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When Recorded Mail to:



Pardee Homes  
1320 Flynn Road, Suite 100  
Camarillo, CA 93012  
Attn: Barbara Bail

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**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTION**

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**OF**

**WEST HIGHLANDS PACIFIC HOMEOWNERS ASSOCIATION**

**THIS DECLARATION CONTAINS A BINDING ARBITRATION PROVISION IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT. ARBITRATION INCLUDES A WAIVER OF THE CONSTITUTIONAL RIGHT TO A JURY. YOU MUST READ THE ARBITRATION PROVISION**

**CAREFULLY (PAGE 26 , ARTICLE IX, SECTION 2, AND SHOULD CONSULT LEGAL  
COUNSEL WITH ANY QUESTIONS.**

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**OF**

**WEST HIGHLANDS PACIFIC HOMEOWNERS ASSOCIATION**

**THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS** is made this 1st day of May 2003, by Pardee Homes, a California corporation, hereinafter called "Declarant".

This Declaration is made with reference to the following RECITALS:

A. Declarant is the owner of real property located in the County of San Diego State of California, hereinafter called the "Real Property", described as follows:

Lots Twenty-Five (25) through Twenty-Nine (29), Sixty-One (61) through Sixty-Eight (68), Eighty-Six (86) through Ninety-Seven (97) and One Hundred One (101) through One Hundred Thirty (130) of Pacific Highlands Ranch Unit No. 2A in the City of San Diego, County of San Diego, State of California according to Map thereof No. 14484 filed in the Office of the County Recorder of San Diego County, State of California on November 13, 2002.

13. Declarant is the owner of certain real property, more particularly described in Exhibit "A" attached hereto and incorporated herein by reference, which Declarant proposes to improve with residential dwellings, and which property Declarant may wish to subject to a common plan of development together with the Real Property, by annexation. Upon such annexation such real property shall be deemed to be part of the Real Property for the purposes of this Declaration. Also, Declarant is the owner of certain real property, more particularly described in Exhibit "13" attached hereto and incorporated herein by reference which Declarant intends be benefitted by this Declaration.

C. Declarant has improved or intends to improve the Real Property and any or all of the real property on Exhibit "A" which is annexed thereto pursuant to this Declaration, with residential dwellings as a common interest development, and as a "planned development" as defined in California Civil Code Section 1351(k). Such planned development shall be named the West Highlands Pacific Homeowners Association. The development of the Real Property is the first phase of a proposed multi-phased development.

D. Declarant desires that each Subdivision Interest (as hereinafter defined) shall have appurtenant to it a membership in the West Highlands Pacific Homeowners Association, a California nonprofit mutual benefit corporation (the "Association"), which will be the management body for the overall Project (as hereinafter defined).

E. Before selling or conveying any interest in the Real Property, Declarant desires to subject the Real Property in accordance with a common plan to certain covenants, conditions and restrictions for the benefit of Declarant and any and all present and future owners of the Real Property and any property annexed thereto pursuant to this Declaration.

**NOW, THEREFORE**, Declarant declares that the Real Property and any additional real property that may be annexed thereto is, and shall be, held, conveyed, hypothecated, encumbered, leased, rented, used, and occupied subject to the following limitations, restrictions, easements, covenants, conditions, servitudes, liens, and charges, all of which are

declared and agreed to be in furtherance of a plan of planned development as described in California Civil Code Sections 13504372 for the subdivision, improvement, protection, maintenance, and sale of each ownership interest within the Real Property and any additional real property that may be annexed thereto, all of which are declared and agreed to be for the purpose of enhancing, maintaining, and protecting the value and attractiveness of the Real Property and such additional property. All of the limitations, restrictions, easements, reservations, covenants, conditions, servitudes, liens, and charges shall run with the land, shall be binding on and inure to the benefit of all parties having or acquiring any right, title, or interest in the Real Property, and such additional property, are for the benefit of the Real Property, and such additional property, and shall be binding on and inure to the benefit of the successors in interest of such parties. Declarant further declares that it is the express intent that this Declaration satisfy the requirements of California Civil Code Section 1353.

**ARTICLE I**

**DEFINITIONS**

Unless the context otherwise specifies or requires, the terms defined in this ARTICLE I, for all purposes of this Declaration, shall have the meanings herein specified.

Section 1. "Architectural Review Committee" means the committee of persons appointed and acting pursuant to Section 19, Article X of the Declaration, whose duties include, without limitation, the review and approval or disapproval of plans for improvements to the Real Property, except for improvements constructed by Declarant.

Section 2. "Articles" means the Articles of Incorporation of the Association as they may from time to time be amended.

Section 3. "Association" means the WEST HIGHLANDS PACIFIC HOMEOWNERS ASSOCIATION, a California nonprofit mutual benefit corporation, its successors and assigns.

Section 4. "Board" or "Board of Directors" means the governing body of the Association.

Section 5. "Bylaws" means the Bylaws of the Association as they may from time to time be amended.

Section 6. "Common Area" means (i) all real property (including any Improvements thereon) owned or to be owned by the Association for the common use, where a right to use has been granted, and enjoyment of the Owners, (ii) all real property (including the Improvements thereto), over which the Association or the Owners own or will own an easement for the maintenance of the area for the benefit of the Owners and (iii) all real property (including the Improvements thereto), in the public right-of-way over which the City of San Diego has granted or will grant an encroachment permit to the Association for the purpose of maintenance of the area for the benefit of the Owners. The Common Area may include property developed or to be developed by Declarant not located within the Real Property, but located within any of the property described in Exhibit "A" hereto. Common Areas for a particular phase of the Project shall be conveyed to the Association prior to or at the same time as the first conveyance of a Subdivision Interest to an Owner in that particular phase. The Common Area at the time of conveyance of the first Subdivision Interest shall be as follows:



Common Area Lot(s): None in Phase One (1) of the project.

Section 7. "Common Expenses" means and includes the actual estimated expenses of operating the Association and any reasonable reserve for such purposes as found and determined by the Board and all sums designated common expenses by or pursuant to the Governing Documents.

Section 8. "County" means San Diego County, California, the county in which the Project is located.

Section 9. "Declarant" means Pardee Construction Company, a California corporation, its successors and assigns, if such successors or assigns are assigned the rights of Declarant pursuant to Article XI Section 7 or if such successor or assignee is a Mortgagee acquiring Declarant's interest in the Project by foreclosure or deed in lieu of foreclosure.

Section 10. "Declaration" means this Declaration of Covenants, Conditions and Restrictions and all amendments, modifications and supplements thereto.

Section 11. "Eligible Insurer or Guarantor" means an insurer or governmental guarantor of a first Mortgage on the Property or any portion thereof who has requested notice of certain matters in accordance with ARTICLE VII herein.

Section 12. "Eligible Mortgage Holder" or "Eligible Holder" means a holder of a first Mortgage on the Real Property or any portion thereof who has requested notice of certain matters from the Association in accordance with ARTICLE VII herein.

Section 13. "Fiscal Year" means the year from January 1 of one calendar year through December 31 of the same calendar year. However, the fiscal year of the Association is subject to change from time to time as the Board may determine.

Section 14. "Governing Documents" means the Declaration, the Articles, the Bylaws, as they may be amended from time to time, and any exhibits attached thereto; and the Rules and Regulations for the Members as established from time to time by the Board.

Section 15. "Improvements" means all structures, construction, and landscaping improvements of every type and kind, whether above or below the land surface, including but not limited to buildings, outbuildings, recreational facilities, carports, signs, roads, driveways, fences, screening walls, retaining walls, hedges, windbreaks, plantings, planted trees, grass and shrubs, sprinkler and irrigation systems, poles and signs.

Section 16. "Member" means every person entitled to membership in the Association as provided herein,

Section 17. "Mortgage" means a deed of trust, as well as a mortgage, encumbering any Subdivision Interest.

Section 18. "Mortgagee" means a beneficiary under or holder of a deed of trust, as well as a mortgagee of a Mortgage, encumbering a Subdivision Interest.

Section 19. "Mortgagor" means the trustor of a deed of trust, as well as a mortgagor of a Mortgage, encumbering a Subdivision Interest.

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Section 20. "Owner" means the record owners, whether one (1) or more persons or entities, of fee simple title to any Subdivision Interest which is a part of the Real Property, including contract buyers under any installment sale contracts, but excluding those having such interest merely as security for the performance of an obligation.

Section 21. "Professional Manager" means a person or firm which has been engaged in the business of managing condominium and/or planned development projects similar to the Project in the County on a full time basis for a period of not less than five (5) years immediately preceding his, her or its employment by the Association. No person or firm may be hired to manage the Project *unless* such person qualifies as a Professional Manager. A Professional Manager may be an employee of the Association or independent contractor, employed by the Association pursuant to the Governing Documents, and assigned the duties, power and functions of the Association, as limited by the Governing Documents, terms of employment and applicable law, Rules and Regulations. No Professional Manager or any officer, director, shareholder, principal, partner or employee thereof may be an officer or director of the Association.

Section 22. "Project" means the Real Property and any additional real property annexed thereto pursuant to this Declaration, including all structures and improvements erected or to be erected thereon.

Section 23. "Record" and "Recordation" means, with respect to any document, the recordation of said document in the Office of the County Recorder of the County of San Diego , State of California.

Section 24. "Rules and Regulations" means the rules and regulations adopted by the Board for the regulation of the Common Area and use of the Subdivision Interest, as they may be amended from time to time.

Section 25. "State" means the State of California.

Section 26. "Subdivision Interest" means each of (i) the lots numbered Lots Twenty-Five (25) through Twenty-Nine (29), Sixty-One (61) through Sixty-Eight (68), Eight-Six (86) through Ninety-Seven(97) and One Hundred One (101) through One Hundred Thirty (130) of Pacific Highlands Ranch Unit No. 2A in the City of San Diego, County of San Diego, State of California according to Map thereof No. 144784 filed in the Office of the County Recorder of San Diego County, State of California on November 13, 2002.

Section 27. "Supplementary Declaration" means a recorded declaration adding additional property to that covered by this Declaration. Such Supplementary Declaration may, but is not required to, impose, expressly or by reference, additional restrictions and obligations on the land submitted by that Supplementary Declaration to the provisions of this Declaration.

## **ARTICLE II**

### **MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION**

Section 1. Qualifications and Voting. Every Owner, including Declarant, shall be a

Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Subdivision Interest. Each Owner is obligated promptly, fully and faithfully to comply with and conform to this Declaration, the Articles and Bylaws and the Rules and Regulations adopted thereunder from time to time by the Board and officers of the Association. Membership in the Association shall not be transferred, pledged or alienated in any way, except upon the sale or encumbrance of the Subdivision Interest to which it is appurtenant, and then only to the purchaser, in the case of a sale, or Mortgagee, in the case of an encumbrance of such Subdivision Interest. Any attempt to make such a prohibited transfer is void. In the event any Owner shall fail or refuse to transfer the membership registered in his/her name to the purchaser of his/her Subdivision Interest, the Association shall have the right to record the transfer upon its books and thereupon the old membership outstanding in the name of the seller shall be null and void.

The Association shall have two classes of voting membership:

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

Class B. Class B Member(s) shall be the Declarant, and shall be entitled to three (3) votes for each Subdivision Interest owned in any phase of the Project. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) On the second anniversary of the issuance of the Final Subdivision Public Report for the most recent phase of the Project; or

(b) On the fourth anniversary of the issuance of the Final Subdivision Public Report for the first phase of the Project.

As long as two classes of voting memberships exist, any action by the Association that requires approval by the Owners shall require the approval by the designated percentage of voting power in each class, except the action described in Section 6 of Article XI of this Declaration. Voting rights shall vest either at the time assessments are levied against the Owner's Subdivision Interest or as provided in a subsidization plan approved by the California Department of Real Estate. Voting for the members of the Board shall be by secret written ballot, and the Members shall be entitled to exercise cumulative voting rights as provided in the Bylaws.

Section 2. Joint Owner Disputes. The vote for each such Subdivision Interest must be cast as a unit, and fractional votes shall not be allowed. In the event that joint Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If one (1) Owner casts a vote representing a certain Subdivision Interest, it will thereafter be conclusively presumed for all purposes that he/she or they were acting with the authority and consent of all other Owners of the same Subdivision Interest. If more than one (1) Owner casts the vote representing a certain Subdivision Interest in any matter in which only one (1) vote could be cast for that Subdivision Interest, the votes cast by such Owners shall not be counted and shall be considered void.

**ARTICLE III****ASSESSMENTS**

Section 1. Covenant to Pay Assessments. The Declarant; for each Subdivision Interest owned by it within the Project that is expressly made subject to the assessments set forth in this Declaration, hereby covenants and each Owner of any Subdivision Interest by acceptance of a deed therefor, whether, or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay, to the Association: regular and special assessments levied in accordance with the provisions of this Declaration, and to allow the Association to enforce any assessment lien established in accordance with the provisions of this Declaration by nonjudicial proceedings under a power of sale or by any other means authorized by law. Each such assessment, plus interest, costs, including attorneys' fees and penalties shall be the personal obligation of the person or persons who were the Owner(s) of such Subdivision Interest at the time when the assessment fell due. If there is more than one Owner of a particular Subdivision Interest, each of such Owners shall be jointly and severally liable for such assessment. Each Owner shall be responsible for (i) notifying the Association of any pending change or transfer of title to his Subdivision Interest and (ii) paying any and all due and unpaid assessments including interest, costs, penalties and attorneys' fees related thereto, if any, levied against his Subdivision Interest prior to and/or concurrent with any such transference of title. The personal obligation for delinquent assessments shall not pass to an Owner's successors in title unless expressly assumed by them. No Owner of a Subdivision Interest may exempt himself/herself from liability for his/her contribution toward the Common Expenses by waiver of the use or enjoyment of any of the Common Area or by abandonment of his/her Subdivision Interest. Each Owner, to the extent permitted by law, waives the protections of any declared homestead or homestead exemption under the laws of the State of California as applied to any action to enforce the assessments levied by the Association. The Association shall provide notice by first-class mail to the Owners of any increase in the regular or special assessments of the Association, not less than thirty (30) nor more than sixty (60) days prior to the increased assessment becoming due. The Declarant shall have the right, but not the obligation, to pay all or any portion of Owners' assessments as a marketing incentive, pursuant to agreements between Declarant and such Owners. Declarant shall also have the right to enter into subsidization agreements with the Association.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to protect, enhance and maintain the recreation, health, safety and welfare of the residents in the Project and for the improvement, maintenance, replacement, repair and operation of the Common Area and the improvements and personal property in the Common Area that are owned or maintained by the Association, as set forth in this Declaration, and to further any other purpose that is for the common benefit of the Owners in their use and enjoyment of the Project.

Section 3. Regular Assessments/Reserve Funds. Until January 1 of the year immediately following conveyance of the first Subdivision Interest to an Owner, the maximum annual regular assessment shall be \$1,200.00 per Subdivision Interest. Not more than sixty (60) days nor less than forty-five (45) days before the beginning of each fiscal year of the Association, the Board shall meet for the purpose of establishing the regular annual assessment for the forthcoming fiscal year. At such meeting the Board shall review the preliminary pro forma operating budget prepared in accordance with the provisions of Section 23 of Article IV hereof, any written comments received from Members and Mortgagees, and such other related information that has been made available to the Board. After making any

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adjustments that the Board considers appropriate, the Board, subject to the restrictions described in this provision and without the requirement for a vote of the Owners, shall establish the regular assessment for the forthcoming fiscal year.

Each annual regular assessment shall include a portion for reserves in such amount as the Board in its discretion considers appropriate to meet the cost of the future repair, replacement, or additions to the major components of the Common Area improvements ("Major Components") that the Association is obligated to maintain and repair. Reserve funds shall be deposited in a separate account and the signatures of at least two persons who shall either be Members of the Board, or one officer who is not a Member of the Board and a Member of the Board, shall be required to withdraw money from the reserve account. Except as provided below, no money shall be transferred from a reserve fund to the Association's general operating fund and reserve funds may not be expended for any purpose other than the repair, restoration, replacement, or maintenance of, or litigation involving the repair, restoration, replacement, or maintenance of, Major Components that the Association is obligated to maintain.

Notwithstanding the foregoing, the Board may authorize the temporary transfer of money from a reserve fund to the Association's general operating fund to meet short term cash flow requirements or other expenses, provided the Board has made a written finding, recorded in the Board's minutes, explaining the reasons that the transfer is needed, and describing when and how the money will be repaid to the reserve fund, The transferred funds shall be restored to the reserve fund within one (1) year of the date of the initial transfer, except that the Board May, on the making of a finding supported by documentation that a temporary delay is in the best interest of the Project, temporarily delay the restoration. The Board shall exercise prudent fiscal management in delaying restoration of these funds and in restoring the expended funds to the reserve account, and shall, if necessary, levy a special assessment to recover the full *amount* of the expended funds within the time limits required by California Civil Code §1365.5 (as such section may be hereafter amended, supplemented or superseded). This special assessment is subject to the limitation imposed by California Civil Code § 1366 and the restrictions imposed herein below. The Board may, at its discretion, extend the date the payment on the special assessment is due. Any extension shall not prevent the Board from pursuing any legal remedy to enforce the collection of an unpaid special assessment.

When the decision is made to use reserve funds or to temporarily transfer money from the reserve fund to pay for litigation, the Association shall notify the Members of the Association of that decision in the next available mailing to all Members pursuant to Section 5016 of the Corporations Code, and of the availability of an accounting of those expenses. Unless the Governing Documents impose more stringent standards, the Association shall make an accounting of expenses related to the litigation on at least a quarterly basis. The accounting shall be made available for inspection by Members of the Association at the Association's office.

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

The study shall, at a minimum, include:

- (i) identification of the Major Components that the Association is obligated to

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repair, replace, restore, or maintain that, as of the date of the study, have a remaining useful life of less than 30 years;

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

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

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

As used herein, "reserve accounts" means money that the Board has identified for use to defray the future repair or replacement of, or additions to, those Major Components that the Association is obligated to maintain; and "reserve account requirements" means the estimated funds that the Board has determined are required to be available at a specified time to repair, replace, or restore those Major Components that the Association is obligated to maintain.

Unless the Association is exempt from federal or state income taxes, including without limitation an exemption under Internal Revenue Code Section 528 and Revenue and Taxation Code Section 23701 t, all reserve funds to the extent possible, shall be designated and accounted for as capital contributions to the Association, and the Board shall take such steps as may be reasonably necessary under federal and state tax laws to prevent the reserve funds from being taxed as income of the Association, including, maintaining the reserve funds in segregated accounts and not commingling the fund with general operating funds.

Annual increases in regular assessments for any fiscal year shall not be imposed unless the Board has complied with subdivision (a) of Civil Code Section 1365 (as such section may be hereafter amended, supplemented or superseded) with respect to that fiscal year, or has obtained the approval of Owners, constituting a quorum, casting a majority of the votes at a meeting or election of the Association 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 (as such sections may be hereafter amended, supplemented or superseded). Notwithstanding any other provision in this Declaration to the contrary, the Board may not impose a regular assessment that is more than twenty percent (20%) greater than the regular assessment for the Association's preceding fiscal year or impose special assessments which in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year without the approval of a majority of the votes at a meeting of the Members of the Association at which a quorum is present 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 (as such sections may be hereafter amended, supplemented or superseded). For the purposes of this section, quorum means a majority of the voting power of the membership of the Association.

This Section does not limit assessment increases necessary for emergency situation. 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 Project or any part

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of it for which the Association is responsible where a threat to personal safety on the property is discovered.

(c) An extraordinary expense necessary to repair or maintain the Project or any part of it for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the proforma operating budget under Civil Code Section 1365. However, prior to the imposition or collection of an assessment under this Subparagraph, 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.

Unless the Board is required by law to give greater notice, at least ten (10) days prior to the commencement of any regular or special assessment, the Board shall give each Owner written notice of the amount of assessment, and the due date (or due dates if paid in installments, and the amount of each installment). The notice need only be given once for any assessment paid in installments. Unless the Board specifies otherwise, the installment due dates shall be the first day of each month.

Regular and special assessments levied pursuant to the governing documents are delinquent fifteen (15) days after they become due. If an assessment is delinquent the Association may recover all of the following:

(a) Reasonable costs incurred in collecting the delinquent assessment, including reasonable attorney's fees.

(b) A late charge not exceeding ten percent (10%) of the delinquent assessment or ten dollars (\$10), whichever is greater.

(c) Interest on all sums imposed in accordance with this section, including the delinquent assessment, reasonable costs of collection, and late charges, at an annual percentage rate not to exceed twelve percent (12%), commencing thirty (30) days after the assessment becomes due.

Section 4. Special Assessments. Subject to the restrictions described in Section 3 of this Article, the Board may levy a special assessment if the Board, in its discretion, determines that the Association's available funds are or will become inadequate to meet the estimated expenses of the Association, including the maintenance of appropriate reserves, for a particular fiscal year for any reason, including, but not limited to, unanticipated delinquencies, costs of construction, unexpected repairs or replacements of capital improvements or otherwise. The Board shall determine the amount necessary to meet the estimated expenses, and if the amount is approved by a majority vote of the Board, it *shall* become a special assessment. The Board, in its discretion, may levy the entire assessment immediately or levy it in installments over a period it considers appropriate. The Association may also levy a special assessment against any Member to reimburse the Association for costs incurred in bringing a Member and his Subdivision Interest into compliance with the provisions of this Declaration, the Articles, the Bylaws, and the Association's Rules and Regulations, and any amendments thereto, which special assessment may be levied upon the vote of the Board after notice and an opportunity for a hearing which satisfy the requirements of Section 7341 of the California Corporations Code (as such section may be hereafter amended, supplemented or superseded), as set forth in ARTICLE VIII, Section 5 of the Bylaws; provided, however, this special assessment may not become a lien against the Member's Subdivision Interest that is enforceable by a power of sale

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under Civil Code Sections 2924, 2924b and 2924c (as such sections may be hereafter amended, supplemented or superseded). This restriction on enforcement is not applicable to late payment penalties for delinquent assessments or charges imposed to reimburse the Association for loss of interest or for collection costs, including reasonable attorneys' fees, for delinquent assessments. Unless the Association is exempt from federal or state income taxes, including without limitation an exemption under Internal Revenue Code Section 2370 It, the Board shall take such steps as may be reasonably necessary to prevent the special assessment from being included in the Association's income for federal and state income tax purposes, including, if necessary, depositing the funds in a segregated account, not commingling the funds with any other funds of the Association, and using the funds solely for the purpose for which they were levied.

Section 5. Uniform Rate. Both regular assessments and special assessments, including but not limited to special assessments to raise funds for the rebuilding or major repair of the Common Area, shall be fixed at a uniform rate for all Subdivision Interests. Such assessments may be collected on a monthly basis or otherwise as determined by the Board.

Section 6. Commencement of Assessments. The regular assessments provided for herein shall commence *as to* all Subdivision Interests in a particular phase covered by this Declaration on the first day of the month following the conveyance of the first Subdivision Interest to an Owner in that phase. Written notice of the annual assessment shall be sent to every Owner forty-five (45) days in advance of the commencement of the fiscal year. The due dates shall be established by the Board. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Subdivision Interest have been paid. A properly executed certificate of the Association as to the status of assessments on a Subdivision Interest is binding upon the Association as of the date of its issuance.

Section 7. Subordinate to First Mortgage. The lien of the assessments provided for herein shall be subordinate to the lien of any first Mortgage upon any Subdivision Interest. Sale or transfer of any Subdivision Interest shall not affect the assessment lien. However, the sale or transfer of any Subdivision Interest as the result of the exercise of a power of sale or a judicial foreclosure involving a default under the first Mortgage shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Subdivision Interest from lien rights for any assessments thereafter becoming due. Where the Mortgagee of a first Mortgage of record or other purchaser of a Subdivision Interest obtains title to the same as a result of foreclosure, such acquirer of title, his successors and assigns, shall not be liable for the share of the common expenses or assessments by the Association chargeable to such Subdivision Interest which became due prior to the acquisition of title to such Subdivision Interest by such acquirer. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the Subdivision Interests including such Subdivision Interest by such acquirer. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the Subdivision Interests including such acquirer, his successors and assigns.

