DECLARATION OF

COVENANTS, CONDITIONS AND RESTRICTIONS

AND ESTABLISHMENT OF EASEMENTS

FOR

BRIGHTWATER MAINTENANCE CORPORATION

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS ("Declaration") is made this _____ day of _____, 200__, by HEARTHSIDE HOMES, INC., a California corporation ("Declarant").

R E C I T A L S:

A. Declarant is the owner of certain real property in the County of Orange, State of California, described as Lots ___ through ___ of Tract No. 15460 as shown on a map recorded in Book ___, Pages ___ through ___ of Miscellaneous Maps, records of Orange County, California (the "Phase 1 of the Properties" or the "Properties").

B. Declarant has deemed it desirable to impose a general plan for the improvement and development of the Properties as a Common Interest Development described in subsection 1351(k) of the California Civil Code 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 and BMC Easement Areas 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. BRIGHTWATER MAINTENANCE CORPORATION, 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 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, shall be enforceable equitable servitudes, unless unreasonable, 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; shall inure to the benefit of and be binding upon Declarant, each

Owner and their respective heirs, executors and administrators; and may be enforced by Declarant, by any Owner or by the BMC (as hereinafter defined).

ARTICLE I

DEFINITIONS

Section 1. Annexable Area. The term "Annexable Area" shall mean and refer to all or any portion of the real property described in Exhibit "A" attached hereto and incorporated herein by this reference which may be annexed to the Properties pursuant to the terms of the Article of this Declaration entitled "ANNEXATION."

Section 2. Approved Plant List for Non-Habitat/Non-Buffer Areas.. The term "Approved Plant List for Non-Habitat/Non-Buffer Areas" shall mean and refer to the those plants identified on Exhibit "B" attached hereto and incorporated herein by this reference as being native to coastal Orange County and appropriate to the natural habitat type or non-native, non-invasive, low water use plants. No plant species listed as problematic and/or invasive by the California Native Plant Society, California Exotic Pest Plant Council, or as may be identified from time to time by the State of California, or any plant species listed as a "noxious weed" by the State of California or the U.S. Federal Government shall be included on the Approved Plant List for Non-Habitat/Non-Buffer Areas. Additions to or deletions from the Approved Plant List for Non-Habitat/Non-Buffer Areas may be made only with the approval of the Executive Director of the California Coastal Commission, in consultation with the Community's restoration ecologist and the Department of Fish and Game and the Fish and Wildlife Service. No deviations from the Approved Plant List for Non-Habitat/Non-Buffer Areas shall occur without an amendment to the CDP or the issuance of a new coastal development permit unless the Executive Director determines that no amendment or new permit is required. Any such approved revision to the Approved Plant List for Non-Habitat/Non-Buffer Areas shall be on file with the management company for the BMC, incorporated in the Design Review Standards available to all Owners, and would require no further amendment to this Declaration.

Section 3. Articles of Incorporation. The term "Articles of Incorporation" or "Articles" shall mean and refer to the Articles of Incorporation of the Brightwater Maintenance Corporation.

Section 4. Assessments. The term "Assessments" shall mean and refer to the following: Regular Assessment, Reimbursement Assessment, Reconstruction Assessment, Special Assessment, and Conservation Property Assessment as set forth in the Budget.

Section 5. Best Management Practices. The term "Best Management Practices" or "BMPs" shall mean and refer to the criteria established by the City and/or County to provide appropriate stormwater pollution control related to the Project's structural and non-structural facilities in compliance with the National Pollutant Discharge Elimination System. Best Management Practices include those certain structural (i.e., physical improvements) and non-structural (i.e., activities and educational information) water quality management practices set forth in, or otherwise required pursuant to, the Water Quality Management Plans prepared in connection with the development of the Properties. The structural Best Management Practices may include, without limitation, detention basins, retention basins, vegetated drainage swales, "V" ditches, bench drains, catch basins, catch basin media filters, inlet trash racks, drainpacs and other storm drain filtration devices, energy dissipaters, culverts, pipes, riparian (wetland) areas, efficient irrigation technology and related storm drain and Water Quality Control Facilities. The non-structural Best Management Practices generally require the BMC and the Owners and other residents within the Properties to be aware of the sensitive natural environment surrounding the Properties and to take appropriate actions to control pollutant runoff, which actions may include, among other things, (i) restricting the amount of irrigation waters used and controlling the direction of irrigation water runoff; (ii) establishing a fertilizer and organic soils management program and requiring the use of pesticides, fertilizers and other chemicals to be consistent with City and/or County ordinances; (iii) prohibiting the disposal of motor oil, paint products, car detergents and other similar pollutants into the storm drains in the Properties; (iv) requiring a regular schedule of advanced street sweeping, litter pick up and proper disposal of animal waste, etc. within the Properties; (v) distributing to Owners and other

residents within the Properties educational materials regarding the proper use of pesticides, fertilizers and other chemicals; and (vi) conducting a monitoring program to assure the effectiveness of the Best Management Practices, if required by the Regional Water Quality Control Board, the County, or other Public Agency having jurisdiction regarding water quality for storm and runoff waters from the Properties. The Best Management Practices are designed and intended to control pollutant runoff and must be implemented by the BMC and the Owners and other residents within the Properties. The Best Management Practices may be modified from time to time by the Declarant, the Regional Water Quality Control Board, the County or other Public Agency having jurisdiction regarding water quality for storm and runoff waters from the Properties in order to control pollutant runoff as the Properties develop and runoff conditions change. Compliance by the BMC and the Owners and other residents within the Properties with the Best Management Practices, as they may be modified from time to time, may be monitored and enforced by the Regional Water Quality Control Board, the County, the City or other Public Agency having jurisdiction regarding water quality for storm and runoff waters from the Properties. BMP inspection and maintenance responsibilities are generally depicted on Exhibit "C" attached hereto and incorporated herein by this reference.

Section 6. Board of Directors. The term "Board of Directors" or "Board" shall mean and refer to the duly elected Board of Directors of the BMC.

Section 7. BMC Easement Areas. The term "BMC Easement Areas" shall mean and refer to certain areas which contain planting, planted trees, shrubs, landscaping, slopes and other Improvements which are located on the residential lots or within a public right of way, Community Walls, Water Quality Control Facilities and Dedicated Maintenance Area or other areas over which the BMC has an easement or obligation for maintenance as hereinafter provided. The BMC Easement Areas may include, but shall not be limited to, landscaping strips and related facilities within the Properties. The BMC shall have a nonexclusive easement for maintenance purposes over the BMC Easement Areas; provided, however, that the BMC, acting through the Board, may reasonably restrict access to those portions of the BMC Easement Areas not generally designed for general use by the membership. The BMC Easement Areas are generally depicted on the drawings which are marked Exhibit "D" attached hereto and incorporated herein by this reference. Additional BMC Easement Areas to be added with a subsequent Phase to the Properties pursuant to the Article of this Declaration entitled "ANNEXATION" shall be generally depicted as an Exhibit to the Supplementary Declaration for such Phase.

Section 8. BMC Maintenance Areas. The terms "BMC Maintenance Area" or "BMC Maintenance Areas" shall collectively mean and refer to the Common Area and the BMC Easement Areas, as shown and depicted on Exhibit "D" attached hereto. The BMC shall only be required to maintain such portions of the BMC Maintenance Areas as have been included in the Budget for the Properties 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 Properties, provided, however, the Budget shall always include funding adequate for the BMC to maintain the Conservation Properties.

Section 9. Brightwater Maintenance Corporation. The term "Brightwater Maintenance Corporation" or "BMC" shall mean and refer to Brightwater Maintenance Corporation, a nonprofit mutual benefit corporation, its successors and assigns. The BMC is an "Association" as such term is defined in Section 1351 of the California Civil Code.

Section 10. BMC Rules. The term "BMC Rules" shall mean and refer to the rules adopted, amended and repealed from time to time by the Board pursuant to the Section of the Bylaws entitled "Discipline of Members" of the Article entitled "POWER AND DUTIES OF ASSOCIATION AND BOARD."

Section 11. Budget. The term "Budget" shall mean a pro forma operating budget approved by the Board pursuant to the requirements of Section 1365 of the California Civil Code.

Section 12. Buffer Areas. The term "Buffer Area" or "Buffer Areas" shall mean and refer to those general native habitat areas that will function as a buffer between the Burrowing Owl ESHA,

the Eucalyptus ESHA, the Southern Tarplant and Seasonal Pond Environmental Protection Area and the other development of the residential community, within which certain plantings and activities shall be restricted in accordance with the Habitat Management Plan. All Buffer Areas are located within the Conservation Property.

Section 13. Burrowing Owl Environmentally Sensitive Habitat Area. The term "Burrowing Owl Environmentally Sensitive Habitat Area" or "Burrowing Owl ESHA" shall mean and refer to those portions of the Conservation Properties as shown on Exhibit "E" hereto that have been designated by a Public Agency as an area which must be maintained as habitat pursuant to the Habitat Management Plan.

Section 14. Bylaws. The term "Bylaws" shall mean and refer to the Bylaws of the BMC.

Section 15. City. The term "City" shall mean and refer to the City of Huntington Beach, California, a municipal corporation of the State of California.

Section 16. California Coastal Commission. The term "California Coastal Commission," "Coastal Commission" or "CCC" shall mean and refer to the commission established pursuant to the California Coastal Act of 1976.

Section 17. Coastal Development Permit. The term "Coastal Development Permit" or "CDP" shall mean and refer to the Coastal Development Permit No. 5-05-020 issued in accordance with the provisions of the California Coastal Act of 1976 for the purpose of preserving in perpetuity habitat and ecosystems essential for the preservation of native species of flora and fauna and authorizing certain development as that term is defined in Section 30106 of the Coastal Act on the Properties in accordance with Special Conditions of the Permit. The Coastal Development Permit is a precise plan of development from which any deviations may require amendment to the CDP. Special Conditions governing the CDP are on file with the BMC's management company.

Section 18. Common Area. The term "Common Area" shall mean and refer to all the real property and improvements which are owned by the BMC for the common use and enjoyment of all of the Owners. The Common Area to be so owned by the BMC at the time of the conveyance of the first Lot within the Properties shall include that certain real property located in the County of Orange, State of California, described more particularly as Lots ___ through ___ and Lots ___ , D, F and 273 of Tract No. 15460 as shown on a map recorded in Book ___, Pages ___ through ___ of Miscellaneous Maps, records of Orange County, California (which includes the Southern Tarplant and Seasonal Pond Environmental Protection Area).

Section 19. Community. The term "Community" shall mean and refer to the Properties, the Improvements thereon, and the BMC Easement Area, as described in this Declaration or which are annexed to this Declaration pursuant to the provisions of the Article of this Declaration entitled "ANNEXATION" and described in the Supplementary Declaration. The term Community shall also include the term Properties where the context in which it is used has the same meaning.

Section 20. Community Walls. The term "Community Walls" shall mean and refer to those certain walls or fences abutting the Properties (a) that are constructed on a tract boundary; (b) that separate a Lot from BMC Maintenance Area or public property; (c) that are constructed entirely within BMC Maintenance Area, or (d) that are designated as a Community Wall by Declarant in this Declaration. Party Walls are not Community Walls. Community Walls are depicted on Exhibit "D" attached hereto and incorporated herein by this reference. Community Walls shall also include the associated footings whether or not depicted on Exhibit "D". The BMC shall have a nonexclusive easement for maintenance of the Community Walls. Additional Community Walls may be added with a subsequent Phase to the Properties pursuant to the Article of this Declaration entitled "ANNEXATION". The BMC shall only be required to maintain such portions of the Community Walls as defined herein as have been included in

the Budget for the BMC as reviewed by the California Department of Real Estate in connection with the issuance of a Final Subdivision Public Report for a Phase of the Properties.

Section 21. Conservation Property. The terms "Conservation Property" or "Conservation Properties" shall collectively mean and refer to the State Dedicated Property and the Southern Tarplant and Seasonal Pond Environmental Protection Area as such terms are defined herein as shown on Exhibit "E" attached hereto and incorporated herein by this reference.

Section 22. Conservation Property Assessment. The term "Conservation Property Assessment" shall mean that portion of the Regular Assessment levied to pay the common expenses to maintain, manage and insure the BMC's ongoing and long-term maintenance in accordance with the Habitat Management Plan as defined below. As components of the Conservation Property Assessment, the Board shall establish and maintain an "**Conservation Property Operating Fund**" necessary for the ongoing payment of the costs of (a) maintenance, management associated with implementation of the HMP, as defined hereinbelow, and (b) premiums for Conservation Property public liability insurance, and other coverages determined by the Board to be appropriate and reasonably obtainable. As a second component the Board shall also establish an "**Conservation Reserve Fund Account**" for long-term capital improvements, which shall be held in a separate interest-bearing account available for long-term maintenance of the Conservation Properties as provided in the HMP. All of the above Conservation Reserve funds shall be separately accounted for and itemized separately from all other funds set forth in the Budget. The Conservation Property Assessment shall be evaluated annually and adjusted consistent with Consumer Price Index by the Board to confirm its adequacy to comply with the obligations of the State Dedications and the HMP.

Section 23. County. The term "County" shall mean and refer to the County of Orange, State of California. The term County as used herein shall also mean and refer to the City of Huntington Beach with respect to those portions of the Properties which are currently within the County of Orange at such future date annexed to the City of Huntington Beach.

Section 24. County Household Hazardous Materials Collection Program. The term "County Household Hazardous Materials Collection Program " shall mean and refer to that certain program adopted by the Orange County Board of Supervisors, as may be amended from time to time, which shall include, but not be limited to, items which are considered household hazardous materials, procedures for safe disposal and the location of the regional collection centers, which program is on file with the Orange County Public Facilities and Resources Department.

Section 25. County Management Guidelines for Use of Fertilizers and Pesticides. The term "County Management Guidelines for Use of Fertilizers and Pesticides" shall mean and refer to that certain program implemented, and as may be amended from time to time, by the County of Orange and on file with the Orange County Public Facilities and Resources Department for purposes of regulating the use of fertilizers and pesticides within residential areas and which, as conditioned by the County, is made applicable to the Properties.

Section 26. County Water Conservation Resolution. The term "County Water Conservation Resolution" shall mean and refer to that certain water conservation program adopted by the Orange County Board of Supervisors, as may be amended from time to time, on file with the Orange County Public Facilities and Resources Department.

Section 27. Declarant. The term the "Declarant" shall mean and refer to HEARTHSIDE HOMES, INC., a California corporation, its successors and assigns, including the successors and assigns of HEARTHSIDE HOMES, INC., a California corporation with respect to any property which may be annexed to this Declaration pursuant to the Article of this Declaration entitled "ANNEXATION".

Section 28. Declaration. The term "covenants" and/or "Declaration" shall mean and refer collectively to the covenants, conditions, restrictions, reservations, easements, liens and charges imposed by or expressed in this Declaration.

Section 29. Dedicated Maintenance Area. The term "Dedicated Maintenance Area" shall mean and refer to those portions of the Common Area or BMC Easement Area which have been conditioned by the County or other Public Agency or by separate agreement for the BMC to maintain. Dedicated Maintenance Area may include State Dedicated Property, landscaping, hardscape, streetscapes, drainage facilities, debris basins all as located on adjacent properties or on portions of the Properties dedicated to the Public Agencies which dedicated property may or may not be accepted for maintenance in the future. All portions of the Dedicated Maintenance Area shall be maintained and used by the BMC in the same manner as Common Area (provided, however, that the BMC, acting through the Board, may reasonably restrict access to those portions of the Dedicated Maintenance Areas not generally designed for general use by the membership) until the Public Agency having proper jurisdiction no longer requires the BMC to maintain all or any portion of the Dedicated Maintenance Area or at such time an agreement with the property owner(s) for maintenance is revoked or amended by the parties to the agreement as to such portion of the Dedicated Maintenance Area. Notwithstanding the foregoing, any walls or fencing between the Properties and abutting any Dedicated Maintenance Area shall remain BMC Easement Area subsequent to acceptance by a Public Agency of any such Dedicated Maintenance Area.

Section 30. Department of Real Estate. The term "Department of Real Estate" or "DRE" shall mean and refer to the California Department of Real Estate and any successor department or agency.

Section 31. Design Review Committee. The term "Design Review Committee" shall mean and refer to the Committee created pursuant to the article of this Declaration entitled "DESIGN REVIEW CONTROL".

Section 32. Design Review Standards. The term "Design Review Standards" shall mean and refer to the guidelines created by the Design Review Committee to govern architectural and landscape design standards, criteria, procedures, rules and instructions adopted or to be adopted by the Design Review Committee, as such Design Review Standards may be amended or supplemented from time to time pursuant to the Article of this Declaration entitled "DESIGN REVIEW CONTROL." Design Review Standards also include criteria established by the Public Agencies, including, but not limited to the Approved Plant List for Non-Habitat/Non-Buffer Areas, irrigation standards, a color palette and rear yard wall design and height standards for certain Residences in accordance with the Coastal Development Permit, for the purpose, among other things, of uniformly enhancing and protecting the attractiveness and desirability of the Properties. The Design Review Standards shall comply with the provisions of Civil Code Section 1378 for reviewing, approving and disapproving proposed changes to the Properties. The Design Review Standards must also be consistent with the standards of the Coastal Development Permit.

Section 33. Eucalyptus Environmentally Sensitive Habitat Area. The term "Eucalyptus Environmentally Sensitive Habitat Area" or "Eucalyptus ESHA" shall mean and refer to those portions of the Conservation Properties as shown on Exhibit "E" hereto that have been designated by a Public Agency as an area which must be maintained as habitat pursuant to the Habitat Management Plan.

Section 34. Federal Agencies. The term "Federal Agencies" shall mean and refer to one or more of the following agencies to the extent that any such agency is a Mortgagee, Owner, insurer or guarantor of a Mortgage within the Properties, and the following letter designations for such agencies shall mean and refer to, respectively, the agency specified within the parentheses following such letter designation: FHLMC (Federal Home Loan Mortgage Corporation), FNMA (Federal National Mortgage Association), and GNMA (Government National Mortgage Association).

Section 35. Final Subdivision Public Report. The term "Final Subdivision Public Report" or "Public Report" shall mean and refer to the report issued by the California Department of Real Estate pursuant to Section 11018.2 of the California Business and Professions Code.

Section 36. Fire Authority. The term "Fire Authority" shall mean and refer to the Orange County Fire Authority, or any other successor agency having jurisdiction over the Community.

Section 37. Fire Lanes. The term "Fire Lanes" shall mean and refer to those portions of the streets designated for the use of emergency access and public service vehicles for ingress and egress in which no parking shall be allowed. Fire Lanes within Phase 1 of the Properties are depicted on Exhibit "F" attached hereto and incorporated herein by this reference.

Section 38. Fuel Modification Plan. The term "Fuel Modification Plan" or "FMZ Plan" shall mean and refer to the required treatments and actions as are set forth in that certain fuel modification plan dated December 12, 2005, which has been submitted to and reviewed by the Fire Authority, the Department of Fish and Game and the California Coastal Commission in conjunction with approval of the subdivision map and development of the Properties. The provisions of the Fuel Modification Plan include but are not be limited to maintaining a minimum setback from the property line which is intended to serve as the defensible space for fire suppression forces and to protect structures from radiant and convective heat. The Fuel Modification Plan is on file with the Fire Authority and the management company for the BMC. No revision to the FMZ Plan shall be made without review and approval by Fire Authority and the CCC.

Section 39. Fuel Modification Zones. The term "Fuel Modification Zones" or "FMZs" shall mean and refer to those portions of the Properties and the Improvements thereon consisting of various set-backs within Common Areas or residential Lots within which Owners or BMC, as to their respective interests, shall be responsible for maintenance of varying degrees of fuel mitigation measures as determined by the Fire Authority and described in the Fuel Modification Plan. The Fuel Modification Zones are generally depicted on Exhibit "G" attached hereto and incorporated herein by this reference. Said Fuel Modification Zones shall be maintained in accordance with all the requirements of the Fuel Modification Plan.

Section 40. Governing Documents. The term "Governing Documents" shall mean and refer to the Articles of Incorporation and Bylaws for the BMC, this Declaration, any Supplementary Declarations, the Design Review Standards and BMC Rules, if any, and any amendments to the foregoing.

Section 41. Habitat Management Plan. The term "Habitat Management Plan" or "HMP" shall mean and refer that certain “Final Habitat Management Plan,” dated December, 2005 and any amendments thereto, on file with the BMC's management company which describes the mitigation measures to offset impacts of the development of the Community in accordance with Special Condition 10 B. 9. of the Coastal Development Permit. The HMP creates a comprehensive plan to preserve and enhance ecological resources within the Conservation Properties. The HMP also provides guidelines to ensure long-term management and protection of these natural resources.

Section 42. Improvement. The term "Improvement" shall mean and refer to any structure or appurtenance thereto of every type and kind, including but not limited to buildings, walkways, sprinkler pipes, garages, room additions, patio covers, swimming pools, spas, recreational facilities, roads, driveways, parking areas, fences, screens, screening walls, retaining walls, stairs, decks, landscaping, antennas, hedges, windbreaks, plantings, planted trees and shrubs, poles, signs, exterior air conditioning and water softening fixtures or equipment (if permissible under applicable laws), and the installation, alteration (which shall include change of material, exterior appearance, color or texture), removal or replacement thereof.

