Lots are the Lots designated on a Map for a Residential Area that are not Residential Common Area or are not given some other designation in this Declaration, in a Declaration of Annexation, or on the Map.

G. Ownership of Common Area. Fee title to the Residential Common Area in each Phase shall be conveyed to the Residential Association prior to the conveyance of the first Residential Lot in that Phase to an Owner. Fee title to the Commercial Common Area in each Phase shall be conveyed to the Commercial Association prior to the conveyance of the first Commercial Lot in that Phase to an Owner.

2.3 Party Fences. If a Residence Lot adjoins a Lot owned by Declarant or a Builder, after obtaining approval pursuant to section 7.14, the Owner of such a Residence Lot may construct a Party Fence along or on the common boundary line between the Owner's Lot ("First Lot"), and Declarant's or Builder's Lot ("Second Lot"). Once the Party Fence has been constructed, each Owner of a Lot upon which a Party Fence is situated shall own to the center of the Party Fence and shall share equally the responsibility and costs of maintenance, repair and replacement of such Party Fence. Prior to that time, the Owner who constructed the Party Fence shall own it and bear the responsibility and costs of maintenance, repair and replacement of such Party Fence. If a dispute arises between the Owners of the Party Fence, and each Owner acquired title to his or her Lot from Declarant or a Builder, Declarant or the Builder, as the case may be, shall have the right to enter and adjust the fence as Declarant or the Builder, as the case may be, determines appropriate to resolve the dispute until Declarant or the Builder no longer owns any Lot in the Project. At such time, with respect to a Residential Lot, as neither Declarant nor a Builder owns the Lot which adjoins the particular Residential Lot, the construction of any Party Fence on the boundary of a Residential Lot that adjoins another Residential Lot that is not owned by Declarant or a Builder must be agreed upon by the Owners of the two Residential Lots, subject to approval of the Residential Design Committee pursuant to section 7.14, and the costs of construction, installation, maintenance, repair and replacement shall be shared equally by the Owners of the two Residential Lots on whose boundary the Party Fence is constructed. If the Owners of the two adjoining Residential Lots cannot agree as to the design and materials of a Party Fence between their Residential Lots, the Residential Design Committee shall have the authority to designate the appropriate Party Fence for installation by the Owners of the Residential Lots involved. Each Owner of a Residential Lot shall have an easement over and across any adjoining Residential Lot which is not owned by Declarant or a Builder for reasonable access for construction, maintenance, repair and replacement of a Party Fence, provided that such access does not unreasonably disturb or injure the Owner or occupants of the adjoining Residential Lot. If the Owners of two adjoining Residential Lots cannot agree as to the obligations to maintain a Party Fence, the dispute shall be referred to the Residential Design Committee for resolution. If the matter cannot be resolved by the Residential Design Committee, the dispute shall be resolved by arbitration pursuant to section 9.14.

2.4 Environmental Easement. There is hereby reserved for the benefit of Declarant, the Associations, and their respective Invitees, a non-exclusive easement on, over and across all portions of the Project, for the purposes of taking any action necessary to effect compliance with environmental rules, regulations, and procedures promulgated or instituted from time to time by the Board of the Association, or by any governmental entity. The easement includes, without limitation, the right to implement erosion control procedures and practices, the right to maintain any and all wetland areas on the Project, the right to drain standing water and the right to do whatever is necessary to comply with federal, state or local laws governing toxic or hazardous wastes.

2.5 Golf Club Easements. The easements and rights specified in this section 2.5 are hereby created for the benefit of the Golf Club, Golf Club Owner and all invitees of Golf Club Owner whose presence at the Golf Club is at the request of or approved by Golf Club Owner, and shall exist whether or not such easements are also set forth in individual grant deeds conveying Lots, Common Area or the Golf Club. All easements shall be appurtenant to the Golf Club Property and shall be binding upon the successors in interest and assigns of the owners of both the dominant and servient tenements. No easement set forth in this section shall be construed to act as a limitation upon the ability of Golf Club or Golf Club Owner to hold tournaments from time to time and to provide whatever temporary services and facilities are deemed appropriate by Golf Club Owner in connection with such tournaments, including, but not limited to, parking and storage in Common Areas. As full and complete compensation for use by Golf Club Owner and its invitees, and maintenance by the Associations of the servient tenements, the Club Owner shall pay to the Associations a share of the Associations' costs and expenses as set forth in section 5.1 of this Declaration.

A. Golf Club Overspray and Intrusion Easement. There is reserved for the benefit of the Golf Club, the Golf Club Owner, and its Invitees a non-exclusive right and easement appurtenant to the Golf Club for purposes of overspray in connection with the watering of the golf course, for the intrusion of golf balls from the fairways, roughs and greens thereof and for the retrieval of golf balls. Any person or entity for whose benefit the right and easement for overspray and intrusion is reserved shall not be liable to any Owner or the Associations for any damage to person or property occasioned by such overspray or intrusion unless occasioned by the intentional act of such person. The rights and easements reserved by this section shall be for the benefit of Declarant and the Club Owner and for the benefit of their employees, contractors, agents, guests, invitees, licensees or members (collectively referred to as "Beneficiaries"). Each Owner of a Lot acknowledges and agrees that owning property adjacent to a golf course has benefits as well as detriments and that the detriments include the risk of damage to property or injury to persons and animals from golf balls or from players retrieving golf balls. Each Owner hereby assumes such risks, releases Declarant and the Beneficiaries from and agrees to indemnify Declarant and the Beneficiaries and hold Declarant and the Beneficiaries harmless from and against any and all liability for damage or injury caused by golf balls which intrude in, on or around, the Owner's Lot or Residence, and to release the Beneficiaries from liability for such damage or injury.

B. Utility Easement. The Golf Club shall have and is hereby granted a non-exclusive easement over, under, through and across the Common Areas for the purposes of installing, maintaining, repairing and replacing, and using master television antenna or cable systems, wireless communication systems, security and similar systems, and all permanent and temporary utilities, including, but not limited to, sewers, drainage systems, storm drainage systems, retention ponds, electrical, gas, telephone, and water necessary or appropriate for the development or operation of the Golf Club, including tournaments held at the Golf Club.

C. Ingress and Egress Easement. The Golf Club shall have and is hereby granted a non-exclusive appurtenant easement over and across the Common Area for the purposes of ingress to and egress from the Golf Club by golf course maintenance vehicles, and vehicles, pedestrians and bicycles using or visiting the Golf Club. The Associations may not impose any restrictions, limitations or requirements for entry into the Golf Club which are not imposed and enforced against all Owners and Invitees. If vehicle passes are issued to the Associations' Members, they must be made available to the owner of the Golf Club and its members on the same terms as they are made available to Associations' members.

D. Easements for 10' Minimum Strip Over Lots. The Golf Club shall have and is hereby granted a non-exclusive appurtenant easement over and across the first ten (10) feet of any Lot which shares a boundary with the Golf Club and which is not fenced, for the following purposes: (i) use and enjoyment of the golf cart paths and golf course maintenance vehicles and vehicles and pedestrians using the golf course located within the Golf Club, provided, however, no golf cart path shall be constructed on any portion of a Lot; (ii) constructing, maintaining, repairing and replacing pedestrian and golf cart paths and directional signs related to the golf course located within the Golf Club; (iii) maintaining any lake, pond, wetland area, waterway, or other body of water and mowing and removing unsightly brush; and (iv) permitting registered golf course players and their caddies to enter to retrieve golf balls in accordance with the rules of the game of golf (any such entry shall be limited to pedestrian access for the minimum period of time required to retrieve golf balls).

E. Easements to Facilitate Tournaments. The Golf Club shall have and is hereby granted a non-exclusive easement over and across the Common Area appurtenant to the Golf Club for all purposes reasonably necessary to hold and conduct tournament play at the Golf Club, including, without limitation, ingress and egress by vehicular and pedestrian traffic, parking, utility services, directional signs, traffic control and other related uses. During such periods, Golf Club shall have the right to take all reasonable actions which are appropriate for holding such an event. Golf Club is solely responsible for all additional costs incurred as a result of the tournament and shall repair any damage caused to the Common Area as a result of the tournament. The Associations shall have no right to prohibit or impair the ability of the Golf Owner to take any and all reasonable actions which are appropriate for holding a tournament.

F. Additional Easements. The Golf Club and its duly authorized agents and representatives shall have a non-exclusive right and easement as is necessary or appropriate to the exercise of any rights granted to Golf Club or the Golf Club Owner by this Declaration, including the right to enter upon Lots and Common Area, subject to the limitations contained in this Declaration.

2.6 Golf Club Sign Easements. The Golf Club shall have and is hereby granted a non-exclusive easement over and across the Common Areas appurtenant to the Golf Club for the purposes of locating, establishing, maintaining, repairing, replacing and lighting all of its signs permitted pursuant to section 7.8 of this Declaration.

2.7 Right to Photograph. Declarant and the Golf Club Owner each hereby reserves a non-exclusive easement and right in gross in display, use and distribute for any and all purposes photographs, video recording and similar reproductions of all Residences and Improvements constructed anywhere in the Project.

2.8 Government Entity Easements. All local governmental entities, agencies and public utilities and their agents shall have non-exclusive easements over the Common Areas for the purposes of performing their duties within the Project.

2.9 Parking. The Board of each respective Association, or a committee designated by the Board, shall regulate and control the use of any unassigned parking spaces in the area over which that Association has jurisdiction and control. The Associations, Board or committee may from time to time assign or reassign the exclusive right to use Common Area parking spaces to particular Lots.

2.10 Non-Severability. The interest of each Owner in the use and benefit of the Common Area shall be appurtenant to the Lot owned by the Owner. No Lot shall be conveyed by an Owner separately from the appurtenant interest in the Common Area. Any conveyance of the Lot shall automatically transfer the right to use the Common Area without the necessity of express reference in the instrument of conveyance.

2.11 Rights of Entry and Use. The Lots and Common Area shall be subject to the following rights of entry and use:

A. The right of each respective Association's agents or employees to enter any Lot to perform any maintenance which the Associations are authorized or required to perform, and/or to cure any violation of this Declaration or the Bylaws, provided that the Owner has received notice and a hearing as required by the Bylaws (except in the case of an emergency, when no such notice shall be required) and the Owner has failed to cure the violation or take steps necessary to cure the violation within thirty (30) days after the finding of a violation by the Association;

B. The access rights of each respective Association to maintain, repair or replace improvements or property located in the Common Areas;

C. The rights of the Owners, the Associations, and the Declarant to install, maintain, repair or replace utilities;

D. The encroachment easements described in section 9.5;

E. The easements and rights reserved to Declarant or otherwise granted in this Declaration, including the rights of the Declarant during the construction and sales period as described in section 9.8. Declarant shall have, and expressly reserves easement rights over, across and under the Common Areas for the purposes of reasonable ingress and egress to and from the Project, until all Annexation Property has been annexed to the Project, and all Improvements have been completed;

F. The rights of Owners to make improvements or alterations authorized by California Civil Code § 1360(a)(2), subject to the provisions of section 7.14 to the extent applicable;

G. The easements shown on the Map;

H. The rights of Residential Owners to non-exclusive easements for ingress, egress, use and enjoyment of the Residential Common Area which shall be appurtenant to and shall pass with the title to every Residential Lot; and

I. The rights of Commercial Owners to non-exclusive easements for ingress, egress, use and enjoyment of the Commercial Common Area, which shall be appurtenant and shall pass with title to every Commercial Lot.

2.12 Partition Prohibited. The Common Areas shall remain undivided as set forth above. Except as provided by California Civil Code § 1359 (if and when applicable) or authorized under section 8.2, no Owner shall bring any action for partition, it being agreed that this restriction is necessary in order to preserve the rights of the Owners with respect to the operation and management of the Project. Judicial partition by sale of a single Lot owned by two (2) or more persons and division of the sale proceeds is not prohibited hereby, but partition of title to a single Lot is prohibited.

2.13 Reservation of Easements; Right to Limit Access. The Boards of the respective Associations, acting on behalf of their Owners, shall have the power, except as otherwise prohibited or limited by law or regulations of any governmental body, to limit access to their respective Residential Areas or Commercial Areas at night or at other appropriate times, by locking gates or by any other reasonable means, limiting access to their respective Residential Areas or Commercial Areas to Residential Owners or Commercial Owners, their tenants and guests. However, the foregoing shall be subject to the rights of the Golf Club Owner as herein stated.

2.14 Annexation of Additional Property. Additional property may be annexed to and become subject to this Declaration by any of the following methods set forth in this section. Upon annexation, the additional property shall become subject to this Declaration without the necessity of amending individual sections hereof.

A. Annexation Pursuant to Plan. The property described in Exhibit "A" as the "Annexation Property" may be annexed to and become a part of the Project, as additional Phases subject to this Declaration, and subject to the jurisdiction of the respective Associations, without the assent of the Associations or their Members, on condition that:

(1) **Plan Approved.** The annexation and development of additional Phases shall be in accordance with a plan of development approved by the Department of Real Estate of the State of California.

(2) **Declaration of Annexation.** A Declaration of Annexation shall be recorded covering the applicable portion of the Annexation Property to be annexed. Said Declaration and/or a Supplemental Declaration may contain such complementary additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the annexed Phase and as are not inconsistent with the scheme of this Declaration. Declarant reserves the right to change the order of Phases and the number and description of Lots in each Phase and is not bound to annex Phases in any particular order, or at all. Each Declaration of Annexation shall require the payment by the Declarant to the respective Associations, concurrently with the closing of the escrow for the first sale of a Lot in an annexed Phase, of appropriate amounts for reserves for replacement or deferred maintenance of Common Area improvements in the annexed Phase necessitated by or arising out of the use and occupancy of any Lots under a rental program conducted by the Declarant which has been in effect for a period of at least one (1) year as of the date of closing of the escrow for the first sale of a Lot in the annexed Phase.

B. Annexation Pursuant to Approval. Upon approval in writing of the Associations, pursuant to vote or written consent of a two-thirds (2/3) majority of the voting power of their Members, other than the Declarant and the approval of Eligible Mortgage Holders as may be required under section 9.6D, the owner of any property other than Annexation Property who desires to add such property to the scheme of this Declaration and to subject it to the jurisdiction of the Associations may file of record a Declaration of Annexation in the manner described in section 2.14A.(2).

C. Effect of Annexation; Assessments. Upon the recordation of a Declaration of Annexation, the Lots and Owners in the annexed Phase shall have all of the rights and easements described in this Declaration, and the Lots and Owners in the Project prior to the annexation shall have all of the easements described in this Declaration as though the annexed Phase were initially part of the Project. Assessments collected from Owners in the Project may be expended by the Associations without regard to the particular Phase from which such Assessments came.

D. Quality of Construction. Future improvements to the Project are required to be consistent with initial improvements in terms of structure, type and quality of construction.

E. Failure to Annex. If any remaining portion of the Annexation Property is not annexed as provided above and that remaining portion of Annexation Property requires ingress and egress access over private streets located within the Project and access to and use of common utilities in the Project, easements shall exist over the Project private streets, sidewalks and pathways for reasonable vehicular and pedestrian traffic and reasonable use of the common utilities within the Project for such portions of the Annexation Property, provided, however, that such portions of the Annexation Property (and the Owner(s) thereof) shall be obligated to pay their equitable share of the cost of maintenance and repair of said private streets and utilities, and shall be subject to a lien or liens for said maintenance and repair costs, as provided in section 4.13 hereof.

F. Right of Successor Declarant to Annex. The right of unilateral annexation provided for in section 2.14A constitutes a covenant running with the land, and as such is enforceable by any successor or assignee of Declarant who acquires any part of the Annexation Property, and who assumes the role of Declarant as provided in section 1.21.

G. Establishment of Cost Centers. One or more Cost Centers may be designated by Declarant in a Declaration of Annexation or Supplemental Declaration, in connection with the addition of Annexation Property to the Project. The allocation of costs of operating, maintaining and replacing Cost Centers and the facilities therein shall be as provided in the Supplemental Declaration, or Declaration of Annexation.

2.15 Reservation of Easements. Upon annexation of subsequent Phases pursuant to section 2.14, the Annexation Property shall be made subject to the terms of this Declaration and become subject to the jurisdiction of the Association, and Declarant reserves to itself, its successors and assigns, the right to, and agrees that it will, grant to the Owners of Lots in the Annexation Property, nonexclusive easements for ingress and egress and construction activities over the Common Areas of Phase I. Declarant further agrees that it will reserve to itself, its successors and assigns, the right to grant, and covenants and agrees that it will grant, to the Owners of Lots in Phase I and in all previously annexed Phases, nonexclusive easements for ingress and egress over the Common Areas of each subsequently annexed Phase.

2.16 Lien Claims. The Commercial Area(s) and the Residential Area(s) are separate legal parcels, and no lien filed against one (1) such parcel shall have any legal affect on the other parcel. If, however, a lien claim should (erroneously) be filed against one Lot or Area, as a result of a claim against the other Lot or Area, the Owner(s) (or the Association, as the case may be) shall immediately, and at its/their expense, do whatever is required to remove the lien claim from the area against which it was erroneously filed.

2.17 Right to Deannex. Notwithstanding any other provisions of this Declaration or any declaration of annexation, notice of addition of property, or amendments or supplements to this Declaration as may be hereinafter filed of record to effect an annexation of property under this Article, the Declarant shall have the right at any time after such annexation but before the close of escrow on the sale under the authority of a Public Report to an Owner other than the Declarant of the first Lot within the property so annexed, to deannex such property or any portion thereof by filing of record a notice of deannexation (or such other instrument as may be acceptable for recordation) describing the property to be so deannexed, and stating that such deannexation is undertaken in accordance with the terms and conditions of this section 2.17. Any such deannexation shall be effective upon the recordation of such

notice or other instrument, and such notice or other instrument need only be executed by the Declarant. In any case where Declarant has sold and closed escrow on the sale of a Lot under authority of a Public Report, or Declarant has exercised any Association vote with respect to the Phase, or Assessments have commenced on any portion of the Phase, or the Associations has made any expenditures or incurred any obligations with respect to any portion of the Phase, Declarant's right to deannex a portion of the Project shall be valid only with the approval, by vote or written consent, of a majority of the Owners other than Declarant, and the prior written consent of the Real Estate Commissioner if and as required under California Business and Professions Code § 11018.7. Such deannexation shall not in such case relieve Declarant from the obligation to continue to pay its equitable share of the cost of maintenance and repair of the private streets and to continue to be subject to liens as provided in section 4.13. The intent and purpose of this deannexation clause is to permit the Declarant to revise the phasing schedule, as necessary to respond to construction and sales schedules, and, if necessary, to meet FNMA pre-closing requirements. Any property that is deannexed under this clause shall be included in an amended phasing schedule, and shall be subsequently re-annexed pursuant to the revised phasing schedule.

2.18 All Easements Part of Common Plan. Whenever any easements are reserved or created or are to be reserved or created herein, such easements shall constitute equitable servitudes for the mutual benefit of all property in the Project, even if only certain Lots are specifically mentioned as subject to or benefiting from a particular easement, and when easements referred to herein are subsequently created by grant deeds, such easements are part of the common plan created by this Declaration for the benefit of all property Owners within the Project. The easements and rights specified in this Article shall exist whether or not they also are set forth in individual grant deeds to Lots. All easements shall be binding upon the successors in interest and assigns of the Owners of both dominant and servient tenements.

2.19 Golf Club Property. The Golf Club Property is not Common Area of the Project and will be owned and operated by a third party, the Golf Club Owner. The Golf Club Owner has the right to establish the requirements for using the Golf Club Property, and the ownership of a Lot in the Project does not automatically entitle an Owner to use the Golf Club Property. The Golf Club Owner, and the employees, agents, contractors and designees of the Golf Club Property Owner, and the persons permitted to use the Golf Club Property by the Golf Club Owner, and their guests (regardless of whether such persons or Owners or Members) shall at all times have a right and non-exclusive easement of access, and use over all roadways and private streets within the Project, whether by automobile, golf cart or other means, which access is reasonably necessary to travel to and from the entrances to the Project, and to and from the Golf Club Property. Without limiting the generality of the foregoing, persons who are permitted to use the Golf Club Property and permitted members of the public should have the right to park their vehicles on the private streets located within the Project at reasonable time before, during, and after golf tournaments, and other similar functions held by or at the Golf Club Property.

It is the Declarant's intention that the Associations and the Owner(s) of the Golf Club Property cooperate to the maximum extent possible in the operation of the Project and the Golf Club Property. Each shall reasonably assist the other in upholding the Project standards as set from time to time. The Associations shall have no power to promulgate rules or regulations affecting activities on or use of the Golf Club Property without the prior written consent of the Golf Club Owner. No amendments may be made to provisions of this Declaration which amendments would adversely affect the Golf Club Owner, or the Golf Club Property, or access to the Golf Club Property without the prior written consent of the Golf Club Owner.

ARTICLE III
ASSOCIATION, ADMINISTRATION, MEMBERSHIP AND VOTING RIGHTS

3.1 Commercial Association to Manage Commercial Areas. The management of the Commercial Area shall be vested in the Commercial Association in accordance with its Bylaws. The Owners of all the Commercial Lots covenant and agree that the administration of the Commercial Area shall be in accordance with the provisions of this Declaration and the Articles and Bylaws of the Commercial Association.

3.2 Residential Association to Manage Residential Areas. Except as provided in sections 4.11 and 5.1, the management of the Residential Area shall be vested in the Residential Association in accordance with its Bylaws. The Owners of all the Residential Lots covenant and agree that the administration of the Residential Area shall be in accordance with the provisions of this Declaration, and the Articles and Bylaws of the Residential Association.

3.3 Membership. The Owner of a Lot shall automatically, upon becoming the Owner of same, be a Member of the Association having jurisdiction and control over the Lot, and shall remain a Member thereof until such time as his or her ownership ceases for any reason, at which time his/her membership in the Association shall automatically cease. Membership shall be held in accordance with the Articles and Bylaws of the respective Association.