Section 8. Assessment for Taxes. In the event that any *taxes* are assessed against the Common Area or the personal property of the Association, rather than against the individual Subdivision Interest, said taxes shall be added to the annual regular assessment and, if necessary, a special assessment may be levied against the Subdivision Interest in the amount equal to said taxes, to be paid in two (2) installments. Assessments levied under this Section shall not be subject to the provisions of Section 3 of Article III of this Declaration.



Section 9. Enforcement Powers. The Association has the right to collect and enforce assessments. In addition to the other enforcement powers described in this Declaration and subject to the restriction on the enforcement of monetary penalties described herein, the Association may enforce delinquent assessments, including delinquent installments, by suing the Owner directly on the debt established by the assessment, or by establishing a lien against the Owner's Subdivision Interest as provided in Section 10 and foreclosing the lien through either judicial proceedings or nonjudicial proceedings under a power of sale as provided in Section 11. The Association may commence and maintain a lawsuit directly on the debt without waiving its right to establish a lien against the Owner's Subdivision Interest for the delinquent assessment. In any action instituted by the Association to collect delinquent assessments, accompanying late charges, or interest, the prevailing party shall be entitled to recover costs and reasonable attorneys' fees.

Section 10. Lien Against Subdivision Interest. A delinquent assessment or installment, together with any accompanying late charges, interest, costs (including reasonable attorneys' fees), and penalties as may be authorized under this Declaration shall become a lien on the Subdivision Interest against which the assessment was levied on the Recordation of a notice of delinquent assessment in the office of the county recorder of the County. The notice shall describe the amount of the delinquent assessment or installment, the related charges authorized by this Declaration, a description of the Subdivision Interest, the name of the Owner, and if the lien is to be enforced by *power* of sale under nonjudicial foreclosure proceedings, the name and address of the trustee authorized by the Association to enforce the lien by sale. The notice shall be signed by any officer of the Association, or any employee or agent of the Association authorized to do so by the Board. Unless the Board considers the immediate recording of the notice to be in the best interests of the Association, the notice shall not be recorded until fifteen (15) calendar days after the Association has delivered a written notice of default and demand for payment. If the delinquent assessment or installment and related charges are paid or otherwise satisfied, the Association shall record a notice of satisfaction and release *of* lien.

Section 11. Foreclosure of Assessment Lien. The Board may enforce any assessment lien established under this Article, by filing an action for judicial foreclosure or, if the notice of delinquent assessment contained the name and address of the trustee authorized by the Association to enforce the lien by nonjudicial foreclosure, by recording a notice of default in the form described in Civil Code §2924c(b)(1) (as such section may be hereafter amended, supplemented or superseded) to commence a nonjudicial foreclosure. Any nonjudicial foreclosure shall be conducted in accordance with the requirements of Civil Code §§2924, 2924b, 2924c, 2924f, 2924g, 2924h and 2924j (as such sections may be hereafter amended, supplemented or superseded) that apply to nonjudicial foreclosures of mortgages or deeds of trust. The sale shall be conducted by the trustee named in the notice of delinquent assessment or by a trustee substituted in accordance with the provisions of Civil Code §2934a (as such section may be hereafter amended, supplemented or superseded). The Association may bid on the Subdivision Interest at the sale, and may hold, lease, mortgage, and convey the acquired Subdivision Interest. If the default is cured before the sale, or before completing a judicial foreclosure, including payment of all costs and expenses incurred by the Association, the Association shall record a notice of satisfaction and release of lien, and, on receipt of a written request by the Owner, a notice of rescission of the declaration of default and demand for sale.

Section 12. Contribution of Start-up Funds By Declarant/Reimbursement By First Owners. Prior to the date of the conveyance of the first Subdivision Interest in a particular phase of the Project, Declarant shall deposit into an escrow for each and every Subdivision

Interest not yet sold in that phase, start-up funds for the Association in an amount equal to one-sixth (1/6) of the amount of the estimated annual regular assessment per Subdivision Interest for that phase. Escrow shall remit these funds to the Association. Each purchaser of a Subdivision Interest from Declarant shall deposit into the purchase and sale (or exchange) escrow for such Subdivision Interest an amount equal to one-sixth (1/6) the amount of the estimated annual regular assessment per Subdivision Interest for that phase. Upon the close of the purchase and sale for exchange) escrow of any Subdivision Interest for which the startup funds were prepaid by Declarant, escrow shall remit to the Declarant the start-up funds deposited by the buyer. Said start-up fund payments shall be limited to the first sales of Subdivision Interests by Declarant and shall not apply to any resale of a Subdivision Interest.

Section 13. Assessment Certificate. A certificate executed under penalty of perjury by any two (2) members of the Board and acknowledged shall be conclusive upon the Association and the Owners in favor of any and all persons who rely thereon in good faith as to the matters therein contained, and any Owner (including Declarant) shall be entitled to such a certificate setting forth the amount of any due and unpaid assessments with respect to his Subdivision Interest (or the fact that all assessments due are paid if such is the case) within ten (10) days after demand therefor and upon payment of a reasonable fee, not to exceed Ten Dollars (\$10.00), which may be fixed by the Board.

Section 14. Declarant's Limited Exemption From Assessment. Notwithstanding the provisions of this Article, any Subdivision Interest having no structural improvements for human occupancy shall be exempt from the payment of that portion of any assessment that is for the purpose of defraying expenses and reserves directly attributable to the existence and use of the structural improvement. The exemption includes, but is not limited to: roof replacement, exterior maintenance, walkway and carport lighting, refuse disposal, cable television, and domestic water supplied to residential structures.

The foregoing exemption shall be in effect until the earliest of the following events:

- (a) Recordation of a notice of completion of the structural improvements;
- (b) Occupation or use of the Subdivision Interest; or
- (c) Completion of all elements of the residential structures that the Association is obligated to maintain.

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

- (a) A notice of completion of the common facility has been recorded; or

The common facility has been placed into use.

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## ARTICLE IV

### POWERS AND DUTIES OF ASSOCIATION

The Association shall have all the powers of a nonprofit mutual benefit corporation organized under the General Nonprofit Mutual Benefit Corporation Law of California, subject only to such limitations on the exercise of its powers as are set forth in the Articles, the Bylaws, and this Declaration. It shall have the power to do any lawful thing that may be authorized, required, or permitted to be done by the Association under this Declaration, the Articles, and the Bylaws, and to do *and perfolan* any act that may be necessary or proper for or incidental to, the exercise of any of the express powers of the Association, including, without limitation, the acts enumerated below, Subject to other provisions of this Declaration and to the limitations of the Articles and the Bylaws and the California Corporations Code as to action to be authorized or approved by the Members, all corporate powers shall be exercised by or under the authority of, and the business and affairs of the Association shall be controlled by, the Board. Without prejudice to such general powers but subject to the same limitations, it is hereby expressly declared that the Association shall have the following powers and duties:

Section 1. Elect Officers. To select and remove all the officers, agents and employees of the Association, prescribed such powers and duties for them as may not be inconsistent with law, the Articles, the Bylaws or this Declaration, and, subject to the provisions of the Bylaws, to fix their compensation.

Section 2. Management and Control. To conduct, manage and control the affairs and business of the Association, and to make such Rules and Regulations therefor not inconsistent with law, the Articles, the Bylaws or this Declaration as they deem best, including Rules and Regulations for the operation of the Common Area and other facilities and property owned or controlled by the Association and use of the Subdivision Interest. Except as provided below, the Association shall at all times employ a Professional Manager to manage and conduct the business of the Association, subject to the provisions of *Section 11* hereof. Professional management shall be required until the Association elects to self manage in accordance with the provisions of Section 2(b) of Article VII hereof.

Section 3. Principal Office. To change the principal office for the transaction of the business of the Association from one location to another within the County and to designate a place within the Project or as close thereto as possible within the County for the holding of any membership meeting or meetings.

Section 4. Incur Indebtedness. To borrow money and incur indebtedness for the purposes of the Association, and to cause to be executed and delivered therefor, in the corporate name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecation or other evidences of debt and securities therefor, with the vote or written assent of two-thirds (2/3) of the voting power of each class of Members of the Association.

Section 5. Obtaining Insurance. To obtain and maintain in force the following policies of insurance:

(a) Bodily injury liability insurance, with limits of not less than \$200,000 per person and \$1,000,000 per occurrence, and property damage liability insurance with a deductible of not more than \$1,500 and a limit of not less than \$500,000 per accident, insuring against liability for bodily injury, death and property damage arising from the activities of the Association or with respect to property under its jurisdiction.

(b) Fidelity insurance in the form of a bond in an amount equal to one hundred and fifty percent (150%) of the Association's annual assessments including reserves which names the Association as obligee and protects against misuse and misappropriation of Association property by members of the Board, officers, trustees and employees of the Association, and any management agent and its officers, agents and employees whether or not such persons are compensated for their services.

(c) Workers' Compensation Insurance covering any employee of the Association.

(d) Casualty insurance covering fire and extended coverage insurance and any other perils that the Association shall deem advisable for the full insurable value of all of the Improvements within the Common Area. "Full insurable value" means the actual replacement value, exclusive of the cost of excavating, foundations and footings. The form, content and term of the policy and its endorsements and the issuing company must be satisfactory to all institutional first Mortgagees. If more than one institutional first Mortgagee has a loan of record against a lot in the Project, the policy and endorsements shall meet the maximum standards of the various institutional first mortgagees represented in the Project. To the extent available, the policy shall contain an agreed amount endorsement or its equivalent; an increased cost of construction endorsement or a contingent liability from operation of building laws endorsement or their equivalent; an extended coverage endorsement; vandalism, malicious mischief coverage; a special form endorsement; and a determinable cash adjustment clause or a similar clause to permit cash settlement covering full value of the improvements in case of partial destruction and a decision not to rebuild. The policy shall provide amounts of coverage as shall be determined by the Board. The policy shall name as insured the Association, the Owners and Declarant, as long as Declarant is the owner of any lot, and all mortgagees as their respective may appear, and may contain a loss payable endorsement in favor of the Insurance Trustee.

One or more policies of insurance in favor of the officers and directors of the Association. Said policies shall be with an insurance company that is rated A+ or better by A. M. Best. Said policies shall protect all former and current officers and directors, without limitation, for all acts performed by them or failures to act within the course and scope for their duties as officers and directors of the Association. Said policies shall also inure to the benefit of the employers of such officers and directors, if those officers and/or directors shall be deemed to be acting for the benefit of or at the direction of said employers. The Association shall obtain policies that protect all officers and directors of the Association from the time of its inception through the present. If a claims-made policy is purchased and maintained in satisfaction of this provision, it shall have a retroactive date coincident with the date of the inception of the Association. Said policy or policies shall be in an amount of \$1,000,000 per occurrence and with a minimum annual aggregate of \$3,000,000. Notwithstanding any other provision of this Declaration, the Association is and shall forever be obligated to maintain in full force and effect during its existence insurance coverage described in this subparagraph (e). No modification of this subparagraph (e) shall be made without notice to and the express consent of all former officers and directors. This modification provision is

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particular to this insurance obligation and applies to it specifically and is additive to any other and all other and all other provisions concerning modification of this Declaration. If the officers and/or directors, whether former or current, object to a modification of this provision they shall have the right to purchase such insurance at the expense of the Association from a like company and in the amounts stated above with similar retroactive dates and aggregate limits.

(1) Such additional or different insurance coverage and other bonds as the Board shall deem necessary or expedient to carry out the Association functions as set forth in this Declaration, the Articles and the Bylaws or as may be required by law or by governmental agencies, or by the Federal National Mortgage Association or similar organizations.

The Association is authorized to negotiate and agree on the value and extent of any loss under any policy carried pursuant to subparagraph (d) above. The Association is granted full right and authority to compromise and settle any claim or enforce any claim by legal action or otherwise and to execute releases in favor of any insurer.

The liability insurance referred to above shall name as separately protected insureds, Declarant, the Association, the Board, and their representatives, members and employees, and the Association Members (as a class), with respect to any liability arising out of the maintenance or use of any Common Areas or other recreational facilities under the jurisdiction of the Association. Such policy or policies shall protect each of the insureds as if each were separately insured under separate policies; provided, however, that such policies shall not require the insurers to pay any amount in excess of the *maximum limits* stated therein.

Every policy of insurance obtained by the Association, whether or not required to be obtained pursuant to the provisions of this Declaration, shall expressly waive any and all rights of subrogation against Declarant, its representatives and employees, and all Members.

The insurance premium on the policies provided by the Association shall be a common expense to be included in the monthly assessments levied by the Association, and the portion of such payments necessary for the insurance premiums shall be held in a separate account of the Association and shall be used solely for the payment of the premiums on the insurance policies as such premiums become due.

Section 6. Notice of Cancellation of Insurance or Fidelity Bond. Upon written request to the Association identifying (i) the name and address of the holder, insurer or governmental guarantor of any first Mortgage encumbering any Subdivision Interest and (ii) the number or address of such Subdivision Interest, to notify the same in writing at least ten (10) days prior to any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.

Section 7. Utilities. To pay all charges for water, *electricity*, gas, and other utility services for the Common Area,

Section 8. Common Area. To manage, operate, maintain and repair the Common Area and all improvements located thereon, including the restoration and replacement *of* any or all of the buildings, structures or improvements which are part of the Common Area at any time and from time to time as the Board may determine desirable or necessary; and to make capital expenditures for and on behalf of the Association with the vote or written assent of a

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majority of the voting power of each class of Members of the Association. The Association shall have the right to enter upon any Subdivision Interest in connection with construction, maintenance or emergency repair of the Common Area.

Section 9. Enforcement and Litigation, Arbitration, Mediation and Administrative Proceedings. To enforce the provisions of the Declaration, the Articles and Bylaws of the Association, the Rules and Regulations adopted by the Board and the provisions of any agreement to which the Association is a party, Subject to compliance with Section 1354 of the Civil Code, the Association is authorized to institute, defend, settle or intervene on behalf of the Association in litigation, arbitration, mediation, or administrative proceedings solely in matters pertaining to (a) enforcement of the Governing Documents, (b) damage to the Common Areas, (c) damage to the Subdivision Interests, if any, which the Association is obligated to maintain or repair, or (d) damage to the Subdivision Interests which arises out of, or is integrally related to, damage to the Common Areas or Subdivision Interests, if any, that the Association is obligated to maintain or repair.

Section 10. Services and Supplies. To contract and pay for maintenance, gardening, utilities, materials, supplies and services relating to the Common Area, and to employ personnel necessary for the operation and maintenance of the same, including legal and accounting services.

Section 11. Employment of Professional Manager and Agents. To employ the services of a Professional Manager, and other employees, to manage and conduct the business of the Association, and to the extent not inconsistent with the laws of the State and upon such conditions as are otherwise deemed advisable by the Association, to delegate to the Professional Manager any of its powers; provided that any agreement for management or person hired as Professional Manager shall not exceed one (1) year, renewable by agreement of the parties for successive one (1) year periods and shall be terminable by the Association upon thirty (30) days written notice.

Section 12. Maintenance Contract. To enter into a maintenance service contract with any person, corporation or other entity for the maintenance of the Common Area, including materials and/or services for the Common Area or the Association, provided that any such contract shall be for a period of one (1) year, renewable by agreement of the parties for successive one (1) year periods and any such contract shall be terminable by the Association upon thirty (30) days written notice.

Section 13. Taxes. To pay any taxes and governmental special assessments which are or could become a lien on the Common Area or any portion thereof.

Section 14. Discipline. To initiate and execute disciplinary proceedings against Members of the Association for violations of the provisions of the Articles and Bylaws, this Declaration and the Rules and Regulations adopted by the Board, subject to the requirements of Corporations Code Section 7341 (as such section may be hereafter amended, supplemented or superseded).

Section 15. Notice of Default. Upon the written request of any holder, insurer or governmental guarantor of a first Mortgage encumbering any Subdivision Interest, to notify the same in writing of any default by the Owner of such Subdivision Interest in the performance of the Owner's obligations under the Bylaws or this Declaration which is not cured within thirty (30) days.

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Section 16. Notice of Taking. The Association shall give, if required by the Federal Home Loan Mortgage Corporation or Federal National Mortgage Association, notice in writing at the addresses to be supplied to the Association by Federal Home Loan. Mortgage Corporation for that organization and Federal National Mortgage Association for that organization of any loss to or taking of any Subdivision Interest or the Common Area owned by the Association and/or its Members if such loss or taking exceeds \$10,000.00, and of any damage to a Subdivision Interest if such damage exceeds \$1,000.00.

Section 17. Notice of Damage. Upon the written request of any holder, insurer or governmental guarantor of the first Mortgage encumbering any Subdivision Interest, to give timely written notice to the same of any substantial damage to or destruction of any Subdivision Interest or any portion of the Common Area and, if any Subdivision Interest, or any portion thereof, or the Common Area, or any portion thereof, is made the subject of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, to give timely written notice to the same of any such proceeding or proposed acquisition.

Section 18. Defense. To prosecute or defend, in the name of the Association, any action affecting or relating to the Common Area or the property owned by the Association, and any action in which all or substantially all of the Owners have an interest.

Section 19. Delegation of Powers. To delegate any of its powers hereunder to others, including committees, officers and employees, or the Professional Manager.

Section 20. Rules and Regulations. To adopt, amend, repeal and enforce Rules and Regulations known as the "Rules and Regulations", governing, among other things, the Common Area and the Subdivision Interest. The Rules and Regulations may restrict and govern the use of Common Areas, if any right to use the Common Areas has been granted, by any Owner, by the family of such Owner, or by any invitee, licensee or lessee of such Owner; provided, however, that with respect to use of such Areas, the Rules and Regulations may not unreasonably discriminate among Owners. Said Rules and Regulations may also include parking restrictions and limitations, limitations upon vehicular travel, restrictions on the type or types of vehicles which may be permitted to use such Common Areas, outside storage of boats, trailers, bicycles and other objects, disposal of waste materials, drying of laundry, control of pets, architectural controls and restrictions on the maintenance of landscaping or other improvements on any property which obstruct the vision of motorists or which create a hazard for vehicular or pedestrian traffic, and restrictions on other activities which, if not so regulated, might detract from the appearance of the Project, or offend or cause inconvenience or danger to persons residing in or visiting the Project. A copy of the Rules and Regulations, as they may from time to time be adopted, amended or repealed shall, if the Board deems it appropriate, be posted at a prominent place or places within the Common Area, where appropriate, and shall be given to each Member and, upon written request therefor, to all first Mortgagees either personally or mailed by first-class, registered or certified mail, postage prepaid to his address appearing on the books of the Association or supplied by him to the Association. If no address is supplied, a copy of said Rules and Regulations shall be deemed given if mailed to the address of the Subdivision Interest owned by such Member. Copies of such Rules and Regulations shall be circulated to each Member in the manner set forth above not less than ten (10) days and not more than sixty (60) days before said Rules and Regulations may be deemed to be in full force and effect. A copy of said Rules and Regulations, as adopted, amended or released, may be recorded and shall have the same force and effect as if they were set forth herein and were a part of the Declaration. Such Rules and Regulations may provide that the Owner of a Subdivision Interest whose occupant leaves property on the Common Area

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in violation of the Rules and Regulations may be assessed after appropriate notice and an opportunity for a hearing before the Board which satisfies the requirements of Section 7341 of the California Corporations Code as set forth in the Bylaws and a two-thirds (2/3) vote of approval by the Board to cover the expense incurred by the Association in removing such property and storing or disposing thereof. The Board may suspend the voting rights and right to use any recreational facilities if applicable, and located on the Common Area of an Owner who is in default in the payment of any assessment for any period during which such assessment remains unpaid, and for a period not to exceed thirty (30) days for any infraction of its Rules and Regulations after reasonable written notice and an opportunity for a hearing before the Board which satisfies the requirements of Section 7341 of the California Corporations Code as set forth in the Bylaws. Prior to election of the Board, Declarant shall have the right to adopt, amend and enforce Rules and Regulations, as provided above.

Section 21. Right to Grant Easements. To grant permits, licenses and easements under, through and over the Common Area for utilities, roads and other purposes which are reasonably necessary or useful for the proper maintenance and operation of the Project.

Section 22. Availability of Documentation. To make available to any prospective purchaser of a Subdivision Interest, any Owner of a *Subdivision* Interest, any first Mortgagee and the holders, insurers and guarantors of a first Mortgage on any Subdivision Interest, current copies of the Declaration, the Articles, the Bylaws, the Rules and Regulations governing the Subdivision Interest, the most recent financial statement of the Association, a statement in writing as to the amount of the Association's current regular and special assessments and fees as well as any assessments levied upon the Owner's Subdivision Interest which are unpaid and the amount of any late charges, interest and costs of collection which, as of the date of the statement, are or may be made a lien on the Subdivision Interest, and any other documents which may be required by applicable law, including but not limited to the provisions of Civil Code Section 1368. "Available" as used in this paragraph shall at least mean available for inspection upon request during normal business hours or under other reasonable circumstances.

Section 23. Budget and Financial Statements. In addition to all other duties of the Association as set out in this Declaration and Bylaws, it shall be the duty of the Board to have the Association prepare budgets and financial statements and have them distributed to all of its Members as follows:

(a) A balance sheet rendered as of an accounting date that is the last day of the month closest *in time* to six (6) months from the date of closing of the first sale of a Subdivision Interest (the "accounting date"), and an operating statement for the period commencing with the date of closing of the first sale and ending on the accounting date shall be distributed to each Owner and any Mortgagee that has requested a copy within sixty (60) days after the accounting date. The operating statement shall include a schedule of assessments received or receivable identified by the Subdivision Interest number and the name of the Owner assessed.

(b) A pro forma operating budget shall be distributed to the Members not less than forty-five (45) days nor more than sixty (60) days prior to the beginning of the Association's fiscal year. The budget shall include all of the following:

- (1) The estimated revenue and expenses on an accrual basis.
- (2) A summary of the Association's reserves based upon the most recent review, or study conducted pursuant to Civil Code Section 1365.5, which shall be 18



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printed in 10 point bold type and include all of the following:

- (A) The current estimated replacement cost, estimated remaining life, and estimated useful life of each Major Component.
  - (B) As of the end of the fiscal year for which the study is prepared:
    - (i) The current estimate of the amount of cash reserves necessary to repair, replace, restore, or maintain the Major Components.
    - (ii) The current amount of accumulated cash reserves actually set aside to repair, replace, restore, or maintain Major Components.
  - (C) The percentage that the amount determined for purposes of clause (ii) of subparagraph (B) is of the amount determined for purposes of clause (i) of subparagraph (B).
- (3) A statement as to whether the Board has determined or anticipates that the *levy* of one or more special assessments will be required to repair, replace, or restore any Major Component or to provide adequate reserves therefor.
- (4) A general statement addressing the procedures used for the calculation and establishment of those reserves to defray the future repair, replacement, or additions to those Major Components that the Association is obligated to maintain.
- 5) The original budget shall include, without limitation, and if applicable to the project, the following items as reserves: (i) alterations; (ii) painting; (iii) roof replacement and maintenance for roofs based upon the life expectancy of the existing roof; (iv) recap, restripe and seal coating of all asphalt; (v) irrigation and landscaping; and (vi) inflation reserve.

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

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

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(d) A statement describing the Association's policies and practices in enforcing lien rights or other legal remedies for default in payment of its assessments against its Members shall be annually delivered to the Members during the 60-day period immediately preceding the beginning of the Association's fiscal year.

(e) A summary of the Association's general liability insurance policy that states all of the following:

(1) The name of the insurer.

(2) The policy limits of the insurance.

(3) if an insurance agent, as defined in Section 1621 of the Insurance Code, an insurance broker, as defined in Section 1623 of the Insurance Code, or an agent of an insurance agent or insurance broker has assisted the Association in the development of the general liability policy limits and if the recommendations of the insurance agent or insurance broker were followed.

(4) The insurance deductibles.

