

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
ESTABLISHING A PLANNED DEVELOPMENT

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RECORDED AT REQUEST OF
Founders

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DEC 15 1989
AT 8 O'CLOCK A.M.
CONTRA COSTA COUNTY RECORDS
STEPHEN L. WEIR
COUNTY RECORDER
14100

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EXHIBITS

Exhibit A	Description of First Phase of Project.
Exhibit B	Description of Lands Which May be Annexed to Declaration.
Exhibit C	Description of All Weather Access Easement and Covenant to Provide Maintenance Guaranty Bond.
Exhibit D	Description of Offsite Landscaping Areas.

8091Q/8090Q

DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS FOR
MAGEE RANCH PLANNED DEVELOPMENT

THIS DECLARATION is made this 11th day of
December _____, 1989, by DIABLO RANCH DEVELOPMENT
COMPANY, a California partnership (hereinafter referred to as
the "Declarant").

PREAMBLE

This Declaration is made with reference to the
following facts:

A. Declarant is the owner in fee simple of that
certain real property situated in the Town of Danville, Contra
Costa County, California more particularly described in Exhibit
"A" attached hereto and incorporated herein by this reference
as though set forth in full.

B. It is the desire and intention of Declarant to
subdivide and to develop said real property as a planned
development, as defined in Section 1351(k) of the Civil Code to
ensure the preservation of the values and the aesthetic
environment for the benefit of the Owners and to this
objective, to impose on said real property described in said
Exhibit "A", mutually beneficial restrictions, easements,
assessments, liens, covenants and conditions under a general
plan or scheme of improvement for the benefit of all of the
Project and the Owners thereof.

C. Declarant intends to develop the project in
multiple phases. The first phase consists of the Lots and the
Common Area referred to in Exhibit A; the subsequent phase(s)
may consist of any portion or portions or all of the lands
referred to in Exhibit B. The first phase of this project will
be subject to this Declaration upon recordation. Any
subsequent phase(s) will be subject to this Declaration upon
recording of a Declaration of Annexation for that phase as
provided in Section 2.02.

D. This Declaration provides for the establishment of a mandatory homeowners association, "Magee Ranch Homeowner's Association" (hereinafter referred to as the "Association"), of which each purchaser of a Lot within the Project is to be a Member. It shall be the responsibility and duty of the Association, among other things, to own, in fee and as easements, and maintain, as necessary, common areas including landscaped areas, to perform some specific maintenance within the Private Areas as more particularly described herein, to enforce this Declaration and, in particular, the design review regulations and provisions, and to levy and collect assessments on the Members to fund such duties and activities.

Declarant therefore declares that said real property described in Exhibit "A" and any property annexed to the Project shall be held, transferred, sold, conveyed, leased and occupied for a term of fifty (50) years from the date of the recording of this Declaration (after which time said Covenants, Conditions and Restrictions shall automatically be extended for successive periods of ten (10) years unless an instrument signed by the then Owners of two-thirds (2/3) of the Lots has been recorded agreeing to change or terminate this Declaration in whole or in part) subject to the following covenants, conditions and restrictions, easements, charges and liens:

ARTICLE I DEFINITIONS

The following words when used in this Declaration (unless the context shall prohibit) shall have the following meaning (regardless of whether the initial letter of the word defined is lower case or capital):

Section 1.01. All Weather Access Easement or A.W.A.E. means the roadway, as shown on the Map, and the easement described in Exhibit C attached hereto which are to be maintained by the Association as provided in Sections 6.01 and 9.04(b). The A.W.A.E. excludes from the roadway, for purposes of maintenance by the Association, the sewer collection system. The sewer collection system consists of the manholes and manhole covers at the surface and the pipes, manholes and other assorted improvements lying below the surface of the easement area which are part of the sewer collection system.

Section 1.02. Annexation. Execution of the process described in Section 2.02 by which all or a portion of the lands referred to in Exhibit "B" will be made subject to this Declaration and included in this Project.

Section 1.03. Articles. The Articles of Incorporation of the Magee Ranch Homeowner's Association as such Articles of Incorporation may from time to time be amended.

Section 1.04. Association. Magee Ranch Homeowners Association, a California nonprofit mutual benefit corporation.

Section 1.05. Board. The Board of Directors of the Association.

Section 1.06. Building. A structure on the Property containing a Residence or designed for the storage of automobiles.

Section 1.07. Bylaws. The Bylaws of the Association which are or shall be adopted by the Board and as such Bylaws may from time to time be amended.

Section 1.08. Common Area. All of the real property designated as "Common Area" on the Map and a part of the Project, or any portion thereof, which will be conveyed in fee to the Association together with all improvements and landscaping from time to time constructed thereon and shall include, but not be limited to, driveways, walkways and recreational facilities, if any. The "Common Area" in the first phase is more particularly described in Exhibit "A" attached hereto and the "Common Area" subject to Annexation shall be as designated on the Map or Maps of the lands described in Exhibit B recorded from time to time by Declarant.

Section 1.09. Declarant. Diablo Ranch Development Company, a California partnership, and any successor or assign designated by Declarant as the Declarant for purposes hereof by a written instrument duly recorded in the Official Records of the County of Contra Costa, State of California.

Section 1.10. Director. A member of the Board.

Section 1.11. First Mortgagee. Any person or entity, including banks, savings and loan associations, insurance companies or other financial institutions holding a recorded Mortgage which constitutes an encumbrance upon a Lot first in priority of lien over all other encumbrances upon said Lot securing payment of money other than this Declaration and liens for real estate taxes and assessments.

Section 1.12. Landscaping Easement or L.S.E. The easements so designated on the Map, burdening certain of the lots and owned by the Association for landscaping purposes, as provided in Section 6.01.

Section 1.13. Lien. Any lien, whether voluntary or involuntary.

Section 1.14. Lot. Any parcel of land shown on the Map and a part of the Project on which a residential structure could legally be constructed, whether or not one has been constructed, together with any and all improvements thereon.

Section 1.15. Maintenance. The exercise of reasonable care to keep buildings, roads, landscaping, lighting and other related improvements and fixtures in a state similar to their original condition, normal wear and tear excepted. Maintenance of landscaping shall further mean the exercise of regular fertilization, irrigation and other garden management practices necessary to promote a healthy, weed-free environment for optimum plant growth.

Section 1.16. Map or Maps. That certain final subdivision map entitled "Subdivision 7058" filed in Map Book 338 at Page 19 in the Office of the County Recorder, County of Contra Costa, State of California together with any final subdivision map or maps depicting all or portions of the lands described in Exhibit B hereto.

Section 1.17. May. The word "may" as used herein is permissive.

Section 1.18. Member. Any person, firm or other entity who is an Owner and thereby a Member of the Association as hereinafter provided.

Section 1.19. Mortgage. A deed of trust, as well as a mortgage, and the terms may be used interchangeably.

Section 1.20. Mortgage Lien. The lien or charge or equivalent security interest of any Mortgage or deed of trust.

Section 1.21. Mortgagee. A beneficiary under, or a holder of, a recorded deed of trust, as well as a mortgagee, and the terms may be used interchangeably.

Section 1.22. Mortgagor. A trustor under a deed of trust, as well as a mortgagor, and the terms may be used interchangeably.

Section 1.23. Owner. Each person, firm or other entity shown by a duly acknowledged instrument recorded in the Office of the Recorder of the County of Contra Costa to be the owner of a fee interest in a Lot. The term "Owner" shall include contract purchasers and exclude contract sellers. Declarant shall be the Owner of each Lot until such time as the Lot is transferred of record by Declarant.

Section 1.24. Private Access and Utility Easement or P.A.U.E. The easements so designated on the Map, the maintenance duties with respect to which are set forth in Section 6.03 and the ownership of which is described in Section 7.04.

Section 1.25. Private Area. Any Lots encumbered by this Declaration from time to time.

Section 1.26. Private Storm Drain Easement or P.S.D.E. The easements so designated on the Map, burdening certain of the lots and owned by the Association for purposes of maintaining and repairing the drainage structures and improvements located therein, as provided in Section 6.01.

Section 1.27. Project. The real property described in Exhibit "A" and so much of that property described in Exhibit "B" which is then annexed to the Project in accordance with those procedures described in Section 2.02.

Section 1.28. Property Tax Assessment. An assessment levied pursuant to Section 4.06 to divide an unsegregated property tax bill between or among two (2) or more Lots.

Section 1.29. Regular Assessment. An assessment levied to raise the "Estimated Cash Requirement" pursuant to Section 4.03, or an "Initial Assessment" as defined in Section 4.03, levied prior to the first annual Regular Assessment.

Section 1.30. Remedial Charge. A charge levied against the Owner or Owners of an individual Lot pursuant to Section 4.05.

Section 1.31. Residence. A residential unit located within a Building.

Section 1.32. Shall. The word "shall" as used herein is mandatory.

Section 1.33. Special Assessment. Any assessment, other than a Regular Assessment or a Property Tax Assessment, levied against all of the Lots pursuant to Section 4.04.

Section 1.34. Term. Any reference to the "term" of a contract shall not include any option or automatic renewal or extension period so long as the term of the contract may not be renewed or extended if notice is given by the Association pursuant to provisions contained within the contract.

Section 1.35. Total Voting Power. Subject to the special provisions of Section 4.03(d), all of the votes of a

class of Members which could at any given time be cast at a meeting of the Members of the Association.

ARTICLE II
DIVISION OF PROPERTY AND LAND CLASSIFICATIONS

Section 2.01. Division of Property. All of the real property described in Exhibit "A" is hereby divided into Private Area and Common Area. Declarant shall convey to the Association all Common Area no later than the time of the first conveyance by sale of a Lot. Whenever a portion of the Common Area has been offered for dedication to a public entity for park, recreational or open space purposes, as evidenced by a certificate on the Map or separate recorded instrument, and has not been accepted for dedication or otherwise conveyed to such public entity, it shall be conveyed to the Association subject to such offer. Until acceptance of the offer of dedication occurs, the Association shall be responsible for the maintenance of such Common Areas, as set forth in Section 6.01 hereof. To the extent that the offer of dedication is, at any time, rejected by all public entities to whom made, the Association, upon demand shall convey to the Town of Danville any and all rights the Association may have to develop the portions of the Common Area which were made subject to the offer of dedication. The transfer of development rights shall be in a form and contain terms consistent, subject to Section 815.9 of the Civil Code, with the grant of "conservation easements" under Sections 815 et seq. of the Civil Code. Upon transfer of the affected Common Areas pursuant to acceptance of the offer of dedication, the rights and duties of the Owners and the governmental entity acquiring such Common Areas relative to such Common Areas shall be governed, in part, by Section 831.25 of the Government Code which limits the liability of governmental entities when injury is caused to persons or property by a failure of unimproved public property which failure is the result of a natural condition of such property. The offers of dedication contemplated in this Section 2.01 shall be deemed prior in right to this Declaration and shall not be subordinate hereto. Concurrent with the transfer of the affected Common Areas, the Board, on behalf of the Association, shall record an instrument which provides that the lands so transferred are de-annexed from the Declaration and are held free and clear of the encumbrance thereof.

Section 2.02. Annexation of Subsequent Phases. The Property described in Exhibit "B" may be annexed to the Project only as specified in this section.

(a) Declarant's Annexation Rights. Declarant may, but shall not be required to, annex all or any portion of the Property described in Exhibit "B" to the Project at any

time without the vote or approval of any other Owners or the Association; provided, however, that the Annexation and development of property is in substantial conformance with a detailed plan of phased development submitted to and approved by the Department of Real Estate with the application for a public report for the first phase of the Project; and, provided further, that such Annexation is effected prior to the fourth anniversary of the issuance of the original subdivision public report for the immediately preceding phase (issued by the State of California Department of Real Estate). The plan of phased development submitted to the Department of Real Estate shall include, but not necessarily be limited to, the following:

(1) Proof satisfactory to the Commissioner that the Annexation will not overburden the Common Area.

(2) Proof satisfactory to the Commissioner that the Annexation will not cause a substantial increase in Assessments against existing Owners which was not disclosed in the subdivision public reports under which the existing Owners purchased their Lots.

(3) Identification of the land proposed to be annexed and the total number of Lots then contemplated by Declarant for all phases of the Project.

(4) A written commitment from Declarant to the Association that upon closing of escrow for the first sale of a Lot, Declarant shall pay to the Association appropriate amounts for reserves for replacement or deferred maintenance of the Common Areas in the annexed phase, which amounts are necessitated by or arise out of the use and occupancy of the Residences under a rental program, if any, conducted by Declarant which has been in effect for a period of one (1) year or more as of the date on which escrow closes for the sale of the first Lot in the annexed phase.

The foregoing requirements shall be conclusively presumed to have been satisfied upon approval of the Plan by the Department of Real Estate.

(b) Annexation Pursuant to Approval. Unless the Annexation is to be made with the prior approval of a detailed plan of phased development by the Department of Real Estate as provided in the preceding paragraph, then such Annexation shall occur only upon the Declarant's seeking and obtaining approval from fifty-one percent (51%) of all First Mortgagees who are Eligible Holders and from the Association pursuant to the vote or written consent of two-thirds (2/3) of the Total Voting Power of the Association residing in Members other than the Declarant.