3.4 Transferred Membership. Membership in the respective Associations shall not be transferred, encumbered, pledged, or alienated in any way, except upon the sale or encumbrance of the Lot to which it is appurtenant, and then only to the purchaser, in the case of a sale, or Mortgagee, in the case of an encumbrance of such Lot. On any transfer of title to an Owner's Lot, including a transfer on the death of an Owner, membership passes automatically with title to the transferee. A Mortgagee does not have membership rights until it obtains title to the Lot by Foreclosure or deed in lieu of Foreclosure. Any attempt to make a prohibited transfer is void. No Member may resign his or her membership. Upon notice of a transfer, the Associations shall record the transfer on its books.

3.5 Membership and Voting Rights. Membership and voting rights for each of the Associations shall be as set forth in their respective Bylaws.

3.6 Association Advisory Committee. An Advisory Committee of six (6) Members, three (3) of whom shall be appointed by the Board of the Residential Association and three (3) of whom shall be appointed by the Board of the Commercial Association, shall meet from time to time, at the request of the Board of either Association, to discuss matters of joint or common interest. The Advisory Committee shall render non-binding advisory opinions and recommendations to the two Associations, based upon a majority vote of the Advisory Committee (four (4) votes out of six (6) votes).

ARTICLE IV
ASSESSMENTS AND LIENS

4.1 Creation of the Lien and Personal Obligation of Assessments.

A. Covenant to Pay. The Declarant, for each Lot owned within the Project, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees:

(1) To pay Regular Assessments, Cost Center Assessments, Special Assessments and Reimbursement Assessments to the Association having jurisdiction over the subject Lot, as such Assessments are established and collected as hereinafter provided, and

(2) To allow the Associations to enforce any Assessment Lien established hereunder by nonjudicial proceedings under a power of sale or by any other means authorized by law.

B. Assessment Lien and Personal Obligation. The Regular Assessments, Cost Center Assessments and Special Assessments, together with interest, costs and reasonable attorneys' fees, shall be a charge on the Lot, and shall be a continuing lien upon the Lot against which each such Assessment is made, the lien to become effective upon recordation of a Notice of Delinquent Assessment. Each such Assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the Assessment fell due. No Owner of a Lot may exempt himself or herself from liability for his/her contribution toward the Common Expenses by waiver of the use or enjoyment of any of the Common Areas or by the abandonment of his/her Lot. The interest of any Owner in the amounts paid pursuant to any Assessment upon the transfer of ownership shall pass to the new Owner. Upon the termination of these covenants for any reason, any amounts remaining from the collection of such Assessments after paying all amounts properly charged against such Assessments shall be distributed to the then-Owners on the same pro-rata basis upon which the Assessments were collected.

4.2 Purpose of Assessments. The Assessments levied by the respective Associations shall be used exclusively to promote the economic interests, recreation, health, safety, and welfare of the residents in the Project, and to provide insurance and maintenance of the Common Areas for the common good of the Project.

4.3 Assessments.

A. Regular Assessments. The Board of each Association shall annually establish and levy Regular Assessments in an amount that the Board estimates will be sufficient to raise the funds needed to perform the duties of the Associations during each fiscal year.

The Regular Assessment shall include a portion for reserves in such amounts as the Board in its discretion considers appropriate to meet the costs of the future repair, replacement or additions to the major improvements and fixtures that the Associations are obligated to maintain and repair. 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 officer who is not a member of the Board and a member of the Board, shall be required in order to withdraw monies from the reserve account. Reserve funds may not be expended for any purpose other than repairing, restoring, maintaining or replacing the major components that the Associations are obligated to maintain without the consent of Owners holding a majority of the voting power either at a duly held meeting or by written ballot.

B. Cost Center Assessments. The Board of each Association may levy a Cost Center Assessment for Common Expenses, including operating and reserve funds, budgeted or allocated exclusively to any particular Cost Center. The Declaration of Annexation or Supplemental Declaration covering a Phase or Lots to be included within a Cost Center, shall:

(1) identify the Cost Center, if existing, or describe the Cost Center, if proposed;

(2) identify Lots, the Owners of which are entitled to use the facilities of the Cost Center and/or which are obligated to bear the exclusive or disproportionate share of the cost of operation, maintenance and replacement of the Cost Center facility;

(3) specify the Common Expenses comprising the Cost Center Assessment Component attributable to such Cost Center Assessment Components. Assessments shall be levied against Owners of Lots in the first Phase, as provided in the budgets on file with the Department of Real Estate. Thereafter, as Cost Center Assessment Components commence with respect to each Phase, the Assessments shall be adjusted in accordance with the budgets approved by the Boards of the Associations from time to time, and subject to the limitations imposed by the maximum range of Assessments disclosed in all Public Reports for the Project.

C. Special Assessments. The Board of each Association, at any time, may levy a Special Assessment in order to raise funds for unexpected operating or other costs, insufficient operating or reserve funds, or such other purposes as the Board in its discretion considers appropriate. Special Assessments shall be allocated among the Lots in the same manner as Regular Assessments.

D. Reimbursement Assessments. A Board of an Association may levy a Reimbursement Assessment against a Member to reimburse the Association for costs incurred in bringing the Member and his/her Lot into compliance with the provisions of the Project Documents in the amount required to reimburse the Association for the actual costs and expenses incurred and the amounts incurred to enforce the Associations rights under this Declaration as are then permitted by law.

4.4 Restrictions on Increases in Regular Assessments or Special Assessments. Without the vote or written assent of Members casting a majority of the votes at a meeting of the Associations at which a quorum is present, the Board of each Association may not: (a) impose a Regular Assessment on any Lot which is more than twenty (20%) greater than the Regular Assessment for the immediately preceding fiscal year, nor (b) levy a Special Assessment to defray the cost of any action or undertaking on behalf of the Associations which in the aggregate exceeds five percent (5%) of the budgeted gross expenses of the Associations for that fiscal year.

For purposes of this section 4.4, a "quorum" means Members constituting more than fifty percent (50%) of the voting power of the Association. Any meeting of each Association for purposes of complying with this section 4.4 shall be conducted in accordance with Chapter 5 (commencing with § 7510) of Part 3, Division 2 of Title 1 of the California Corporations Code and § 7613 of the California Corporations Code. In addition, the Board of each Association may increase annual Regular Assessments by up to twenty percent (20%) over the annual Regular Assessment for the immediately preceding fiscal year only if the Board has complied with the provisions of California Civil Code § 1365(a), which provisions are set forth in the Bylaws, or has obtained the approval of such increase by the Members in the manner set forth above in this section 4.4.

A. Emergency Situations. Notwithstanding the foregoing, the Board of each Association, without membership approval, may increase annual Regular Assessments or levy Special Assessments necessary for an emergency situation. For purposes of this section, an emergency situation is one of the following:

- (1) An extraordinary expense required by an order of a court;
- (2) An extraordinary expense necessary to repair or maintain the Project or any part of it for which the each Association is responsible, where a threat to personal safety on the Project is discovered; or

(3) An extraordinary expense necessary to repair or maintain the Project or any part of it for which each Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the pro-forma operating budget; provided, however, that prior to the imposition or collection of the Assessment, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to the Members with the notice of the Assessment.

The Associations shall provide notice by first-class mail to the Owners of any increase in the regular or special Assessments of the Association, not less than thirty (30) nor more than sixty (60) days prior to the increased Assessment becoming due. This section 4.4 incorporates the statutory requirements of California Civil Code § 1366. If that section of the California Civil Code is amended in any manner, this section 4.4 automatically shall be amended in the same manner without the necessity of amending this Declaration.

4.5 Notice and Quorum for Any Action Authorized Under Section 4.4. Any action authorized under section 4.4 which requires a vote of the membership of either Association, shall be taken at a meeting called for that purpose, written notice of which shall be sent to all Members of each Association not less than ten (10) nor more than ninety (90) days in advance of the meeting, specifying the place, day and hour of the meeting and, in the case of a special meeting, the nature of the business to be undertaken. The action may also be taken without a meeting pursuant to the provisions of California Corporations Code § 7513.

4.6 Division of Assessments. Regular Assessments and Special Assessments of the Residential Association shall be levied equally among the Residential Lots. Assessments for the Commercial Association shall be levied against the Commercial Lots as determined by the Commercial Owner. Regular Assessments shall be collected on a monthly basis unless the Board directs otherwise. Special Assessments may be collected in one (1) payment or periodically as the Board shall direct. Cost Center Assessment Components shall be allocated among the owners of Lots within the Cost Center as provided in a Declaration of Annexation or in a Supplemental Declaration and shall be collected on a monthly basis unless the Board directs otherwise.

4.7 Date of Commencement of Regular Assessment; Due Dates. The Regular Assessments (including, where applicable, Cost Center Assessments) provided for herein shall commence as to all Lots in the first Phase of each area (Commercial Area or Residential Area) on the first day of the month following the first conveyance of a Lot in that area to the Owner under authority of a Public Report. The first Regular Assessment shall be adjusted according to the number of months remaining in the calendar year after the annexation. In subsequent Phases, the Regular Assessments and Cost Center Assessments against all Lots in each Phase shall commence on the earlier to occur of (i) the first day of the month following the closing of the first such sale, or (ii) upon the occupancy of a subdivision interest in the annexed Phase. The first Regular Assessment for each added Phase shall be adjusted according to the number of months remaining in the calendar year after the annexation. Regular Assessments may be reduced or abated pursuant to a management agreement or subsidy agreement entered into between Declarant and Association.

A. The Board of Directors of each Association shall use its best efforts to fix the amount of the annual Regular Assessment and any Cost Center Assessments against each Lot, and send written notice thereof to every Owner at least forty-five (45) days in advance of each annual Regular Assessment period, provided the failure to comply with the foregoing shall not affect the validity of any Assessment

levied by the Board. Regular Assessments and Cost Center Assessments may be pro-rated on a monthly basis. The due dates shall be established by the respective Boards. Each Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer or designated representative of the Associations setting forth whether the Assessments on a specified Lot have been paid. Such a certificate shall be conclusive evidence of such payment.

4.8 Effect of Nonpayment of Assessments. Any Assessment not paid within fifteen (15) days after the due date 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 payment penalty in an amount to be set by the Board from time to time, not to exceed the maximum permitted by applicable law.

4.9 Transfer of Lot by Sale or Foreclosure. Sale or transfer of any Lot shall not affect the Assessment Lien. However, the sale of any Lot pursuant to foreclosure of a First Mortgage shall extinguish such Assessment Lien (including fees, late charges, fines or interest levied in connection therewith) as to payments which became due prior to such sale or transfer (except for Assessment Liens as to which a Notice of Delinquent Assessments has been recorded prior to the Mortgage). No sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof.

A. Where the Mortgagee of a First Mortgage of record or other purchaser of a Lot obtains title to the same as a result of Foreclosure of any such First Mortgage, such acquirer of title, his/her successor and assigns, shall not be liable for the Assessment by the Associations chargeable to such Lot which became due prior to the acquisition of title to such Lot by such acquirer (except for assessment liens as to which a Notice of Delinquent Assessments has been recorded prior to the Mortgage). No amendment of the preceding sentence may be made without the consent of Owners of Lots to which at least sixty-seven percent (67%) of the votes in each Association are allocated, and the consent of the Eligible Mortgage Holders holding First Mortgages on Lots comprising fifty-one percent (51%) of the Lots subject to First Mortgages. The unpaid share of such Assessments shall be deemed to be Common Expenses collectible from all of the Lot Owners including such acquirer, his/her successors or assigns.

B. If a Lot is transferred, the grantor shall remain liable to each Association for all unpaid Assessments against the Lot through and including the date of the transfer. The grantee shall be entitled to a statement from the Association, dated as of the date of transfer, setting forth the amount of the unpaid Assessments against the Lot to be transferred, and the Lot shall not be subject to an Assessment Lien for unpaid Assessments in excess of the amount set forth in the statement; provided, however, the grantee shall be liable for any Assessments that become due after the date of the transfer.

4.10 Priorities; Enforcement; Remedies. If an Owner fails to pay an Assessment when due, the Association has the right, and option, to bring legal action against the Owner to enforce collection of the unpaid and past due Assessment, or may impose an Assessment Lien on the Lot owned by Owner pursuant to the provisions of Civil Code § 1367.1, or both. Suit to recover a money judgment for unpaid Assessments and attorneys' fees, shall be maintainable without foreclosing or waiving the lien securing the same. The Association shall distribute the written notice described in subdivision (b) of Civil Code § 1365.1 entitled "Notice Assessments and Foreclosure" to each Member during the 60-day period immediately preceding the beginning of the Association's fiscal year. The notice is to be printed in at least 12-point type.

A. Statement of Charges. At least 30 days prior to the Association recording an Assessment Lien upon a Lot pursuant to Civil Code § 1367.1(a), the Association shall notify the owner of record in writing by certified mail of the following:

(1) A general description of the collection and lien enforcement procedures of the Association and the method of calculation of the amount owed, a statement that the Owner has the right to inspect the Association's records, pursuant to section 8333 of the Corporations Code, and the following statement in 14-point boldface type, if printed, or in capital letters, if typed: "IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST IS PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT ACTION".

(2) An itemized statement of the charges owed by the Owner, including items on the statement which indicate the amount of any delinquent assessments, the fees and reasonable costs of collection, reasonable attorney's fees, any late charges, and interest, if any.

(3) A statement that the Owner shall not be liable to pay the charges, interest, and costs of collection, if it is determined the Assessment was paid on time to the Association.

(4) The right to request a meeting with the Board as provided by Civil Code §1371.1(c).

B. Right to Request Meeting. An Owner may dispute the debt noticed pursuant to section 4.10A, above, submitting to the Board a written explanation of the reasons for his or her dispute. The Board shall respond in writing to the Owner within 15 days of the date of the postmark of the explanation, if the explanation is mailed within 15 days of the postmark of the notice. The Owner may submit a written request to meet with the Board to discuss a payment plan for the debt noticed pursuant to section 4.10A, above. The Board shall provide the Owner the standards for payment plans, if any exist. The Board shall meet with the Owner in executive session within 45 days of the postmark of the request, if the request is mailed within 15 days of the date of the postmark of the notice, unless there is no regularly scheduled Board meeting within that period, in which case the Board may designate a committee of one or more members to meet with the Owner.

C. Notice of Delinquent Assessment. After compliance with the provisions of Civil Code § 1367.1(a), the Association may record a Notice of Delinquent Assessment and establish an Assessment Lien against the Lot of the delinquent Owner prior and superior to all other liens recorded subsequent to the Notice of Delinquent Assessment, except (1) all taxes, bonds, assessments and other levies which, by law, would be superior thereto, and (2) the lien or charge of any First Mortgage of record recorded prior to the Notice of Delinquent Assessment. The Notice of Delinquent Assessment shall state the amount of the Assessment, collection costs, attorneys' fees, late charges and interest, a description of the Lot against which the Assessment and other sums are levied, the name of the record Owner, and 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 any management agent retained by the Association and shall be mailed in the manner set forth in Civil Code § 2924b to all record owners of the Lot no later than ten (10) days after recordation.

Within twenty-one (21) days after payment of the sums specified in the Notice of Delinquent Assessment, the Association shall record or cause to be recorded in the Office of the County Recorder in which the Notice of Delinquent Assessment is recorded a lien release or notice of rescission and provide the Owner a copy of the lien release or notice that the delinquent assessment has been satisfied.

D. Enforcement of Assessment Lien. Thirty (30) days following the recordation of the Notice of Delinquent Assessment, the Assessment Lien may be enforced in any manner permitted by law, including sale by the court, sale by the trustee designated in the Notice of Delinquent Assessment, or sale by a trustee substituted pursuant to California Civil Code § 2934(a). Any sale by the trustee shall

be conducted in accordance with the provisions of §§ 2924, 2924b, 2924c, 2924f, 2924g, 2924h and 2924j of the California Civil Code applicable to the exercise of powers of sale in mortgages and deeds of trust, including any successor statutes thereto, or in any other manner permitted by law. The fees of a trustee may not exceed the amounts prescribed in Civil Code §§ 2924c and 2924d. Nothing in this Declaration shall preclude the Association from bringing an action directly against an Owner for breach of the personal obligation to pay Assessments.

The Association, acting on behalf of the Lot Owners, shall have the power to bid for the Lot at Foreclosure sale, and to acquire and hold, lease, mortgage and convey the Lot. If the purchase of a Lot would result in a five percent (5%) or greater increase in Assessments, the purchase shall require the vote or written consent of a majority of the total voting power of the Association, including a majority of Members other than Declarant. During the period a Lot is owned by the Association, following Foreclosure:

- (1) no right to vote shall be exercised on behalf of the Lot;
- (2) no Assessment shall be assessed or levied on the Lot; and
- (3) each other Lot shall be charged, in addition to its usual Assessment, its share of the Assessment that would have been charged to such Lot had it not been acquired by the Association as a result of Foreclosure.

After acquiring title to the Lot at Foreclosure sale following notice and publication, the Association may execute, acknowledge and record a deed conveying title to the Lot which deed shall be binding upon the Owners, successors, and all other parties.

The Board may temporarily suspend the voting rights of a Member who is in default in payment of any Assessment, after notice and hearing, as provided in the Bylaws.

4.11 Unallocated Taxes. In the event that any taxes are assessed against the Common Area or the personal property of an Association, rather than against the Lots, said taxes shall be included in the Assessments made under the provisions of section 4.1 and, if necessary, a Special Assessment may be levied against the Lots in an amount equal to said taxes, to be paid in two (2) installments, thirty (30) days prior to the due date of each tax installment.

4.12 Exemptions from Assessments. The Declarant and any other Owner of a Lot are exempt from the payment of that portion of any Assessment which is for the purpose of defraying expenses and reserves directly attributable to the existence and use of a common facility that is not complete at the time Assessments commence. This exemption from the payment of Assessments shall be in effect until the earliest of the following events:

- (1) A notice of completion of the common facility has been recorded; or
- (2) The common facility has been placed into use.

4.13 Assessments on Lots in Annexation Property. If portions of the Annexation Property are not annexed to this Declaration pursuant to section 2.14, and such portions of the Annexation Property are developed and sold or leased to persons whose use and occupancy thereof results in use of the private streets and/or utilities within the Common Area, the property in said portions of the Annexation Property and the owner(s) thereof (including Declarant) shall be subject to Regular Assessments and Special

Assessments pursuant to section 4.1 levied by the Board for the costs of maintenance and repair of said streets and/or utilities. The cost of maintenance and repair under such circumstances shall be pro-rated equitably between the properties, and payment therefor shall be enforced pursuant to section 4.10. In the event of any disagreement as to the reasonableness of said annual Regular Assessments and/or Special Assessments or the division thereof, the matter shall be submitted to arbitration under the rules of the American Arbitration Association, with the arbitrator to determine the amount of the annual and/or special Assessment against all properties. Notwithstanding the foregoing, none of the other sections of this Declaration shall apply to any such portion of the Annexation Property until and unless it is annexed in accordance with section 2.14.

4.14 Allocation of Maintenance Costs. The Residential Association and the Golf Club Owner shall reimburse the Commercial Association monthly for a fixed percentage of the costs of maintenance of the following items of maintenance to be undertaken by the Commercial Association, including reserves:

- (1) Maintenance, repair and replacement of private streets and street lighting;
- (2) Slope control;
- (3) Street sweeping;
- (4) Fuel management and wildlife protection.

The initial allocations of the percentage for the reimbursement for Phase I shall be 61% for the Residential Association, 5% for the Golf Club Owner, and 34% for the Commercial Association.

The percentage allocations made hereunder shall be subject to modification based upon annexation of additional lands to the Project as stated in Declarations of Annexation made and recorded by the Declarant pursuant to section 2.14A of this Declaration. Such modifications shall be made to reflect the relative change in the portion of the Project which is Residential Area or Commercial Area, and the relative size and burden of the Golf Club Property. The modifications shall be based upon the trip generation projections which are part of the Diablo Grande Specific Plan, which was the basis for the above allocations. In case of any dispute about the reasonableness of any modifications to the allocations, the matter shall be submitted to Judicial Reference pursuant to section 9.14E.

4.15 Maintenance Agreement Between Declarant and the Associations. The Associations and Declarant shall execute a contract or contracts that require the Declarant to maintain the Common Areas and facilities within the Project. Said contracts shall be for a term of one (1) year, renewable with consent of both parties. Each Board shall have authority to renew the contract, provided that at the request of any Board member or upon written request of five percent (5%) or more of the Members of an Association, the question of renewal shall be submitted to the Members of that Association, provided that the vote of a majority of all Members of that Association shall be required to override the decision of the Board to renew the contract.

ARTICLE V DUTIES AND POWERS OF THE ASSOCIATIONS

5.1 Duties. In addition to the duties enumerated in their Bylaws, or elsewhere provided for in this Declaration, and without limiting the generality thereof, each Association shall perform the following duties:

A. Common Area Maintenance. Except as elsewhere provided in this Declaration, each Association shall maintain, repair, replace, restore, operate and manage all of the Common Areas which the respective Association owns and controls, including all facilities (including Utility Facilities to the extent described in section 6.3), Improvements, furnishings, equipment and landscaping located thereon, and all property that may be acquired by each respective Association. Each Association shall perform its maintenance requirements in a manner that is comparable to or exceeds that undertaken by community associations of first class residential and resort oriented common interest projects in Northern California.

(1) The type and color of paint or finish used on the exterior of all Building(s) in a Residential Area or in a Commercial Area shall not be changed without approval from the Board or Design Review Committee of the Association having jurisdiction over that Area. Maintenance shall include (without limitation): painting, maintaining, cleaning, repairing and replacing of all Common Areas.