(5) The person or entity that is responsible for paying the insurance deductible in the event of loss,

(6) Whether or not the insurance coverage extends to the real property improvements to the separate interests.

(<sup>1</sup>) A summary of the Association's earthquake and flood insurance policy, if one has been issued, that states all of the following:

(1) The name of the insurer.

(2) The policy limits of the insurance.

(3) The insurance deductibles.

(4) The person or entity that is responsible for paying the insurance deductible in the event of loss.

(g) A summary of the liability coverage policy for the directors and officers of the Association that lists all of the following:

(1) The name of the insurer.

(2) The limits of the insurance.

(h) Notwithstanding the provisions of subparagraphs (e), (f) and (g), the Association shall, as soon as reasonably practical, notify its Members by first class mail if any of the policies have been canceled and not immediately replaced. If the Association renews any of the policies or a new policy is issued to replace an insurance policy of the Association, and where there is no lapse in coverage, the Association shall notify its Members of that fact in the next available mailing to all Members pursuant to Section 5016 of the Corporations Code. To the

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extent that the information to be disclosed pursuant to subparagraphs (e), (f) and (g) is specified in the insurance policy declaration page, the Association may meet the requirements of those subparagraphs by making copies of that page and distributing it to all its Members.

Section 24. Additional Duties. The Board of Directors of the Association shall do the following:

(a) Review a current reconciliation of the Association's operating accounts on at least a quarterly basis.

(b) Review a current reconciliation of the reserve accounts 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 Association has its operating and reserve accounts.

(e) Review an income and expense statement for the Association's operating and reserve accounts on at least a quarterly basis.

Inspect and maintain roofs on any improvements in the Common Area if applicable and if constructed in the project at least twice a year in the spring and fall of each year, or more frequently, if so required, as per specifications to be provided by Declarant.

(g) Inspect and maintain drainage with respect to the Common Area at least once a year in November of each year, or more frequently, if so required, at which time all drain gates, basins and lines shall be cleared and cleaned. Keep all swales and drainage channels in the Common Area clear and free of debris and all drainage facilities functioning as originally designed and not alter grading on project as originally provided.

(h) Seal and restripe all asphalt in the Common Area at least every two years, or more frequently, if required or appropriate.

(I) Replace caulking at least once a year, or more frequently, if so required, around the coping and decking of any swimming pool.

Maintain all landscaping in the Common Area as per the following minimum maintenance standard:

(1) All planting areas shall be kept *free* of leaves and debris.

(2) Lawn and ground cover shall be kept mowed and/or trimmed regularly

(3) All plantings shall be kept in a healthy and growing condition. Fertilization, cultivation, spraying, tree removal, if applicable, and tree pruning are to be performed as a part of a regular maintenance program.

(4) Stakes, guys and ties on trees shall be checked regularly to ensure the correct function of each. Ties shall be adjusted to avoid creating abrasions or girdling of the trunk or stem.

(5) Damage to plantings shall be corrected within thirty (30) days of occurrence.

(6) Irrigation systems shall be kept in working condition. Adjustment, replacement of malfunctioning parts, and cleaning of systems, shall be a part of the regular maintenance program.

Section 25. Limitations on Powers of Association.

(a) Except with the vote or written assent of the Owners holding more than fifty percent (50%) of the voting rights of each class of Owners, if two classes exist, or, if only one class exists, more than fifty percent (50%) of the voting rights of all Owners and more than fifty percent (50%) of the voting rights of all Owners other than Declarant, the Board shall not take any of the following actions:

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

(2) Sell during any fiscal year property of the Association having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year;

(3) Pay compensation to members of the Board or to officers of the Association for services performed in the conduct of the Association's business, provided that the Board may reimburse a member for expenses incurred in carrying on the business of the Association; or

(4) Enter into a contract with a third person to furnish goods or services for the Common Area or the Association, if applicable to this Association, for a term longer than one (1) year, with the following exceptions:

(A) A management contract, the terms of which have been approved by the Federal Housing Administration or U.S. Department of Veterans Affairs;

(13) A contract with a public utility company if the rates charged for the materials or services are regulated by the Public Utilities Commission, provided the term does not exceed the shortest term for which the supplier will contract at the regulated rate;

(C) Prepaid casualty or liability insurance policies not to exceed three (3) years' duration provided the policy permits for short rate cancellation by the insured;

(D) Agreements for cable television services and equipment not exceeding five (5) years in duration provided the supplier is not an entity in which the Declarant has a direct or indirect ownership interest of ten percent (10%) or more; and

(E) A contract for a term \_\_\_\_\_ not to exceed three (3) years that is

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terminable by the Association after no longer than one (1) year without cause, penalty or other obligation upon ninety (90) days written notice of termination to the other party.

(b) Except with the vote or written assent of the Owners holding more than two-thirds (2/3) of the voting rights of each class of Owners, if two classes exist, or, if only one class exists, more than two-thirds (2/3) of the voting rights of all Owners and more than two-thirds (2/3) of the voting rights of all Owners other than Declarant, the Board shall not initiate any claim under California Civil Code Section 895 et seq. and Declarant, and its representatives on the Board shall have no control over the issue to decide whether to initiate a claim under such statutory provisions.

Section 26. Limitation of Liability. No director, officer, committee member, employee, or other agent of the Association, including Declarant or any agent of Declarant when acting in such capacity, shall be liable to any Owner or any other party, including the Association, for any damage, loss, or prejudice suffered or claimed on account of any act, omission, error, or negligence of any such person if such person has acted in good faith and in a manner such person believed to be in the best interests of the Association. Without limiting the generality of the foregoing, no director, officer, committee member, employee or other agent of the Association, including Declarant or any agent of Declarant when acting in such capacity, shall be liable to any Owner or any other party, including the Association, for any failure to commence, prosecute, settle or defend any claim relating to defects in the design or construction of the Project or any Improvements therein, if such person has acted in good faith and in a manner such person believed to be in the best interests of the Association.

Section 27. Scope of Association Authority to Pursue Litigation.

(a) Neither the Association, nor any person on behalf of the Association, shall commence or maintain any legal action, arbitration, or other proceeding, except to pursue those claims specifically enumerated in section 383 of the California Code of Civil Procedure, as it may be amended from time to time. The right and capacity of the Association to act for itself, or in any representative capacity, shall be limited to claims based upon the following matters:

- (1) Enforcement of the Governing Documents;
- (2) Damage to the Common Areas;
- (3) Damage to separate interests (as defined in Civil Code section 1351(1)) which the Association is obligated to maintain or repair; and
- (4) Damage to the separate interests which arises out of, or is integrally related to, damage to the Common Areas or separate interests that the Association is obligated to maintain or repair.

The above categories may be modified or supplemented only to the extent of any modification or supplementation of California Code of Civil Procedure section 383.

(b) The Association shall not join with any legal action, arbitration, or other proceeding brought by the Association pursuant to paragraph (a), a claim of any individual, or any class action or other representative. The Association shall not enter into any agreement to share attorneys' fees or costs with any person or entity pursuing a claim as an individual, or as a class action or

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other representative.

(c) Any Member of the Association or any party to any action or proceeding to which the Association is a party shall have the right to enforce this section and/or to enjoin violation of this section upon application to a court of competent jurisdiction. Such Member or other party may recover attorneys' fees and costs in the event such Member or other party prevails in any such action or proceeding.

## **ARTICLE V**

### **COMMON AREA**

#### **PERMITTED USES AND LIMITATIONS ON USE**

Section 1. Restricted Uses. The following location has been designated as entry monumentation area and may contain walls, landscaping and signs: Old Cannel Valley Road and Gomay Way.

Section 2. Restrictions on Change. No improvement, excavation or work which in any way alters any Common Area from its natural or existing state on the date such Common Area was transferred to or otherwise came under the jurisdiction of the Association shall be made or done except upon strict compliance with and within the restrictions and limitations of the following provisions of this Section.

Section 3. Improvements and Uses of Common Areas. Except as otherwise provided herein, the Common Area shall be improved and used only for the following purposes:

- (a) affording pedestrian movement within the Real Property, including access to the Subdivision Interests;
- (b) recreational use by the Owners and occupants of Subdivision Interest in the Real Property and their guests, subject to Rules and Regulations established by the Board; and
- (c) beautification of the Common Area and providing privacy to the residents of the Real Property through landscaping and such other means as the Board shall deem appropriate.

Section 4. Limitation on Construction. No person other than the Association, Declarant or their duly authorized agents shall construct, reconstruct, refinish, alter or maintain any improvement upon, or shall make or create any excavation or fill upon, or shall change the natural or existing drainage of, or shall destroy or remove any tree, shrub, or other vegetation from any Common Area.

The Association may, at any time, as to any Common Area:

(a) Reconstruct, replace or refinish any improvement or portion thereof upon any such Common Area (to the extent that such work is not done by a governmental entity, if any, responsible for the maintenance and upkeep of such Common Area), in accordance with the plans filed by Declarant with the Board pursuant to Section 9 below.

(b) Construct, reconstruct, replace or refinish any road improvement or surface

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upon any portion of such Area used as a road, driveway or parking area in accordance with the plans filed by Declarant with the Board pursuant to Section 9 below.

(c) Replace injured or diseased trees, shrubs or other vegetation in any such Common Area, and plant trees, shrubs and other vegetation to the extent that the Association deems necessary for the conservation of water and soil or for aesthetic purposes; and

(d) Place and maintain upon any such Common Area such signs as the Association may deem appropriate for the proper identification, use and regulation thereof.

Except as provided above, no change, alteration or modification to the Common Area, which would alter height or width of vegetation by more than five percent (5%), shall be made which is not in accordance with the plans filed by Declarant with the Board pursuant to Section 9 hereof without the affirmative vote of fifty-one percent (51%) of each class of Members at a special meeting thereof, duly called and held, notice of which shall specifically state the proposed change, alteration or modification to be made to the Common Area.

Section 5. Mineral Exploration. No property within Common Areas shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth, or any earth substance of any kind.

Section 6. Declarant's Exemption. Nothing contained in the Declaration shall be construed to prevent the erection or maintenance by Declarant, or its duly authorized agents, within the Common Area or Subdivision Interests owned by Declarant of signs, flags or other improvements necessary or convenient to the development, sale, operation or other disposition of the Project, or any part thereof, or any master planned community or other real estate in the vicinity of the Real Property, except such signs, flags or other improvements shall not be on or within any Subdivision Interest not owned by Declarant.

Section 7. Nuisances. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to the Common Area, and no odors shall be permitted to arise therefrom, so as to render any such property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to its occupants. No nuisance shall be permitted to exist or operate upon any such property so as to be offensive or detrimental to any other property in the vicinity thereof or its occupants.

Section 8. Owner's Liability for Damages to Common Area. Each Owner shall be legally liable to the Association for all damages to the Common Area or to any improvements thereof or thereto, including but not limited to curbs, sidewalks, paved surfaces, any buildings and landscaping, caused by such Owner, his tenant(s), or licensee(s) or any occupant(s) of such Owner's Subdivision Interest as such liability may be determined under California law.

Section 9. Declarant's Plans and Specifications. Declarant shall provide the Board with plans and specifications for the purpose of maintaining a permanent record of Improvements constructed on any Common Area.

## **ARTICLE VI**

### **COMMON AREA MAINTENANCE AND EASEMENTS**

Section 1. Easement for Maintenance. The Association is hereby granted a right

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and easement over, under, upon and across the Common Area for the purpose of planting and maintaining grass, flowers, shrubs, trees and irrigation and other landscaping appurtenances, including but not limited to, brush maintenance, fuel modification on designated areas, and for the purpose of maintaining fences and retaining and other walls, monument signs, any drainage facilities or landscaping located on Subdivision Interests. The Association is hereby granted a right and easement over, under upon and across the Common Area for the purpose of maintaining utility transmission facilities (including television cables), antennas for reception of television signals or other forms of electromagnetic radiation, including satellite dishes, sidewalks, paths and steps, directional signs, lighting facilities and any other improvements permissible by law and not prohibited by existing easements.

Section 2. Maintenance. The Association shall maintain, or provide for the maintenance of all Common Area within the Project and shall keep all Improvements of whatever kind and for whatever purpose from time to time located thereon in good order and repair. In the maintenance of the Common Area, the Association shall at all times strictly comply with the conditions of all applicable federal, state and local laws, including the laws and ordinances of the County. Any and all irrigation systems installed in the Common Area shall be automatic. The Association shall keep clear areas designated as brush maintenance areas. The Association shall maintain any drainage facilities designated as a responsibility of the Association.

Section 3. Standards of Maintenance by Association. Standards of maintenance for the Common Area to be adhered to by the Association have been established by Declarant. The Board shall have the right to establish standards of maintenance for the Common Area more stringent than those initially established by Declarant; provided, however, standards of maintenance less stringent than those initially established by Declarant shall not be allowed. The Association shall clear away all brush and debris from brush maintenance areas. The Association shall maintain and repair any drainage facilities.

Section 4. Duties of Association. The Association shall adhere to the standards of maintenance for the Common Area established as provided in Section 3 hereof. °

Section 5. Private Sewer System and Pump Station The Association shall maintain and provide for the maintenance and repair of the private sewer and/or water system and pump station(s) if applicable and required to complete the construction of the project.

Section 6. Owner's Easement of Enjoyment. Every Owner is hereby granted a right and easement of enjoyment of the Common Area and such easement shall be appurtenant to and shall pass with title to every Subdivision Interest subject to the following provisions:

The right of the Board or the Association to establish uniform Rules and Regulations pertaining to the Common Area, including, but not limited to, Rules and Regulations with respect to the number of guests using the recreational facilities (if applicable and constructed within the project) on the Common Area.

(b) The right of the Board or the Association to suspend the voting rights and right to use of any of the recreational facilities (if applicable and constructed within the project) by an Owner for any period during which any assessment against his/her Subdivision Interest remains unpaid and delinquent, and for a period not to exceed thirty (30) days for any single infraction of Bylaws, Declaration, Rules and Regulations of the Association provided that any suspension of such voting rights except for failure to pay assessments, shall be made only by the Association after notice and hearing given and held in accordance with the Bylaws of the



Association.

(9) The right of Declarant and its successors and assigns together with the employees, agents and representatives thereof, to the non-exclusive use of the Common Area in connection with the display and sale of Subdivision Interests within the Project, which right Declarant hereby reserves; provided that no such use by Declarant or its sales agents or representatives shall otherwise restrict the Owners in their enjoyment of the Common Area.

Section 7. Delegation of Enjoyment. Any Owner may delegate, in accordance with the Bylaws his right of enjoyment to the Common Area and facilities to the members of his/her tonally, and his/her tenants or contract purchasers who reside in the Subdivision Interest.

Section 8. Waiver of Enjoyment. No Owner may exempt himself/herself from personal liability for assessments duly levied by the Association, nor release the Subdivision Interest owned by him/her from the liens and charges hereof, by waiver of the enjoyment of the Common Area or by abandonment of his/her Subdivision Interest.

## **ARTICLE VII**

### **RIGHTS OF ELIGIBLE MORTGAGE HOLDERS AND ELIGIBLE INSURERS OR GUARANTORS**

Section 1. Notice of Action. Upon written request to the Association, identifying the name and address of the holder, insurer or guarantor and the Subdivision Interest number or address, any such Eligible Mortgage Holder or Eligible Insurer or Guarantor will be entitled to timely written notice of:

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

(b) Any delinquency in the payment of assessments or charges owed by an Owner of a Subdivision Interest subject to a first Mortgage held, insured or guaranteed by such Eligible Holder or Eligible Insurer or Guarantor, which remains uncured for a period of thirty (30) days;

(c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

(d) Any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders as specified in Section 2 of ARTICLE VII or in Section 3 of ARTICLE XI herein.

Association shall not be obligated to confirm receipt of such notice.

Section 2. Other Provisions for Eligible Mortgage Holders. To the extent permitted by applicable law, Eligible Mortgage Holders shall also be afforded the following rights:

(a) Any restoration or repair of the Project, after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with this Declaration and the original plans and specifications, unless other action is approved by at least fifty-one percent (51%) of the Eligible Mortgage Holders and the prior consent (by vote or

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written consent) of Members representing sixty-seven percent (67%) or more of the voting power of each class of Members; provided, however, in the event the Class B membership has been converted to Class A membership, then sixty-seven percent (67%) or more of the total voting power of the Association comprised of at least sixty-seven percent (67%) of the votes of Members other than Declarant;

(b) Any decision to establish self management by the Association shall require the prior written approval of at least fifty-one percent (51%) of the Eligible Mortgage Holders and the prior consent (by vote or written consent) of Members representing sixty-seven percent (67%) or more of the voting power of each class of Members; provided, however, in the event the Class B membership has been converted to Class A membership, then sixty-seven percent (67%) or more of the total voting power of the Association comprised of at least sixty-seven percent (67%) of the votes of Members other than Declarant.

**ARTICLE VIII**

**DAMAGE, DESTRUCTION AND CONDEMNATION OF COMMON AREA**

Section I. Damage and Destruction Affecting the Common Area. If any portion of the Common Area is damaged or destroyed by fire or other casualty, then:

(a) if the available insurance proceeds initially offered or paid by the insurer do not exceed the sum of Five Thousand Dollars (\$5,000.00), such insurance proceeds shall be paid to the Board;

(b) if the provisions of subparagraph (a) above are inapplicable, then:

(1) all insurance proceeds shall be paid to a bank or trust company (as an "Insurance Trustee") to be held for the benefit of the Owners and their mortgagees and the holders of, or under their sales contract, as their interests shall appear. The Board is authorized on behalf of the Owners, to enter into an agreement, consistent with this Declaration, with such Insurance Trustee, relating to its powers, duties and compensation, as the Board may approve; and

(2) The Board shall proceed under Section 2 below.

Section 2. Partial or Total Destruction. In the event of partial or total destruction of improvements on the Common Areas, it shall be the duty of the Association to restore and repair the same to its former conditions as promptly as practicable and in a lawful and workmanlike manner. The proceeds of any insurance written pursuant to ARTICLE IV, Section 5 shall be made available for such purpose and the Association or the Insurance Trustee, as the case may be, shall distribute the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments, subject to the prior rights of beneficiaries of deeds of trust whose interest may be protected by said policies. In the event that the amount available from the proceeds of such insurance policies for such partial reconstruction shall be inadequate, a special assessment of the Owners, with each Subdivision Interest ownership contributing its share to be determined as set forth in ARTICLE III, Section 4 herein, shall be levied to provide the necessary funds for such reconstruction, over and above the amount of any insurance proceeds available for such purpose.

Section 3. Condemnation. If an action for condemnation of all or a portion of the

Common Area is proposed or threatened by any governmental agency having the right of eminent domain, then, after approval by vote or written consent of at least fifty-one percent (51%) of all the Owners and with the prior written consent of seventy-five percent (75%) of all Eligible Mortgage Holders, the Common Area, or a portion of it may be sold and conveyed to the condemning authority by the Association or its designees acting as the attorney-in-fact of all Owners under an irrevocable power of attorney, which each Owner by accepting a deed to a Subdivision Interest in the Project grants to the Board and which shall be coupled with the interest of all other Owners, for a price deemed fair and equitable by the Board. On such a sale, the proceeds shall be distributed equally to each Owner and their Mortgagees as their respective interests may appear. If the Common Area, or a portion of it, is not sold but is instead taken, the award shall be apportioned among the Owners and their respective Mortgagees by the terms of the judgment of condemnation, and if not so apportioned, then the award shall be distributed equally to each Owner and their Mortgagees as their respective interests may appear.

**ARTICLE IX**

**ENFORCEMENT AND ALTERNATIVE DISPUTE RESOLUTION**

Section 1. Enforcement.

(a) Rights of Enforcement of Governing Documents. The Association or any Owner shall have a right of action against any Owner, and any Owner shall have a right of action against the Association, to enforce by proceedings at law or in equity, all restrictions, conditions, covenants and reservations, now or hereafter imposed by the provisions of the Governing Documents or any amendment thereto, including the right to prevent the violation of such restrictions, conditions, covenants, or reservations and the right to recover damages or other dues for such violation except that Owners shall not have any right of enforcement concerning assessment liens. The Association shall have the exclusive right to the enforcement of provisions relating to architectural control and the Rules and Regulations, unless the Association refuses or is unable to effectuate such enforcement, in which case any Owner who otherwise has standing shall have the right to undertake such enforcement. Failure of the Association, Declarant or any Owner to enforce any covenants or restrictions herein contained shall in no event be deemed a waiver of the right to do so thereafter.

(b) Procedure for Enforcement. Notwithstanding anything to the contrary set forth in subparagraph (a) above, in enforcing any action under the Governing Documents for monetary damages, the parties shall comply with the provisions of California Civil Code Section 1354 and any successor statutes or laws. The Board shall annually provide to the Owners a summary of the provisions of California Civil Code Section 1354 or and any successor statutes or laws, which shall include the language required and shall be delivered in the manner provided in Civil Code Section 1365. The exception for disputes related to Association assessments set forth in Section 1354 shall not apply to disputes between an Owner and the Association regarding assessments imposed by the Association, if the Owner chooses to pay in full the Association all of the assessments as specified in California Civil Code Section 1366.3 and any successor statutes or laws.

Section 2. Alternative Dispute Resolution. The purpose of this section is to provide an expedited means of resolving any claims, disputes and disagreements which may arise between i) Owner or the Association, and ii) Declarant concerning the Property, including but not limited to allegations of latent or patent construction defects that are not resolved pursuant to any applicable statutory dispute resolution procedures (individually referenced to herein as

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"Dispute" and collectively as "Disputes"). Declarant hereby elects not to engage in, follow, nor be bound by Civil Code Sections 910 through 938.

(a) Arbitration.

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(1) Agreement to Arbitrate. If a dispute is not resolved through mediation or the statutory non-adversarial procedures of Civil Code Section 1375, the Association, each Owner and Declarant shall resolve any Dispute, agree to resolve any and all Disputes exclusively through binding arbitration in the county in which the Property is located. This arbitration provision shall apply to Disputes of any kind or nature regardless of when the Dispute first arose or the nature of the relief sought. Alternatively, either the Association, any Owner or Declarant may elect to resolve such Disputes through a small claims court proceeding, in which case the party filing the small claims action will have waived the right to any relief in excess of the jurisdiction of the small claims court.

(2) Waiver of Trial by Judge or Jury. By agreeing to resolve all Disputes through binding arbitration, the Association, each Owner and Declarant each give up the right to have their respective claims and defenses decided by a judge or a jury.

(3) Rules Applicable to All Cases. The arbitration will be conducted by Construction Arbitration Service ("CAS") in accordance with the CAS rules ("CAS Rules") then applicable to the claims presented, as supplemented by this Declaration. The following supplemental rules shall apply to all arbitration proceedings and shall govern in the event of a conflict between the rules set forth below and the CAS Rules.

(4) Qualifications of Arbitrators. The arbitrator shall be neutral and impartial and either a retired judge or a member or former member of the California State Bar with at least fifteen (15) years experience as a practicing lawyer.

(5) Appointment of Arbitrator. The arbitrator to preside over the Dispute shall be selected in accordance with the CAS Rules, but no later than sixty (60) days after a notice of claim is filed.

(6) Expenses. All fees charged by CAS and the arbitrator shall be advanced by Declarant. If Declarant is the prevailing party in the arbitration, the arbitrator may direct the Owner or the Association, as applicable, to reimburse Declarant for up to fifty percent (50%) of the CAS fee and arbitrator's *fee* advanced by Declarant within sixty (60) days after the final arbitration award.

(7) Preliminary Procedures. Nothing contained herein shall be deemed a waiver or limitation of the provisions of California Civil Code Sections 1368.4, 1375, 1375.05 or 1375.1.

(8) Participation by Other Parties. Declarant, the Association or Owner, to the extent either such party is defending a claim in the arbitration, may, if it chooses, have all necessary and appropriate parties included as parties to the arbitration.

(9) Rules of Law. The arbitrator must follow California substantive law (including statutes of limitations) but may receive hearsay evidence. The arbitrator shall be authorized to provide all recognized remedies available at law or equity for any cause of action.