Section 43. Invitee. The term “Invitee” shall mean any person whose presence within the Community is approved by or is at the request of the BMC or a particular Owner, including, but not

limited to, lessees, tenants, and the family members, guests, employees, licensees or invitees of Owners, tenants or lessees.

Section 44. Lot. The term "Lot" 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), which may be adjusted from time to time by a recorded lot line adjustment.

Section 45. Maintenance Manual. The term "Maintenance Manual" shall mean and refer to each of the manuals which may be prepared by the Declarant or its agents and provided to the BMC and to each initial Owner, specifying obligations for maintenance of the Common Area and BMC Easement Areas by the BMC and the Lots by the Owners, including but not limited to preventative maintenance information, manufactured products' maintenance and limited warranty information, fit and finish warranty or other contractual warranties, as may be updated and amended from time to time.

Section 46. Member. The term "Member" shall mean and refer to those persons entitled to membership in the BMC as provided in this Declaration and in the BMC Articles of Incorporation and Bylaws.

Section 47. Mortgage or Mortgagee. The terms "Mortgage" and "Mortgagee" shall mean and refer to respectively any duly recorded and valid mortgage or deed of trust encumbering a Lot and the holder of the mortgagee's or beneficiary's interest under any such Mortgage. The term "First Mortgage" and "First Mortgagee" shall mean and refer respectively to a Mortgage which has priority over all other Mortgages encumbering a specific Lot and the holder of any such First Mortgage.

Section 48. Owner. The term "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, who are alone or collectively the record owner of a fee simple title to a Lot, including Declarant, excluding those having such interest merely as security for the performance of an obligation. If a Lot is leased by Declarant for a term in excess of ten (10) years and the lease or a memorandum thereof is recorded, the lessee or transferee of a leasehold interest and not the Declarant shall be deemed the Owner. If fee title to a Lot is owned other than by Declarant, the Owner of the fee title and not the lessee of such Lot shall be deemed the Owner regardless of the term of the Lease.

Section 49. Party Wall. The term "Party Wall" shall mean any fence, wall or wall system originally constructed by Declarant which separates two (2) or more Residences and which is placed on or immediately adjacent to the common boundary of two (2) or more Lots.

Section 50. Phase. The term "Phase," "Phase of the Development" or "Phase of the Properties" shall mean and refer to the real property identified by this Declaration, being Phase 1 of the Properties, and 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 "ANNEXATION."

Section 51. Properties. The term "Properties" shall mean and refer to that certain real property in the County of Orange, State of California, described in Recital A of this Declaration. 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 "ANNEXATION."

Section 52. Public Agencies. The term "Public Agency" or "Public Agencies" shall mean and refer individually and/or collectively to any of the various federal, state and local governmental agencies having jurisdiction over all or any portion of the Properties (including, but not limited to, the Department of the Army [Corps of Engineers], the United States Fish and Wildlife Service, the State of California, the California Coastal Commission, the California Department of Fish and Game, the California Department of Real Estate, the Regional Water Quality Control Board, the County, the Fire Authority and/or the City).

Section 53. Regular Assessment. The term "Regular Assessment" shall mean and refer to the amount which is to be paid by each Owner to the BMC for common expenses as provided by the terms of this Declaration.

Section 54. Reimbursement Assessment. The term "Reimbursement Assessment" shall mean a charge against each Owner and their Lot for the purpose of reimbursing the BMC for any costs incurred by the BMC on behalf of an individual Owner. A Reimbursement Assessment may also be levied by the BMC for purposes of collecting any monetary penalties which may be imposed by the BMC against an Owner as a disciplinary measure for failure of an Owner to comply with provisions of this Declaration, the determinations of the Board or the Design Review Committee, or any rule or regulation adopted by the BMC.

Section 55. Residence. The term "Residence" shall mean and refer to a dwelling on a Lot intended for use and occupancy by a single family. As used in this Section, "family" means (a) one or more natural persons related to each other by blood, marriage or adoption, or (b) a group of natural persons not all so related, but who maintain a common household in a Residence on a Lot.

Section 56. Residential FMZ. The term "Residential FMZ" shall mean and refer to that portion of the Fuel Modification Zone designated as "Zone A" consisting of portions of a residential Lots 17 through 35, 83 through 87, 114 through 122, and 158 through 183 within which certain requirements are imposed pursuant to the FMZ Plan. Each Lot Owner is responsible for maintaining their Lot to the required Fuel Modification Zone standards as set forth in the FMZ Plan.

Section 57. Shared Driveway. The term "Shared Driveway" shall mean and refer to those portions of the Lots which are designated by this Declaration or by a Supplementary Declaration for the exclusive use for driveway purposes by two (2) or more but fewer than all the Owners of the Lots, and for which an easement is or will be appurtenant to such Lot(s). The Shared Driveways are identified for Phase 1 of the Properties on Exhibit "H" to this Declaration.

Section 58. Sight Distance Corridor. The term "Sight Distance Corridor" shall mean and refer to those portions of Properties as generally depicted on the recorded map for the Properties. Sight Distance Corridors are established pursuant to criteria as provided by the California Department of Transportation Highway Design Manual.

Section 59. Southern Tarplant and Seasonal Pond Environmental Protection Area. The term "Southern Tarplant and Seasonal Pond Environmental Protection Area" shall mean and refer to those portions of Lots D, F and 273 of Tract No. 15460 and as further shown on Exhibit "E" attached hereto and incorporated herein by this reference.

Section 60. Special Assessment. The term "Special Assessment" shall mean a charge against each Owner and their Lot, representing a portion of the cost to the BMC for installation, construction, reconstruction, repair or replacement of any capital improvements on any of the BMC Maintenance Area which the BMC may from time to time authorize pursuant to the provisions of this Declaration.

Section 61. State Dedication. The terms "State Dedication" or "State Dedications" shall collectively mean and refer to the grants, easements and rights established in favor of the State of California pursuant to those documents recorded December 5, 2005 as Instrument Nos. 2005000970072 and 2005000970073, both Official Records of Orange County, California, and any amendments or supplements thereto.

Section 62. State Dedicated Property. The term "State Dedicated Property" shall mean and refer to the real property which is subject to the State Dedications. The State Dedicated Property consists of that portion of the Conservation Property lying to the South of the Community.

Section 63. Supplementary Declaration. The term "Supplementary Declaration" shall mean and refer to a document annexing additional property and extending the plan of this Declaration to such additional property.

Section 64. Title 7 Declaration. The term "Title 7 Declaration" shall mean the Declaration of Covenants for Title 7 and Dispute Resolution recorded in the Official Records of the County, including any subsequently recorded amendments thereto. The term "Title 7 Declaration" shall also mean any separately recorded Title 7 Declaration which applies to a subsequent phase of the Community, including any subsequently recorded amendments thereto.

Section 65. Trail System. The term "Trail System" shall mean and refer to certain multipurpose trails dedicated for public use.

Section 66. Water Quality Management Plan. The term "Water Quality Management Plan" or "WQMP" shall mean and refer to the plan and practices adopted for the Properties as approved by the County and the CCC in order to promote water quality and conservation in connection with the County Water Conservation Resolution, on file with the Public Facilities and Resources Department, the CCC and the BMC's management company.

Section 67. Water Quality Control Facilities. The term "Water Quality Control Facilities" shall mean and refer collectively to the structural design and appurtenances associated water quality control incorporated into the Properties pursuant to the Water Quality Management Plan.

Section 68. Wildlife Protection Plan. The term "Wildlife Protection Plan" shall mean and refer to the plan to be implemented for the Community as approved by the County and Coastal Commission, as may be amended from time to time without need for further amendment to this Declaration, containing criteria for the control of the presence of invasive and/or feral pets in wildlife areas. Information on the detrimental effects of domestic cats and dogs on common and sensitive species of flora and fauna, as well as hazards to domestic animals accessing these areas is contained in the Wildlife Protection Plan attached hereto and incorporated herein as Exhibit "I".

ARTICLE II

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 their 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.

ARTICLE 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. Except as provided elsewhere in this Declaration, each Lot shall be used as a single residence for a single family and for no other purpose. No Lot shall be further subdivided to create an additional parcel of land.

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 Residence as a residential home.

Section 3. Address Identification Numbers. Permanent street numbers, a minimum of four inches (4") in height, shall be provided on all Residences, visible from either direction of approach.

Section 4. Animals and Wildlife Protection.

(a) Domestic Animals. No insects, reptiles, poultry or animals of any kind shall be raised, bred or kept on any Lot or the BMC Maintenance Area, except a reasonable number of 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 BMC Rules. As used in this Declaration, "unreasonable quantities" shall ordinarily mean more than two (2) pets per household, provided, however, that the BMC (or the Design Review Committee or such other person or entity as the BMC may from time to time designate) may determine that a reasonable number in any instance may be more or less. Small household pets such as fish and caged birds may be kept in reasonable numbers so long as there is no external evidences of their presence in the Community. The BMC, 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 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 their family, their tenants or their 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 BMC Maintenance Area or any portion of another's Lot.

(b) Wildlife Protection Plan Implementation. The Community includes, and borders, natural open space areas which provide habitat for various forms of wildlife (including, but not limited to, coyotes, snakes, raccoons, possums, skunks, rabbits, squirrels and mice) and poisonous vegetation (e.g., poison ivy, poison oak, etc.). Animal wildlife may venture from the open space areas into the Community, including your Lot. Unless otherwise designated as the Trail System, the open space areas are not intended for recreational purposes, and in any case, may be hazardous. In addition, certain types of vegetation and wildlife within the open space adjacent wetland areas are protected species pursuant to federal and state environmental laws and pursuant to agreements or other arrangements with various Public Agencies. Owners therefore must prohibit their animals from

threatening, harassing or in any way harming protected habitat and species within the Conservation Properties by abiding by the Wildlife Protection Plan. It shall be the obligation of each Owner to provide their Invitees and to their successor Owner a copy of the Wildlife Protection Plan. Owners and other residents within the Properties shall report sightings of feral cats and dogs to the BMC. Owners, Invitees or other residents within the Properties who allow their pets to roam beyond yards will be subject to penalties.

(c) Assumption of Risks. By acceptance of a deed each Owner shall assume all risks pertaining to such wildlife and releases Declarant, the BMC and their respective shareholders, directors, officers, employees, consultants and agents from any and all claims, damages, costs, expenses, losses and other liability (including actual attorney's fees) for death or injury to any person and/or damage to any property arising from or otherwise relating to such wildlife, and from any activity undertaken within the natural open space areas.

Section 5. Conservation Property

(a) Use of Conservation Property. No use or development shall occur within the Conservation Property which is inconsistent with those provided in the HMP or State Dedications.

(b) Preservation. Owners of Lots within the Properties shall obey all BMC Rules and ordinances regarding the preservation of the Conservation Properties, including but not limited to, the HMP.

(c) Conservation Property Signs. Any signs identifying the presence of Conservation Properties, interpretive displays. those posting local ordinances requiring the confinement of pets or other signage designated by the HMP shall be installed and maintained by the BMC in locations specified by the HMP.

Section 6. Common Area and BMC Easement Areas Facilities Use.

(a) Nothing shall be altered or constructed in or removed from the Common Area or BMC Easement Areas except upon the written consent of the Board, subject to the provisions of this Declaration limiting construction on portions of the Common Area or BMC Easement Areas. All persons residing within the Community may enjoy the use of all facilities in the Common Area or BMC Easement Areas as long as they are in compliance with the terms of the Governing Documents.

(b) Those BMC Maintenance Areas designated as "Open Space" on a recorded Tract Map of the Properties shall remain as permanent open space with no structures, development or encroachment allowed within the designated open space.

(c) Those portions of the BMC Maintenance Area developed as streets, parks and the Trail System shall remain open for use to the general public. Additionally, no changes to the approved final development plans shall occur within these areas without an amendment to the CDP unless the Executive Director of the Coastal Commission determines that no amendment is required.

Section 7. Antennas and Satellite Dishes. No radio station or short-wave operators of any kind shall operate from any Lot or Residence unless approved in writing by the Design Review Committee, or by the Board of Directors, and the same be contained within a building or underground conduits. No exterior radio antenna, C.B. antenna, television antenna, microwave or satellite dish, aerial or other antenna of any type ("**Antenna[s]**") shall be erected or maintained in the Properties without the prior written approval of the Design Review Committee or the Board, except such Antennas which are not visible from any street or BMC Maintenance Area, and that have a diameter or diagonal measurement allowed by California and federal laws are acceptable without the prior written approval of the Design Review Committee or the Board. Notwithstanding any provision hereof, this Section shall be interpreted to comply with state and federal laws applicable to Antennas in effect at the time of enforcement of this

Section. In that regard, this Section shall not be interpreted or enforced in a manner which would (i) unreasonably delay or prevent installation, maintenance or use of such Antenna, (ii) unreasonably increase the cost of installation, maintenance or use, or (iii) preclude reception of an acceptable quality signal.

Section 8. Compliance with Coastal Development Permit. Certain development on the Properties has been authorized by the California Coastal Commission subject to terms and conditions set forth in Coastal Development Permit No. 5-05-020 (CDP) that restrict the use and enjoyment of the Property. The CDP is kept on file at the BMC management company. Any development, as that term is defined in Section 30106 the Coastal Act and as set forth below, that a homeowner wishes to undertake may require an amendment to the CDP or a new coastal development permit, and prior to commencing any development, as that term is defined in Section 30106 of the Coastal Act, each homeowner should check with the California Coastal Commission to determine if a new coastal development permit or an amendment to CDP 5-05-020 will be required.

> Public Resources Code § 30106 of the California Coastal Act defines “development” as follows: "Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or therma waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511).
>
> As used in this section, "structure" includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line.”

Section 9. 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 Design Review Committee. For the purposes hereof, "established" drainage is defined as the drainage which exists at the time that such Lot is conveyed to a Owner from Declarant, or that which is shown on any plans approved by the Design Review Committee, which may include, but shall not be limited to, drainage from the BMC Maintenance Area over any Lot or Lots in the Properties, drainage from the BMC Maintenance Area or natural drainage into the BMC Maintenance Area, drainage from adjoining property through the drainage facilities within the Properties, or drainage from one Lot through the drainage devices of another Lot until reaching the drainage devices located within the BMC Maintenance Area or public facilities. Declarant hereby reserves unto itself, with the right to grant and transfer same, nonexclusive drainage easements for the benefit of the Owners and the BMC along, over, under, through and across the established drainage pattern and the drainage facilities for the acceptance and transmission of drainage waters. Each Owner shall maintain all drainage facilities (which include, but shall not be limited to, the finished grade of the yard, yard drains and associated piping but excluding drainage devices designated to be maintained by the BMC) located within such Owner's Lot free and clear of debris which would interfere with the established drainage pattern within the Properties. Each Owner shall be required to provide such maintenance in such manner so as to protect the integrity of their Lot, all adjoining Lots and the Improvements thereon and the BMC Maintenance Area. The BMC and its representatives shall have the right to enter any Lot within the Properties to the extent such entry is necessary in the event an Owner has not maintained such drainage devices as set forth hereinabove, or for effectuation of emergency repairs or for the removal of any obstruction of drainage waters for the benefit of the Lots, the BMC Maintenance Area or for any of the Owners within the Properties. The Owner of a Lot shall also have the right of drainage on, over, across

and upon the BMC Maintenance Area for water draining from the Lot and the Residence within the Lot. No Owner shall do anything which would adversely affect the stability of the soil within the Properties.

Section 10. 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 feet (500') 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 11. Fire Sprinkler System. Each dwelling unit and any additions or modifications thereto shall conform to the requirements of the Fire Authority, which may include, but shall not be limited to protection by an automatic fire sprinkler system in a manner meeting the approval of the Fire Authority. No Owner shall remove, disable, alter or otherwise modify any fire sprinkler system installed in such Owner's Residence or appurtenant structures which would alter its functionability. Care should be taken not to alter or damage the sprinkler system which could cause the system to malfunction.

Section 12. Insurance Rates. Nothing shall be done or kept in the Properties which will increase the rate of insurance on any property insured by the BMC 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 BMC or which would be in violation of any law.

Section 13. Leases. Any agreement for the leasing or rental of a Lot (hereinafter in this Section referred to as a "lease") shall provide that the terms of such lease shall be subject in all respects to the provisions of the Governing Documents and any applicable agreement between the BMC and any of the Federal Agencies. Said lease shall further provide that any failure by the lessee thereunder to comply with the terms of the foregoing documents shall be a default under the lease. All leases shall be in writing. The Owner of said leased or rented Lot has the duty and obligation to furnish the Board with the name or names of the individuals currently leasing or renting said Lot and to maintain with the BMC a record of the current mailing address of said Owner. Any Owner who shall lease their Lot shall be responsible for assuring compliance by such Owner's lessee with the Governing Documents. No Lot shall be leased for any period less than thirty (30) days or any rental whatsoever if the occupants of the Lot are provided customary hotel services such as room service for food and beverage, maid service, furnishing laundry and linen and bellboy service. Other than the foregoing, there shall be no restriction on the right of any Owner to lease the Residence on their Lot.

Section 14. Lighting Plan and Approval Requirements. No light shall be installed which directs light into any adjacent property. All direct rays shall be confined to the respective Lot or Common Area upon which the lights are installed so that adjacent Lots, Common Area, Conservation Properties or other properties are protected from substantial light spillage, intrusion and glare. All lighting within the Properties shall be directed and shielded so that light is directed away from Conservation Property. No skyward casting lighting shall be allowed within the Community. To reduce the amount of stray lighting affecting the Conservation Property the lowest intensity lighting shall be utilized as is appropriate for the intended use. No Owner shall install any exterior lighting without prior written approval of the Design Review Committee. Plans submitted to the Design Review Committee shall indicate at a minimum (i) the location, type, intensity and height of luminaries, including both building and ground mounted fixtures; and (ii) a description of the luminaries, including lamps, poles or other supports and shielding devices, and which may be provided from catalogue illustrations and performance data from manufacturers. There shall be no change to the lighting design as installed by Declarant or as approved by the Design Review Committee which would result in increased light spillage onto the Conservation Property. The CCC has approved the Brightwater Maintenance Area lighting plan (which includes street lighting) and the provisions of this Section. No changes to the approved lighting plan or to this Section shall occur without an amendment to the CDP unless the Executive Director of the CCC determines that no amendment is required. Additionally the BMC shall conform to additional and more restrictive requirements, if any, of other Public Agencies having jurisdiction governing lighting criteria.

Section 15. 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 BMC Maintenance 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 Design Review Committee. The Board of Directors shall have the right to determine in accordance with the Bylaws if any noise, odor, interference or activity producing such noise, odor or interference constitutes a nuisance.

Section 16. Outside Installations.

(a) No fence or wall shall be erected, altered or maintained on any Lot in the Properties, except with the prior written approval of the Design Review Committee. Any alterations or modifications of the Party Walls not addressed herein shall be subject to the prior written approval of the Design Review Committee.

(b) No other appliances or installation on the exterior of the roofs of structures including, without limitation, roof-top turbine ventilators and air-conditioners, shall be permitted unless they are installed in such a manner that they are not visible and are sound buffered from streets, BMC Maintenance Area, or neighboring Lots, except that attic ventilators and solar panels which are architecturally treated in conformity with guidelines contained in the Design Review Standards and which have been approved by the Design Review Committee pursuant to the provisions of the Article entitled "DESIGN REVIEW CONTROL" of this Declaration, and as further regulated by the local governmental authority, shall be permitted.

Section 17. Parking and Vehicular Restrictions.

(a) No Owner shall park, store or keep any vehicle, except wholly within the parking area designated therefor, and any inoperable vehicle shall be stored only in enclosed garages. No Owner shall park, store or keep on any property or street (public or private) 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, deemed to be a nuisance by the Board, upon any unenclosed parking space, so as to be visible from anywhere in the Properties. The above excludes camper trucks and similar vehicles when used for everyday-type transportation, 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 BMC Maintenance 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. No Owner shall store their vehicle in the guest parking spaces. Each Owner shall maintain open space in the garage as the primary parking space for his or her vehicles. It is the intent of this Section to require Owner, to the extent such Owners have automobiles in the Properties, to park such automobiles in the garage when in the Properties, and in the appropriate length driveway as a secondary location.

(b) Each residence shall be provided with an automatic garage door opener with sectional roll-up type garage doors. Each Owner shall maintain their garage door and automatic garage door opener in workable condition.

(c) At all times there shall be a minimum of two (2) garage parking spaces per Lot readily available for vehicle storage.

(d) Parking within 15 feet of any fire hydrant within the Properties shall at all times be prohibited.

(e) Blue reflective pavement markers indicating location of the fire hydrants shall be maintained by the BMC in accordance with the Fire Authority standards and as approved by the Fire Chief.

(f) No Owner or resident shall park or store his or her vehicle in the guest parking spaces.

(g) No sign or advertising shall be affixed to a vehicle visible from other Lots within the Properties other than a magnetic sign which shall be removed if the vehicle is to be parked in view of other Units within the Properties.

(h) Notwithstanding the foregoing, parking along the Common Area streets in areas designated as Fire Lanes is prohibited at all times.