(2) The responsibility of the Associations for maintenance and repair shall not extend to repairs or replacements arising out of or caused by the willful or negligent act or omission of an Owner, or his/her guests, tenants or invitees, or the Owner's pets, except if the repair is covered by the insurance carried by the Association, the Associations shall be responsible for making the repairs, and the responsible Owner shall pay any deductible pursuant to the insurance policy. If the Owner fails to make such payment, then the Associations may make such payment and shall charge the responsible Owner as a Reimbursement Assessment, which charge shall bear interest at the rate of twelve percent (12%) per annum (but no greater than the maximum rate allowed by law) until paid in full. Any repairs arising out of or caused by the willful or negligent act of an Owner, or his/her guests, tenants or invitees, or the Owner's pets, the cost of which is not covered by insurance carried by the Association, shall be made by the responsible Owner, provided the Board approves the person actually making the repairs and the method of repair. If the responsible Owner fails to take the necessary steps to make the repairs within a reasonable time under the circumstances, the Associations shall make the repairs and charge the cost thereof to the responsible Owner as a Reimbursement Assessment, which cost shall bear interest at the rate of twelve percent (12%) per annum (but no greater than the maximum rate authorized by law) until paid in full. If an Owner disputes his or her responsibility for the repairs, the Owner shall be entitled to notice and a hearing as provided in the Bylaws before any charge may be imposed.

(3) Notwithstanding the provisions of this section, the Association shall not be obligated to continue to maintain, repair or replace any Improvement whose maintenance, repair or replacement is undertaken subsequent to the recording of this Declaration by any Landscaping and Lighting District, Community Service Area, Geological Hazard Abatement District, Water District, or other district, governmental or quasi-governmental entity or utility company. The Western Hills Water District has been established to operate and maintain the water systems, waste water systems and storm drain systems within the Project.

(4) The identification from time to time of some individual components of Common Area Improvements in this Declaration is the result of requirements imposed by the County and shall not be construed as limiting the type, nature or extent of other Common Area Improvements within the Project.

(5) The Boards of the Associations may decide, from time to time, which of the Associations shall be responsible for maintenance of a particular element of the Common Area, including existing elements or future elements. In the event of new elements being added to the Common Area, or in the event of a new service being added, the cost of maintenance, repair and replacement shall be shared between the Associations as provided in section 4.14, unless otherwise agreed upon by the two Boards.

B. Streets and Street Lighting. All streets and street lighting within the Project shall be private and, as Common Area Improvements, shall be operated, maintained, repaired and replaced, as necessary, by the Commercial Association.

C. Slope Control. The Commercial Association shall inspect all slopes and related facilities within their respective Common Areas, at least once annually prior to October 1 of each year and shall repair any mass soil movement or erosion in a timely manner.

D. Street Sweeping. The Commercial Association shall sweep all private streets within the Project on a regular schedule to minimize trash, oil, grease, and other toxic urban runoff to watercourses.

E. Riparian Areas.

(1) Maintenance of Riparian Areas. The Western Hills Water District shall maintain those areas outside of the Golf Club that constitute Riparian Areas in accordance with the Protection Plan on file with and approved by the County. Owners are prohibited from introducing into the Riparian Areas non-native warm-water fishes and bullfrogs which prey on native amphibians.

(2) Limitation of Development in Riparian Areas. Setbacks of development of at least 100 feet from major creek centerlines shall be adhered to. Development shall include fenced yards, landscaping, grading, paving, buildings, and any other construction or use which will degrade the value of the riparian corridor as determined by the Stanislaus County Department of Planning and Community Development. Deed restrictions shall be placed on all parcels containing major creeks to preserve the minimum setback. The only exceptions to this rule will be for: (i) roadway purposes where a minimum setback of fifty (50) feet shall be adhered to except at creek crossings, and only upon acquisition of all appropriate permits from the Corps of Engineers and the California Department of Fish and Game; and (ii) golf fairways and greens where a minimum setback of fifty (50) feet shall be adhered to.

F. Fuel Management and Wildfire Protection Plan. The Associations shall maintain those areas which constitute Fire Buffer Areas within the Area or Areas over which the Association has responsibility and control in accordance with the Fuel Reduction Plan. Individual Lot Owners shall meet the guidelines of the Fuel Reduction Plan, with exceptions subject to Design Review Committee and Fire District approval.

G. Diablo Grande Community Park Facilities. Once constructed or installed on Commercial Common Area, the Commercial Association shall maintain the following Improvements which may be located within the Commercial Areas: baseball and/or soccer field(s), play areas, equipment for children, paths, picnic areas, parking areas, and other recreational areas and facilities approved by Stanislaus County.

H. Maintenance of Lots and Residences. Except as otherwise specifically provided in this Declaration, or in a Supplemental Declaration, each Owner shall maintain and care for his or her Lot, including but not limited to the Residence and all other Improvements located in or on his or her Lot, in a manner consistent with the standards established by the Project Documents and other well maintained residential and commercial communities in Northern California. Each Owner shall regularly clear all storm drainage inlets and maintain the capacity and flow of all storm drainage improvements and drainage swales situated on the Owner's Lot. The finished ground surface of each Lot shall be maintained to slope away from all structures at a minimum five percent (5%) grade for at least two and one-half (2-1/2) feet from all structures. Landscaping may not be installed in any manner which interferes with the storm

drainage improvements or which traps or ponds water adjacent to a residence. Any Lot upon which a Residence has not yet been constructed shall be maintained by the Owner of the Lot in accordance with the Rules adopted by the Associations for maintenance of vacant, improved Lots. The Associations shall maintain, repair and replace sidewalk and commonly used path pavements on all Lots. If the pavement is damaged by the Owner of the Lot or his or her guest tenants or invitees, the Associations shall repair it at the expense of the Lot Owner. The Associations shall maintain, repair and replace all exterior light fixtures and bulbs connected to the Associations' electric service; provided, however, each Owner shall replace any inoperable light bulb in any such light fixture located on that Owner's Lot within eight (8) feet of ground level.

I. Maintenance and Repair of Fences.

(1) **Fences Adjacent to Golf Club.** All fences situated on the common boundary of a Lot and the Golf Club shall be maintained by the Owner of the Lot at the sole cost and expense of the Owner. All fences situated on the common boundary of Common Area and the Golf Club shall be maintained by the respective Association at the sole cost and expense of the Association.

(2) **Party Fences.** The Owners of a Party Fence shall be responsible for maintaining, repairing and replacing it. The costs of such maintenance, repair and/or replacement shall be shared equally by the Owners; provided, however, that all costs of any maintenance, repair or replacement necessitated by the negligent or willful action of an Owner shall be borne by that Owner. In the absence of negligent or willful conduct, any necessary maintenance, repair or replacement performed by an Owner shall entitle that Owner to a right of contribution from the other Owner(s) of the Party Fence. The right of contribution shall be appurtenant to the Lot and shall pass to the successor(s) in interest of the Owner entitled to contribution.

(3) **Fences Separating Common Areas and Lots.** Unless a Supplemental Declaration provides otherwise, each fence which separates a Lot from Common Area in the Residential Area shall be maintained, repaired and replaced by the Residential Association; provided, however, if the side of the fence which faces a Lot is inaccessible by the Association, the Owner of the Lot shall maintain that fence surface. Maintenance shall include refinishing the exterior surface of the fence if that surface was previously finished with paint or stain.

(4) **Wrought Iron Fences:** The Residential Association shall maintain, repair and replace (as necessary) all wrought iron fencing originally installed in the Project by Declarant or by a Builder.

J. Landscaping and Irrigation. All landscaping and irrigation in the Project shall be maintained and cared for in a manner consistent with the standards of design and quality as originally established by Declarant, and in a condition comparable to that of other well-maintained planned residential areas in Northern California. All landscaping shall be maintained in a neat and orderly condition. Any weeds or diseased or dead lawn, trees, ground cover or shrubbery shall be removed and replaced. All lawn areas shall be neatly mowed and trees and shrubs shall be neatly trimmed. Other specific restrictions on landscaping may be established in the Rules. Native grasses are permitted on Lots over 20,000 square feet in areas designated in the Fuel Reduction Plan. Appropriate steps shall be taken to maintain irrigation systems, and to prevent damage resulting from mis-directed and/or excessive watering.

(1) **Associations.** The respective Associations shall be responsible for all landscaping located on Common Area owned and controlled by the Association. The Associations shall also irrigate, maintain and replace, if necessary, landscaping located within any public right-of-way or easement as described and set forth in a Declaration of Annexation.

(2) **Owners.** Except as otherwise provided in this Declaration, or in any Supplemental Declaration or Declaration of Annexation, each Owner shall be responsible for all landscaping located within that Owner's Lot. If landscaping within Lots is not installed by Declarant, each Owner shall install permanent landscaping within his or her Lot prior to obtaining the occupancy permit, unless the time period is lengthened in the Architectural Design Guidelines. Except as otherwise provided in this Declaration, or any Supplemental Declaration or Declaration of Annexation, each Owner shall install and maintain landscaping and irrigation and any necessary engineering measures to maintain slope stability in order to prevent mass soil movement and erosion. Any mass soil movement or erosion which occurs on a Lot shall be promptly repaired by the Owner of the Lot. Unless the responsibility is assumed by the Association, each Owner shall also maintain the landscaping and street tree(s) within the right of way or easement between the back of the nearest street curb and the Owner's Lot line. Maintenance of street trees shall include pruning as appropriate.

K. Inspection and Maintenance Guidelines. The Board of each Association shall adopt inspection and maintenance guidelines for the periodic inspection and maintenance of the Common Area improvements and landscaping within its jurisdiction. The Boards periodically, and at least once every three (3) years, shall review and update the inspection and maintenance guidelines. The Boards shall take all appropriate steps to implement and comply with the inspection and maintenance guidelines that apply to improvements required to be maintained by the Association (if any).

L. Maintenance by Golf Club. If either of the Associations or an Owner ("Defaulting Party") fails to maintain any landscaping or fencing situated adjacent to the Golf Club and within twenty (20) feet of any portion of the golf course, the Club Owner shall have the right, but not the duty, to maintain the landscaping or fencing at the sole cost and expense of the Defaulting Party. If the Club Owner desires to perform any such maintenance authorized by the preceding sentence, the Club Owner shall first notify the Defaulting Party in writing and allow the Defaulting Party at least thirty (30) days from the date of the notice to perform such maintenance. If the Defaulting Party fails to commence and complete such maintenance within said thirty (30) day period, the Club Owner shall have the right to enter the Lot on which the maintenance is required, during reasonable business hours, and perform such maintenance. Written notice of the costs incurred by the Club Owner in performing such maintenance and/or repair shall be given to the Defaulting Party, who shall have ten (10) days to reimburse the Club Owner in full. The Club Owner shall have the right to deduct any charges which remain unpaid for longer than thirty (30) days from its obligation to the Association described in section 4.14 of this Declaration. The Associations may then assess any such charges which are attributable to a specific Owner against that Owner and the Owner's Lot.

M. Insurance. Each Association shall maintain such policy or policies of insurance and pay its share of any premium, as required by section 8.1 of this Declaration.

N. Discharge of Liens. Each Association shall discharge by payment, if necessary, any lien against the Common Area under its control, and charge the cost thereof to the Member or Members (if any) responsible for the existence of the lien (after Notice and Hearing).

O. Assessments. Each Association shall fix, levy, collect and enforce Assessments as set forth in Article IV hereof.

P. Payment of Expenses and Taxes. Each Association shall pay all expenses and obligations incurred by the Associations in the conduct of its business including, without limitation, all licenses, taxes or governmental charges levied or imposed against the Project of the Association.

Q. Enforcement. Each Association shall be responsible for the enforcement of this Declaration as to its Members and the areas over which it has control.

R. Conformance with Laws. Each Association shall maintain and operate the Common Areas of the Project under its jurisdiction in accordance with all applicable municipal, state, and federal laws, statutes and ordinances, as the case may be. Each Association shall also, as a separate and distinct responsibility, ensure that third parties (including Owners and their guests) utilize the Common Area in accordance with the aforementioned regulations. Each Association shall, when it becomes aware of any violation of the aforementioned regulations, expeditiously correct such violations.

5.2 Powers. In addition to the powers enumerated in its Articles and Bylaws, or elsewhere provided for herein, and without limiting the generality thereof, each Association shall have the following powers:

A. Easements. Each Association shall have authority, by document signed or approved by two-thirds (2/3) of the total voting power of the Members, including two-thirds (2/3) of the Members other than Declarant, to grant permits, licenses and easements in addition to those shown on the Map, where necessary for roads, utilities, cable television, drainage, venting, sewer facilities and other such facilities over the Common Areas over which it has control to serve the Common Areas and the Lots, and/or where necessary to satisfy or achieve appropriate governmental purpose or request.

B. Manager. Each Association may employ a Manager to perform all or any part of the duties and responsibilities of the Association, except for the responsibility to levy fines, impose discipline, hold hearings, file suit, record or foreclose liens, or make capital expenditures, provided that any contract with a firm or person appointed as a Manager shall not exceed a one (1) year term, shall provide for the right of each Association to terminate the same at the first annual meeting of the Members of the Association, and to terminate the same for cause on thirty (30) days' written notice, or without cause or payment of a termination fee on ninety (90) days' written notice. Subject to the limitations set forth in this Declaration and the Bylaws, each Association may employ other persons or companies, and contract with independent contractors or agents to perform any of the operational or maintenance responsibilities of the Association. Each Association may terminate the contract of any person or organization engaged by Declarant to perform management or maintenance duties three (3) months after the Associations assume control of the Project or any time thereafter.

C. Adoption of Rules. The Board of each Association may adopt Rules which are not inconsistent with this Declaration relating to use of the Areas of the Project which are governed by that Association and all facilities located thereon, and the conduct of its Members and their tenants and guests with respect to the Project and other Owners within such Areas. Written copies of such Rules and any schedule of fines and penalties adopted by the Boards shall be furnished to all Owners.

D. Access to Lots for Maintenance. For the purpose of performing construction, maintenance or emergency repair for the benefit of the Common Area or the Owners in common, each Board shall have the right, after reasonable notice (not less than twenty-four (24) hours except in emergencies) to the Owner thereof, to enter any Lot exclusive of a Residence or interior of commercial improvements within the respective Association's jurisdiction and control at reasonable hours. Such entry shall be made with as little inconvenience to the Owner as practicable, and any damage caused thereby shall be repaired by the Board at the expense of the Association.

If an Owner fails to perform maintenance and/or repair which that Owner is obligated to perform pursuant to this Declaration, and if the Association determines, after Notice and Hearing given pursuant to the provisions of the Bylaws, that such maintenance and/or repair is necessary to preserve the attractiveness, quality, nature and/or value of the Project, the Association may cause such maintenance and/or repair to be performed. The costs of such maintenance and/or repair shall be charged to the Owner of the Lot.

E. Assessments, Liens, Penalties and Fines. Each Board shall have the power to levy and collect Assessments in accordance with the provisions of Article IV hereof. Each Association may impose fines or take disciplinary action against any Owner for failure to pay Assessments or for violation of any provision of the Project Documents and the Rules adopted by the Board or the Association. Penalties may include, but are not limited to: fines, temporary suspension of voting rights, or other appropriate discipline, provided the Member is given notice and a hearing as provided in the Bylaws before the imposition of any fine or disciplinary action. The Board shall have the power to adopt a schedule of reasonable fines and penalties for violations of the terms of this Declaration, and for violations of any Rules adopted pursuant to section 5.2C. The penalties prescribed may include suspension of all rights and privileges of membership; provided, however, that suspension for failure to pay Assessments shall be for a maximum period of thirty (30) days, renewable by the Board for an additional thirty (30) day period or periods until paid; and provided further that suspension for infraction of Rules or violation of this Declaration, other than for failure to pay Assessments, shall be limited to a maximum period of thirty (30) days per infraction or violation, and shall be imposed only after a hearing before the Board. The Board may extend said period for an additional period or periods in the case of a continuing infraction or violation, and no hearing need be held for such extension. Written copies of rules and the schedule of penalties shall be furnished to Owners. The Board shall assess fines and penalties and shall enforce such assessments as appropriate under applicable law.

F. Enforcement. Each Board shall have the authority to enforce this Declaration as per section 9.1 hereof.

G. Acquisition and Disposition of Property. Each Board shall have the power to acquire (by gift, purchase, or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, or otherwise dispose of real or personal property in connection with the affairs of the Association. Any transfer of property by an Association shall be by document signed or approved Members representing two-thirds (2/3) of the total voting power of the Association, which shall include Members representing two-thirds (2/3) of the Members other than Declarant, or, where the two (2) class voting structure is still in effect, Members representing two-thirds (2/3) of the voting power of each class of Members.

H. Loans. Each Board shall have the power to borrow money, and only with the assent (by vote or written consent) of Members representing two-thirds (2/3) of the total voting power of the respective Association including Members representing two-thirds (2/3) of the Members other than Declarant, or, where the two (2) class voting structure is still in effect, including Members representing two-thirds (2/3) of the voting power of each class of Members, to mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

I. Dedication. Each Association shall have the power to dedicate all or any part of the Common Area under its control to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication shall be effective unless an instrument has been signed by Members representing two-thirds (2/3) of the total voting power of the Association including Members representing two-thirds (2/3) of the Members other than Declarant, or where the two (2) class voting structure is still in effect, Members representing two-thirds (2/3) of the voting power of each class of Members agreeing to such dedication.

J. Contracts. Each Board shall have the power to contract for goods and/or services for its Common Area(s), subject to limitations set forth in the Bylaws, or elsewhere herein. The Boards shall not enter into any contracts with independent contractors until they meet the requirements of section 8.1.A.(3) herein.

K. Delegation. Each Association, the Board, and the officers thereof, shall have the power to delegate their authority and powers to committees, officers, or employees of the Association, or to a manager employed by the Association, provided that the Boards shall not delegate their responsibility:

(1) To make expenditures for capital additions or improvements chargeable against the reserve funds;

(2) To conduct hearings concerning compliance by an Owner or his or her tenant, lessee, guest, or invitee with the Declaration, Bylaws, or Rules promulgated by the Board;

(3) To make a decision to levy monetary fines, impose Reimbursement Assessments against individual Lots, temporarily suspend an Owner's rights as a Member of the Association, or otherwise impose discipline;

(4) To make a decision to levy Regular Assessments or Special Assessments; or

(5) To make a decision to bring suit, record a claim of lien, or institute foreclosure proceedings for default in payment of Assessments.

L. Security. Each Association shall have the authority (but not the obligation) to contract for security service for the area over which it has control. Notwithstanding the foregoing, if either Association elects to provide any security services or systems, neither that Association nor the Board of that Association shall be deemed to have made any representation or warranty to any Owner, nor the tenants or invitees of any Owner, nor to any other Person using the facilities or Improvements within the Project regarding security or safety. Each Owner shall be responsible for the security and safety of Persons who occupy or use the Lot owned by the respective Owner. The Associations shall not be subject to any claims or liability in connection with the provision of any security service or security system, or the failure to provide any security service or security system, within any portion of the Project.

M. Appointment of Trustee. Each Association, or its Board acting on behalf of the Association, has the power to appoint or designate a trustee to enforce assessment liens by sale as provided in section 4.10 and California Civil Code § 1367(b).

N. Litigation/Arbitration. Each Association, subject to section 9.14 of this Declaration, shall have the power to institute, defend, settle, or intervene in litigation, arbitration, mediation, or administrative proceedings on behalf of the respective Association pursuant to Code of Civil Procedure § 383. The Board of Directors of each Association has authority to enter into a contingent fee contract with an attorney in a matter involving alleged design or construction defects in the Project, only as to the facilities or improvements the Association is responsible for maintaining as provided herein, and then only after obtaining voter approval at a duly noticed and properly held membership meeting, of a majority of a quorum of the Members other than Declarant. The Board shall, not later than thirty (30) days prior to the filing of any civil action by the Associations for alleged design or construction defects in the areas of the Project which it is obligated to maintain, notify the Members in the manner required by Civil Code § 1368.4. In the event the Board files an action in advance of a meeting of the Members, in order to

avoid the running of a statute of limitations, the Board shall call a special meeting of the Members within thirty (30) days after filing the action, for the purpose of discussing the action taken by the Board.

Before an Association commences an action for damages against the Declarant or a Builder of the Project based upon a claim for defects in the design or construction of the Project, the Association shall comply with the requirements of Civil Code Section 1375 and Civil Code Section 895 et seq.

If and to the extent that there is any inconsistency between this section 5.2N and applicable provisions of the Civil Code and/or the Code of Civil Procedure pertaining to the commencement of an action by the Associations for construction defect litigation, the applicable provisions of the California statutes shall control.

O. Other Powers. In addition to the powers contained herein, the Boards may exercise the powers granted to a nonprofit mutual benefit corporation under California Corporations Code § 7140.

P. Common Area Improvements. Each Association shall have the authority and power to construct, improve, repair, demolish, remove, and reconstruct any and all improvements on or over or under its Common Area not inconsistent with this Declaration, and appropriate for the use and benefit of the Members of that Association, and to charge for the use thereof, provided that an Association shall not include in any assessment, annual or special, the cost of any new capital improvement which exceeds \$25,000 in cost to be expended in any one calendar year, unless fifty-one percent (51%) or more of the voting power of that Association shall have previously approved said expenditure.

5.3 Commencement of Associations' Duties and Powers. Until incorporation of each Association, all duties and powers of each Association as described herein, including all rights of consent and approval, shall be and remain the duties and powers of Declarant. From and after the date of incorporation of each Association, each Association shall assume all of its duties and powers, and Declarant shall be relieved of any further liability therefor.

ARTICLE VI UTILITIES

6.1 Owners' Rights and Duties. The rights and duties of the Owners of Lots within the Project with respect to Utility Facilities shall be as follows:

A. Whenever Utility Facilities are installed within the Project, which Utility Facilities or any portion thereof lie in or upon Lots owned by other than the Owner of a Lot served by said Utility Facilities, the Owners of any Lot served by said Utility Facilities shall have the right of reasonable access for themselves or for utility companies to repair, replace, and generally maintain said Utility Facilities as and when necessary, due to failure or inability of the Board to take timely action to make such repairs or perform such maintenance. These same reciprocal easements and rights exist between the Commercial Area and the Residential Area for the benefit of the Owners of Lots in those areas and their respective Associations. The exact location of said easements shall be determined by reference to the final as-built plans for the Building (as defined in section 6.2).