(10) Attorneys Fees and Costs. Each party shall bear its own attorneys fees and costs (including expert witness costs) in the arbitration.

(b) Agreement to Arbitration and Waiver of Jury Trial.

Arbitration of Disputes. By executing this Declaration, and by accepting a deed as defined herein, Declarant, each Owner and the Association agree to have any dispute decided by neutral arbitration in accordance with the Federal Arbitration Act and the California Arbitration Act, to the extent the California Arbitration Act is consistent with the Federal Arbitration Act, and each Owner, Declarant and the Association are giving up any rights Declarant, each Owner and the Association *might* possess to have the dispute litigated in a court or jury trial. Declarant, each Owner and the Association are giving up their respective judicial rights to discovery and appeal, unless those rights are specifically included in this section. If Declarant, any Owner or Association refused to submit to arbitration after agreeing to this provision, such party may be compelled to arbitrate under the Federal Arbitration Act and the California Arbitration Act, to the extent the California Arbitration Act is consistent with the Federal Arbitration Act.

(2) Waiver of Jury Trial. In the event the foregoing arbitration provision is held not to apply or is held invalid, void or unenforceable in its entirety for any reason, all disputes shall be tried before a judge in a court of competent jurisdiction without a jury. The judge in such court of competent jurisdiction shall have the power to grant all legal and equitable remedies and award compensatory damages. Declarant, by executing this Declaration and each Owner and the Association by accepting a deed to any portion of the Property, hereby waive and covenant not to assert their constitutional right to trial by jury of any disputes, including, but not limited to, disputes relating to construction defects, misrepresentation or Declarant's failure to disclose material facts. This mutual waiver of jury trial shall be binding upon the respective successors and assigns of such parties and upon all persons and entities asserting rights or claims or otherwise acting on behalf of Declarant, any Owner and the Association or their respective successors and assigns.

(c) Final and Binding Award. The decision of the arbitrator or, if an appeal is heard, the decision of the appeal arbitrators, shall be final and binding. A petition to confirm, vacate, modify or correct an award may be filed in any court of competent jurisdiction in the County in which the Property is located, but the award may be vacated, modified or corrected only as permitted by the Federal Arbitration Act.

(d) Severability. In addition to and without limiting the effect of any general severability provisions of this Declaration, if the arbitrator or any court determines that any provision of this section is unenforceable for any reason, that provision shall be severed, and proceedings agreed to in this Declaration shall be conducted under the remaining enforceable terms of this section.

(e) Exceptions to Mediation and Reference Statutes of Limitation. The procedures set forth in this Section shall apply only to Disputes and shall not apply to any action taken by the Association against Declarant or any Owner for delinquent assessments, which shall be covered by the Article entitled "Covenant to Pay Assessments".

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## ARTICLE X

### COVENANTS AND USE RESTRICTIONS; ARCHITECTURAL CONTROL

Section 1. Residential Use. Except as provided in Article XI, Section 7, with respect to Declarant, each Subdivision Interest shall be used for private, one-family residence purposes exclusively and no part of the Project shall be used or caused, allowed or authorized to be used in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending or other non-residential purpose, without the prior written consent of the Board. In deciding whether or not to permit an otherwise nonconforming use hereunder, the Board shall consider the potential effect upon traffic in the Project and interference with or annoyance of neighbors; notwithstanding the foregoing, a nonconforming use shall never be permitted unless such use is incidental to the residential use of the Subdivision Interest and is permitted by applicable law,

Section 2. Improvements. Each Subdivision Interest shall be used for private, single-family residence purposes exclusively; however, Subdivision Interests owned by Declarant may be used by Declarant or its designees as models, sales offices and construction offices for the purpose of developing, improving and selling Subdivision Interests within the Real Property. Declarant shall have the right to construct one or two-story residential dwellings on Subdivision Interests it owns. Except as provided in the preceding sentence, and except for residences and other improvements constructed by Declarant, no structure whatsoever, other than a one-family, private residence may be erected or maintained on any Subdivision Interest at any time, and except for residences and other improvements constructed by Declarant, and no building, structure or other improvement of any kind shall be erected, constructed, altered or maintained on any Subdivision Interest in excess of one story, provided, however, for those Subdivision Interests upon which a two-story residential dwelling has previously been erected by Declarant, a two-story residential dwelling may be erected, constructed, altered or maintained thereon. No garage or carport shall be used as a living area or used for purposes other than those uses normally attendant to a garage or carport.

Section 3. Sanitary Facilities. All lavatories and toilets shall be built indoors and connected with the sewer system.

Section 4. Antennae; Satellite Dishes. No antennae or other device for the transmission or reception of radio, television or video signals or any other form of electromagnetic radiation, including but not limited to, a dish or other device capable of transmitting or receiving signals for cable, satellite or television systems, shall be erected, used or maintained outdoors above ground on any Subdivision Interest, except as provided below:

(a) An Owner may install a satellite dish or antenna for the reception of television or video signals ("Dish") on his or her Subdivision Interest if such Owner can demonstrate to the satisfaction of the Architectural Review Committee ("ARC") that the Dish will not be visible: (i) from any street, alley or Common Area; and (ii) from any other Subdivision Interest, or if visible from any other Subdivision Interest, the Owner has either obtained the written consent of all Owners of the Subdivision Interests from which the Dish can be seen, or the Dish is disguised to be indistinguishable from the Improvements otherwise allowed on a Subdivision Interest and such Owner complies with the provisions of subparagraphs (b) and (c) below.

(b) Prior to the installation of the Dish, the Owner shall submit to the ARC detailed plans depicting the Dish and showing the dimensions and proposed location of the Dish and any landscaping or other screening to be installed to shield the Dish from view ("Plans")

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any necessary written consents establishing that the requirements of subparagraph (a) above have been fully satisfied. The submission and approval process shall be the same as set forth in Section 20 of this Article X. The decision of the ARC shall not be willfully delayed. The ARC may impose "reasonable restrictions" upon the location and visibility of the Dish. As used herein, "reasonable restrictions" means those restrictions that do not significantly increase the cost of the video or television antenna system, including all related equipment, or significantly decrease its efficiency or performance, including, but not limited to those reasonable restrictions set forth in Civil Code Section 1376.

(c) If the Plans are approved by the ARC, *the* Dish shall be installed in strict compliance with the Plans and any deviation from such Plans shall require the prior written approval of the ARC. Each Owner hereby grants the ARC the right to inspect such Owner's Subdivision Interest to determine that the Dish has been installed in strict compliance with the Plans. If the ARC determines that the installation of the Dish is not in strict compliance with the Plans, it shall notify the Owner and the Owner shall immediately take such action as may be necessary to bring the Dish into compliance with the Plans or shall remove the Dish from the Subdivision Interest.

Section 5. Oil, Water and Mineral Operations. No tools or equipment and no derrick or other structure designed for use in boring for oil, gas, or other kindred substances, or designed for use in boring for water, or designed for use in any mining operation or exploration shall hereafter be erected or placed upon such realty; and no Owner of any of said Subdivision Interest shall ever consent to the use of the surface of the land, or any portion of the subsurface thereof, by any lessee under any lease to be negotiated or under any lease now of record affecting any of said Subdivision Interest, which lease pertains to the exploration, mining or operating for oil, gas or other hydrocarbon substances and the taking, storing, removing and disposition of same.

Section 6. Ground Cover Requirement. If Declarant has not provided a lawn for the front yard of a Subdivision Interest, then the Owner of said Subdivision Interest shall have installed thereon, within four (4) months after the date of conveyance by Declarant to the Owner of title to said Subdivision Interest or the date of occupancy thereof, whichever occurs first, a front yard lawn or a ground cover acceptable to the Association. Each Owner shall have installed on his or her Subdivision Interest, within four (4) months after the date of conveyance by Declarant to the Owner of title to the Subdivision interest or the date of occupancy thereof, whichever occurs first, a side and rear yard lawn or ground cover or other landscaping acceptable to the Association. Should any Owner fail to comply with the provisions of this section, the Association may, at any time (i) initiate legal proceedings to enforce compliance with this Section 6 or (ii) upon thirty (30) days written notice to the Owner of its intention to do so, enter upon said Subdivision Interest and install a lawn, ground cover or other landscaping and recover the cost thereof from said Owner. The Association shall notify the Owner of the Subdivision Interest in writing of the costs incurred, which shall constitute a personal obligation of the Owner of the Subdivision Interest. In the event such Owner fails to pay the Association the amount due within ten (10) days after receipt of such written notice, the Association may enforce such obligation in the same manner provided by law with respect to any other contractual obligation, or in accordance with the provisions of Article HI of this Declaration.

Section 7. Maintenance of Lots. No rubbish, brush, weeds, undergrowth, debris of any kind or character shall ever be placed or permitted to grow or accumulate upon any Subdivision Interest, or any portion thereof, so as to render said premises a fire ha7 rd, unsanitary, unsightly, offensive or detrimental to any other Real Property in the vicinity or the

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occupants thereof. The Owner of each Subdivision Interest for himself/herself, his successors and assigns agrees to care for, irrigate, cultivate, prune and maintain in good condition any and all trees, lawns and shrubs growing on the Subdivision interest and should Owner or his successors or assigns fail to do so, or fail to keep said realty free from rubbish, brush, weeds, undergrowth or debris of any character, the Association may, at any time, (i) initiate legal proceedings to enforce compliance with this Section 7 of Article X or (ii) upon thirty (30) days written notice to such Owner or his successors and assigns, of its intention so to do, enter upon said Subdivision Interest and remove such rubbish, brush, weeds, undergrowth or debris or replace dead /awn, trees or plants and assess said Owner or his successors or assigns for the cost thereof. The Association shall notify Owner or his successors or assigns in writing of the cost thereof, and in the event such person or persons fails to reimburse the Association for its costs and expenses, such charges shall constitute a lien on that Owner's Subdivision Interest, which may be enforced by the Association in accordance with the provisions of Article III of this Declaration, including, without limitation, the provisions of Sections 8, 9 and 10 of Article III.

Section 8. Trees; Vegetation. No tree, shrub, hedge, plant, vegetation, foliage or landscaping which exceeds the height of the residence or which could eventually grow to a height exceeding the height of the residence or which could interfere with the view from any other Subdivision Interest shall be planted, installed or maintained upon arty Subdivision Interest unless prior to the planting or installation thereof, a complete description of the species, actual and potential height and shape thereof, and proposed location within the Subdivision Interest have been submitted to and approved in writing, as to species, height, shape appearance and as to the effect on the view or visibility from or afforded by any other Subdivision Interest or Real Property, by the Architectural *Review* Committee. In the event the Committee fails to approve or disapprove such description and the contents thereof within sixty (60) days after the submission thereof to it, then such description shall be deemed disapproved. The method of submission shall be by mailing of a first class United States Mail Certified Receipt Requested letter to any current member of the Architectural Review Committee. The sixty (60) day period shall begin to *run on* the date of receipt of said letter by the Committee member. Notwithstanding any other provisions herein to the contrary, the foregoing restrictions shall not apply to trees, shrubs, hedges, plants, vegetation, foliage or landscaping planted by Declarant.

Section 9. Nuisances. No odors shall be pet \_\_\_\_ Hated to arise from any Subdivision Interest so as to render such Subdivision Interest unsanitary, unsightly, offensive or detrimental to any other Subdivision Interest; and no nuisance shall be permitted to exist or operate upon any Subdivision Interest so as to be offensive or detrimental to any other Subdivision Interest or to the Owners thereof; without limiting the generality of the foregoing provisions, horns, whistles, bells or other sound devices, except devices used exclusively for security purposes and which are approved by Declarant, the Association or the Committee, or bright lights which may disturb occupants of the neighborhood, shall be located, used or placed upon any Subdivision Interest; no Owner shall permit any thing or condition to exist upon *any* Subdivision Interest which shall induce, breed or harbor infectious plant diseases or noxious insects, and no noxious or offensive trade or activity shall be carried on upon any Subdivision Interest, nor shall anything be done thereon which is or may become an annoyance or nuisance to the project.

Section 19. Repair of Improvements. No improvements (including but not limited to dwelling units, garages, carports, walls and fences) shall be permitted to fall into disrepair and all Improvements shall at all times be kept in good condition and repair and adequately painted or otherwise finished. Any and all repairs, redecorations, modifications or additions, interior or



exterior, shall fully comply with all applicable building code requirements, Rules and Regulations. Roof ventilators, if any, shall be painted within three (3) months of installation to match the color of the roof to which it is or will be attached. Any violation of this provision may be enforced by the same parties and in the same manner as provided in Section 7 above.

Section 11. Easements. Easements for installation and maintenance of utilities and drainage facilities may have been conveyed as shown on the recorded plat and otherwise of record. Whether or not such easements constitute a part of the Common Area, neither the Association nor any Owner shall take any action which would interfere with the reasonable and normal use and operations of such easements. If a drainage facility located on a Subdivision Interest requires maintenance, the Owner of such Subdivision Interest shall maintain it in good condition and repair.

Section 12. Signs. No billboards, signs or advertising of any kind, excepting a conventional "for sale", "for rent" or "for exchange" sign, and not more than two (2) conventional security company signs shall be erected or maintained upon any of said Subdivision Interest without the prior written consent of the Architectural Review Committee, except that this restriction shall not apply to Declarant or to any entity owned or controlled by Declarant, as provided in Section 7 of Article XI. No permitted sign shall exceed two (2) feet in height or width.

Section 13. Sales Office. Declarant or its sales agents may, during the sale campaign of the Subdivision Interests in the Real Property and/or interests in other real property owned by Declarant or its affiliates in the general vicinity thereof, maintain on the property owned by it in the Real Property, or in the Common Area a real estate office, model homes, parking facilities, lights, decorative entrance wall lot areas, and such signs, flags and sales aids as it may desire to promote such sales.

Section 14. Animals. No animals, birds or fowl, other than commonly recognized household pets, shall be kept or maintained on said Subdivision Interest or any portion thereof. At any one time the total number of household pets shall not exceed four (4). In the event of a dispute with respect to whether or not a particular species of animal, bird or fowl is a commonly recognized pet, the determination of the Board shall govern.

Section 15. Walls and Fences. There are walls and/or fences around and within the Project which were constructed or are to be constructed by Declarant and are subject to this Declaration. It shall be the duty of every Owner of a Subdivision Interest to maintain and repair all walls and fences located within such Owner's Subdivision Interest and, if necessary, to replace said walls and fences as originally constructed. The Owner shall remove all graffiti from said walls and fences or paint over such graffiti within forty-eight (48) hours after such graffiti first appears. No changes or alterations shall be made to said walls and/or fences unless prior Architectural Review Committee approval has been received in accordance with Article X Section 18 hereof. In the event the need for repair of said walls and/or fences is caused through the willful or negligent acts of an Owner or his family, guests or invitees, the liability of the Owner for the cost of such repair shall be determined according to the laws of the State of California. It shall be the duty of each Owner of a Subdivision Interest on which a wall or fence is located to maintain said wall or fence and to obtain and maintain in force property and casualty insurance on a current replacement cost basis on such walls or fences. If such Owner fails to promptly repair or replace a damaged or destroyed wall or fence, or remove graffiti, the Association shall perform such work at the Owner's expense. In such event, any insurance proceeds an Owner may receive for any damage or destruction to the wall or fence located on his Subdivision Interest shall be paid to the Association which shall as

promptly as practicable and in a lawful and workmanlike manner restore and repair the block wall and/or fence to its former condition. If an Owner fails to pay to the Association any such insurance proceeds, or to reimburse the Association for the cost of the work, then the Association shall have the right to file a lien upon the *Subdivision* Interest of such Owner. The Association is hereby granted a right and easement over, under, upon and across each Subdivision Interest wherein the aforesaid perimeter wall and/or fence is located for the purpose of repairing and, if necessary, replacing said walls.

Section 16. Construction of Walls. No fence, wall, hedge, construction, or obstruction shall be installed or constructed upon any Subdivision Interest in said Project except the residence, garage, or other out building permitted to be erected under the provisions of these restrictions, unless such fence, hedge, wall, construction or obstruction is originally constructed by Declarant\* The fence or wall as constricted by Developer may not be revised, altered or modified as to the construction or materials used. In addition, no gates will be allowed in a fence or wall which would permit access from a Subdivision Interest to open space or Common Area owned by the Association or City of San Diego.

Section 17. Drainage. Each Owner agrees for himself and his successors and assigns that he will not in any way interfere with the natural or established drainage of water over, under or through his Subdivision Interest from an adjoining or other Subdivision Interest in the Project, including run off from the roof of an adjoining Owner, or that he will make adequate provisions for proper drainage in the event the Association determines it is necessary to change the natural or established flow of water drainage over the Owner's Subdivision Interest. For the purposes hereof "natural" drainage is defined as the drainage which would naturally occur at the time the overall approved grading plan of said Project has been completed by the Declarant. For the purposes hereof, "established" drainage is defined as the drainage which occurred or which would occur at the time the overall grading of the Project, including the finish grading of each Subdivision Interest in the Project, was completed by the Declarant. In the event an Owner interferes with the natural or established drainage over his or her Subdivision Interest or any other Subdivision Interest or Common Area or ifan Owner causes flooding or oversaturation of any other Subdivision Interest or Common Area, such Owner shall be deemed to be in violation of this Declaration. Compliance with the provisions of this section shall be enforced as provided in Article IX of this Declaration.

Section 18. Water Quality and Soil Erosion Control. Each Owner shall occupy, use and maintain such Owner's Subdivision Interest in compliance with the Federal Clean Water Act, regulations of the California State Water Resources Control Board and the Regional Water Quality Control Board for the region that includes the Project, and all applicable federal, state and local ordinances and laws relating to water quality, erosion and the disposition of silt. Each Owner shall be responsible for any soil erosion, silting, water pollution, contamination or nuisance emanating from. such Owner's Subdivision Interest. Whenever an Owner has exterior work done on such Owner's Subdivision Interest (such as landscaping or patio work), such Owner will ensure that the contractor disposes of water responsibly and that such contractor is aware of the environmental consequences of improper disposal. Each Owner will ensure that such Owner's contractors observe all applicable laws concerning the redirection of water from such Owner's Subdivision Interest and discharges of water and substances carried by water that may flow from such Owner's Subdivision Interest into storm drains. Should any Owner fail to comply with any provision of this Section 18., each of Declarant (provided that Declarant then owns any Subdivision Interest in the Project) and the Association, each acting independently, may at any time (i) initiate legal proceedings to enforce compliance with this Section 18. or (ii) upon thirty (30) days written notice to the Owner of its intention to do so, enter upon said Subdivision Interest and endeavor to rectify any situation on said Subdivision

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Interest not in conformity with the Federal Clean Water Act, any regulation of the California State Water Resources Control Board or the Regional Water Quality Control Board for the region that includes the Project, or any applicable federal, state or local ordinance or law relating to water quality, erosion or silting. If any such work is undertaken by or on behalf of Declarant, said Owner or said Owner's successors or assigns shall be responsible to Declarant for the costs thereof, including reasonable attorneys' fees, costs of suit and court costs in the event that Declarant shall institute any legal proceeding to recover any amount due Declarant in accordance with this Section 18. Declarant may not institute any such legal proceeding unless Declarant shall have notified such Owner in writing of the cost of such work undertaken by or on behalf of Declarant and such Owner shall not have fully reimbursed Declarant within fifteen (15) days of such notice. If any such work is undertaken by or on behalf of the Association, the Association may assess said Owner or said Owner's successors or assigns for the cost thereof. The Association shall notify Owner or such Owner's successors or assigns in writing of the cost of such work undertaken by or on behalf of the Association, and in the event such person or persons fail to reimburse the Association for its costs and expenses, such charges shall constitute a lien, on that Owner's Subdivision Interest, which may be enforced by the Association in accordance with the provisions of Article III of this Declaration, including, without limitation, the provisions of Sections 8, 9 and 10 of Article III.

Section 19. Provision for Architectural Approvals. Except as to construction of Improvements by Declarant in any phase of the Project, no building, fence, wall, or other structure shall be commenced, erected, or maintained on the Real Property; nor shall any Improvement be made which affects the natural or established drainage from the Subdivision Interest nor shall any exterior addition or change or alteration in any such Improvements on the Real Property, including the following by way of illustration but not limitation, solar or heating systems; pools, spas, ponds, fountains; landscaping, stonework, or concrete work; related mechanical, plumbing or electrical facilities; awnings or patio covers, be made, until the plans and specifications showing the nature, kind, shape, materials, location and proposed construction schedule of the same have been submitted to and approved in writing by the Architectural Review Committee provided in the Declaration. Whenever in the Declaration the prior consent or approval of the Association is required as a condition to any action by an Owner affecting any alterations, changes, additions, or modification, the Association through the Board may delegate to the Architectural Review Committee the *right* and duty to grant or withhold such consent or approval. In the event the Architectural Review Committee or its designated representatives fails to approve or disapprove such design and location within sixty (60) days after the plans and specifications have been submitted to it, such plans and specifications shall be deemed disapproved. The Board may require that every submission of a request for approval in connection with any proposed Improvement be accompanied by a fee to be paid to the Association.

Section 20. Architectural Review Committee. The Declarant shall appoint all of the original members of the Architectural Review Committee consisting of not less than three (3) nor more than five (5) members, the initial members of which shall be John Osgood, Beth Fischer and Karen Oyanguren, 10880 Wilshire Boulevard, Suite 1900, Los Angeles, California 90024. A majority of the Committee may designate a representative to act for it. Any member shall have the right to resign at any time. Neither the members of the Committee nor its designated representative shall be entitled to any compensation for services performed under this provision. The Declarant shall have the right to appoint a majority of the members of the Architectural Review Committee and any replacements on such committee until ninety percent (90%) of the Subdivision Interests in the Project have been sold and the deeds to Owners recorded. Thereafter the Board shall have the power to appoint members thereof or to change the membership of the committee in accordance with the Bylaws. The terms of office of the

Members of the Architectural Review Committee shall expire at such time as the Board or the Declarant, in its sole discretion shall determine, whichever shall be entitled to appoint the members thereof.

Section 21. Approval of Committee. The Architectural Review Committee's approval as required in this Declaration shall be in writing.. In the event that the Architectural Review Committee, or its designated representative, fails to approve or disapprove any plan, specification, design or plot plan within sixty (60) days after the same shall have been submitted to it, then such plans and specifications shall be deemed to have been disapproved by the Committee. The method of submission shall be by the mailing of a first class United States Mail Certified Return Receipt Requested letter to any current member of the Architectural Review Committee. The sixty (60) day period shall begin to run on the date of receipt of an id letter by the Committee member.

Section 22. Basis for Approval of Improvements. The Architectural Review Committee shall grant the requested approval only if said Committee determines, in its sole and absolute discretion, that:

(a) The proposed Improvement conforms to this Declaration and particularly to the requirements and restrictions of this Section, and to the Rules and Regulations in effect at the time the application for approval was submitted;

(b) The proposed Improvement is compatible with the standards of the Project and the purposes of this Declaration as to quality of workmanship and materials;

The proposed Improvement is compatible with the architectural quality of the Project and will not depreciate the value of the Project;

To the extent economically feasible, all landscaping design changes (if any) and all changes to driveway design (if any) include pegable elements; such as porous pavers.

Section 23. Liability of Committee Members. Neither Declarant, the Association nor any member of the Architectural Review Committee shall be liable for damages to anyone submitting plans and specifications to it for approval or to any Owner, occupant or guest, by reason of a mistake in judgement, negligence or nonfeasance arising in connection with the approval or disapproval of any plans and specifications.

Anyone who submits plans and specifications to the Architectural Review Committee shall be deemed to have agreed by submission of such plans and specifications, and every Owner and occupant of any Subdivision Interest, or any part of the Real Property, agrees, by acquiring title and/or possessory rights thereto, that he will not bring any action or suit against Declarant, the Association, any member of the Architectural Review Committee or its designated representative for the recovery of damages by reason of any such approval or disapproval.