(i) In accordance with Section 22658.2 of the California Vehicle Code, the BMC, through its officers, committees and agents, is empowered to establish and enforce parking restrictions within the Common Area streets, as well as to enforce these parking limitations by all means lawful for such enforcement on county/city streets, including the removal of any violating vehicles by those so empowered. Provided, however, if the Fire Authority finds that the BMC does not adequately enforce the parking restrictions set forth in this Declaration and those other parking restrictions that are otherwise applicable to the Properties, the Fire Authority may require that the BMC bring the Properties into compliance with applicable requirements for public streets within the State of California, but only to the extent such compliance may reasonably be accomplished given the original design parameters of the Properties (including, without limitation, street widths). Additionally, Fire Authority approval shall be required for any modifications to the Common Area streets, such as speed bumps, or revisions to the parking plan within the Properties.

(j) Each Owner shall be responsible for assuring that their Invitees abide by the parking restrictions set forth in this Declaration, and any additional regulations established by the BMC's Rules and regulations in accordance with the Section entitled "BMC Rules" of the Article of this Declaration "DUTIES AND POWERS OF THE BMC."

(k) In accordance with the CDP, all publicly and privately maintained streets, roads and public parking areas within the Properties shall be for public street purposes including, but not limited to, pedestrian, bicycle and vehicular access. All streets, roads and public parking areas shall be open for use by the general public 24 hours per day, with the exception of standard limited parking restrictions for street sweeping/maintenance purposes. Long term or permanent physical obstruction of streets, roads and public parking areas shall be prohibited.

(l) The appropriate local government authority shall be allowed to impose and enforce all provisions of the California Vehicle Code applicable to any private streets contained within the Properties.

Section 18. Pollutant Control.

(a) NPDES Requirements. The Properties are subject to all Federal, State and local requirements of the National Pollutant Discharge Elimination System adopted pursuant to the Federal Clean Water Act. Pursuant to a NPDES General Permit adopted by the State Water Resources Control Board and the County NPDES Storm Water Permit Program, Drainage Area Management Plan ("DAMP"), a Water Quality Management Plan has been adopted for the Community which identifies certain Best Management Practices to reduce the discharge of pollutants to storm water facilities, before, during and after construction on the Properties is completed.

(b) Water Quality Management Plan. All development within the Properties shall be carried out in accordance with the Water Quality Management Plan.

(c) BMP Guidelines. The BMC and the Owners shall comply with all NPDES requirements and all applicable BMPs that apply to the Community.

(d) Pesticides and Fertilizers. Large-scale use of herbicides, pesticides or fertilizers during landscape maintenance activities and installation of certain planting materials are prohibited unless applied by applicators licensed by the State of California.

(e) Hazardous or Toxic Waste. Nothing other than natural rainwater may be discharged into the storm drains and storm drainage system located on private or public property. The National Pollutant Discharge Elimination System and Section 5650 of the California Fish and Game Code prohibit, among other things, discharging anything other than natural rainwater into storm drainage systems. Toxic chemicals or hydrocarbon compounds such as gasoline, motor oil, antifreeze, solvents, paints, paint thinners, wood preservative and other such fluids shall not be discharged into any street, public or private, or into storm drains or storm water conveyance systems. Use and disposal of pesticides, fungicides, herbicides, insecticides, fertilizers and other such chemical treatments shall meet Federal, State and County requirements as prescribed on their respective containers. All Owners within the Properties are required to comply with such restrictions.

Section 19. Rodenticides. The use of rodenticides is prohibited within the Community to prevent inadvertent poisoning of sensitive and beneficial species within the Conservation Properties.

Section 20. Post Tension Slabs. Due to the soil conditions the concrete slabs for the Lots or Common Area structures in the Properties may be reinforced with a grid of steel cables which were installed in the concrete and then tightened to create very high tension. This type of slab is commonly known as "Post Tension Slab." Any attempt to alter or pierce the Post Tension Slab foundation (for example, cutting, drilling or installation of subterranean improvements such as new plumbing or a floor safe) is very hazardous and may result in serious damage to the Residence and/or personal injury. By accepting a grant deed to a Lot or BMC Maintenance Area in the Properties, each Owner or the BMC, respectively, specifically covenant and agree that: (1) there shall be no cutting into or otherwise tampering with a Post Tension Slab; (2) they shall not knowingly permit or allow any person to cut into or tamper with a Post Tension Slab so long as such they have an ownership interest in the respective property; (3) disclosures shall be made as to the existence of a Post Tension Slab to any tenant, lessee or subsequent owner; and (4) such Owner or BMC as to their respective interests shall indemnify and hold Declarant and its respective officers, employees, contractors and agents, free and harmless from and against any and all claims, damages, losses, or other liability (including attorney's fees) arising from any breach of this Section.

Section 21. Reclaimed Water. The BMC Maintenance Area may utilize reclaimed water (treated wastewater) for irrigation. Reclaimed water is not potable and therefore not suitable from human consumption and prolonged skin contact (such as child's play). The California Department of Health Services has determined that inadvertent consumption of reclaimed water by domestic pets and other animals will not cause harm and further has not resulted in any significant adverse health

consequences, however, it is recommended contact and consumption be reasonably avoided. It should be noted that standards for reclaimed water and its suitability for irrigation purposes are determined by applicable governmental agencies, which standards may vary from time to time. As with any water spray, the repeated spray of reclaimed water may spot, stain, discolor or otherwise adversely impact personal property, fencing, glass, metals and other Improvements over time.

Section 22. Rights of Disabled. Subject to the provisions of the Article of this Declaration entitled "DESIGN REVIEW CONTROL," each Owner shall have the right to modify their Residence, at such Owner's sole expense, in order to facilitate access to their Residence by persons who are blind, visually handicapped, deaf or physically disabled, or to alter conditions which could be hazardous to such persons in accordance with Section 1360 of the California Civil Code or any other applicable law or ordinance. In the event it is also necessary to modify a portion of the BMC Maintenance Area to facilitate access, Owner shall obtain prior written approval from the Design Review Committee, and the Owner shall be responsible for all costs associated with such modification; provided, however, such modification to the BMC Maintenance Area shall be removed and restored to its original design by the Owner, at Owner's sole expense, when the Lot is no longer occupied by persons requiring those modifications.

Section 23. Roofing Materials. Notwithstanding a more stringent standard as may be imposed by the local governing agency, which may be amended from time to time, or by the Fire Authority, from time to time, all roof coverings shall be fire retardant listed Class A.

Section 24. Sight Distance Corridor - Height Restriction. Improvements, including landscaping, fences, walls or other structures shall be installed and maintained within a Sight Distance Corridor in such a manner so as to ensure that sight distance is adequate for minimum design speeds at intersections, curves and driveways in accordance with County ordinances as may be promulgated from time to time.

Section 25. Signs. All signs within the Properties must be in compliance with the requirements of local agency and other Public Agency having jurisdiction over signage within the Properties, including, but not limited to California Civil Code Sections 712, 713 and 1353.6. In the event of a conflict in the provisions of the various Public Agencies the more restrictive shall apply. Under no circumstances, however, shall any Owner be permitted to display signs or banners that endanger public health or safety, or that violate a local, state, or federal statute.

Section 26. Structures: In addition to other building code requirements as may be imposed by Public Agencies, or in accordance with the Design Review Standards, the following shall apply:

(a) Exterior Colors. All structures, walls and building exteriors located on Lots 17 through 35, 83 through 87, 114 through 122, and 158 through 183 and visible from the Trail System, the trails within the Bolsa Chica Wetlands, or the trails or interpretive display area within the Bolsa Chica Ecological Reserve shall be finished in earth tones including muted shades of brown, gray and green, with no white, light or bright colors, except as minor accent features. The color palette for exterior building treatments as approved in conjunction with the Coastal Development Permit shall be maintained throughout the life of the structures and enforced by the Design Review Committee.

(b) Residential Height Restrictions And Habitat Buffer Area Setbacks. The heights of all residential structures shall not exceed 35 feet above finished grade as shown on the final approved grading plan on file with the County. .

(c) Rear Yard Setback. Structures (enclosed) and appurtenant buildings on Lots 17 through 35, 83 through 87, 114 through 122, and 158 through 183 shall be setback a minimum of 20 feet from the rear yard property line and shall be consistent with the above height limits.

(d) **Fences/Walls. Rear yard walls on Lots 17 through 35, 83 through 87, 114 through 122, and 158 through 183 abutting the Burrowing Owl ESHA and the Eucalyptus EHSA Buffer Areas shall not exceed a total height of six feet six inches above finished grade shown on the approved final grading plan on file with the County. The lower two feet of the rear yard wall shall be of concrete or similar material and the upper four feet six inches shall be of Plexiglas or similar material. Future development shall conform to these heights and setbacks unless such heights are changed by an amendment to the Coastal Development Permit, unless the Executive Director determines that no amendment to this permit is required. 1 foot and 5 foot plexi installed**

Section 27. Unreasonable Restrictions on Marketability of Property Void.

(a) Any rule or regulation of the BMC that arbitrarily or unreasonably restricts an Owner's ability to market their Lot is void.

(b) The BMC may not adopt, enforce, or otherwise impose any rule or regulation that does either of the following:

(1) Imposes an Assessment or fee in connection with the marketing of an Owner's Lot in an amount that exceeds the BMC's actual or direct costs. That Assessment or fee shall be deemed to violate the limitation set forth in Civil Code Section 1366.1.

(2) Establishes an exclusive relationship with a real estate broker through which the sale or marketing of Lots in the Properties is required to occur. The limitation set forth in this paragraph does not apply to the sale or marketing of Lots owned by the BMC or to the sale or marketing of Common Area by the BMC.

(c) For purposes of this section, "market" and "marketing" mean listing, advertising, or obtaining or providing access to show the Owner's Lot in the Properties.

(d) This section does not apply to rules or regulations made pursuant to Civil Code Section 712 or 713 regarding real estate signs.

Section 28. Development within Conservation Properties. No development, as defined in Section 30106 of the Coastal Act, shall occur within the Conservation Properties except for those uses expressly allowed in the CDP, Special Condition 1, which includes, habitat restoration and other development necessary to implement the HMP; fuel modification within those areas identified for fuel modification in the approved final Fuel Modification Plan; installation of utilities; construction of Water Quality Control Facilities, grading, the Trail System and associated appurtenances including public access and interpretive signage, and maintenance and repair activities pursuant to and in conjunction with the HMP.

Section 29. Temporary Buildings. Unless approved in writing by the Design Review Committee, and then only in connection with construction activities which have been approved by the Design Review Committee, no outbuilding, tent, shack, shed, trailer, trash dumpster, or other structure or building of a temporary character shall be placed upon any portion of the Properties, either temporarily or permanently, except any such structure that does not extend above the height of the fence or wall enclosing the Lot and which is not visible from any other Lot or BMC Maintenance Area within the Properties. No garage, trailer, camper, motor home or recreational vehicle shall be used as a residence in the Properties, either temporarily or permanently.

Section 30. Standards of Maintenance - Landscaping.

(a) All landscaping in the Community shall be maintained in a manner consistent with the standards of design and quality as set forth in the Design Review Standards and the Fuel Modification Plan and the Coastal Development Permit. All plantings shall be maintained in good growing condition throughout the life of the Community, and whenever necessary, shall be replaced with new plant materials that conform to the requirements of the HMP. Other specific restrictions on landscaping may be established in the BMC Rules or Design Review Standards, which shall include a landscape palette which shall be consistent with the Approved Plant List for Non-Habitat/Non-Buffer Areas

(b) Landscaping within the Conservation Properties shall be maintained pursuant to those provisions set forth in the HMP.

(c) All landscaping (including temporary erosion control and final landscaping) for those portions of the Community lying outside the Conservation Properties shall be of plants listed in the Approved Plant List for Non-Habitat/Non-Buffer Areas as has been incorporated into the Design Review Standards and subject to those provisions of this Declaration as set forth in the Article entitled "DESIGN REVIEW CONTROL". Only those plants on the Approved Plant List for Non-Habitat/Non-Buffer Areas shall be planted and allowed to grow outside the Conservation Property within the Community.

(d) Landscaping within the Residential FMZ is further restricted to those plants and planting criteria as set forth in the FMZ Plan;

(e) It shall be the responsibility of each Lot Owner to maintain the landscaping on their respective Lot in a clean and attractive condition at all times, in accordance with the general standards of maintenance within the Properties as established in the Design Review Standards. Unless otherwise installed by Declarant prior to sale to an Owner, each Owner shall be responsible to landscape, irrigate and maintain the all yard area landscaping on their Lot within six (6) months of such Owner's initial occupancy of the Lot (except for any portion thereof which is to be maintained by the BMC). In the event that any Owner shall fail to install the landscaping on their Lot, or fails to maintain the landscaping in accordance with the Design Review Standards, then, upon a vote of a majority of the Board of Directors, and after not less than thirty (30) days notice to the Owner and an opportunity to be heard before the Board, the BMC shall have the right to enter upon such Owner's Lot to perform the necessary installation or maintenance or removal of plants not on the Approved Plant List for Non-Habitat/Non-Buffer Areas, and the cost of such installation, maintenance or removal shall be a Reimbursement Assessment chargeable to such Lot, and shall be payable to the BMC by the Owner of the Lot.

(f) All irrigation systems within the Community shall be installed with weather-based irrigation technology to include automatic rain gauges or similar device connected to irrigation controllers which are designed to manage irrigation water by interrupting watering schedules in response to site specific rainfall conditions. Rain gauges installed within the Brightwater Maintenance Areas shall be located adjacent to controllers to facilitate monitoring.

(g) Rear yard landscaping on Lots 17 through 35, 83 through 87, 114 through 122, and 158 through 183 shall use only drip irrigation regulated by a timer system..

(h) Notwithstanding the foregoing, all landscaping and irrigation systems within the Community shall be installed and maintained in a condition acceptable to the County and in accordance with the provisions of the Article entitled "DESIGN REVIEW" of this Declaration.

(i) It shall be the obligation of each Owner of a Lot and the BMC as owner of the BMC Maintenance Area to eradicate plants not included on the Approved Plant List for Non-Habitat/Non-Buffer Areas for the Properties;

(j) Driveways, parking areas and sidewalks shall be kept free from debris and items that may be hazardous to vehicular and pedestrian traffic;

(k) Trees and shrubs shall be trimmed so they do not impede pedestrian traffic along the walkways;

(l) Trees shall be pruned so they do not intrude into neighboring properties and shall be maintained so they do not litter or create other nuisances to neighboring Lots, BMC Maintenance Area or other properties; and

(m) All trees shall also be root pruned to eliminate exposed surface roots and damage to sidewalks, driveways and structures or other Improvements;

(n) All private drives, walkways and sidewalks shall be maintained so that they are safe for users. Significant pavement cracks, pavement distress, excessive slab settlement, abrupt vertical variations and debris shall be removed or repaired promptly.

Section 31. Standards of Maintenance for Fuel Modification Zones and Release. No Improvement of combustible material, which includes, but shall not be limited to, structural improvements constructed with flammable materials or flammable vegetation, shall be allowed to be installed or maintained on any FMZ. Vegetation located within the Properties which presents a fire hazard to structures shall be modified or removed in accordance with specifications established by the Fire Authority and as may be further supplemented by the BMC Rules or Design Review Standards. It shall be the primary obligation of the Owner of a Lot or the BMC as the owner of the BMC Maintenance Area affected by Fuel Modification Zones, to maintain such Fuel Modification Zone in accordance with all the requirements as set forth on the FMZ Plan, consistent with the Fuel Modification Plan as approved by the CCC and keeping the property in a good, safe condition, free of waste and disease at all times in compliance with such Fire Authority FMZ standards. The BMC shall enforce through fines and penalties for any violation for trash dumping or disposal of yard trimmings in the designated open space or in the Fuel Modification Zones. By acceptance of a deed to a Lot containing a Residential FMZ each Owner, or the BMC as owner of the BMC Maintenance Area agrees to comply with the Fuel Modification Plan and relinquishes any and all rights within the FMZ to (i) construct, erect or maintain any structure, (ii) construct, erect or maintain fences or walls, (iii) remove live trees and shrubs, (iv) change the grade, or (v) otherwise change the open space character of such FMZ, unless approved by the Coastal Commission as an amendment to the Coastal Development Permit and by the local governing agency having jurisdiction over the Properties pursuant to mitigation measures established by the Fire Authority. So long as the BMC maintains the respective Fuel Modification Zones in accordance with the applicable Fuel Modification Zones Plan each Owner hereby covenants and agrees to release the BMC and its officers, directors, employees, contractors, consultants and agents from any and all claims, damages, costs, expenses, losses and other liability (including actual attorney's fees) for death or injury to any person and/or damage to property arising from or relating to a fire. Each Owner acknowledges that compliance with the Fuel Modification Zones Plan is not a guarantee against damage or destruction caused by fire.

Section 32. Unsightly Items. No rubbish, trash, debris, garbage or other waste material shall be kept or permitted upon any Lot or BMC Maintenance 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). There shall be no exterior fires whatsoever except barbecue fires contained within receptacles therefor and fire pits in the enclosed yards

designed in such a manner that they do not create a fire hazard. Weeds shall be regularly removed from the Lots and shall not be allowed to accumulate. No clothing or household fabrics shall be hung, dried or aired and no lumber, wood piles, 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 33. View Obstruction. Declarant makes no representations or warranty with respect to the presence or absence of any view from any portion of any Lot or BMC Maintenance Area within the Properties. Any existing view may change or be blocked or impaired depending upon construction, landscaping or other activities undertaken on remaining land located within the Properties or on land located outside the boundaries of the Properties. Each Owner, by accepting title to a Lot in the Properties, hereby acknowledges that (a) there are no protected views within the Properties, and no Lot in the Properties is assured the existence or unobstructed continuation of any particular view, (b) any construction, landscaping or other installation of Improvements by Declarant, other Owners, or adjacent landowners may impair the view from any Lot or BMC Maintenance Area within the Properties, and the Owners hereby consent to such view impairment.

Section 34. Window Covers. Curtains, drapes, shutters or blinds may be installed as window covers. No window shall be covered with aluminum foil, sheets, newspapers or similar material not designed for use as a window cover.

Section 35. Violation of Governing Instruments. There shall be no violation of the restrictions of this Declaration or other Governing Documents including the BMC Rules adopted in accordance with the provisions of the Bylaws. If any Owner, their 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 privileges of such Owner as further provided in the Bylaws. 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.

ARTICLE IV

MAINTENANCE AND FUNDING OF CONSERVATION PROPERTIES

Section 1. Obligations Of Declarant. As set forth in the HMP Declarant shall be responsible for performing the certain activities within the Conservation Property, for a limited period of time. At the conclusion of the period for the performance of these activities, a notification of the successful completion of the Declarant's obligations for the establishment, maintenance and monitoring as evidenced by the approval of by the Public Agency having jurisdiction thereof shall be the "**Establishment Completion Date**". There may be more than one Establishment Completion Date associated with the various components of the Conservation Property. The Declarant shall be responsible for the performance of the maintenance and management of the Conservation Property in conformance with the State Dedications and the Habitat Management Plan, until the BMC Conservation Maintenance Date as defined below. Additionally, concurrent with the commencement of Regular Assessments Declarant shall contribute to the BMC for deposit into the Conservation Reserve Fund Account the amount of $132,000.00.

Section 2. Obligations Of The BMC.

(a) After Conveyance. By acceptance of title by fee or easement to any portion of the Conservation Property, the BMC agrees to assume all obligations for the maintenance, management and to insure the Conservation Property which includes, the duty to collect and to disburse the Conservation Property Assessment as a portion of the Regular Assessment.. The Conservation Property Assessment collected shall be deposited in the Conservation Property Operating Fund and Conservation Reserve Fund Account, and disbursed to insure the ongoing and long-term funding for the perpetual management, maintenance and monitoring of the pursuant to the Habitat Management Plan before and after the Establishment Completion Date.

(b) Commencement of Maintenance. Public Agency acceptance of the successful completion of Declarant's obligations under the HMP is absolute and conclusive authority that the Conservation Property meets all criteria for acceptance of maintenance by the BMC. The BMC shall thereafter assume all obligations for the preservation and maintenance of the Conservation Property under the terms of the State Dedications and the HMP, and shall commence all activities associated with the maintenance and management of that portion of the Conservation Property no later than the first day of the first full month following the Establishment Completion Dates affecting that portion of the Conservation Property ("**BMC Conservation Maintenance Date**"). There may be more than one BMC Conservation Maintenance Date associated with the various components of the Conservation Property. By the BMC's assumption of such obligations, all references in the State Dedications and the HMP to the Declarant herein shall be interpreted to mean the BMC. Also, commencing on the BMC Conservation Maintenance Date, the BMC shall be responsible for contracting with a biologist and qualified native habitat contractor to monitor and maintain the subject Conservation Property. The Board shall annually perform an internal review of the Conservation Property to determine if the BMC is in full compliance with the terms of the State Dedications and the HMP.

(c) Funding of the Conservation Reserve Fund Account. Concurrent with the final BMC Conservation Maintenance Date, the Conservation Reserve Fund Account shall contain funds in an amount no less than $275,000.00. In the event said funds are insufficient Declarant shall deposit the difference with the BMC within sixty (60) days after said final BMC Conservation Maintenance Date.