B. Whenever Utility Facilities are installed within the Project, which Utility Facilities serve more than one (1) Lot the Owner of each Lot served by said Utility Facilities shall be entitled to the full use and enjoyment of such portions of said connections as service his or her Lot.

C. In the event of a dispute between the two (2) Associations with respect to the repair, maintenance, or rebuilding of Utility Facilities used by both, or Utility Facilities used by one (1) Association or its Members but which pass through the area under control of the other Association, which cannot be settled by negotiations between the parties, then, upon written request by the Board of an Association to the Board of the other Association, the matter shall be submitted first to the mediation by a mediator mutually selected by the parties involved with the dispute. If the parties are unable to agree upon a mediator within thirty (30) days from the date of service by any party upon the other parties of a notice to mediate, then the mediator shall be appointed under the procedure stipulated in the Commercial Mediation Rules of the American Arbitration Association ("AAA"). Thereafter, if the dispute remains unresolved, the dispute shall be submitted to binding arbitration within sixty (60) days pursuant to the Commercial Arbitration Rules of the American Arbitration Association, or any successor thereto, or to any other generally recognized system of alternative dispute resolution, and the decision of the arbitrator(s) shall be final and conclusive upon the parties, and judgment may be entered thereon in any court having jurisdiction.

D. In the event of a dispute between Members of an Association with respect to the repair, maintenance, or rebuilding of Utility Facilities used by both, or Utility Facilities used by a Member but which pass through the area under control of another Member, then, upon written request addressed to the Board of the Association, the matter shall be submitted first to the Board for mediation, and thereafter, if the dispute remains unresolved, to binding arbitration within sixty (60) days pursuant to the procedures adopted by Judicial Arbitration and Mediation Services ("JAMS"), or any successor thereto, or to any other generally recognized system of alternative dispute resolution, and the decision of the arbitrator(s) shall be final and conclusive upon the parties, and judgment may be entered thereon in any court having jurisdiction.

6.2 Easements for Utilities and Maintenance. Reciprocal easements between and among the Commercial Area, Residential Area, the Lots, the Golf Club, and the Owner(s) thereof over, through, and under the Project and all areas thereof, for the installation, repair, replacement, and maintenance of Utility Facilities as shown on the Map, as built, and as may be hereafter required or needed to service the Project, are hereby declared to exist, and Declarant and its successors and assigns, and all Owners, until the completion of construction of the Project and sale of the first Lot under authority of a Public Report and thereafter, are reserved by and for the benefit of each Association and its Members and the Golf Club, together with the right to grant and transfer additional easements for such purposes, as necessary. The easements shall be in favor of Declarant and its successors and assigns, for the benefit of all Phases of the Project, and for the benefit of the Associations with respect to all Common Areas transferred to the Associations, or either of them.

6.3 Maintenance Obligations. Except as otherwise expressly provided in this Declaration, each Association shall maintain all Utility Facilities located in the Common Area under its control, except for those facilities maintained by public, private, or municipal utility companies, or by the Western Hills Water District, or any community services district, landscape and lighting district, or other such district. Each Association shall pay all charges for utility services supplied to the areas of the Project over which it has jurisdiction and control except those metered or charged separately to the Lots. All Utility Facilities which are common to and serve both the Commercial Area and the Residential Area, shall be maintained and repaired jointly by the Associations, each paying for one-half (1/2) the cost thereof.

6.4 Access Easements. The Residential Association and its Members shall have nonexclusive easements for ingress and egress over the portions of the Commercial Area Common Areas containing private roadways, sidewalks, stairs, walkways, lobbies, elevators and corridors.

6.5 Hold Harmless. The Residential Owners and the Residential Association shall hold the Commercial Association and its Members harmless from all liability, damage, cost, or expense, including, without limitation, reasonable attorneys' fees incurred by the Commercial Association (other than that proximately caused by the willful act or sole negligence of the Commercial Association or its Members) arising out of the negligent acts or omissions of any of the Residential Owners or the Residential Association in the course of their use of any of the easements in the Commercial Area which are created or reserved for the benefit of the Residential Owners.

The Commercial Owners and the Commercial Association shall hold the Residential Association and its Members harmless from all liability, damage, cost or expense, including, without limitation, reasonable attorneys' fees incurred by the Residential Association (other than that proximately caused by the willful act or sole negligence of the Residential Association or its Members) arising out of the negligent acts or omissions of any of the Commercial Owners or the Association in the course of their use of any of the easements in the Residential Area which are created or reserved for the benefit of the Commercial Owners.

ARTICLE VII USE RESTRICTIONS

In addition to all of the covenants contained herein, the use of the Project and each Lot therein is subject to the following:

7.1 Use and Occupancy of Residential Lots. No Residential Lot shall be occupied and used except for residential purposes by the Owners, their tenants, and social guests, and no trade or business shall be conducted therein, except that Residential Lots may be used as a combined residence and executive or professional office by the Owner or occupant thereof, so long as such use does not interfere with the quiet enjoyment by other Residential Owners of their Lots and does not include signs, on site employees, or visiting clients. Declarant, its successors or assigns, may use any Lot or Lots in the Project owned by Declarant for a model homesite or sites and display and sales/construction office during construction and until the last Lot in the Project is sold by Declarant. No tent, shack, trailer, basement, garage, outbuilding, or structure of a temporary character shall be used at any time as a residence, either temporarily or permanently.

A. No more than two (2) persons per bedroom shall be permitted as permanent residents in any dwelling. A "permanent resident" means any person residing in a dwelling more than sixty (60) days out of any twelve (12) consecutive month period, provided that one (1) person shall be allowed in addition to the maximum number of permanent residents otherwise permitted in each dwelling.

B. No health care facilities operating as a business or charity and serving the sick, elderly, disabled, handicapped, or retarded shall be permitted in the Project, unless permitted by law or ordinance which preempts this restriction.

C. No family day care center for children shall be permitted within the Project except as specifically authorized by California Health and Safety Code § 1597.40 and other applicable state statutes. The owner/operator of any such day care facility shall comply with all local and state laws regarding the licensing and operating of a day care center and, in addition, shall:

(1) Name each Association as an additional insured on the liability insurance policy or bond carried by the owner/operator of the day care center;

(2) Defend, indemnify, and hold the Associations harmless from any liability arising out of the existence and operation of the day care center;

(3) Abide by and comply with all of the Associations' Rules;

(4) Supervise and be completely responsible for children at all times while they are within the project;

(5) Cooperate with the Associations if the Associations' insurance agent or carrier requires proof of insurance, proof of the agreement of the owner or operator of the center to these conditions, or other reasonable requests.

D. No Lot or any portion thereof in the Project shall be leased, subleased, occupied, rented, let, sublet, or used for or in connection with any time-sharing agreement, plan, program, or arrangement, including, without limitation, any so-called "vacation license," "travel club," "extended vacation," or other membership or time interval ownership arrangement. The term "time-sharing" as used herein shall be deemed to include, but shall not be limited to, any agreement, plan, program, or arrangement under which the right to use, occupy, or possess a Lot or dwelling or any portion thereof in the Project rotates among various persons, either corporate, partnership, individual, or otherwise, on a periodically recurring basis for value exchanged, whether monetary or like/kind use privileges, according to a fixed or floating interval or period of time of twenty-five (25) consecutive calendar days or less. Provided, however, this section shall not be construed to limit the personal use of any Lot or any portion thereof in the Project by any Lot Owner or his or her or its social or familial guests.

7.2 Uses in Surrounding Areas. In addition to golf or tennis tournaments within the Project, areas surrounding the Project may be subject to a wide variety of uses, including, but not limited to, agricultural, viticultural, commercial, retail, office, hotel, bed and breakfast, and winery purposes. Each Owner, by acceptance of a deed to a Lot, expressly waives for himself or herself and his or her successors in interest and assigns, any and all claims against owners of land adjacent to the Project, including Declarant and all of its general limited partners, and their successors in interest and assigns, which arise from landowners' business uses of their lands as long as such uses are legal and in conformance with the applicable zoning, and are customarily considered ordinary and normal within the scope of the business use.

7.3 Nuisances. No noxious, illegal, or seriously offensive activities shall be carried on upon any Lot, or in any part of the Project, nor shall anything be done thereon which may be or may become a serious annoyance or a nuisance to or which may in any way interfere with the quiet enjoyment of each of the Owners of his or her respective Lot, or which shall in any way increase the rate of insurance for the Project, or cause any insurance policy to be cancelled or to cause a refusal to renew the same, or which will impair the structural integrity of any Building.

7.4 Vehicle Restrictions and Towing. No trailer, camper, mobile home, commercial vehicle, recreational vehicle, truck having a carrying capacity of greater than one-half (1/2) ton, or van having a seating capacity in excess of eight (8) persons, boat, inoperable automobile, or similar equipment shall be permitted to be parked or remain upon any area within the Residential Areas of the Project, except in special recreational vehicle parking areas, or in an enclosed garage. Brief parking for the purpose of loading or unloading of prohibited vehicles is permitted. Permitted vehicles which shall not include sedans (or standard-size vans or pickup trucks) which are used both for business and personal use are not prohibited, provided that any signs or markings of a commercial nature on such vehicles shall be unobtrusive and inoffensive as determined by the Board. No noisy, polluting, or smoky vehicles shall be

operated on the Project. No unlicensed motor vehicles shall be operated upon the Project, with the exception of golf carts that are operated in accordance with rules adopted by the Golf Club Owner. The Associations may install a sign at each vehicular entrance to the Project containing a statement that public parking is prohibited and that all vehicles not authorized to park on the Project will be removed at the owner's expense. The sign shall contain the telephone number of the local traffic law enforcement agency, and shall not be less than 17 by 22 inches in size with lettering not less than one (1) inch in height.

A. The Commercial Association may adopt Rules regarding parking within Common Areas of the Commercial Area.

B. The Associations may cause the removal of any vehicle wrongfully parked on the Project, including a vehicle owned by an occupant. If the identity of the registered owner of the vehicle is known or readily ascertainable, the President of an Association or his or her designee or the manager shall, within a reasonable time thereafter, notify the owner of the removal in writing by personal delivery or first-class mail. In addition, notice of the removal shall be given to the local traffic law enforcement agency immediately after the vehicle has been removed. The notice shall include a description of the vehicle, the license plate number, and the address from where the vehicle was removed. If the identity of the owner is not known or readily ascertainable and the vehicle has not been returned to the owner within one hundred twenty (120) hours after its removal, the Associations or the manager shall immediately send or cause to be sent a written report of the removal by mail to the California Department of Justice in Sacramento, California, and shall file a copy of the notice with the proprietor of the public garage in which the vehicle is stored. The report shall be made on a form furnished by the Department of Justice and shall include a complete description of the vehicle, the date, time, and place from which the vehicle was removed, the amount of mileage on the vehicle at the time of removal, the grounds for removal, and the name of the garage or place where the vehicle is stored. Notwithstanding the foregoing, the Associations may cause the removal, without notice, of any vehicle parked in a marked fire lane, within fifteen (15) feet of a fire hydrant, in a parking space designated for handicapped without proper authority, or in a manner which interferes with any entrance to, or exit from, the Project or any Lot, parking space, or garage located thereon. The Associations shall not be liable for any damages incurred by the vehicle owner because of the removal in compliance with this section or for any damage to the vehicle caused by the removal, unless such damage resulted from the intentional or negligent act of the Associations or any person causing the removal of or removing the vehicle. If requested by the owner of the vehicle, the Associations shall state the grounds for the removal of the vehicle.

C. Garage space in the Residential Areas shall not be converted into any use (such as a recreational room or storage) that would prevent its use as parking space for the number of vehicles the space was designed to contain. Owners of Residential Lots are to use their assigned parking spaces for parking of their vehicles so that unassigned Common Area parking will be available for guest parking. The Residential Association may establish Rules from time to time for the parking of vehicles in the Common Areas.

D. No parking shall be allowed in street areas where curbs are painted red, and/or where signed for "No Parking." The Associations shall enforce these no parking restrictions.

7.5 Traffic Regulations. The Associations may promulgate, administer and enforce reasonable rules and regulations governing vehicular and pedestrian traffic, including reasonable safety measures and speed limits; provided, however, that the Associations may not regulate beyond that which is necessary for safety reasons, unreasonably interfere with access to the Golf Club or Commercial Areas, or prohibit golf cart access to streets within the Project. Vehicular and pedestrian traffic includes, but is

not limited to, motor vehicles, trailers, golf carts, bicycles, skateboards and roller skates. The Associations shall be entitled to enforce such provisions by establishing such enforcement procedures as it deems appropriate, including levying fines for the violation thereof, as long as such procedures are consistent with the Project Documents. Only drivers licensed to operate motor vehicles shall operate any type of motor vehicle within the Project [excluding golf carts operated by persons 16 years of age or older]. All vehicles of any kind which are operated within the Project shall be operated in a careful, prudent, safe and quiet manner and with due consideration for the rights of all Owners and their Invitees and the Golf Club, the Golf Club Owner and its Invitees.

7.6 Residential Area Signs. No signs shall be displayed to the public view on any Residential Lots or any portion of the Residential Areas of the Project, except such signs as are approved by the Board of the Residential Association or a committee appointed by the Board, and each Owner may also display only one (1) "For Sale" or "For Rent" or "For Exchange" sign, and may also display one (1) sign advertising directions to another Residential Lot which is for sale, rent, or exchange, provided the design, dimensions, and locations are reasonable.

7.7 Commercial Area Signs. Signs in the Commercial Area shall conform to County Ordinances and any Rules established by the Commercial Association.

7.8 Golf Club Signs.

A. Golf Club Crossing Signs. Appropriate signs may be displayed by the Golf Club Owner to identify, warn and otherwise control crossings of streets and roads within the Project by golf carts and pedestrian golfers.

B. Golf Club Identification. Permanent and temporary signs may be displayed by the Golf Club Owner to identify the Golf Club and provide appropriate directions to the Golf Club and/or golf course for motorists and pedestrians.

C. Golf Course Boundaries. Permanent and temporary signs may be displayed by the Golf Club Owner to identify the boundaries of a golf course.

7.9 Project Identification Signs. Appropriate signs may be displayed by Declarant and by the Associations to identify the Project.

7.10 Animals. Except as provided in this Declaration and permitted by the Rules, no animals of any kind shall be raised, bred, or kept within any Residence Lot, or on any other portion of the Residence Area. Trained dogs used for assistance by visually impaired, hearing impaired or physically handicapped persons may be kept by an occupant or invitee of an Owner. Owners, their tenants or other occupants of Lots may keep no more than two (2) dogs, or two (2) cats, or one (1) dog and one (1) cat, within a Lot, and may keep a reasonable number of other ordinary household pets and fish that are kept in cages or aquariums, provided that no such dogs, cats or other animal or fish may kept, bred, or maintained for any commercial purposes. A reasonable number of pets shall be as established by the ordinances, rules and regulations of the City, unless the Board adopts Rules that provide for a lesser number of permissible pets. All pets shall be kept under reasonable control at all times. No pets shall be allowed in the Residential Common Area except as may be permitted by Rules of the Board. No Owner shall allow his dog to enter the Residential Common Area except on a leash. After making a reasonable attempt to notify the Owner, the Residential Association or any Owner may cause any pet found within the Residential Common Area in violation of the Rules of the Board or this Declaration to be removed by the Association (or any Owner) to a pound or animal shelter under the jurisdiction of the

County by calling the appropriate authorities, whereupon the Owner may, upon payment of all expenses connected therewith, repossess the pet. Owners shall prevent their pets from soiling all portions of the Common Area and shall promptly clean up any waste left by their pets. Owners shall be fully responsible for any damage caused by their pets. An Owner shall use reasonable efforts to prevent any animal within his Lot from making disturbing noises that can be heard from any other Lot between the hours of 10:00 PM to 7:00 AM. The Board, after notice and a hearing, may require the permanent removal of any animal that the Board determines to be a danger to the health and safety of any occupant in the Project, or otherwise to be a nuisance within the Project. The Board may find that an animal is a nuisance if the animal or its owner continue to violate the Rules regulating pets after receipt by the owner of a written demand from the Board to comply with the Rules.

7.11 Garbage and Refuse Disposal. All rubbish, trash, and garbage shall be regularly removed from the Project, and shall not be allowed to accumulate thereon. Trash, garbage, and other waste shall only be kept in sanitary containers. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. All equipment, garbage cans or recycling containers, woodpiles, or storage piles shall be kept screened and concealed from view of other Lots, streets and Common Areas, except when placed out for pickup on the designated garbage pickup day. No toxic or hazardous materials shall be disposed of within the Project by dumping in the garbage containers or down the drains, or otherwise.

7.12 Radio and Television Antennas Within the Residential Areas. No alteration to or modification of a central radio and/or television antenna system or cable television system, whichever is applicable, if installed by Declarant, shall be permitted, and no Owner may be permitted to construct and/or use and operate his or her own external radio and/or television antenna, satellite dish, or related equipment within the Residential Area without the consent of the Board of the Residential Association. In considering whether to approve applications, the Board shall consider and give great weight to considerations of aesthetics and uniformity of appearance and potential structural damage and potential for water leaks in the Project, and the requirements of any applicable laws, including Civil Code Section 1376. The Board shall, in acting upon requests for approval of a satellite dish or other signal reception or transmission devices comply with California Civil Code §1376 and FCC (Federal Communications Commission) regulations. All fees for the use of any cable television system shall be borne by the respective Lot Owners, and not by the Association.

7.13 Residential Lots Right to Lease.

A. Any Residential Owner who wishes to lease his or her Residence must meet each and every one of the following Rules, and the lease will be subject to these Rules whether they are included within the lease or not:

- (1) All leases must be in writing;
- (2) The lease must be for the entire Residence and not merely parts thereof, unless Owner remains in occupancy;
- (3) All leases shall be subject in all respects to provisions of the Declaration, the Bylaws, and all Rules by the Residential Association Board;
- (4) All Owners who lease their Residences shall promptly notify the secretary of the Residential Association in writing of the names of all tenants and members of tenants' family occupying such residence, and shall provide the secretary of the Residential Association with a complete

copy of the lease; all Owners leasing their residence shall promptly notify the secretary of the Residential Association with the address and telephone number where such Owner can be reached;

(5) Any failure of the tenant to comply with the foregoing shall be a default under the lease, regardless of whether the lease so provides. In the event of any such default, the Owner immediately shall take all actions to cure the default, including, if necessary, eviction of the tenant;

(6) If any Owner acting as a landlord or tenant is in violation of the provisions of the Declaration, Bylaws, or Rules of the Residential Association or Board, the Residential Association may, in the alternative, bring an action in its own name and/or in the name of the Owner to have the tenant evicted and/or to recover damages. If the court finds that the tenant is or has violated any of the provisions of the Declaration, the Bylaws of the Residential Association, or the Rules of the Residential Association or the Board, the court may find the tenant guilty of unlawful detainer, notwithstanding the fact that the Owner is not a party to the action and/or the tenant is not otherwise in violation of tenant's lease or other rental agreement with the Owner/landlord. For purposes of granting a unlawful detainer against the tenant, the court may consider the Owner or person in whose name a contract (the lease or rental agreement) was made for the benefit of the Residential Association. The remedy provided by this subsection is not exclusive and is in addition to any other remedy or remedies which the Residential Association has. If permitted by present or future law, the Residential Association may recover all its costs, including court costs and reasonable attorneys' fees, and such costs shall be a continuing lien upon the Residential Lot.

B. The Residential Association will give the tenant and the Owner notice in writing of the nature of the violation of the Rules, and twenty (20) days from the mailing of the notice in which to cure the violation, before the Residential Association may file for eviction.

C. By becoming a tenant, each tenant agrees to be bound by the Declaration, the Bylaws and the other Rules of the Residential Association, and recognizes and accepts the rights and power of the Residential Association to evict a tenant for any violation by the tenant of the Declaration, the Bylaws, and other Rules of the Residential Association.

7.14 Architectural and Design Control. The purpose and intent of this Article is to empower the Associations to establish harmony in design of Improvements in the Project and preserve property values within the Project. Except for Improvements undertaken by or on behalf of Declarant, no structure or other Improvements shall be placed upon any Lot except in compliance with this section 7.14 and Design Guidelines adopted originally by the Declarant and subsequently by the Diablo Grande Design Review Committee pursuant to this section 7.14 which are applicable to such Improvements. Under this section, Improvements shall include clearing, excavation, grading and other site work, original construction of Improvements and exterior alteration of existing Improvements and planting or removal of landscaping materials.

A. Residential Area - Original Improvements by Builders. All new construction of Improvements in Residential Areas by Builders shall be subject to review and written approval of the design of such Improvements by Declarant pursuant to Diablo Grande Builder Design Guidelines established by Declarant.

B. Residential Area - Original Improvements by Lot Owner. Where a Lot in the Residential Area has been sold by Declarant or a Builder to a Lot Owner who is not a Builder, and such Lot is not improved with a residence when sold, the design of any residence and other Improvements on the Lot shall be subject to review and written approval of the design of such Improvements by the

Declarant pursuant to **Residential Area** Design Guidelines established by Declarant. Declarant may delegate such review and approval to the Design Review Committee.

C. Residential Area - Modifications, Alterations or Additions of Improvements by Lot Owner. No Improvement, pool, spa, outside or exterior wiring, balcony, screen, patio, patio cover, tent, awning, carport, carport cover, or structure of any kind shall be commenced, installed, erected, painted, repainted, or maintained in the Residential Area, nor shall any modification or alteration of any Improvement of any kind be made thereto until the same has been approved in writing by the Design Review Committee, or Declarant, (with the exception of original improvements constructed by or approved for construction by Declarant).

D. Commercial Area - Original Improvements by Commercial Lot Owners. All new construction of Improvements in Commercial Areas shall be subject to review and written approval of design of such Improvements by the **Declarant** or by the Design Review Committee pursuant to **Diablo Grande Commercial Area** Design Guidelines established by Declarant, and by the Stanislaus County Planning Commission.

E. Commercial Area - Modification of Improvements in Commercial Areas. No modification, alteration or improvement of any kind shall be made to any Improvements in the Commercial Area until approved in writing by the Design Review Committee.

F. Requirement for Approval of Plans. For any review and approval required under this section 7.14, plans and specifications, in accordance with the reasonable requirements of the applicable Design Guidelines, shall be submitted by the applicant Owner to the Declarant, Board or Committee which is to undertake such review and approval, showing the nature, kind, shape, color, size, materials and location of such improvements, alterations, or modifications. Such plans and specifications shall be reviewed for approval as to quality of workmanship and design and harmony of external design with existing structures, and as to location in relation to surrounding structures, topography, and finish grade elevation and other requirements stated in this section and in the applicable Design Guidelines. No structure, fence or wall shall be erected, placed or altered on any Lot nearer to any adjoining Lot or any street than the minimum building set back line established by the Diablo Grande Specific Plan or by the applicable Design Guidelines.

(1) No permission or approval shall be required to repaint in accordance with Declarant's or a Builder's original color scheme, or to rebuild in accordance with Declarant's or a Builder's original plans and specifications. No permission or approval shall be required to repaint in accordance with a color scheme previously approved by the Declarant, a Board or a Committee, as herein required, or to rebuild in accordance with plans and specifications previously approved by the Declarant, a Board or a Committee. Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of a building or residence or to paint the interior of a building or residence any color desired.

(2) The Boards and Design Review Committee shall not restrict or prohibit the installation or use of a solar energy system, except that it may adopt reasonable restrictions which do not significantly increase the cost of the system or significantly decrease its efficiency or specified performance, or which allow for an alternative system of comparable cost, efficiency, and energy conservation benefits.

(3) Design Guidelines shall be adopted by the Design Review Committee. The Design Guidelines may be modified by the Design Review Committee from time to time, subject to oversight by the respective Boards. A copy of the Design Guidelines shall be available for review by Owners, their architects and designers, during business hours, and may be copied by any Owner, at the Owner's expense. A copy of the Design Guidelines, including all modifications, shall be provided by each Association to the County. Improvements and alterations shall conform to the **applicable** Design Guidelines which are in effect at the date of the approval by the Declarant or by the Design Review Committee. **As long as the Declarant owns any Commercial Lot or Residential Lot, or any of the Annexation Property subject to annexation under section 2.14, no Design Guidelines may be modified without the prior written approval of the Declarant.**

G. Design Review Committee Membership. The Design Review Committee shall consist of three (3) members. Declarant shall appoint all of the original members of the Design Review Committee and all replacements until 90% of the subdivision interests in the Residential Area have been sold to Class A members, other than Builders. Thereafter, the Residential Association Board shall appoint two (2) members and the Commercial Association Board shall appoint one (1) member to the Design Review Committee. Members appointed to the Design Review Committee need not be Members of either Association. A majority of a Design Review Committee may designate a representative to act for it. In the event of death or resignation of any member of the Design Review Committee, the successor shall be appointed by the entity which appointed such member. Neither the members of the Design Review Committee nor its designated representatives shall be entitled to any compensation for services performed pursuant hereto.

(1) The Declarant, the Boards and the Design Review Committee shall operate pursuant to the following guidelines:

(a) The emphasis of architectural review shall be upon uniformity of appearance in the Project, and consistency in carrying out Declarant's original design and architectural scheme for the Project. The Design Guidelines shall adopt reasonable and objective standards and rules which are reasonably ascertainable, and are uniformly and fairly applied to all cases with respect to these objectives.

(b) With respect to modifications and alterations of residences in Residential Area, after original construction, the emphasis of architectural review shall be upon preventing additions, alterations or replacements which are reasonably likely to be detrimental to the overall ambiance of the Project, and reasonably likely to adversely affect property values throughout the Project and preventing additions or alterations that are unreasonably inconsistent with the Project's basic design and architectural scheme or that are found by the Declarant, a Board or a Committee to be offensive to a reasonably prudent homeowner within the Project. The Declarant, the Board of the Residential Association or a Committee appointed by that Board shall adopt reasonable and objective standards and rules, which are reasonably ascertainable, and are uniformly and fairly applied to all cases. Neither the Board or a Committee appointed by the Board shall act arbitrarily or capriciously in the process of reviewing plans. The Board or its Committee shall base their decisions on what is in the best interests of the Project as a whole, and not upon what determination will appeal to or appease a particular Member or group of Members.

H. Design Review Committee Action. In the event the Design Review Committee fails to approve or disapprove an application for improvements by an Owner of a Lot in writing within sixty(60) days after the complete application has been submitted to the Design Review Committee, approval of the application will be deemed to have been made by the Design Review Committee based

upon the application submitted by the applicant Owner. The Design Review Committee may establish reasonable criteria for a complete application for approval of Improvements, including the type and nature of plans, specifications, drawings and other relevant information which must be submitted for an application.

(1) If the Design Review Committee determines that a submittal to the Design Review Committee is not in sufficient form or content to constitute a complete application, it must notify the applicant in writing within ten (10) days after the application is submitted to the Design Review Committee by the applicant, stating why the application is not complete or adequate; otherwise the application as submitted shall be deemed to be adequate and complete. If the Design Review Committee disapproves a submittal, it shall set forth in writing to the applicant the reasons for such disapproval identifying the criteria and standards in this Declaration or the Design Rules and Guidelines that have not been reasonably met by the application.

(2) Approval or disapproval of plans by the Design Review Committee, in accordance with the process and procedures herein set forth shall in no way make the Design Review Committee, or its members, or the Associations, liable to any Owner in the Project, or responsible for, or liable for, the improvements built after approval of the plans, and the Owner whose plans are approved shall defend, indemnify and hold the Design Review Committee, and the members thereof, and the Associations harmless from any and all liability arising out of such approval.

I. Review of Landscaping. No landscaping, decks, balconies, patios or other physical improvements or additions shall be made by any Owner to any yards of a Lot in a Residential Area ("Yard Improvements or Alterations") which Yard Improvements or Alterations are visible from the streets or Common Areas of the Project until plans and specifications showing the nature, kind, shape, and location of the materials for such Yard Improvements or Alterations have been submitted to and approved in writing by the Design Review Committee. Lots from forty thousand (40,000) square feet to three (3) acres in size are limited to a maximum of fifteen thousand (15,000) square feet of irrigated landscaping. Lots larger than three (3) acres in size are limited to a maximum of twenty thousand (20,000) square feet of irrigated landscaping.

J. Governmental Approval. All alterations, modifications, or other Improvements on or within Lots in the Project shall comply with all design requirements, approvals and procedures of the County. Before commencement of any alteration or Improvements approved by the Design Review Committee, the Owner shall comply with all appropriate governmental laws and regulations. Approval by the Design Review Committee does not satisfy the appropriate approvals that may be required by any governmental entity with appropriate jurisdiction.

K. Structural Integrity. Nothing shall be done in or on any Lot or in or on the Common Area which will impair the structural integrity of any building.

L. Completion of Work; Review of Work. Upon approval of the Declarant, or Design Review Committee, as required under this section 7.14, and the obtaining of all appropriate permits from the applicable governmental agencies for such approved work, and not before, the Owner shall diligently proceed with the commencement and completion of all work so approved in compliance with the approvals granted. The work must be commenced within six months from the date of approval unless the Declarant, or Design Review Committee which approved the work permits in writing the work to be commenced at a later time. If the work is not commenced within six months after the approval date, or such later time as has been otherwise granted, then the approval shall be deemed cancelled, and the Owner must reapply for approvals under this section 7.14 before undertaking any such work.

(1) The Declarant, or Design Review Committee that approved the work shall inspect work within sixty (60) days after a notice of completion has been delivered to the Declarant, or Design Review Committee that approved the work by the Owner. The Declarant, or Design Review Committee may also inspect the work at any time prior to completion as it deems appropriate to determine that the approval is being followed. The Declarant, or Design Review Committee is to inspect the work performed, and determine whether it was performed and completed in compliance of the approval granted in all material respects.

(2) If at any time during the construction of any work, the Declarant, or Design Review Committee, finds that the work was not performed or completed in compliance of the approval granted in all material respects, or finds that the appropriate approval which was required for any work was not obtained, the Declarant, or Design Review Committee shall notify the Owner in writing of the non-compliance. The notice shall specify in writing the particulars of non-compliance, and shall set forth the requirement of the Owner to remedy the non-compliance. The Declarant, or Design Review Committee shall determine in its reasonable judgement whether an alteration, modification or improvement complies with the approval as granted in material respects. Minor changes, deviations or imperfections that do not negatively effect or impact the Project shall not be considered as non-compliance.

(3) If it is determined that an Owner has not constructed an Improvement in compliance of the approval granted in all material respects, and if the Owner fails to remedy such non-compliance in accordance with provisions of the notice of non-compliance, then after expiration of thirty (30) days from the date of such notification, the Board of the Association shall provide Notice and Hearing to consider the Owner's continuing non-compliance. At the Hearing, if the Board finds that there is no valid reason for the continuing non-compliance, the Board shall then require the Owner to remedy the non-compliance as necessary and appropriate in the determination of the Board as to result in the improvement being rendered as reasonably in compliance as is appropriate for the overall good and benefit of the project, or remove the same within a period of not more than forty-five (45) days from the date of the Board's determination. If the Owner does not comply with the Board's ruling within such period, or within any extension of such period as the Board, in its discretion may grant, the Board may (a) remove the non-complying improvement, (b) remedy the non-compliance, or (c) institute legal proceedings to enforce compliance or completion.

(4) After the period of time after ninety per cent (90%) of the Lots in the Residential Project have been sold by the Declarant to Class A members other than Builders, an Owner who has submitted an application to the Design Review Committee may appeal a decision to deny or conditionally approve the Owner's application to the Board of the Association to which the Owner belongs, by written appeal to the Board. The Board shall notify the appealing Owner in writing of the date set for a hearing regarding the Owner's appeal within ten (10) days after receipt of the Owner's appeal. The hearing shall be held within thirty (30) days after receipt of the Owner's appeal by the Board. The Board shall make its determination on the appeal in writing delivered to the appealing Owner within ten (10) days after the hearing. The determination of the Board shall be final.

(5) In reviewing submissions made to the Design Review Committee pursuant to this section 7.14, the Design Review Committee as appropriate, may consider visual and environmental impact ecological compatibility, appropriate siting and location with respect to the terrain, finish grade elevations, harmony of external design with surrounding structures and environment, and location in relation to surrounding structures and plant like. The Design Review Committee may require the preservation or relocation of trees and native plants within a construction site as a condition of approval of the plans. Design Review Committee can approve, conditionally approve or deny an application. If an application is denied, the reason for the denial must be stated in writing with sufficient explanation as to enable the

applicant to remedy any discrepancies in the application with suggestions as may be appropriate for curing any objections.

(6) Each Owner acknowledges that the Design Review Committee members will change from time to time and that interpretation, application and enforcement of the Design Guidelines may vary accordingly. Approval of proposals, plans, drawings for any work or proposed work or in connection with a matter requiring review and approval under this section 7.14 shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals subsequently or additionally submitted for approval.

M. Variances. The Design Review Committee undertaking review and approval under this section 7.14 may authorize variances from strict compliance with any guideline and procedures when circumstances such as topography, natural obstructions, hardship or aesthetic or environmental considerations require, but only in accordance with duly adopted Rules. The Design Review Committee granting any such variance shall state in its findings of approval the reasons and rationale for such variance. Such variances may be granted only when unique circumstances dictate and no variance may be effective unless in writing, and if not contrary to an express provision of the Declaration. The granting of a variance in any one circumstance shall not estop or prevent the Design Review Committee from denying a variance in any other circumstance. For purposes of this section, the inability to obtain approval of any government agency or the issuance of a permit from a government agency, the cost of compliance, or the terms of any financing shall not be considered a hardship warranting a variance.

N. Limitation of Liability. Review and approval or denial of any application pursuant to this section 7.14 is made on aesthetic considerations only and neither the Declarant nor a Board nor Design Review Committee, nor the members thereof, shall bear any responsibility for ensuring the structural integrity or soundness of any approved construction or modifications nor for ensuring compliance with building codes and any other governmental requirements. Neither the Declarant, the Associations, the Boards or the Design Review Committee, or the members thereof, shall be held liable for any injury, damages, or loss arising out of the manner or quality of construction reviewed or approved under this section.

O. Enforcement. Any structure or other Improvement placed or made in violation of this section 7.14 shall be deemed to be nonconforming. Upon written request from the Declarant, or the Board of the Association in which the nonconforming Improvements are located, the Owner of the Lot on which the nonconforming Improvements are located shall at its cost and expense, remove the nonconforming Improvements and restore the Lot, and any of the Improvements situated on the Lot before the nonconforming Improvements were made to their original state before such nonconforming Improvements were made. Should an Owner fail to remove such nonconforming Improvements and restore as herein required, the Declarant or the Board of the Association involved shall have the authority and standing to pursue all legal and equitable remedies available to enforce this section and the decisions of the Design Review Committee under this section.

7.15 Fencing.

A. Adjacent to Golf Course. Except for fencing originally constructed or approved by Declarant, there shall be no fencing constructed, maintained or placed (i) on any portion of the Project which adjoins the golf course unless first approved by the Design Review Committee, (ii) on any portion of the Common Area or any portion of any Lot which is subject to the ten (10) foot easement established pursuant to section 2.5 of this Declaration, or (iii) on any portion of the Project which, in the judgment of the Club Owner, unreasonably interferes with the view from the Golf Club. For purposes of the preceding sentence, fencing includes fences, walls, netting, and other similar barriers, including landscaping. Any fencing approved in writing by the Golf Club Owner shall be deemed to not be in violation of this section. All fences adjacent to the golf course shall be of open "ranch" or metal construction, consistent within each neighborhood or common street, and have a maximum height of six (6) feet.

B. Chain Link Fences. No chain link fences shall be permitted within the Project except for (i) maintenance or utility areas, (ii) tennis courts, and (iii) those erected by the Declarant; all of which will have landscaping approved by the Design Review Committee.

C. Other Fences. All fences within the Project must conform to the overall project fencing plan contained in the Design Guidelines.

D. "Spite" Fences. Any perimeter fence on a Lot which is constructed parallel to any portion of an existing fence must maintain a minimum ten (10) foot horizontal separation and be a maximum of six (6) feet in height.

7.16 Structural Integrity. Nothing shall be done in or on any Lot or in or on the Common Area which will impair the structural integrity of any building.

7.17 Window Coverings. Within the Residential Area, all drapes, curtains, window coverings, shutters, or blinds visible from the street or Common Areas shall be beige, white, or off-white in color or lined in beige, white, or off-white, or as the case may be, of colors, materials, and patterns which are approved by the Design Review Committee.

7.18 Clothes Lines. There shall be no outside laundering or drying of clothes. No draping of towels, carpets, or laundry over railings shall be allowed.

7.19 Power Equipment and Motor Vehicle Maintenance. Within the Residential Area, no power equipment, hobby shops, or motor vehicle maintenance (other than emergency work) shall be permitted in any area except with prior written approval of the Residential Association Board. Approval shall not be unreasonably withheld, and in deciding whether to grant approval, the Board shall consider the effects of noise, air pollution, dirt or grease, fire hazard, interference with radio or television reception, and similar objections. All hazardous waste shall be disposed of properly by each Owner.

7.20 Commonly Metered Utilities. The Boards may establish restrictions regarding the individual use of any utility on a common meter, and may impose reasonable charges for the individual use thereof.

7.21 Liability of Owners for Damage to Common Area. The Owner of each Lot shall be liable to his or her respective Association for all damage to the respective Common Areas or improvements to the extent described in section 5.1A(2).

7.22 Basketball Standards. No basketball apparatus that is attached to a Residence or the Improvement shall be permitted within the Residential Areas of the Project, nor shall any portable apparatus be used for playing basketball in the Residential Areas, unless approved by the Design Review Committee.

7.23 Lakes and Ponds. Neither boats nor watercraft shall be permitted in the lakes or ponds in the Common Area. No dogs shall be permitted in the lakes or ponds. No garbage or waste shall be disposed of in the lakes or ponds. The Board of the Residential Association may adopt additional Rules for the use of the lakes and ponds, and shall enforce the same. The lake or pond area shall mean and refer to all areas of the Project occupied by bodies of water (other than swimming pools).

7.24 Commercial Area Uses. Uses within the Commercial Area shall be only those uses permitted under applicable zoning ordinances.

7.25 Flags, Pennants, Banners, Etc. There shall be no exhibiting, flying, or hanging of any flags, pennants, banners, kites, towels, etc., from any Residential Lots (except the sales office) that would be visible from the street, Common Area, or the other Residential Lots, except under reasonable rules adopted by the Design Review Committee, and except as expressly permitted by statute.

7.26 Activities Causing Increase in Insurance Rates. Nothing shall be done or kept on any Lot or in any improvements constructed thereon or in the Common Area which will increase any applicable rate of insurance or which will result in the cancellation of insurance on any Lot or any part of the Common Area, or which would be in violation of any law.

7.27 Common Area Use. Nothing shall be stored, grown, or displayed in the Residential Common Area, including balconies and patios, that is not approved in advance by the Residential Association Board, or by the Design Review Committee.

7.28 Non-Native Species. Owners, tenants, or invitees are prohibited from introducing (planting) non-native species to any portion of the Project.

7.29 Southwestern Pond Turtle. Owners, tenants or invitees are prohibited from collecting the southwestern pond turtle and other native species from the Project that are considered to be special status as defined by the California Fish and Game Department.

7.30 Appearance of Golf Club. Each Owner acknowledges and agrees that neither Owners nor the Associations shall have any right to compel the Golf Club Owner or the owner of the golf course to maintain the Golf Club or golf course or any improvements thereon to any particular standard of care, and that the appearance of the Golf Club, golf course and improvements shall be determined in the sole discretion of the Golf Club Owner.

7.31 Drainage. No Owner shall impede, alter or otherwise interfere with the drainage patterns and facilities in the Project until plans have been submitted and approved pursuant to section 7.14, and approved by any public authority having jurisdiction thereof. This Declaration provides notice that many Lots were carefully graded by Declarant to provide positive drainage to a common drainage system. Lots that were not graded by Declarant will be subject to design review by the Design Review Committee for drainage design. Positive drainage is achieved by shaping and cutting drainage swales or channels in the ground. These swales are engineered progressively lower than the adjoining surface ground areas on the Lot and provide a receptacle and conduit to drain water away from foundations and into the streets or Project storm drainage system. Swales also help to prevent surface drainage water from flowing to adjacent Lots. All drainage on each Lot must flow away from the foundation of the Residence, must tie into the common drainage system and may not drain onto the golf course unless expressly approved by the Golf Club Owner. Each Residence must have a roof gutter system and downspouts that properly drain roof water to the Project's storm drainage system.

7.32 Engineering Required. No Owner shall grade or fill or otherwise alter the slope or contour of any Lot, as established by Declarant, without first retaining a soils engineer or civil engineer, as appropriate, licensed by the State of California, and receiving from such engineer written recommendations, plans and specifications regarding such proposed grade, fill and/or alteration. No Owner shall perform any such grading, fill and/or alteration except in conformity with the recommendations, plans and specifications of such engineer. In addition, the Owner shall also obtain prior approval by Declarant, or Design Review Committee in accordance with the provisions of section 7.14 of this Declaration, and shall comply with all applicable County requirements. Any proposed construction, development or landscaping work on a slope that is 25% or greater may require special design or other treatment. For any such slopes that are 25% or greater, a soils engineer must provide written recommendations to the Declarant, and the Design Review Committee, in advance of any such work being approved or undertaken.

7.33 Exterior Lighting. No Owner shall remove, damage or disable any exterior light, regardless of where located, which is connected to an Association's electric service.

7.34 Golf Course Areas. Owners and their Invitees adjacent to all golf course areas shall not engage in any action which would distract from the playing quality of the golf course. Such actions include, but are not limited to, burning materials where the smoke will cross the golf course, maintaining pets which are creating excess noise, playing loud radios, stereos, televisions or musical instruments, running, walking, jogging, bicycle riding, or skateboarding on the fairways or golf cart paths, picking up golf balls or otherwise interfering with play.

7.35 Golf Cart Paths. No portion of the golf cart path system will be situated on individual Lots. No Owner or Invitee shall have any right to use any portion of the golf cart path system without the prior approval of the owner or manager of the Golf Club. All golf cart paths shall be maintained, repaired and replaced by the Golf Club Owner.

7.36 Golf Tournaments. From time to time, the Golf Club may be used for tournament play. At such time, vehicular and pedestrian traffic within the Project is likely to increase substantially as persons who will play in the tournament as well as persons who will watch the tournament will be invited, the broadcast media and their equipment may be present, and additional parking, utility services, directional signs, traffic control, security, clean-up crews and other services may be required. During all such periods, the Golf Club shall have the right to take all reasonable actions which are appropriate for holding such an event as long as the Golf Club is solely responsible for all additional costs incurred as a result of the tournament, including repairing any damage caused to the Common Area as a result of the

tournament. The Associations shall have no right to prohibit the Golf Club Owner from taking any and all reasonable actions which are appropriate for holding a tournament.

7.37 Intrusion Onto Golf Course. Neither the Associations nor any Owner shall have any right of entry onto the Golf Club[s] without the prior written consent of the Golf Club Owner. All permitted entry shall be made only through entry points designated by the Golf Club; no Owner may access the Golf Club or the golf course from any adjacent residential Lot. Neither the Associations nor any Owner may permit irrigation water to overspray or drain from its Common Area or Lot onto any portion of the Golf Club without approval of the Golf Club Owner. Neither the Associations nor any Owner may permit any fertilizer, pesticides or other chemical substances to overspray, drain, flow or be disposed of in any manner upon the Golf Club. If the Associations or any Owner violates the provisions of this section, it shall be liable to the Golf Club Owner for all damages to the turf resulting from violation and all damages, including consequential damages, suffered by the Golf Club Owner.

7.38 Ownership of Property Near a Golf Course. By acceptance of a deed to a Lot, each Owner acknowledges and agrees that owning property adjacent to a golf course has benefits as well as detriments and that the detriments include (a) the risk of damage to property or injury to persons and animals from golf balls which are hit onto an Owner's Lot or other portion of the Project utilized by the Owner, (b) the entry by golfers onto Owner's Lot or other portions of the Project utilized by the Owner to retrieve golf balls, (c) overspray in connection with the watering of the roughs, fairways and greens on the golf course, (d) noise from golf course maintenance and operation equipment (including, without limitation, irrigation systems, compressors, blowers, mulchers, tractors, utility vehicles and pumps, all of which may be operated at all times of the day and night and/or continuously), (e) odors arising from irrigation and fertilization of the turf situated on the golf course, (f) disturbance and loss of privacy resulting from golf cart traffic and golfers and (g) noise, vehicular and pedestrian traffic, congestion and loss of privacy as a result of tournaments held on the golf course. Additionally, each Owner acknowledges that pesticides and chemicals may be applied to the golf course throughout the year and that reclaimed water, treated waste water or other sources of non-potable water may be used for irrigation of the course. Each Owner expressly assumes such detriments and risks and agrees that neither Declarant, the owner or manager of the golf course, nor any of their successors or assigns shall be liable to the Owner or anyone claiming any loss or damage, including, without limitation, indirect, special or consequential loss or damage arising from personal injury, destruction of property, trespass or any other alleged wrong or entitlement to remedy based upon, due to, arising from or otherwise related to the proximity of the Owner's Lot or Residence to the golf course, including, without limitation, any claim arising in whole or in part from the negligence of Declarant, the manager or owner of the golf course, or their successors or assigns. Each Owner hereby agrees to indemnify and hold harmless Declarant and the Golf Club Owner, manager of the golf course, and their respective successors and assigns, against any and all such claims by Owner's Invitees. By acceptance of a deed to a Lot, each Owner specifically covenants and agrees that he or she will specifically disclose the existence and contents of this section 7.38 to his or her subsequent transferees.

7.39 Irrigation Specifications. The irrigation specifications contained in the "Western Hills Water District Standards Report" have been designed to minimize consumption of water in landscape irrigation on individual Lots and Common Area. The Associations shall follow the irrigation specifications of such report when irrigating Common Area, and all Owners shall follow the irrigation specifications of such report when irrigating their Lots.

7.40 Landscaping. No hedge, shrubbery, plant or tree which obstructs sight-lines at intersections of driveways, streets or roadways within the Project shall be permitted to remain on any Lot. No Owner shall cut, remove, or mutilate any trees, shrubs, bushes or other vegetation having trunk diameter of six (6) inches or more at a point four (4) feet above ground level, without obtaining approval pursuant to section 7.14, except as provided in section 5.1A.

7.41 Liquor Sales. The Golf Club will offer for sale liquor to be consumed on-site. In addition, special event permits may be obtained for activities within the Project from time to time. Special events held within Common Area or for events which utilize Common Area are subject to the approval of the Declarant; the Declarant shall have sole and absolute discretion to determine whether to grant approval of any request. By acceptance of a deed to a Lot, each Owner agrees not to contest the sale of liquor within the Golf Club and not to object to any special event permits applied for or issued from time to time.

7.42 Mineral Exploration. No Lot shall be used to explore for or remove any oil, hydrocarbons or minerals of any kind without the approval of the Board and only if permitted by local ordinances.

7.43 Wells and Septic Tanks. Except as specifically permitted and approved by Declarant in connection with the conveyance of a Lot, no well for water shall be constructed or installed on any Lot. Septic tanks may be constructed or installed on Estate Lots (3 acres or larger in size) subject to Stanislaus County approval prior to issuance of a Building Permit. Owners of Estate Lots that are in proximity to smaller Lots where a sewer line exists or is planned are required to connect to the sewer system. Declarant has no express or implied obligation to permit the installation of any well, and approving the installation of any well or wells does not impose any express or implied obligation on Declarant to approve the installation of any other well.

7.44 Firewood. Cutting or collecting of firewood on Residential Lots is permitted only within the Lot of the Owner by or for whom the cutting or collecting is to occur, and is subject to Residential Association Rules.

7.45 Owner's Right and Obligation to Maintain and Repair. Except for those portions of the Project which either of the Associations are required to maintain and repair, or are to be maintained by an Association created by a Builder for the purpose of maintaining improvements within a portion of the Project subject to a Supplemental Declaration, each Lot Owner shall, at his or her sole cost and expense, maintain and repair his/her Lot, and all Improvements and landscaping thereon, keeping the same in good condition. In the event an Owner or an Association created by a Builder under a Supplemental Declaration for the purpose of maintaining homes, or other improvements or landscaping for a group of Lots within a portion of the Project, fails to maintain the Lot (or the Improvements and landscaping within his/her Lot) in a manner which the Board having control thereover deems necessary to preserve the appearance and value of the Project, the Board may notify Owner of the work required and request that it be done within sixty (60) days from the giving of such notice. In the event Owner fails to carry out such maintenance within such period, the Board may, following notice and hearing as provided in the Bylaws, cause such work to be done, and the cost thereof shall immediately be paid by such Owner to the Associations and until paid shall bear interest at the rate of twelve percent (12%) per annum (but no greater than the maximum rate authorized by law).

**ARTICLE VIII
INSURANCE; DAMAGE OR DESTRUCTION; CONDEMNATION**

8.1 Insurance; Damage or Destruction.

A. Insurance. The Associations shall each obtain and maintain the following insurance:

(1) A master hazard policy ("special form") insuring 100% of the insurable replacement cost of all improvements, equipment and fixtures in their respective Common Areas;

(2) If obtainable, an occurrence version comprehensive general liability policy insuring each Association, its agents, the Owners, and their family members against liability incident to the ownership or use of the Common Area or any other Association-owned or maintained real or personal property; the amount of general liability insurance which the Associations shall carry at all times shall be not less than the minimum amounts required by California Civil Code §§ 1365.7 and 1365.9;

(3) Workers' compensation insurance to the extent required by law (or such greater amount as the Board deems necessary); the Associations shall obtain a Certificate of Insurance naming it as an additional insured in regard to workers' compensation claims from any independent contractor who performs any service for the Association, if the receipt of such a certificate is practicable;

(4) Fidelity bonds or insurance covering officers, directors, and employees that have access to any Association funds;

(5) Officers and directors liability insurance in the minimum amounts required by California Civil Code § 1365.7;

(6) Such other insurance as the Board in its discretion considers necessary or advisable; and

(7) Earthquake insurance to the extent required by law, and if not required by law, then to the extent available at commercially reasonable rates in the opinion of the Board.

(8) The following endorsements should be included, if applicable:

(a) Changes in building codes, and demolition coverage (sometimes referred to as "ordinance or law endorsement");

(b) Inflation guard coverage;

(c) "Agreed-amount" endorsement (to eliminate a co-insurance problem);

(d) Replacement cost endorsement;

(e) Primary coverage endorsement.

B. Amount, Term and Coverage.

(1) **Residential Areas.** The amount, term and coverage of any policy required hereunder for Residential Areas (including the type of endorsements, the amount of the deductible, the named insureds, the loss payees, standard mortgage clauses, notices of changes or cancellations, and the insurance company rating) shall satisfy the minimum requirements imposed for this type of project by the Federal National Mortgage Association ("FNMA") and the Federal Home Loan Mortgage Corporation ("FHLMC") or any successor to either of those entities (except for earthquake insurance, the purchase of which shall be within the discretion of the Board, as provided in § 8.1(7) above). If the FNMA or FHLMC requirements conflict, the more stringent requirement shall be met. If FNMA and FHLMC do

not impose requirements on any policy required hereunder, the term, amount and coverage of such policy shall be no less than that which is customary for similar policies on similar projects in the area.

(2) Commercial Areas. The amount, term and coverage of any policy required hereunder for Commercial Areas (including the type of endorsements, the amount of the deductible, the named insureds, the loss payees, standard mortgage clauses, notices of changes or cancellations, and the insurance company rating) shall satisfy the minimum requirements imposed for this type of project by any First Mortgagees of the Property in the Commercial Area. If such First Mortgagees do not impose requirements on any policy required hereunder, the term, amount and coverage of such policy shall be no less than that which is customary for similar policies on similar projects in the area.

(3) Deductibles. The Boards shall adopt a policy regarding payment of deductibles on any insurance coverage. Unless the Boards determine otherwise, the Associations shall pay deductibles required under any insurance claim from the Association's funds, unless insufficient funds are available to the respective Association from the Association's accounts or from funds borrowed by the Association in accordance with this Declaration, in which event the Association shall levy a Special Assessment, in accordance this Declaration with respect to the amount of any such deductible which exceeds funds available to the Association from Association funds or from borrowing.

C. Representation for Claims. Each Owner appoints the Association of which it is a member or any insurance trustee designated by the Association to act on behalf of the Owner in connection with all insurance matters arising from any insurance policy maintained by the Association, including without limitation, representing the Owners in any proceeding, negotiation, settlement or agreement.

D. Waiver of Subrogation. Any insurance maintained by an Association shall contain "waiver of subrogation" as to the Association and its officers, directors and Members, the Owners and occupants of the Lots and Mortgagees, and, if obtainable, a cross-liability or severability of interest endorsement insuring each insured against liability to each other insured. All individually owned insurance shall contain a waiver of subrogation as to the Association and its officers, directors and Members, the Owners and occupants of the Lots and Mortgagees, and all Members are deemed to have waived subrogation rights as to the Association and/or other Members, whether or not their policies so provide.

E. Review of Policies. The Associations shall each periodically (and not less than once every three (3) years) review all insurance policies maintained by the Association to determine the adequacy of the coverage and to adjust the policies accordingly.

F. Separate Insurance Policy Requirements for Lots. Each Owner shall obtain and maintain, at the Owner's sole expense, fire and casualty coverage for the Improvements of his or her Lot as may be required by any Mortgagee of the Lot and in no event less than the amount and type of fire and casualty insurance required to be obtained and maintained as determined by the Board, and with respect to amount, the coverage shall be for one hundred percent (100%) of current replacement cost of all improvements on his Lot. All such individually carried insurance shall contain a waiver of subrogation by the carrier as to the other Owners, the Association, Declarant, and the Mortgagees of such Lot. The insurance maintained by the Association does not cover the Improvements on a Lot or the personal property located therein and does not cover personal liability for damages or injuries occurring in the Lots.

Each Owner shall insure his or her personal property against loss and obtain any personal liability insurance that is reasonable and prudent in the location of the Project.

G. Copies of Policies. The Associations shall make available to their respective Members a copy of the Association's policy to enable Members to insure their Lots without duplicating insurance carried by the Association and inadvertently triggering any co-insurance clause in the Association's insurance policies. The Residential Association shall distribute annually to its Members a summary of the Association's insurance policies as required by Civil Code §1365(e) and as provided in the Bylaws. The Residential Association, as soon as reasonably practical, shall notify its Members by first-class mail if any of the policies have been cancelled or not immediately renewed or restored, or if there is a significant change such as a reduction in coverage or limits, or an increase in the deductible for any policy. If the Residential Association receives any notice of non-renewal of a policy, the Residential Association immediately shall notify its Members if replacement coverage will not be in effect by the date existing coverage will lapse. To the extent that the information required to be disclosed as described in this section is specified in the insurance policy declaration page, the Residential Association may meet its disclosure obligations by making copies of that page and distributing copies to all its Members.

H. Limitation on Liability. The Association, and its directors and officers, shall have no liability to any Owner or Mortgagee if, after a good faith effort, it is unable to obtain the insurance required hereunder, because the insurance is no longer available or, if available, can be obtained only at a cost that the Board in its sole discretion determines is unreasonable under the circumstances, or the Members fail to approve any Assessment increase needed to fund the insurance premiums. In such event, the Board immediately shall notify each Member and any Mortgagee entitled to notice that the insurance will not be obtained or renewed.

I. Policies and Procedures Regarding the Filing and Processing of Claims. The Boards shall adopt a policies and procedures regarding the filing and processing of claims for damage and destruction of Common Area improvements or any other matters covered by insurance maintained by the respective Association.

8.2 Residential Owner's Obligation and Right to Maintain, Repair and Reconstruct. If any Improvements on a Residential Lot are damaged or destroyed by casualty or other event, the Improvements shall be repaired or reconstructed, as promptly as circumstances allow, but in no event less than one (1) year after the damage or destruction occurred unless such completion within one year is prevented by matters outside the Lot Owner's control and the Lot Owner obtains written consent from the Board of the Residential Association to extend the date of such completion, which consent shall not be unreasonably withheld, substantially in accordance with the original as-built plans and specifications, modified as may be required by applicable building codes and regulations in force at the time of such repair or reconstruction, or as otherwise approved pursuant to section 7.14 hereof. Unless the Board of the Residential Association approves otherwise in writing, such repair or reconstruction by the Lot Owner shall commence within 120 days after the occurrence of the damage or destruction. Notwithstanding the time limitations for undertaking and completing such repair and reconstruction, the Owner of the Lot shall undertake to clear all debris and any unsafe conditions from the Lot as soon as is reasonably possible and take such other steps as are reasonable and necessary to render the Lot reasonably neat, safe and secure.

8.3 Commercial Owner's Obligation and Right to Maintain, Repair and Reconstruct. If any Improvements on a Commercial Lot are damaged or destroyed by casualty or other event, the Improvements shall be repaired or reconstructed, as promptly as circumstances allow, but in no event less than one (1) year after the damage or destruction occurred unless such completion within one year is prevented by matters outside the Lot Owner's control and the Lot Owner obtains written consent from the Board of the Commercial Association to extend the date of such completion, which consent shall not be unreasonably withheld, substantially in accordance with the original as-built plans and specifications, modified as may be required by applicable building codes and regulations in force at the time of such repair or reconstruction, or as otherwise approved pursuant to section 7.14 hereof. Unless the Board of

the Commercial Association approves otherwise in writing, such repair or reconstruction by the Lot Owner shall commence within 120 days after the occurrence of the damage or destruction. Notwithstanding the time limitations for undertaking and completing such repair and reconstruction, the Owner of the Lot shall undertake to clear all debris and any unsafe conditions from the Lot as soon as is reasonably possible and take such other steps as are reasonable and necessary to render the Lot reasonably neat, safe and secure.

8.4 Damage or Destruction - Residential Common Areas. If any Improvements in the Residential Common Area are damaged or destroyed by casualty, the Improvements shall be repaired or reconstructed by the Residential Association substantially in accordance with the original as-built plans and specifications, modified as may be required by applicable building codes and regulations in force at the time of such repair or reconstruction, using available insurance proceeds to undertake and complete such repair and reconstruction. If available insurance proceeds are insufficient to complete such repair or reconstruction work, then the Residential Association shall use the funds in the Association's reserve accounts to complete such repair or reconstruction work. To the extent that funds from insurance proceeds and reserve accounts are insufficient to complete such repair or reconstruction work, the Association may borrow funds for such work pursuant to section 5.2H hereof, or the call for a Special Assessment of its members pursuant to sections 4.3 and 4.4 hereof. If a Special Assessment is approved, the Association shall use the proceeds thereof to complete such repair or reconstruction work. If the Special Assessment is not approved, then the Board of the Residential Association shall engage an architect or other professionals to redesign the Improvements in a manner that can be reconstructed within a cost that can be paid from the available funds from insurance proceeds and reserve accounts.

8.5 Damage or Destruction - Commercial Common Areas. If any Improvements in the Commercial Common Areas are damaged or destroyed by casualty, the Improvements shall be repaired or reconstructed by the Commercial Association substantially in accordance with the original as-built plans and specifications, modified as may be required by applicable building codes and regulations in force at the time of such repair or reconstruction, using available insurance proceeds to undertake and complete such repair and reconstruction. If available insurance proceeds are insufficient to complete such repair or reconstruction work, then the Commercial Association shall use the funds in the Association's reserve accounts to complete such repair or reconstruction work. To the extent that funds from insurance proceeds and reserve accounts are insufficient to complete such repair or reconstruction work, the Commercial Association may borrow funds for such work pursuant to section 5.2H hereof, or the call for a Special Assessment of its members pursuant to sections 4.3 and 4.4 hereof. If a Special Assessment is approved, the Commercial Association shall use the proceeds thereof to complete such repair or reconstruction work. If the Special Assessment is not approved, then the Board of the Commercial Association shall engage an architect or other professionals to redesign the Improvements in a manner that can be reconstructed within a cost that can be paid from the available funds from insurance proceeds and reserve accounts.

8.6 Process For Repair or Reconstruction of Common Area by Associations.

A. If the cost of the Improvement to be repaired or reconstructed is in excess of twenty-five percent (25%) of the current replacement cost of all the Common Area improvements owned by an Association, the Board of that Association shall designate a construction consultant or an architect to supervise the repair or reconstruction. All insurance proceeds, Association monies allocated for the repair or reconstruction, and any borrowings by the Association for the repair or reconstruction shall be deposited with a commercial lending institution experienced in the disbursement of construction loan funds (the "depository") as selected by the Board. Funds shall be disbursed in accordance with the normal construction loan practices of the depository that require as a minimum that the construction consultant or the architect certify within ten (10) days prior to any disbursement substantially the following:

(1) That all of the work completed as of the date of such request for disbursement has been done in compliance with the approved plans and specifications;

(2) That such disbursement request represents monies which are justly due to contractors, subcontractors, materialmen, engineers, or other persons (whose name and address shall be stated) who have rendered or furnished certain services or materials for the work, and giving a brief description of such services and materials and the principal subdivisions or categories thereof and the respective amounts paid or due to each of said persons in respect thereof, and stating the progress of the work up to the date of said certificate;

(3) That the sum then requested to be disbursed plus all sums previously disbursed does not exceed the cost of the work insofar as actually accomplished up to the date of such certificate;

(4) That no part of the cost of the services and materials has been or is being made the basis for the disbursement of any funds in any previous or then-pending application; and

(5) That the amount held by the depository, after payment of the amount requested in the pending disbursement request, will be sufficient to pay in full the costs necessary to complete the repair or reconstruction.

B. If the cost of repair or reconstruction is less than twenty-five percent (25%) of the current replacement cost of all the Common Area improvement, the Board shall disburse the available funds for the repair and reconstruction under such procedures as the Board deems appropriate under the circumstances.

C. The repair or reconstruction shall commence no later than ninety (90) days after the date of such damage or destruction, with such time of commencement being extended for any period of time in which payment of insurance proceeds are delayed, and shall be completed no later than one hundred eighty (180) days after commencement of reconstruction, subject to delays that are beyond the control of the party responsible for making the repairs. Notwithstanding the foregoing, the Association shall immediately take such steps as may be reasonably necessary to secure any hazardous condition and to screen any unsightly views resulting from the damage or destruction.

8.7 Process If Repair or Reconstruction of Common Areas Not Undertaken. If the Improvements to Common Area are not repaired or reconstructed in accordance with the foregoing, all available insurance proceeds shall be disbursed among all Owners in the Residential Areas with respect to Residential Common Area Improvements or all Owners in the Commercial Areas with respect to Commercial Common Area Improvements, and their respective Mortgagees, in proportion to the respective fair market values of their Lots as of the date immediately preceding the date of damage or destruction as determined by a qualified independent appraiser selected by the Board, after first applying the proceeds to the cost of mitigating hazardous conditions on the Project, making the area of the damaged Improvements reasonably attractive, and making provision for the continuance of public liability insurance to protect the interests of the Owners, and complying with all other applicable requirements of governmental agencies. In the event of a failure to agree upon an appraiser, the appraiser shall be appointed by the then-president of the Stanislaus County Bar Association.

8.8 Condemnation. The Associations shall represent the Owners in any condemnation proceedings or in negotiations, settlements, and agreements with the condemning authority for acquisition of the Common Area(s), or part thereof owned by the respective Associations. In the event of a taking or acquisition of part or all of the Common Area(s) by a condemning authority, the award or proceeds of settlement shall be payable to the respective Association, or any trustee appointed by the Association,

for the use and benefit of the Lot Owners and their Mortgagees as their interests may appear. In the event of an award for the taking of any Lot in the Project by eminent domain, the Owner of such Lot shall be entitled to receive the award for such taking, and after acceptance thereof he/she and his/her Mortgagee shall be divested of all interest in the Project if such Owner shall vacate his or her Lot as a result of such taking. The remaining Owners shall decide by majority vote whether to rebuild or repair the Project, or take other action. The remaining portion of the Project shall be resurveyed, if necessary, and the Declaration shall be amended to reflect such taking. In the event of a taking by eminent domain of any part of the Common Area, the Associations shall participate in the negotiations, and shall propose the method of division of the proceeds of condemnation. Proceeds of condemnation shall be distributed among Owners of Lots and their respective Mortgagees according to the relative values of the Lots affected by the condemnation, said values to be determined by the method provided in section 8.7.

If there is a substantial taking of the Project (meaning more than fifty percent (50%) of the land area of the Project), the Owners may terminate the legal status of the Project and, if necessary, bring a partition action under California Civil Code § 1359 or any successor statute, upon the election to terminate by fifty-one percent (51%) of the total voting power of the Associations residing in Members other than Declarant and the approval of Eligible Mortgage Holders holding Mortgages on Lots which have at least fifty-one percent (51%) of the votes of Lots subject to Eligible Mortgages. The proceeds from the partition sale shall be distributed to the Owners and their respective Mortgagees in proportion to the fair market values of their Lots as determined under the method described in section 8.7.

ARTICLE IX GENERAL PROVISIONS

9.1 Enforcement. Each Association, or any of its Members, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration which pertain to the area over which that Association has control, and in such action shall be entitled to recover reasonable attorneys' fees as are ordered by the Court. If permitted by applicable law, each Association has the right to record a Notice of Violation against the Lot of an Owner who is not in compliance with the provisions of the Project Documents. Failure by an Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

9.2 Invalidity of Any Provision. Should any provision or portion hereof be declared invalid or in conflict with any law of the jurisdiction where this Project is situated, the validity of all other provisions and portions hereof shall remain unaffected and in full force and effect.

9.3 Term. The covenants and restrictions of this Declaration shall run with and bind the Project, and shall inure to the benefit of and shall be enforceable by the respective Associations or the Owner of any property subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of fifty (50) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by a majority of the then-Owners of the Commercial Lots, and a majority of the then-Owners of the Residential Lots, has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to change covenants and restrictions in whole or in part, or to terminate the same.

9.4 Amendments.

A. Prior to close of escrow on the sale of the first Lot under the authority of a Public Report, Declarant may amend this Declaration.

B. After sale of the first Lot under the authority of a Public Report, this Declaration may be amended only by the affirmative vote (in person or by proxy) or written consent of the Members representing a majority of the total voting power of the Commercial Association and the Members representing a majority of its Members other than the Declarant, or where the two (2) class voting structure is still in effect, a majority of each class of Members (whose right to vote shall be limited to matters which affect the Commercial Owners' interests or rights in the Project or their obligations under the Declaration), and of the Members representing a majority of the total voting power of the Residential Association and the Members representing a majority of its Members other than Declarant, or where the two (2) class voting structure is still in effect, a majority of each class of Members (whose right to vote shall be limited to matters which affect the Residential Owners' interests or rights in the Project or their obligations under the Declaration). However, the percentage of voting power necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any amendment must be certified in a writing executed and acknowledged by the President or Vice President of both Associations and recorded in the Recorder's Office of the County of Stanislaus.

C. If at any time an Association proposes to amend the Declaration, it shall give the other Association sixty (60) days' advance written notice of its proposed amendment. In the event of any disagreement between the Associations as to whether a proposed amendment concerns matters which affect the interests or rights of either Association or its Members, the matter shall be submitted, at the request of either Association (or its Board) to alternative dispute resolution as provided in section 9.14.

D. Neither the Articles nor Bylaws shall be amended so as to be inconsistent with this Declaration. If there should be any ambiguity in any provision of the Articles and Bylaws, then such provision shall be construed, to the extent possible, so as to be consistent with the provisions of this Declaration.

E. This Declaration may not be amended without the consent of Declarant prior to the earliest to occur of the following:

(1) the date upon which all Annexation Property has been annexed and subjected to this Declaration, and Declarant no longer owns any Residential Lot within the Project; or

(2) twenty-five (25) years after the date of recordation of the deed for the sale of the first Lot in the Project.

9.5 Encroachment Rights. If any portion of the Common Area encroaches on any Lot or any portion of a Lot encroaches on any Common Area due to engineering errors, errors, or adjustments in original construction, reconstruction, repair, settlement, shifting, or movement of the Building, or any other cause, there shall be valid easements for the encroachments, including an easement for maintenance, repair, and replacement, as long as the encroachments shall exist, and the rights and obligations of Owners shall not be altered in any way by the encroachment, settlement, or shifting; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if the encroachment occurred due to the intentional conduct of the Owner or Owners other than adjustments by Declarant in original construction. In the event a structure is partially or totally destroyed, and then repaired or rebuilt, the Owners agree that minor encroachments over adjoining Lots or Common Areas

shall be permitted and that there shall be valid easements for the maintenance of the encroachments so long as they shall exist. In the event that an error in engineering, design, or construction results in an encroachment of a Building into the Common Area, or into or onto an adjoining lot, or into a required setback area, a correcting modification may be made in the subdivision map. Said modification shall be in the form of a Certificate of Correction, and may be executed by Declarant (so long as Declarant is the sole owner of the Project) and by Declarant's engineer and by the County Engineer. If the correction occurs after title to any Common Area has been conveyed to an Association, the Associations shall also execute the certificate of correction. The Board of Directors may, by vote or written approval of a majority of the directors, authorize the execution of the certificate of correction.

9.6 Rights of First Lenders. No breach of any of the covenants, conditions and restrictions herein contained, nor the enforcement of any lien provisions herein, shall render invalid the lien of any First Mortgage on any Lot, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale, or otherwise. Notwithstanding any provision in the Project Documents to the contrary, First Lenders shall have the following rights:

A. Copies of Project Documents. Each Association shall make available to Lot Owners and First Lenders, and to holders, insurers, or guarantors of any First Mortgage, current copies of the Declaration, Bylaws, Articles, or other Rules concerning the Project, and the books, records, and financial statements of that Association. "Available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances. The Board may impose a fee for providing the foregoing which may not exceed the reasonable cost to prepare and reproduce the requested documents.

B. Audited Statement. Any holder, insurer, or guarantor of a First Mortgage shall be entitled, upon written request, to an audited financial statement for the immediately preceding fiscal year, free of charge to the party so requesting. Such statement shall be furnished within 120 days of the Associations' fiscal year-end.

C. Notice of Action. Upon written request to an Association, identifying the name and address of the Eligible Mortgage Holder or Eligible Insurer or Guarantor, and the Lot number or address, such Eligible Mortgage Holder or Eligible Insurer or Guarantor will be entitled to timely written notice of:

(1) Any condemnation loss or any casualty loss which affects a material portion of the Project or any Lot on which there is a First Mortgage held, insured, or guaranteed by such Eligible Mortgage Holder or Eligible Insurer or Guarantor, as applicable;

(2) Any default in performance of obligations under the Project Documents or delinquency in the payment of Assessments or charges owed by an Owner of a Lot subject to a First Mortgage held, insured, or guaranteed by such Eligible Mortgage Holder or Eligible Insurer or Guarantor, which remains uncured for a period of sixty (60) days;

(3) Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained an Association;

(4) Any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders as specified in section 8.6D.

The Associations shall discharge its obligation to notify Eligible Mortgage Holders or Eligible Insurers or Guarantors by sending written notices required herein to such parties, at the address given on the current request for notice, in the manner prescribed by section 9.11.

D. Consent to Action.

(1) Except as provided by statute or by other provision of the Project Documents in case of substantial destruction or condemnation of the Project, and further excepting the annexation rights under section 2.14 hereof and any reallocation of interests in the Common Area(s) which might occur pursuant to any plan of expansion or phased development contained in the original Project Documents:

(a) The consent of Owners of Lots to which at least sixty-seven percent (67%) of the votes in each Association are allocated, and the approval of Eligible Mortgage Holders holding Mortgages on Lots which have at least fifty-one percent (51%) of the votes of Lots subject to Eligible Mortgages, shall be required to terminate the legal status of the Project as a common interest development project; provided, however, that if termination is for reasons other than substantial destruction or condemnation, the agreement of Eligible Mortgage Holders representing at least sixty-seven percent (67%) of the votes of the mortgaged Lots is required;

(b) The consent of Owners of Lots to which at least sixty-seven percent (67%) of the votes in each Association are allocated, and the approval of Eligible Mortgage Holders holding Mortgages on Lots which have at least fifty-one percent (51%) of the votes of the Lots subject to Eligible Mortgages, shall be required to add or amend any material provisions of the Project Documents which establish, provide for, govern, or regulate any of the following: (i) voting rights; (ii) increases in Assessments that raise the previously assessed amount by more than twenty-five percent (25%), assessment liens, or the priority of assessment liens; (iii) reductions in reserves for maintenance, repair, and replacement of Common Areas; (iv) responsibility for maintenance and repairs; (v) reallocation of interests in the general or Restricted Common Areas, or rights to their use; (vi) convertibility of Lots into Common Areas or vice versa; (vii) expansion or contraction of the Project, or the addition, annexation, or withdrawal of property to or from the Project; (viii) hazard or fidelity insurance requirements; (ix) imposition of any restrictions on the leasing of Lots; (x) imposition of any restrictions on an Owner's right to sell or transfer his or her Lot; (xi) restoration or repair of the Project (after damage or partial condemnation) in a manner other than that specified in the Project Documents; or (xii) any provisions that expressly benefit Mortgage holders, insurers, or guarantors;

(c) An Eligible Mortgage Holder who receives a written request to approve additions or amendments and who does not deliver or post to the requesting party a negative response within thirty (30) days after the notice of the proposed addition or amendment shall be deemed to have approved such request, provided the notice has been delivered to the Eligible Mortgage Holder by certified or registered mail, return receipt requested;

(2) Except as provided by statute in case of condemnation or substantial loss to the Lots and/or Common Areas of the Project, unless the holder(s) of at least two-thirds (2/3) of the First Mortgages (based upon one (1) vote for each First Mortgage owned), or Owners (other than Declarant) of the individual Lots have given their prior written approval, the Associations and/or the Owners shall not be entitled to:

(a) By act or omission, seek to abandon or terminate the Project (except for abandonment or termination provided by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain);

(b) Change the pro-rata interest or obligations of any individual Lot Owner for the purpose of: (i) levying Assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or (ii) determining the pro-rata share of ownership of each Lot in the Common Area; provided that no Owner's undivided interest in the Common Area may be changed without the consent of that Owner;

(c) Partition or subdivide any Lot;

(d) By act or omission, seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Area. (The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Area by the Project shall not be deemed a transfer within the meaning of this clause.);

(e) Use hazard insurance proceeds for losses to any Lot (whether to Lots or to Common Area) for other than the repair, replacement or reconstruction of such property.

E. Right of First Refusal. The right of an Owner to sell, transfer, or otherwise convey his or her Lot shall not be subject to any right of first refusal or similar restriction.

F. Contracts. Any agreement for professional management of the Project, or lease, or any other contract providing for services of the developer, sponsor, or builder, may not exceed one (1) year. Any agreement, contract, or lease, including a management contract entered into prior to passage of control of the Board of Directors of an Association to Lot purchasers, must provide for termination by either party for cause upon thirty (30) days' written notice, or without cause and without payment of a termination fee or penalty upon ninety (90) days' or less written notice.

G. Reserves. Assessments shall include an adequate reserve fund for maintenance, repairs, and replacement of those improvements which the Residential Association is obligated to maintain and that must be replaced on a periodic basis, and shall be payable in regular installments rather than by special Assessments.

H. Priority of Liens. Any lien created under the provisions of this Declaration is expressly made subject and subordinate to the lien and encumbrance of any First Mortgage that encumbers all or any portion of the Project, or any Lot. Each holder of a First Mortgage lien on a Lot who comes into possession of the Lot by virtue of Foreclosure of the Mortgage, or any purchaser at a foreclosure sale under a first deed of trust, will take the Lot free of any claims for unpaid Assessments and fees, late charges, fines, or interest levied in connection therewith, against the Lot which accrue prior to the time such holder takes title to the Lot, except for claims for a pro-rata share of such Assessments or charges to all Lots including the mortgaged Lot, and except for Assessment liens as to which a notice of delinquent assessment has been recorded prior to the Mortgage.

I. Distribution of Insurance or Condemnation Proceeds. No provision of the Project Documents gives an Owner or any other party priority over any rights of First Lenders in the case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or taking of Lots and/or Common Area.

J. Termination of Professional Management. When professional management has been previously required by the Project Documents or by any Eligible Mortgage Holder or Eligible Insurer or Guarantor, whether such entity became an Eligible Mortgage Holder or Eligible Insurer or Guarantor at that time or later, any decision to establish self-management by each Association shall require the prior consent of Owners of Lots to which at least sixty-seven percent (67%) of the votes in each Association

are allocated and the approval of Eligible Mortgage Holders holding Mortgages on Lots which have at least fifty-one percent (51%) of the votes of Lots subject to Eligible Mortgages.

K. Status of Loan to Facilitate Resale. Any First Mortgage given to secure a loan to facilitate the resale of a Lot after acquisition by foreclosure or by a deed in lieu of foreclosure or by an assignment in lieu of foreclosure, shall be deemed to be a loan made in good faith and for value and entitled to all of the rights and protections of Mortgages under this Declaration.

L. Right to Appear at Meetings. Any Eligible Mortgage Holder may appear (but cannot vote) at meetings of Owners and the Board to draw attention to violations of this Declaration that have not been corrected or that have been made the subject of remedial proceedings or Assessments.

9.7 Limitation of Restrictions on Declarant. Declarant is undertaking the work of construction of a master planned residential and commercial project. The completion of that work and the sale, rental, and other disposal of the Project is essential to the establishment and welfare of the Project as a combined residential, commercial, and recreational community. In order that said work may be completed and said property be established as a fully occupied community as rapidly as possible, nothing in this Declaration shall be understood or construed to:

A. Prevent Declarant, its contractors, or subcontractors from doing on the Project or any Lot, or within any Common Area, whatever is reasonably necessary or advisable in connection with the completion of said work; or

B. Prevent Declarant or its representatives from erecting, constructing, and maintaining on the Project (except upon Lots owned by others), such structures as may be reasonable and necessary for the conduct of its business of completing said work and establishing said Project as a combined residential, commercial, and recreational community, and disposing of the same in parcels by sale, lease, or otherwise; or

C. Prevent Declarant from conducting on the Project (except upon Lots owned by others) its business of completing said work and disposing of said Project by sale, lease, or otherwise;

D. Prevent Declarant from maintaining such sign(s) or flag(s) on the Project (except upon Lots owned by others) as may be necessary for the sale, lease, or disposition thereof; or

E. Subject Declarant to the architectural control provisions of section 7.14 for construction of any Improvements on the Project.

The foregoing rights of Declarant shall terminate upon sale of Declarant's entire interest in the Project. So long as Declarant, its successors, and assigns own one (1) or more of the Lots established and described herein, Declarant, its successors, and assigns shall be subject to the provisions of this Declaration. Declarant shall make reasonable efforts to avoid disturbing the use and enjoyment of their Lots (and the Common Area) by Owners, while completing any work necessary to said Lots or Common Area.

9.8 Termination of Any Responsibility of Declarant. In the event Declarant shall convey all of its right, title, and interest in and to the Project to any successor person or entity, then and in such event, Declarant shall be relieved of the performance of any further duty or obligation hereunder, and such successor person or entity shall be obligated to perform all such duties and obligations of the Declarant. The obligations of Declarant to the County contained in the conditions of approval for the Project, which obligations are intended to be ongoing after Declarant has sold its interest in the Project, shall become the

obligations of the Associations, and the Associations shall indemnify Declarant against any liability arising out of the performance or non-performance of those obligations after Declarant has sold its interest in the Project and/or turned over the maintenance and management of the Project to the Associations.

9.9 Owners' Compliance. Each Owner, tenant, or occupant of a Lot shall comply with the provisions of this Declaration, and (to the extent they are not in conflict with the Declaration) the Articles and Bylaws, and the decisions and resolutions of the Associations or the Board, as lawfully amended from time to time. Failure to comply with any such provisions, decisions, or resolutions shall be grounds for an action (1) to recover sums due, (2) for damages, (3) for injunctive relief, (4) for costs and attorneys' fees, or (5) any combination of the foregoing.

All agreements and determinations lawfully made by an Association in accordance with the voting percentages established in this Declaration or in the Articles or the Bylaws of such Association shall be deemed to be binding on all Owners of Lots, their successors and assigns.

9.10 Notice. Any notice permitted or required by the Declaration, Articles, or Bylaws of each Association may be delivered either personally or by mail. If delivery is by mail, it shall be deemed to have been delivered seventy-two (72) hours after a copy of the same has been deposited in the United States mail, first-class or registered, postage prepaid, addressed to the person to be notified at the current address given by such person to the Secretary of the Board or addressed to the Lot of such person if no address has been given to the Secretary.

9.11 Special Provisions Relating to Enforcement of Declarant's Obligation to Complete Common Area Improvements. Where the Project includes Common Area improvements which have not been completed prior to the close of escrow on the sale of the first Lot, and where either Association is obligee under a bond or other arrangement (hereafter "bond") to secure performance of the commitment of Declarant to complete said improvements, the Board shall consider and vote on the question of action by each Association to enforce the obligations under the bond with respect to any improvement for which a notice of completion has not been filed within sixty (60) days after the completion date specified for that improvement in the planned construction statement appended to the bond. If an Association has given an extension in writing for the completion of any Common Area improvement, the Board of that Association shall consider and vote on the aforesaid question if a notice of completion has not been filed within thirty (30) days after the expiration of the extension. A special meeting of Members of either Association for the purpose of voting to override a decision by the Board not to initiate action to enforce the obligations under the bond, or upon the failure of the Board to consider and vote on the question, shall be held not less than thirty-five (35) days nor more than forty-five (45) days after receipt by the Board of a petition for such a meeting signed by Members representing five percent (5%) or more of the total voting power of the Association. At such special meeting, a vote of a majority of Members of the respective Association other than the Declarant shall be required to take action to enforce the obligations under the bond, and a vote of a majority of the voting power of that Association, excluding Declarant, shall be deemed to be the decision of that Association, and the Board shall thereafter implement this decision by initiating and pursuing appropriate action in the name of the Association.

On satisfaction of the Declarant's obligation to complete the Common Area improvements, the Association shall acknowledge in writing that it approves the release of the bond and shall execute any other documents as may be necessary to effect the release of the bond. The Association shall not condition its approval of the release of the bond on the satisfaction of any condition other than the completion of the Common Area improvements as described on the planned construction statement. Any dispute between the Declarant and the Association regarding the question of satisfaction of the Conditions for exoneration or release of the security shall, at the request of either party, be submitted to arbitration pursuant to section 9.14D of this Declaration.

9.12 Special Provisions Relating to Enforcement of Declarant's Obligation to Pay Assessments. Where either Association is obligee under a bond or other arrangement (hereafter "bond") to secure performance of the commitment of Declarant to pay assessments on Lots owned by Declarant, the Board shall consider and vote on the question of action by the Associations to enforce the obligations under the bond with respect to any of Declarant's assessments which are delinquent for thirty (30) days. A special meeting of Members of either Association for the purpose of voting to override a decision by the Board not to initiate action to enforce the obligations under the bond, or upon the failure of the Board to consider and vote on the question, shall be held not less than ten (10) days nor more than twenty (20) days after receipt by the Board of a petition for such a meeting signed by Members representing five percent (5%) or more of the total voting power of the Association. At such special meeting, a vote of a majority of Members of the respective Association other than the Declarant shall be required to take action to enforce the obligations under the bond, and a vote of a majority of the voting power of the Association, excluding Declarant, shall be deemed to be the decision of the Association, and the Board shall thereafter implement this decision by initiating and pursuing appropriate action in the name of the Association.

Upon satisfaction of the Declarant's obligation to assure the availability of funds to pay assessments upon unsold Lots as set forth in Title 10 Cal Code of Regs § 2792.9, the escrow holder holding the bond shall return the bond to Declarant, after delivery to said escrow holder of Declarant's written request for release of the bond, and Declarant's written statement that [1] Declarant has paid, as and when due, all regular and special assessments levied by the Association against Lots owned by the Declarant and that [2] 80% of the Lots in the Project have been conveyed by Declarant, unless pursuant to Title 10 Cal Code of Regs § 2792.9, the Association delivers to said escrow holder its written objection to the return of the Bond to Declarant within forty (40) days after delivery of notice of Declarant's request from release and the statement to the Association. The Association shall not condition its approval of the release of the bond on the satisfaction of any condition other than the payment of Assessments.

If the Association delivers to the escrow holder of the bond a demand for remittance of the bond or a portion thereof, or the proceeds thereof to the escrow holder of the bond, which demand is accompanied by a written statement signed by an officer of the Association that the Declarant is delinquent in the payment of regular or special assessments which have been levied by the Association against Lots owned by the Declarant, then all or some specified portion of the security as demanded shall be remitted to the Association upon the Declarant's failure to give the escrow holder within forty (40) days after receipt of delivery of the demand by the escrow holder, the subdivider's written objection to remittance of the security. Both the Declarant and the Association shall adhere and comply with the terms of escrow instructions with the escrow depository of the bond, which shall be in the form approved by the Department of Real Estate, with respect to the holding of the bond, the return or remittance of the bond and other disposition of matters set forth in said escrow instructions with respect to the bond. Any dispute between the Declarant and the Association regarding the question of satisfaction of the conditions for exoneration or release of the security shall, at the request of either party, be submitted to Arbitration as provided in section 9.14D hereof.

9.13 Fair Housing. No Owner shall, either directly or indirectly, forbid or restrict the conveyance, encumbrance, leasing, mortgaging, or occupancy of his or her Lot to any person of a specified race, sex, age, marital status, color, religion, ancestry, physical handicap, or national origin.

9.14 Alternative Dispute Resolution. The provisions of this section 9.14 apply to the Boards of each of the Associations. Each Board is authorized to resolve any civil claim or action through alternative dispute resolution proceedings such as mediation, binding arbitration, or non-binding arbitration proceedings.

A. Design or Construction Defect Claims. Actions by the Association pertaining to or based upon a claim for defects in the design or construction of improvements within the Project against the Declarant, or any architect, engineer or other consultant, or any contractor, subcontractor or materials supplier engaged by or on behalf of Declarant for the design and/or construction of the Project, or any element thereof, shall be resolved and administered in accordance with Civil Code sections 1375 and 1375.05 and Civil Code Sections 895 through 897; 900 through 938; and 941 through 945.5. If permitted by the then applicable law, such claims shall be submitted to Judicial Reference, as set forth in section 9.14E below. If a claim is subject to pre-litigation procedures in Civil Code §§910 through 938, or any successor statutes, and Declarant has not elected to use an alternative non-adversarial procedure described in §914 of the Civil Code, or the claim is subject to the provisions of Civil Code §1375, or successor statutes, the requirements of Civil Code §§910 through 938 or Civil Code §1375, as applicable, shall satisfy the requirements of this section 9.14. If not resolved by actions under Civil Code §§910 through 938 or 1375, the claim shall be resolved in accordance with the provisions of section 9.14E of this Declaration [Judicial Reference for certain disputes], if permitted by then applicable law.

B. Notice of Intent of Association's Institute Actions. The Board of an Association shall provide, or in good faith attempt to provide, one hundred twenty (120) days advance written notice of the Board's intent to initiate the prosecution of any civil action, stating the nature and basis of the claim, to every Member of the Association and every entity or person who is a prospective party to the civil action, provided that such notice can be given more than one hundred twenty (120) days prior to the expiration of any pertinent statute of limitations; and such notice can be given without prejudice to the Association's right to enforce the Project Documents, and further provided that no such notice need be given prior to the filing of an action in small claims court or an action solely to enforce Assessment obligations.

C. Claims for Declaratory Relief or Enforcement of Project Documents. Prior to initiating the prosecution of a civil action solely for declaratory relief or injunctive relief to enforce the Project Documents, or for declaratory relief or injunctive relief to enforce the Project Documents in conjunction with a claim for monetary damages not in excess of five thousand dollars (\$5,000), the Board of an Association, or any Owner who seeks such relief, shall first endeavor to submit the matter to alternative dispute resolution in compliance with the provisions of Section 1354(b) of the California Civil Code.

(1) Immediately after initiating the prosecution or defense of any such civil action, the Board of an Association, or any Owner who seeks such relief, shall make a reasonable effort, in good faith, to meet and confer with every person who is a party concerning appropriate processes for resolving the civil action, including available alternative dispute resolution proceedings; concerning appropriate processes for avoiding or reducing costs or losses by the parties associated with the action; providing an opportunity to cure any alleged defect in the Common Area or facilities which is the basis for the action; and providing for the scope of discovery, if any, to be conducted prior to the inception of any alternative dispute resolution procedure. The Board is authorized to consider diversion of the prosecution or defense of any civil action to alternative dispute resolution proceedings such as mediation, non-binding arbitration, or binding arbitration and is authorized to agree to participate and to participate fully and in good faith in the resolution of any such civil action through any alternative dispute resolution proceedings, including, but not limited to, mediation, non-binding arbitration, and binding arbitration, and paying costs reasonably incurred by the Association on account of those alternative dispute resolution proceedings.

(2) The Board shall comply with the requirements of California Civil Code Section 1354(i) by providing Members of the Association annually with a summary of the provisions of California Civil Code Section 1354, including the following language: "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."

D. Arbitration. If a dispute is the subject of binding arbitration under this Declaration, the following shall apply:

(1) costs and fees of the arbitration, including ongoing costs and fees of the arbitration shall be paid as agreed by the parties, and, if the parties cannot agree, as determined by the arbitrator, with the costs and fees of the arbitration to ultimately be borne as determined by the arbitrator(s); provided, however, if the Declarant is a party to the arbitration, then any fee to initiate arbitration shall be paid by Declarant, but the cost of arbitration shall ultimately be borne as determined by the arbitrators;

(2) a neutral and impartial individual shall be appointed to serve as the sole arbitrator, with the arbitrator to be appointed within a reasonable period of time, which in no event shall be more than 60 days from the administrator's receipt of a written request from a party to arbitrate the claim or dispute. If the parties cannot agree on the arbitrator within thirty (30) days, the arbitrator shall be appointed pursuant to §1297.115 of the Code of Civil Procedure. In selecting the arbitrator, the provisions of §1297.121 of the Code of Civil Procedure shall apply. An arbitrator may be challenged for any of the grounds listed in §1297.121, or in §1297.124 of the Code of Civil Procedure;

(3) venue of the arbitration to be in Stanislaus County;

(4) for the prompt and timely commencement of the arbitration in accordance with (i) the rules of the arbitration, or if the rules do not specify a date by which arbitration is to commence, then (ii) a date was agreed by the parties, and if they cannot agree as to a commencement date, (iii) a date determined by the arbitrator;

(5) for the arbitration to be conducted in accordance with rules and procedures which are reasonable and fair to the parties;

(6) for the prompt and timely conclusion of the arbitration;

(7) the arbitrator shall be authorized to provide all recognized remedies available in law or equity for any cause of action that is the basis of arbitration; provided, however, that there shall in no event be any award of punitive damages.

(8) A judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

E. Judicial Reference for Certain Disputes. For any action by the Association against the Declarant or any architect, engineer or other consultant, or any contractor, subcontractor or materials supplier engaged by or on behalf of Declarant for the design and/or construction of the Project, or any element thereof ("Developer Parties"), subject to the provisions of Civil Code section 1375 and Civil Code Section 1375.05, and Civil Code Sections 895 through 897; 900 through 938; and 941 through 945.5, such claim shall be submitted to Judicial Reference as hereinafter provided:

(1) Subject to compliance with the alternative dispute resolution ("ADR") requirements set forth in Section 1354 of the California Civil Code, as same may be amended from time to time, for those matters that are subject to Section 1354, all other disputes between or among the Association, any Owner(s) and/or the Developer Parties (excepting disputes with the Declarant for

delinquent Assessments, and disputes with Declarant regarding the releases or exoneration of completion bonds for the Association Property) shall be resolved in accordance with the provisions of subsection (2) below.

(2) All unresolved disputes under subsections (1) above shall be submitted to binding general judicial reference pursuant to California Code of Civil Procedure Sections 638(1) through 645.1, or any successor statutes thereto pertaining to proceedings under judicial reference. The parties shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the judicial reference proceeding. Declarant shall not be required to participate in the judicial reference proceeding unless it is satisfied that all necessary and appropriate parties will participate. The parties shall share the fees and costs of the Referee for the judicial reference proceeding as determined by the Referee.

(3) The Referee shall have the authority to try all issues, whether of fact or law, and to report a statement of decision to the court. The parties shall use the procedures adopted by Judicial Arbitration and Mediation Services ("JAMS") for judicial reference (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:

(a) If the Declarant is a party to the judicial reference, then any fee to initiate the judicial reference shall be paid by Declarant, provided however, that the cost of the judicial reference shall ultimately be borne as determined by the Referee;

(b) The proceedings shall be heard in Stanislaus County;

(c) The Referee must be a neutral and disinterested party who is a retired judge or a licensed attorney with at least ten (10) years' experience in relevant real estate matters;

(d) Any dispute regarding the selection of the Referee shall be resolved by JAMS or the entity providing the reference services, or, if no entity is involved, by the court with appropriate jurisdiction;

(e) The Referee may require one or more pre-hearing conferences;

(f) 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;

(g) A stenographic record of the trial shall be made, provided that the record shall remain confidential except as may be necessary for post-hearing motions and any appeals;

(h) The Referee's statement of decision shall contain findings of fact and conclusions of law to the extent applicable;

(i) The Referee shall have the authority to rule on all post-hearing motions in the same manner as a trial judge; and.

(j) The Referee shall be authorized to provide all recognized remedies available in law or equity for any cause of action that is the basis of the judicial reference.

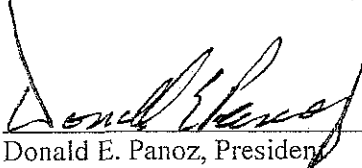
(k) The statement of decision of the Referee upon all of the issues considered by the Referee shall be binding upon the parties, and upon filing of the statement of decision with the clerk of the court, or with the judge where there is no clerk, judgment may be entered thereon. The decision of the Referee shall be appealable as if rendered by the court. This provision shall in no way be construed to limit any valid cause of action which may be brought by any of the parties.

(4) In the event that the Owners of Lots within a Cost Center desire to have the Association bring a construction defect action under Code of Civil Procedure §383, for damage to Common Areas within a Cost Center, or damage to separate interests within the Cost Center which the Association is obligated to maintain or repair, the Association shall submit the claim to judicial reference upon receipt of evidence that a majority of the Owners of Lots within the Cost Center have voted to submit the claim, and in the absence of such evidence, the Association shall not be obligated to submit the claim to judicial reference.

9.15 Number; Gender. The singular and plural number and masculine, feminine and neuter gender shall each include the other where the context requires.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has executed this Declaration this 21st day of May, 2003.

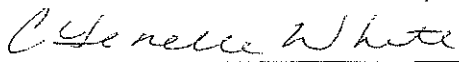
DIABLO GRANDE LIMITED PARTNERSHIP
a California limited partnership
by its General Partner
Diablo Grande, Inc., a California Corporation

By: 
Donald E. Panoz, President

State of Georgia)
) SS.
County of Gwinnett)

On this 21st day of May, before me, C. Genelle White, the undersigned a Notary Public in and for said County and State, personally appeared **DONALD E. PANOZ**, 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 on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.


Notary's Signature

C. GENELLE WHITE
Notary Public, Gwinnett County, Georgia
My Commission Expires January 8, 2006

EXHIBIT "A"
DIABLO GRANDE

PHASING SCHEDULE

<u>Phase</u>	<u>Subdivision Map</u>	<u>Lots</u>
1	Diablo Grande	7-14
	Unit No. 1-A	17
	Recorded May 13, 2003	18
	in Book 40 of Maps	26
	at Page 94, in the Official	33-36
	Records of Stanislaus	48
	County, California	49
		55-95
		96-99
		100
		107
		111
		112
		131-139
		155-214
		238-288
		313

Annexation Property: All that property described in Exhibit "A-1", attached hereto.

Description: The land referred to herein is situated in the State of California, County of Stanislaus, UNINCORPORATED AREA, and is described as follows:

PARCEL NO. 1:
IN TOWNSHIP 6 SOUTH, RANGE 6 EAST, MOUNT DIABLO BASE AND MERIDIAN, THE FOLLOWING:

ALL OF SECTION 13; THE EAST ¼ OF SECTION 23; ALL OF SECTION 24; ALL OF SECTION 25; THE NORTH EAST QUARTER OF SECTION 26; EXCEPTING THEREFROM THE SOUTH WEST QUARTER OF THE SOUTH WEST QUARTER OF SECTION 25.

PARCEL NO. 2:
IN TOWNSHIP 6 SOUTH, RANGE 7 EAST, MOUNT DIABLO BASE AND MERIDIAN, THE FOLLOWING:

THE EAST HALF AND GOVERNMENT LOTS 1, 2, 3, 4, 5, 6, 7, 8, 9 AND 10 OF SECTION 7 (BEING ALL OF SECTION 7); GOVERNMENT LOTS 1, 2, 3, 4, 5, 6, 7, 8, 9 AND 10 OF SECTION 18; GOVERNMENT LOTS 1, 2, 3, 4, 5, 6, 7, 8, 9 AND 10 OF SECTION 19; GOVERNMENT LOTS 3, 4, 5 OF SECTION 30.

ASSESSOR'S PARCEL NO.: 25-05-04
ASSESSOR'S PARCEL NO.: 25-10-05
ASSESSOR'S PARCEL NO.: 25-11-06
ASSESSOR'S PARCEL NO.: 25-15-06
ASSESSOR'S PARCEL NO.: 25-16-10
ASSESSOR'S PARCEL NO.: 25-15-07

EXCEPTING THEREFROM THE PROPERTY DESCRIBED AS "PHASE I" IN EXHIBIT "A" (PHASING SCHEDULE)

EXHIBIT "A-1"

**DIABLO GRANDE DECLARATION
OF COVENANTS, CONDITIONS & RESTRICTIONS
FOR MASTER PLANNED COMMUNITY**

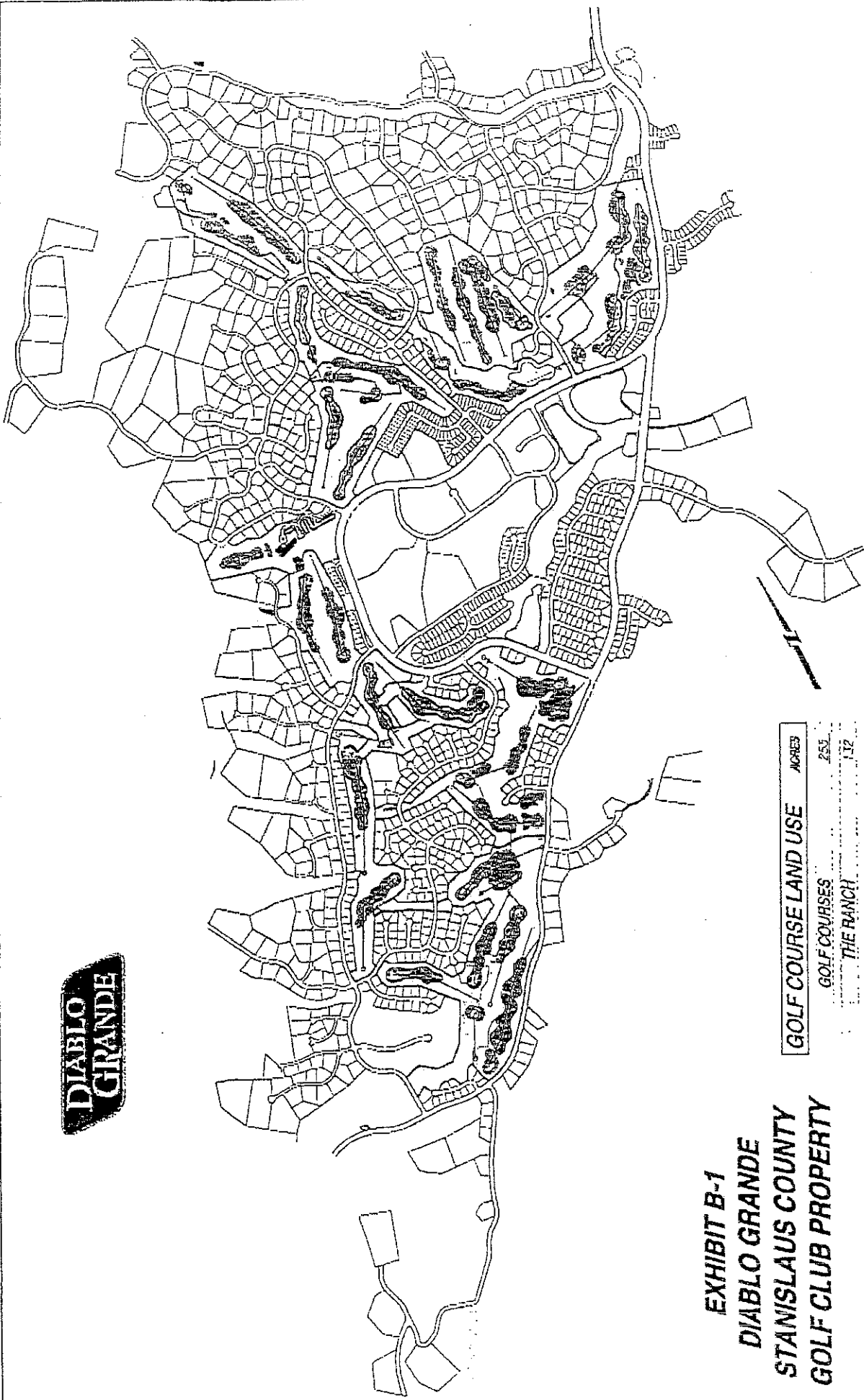
EXHIBIT "B"

Description of Golf Club Property

The golf club property presently consists of all of that land within Stanislaus County presently including the two golf courses, one being the Ranch course consisting of approximately 132 acres, and the other being the Legends course consisting of approximately 123 acres

The general location and description of the golf courses are as designated on Exhibit B-1.

DIABLO GRANDE



**EXHIBIT B-1
DIABLO GRANDE
STANISLAUS COUNTY
GOLF CLUB PROPERTY**

GOLF COURSE LAND USE		ACRES
GOLF COURSES	255
THE RANCH	112
THE LEGENDS	123



**THOMPSON-HYSELL
ENGINEERS**

DATE	NOV 19 1983
BY	J. H. H.
CHECKED	J. H. H.
SCALE	AS SHOWN

Consent and Subordination

NORTH AMERICAN TITLE COMPANY, a CALIFORNIA corporation, [as trustee] ~~As beneficiary~~ under deed of trust dated APRIL 10, 2003, recorded APRIL 10, 2003, as instrument no. 2003-0056243, Official Records, Stanislaus County, California hereby approves and consents to the recording of the declaration of covenants entitled "Diablo Grande Declaration of Covenants, Conditions and Restrictions for Master Planned Community" made and executed on May 21, 2003, and subordinates the beneficial interest under said deed of trust to said declaration of covenants. [and to said condominium plan, pursuant to California Civil Code §§ 1350-1372].

North American Title Company

By:

Vicki Whited, Vice President

By:

Kenneth H. Burgess, Asst. Secretary

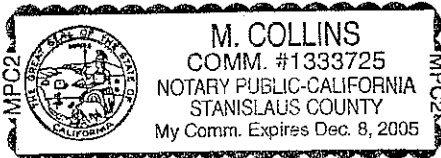
STATE OF CALIFORNIA)

) ss.

COUNTY OF)

On this 26th day of June, 2003, before me, M. Collins, a notary public for the state, personally appeared Kenneth H. Burgess, 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.

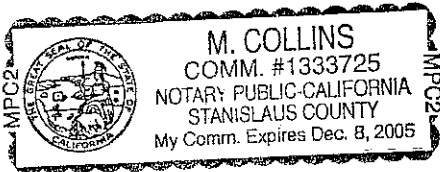


M. Collins
Notary Public, State of California

STATE OF CALIFORNIA
COUNTY OF Stanislaus

On June 30, 2003, before me, M. Collins, Notary Public
personally appeared Vicki Whited

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.

M. Collins

(This area for official notarial seal)

DESCRIPTION OF ATTACHED DOCUMENT

CCOR'S

DESCRIPTION OF DOCUMENT (OPTIONAL)

STATE OF CALIFORNIA
COUNTY OF _____

On _____, before me, _____
personally appeared _____

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.

(This area for official notarial seal)

DESCRIPTION OF ATTACHED DOCUMENT

DESCRIPTION OF DOCUMENT (OPTIONAL)



Stanislaus, County Recorder
 Lee Lundrigan Co Recorder Office
DOC- 2003-0180009-00
 Acct 505-North American Title Ins Co
 Tuesday, OCT 21, 2003 08:00:03
 Ttl Pd \$13.00 Nbr-0001335251
 BJE/R4/1-3

When Recorded Return To:
 ID Hanna & Van Atta
 525 University Avenue, Suite 705
 Palo Alto, CA 94301

**CORRECTING AMENDMENT TO DIABLO GRANDE
 DECLARATION
 OF COVENANTS, CONDITIONS & RESTRICTIONS
 FOR MASTER PLANNED COMMUNITY**

The document entitled "Diablo Grande Declaration of Covenants, Conditions and Restrictions for Master Planned Community", was recorded on June 27, 2003, Document No. 2003-01061E9, Stanislaus County Official Records. ("Master Declaration"). The Master Declaration applies to the property described on the subdivision map entitled "Diablo Grande Unit No. 1A", which map was filed for record in the Office of the Recorder of Stanislaus County, California, on May 13, 2003, in Book 40 of Maps, pages 94 et seq. 1, as modified by a Certificate of Correction recorded the 9th day of September, 2003, Document No. 2003-0152704-00 and Certificate of Correction recorded the 10th day of October, 2003, Document No. 2003-0175174-00, Stanislaus County Records. ("Unit No. 1A map").

The intent of the Declarant, Diablo Grande Limited Partnership, in filing for record the Unit No. 1A Map and the Master Declaration, was to, among other things, specifically identify lots referred to in the Master Declaration as "Commercial Lot", "Commercial Common Areas", "Residential Lot", and "Residential Common Area Lots." Although the Unit No. 1A Map does identify the Common Area Lots by the use of letters, and identifies the residential lots by use of numbers, the map does not indicate which lots are residential, residential Common Area, commercial, or commercial Common Area. The Unit No. 1A Map does identify those lots which are part of the golf course property by designating such lots as "golf course".

It is the intention of the Declarant to rectify this omission by specifically identifying the commercial lots, the residential Common Area lots, and the commercial Common Area lots. Declarant intends to do this by revising the Exhibit "A" attached to the Master Declaration, and specifically identifying the categories of lots on that revised Exhibit "A."

Now, therefore, Declarant hereby amends Exhibit "A" attached to the Master Declaration so as to identify the lots described or designated on the Unit No. 1A Map. The revised Exhibit "A" is attached hereto and incorporated by reference herein.

North American Title Company

RECORDED & ORDER PRESENTED

[Handwritten signature]

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has executed this correcting amendment to the Declaration this 15th day of October, 2003.

DIABLO GRANDE LIMITED PARTNERSHIP
a California limited partnership
by its General Partner
Diablo Grande, Inc., a California Corporation

By: Donald E. Panoz
Donald E. Panoz, President

Georgia
STATE OF CALIFORNIA)
COUNTY OF Barrow) ss.
)

On this 15th day of October, 2003, before me, Deborah R. Sheridan notary public for the state, personally appeared Donald E. Panoz, 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.

Deborah R. Sheridan
Notary Public, State of ~~California~~ Georgia

DEBORAH R. SHERIDAN
Notary Public, Barrow County, Georgia
My Commission Expires October 16, 2005

AMENDED EXHIBIT "A"
DIABLO GRANDE

PHASING SCHEDULE

<u>Phase Lots</u>	<u>Subdivision Map</u>	<u>Residential Lots</u>	<u>Residential Common Area</u>	<u>Commercial Lots</u>	<u>Commercial Common Area</u>
1	Diablo Grande	7-14			Q
	Unit No. 1-A	17			D
	Recorded May 13, 2003	18			E
	in Book 40 of Maps	26			F
	at Page 94, in the Official	33-36			G
	Records of Stanislaus	48			H
	County, California	49			I
		55-95			J
		96-99			K
		100			L
		107			M
		111			N
		112			O
		131-139			P
		155-214			R
		238-288			S
		313			ff

Annexation Property: All that property described in Exhibit "A-1", attached hereto.