Section 24. Painting. No building, including without limitation, garages, shall be painted or repainted other than in its original colors unless the new color has been approved by the Architectural Review Committee.

Section 25. Clotheslines. No clotheslines shall be placed nor shall any clothes be hung in any manner whatsoever on any Subdivision Interest in a location, including but not limited to the garage door, visible from a public street.

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Section 26. Commercial Vehicles and Recreational Vehicles. "Commercial Vehicles" and "Recreation Vehicles" (as those terms are defined below) shall be subject to the following prohibitions and restrictions:

(a) As used herein the term "Commercial Vehicle" shall be defined as: (i) any vehicle with a sign displayed on any part thereof advertising any kind of business or other venture; or (ii) any vehicle on which racks, materials, ladders and/or tools are visible; or (iii) any vehicle with a body type normally employed as a business vehicle whether or not a sign is displayed on any part thereof; or (iv) a truck of greater than one (1) ton capacity; or (v) a van other than one used solely as a family passenger van; or (vi) a bus. A Commercial Vehicle may be defined as such even if such vehicle does not have a commercial license plate.

(b) As used herein, the term "Recreational Vehicle" shall include, without limitation, motorhomes, buses, trailer coaches, trailers, boats or other watercraft, aircraft or campers.

(c) No Commercial Vehicle or Recreational Vehicle may be parked on any Subdivision Interest (unless the entire vehicle is located within a garage) or on any street or alley at any time, except as permitted below:

(1) A Commercial Vehicle not owned or operated by an Owner or an occupant of a Subdivision Interest may be parked temporarily on said Subdivision Interest or on the street in front of said Subdivision Interest during such time as the operator of such Commercial Vehicle is delivering goods or providing services to the Owner or occupant of said Subdivision Interest.

(ii) No Recreational Vehicles owned by an Owner or occupant of a Subdivision Interest may be parked on said Subdivision Interest or in the street in front of such Owner's or occupants Subdivision Interest except while said Recreational Vehicle is being loaded or unloaded for a period not to exceed forty-eight (48) hours in any seven (7) day period;

(iii) Recreational Vehicles owned by persons visiting an Owner or occupant may be parked in front of such Owner's or occupant's Subdivision Interest while such person is visiting, provided that such Owner or occupant first obtains the written consent of the Board, but in any event such period shall not exceed seven (7) days;

(iv) On those Subdivision Interests on which Declarant has constructed a Recreational Vehicle parking space ("RV space"), a Recreational Vehicle may be parked within such RV space.

In addition, no Commercial or Recreational Vehicle or any automobile, van, motorhome or truck or equipment, may be dismantled, repaired or serviced on any Subdivision Interest, street or alley in any area visible from adjoining property or public street.

Section 27. Garage Doors. No garage door is to be left open except: (a) at such time as a vehicle is entering or leaving said garage; or (b) when the Owner or occupant of such Subdivision Interest is working in such garage, not to exceed four (4) hours per day; however, such work shall not include any activity which is prohibited by Section 25 above. Notwithstanding the foregoing, garage doors may be left open to a height of up to two (2) feet if necessary to ventilate heat from the garage during very hot weather.

Section 28. Drainage Slope. Each Owner of a Subdivision Interest in said Project agrees for himself, his heirs, assigns, or successors in interest that he will permit free access by Owners of adjacent or adjoining Subdivision Interests to slopes or drainageways located on his Subdivision Interest which affect said adjacent or adjoining Subdivision Interests, when such access is essential for the maintenance of permanent stabilization on said slopes, or maintenance of the drainage facilities for the protection and use of Real Property other than the Subdivision Interest on which the slope or drainageway is located.

Section 29. Post-Construction Entry Rights. Declarant or its designee shall have the right to enter upon each Subdivision Interest in said Project for the purpose of planting and maintaining the slope banks as required. Said right of entry shall exist for a period not to exceed ninety (90) days after the completion of the construction of all residential structures in said Project, at which time said right of entry and maintenance shall terminate as to said Subdivision Interest.

Section 30. No Impairment of Liens. No violation of any of the covenants, conditions or restrictions in this Declaration, nor any of the rights or rights to claim a lien or liens created hereunder upon any Subdivision Interest in the Project shall defeat or render invalid the lien of any holder of any indebtedness, or the renewal, extension or refinancing thereof, made in good faith and for value, and secured by any recorded trust deed upon such Subdivision Interest in favor of or for the benefit of any agency or officer of the United States of America, any agency or officer of the State of California, any institutional lender (meaning any bank, insurance company, savings and loan association, or building and loan association), Declarant, any wholly-owned corporate subsidiary of Declarant, or any corporation of which Declarant is a wholly-owned subsidiary, and the rights, remedies and liens created hereby upon any such Subdivision Interest shall be subject and subordinate thereto; provided that, immediately after any power of sale or court foreclosure of any such trust deed by sale of such Subdivision Interest, this Declaration shall be binding upon and effective against any Owner (including Declarant) whose title is derived through such a trustee's sale or court foreclosure, and the same rights and remedies shall attach and a new claim of lien shall automatically be created on such Subdivision Interest under the applicable provisions hereof, without further act, to secure payment of any and all assessments levied hereunder, after the date of such trustee's sale or court foreclosure.

Section 31. Solar Equipment. No solar equipment, including but not limited to solar collectors and solar panels, shall be installed until approval of the Architectural Review Committee has been obtained, which approval will not be unreasonably withheld, as to (1) type of solar equipment to be installed and (ii) location thereof. The Architectural Review Committee may impose reasonable restrictions on the solar energy system as set forth in California Civil Code Section 714 (as such section may be hereafter amended, supplemented or superseded).

Section 32. Mutual Covenants. Except as otherwise provided herein, the Association and each Owner, including without limitation Declarant if, and only for so long as it owns any of the Real Property or the property on Exhibit "B" hereto, shall have the right to enforce any or all of the provisions of the covenants, conditions and restrictions upon any other Owner or Owners. In order to enforce said provision or provisions, any appropriate judicial proceeding in law or in equity may be initiated and prosecuted by such Owner or Owners. Failure by the Association or any Owner (including Declarant) to enforce any provision of this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

Section 33. Enforcement Costs. If any Owner, Declarant or the Association seeks to

enforce the provisions of this Declaration, the party in violation of this Declaration shall pay all reasonable expenses incurred by the party enforcing the provisions hereof, including but not limited to reasonable attorneys' fees.

Section 34. Multiple Habitat Planning Area. The Multi-Phase Development Community referred to as the West Highlands Pacific Homeowners Association is located within the Multiple Habitat Planning Area ("MHPA").

In order to protect the native plants and animals in the MHPA, the Association and each owner of a Subdivision Interest agree to the following covenants and restrictions.

All private outdoor lighting shall be shaded and adjusted to fall on the same premises where such lights are located.

The use of porous hardscape, the use of xeriscape and native landscape methods and the minimization of pesticides and fertilizers shall be utilized when possible.

The curb may not be cored to allow runoff from the residential lot to the street.

No car washing will be allowed on any street, driveway or garage.

Cars will not be allowed to park on any street during the time the streets are being cleaned.

Non-native plants and animals shall not be allowed to encroach within the MHPA. This includes trees which may grow over a fence/wall.

No outdoor speakers will be allowed.

Roof drains are not allowed to be connected to yard drains.

Section 35. Brush Management Requirements. The Association is located within the Brush Management Zone One Area as defined by the City of San Diego Landscape Technical Manual. Any combustible accessory structure with less than a one-hour fire rating is not permitted. This includes but is not limited to decks, trellises and gazebos. A non-combustible accessory structure and/or combustible accessory structure with a minimum fire rating of one hour or more may be approved within the Zone One area subject to Fire Marshall, the City Manager and Architectural Review Committee's approval.

**ARTICLE XI**

**GENERAL PROVISIONS**

Section 1. Severability. The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any provision or provisions shall not invalidate any other provisions.

Section 2. Amendments.

(a) Before the close of the first sale of a Subdivision Interest in the Project to a purchaser other than Declarant, this Declaration and any amendments to it may be amended

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in any respect or revoked by the execution by Declarant and any Eligible Mortgage Holder of record of an instrument amending or revoking the Declaration. Before the close of the first sale of a Subdivision Interest in a second or subsequent phase of the Project to a purchaser other than Declarant, any Supplementary Declaration recorded pursuant to Section 15 with respect to such phase may be amended in any respect or revoked by the execution of an instrument amending or revoking the Supplementary Declaration by Declarant and any Eligible Mortgage Holder of record of the property described in the Supplementary Declaration.

(b) The amending or revoking instrument shall make appropriate reference to this Declaration and its amendments and shall be acknowledged and recorded in the office of the County Recorder of the County.

(c) After the close of the first sale of a Subdivision Interest in the Project to a purchaser other than Declarant, this Declaration may be amended at any time and from time to time by an instrument in writing signed by the President and Secretary of the Association certifying that the Amendment has been approved by Members representing seventy-five percent (75%) or more of the voting power of each class of Members or if the Class B membership has been converted to Class A membership, by seventy-five percent (75%) of the total voting power of the Association comprised of at least seventy-five percent (75%) of the votes of Members other than Declarant. Such amendment shall become effective upon the recording thereof with the Office of the County Recorder; provided, however, that no change may be made to material provisions herein without the prior written consent of Eligible Mortgage Holders, all as more particularly set forth below in Section 3 of this ARTICLE XI. Notwithstanding the above or any other section of this Declaration, the percentage of the 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.

(d) No amendments to any provisions in this Declaration or other Governing Documents which specifically relate to or concern Declarant's rights, shall be made without the written consent of Declarant, including but not limited to:

- (1) Article III, Section 14, Declarant's Limited Exemption From Assessment;
- (2) Article IV, Section 25, Limitations on Powers of Association, subparagraph (b);
- (3) Article IX, Enforcement;
- (4) Article X, Section 19, Provision for Architectural A ~~■~~royals;
- (5) Article X, Section 20, Architectural Review Committee; and
- (6) Article X, Section 29, Post-Construction Entry Rights.

(e) After the first close of escrow of a sale of a Subdivision Interest in the Project, the Board may amend this Declaration, without vote of the Owners, by recording an appropriate instrument signed by two (2) officers of the Association if such amendment is solely for any of the following purposes: i) to conform this Declaration to applicable law; ii) to conform this Declaration to any conditions of approval imposed by any governmental agency; iii) to correct typographical errors; or iv) to correct any error in an Exhibit or to cause an Exhibit to confer iii to as-built conditions.



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(f) Notwithstanding any provision herein to the contrary, any addition or amendment made to the Governing Documents in order to correct a technical error or for clarification purposes may be made by Declarant without membership approval.

## Section 3. Material Amendments.

(a) In addition to the consent of the Members in accordance with Section 2 of this ARTICLE XI, the approval of at least fifty-one percent (51%) of the Eligible Mortgage Holders shall be required to add or amend any material provisions of the Governing Documents, which establish, provide for, govern or regulate any of the following:

- (1) Voting;
- (2) Assessments, assessment liens or subordination of such liens;
- (3) Reserves for maintenance, repair and replacement for the Common Areas;
- (4) Insurance or Fidelity Bonds;
- (5) Rights to use of the Common Areas;
- (6) Responsibility for maintenance and repair of the several portions of the Project;
- (7) Expansion or construction of the Project or the addition, annexation or withdrawal of property to or from the Project;
- (8) Boundaries of any Subdivision Interest;
- (9) The interests in the Common Areas;
- (10) Convertibility of Subdivision Interest into Common Areas or of Common Areas into Subdivision interest;
- (11) Leasing of Subdivision Interests;
- (12) Imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer or otherwise convey his or her Subdivision Interest;
- (13) Any provisions which are the express benefit of Mortgage Holders, Eligible Mortgage Holders or Eligible Insurers or Guarantors.

(b) An addition or amendment to the Governing Documents shall not be considered material if it is for the purpose of correcting technical errors, or for clarification only. An Eligible Mortgage Holder who receives a written request to approve additions or amendments who does not deliver or post to the requesting party a negative response within thirty (30) days shall be deemed to have approved such request.

## Section 4. Extension of Declaration. Each and all of these covenants, conditions

and restrictions shall terminate on December 31, 2050 , after which date they shall automatically be extended for successive periods of ten (10) years unless the Owners have executed and recorded at any time within six (6) months prior to December 31, 2050 , or within six (6) months prior to the end of any such ten (10) year period, in the manner required for a conveyance of real property, a writing in which it is agreed that said restrictions shall terminate on December 31, 2050 , or at the end of any such ten (10) year period.

Section 5. Attorneys Fees. In the event the Association, Declarant or any Owner shall commence litigation to enforce any of the covenants, conditions or restrictions herein contained, the prevailing party in such litigation shall be entitled to costs and expenses of the suit including reasonable attorney's fees.

Section 6. Special Responsibilities of Association. In the event that the improvements to be installed by Declarant to the Common Area have not been completed prior to the issuance of a Final Subdivision Public Report covering the Project, and in the further event that the Association is the obligee under a bond to secure performance by the Declarant to complete such improvements, then if such improvements have not been completed and a Notice of Completion filed within sixty (60) days after the completion date specified in the Planned Construction Statement appended to the bond, the Board shall consider and vote upon the question of whether or not to bring action to enforce the obligations under the bond. If the Association has given an extension in writing for the completion of any such improvement then the Board shall consider the vote on said question if such improvements have not been completed and a Notice of Completion filed within thirty (30) days after the expiration of the extension period. In the event that the Board determines not to take action to enforce the obligations secured by the bond, or does not vote on the question as above provided, then in either such event, upon petition signed by Members representing five percent (5%) of the total voting power of the Association, the Board shall call a special meeting of the Members of the Association to consider the question of overriding the decision of the Board or of requiring the Board to take action on the question of enforcing the obligations secured by the bond. Said meeting of Members shall be held not less than thirty-five (35) days nor more than forty-five (45) days following receipt of the petition. At said meeting, a vote of a majority of the voting power of the Members of the Association, excluding the vote of Declarant, to take action to enforce the obligations under the bond shall be deemed to be the decision of the Association, and the Board shall thereafter implement the decision by initiating and pursuing appropriate action in the name of the Association.

Section 7. Limitation of Restrictions on Declarant. Declarant is undertaking the work of construction of residential dwellings and incidental improvements upon the Real Property. The completion of that work, and the sale, rental and other disposal of said dwellings essential to the establishment and welfare of said Real Property as a residential community. In order that said work may be completed and said Real Property be established as a fully occupied residential community as rapidly as possible, nothing in this Declaration shall be understood or construed to:

(a) Prevent Declarant, its contractors or subcontractors from doing on the Real Property or any Subdivision Interest, whatever is reasonably necessary or advisable in connection with the completion of said work; or

(b) Prevent Declarant or its representatives from erecting, constructing and maintaining on any part or parts of the Real Property, such structures as may be reasonable and necessary for the conduct of its business of completing said work and establishing said Real Property as a residential planned development and disposing of the same in parcels by

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sale, lease or otherwise, including the use by Declarant of improvements for models, sales offices and construction offices; or

(c) Prevent Declarant from conducting on any part of the Real Property its business of completing said work, and of disposing of said Real Property in dwellings by sale, lease or otherwise; or

(d) Prevent Declarant from maintaining such sign or signs on any of the Real Property as may be necessary or convenient for the sale, lease or disposition of the Real Property or any portion thereof or any master planned community or other real estate in the vicinity of the Real Property; provided, however, that the maintenance of any such sign shall not unreasonably interfere with the use by any Owner of his Subdivision Interest or the Common Areas, where a right to use the Common Areas, or a portion thereof, has been granted.

Notwithstanding any provision herein to the contrary, Declarant shall not have the right to maintain any sign or signs on or within any Subdivision Interest which is not owned by Declarant.

Except as otherwise provided in Section 3 of ARTICLE V of this Declaration, so long as Declarant, its successors and assigns owns one or more of the Subdivision Interests established and described herein, Declarant, its successors and assigns shall be subject to the provisions of this Declaration. The rights of Declarant in this Declaration may be assigned by Declarant to any successor to all or any part of any Declarants interest in the Project, as developer, by an express assignment incorporated in a recorded deed that transfers any such interest to a successor or to a Mortgagee acquiring Declarants interest in the Project by foreclosure or by deed in lieu of foreclosure.

Section 8. Owners' Compliance. Each Owner, tenant or occupant of a Subdivision Interest shall comply with the provisions of this Declaration, the Bylaws, decisions and resolutions of the Association or its duly authorized representative, as lawfully amended from time to time, and failure to comply with any such provisions, decisions, or resolutions shall be grounds for an action to recover sums due, for damages, or for injunctive relief.

Section 9. Notices. Any Owner who encumbers his/her Subdivision Interest shall furnish the Association the name and address of the Mortgagee. The Association shall report to such Mortgagee any unpaid assessments due from the Owner of such Subdivision Interest at the same time as the Association makes demand of the Owner thereof for the payment of such assessment. Each Mortgagee shall also be entitled to timely written notification from the Association of any other default by its Owner-Trustor in the performance of such Owner's obligations under the terms and provisions of this Declaration which shall not have been cured within thirty (30) days after written notice to such Owner-Trustor by the Association specifying such default, and written notification of substantial damage to or destruction of any part of the Common Area as provided for in ARTICLE VII, herein.

Section 10. Examination of Books. The representative of any Mortgagee or other lender shall have the right to examine the books and records of the Association during reasonable business hours. A copy of the financial statements required under Section 23 of Article IV of this Declaration shall be mailed to each lender who requests same within the time limit prescribed therein.

Section 11. Meetings, Notice and Representation.

Each Mortgagee who has

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furnished the Association with an address as set out in Section 9 of the Article XI above shall be given notice of all meetings of the Association membership on the same basis as members and shall be permitted to designate a representative to attend all such meetings.

Section 12. Captions. The captions appearing at the commencement of the Sections hereof are descriptive only and for convenience in reference. Should there be any conflict between any such caption and the Section at the head of which it appears, the Section and not the caption shall control and govern in the construction of this Declaration.

Section 13. Vote of Membership. Except as otherwise provided in the Governing Documents, if the Class B membership has been converted to Class A membership, then wherever the provisions of this Declaration, the Articles or the Bylaws call for membership approval of action to be taken by the Association, the vote or written assent of a bare majority of the total voting power of the Association, comprised of at least the percentage of the voting power of members other than Declarant prescribed for action under any such provision, shall be necessary for such approval.

## Section 14. Annexation.

(a) Annexation of real property to the existing Project shall require the vote or written assent of not less than 66-2/3% of the total votes residing in Association Members other than Declarant unless the proposed annexation is in substantial conformance with a detailed plan of phased development submitted to the California Department of Real Estate with the application for a public report for the first phase of the Project.

(b) The plan for phased development through annexation referred to in subparagraph (a) must include, but need not be limited to, the following:

(1) Proof satisfactory to the California Department of Real Estate that no proposed annexation will result in an overburdening of common facilities.

(2) Proof satisfactory to the California Department of Real Estate that no proposed annexation will cause a substantial increase in assessments against existing Owners which was not disclosed in subdivision public reports under which pre-existing Owners purchased their interests.

(3) Identification of the land proposed to be annexed and the total number of residential units then contemplated by Declarant for the overall Project.

(4) Provisions requiring that annexation of a new phase be effected prior to the third anniversary of the issuance of the original public report for the immediately preceding phase.

(5) A written commitment by Declarant to pay to the Association, concurrently with the closing of the escrow for the first sale of a Subdivision Interest in an annexed phase, appropriate amounts for reserves for replacement or deferred maintenance of Common Area improvements in the annexed phase necessitated by or arising out of the use and occupancy of a Subdivision Interest under a rental program conducted by Declarant which has been in effect for a period of at least one (1) year as of the date of closing of escrow for the first sale of a Subdivision Interest in the annexed phase.

(c) The Supplementary Declaration annexing additional Real Property to the Project

shall contain at least the following provisions:

- (1) A reference to this Declaration stating the date of recording hereof and the File/Page number where this Declaration is recorded in the records of the County,
- (2) A statement that the provisions of this Declaration, or some specified part thereof, shall apply to such added real property.
- (3) An exact description of said added real property; and
- (4) Such other or different covenants, conditions and restrictions as Declarant shall, in its discretion, specify to regulate and control the use-, occupancy and improvement of such added real property.

Nothing contained herein, however, shall require Declarant to construct or to complete the future phases of the planned overall Project. There is no guarantee that the future phases will be annexed.

(d) Subject to the provisions of subparagraphs (a) and (b) above, if, within three (3) years of the date of the issuance by the California Department of Real Estate of the original Final Subdivision Public Report for the immediately preceding phase of the Project, Declarant should develop the property described in the attached Exhibit "A" such additional property may be added to the Project and included within the jurisdiction of the Association by action of the Declarant without the assent of Members of the Association; provided, however, that the development of the additional lands shall be in accordance with the plan of development submitted to (i) the Department of Real Estate prior to the time a Final Subdivision Public Report is issued in connection with the Project. Said annexation may be accomplished by recording a Supplementary Declaration which annexes the property and requires Owners of Subdivision Interests therein to be members of the Association and makes new Owners subject to this Declaration. Subject to the provisions of Section 6 of Article III hereof, the obligation of annexed Owners to pay dues to the Association and the right of such Owners to exercise voting rights in the Association in such annexed property shall not commence until the first day of the month following close of the first sale of a Subdivision Interest by Declarant in that phase of development. However, if the annexed property has been rented for at least one (1) year before the closing of the first Subdivision Interest in the annexed phase, the Declarant must pay the Association appropriate amounts for reserves for replacement or deferred maintenance of Common Area Improvements in the annexed phase.

(e) With the prior consent (by vote or written consent) of the Class A Members representing a two-thirds (2/3) majority of the voting power of the Class A membership or, if in the event the Class B membership has been converted to Class A membership, then two-thirds (2/3) or more of the total voting power of the Association comprised entirely of the votes of Members other than Declarant, the owner of any real property who desires to add it to the scheme of this Declaration and to subject it to the jurisdiction of the Association, may file of record a Declaration of Annexation.

(I) This Section 14 of ARTICLE XI shall not be amended without the written approval of Declarant attached to the instrument of amendment.

Section 15. Litigation. Before the Association commences an action for damages against the builder of the Project (i.e., Declarant) based upon a claim for defects in the design or construction of the Project, the Association shall comply with all provisions of Civil Code

Section 1375, as such section may be hereafter amended, supplemented or superseded. Not later than thirty (30) days prior to filing of any civil action by the Association against Declarant or other developer of the Project for alleged damage to the Common Areas, alleged damage to the separate interests that arises out of, or is integrally related to damage to the Common Areas or separate interests that the Association is obligated to maintain or repair, the Board of Directors of the Association shall provide written notice to the Owners in accordance with the provisions of Civil Code Section 1368.4, except to the extent compliance is excused pursuant to Civil Code Section 1375.

Section 16. Conflicting Provisions. In the case of any conflict between this Declaration and the Articles or the Bylaws, this Declaration shall control. In the event of any conflict between the Articles and the Bylaws, the Articles shall control.

Section 17. Singular Includes Plural. Whenever the context of this Declaration requires same, the singular shall include the plural, and *vice versa*, and the masculine shall include the feminine and the neuter, and *vice versa*.

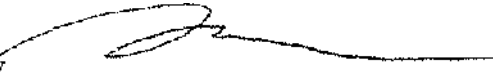
All agreements and determinations lawfully made by the Association in accordance with the voting percentages established in this Declaration or in the Bylaws, shall be deemed to be binding on all Owners of Subdivision Interests, their successors and assigns.

**21135**

IN WITNESS WHEREOF, the undersigned, being Declarant herein, has executed this instrument the day and year first herein above written.

PARDEE HOMES  
a California corporation

By, ~ ~ t r I 6 : t r ' 7 Ralph Pistone, \_\_\_\_\_  
Assistant Vice President

By  \_\_\_\_\_  
Barbara Bail, Assistant Secretary

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**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California  
County of Ventura

On May 1, 2003, before me, Verna D. Olson, Notary Public, personally appeared **Barbara Bail, as Assistant Secretary**, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.