Section 3. Prohibited Uses Within State Dedicated Property. Any activity on or use of the Conservation Property that is inconsistent with the purposes of the State Dedications and the HMP, is prohibited. Without limiting the generality of the foregoing, the following uses within the Community are prohibited:

(a) Supplemental watering;

(b) General access into Conservation Properties outside the Trail System;

(c) Use of herbicides, pesticides, rodenticides, biocides, fertilizers, or other agricultural chemicals or weed abatement activities, except weed abatement activities necessary to control or remove invasive and or non-native, exotic plant species;

(d) Fire protection activities other than those specified in the Fuel Modification Plan;

(e) Use of off-road vehicles and use of any other motorized vehicles except on existing roadways or as necessary to restore native plant communities and authorized maintenance activities pursuant to the HMP and Water Quality Management Plan;

(f) Residential, commercial, retail, institutional, or industrial development or uses within the Conservation Property;

(g) Any legal or de facto division, subdivision or portioning of the Conservation Property;

(h) Construction, reconstruction or placement of any Improvement or signs except those permitted by the HMP;

(i) Depositing, dumping or accumulating soil, trash, ashes, refuse, waste, bio-solids or any other material;

(j) Planting, introduction or dispersal of non-native or exotic plant or animal species;

(k) Filling, dumping, excavating, draining, dredging, mining, drilling, removing or exploring for or extraction of minerals, loam, gravel, soil, rock, sand or other material on or below the surface of the State Dedicated Property;

(l) Altering the general topography of the Conservation Properties, including but not limited to building of roads and flood control work, excepting any work performed in the maintaining the integrity of the Water Quality Management Facilities as set forth in the Habitat Management Plan;

(m) Removing, destroying, or cutting of trees, shrubs or other vegetation, except for (1) control of invasive, exotic plants which threaten the integrity of the habitat, (2) prevention or treatment of disease, or (3) remedial measures required by the Habitat Management Plan;

(n) Manipulating, impounding or altering any natural watercourse, body of water or water circulation within the Conservation Property, excepting any work performed in the construction and grading of the drainage devices as set forth in the Habitat Management Plan, and activities or uses detrimental to water quality, including but not limited to degradation or pollution of any surface or sub-surface waters; and

(o) Establishing Fuel Modification Zones which do not conform to those set forth in the FMZ Plan.

Section 4. Costs And Liabilities. The BMC shall be responsible for and bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the State Dedicated Property.

Section 5. Conflicts. In the event of any conflict between the provisions of this Article and the HMP or the State Dedications, the more restrictive provisions shall control.

ARTICLE V

MAINTENANCE, REPAIR AND CONSTRUCTION OBLIGATIONS

Section 1. BMC Maintained Improvements. Except as otherwise specifically provided in this Declaration or a Supplementary Declaration, the BMC shall maintain the BMC Maintenance Area and any Improvements thereon. The BMC Maintenance Area shall be maintained in accordance with the provisions set forth in this Declaration, the Maintenance Manual and the provisions as set forth in the Section below entitled "Standards of Maintenance": These maintenance obligations, include, but shall not be limited to the following:

(a) Community Walls. Maintenance of Community Walls is addressed in the Section entitled "Community Walls" of the Article entitled "EASEMENTS AND OWNERS' PROPERTY RIGHTS"

(b) Restricted Access. The BMC shall have a nonexclusive easement for maintenance purposes or use over the BMC Easement Areas. The BMC, however, acting through the Board, may reasonably restrict access to those portions of the BMC Maintenance Area or BMC Easement Areas not generally designed for general use by the membership or the public, including, but not limited to the Conservation Properties, except the Trail System. Additional areas may be divided so that the responsibility for the entire area is transferred over more than one (1) Phase. Notwithstanding any other provisions of this Declaration, the Dedicated Maintenance Area located within public right-of-way shall be available for the use by the general public. Dedicated Maintenance Areas shall be maintained by the BMC at all times, until such time should the Public Agency, at its sole and absolute discretion elects to maintain such area at which time it shall no longer constitute a part of the BMC Easement Area.

(c) Storm Drains/Utilities/Street Lights. Each Owner shall maintain those portions of all utility lines which are not maintained by the public or quasi-public entity or utility company and serve only that Owner's Lot, irrespective of whether the utility line is located on Common Area or on one (1) or more Lots.

Section 2. Maintaining Lots and Residences. Except for those areas which may be maintained as BMC Easement Areas, as specifically provided in this Declaration or a Supplementary Declaration, each Owner shall maintain the Owner's Lot, including the Residence and other Improvements located thereon in compliance with the provisions of the Maintenance Manual and the standards established by the Governing Documents.

Section 3. Owner Compliance with Maintenance Manual. By accepting a deed to a Lot, each Owner acknowledges and agrees that each Owner shall comply with all of the maintenance obligations and schedules set forth in the Maintenance Manual, and each Owner shall provide a copy of such Maintenance Manual to any successor purchaser of such Owner's Lot. The BMC shall comply with all of the maintenance obligations and schedules set forth in the Maintenance Manual provided the BMC.

Section 4. BMC Compliance with Maintenance Manual. The BMC shall cause the BMC Maintenance Areas to be regularly maintained, painted, repaired, and/or replaced in accordance with the requirements and recommendations of the Maintenance Manual, as revised from time to time and shall perform all remedial maintenance in accordance with the recommendations of the annual inspection reports prepared by Declarant’s consultant(s). The BMC has the duty and obligation, along with the attendant rights and power to carry out the Declarant’s and its consultant(s)’ required maintenance of the BMC Maintenance Area and keep appropriate records to document that it has performed all inspections and maintained all Improvements in compliance with the BMC's Maintenance Manual. The Board shall regularly determine whether the recommended inspections and maintenance activities have been followed, and, if any such recommendations have not been followed, what corrective steps need to be taken to assure proper inspections and maintenance of the BMC Maintenance Area.

Section 5. BMC's Right to Enter and Maintain. In the event any Owner fails to install and/or maintain the landscaping or maintain an Improvement which that Owner is obligated to maintain pursuant to this Declaration in accordance with the Section above entitled "Standards of Maintenance" and the Maintenance Manual, the BMC, acting through its Board of Directors, shall have the right, after providing an Owner with reasonable notice and an opportunity to be heard before the Board, to enter upon such Owner's Lot, perform the required work and maintain such Improvement to preserve the attractiveness, quality, nature and/or value of the Community. The BMC may charge the full cost of such installation and/or maintenance to such Lot Owner as a Reimbursement Assessment. If Owner does not pay the Reimbursement Assessment in a timely manner, the BMC may proceed with any legal remedy allowable under this Declaration at its sole discretion. Any damage caused by an entry into the Lot shall be repaired by the entering party to as near the same condition as it was prior to such entry to the extent practicable; provided, however, the BMC shall not be responsible for damage to the extent such damage could not be reasonably avoided in connection with such entry for authorized purposes.

Section 6. Damage from Wood-Destroying Pests. The Owner of each Lot shall be responsible for the repair and maintenance of the Residence 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 BMC, the responsibility for such repair and maintenance for the Community may be delegated to the BMC 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 Residence shall be borne by the Owner of the Residence being repaired. The BMC may cause the temporary, summary removal of any occupant of a Residence 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 BMC shall give notice as specified in California Civil Code Section 1364, and such notice by the BMC shall be deemed complete when given as specified therein.

Section 7. Damage and Destruction Affecting BMC Maintenance Area.

(a) Consent of Owners to Rebuild. If all or any portion of the BMC Maintenance Area is damaged or destroyed by fire, or other casualty, and the amount of the insurance proceeds available plus the deductible amount designated in the fire and casualty insurance policy does not total at least ninety percent (90%) of the cost to repair or rebuild, then neither the Board, the BMC, nor 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 below in the event adequate insurance proceeds are available as set forth therein.

(b) No Consent Required With Adequate Insurance. If the cost of repairing or rebuilding the portion of the BMC Maintenance Area so damaged or destroyed does not exceed by ten percent (10%) (less the deductible) the amount of insurance proceeds available to the BMC, 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 BMC Maintenance Area substantially in accordance with the original plans and specifications therefor. Subject to the provisions of the Article of this Declaration entitled "RIGHTS OF MORTGAGEES," in the event any excess insurance proceeds remain, or in the event of a decision by the BMC not to reconstruct or replace such damaged or destroyed improvements, such sums may be retained in the general funds of the BMC or all or a portion thereof may be distributed pro rata to the Owners, subject to the prior rights of Mortgagees whose interest may be protected by insurance policies carried by the BMC. The rights of an Owner and the Mortgagee on their Lot as to such pro rata distribution shall be governed by the provisions of the Mortgage encumbering such Lot.

ARTICLE VI

MEMBERSHIP AND VOTING RIGHTS

Section 1. Organization. The BMC is organized as a California corporation under the California Nonprofit Mutual Benefit Corporation Law. The BMC is charged with the duties and vested with the powers prescribed by law and set forth in the Articles, Bylaws, and this Declaration. Neither the Articles nor Bylaws 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 Bylaws, 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 Owner shall be a Member of the BMC. Membership shall be appurtenant to and may not be separated from the fee ownership of any Lot which is subject to Assessment by the BMC. Ownership of such Lot shall be the sole qualification for membership. Transfer of a Lot shall automatically transfer membership in the BMC.

Section 3. Membership Voting. The BMC shall have three (3) classes of voting membership:

(a) 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 (1) vote be cast with respect to any Lot.

(b) 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:

(1) On the second anniversary of the conveyance of the first Lot in the most recent Phase of the Properties in a transaction that requires the delivery of a Final Subdivision Public Report; or

(2) On the fourth anniversary of the conveyance of the first Lot in the first Phase of the Properties in a transaction that requires the delivery of a Final Subdivision Public Report.

(c) Class C. The Class C Member shall be Declarant (whether or not Declarant is an Owner). The Class C membership shall not be considered a part of the voting power of the BMC, and Declarant shall not be entitled to exercise any Class C votes except for the purpose of electing a majority of the members of the Board pursuant to the provisions set forth below. The Class C Member shall be solely entitled to elect a majority of the members of the Board until the day after the first annual meeting of the Members of the BMC as further provided in the Bylaws; provided that during the initial three-year terms of the Board members elected by the Class C Member, the Class C Member shall be entitled to replace any Member of the Board initially elected by Declarant using its Class C membership upon the death, resignation or removal of any such Board member.

Section 4. Classes of Memberships. Any action by the BMC which must have the approval of the membership of the BMC 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 Bylaws or Articles of the BMC requires the approval of a greater percentage of the voting membership.

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 Bylaws 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 C Member. 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 Regular Assessments for said Lot have been levied by the BMC; provided, however, 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.

ARTICLE VII

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 or other conveyance therefor, whether or not it shall be so expressed in such conveyance, is deemed to covenant and agree to pay to the BMC: (1) Regular Assessments or charges (which includes the Conservation Property Assessment), (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 BMC Maintenance 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 BMC shall not impose or collect an Assessment or fee that exceeds the amount necessary to defray the costs for which it is levied.

Section 2. Purpose of Assessments. The Assessments levied by the BMC 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 BMC Maintenance Areas and the performance of the duties of the BMC as set forth in this Declaration.

Section 3. Amount of Regular Assessments and Limitation on Increases in Regular Assessments.

(a) The amount and time of payment of Regular Assessments against each Lot shall be determined by the Board of Directors of the BMC giving due consideration to the current maintenance costs and future needs of the BMC. Except as provided in this Section, the BMC shall levy Regular and Special Assessments sufficient to perform its obligations under the Governing Documents and this Article. However, annual increases in Regular Assessments for any fiscal year, as authorized by subdivision (b) of Section 1366 of the California Civil Code, shall not be imposed unless the Board has complied with subdivision (a) of Section 1365 of the California Civil Code, the provisions of which are set forth in the Article of this Declaration entitled "BUDGET, FINANCIAL STATEMENTS, REPORTS AND STUDIES," with respect to that fiscal year, or has obtained the approval of membership, constituting a quorum, casting a majority of the votes at a meeting or election of the BMC conducted in accordance with Chapter 5 (commencing with Section 7510) of Part 3 of Division 2 of Title 1 of the Corporations Code and Section 7613 of the Corporations Code. Notwithstanding more restrictive limitations placed on the Board by the Governing Documents, and except for the terms of this Declaration as provided for in Section 6 below, the Board of Directors may not impose a Regular Assessment that is more than twenty percent (20%) greater than the Regular Assessment for the BMC's preceding fiscal year against each Lot without the vote or written assent of the Members, constituting a quorum, casting a majority of the votes at a meeting or election of the BMC. For purposes of this Section, quorum means more than fifty percent (50%) of the Members of the BMC.

(b) 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 ("DRE Reviewed Budget") on a subsequent Phase of the Development is greater than the amount authorized by this Declaration without a vote of the Members, then the Board, on behalf of the BMC and without the requirement of a vote of the Members, shall be entitled to increase the maximum Regular Assessment amount as reflected in such Final Subdivision Public Report. The BMC shall provide notice by first-class mail to the Owner of each Condominium of any increase in the Regular Assessments of the BMC not less

than thirty (30) nor more than sixty (60) days prior to the increased Assessment becoming due. Furthermore, in order to avoid confusion and the administrative burden of fluctuating Assessments during the Phases of development of the Properties, the Department of Real Estate deemed it reasonable to allow in accordance with the DRE Reviewed Budget that the Regular Assessment be fixed ("Level Regular Assessment") at a levels which vary, in some Phases, to be more or less than the actual amount required by the BMC to perform its obligations. The DRE Reviewed Budget provides the Level Regular Assessment levied by the BMC will either temporarily accrue a surplus or permit a previously accrued surplus to gradually deplete. Until all of the Annexable Area is subject to Regular Assessments, any excess Regular Assessment funds collected in connection with the Level Regular Assessments shall be placed in a separate account ("Surplus Fund Account") to be drawn upon only for the purpose of funding any deficit which may occur due to the Level Regular Assessment in a subsequent Phase of Development. In order to insure adequate Regular Assessments are being collected during the development of the Properties, the Board shall review the Surplus Fund Account on a monthly basis to assure funds are available to finance a deficit, if any, created by the Level Regular Assessment in a Phase of Development for a minimum of 3 month deficit funding. In the event the Surplus Fund Account is depleted to an amount inadequate to fund an anticipated deficit for 3 months, then in that event, the Board shall make alternative arrangements to assure adequate funding of Regular Assessments.

Section 4. Special Assessments for Capital Improvements and Limitation on Increases in Special Assessments. In addition to the Regular Assessments authorized above, the BMC 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 BMC Maintenance Area including fixtures and personal property related thereto or any other action or undertaking on behalf of the BMC, 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 BMC for that fiscal year shall be approved by the vote or written assent of the Members, constituting a quorum, casting a majority of the votes of the BMC at a meeting or election of the BMC. This limitation on Special Assessments shall not apply to any Reimbursement Assessment which is authorized by the provisions of this Declaration. The BMC shall provide notice by first-class mail to the Owner of each Lot of any Special Assessments of the BMC not less than thirty (30) nor more than sixty (60) days prior to the Assessment becoming due.

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 BMC. Any vote regarding Assessments shall be held by secret ballot in accordance with the procedures set forth in Section 1363.03(b) of the Civil Code. Any meeting or election of the BMC 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 l 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:

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

(b) An extraordinary expense necessary to repair or maintain the Properties or any part thereof for which the BMC is responsible where a threat to personal safety on the Properties is discovered;

(c) An extraordinary expense necessary to repair or maintain the Properties or any part thereof for which the BMC 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 "BUDGET, FINANCIAL STATEMENTS, REPORTS AND STUDIES." 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 BMC shall levy a Reimbursement Assessment against any Owner as a monetary penalty for failure of an Owner to comply with the terms of the Declaration, the determinations of the Board or the Design Review Committee, or any rule or regulation adopted by the BMC, or as a means of reimbursing the BMC for costs incurred by the BMC in the repair of damage to the BMC Maintenance Area for which the Owner, their family, guests, employees, tenants, agents, or invitees, was allegedly responsible or as a means to force an Owner to comply with the terms of this Declaration, the determinations of the Design Review Committee, the BMC's Articles or Bylaws, or any rule or regulation adopted by the BMC, if such failure results in the expenditure of monies by the BMC in carrying out its functions hereunder. Except for collection of fines, such Assessment shall be for the purpose of reimbursing the BMC, shall be limited to the amount so expended, and shall be due and payable to the BMC when levied.

Section 8. Rate of Assessment. Unless otherwise required by the California Department of Real Estate in connection with the issuance of a Public Report for a Phase of the Properties, Regular and Special Assessments for each Lot shall be uniform. Regular Assessments shall 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 (but earlier at the discretion of the Declarant) the first day of the month following the first conveyance of a Lot within such Phase in a transaction that requires the delivery of a Final Subdivision Public Report. 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 BMC 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 BMC. 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 BMC 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 BMC. 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 BMC for any reason, it shall immediately determine the approximate amount of such inadequacy and issue a supplemental estimate of the total BMC expenses and determine the revised amount of the Regular Assessment against each Owner.

Section 10. Certification of Payment. The BMC shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the BMC 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.

Section 11. Exemption from Regular Assessments - Residence. 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 Residence 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:

(a) Roof replacement;

(b) Exterior maintenance;

(c) Walkway and carport lighting;

(d) Refuse disposal;

(e) Cable television; and

(f) 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: (a) a notice of completion of the structural improvements on the Lot has been recorded, (b) occupation or use of the dwelling unit on the Lot, (c) completion of all elements of the residential structures on the Lot which the BMC is obliged to maintain, or (d) upon request of the Declarant if necessary to comply with any regulations of any of the Federal Agencies.

Section 12. Exemption from Regular Assessments- BMC Maintenance 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 BMC Maintenance Area facility that is not complete at the time the Regular Assessments commence. Any exemption from the payment of Regular Assessments attributable to BMC Maintenance Area facilities shall be in effect only until the earliest of the following events: (a) a notice of completion of the BMC Maintenance Area facility has been recorded, (b) the BMC Maintenance Area facility has been placed into use, or (c) upon request of the Declarant if necessary to comply with any regulations of any of the Federal Agencies.

Section 13. Exemption from Assessments - Model Homes. Conveyance of a Residence which is being used by Declarant for use as a model home, sales office, design center, construction office or similar purposes (collectively referred to as "**Model Home**" or "**Model Homes**") shall not commence the Regular Assessments against such Lot or other Lots within the same Phase of development in which such Model Homes are located until the earlier to occur of (i) discontinuance of use of such Residence as a Model Home; (ii) failure of the Declarant to maintain the BMC Maintenance Area in such Phase; or (iii) conveyance by Declarant of any Lot in the Phase which is not a Model Home. During the period of time commencing on the first day of the month after conveyance of a Lot being used as a Model Home and ending on the date regular Assessments commence against such Lot, Declarant shall be solely responsible to maintain all portions of the Phase (including the BMC Maintenance Area) in which such Model Homes are located until the commencement of Regular Assessments against the Model Homes as set forth above. The Board shall have the right to inspect the areas being maintained by Declarant pursuant to this Section to determine that such maintenance meets reasonable standards as established by the BMC for the maintenance of the Community.

Section 14. 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 BMC Maintenance 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 BMC. Such reserves shall be deemed a contribution to the capital account of the BMC by the Members.

Section 15. 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 Agency and the BMC Maintenance Area.

Section 16. 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 any First Mortgagee, and as soon as practicable before transfer of the interest being acquired, give to each purchaser or lessee (a) a copy of the Governing Documents, (b) copies of any other instruments which define the rights and responsibilities of the Owner as a Member of the BMC, (c) to the extent available, a copy of the most recent financial statement distributed by the BMC in accordance with the Article of this Declaration entitled "BUDGET, FINANCIAL STATEMENTS, REPORTS AND STUDIES," (d) a statement prepared by the Board of Directors as to the amount of the BMC's current Regular and Special Assessments and fees, as well as 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, and (e) written notice of any change in the BMC's current Regular and Special Assessments and fees which have been approved by the Board, but which are not yet due and payable as of the date disclosure is provided, as required by this Section, to the prospective Owner.

Section 17. Prohibited Expenditures. The BMC shall be prohibited from utilizing Regular Assessments, Special Assessments, or Reimbursement Assessments for support of any political activities or to commence an action to abate a nuisance located outside the Properties.

ARTICLE VIII

DUTIES AND POWERS OF THE BMC

Section 1. General Powers of the BMC. All powers relating to the management, operation and maintenance of the BMC Maintenance Area, as well as certain rights, duties and powers relating to the Lots, as hereinafter set forth, shall be vested in the BMC and in its Board of Directors. The specific and primary purposes and powers of the BMC and its Board of Directors are to provide for the operation, control, repair, maintenance and restoration of the BMC Maintenance Areas, provide Design Review Control of the Properties, provide recreational activities for the Members, and to enforce the provisions of this Declaration and the BMC's Articles and Bylaws, and any other instruments relating to the management and control of the BMC and the Properties. The BMC 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 BMC, through its Board of Directors, shall have the authority to delegate its powers to committees, officers of the BMC or its employees. The foregoing power of the BMC shall include the right to join in the execution of any lot line adjustment and to accept title to additional property or to quitclaim all right, title and interest in and to any BMC Maintenance Area as necessary to transfer title in accordance with any lot line adjustment, provided that such lot line adjustment and the resulting conveyance are made for the following reasons and with the following conditions: (a) for the purpose of eliminating encroachments due to engineering errors or errors in construction by Declarant of any Improvements upon any of the affected property, (b) to permit changes in the development plan in circumstances where such changes are the result of topography, obstructions, hardship, aesthetic or other environmental conditions, (c) are the requirement of a Public Agency, (d) do not have a significant negative impact upon the BMC or the Owners, or (e) to transfer the burden of management and maintenance of any BMC Maintenance Area which in the reasonable judgment of the Board is generally inaccessible or is not likely to be of any particular use or benefit to the Owners.

Section 2. Contracts of the BMC. The BMC 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 the Board may deem reasonable or necessary to operate and maintain the Properties and the BMC Maintenance Area, and the improvements thereon, and to discharge its other duties as herein provided. Any agreement for professional management of the BMC 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 no more than ninety (90) days written notice, and the term of such contract shall not exceed one (1) year. Any management company or agent that handles funds for the BMC should be covered by a fidelity bond, which must provide the same coverage required of the BMC under the Article of this Declaration entitled "INSURANCE."

Section 3. General Powers and Duties of BMC. In addition to the duties and powers enumerated in its Articles of Incorporation and Bylaws, or elsewhere provided for herein, and without limiting the generality thereof, and subject to the limitations on the power of the Board as set forth in the Sections below entitled "Restrictions on Power of the Board," and "Limitation on Board Authority to Contract" of this Article, the BMC, acting through the Board shall have the following powers and duties:

(a) Own, operate, manage and maintain all Common Area and BMC Easement Areas within the Properties in accordance with the provisions of the this Declaration and the Maintenance Manual. Said management and maintenance shall be in conformance with the Best Management Practices in accordance with the County Water Conservation Resolution, the County Household Hazardous Materials Collection Program and the County Management Guidelines for Use of Fertilizers and Pesticides, and the Coastal Development Permit.. The responsibility of the BMC to operate, manage and maintain the BMC Maintenance Area shall commence on the date of commencement of Regular Assessments for the respective Phase of the Properties;

(b) Maintain such policy or policies of insurance as the Board deems necessary or desirable in furthering the purposes of and protecting the interests of the BMC and its Members including, but not limited to, hazard and liability insurance, plate glass insurance, fidelity bonds, worker's compensation and officers' and directors' liability insurance. If applicable, the BMC shall be required, if available, to maintain fire and extended coverage insurance on insurable BMC 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 BMC Maintenance Area, all utility services unless such services are separately charged to the Owners;

(d) Maintain all drainage facilities and easements owned by the BMC;

(e) Maintain the Dedicated Maintenance Area unless some other mechanism acceptable to the Public Agency having proper jurisdiction has removed the responsibility of maintenance of the Dedicated Maintenance Area from the BMC. In the event such responsibility is removed or at such time an agreement with adjoining property owner(s) for maintenance is revoked or amended by the parties to the agreement as to all or any portion of the Dedicated Maintenance Area (and as further approved by the appropriate Public Agency), the BMC shall be relieved of all maintenance duties or other services associated with such Dedicated Maintenance Area and all costs associated therewith shall be removed from the Regular Assessments;

(f) Operate and maintain Water Quality Control Facilities to include monitoring water quality to determine the effectiveness of the Water Quality Control Facilities at pollutant removal. Tests shall be conducted in accordance with the Water Quality Management Plan.

(g) Implement Best Management Practices to be operated in accordance with the Best Management Practices for the Community, to occur, at a minimum, in accordance with the provisions as set forth in the Water Quality Management Plan;

(h) Maintain the Properties in accordance with the Habitat Management Plan which includes the Wildlife Protection Plan for the Properties;

(i) Maintain the Properties in accordance with the Fuel Modification Plan created for the Properties which includes, but shall not be limited to the removal of all dead plant material and invasive species (i.e., any plant not on the plant palette attached to the Fuel Modification Plan) within the BMC Maintenance Area on an as needed basis, but at least by June 1 of each year and maintaining Fuel Modification Zone markers indicting the boundaries of Fuel Modification Zones B and C;

(j) Implement and maintain the Properties in accordance with the Design Review Standards which includes, but shall not be limited to the removal of all dead plant material and invasive species from all non-habitat/non-buffer areas (i.e., any plant not on the Approved Plant List for Non-Habitat/Non-Buffer Areas) ;

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

(l) Prepare the Budget and financial statements for the BMC and its Members as prescribed in the Article of this Declaration entitled "BUDGET, FINANCIAL STATEMENTS, REPORTS AND STUDIES";

(m) Initiate and execute disciplinary proceedings against Members of the BMC for violations of provisions of the Governing Documents in accordance with the procedures set forth in this Declaration;

(n) Disclose information in accordance with Section 11018.6 of the California Business and Professions Code and Sections 1365, 1365.9, 1369.510 and 1369.590 of the California Civil Code;

(o) Permit utility suppliers to use portions of the BMC Maintenance Area reasonably necessary to the ongoing development and operation of the Properties;

(p) Grant permits, licenses and easements for utilities and other purposes pursuant to Civil Code Section 1353.07;

(q) Subject to compliance with Civil Code Section 1369.510 through 1369.590, have the authority to institute, defend, settle or intervene in litigation, arbitration, mediation, or administrative proceedings in its own name as the real party in interest and without joining with it the individual Owners of the Properties, in matters pertaining to the following:

(1) Enforcement of this Declaration and the Bylaws of the BMC;

(2) Damage to the BMC Maintenance Areas;

(3) Damage to the Lots that the BMC is obligated to maintain or repair;

(4) Damage to the Lots which arises out of, or is integrally related to, damage to the BMC Maintenance Areas that the BMC is obligated to maintain or repair.

(r) Subject to the terms and provisions of the Article herein entitled "Mortgagee Protection," the right of the BMC to dedicate or transfer all or any part of the BMC Maintenance Area (including, but not limited to the all or any portion of the Conservation Properties and Water Quality Control Facilities) to any Public Agency or any utility for such purposes and subject to such conditions as may be agreed to by the Owners. No such dedication or transfer of property held in fee title shall be effective unless it is approved by any affected Public Agency and by at least sixty-seven percent (67%) of the total voting power of the BMC and a certificate executed by the President and the Secretary of the BMC evidencing such approval is recorded in the office of the County Recorder for Orange County.

(s) Have the right to enter into an agreement with a Public Agency to convey all rights and interest or the operation and maintenance of portions of the BMC Maintenance Area, including, but not limited to the Conservation Properties and Water Quality Control Facilities provided the cost for such maintenance, if any, is at a reasonable market rate;

(t) Comply with the terms and provisions of California Civil Code Sections 1368.4 and 1375, as amended, in connection with any potential litigation based upon a claim for defects in the design or construction of the Properties.

(u) Keep appropriate records to document that it has performed all inspections and maintained all Improvements in compliance with the BMC's Maintenance Manual.

Section 4. Powers and Duties Relating to the Conservation Properties. The BMC shall have the power and duty to accept the conveyance of title (as fee or by easement) to the Conservation Properties, to collect and disburse the Conservation Property Assessment, and to hold, preserve, maintain, manage, and insure all the Conservation Property in conformance with the State Dedications and the HMP. The BMC shall also have the power to transfer or assign all or part of its interests, rights and obligations in the Dedicated Maintenance Area in conformance with the State Dedications and the Coastal Development Permit, which power may be exercised by the Board without a vote of the Members, and which shall include the power to enter into a contract for the payment of all or a portion of the Conservation Property Assessment to the transferee or assignee.

Section 5. Conservation Maintenance Contracts. Notwithstanding anything in the Declaration to the contrary, the Board shall have the power and the duty to (a) accept an assignment of all of the rights and obligations of Declarant under a contract or contracts, or (b) otherwise cause the BMC to enter into a contract or contracts, with a qualified and licensed contractor for the maintenance of the BMC Easement Area that is necessary to comply with the applicable State Dedications or Habitat Management Plan. Such a maintenance contract shall be for a term not exceeding three (3) years and shall be terminable by the BMC after one year without cause, penalty or other obligation on ninety (90) days prior to written notice to the other party. The assignment of Declarant's rights and obligations under such a maintenance contract shall not be interpreted to affect or relieve any other obligations of Declarant which may exist under other BMC Maintenance Area agreements or under any State Dedications.

Section 6. Restrictions on Power of the Board. The BMC shall be prohibited without the prior vote or written assent of a majority of the voting power of the BMC (excluding the voting power of the Declarant) from doing any of the following: (a) 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 BMC for that fiscal year; (b) selling during any fiscal year of the BMC property of the BMC having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the BMC for the fiscal year; (c) paying compensation to members of the Board or to officers of the BMC for services performed in the conduct of the BMC'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 BMC; and (d) filling of a vacancy on the Board created by the removal of a Board member.

Section 7. Limitation on Board Authority to Contract. The Board of Directors shall be prohibited from taking any of the following actions, except with the assent, by vote at a meeting of the BMC or by written ballot without a meeting, pursuant to Corporations Code Section 7513, of Members representing a simple majority of the Members, other than the Declarant, constituting a quorum consisting of more than 50 percent of the voting power of the BMC residing in Members other than the Declarant: Entering into a contract with a third person wherein the third person will furnish goods or services for the BMC Maintenance Area or the BMC for a term longer than one year with the following exceptions: (a) a management contract, the terms of which have been approved by the Federal Housing Administration or Department of Veterans Affairs; (b) 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; (c) prepaid casualty and/or liability insurance policies of not to exceed three years duration, provided that the policy permits for short rate cancellation by the insured; (d) lease agreements for laundry room fixtures and equipment of not to exceed five 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; (e) agreements for cable television services and equipment or satellite dish television services and equipment, communication services and equipment, high speed data transfer, computer services, telephone and comparable technology, services and equipment with terms not to exceed five 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; (f) agreements for sale or lease of burglar alarm and fire alarm equipment, installation and services of not to exceed five years duration provided that the supplier or suppliers are not entities in which the subdivider has a direct or indirect ownership interest of ten percent (10%) or more; or (g) a contract for a term not to exceed three years that is terminable by the BMC after no longer than one year without cause, penalty or other obligation upon ninety (90) days written notice of termination to the other party.

Section 8. Limitation on Authority to Restrict Access. Except as otherwise provided by law, an order of the court, or an order pursuant to a final and binding arbitration decision, the BMC may not deny an Owner or occupant physical access to their Lot, either by restricting access through the BMC Maintenance Areas to the Owner's Lot, or by restricting access solely to the Owner's Lot.

Section 9. BMC 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, as more fully set forth in the Bylaws of the BMC. The BMC Rules shall govern such matters in furtherance of the purposes of the BMC, including, without limitation, the use of the BMC Maintenance Areas provided, however, that the BMC Rules may not discriminate among Owners, and shall not be inconsistent with this Declaration, the Articles or Bylaws, the Coastal Development Permit or any other writing that governs the Community. Any BMC Rule 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 BMC Rules 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 BMC Rules 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 BMC Rules 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 BMC Rules, as adopted, amended or repealed, along with current copies of the Declaration, and Articles of Incorporation and Bylaws of the BMC, shall be available at the principal office of the BMC to each Owner and Mortgagee upon request. In the event of any conflict between any such BMC Rules and any other provisions of this Declaration, or the Articles or Bylaws, the provisions of the BMC Rules shall be deemed to be superseded by the provisions of this Declaration, the Articles or the Bylaws to the extent of any such conflict. Notwithstanding the foregoing, except as otherwise provided in law, an order of the court, or an order pursuant to a final and binding arbitration decision, the BMC may not deny an Owner or occupant physical access to their Lot either by restricting access through the BMC Maintenance Area to the Owner's Lot, or by restricting access solely to the Owner's Lot.

Section 10. BMC Documents to Declarant. In addition to documents to be provided to Declarant as set forth in Section 1 of the Article of this Declaration entitled "BUDGET, FINANCIAL STATEMENTS, REPORTS AND STUDIES", commencing with the close of the first sale escrow and terminating ten years after the closing of the final sale escrow for a Lot in the Properties, the Board shall provide Declarant or a designated representative of Declarant copies of all BMC correspondence to its general membership, minutes of each meeting of the BMC or its Board, and a full copy of the reserve study conducted pursuant to Civil Code Section 1365.5, as set forth in the Article of this Declaration entitled "BUDGET, FINANCIAL STATEMENTS, REPORTS AND STUDIES." Declarant shall further be entitled to: (a) inspect and copy the books and records of the BMC during normal business hours; and (b) receive written notice of all meetings of Owners of the BMC and be permitted to designate a representative to attend all such meetings. In the event Declarant is no longer an Owner of a Lot, the Board shall notify Declarant of the amount of reimbursement of the BMC's costs which the Declarant shall pay prior to making such distribution, which shall be equal to the cost it would charge its Members for such distribution, if any.

ARTICLE IX

INSURANCE

Section 1. General Insurance Limitations. The Board shall make every reasonable effort to obtain the insurance policies described in this Section and maintain them in full force and effect. All insurance policies shall be subject to and where applicable, shall contain the following provisions and limitations:

(a) Named Insured. All insurance policies required to be obtained by the BMC pursuant to this Declaration shall show the BMC, or an authorized representative of the BMC (including its insurance trustee), as the named insured.

(b) Loss Payable. The "loss payable" clause of said policies shall show the BMC or the insurance trustee as a trustee for each owner and the Mortgagee.

(c) Rate of Insurance. Nothing shall be done or kept in the Properties which will increase the rate of insurance on any property insured by the BMC 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 BMC or which would be in violation of any law.

(d) Notice of Cancellation or Modification of Coverage. All insurance policies and fidelity bonds maintained by the BMC must provide that such policies or bonds may not be cancelled, reduced or substantially modified without at least ten (10) days' prior written notice to the BMC, and in the case of fidelity bonds, to each mortgage servicing contractor acting on behalf of any of the Federal Agencies.

Section 2. Types of Coverage. The BMC, to the extent available, shall obtain and continue in effect in its own name the following types of insurance:

(a) Liability Insurance. Adequate blanket public liability insurance with limits and coverages which satisfy the requirements of Section 1365.9 of the California Civil Code:

(b) Property Insurance. A policy of fire and casualty insurance with extended coverage for the full replacement value of the BMC Maintenance Area improvements, without deduction for depreciation, and clauses waiving subrogation against Owners and the BMC and persons upon the Properties with the permission of an Owner, such insurance to afford protection against loss or damage by fire and other hazards covered by the standard extended coverage policy of hazard insurance;

(c) Fidelity Bond Coverage. Blanket fidelity bond coverage providing for coverage of losses resulting from dishonest or fraudulent acts on the part of anyone who handles or is responsible for funds held or administered by the BMC, including directors, officers, trustees, employees or volunteers of the BMC. Where the BMC delegates some or all of the responsibility for the handling of funds to a management agent, fidelity bonds are required for its officers, employees and agents handling or responsible for funds of, or administered on behalf of, the BMC whether or not such persons receive compensation for services. A management agent who handles funds for the BMC should also be covered by its own fidelity bond which must provide the same coverage required by the BMC and must submit evidence of such coverage to the BMC. The fidelity bond should cover the maximum funds that will be in the custody of the BMC or its management agent at any time while the bond is in force, but must be written in an amount of not less than a sum equal to three (3) months Regular Assessments on all Lots, plus reserve funds. The bond shall name the BMC as obligee and shall cover persons serving without compensation by endorsement to the policy if not otherwise covered under the policy.

(d) Other Insurance: 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, worker's compensation, and directors and officer's liability equal to at least the minimum amount specified in Section 1365.7 (a) (4) of the California Civil Code. Such other types of fidelity bonds, insurance policies, coverage and endorsements as may be required from time to time pursuant to the Article herein entitled "RIGHTS OF MORTGAGEES."

Section 3. 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 BMC, 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 4. Annual Review. The Board shall annually determine whether the amounts and types of insurance it has obtained provide adequate coverage for the BMC 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 BMC. If the Board determines that increased coverage or additional insurance is appropriate, it shall obtain the same.

Section 5. Premiums and Proceeds. Insurance premiums for any other insurance deemed necessary by the BMC shall be an expense to be included in the Regular Assessments levied by the BMC. The BMC is hereby granted the authority to negotiate loss settlements with the appropriate insurance carriers. Any two (2) directors of the BMC 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 BMC and the Members.

Section 6. Payment of Taxes or Premiums by Mortgagees. Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the BMC Maintenance Area, unless such taxes or charges are separately assessed against the Owners, in which case the rights of Mortgagees shall be governed by the provisions of their Mortgages. Mortgagees 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 BMC Maintenance Area and the Mortgagee making such payments shall be owed immediate reimbursement therefor from the BMC.

Section 7. Requirements of Federal Agencies. Notwithstanding the foregoing provisions of this Article, the BMC shall obtain and maintain in effect such fidelity bonds and insurance policies, coverages and endorsements which shall be required from time to time by the Federal Agencies, except to the extent that any such policies, coverages and endorsements are not available or have been waived in writing by the particular Federal Agency that had imposed the requirements. These may include, but are not limited to, the following: (a) Fidelity Bond; (b) Hazard Insurance; (c) Liability; (d) Flood Insurance; and (e) Earthquake Insurance. All insurance policies must have the "standard mortgagee clause" or equivalent endorsement providing that coverage of a mortgagee under the insurance policy will not be adversely affected or diminished by an act or neglect of the Mortgagor, which is commonly accepted by private institutional mortgage investors in the area in which the Property is located, unless such coverage is prohibited by applicable law. A mortgagee clause in favor of mortgagees holding Mortgages on Lots is not required on a policy insuring the BMC Maintenance Area.

Section 8. Annual Notification of Insurance. The Board shall prepare and distribute to all Members a summary of the BMC's general liability, earthquake and flood and fidelity insurance policies as required by Section 1365 of the California Civil Code which shall be distributed no more than ninety (90) days preceding the beginning of the BMC's fiscal year. The BMC shall, upon issuance or renewal of insurance, but no less than annually, notify its Members as to the amount and type of insurance carried by the BMC, and it shall accompany this notification with statements to the effect that the BMC is or is not insured to the levels specified by this Article, and that if not so insured, Owners may be individually liable for the entire amount of a judgment, and if the BMC is insured to the levels specified

above, then Owners may be individually liable only for their proportional share of Assessments levied to pay the amount of any judgment which exceeds the limits of the BMC's insurance.

ARTICLE X

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 of the Common Area. 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 BMC. 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 BMC or distribute pro rata all or a portion thereof to the Owners. The rights of an Owner and the Mortgagee of a Mortgage on their Lot as to such pro rata distribution shall be governed by the provisions of the Mortgage encumbering such Lot.

ARTICLE XI

DESIGN REVIEW CONTROL

Section 1. Members of Committee. The Design Review Committee shall consist of not less than three (3) members as shall be determined by the Board. The initial members of the Design Review Committee shall be representatives of Declarant. 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 Design Review Committee or to fill any vacancy of such majority until the "turnover date" which shall be the date on which either (a) ninety percent (90%) of the Lots subject to this Declaration have been sold and the deeds recorded ("close of escrow"), or (b) five years following the date of issuance of the Final Subdivision Public Report for the Properties, whichever occurs earlier. Commencing one year from the date of close of escrow for the sale by Declarant of the first Lot in the Properties to a purchaser, the Board shall have the power to appoint one member to the Design Review Committee, until the turnover date. Thereafter, the Board shall have the power to appoint and remove all of the members of the Design Review Committee. Persons appointed to the Design Review Committee by the Board shall be from the membership of the BMC, but persons appointed to the Design Review Committee by Declarant need not be Members of the BMC. The Design Review 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 Design Review Committee may designate and appoint a representative who is a licensed architect and a majority of the members of said Design Review Committee may, from time to time, remove or replace such representative. The designated representative of the Design Review Committee may be, but need not be, a member of the Design Review Committee.

Section 2. Review of Plans and Specifications. The Design Review 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 Design Review 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 Design Review Committee and approved in writing by the Design Review Committee. The address for submission of such plans and specifications shall be the address of the principal place of business of the BMC. The Design Review 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 are consistent with the standards of the Coastal Development Permit and 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 BMC Maintenance Area or the enjoyment thereof by the Members, and that the upkeep and maintenance thereof will not become a burden on the BMC. The Design Review Committee may condition its approval of proposals or plans and specifications for any Improvement (a) on such changes therein as it deems appropriate, (b) upon the agreement by the person (referred to in this Section as "applicant") submitting the same to grant appropriate easements to the BMC for the maintenance of the Improvement, or (c) upon the agreement of the applicant to reimburse the BMC 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 Design Review Committee may also issue rules or guidelines setting forth procedures for the submission of plans for approval, requiring a fee payable to the BMC to accompany each application for approval, or additional factors which it will take into consideration in reviewing submissions. The Design Review 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. An additional fee may be collected to cover costs of hiring an architect or other

professional to evaluate the proposed modifications to ensure that they are consistent with existing architectural standards or site conditions. The Design Review 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, colors and/or fixtures. Failure to comply with the requirements for Design Review Committee approval shall be deemed sufficient basis for the Design Review Committee to refuse to review the submission. Decisions of the Design Review Committee and the reasons therefor shall be transmitted by the Design Review Committee to the applicant at the address set forth in the application for approval, within thirty days after receipt by the Design Review Committee of all materials required by the Design Review 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 Design Review Committee shall have been transmitted to the applicant within thirty days after the date of receipt by the Design Review Committee of such application or additional information.

