

SEWAY

ASSOCIATION GOVERNING DOCUMENTS

In compliance with amendments to California Civil Code and Government Code, effective January 1, 2000, please attach this cover page to your copy of the association's governing documents.

If this document contains any restriction based on race, color, religion, sex, familial status, marital status, disability, national origin, or ancestry, that restriction violates state and federal fair housing laws and is void. Any person holding an interest in this property may request that the county recorder remove the restrictive covenant language pursuant to subdivision (c) of Section 12956.1 of the Government Code.

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RECORDING REQUESTED BY TICOR TITLE INS. CO. OF CALIF.

RECORDED IN OFFICIAL RECORDS OF ORANGE COUNTY, CALIFORNIA

4:00 PM APR 10 1990

Lee A. Branch Recorder

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR TRACT NO. 13621 AND ESTABLISHMENT OF DELEGATE DISTRICT NO. 5

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**DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
TRACT NO. 13621
AND ESTABLISHMENT OF DELEGATE DISTRICT NO. 5**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made this 2nd day of April, 1990, by LAGUNA AUDUBON II, a California limited partnership ("Declarant").

R E C I T A L S:

A. Declarant is the owner of certain real property in the unincorporated territory of the County of Orange, State of California, described as Lots 46 through 95 of Tract No 13621, as per map recorded in Book 620, Pages 25 through 31 of Miscellaneous Maps, Records of Orange County, California (the "Properties").

B. Declarant has deemed it desirable to impose a general plan for the improvement and development of the Properties as a planned development and the adoption and establishment of covenants, conditions and restrictions upon the real property and each and every lot and portion thereof and upon the use, occupancy and enjoyment thereof, all for the purpose of enhancing and protecting the value, desirability and attractiveness of the Properties.

C. Declarant has deemed it desirable for the efficient preservation of the value, desirability and attractiveness of the Properties, pursuant to the provisions of this Declaration, to create a corporation to which should be delegated and assigned the powers of maintaining certain Common Area within the properties as hereinafter provided, and administering and enforcing these covenants, conditions and restrictions and collecting and disbursing funds pursuant to the assessment and charges hereinafter created and referred to.

D. SEAWAY COLLECTION HOMEOWNERS ASSOCIATION, a nonprofit mutual benefit corporation, has been incorporated under the laws of the State of California for the purpose of exercising the powers and functions aforesaid.

E. Declarant hereby declares that all of the Properties shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the

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following easements, restrictions, covenants, conditions and equitable servitudes, all of which are for the purpose of uniformly enhancing and protecting the value, attractiveness and desirability of the Properties, in furtherance of a general plan for the protection, maintenance, subdivision, improvement and sale of the Properties or any portion thereof. The covenants, conditions, restrictions, reservations, easements and equitable servitudes set forth herein shall run with the Properties and shall be binding upon all persons having any right, title or interest in the Properties, or any part thereof, their heirs, successors and assigns; shall inure to the benefit of every portion of the Properties and any interest therein; and shall inure to the benefit of and be binding upon Declarant, each Owner and their respective heirs, executors and administrators; may be enforced by Declarant, by any Owner or by the Association (as hereinafter defined).

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I

DEFINITIONS

Section 1. Architectural Committee. The term "Architectural Committee" shall mean the Committee created pursuant to the article of this Declaration entitled "Architectural Control".

Section 2. Association. The term "Association" as used herein shall mean and refer to SEAWAY COLLECTION HOMEOWNERS ASSOCIATION, a nonprofit mutual benefit corporation, its successors and assigns.

Section 3. Board of Directors. The term "Board of Directors" or "Board" as used herein shall mean and refer to the duly elected Board of Directors of the Association.

Section 4. Common Area. The term "Common Area" as used herein shall mean all the real property and improvements which are owned by the Association for the common use and enjoyment of all of the Owners, including, but not limited to, an easement over a portion of Master Association Lot B, as shown on Exhibit "A" attached hereto and incorporated herein by this reference, of Tract No. 13621, as per map recorded in Book 620, Pages 25 through 31 of Miscellaneous Maps, Records of Orange County, California.

Section 5. Community Association. The term "Community Association" as used herein shall mean and refer to the ALISO VIEJO COMMUNITY ASSOCIATION, a California nonprofit mutual benefit corporation, its successors and assigns.

Section 6. Community Declaration. The term "Community Declaration" as used herein shall mean and refer to that certain Declaration of Covenants, Conditions and Restrictions for ALISO VIEJO COMMUNITY ASSOCIATION. The Community Declaration was recorded on April 8, 1982, as Instrument No. 82-118353, Official Records of Orange County, California. The Community Declaration is binding upon all Owners of Lots within the Properties presently covered by the Community Declaration.

Section 7. Declarant. The term the "Declarant" as used herein shall mean and refer to LAGUNA AUDUBON II, a California limited partnership, its successors and assigns, including the successors and assigns of LAGUNA AUDUBON II with respect to any property which may be annexed to this Declaration pursuant to the Article in this Declaration entitled "Annexation".

Section 8. Declaration. The term "covenants" and/or "Declaration" as used herein shall mean and refer collectively to

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the covenants, conditions, restrictions, reservations, easements, liens and charges imposed by or expressed in this Declaration.

Section 9. Delegate. The term "Delegate" shall mean and refer to a natural person selected by the Members of a Delegate District pursuant to Article IV hereof to represent all such Members and to vote on their behalf, as further described in the Master Declaration and in the Bylaws of the Master Association.

Section 10. Delegate District. The term "Delegate District" shall mean and refer to Delegate District No. 5 of the Master Association established pursuant to the Master Declaration. All of the real property described in Recital A of this Declaration, together with any and all real property which may be annexed thereto pursuant to the Article of this Declaration entitled "ANNEKATION," shall constitute said Delegate District.

Section 11. Improvement. The term "Improvement" as used herein shall mean any structure or appurtenance thereto of every type and kind, including but not limited to buildings, garages, swimming pools, recreational facilities, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, landscaping, antennae, hedges, windbreaks, plantings, shrubs, poles, signs, exterior air conditioning and water softening fixtures or equipment.

Section 12. Institutional Holder. The term "Institutional Holder" as used herein shall mean and refer to any holder (beneficiary) of a first deed of trust which encumbers a lot, which holder is a bank or savings and loan association or established mortgage company, or other entity chartered under federal or state laws, any corporation or insurance company, or any federal or state agency.

Section 13. Landscape Maintenance Area. The term "Landscape Maintenance Area" as used herein shall mean the landscaping and improvements on each Lot which is located exterior to a fence, wall or building and is originally planted by Declarant, but which the Association shall be required to maintain. The Association shall only be required to maintain such portions of the Landscape Maintenance Area as defined herein as have been included in the budget for the Association as approved by the California Department of Real Estate in connection with the issuance of a final subdivision public report on each Phase of the development.

Section 14. Lot. The term "lot" or "Lot" as used herein shall mean and refer to any numbered plot of land shown upon any recorded subdivision map of the Properties (with the exception of the public streets or alleys and the Common Area).

Section 15. Master Association. The term "Master Association" as used herein shall mean and refer to the LAGUNA

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AUDUBON II MASTER ASSOCIATION, a California nonprofit mutual benefit corporation, its successors and assigns.

Section 16. Master Declaration. The term "Master Declaration" as used herein shall mean and refer to that certain Master Declaration of Covenants, Conditions and Restrictions for LAGUNA AUDUBON II MASTER ASSOCIATION. The Master Declaration was recorded on September 5, 1989 as Instrument No. 89-475029, Official Records of Orange County, California. The Master Declaration is binding upon all Owners of Lots within the Properties presently covered by the Master Declaration.

Section 17. Member. The term "Member" shall mean and refer to those persons entitled to membership in the Association as provided in this Declaration and in the Association Articles of Incorporation and By-Laws.

Section 18. Mortgage. The term "Mortgage" as used herein shall mean and refer to any duly recorded and valid mortgage or deed of trust encumbering a lot.

Section 19. Owner. The term "Owner" as used herein shall mean and refer to the record Owner, whether one or more persons or entities, of a fee simple title to any lot which is a part of the Properties, including contract purchasers, but excluding those having such interest merely as security for the performance of an obligation.

Section 20. Phase. The term "Phase of the Development" or "Phase of the Properties" shall mean and refer to those portions of real property as shall be identified by a Supplementary Declaration of Covenants, Conditions and Restrictions to be recorded pursuant to the terms of the Article of this Declaration entitled "ANNEKATION".

Section 21. Properties. The term "Properties" as used herein shall mean and refer to that certain real property in the unincorporated territory of the County of Orange, State of California, described as Lots 46 through 95 of Tract No. 13621, as per map recorded in Book 620, Pages 25 through 31 of Miscellaneous Maps, Records of Orange County, California. The term "Properties" shall also include all real property which is annexed to this Declaration pursuant to the provisions of the Article of this Declaration entitled "ANNEKATION."

Section 22. Regular Assessment. The term "Regular Assessment" as used herein shall mean and refer to the amount which is to be paid by each Owner to the Association for the common expenses as provided by the terms of this Declaration.

Section 23. Reimbursement Assessment. The term "Reimbursement Assessment" as used herein shall mean a charge against each Owner and his lot for the purpose of reimbursing the Association for any costs incurred by the Association on behalf of

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an individual Owner. A Reimbursement Assessment may also be levied by the Association for purposes of collecting any monetary penalties which may be imposed by the Association against an Owner who fails to comply with provisions of this Declaration, the determinations of the Board or the Architectural Committee, or any rule or regulation adopted by the Association.

Section 24. Special Assessment. The term "Special Assessment" as used herein shall mean a charge against each Owner and his lot representing a portion of the cost to the Association for installation or construction of any capital improvements on any of the Common Area which the Association may from time to time authorize pursuant to the provisions of this Declaration.

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NATURE AND PURPOSE OF COVENANTS

The covenants, conditions and restrictions set forth in this Declaration constitute a general scheme for the development, protection and maintenance of the Properties to enhance the value, desirability and attractiveness of the lots for the benefit of all Owners of lots therein. These covenants, conditions and restrictions are imposed upon Declarant and upon the Owners of all lots. Said covenants, conditions and restrictions are for the benefit of all lots, and shall bind the Owners of all such lots. Such covenants, conditions and restrictions shall be a burden upon and a benefit to not only the original Owner of each lot, but also his successors and assigns. All such covenants, conditions and restrictions are intended as and are hereby declared to be covenants running with the land or equitable servitudes upon the land, as the case may be.

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III

USE RESTRICTIONS

All real property within the Properties shall be held, used and enjoyed subject to the following limitations and restrictions.

Section 1. Single Family Residence. Each lot shall be used as a residence for a single family and for no other purpose.

Section 2. Business or Commercial Activity. No part of the Properties shall ever be used or caused to be used or allowed or authorized in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storage, vending or other such non-residential purposes; except Declarant, its successors or assigns, may use any portion of the Properties for a model home site, and display and sales office during the construction and sales period. The provisions of this Section shall not preclude professional and administrative occupations without external evidence thereof, for so long as such occupations are in conformance with all applicable governmental ordinances and are merely incidental to the use of the dwelling unit as a residential home.

Section 3. Nuisances. No noxious or offensive activity (including but not limited to the repair of motor vehicles) shall be carried on, in or upon any lot or the Common Area, nor shall anything be done therein which may be or become an unreasonable annoyance or a nuisance to any other Owner. Without limiting the generality of the foregoing provisions, no loud noises or noxious odors, no exterior speakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes), noisy or smoky vehicles, large power equipment or large power tools, unlicensed off-road motor vehicles or items which may unreasonably interfere with television or radio reception of any Owner in the Properties, shall be located, used or placed on any portion of the Properties, or exposed to the view of other Owners without the prior written approval of the Architectural Committee. The Board of Directors shall have the right to determine in accordance with the By-Laws if any noise, odor, interference or activity producing such noise, odor or interference constitutes a nuisance.

Section 4. Signs. No sign, poster, display, billboard or other advertising device of any kind shall be displayed to the public view on any portion of the Properties or any lot, without the prior written consent of the Architectural Committee, except for the following: (i) one sign for each dwelling unit, of not more than six (6) square feet, plain block letters, advertising the dwelling unit for sale or rent, or (ii)

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signs, regardless of size or number, used by Declarant, its successors or assigns, to advertise the Properties during construction and sale period. All signs or billboards and the conditions promulgated for the regulation thereof shall conform to the requirements of all applicable governmental ordinances.