VERNA D. OLSON  
Commission 1328620 7  
Notary Public - California  
Ventura County  
My Comm. Expires Nov 5, 20(15

WITNESS my hand and official seal

Verna D. Olson  
Notary Public in and for said state.

.....**OPTIONAL**-----

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form,

**DESCRIPTION OF ATTACHED DOCUMENT**

Title or Type of Document: Declaration of Covenants, Conditions, & Restrictions  
Additional Information: West Highlands Pacific HOA  
Date of Document: May 1, 2003 Number of Pages: 51  
Signer is Representing: Pardee Homes  
Signer(s) other than named above: Ralph Pistone

**CAPACITY CLAIMED BY SIGNER**

Name of Signer: Barbara Bail  
Signing As:

INDIVIDUAL  
 CORPORATE OFFICER TITLE: Assistant Secretary

PARTNER(S)  
 LIMITED 0 GENERAL

ATTORNEY-IN-FACT  
 TRUSTEE  
 GUARDIAN/CONSERVATOR  
 OTHER:

THUMB PRINT  
RIGHT THUMB



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**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California  
County of Ventura

On May 1, 2003, before me, Verna D. Olson, Notary Public, personally appeared **Ralph Pistone, as Assistant Vice President**, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.



VERNA D. OLSON  
Commission # 1326620  
Notary Public - California  
Ventura County  
My Comm. Expires Nov 5, 2005

WITNESS my hand and official seal

Verna D. Olson  
Notary Public in and for said state.

..... **OPTIONAL** .....

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

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Additional Information: West Highlands Pacific HOA  
Date of Document: May 1, 2003 Number of Pages: 51  
Signer is Representing: Pardee Homes  
Signer(s) other than named above: Barbara Bail

**CAPACITY CLAIMED BY SIGNER**

Name of Signer: Barbara Bail  
Signing As:  
XX INDIVIDUAL TITLE: Assistant Vice President  
CORPORATE OFFICER  
 PARTNER(S)  
 LIMITED  GENERAL  
 ATTORNEY-IN-FACT  
 TRUSTEE  
 GUARDIAN/CONSERVATOR  
 OTHER:

\_\_\_\_\_  
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## EXHIBIT "A"

### ANNEXABLE PROPERTY OWNED BY DECLARANT

Property located in the County of San Diego, State of California, more particularly described as follows: Lots One (1) through Twenty-One (21); Thirty (30) through Sixty (60); Sixty-Nine (69) through Eighty-Five (85); Ninety-Eight (98) through One Hundred (100); and One Hundred Thirty-One (131) through One Hundred Forty-Nine (149) of Pacific Highlands Ranch Unit No. 2A, according to Map No. 14484 filed on November 13, 2002 and Lots One Hundred Fifty (150) through One Hundred Sixty-Nine (169) of Pacific Highlands Ranch Unit 2B;

And Residential Lots contained within Pacific Highlands Ranch Units No. 3, 5-10, 12, 17-23 and 25-28.

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## EXHIBIT "B"

### COMMON AREA

Listing of Proposed Common Area Open Space Parcels to be owned by Association:

Lot A of Pacific Highlands Ranch Unit No. 2A located in the City of San Diego, as shown on Map No. 14484 filed in the Office of the County Recorder of San Diego County, State of California on November 13, 2002.

Lot E of Pacific Highlands Ranch Unit No. 2B.

Lots B and C of Pacific Highlands Ranch Unit No. 3.

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

JONATHAN D. MASSIE  
MASSIE, BERMAN  
3588 FOURTH AVENUE, SUITE 200  
SAN DIEGO, CALIFORNIA 92103

THE ORIGINAL OF THIS DOCUMENT  
WAS RECORDED ON AUG 06, 2012  
DOCUMENT NUMBER 2012-0461289  
Ernest J. Dronenburg, Jr., COUNTY RECORDER  
SAN DIEGO COUNTY RECORDER'S OFFICE  
TIME: 2:25 PM

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AMENDMENT TO THE DECLARATION OF  
COVENANTS, CONDITIONS & RESTRICTIONS FOR  
WEST HIGHLANDS PACIFIC HOMEOWNERS ASSOCIATION

THIS AMENDMENT to the Declaration of Covenants Conditions and Restrictions ("Declaration") for the West Highlands Pacific Homeowners Association ("Association") is made this 24 day of JULY 2012, by the members of the Association.

WHEREAS, the original Declaration was recorded on, May 7, 2003, in the Office of the San Diego County Recorder as Instrument No. 2003-0536038; and

WHEREAS, the Original Declaration has been previously amended by amendments recorded in the official records of San Diego County, California as follows:

<u>Recording Date:</u>	<u>File/Page No.</u>
May 21, 2003	2003-0594750
May 29, 2003	2003-0656394

WHEREAS, the Declaration encumbers that certain real property more particularly described on **Exhibit "A"** attached hereto and incorporated herein and such additional property as may be subsequently annexed thereto; and

WHEREAS, the Declaration at Article XI, Section 2(f) provides that the Declaration may be amended by a vote of seventy-five percent (75%) of the total voting power of the Association comprised of at least seventy-five percent (75%) of the votes of Members other than the Declarant; and

WHEREAS, the Declaration at Article XI, Section 3 provides that the Declaration requires that this Amendment have the approval of at least fifty-one percent (51%) of the eligible Mortgage Holders. As of the date of recordation of this Amendment, there are no Eligible Holders; and

WHEREAS, after extensive efforts to obtain membership approval for the amendments to Articles I, II, III and IV, and Exhibit "B" to the Declaration and establishing cost centers for Arabella (Unit 12) and Bordeaux and Soleil, the Association was unable to obtain approval of seventy-five percent (75 %) of the membership; and

WHEREAS, due to the importance of the amendments, the Association filed a Petition pursuant to California Civil Code Section 1356, in the Superior Court of California, County of San Diego, Case No. 37-2012-00098005CU-PT-CTL asking the Court to reduce the percentage of votes necessary to amend Articles I, II, III, IV and Exhibit "B" to the Declaration and establishing cost centers for Arabella and Bordeaux and Soleil; and

WHEREAS, on June 29, 2012, said Petition was granted by the Honorable Lisa C. Schall. A copy of the Order reducing the percentage of votes necessary to amend Articles I, II, III, IV and Exhibit "B" to the Declaration and establishing cost centers for Arabella and Bordeaux and Soleil to the affirmative votes received during the balloting period is attached hereto as **Exhibit "B"**.

NOW THEREFORE, the Declaration is amended as follows:

Article I, shall be amended to read:

1.1 "Arabella Cost Center" means the Cost Center established for the Arabella Property for costs incurred by the Association, including but not limited to costs incurred for the maintenance of the Arabella (Unit 12) Private Streets, removal of trash, water, management, administrative costs, insurance, electricity, lighting, audit, and other expenses necessary to properly operate the Arabella Cost Center.

1.2 "Arabella Private Streets" means the private streets described on **Exhibit "C"** which shall be included in the Arabella (Unit 12) Cost Center.

1.3 "Bordeaux and Soleil Cost Center" means the Cost Center established for the Bordeaux and Soleil Property for costs incurred by the Association, including but not limited to costs for maintenance of the landscape and hardscape described on **Exhibit "D"** and other necessary expenses necessary to properly operate the Bordeaux and Soleil Cost Center.

1.4 "Cost Center" means the portions of the Project which directly receive a special benefit from the Association for maintenance of certain areas and for which additional assessments will be imposed on the Owners of Subdivision Interests within such Cost Center, as provided in the Cost Center Budget.

1.5 "Cost Center Assessments" means the Assessments levied and assessed by the Association under a Cost Center Budget in accordance with Article V, including, without limitation, any such costs and expenses under a third party operating or management agreement made by the Association for such Cost Center.

1.6 "Cost Center Budget" means the elements of the budget for the Association which itemize the cost components to be assessed against the Subdivision Interests within a Cost Center Area, as provided in this Declaration.

1.7 "Cost Center Maintenance Areas" means the areas to be maintained by the Association for the benefit of the Owners of Subdivision Interests located within a Cost Center.

2. Membership and Voting Rights in Association: Cost Centers. The following provisions are hereby added as Article II, Section 3 of the West Highlands Pacific Declaration:

Section 3. Cost Center Approvals. Notwithstanding any other provisions of the Governing Documents, any action expressly only for the benefit of a Cost Center or the Owners of Subdivision Interests within a Cost Center which requires a vote of the Members shall require the approval of the prescribed percentage of the class or classes of Members or the approval of Members other than Declarant (if applicable) of only those Owners within such Cost Center, except that if Section 1366 of the California Civil Code or any similar applicable statute or law requires the approval of all Owners, then this provision shall not apply.

3. Assessments: Uniform Rate. The following sentence is hereby added at the end of Article III, Section 5:

The provisions of this Section 5 shall apply to assessments exclusive of Cost Center Assessments, which Cost Center Assessments shall be levied in accordance with the provisions set forth in Section 5.1 below.

4. Assessments: Cost Center Assessment Component. The following provisions are hereby added as Article III, Section 5.1:

Section 5.1. Cost Center Assessment Component. The portion of the regular assessments budgeted exclusively to any particular Cost Center in the Cost Center Budget shall be assessed solely to the Owners of Subdivision Interests within the applicable Cost Center, at a uniform rate determined by dividing the amount of the assessment by the total number of Subdivision Interests within the Cost Center Assessment component may include, without limitation, estimated or actual costs and expenses incurred by the Association or administering and maintaining the Cost Center Maintenance Areas, obtaining and maintaining insurance coverage related to the Cost Center Maintenance Areas, providing utility service to the Cost Center Maintenance Areas and funding reasonable reserves for the repair or replacement of the Cost Center Maintenance Areas. The Association shall provide for a separate accounting for the funds which are collected and expended on behalf of a Cost Center. The Association shall also provide for a reserve study and the annual review and disclosure of the reserves applicable to a Cost Center to the same extent required for the other budgetary components.

5. Powers and Duties of Association. The following provisions are hereby added as Article IV, Sections 27, and 28, of the West Highlands Pacific Declaration:

Section 27. Cost Centers. Subject to the restrictions set forth in Article II, Section 3 of this Declaration, the Association shall have the power to administer Cost Centers in accordance with the terms and provisions of this Declaration and the Bylaws. In connection with the administration of Cost Centers, the Association shall have the power to establish advisory committees for any Cost Center, comprised of Owners whose Subdivision Interests are within the applicable Cost Center. Such

advisory committees may propose special rules and regulations with respect to Cost Centers or Cost Center Maintenance Areas which may be adopted by the Board. The Board may also adopt special election procedures for the election of members of such advisory committees. Upon written request of at least twenty (20) members of a Cost Center, the Association shall be obligated to form an advisory committee for such Cost Center.

Section 28. Cost Center Administration. The Association shall administer and perform any obligations associated with any Cost Center created pursuant to this Declaration.

6. Establishment of Cost Centers. Declarant hereby establishes the following Cost Centers:

6.1 Arabella Cost Center. The Arabella Cost Center is hereby established for Arabella (Unit 12) described on Exhibit "E." The Arabella (Unit 12) Cost Center Maintenance Areas and Services for the Arabella Cost Center include (a) the maintenance of the Arabella Private Streets, (b) removal of trash, (c) water, (d) management and administration costs related to the administration of the Arabella Cost Center, (e) insurance, (f) electricity, (g) lighting, (h) audit, and other expenses necessary to properly operate the Arabella Cost Center.

6.2 Bordeaux and Soleil Cost Center. The Bordeaux and Soleil Cost Center is hereby established for the Bordeaux and Soleil Property for the Subdivision Interests described on Exhibit "F." The Cost Center Maintenance Areas and Services for the Bordeaux and Soleil Cost Center include the maintenance of the Bordeaux and Soleil Common Area described on Exhibit "D".

7. Common Area. Exhibit B of the Declaration is hereby amended to include the following real property and upon recordation of this Third Amendment to annex the real property described below and to make such real property subject to the Declaration:

**LOT C, OF PACIFIC HIGHLANDS RANCH UNIT NO. 2B, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 14994, RECORDED ON APRIL 12, 2005, AS FILE NUMBER 2005-0301848, IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY;**

**LOT A, OF PACIFIC HIGHLANDS RANCH UNIT NO. 3, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 14635, RECORDED ON JULY 22, 2003, AS FILE NUMBER 2003-0873619, IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY; AND**

**LOTS B AND G, OF PACIFIC HIGHLANDS RANCH UNIT NO. 12, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 15034, RECORDED JUNE 23, 2005, AS FILE NUMBER**

CERTIFICATE OF AMENDMENT

We MICHAEL WENNEMAN \_\_\_\_\_ certify and state:

We are the President and the Treasurer, respectively, of West Highlands Pacific Homeowners Association, a California nonprofit mutual benefit corporation. The foregoing Amendments to the Declaration of Covenants Conditions and Restrictions, for West Highlands Pacific Homeowners Association were approved by the Honorable Lisa C. Schall, Judge of the Superior Court of the State of California, North County Judicial District, pursuant to Civil Code Section 1356, on the basis of the affirmative votes received during the balloting period. A copy of said Order of the Court, dated June 29, 2012, is attached to this Certificate of Amendment as Exhibit "B." Pursuant to said Order, upon signing and recording of this Verification and distribution of the foregoing Amendments to the membership of West Highlands Pacific Homeowners Association, said Amendments will be in full force and effect.

WEST HIGHLANDS PACIFIC HOMEOWNERS ASSOCIATION, INC.

[Signature]  
By: MICHAEL WENNEMAN \_\_\_\_\_, President

By: \_\_\_\_\_, Treasurer

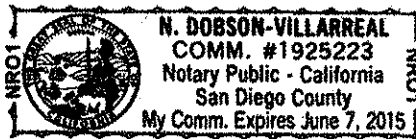
STATE OF CALIFORNIA )  
 )ss.  
COUNTY OF SAN DIEGO )

On July 24, 2012 before me, Nancy Villarreal a Notary Public in \_\_\_\_\_ and for said State, personally appeared Michael Wenneman and \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/hers/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

[Signature] (Seal)  
Notary Public






2005-0529577, IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY.

8. Affirmation. Except as amended or modified herein or to the extent inconsistent with this Amendment, the Declaration remains in full force and effect.

Dated: 7/24/, 2012

WEST HIGHLANDS PACIFIC  
HOMEOWNERS ASSOCIATION, INC.

By:   
\_\_\_\_\_  
President of the Board of Directors  
MICHAEL E. WENNEMAN

CERTIFICATE OF AMENDMENT

We John D. Milikowsky certify and state:

We are the President and the Treasurer, respectively, of West Highlands Pacific Homeowners Association, a California nonprofit mutual benefit corporation. The foregoing Amendments to the Declaration of Covenants Conditions and Restrictions, for West Highlands Pacific Homeowners Association were approved by the Honorable Lisa C. Schall, Judge of the Superior Court of the State of California, North County Judicial District, pursuant to Civil Code Section 1356, on the basis of the affirmative votes received during the balloting period. A copy of said Order of the Court, dated June 29, 2012, is attached to this Certificate of Amendment as Exhibit "B." Pursuant to said Order, upon signing and recording of this Verification and distribution of the foregoing Amendments to the membership of West Highlands Pacific Homeowners Association, said Amendments will be in full force and effect.

WEST HIGHLANDS PACIFIC HOMEOWNERS ASSOCIATION, INC.

By: \_\_\_\_\_, President

By: [Signature], Treasurer

STATE OF CALIFORNIA )  
 )ss.  
COUNTY OF SAN DIEGO )

On July 27, 2012 before me, Shannon Marie Gustaveson Notary Public in and for said State, personally appeared John Milikowsky and \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/hers/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.  
[Signature] (Seal)  
Notary Public



EXHIBIT "A"

REAL PROPERTY ENCUMBERED BY DECLARATION AND AMENDMENT

LOTS 1 THROUGH 149, INCLUSIVE, OF PACIFIC HIGHLANDS RANCH UNIT NO. 2A, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 14484, RECORDED ON NOVEMBER 13, 2002, AS FILE NUMBER 2002-1013087, IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY.

LOTS 150 THROUGH 168, INCLUSIVE, AND LOT C, OF PACIFIC HIGHLANDS RANCH UNIT NO. 2B, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 14994, RECORDED ON APRIL 12, 2005, AS FILE NUMBER 2005-0301848, IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY.

LOTS 1 THROUGH 119, INCLUSIVE, AND LOT A, OF PACIFIC HIGHLANDS RANCH UNIT NO. 3, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 14635, RECORDED ON JULY 22, 2003, AS FILE NUMBER 2003-0873619, IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY.

LOTS 1 THROUGH 185, INCLUSIVE, OF PACIFIC HIGHLANDS RANCH UNIT NO. 5, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 14754, RECORDED ON MARCH 19, 2004, AS FILE NUMBER 2004-0226766, IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY.

LOTS 1 THROUGH 147, INCLUSIVE, OF PACIFIC HIGHLANDS RANCH UNIT NO. 6, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 15573, RECORDED ON JUNE 29, 2007, AS FILE NUMBER 2007-0439091, IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY.

LOTS 1 THROUGH 123, INCLUSIVE, OF PACIFIC HIGHLANDS RANCH UNIT NO. 7, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 14816, RECORDED ON MAY 28, 2004, AS FILE NUMBER 2004-0499129, IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY.

LOTS 1 THROUGH 93, INCLUSIVE, OF PACIFIC HIGHLANDS RANCH UNIT NO. 10, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 14817, RECORDED ON MAY 28, 2004, AS FILE NUMBER 2004-0499130, IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY.

LOTS 1 THROUGH 47, INCLUSIVE, B AND G, OF PACIFIC HIGHLANDS RANCH UNIT NO. 12, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 15034, RECORDED JUNE 23, 2005, AS FILE NUMBER 2005-0529577, IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY.

LOTS 7 THROUGH 14, INCLUSIVE, 31 THROUGH 52, INCLUSIVE, 108 THROUGH 124, INCLUSIVE, 145 THROUGH 152, INCLUSIVE, 153 THROUGH 166, INCLUSIVE, AND 178 THROUGH 189, INCLUSIVE, OF PACIFIC HIGHLANDS RANCH UNIT NO. 21, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 15815, RECORDED FEBRUARY 24, 2011, AS FILE NUMBER 2011-0102660, IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY.

ANY ADDITIONAL REAL PROPERTY ENCUMBERED BY THE DECLARATION AS OF THE DATE OF RECORDATION OF THIS AMENDMENT, AND ANY ADDITIONAL REAL PROPERTY ANNEXED TO THE DECLARATION SUBSEQUENT TO THE DATE OF RECORDATION OF THIS AMENDMENT.

EXHIBIT "B"

COURT ORDER

[attached hereto]

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F I L E D

Clerk of the Superior Court

JUN 29 2012

By: Shellie Marsburn, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN DIEGO, CENTRAL

In the Matter of WEST HIGHLANDS  
PACIFIC HOMEOWNERS ASSOCIATION,  
INC., a California nonprofit mutual benefit  
corporation,  
  
Petitioner.

CASE NO.: 37-2012-00098005 CU-PT-CTL

**ORDER REDUCING THE PERCENTAGE  
OF VOTES NEEDED TO APPROVE AND  
ADOPT THE AMENDMENT TO THE  
DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS**

Date: June 29, 2012  
Time: 1:30pm  
Dept.: 46  
Judge: The Honorable Lisa C. Schall

The Petition of West Highlands Pacific Homeowners Association for an order reducing the percentage of votes necessary to approve and adopt the Amendment to the Declaration of Covenants, Conditions and Restrictions came on regularly for hearing on June 29, 2012 at 1:30 p.m., in Department 46 of the above-entitled court, the Honorable Lisa C. Schall, presiding. Petitioner, West Highlands Pacific Homeowners Association, appeared by Jonathan D. Massie of Massie Berman, APC. Dabak Shoushtari appeared on behalf of themselves as individual owners.

After full consideration of the evidence, points and authorities and argument submitted by both parties,

IT IS HEREBY ORDERED THAT:

1. The Court finds that Petitioner has given proper notice to all Members of West

1 Highlands Pacific Homeowners Association to vote on the Amendments to Article I, Article II,  
2 Section 3, Article III, Section 5, Article III, Section 5.1, Article IV, Sections 27 and 28, Exhibit B and  
3 the addition of provisions establishing cost centers ("Proposed Amendments"), in compliance with  
4 Civil Code section 1356(c)(1); that balloting on the Proposed Amendments was conducted in  
5 compliance with all applicable provisions of the governing documents; a reasonably diligent effort  
6 was made to secure the vote of the membership; that Owners having more than fifty percent (50%) of  
7 the votes approved the Proposed Amendments as reasonable and that granting this Petition is not  
8 improper for any reason stated in Civil Code section 1356(e).

9           2.       Therefore, Petitioner's Petition to Reduce the Required Voting Percentage for approval  
10 of the Amendment to the Declaration of Covenants, Conditions and Restrictions is granted.

11           3.       Pursuant to the granting of said Petition, the Court will dispense with the requirement  
12 in Article XI, Section 2(c) of the Declaration that amendments must be approved by seventy-five  
13 percent (75%) of the voting power of the Association, and substituting the Court's order that, by virtue  
14 of substantial compliance with the vote requirement by the votes received from the members, the  
15 Proposed Amendment be approved on the basis of the affirmative votes received during the balloting  
16 period, subject only to the requirement that the amendments be executed and acknowledged by  
17 Petitioner's president and secretary and recorded in the office of the San Diego County Recorder  
18 under Civil Code section 1356(f) and a copy of said recorded Amendment to the Declaration of  
19 Covenants, Conditions and Restrictions be forwarded to each member of the Association via first class  
20 mail.

21 IT IS SO ORDERED.

22  
23 Dated:         JUN 29 2012        

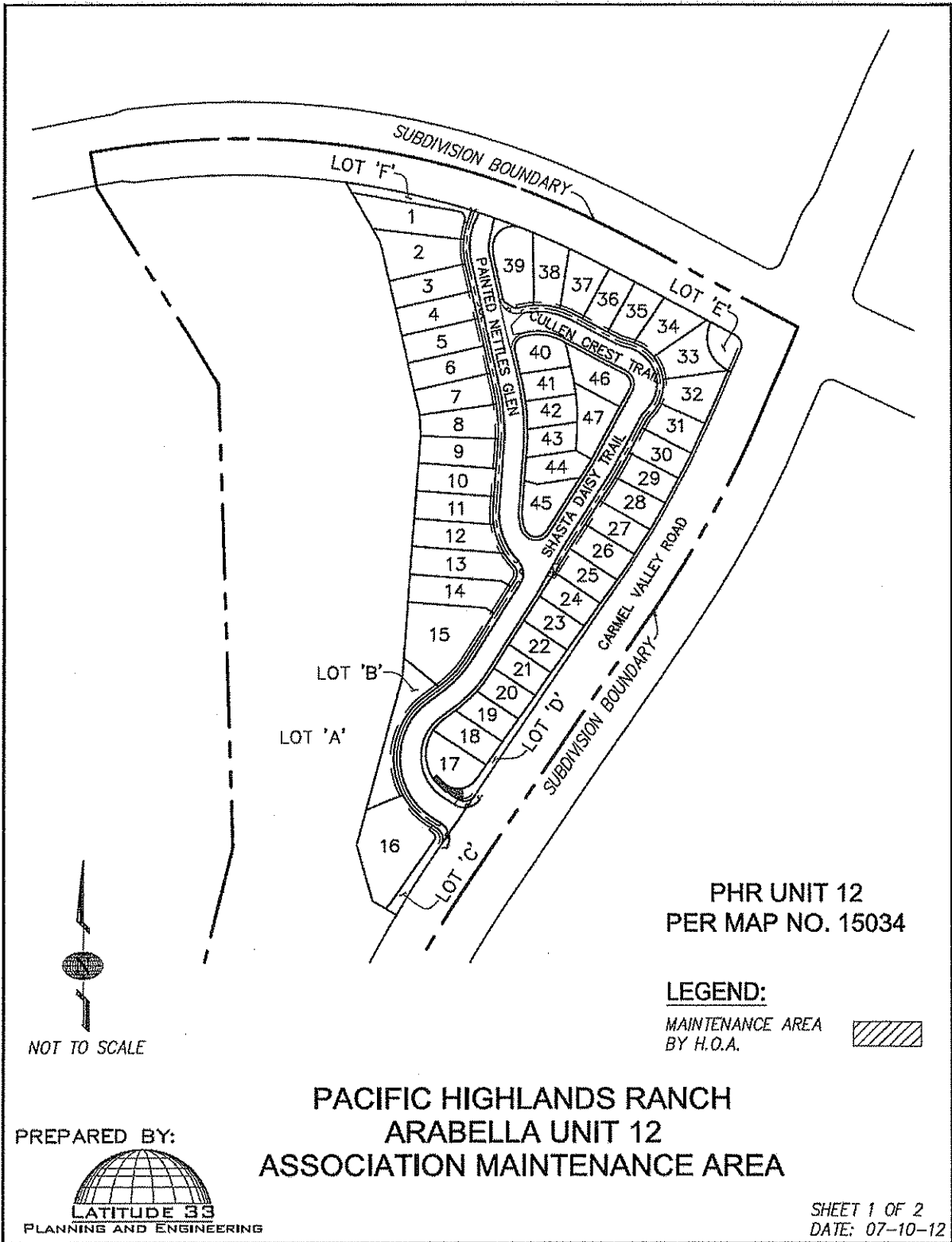
By:         /s/ LISA C. SCHALL *LSM*          
Lisa C. Schall  
Judge of the Superior Court


EXHIBIT "C"

ARABELLA PRIVATE STREETS AND LANDSCAPE AREAS

LOTS B AND G, OF PACIFIC HIGHLANDS RANCH UNIT NO. 12, OF PACIFIC HIGHLANDS RANCH UNIT NO. 12, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 15034, RECORDED JUNE 23, 2005, AS FILE NUMBER 2005-0529577, IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY.