Section 3. Meetings of the Design Review Committee. The Design Review Committee shall meet from time to time as necessary to perform its duties hereunder. The Design Review Committee may from time to time, by resolution unanimously adopted in writing, designate an Design Review Committee representative (who may, but need not, be one of its members) to take any action or perform any duties for and on behalf of the Design Review Committee, except the granting of variances pursuant to the Section entitled "Variance" of this Article. In the absence of such designation, the vote of a majority of the members of the Design Review Committee taken without a meeting, shall constitute an act of the Design Review Committee.

Section 4. No Waiver of Future Approvals. The approval of the Design Review 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 Design Review 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 Design Review 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 Design Review Committee.

(b) Within sixty (60) days thereafter, the Design Review Committee or its duly authorized representative may inspect such Improvement. If the Design Review 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 Design Review 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 the Board determines a noncompliance 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 Official Records of Orange County and may peacefully remove the noncomplying Improvement or otherwise peacefully remedy the noncompliance, and the Owner shall reimburse the BMC, upon demand, for all expenses incurred in

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

(d) If for any reason the Design Review Committee fails to inspect the Improvement within sixty (60) days after receipt of said written notice of completion from the Owner, or the Owner requesting such inspection has not been notified of any noncompliance within thirty (30) days after such inspection, the Improvement shall be deemed to be completed in substantial conformance with said approved plans and specifications.

Section 7. Nonliability of Design Review Committee Members. Neither Declarant, the Design Review Committee nor any member of the Design Review Committee, the Board nor their duly authorized representative, shall be liable to the BMC, or to any Owner for any loss, damage or injury arising out of or in any way connected with the performance of the Design Review Committee's duties hereunder, unless due to the willful misconduct or bad faith of the Design Review Committee. The Design Review 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 overall benefit or detriment which would result to the immediate vicinity and the Properties generally. The Design Review Committee shall take into consideration the aesthetic aspects of the architectural designs, placement of buildings, landscaping, lighting, color schemes, exterior finishes and materials and similar features. The Design Review Committee's approval or disapproval shall be based solely on the considerations set forth in this Article, and the Design Review 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 Design Review 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 Design Review Committee. 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 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 their use of the premises, including but not limited to zoning ordinances and Lot setback lines or requirements imposed by the City and/or County. Without limiting any other provisions of this Declaration, no variance for residential building height, required color palette, rear yard wall design or height, requirement for drip irrigation system and placement of structures shall be granted for Lots 17 through 35, 83 through 87, 114 through 122, and 158 through 183.

Section 10. Appeal. In the event plans and specifications submitted to the Design Review 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 Design Review Committee. The Board shall submit such request to the appropriate Design Review Committee for review, whose written recommendations will be submitted to the Board. In the event plans and specifications submitted to the Design Review Committee are approved, such decision shall be final unless the decision is appealed to the Board within ten (10) days of the decision by the Design Review Committee. Such decision may be appealed by any member of the Board, the Design Review Committee or any Owner. 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 decision made by the Design Review Committee.

Section 11. Government Requirements. The application to and the review and approval by the Design Review Committee or the Board of any proposals, plans or other submittals shall in no way be deemed to be to the satisfaction of or in compliance with any building permit process or any other governmental requirements, including the California Coastal Act of 1976, the responsibility for which shall lie solely with the respective Owner.

ARTICLE XII

RIGHTS OF MORTGAGEES

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

Section 1. Notice to Mortgagees of Default. Any Mortgagee of any Mortgage on a Lot shall be entitled to receive, upon written request to the BMC, written notification from the BMC of any default by the Owner (trustor) of such Lot in the performance of such Owner's obligations under the Declaration or the BMC's Articles or Bylaws which is not cured within thirty (30) days from the date of such default.

Section 2. Assessments on Foreclosure. Any First Mortgagee who obtains title to a Lot pursuant to the remedies provided in the First 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 First Mortgagee of the First Mortgage.

Section 3. Rights of First Mortgagees. All First Mortgagees of Mortgages on individual Lots, or insurers or guarantors of said First Mortgage, shall, upon written request to the BMC, be entitled to:

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

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

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

Section 4. Payment of Taxes and Insurance Premiums. Mortgagees 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 BMC Maintenance Area 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 Common Area property and the mortgagees making such payments shall be owed immediate reimbursement therefor from the BMC.

Section 5. 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 6. Conflicts. In the event of any conflicts between any of the provisions of this Article and any other provisions of the Governing Documents, the provisions of this Article shall control.

ARTICLE XIII

EASEMENTS AND OWNERS' PROPERTY RIGHTS

Section 1. Easements and Rights of Enjoyment. Declarant hereby reserves, with the right to grant and transfer same, for the benefit of every Owner in the Properties, a right and easement of ingress and egress and of enjoyment in, to and over the BMC Maintenance Area (except for any slope areas on the BMC Maintenance Area and Conservation Property, except the Trail System) which easement shall be appurtenant to and shall pass with title to every Lot, subject to the following provisions:

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

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

(c) The right of the general public to use certain portions of the BMC Maintenance Area (including, without limitation, the Trail System , internal park areas and streets) as required by any Public Agency in connection with the development of the Community.

(d) The right of the BMC in accordance with the Articles, Bylaws and this Declaration, with the vote or written assent of a majority of the total voting power of the BMC, which shall include a majority of the votes residing in Members other than the Declarant, to borrow money for the purpose of improving the BMC Maintenance Area and the facilities and in aid thereof, and, subject to the provisions of the Article of this Declaration entitled "RIGHTS OF MORTGAGEES," 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 Mortgagees shall be subordinated to the rights of the Owners;

(e) Subject to the provisions of the Article of this Declaration entitled "RIGHTS OF MORTGAGEES," the right of the BMC to dedicate, release, alienate or transfer the BMC Maintenance 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 BMC, 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;

(f) 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 BMC Maintenance 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, including the Annexable Area; provided, however, that such use shall not unreasonably interfere with the rights of enjoyment of the other Owners as provided herein;

(g) The right of the Board to suspend the rights and easements of use and enjoyment of the recreational facilities, if any, located on the BMC Maintenance 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 their 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, Bylaws or BMC Rules, or other Governing Documents, 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;

(h) The right of the BMC, acting through the Board, to reasonably restrict access to areas of the BMC Maintenance Area.

Section 2. Waiver of Use. No Owner may exempt themselves from personal liability for Assessments duly levied by the BMC, nor release the Lot or other property owned by them from the liens and charges hereof, by waiver of the use and enjoyment of the BMC Maintenance Area and the facilities thereon or by abandonment of their Lot or any other property in the Properties.

Section 3. Owners' Rights and Duties: Utilities. Declarant hereby reserves, with the right to grant and transfer same, easements for installation and maintenance of sanitary sewer and water, electricity, gas, telephone and cable television lines, and drainage facilities. The rights and duties of the Owners of the Lots within the Properties granted said easements shall be governed by the following provisions:

(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 their 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 BMC, 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 4. BMC Maintenance Area Easements. The BMC shall own the Common Area and the BMC Easement Area for the use, enjoyment and convenience of the Owners. Declarant hereby reserves, with the right to grant and transfer same, to each Owner of a Lot within the Properties subject to this Declaration an easement over all of the BMC Maintenance Area, for the benefit of the Lots, the Owners of the Lots, and each of them, and for their respective Invitees and contract purchasers, for all of the purposes and uses hereinabove set forth, and without limiting the generality of the foregoing, for ingress and egress over and through the BMC Maintenance Area. Additionally, the Owner and occupants of Lots in any Phase of the Development shall have reciprocal, nonexclusive easements for ingress, egress and use over the BMC Maintenance Area located within each other annexed Phase, provided that a Notice of Completion, as defined in California Civil Code Section 3093, has been recorded for all of the Improvements in such respective Phase of the Development and (a) the conveyance of the first Lot by Declarant to an individual Owner, (b) conveyance of the BMC Maintenance Area to the BMC, or (c) the first residential occupancy of a Lot, has occurred within such Phase. Such ingress, egress and use shall further be subject to the terms, limitations, restrictions and conditions set forth in this Declaration, any Supplementary Declaration, or any BMC Rules adopted by the Board.

Section 5. Easement Over BMC Easement Areas. Declarant reserves for the benefit of the BMC and all BMC agents, officers and employees, nonexclusive easements over the Lots for the maintenance of the BMC Easement Area, including the Community Wall, located thereon or abutting such Lot together with nonexclusive easements for ingress, egress and access as reasonably necessary to perform its obligations as set forth in the Governing Documents.

Section 6. Cluster Mailbox Easements. Declarant hereby creates easements over the Properties for the benefit of the Owners, the BMC and the United States Postal Service for delivery, deposit and pick up of United States mail, for maintenance, repair and replacement of such mailboxes, and for ingress and egress to and across those portions of the Properties to the extent necessary for all such purposes. The easement rights and obligations of each Owner shall be limited to the mailbox that services such Owner and any appurtenances thereto and the portion of the Properties on which such mailbox and appurtenances are located and to the extent necessary to access said mailbox for all the foregoing purposes. The BMC shall maintain mailboxes not otherwise maintained by the United States Postal Services.

Section 7. Trail System Maintenance and Easements. The Coastal Development Permit requires that the Trail System shall be completed and open for public use concurrently with the opening of the first model home for public viewing. The BMC shall maintain, keep in good order and repair the Trail System in conformance with the provisions as set forth in the HMP. The BMC shall carry and maintain, at the BMC's sole cost and expense including, but not limited to, comprehensive general liability insurance, with limits for personal injury and property damage in the amounts set forth in the Article of this Declaration entitled "INSURANCE." The obligations contained herein shall be deemed to terminate upon the date of receipt by the BMC of written notice from the City or County or other such entity acceptable to the Public Agencies, of acceptance of the maintenance responsibilities for the Trail System.

Section 8. Party Walls.

(a) Use of Party Wall. Those Owners who have a Party Wall adjoining their Lots, shall have the equal right to use the interior surface of the Party Wall facing such Owner's Lot. Neither Owner shall use any portion of the Party Wall so as to interfere with the use and enjoyment of the other Owner.

(b) Cost of Maintenance. The cost of reasonable repair and maintenance of a Party Wall shall be shared equally by the Owners of the Lots connected by such Party Wall, except all costs, which are a result of the negligent or willful action of an Owner, shall be borne by that Owner. However, each Owner shall be solely responsible for repainting the interior side of any Party Wall facing his/her Lot.

(c) Destruction by Fire or other Casualty. In the event that any portion of such Party Wall, except the interior surface of one side, is damaged or injured from any cause, other than the act or negligence of either Owner sharing the Party Wall, it shall be repaired or rebuilt at their joint expense. In the event that a portion of the Party Wall is damaged or injured because of the act or negligence of the Owner whose Lot adjoins the fence or wall, then it shall be repaired or rebuilt at the expense of such Owner. Other than as expressly provided herein, there shall be no modification by any Owner to the Party Walls.

(d) Disputes Involving Party Walls. Unless otherwise provided herein, for purposes of this Section, the general rules of law regarding Party Walls and liability for property damage due to negligence or willful acts or omissions shall apply. In the event of any dispute arising concerning a Party Wall between Owners, said dispute shall be submitted to the Board for a resolution thereof. In the event the Board cannot or will not resolve such dispute, said dispute shall, at the request of either party, be submitted to arbitration before an arbitrator selected from the panels of the arbitrators of said American Arbitration Association in accordance with the commercial arbitration rules of the American

Arbitration Association and the requirements of the law of the State of California. If the parties are unable to agree on a single arbitrator, each will select one arbitrator who together will select a third.

Section 9. Community Walls. The Owner of each Lot adjacent to a Community Wall is responsible for maintaining only the surface of those portions of the Community Wall that face the Owner's Lot and accessible only through the yard of such Owner. Notwithstanding the foregoing, unless otherwise provided for in the Budget any tempered glass, Plexiglas, tubular steel metal or other material installed as all or a portion of said Community Wall shall be the sole responsibility of the Owner to maintain, replace and repair (including preventative maintenance for deterioration that may be caused by irrigation of the BMC Maintenance Area) unless such need for maintenance, replacement or repair is a result of acts of the BMC. In the event that any portion of such Community Wall (which includes the structural integrity thereof) except the interior surface of one side facing an Owner's Lot or those areas designated herein as the Owner's responsibility, is damaged or injured from any cause, other than the act or negligence of the Owner whose Lot adjoins such Community Wall, it shall be repaired or rebuilt at the expense of the BMC. In the event that a portion of such Community Wall is damaged or injured because of the act or negligence of the Owner whose Lot adjoins such wall or fence, then it shall be repaired or rebuilt at the expense of such Owner. To provide for such maintenance by or on behalf of the BMC, Declarant hereby reserves for the benefit of the BMC an easement of ingress and egress to provide reasonable access across the Lot to perform such maintenance and for replacement or repair as may be necessary. Except in connection with necessary repairs, no Owner may remove, puncture or otherwise modify any portion of the Community Wall. No Owner may change the original design or original appearance of any portion of the Community Wall without the prior consent of the Design Review Committee. Additionally, no changes to the Community Walls facing the Conservation Property shall occur without a CCC amendment to the CDP unless the Executive Director determines that no amendment is required.

Section 10. Encroachment Easements. Each Lot and the BMC Maintenance Area is hereby declared to have an easement over all adjoining Lots and the BMC Maintenance Area for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, settlement or shifting or any other similar cause of any fence or wall. 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 fence or wall 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 11. Fuel Modification Zone Easements. The Fire Authority and BMC shall have an easement over, along and across the Residential FMZ areas and the Fire Authority shall have an easement over, along and across the BMC Maintenance Area to enforce the standards in accordance with the FMZ Plan. In the event of an emergency, vegetation or Improvements within the FMZs which, in the opinion of the Fire Authority or the BMC, violate standards governing FMZs, may be removed by the Fire Authority or the BMC without notice to the Owner, or if BMC Maintenance Area, may be removed by the Fire Authority without notice to the BMC. In the event that such Residential FMZ is not maintained by the Owner as provided herein, the BMC shall be obligated to maintain the same. In that regard, the BMC, acting through its Board shall have the right and an easement, after providing an Owner with reasonable notice and an opportunity to be heard before the Board, to enter upon such Owner's Lot to bring a Residential FMZ into compliance with the Fuel Modification Zone standards or other such supplementary standards as may be designated in the Design Review Standards or BMC Rules. In the event the BMC is required to provide such services, the Owner shall reimburse the BMC, upon demand, for all expenses incurred in connection therewith. If such expenses are not promptly repaid by the Owner to the BMC, the Board shall levy a Reimbursement Assessment against such Owner for reimbursement. Furthermore, the Fire Authority, and the agents or employees thereof, shall have the right of ingress and egress for inspection and maintenance, with the right to access for such maintenance, for the purpose of providing maintenance of the FMZs or to enforce the standards governing Fuel Modification Zones in the Properties

in the event the BMC or an Owner of a Residential FMZ fails to provide such maintenance in accordance with such standards. Design Review Committee approval of any Improvement within the Residential FMZ does not necessarily mean the Improvement satisfies the criteria established by the local agency for Fuel Modification Zones. Prior to construction of any Improvement within an FMZ, the Owner of a Lot containing Residential FMZ or the BMC as owner of the BMC Maintenance Area shall obtain any required governmental approvals.

Section 12. Shared Driveway.

(a) Reservation of Easement. Declarant hereby reserves for the benefit of the Owners of each Lot sharing a Shared Driveway, an exclusive easement ("**Driveway Easement**") for vehicular and pedestrian access, ingress and egress over such Shared Driveway. The scope of the Driveway Easement shall also include those uses reasonably related to vehicular and pedestrian ingress and egress and the right to maintain electrical, water, sanitary sewer, natural gas, telephone, surface and underground drainage facilities, cable television or any other type of utility line, cable pipeline, conduit or other transmission medium under or along the Shared Driveway. Declarant intends that the scope of the Driveway Easement shall be interpreted in a broad manner for the purpose of allowing all proper activity consistent with providing driveway access to the Lots serviced by the Shared Driveway.

(b) Maintenance of Shared Driveway. The maintenance, benefits and burdens of each Shared Driveway shall be the held and shared equally between the Owners of the Lots using the Shared Driveway; provided, however, that if any Shared Driveway, or portion thereof, is damaged or destroyed through the act or negligence of an Owner, or by their family, guests, or agents, so as to deprive the Owner(s) possessing Driveway Easements over such Shared Driveway of the full use and enjoyment of such Shared Driveway, or any portion thereof, then the Owner whose act or negligence caused such damage or destruction shall promptly proceed to rebuild and repair the Shared Driveway to the condition as formerly existed, at such Owner's sole cost, without cost to other Owners or to the BMC.

(c) Use of Shared Driveway. No Owner entitled to use an Shared Driveway nor any other person shall erect any structure or conduct any activity, or otherwise cause to permit any activity or situation to exist, which will unreasonably impede or impair the use of the Shared Driveway by the other Owners entitled to use such area. Parking of any vehicles upon the Shared Driveway shall not be allowed.

(d) Resolution of Disputes. In the event of a dispute between Owners with respect to the Shared Driveway, said dispute shall be submitted to the Board for a resolution thereof. In the event the Board cannot or will not resolve such dispute, said dispute shall, at the request of either party, be submitted to the dispute resolution procedure set forth at Article below entitled "DISPUTE RESOLUTION."

Section 13. Sideyard Easements. There is hereby created by the Declarant, together with the right to grant and transfer the same, sideyard easements ("**Sideyard Easements**"), as further depicted on Exhibit "J" attached hereto ("**Sideyard Easement Area**"), which easements shall be appurtenant to and benefit certain Lots ("**Dominant Tenement**") and which easements shall burden certain Lots as ("**Servient Tenement**") as set forth in the grant deeds to be recorded by Declarant on those Lots which are subject to or receive a Sideyard Easement. As shown in the Exhibit "J" and as may be further specified in each Owner's grant deed to their Lot, some Lots within the Properties will be both benefited and burdened by such Sideyard Easements, some Lots only benefited, some Lots only burdened, and some Lots neither benefited nor burdened. Such Sideyard Easements shall be subject to the following terms and conditions:

(a) Such Sideyard Easement shall be in favor of the Dominant Tenement over the Servient Tenement for the purposes set forth herein. Such purposes shall include the right of the Owner of the Dominant Tenement to (i) construct upon the Sideyard Easement Area an uncovered concrete patio, provided said patio shall not be closer than six (6) inches from the structural wall of the residential dwelling located on the Servient Tenement (subject, however, to any statute, ordinance or

other law of the County, or any other governmental body having jurisdiction which may require that such patio be located at a greater distance from the structural wall), (ii) establish and maintain a landscaping and irrigation system thereon, provided such landscaping and system shall first be approved by the Design Review Committee, (iii) construct and install upon the Sideyard Easement Area such other improvements as shall first be approved by the Design Review Committee, and (iv) have the right of drainage over, across and upon the Sideyard Easement Area for water draining from any structure upon the Dominant Tenement, or for drainage into and through the subsurface drainage facilities located within the Sideyard Easement Area. The Sideyard Easement Area and every part thereof, including the drainage system established by Declarant as part of the grading and original construction of the Properties, and any fence constructed by the Declarant and located on the Sideyard Easement Area and the Dominant Tenement shall be maintained continuously in a neat, safe, attractive and orderly condition by the Owner of the Dominant Tenement Lot;

(b) The Owner of the Servient Tenement shall have the right at all reasonable times to enter upon the Sideyard Easement Area, including the right to cross over the Dominant Tenement for such entry, in order to perform work related to the use and maintenance of the Servient Tenement including the structure thereon;

(c) The Servient Tenement shall have the right of drainage over, across and upon the Sideyard Easement Area for water draining from any structure upon the Servient Tenement, or for drainage into and through the subsurface drainage facilities located within the Sideyard Easement Area, the right to maintain eaves and appurtenances thereto and the portions of any structure upon the Servient Tenement as originally constructed or as constructed pursuant to the terms of this Declaration;

(d) The Owner of the Dominant Tenement shall have the right to construct fencing across the Sideyard Easement Area, provided that the Owner of the Dominant Tenement shall not attach any object or structure to a wall or dwelling belonging to the Servient Tenement or disturb the grading of the Sideyard Easement Area or otherwise act with respect to the Sideyard Easement Area in any manner which would damage the Servient Tenement and provided further that any such fencing shall comply with the Design Review Standards as provided by this Declaration;

(e) In exercising the right of entry upon the Sideyard Easement Area as provided for above, the Owner of the Servient Tenement agrees to utilize reasonable care not to damage any landscaping or other items existing in the Sideyard Easement Area; provided, however, the Owner of the Servient Tenement shall not be responsible for damage to such landscaping or other items to the extent such damage could not be reasonably avoided in connection with such entry upon the Sideyard Easement Area for authorized purposes; and

(f) In the event there is any conflict between the Exhibit "J" and an Owner's grant deed with respect to the description of any Sideyard Easement Area, the description contained in the grant deed shall control over the description on the Exhibit "J."

(g) The BMC shall have the right to adopt rules and regulations regarding all aspects of the Sideyard Easements created by this Section. In the event of any dispute arising between Owners concerning the use of the Sideyard Easement, said dispute shall be submitted to the Board for a resolution thereof. In the event the Board cannot or will not resolve such dispute, said dispute shall, at the request of either party, be submitted to arbitration before an arbitrator selected from the panels of the arbitrators of the American Arbitration Association in accordance with the commercial arbitration rules of the American Arbitration Association and the requirements of the laws of the State of California. If the parties are unable to agree on a single arbitrator, each will select one arbitrator who together will select a third.

Section 14. Easements for Cross-Lot Drainage.

(a) Purpose of Easement. Certain Lots within the Properties have been designed to be benefited and/or burdened by nonexclusive easements on, over, across and through the

Lots to allow for the construction, installation, maintenance, use, operation, repair and replacement of certain Drainage Facilities. The easements granted and reserved herein, provide a method to control and direct the flow of drainage waters on, over, under, across and through portions of the Lots to the private and public storm drain systems which have been constructed within the Properties or adjacent thereto, for the benefit of the Properties. The design is created by the granting and reservation of non-exclusive easements as set forth in this Section.

(b) Definitions. As used in this Section, the following terms are defined as follows:

(1) "Affected Lots" shall mean all Lots designated on Exhibit "K".

(2) "Benefited Lot(s)" shall mean those Affected Lots, which are benefited by the nonexclusive easements appurtenant thereto, on, over and across one (1) or more Affected Lots, as shown on Exhibit "K" attached hereto;

(3) "Easement Areas" shall mean those portions of Affected Lots shown on Exhibit "K" attached hereto, within which Declarant has graded, installed and/or placed the Drainage Facilities; and

(4) "Drainage Facilities" shall mean and refer collectively to a drainage line which is comprised of a four inch PVC pipe set in a trench within the upper three 3 feet of the Easement Area, which is then covered by compacted soil. The Drainage Facilities may contain "inlets" and "clean-outs" connecting to the drainage line within the storm drain easement area located within the street which eventually connects to the public storm drain system.

(5) "Burdened Lot(s)" shall mean those Affected Lots which are burdened by the nonexclusive easements appurtenant to and in favor of Benefited Lots shown on Exhibit "K" attached hereto.

(c) Grant and Reservation of Easements. There is hereby granted to each Benefited Lot a nonexclusive easement appurtenant to the Benefited Lot on, over, under and across the Easement Area located on the Burdened Lot set forth opposite the number of the Benefited Lot on Exhibit "K" for purposes of the installation, construction, maintenance, use, operation, repair and replacement of Drainage Facilities. There is hereby reserved from each Burdened Lot a nonexclusive easement for the benefit of and appurtenant to the Benefited Lot(s) set forth opposite the number of the Burdened Lot on Exhibit "K" on, over, under and across the Easement Area located on the Burdened Lot for purposes of the installation, construction, maintenance, use, operation, repair and replacement of Drainage Facilities. The rights and obligations of all Owners of Affected Lots respecting the Easement Areas, and operation, maintenance, repair and replacement of Drainage Facilities within the Easement Areas, shall be as set forth herein. Each Owner acknowledges and understands that Exhibit "K" attached hereto represents only a graphic description of the Easement Areas, and is intended to clarify the general relationship of the system of easements for cross-lot drainage. Exhibit "K" is not drafted precisely in accordance with the "as-built" condition of the Drainage Facilities within the Easement Areas. In the event of a discrepancy between Exhibit "K" and the as-built condition of the Easement Areas, the as-built condition shall be controlling.

(d) Use of Easement Areas. Each Owner of a Burdened Lot shall have the right to the full use and enjoyment of the Easement Area located on his Lot, subject to the easements, covenants, conditions and restrictions set forth herein. Each Owner shall have the right and obligation to maintain the Easement Area located on his Lot in a neat, clean, safe, sanitary and attractive condition at all times, and shall bear all costs incurred on account of such maintenance. As more specifically set forth in this Declaration, or in the Design Review Standards, no improvements, including, but not limited to landscape, hardscape and irrigation improvements may be constructed, developed or installed on any Lot in the Properties, including, without limitation, within the Easement Area, without the express written approval of the Design Review Committee, or in the event the Design Review Committee fails to act on

such approval, written approval of the Owners of the Affected Lots. Each Owner further agrees not to obstruct, retard or otherwise interfere with, in any manner whatsoever, the Drainage Facilities within the Easement Area located on his/her Lot, or to perform any re-grading or construction on his Lot which may result in creating an excessive amount of water runoff (i.e., an amount of water beyond the flow originally intended and provided for, or which will re-direct or impede the flow of drainage waters. In the event said Owner does not comply with this maintenance responsibility and the drainage devices impact the adjoining Lots, the Owner of said Lot is hereby granted an easement across the Burdened Lots as necessary to maintain, clear and repair the drainage devices to ensure proper drainage.

(e) Relocating Drainage Facilities. In the event that an Owner wishes to relocate the Drainage Facilities on his Lot, the Owner of the Lot must provide the Design Review Committee with written certification from a registered civil engineer that the relocation of the Drainage Facilities will be done in a manner so as not to interfere with the use and effectiveness of the Drainage Facilities originally installed by Declarant. In the event that the Design Review Committee deems it appropriate to retain its own registered civil engineer or other licensed professional consultant in connection with the relocation of the Drainage Facilities to assure that positive drainage will continue as a result of the relocation of the Drainage Facilities, the Owner of the Lot covenants and agrees to bear all costs and expenses associated with such hiring. A copy of all approved plans and specifications for the relocation of the Drainage Facilities shall be retained by the Design Review Committee as part of the Committee's permanent records. Any document to be recorded to indicate the relocation of the easement area shall be at such Owner's expense,

(f) Indemnification by Benefited Lot Owner. Each Owner of a Benefited Lot shall indemnify and hold the Burdened Lot Owner(s) harmless from and against any and all liability arising out of or otherwise resulting from any negligent act or omission of the owner of the Benefited Lot relating to the exercise of his rights, or the performance of his obligations hereunder.

(g) Indemnification by Burdened Lot Owner. Each owner of a Burdened Lot shall indemnify and hold the Owner of a Benefited Lot and Declarant harmless from and against any and all liability arising out or otherwise resulting from any negligent act or omission of the Owner of the Burdened Lot relating to the exercise of his rights, or the performance of his obligations hereunder.

Section 15. Driveway Access Encroachment Easement. There is hereby created by the Declarant, together with the right to grant and transfer the same, driveway access encroachment easements ("**DAE Easements**"), as further depicted on Exhibit "L" attached hereto ("**DAE Easement Area**"), which easements shall be appurtenant to and benefit certain Lots ("**DAE Benefitted Lot**") and which easements shall burden certain Lots as ("**DAE Burdened Lots**") as set further forth in the grant deeds to be recorded by Declarant on those Lots which are subject to or receive a DAE Easement. As shown in the Exhibit "L" and as may be further specified in each Owner's grant deed to their Lot, some Lots within the Properties will be both benefited and burdened by such DAE Easements, some Lots only benefited, some Lots only burdened, and some Lots neither benefited nor burdened. Such DAE Easements shall be subject to the following terms and conditions:

(a) Such DAE Easement shall be in favor of the DAE Benefitted Lot over the DAE Burdened Lot for the purposes set forth herein. Such purposes shall include the right of the Owner of the DAE Benefitted Lot to temporarily encroach into the DAE Easement Area to allow for a standard turning radius required for purposes of vehicular ingress and egress to and from the Residence located on the DAE Benefitted Lot

(b) The Owner of the DAE Burdened Lots shall not install any Improvements within the DAE Easement Area that would be or become more than six (6) inches in height or otherwise impair the easement being established herein. The DAE Easement Area and every part thereof, shall be maintained continuously in a neat, safe, attractive and orderly condition by the Owner of the DAE Burdened Lot;

(c) In exercising the right of entry upon the DAE Easement Area as provided for above, the Owner of the DAE Benefitted Lot agrees to utilize reasonable care not to damage any landscaping or other items existing in the DAE Easement Area; provided, however, the Owner of the DAE Benefitted Lot shall not be responsible for damage to such landscaping or other items to the extent such damage could not be reasonably avoided in connection with such entry upon the DAE Easement Area for authorized purposes; and

(d) In the event there is any conflict between the Exhibit "L" and an Owner's grant deed with respect to the description of any DAE Easement Area, the description contained in the grant deed shall control over the description on the Exhibit "L."

(e) The BMC shall have the right to adopt rules and regulations regarding all aspects of the DAE Easements created by this Section. In the event of any dispute arising between Owners concerning the use of the DAE Easement, said dispute shall be submitted to the Board for a resolution thereof. In the event the Board cannot or will not resolve such dispute, said dispute shall, at the request of either party, be submitted to arbitration before an arbitrator selected from the panels of the arbitrators of the American Arbitration Association in accordance with the commercial arbitration rules of the American Arbitration Association and the requirements of the laws of the State of California. If the parties are unable to agree on a single arbitrator, each will select one arbitrator who together will select a third.

Section 16. 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, with the exception of any easements created in favor of a Public Agency after the recordation 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.

Section 17. Easements for BMC. There is hereby reserved to Declarant, together with the right to grant and transfer the same to the BMC with the right of the BMC to grant and transfer same, easements over the Properties for the purpose of permitting the BMC to perform emergency repairs or to do other work reasonably necessary for the proper maintenance of the Properties and to discharge any other obligations and powers as described in the Governing Documents, including without limitation a right of entry for such purpose.

Section 18. Easements for Construction, Marketing and Sales. The Declarant may use any of the Lots within the Community owned by it for model home sites and incidental 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 BMC Maintenance 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, signs and other structures); provided, however, that such use shall not be for a period beyond the sale by Declarant of all Lots within the Community, and provided further that the exercise of such right and easement shall not unreasonably interfere with the reasonable use and enjoyment of the BMC Maintenance Area by the Members.

Section 19. Access Easement for Conservation or Mitigation Purposes. Declarant reserves to itself and to its agents, successors and assigns, a nonexclusive easement over the BMC Maintenance Area for purposes of access to perform any inspections, maintenance, repair, improvements or any other actions in conformance with the terms of the applicable State Dedications or the HMP.

Section 20. Construction by Declarant. Nothing in this Declaration shall limit the right or easements reserved herein by Declarant to commence and complete construction of improvements to the Properties or to alter the foregoing or the Lots or BMC Maintenance Area or to construct such

additional improvements as the Declarant deems advisable prior to the completion and sale of all of the Properties.

Section 21. Amendment to Eliminate Easements. This Declaration cannot be amended to modify or eliminate the easements reserved to Declarant without prior written approval of Declarant, and any attempt to do so shall have no effect. Any attempt to modify or eliminate this Section shall likewise require the prior written approval of Declarant.

ARTICLE XIV

ANNEXATION

Section 1. Annexation With Consent. Additional Lots and BMC Maintenance 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 BMC residing in BMC 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, the Declarant should develop additional lands within the Annexable Area, 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 BMC; provided, however, that the development of the additional lands described in this Section shall be in accordance with the 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 BMC and the Declarant, the annexation of the additional lands must be in accordance with Section 1 immediately above. A Supplementary Declaration covering all or any portion of the Annexable Area 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 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, revoke, modify or add to the covenants established by this Declaration within the existing Properties, except as hereinafter otherwise provided. Upon the effective date of annexation as provided in the Section entitled "Effective Date of Annexation" of this Article, the Annexable Area subject to such Supplementary Declaration shall become subject to this Declaration and subject to the functions, powers and jurisdiction of the BMC, and thereafter all of the Owners of Lots in said Annexable Area shall be Members of the BMC in accordance with the terms and provisions of this Declaration and such Supplementary Declaration. Upon the effective date of the annexation as provided in the Section entitled "Effective Date of Annexation" 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 BMC Maintenance 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 Annexable Area, and any decision to effect 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 recordation of a Supplementary Declaration for each particular Phase, and which has been annexed pursuant to the provisions of this Declaration; provided, however, the powers, duties, obligations and other covenants, conditions and restrictions as set forth herein or in such Supplementary Declaration shall not commence as to such Phase until the first conveyance of a Lot in a Phase, or the BMC has assumed maintenance obligations for the BMC Maintenance Area located within such Phase, whichever is first to occur.

Section 5. Commitment by Declarant to Pay Assessments.

(a) Declarant for itself and its successors and assigns covenants and agrees to pay to the BMC, concurrently with the closing of the escrow for the first sale of a Lot in a Phase, appropriate amounts for reserves for replacement or deferred maintenance of BMC Maintenance Area improvements in the Phase necessitated by or arising out of the use and occupancy of the dwelling units on the Lots in such 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 Phase.

(b) Declarant for itself and its successors and assigns further covenants and agrees to pay to the BMC, concurrently with the closing of the escrow for the first sale of a Lot in a Phase, appropriate amounts for unfunded reserves for replacement or deferred maintenance of completed BMC Maintenance Area improvements in the Phase necessitated by or arising out of the use of such BMC Maintenance Area Improvements for a period of at least one year prior to the conveyance of such BMC Maintenance Area to the BMC.

Section 6. Deannexation by Declarant. Declarant may delete all or any portion of a Phase of the Properties annexed to the Properties from coverage of this Declaration as long as Declarant is the Owner of all of the real property within such Phase or portion of a Phase of the Properties, and provided that (a) a Notice of Deletion of Territory or Termination of Supplementary Declaration is recorded in the Official Records of Orange County in the same manner as the applicable Supplementary Declaration was recorded as to such Phase of the Properties; (b) Declarant has not exercised any BMC vote with respect to any portion of such Phase of the Properties; (c) Assessments have not yet commenced with respect to any portion of such Phase of the Properties; (d) no escrow has closed for the sale of any Lot requiring the delivery of a Final Subdivision Public Report in such Phase of the Properties; and (e) the BMC has not made any expenditures or incurred any obligations with respect to any portion of such Phase of the Properties.

ARTICLE XV

BUDGET, FINANCIAL STATEMENTS, REPORTS AND STUDIES

Section 1. Types of Accounts. Assessments collected by the BMC shall be deposited into at least two (2) separate accounts with a responsible financial institution, which accounts shall be clearly designated as (i) the Current Operation Account and (ii) the Reserve Account. The Board shall deposit those portions of the Assessments collected for current maintenance and operation into the Current Operation Account and shall deposit those portions of the Assessments collected as reserves for replacement and deferred maintenance of major components which the BMC is obligated to maintain into the Reserve Account.

(a) Reserve Account. Withdrawal of funds from the Reserve Account shall require the signatures of either two (2) Directors or one (1) Director and one (1) officer of the BMC who is not a Director. The BMC may expend funds from the Reserve Account only for the purposes set forth in Section 1365.5 of the California Civil Code.

(b) Current Operation Account. All other costs properly payable by the BMC shall be paid from the Current Operation Account.

Section 2. Budgets and Financial Statements. The Board of Directors of the BMC shall annually prepare, adopt and distribute a Budget and other required documents in accordance with the requirements of Section 1365 of the California Civil Code to (a) all Members of the BMC as provided herein regardless of the number of Members or the amount of assets of the BMC, and (b) Declarant for a period terminating ten (10) years after the closing of the final sale escrow for a Lot in the Properties or an extended period of time as may be required in writing by Declarant.

Section 3. Annual Report. The Board shall annually prepare and distribute an annual report in accordance with the requirements of Section 1365 of the California Civil Code.

Section 4. Assessments and Foreclosure. During the ninety (90) period preceding the beginning of each BMC fiscal year, the BMC shall prepare and distribute the following notices to Owners by first-class mail:

(a) The notice required by Section 1365.1 of the California Civil Code;

(b) The statement of the BMC's policies and practices in enforcing its remedies against Members for defaults in the payment of Regular and Special Assessments, including the recording and foreclosing of liens against Lots required by Section 1365 of the California Civil Code; and

(c) Notice of any increase in Regular Assessments or the levy of any Special Assessments in accordance with the provisions of California Civil Code Section 1366.

Section 5. Quarterly Reconciliation. If then required by Section 1365.5 of the California Civil Code, the Board shall:

(a) Cause a current reconciliation of the BMC's operating accounts to be made and review the same on at least a quarterly basis;

(b) Cause a current reconciliation of the BMC's Reserve Accounts to be made and review the same on at least a quarterly basis;

(c) Review, on at least a quarterly basis, the current year's actual reserve revenues and expenses compared to the current year's Budget;

(d) Review the most current account statements prepared by the financial institutions where the BMC has its operating and Reserve Accounts; and

(e) Review an income and expense statement for the BMC's operating and Reserve Accounts on at least a quarterly basis.

Section 6. Reserve Account Study. The Board shall (i) cause a study of the Reserve Account to be conducted, (ii) review the study annually and (iii) consider and implement necessary adjustments to the Board's analysis of the reserve account requirements as a result of that review in compliance with the provisions of California Civil Code Section 1365.5.

Section 7. Assessment and Reserve Funding Disclosure Summary. All disclosures relating to the BMC or a Lot shall be summarized on a form in accordance with the provisions of Civil Code Section 1365.2.5. Such form shall accompany each Budget or summary thereof delivered pursuant to the section above entitled "Budgets and Financial Statements".

(a) The form may be supplemented or modified to clarify the information, so long as the minimum information is provided for as set forth in subdivision (a) of Civil Code Section 1365.2.5.

(b) For the purpose of the report and summary, the amount of reserves needed to be accumulated for a component at a given time shall be computed as the current cost of replacement or repair multiplied by the number of years the component has been in service divided by the useful life of the component. This shall not be construed to require the Board to fund reserves in accordance with this calculation.

Section 8. Statement of Outstanding Charges. Within ten (10) days of a written request by an Owner, the BMC shall provide a written statement to the Owner which sets forth all information required by California Civil Code Section 1368. A charge for the statement may be made by the BMC, not to exceed the reasonable costs of preparation and reproduction of the statement.

Section 9. Schedule of Monetary Penalties. If the Board adopts a policy imposing any monetary penalty on or charging any fee to any Owner for a violation of the Governing Documents by that Owner or that Owner's Invitee, the Board shall adopt a schedule of the monetary penalties that may be assessed for those violations. The penalties must be consistent with the Governing Documents. A copy of the schedule shall be personally delivered or mailed by first-class mail, postage prepaid, to each Owner by the Board. Each time the schedule is modified, the Board shall again deliver a copy to each Owner, either personally or by first-class mail, postage prepaid.

Section 10. Delivery of Documents by the BMC. Any document required by the terms of this Declaration, or the California Civil Code, to be delivered by the BMC to an Owner shall be delivered pursuant to Civil Code Section 1350.7, 1368 and 1365.2. The BMC may charge a reasonable fee for delivery of such documents based up on the BMC's actual cost to procure, prepare and reproduce the requested items.

ARTICLE XVI

ENFORCEMENT AND AMENDMENT

Section 1. Disputes Involving Declarant. Any disputes, claims, issues or controversies between an Owner and Declarant or the BMC and Declarant regarding any matters that arise from or are in any way related to the Community, the relationship between the Owner and Declarant, whether contractual or tort, including, but not limited to, the purchase, sale, condition, design, construction or materials used in construction of any portion of the Community, the agreement between an Owner and Declarant or an Owner to purchase a Lot or any related agreement, or a deficiency as that term is defined in Section 896 of the California Civil Code shall be resolved in accordance with the provisions of the applicable Title 7 Declaration.

Section 2. Enforcement of Nonpayment of Assessments. Each Owner of any Lot shall be deemed to covenant and agree to pay to the BMC each and every Assessment provided for in this Declaration; and agrees to the enforcement of all such Assessments in the manner herein specified.

(a) Exceptions. Notwithstanding anything to the contrary contained in this Article or elsewhere in this Declaration, in the event the BMC imposes an Assessment as a monetary penalty for failure of an Owner to comply with the terms of the Declaration or as a means of reimbursing the BMC for costs incurred by the BMC in the repair of damage to the BMC Maintenance Area for which the Owner was allegedly responsible, such Assessment, late charges, interest or any costs in connection with the collection of such Assessment, shall not be characterized or treated as an Assessment which may become a lien against an Owner's Lot enforceable in the manner provided under Sections 2924, 2924(b), and 2924(c) of the California Civil Code.

(b) Late Charges and Interest on Delinquent Assessments. Assessments are delinquent if not paid within fifteen (15) days after the due date established by the BMC. Assessments not paid within thirty (30) days after the due date, plus all reasonable costs of collection (including attorneys' fees as set forth below) and late charges bear interest at the maximum rate permitted by law commencing thirty (30) days after the due date until paid. The BMC may also require the delinquent Owner to pay a late charge in accordance with California Civil Code Section 1366 (d)(2).

(c) Attorneys Fees. 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:

(1) Enforcement by Alternative Dispute Resolution. An Owner may dispute the Assessments if such Owner pays in full (a) the amount of the Assessment in dispute, (b) any late charges, (c) any interest, and (d) all reasonable fees and costs associated with preparing and filing a Notice of Delinquent Assessment ("**Notice of Delinquent Assessment**") as required by and in compliance with the provisions of California Civil Code Section 1367.1 of the California Civil Code. On receipt of written notice, the BMC shall inform the Owner in writing that the dispute may be resolved through alternative dispute resolution as established in Civil Code Sections 1363.810. Enforcement by alternative dispute resolution to recover a money judgment for unpaid Assessments shall be maintainable without foreclosing or waiving the Assessment lien.

(2) Enforcement by Lien. Prior to recording a lien against an Owner's Lot for failure to pay Assessments, the BMC shall prepare and serve the Notice of Delinquent

Assessment. The BMC or a trustee nominated by the BMC may commence and prosecute proceedings to establish and/or foreclose Assessment liens in accordance with the provisions of California Civil Code Section 1367.1 and the following provisions:

(A) Satisfaction of Lien. Any payments made by the Owner of a Lot toward the debt set forth, as required in this Article, shall first be applied to the Assessments owed, and, only after the Assessments owed are paid in full shall the payments be applied to the fees and costs of collection, attorney's fees, late charges, or interest. Within twenty-one (21) days of payment or other satisfaction of a delinquent Assessment for which a Notice of Delinquent Assessment was recorded pursuant to Civil Code Section 1367.1(d), the BMC shall record a certificate stating the satisfaction and release of the Assessment lien.

(B) Priority of Lien. A lien created pursuant to this Section shall be prior to all other liens recorded subsequent to the Notice of Delinquent Assessment, except that this Declaration may provide for the subordination thereof to any other liens and encumbrances. Mortgages recorded before a Notice of Delinquent Assessment have lien priority over the Notice of Delinquent Assessment. Sale or transfer of any Lot shall not affect any Assessment lien, except that the sale or transfer of any Lot pursuant to a judicial or nonjudicial foreclosure of a First Mortgage extinguishes any Assessment lien which has attached and become effective prior to the time of such sale or transfer. No sale or transfer relieves such Lot from liens for any Assessments thereafter becoming due. No person who obtains title to a Lot pursuant to a judicial or nonjudicial foreclosure of the first Mortgage is liable for the share of the Assessments chargeable to such Lot which became due before the acquisition of title to the Lot by such person. Such unpaid share of the Assessment shall be collectible from all Owners including such person.

Section 3. Enforcement of Governing Documents. The BMC, 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 the Governing Documents, and any amendment thereto, including the right to prevent the violation of any such restrictions, conditions, covenants or reservations contained in the Governing Documents and the right to recover damages or other dues for such violation. Failure by the BMC 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.

(a) Disputes by Members. Prior to filing a civil action by a Member solely for declaratory relief or injunctive relief, or for declaratory relief or injunctive relief in conjunction with a claim for monetary damages, related to the enforcement of the Governing Documents, the Members shall be required to comply with California Civil Code Section 1369.510, if applicable. Failure to comply with the dispute resolution requirements of Section 1369.510 of the Civil Code may result in the loss of the right to sue regarding enforcement of the Governing Documents.

(b) Disputes by BMC and Members. Prior to filing a civil action by either the BMC or by a Member solely for declaratory relief or injunctive relief, or for declaratory relief or injunctive relief in conjunction with a claim for monetary damages, (other than for nonpayment of Assessments), related to the any of the following matters (1) enforcement of the Governing Documents; (2) damage to the BMC Maintenance Area; (3) damage to a separate interest that arises out of, or is integrally related to, damage to the BMC Maintenance Area or a separate interest that the BMC is obligated to maintain or repair; the BMC shall be required to perform any act reasonably necessary to resolve any civil claim or action through alternative dispute resolution proceedings such as mediation, binding arbitration, or non-binding arbitration proceedings. Any dispute resolution procedure imposed by the BMC shall satisfy the requirements of Sections 1363.810 through 1363.830 of the California Civil Code. In the event the BMC does not comply with the minimum requirements of a fair, reasonable and expeditious dispute resolution procedure, the BMC or any Member may invoke the procedures provided for in Civil Code Section 1363.840. The Board may impose any of the remedies provided for in the Bylaws.

(c) Notice Requirements. Members of the BMC shall annually be provided a summary of the provisions of Section 1363.810 of the California Civil Code which specifically references the provisions of Section 1369.590 of the California Civil Code. The summary shall be provided either at the time the Budget required by Section 1365 is distributed or in the manner specified in Section 5016 of the Corporations Code. The summary shall include a description of the BMC's internal dispute resolution procedure, as required by Section 1363.850.

(d) Attorneys' Fees. In any action to enforce the terms of the Governing Documents, the prevailing party shall be awarded reasonable attorneys' fees and costs. Upon motion by any party for attorney's fees and costs as the prevailing party, the court, in determining the amount of the award, may consider a party's refusal to participate in alternative dispute resolution prior to the filing of the action.

Section 4. Enforcement of Bonded Obligations. In the event that the Improvements to the BMC Maintenance Area have not been completed prior to the issuance of a Final Subdivision Public Report to which the BMC is subject and the BMC is obligee under a bond or other arrangement ("**Bond**") to secure performance of the commitment of Declarant to complete such Improvements, the following provisions shall apply:

(a) Improvements Complete. If all Improvements in the planned construction stated appended to the Bond are covered by one or more recorded notices of completion, the Board shall execute whatever documents are required by the surety to release the Bond.

(b) Improvements Not Complete. If a notice of completion has not been filed within sixty (60) days after the completion date specified for that Improvement in the planned construction statement appended to the Bond, the Board shall consider and vote on the question of action by the BMC to enforce the obligations under the Bond. If the BMC has given an extension in writing for the completion of any BMC Easement Area Improvements, 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.

Section 5. Action by Members. In the event that the Board determines not to act or fails to initiate action to enforce the obligations under the Bond, 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 Bylaws 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 BMC. 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 BMC and the Board shall thereafter implement such decision by initiating and pursuing appropriate action in the name of the BMC.

Section 6. Amendments.

(a) Except to amend this Declaration for purposes as set forth in subsections (b) and (c) below, this Declaration may be amended only by the affirmative assent or vote of both (a) sixty-seven percent (67%) of the voting power of the BMC, including the voting power of the Declarant, and (b) sixty-seven percent (67%) 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 sixty-seven percent (67%) of the voting 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 Civil Code Section 1356(a), the Board of

Directors of the BMC or any Owner of a Lot may petition the Superior Court of such 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 BMC who shall certify that the amendment or modification has been approved as hereinabove provided, and recorded in the Official Records of Orange County, California.

(b) After the first Close of Escrow for the sale of a Lot in the Community, Declarant may unilaterally amend this Declaration by recording an appropriate instrument executed solely by Declarant, in the Official Records of Orange County, California so long as such amendment is solely for any of the following purposes: (A) to conform this Declaration to applicable law; (B) to conform this Declaration to any requirements of the DRE, FNMA, GNMA, FHLMC, or to any conditions of approval for the Community imposed by any Public Agency; (C) to correct typographical errors; or (D) to correct any error in any Exhibit or to cause an Exhibit to conform to as-built conditions.

(c) No amendment to this Declaration shall be effective if in direct conflict with the Coastal Development Permit. Notwithstanding the foregoing, any change that would not create a direct conflict between this Declaration and the provisions of the Coastal Development Permit or of any approved plan or other document pursuant to the Coastal Development Permit shall be submitted to the Executive Director of the Coastal Commission in writing, for a determination as to whether such change requires approval of the Coastal Commission. The Executive Director shall have 90 days in which to communicate a determination to the BMC. If, within that 90 days, the Executive Director indicates that Coastal Commission approval is required, no such change shall occur until such approval is secured in writing. Otherwise, no Coastal Commission approval shall be required.

Section 7. 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 Design Review Committee, the BMC, or any other land owner in the Properties. Such remedy shall be deemed cumulative and not exclusive.

Section 8. BMC Management Document Conflicts. In case of any conflict between provisions of any of the Governing Documents with the provisions of another BMC Management Document, the order of superiority of such documents shall be (1) Declaration, (2) Articles, (3) Bylaws, (4) Design Review Standards, and (5) BMC Rules, and the provisions of any such documents shall be superseded by the provisions of the documents shown to be the superior to such document to the extent of such conflict.

Section 9. 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 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.

ARTICLE XVII

DECLARANT EXEMPTION

Declarant or its successors or assigns, intend, but shall not be obligated to undertake the work of constructing Residences and developing all of the Lots included within the Properties. The completion of that work and sale, resale, rental and other disposal of Residences is essential to the establishment and welfare of the Properties as a quality residential community. As used in this Article and its subparagraphs, the words "its successors and assigns" specifically do not include purchasers of Lots pursuant to transactions requiring the issuance of a Final Subdivision Public Report. In order that such work may be completed and the Properties be established as a fully occupied residential community as rapidly as possible, no Owner nor the BMC shall do anything to interfere with, and nothing in this Declaration shall be understood or construed to:

(a) Prevent Declarant or its successors or assigns, or its contractors or subcontractors, from doing on any Lot owned by them whatever they determine to be necessary, desirable, or advisable in connection with the completion of such work, including, without limitation, the alteration of construction plans and designs as Declarant deems advisable in the course of development; or

(b) Prevent Declarant its successors or assigns, or its representatives, from erecting, constructing and maintaining on any portion of the Properties owned or controlled by Declarant, or its successors or assigns, or its contractors or subcontractors, such structures as may be reasonably necessary for the conduct of their business or completing such work and establishing the Properties as a residential community and disposing of the same by sale, resale, lease or otherwise; or

(c) Prevent Declarant or its successors or assigns, or its contractors or subcontractors from conducting on any Lot, or any portion thereof, owned or controlled by Declarant, or its successors or assigns, its business of developing, altering, subdividing, grading and constructing Residences and other Improvements to and on any portion of the Properties as a residential community and of disposing of Residences thereon by sale, lease or otherwise; or

(d) Prevent Declarant or its successors or assigns, or its contractors or subcontractors, from maintaining such sign or signs on any portion of the Properties owned or controlled by any of them as may be necessary in connection with the sale, lease or other marketing of Lots and Residences in the Properties; or

(e) Prevent Declarant at any time prior to acquisition of title to a Lot by a purchaser from Declarant to establish on that Lot additional licenses, reservations and rights-of-way to itself, to utility companies, or to others as may from time to time be reasonably necessary to the proper development and disposal of the Properties; or

(f) Prevent Declarant from designating land uses as Declarant shall deem appropriate in the Properties and Annexable Area, and such land uses shall not be amended without Declarant's prior written approval, so long as any Lot owned by Declarant remains unsold.

(g) Prevent Declarant from performing duties in relation to the Conservation Property;

(h) Declarant need not seek or obtain BMC Design Review Committee approval of any Improvement constructed or placed on the Properties by Declarant. Declarant shall not, in the exercise of their rights under this Article, unreasonably interfere with the use of the BMC Maintenance Area by any other Owner. Declarant reserves for itself an easement to permit the Declarant

to enter the BMC Maintenance Area to determine what Improvements should be made and to complete such Improvements as they may choose to perform in its sole discretion.

(i) Declarant may assign all or any portion of its rights under this Declaration to any person or entity purchasing any portion of the Properties or the Annexable Area by an express written assignment specifying the rights so assigned.

ARTICLE XVIII

GENERAL PROVISIONS

Section 1. Statutory References. Any reference to a specific statute or law in this Declaration shall be deemed to include a reference to any successor statutes and/or regulations which may be adopted or applied to implement such statute or law.

Section 2. Notices. Except as otherwise provided in this Declaration, notice to be given to an Owner must be in writing and may be delivered personally to the Owner. Personal delivery of such notice to one or more co-Owners, or any general partner of a partnership owning a Lot, constitutes delivery to all Owners. Personal delivery of such notice to any officer or agent for the service of process on a corporation or limited liability company constitutes delivery to the corporation or limited liability company. Such notice may also be delivered by regular United States mail, postage prepaid, addressed to the Owner at the most recent address furnished by such Owner to the BMC or, if no such address shall have been furnished, then to the street address of such Owner's Lot. Such notice is deemed delivered forty-eight (48) hours after such deposit. Any notice to be given to the BMC may be delivered personally to any member of the Board, or delivered in such other manner as may be authorized by the BMC. Any notice to be given to the BMC 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 the County and shall be deemed delivered forty-eight (48) hours after such deposit.

Section 3. 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 4. Enforcement by Fire Authority. The Fire Authority is hereby designated as an intended third party beneficiary of the BMC's duties to perform fire prevention maintenance for all portions of the BMC Maintenance Areas consisting of Fuel Modification Zones or designated interior/manufactured slopes in accordance with the Fuel Modification Plan, and of each Owner's duty to comply with any Fuel Modification Zone or designated interior/manufactured slopes restrictions applicable to the Owner's Lot as set forth in the Fuel Modification Plan. In furtherance thereof, the Fire Authority shall have the right, but not the obligation, to enforce the performance by the BMC of its duties and any other fire prevention requirements which were imposed by the Fire Authority or other Public Agency as a condition of approval for the development of the Community and shall also have the right, but not the obligation, to enforce compliance by any Owner with any FMZ or designated interior/manufactured slopes restrictions applicable to Owner's Lot as set forth in the Fuel Modification Plan. If, in its sole discretion, the Fire Authority shall deem it necessary to take legal action against the BMC or any Owner to enforce such duties or other requirements, and prevails in such action, the Fire Authority shall be entitled to recover the full costs of said action, including its actual attorney's fees, and to impose a lien against the BMC, or an Owner's Lot, as the case may be, until said costs are paid in full.

Section 5. Enforcement by the California Coastal Commission. The California Coastal Commission, or its successor agency, is hereby designated as an intended third party beneficiary for the purpose of verifying that the implementation of the Habitat Management Plan for the maintenance and preservations of the Conservation Properties is in compliance with Special Condition 10 imposed by the California Coastal Commission in connection with the issuance of the Coastal Development Permit for the Community. The Coastal Commission shall have the right, but not the obligation, to monitor such compliance by the BMC, and to enforce compliance therewith. If, in its sole discretion, the Coastal Commission shall deem it necessary to take legal action to enforce such compliance, the Coastal Commission shall be entitled to recover the full cost of said action, including reasonable attorneys' fees. Under State law the California Coastal Commission can enforce all provisions of the Coastal Development Permit and any noncompliance with the Coastal Development Permit can potentially result in imposition of fines and penalties

Section 6. Term. Subject to the limitations set forth in the Section above, this Declaration and the covenants herein contained shall be in effect for a term of fifty (50) years from its date of recordation. Thereafter, this Declaration 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 Records of the County 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 7. Nonliability of Officials. To the fullest extent permitted by law, neither the Board, the Design Review Committee, any other committees of the BMC or any Member of such Board or committee shall be liable to any Member of the BMC 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 8. 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 the BMC Maintenance Area. 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 9. 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 10. 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 themselves, their heirs, personal representatives, successors, transferees and assigns, binds themselves, their 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 their 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 executed this Declaration on the day and year first above written.

HEARTHSIDE HOMES, INC.,
a California corporation

By: _____

Its: _____

By: _____

Its: _____

EXHIBIT "A"
ANNEXABLE AREA

All that certain real property in the County of Orange, State of California described as follows:

Parcel 1:
Tract No. 15460 as shown on a map recorded in Book ___, Pages ___ through ___ of Miscellaneous Maps, records of Orange County, California excepting therefrom Phase 1 of the Properties.

Parcel 2:
All of Tract No. 15734 as shown on a map recorded in Book 797, Pages 40 through 42 of Miscellaneous Maps, Records of Orange County, California.

EXHIBIT "B"
APPROVED PLANT LIST FOR NON-HABITAT/NON-BUFFER AREAS

EXHIBIT "C"
BMP INSPECTION MAINTENANCE RESPONSIBILITY

Table 3: BMP Inspection and Maintenance Responsibility

BMP Designation	Responsible Party	Description of Inspection and Maintenance Activity	Frequency of Maintenance
S1 Filtration	Homeowner's Association	Verify landscaped common areas continue to provide filtration. Modify as necessary to ensure adequate filtration.	Monthly maintenance
S2 Common Area Efficient Irrigation	Homeowner's Association, Private lot owners, Hearthside Homes **Refer to ownership and maintenance exhibit**	Verify that runoff minimizing landscape design continues to function by checking that water sensors are functioning properly, that irrigation heads are adjusted properly to eliminate overspray to hardscape areas, and to verify that irrigation timing and cycle lengths are adjusted in accordance with water demands, given time of year, weather and day or night time temperatures.	Weekly maintenance
S3 Common Area Runoff – Minimizing Landscape	Homeowner's Association, Private lot owners, Hearthside Homes **Refer to ownership and maintenance exhibit**	Plants must be grouped according to similar water requirements to reduce excess irrigation runoff.	During original landscaping and prior to re-landscaping
S12 Energy Dissipaters	Homeowner's Association	Remove any accumulated debris or sediment that would impact future performance. Add or reposition rip rap as necessary by indications of erosion.	Visually inspect within 72 hours of each significant storm event
S13 Catch Basin Stenciling	Homeowner's Association **Refer to ownership and maintenance exhibit**	Inspect stenciling for legibility. Re-stencil as necessary.	Bi-annual maintenance
S15 Inlet Trash Racks	Homeowner's Association **Refer to ownership and maintenance exhibit**	Remove any accumulated debris from the racks.	Visually inspect prior to the first week of the rainy season (October) and within 72 hours of each significant storm event
N1 Tenant Education	Hearthside Homes, Homeowner's Association	Provide all members with environmental awareness education materials (made available by municipalities).	Upon initial leasing or sale of property to residents, occupants, and/or tenants, and annually thereafter
N2 Activity Restrictions	Homeowner's Association		Continuous
N3 Common Area Landscape Management	Homeowner's Association	Manage landscaping in accordance with applicable ordinances and with management guidelines for use of fertilizers and pesticides.	Ongoing
N11 Common Area Litter Control	Homeowner's Association	Inspect for, remove and properly dispose of litter.	Weekly

Table 3: BMP Inspection and Maintenance Responsibility

BMP Designation	Responsible Party	Description of Inspection and Maintenance Activity	Frequency of Maintenance
N14 Common Area Catch Basin Inspection	Homeowner's Association, City of Huntington Beach **Refer to ownership and maintenance exhibit**	Inspect to verify inlets and gutters are clean.	Monthly
N15 Street Sweeping Private Streets and Parking Lots	Homeowner's Association	Sweep streets.	Monthly
SP1 Media Filters	Homeowner's Association	Inspect , clean and/or replace media cartridges.	Inspection three times a year, generally in September, January, and March. Replacement of cartridges as necessary, average is about every two years.
SP2 Catch Basin Filter Inserts	Homeowner's Association	Visually inspect the filter inserts and replace as needed. In addition, visually inspect filters after each significant rainfall event and replace as needed.	Monthly maintenance
SP3 Nuisance Flow Diversion	Homeowner's Association	Visually inspect the diversion equipment and clean out any debris as needed.	Quarterly, with at least one inspection made in May at the end of the rainy season and one in September prior to the start of the rainy season

EXHIBIT "D"
BMC MAINTENANCE AREAS

(The BMC Maintenance Areas as depicted in this Exhibit are not necessarily drawn to scale and shall be governed by fencing or other boundaries as may be imposed in the field.)

(Any drawings representing areas other than BMC Maintenance Areas within the Properties are contained herein for informational purposes only and shall not be binding as to any representation of product type, location of building, grading, BMC maintenance responsibilities or scale.)

Any BMC Maintenance Areas depicted on this Exhibit which is applicable to subsequent Phases is subject to change, and in the event of any discrepancies between the BMC Maintenance Areas depicted on this Exhibit and any BMC Maintenance Areas described or depicted in a Supplementary Declaration, the Supplementary Declaration shall control.

(Common Areas, portions of Residential Lots,
Community Walls, and Dedicated Maintenance Areas)

See Attached

EXHIBIT "E"
CONSERVATION PROPERTY

EXHIBIT "F"
DEPICTION OF FIRE LANES

(The Fire Lanes as depicted in this Exhibit are not necessarily drawn to scale and shall be governed conditions as may be imposed in the field.)

(Any drawings representing areas other than Fire Lanes within the Properties are contained herein for informational purposes only and shall not be binding as to any representation of product type, location of building, grading, BMC maintenance responsibilities or scale.)

EXHIBIT "G"
FUEL MODIFICATION PLAN

EXHIBIT "H"
SHARED DRIVEWAYS

Not applicable to this Phase

EXHIBIT "I"
WILDLIFE PROTECTION PLAN

EXHIBIT "J"
SIDEYARD EASEMENT AREAS

Not Applicable to this Phase

EXHIBIT "K"
DRIVEWAY ACCESS ENCROACHMENT EASEMENT

Not Applicable to this Phase

EXHIBIT "L"
EASEMENTS FOR CROSS-LOT DRAINAGE

Not Applicable to this Phase

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RECORDING REQUESTED BY AND

WHEN RECORDED RETURN TO:

PALMIERI, TYLER, WIENER,
WILHELM & WALDRON, LLP (DGT)
2603 Main Street
East Tower - Suite 1300
Irvine, CA 92614

DECLARATION OF

COVENANTS, CONDITIONS AND RESTRICTIONS

AND ESTABLISHMENT OF EASEMENTS

FOR

BRIGHTWATER MAINTENANCE CORPORATION

THIS DOCUMENT INCLUDES A WAIVER OF THE RIGHT TO JURY TRIAL AND THE USE OF AN ALTERNATIVE DISPUTE RESOLUTION PROCESS IN THE EVENT OF DISPUTES (INCLUDING CONSTRUCTION DEFECT DISPUTES) BETWEEN THE DECLARANT AND THE BMC AND/OR OWNERS