(c) Annexation Procedure. The Annexation of any property by Declarant shall be effected by the fulfillment of the following procedure:

(1) Declarant shall have recorded a Declaration of Annexation describing the property to be annexed and providing for such additional covenants, conditions and restrictions on such annexed property as may be necessary to include such property in the Project and specifying that all of the covenants, conditions and restrictions of this Declaration shall apply to such annexed property in the same manner as if it were originally subject to the Declaration as part of the Project. No such amendment, addition or deletion shall alter or change the general common plan or scheme created by this Declaration, nor affect the provisions hereof or thereof as covenants running with the land or equitable servitudes, it being the express desire and intention of Declarant to establish a cohesive plan of such covenants and servitudes to be uniformly applicable to all portions of the Project, including those portions added thereto by Annexation.

(2) Declarant shall have recorded a deed conveying in fee to the Association all of the real property to be annexed which is designated on the Map as "Common Area."

After the required Annexation procedures are fulfilled, the annexed property shall be subject to this Declaration, all Owners shall be entitled to the use of all Common Area, subject to the provisions of this Declaration, and Owners of Lots situated on the land annexed shall thereupon be subject to this Declaration and, upon commencement of assessments, be entitled to Membership in the Association (any vote of the Members or reference to Total Voting Power shall include all Members, with no distinction being made because of the location of the Lot owned by any Member). Upon Annexation, each Owner shall have a nonexclusive easement for ingress, egress and utility purposes on, over, under, across and through all Common Area subject to this Declaration, as provided in Section 7.06 hereof.

(d) Prior to Annexation. Unless and until Annexation occurs, the Property described in Exhibit "B" shall not be subject to the provisions of this Declaration. Notwithstanding the preceding sentence and any other provisions of this Declaration, those provisions of this Declaration which expressly state that they shall apply to the Property described in Exhibit "B" prior to Annexation shall so apply.

ARTICLE III
THE ASSOCIATION

Section 3.01. Formation. The Association shall be established no later than the time of the first conveyance by sale of a Lot and shall be a nonprofit corporation organized under the General Nonprofit Corporation Law of the State of California. Upon the first conveyance by sale of a Lot to an Owner, the Association shall be charged with the duties and invested with the powers set forth in the Articles and the Bylaws and this Declaration including, without limitation thereto, administration and maintenance of the Project and the Common Area. Neither the Articles nor the Bylaws shall be amended so as to be inconsistent with this Declaration; and, in the event of any inconsistency, the provisions of this Declaration shall control.

Section 3.02. Owners of Lots are Members. Every person who is a record Owner of a fee interest in any Lot which is subject, by covenants of record, to assessment by the Association, including contract purchasers (but not contract sellers), shall be a Member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot to which it relates. The membership held by any Owner shall not be transferred, pledged or alienated in any way, except upon the sale of a Lot and then only to the purchaser thereof. Any attempt to make a prohibited transfer is void and will not be reflected upon the books or records of the Association. Upon conveyance of any Lot, the Association membership shall automatically be transferred to the new Owner of such Lot and the Association shall, upon receipt of evidence of such conveyance, change its membership records accordingly.

Section 3.03. Voting and Classes of Voting Rights.

A. Class A Members. The owner of each Lot, excluding the Declarant, shall be a Class A Member and entitled to one (1) vote for each Lot owned; provided, however, Declarant shall only be excluded from Class A Membership until the conversion of Class B Membership to Class A Membership pursuant to Paragraph C, below. If a Lot is owned by more than one (1) person, each such person shall be a Member of the Association, but there shall be only one (1) vote for each Lot and the joint owners thereof shall determine among themselves how such vote will be cast. If any Owner casts a vote attributable to a certain Lot, it will be conclusively presumed for any and all purposes that the person casting the vote was acting with the authority and consent of all other Owners of the same Lot. If two (2) or more Owners of a Lot attempt to cast the vote

attributable to that Lot in connection with any issue to be decided by the Membership of the Association, all of such votes shall be void and the vote attributable to that Lot shall not be counted.

B. Class B Members. The Declarant shall, until the conversion of Class B Membership to Class A Membership, pursuant to Paragraph C, below, be a Class B Member and entitled to three (3) votes for each Lot owned.

C. Conversion. Class B Membership shall be irreversibly converted to Class A Membership on the first to occur of the following:

(1) Upon the second anniversary of the issuance of the original final subdivision public report for the most recent phase of the Project.

(2) Upon the fourth anniversary of the issuance of the original final subdivision public report for the first phase of the Project.

D. Voting with Two Classes of Membership. So long as the Association has two (2) classes of Membership, no action by or on behalf of the Association which requires the approval of Members, whether or not the action requires the vote of the Total Voting Power of the Association residing in Members other than Declarant or otherwise excludes the votes of Declarant (except for action pursuant to Section 9.10), shall be deemed approved without the vote or written consent of the prescribed percentage of the Total Voting Power of each class of Members.

E. Voting with One Class of Membership. After conversion of the Class B Membership to Class A Membership, any matter which requires the approval of a majority of the Total Voting Power residing in Members other than the Declarant (except for action pursuant to Section 9.10) shall also require a majority of the Total Voting Power of the entire Association.

F. Vesting of Voting Rights. Voting rights with respect to the ownership of a Lot shall commence only at the time the Lot becomes subject to Regular Assessments.

Section 3.04. General Powers, Duties and Authority of the Association.

The Association shall have all of the powers set forth in the Articles, Bylaws and this Declaration, together with the general power to do any and all things that a corporation organized under the laws of the State of California may lawfully do in operating for the benefit of its Members, subject only to the limitations upon the exercise of such

powers as are expressly set forth in the Articles, Bylaws and this Declaration. The Association shall have the power to do any and all lawful things which may be authorized, required or permitted to be done by the Association under and by virtue of this Declaration and to do and perform any and all acts which may be necessary or proper for or incidental to the exercise of any of the express powers of the Association or for the peace, health, comfort, safety or general welfare of the Owners and guests of the Owners. Except as expressly otherwise provided herein, the Association may delegate any of its power to such committees, officers or employees thereof as a majority of the Board may deem appropriate; provided, however, the Association may not delegate to officers or employees of the Association any power to levy fines, hold hearings as described in Section 9.02 or impose discipline.

Section 3.05. Powers of the Board. The affairs of the Association shall be managed by the Board. The Board shall have the following powers:

(a) Exclusive Power. Except as expressly otherwise provided herein, the powers and duties of the Association which are not by the Articles, Bylaws or this Declaration reserved to Members shall be exclusively exercised and performed by the Board or such committees or officers as the Board may establish, elect or appoint pursuant to the provisions of the Bylaws. Any power to be exercised or duty to be performed by the Association shall not be exercised or performed by any Owner individually without the written consent of the Board.

(b) General Powers of the Board. Without limiting any powers of the Board conferred elsewhere herein, or in the Articles or the Bylaws, the Board shall have the following powers:

(i) To call meetings of the Members.

(ii) To appoint and remove at pleasure all officers, agents and employees of the Association, prescribe their duties, fix their compensation (subject to the provisions of Section 3.07(c)), and require of them such security or fidelity bonds as it may deem expedient. Nothing contained in this Declaration shall be construed to prohibit the employment of any Member, Director or officer of the Association in any capacity whatsoever.

(iii) To establish, levy, assess and collect the assessments necessary to operate the Association and carry on its activities and to create such reserves for extraordinary expenditures as it may deem appropriate.

(iv) To authorize and cause the Association, subject to Section 3.07, to: (1) enter into management contracts and contracts for the day-to-day operation of the Association and the discharge of its responsibilities and obligations; or (2) enter into lease, license or other agreements for the use of property or facilities not a part of the Common Area. No contract for professional management shall have a term of more than three (3) years and each such contract shall be subject to all the other provisions hereof and shall be terminable by either party without cause or payment of a termination fee on ninety (90) days' written notice. Subject to the foregoing, the Association shall, at all times, maintain in force and in effect a contract with a professional property manager for either the performance of the Association's maintenance obligations or advisory or consulting services with respect to the performance of such obligations.

(v) To adopt, amend and repeal rules and regulations consistent with this Declaration relating to (1) the use of the Common Area; (2) the conduct of an Owner and its family, contract purchasers, tenants or lessees and their guests, invitees or licensees, with respect to the Project and the other Owners or occupants of the Project; (3) reasonable charges for labor, services or expenditures incurred at the request of an Owner or as a result of the actions of an Owner; and (4) the interpretation of provisions of, and terms used in, this Declaration (said interpretation shall be conclusively presumed to be correct so long as it is not inconsistent with this Declaration).

(vi) To delegate its powers to committees, officers or employees of the Association.

(vii) To incur debt for the purpose of maintaining and improving the Common Area, and to encumber property of the Association as security for the repayment of such debt.

(viii) To grant easements on, over, under, across and through the Project for public utility and other purposes consistent with the provisions of this Declaration and the intended use of the Project as a planned unit development.

(ix) Except as expressly otherwise provided herein, the Board shall have the exclusive right and obligation to manage and administer the Common Area and to contract for all goods, services and insurance, payment for which is to be made from the assessments hereinafter provided.

(c) No Active Business. Nothing contained in this Declaration, however, shall be construed to give the Board authority to conduct an active business for profit on

behalf of the Association, all of the Owners, or any of them, and the Board shall have no such power or authority.

Section 3.06. Duties of the Board. The Board shall have the following duties:

(a) Association Duties. To cause to be properly performed all duties imposed on the Association by this Declaration.

(b) Records. To cause to be kept a complete record of all its acts and corporate affairs, and to prepare budgets and financial statements for the Association.

(c) Supervise. To supervise all officers, agents and employees of the Association and to see that their duties are properly performed.

(d) Assessments. With reference to assessments of the Association:

(i) To fix, levy and collect assessments pursuant to the provisions of Article IV of this Declaration;

(ii) To approve the annual budget and fix the amount of the assessment against each Member for each assessment period at least thirty (30) days in advance of such date or period;

(iii) To prepare a roster of the Members and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Member;

(iv) To send written notice of each assessment to every Member subject thereto; and

(v) To issue or cause an appropriate officer to issue certificates as required by Section 4.08.

(vi) To establish bank accounts for the Association, consisting of separate accounts for that portion of the Regular Assessments to be expended for current operations and that portion of the Regular Assessments to be held as reserves. The account into which the reserves are deposited shall also be the depository for any Special Assessments. The signatures of at least two (2) members of the Board or of one (1) Board member and one (1) officer of the Association, not a Board member, shall be required to make withdrawals from the account in which the reserves (and Special Assessments) are kept.

(vii) To advise the Town of Danville, from time to time, of the names, addresses and telephone numbers of the current members of the Board.

(e) Insurance. To contract for casualty, liability and other insurance on behalf of the Association with such coverages and in such amounts as required by this Declaration and as deemed necessary by the Board.

(f) Vacancies. To fill a vacancy or vacancies on the Board except for a vacancy created by the removal of a Board member for cause.

(g) Utilities. To acquire, provide and pay the costs of all water, electric, refuse disposal, and other necessary utility services for the Common Area.

(h) Discharge of Liens. To pay any amount necessary to bond or discharge any claim which may be or become a lien or encumbrance levied against the Project as a whole or any part thereof which constitutes a lien against the Common Area, rather than merely against the interest therein of particular Owners; provided, however, that where one or more Owners are responsible for the existence of such lien, they shall jointly and severally be liable for the cost of discharging it, and any costs incurred by the Association by reason of said lien or liens shall be charged against each such Owner and its Lot as provided in Section 4.06. No decision resulting in such liability or charge shall be reached before providing the Owner or Owners with notice and hearing satisfying the requirements of Section 9.02 of this Declaration.

(i) Enforcement. To commence and maintain, in the name of the Association and on its behalf, or in the name and on behalf of any Owner who consents thereto, actions for damages arising from, or to restrain and enjoin, or to take any reasonable action necessary to prevent, any actual or threatened violation of the provisions of this Declaration, the Articles, the Bylaws, the rules and regulations of the Association, the orders and awards of arbitration, or resolutions of the Board, or to enforce, by mandatory injunction or otherwise, the provisions of the foregoing. In addition, the Board may suspend the voting rights of an Owner or suspend the privileges of an Owner or its family, tenants or lessees, or their guests, invitees or licensees to use the recreational facilities located on the Property, or assess monetary penalties against any Owner or other person entitled to exercise such privileges for any violations of the provisions of the foregoing; provided that the accused Owner or other person is given fair notice and the opportunity to be

heard (in satisfaction of the minimum requirements of Section 9.02 of this Declaration) with respect to the alleged violation before a decision to impose discipline is made.

Notwithstanding anything to the contrary herein contained, neither the Board nor the Association shall have the power to cause a forfeiture or abridgement of an Owner's right to the full use and enjoyment of its Lot and Residence, including access thereto over and across the Common Area, except when such loss or forfeiture is the result of a judgment of a court or a decision arising out of arbitration or on account of a foreclosure (judicial or under the power of sale herein granted) for failure of the Owner to pay the assessments levied pursuant to the provisions hereof. In the event legal action is instituted by the Board pursuant to this section, any judgment rendered in any such action shall include all costs of collection, court costs and reasonable attorneys' fees.

(j) Operating Requirements. To obtain any other material, supplies, furniture, property, labor, services, maintenance, repairs, structural alterations, insurance, taxes or assessments which the Association is required to secure or pay by law, local requirement or pursuant to the terms of this Declaration, or as is necessary for the operation of the Common Area, or for the enforcement of this Declaration; provided, however, that if any such materials, labor, services, maintenance, repairs, structural alterations, insurance, taxes or assessments are provided for particular Lots, the costs thereof shall, as is reasonable, be assessed to such Lots and the Owners thereof as provided in Section 6.02 or as provided in the Bylaws.

Section 3.07. Limitations on Powers of the Board.
The Board shall not have the power to take any of the following actions without the vote or written assent of a majority of the voting power of the Association residing in Members other than the Declarant:

(a) Entering into a contract with a third person to furnish goods or services for the Common Area or the Association for a term longer than one (1) year with the following exceptions:

(i) A management contract, the terms of which have been approved by the Federal Housing Administration or Veterans Administration.

(ii) A contract with a public utility company if the rates charged for the materials or services are regulated by the Public Utilities Commission or with any municipal utility district, provided, however, that the term of the contract shall not exceed the shortest term for which the supplier will contract at the regulated rate.

(iii) Prepaid casualty and/or liability insurance policies not to exceed three (3) years' duration provided that the policies provide for short-rate cancellation by the insured.

(iv) Agreements for cable television services and equipment or satellite dish services and equipment of not to exceed five (5) years' duration provided that the supplier is not an entity in which the subdivider has a direct or indirect ownership interest of ten percent (10%) or more.

(b) Selling during any fiscal year property of the Association having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year. The foregoing limitation shall not include the granting of easements for purposes not inconsistent with the development and use of the Project as a planned development, which may be granted by the Board in its reasonable discretion.

(c) Paying compensation to Directors or officers of the Association for services performed, except that the Board may authorize reimbursement to a Director or officer for expenses incurred in carrying on the business of the Association.

(d) Delegating by the Board of the power to levy fines, hold hearings or impose discipline.

(e) Incurring aggregate expenditures for capital improvements to the common area in any fiscal year in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year.

Section 3.08. Insurance and Bonds. The Association shall obtain those policies of insurance and bonds required, and may obtain those policies of insurance and bonds permitted to be obtained by the Association. The Association shall review and re-evaluate all policies and bonds obtained by the Association at least annually.

(a) Fire and Casualty Insurance. The Association shall maintain such casualty coverages and in such amounts as the Board deems appropriate in light of the nature of the Common Areas or any personal property acquired by the Association in connection with performance of its duties under the Declaration.

(b) Liability Insurance. The Association shall obtain a policy of comprehensive general liability insurance covering all of the Common Area and all land, improvements or

spaces owned, leased or used by the Association whether or not they are leased to or used by a third party. Such coverage shall be in amounts generally required by private institutional mortgage investors for projects similar in construction, location and use, but not less than One Million Dollars (\$1,000,000.00) for personal injury and bodily injury, including deaths of persons, arising out of a single occurrence, and at least One Million Dollars (\$1,000,000.00) for property damage arising out of a single occurrence. Coverage shall include, but not by way of limitation, liability for property damage and bodily injury, including deaths arising from the operation, maintenance or use of the Common Area or from liability arising out of litigation related to employment contracts of the Association. The policy shall name the Association, the Board and each Member as insureds thereunder and shall include a cross-liability provision or endorsement.

(c) Reimbursement of Declarant. The premiums for any of the insurance policies required or permitted to be obtained hereunder, if paid by Declarant, shall be prorated between Declarant and the Association on the basis of a 360-day year as of the date on which interim Regular Assessments commence pursuant to Section 4.03, and the Association shall reimburse Declarant for that portion of the premium applicable to the period from and after said date. Nothing contained in this section, however, shall relieve Declarant from its obligation to pay the pro rata share of insurance premiums attributable to each Lot owned by Declarant until such time as the Lot is transferred of record by Declarant.

(d) Workers Compensation. The Association shall obtain such workers' compensation insurance as it shall deem desirable and to the extent required under any applicable law.

(e) Bonds. The Association shall obtain blanket fidelity bonds for all officers, directors, trustees and employees of the Association and for all other persons handling or responsible for funds of or administered by the Association. If the Association has delegated some or all of the responsibility for the handling of funds to a management agent, a bond shall be obtained for its officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Association. The amount of coverage shall be based upon the best business judgment of the Board, but shall not be less than the lesser of: (1) the estimated maximum amount of funds, including reserve funds in the custody of the Association or the management agent, at any given time during the term of the bond; and (2) an amount equal to the sum of three (3) months' assessments on all Lots plus reserve funds. The bonds shall name the Association as an obligee and shall contain a waiver by the issuers of all defenses based upon the exclusion of persons serving without compensation from the

definition of "employees" or similar terms or expressions. The bonds shall also provide that they may not be cancelled or substantially modified (including cancellation for non-payment of premium) without at least ten (10) days' notice to the Association and any Insurance Trustee.

(f) Board Member's and Officer's Liability. The Association may obtain, at the discretion of the Board, a policy or policies of insurance covering the Owners, individually or collectively, and the Directors and officers of the Association, individually or collectively, against claims arising out of or based upon negligent acts, errors, omissions or alleged breaches of duty of any Director or any officer, while acting in its capacity as such, upon terms and in an amount to be determined by the Board.

(g) Adjustment of Losses. Each Owner appoints the Board as its attorney-in-fact to negotiate and agree on the value and extent of any loss under a policy of insurance carried by the Association pursuant to any of the provisions of this section. The Board shall have full right and authority to compromise any claim, or to enforce any claim by legal action or otherwise, or to release and discharge any insurer, by and on behalf of the Owners, and each of them.

ARTICLE IV ASSESSMENTS

Section 4.01. Creation of the Lien and Personal Obligation of Assessments. The Declarant for each Lot owned by it and described in the Declaration and each Owner of any Lot (by acceptance of a deed or other conveyance therefor, whether or not it shall be so expressed in any such deed or other conveyance) including any purchaser at a judicial sale (or a nonjudicial sale conducted in the manner provided by law for the foreclosure of a mortgage with a power of sale), shall thereafter be deemed to covenant and agree to pay to the Association all Regular Assessments or charges, and all Special Assessments for capital improvements or major repairs, or other purposes as herein provided, as such assessments are, from time to time, fixed, established and collected as hereinafter provided. No Owner may waive or otherwise escape liability for any assessment provided for herein by nonuse of the Common Area or by abandonment.

Section 4.02. Purpose of Assessments. All assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents of the planned unit development and in particular for the maintenance, operation and improvement of the Common Area and any real or personal property in which the

Association holds an interest. The Association is hereby authorized to establish a reserve account to fund anticipated capital expenditures.

Section 4.03. Regular Assessments.

(a) Determination of Assessment. Pursuant to Section 1365 of the Civil Code and as set forth in the Bylaws, the Board shall prepare and distribute to the Members a pro forma operating statement (hereinafter called the "Budget") for such fiscal year. The Budget shall consist of an estimate of (i) the operating and maintenance expenses (including the costs of all insurance and fidelity bond premiums and including reasonable reserves for contingencies, maintenance, repairs and replacements) to be paid by the Association in the performance of its duties during such fiscal year; (ii) the income (other than from assessments as hereinafter provided), if any, expected to be earned by the Association during such fiscal year; and (iii) the surplus, if any, available to the Association during such fiscal year from the prior year's fund. The amount by which the estimated expenses exceed the sum of expected income plus available surplus shall constitute the "Estimated Cash Requirement" of the Association for such fiscal year, which amount shall be assessed equally to the Lots, including those owned by Declarant. Failure to provide a copy of the Budget shall not affect the validity of assessments based thereon so long as an Owner receives reasonable notice before commencement of any action or proceedings to enforce collection thereof.

In the event that Annexation occurs subsequent to the date that the Board prepares the Budget but prior to the commencement of the fiscal year for which the Budget was prepared, the Board, within ten (10) days after Annexation, shall prepare and distribute a revised Budget to the Members. Such revised Budget shall be used, in lieu of the Budget previously prepared, to calculate the Estimated Cash Requirement of the Association and the assessments to be assessed to each Lot during the Fiscal Year.

(b) Commencement and Payment of Assessments. The first Regular Assessment shall be levied as of the first day of the Association fiscal year which is subsequent to the first day of the first full month immediately following the time of the first conveyance by sale of a Lot, and subsequent Regular Assessments shall be levied as of the first day of each Association fiscal year thereafter. Each Owner shall pay the Regular Assessment for a fiscal year in four (4) equal quarterly installments, one (1) such installment due on the first day of each quarter in the fiscal year or in such other reasonable manner as the Board may designate. Until the first Regular Assessment is levied, interim Regular Assessments,

based upon an approved Budget (the cumulative budget, which includes the annexed phases, shall be used if Annexation has occurred) shall be assessed equally to the Lots, including those owned by Declarant. Interim Regular Assessments shall be due and payable on the first day of the first full quarter immediately following the time of the first conveyance of a Lot and subsequent interim Regular Assessments shall be due on the first day of each quarter thereafter.

(c) Increase in Assessments. The Board may not without the vote or written consent of a majority of a quorum of the Members, including Declarant, impose an annual Regular Assessment which exceeds the Regular Assessment for the preceding fiscal year (and subsequent to Annexation, the Regular Assessment set forth in the approved cumulative budget) by greater than twenty percent (20%).

(d) Quorum and Voting.

(1) For the purposes of Section 4.03(c) and Section 4.04, a quorum means more than fifty percent (50%) of the Members.

(2) Any meeting or election of the Association for purposes of complying with Section 4.03(c) and Section 4.04 shall be conducted in accordance with Chapter 5 (commencing with Section 7510) of Part 3, Division 2 of Title 1 of the Corporations Code and Section 7613 of the Corporations Code. For purposes of this provision and notwithstanding the definition of "voting power" or "Total Voting Power" a quorum shall not exist unless the percentage arising from dividing the number of Members participating in the voting, whether pursuant to a meeting or by written ballot, and eligible to so by the total number of Members in the Association, including those ineligible for any reason to vote exceed fifty percent (50%).

(e) Emergency Assessments. Notwithstanding any other provision contained in Sections 4.03 and 4.04, the Board may increase assessments necessary for emergency situations. For purposes of this section, an emergency situation is any one of the following:

(i) An extraordinary expense required by an order of a court.

(ii) An extraordinary expense necessary to repair or maintain the Project or any part of it for which the Association is responsible where a threat to personal safety in the Project is discovered.

(iii) An extraordinary expense necessary to repair or maintain the Project or any part of it for which the Association is responsible that could not have been reasonably

foreseen by the Board in preparing and distributing the Budget. However, prior to the imposition or collection of an assessment under this Section 4.03(e), 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 assessment.

(f) Annexation. If Annexation occurs after the first Regular Assessment is due and payable, then the following procedure shall be used to determine and allocate the Regular Assessments due during the fiscal year in which Annexation occurs:

(i) The Regular Assessment due and payable by Owners of Lots for the fiscal year shall be a fraction of the assessment determined in Subsection (a), above. The numerator of said fraction shall be four (4), less the number of whole quarters remaining in the fiscal year, and the denominator of said fraction shall be four (4). The entire Regular Assessment shall be due, notwithstanding the first sentence of Subsection (b), no later than the first day of the quarter following the quarter in which Annexation occurs.

(ii) Commencing with the first day of the first full quarter immediately following the date on which the Declaration of Annexation is recorded and continuing on the first day of each remaining quarter in the fiscal year in which the Declaration of Annexation was recorded, interim Regular Assessments (which shall be in addition to the Regular Assessment described in (i), above) based upon an approved cumulative budget which includes the annexed phases shall be assessed equally to each Lot, including those owned by Declarant.

(iii) Notwithstanding anything to the contrary contained in clauses (i) and (ii) above, if annexation of a phase of this Project occurs prior to the first sale of a Lot (Unit) thereon, then assessments with respect thereto shall not commence until the first day of the quarter following the month in which the first Lot is sold unless Declarant elects to begin paying assessments before such sale occurs.

(iv) In no circumstances shall the Regular Assessment assessed against a Lot be reduced by operation of this subsection if

(A) The Association has commenced a suit (as described in Section 4.07(a)) or recorded a claim of lien (as described in Section 4.07(b)) for failure of the Owner of such Lot to pay its Regular Assessment, and

(B) The Owner has not, within ten (10) days after recordation of the Declaration of Annexation, cured the default.

Section 4.04. Special Assessments. If the Board determines that the Estimated Cash Requirement is, or will become, inadequate for any reason (including, but not limited to, unanticipated delinquencies or costs of construction), the Board may, at any time, levy a Special Assessment, which shall be assessed to the Lots (including those owned by Declarant) in the same proportions as a Regular Assessment, to make up such inadequacy. Except as provided to the contrary in Section 4.03(e), in any fiscal year the Board may not, without the vote or written consent of a majority of a quorum of the Members, including Declarant, levy Special Assessments to defray the costs of any action or undertaking on behalf of the Association which in the aggregate (i) exceeds five percent (5%) of the budgeted gross expenses (per clause (i) of Section 4.03(a)) for the then current fiscal year; or (ii) causes the sum of the Regular Assessment and the Special Assessment(s) to exceed the Regular Assessment for the preceding fiscal year by more than twenty percent (20%) of such preceding Regular Assessment. The Board may, in its discretion, prorate the amount of any permitted Special Assessment over the remaining quarters of the fiscal year or levy the assessment immediately against the Lots. Unless the time for payment is extended by the Board, a permitted Special Assessment shall be due ten (10) days after the Board gives the Owners written notice thereof.

Section 4.05. Remedial Charges. The Board may, after notice and hearing in accordance with the provisions of Section 9.02 (notice and hearing), levy a Remedial Charge against any Owner. Such Remedial Charges shall be due and payable to the Association when levied. A Remedial Charge may be levied as provided in Sections 3.06(h) (discharge of liens), 3.06(i) (enforcement), 3.08(b) (co-insurance), 5.05 (insurance burden), 5.06 (mechanics' liens), 6.02(a) (mandatory maintenance), or as otherwise provided in this Declaration or in the Bylaws. The limitations imposed by Sections 4.03 and 4.04 do not apply to Remedial Charges.

Section 4.06. Property Tax Assessments. Until such time as the County Tax Collector segregates the property taxes applicable to each Lot into separate assessments for each Lot, the Association shall levy and enforce a Property Tax Assessment against each Owner whose Lot is taxed to Declarant. A proportionate amount of the unsegregated property tax bill shall be assessed equally against each individual Lot. Notwithstanding any provision to the contrary in Section 4.07, the lien of the Property Tax Assessment shall attach to the

individual Lot as of the date the lien for the payment of the unsegregated property tax bill attaches to the Property, or any part thereof; provided, however, that prior to undertaking enforcement of any delinquent Property Tax Assessment, the Association shall record a Notice of Assessment and Claim of Lien against the delinquent Owner's Lot in the manner provided in Section 4.07. The first installment of the Property Tax Assessment shall be due no later than December 1, and the second installment shall be due no later than April 1. On or before each such date, the Association shall deliver to Declarant satisfactory evidence of the payment of each such installment by the Association to the County Tax Collector.

Section 4.07. Default in Payment of Assessments.
Each assessment (including Special Assessments) permitted or required hereunder shall be a separate, distinct and personal debt and obligation of the Owner against whose Lot the same is assessed. Any grantee (including contract purchasers) of a Lot who acquires its interests by a voluntary conveyance shall take title to its Lot subject to all unpaid assessments levied against the Lot prior to the conveyance of which it had actual or constructive notice. The grantee's liability shall not prejudice the grantee's right to recover from the grantor any amounts paid by the grantee for which the grantor was liable. As between a grantor and grantee, liability for the Payment of any installment of any assessment shall be deemed to accrue on the date on which such installment becomes payable. All assessments shall be payable in the amount specified by the assessment and no offsets against such amount shall be permitted for any reason, including, without limitation, a claim that the Association is not properly exercising its duties and powers as provided in this Declaration. The amount of any assessment levied against a Lot (plus, in the event of default in the payment thereof, late payment charges as hereinafter provided, reasonable costs of collection, bank charges for returned checks, interest at the maximum legal rate permitted from time to time under Section 1366 of the Civil Code or any successor statute thereto, costs and reasonable attorneys' fees), after recordation of a notice of delinquent assessment establishing a claim of lien pursuant to Section 4.07(b), shall constitute a lien upon such Lot (fines, penalties and Remedial Charges imposed to bring an Owner into compliance with this Declaration or the Bylaws shall not, except when the result of a judgment or order of a court, constitute a lien). Each of the Owners does, by mere acceptance of a deed to a Lot, grant and appoint the Association as trustee, with the power pursuant to Civil Code Sections 2934 and 1367(d) as to effect substitutions of trustee, and as attorney-in-fact by special power of attorney to enforce and to foreclose such lien by private power of sale as provided in Division Third, Part 4, Title 14, Chapter 1, Article 1, Sections 2920 et seq. of the Civil Code of the State

of California and further grants to the Association the authority and power to sell the Lot of such defaulting Owner, or any part thereof, to satisfy said lien, for lawful money of the United States to the highest bidder. The Association may commence any procedure for collection upon its own decision, and it must so proceed upon the written request therefor signed by any five (5) Owners. In the event of default in payment of any assessment, and in addition to any other remedies herein or by law provided, the Association may enforce each such obligation as follows:

(a) Suit. By suit at law against the defaulting Owner. The judgment rendered in any such action shall include, where permissible, awards for interest from the date of default and for costs (including costs incurred in the collection of delinquent assessments) and reasonable attorneys' fees.

(b) Lien. Thirty (30) days after the occurrence of any such default, the Association may give a notice to the defaulting Owner or Owners demanding payment and stating the date of the delinquency, the amount of the delinquency and the amount of interest and late payment charges thereon from the date of delinquency. If the amount of the delinquency plus interest and late payment charges is not paid within ten (10) days after delivery of the notice, the Association may record a notice of delinquent assessment against the Lot of the delinquent Owner or Owners which shall state (i) the name or names of the delinquent Owner or Owners; (ii) a legal description of the Lot against which notice of delinquent assessment is made; (iii) the amount claimed to be due and owing; (iv) that the notice of delinquent assessment is made by the Association pursuant to the terms of this Declaration (giving the date of execution and the date, book and page references of the recording thereof in the Office of the Recorder of the County of Contra Costa); (v) the name and address of the trustee authorized by the Association through exercise of its rights of substitution of trustee pursuant to Civil Code Sections 1367(d) and 2934a to conduct a non-judicial sale; and (vi) that a lien is claimed against the Lot in an amount equal to the amount of the stated delinquency plus interest thereon from the date of delinquency, late payment charges, costs and reasonable attorneys' fees. The lien shall attach immediately upon recordation of the notice of delinquent assessment subject only to the limitations hereinafter set forth. The lien shall not be affected by any sale or transfer of the Lot. Each default shall constitute a separate basis for a lien. Any such lien may be foreclosed by appropriate action in court or in the manner provided by law for the foreclosure of a mortgage with a power of sale. In the event foreclosure is by action in court, reasonable attorneys' fees shall be allowed. In the event foreclosure is under power of sale, the Board, or any person designated by it in writing, shall be

deemed to be acting as the agent of the Association for conduct of the sale and shall be entitled to expenses and such fees as may be allowed by law or as may be prevailing at the time the sale is conducted. The Association, acting on behalf of the Owners, shall have the right to bid on the Lot of the delinquent Owner or Owners at the foreclosure sale and to acquire, hold, lease, mortgage and convey for valuable consideration the Lot. In the event a default for which a notice of delinquent assessment is recorded as hereinabove provided is timely cured, the Association shall record a release of the notice of delinquent assessment.

(c) Late Payment Charge and Interest. The Association shall be entitled to levy late payment charges and interest for the delinquent payment of Regular Assessments, Special Assessments and Remedial Charges in amounts not to exceed the amounts, and at the rates, permitted from time to time under Section 1366 of the Civil Code, any successor statute thereto or, in the absence of a statute, such reasonable amounts as may be established by the Board from time to time. Unless a different charge or rate is permitted by law from time to time, a late charge shall not exceed the greater of ten percent (10%) of the delinquent assessment or Ten Dollars (\$10.00) and interest on the delinquent assessment, reasonable costs of collection and the late charge may be charged at a rate not to exceed twelve percent (12%) per annum commencing thirty (30) days after the assessment becomes due.

Section 4.08. Estoppel Certificate. A certificate executed by any two (2) members of the Board setting forth the amount of any due and unpaid assessments with respect to a Lot (or the fact that all assessments due are paid, if such is the case) shall be conclusive upon the Board, the Association and the Owners in favor of any and all persons who rely thereon in good faith, and any Owner shall be entitled to such a certificate within ten (10) days after demand therefor and upon payment of a reasonable fee not to exceed the greatest amount charged for a loan statement of condition by a major bank with headquarters in San Francisco, California.

Section 4.09. Failure to Fix Regular Assessments. The failure of the Board to fix Regular Assessments hereunder before the expiration of any year, for that or the next year, shall not be deemed a waiver or modification in any respect of the provisions of this Declaration or a release of the Owner from the obligation to pay the assessments, or any installment thereof for that or any subsequent year, but the assessment fixed for the preceding year shall continue until the new assessment is fixed.

Section 4.10. Exempt Property. The following property shall be exempt from all assessments, charges and liens created herein:

(a) all property dedicated to and accepted by a public authority; and

(b) all Common Area.

Section 4.11. Exemption from Certain Assessments Relating to Incomplete Common Areas. The Declarant and any other Owner shall be exempted from the payment of that portion of any Regular Assessment which is for the purpose of defraying expenses and reserves directly (including, without limitation, landscaping and any systems or equipment to be used for the maintenance thereof) attributable to the existence and use of a Common Area facility that is not complete at the time Regular Assessments commence. Any exemption from the payment of Regular Assessments with respect to Common Area facilities shall be in effect only until the earliest of the following events:

(a) A notice of completion of the Common Area facility has been recorded.

(b) The Common Area facility has been placed into use.

ARTICLE V USE RESTRICTIONS

Section 5.01. Residential Use. Each Lot shall be used exclusively for residential purposes except as provided in Sections 5.02 and 5.17.

Section 5.02. Sales Models. Notwithstanding any provision to the contrary herein, Declarant and its successors or assigns shall be allowed to use certain Residences or to use trailers located in the Project at such places as Declarant may select as sales models, conducting therein, through agents or employees, sales activities usually associated with model homes until Declarant or such successor or assign no longer owns a Lot in the Project. For purposes of this Section 5.02 and all provisions of this Declaration which make express reference to this Section 5.02, a successor or assign of Declarant shall mean a person or entity, whether or not designated pursuant to Section 1.09, who purchases one (1) or more Lots for purposes of constructing Residences thereon and thereafter (or during the course of construction) reselling the Lot and Residence, all in the ordinary course of such purchaser's business.

Section 5.03. Signs. No sign, advertisement, poster, bill or notice of any kind (including, without limitation, political and commercial signs) shall be displayed to the public view on or from any Lot or the Common Area without the prior consent of the Board, subject to the following exceptions:

(a) Project identification signs maintained by Declarant;

(b) A single sign, indicating the number of the Residence and the name of the Owner, which has been approved as to design, size and location by the Board;

(c) A single sign of customary and reasonable dimensions advertising any Lot for sale, lease or rent and placed on the Lot; and

(d) Signs maintained by Declarant or a successor or assign within the meaning of Section 5.02 in connection with its sales activities.

(e) Signs erected by a public agency in connection with the use of rights-of-way and easements on the Project granted to such public agency.

Section 5.04. Design Review Committee.

(a) Members. The Design Review Committee (the "Committee") shall consist of a chairman and two (2) additional members and shall include a member of the Board. The members shall be elected and serve as provided in this Declaration.

(i) The Declarant may appoint all of the original members of the Committee and all replacements until the first anniversary of the issuance of the original final subdivision public report for the Project. The Declarant may appoint a majority of the members of the Committee until ninety percent (90%) of all Lots have been sold or until the fifth anniversary of the issuance of the original final subdivision public report, whichever first occurs.

(ii) After one (1) year from the date of issuance of the original final subdivision public report, the Board shall have the power to appoint one (1) member to the Committee. The Board shall have the power to appoint all the members of the Committee upon conveyance of ninety percent (90%) of all Lots or the fifth anniversary date of the issuance of the original final subdivision public report, whichever first occurs.

(iii) Persons appointed to the Committee by the Board shall be Members of the Association. Persons appointed to the Committee by the Declarant need not be Members of the Association (the Declarant shall provide the Board with the names of all persons appointed by Declarant). Persons appointed to the Committee shall serve until their successor is named.

(b) Prohibitions Against Construction or Alteration. Except with respect to Declarant as hereinafter provided, (i) no buildings, fences, walls or other structures shall be erected, altered or placed on any Lot, or (ii) shall any landscaping be installed which is visible from a public street or adjacent Lot, or (iii) shall the exterior of any structure be painted or the exterior building materials be replaced or altered until building plans, specifications and plot plans showing the location of structures on the Lot and/or the exterior treatment proposed to be given to any structure and/or landscape plans showing the nature and arrangement of the landscaping materials together with such additional plans and specifications as the Committee may reasonably require have been submitted to and approved in writing as to conformity and harmony of external design, and as not interfering with the reasonable enjoyment of any other Lot, by the Committee.

(c) Exclusion of Declarant from Jurisdiction of Committee. Neither Declarant nor any successor or assign of Declarant as defined in Section 5.02, shall be required to obtain the approval of the Committee in connection with the construction of the original Residence or any ancillary structure or improvement on a Lot or for the planting of the original landscaping therefor (or in the Common Areas) or for any alterations or modifications to such Residence, structures or improvements made at the request of the original purchaser of the Residence and agreed to be made and substantially completed prior to the transfer of title to such original purchaser.

(d) Powers of the Design Review Committee. The Committee shall have the following powers:

(i) to review and approve, disapprove or conditionally approve all plans, submittals, applications and requests made or tendered to it by Owners, or their agents, pursuant to the provisions of this Declaration. In connection therewith, the Committee may investigate and consider the architecture, design, layout, landscaping, energy conservation measures, water conservation measures, fence detail, and other features of the proposed improvements;

(ii) to adopt rules and regulations for the transaction of business, scheduling of meetings, conduct of meetings and related matters;

(iii) to require the submission of site plans, diagrams, photographs, materials or other presentation material as may be necessary for complete review and consideration of the proposed development. All such plans and specifications shall be submitted in writing in duplicate and each shall be signed by the Owner or its authorized agent;

(iv) to adopt criteria, consistent with the purpose and intent of this Declaration, to be used in making its determination to approve, disapprove or conditionally approve any matter submitted to it for decision;

(v) to adopt a schedule of reasonable fees for processing submittals and otherwise to cover the costs of exercising its rights and powers hereunder and to establish the time and manner in which such fees shall be paid; and

(vi) to advise the Board to enjoin any action taken in violation of the covenants relating to architectural control.

(e) Duties of the Design Review Committee. The Committee shall:

(i) render a decision, in writing, on each matter submitted to it within thirty (30) days of receipt of all data required by its rules and regulations. Failure to render a decision within said period of time shall be deemed to be an approval of the matter as submitted. The approved plans and specifications, if any, shall be signed in duplicate by a duly authorized member or employee of the Committee and shall be incorporated in the decision by reference. One (1) copy shall be retained by the Committee and one (1) copy shall be returned to the Owner or applicant;

(ii) publish and make available to the Owners and prospective owners all of its rules, regulations and criteria from time to time adopted, if any;

(iii) impose a requirement, at the time of granting any approval, that the improvements or landscaping be commenced within a stipulated time, failing which the approval shall be deemed revoked. Any failure to prosecute landscaping or improvements or alterations diligently to completion shall be deemed a breach of the Owner's covenants under this Declaration;

(iv) as conditions precedent to approval of any matter submitted to it, the Committee shall find that:

(1) general architectural considerations, including the character, scale, and quality of the design, the architectural relationship with the site and other Buildings, building materials, colors, screening of exterior appurtenances, exterior lighting and similar elements have been incorporated in order to ensure the compatibility of the proposed improvement with its design concept and the character of adjacent Buildings.

(2) general site considerations including site layout, open space and topography, orientation and locations of buildings, vehicular access, circulation and parking, setbacks, height, walls, fences, and similar elements have been designed to provide a desirable environment.

(3) general landscape consideration, including the location, type, size, color, texture and coverage of plant materials, provision for irrigation, maintenance and protection of landscaped areas and similar elements have been considered to ensure visual relief, to complement Buildings and other structures, and to provide an attractive environment for the enjoyment of the Owners in general and the enhancement of property values in the Project generally; and

(v) if the Committee makes a negative finding on one or more of the matters set forth in Paragraph (iv) above, as applicable to the matter before it, it shall disapprove such matter or condition its approval so as to allow such finding to be made.

(f) Appeal of Design Review Committee Decisions; Arbitration. An Owner may appeal the decisions of the Committee to the Board. If the Board elects to hear the appeal, it shall convene a special meeting in accordance with the By-laws within thirty (30) days after receipt of the Owner's request for a hearing. If the Board does not convene such special meeting within the thirty (30) day period or if after such special meeting the Owner has failed to obtain the relief which it sought, the Owner may demand that the matter be submitted to binding arbitration in accordance with Article X of the By-laws. The Board shall have the powers to uphold a decision of the Committee, overrule such decision either with or without the imposition of conditions on the proposed construction or landscaping, or require the Committee to reconsider the matter.

(g) No Liability for Architectural Review. Neither the Declarant, the Association, the Board, the Committee nor the members of designated representatives thereof shall be liable for damages to anyone submitting plans or specifications to them for approval, or to any Owner or occupant of a Lot by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications, or for any defect, whether in design or construction, in any structure constructed from such plans and specifications. Neither the Declarant, the Association, the Board, the Committee nor any member thereof shall be responsible for reviewing or approving any plans with respect to the adequacy of engineering design in any aspect

whatsoever. Every person who submits plans or specifications to the Committee for approval agrees, by submission of such plans and specifications, and every Owner or occupant of a Lot also agrees, that it (they) will not bring any action, suit or claim against Declarant, the Association, the Board, the Committee or any of the members or designated representatives thereof with respect to any matters for which such persons or entities are relieved of liability pursuant to this section. Each Owner, in addition to satisfying the requirements set forth in this Declaration, shall determine and satisfy the requirements imposed by the Town of Danville in connection with its construction. Approval by the Committee does not constitute a representation that the proposed construction will be approved by the Town of Danville or that it conforms to the zoning or building requirements thereof.

(h) Notice of Noncompliance or Noncompletion. Notwithstanding anything to the contrary contained herein, after the expiration of the later of (i) one (1) year from the date of issuance of a building permit by municipal or other governmental authority for any improvements or (ii) one (1) year from the date of the commencement of construction within the properties of any improvements, said improvements shall, in favor of purchasers and encumbrancers in good faith and for value, be deemed to be in compliance with all provisions of this Declaration, unless actual notice of such noncompliance or noncompletion, executed by the Board, the Committee or its designated representatives, shall appear of record in the Office of the County Recorder of the County of Contra Costa, State of California, or unless legal proceedings shall have been instituted to enforce compliance or completion.

(i) Appointment and Designation. The Committee may, from time to time, upon approval of the Board, delegate any of its rights or responsibilities hereunder to one (1) or more duly licensed architects or other qualified persons who shall have full authority to act on behalf of the Committee in all matters delegated.

(j) Inspection by Design Review Committee. Any member or agent of the Committee may, from time to time, at any reasonable hour or hours and upon reasonable notice, enter and inspect any property subject to the jurisdiction of the Committee as to its improvement or maintenance in compliance with the provisions hereof.

Section 5.05. No Insurance Burden. Nothing shall be done or kept in any Private Area or in the Common Area which would increase the rate of insurance on the Common Area or any part of the Project without the prior written consent of the Board. The Board may levy a Remedial Charge against the Owner of a Lot to reimburse the Association for any such increase in

the rate of insurance. No Owner shall permit anything to be done or kept in its Residence or on its Lot or in the Common Area which would result in the cancellation of insurance on any Building or any part of the Common Area or the Project, or which would be in violation of any law. No waste shall be committed in the Common Area.

Section 5.06. Termination of Mechanics' Lien Rights and Indemnification. No labor performed or materials furnished to and incorporated in a structure or improvement with the consent or at the request of the Owner thereof, its family, lessees, tenants or contract purchasers, or their agents, contractors or subcontractors, shall be the basis for filing a lien against the Lot of any other Owner not expressly consenting to or requesting the same, or against the Common Area. Each Owner shall indemnify and hold harmless each of the other Owners and the Association from and against all liability arising from the claim of any lien against the Lot of any other Owner or against the Common Area for construction performed, or for labor, materials, services, equipment or other products incorporated into Improvements on the Owner's Lot, at such Owner's request or with its consent. The provisions of this section shall not apply to any labor performed or materials furnished at the request of the management agent or the Board. At the written request of any Owner, the Association shall enforce such indemnity by collecting from the Owner of the Lot on which the labor was performed or to which materials were furnished, through Remedial Charge against the Owner of said Lot, the amount necessary to discharge any such lien, including all costs incident thereto.

Section 5.07. Storage. There shall be no obstruction of the Common Area. Nothing shall be stored in the Common Area without the prior consent of the Board.

Section 5.08. Trailers, Trucks, Campers and Boats. No mobile home, trailer of any kind (except trailers used in connection with sales activities by Declarant or its successors or assigns as defined in Section 5.02), truck (except three-quarter ton or smaller pick-up trucks without campers), unmounted camper, boat or similar recreational vehicle shall be parked, stored, kept, maintained, placed, constructed, remodeled, reconstructed or repaired (herein collectively referred to as "park" or "parking"), upon any street or portion of the Common Area in the Project, Lot, driveway or parking space, nor shall any maintenance or repair of any motor vehicle be performed except within a Building where totally isolated from public view.

Section 5.09. Noncommercial Vehicles and Garages. The streets within the Project and the driveways of Residences shall be used solely for temporary parking of noncommercial

passenger vehicles (the fact that a vehicle has, or does not have, commercial license plates shall not be determinative of the question whether a vehicle is or is not "noncommercial"). When garages are not in use (the fact that a vehicle is parked in a garage shall not constitute "use"), garage doors shall be closed. Disabled noncommercial vehicles or those which will be parked continuously for twenty-four (24) hours or more shall be subject to the provisions of Section 5.08 unless the consent of the Board to an alternative arrangement is first obtained.

Section 5.10. Laundry. No clotheslines shall be erected or maintained and there shall be no drying or laundering of clothes outside of a Building.

Section 5.11. Pets and Animals. Except for a reasonable number of household pets of the type usually found in single family homes, no animals, livestock, reptiles, rodents, birds or poultry of any kind shall be raised, bred or kept in any Private Area or in the Common Area. Under no circumstances may an animal be kept, bred or maintained for any commercial purpose. Should any animal belonging to an occupant or Owner be found in the Common Area without a leash held by a person capable of controlling the animal, the animal may be removed by the Association, or a person designated by it to do so, to an animal control shelter under the jurisdiction of the County of Contra Costa, subject to the laws and rules governing said shelter.

Section 5.12. Plants and Pests. Neither an Owner, nor its family, lessees, tenants or contract purchasers, shall permit any thing or condition which would induce, breed or harbor infectious plant diseases or noxious insects or vermin.

Section 5.13. No Nuisance. No obnoxious, offensive or illegal activity shall be carried on in any Private Area or in the Common Area, nor shall anything be done therein which may be or become an annoyance or nuisance to the other residents of the Project including, by way of example and without limitation thereto, maintenance of flashing lights visible or noise audible outside the Owner's Lot, or accumulation of rubbish or debris of any kind on any Lot or the Common Area so as to permit odors to arise therefrom or so as to render any Lot or the Common Area unsightly, unsanitary, offensive or detrimental to any other Lot or the Common Area. All garbage, rubbish and debris shall be deposited immediately in proper receptacles. Garments, rugs or similar items shall not be hung from windows or the facades of the Project, and rugs, mats or similar items shall not be dusted or cleaned by beating from or against windows or facades of the Project.

Section 5.14. Fences, Hedges and Walls. No fence, hedge, wall or other dividing instrumentality over six (6) feet in height measured from the ground on which it stands shall be

constructed or maintained on any Lot except by Declarant or a successor or assign of Declarant as provided in Section 5.02, in accordance with its architectural plans. Wherever a portion of a Lot is burdened by a Landscaping Easement or a Private Storm Drainage Easement, as shown on the Map or as an exception to the Owner's title, containing a surface drainage structure such as a B-58 ditch or similar conduit and the Association is responsible for the maintenance thereof, no fence, wall, hedge or other obstruction of any nature shall be erected or maintained within the easement area or otherwise in such manner as to impede access to the easement area from the adjacent Common Area or street. If the drainage structure or facility is underground, Owner may erect non-permanent and readily moveable improvements such as fences and landscaping in the easement area.

Section 5.15. Airspace and Exterior. No Owner, resident or tenant shall install any television, FM, AM, or amateur radio antenna, air conditioning unit, electrical or telephone wiring, or similar thing on the exterior of a Building or in such a manner that such protrude through a wall or the roof of a Building without the approval of the Design Review Committee. Subject to Section 714 of the Civil Code, installation of Solar Energy Systems shall require the approval of the Design Review Committee. Sports standards and satellite dishes may be installed so long as they are not visible from the street or an adjacent lot.

Section 5.16. Hydrocarbon and Mineral Exploration and Extraction. No oil drilling, development or refining, and no quarrying or mining operations of any kind shall be permitted on the Project, nor shall oil wells, tanks, tunnels or mineral excavations be permitted upon the surface, or within five hundred (500) feet of the surface, of the Project, nor shall derricks or other structures designed for use in drilling for oil, natural gas, steam or other hydrocarbons or minerals be erected, maintained or operated upon any portion of the Project. No water well shall be drilled or otherwise established on any Lot.

Section 5.17. Commercial Activity. Except as permitted in Section 5.02, no commercial enterprise, trade or activity shall be conducted in or upon the Project, either directly or indirectly unless it satisfies all of the following requirements:

(a) The use shall be clearly incidental and secondary to the use of the dwelling as a Residence.

(b) The use shall be conducted entirely within the Residence and carried on by the inhabitants thereof only.

(c) No article shall be sold or offered for sale from the Lot or Residence, except as such as is produced by the occupants on the premises, and no mechanical or electrical equipment shall be installed or maintained other than such as is customarily incidental to domestic use.

(d) There shall be no display; no storage of materials or supplies; and no stock in trade or commodity sold upon the premises except as provided in Subsection (c) above.

(e) The use shall not generate vehicular or pedestrian traffic in excess of that which is normally associated with single-family residential use and shall require no additional parking spaces; no professional equipment, apparatus or business equipment or trucks shall be kept or stored on the premises.

(f) The use shall not involve any exterior indication of the home occupation or alteration of the Residence to adopt to the home occupation.

(g) The use shall not involve the use of an exterior sign, and shall not create noise, odor, dust, fumes, vibration, smoke, electrical interference, or other interference with the residential use of adjacent property.

(h) No person, employee or assistant shall be employed in the Residence or dispatched from the Residence.

(i) The home occupation shall have no advertising of the home address in the telephone book, newspapers or other media of any kind.

Section 5.18. Window Coverings. All drapes, blinds, shades, shutters or other internal window coverings visible from outside of Building shall be white unless otherwise approved by the Design Review Committee.

Section 5.19. Drainage. Neither an Owner, nor its family, lessees, tenants or contract purchasers, nor their guests, invitees or licensees, shall impede, alter or otherwise interfere with the drainage patterns or facilities established pursuant to Declarant's grading, drainage and landscaping plans for the Project, as approved by the Town of Danville in, over, under, across and through the Common Area, without the prior written consent of the Board and any other public authorities having jurisdiction or, in, over, across, under and through a Lot without the consent of the Design Review Committee and any public authority having jurisdiction thereof.

Section 5.20. Rules and Regulations of the Association. The Board shall promulgate rules and regulations concerning the use of the Common Area by Owners and their guests. The Board shall have the right to limit the number of an Owner's guests that may use any recreational facilities. Neither an Owner, nor its family, contract purchasers, lessees or tenants, nor their guests, invitees or licensees, shall violate any provision of this Declaration, the Bylaws or the rules and regulations of the Association (or the resolutions of the Board) as the same may be amended from time to time.

Section 5.21. Indemnification. Each Owner shall be liable to the remaining Owners and the Association for any damage to the Common Area that may be sustained by reason of the negligence of the Owner, members of its family, its contract purchasers, lessees or tenants, and their guests, invitees or licensees, to the extent any such damage is not covered by insurance. Each Owner, and its family, contract purchasers, lessees and tenants, and their guests, invitees and licensees, shall indemnify each and every other Owner against, and hold it harmless from, and defend it against, any claim of any person for personal injury or property damage occurring on the Lot of such Owner (unless the injury or damage incurred by reason of the negligence of any other Owner or person temporarily visiting said Lot is fully covered by insurance). No decision resulting in the liability of an Owner pursuant to this section shall be reached before providing such Owner with notice and hearing satisfying the minimum requirements of Section 7341 of the Corporations Code of California.

Section 5.22. Miscellaneous. No weeds, underbrush or other unsightly growths shall be permitted to grow or remain upon any Lot and no refuse pile, rubbish, garbage or unsightly objects shall be allowed to be placed, accumulated or suffered to remain anywhere thereon. If any Building or other improvement shall suffer a casualty which affects the exterior thereof, the Owner shall promptly restore the Building or, if the Building is not capable of restoration, shall demolish the structure and remove all rubble and debris from the Project. In the event that any Owner shall fail or refuse to keep its Lot free of weeds, underbrush, unreasonable accumulations of garbage, refuse or rubbish, or other unsightly growths or objects, or fail to restore or demolish and remove damaged structures and improvements, the Association may proceed in accordance with Section 6.02. All garbage or trash containers must be underground or placed in walled-in areas so that they are not visible from adjoining Lots or the Common Area.

ARTICLE VI
MAINTENANCE AND IMPROVEMENTS

Section 6.01. Maintenance by Association.

(a) After initial construction or installation thereof by Declarant, the Association shall maintain, repair and, when necessary, replace and reconstruct all Common Area improvements including, but not limited to, landscaping, drainage structures (including retention ponds and basins) and irrigation systems. For purposes of this Paragraph 6.01(b), Common Area improvements shall include the landscaping and irrigation systems installed in the areas shown on Exhibit D, on that portion of any Lot designated on the Map as a Landscaping Easement or L.S.E. and any drainage improvements and structures constructed on any portion of a Lot designated on the Map as a Private Storm Drainage Easement or P.S.D.E. The Association's obligations under this Paragraph shall commence with the commencement of Regular Assessments and upon conveyance of a Common Area parcel, L.S.E. or P.S.D.E. to the Association and with respect to the areas shown on Exhibit D, concurrent with the transfer of the first Common Area parcel to the Association; provided, however, that for a period of one (1) year from the installation of any landscaping to be established by Declarant under the conditions of approval for the Map, Declarant shall be responsible for the repair or replacement of any defective plant materials. The Association shall hire necessary personnel and services and do, or cause to be done, such other things as are necessary to provide for the administration of the Common Area for the benefit of all the Owners and as are consistent with its powers.

(b) The Association shall keep all shrubs, trees, grass and plantings of every kind within the Common Area, within the areas shown on Exhibit D, within an L.S.E. or on the boundary between a Lot and the Common Area neatly trimmed, properly cultivated and free of trash, weeds and other unsightly material. The Association shall replace dead or defective plant materials with materials of a like kind. In addition to the foregoing, the Association shall maintain the elements of the retaining wall located along Magee Ranch Road consisting of the decorative stone surface of the wall and the iron railing running on top of the wall. Structural maintenance of the wall itself shall be performed by the Town of Danville.

(c) In addition to the foregoing, the Association shall have the duties with respect to preservation of the All-Weather Access Easement or A.W.A.E. as set forth in Section 9.04(b).

Notwithstanding the preceding, the obligation of the Association shall not:

(d) as between an Owner and the Association, extend to repairs or replacements required or caused by the willful or negligent act of an Owner, or its family, contract purchasers, lessees or tenants or their licensees, guests or invitees; or

(e) subject to the Association's duties with respect to the A.W.A.E., include the duty to repair, replace or restore public or quasi-public utility installations which are owned or operated by East Bay Municipal Utility District, Central Contra Costa Sanitary District, Pacific Gas and Electric Company, Pacific Bell, their successors and assigns, or any other public or quasi-public utility or similar entity which customarily repairs, replaces or restores such installations.

The maintenance, repair and replacement described in (d) above shall be the responsibility of the Owner of the affected Lot or the Owner to whom the willful or negligent act is attributed, as the case may be.

Section 6.02. Maintenance by Owner.

(a) Mandatory Maintenance. Each Owner, at its sole cost and expense, shall maintain the interior and exterior of its Residence and all fixtures, fences, walls, driveways, appliances or appurtenances therein or thereto; and all other portions of Owner's Lot not required by this Declaration to be maintained by the Association, in good condition and repair and so that the same does not deteriorate so as to be dangerous, or to present a hazard or nuisance to, or to diminish the value and attractiveness of, any other Lot or the Project. With respect to other portions of the Lot, said obligation shall include, without limitation thereto, the duty to promptly repair and replace all damaged improvements, to maintain all improvements in good, attractive, safe and sanitary condition, and to maintain and cultivate all landscaping, installed or placed thereon or therein by the Owner or occupant of such Lot and to keep such area free from rubbish, litter and weeds. If any fence or wall lies on the boundary between a Lot and the Common Area, the Owner shall be responsible for the maintenance, repair and replacement thereof.

(b) Installation of Landscaping on Lots. Within six (6) months after the later to occur of the close of escrow for its Lot or the completion of its home, each Owner shall

have landscaped the front yard of its Lot and the portions of any side yards visible from a street in accordance with a plan approved by the Design Review Committee.

(c) Association May Perform. After giving notice and hearing as herein specified, and if an Owner fails to perform necessary maintenance and repairs (or restoration or removal of debris) for which it is obligated pursuant to subsection (a) of this Section 6.02 or pursuant to Section 5.21 or if the Owner fails to observe its covenant under Section 6.02(b), the Association may provide to any Lot requiring same, when necessary in the opinion of the Board to preserve the beauty, quality and value of the neighborhood, such repair and maintenance or landscaping as is necessary (herein referred to as "optional maintenance").

(d) Notice. When, in the opinion of the Board, certain optional maintenance needs to be provided to a Lot, the Board shall notify the Owner by certified mail specifying in said notice exactly what should be repaired, fixed, etc. The Owner shall then have thirty (30) days from receipt of such notice to perform the optional maintenance or to make written demand for a hearing before the Board.

(e) Hearing. If a hearing is demanded, the Board shall set a date therefor and give the Owner at least fifteen (15) days' notice thereof. The Board shall in all respects comply with the provisions of Section 9.02 of this Declaration. The hearing shall be informal and rules of evidence shall not apply. The Board shall render its decision in writing. The Owner may, within twenty (20) days of service on it of such decision, submit the matter to arbitration pursuant to the Bylaws or, if at the time of such submission there are no effective and enforceable provisions in the Bylaws governing such arbitration, then pursuant to Title 9 of the Code of Civil Procedure of the State of California, Sections 1280 et seq. as amended from time to time, or pursuant to such successor statutes as are adopted by the Legislature of the State of California.

(f) Assessment of Costs. The cost of such optional maintenance shall be assessed as a Remedial Charge against the Owner of said Lot upon which such optional maintenance is performed and such shall be the personal obligation of the Owner, and shall become due and payable in all respects, together with interest and fees for the cost of collection. The Board may also deliver to the Disciplinary Committee, if any, a written complaint against such Owner.

(g) Access at Reasonable Hours. For the purpose of performing the maintenance authorized by the Declaration, the Association, through its duly authorized agents or employees, shall have the right to enter upon any Lot or the interior of any Residence or other Improvements thereon at reasonable hours with twenty-four (24) hours' notice on any day except Saturday or Sunday and such entry shall not be deemed a trespass.

Section 6.03. Maintenance of Private Access and Utility Easements.

The portions of any Lots designated as Private Access and Utility Easement or P.A.U.E. on the Map shall be maintained by the Owners of the Lots reciprocally burdened and benefitted by such Private Access and Utility Easements in accordance with the provisions of the Supplemental Declarations of Covenants, Conditions for Road Maintenance and Reciprocal Easements and Restrictions encumbering such Lots.

ARTICLE VII
EASEMENTS AND RESERVATIONS

Section 7.01. Encroachments. If, as a result of construction, reconstruction, repair, shifting, settlement or movement, any portion of a Building containing the Residence of one Owner or any fence or other Improvement encroaches on any Lot of another Owner, there shall be valid easements for the maintenance of such encroachments so long as they shall exist. None of the rights and obligations of the Owners created herein shall be altered in any way by encroachments due to settlement or shifting of structures or any other cause. There shall be valid easements for the maintenance of said encroachments so long as they shall exist; but in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful conduct of said Owner or Owners.

Section 7.02. Association Right of Entry and Enforcement. The Association (the Board or its duly authorized representatives) shall have and enjoy a right of entry upon any Lot or within any Residence or other Improvement thereon, as necessary in connection with construction, maintenance, operation or emergency repair for the benefit of the Common Area or the Owners in common. Entry pursuant to this right shall be restricted to reasonable times and must be preceded by notice of at least twenty-four (24) hours to the occupant unless entry is required by an emergency.

Section 7.03. Rights of Entry for Maintenance, Repair and Replacement.

(a) The Association. In general, the Association shall have and enjoy rights of entry on, over, under, across and through the Project, and every part thereof including, without limitation thereto, the Lots, for the purposes of performing any duty or obligation of the Association arising under this Declaration. The Association shall own the easements on any Lots shown on the Map as Landscaping Easements or L.S.E. and shall own the easements shown on the Map as Private Storm Drain Easements or P.S.D.E. The easements owned by the Association shall be deemed easements in gross and the Association or Declarant shall have the right to transfer any or all thereof to a public entity, notwithstanding the fact that any or all thereof were not offered for dedication on the Map, provided that such entity assumes the maintenance of the landscaping or drainage facilities, as the case may be, within the boundaries of such easements.

(b) The Owners. The Owner of each Lot served by a sanitary sewer, water, gas, electric, telephone, television line or connection, heating or air conditioning conduit, duct, flue or system, or similar utility connection shall be entitled to the full use and enjoyment of such portions of said connections as service its Lot.

Section 7.04. Private Access and Utility Easements. Easements shown on the Map as Private Access and Utility Easements or P.A.U.E. shall be owned by the Owners of Lots which are expressly benefitted by such easements as set forth in the Supplemental Declarations of Covenants, Conditions, Restrictions and Reciprocal Easements encumbering the Lots burdened and benefitted by such easements.

Section 7.05. Easements Reserved by Declarant.

(a) Original Subdivision and Development Work. Declarant, or its designated successors, their contractors, subcontractors, agents, employees, materialmen or assigns, shall have and enjoy easements on, over, under, across and through the Project including, without limitation thereto, the individual Lots for the subdivision, construction, improvement and development of the Project and any lands remaining to be annexed to this Declaration including, without limitation thereto, the installation and maintenance of electric, telephone, cable television, water, gas, sewer, drainage and security systems, equipment and facilities now or hereafter necessary or appropriate to service the Project, and the right

to enter upon all or any portion of the Project including, without limitation thereto, the individual Lots for the purposes of conducting therein and thereon such work of subdivision, improvement, construction and development as Declarant may deem necessary or desirable to complete the division of the planned unit development, and any lands remaining to be annexed to this Declaration, together with the right to grant and transfer Lots. Upon such completion, or within four (4) years from the date of original issuance of the final subdivision public report for the final phase of the Project, whichever is earlier, said easements and rights shall automatically terminate.

(b) Sales Program. Until such time as Declarant, its successors or assigns as defined in Section 5.02 no longer owns a Lot in the Project, Declarant, or its successors and assigns or their agents or employees, shall have a nonexclusive easement and right to maintain in or upon the Common Area such signs and sales displays including sales trailers as may be required in connection with sales programs in the Project. During such period, Declarant, or its designated successors and assigns, their agents or employees and prospective purchasers coming to view sales models, shall also have a nonexclusive easement to use the Common Area for the purposes of ingress, egress and parking in connection with a sales program. Any person claiming the benefit of this provision shall pay to the Association reasonable rent for any portion of the Common Area used as a sales office or for a similar use.

Section 7.06. Common Area. Subject to the other provisions of this Declaration, each Owner, the members of its family, its contract purchasers, lessees or tenants, and their guests, invitees and licensees, shall have a nonexclusive easement for use, ingress, egress and utility purposes on, over, under, across and through the Common Area subject to this Declaration. The Association for the benefit of all Owners may promulgate rules and regulations limiting the rights of Owners to use portions of the Common Area.

Section 7.07. Drainage Easement. Each Lot and each Parcel of the Common Area shall be reciprocally benefited and burdened by an easement for the conveyance and flow of surface and subsurface waters and debris by pipe, channel, conduit or similar structure or by unconfined surface discharge and subsurface flow if such conveyance and flow arises from the grading and drainage plan established by Declarant for the Project as approved by all governmental authorities having jurisdiction thereof.

ARTICLE VIII
CONDEMNATION

Section 8.01. Sale by Unanimous Consent or Taking.

The Board or a trustee appointed to act on behalf of the Owners shall represent the Owners in any condemnation proceeding, negotiations, settlements or agreements affecting any portion of the Common Area. If an action for condemnation of all or a portion of the Common Area is proposed or threatened by any governmental agency having the right of eminent domain, then, on the unanimous written consent of all of the Owners, the Project, or a portion of it, may be sold and conveyed to the condemning authority by the Board for a price deemed fair and equitable by the Board. If the requisite number of Owners do not consent to a sale of all or a portion of the Common Area and the condemning authority institutes condemnation proceedings, the Court shall fix and determine the condemnation award.

ARTICLE IX
MISCELLANEOUS

Section 9.01. Amendment.

(a) Amendment Before Close of First Sale.

Before the close of the first sale of a Lot to a purchaser other than Declarant, this Declaration and any amendments to it may be amended in any respect or revoked by the execution by Declarant and any Mortgagee of record of an instrument amending or revoking this Declaration. The amending or revoking instrument shall make appropriate reference to this Declaration and its amendments and shall be acknowledged and recorded in the Office of the Contra Costa County Recorder. No amendment may be made pursuant to this subsection which would materially change the rights of an Owner, either directly or as a Member of the Association, without the prior written consent of the Real Estate Commissioner.

(b) Amendment After the Close of First Sale.

After the close of the first sale of a Lot to a purchaser other than Declarant and subject to Section 9.03 of this Declaration, the provisions of this Declaration may be amended by an instrument in writing signed and acknowledged by the majority of the members of the Board certifying under penalty of perjury that the amendment set forth therein was duly adopted with the vote or written consent of Members entitled to exercise fifty-one percent (51%) of the voting power of each class of voting membership of the Association (except that where a

greater percentage or different vote is required with respect to any provision hereunder, amendment of any provision shall require the vote or written consent of at least the prescribed percentage of affirmative votes of each class required for action to be taken under that section), which amendment shall be effective upon recordation of the aforementioned instrument in the Office of the Contra Costa County Recorder. Upon the conversion of Declarant's Class B voting rights to Class A voting rights as provided in Section 3.03 C., amendment of the provisions of this Declaration shall require the approval of fifty-one percent (51%) of the total voting power held by all Members, including Declarant and shall also require the vote or written consent of fifty-one percent (51%) of the voting power of the Association held by Members other than Declarant.

Section 9.02. Notice and Hearing. Any requirements elsewhere in this Declaration which require notice and hearing shall meet the minimum requirements of Section 7341 of the Corporations Code of the State of California and provide the party who is entitled to the hearing with at least fifteen (15) days' notice of the hearing. Said notice shall set forth the reasons for imposing any proposed liability, assessment, penalty or other remedy, and shall be delivered to such person in person or by first class or registered mail. All hearings shall be informal and rules of evidence shall not apply. All decisions shall be rendered in writing. No action shall be taken on any decision until at least five (5) days after the date of the hearing.

Section 9.03. Enforcement. The provisions of this Declaration, the Bylaws, the rules and regulations of the Association or the resolutions of the Board, as the same may be adopted or amended from time to time, shall constitute enforceable equitable servitudes which shall inure to and bind each Owner, its family, lessees, tenants or contract purchasers, and their guests, invitees or licensees, and which may be enforced by Declarant, the Association or an Owner, by any proceeding at law or in equity. Every act or omission whereby any provision of this Declaration, the Bylaws, the rules and regulations of the Association or the resolutions of the Board is violated, whether in whole or in part, is hereby declared to be a nuisance, and may be abated or enjoined through an action maintained by Declarant, the Association or an Owner, whether the relief requested is for negative or affirmative action. The failure of an Owner, its family, lessees, tenants or contract purchasers, and their guests, invitees or licensees, to comply strictly with the provisions of any of the foregoing instruments, as the same may be in force and effect from time to time, shall be grounds for an action to recover sums due for damages maintainable by

Declarant, the Association or an aggrieved Owner. The failure by Declarant, the Association or an Owner to enforce any covenant or restriction contained in this Declaration shall in no event be deemed a waiver of the right to do so thereafter. Each remedy set forth in this Declaration shall be in addition to all other remedies, whether available at law or in equity, and all such remedies, whether or not set forth in this Declaration, shall be cumulative and not exclusive. Excepting those powers provided by Section 4.07, the Association shall have no power to forfeit or abridge an Owner's rights to the full use and enjoyment of its Lot and Residence except where the forfeiture or abridgement is the result of the judgment of a court or a decision arising out of arbitration.

Section 9.04. Rights of Town of Danville; Rights of Central Contra Costa Sanitary District; Rights of East Bay Regional Park District.

(a) The Town of Danville (the "Town") is an express and intended beneficiary of the covenants set forth in Sections 2.01, 3.05(b)(iv), 3.06, 4.01, 4.07, 5.03(e) and Article VI. The Town shall have the right, but not the obligation, to enforce by proceedings at law or in equity the covenants imposed by this Declaration with respect to which it is an express beneficiary, including, without limitation, the right to prosecute a proceedings at law or in equity against the person or persons (including the Association) who have violated or are attempting to violate any of said covenants, to enjoin or prevent them from doing so, to cause said violation to be remedied, and/or to recover damages for said violation. In the event of any violation of any of said covenants, the Town may give written notice of said violation together with a demand upon the affected party to remedy the said violation. If the affected party refuses to remedy said violation, or fails to take appropriate action within thirty (30) days of the receipt of said written notice, the Town shall have full power to cause said violation to be remedied and/or to recover damages for said violation. The remedies herein provided for breach of the covenants contained in this Declaration shall be deemed cumulative. The failure to enforce any of said covenants shall not constitute a waiver of the right to enforce any of said covenants thereafter. The covenants with respect to which the Town is an express beneficiary shall not be amended or rescinded without the consent of the Town, which consent shall not be unreasonably withheld or delayed.

(b) Central Contra Costa Sanitary District (the "District") is an express and intended beneficiary of the covenants set forth in Sections 1.01, 6.01, 9.04(b), Exhibit C, and Article IV of the Declaration and Article XI of the

Bylaws. The covenants and bylaws with respect to which the District is an express beneficiary shall not be amended or rescinded without prior written consent of the District, which consent shall not be unreasonably withheld or delayed. After initial construction thereof by Declarant and conveyances of the first Lot in the Project, the Association shall have the power and the duty to reconstruct, restore, replace, modify, repair, and maintain (the foregoing activities are hereinafter collectively called "preservation" or "preserve") the A.W.A.E., all of which shall be done in conformance with the requirements of the District. Any preservation by the Association shall also include, without limitation, any retaining walls within or adjacent to the A.W.A.E. and any other appurtenances to the roadway. In connection with performance of its duties:

(i) Pursuant to Article IV hereof, the Association shall collect from the Owners (including Declarant) as part of the Regular Assessments the sums necessary to provide for preservation including regular maintenance and repair and to fund reserves for preservation of the A.W.A.E. The foregoing sums shall be used only for preservation of the A.W.A.E. and shall be initially established in a budget for the Project approved by the California Department of Real Estate.

(ii) At the request of the District, and at no cost to the District, the Association shall provide to the District copies of the pro-forma operating statement (budget) and financial statements required to be prepared by the Association pursuant to Article XI of the Bylaws. For purposes of such statements the A.W.A.E. shall be deemed a "major component" of the Project and the financial statements shall show the balance of the reserve account for preservation of the A.W.A.E.

(iii) At the request of the District, the Association shall provide evidence, satisfactory to the District, that the funds representing the reserves for preservation of the A.W.A.E. are on deposit in the reserve fund account.

(iv) If a Geologic Hazard Abatement District ("GHAD") is formed by the Town which includes the Project, the GHAD may accept the duties and responsibilities of the Association. Such duties and responsibilities shall remain with the Association until the District has approved their transfer to the GHAD. Upon approval of the transfer, the necessary reserves shall be accumulated through an assessment levied by the GHAD rather than assessments by the Association and their expenditure for preservation of the A.W.A.E. shall become the responsibility of the directors of the GHAD.

(v) The District shall have immediate access at all time to preserve the sewer collection system. If any barrier to the District's immediate access is to be constructed or installed, then the District's prior written approval is required. The Declarant or Association shall submit a plan to the District for prior written approval that provides the District with an acceptable means to obtain immediate access.

(vi) The District will repair any damages to the A.W.A.E. in excess of those normally anticipated from wear and aging which are caused by the District's actions to preserve the sewer collection system provided the Association has complied with its duties pertaining to preservation of the A.W.A.E. in accordance with Sections 6.01 and 9.04(b).

(vii) If the Association shall breach any covenant, or otherwise fail to perform any of its duties under Sections 6.01 and 9.04(b), or any other portions of the Declaration, Articles and Bylaws to which the District is an intended beneficiary, the District may give written notice of such breach to the Association, together with a demand upon the Association to remedy such breach. If the Association refuses to do so, or fails to take appropriate action within thirty (30) days of the receipt of such notice, the District shall have the standing and the right (but not the obligation) to bring an action in a court of proper jurisdiction to enforce the provisions of Sections 6.01 and 9.04(b) and any of the above mentioned Agreements, Articles and Bylaws or to seek damages for said breach. These remedies are cumulative and in addition to any other remedies the District may have. Should the District prevail in any such litigation, the Association shall be liable for and pay to the District its costs (including attorney's fees and all other involved District staff time). Nothing contained herein shall limit any other right or remedy, which the District may exercise by virtue of authority contained in ordinance or law.

(c) The East Bay Regional Park District ("EBRPD") shall have the right to enter upon the Common Area over existing rights of way, if such there be, or, if there are none, by such ways and means which permit the least practical interference with the rights of the Owners for purposes of maintaining, repairing, replacing and reconstructing any fences which separate the lands now or hereafter owned by EBRPD from the Property.

Section 9.05. Joint and Several Liability. If a Lot is owned jointly by two (2) or more persons, the liability of

each Owner thereof in connection with the obligations of Owners imposed by this Declaration shall be joint and several.

Section 9.06. Attorneys' Fees. In any action brought by Declarant, the Association or an Owner, to enforce the provisions hereof, whether legal or equitable, the prevailing party shall be entitled to such reasonable attorneys' fees as may be fixed by the court. Should the Association prevail in any legal proceeding instituted by or on behalf of an Owner, the Association shall be reimbursed by such Owner for its legal expenses including, without limitation thereto, attorneys' fees, court costs and experts' fees, incurred in connection therewith.

Section 9.07. Severability. The provisions of this Declaration shall be independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision shall not affect the validity or enforceability of any other provisions which shall remain in full force and effect.

Section 9.08. Interpretation. The provisions of this Declaration shall be liberally construed to effectuate their purpose of creating a uniform plan for development and operation of the Project. Failure to enforce any provision hereof shall not constitute a waiver of the right thereafter to enforce said provision or any other provision hereof.

Section 9.09. Limitation of Liability. The liability of any Owner for performance of any one (1) or more of the provisions of this Declaration with respect to any Lot shall terminate upon the sale, transfer or other divestiture of such Owner's entire interest in that Lot with respect to obligations arising hereunder from and after the date of such divestiture.

Section 9.10. Special Provisions Relating to Enforcement of Grantor's Obligations to Complete Common Area Improvements.

(a) If Common Area improvements have not been completed prior to the issuance of the final subdivision public report for the Project by the Department of Real Estate of the State of California, and if the Association is obligee under a bond or other arrangement (hereinafter called either alternatively or collectively "bond") to secure performance of the commitment of Declarant to complete said improvements, the Board shall consider and vote on action by the Association to enforce 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 the Association has given an extension in writing for the completion of any Common Area improvement, the Board 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 for the purpose of voting to override a decision by the Board not to initiate action to enforce the obligations under the bond or on the failure of the Board to consider and vote on the question shall be held not fewer 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 the voting power of the Association residing in Members other than Declarant to enforce Declarant's obligations under the bond shall be deemed to be the decision of the Association, and the Board shall thereafter implement that decision by initiating and pursuing appropriate action in the name of the Association.

(b) At such time as Declarant deems those Common Area improvements covered by any bond to be complete it shall so notify the Association in writing, which notification shall constitute Declarant's demand that a notice of completion with respect to the designated improvements be filed and that the bond with respect thereto be released. If the Association shall dispute the Declarant's entitlement to have the notice of completion filed and its bond released then either Declarant or the Association shall be entitled to submit the dispute to binding arbitration, as provided in Article X of the Bylaws. For purposes hereof the Declarant shall have the rights and duties of an "Owner" under Article X of the Bylaws whether or not it owns any lots at the time it seeks the release of its bond.

Section 9.11. Notification Upon Sale of a Lot or Residence.

(a) Transfer of Lot. At least ten (10) days prior to the consummation of any sale or other transaction which will result in a change in the record ownership of the fee interest in a Lot, the transferring Owner or Owners shall provide the following information to the Association in writing:

(i) The name of each transferor and transferee;

(ii) The Lot number and street address of the Residence to be transferred;

- (iii) The mailing address of each transferee;
- (iv) The name and address of the escrow holder, if any, for such transfer and the escrow number; and
- (v) The proposed date for consummation of the transfer.

(b) Effect of Failure to Notify. Until such time as the Association receives the notice required hereinabove, a transferee shall be deemed to have received any notice or other communication required or permitted to be given by the Association hereunder which is duly given to his transferor.

Section 9.12. Obligations of Owners; Avoidance; Termination.

(a) No Owner may avoid the obligations of membership in the Association or any other obligations imposed on it by this Declaration by virtue of its being an Owner or Association Member through nonuse of any Common Area, by renunciation or abandonment of its Lot or by any other act of renunciation or abandonment, nor may it divest itself of any such burden or obligation by attempting to assign responsibility therefor to a tenant, manager or any third person.

(b) An Owner who leases its Residence to any person or entity shall be responsible for assuring compliance by his lessee with this Declaration, including all easements, reservations, assessments, liens and charges created in accordance with this Declaration, all as amended and supplemented from time to time.

(c) Upon the conveyance, sale, assignment or other transfer of a Lot to a new Owner, the transferring Owner shall not be liable for any assessments levied with respect to such Lot after the date of such transfer, and no person, after the termination of its status as an Owner and prior to its again becoming an Owner, shall incur any of the obligations or enjoy any of the benefits of an Owner under this Declaration. The voluntary conveyance of a Lot to a new Owner, however, will not extinguish any obligations for unpaid assessments against said Lot being conveyed.

(d) No Owner, or other person, may by conveyance, transfer or any other action, including an action at law for partition, sever any Lot or Lots from the Common

Area or from the Association and all rights to do so are expressly waived.

Section 9.13. Nonliability of Officials. To the fullest extent permitted by law, neither a Director, officer or Committee of the Association or member of a Committee of the Association, nor Declarant or the Board, shall be liable to any Member, Owner, the Association or any other party for any damage, loss, claim, liability or prejudice suffered or claimed on account of any decision, approval, disapproval, course of action, act, inaction, omission, error, negligence or the like made in good faith and within which such person or entity reasonably believed to be the scope of its duties.

Section 9.14. Limitation of Restrictions on Declarant. Declarant is undertaking the work of constructing improvements upon the Project. The completion of that work and the sale and other disposal of said improvements is essential to the establishment and welfare of said Property as a residential community. In order that said work may be completed and said Property be established as a fully-occupied residential community as rapidly as possible, nothing in this Declaration shall be understood or construed to:

(a) Prevent Declarant, its successors or assigns (as defined in Section 5.02), contractors and subcontractors from doing on the Project whatever is reasonably necessary or advisable in connection with the completion of said work; or

(b) Prevent Declarant, its successors or assigns (as defined in Section 5.02), contractors and subcontractors from erecting, constructing and maintaining on any part or parts of the Project, such structures as may be reasonably necessary for the conduct of the business of completing said work and establishing the Project as a residential community and disposing of the same as individual Lots by sale, lease or otherwise; or

(c) Prevent Declarant, its successors or assigns (as defined in Section 5.02), contractors and subcontractors from conducting on any part of the Project the business of completing said work and of establishing the Project as a residential community and of disposing of said Property as individual Lots by sale, lease or otherwise; or

(d) Prevent Declarant, its successors or assigns (as defined in Section 5.02), from maintaining such sign or signs anywhere on the Project as may be necessary for sale, lease or disposition thereof; or

(e) Prevent Declarant, its successors or assigns (as defined in Section 5.02) from maintaining models, sales offices, storage facilities or related such facilities in any unsold Residences, as may be necessary or reasonable, in the opinion of Declarant, for the sale or disposition of the Lots. Declarant shall be entitled to reasonable use of the Common Area for undertaking its sale of the Lots and shall pay a reasonable rental for such use. If the Declarant (or its successors or assigns, as defined in Section 5.02) and the Board (or the Board member elected by the Owners other than Declarant, if Declarant controls the Board) shall dispute the amount of the rental, the matter shall be submitted to arbitration, as provided in the Bylaws.

Section 9.15. Scope. Each owner, by mere acceptance of a deed to a Lot, shall be deemed to have agreed, for any and all purposes, for itself, and the members of its family, its contract purchasers, tenants or lessees and their guests, invitees or licensees, to abide by, and to be bound by, each and every provision of this Declaration which subjects such Owner or other person to a contractual, fiduciary or other duty, obligation or agreement for the benefit of Declarant, the other Owners or occupants of the planned unit development, either individually or as a class, the Association, the Property or any part thereof, including the individual Lots, or the public generally, regardless of whether the deed refers specifically to this Declaration or to any such duty, obligation or agreement.

Section 9.16. Effective Date. This Declaration shall become effective upon its recordation in the Official Records of Contra Costa County, California.

Section 9.17. Notices. Any notice required or permitted to be given hereunder shall be either personally delivered or mailed, by registered or certified mail, return receipt requested, and addressed as follows:

THE ASSOCIATION: Magee Ranch Homeowners Association
140 Mayhew Way, Suite 800
Pleasant Hill, CA 94523-4396

DECLARANT: Diablo Ranch Development Company
2217 California Street
San Francisco, CA 94115

AN OWNER: At the address of the
Residence of such Owner

A MORTGAGEE: At the address supplied
by the Mortgagee or its
Mortgagor to the
Association

Notice shall be deemed to have been received upon personal delivery or seventy-two (72) hours after deposit in the United States mail as aforesaid. The foregoing addresses may be changed by written notice given as herein provided. Unless so changed, the last address provided for each party, whether herein or pursuant to notice hereunder, shall be deemed to be the address of such party for any and all purposes.

Section 9.18. Gender/Singular and Plural. Whenever used, the singular shall include the plural and the use of any gender shall include all genders.

Section 9.19. Inflation Adjustment. Those dollar amounts referred to in Section 3.08(c) and in Section 8.01 shall be adjusted on a date five (5) years from the date of execution of this Declaration (and every five (5) years thereafter) by a fraction of the amounts actually stated in those sections; the numerator of said fraction shall be the U. S. Bureau of Labor Statistics, Consumer Price Index: San Francisco/Oakland, California, Table for all Urban Consumers, all items 1982-84 (or any similar index substituted therefor), herein referred to as "CPI", on a date one hundred twenty (120) days prior to the date that said adjustment is required to be made, and the denominator of said fraction shall be the CPI on a date one hundred twenty (120) days prior to the date of execution of this Declaration.

Section 9.20. Arbitration of Disputes Related to Defects. If any Owner or the Association shall have a claim against Declarant related to any defect in any Lot, any Building thereon or any improvement to any such Lot or Building or related to the Common Area or any structures thereon or any improvements to any such Common Area or structures, whether such claim arises in contract or in tort and whether such claim is with respect to design, engineering, workmanship, manufacture, construction, site preparation, drainage, grading or other similar or dissimilar matters and the Declarant disputes the claim, such claim shall be settled by binding arbitration. The arbitration shall be conducted before a

single neutral arbitrator in accordance with the rules for construction disputes of the American Arbitration Association and under the provisions of Part III, Title 9, Sections 1280 through 1294.2 of the California Code of Civil Procedure or any successor statute. Any fee or other cost to initiate the arbitration shall be remitted by the party seeking arbitration but all such costs and fees shall be borne equally by the parties, who shall also each bear the costs of its expert witnesses and attorneys, regardless of whom is the prevailing party in the arbitration. The Declarant shall be entitled to the benefits of this covenant whether or not it owns any Lots in the Project at the time the claim is brought.

ARTICLE X MORTGAGE PROTECTION

Section 10.01. Mortgage Permitted. Any Owner may encumber its Lot with a Mortgage.

Section 10.02. Subordination. Any lien created or claimed under the provisions of this Declaration is expressly made subject and subordinate to the rights of any First Mortgage that encumbers all or a portion of the Project or any Lot, made in good faith and for value, and no such lien shall in any way defeat, invalidate or impair the obligation or priority of such First Mortgage unless the Mortgagee expressly subordinates its interest, in writing, to such lien. All taxes, assessments and charges which may become liens prior to the First Mortgage under local law shall relate only to the individual Lots and not to the Project as a whole.

Section 10.03. Effect of Breach. Except as such breach shall cause a foreclosure of a lien for assessments and charges which is prior in right to the lien of a Mortgage other than a First Mortgage, no breach of any provision of this Declaration shall invalidate the lien of any Mortgage made in good faith and for value, but all of the covenants, conditions and restrictions shall be binding on any Owner whose title is derived through foreclosure sale, trustee's sale or otherwise.

Section 10.04. Foreclosure. If any Lot subject to a monetary lien created by any provision hereof shall be subject to a First Mortgage Lien (i) the foreclosure of any lien created by anything set forth in this Declaration shall not operate to affect or impair such First Mortgage Lien; and (ii) the foreclosure of said First Mortgage Lien or sale under a power of sale included in such First Mortgage (such events being hereinafter referred to as "events of foreclosure"), shall not operate to affect or impair the encumbrance of this Declaration, except that any persons who obtain an interest

through any of the events of foreclosure shall take title free of the lien for all assessments and charges as shall have accrued up to the time of any of the events of foreclosure, but subject to any lien assessments and for all assessments and charges that shall accrue subsequent to the events of foreclosure. For purposes hereof, the obligation for any installment of a previously levied assessment which has not become payable as of the date of foreclosure shall be deemed to accrue on the date such installment becomes payable. If the events of foreclosure are with respect to a Mortgage other than a First Mortgage, the liability of the Mortgagee with respect to any assessments and charges arising prior to the events of foreclosure and the effects of a foreclosure of the lien for assessments and charges on such Mortgage shall be determined by the relative dates on which the lien of the Mortgage and the lien for such assessments became duly perfected.

Nothing in this section shall be construed to release any Owner from its obligation to pay for any assessment levied pursuant to this Declaration.

Section 10.05. Non-Curable Breach. Any Mortgagee who acquires title to a Lot by foreclosure or by deed in lieu of foreclosure or assignment in lieu of foreclosure shall not be obligated to cure any breach of this Declaration that is non-curable or of a type that is not practical or feasible to cure.

Section 10.06. Loan to Facilitate. 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 this Article X.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed as required by law on this 1/11 day of November, 1989.


DIABLO RANCH DEVELOPMENT COMPANY,
a California limited partnership

By: Broadmore Properties, Inc.,
General Partner

[Signatures continued on next page]

[Signatures continued from previous page]

By: W.S.I. Builders, Inc.
a California corporation,
Its Authorized Agent,

By: 
Jerry W. P. Schaufler
President

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STATE OF CALIFORNIA)
)SS
COUNTY OF CONTRA COSTA)

On this 17th day of September, in the year 1989, before me a notary public in and for said county and state, personally appeared Jerry W.P. Schauffler, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument as President, of W.S.I. Builders, Inc., a California corporation, on behalf of said corporation as Authorized Agent of Broadmore Properties, Inc., a California corporation, General Partner of Diablo Ranch Development Company, and acknowledged to me that said corporation executed the same as General Partner in said Partnership and that said Partnership executed the same.

WITNESS my hand and official seal.



Susan Schultz
NOTARY PUBLIC

EXHIBIT A

DESCRIPTION OF FIRST
PHASE OF PROJECT

LOTS

Lots 1 through 92, inclusive, as shown on the Map of Subdivision 7058, recorded on October 10, 1989, in Book 338 of Maps at Page 19 of the Contra Costa County Records.

COMMON AREA

Parcels A through E, inclusive, and J, as shown on the Map of Subdivision 7058, recorded on October 10, 1989, in Book 338 of Maps at Page 19 of the Contra Costa County Records.