  
 NOT TO SCALE

PHR UNIT 12  
 PER MAP NO. 15034

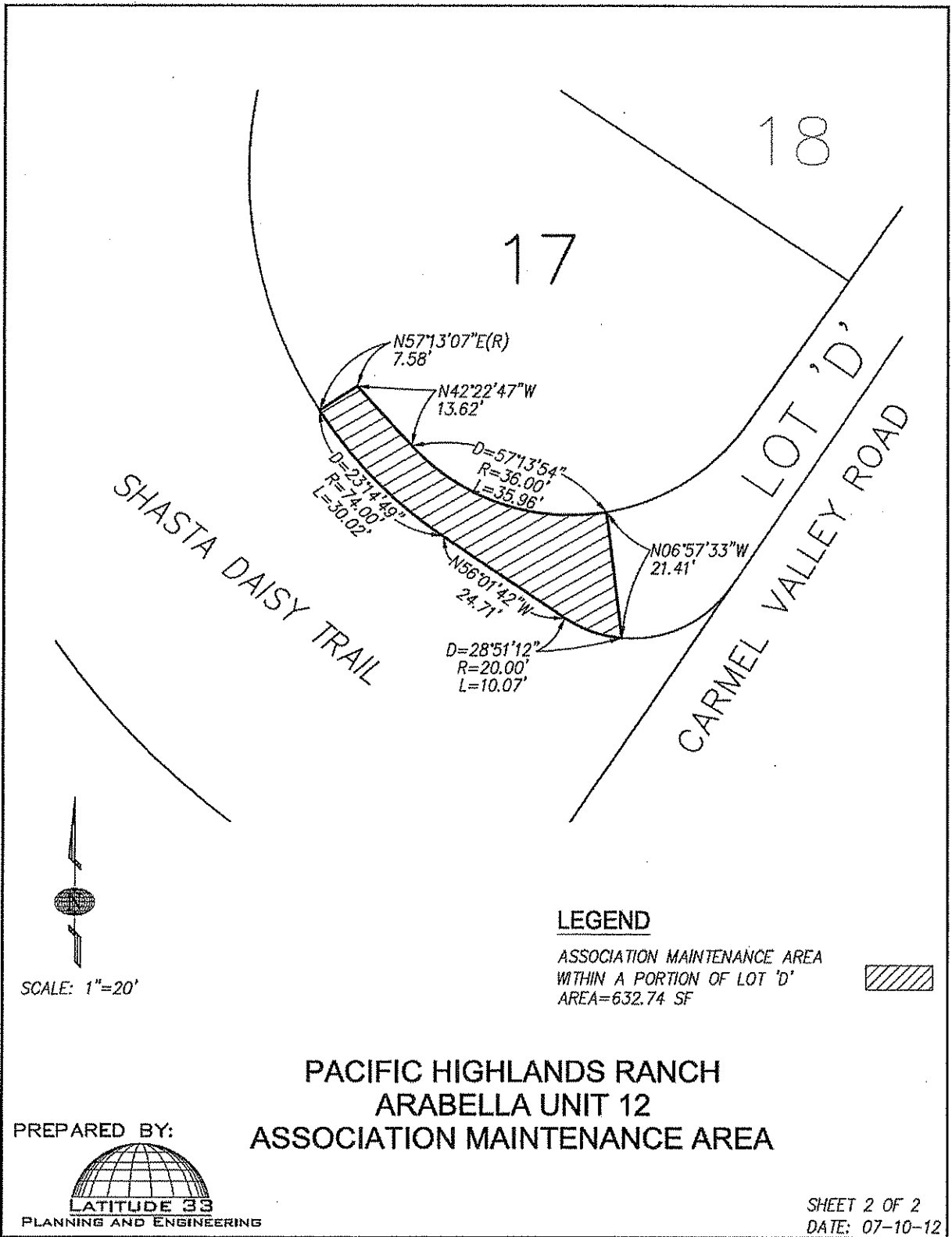
**LEGEND:**  
 MAINTENANCE AREA  
 BY H.O.A. 

**PACIFIC HIGHLANDS RANCH  
 ARABELLA UNIT 12  
 ASSOCIATION MAINTENANCE AREA**

PREPARED BY:  
  
**LATITUDE 33**  
 PLANNING AND ENGINEERING

SHEET 1 OF 2  
 DATE: 07-10-12

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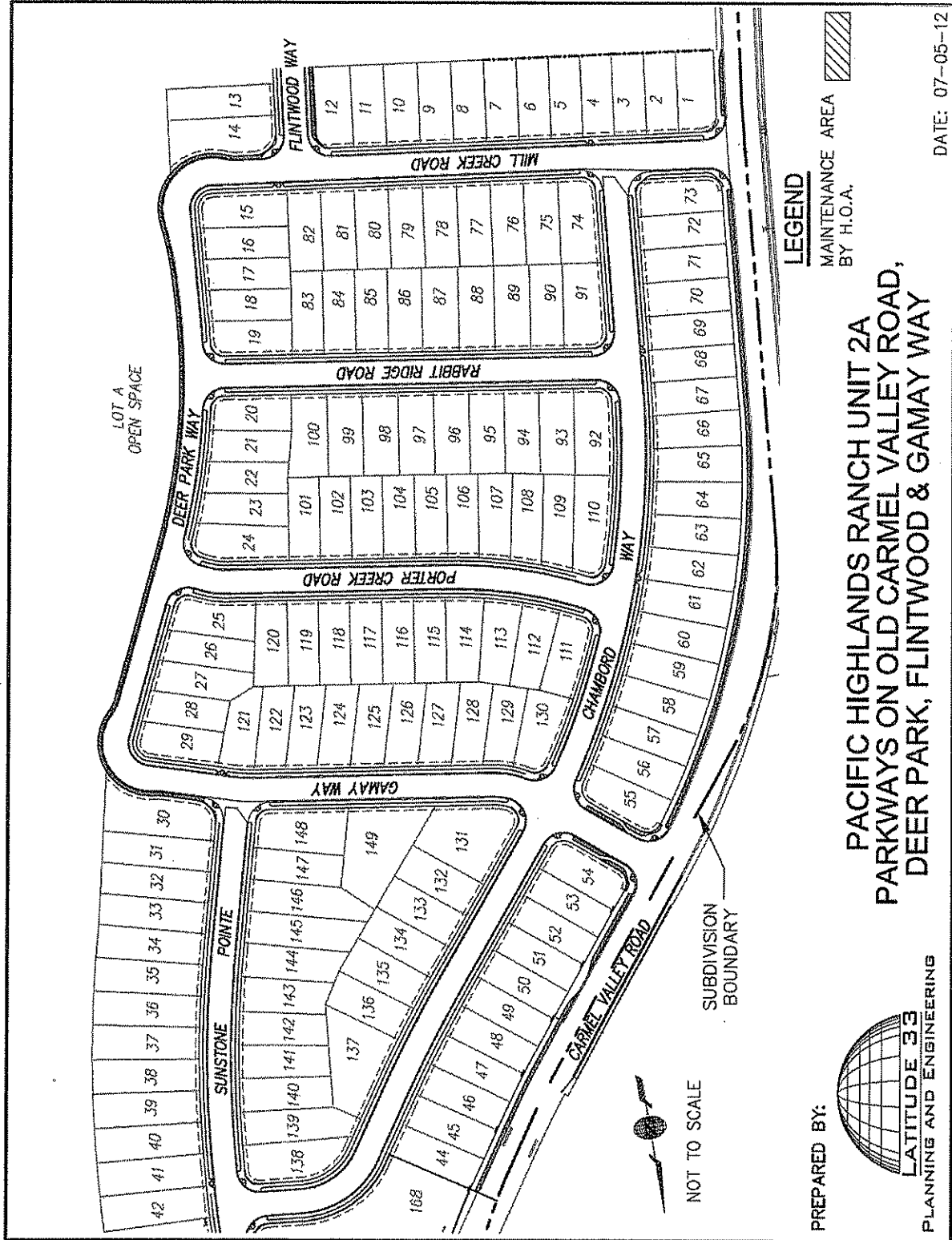
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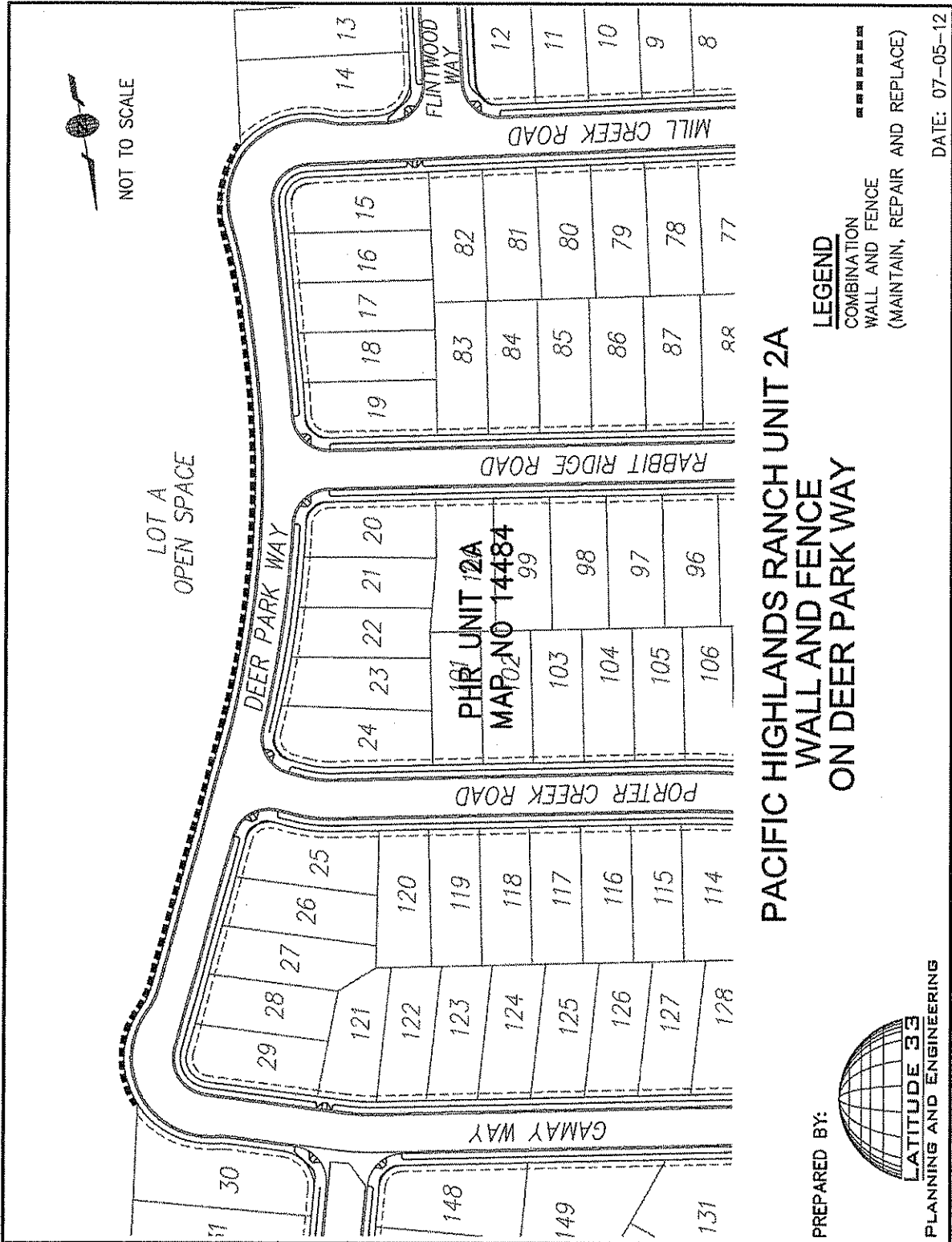
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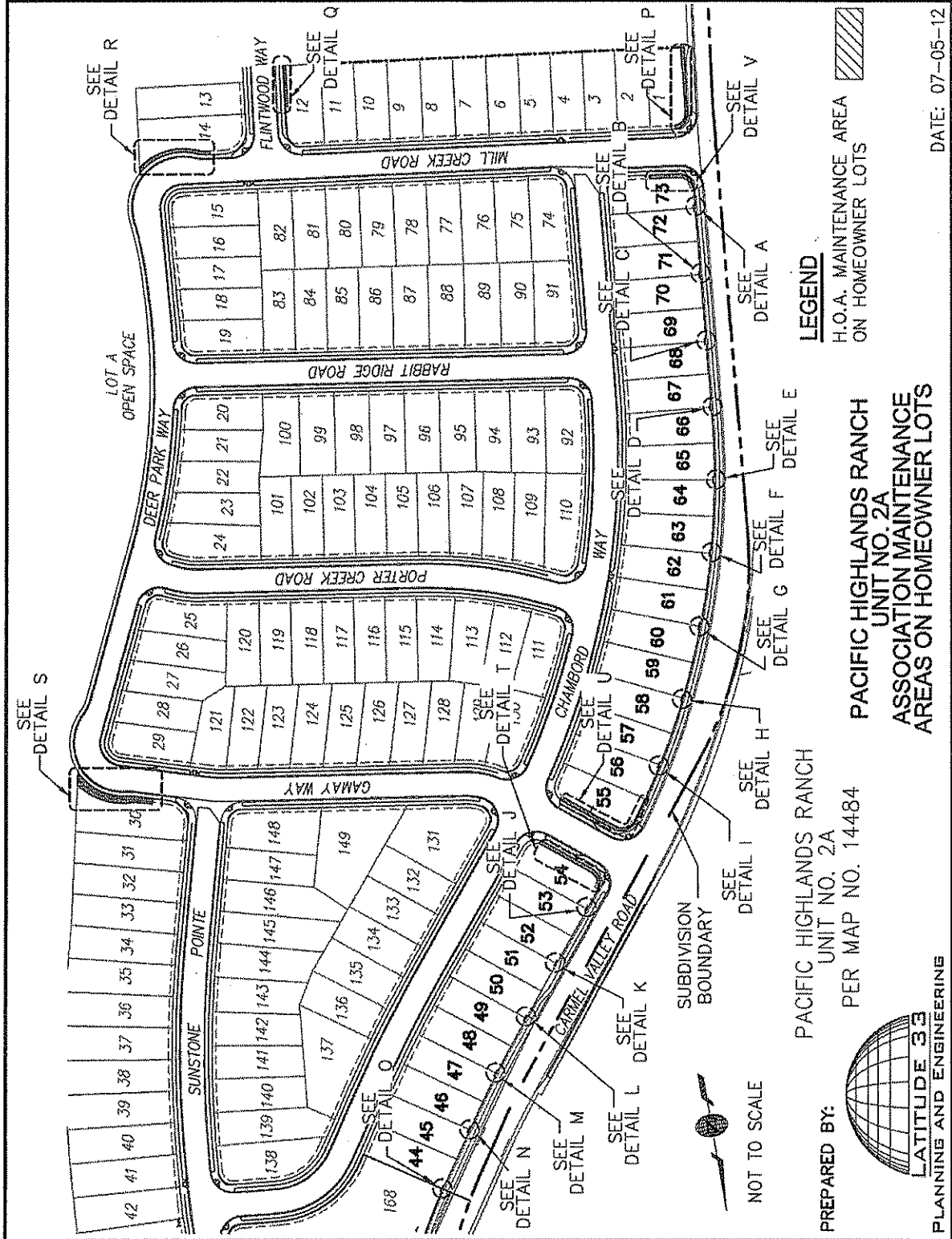
BORDEAUX AND SOLEIL COST CENTER MAINTAINED AREAS

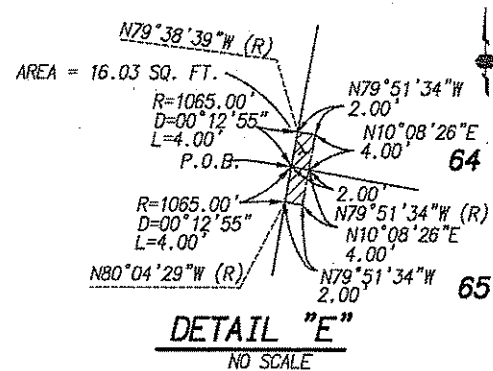
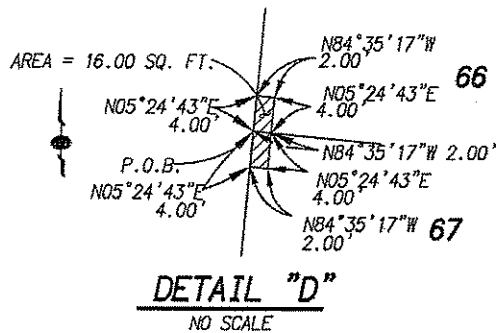
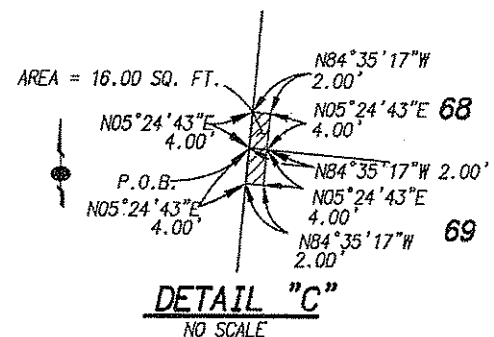
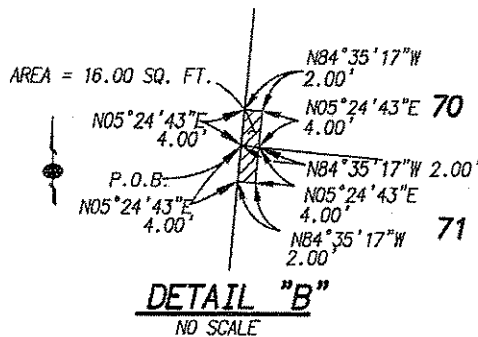
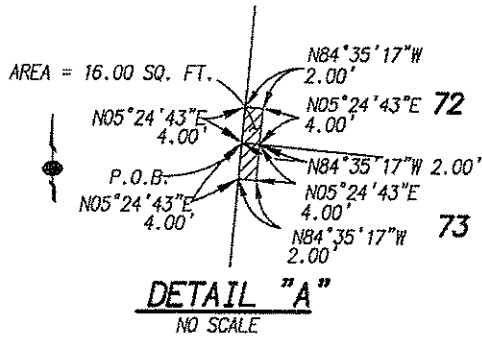
LOT C, OF PACIFIC HIGHLANDS RANCH UNIT NO. 2B, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 14994, RECORDED ON APRIL 12, 2005, AS FILE NUMBER 2005-0301848, IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY.

LOT A, OF PACIFIC HIGHLANDS RANCH UNIT NO. 3, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 14635, RECORDED ON JULY 22, 2003, AS FILE NUMBER 2003-0873619, IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY.









PREPARED BY:



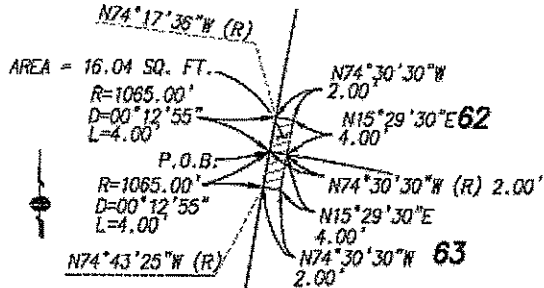
**LATITUDE 33**  
PLANNING AND ENGINEERING

**LEGEND**

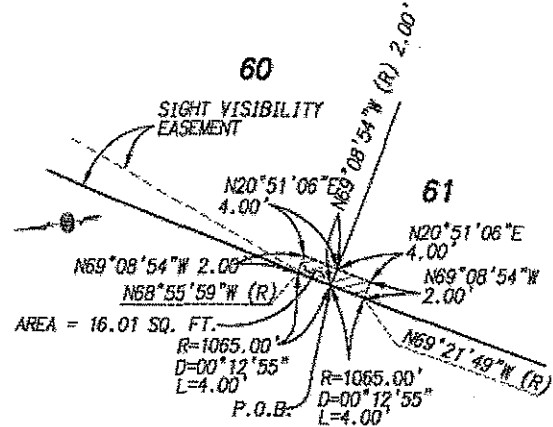
- MAINTENANCE AREA BY H.O.A.
- POINT OF BEGINNING
- P.O.B.

PACIFIC HIGHLANDS RANCH  
UNIT NO. 2A  
ASSOCIATION MAINTENANCE  
AREAS ON HOMEOWNER LOTS  
STREE TREE POP OUTS  
LOTS 44 THRU 73 DETAILS

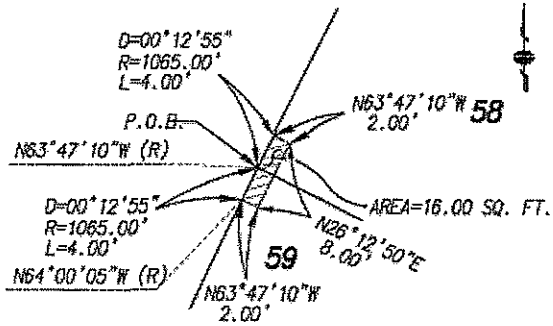
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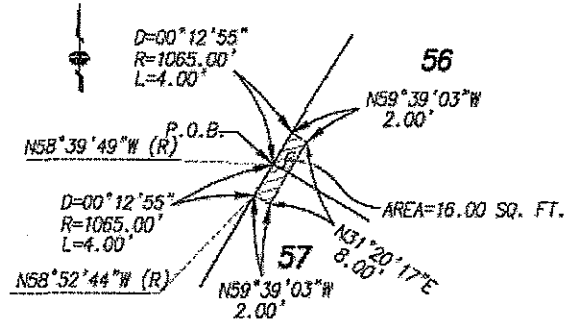
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**DETAIL "G"**  
NO SCALE



**DETAIL "H"**  
NO SCALE



**DETAIL "I"**  
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PREPARED BY:



**LATITUDE 33**  
PLANNING AND ENGINEERING

**LEGEND**

MAINTENANCE AREA BY H.O.A.