Section 5. Parking and Vehicular Restrictions. No Owner shall park, store or keep any vehicle, except wholly within the parking area designed therefor, and any inoperable vehicle shall be stored only in enclosed garages. No Owner shall park, store or keep on any property, street (public or private), unenclosed parking space or driveway within the Properties any large commercial-type vehicle (including, but not limited to, any dump truck, cement mixer truck, oil or gas truck or delivery truck), any recreational vehicle (including, but not limited to, any camper unit or motor home), any bus, trailer, trailer coach, camp trailer, boat, aircraft, mobile home, inoperable vehicle or any other similar vehicle or any vehicular equipment, mobile or otherwise, or any other non-automotive vehicles and non-automotive storage or other items visible from anywhere in the Properties determined to be a nuisance by the Board. The above excludes camper trucks and similar vehicles up to and including three-quarter (3/4) ton when used for everyday-type transportation and subject to approval by the Board. No Owner of a lot shall conduct repairs or restorations of any motor vehicle, boat, trailer, aircraft or other vehicle upon any portion of any lot or upon the Common Area, except wholly within the Owner's garage, and then only when the garage door is closed; provided, however, that such activity shall at no time be permitted if it is determined by the Board or its agent to be a nuisance. Garage doors shall remain closed except for reasonable periods while the garages are being used.

Section 6. Animal Restrictions. No insects, reptiles, poultry or animals of any kind shall be raised, bred or kept on any lot or the Common Area, except usual and ordinary dogs, cats, fish, birds and other household pets (excluding, without limitation, equine, bovine, sheep, swine, goats and other such animals) may be kept on lots, provided that they are not kept, bred or maintained for commercial purposes or in unreasonable quantities, nor in violation of the rules and regulations adopted by the Association as provided in the By-Laws. As used in this Declaration, "unreasonable quantities" shall ordinarily mean more than two (2) pets per household, provided, however, that the Association (or the Architectural Committee or such other person or entity as the Association may from time to time designate) may determine that a reasonable number in any instance may be more or less. The Association, acting through the Board of Directors, shall have the right to prohibit maintenance of any animal which constitutes, in the opinion of the Board, a nuisance to any other Owner. Animals belonging to Owners, occupants or their licensees, tenants or invitees within the Properties must be either kept within an enclosure, an enclosed yard or on a leash being held by a person capable of controlling

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the animals. Furthermore, any Owner shall be absolutely liable to each and all remaining Owners, their families, guests, tenants and invitees, for any unreasonable noise or damage to person or property caused by any animals brought or kept upon the Properties by an Owner or by members of his family, his tenants or his guests; and it shall be the absolute duty and responsibility of each such Owner to clean up after such animals which have used any portion of the Common Area or any portion of another's lot.

Section 7. Trash. No rubbish, trash or garbage or other waste material shall be kept or permitted upon any lot or Common Area, except in sanitary containers located in appropriate areas screened and concealed from view, and no odor shall be permitted to arise therefrom so as to render the Properties, or any portion thereof, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to its occupants. Such containers shall be exposed to the view of neighboring lots only when set out for a reasonable period of time (not to exceed twenty-four (24) hours before and after scheduled trash collection hours). No clothing or household fabrics shall be hung, dried or aired in such a way in the Properties as to be visible to other property, and no lumber, grass, shrub or tree clippings or plant waste, metals, bulk material or scrap or refuse or trash shall be kept, stored or allowed to accumulate on any portion of the Properties except within an enclosed structure or appropriately screened from view.

Section 8. Temporary Buildings. No outbuilding, tent, shack, shed or other temporary building or improvement of any kind shall be placed upon any portion of the Properties either temporarily or permanently. No garage, trailer, camper, motor home or recreational vehicle shall be used as a residence in the Properties, either temporarily or permanently.

Section 9. Common Area Facilities. Nothing shall be altered or constructed in or removed from the Common Area except upon the written consent of the Architectural Committee, subject to the provisions of this Declaration limiting construction on portions of the Common Area.

Section 10. Outside Installations. No radio station or short-wave operators of any kind shall operate from any lot or dwelling unit unless approved by the Board of Directors. No exterior radio antenna, C.B. antenna, television antenna, or other antenna of any type shall be erected or maintained in the Properties unless approved by the Architectural Committee or the Board. No swimming pool, tennis court, basketball backboard or other fixed sports apparatus shall be constructed, maintained, or reconstructed in the Properties without the prior written approval of the Architectural Committee. No fence or wall shall be erected, altered or maintained on any lot in the Properties, except with the prior written approval of the Architectural Committee. All walls or fences initially constructed by Declarant shall be permanently maintained by the Owners of the lots on which

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they are located. Any alterations or modifications of the walls or fences not addressed herein shall be subject to the prior written approval of the Architectural Committee.

Section 11. Insurance Rates. Nothing shall be done or kept in the Properties which will increase the rate of insurance on any property insured by the Association without the approval of the Board, nor shall anything be done or kept in the Properties which would result in the cancellation of insurance on any property insured by the Association or which would be in violation of any law.

Section 12. Drilling. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any lot, nor shall oil wells, tanks, tunnels or mineral excavations or shafts be permitted upon the surface of any lot or within five hundred fifty feet (550') below the surface of the Properties. No derrick or other structure designed for use in boring for water, oil or natural gas shall be erected, maintained or permitted upon any lot.

Section 13. Drainage. There shall be no interference with the established drainage pattern over any lot within the Properties, unless an adequate alternative provision is made for proper drainage and is first approved in writing by the Architectural Committee. For the purposes hereof, "established" drainage is defined as the drainage which exists at the time that such lot is conveyed to a purchaser from Declarant, or that which is shown on any plans approved by the Architectural Committee, which may include drainage from the Common Area over any lot or lots in the Properties.

Section 14. Violation of Governing Instruments. There shall be no violation of the restrictions of this Declaration or of the rules and regulations of the Association adopted in accordance with the provisions of the By-Laws. If any Owner, his family, guest, licensee, lessee or invitee, violates any such restrictions, the Board may impose a reasonable Reimbursement Assessment upon such Owner for each violation and may suspend the voting privileged of such Owner as further provided in the By-Laws. Such Reimbursement Assessment shall be collectible in the same manner as Regular Assessments hereunder, but the Board shall give such Owner notice and hearing before invoking any such Reimbursement Assessment or suspension.

Section 15. Construction by Declarant. Nothing in this Declaration shall limit the right of the Declarant to commence and complete construction of improvements to the Properties or to alter the foregoing or the lots or Common Area or to construct such additional improvements as the Declarant deems advisable prior to the completion and sale of all of the Properties. The Declarant may use any of the lots within the Properties owned by it for model home sites and incidental

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parking. The Declarant shall have the right and an easement to enter upon, use and enjoy and designate and permit others (including, without limitation, Declarant's agents, employees, representatives, contractors and prospective purchasers) to enter upon, use and enjoy the Common Area for any purpose in connection with or incidental to the construction, development, sale, lease or other transfer of property within or adjacent to the Properties (including, without limitation, the erection, construction and maintenance of displays, sales offices and incidental parking, exhibits, sign and other structures), provided, however, that the exercise of such right and easement shall not unreasonably interfere with the reasonable use and enjoyment of the Common Area by the Members.

Section 16. Antennas. No television, radio, or other electronic antenna or device of any type shall hereafter be erected, constructed, placed or permitted to remain on the lot or the Common Area unless and until the same shall have been approved in writing by the Architectural Committee, or the Board, or unless the same be contained within a building.

Section 17. Window Covers. Curtains, drapes, shutters or blinds may be installed as window covers. No window shall be covered with aluminum foil or similar material.

Section 18. Bicycles. Bicycles shall not be stored or kept in any unenclosed area where they are visible from anywhere in the Project.

Section 19. Community Declaration Restrictions. Each Owner of a Lot, by acceptance of a deed or other conveyance therefor, whether or not it shall be so expressed in such deed or other instrument, agrees to be subject to all of the covenants, conditions and restrictions set forth in the Community Declaration.

Section 20. Master Declaration Restrictions. Each Owner of a Lot, by acceptance of a deed or other conveyance therefor, whether or not it shall be so expressed in such deed or other instrument, agrees to be subject to all of the covenants, conditions and restrictions set forth in the Master Declaration.

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IV

MEMBERSHIP AND VOTING RIGHTS

Section 1. Organization. The Association is organized as a California corporation under the California Non-profit Mutual Benefit Corporation Law. The Association is charged with the duties and vested with the powers prescribed by law and set forth in the Articles, By-Laws, and this Declaration. Neither the Articles nor By-Laws shall, for any reason, be amended or otherwise changed so as to be inconsistent with this Declaration. In the event that there should exist any ambiguity in any provision of the Articles or By-Laws, then such provision shall be construed, to the extent possible, so that such provision shall be interpreted so as to be consistent with the provisions of this Declaration.

Section 2. Membership. Every person or entity who is a record Owner of a fee or undivided fee interest in any lot which is subject by covenants of record to assessment by the Association, shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from the fee ownership of any lot which is subject to assessment by the Association. Ownership of such lot shall be the sole qualification for membership. Transfer of a lot shall automatically transfer membership in the Association.

Section 3. Voting Rights. The Association shall have two (2) classes of voting membership:

Class A. Class A Members shall be all Owners with the exception of Declarant and shall be entitled to one (1) vote for each lot owned. When more than one person holds an interest in any lot, all such persons shall be entitled to all rights and privileges of membership. The vote for such lot shall be exercised as its Owners collectively determine, but in no event shall more than one vote be cast with respect to any lot.

Class B. The Class B Member shall be the Declarant and shall be entitled to three (3) votes for each lot owned. The Class B membership shall cease and be converted to Class A Membership on the happening of any of the following events, whichever occurs earlier:

(a) On the second anniversary of the original issuance of the most recently issued public report for the most recent Phase of the Properties; or

(b) On the fourth anniversary of the original issuance of the final subdivision public report for the first phase of the Properties.

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Section 4. Two Classes of Memberships. Any action by the Association which must have the approval of the membership of the Association (other than Declarant) before being undertaken, shall require the vote or written assent of both a majority of the Class B membership as well as a majority of the Class A membership so long as there are two (2) outstanding classes of Membership, unless a specific provision of this Declaration or the By-Laws or Articles of the Association requires the approval of a greater percentage of the voting membership. Notwithstanding the foregoing, any action by the Association pursuant to the Article of this Declaration entitled "ENFORCEMENT OF BONDED OBLIGATIONS" shall only require a majority of the voting power of the Owners other than Declarant.

Section 5. Special Class A Voting Rights. Notwithstanding the provisions of this Article, if the Class A Members do not have sufficient voting power pursuant to the voting rights set forth in this Declaration and the By-Laws to elect at least one (1) director at any meeting at which directors are to be elected, and at which Class A Members are entitled to vote, then such Class A Members shall, by majority vote, among themselves, elect one (1) director and the remaining vacancies on the Board shall be elected by the Class B Member so long as there are two outstanding classes of membership in the Association or so long as a majority of the voting power of the Association resides in the Declarant. In no event shall the Class A Members be entitled to elect more than one (1) director to the Board pursuant to the provisions of this special Class A voting right.

Section 6. Vesting of Voting Rights. All voting rights which are attributable to a specific lot pursuant to the terms of this Declaration shall not vest until such time as such lot is subject to Regular Assessments pursuant to the terms of this Declaration. Declarant shall have the right at any time, and from time to time, to commence the payment of Regular Assessments on all lots within a phase of the Properties prior to the closing of the first escrow therein in order to have the voting rights with respect to such lots.

Section 7. Delegate District No. 5 - Election of Delegate.

(a) The Members shall elect one (1) Delegate to the Master Association to exercise the voting power of all of the members of such Delegate District. The President of the Association at any meeting at which a Delegate is elected shall certify in writing to the Board of the Master Association the name and address of the Delegate elected, the time and place of the meeting at which the election occurred, and that the Delegate represents Delegate District No. 5. A Delegate may be removed without cause by the vote in person or by proxy at any duly constituted meeting of at least a majority of the Members. Only members of the Master Association shall be eligible for election as Delegates. Upon termination of any Delegate's membership in

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the Master Association, such Delegate's term of office shall immediately terminate and a new Delegate shall be elected in their place. Delegates may act by proxy in the same manner as individual Members, as provided in the Master Declaration.

(b) The Delegate will be entitled to cast one (1) vote for each Condominium subject to the Master Declaration which is located within the Project represented by such Delegate. Each Delegate shall be entitled to cast the votes representing Condominiums in their Delegate District with respect to each such Condominium only during such periods as the Owner of such Condominium may be entitled to cast votes for the election of a Delegate as provided in this Declaration or the Master Declaration, whichever is applicable.

(c) Each Delegate shall cast the votes which they represent in such manner as they may, in their sole discretion, deem appropriate, acting on behalf of all the Members owning Condominiums in their Delegate District; provided, however, that in the event at least a majority of the Members in any Delegate District shall determine at any duly constituted meeting of the Members in such Delegate District to instruct their Delegate as to the manner in which they are to vote on any issue to be voted on by the Delegates, then the Delegate representing such Delegate District shall cast all of the voting power in such Delegate District in the same proportion, as nearly as possible without counting fractional votes, as the Members in such Delegate District shall have voted "for" or "against" such issue in person or by proxy. When a Delegate is voting in their own discretion, without instruction from the Members whom they represent, then such Delegate shall cast all of the votes which they represent as a unit, and may not apportion some of such votes in favor of a given proposition and some of such votes in opposition to such proposition. It will be conclusively presumed for all purposes of Master Association business that any Delegate casting votes on behalf of the Members owning Condominiums in their Delegate District will have acted with the authority and consent of all such Members.

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V

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Covenant to Pay Assessment. Declarant, on behalf of itself, and for each lot owned, hereby covenants, and each Owner of any lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) Regular Assessments or charges, (2) Special Assessments for capital improvements, and (3) Reimbursement Assessments, all such assessments to be established and collected as hereinafter provided. The Regular Assessments or charges must be in an amount sufficient to include an adequate reserve fund for maintenance, repairs and replacement of the Common Area that must be replaced on a periodic basis, and this reserve fund must be collected as a Regular Assessment rather than as a Special Assessment. Each of such assessments, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such lot at the time the assessment fell due. The personal obligation for delinquent assessments shall not pass to such person's successors in title unless expressly assumed by them. The Association shall not impose or collect an assessment, penalty or fee that exceeds the amount necessary for the purpose or purposes for which it is levied.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the lots and for the improvement, operation and maintenance of the Common Areas and the performance of the duties of the Association as set forth in this Declaration.

Section 3. Amount of Regular Assessments and Limitation on Increases in Regular Assessments. The amount and time of payment of Regular Assessments against each lot shall be determined by the Board of Directors of the Association giving due consideration to the current maintenance costs and future needs of the Association. Except for the terms of this Declaration as provided for in Section 6 below, the Regular Assessments against each lot shall not be increased more than twenty percent (20%) over the Regular Assessments for the preceding year against each lot without the vote or written assent of Members, constituting a quorum, casting a majority of the votes at a meeting or election of the Association. Notwithstanding any limitation contained in this Declaration to the contrary, in the event that the amount of Regular Assessments as approved by the California Department of Real Estate in connection with the issuance of a final subdivision public report on a subsequent Phase of the Development is greater than the amount authorized by this Declaration without a vote of the membership, then the Board, on behalf of the Association and without the requirement of a vote of the membership, shall be

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entitled to increase the maximum Regular Assessment amount as reflected in such final subdivision public report.

Section 4. Special Assessments for Capital Improvements and Limitation on Increases in Special Assessments. In addition to the Regular Assessments authorized above, the Association may levy, in any assessment year, a Special Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, restoration, repair or replacement of a capital improvement within the Common Area including fixtures and personal property related thereto or any other action or undertaking on behalf of the Association, provided that any Special Assessment for all lots for the fiscal year in the aggregate in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year shall be approved by the vote or written assent of Members, constituting a quorum, casting a majority of the votes of the Association at a meeting or election of the Association. This limitation on Special Assessments shall not apply to any Reimbursement Assessment which is authorized by the provisions of this Declaration.

Section 5. Special Quorum and Meeting Requirements for Increases in Assessments. For purposes only of Section 3 and Section 4 of this Article, a quorum means more than fifty percent (50%) of the Members of the Association. Any meeting or election of the Association for purposes of complying with Sections 3 and 4 of this Article shall be conducted in accordance with the provisions of Chapter 5 of Part 3, Division 2 of Title 1 of the California Corporations Code dealing with meetings and voting and Section 7613 of the California Corporations Code dealing with proxies.

Section 6. Exceptions from Limitation on Assessment Increases. The limitation on percentage increases of Regular and Special Assessments under Sections 3 and 4 above shall not limit assessment increases necessary for addressing 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 Properties or any part thereof for which the Association is responsible where a threat to personal safety on the Properties is discovered;
- (iii) An extraordinary expense necessary to repair or maintain the Properties or any part thereof for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the pro forma operating budget, as required under the Article of this Declaration entitled "COMPLIANCE WITH CIVIL CODE SECTIONS 1365 AND

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1365.5." However, prior to the imposition or collection of an increased assessment under this Section, 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.

Section 7. Reimbursement Assessments. The Association shall levy a Reimbursement Assessment against any Owner who fails to comply with the provisions of this Declaration, the determinations of the Architectural Committee, the Association's Articles or By-Laws, or any rule or regulation adopted by the Association, if such failure results in the expenditure of monies by the Association in carrying out its functions hereunder or for purposes of collecting any fines which may be levied by the Association. Except for collection of fines, such assessment shall be for the purpose of reimbursing the Association, shall be limited to the amount so expended, and shall be due and payable to the Association when levied.

Section 8. Uniform Rate of Assessment. Both Regular and Special Assessments must be fixed at a uniform rate for all lots and may be collected on a monthly basis, unless some other period for collection is adopted by the Board.

Section 9. Date of Commencement of Regular Assessments: Due Dates. The Regular Assessments provided for herein shall commence as to all lots within a Phase of the Properties (including those owned by Declarant) no later than the first day of the month following the conveyance of the first lot by Declarant to an individual Owner, or upon the conveyance of the Common Area to the Association, whichever first occurs. Once Regular Assessments have commenced as to a Phase, such assessments may not cease and such lots shall be subject at all times to the provisions of the Declaration, including the power of the Association to collect such assessments through the enforcement of a lien as provided in this Declaration. The first Regular Assessments shall be adjusted according to the number of months remaining in the fiscal year of the Association. The Board of Directors shall fix the amount of the Regular Assessment against each lot at least sixty (60) days in advance of each fiscal year of the Association at an amount not in excess of the maximum as provided in this Declaration. Written notice of the amount of the Regular Assessments against each lot shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. Regular Assessments shall be deemed delinquent fifteen (15) days after the due dates established by the Association. In the event the Board shall determine at any time that the estimate of the Regular Assessment for the current fiscal year is, or will become, inadequate to meet the expenses of the Association for any reason, it shall immediately determine the approximate amount of such inadequacy and issue a supplemental

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estimate of the total Association expenses and determine the revised amount of the Regular Assessment against each Owner.

Section 10. Exemption from Regular Assessments - Dwelling Unit. Notwithstanding anything to the contrary contained elsewhere in this Article, the Declarant and any other Owner of a lot within the Properties which does not contain a residential dwelling unit shall be exempt from the payment of that portion of the Regular Assessments which is for the purpose of defraying expenses and reserves directly attributable to the existence and the use of the residential structural improvements. The exemption may include, but shall not necessarily be limited to:

- (1) Roof replacement;
- (2) Exterior maintenance;
- (3) Walkway and carport lighting;
- (4) Refuse disposal;
- (5) Cable television; and
- (6) Domestic water supplied to a portion of the dwelling units.

This exemption from the payment of Regular Assessments attributable to the dwelling units shall be in effect only until the earliest of the following events: (i) a notice of completion of the structural improvements on the lot has been recorded; (ii) occupation or use of the dwelling unit on the lot; or (iii) completion of all elements of the residential structures on the lot which the Association is obliged to maintain.

Section 11. Exemption from Regular Assessments - Common Area. The Declarant and any other Owner of a lot shall be exempt from the payment of that portion of the Regular Assessments which is for the purpose of defraying expenses and reserves directly attributable to the existence and use of a Common Area facility that is not complete at the time the Regular Assessments commence. Any exemption from the payment of Regular Assessments attributable to Common Area facilities shall be in effect only until the earliest of the following events: (i) a notice of completion of the Common Area facility has been recorded, or (ii) the Common Area facility has been placed into use.

Section 12. Certification of Payment. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified lot have been paid. Said signed certificate shall be conclusive evidence as to all third parties relying thereon to show that all assessments acknowledged therein have been paid but shall not relieve any Owner of the responsibility for assessments not in fact paid.

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Section 13. Reserves. The Regular Assessments shall include reasonable amounts as determined by the Board collected as reserves for the future periodic maintenance, repair or replacement of all or a portion of the Common Area, or any other purpose as determined by the Board. All amounts collected as reserves, whether pursuant to this Section or otherwise, shall be deposited by the Board in a separate bank account to be held in trust for the purposes for which they are collected and are to be segregated from and not commingled with any other funds of the Association. Such reserves shall be deemed a contribution to the capital account of the Association by the Members.

Section 14. Effect of Nonpayment of Assessments; Remedies of the Association. Each Owner of any lot on becoming an Owner of any lot, is and shall be deemed to covenant and agree to pay to the Association each and every of the assessments provided for in this Declaration; and agrees to the enforcement of all such assessments in the manner herein specified. In the event an attorney or attorneys are employed for collection of any assessment, whether by suit or otherwise, or to enforce compliance with or specific performance of the terms and conditions of this Declaration, each Owner agrees to pay reasonable attorneys' fees and costs thereby incurred in addition to any other amounts due or any other relief or remedy obtained against said Owner. In addition to any other remedies herein or by law provided, the Board, or its authorized representative, may enforce the obligations of the Owners to pay the assessments provided for in this Declaration, and each of them, in any manner provided by law or in equity, or without any limitation of the foregoing, by either or both of the following procedures:

(a) **Enforcement by Suit.** By commencement and maintenance of a suit at law against any Owner or Owners personally obligated to pay assessments for such delinquent assessments as to which they are personally obligated, such suit to be maintained in the name of the Association. Any judgment rendered in any such action shall include the amount of the delinquency, together with interest thereon as provided for herein, costs of collection, court costs and reasonable attorneys' fees in such amount as the Court may adjudge against the delinquent Owner. Suit to recover a money judgment for unpaid assessments shall be maintainable without foreclosing or waiving the lien hereinafter provided for.

(b) **Enforcement by Lien.** There is hereby created a claim of lien, with power of sale, on each and every lot to secure payment to the Association of any and all assessments levied against any and all Owners of such lots pursuant to this Declaration, together with interest thereon as provided for in this Declaration, and all costs of collection which may be paid or incurred by the Association in connection therewith, including reasonable attorneys' fees. At any time after the occurrence of any delinquency in the payment of any such assessment, the Board or any authorized representative thereof may make a written demand

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for payment to the delinquent Owner. Said demand shall state the date and amount of the delinquency. Each delinquency shall constitute a separate basis for a demand or claim of lien or a lien, but any number of defaults may be included within a single demand or claim of lien and any demand or claim of lien or lien on account of prior delinquencies shall be deemed to include subsequent delinquencies and amounts due on account thereof. If such delinquency is not paid within ten (10) days after delivery of such demand, the Board or its duly authorized representative may thereafter elect to file and record a Notice of Delinquent Assessment ("Notice") on behalf of the Association against the lot of the defaulting Owner in the Office of the County Recorder of Orange County. The amount of the assessment, plus any costs of collection, late charges and interest assessed in accordance with this Declaration shall be a lien on the Owner's lot from and after the time the Association records the Notice of Delinquent Assessment. Such Notice shall be executed and acknowledged by any officer of the Association and shall contain substantially the following information:

- (1) The claim of lien made pursuant to this Declaration;
- (2) The name of the record Owner;
- (3) The legal description of the lot against which claim of lien is made;
- (4) The total amount claimed to be due and owing for the amount of the delinquency, interest thereon, collection costs, and estimated attorneys' fees (with any proper offset allowed);
- (5) That the claim of lien is made by the Association pursuant to this Declaration;
- (6) That a lien is claimed against said lot in an amount equal to the amount stated, together with all other amounts becoming due from time to time in accordance with this Declaration; and
- (7) The name and address of the trustee authorized by the Association to enforce the lien by public sale.

Upon such recordation of a duly executed original or copy of such Notice, the lien claimed therein shall immediately attach and become effective in favor of the Association as a lien upon the lot against which such assessment was levied. Such a lien shall have priority over all liens or claims created subsequent to the recordation of this Declaration, except for tax liens for real property taxes on any lot and assessments on any lot in favor of any municipal or other governmental assessing unit and except for certain Trust Deeds as provided in the Section of this Article entitled "Subordination to Certain Trust Deeds"

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below. Any such lien may be foreclosed by appropriate action in Court or in the manner provided by the California Civil Code for the foreclosure of a deed of trust with power of sale, or in any other manner permitted by law. The Board is hereby authorized to appoint its attorney, any officer or director of the Association, or any title company authorized to do business in California as Trustee for the purpose of conducting such power of sale foreclosure. The lien provided for herein shall be in favor of the Association and shall be for the benefit of all other lot Owners and shall secure payment of all sums set forth in the Notice, together with all sums becoming due and payable in accordance with this Declaration after the date of recordation of said Notice. The Association shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any lot. In the event such foreclosure is by action in Court, reasonable attorneys' fees, court costs, title search fees, late payment fees, interest and all other costs and expenses shall be allowed to the extent permitted by law. Each Owner, by becoming an Owner of a lot, hereby expressly waives any objection to the enforcement and foreclosure of this lien in this manner. Upon the timely curing of any default for which a Notice was filed by the Board and the payment of all sums secured by the lien created by the recordation of such Notice, the Board shall cause an officer of the Association to file and record an appropriate release of such Notice in the Office of the County Recorder of Orange County, California. No Owner may waive or otherwise escape liability for the assessments provided for in this Declaration by non-use or abandonment of his lot. Notwithstanding anything contained in this Declaration to the contrary, no action may be brought to foreclose the lien created by recordation of a Notice of Delinquent Assessment, whether judicially, by power of sale, or otherwise, until the expiration of ten (10) days after a copy of said Notice, showing the date of recordation thereof has been mailed to the Owner of the lot which is described in such Notice.

Section 15. Subordination to Certain Trust Deeds.

The lien for the assessments provided for herein in connection with a given lot shall not be subordinate to the lien of any deed of trust or mortgage, except the lien of a first deed of trust or first mortgage, given and made in good faith and for value that is of record as an encumbrance against such given lot prior to the recordation of a Notice of Delinquent Assessment for the assessments provided for in this Declaration against such given lot (such deed of trust or mortgage being hereinafter referred to as a "First Encumbrance"). The sale or transfer of any lot shall not affect any assessment lien created pursuant to the term of this Declaration to secure assessments becoming due whether prior to, on, or after the date of such sale or transfer, nor shall such sale or transfer diminish or defeat the personal obligation of any Owner for delinquent assessments as provided for by Section 1 of this Article; provided, however, that the sale or transfer of any lot pursuant to a judicial foreclosure or foreclosure by power of sale of a First Encumbrance, shall extinguish any assessment lien

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which has attached and become effective with regard to the lot being so transferred prior to the time of such sale or transfer, and shall prohibit the recordation of any assessment lien against such lot on account of assessments which became due prior to the date of such sale or transfer; provided, however, that there shall be a lien on the interests of the purchaser at such sale which shall attach, be created and become effective and be foreclosed in accordance with this Declaration and which shall secure all assessments becoming due after the date of any such sale or transfer. For the purpose of this Section, a sale or transfer of a lot shall occur on the date of recordation of a deed or other instrument of title evidencing the conveyance of record title to the lot.

Section 16. Exempt Property. The following property subject to this Declaration shall be exempt from the assessments created herein: All properties dedicated to and accepted by any local public authority and the Common Area.

Section 17. Enforcement of Reimbursement Liens.

(a) Notwithstanding anything to the contrary contained in this Article or elsewhere in this Declaration, in the event the Association imposes a Reimbursement Assessment as a monetary penalty for failure of a Member to comply with the terms of the Declaration or as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to the Common Area for which the Member was allegedly responsible or as a means to force a Member to comply with the terms of this Declaration, such Reimbursement Assessment shall not be characterized or treated as an assessment which may become a lien against a Member's lot enforceable in the manner provided by the California Civil Code for the foreclosure of a deed of trust with power of sale as provided in this Article. A Reimbursement Assessment imposed for any purpose other than the purposes enumerated hereinabove in this Section shall be enforceable in accordance with the procedures set forth in this Article.

(b) The provisions of subsection (a) hereinabove relating to restrictions on the enforcement of Reimbursement Assessments for certain purposes shall not apply to any interest charge or late charge for delinquent assessments imposed pursuant to this Article or to any costs reasonably incurred by the Association (including attorneys' fees) in its efforts to collect delinquent assessments.

Section 18. Delivery by Owner. Each Owner of a lot shall, before the execution of an offer to purchase or lease, make available for examination by the prospective purchaser or lessee, and as soon as practicable before transfer of the interest being acquired, give to each purchaser or lessee (i) a copy of this Declaration and copies of the Bylaws and Articles of Incorporation of the Association, (ii) copies of any other instruments which define the rights and responsibilities of the Owner or lessee as

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members of the Association, (iii) to the extent available, a copy of the most recent financial statement distributed by the Association in accordance with the Article of this Declaration entitled "COMPLIANCE WITH CIVIL CODE SECTION 1365 AND 1365.5," and (iv) a statement prepared by the Board of Directors as to the amount of any delinquent assessments and information relating to penalties, late charges, interest and other charges authorized by this Declaration which are or may be a lien on such Owner's lot as of the date the statement is issued.

Section 19. Late Charges and Interest on Delinquent Assessments. Any assessment imposed pursuant to the terms of this Declaration, if delinquent, shall include a late charge in the maximum amount which shall be imposed by the Board in accordance with and subject to the limitations of California Civil Code Section 1366 as the same may be modified from time to time by statute or judicial decision. Interest shall accrue on all sums imposed in accordance with this Article, including the delinquent assessment, reasonable costs of collection and late charges, at an annual percentage rate of twelve percent (12%) interest, commencing thirty (30) days after the assessment becomes due, or such higher percentage rate of interest authorized by California Civil Code Section 1366 as modified from time to time by statute or judicial decision.

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VI

DUTIES AND POWERS OF THE ASSOCIATION

Section 1. General Powers of the Association. All powers relating to the management, operation and maintenance of the Common Area, as well as certain rights, duties and powers relating to the lots, as hereinafter set forth, shall be vested in the Association and in its Board of Directors. The specific and primary purposes and powers of the Association and its Board of Directors are to provide for the operation, control, repair, maintenance and restoration of the Common Areas, provide architectural control of the Properties, provide recreational activities for the Members, and to enforce the provisions of this Declaration and the Association's Articles and By-Laws, and any other instruments relating to the management and control of the Association and the Properties. The Association may do any and all other acts and things that a nonprofit corporation is empowered to do, which may be necessary, convenient or desirable in the administration of its affairs for the specific and primary purposes of meeting its duties as set forth in this Declaration. The Association, through its Board of Directors, shall have the authority to delegate its powers to committees, officers of the Association or its employees.

Section 2. Contracts of the Association. The Association shall have the right and power to employ or engage a manager and other employees or agents and contract for such services, labor and materials as it may deem reasonable or necessary to operate and maintain the Properties and the Common Area, and the improvements thereon and to discharge its other duties as herein provided. Any agreement for professional management of the Association or for services of the Declarant must provide that the management contract may be terminated by either party without cause or payment of a termination fee upon thirty (30) days written notice and the term of such contract shall not exceed one (1) year.

Section 3. General Duties of Association. In addition to the duties and powers enumerated in its Articles of Incorporation and By-Laws, or elsewhere provided for herein, and without limiting the generality thereof, the Association shall:

(a) Maintain all Landscape Maintenance Area and Common Area, if any, within the Properties. The responsibility of the Association to maintain the Landscape Maintenance Area and Common Area, if any, shall commence on the first of the month following the close of escrow representing the conveyance of the first lot by Declarant to an Owner;

(b) Maintain such policy or policies of insurance as the Board deems necessary or desirable in furthering the

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purposes of and protecting the interests of the Association and its Members including, but not limited to, hazard and liability insurance, plate glass insurance, fidelity bonds, workmen's compensation and officers' and directors' liability insurance. The Association shall be required, if available, to maintain fire and extended coverage insurance on insurable Common Area, if any, or Landscape Maintenance Area improvements on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement costs);

(c) Have the authority to obtain, for the benefit of the Common Area, if any, or Landscape Maintenance Area, all water services unless such services are separately charged to the Owners;

(d) Maintain all drainage facilities and easements owned by the Association, if any;

(e) Pay taxes and assessments which are or could become a lien on the Common Area, if any, or some portion thereof;

(f) Prepare budgets and financial statements for the Association and its Members as prescribed in the Article of this Declaration entitled "COMPLIANCE WITH CIVIL CODE SECTION 1365 AND 1365.5";

(g) Initiate and execute disciplinary proceedings against Members of the Association for violations of provisions of this Declaration or the Association's Articles of Incorporation or By-Laws in accordance with the procedures set forth in this Declaration;

(h) Disclose information in accordance with Section 11018.6 of the California Business and Professions Code.

Section 4. Maintenance of Dwellings and Lots.

Without limiting the generality of the statement of duties and powers contained elsewhere in this Declaration, the Association shall have a duty to accomplish the following upon the lots in a good, safe and sanitary manner:

(a) Paint the exterior surfaces of the dwellings and fences including such portions of the dwellings as are within portions of the lot enclosed by walls or fences; provided, however, that such obligation shall specifically exclude the maintenance of glass and lighting fixtures and that the Association shall not be obligated to maintain the interior surfaces of any walls or fences; and

(b) Maintain, repair and replace the exterior most material of the roofs of the dwellings, together with such subsurface roofing materials as are consistent with good roofing maintenance practice; specifically excluding, however, the

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maintenance, repair and replacement of the structural support portions of the roofs.

Section 5. Restrictions on Power of the Board. The Association shall be prohibited without the prior vote or written assent of a majority of the voting power of the Association, which shall include a majority of the votes residing in Members other than the Declarant, from doing either of the following: (i) incurring aggregate expenditures for capital improvements to any portion of the Properties in any fiscal year in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year; or (ii) selling during any fiscal year of the Association property of the Association having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association for the fiscal year; (iii) paying compensation to members of the Board or to officers of the Association for services performed in the conduct of the Association's business; provided, however, that the Board may cause a member or officer to be reimbursed for expenses incurred in carrying on the business of the Association; and (iv) filling of a vacancy on the Board created by the removal of a Board member.

Section 6. Limitation on Board Authority to Contract. The Board of Directors shall not enter into any contracts for goods or services with a duration greater than one (1) year without the vote or written consent of a majority of the voting power of the Association, which shall include a majority of the votes residing in Members other than the Declarant, 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; 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 of not to exceed three (3) years duration, provided that the policy permits for short rate cancellation by the insured; (iv) a lease agreement for laundry room fixtures and equipment of not to exceed five (5) years duration provided that the lessor under the agreement is not an entity in which Declarant has a direct or indirect ownership interest of ten percent (10%) or more; or (v) agreements for cable television services and equipment or satellite dish television 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.

Section 7. Association Rules. The Board shall also have the power to adopt, amend, and repeal such rules and regulations as it deems reasonable which may include the establishment of a system of fines and penalties enforceable as Reimbursement Assessments. The rules of the Association shall

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govern such matters in furtherance of the purposes of the Association, including, without limitation, the use of the Common Areas provided, however, that the rules of the Association may not discriminate among Owners, and shall not be inconsistent with this Declaration, the Articles or By-Laws. Any rule of the Association which imposes a system of fines or penalties must provide that the accused be given notice and the opportunity to be heard by the Board with respect to the alleged violations before a decision to impose discipline is imposed. A copy of the rules of the Association as they may from time to time be adopted, amended or repealed or a notice setting forth the adoption, amendment or repeal of specific portions of the rules of the Association shall be delivered to each Owner in the same manner established in this Declaration for the delivery of notices. Upon completion of the notice requirements, said rules of the Association shall have the same force and effect as if they were set forth in and were part of this Declaration and shall be binding on the Owners and their successors in interest whether or not actually received thereby. The rules of the Association, as adopted, amended or repealed, shall be available at the principal office of the Association to each Owner and Institutional Holder of a Mortgage upon request. In the event of any conflict between any such rules of the Association and any other provisions of this Declaration, or the Articles or By-Laws, the provisions of the rules of the Association shall be deemed to be superseded by the provisions of this Declaration, the Articles or the By-Laws to the extent of any such conflict.

Section 8. Entry Onto Lots. The Association and its representatives shall have the right to enter upon any lot within the Properties to the extent such entry is necessary in connection with the performance by the Association of its duties and responsibilities under this Article or under this Declaration, including, without limitation, the construction, maintenance or effectuation of emergency repairs for the benefit of the lots, the Common Areas, or for any of the Owners within the Properties.

Section 9. Damage from Wood-Destroying Pests. The Owner of each lot shall be responsible for the repair and maintenance of the dwelling unit on that lot as may be occasioned by the presence of wood-destroying pests or organisms. Upon approval of the majority of all Members of the Association, the responsibility for such repair and maintenance may be delegated to the Association which shall be entitled to recover the cost thereof as a Special Assessment. The costs of temporary relocation during the repair and maintenance of the dwelling unit shall be borne by the Owner of the dwelling unit being repaired. The Association may cause the temporary, summary removal of any occupant of a dwelling unit for such periods and at such times as may be necessary for prompt, effective treatment of wood-destroying pests or organisms. In the event of such removal, the Association shall give notice as specified in California Civil Code Section 1364, and such notice by the Association shall be deemed complete when given as specified therein.

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VII

INSURANCE

Section 1. Duty to Obtain Insurance; Types. The Board of Directors on behalf of the Association shall obtain and continue in effect adequate blanket public liability insurance with a limit of not less than One Million Dollars (\$1,000,000) for claims for personal injury and/or property damage arising out of a single occurrence, and fire and extended coverage insurance on insurable Common Area improvements on a current replacement cost basis in an amount equal to one hundred percent (100%) of the full insurable replacement cost of such improvements without deduction for depreciation. In addition, the Board, on behalf of the Association, shall obtain and continue in effect blanket casualty and fire insurance with extended coverage, in an amount equal to one hundred percent (100%) of the full insurable replacement cost (without deduction for depreciation) for all dwelling units located on the lots, including structural portions and fixtures thereof. Such insurance shall be maintained by the Board of Directors for the benefit of the Association, the Owners, and Institutional Holders of First Mortgages upon the Properties or any part thereof as their interests may appear as named insureds, subject, however, to loss payment requirements as set forth herein. Each such policy shall contain a standard mortgagee clause to provide that any proceeds shall be paid to the Association for the use and benefit of mortgagees as their interest may appear. With respect to such blanket policies of hazard insurance for the dwelling units on the lots, neither the Association nor the Owners shall be required to rebuild after destruction by fire or other casualty or loss unless the dwelling units on the lots are insured under a group or blanket hazard insurance policy which contains a "Replacement Cost Endorsement", providing for replacement of the dwelling unit from the proceeds of such insurance. The Association shall not have the authority to rebuild the dwelling unit on a lot and assess the cost of repair or replacement to the Owner of the lot experiencing such loss; provided, however, in the event of a short-fall in funds necessary to rebuild a dwelling unit by reason of undercoverage under the blanket policy, such shortfall for purposes of reconstruction may be obtained through a Special Assessment levied against all lots in the Properties in accordance with the procedures for a Special Assessment as set forth in the Article of this Declaration entitled "Covenant for Maintenance Assessments". The policy of public liability insurance covering Common Areas shall contain a "Severability of Interest" endorsement which shall preclude the insurer from denying the claim of any Owner because of negligent acts of the Association or other Owners. The Association shall maintain fidelity coverage against dishonest or fraudulent acts on the part of directors, officers, managers, trustees, employees or volunteers who handle or who are responsible for handling funds belonging to or administered by the

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Association, and such fidelity coverage shall name the Association as obligee and beneficiary, and shall be written in an amount equal to at least the estimated maximum of funds, including reserves, in the custody of the Association or a management agent at any given time during the term of the fidelity bond. However, the bond shall not be less than a sum equal to three (3) months' aggregate assessments on all lots, plus reserve funds. The bond shall cover persons serving without compensation by endorsement to the policy if not otherwise covered under the policy. The Board of Directors may purchase such other insurance as it may deem necessary, including, but not limited to, plate glass insurance, medical payments, malicious mischief and vandalism insurance and workmen's compensation, and directors and officer's liability.

Section 2. Waiver by Members. As to each of said policies which will not be voided or impaired thereby, the Members hereby waive and release all claims against the Association, the Board, the Declarant and agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence of or breach of any agreement by said persons, but to the extent of insurance proceeds received in compensation for such loss only.

Section 3. Other Insurance; Annual Review. The Association may purchase such other insurance as it may deem necessary, including, but not limited to, plate glass insurance, workmen's compensation, officers' and directors' liability, errors and omission insurance. The Board shall annually determine whether the amounts and types of insurance it has obtained provide adequate coverage for the Association in light of inflation, practice in the area in which the Properties are located, or any other factor which tends to indicate that either additional insurance policies or increased coverage under existing policies are necessary or desirable to protect the interests of the Association. If the Board determines that increased coverage or additional insurance is appropriate, it shall obtain the same.

Section 4. Premiums and Proceeds. Insurance premiums for any such blanket insurance coverage obtained by the Association and any other insurance deemed necessary by the Association shall be an expense to be included in the Regular Assessments levied by the Association. The Association is hereby granted the authority to negotiate loss settlements with the appropriate insurance carriers. Any two (2) directors of the Association may sign a loss claim form and release form in connection with the settlement of a loss claim, and such signatures shall be binding on the Association and the Members.

Section 5. Payment of Taxes or Premiums by Institutional Holders of Mortgages. Institutional Holders of Mortgages may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area, unless such taxes or charges are separately assessed against the Owners, in which case the rights of Institutional

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Holders of Mortgages shall be governed by the provisions of their Mortgages. Institutional Holders of Mortgages may, jointly or singly, also pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for the Common Area and the Institutional Holder of a Mortgage making such payments shall be owed immediate reimbursement therefor from the Association.

Section 6. Individual Fire Insurance Prohibited and Rights and Duty of Unit Owners to Insure. No Owner will separately insure his dwelling or any part thereof against loss by fire or other casualty covered by any insurance carried by the Association. Each Owner shall provide insurance on his personal property and upon all other property and improvements within his dwelling, but not including the dwelling. All such other policies as may be carried by Owners shall contain waivers of subrogation of claims against Declarant, the Association, the Board of Directors of the Association, the Officers of the Association and all other Owners. Such other policies shall not adversely affect or diminish any liability under any insurance obtained by the Association, and duplicate copies of such other policies shall be deposited with the Board of Directors.

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VIII

DAMAGE AND DESTRUCTION AFFECTING COMMON AREA

Section 1. Consent of Owners to Rebuild. If all or any portion of the Common Area is damaged or destroyed by fire, or other casualty, then neither the Board, the Association, or any agent or employee thereof shall be required or permitted to take any action to repair or rebuild the damaged portions, or to cause the damaged portions to be repaired or rebuilt without the written consent of at least fifty-one percent (51%) of the Members of each class as to the manner of repair or reconstruction and the payment therefor, except as provided in Section 2 of this Article in the event adequate insurance proceeds are available as set forth therein.

Section 2. No Consent Required With Adequate Insurance. Notwithstanding anything contained in Section 1 above to the contrary, if the cost of repairing or rebuilding the portion of the Common Area so damaged or destroyed does not exceed the amount of insurance proceeds available to the Association, the Board shall be authorized and required without the consent or approval of the Members, to contract to repair or rebuild the damaged portions of the Common Area substantially in accordance with the original plans and specifications therefor. In the event any excess insurance proceeds remain, or in the event of a decision by the Association not to reconstruct or replace such damages or destroyed improvements, the Board, in its sole discretion, may retain such sums in the general funds of the Association or distribute pro rata all or a portion thereof to the Owners, subject to the prior rights of Institutional Holders of any first Mortgage whose interest may be protected by insurance policies carried by the Association. The rights of an Owner and the Institutional Holder of a first Mortgage on his lot as to such pro rata distribution shall be governed by the provisions of the Mortgage encumbering such lot.

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IX

EMINENT DOMAIN

The term "taking" as used in this Article shall mean condemnation by eminent domain or sale under threat of condemnation. In the event of a threatened taking of all or any portion of the Common Area or the improvements thereon, the Owners hereby appoint the Board and such persons as the Board may delegate to represent all of the Owners in connection with the taking. The Board shall act in its sole discretion with respect to any awards being made in connection with the taking and shall be entitled to make a voluntary sale to the condemnor in lieu of engaging in a condemnation action. Any awards received on account of the taking shall be paid to the Association. In the event of a taking of less than all of the Common Area, the rules as to restoration and replacement of the Common Area and the improvements thereon shall apply as in the case of destruction of improvements upon the Common Area. In the event of a total taking, the Board may in its sole discretion retain any award in the general funds of the Association or distribute pro rata all or a portion thereof to the Owners. The rights of an Owner and the Institutional Holder of a Mortgage on his lot as to such pro rata distribution shall be governed by the provisions of the Mortgage encumbering such lot.

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X

COMMON WALLS

Section 1. Establishment of Easement. Each wall which is built as part of the original construction of the homes upon the Properties and is placed on the lot so as to abut or adjoin a dwelling constructed on a contiguous lot, shall constitute a common wall, and to the extent not inconsistent with the provisions of this Article, the general rules of law regarding common walls and of liability for property damage due to negligence or willful acts or omissions shall apply thereto. Each Owner of a lot upon which there exists a common wall shall own to the center of such wall.

Section 2. Reciprocal Use of Easement. The Owner of each lot upon which there is located a common wall shall have a reciprocal non-exclusive easement to each contiguous lot for the purpose of maintaining the common wall. The cost of reasonable repair and maintenance of a common wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. Damage of Common Wall. If a common wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Negligence. Notwithstanding any other provisions of this Article, an Owner who by his negligent or willful act causes the common wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Contribution for Repair. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 6. Arbitration of Disputes. In the event of any dispute between Owners arising concerning a common wall, or under the provisions of this Article, such Owners shall submit the matter to a binding arbitration to and under the rules of the American Arbitration Association. Thereafter, each Owner shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision of a majority of all the arbitrators shall be final and conclusive of the question involved.

XI

ARCHITECTURAL CONTROL

Section 1. Members of Committee. The Architectural Committee shall consist of not less than three (3) members as shall be determined by the Board. The initial members of the Architectural Committee shall be representatives of Declarant, whose business address is 15510 Rockfield Boulevard, Suite C, Irvine, California 92718. Subject to the following provisions, Declarant shall have the right and power at all times to appoint and remove a majority of the members of the Architectural Committee or to fill any vacancy of such majority until the "turnover date" which shall be the date on which either (i) ninety percent (90%) of the lots subject to this Declaration have been sold and the deeds recorded ("close of escrow"), or (ii) five (5) years following the date of issuance of the Final Subdivision Public Report for the Properties, whichever occurs earlier. Commencing one (1) year from the date of close of escrow for the sale of the first lot in the Properties to a purchaser (other than a Developer) from Declarant, the Board shall have the power to appoint one (1) member to the Architectural Committee, until the turnover date. Thereafter, the Board shall have the power to appoint and remove all of the members of the Architectural Committee. Persons appointed to the Architectural Committee by the Board shall be from the membership of the Association, but persons appointed to the Architectural Committee by Declarant need not be Members of the Association. The Architectural Committee shall have the right and duty to promulgate reasonable standards against which to examine any request made pursuant to this Article, in order to ensure that the proposed plans conform harmoniously to the exterior design and existing materials of the buildings in the Properties. The Architectural Committee may designate and appoint a representative who is a licensed architect and a majority of the members of said Architectural Committee may, from time to time, remove or replace such representative. The designated representative of the Architectural Committee may be, but need not be, a member of the Architectural Committee.

Section 2. Review of Plans and Specifications. The Architectural Committee shall consider and act upon any and all plans and specifications submitted for its approval under this Declaration and perform such other duties as from time to time shall be assigned to it by the Board, including the inspection of construction in progress to assure its conformance with plans approved by the Architectural Committee. No construction, alteration, addition, modification, decoration, redecoration or reconstruction of an Improvement in the Properties shall be commenced or maintained, until the plans and specifications therefor showing the nature, kind, shape, height, width, color, materials and location of the same shall have been submitted to the Architectural Committee and approved in writing by the

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Architectural Committee. The address for submission of such plans and specifications shall be the address of the principal place of business of the Association. The Architectural Committee shall approve plans and specifications submitted for its approval only if it deems that the construction, alterations or additions contemplated thereby in the locations indicated will not be detrimental to the appearance of the surrounding area of the Properties as a whole, that the appearance of any structure affected thereby will be in harmony with the surrounding structures, and that the construction thereof will not detract from the beauty, wholesomeness and attractiveness of the Common Area or the enjoyment thereof by the Members, and that the upkeep and maintenance thereof will not become a burden on the Association. The Architectural Committee may condition its approval of proposals or plans and specifications for any Improvement (i) on such changes therein as it deems appropriate, (ii) upon the agreement by the person (referred to in this Section as "applicant") submitting the same to grant appropriate easements to the Association for the maintenance of the Improvement, or (iii) upon the agreement of the applicant to reimburse the Association for the cost of such maintenance, or all three, and may require submission of additional plans and specifications or other information prior to approving or disapproving material submitted. The Architectural Committee may also issue rules or guidelines setting forth procedures for the submission of plans for approval, requiring a fee payable to the Association to accompany each application for approval, or additional factors which it will take into consideration in reviewing submissions. The Architectural Committee may provide that the amount of such fee shall be uniform, or that it be determined in any other reasonable manner, such as by the reasonable cost of the construction, alterations or additions contemplated. The Architectural Committee may require such detail in plans and specifications submitted for its review as it deems proper, including, without limitation, floor plans, site plans, drainage plans, elevation drawings and description or samples of exterior material and colors. Decisions of the Architectural Committee and the reasons therefor shall be transmitted by the Architectural Committee to the applicant at the address set forth in the application for approval, within thirty (30) days after receipt by the Architectural Committee of all materials required by the Architectural Committee. Any application submitted pursuant to this Section shall be deemed approved, unless written disapproval or a request for additional information or materials by the Architectural Committee shall have been transmitted to the applicant within thirty (30) days after the date of receipt by the Architectural Committee of such application or additional information.

Section 3. Meetings of the Architectural Committee.

The Architectural Committee shall meet from time to time as necessary to perform its duties hereunder. The Architectural Committee may from time to time, by resolution unanimously adopted in writing, designate an Architectural Committee representative

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(who may, but need not, be one of its members) to take any action or perform any duties for and on behalf of the Architectural Committee, except the granting of variances pursuant to the Section of this Article entitled "Variance." In the absence of such designation, the vote of a majority of the members of the Architectural Committee taken without a meeting, shall constitute an act of the Architectural Committee.

Section 4. No Waiver of Future Approvals. The approval of the Architectural Committee to any proposals or plans and specifications or drawings for any work done or proposed or in connection with any other matter requiring the approval and consent of the Architectural Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matter whatever subsequently or additionally submitted for approval or consent.

Section 5. Compensation of Members. The members of the Architectural Committee shall receive no compensation for services rendered, other than reimbursement for expenses incurred by them in the performance of their duties hereunder.

Section 6. Inspection of Work. Inspection of work and correction of defects therein shall proceed as follows:

(a) Upon the completion of any work for which approved plans are required under this Article, the Owner shall give written notice of completion to the Architectural Committee.

(b) Within sixty (60) days thereafter, the Architectural Committee or its duly authorized representative may inspect such Improvement. If the Architectural Committee finds that such work was not done in substantial compliance with the approved plans it shall notify the Owner in writing of such noncompliance within such sixty (60) day period, specifying the particulars of noncompliance, and shall require the Owner to remedy the same.

(c) If upon the expiration of thirty (30) days from the date of such notification the Owner shall have failed to remedy such noncompliance, the Architectural Committee shall notify the Board in writing of such failure. After affording such Owner notice and hearing, the Board shall determine whether there is a noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If a non-compliance exists, the Owner shall remedy or remove the same within a period of not more than forty-five (45) days from the date of announcement of the Board ruling. If the Owner does not comply with the Board ruling within such period, the Board, at its option, may record a notice of noncompliance in the Office of the Orange County Recorder and may peacefully remove the noncomplying Improvement or otherwise peacefully remedy the noncompliance, and the Owner shall reimburse the Association, upon demand, for all

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expenses incurred in connection therewith. If such expenses are not promptly repaid by the Owner to the Association, the Board shall levy a special Reimbursement Assessment against such Owner for reimbursement.

(d) If for any reason the Architectural Committee fails to notify the Owner of any noncompliance within sixty (60) days after receipt of said written notice of completion from the Owner, the Improvement shall be deemed to be in accordance with said approved plans.

Section 7. Nonliability of Architectural Committee Members. Neither Declarant, the Architectural Committee nor any member of the Architectural Committee, the Board nor their duly authorized representative, shall be liable to the Association, or to any Owner for any loss, damage or injury arising out of or in any way connected with the performance of the Architectural Committee's duties hereunder, unless due to the willful misconduct or bad faith of the Architectural Committee. The Architectural Committee shall review and approve or disapprove all plans submitted to it for any proposed Improvement, alteration or addition, solely on the basis of aesthetic considerations and the over-all benefit or detriment which would result to the immediate vicinity and the Properties generally. The Architectural Committee shall take into consideration the aesthetic aspects of the architectural designs, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features. The Architectural Committee's approval or disapproval shall be based solely on the considerations set forth in this Article, and the Architectural Committee shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any plans or design from the standpoint of structural safety or conformance with building or other codes.

Section 8. Nonapplicability to Declarant. The provisions of this Article shall not apply to any lot owned by Declarant prior to the construction on such lot by Declarant of a residential dwelling unit or prior to the conveyance of such lot by Declarant to a member of the public.

Section 9. Variance. The Architectural Committee may authorize variances from compliance with any of the architectural provisions of this Declaration, including without limitation, restrictions upon height, size, floor area or placement of structures, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental consideration may require. Such variances must be evidenced in writing, must be signed by at least two (2) members of the Architectural Committee, and shall become effective upon recordation in the Office of the County Recorder of Orange County. If such variances are granted, no violation of the covenants, conditions and restrictions contained in this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a

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variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular property and particular provision hereof covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting his use of the premises, including but not limited to zoning ordinances and lot setback lines or requirements imposed by the County of Orange or any other governmental authority.

Section 10. Appeal. In the event plans and specifications submitted to the Architectural Committee are disapproved thereby, the party or parties making such submission may appeal in writing to the Board. The written request must be received by the Board not more than thirty (30) days following the final decision of the Architectural Committee. The Board shall submit such request to the appropriate Architectural Committee for review, whose written recommendations will be submitted to the Board. Within forty-five (45) days following receipt of the request for appeal, the Board shall render its written decision. The failure of the Board to render a decision within said forty-five (45) day period shall be deemed a decision in favor of the appellant.

Section 11. Community Association Architectural Control. In addition to the provisions of this Article, each Owner of a Lot within the Properties shall be subject to the architectural and landscaping control restrictions and provisions of the Community Declaration.

Section 12. Master Association Architectural Control. In addition to the provisions of this Article, each Owner of a Lot within the Properties shall be subject to the architectural and landscaping control restrictions and provisions of the Master Declaration.

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XII

NOTICES

In each instance in which notice is to be given to the Owner of a lot, the same shall be in writing and may be delivered personally, in which case personal delivery of such notice to one or two or more co-owners of a lot, or to any general partner of a partnership owning such a lot, shall be deemed delivery to all of the co-owners or to the partnership as the case may be, and personal delivery of the notice to any officer or agent for the service of process of a corporation owning such lot shall be deemed delivery to the corporation or such notice may be delivered by United States mail, certified or registered, postage prepaid, return receipt requested, addressed to the Owner of such lot at the most recent address furnished by the Owner in writing for the purpose of giving notice, or if no such address shall have been furnished, then to the street address of such lot, and any notice so deposited in the mail within Orange County, California, shall be deemed delivered forty-eight (48) hours after such deposit. Any notice to be given to the Association may be delivered personally to any member of the Board, or delivered in such other manner as may be authorized by the Association. Any notice to be given to the Association shall be delivered by the United States mail, certified or registered, postage prepaid, return receipt requested, and any notice so deposited in the mail within Orange County, California, shall be deemed delivered forty-eight (48) hours after such deposit.

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XIII

RIGHTS OF LENDERS

Notwithstanding any provisions to the contrary as may be provided elsewhere in this Declaration, Lenders shall have the following rights:

Section 1. Notice to Institutional Holders of Default. Any Institutional Holder of any Mortgage on a lot shall be entitled to receive upon written request to the Association written notification from the Association of any default by the Owner (trustor) of such lot in the performance of such Owner's obligations under the Declaration or the Association's Articles or By-Laws which is not cured within thirty (30) days from the date of such default.

Section 2. Assessments on Foreclosure. Any Institutional Holder of any First Mortgage who obtains title to a lot pursuant to the remedies provided in the Mortgage but exclusive of a deed in lieu of foreclosure, or through foreclosure of the First Mortgage, shall not be liable for any claims for unpaid assessments or charges against such lot which accrued prior to the acquisition of title to such lot by the Institutional Holder of the First Mortgage.

Section 3. Right of First Refusal. Any Institutional Holder of a Mortgage who comes into possession of a lot pursuant to the remedies provided in such Mortgage, or foreclosure of the Mortgage, shall be exempt from any right of first refusal, and any right of first refusal shall not impair the rights of an Institutional Holder to:

(a) Foreclose or take title to a lot pursuant to the remedies provided in the Mortgage, or

(b) Accept a deed (or assignment) in lieu of foreclosure in the event of default by the Trustor of the Mortgage, or

(c) Sell or lease a lot acquired by the Institutional Holder.

Section 4. Required Consent of Owners. Unless at least two-thirds (2/3rds) of the Owners, excluding the vote of Declarant, (based on one vote for each lot owned) have given their prior written approval, the Association and the Owners shall not be entitled to:

(a) Change the method of determining the obligations, assessments (whether Regular or Special), dues or other charges which may be levied against the Owner of a lot;

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(b) By act or omission seek to abandon, partition, release, subdivide, encumber, sell or transfer any property or any improvements which are owned, directly or indirectly, by the Association;

(c) By act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design of the dwellings situated on each lot or the upkeep of the Common Areas within the Properties;

(d) Use hazard insurance proceeds for losses to the Common Area for other than the repair, replacement or reconstruction of such improvements;

(e) Fail to maintain fire and extended coverage insurance on insurable Common Area property, on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost);

(f) Abandon or terminate the Association, except for abandonment, partition or termination as may be provided by law;

(g) Fail to maintain an adequate reserve fund for the replacement of equipment and facilities used for Common Area maintenance.

Section 5. Rights of Institutional Holders. All Institutional Holders of Mortgages on individual lots shall, upon written request to the Association, be entitled to:

(a) Inspect the books and records of the Association during normal business hours;

(b) Receive an annual audited financial statement of the Association within ninety (90) days following the end of any fiscal year of the Association provided, however, that such audited statements shall be made available only if they have been prepared by the Association in the regular course of business;

(c) Receive written notice of all meetings of the Owners of the Association and shall be entitled to designate a representative to attend all such meetings.

Section 6. Payment of Taxes and Insurance Premiums. Institutional Holders of Mortgages on lots within the Properties may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge or lien against any common property, if any, and may pay overdue premiums on hazard insurance policies or secure hazard insurance coverage upon the lapse of a policy for any commonly owned property and the mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

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Section 7. Priority on Distribution of Proceeds. No Owner or any other party shall have priority over any rights of Institutional Holders of Mortgages upon individual lots pursuant to their Mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or a taking of all or any portion of the Common Area property, if any, and/or the individual lots and improvements thereon.

Section 8. Notice of Destruction or Taking. In the event that any lot or the improvements thereon or any commonly owned property, if any, or portions thereof, are substantially damaged or destroyed, or are made the subject of any condemnation proceeding in eminent domain or are otherwise sought to be acquired by a condemning authority, the Association shall promptly notify all Institutional Holders of Mortgages affected by such destruction, taking or threatened action.

Section 9. Insurance. Notwithstanding any other provisions herein, the Association shall continuously maintain in effect such casualty, flood and liability insurance and a fidelity bond meeting the insurance and fidelity bond requirements for planned unit development projects established by the Federal Home Loan Mortgage Corporation, so long as it is a mortgagee or owner of a lot within the project, except to the extent such coverage is not available or has been waived in writing by the Federal Home Loan Mortgage Corporation.

Section 10. Mortgage Protection Clause. No breach of the covenants, conditions or restrictions herein contained, nor any lien created hereby, shall defeat or render invalid the lien of any first mortgage or first deed of trust made in good faith and for value, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale, or otherwise.

Section 11. Conflicts. In the event of any conflicts between any of the provisions of this Article and any other provisions of the Declaration, the provisions of this Article shall control.

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XIV

ENFORCEMENT OF BONDED OBLIGATIONS

In the event that the improvements to any commonly owned or maintained property within the Properties have not been completed prior to the issuance of a Final Subdivision Public Report covering such tract by the Department of Real Estate of the State of California, and the Association is obligee under a bond or other arrangement (hereinafter the "Bond") to secure performance of the commitment of Declarant to complete such improvements, the following provisions shall apply:

(a) The Board shall consider and vote on the question of action by the Association to enforce the obligations under the Bond with respect to any improvements for which a Notice of Completion has not been filed within sixty (60) days after the completion date specified for such 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 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 such extension.

(b) In the event that the Board determines not to initiate action to enforce the obligations under the Bond, or in the event the Board fails to consider and vote on such question as provided above, the Board shall call a special meeting of the Members for the purpose of voting to override such decision or such failure to act by the Board. Such meeting shall be called according to the provisions of the By-Laws dealing with meetings of the Members, but in any event such meeting shall be held not less than thirty-five (35) days nor more than forty-five (45) days after receipt by the Board of a petition for such meeting, signed by Members representing five percent (5%) or more of the total voting power of the Association.

(c) The only Members entitled to vote at such meeting shall be the Owners other than Declarant. A vote at such meeting of a majority of the voting power of such Members, other than Declarant, to take action to enforce the obligations under the Bond shall be deemed to be the decision of the Association and the Board shall thereafter implement such decision by initiating and pursuing appropriate action in the name of the Association.

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XV

EASEMENTS AND OWNERS' PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Owner shall have a right and easement of ingress and egress and of enjoyment in, to and over the Common Area which shall be appurtenant to and shall pass with title to every lot, subject to the following provisions:

(a) The right of the Association to reasonably limit the number of guests of Owners using the Common Area facilities;

(b) The right of the Association to establish uniform rules and regulations pertaining to the use of the Common Area;

(c) The right of the Association in accordance with the Articles, By-Laws and this Declaration, with the vote or written assent of a majority of the total voting power of the Association, which shall include a majority of the votes residing in Members other than the Declarant, to borrow money for the purpose of improving the Common Area and the facilities and in aid thereof, and, subject to the provisions of the Article of this Declaration entitled "RIGHTS OF LENDERS," to mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, provided that the rights of such Institutional Holders of Mortgages shall be subordinated to the rights of the Owners;

(d) Subject to the provisions of the Article of this Declaration entitled "RIGHTS OF LENDERS," the right of the Association to dedicate, release, alienate or transfer the Common Area to any public agency, authority, utility or other person for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication, release, alienation or transfer shall be effective, unless an instrument signed by Members entitled to cast at least a majority of the total voting power of the Association, which shall include a majority of the votes residing in Members other than the Declarant, agreeing to such dedication, release, alienation or transfer has been recorded;

(e) The rights and reservations of Declarant as set forth in this Declaration, including the right of Declarant and its sales agents, representatives and prospective purchasers, to the non-exclusive use of the Common Area and any facilities thereof, without cost, for access, ingress, egress, use and enjoyment, in order to dispose of the Properties as provided herein, until the close of escrow for the sale of all of the lots in the Properties; provided, however, that such use shall not

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unreasonably interfere with the rights of enjoyment of the other Owners as provided herein;

(f) The right of the Board to suspend the rights and easements of use and enjoyment of the recreational facilities, if any, located on the Common Area of any Member, and the persons deriving such rights and easements from any Member, for any period during which the payment of any assessment against such Member and his lot remains delinquent; and, after notice and hearing with an opportunity to be heard, to impose monetary penalties or suspend such use rights and easements for a reasonable period of time as determined by the Board for any violation of this Declaration, Articles, By-Laws or rules and regulations of the Association, it being understood that any suspension for either non-payment of any assessment or breach of such restrictions shall not constitute a waiver or discharge of the Member's obligation to pay assessments as provided herein;

(g) The right of the Association, acting through the Board, to reasonably restrict access to areas of the Common Area.

Section 2. Encroachment Easements. Each lot and the Common Area is hereby declared to have an easement over all adjoining lots and the Common Area for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, settlement or shifting of any building, or any other similar cause, and any encroachment due to building over-hang or projection whether roof, eaves or otherwise, specifically including, without limitation, bay windows, fireplaces and floor area cantilevers. There shall be valid easements for the maintenance of said encroachments so long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachment, settling or shifting; provided, however, that 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 act or acts of said Owner or Owners. In the event a structure on any lot is partially or totally destroyed, and then repaired or rebuilt, the Owners of each lot agree that minor encroachments over adjoining lots shall be permitted, and that there shall be valid easements for the maintenance of said encroachments so long as they shall exist.

Section 3. Waiver of Use. No Owner may exempt himself from personal liability for assessments duly levied by the Association, nor release the lot or other property owned by him from the liens and charges hereof, by waiver of the use and enjoyment of the Common Area and the facilities thereon or by abandonment of his lot or any other property in the Properties.

Section 4. Title to the Common Area. Declarant hereby covenants for itself, its successors and assigns, that it will convey to the Association title to the Common Area in the

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Properties, free and clear of any and all encumbrances and liens, subject to reservations, easements, covenants and conditions then of record, including those set forth in this Declaration. Said conveyance shall be made prior to the conveyance of the first lot to a purchaser from Declarant pursuant to a Final Subdivision Public Report covering the Properties.

Section 5. Owners' Rights and Duties: Utilities.

The rights and duties of the Owners of lots within the Properties with respect to sanitary sewer and water, electricity, gas and telephone and cable television lines and drainage facilities shall be governed by the following:

(a) Wherever sanitary sewer house connections and/or water house connections or electricity, gas, or telephone and cable television lines or drainage facilities are installed within the Properties, which connections, lines or facilities, or any portion thereof, lie in or upon lots owned by persons other than the Owner of a lot served by said connections, the Owners of any lots served by said connections, lines or facilities shall have the right, and are hereby granted an easement to the full extent necessary therefor, to enter upon the lots or to have utility companies enter upon the lots within the Properties in or upon which said connection, lines or facilities, or any portion thereof, lie, to repair, replace and generally maintain said connections as and when the same may be necessary as set forth below;

(b) Wherever sanitary sewer house connections and/or water house connections or electricity, gas or telephone or cable television lines or drainage facilities are installed within the Properties, which connections serve more than one lot, the Owner of each lot served by said connections shall be entitled to the full use and enjoyment of such portions of said connections as service his lot;

(c) In the event of a dispute between Owners with respect to the repair or rebuilding of said connections, or with respect to the sharing of the cost thereof, then upon written request of one of such Owners addressed to the Association, the matter shall be submitted to the Board of Directors who shall decide and make an assessment against any or all of the Owners involved, which assessment shall be collected and enforced in the manner provided by this Declaration.

Section 6. Common Area Easements. The Association shall own the Common Area for the use, enjoyment and convenience of the Owners. Each lot within the Properties subject to this Declaration is hereby declared to have an easement over all of the Common Area, for the benefit of the lots, the Owners of the lots, and each of them, and for their respective families, guests, invitees, tenants and contract purchasers, for all of the purposes and uses hereinabove set forth, and without limiting the

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generality of the foregoing, for ingress and egress over and through the Common Area.

Section 7. Party Walls and Fences. Those Owners who have a common wall or fence adjoining their lots and such a wall or fence dividing the lots upon which their homes are constructed, shall equally have the right to the use of such wall or fence except that each shall have the exclusive right to the use of the interior surface of the wall or fence on his side. Neither Owner shall use any portion of the wall or fence so as to interfere with the use and enjoyment of the other Owner. In the event that any portion of such wall or fence, except the interior surface of one side, is damaged or injured from any cause, other than the act or negligence of either party, it shall be repaired or rebuilt at their joint expense.

Section 8. Creation of Easements. Each of the easements provided for in this Declaration shall be deemed to be established upon the recordation of this Declaration, and shall thenceforth be deemed to be covenants running with the land for the use and benefit of the lots superior to all other encumbrances applied against or in favor of any portion of the Properties which is the subject of this Declaration. In furtherance of the easements provided for in this Declaration the individual grant deeds to lots may, but shall not be required to, set forth said easements.

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XVI

ANNEXATION

Section 1. Annexation With Consent. Additional lots and Common Area may be annexed to the Properties with the written consent of not less than 66-2/3% of the total voting power of the Association residing in Association members other than the Declarant unless the proposed annexation is in substantial conformance with a detailed plan submitted to the Department of Real Estate with the application for a public report for the first phase of the Properties as set forth below.

Section 2. Annexation Without Consent. If, at any time within the third anniversary date of the issuance of the original public report for the immediately preceding phase of the Properties, the Declarant should develop additional lands within the areas described in Exhibit "B" which is attached hereto and by this reference made a part hereof, such additional lands may be annexed to the Properties without the assent of the Class A members and be made subject to the Declaration and thereby become, subject to the jurisdiction of the Association; provided, however, that the development of the additional lands described in this Section shall be in accordance with a general plan set forth in this Article. Detailed plans for the development of additional lands must be submitted to the California Department of Real Estate prior to such development of additional lands. If the California Department of Real Estate determines that such detailed plans are not in accordance with the general plan on file and such agency so advises the Association and the Declarant, the annexation of the additional lands must be in accordance with Section 1 immediately above. A supplementary Declaration of Covenants, Conditions and Restrictions as described hereinafter in Section 3 of this Article, covering the real property or portions thereof described in Exhibit "B" hereto, shall be executed and recorded by the Owner of such property to be annexed.

Section 3. Supplementary Declaration. The additions authorized under the foregoing section shall be made by filing of record a supplementary Declaration of Covenants, Conditions and Restrictions, or similar instrument, with respect to the additional property which shall extend the plan of this Declaration to such property. Such supplementary Declarations contemplated above may contain such complementary additions or modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added property as are not inconsistent with the plan of this Declaration. In no event, however, shall any such supplementary Declaration, merger or consolidation, revoke, modify or add to the covenants established by this Declaration within the existing property, except as hereinafter otherwise provided. The closing of the first escrow

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within a particular phase or increment for which a Supplementary Declaration has been recorded, shall constitute and effectuate the annexation of the said real property described therein, making said real property subject to this Declaration and subject to the functions, powers and jurisdiction of the SEAWAY COLLECTION HOMEOWNERS ASSOCIATION, and thereafter all of the Owners of lots in said real property shall be Members of the SEAWAY COLLECTION HOMEOWNERS ASSOCIATION, in accordance with the terms and provisions of this Declaration and such supplementary Declaration. Upon the effective date of the annexation as provided in Section 4 of this Article, all Owners of lots within a Phase of the Properties for which assessments have commenced shall have an equal right to the use of all of the Common Areas within the Phases of the Properties for which assessments have commenced. Nothing herein shall obligate Declarant to annex to the Properties all or any portion of the lots described in Exhibit "B" hereto and any decision to affect such annexation shall be in the sole discretion of Declarant.

Section 4. Effective Date of Annexation. Notwithstanding anything to the contrary as may be contained herein, any annexation pursuant to the provisions of this Article shall only be effective upon the close of the first escrow within each particular phase or increment which has been annexed pursuant to the provisions of this Declaration or upon the commencement of assessments pursuant to the provisions of this Declaration, whichever is first to occur.

Section 5. Commitment by Declarant to Pay Assessments. Declarant for itself and its successors and assigns covenants and agrees to pay to the Association, concurrently with the closing of the escrow for the first sale of a lot in an annexed phase, appropriate amounts for reserves for replacement or deferred maintenance of Common Area improvements in the annexed phase necessitated by or arising out of the use and occupancy of the dwelling units on the lots in such annexed phase under a rental program conducted by the Declarant which has been in effect for a period of at least one year as of the date of closing of escrow for the first sale of a lot in the annexed phase.

Section 6. Deannexation by Declarant. Declarant may delete all or a portion of any real property annexed to the Properties from coverage of this Declaration and the jurisdiction of the Association, so long as Declarant is the owner of all of such annexed real property, and provided that (a) a Notice of Deletion of Territory is recorded in the Office of the Orange County Recorder in the same manner as the applicable Supplementary Declaration was recorded; (b) Declarant has not exercised any Association vote with respect to any portion of such annexed real property; (c) assessments have not yet commenced with respect to any portion of such annexed real property; (d) no escrow has closed for the sale of any lot in any portion of such annexed real property to the public; and (e) the Association has not made any

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expenditures or incurred any obligations with respect to any portion of such annexed real property.

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XVII

COMPLIANCE WITH CIVIL CODE SECTION 1365 AND 1365.5

Section 1. Budgets and Financial Statements. The Board of Directors of the Association shall have the below described financial information of the Association regularly prepared and distributed to all Members of the Association as provided herein regardless of the number of Members or the amount of assets of the Association:

(a) A pro forma operating budget for each fiscal year of the Association which shall include at least the following information shall be distributed no more than sixty (60) days and not less than forty-five (45) days prior to the beginning of the fiscal year of the Association:

(i) Estimated revenue and expenses on an accrual basis;

(ii) The amount of the total cash reserves of the Association currently available for replacement or major repair of Common Area facilities and for contingencies;

(iii) An estimate of the current replacement costs, of the estimated remaining life of, and the methods of funding used to defray the future repair, replacement or additions to those major components of the Common Areas and facilities which the Association is obligated to maintain; and

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

(b) A balance sheet - as of a designated accounting date which shall be the last day of the month closest in time to six (6) months from the date of closing of escrow representing the first sale of a lot in the Properties - and an operating statement for the period from the date of the first closing to the designated accounting date, shall be distributed to each Member within sixty (60) days after the designated accounting date. This operating statement shall include a schedule of assessments received and receivable identified by the lot within the Properties and the name of the person or entity assessed therefor.

(c) An annual report which shall consist of at least the following shall be distributed within one hundred twenty (120) days after the close of the fiscal year of the Association:

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- fiscal year; (i) A balance sheet as of the end of the
- fiscal year; (ii) An operating (income) statement for the
- (iii) A statement of changes in financial position for the fiscal year; and
- (iv) For any fiscal year in which the gross income of the Association exceeds Seventy-Five Thousand Dollars (\$75,000.00), a copy of the review of the annual report prepared in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy. Such financial report shall include any information required to be reported under Section 8322 of the California Corporations Code.

Section 2. Certification of Report. If the report referred to in subsection (c) above is not prepared by an independent accountant, it shall be accompanied by the certificate of an authorized officer of the Association that the statement was prepared from the books and records of the Association without independent audit or review.

Section 3. Alternative Financial Statements. In lieu of the distribution of the financial statements required by this Article, the Board of Directors may elect to distribute a summary of the financial statements to all its Members with a written notice that the financial statements are available at the business office of the Association or at another suitable location within the boundaries of the Properties and that copies will be provided upon request and at the expense of the Association. If any Member requests copies of the financial statements to be mailed to the Member, the Association shall provide the copies to the Member by first-class United States mail at the expense of the Association and delivered within five (5) days. The written notice that is distributed to each of the Association Members shall be in at least 10-point bold type on the front page of the summary of the statements.

Section 4. Policies on Remedies. In addition to financial statements, the Board of Directors shall annually distribute within sixty (60) days prior to the beginning of the fiscal year of the Association a statement of the Association's policies and practices in enforcing its lien rights and other legal remedies against Members for defaults in the payment of Regular and Special Assessments including the recording and foreclosing of liens against Members' lots.

Section 5. Fiscal Duties of Board.

(a) The Board of Directors of the Association shall do all of the following not less frequently than quarterly:

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(i) Cause a current reconciliation of the Association's operating accounts to be made and review the same;

(ii) Cause a current reconciliation of the Association's reserve accounts to be made and review the same;

(iii) Review the current year's actual reserve revenues and expenses compared to the current year's budget;

(iv) Review the most current account statements prepared by the financial institutions where the Association has its operating and reserve accounts; and

(v) Review an income and expense statement for the Association's operating and reserve accounts.

Section 6. Withdrawal of Funds from the Association's Reserve Accounts.

(a) Withdrawal of funds from the Association's reserve accounts shall require the signatures of either:

(i) Two members of the Board; or

(ii) One member of the Board and one officer of the Association who is not also a member of the Board.

(b) As used in this section, "reserve accounts" means moneys that the Board has identified from its annual budget for use to defray the future repair or replacement of, or additions to, those major components which the Association is obligated to maintain.

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XVIII

GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner or the successor in interest of an Owner, shall have the right to enforce by proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration or any amendment thereto, including the right to prevent the violation of any such restrictions, conditions, covenants or reservations and the right to recover damages or other dues for such violation; provided, however, that with respect to assessment liens, the Association shall have the exclusive right to the enforcement thereof. Failure by the Association or by any Owner to enforce any covenant, condition or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Should any of the covenants contained in this Declaration be void or be or become unenforceable in law or in equity, the remaining portions of this Declaration shall, nevertheless, be and remain in full force and effect.

Section 3. Term. Subject to the limitations set forth in Section 4 of this Article, this Declaration and the covenants herein contained shall be in effect until December 31, 2039, and shall automatically be extended for successive periods of ten (10) years unless within six (6) months prior to the expiration of the initial term or any ten (10) year renewal period a written agreement executed by the then record Owners of more than three-fourths (3/4) of the lots within the Properties shall be placed on record in the Office of the County Recorder of the County of Orange, by the terms of which agreement the effectiveness of this Declaration is terminated or the covenants herein contained are extinguished in whole or in part as to all or any part of the property then subject thereto.

Section 4. Amendments. Subject to the rights of lenders as set forth in the Article hereof entitled "RIGHTS OF LENDERS," this Declaration of Covenants, Conditions and Restrictions may be amended only by the affirmative assent or vote of both (i) seventy-five percent (75%) of the voting power of the Association, including the voting power of the Declarant, and (ii) seventy-five percent (75%) of the voting power of Members other than Declarant; provided, however, that the percentage of voting power necessary to amend a specific clause or provision shall not be less than the percentage of affirmative votes prescribed for action to be taken under that clause; provided further, that if the two-class voting structure as provided in this Declaration is still in effect, this Declaration may not be amended without the vote or written assent of seventy-five percent (75%) of the voting

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power of each class of Members. This amendment provision shall not be amended to allow amendments by the assent or vote of less than the prescribed percentage of voting power required for amendments hereof; provided, however, that in compliance with California Civil Code Section 1356(a), the Board of Directors of the Association or any Owner of a lot may petition the Superior Court of Orange County for an order reducing the percentage of the affirmative votes necessary for such amendment. An amendment or modification shall be effective when executed by the President and Secretary of the Association who shall certify that the amendment or modification has been approved as hereinabove provided, and recorded in the Official Records of Orange County, California.

Section 5. Nonliability of Officials. To the fullest extent permitted by law, neither the Board, the Architectural Committee, any other committees of the Association or any member of such Board or committee shall be liable to any Member of the Association for any damage, loss or prejudice suffered or claimed on account of any decision, approval or disapproval of plans or specifications (whether or not defective), course of action, act, omission, error, negligence or the like made in good faith within which such Board, committees or persons reasonably believed to be the scope of their duties.

Section 6. Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a residential community or tract and for the maintenance of Common Areas. The Article and Section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction.

Section 7. Singular Includes Plural. Whenever the context of this Declaration requires same, the singular shall include the plural and the masculine shall include the feminine.

Section 8. Nuisance. The result of every act or omission, whereby any provision, condition, restriction, covenant, easement or reservation contained in this Declaration is violated in whole or in part, is hereby declared to be and constitutes a nuisance, and every remedy allowed by law or equity against a nuisance, either public or private, shall be applicable against every such result, and may be exercised by the Architectural Committee, the Association, or any other land owner in the Properties. Such remedy shall be deemed cumulative and not exclusive.

Section 9. Conflicts. In case of any conflict between this Declaration and the Articles of Incorporation or By-Laws of the Association, this Declaration shall control.

Section 10. Attorneys' Fees. In the event of any controversy or claim respecting this Declaration, or in connection with the enforcement of this Declaration, the prevailing parties

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shall be entitled, in addition to all expenses, costs and damages, to reasonable attorneys' fees, whether or not such controversy or claim is litigated and prosecuted to judgment.

Section 11. The Declaration. By acceptance of a deed or by acquiring any ownership interest in any of the real property included within this Declaration, each person or entity, for himself or itself, his heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules and regulations now or hereafter imposed by this Declaration and any amendments thereof. In addition, each such person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the improvement and development of the real property covered hereby, and hereby evidences his intent that all the restrictions, conditions, covenants, rules and regulations contained herein shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, and transferees thereof. Furthermore, each such person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the various subsequent and future Owners.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereto set its hand and seal this 2nd day of April, 1990.

LAGUNA AUDUBON II, a
California limited partnership

BY: KATHRYN G. THOMPSON DEVELOPMENT
CO., a California corporation
General Partner

By Sandra Ezell, V.P.
Sandra Ezell, Vice
President

3008 (8/82) - (Corporation as a Partner of a Limited Partnership)
FIRST Affirmation in this Company

STATE OF CALIFORNIA Orange ss.
COUNTY OF Orange
On April 2nd, 1990, before me, the undersigned, a Notary Public in and for
said State, personally appeared Sandra Engell _____
personally known to me (as proved to me on the

_____ basis of satisfactory evidence) to be the person who executed the within instrument as
Vice President and Secretary, on behalf of Kathryn
G. Thompson Dew Co.

the corporation therein named, and acknowledged to me that said
corporation executed the within instrument pursuant to its by-
laws or a resolution of its board of directors, said corporation being
known to me to be the general partner of Laguna
Audubon II
the limited partnership that executed the within instrument, and
acknowledged to me that such corporation executed the same as
such partner and that such partnership executed the same.



WITNESS my hand and official seal
Signature Sheri L. Glass

(This area for official notarial seal)

4/6/90

EXHIBIT "A"

COMMON AREA

In the event of any conflict between this legal description and the legal description set forth in the Easement Deed, the Easement Deed shall control.

PARCEL 1

THAT PORTION OF LOT "B" OF TRACT 13621, IN THE UNINCORPORATED TERRITORY OF THE COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON THE MAP RECORDED IN BOOK 620, PAGES 25 THROUGH 31, INCLUSIVE, OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST SOUTHERLY CORNER OF SAID LOT "B", SAID POINT LYING ON THE NORTHERLY RIGHT-OF-WAY LINE OF CUERVO DRIVE AS SHOWN ON SAID MAP; THENCE ALONG THE WESTERLY LINE OF SAID LOT THE FOLLOWING COURSES:

- 1) NORTH 00° 17' 21" EAST, 29.27 FEET;
- 2) NORTH 29° 38' 32" WEST, 43.89 FEET;

THENCE LEAVING SAID WESTERLY LINE NORTH 60° 21' 28" EAST, 14.81 FEET TO ITS INTERSECTION WITH THE WESTERLY RIGHT-OF-WAY LINE OF CANYON WREN LANE 60 FEET WIDE AS SHOWN ON SAID MAP; THENCE ALONG SAID WESTERLY RIGHT-OF-WAY LINE THE FOLLOWING COURSES:

- 1) SOUTH 23° 41' 22" EAST, 12.65 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE WESTERLY HAVING A RADIUS OF 570.00 FEET;
- 2) SOUTHERLY 43.99 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 04° 25' 19" TO A POINT OF COMPOUND CURVATURE WITH A CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 17.00 FEET, FROM WHICH A RADIAL LINE BEARS SOUTH 70° 43' 57" WEST;
- 3) SOUTHWESTERLY 28.85 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 97° 13' 03" TO THE POINT OF BEGINNING.

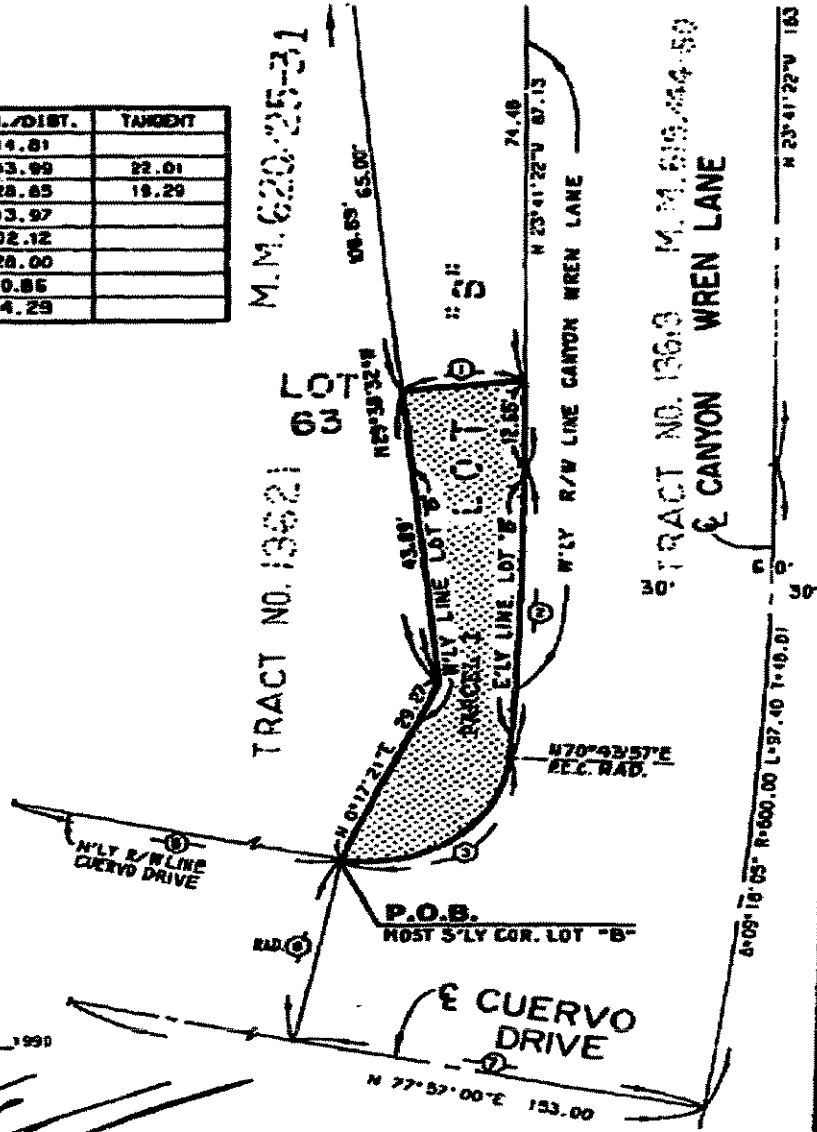
DATA

NO.	DELTA/BEARING	RADIUS	LEN./DIST.	TANGENT
1	N 80° 21' 28" E		14.81	
2	04° 25' 19"	570.00	43.99	22.01
3	97° 13' 03"	17.00	28.85	18.29
4	N 80° 48' 41" E		13.97	
5	N 77° 57' 00" E		102.12	
6	N 12° 03' 00" V		28.00	
7	N 77° 57' 00" E		50.86	
8	N 38° 25' 10" E		24.29	



DATED THIS 6th DAY OF February, 1990

MATTHEW E. HOGLUND, L.S. 5757
REGISTRATION EXPIRES 6/30/92



VAN DELL AND ASSOCIATES, INC.
CIVIL ENGINEERS
SURVEYORS LAND PLANNERS
17801 CARTWRIGHT ROAD
IRVINE, CA 92714 (714) 474-1400

EXHIBIT "A-1"
LANDSCAPE MAINTENANCE EASEMENT

PROJ. MGR.: M.E.H.
SURVEYOR: T.E.P.
DRAFTER: G.A.K.

DRAWING DATE: 2 - 2 - 90	PROJECT NO: 665.1001. 98	SCALE: 1" = 20'	SHEET OF
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4/6/90

EXHIBIT "B"
ANNEXABLE AREA

That certain real property located in the unincorporated territory of the County of Orange, State of California, described as follows:

That remaining portion of Tract No. 13621, as per map recorded in Book 620, Pages 25 through 31 of Miscellaneous Maps, Records of Orange County, California.

All of Tract No. 13622, as per map recorded in Book 620, Pages 32 through 35 of Miscellaneous Maps, Records of Orange County, California.