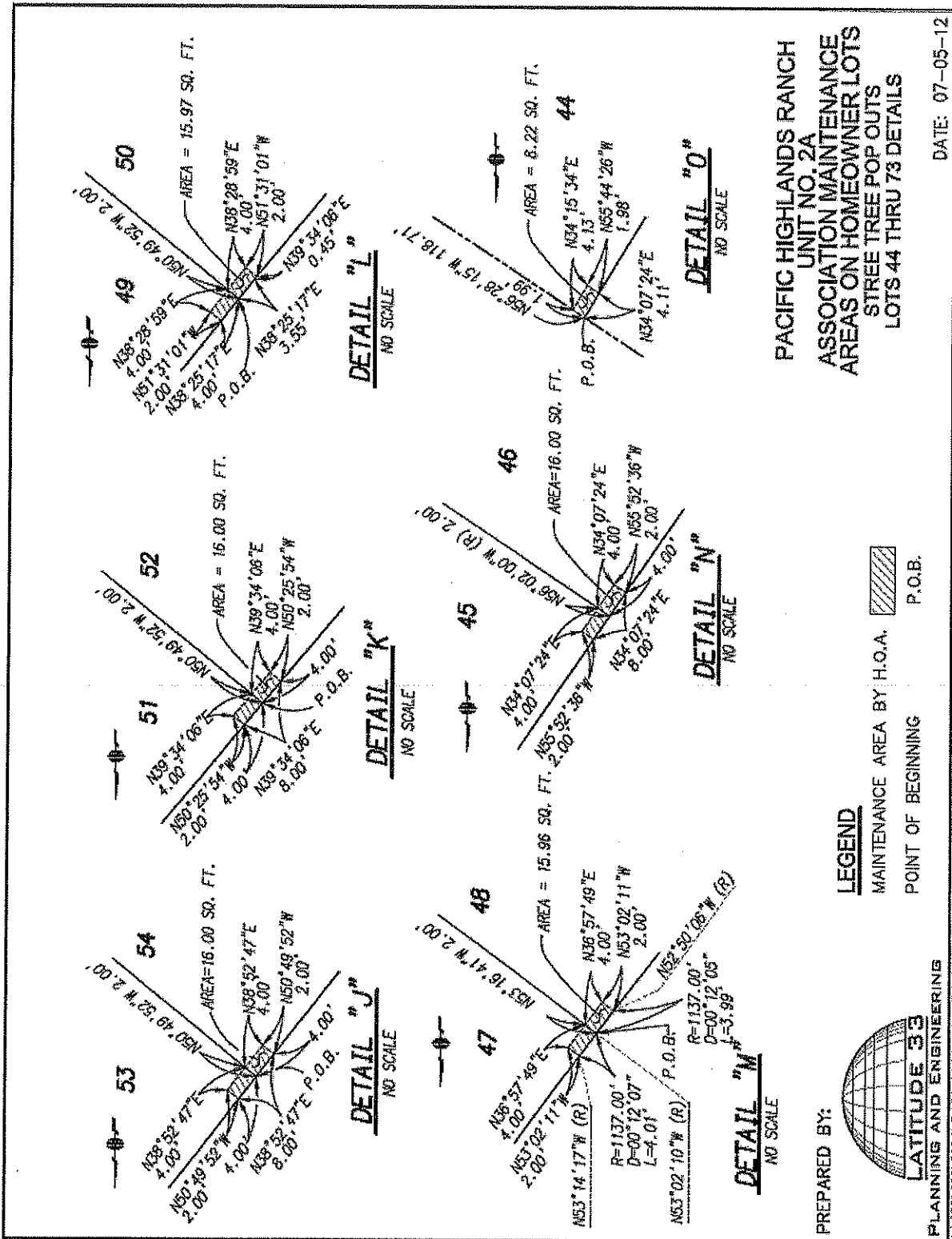
POINT OF BEGINNING

P.O.B.

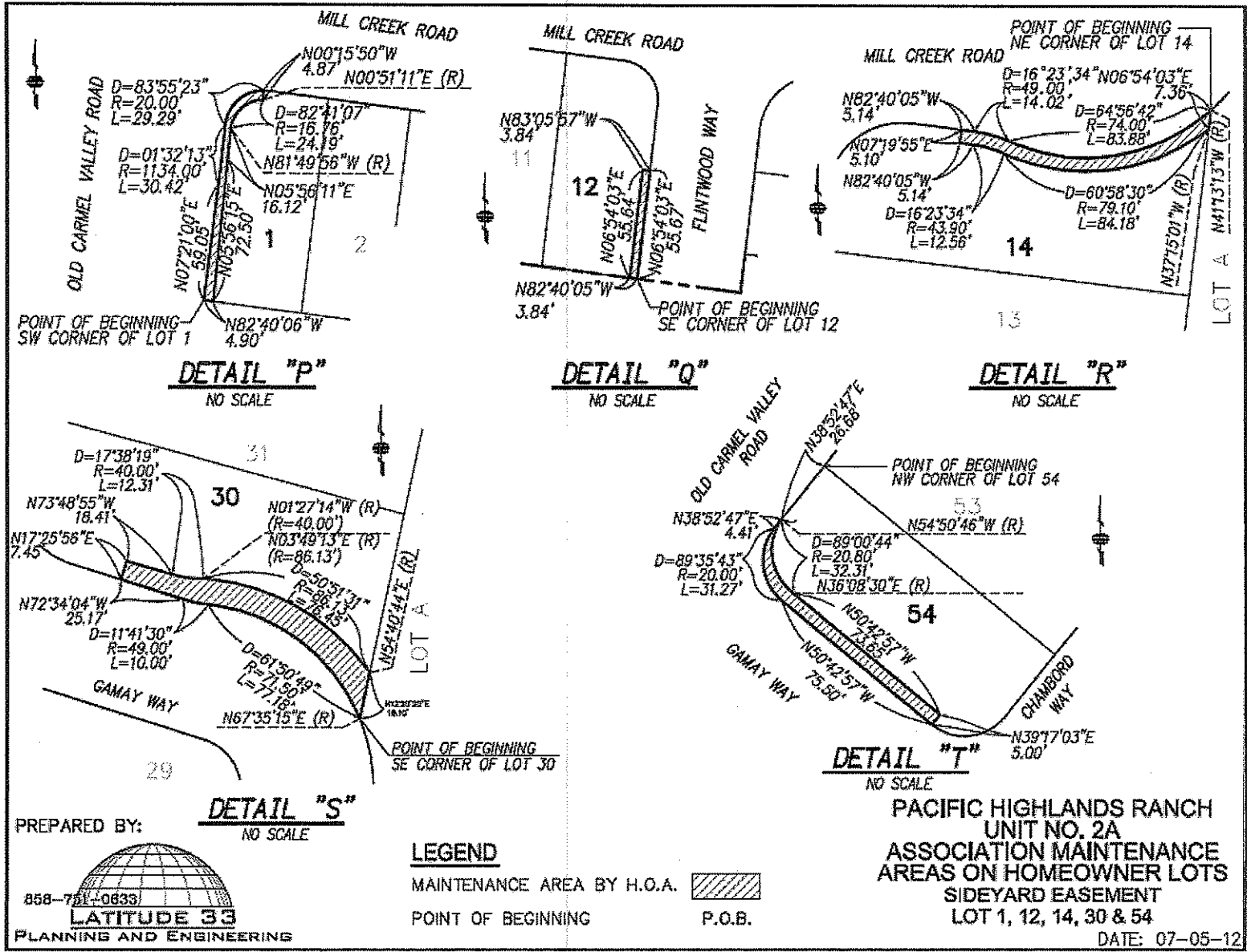
**PACIFIC HIGHLANDS RANCH  
UNIT NO. 2A  
ASSOCIATION MAINTENANCE  
AREAS ON HOMEOWNER LOTS  
STREE TREE POP OUTS  
LOTS 44 THRU 73 DETAILS**

DATE: 07-05-12



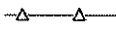




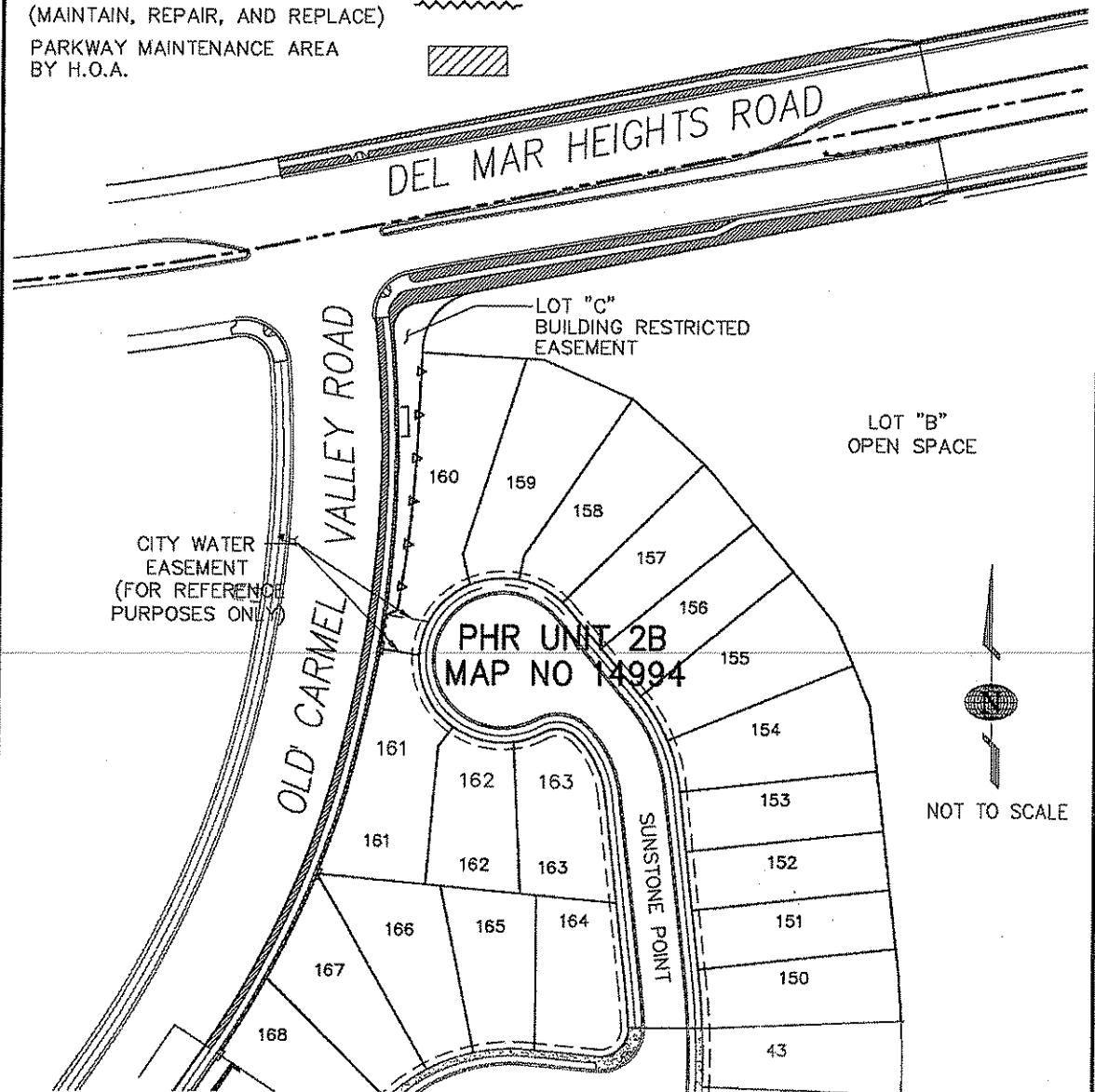
PLANNING AND ENGINEERING 14155 Paces Ferry Road, Suite 200, Atlanta, GA 30340-1415 (404) 251-1415



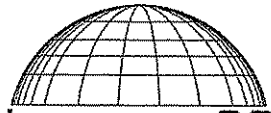


**LEGEND**

- PERIMETER BLOCK WALL  
(MAINTAIN, REPAIR, AND REPLACE) 
- WOODEN GATE  
(MAINTAIN, REPAIR, AND REPLACE) 
- PARKWAY MAINTENANCE AREA  
BY H.O.A. 



PREPARED BY:



**LATITUDE 33**  
PLANNING AND ENGINEERING

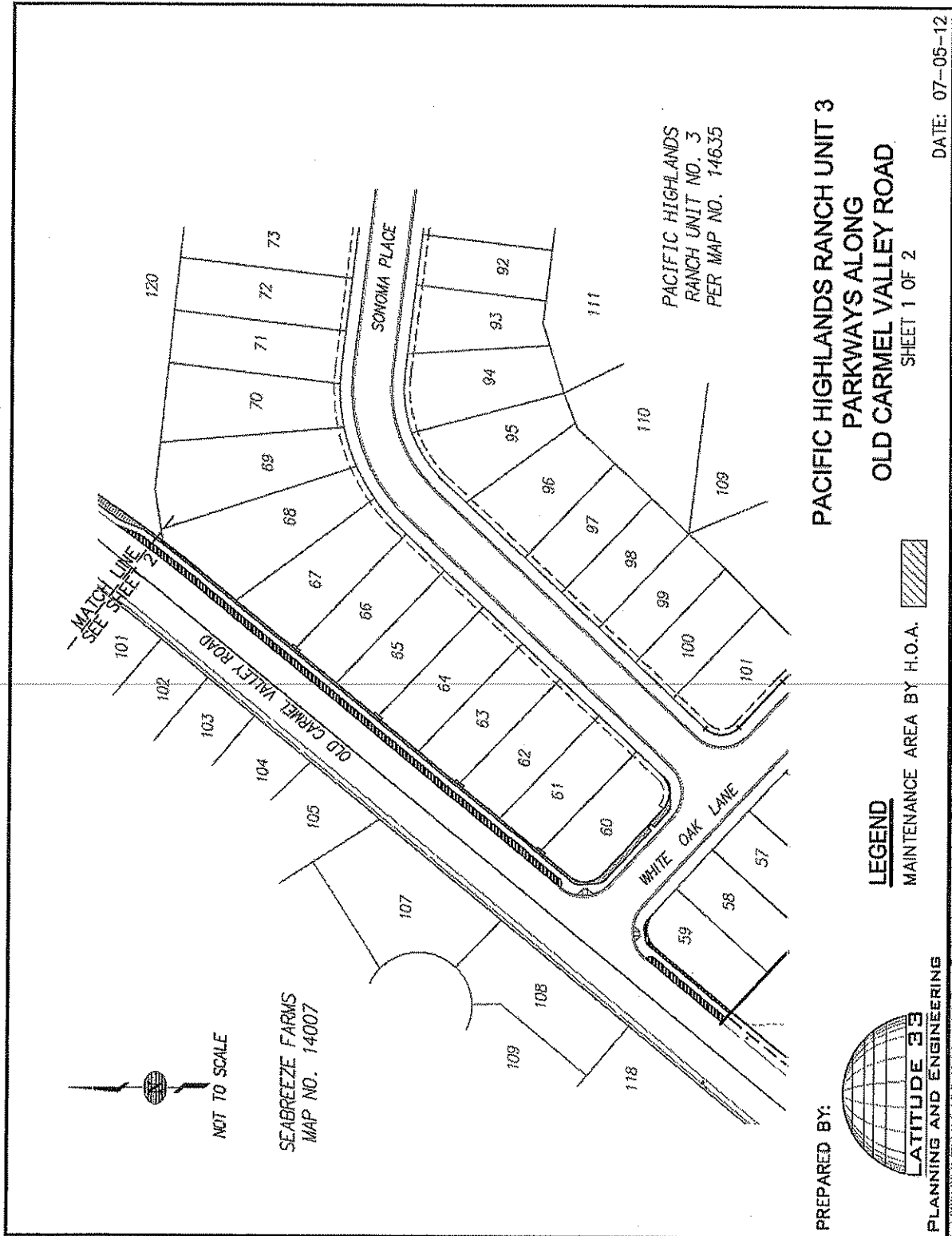
**PACIFIC HIGHLANDS RANCH UNIT 2B  
PARKWAY MAINTENANCE AND  
PERIMETER BLOCK WALL ON  
OLD CARMEL VALLEY ROAD  
AND LOT 160 EMERGENCY ACCESS GATE**

DATE: 07-05-12

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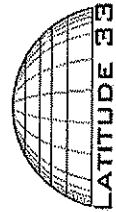




DATE: 07-05-12

**LEGEND**

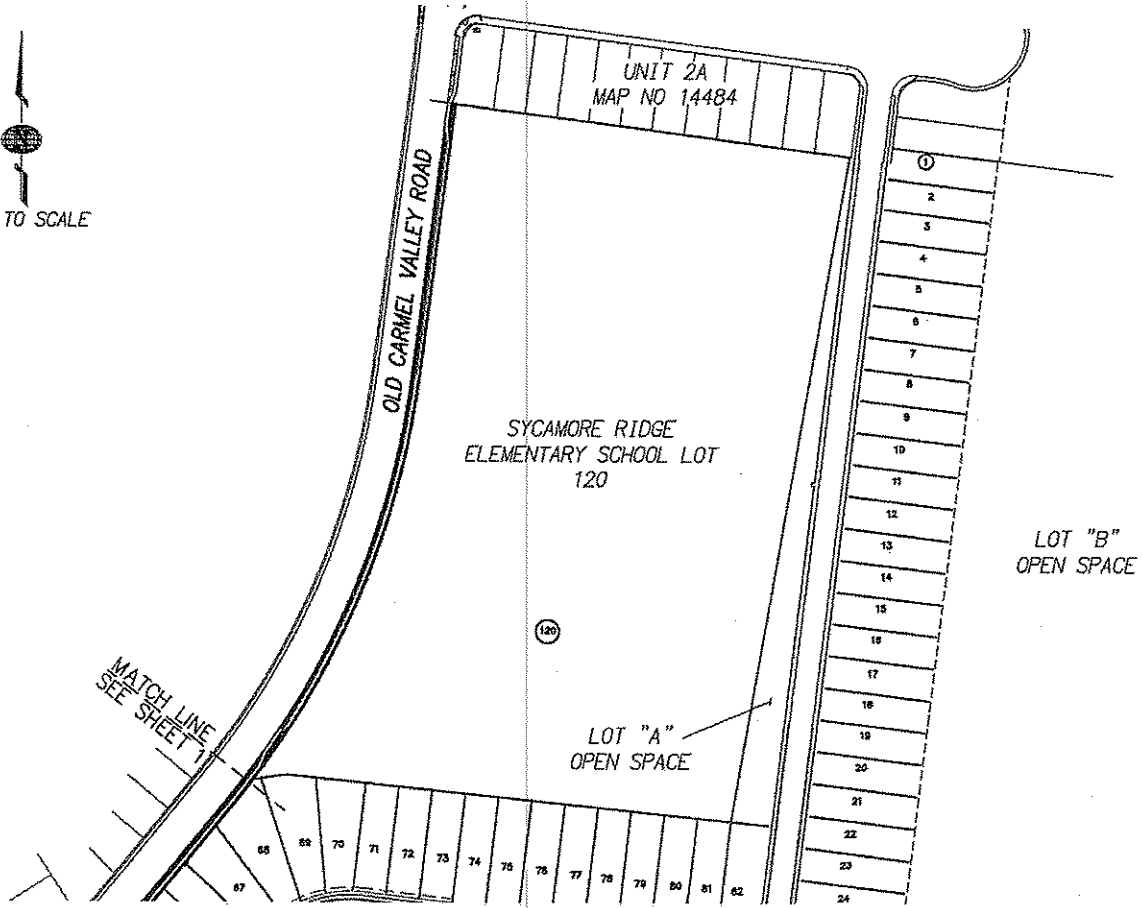
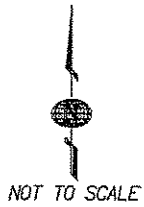
MAINTENANCE AREA BY H.O.A.



PREPARED BY:

LATITUDE 33  
PLANNING AND ENGINEERING

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


PREPARED BY:



LATITUDE 33  
PLANNING AND ENGINEERING

**LEGEND**

MAINTENANCE AREA BY H.O.A. 

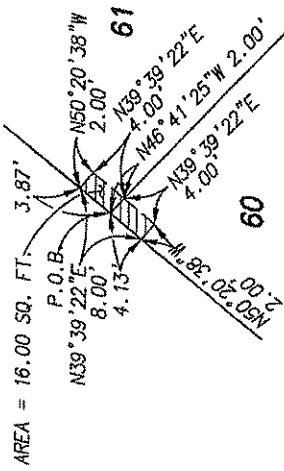
**PACIFIC HIGHLANDS RANCH UNIT 3  
PARKWAYS ALONG  
OLD CARMEL VALLEY ROAD**

SHEET 2 OF 2

DATE: 07-05-12

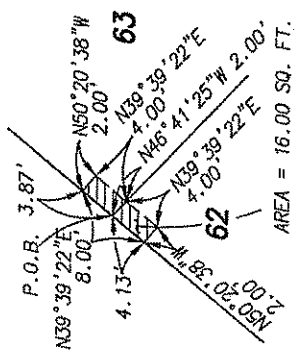






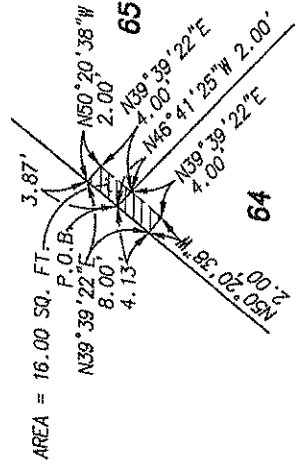
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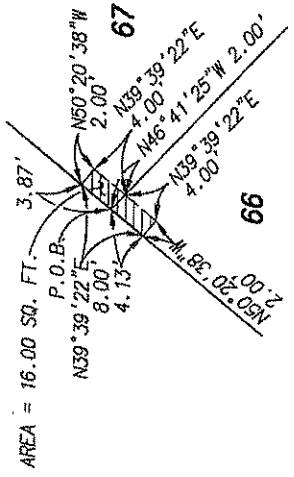
**DETAIL "B"**

NO SCALE



**DETAIL "C"**

NO SCALE



**DETAIL "D"**

NO SCALE

PREPARED BY:



LATITUDE 33  
PLANNING AND ENGINEERING

**LEGEND**

MAINTENANCE AREA BY H.O.A.

POINT OF BEGINNING



P.O.B.

**PACIFIC HIGHLANDS RANCH  
UNIT NO. 3  
ASSOCIATION MAINTENANCE  
AREAS ON HOMEOWNER LOTS  
STREET TREE POP OUTS  
LOTS 60 THRU 67**

DATE: 07-05-12

EXHIBIT "E"

SUBDIVISION INTERESTS WITHIN ARABELLA (UNIT 12) COST CENTER

LOT 1 THROUGH 47, INCLUSIVE, OF PACIFIC HIGHLANDS RANCH UNIT NO. 12, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 15034, RECORDED JUNE 23, 2005, AS FILE NUMBER 2005-0529577, IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY.

EXHIBIT "F"

SUBDIVISION INTERESTS WITHIN BORDEAUX AND SOLEIL COST CENTERS

LOTS 1 THROUGH 149, INCLUSIVE, OF PACIFIC HIGHLANDS RANCH UNIT NO. 2A, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 14484, RECORDED ON NOVEMBER 13, 2002, AS FILE NUMBER 2002-1013087, IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY.

LOTS 150 THROUGH 168, INCLUSIVE, OF PACIFIC HIGHLANDS RANCH UNIT NO. 2B, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 14994, RECORDED ON APRIL 12, 2005, AS FILE NUMBER 2005-0301848, IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY.

LOTS 1 THROUGH 119, INCLUSIVE, OF PACIFIC HIGHLANDS RANCH UNIT NO. 3, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 14635, RECORDED ON JULY 22, 2003, AS FILE NUMBER 2003-0873619, IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY.