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DATE: February 1, 2010  
ESCROW NO.: 10-**99612579**-IA  
LOCATE NO.: CACTI7743-7743-2996-0099612579  
TITLE NO.: 10-**99612579**-RP  
PROPERTY ADDRESS:  
2002 McKenzie Place, San Jose, CA 95131

In connection with the above-mentioned property, enclosed please find the following:

Enclose are the ccr's you requested

We appreciate the opportunity of being of service to you. If we can be of further assistance, please feel free to call upon us.

Sincerely,

Ruben Pinzon  
408 271-7600

LD

enclosure(s)

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OR DEED CONTAINING RESTRICTIONS,  
PURSUANT TO CALIFORNIA GOVERNMENT  
CODE SECTION 12956.1**

**If this document contains any restriction based on race, color, religion, sex familial status, marital status, disability, national origin, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.1 of the Government Code. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.**

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# DECLARATION OF COVENANTS CONDITIONS AND RESTRICTIONS OF BENTLEY PARK

A Common Interest Development

**If this document contains any restriction based on race, color, religion, sex, familial status, marital status, disability, national origin, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.1 of the Government Code. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.**

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**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
OF  
BENTLEY PARK  
A Common Interest Development**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF BENTLEY PARK ("Declaration") is made by PULTE HOME CORPORATION, a Michigan corporation ("Declarant").

**ARTICLE I  
APPLICABILITY OF DECLARATION**

1.1 **FACTS:** This Declaration is made with reference to the following facts:

1.1.1 **Property Owned by Declarant:** Declarant is the owner of all the real property and Improvements thereon located in the City of San Jose, County of Santa Clara, State of California, described as follows:

Lots 1 through 6, inclusive, and 61 through 84, inclusive, and Lots A and D, as shown on the subdivision map of Tract No. 9534, filed for record on February 4, 2004, in Book 767 of Maps at Pages 42 through 45, inclusive, in the Official Records of the County of Santa Clara, State of California.

1.1.2 **Nature of Project:** Declarant intends to develop the Subject Property and the Additional Property as a Common Interest Development which shall be a planned development as defined in California Civil Code Section 1351(k). The Project is intended to be created in conformity with the provisions of the Davis-Stirling Common Interest Development Act (California Civil Code, Section 1350 et seq.). To establish the Project, Declarant desires to impose on the Subject Property, and any property annexed thereto, these mutually beneficial restrictions, easements, assessments and liens under a comprehensive general plan of improvement and development for the benefit of all of the Owners, the Lots and Common Area within the Subject Property and any property annexed thereto.

1.1.3 **Phases of Project:** The Subject Property and the Additional Property are intended to be developed in two (2) or more Phases. The first Phase consists of the Subject Property. Prior to annexation, the Additional Property will not be subject to any provision of this Declaration. Declarant may, but has no obligation to, annex all or any portion of the Additional Property to the Project by recording a Declaration of Annexation in compliance with the provisions of this Declaration.

1.2 **APPLICABILITY OF RESTRICTIONS:** Pursuant to California Civil Code Sections 1353 and 1354, Declarant hereby declares that the Project and all Improvements thereon are subject to the provisions of this Declaration. The Project shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the covenants, conditions and restrictions stated in this Declaration. All such covenants, conditions and restrictions are declared to be in furtherance of the plan for the subdivision, development and management of the Project as a Common Interest Development. All of the limitations, easements, uses, obligations, covenants, conditions, and restrictions stated in this Declaration shall run with the Project and shall inure to the benefit of and be binding on all Owners and all other parties having or acquiring any right, title or interest in any part of the Project. After recordation of a Declaration of Annexation, the property described therein will constitute a part of the Project and will be subject to this Declaration.

1.3 **BOUNDARY MODIFICATIONS:** If the boundaries of real property change as a result of one or more subsequently recorded final maps, amended final maps, parcel maps, amended parcel maps, certificates of correction, lot line adjustments and/or records of survey, then, for all purposes of this Declaration:

1.3.1 **Added to Common Area:** Property which is removed from a Lot or a Common Area parcel and added to a Common Area parcel shall thereafter be part of that Common Area parcel;

1.3.2 **Added to Lot:** Property which is removed from a Lot or a Common Area parcel and added to a Lot shall thereafter be part of that Lot;

1.3.3 **Removed From Declaration:** Property which is removed from a Lot or Common Area parcel and added to real property which is not subject to this Declaration shall no longer constitute a part of such Lot or Common Area and shall no longer be subject to this Declaration.

1.3.4 **Added to Declaration:** Property not subject to this Declaration which is added to a Lot or Common Area parcel shall be part of the Lot or Common Area parcel to which it is added and shall automatically be subject to all provisions of this Declaration.

**ARTICLE II  
DEFINITIONS**

Unless otherwise defined or unless the context clearly requires a different meaning, the terms used in this Declaration, the Map and any grant deed to a Lot shall have the meanings specified in this Article.

2.1 **ADDITIONAL CHARGES:** The term "Additional Charges" shall mean costs, fees, charges and expenditures, including without limitation, attorneys' fees, late charges, interest and recording and filing fees actually incurred by the Association in collecting and/or enforcing payment of assessments, fines and/or penalties.

2.2 **ADDITIONAL PROPERTY:** The term "Additional Property" shall mean the real property described on Exhibit "A" and all Improvements situated on such real property.

2.3 **ALTERATION:** The term "Alteration" shall mean constructing, performing, installing, remodeling, repairing, replacing, demolishing and/or changing any Improvement or changing the color, hue, intensity, tone or shade of any Improvement.

2.4 **ARTICLES:** The term "Articles" shall mean the Articles of Incorporation of Bentley Park Owners Association, which are or shall be filed in the Office of the Secretary of State of the State of California.

2.5 **ASSOCIATION:** The term "Association" shall mean Bentley Park Owners Association, its successors and assigns, a nonprofit mutual benefit corporation incorporated under the laws of the State of California.

2.6 **BOARD:** The term "Board" shall mean the Board of Directors of the Association.

2.7 **BUDGET:** The term "Budget" shall mean a pro forma operating budget prepared by the Board in accordance with Section 6.7.1 of this Declaration.

2.8 **BYLAWS:** The term "Bylaws" shall mean the Bylaws of the Association and any amendments thereto.

2.9 **CITY:** The term "City" shall mean the City of San Jose, California.

2.10 **COMMON AREA**: The term "Common Area" shall mean Lots A and D, as shown on the Map. The term "Common Area" shall also mean any property described as Common Area in a Declaration of Annexation and any real property estate or interest owned by the Association. Common Area includes all Improvements situated thereon or therein.

2.11 **COUNTY**: The term "County" shall mean the County of Santa Clara, State of California.

2.12 **DECLARANT**: The term "Declarant" shall mean Pulte Home Corporation, a Michigan corporation. The term "Declarant" shall also mean any person or entity if (i) a notice signed by Declarant and such person or entity has been recorded in the County in which such person or entity assumes the rights and duties of Declarant to some portion of the Subject Property or the Additional Property, or (ii) such person or entity acquires all of the Subject Property and all of the Additional Property then owned by a Declarant which must be more than one (1) Lot. There may be more than one Declarant at any given time.

2.13 **DECLARATION**: The term "Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions of Bentley Park and includes any subsequently recorded amendments.

2.14 **DECLARATION OF ANNEXATION**: The term "Declaration of Annexation" shall mean any instrument recorded in the County which extends the provisions of this Declaration to all or a portion of the Additional Property or any other property.

2.15 **FIRST MORTGAGE**: The term "First Mortgage" shall mean a Mortgage which has priority under the recording statutes of the State of California over all other Mortgages encumbering a specific Lot.

2.16 **FIRST MORTGAGEE**: The term "First Mortgagee" shall mean the Mortgagee of a First Mortgage. The term "First Mortgagee" shall also include an insurer or governmental guarantor of a First Mortgage including, without limitation, the Federal Housing Authority and the Department of Veterans Affairs.

2.17 **IMPROVEMENTS**: The term "Improvements" shall mean everything constructed, installed or planted on real property, including without limitation, buildings, streets, fences, walls, paving, pipes, wires, grading, landscaping and other works of improvement as defined in Section 3106 of the California Civil Code, excluding only those Improvements or portions thereof which are dedicated to the public or a public or quasi-public entity or utility company, and accepted for maintenance by the public, such entity or utility company.

2.18 **INVITEE**: The term "Invitee" shall mean any person whose presence within the Project is approved by or is at the request of the Association or a particular Owner, including, but not limited to, lessees, tenants, and the family, guests, employees, licensees or invitees of Owners, tenants or lessees.

2.19 **LANDSCAPE MAINTENANCE AREA**: The term "Landscape Maintenance Area" shall mean the unenclosed portions of each Lot. Each Landscape Maintenance Area includes all landscaping within the Landscape Maintenance Area and the landscape irrigation systems and components, for the Landscape Maintenance Area, including wiring, automatic valves, controllers and timers, wherever located.

2.20 **LOT**: The term "Lot" refers to a Separate Interest as defined in California Civil Code Section 1351(l) and shall mean Lots 1 through 6, inclusive, and 61 through 84, inclusive, as shown on the Map. The term "Lot" shall also mean any Lot described as such in a Declaration of Annexation. Lot includes all Improvements situated thereon or therein.

2.21 **MAINTAIN**: The term "Maintain" or "Maintained" (but not the word "maintenance") shall mean taking all actions reasonably necessary to keep an Improvement in first class condition and repair, which actions include but are not limited to regular inspections, painting, maintenance, refinishing, repairing, replacing and reconstructing the Improvement, and in the case of landscaping, irrigating and fertilizing the landscaping. The Owners and the Association shall have no responsibility to Maintain any Improvement Maintained by a third party or the public or a quasi-public entity or utility company even if

the third party or the public or a quasi-public entity or utility company public fails to perform all actions required by this Section.

2.22 **MAINTENANCE MANUAL**: The term "Maintenance Manual" shall mean the Association Maintenance Manual, if any, and the Owner Maintenance Manual, unless otherwise provided.

2.22.1 **Association Maintenance Manual**: The term "Association Maintenance Manual" shall mean the documents which establish procedures, practices, specifications, scopes and intervals for the Association to Maintain the Improvements for which the Association is responsible. The Association Maintenance Manual may be provided to the Association by Declarant no later than the time of conveyance of the Common Area to the Association. If Declarant does not provide a Maintenance Manual to the Association, then the Association may prepare and adopt an Association Maintenance Manual.

2.22.2 **Owner Maintenance Manual**: The term "Owner Maintenance Manual" shall mean the documents which establish procedures, practices, specifications, scopes and intervals for the Owner to Maintain the Improvements for which an Owner is responsible. The Maintenance Manual applicable to each Lot shall be provided by Declarant to the initial Owner (other than a Declarant) to acquire that Lot from Declarant.

2.23 **MAP**: The term "Map" shall mean the subdivision map of Tract No. 9534, recorded on February 4, 2004, in Book 767 of Maps at Pages 42 through 45, inclusive, in the Official Records of the County, including any subsequently recorded amended final maps, parcel maps, certificates of correction, lot line adjustments and/or records of survey. The term "Map" shall also mean any recorded subdivision map described in a Declaration of Annexation.

2.24 **MEMBER**: The term "Member" shall mean an Owner.

2.25 **MORTGAGE**: The term "Mortgage" shall mean any duly recorded mortgage or deed of trust encumbering a Lot.

2.26 **MORTGAGEE**: The term "Mortgagee" shall mean a Mortgagee under a Mortgage as well as a beneficiary under a deed of trust.

2.27 **NOTICE AND HEARING**: The term "Notice and Hearing" shall mean the procedure which gives an Owner notice of an alleged violation of the Project Documents and the opportunity for a hearing before the Board.

2.28 **OPERATING RULES**: The term "Operating Rules" shall mean the rules adopted by the Board, including the Architectural Standards.

2.29 **OWNER**: The term "Owner" shall mean the holder of record fee title to a Lot, including Declarant as to each Lot owned by Declarant. If more than one person owns a single Lot, the term "Owner" shall mean all owners of that Lot. The term "Owner" shall also mean a contract purchaser (vendee) under an installment land contract but shall exclude the contract vendor and any person having an interest in a Lot merely as security for performance of an obligation.

2.30 **PARTY FENCE**: The term "Party Fence" shall mean any portion of a fence or wall which is constructed and placed so as to physically separate one (1) Lot from another Lot, whether the fence or wall is situated approximately along a common Lot boundary or an easement boundary.

2.31 **PHASE**: The term "Phase" shall mean any Lots and/or Common Area which are simultaneously made subject to the provisions of this Declaration either by recording this Declaration or by recording a Declaration of Annexation. More than one Phase may be established in any Declaration of Annexation.

2.32 **PROJECT**: The term "Project" shall mean the Subject Property and any property described in a Declaration of Annexation.

2.33 **PROJECT DOCUMENTS**: The term "Project Documents" shall mean the Articles, Bylaws, this Declaration and the Operating Rules.

2.34 **PUBLIC REPORT**: The term "Public Report" shall mean a Final Subdivision Public Report issued by the Department of Real Estate of the State of California for one or more Phases of the Project.

2.35 **RESIDENCE**: The term "Residence" shall mean a dwelling situated on a Lot, including any garage also situated on a Lot.

2.36 **SUBJECT PROPERTY**: The term "Subject Property" shall mean the real property described in Section 1.1.1, above, and all Improvements thereon.

2.37 **VISIBLE**: The term "Visible" shall mean the item described can be seen by a six (6) foot tall person standing on the described area, or if no area is described, on any portion of the street which provides access to the Residence.

### **ARTICLE III OWNERSHIP AND EASEMENTS**

3.1 **NON-SEVERABILITY**: The interest of each Owner in the use and benefit of the Common Area shall be appurtenant to the Lot owned by the Owner. Any conveyance of any Lot shall automatically transfer the right to use the Common Area without the necessity of express reference in the instrument of conveyance. The ownership interests in the Common Area and Lots described in this Article are subject to the easements described, granted and reserved in this Declaration. Each of the easements described, granted or reserved herein shall be established upon the recordation of this Declaration and shall be enforceable as equitable servitudes and covenants running with the land for the use and benefit of the Owners and their Lots superior to all other encumbrances applied against or in favor of any portion of the Project.

3.2 **OWNERSHIP OF LOTS**: Title to each Lot in the Project shall be conveyed in fee to an Owner.

3.3 **OWNERSHIP OF COMMON AREA**: Title to or a legal ownership interest in the Common Area in each Phase shall be conveyed to the Association prior to or concurrently with the conveyance of the first Lot in that particular Phase to an Owner. The Association shall be deemed to have accepted the Common Area conveyed to it when (i) a grant deed conveying title to the Common Area has been recorded in the Official Records of the County and (ii) assessments for the Phase in which the Common Area is located have commenced.

3.4 **OWNERSHIP OF PARTY FENCES**: Each Owner of a Lot upon which a Party Fence is situated shall own that portion of the fence or wall from the surface which faces the Owner's Lot up to the center of the Party Fence.

3.5 **EASEMENTS**: The easements and rights specified in this Article are hereby created and shall exist whether or not they are also set forth in individual grant deeds to Lots. By reference to this Declaration, each grant deed to a Lot shall be deemed to be conveyed with the benefit of and subject to all applicable easements set forth in this Section.

3.5.1 **Adjoining Property**: Declarant shall have, and hereby expressly reserves, a right and easement over and across the Common Area for the purposes of reasonable ingress to and egress from, over and across the Project, including private roads and pathways, to the Additional Property until all of the Additional Property is annexed to the Project.

3.5.2 Annexation of Additional Property: Upon the recordation of a Declaration of Annexation, the Lots and the Owners of Lots in the annexed Phase shall have all of the rights and easements specified in this Article and the Lots and the Owners of Lots in the Project prior to annexation shall have all of the easements specified in this Article as though the annexed Phase were initially part of the Project.

3.5.3 Association: The Association and its duly authorized agents and representatives shall have a non-exclusive right and easement as is necessary to perform the duties and obligations of the Association set forth in the Project Documents, including the right to enter upon Lots, subject to the limitations contained in this Declaration.

3.5.4 Common Area: Every Owner shall have a non-exclusive right and easement for the ingress, egress, use and enjoyment of the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The right of the Association to grant, convey and dedicate fee title to or easements over all or any portion of the Common Area; and

(b) Any easement which affects the Common Area or which is set forth in the deed which conveys the Common Area to the Association.

3.5.5 Encroachment: Non-exclusive rights and easements are reserved and granted (i) for the benefit of each Lot, as dominant tenement, over, under and across each other Lot and the Common Area, as servient tenement, and (ii) for the benefit of the Common Area, as dominant tenement, over, under and across each Lot, as servient tenement. Such easements shall be for the purposes of encroachment, support, occupancy and use of such portions of Lots and/or Common Area as shall be encroached upon, used and occupied by the dominant tenement as a result of any original construction design, accretion, erosion, deterioration, decay, errors in original construction, movement, settlement, shifting or subsidence of any building or structure or any portion thereof. If any portion of the Project is partially or totally destroyed, the encroachment easement shall exist for any replacement structure which is rebuilt pursuant to the original construction design. The easement for the encroaching Improvement shall exist for as long as the encroachment exists, provided that no easement for encroachment shall be created due to the willful misconduct of the Association or any Owner. Any easement for encroachment may but need not be cured by repair or restoration of the Improvement.

3.5.6 Governmental Entities: All governmental and quasi-governmental entities, agencies and utilities and their agents shall have a non-exclusive easement over the Common Area for the purposes of performing their duties within the Project.

3.5.7 Landscape Maintenance Areas: The Association shall have a non-exclusive easement over the Landscape Maintenance Areas to Maintain and irrigate the Landscape Maintenance Areas.

3.5.8 Mailboxes: Each Owner whose mailbox is not located on that Owner's Lot shall have a non-exclusive easement to use and Maintain the mailbox over those portions of the Project on which the mailbox is located.

3.5.9 Map: The Common Area and Lots are subject to all easements and rights of way shown on the Map.

3.5.10 Party Fences: Each Owner of a Lot containing a Party Fence shall have a reciprocal non-exclusive easement over and across such portions of the contiguous Lot as are necessary to Maintain the Party Fence.

3.5.11 Storm Drains: There are reserved and granted for the benefit of each Lot and the Common Area, over, under, across and through the Project, except Residences, non-exclusive easements for surface and subsurface storm drains and the flow of water in accordance with natural drainage patterns

and the drainage patterns and Improvements installed or constructed by Declarant. Additionally, this Declaration and each Lot and the Common Area shall be subject to all easements granted by Declarant to install and Maintain drainage Improvements necessary for the development of the Project.

3.5.12 Support: The Association and each Owner shall have a non-exclusive right and easement appurtenant to the Common Area and to all Lots through each Lot and the Common Area to support and Maintain the Common Area and all Lots.

3.5.13 Utilities: Each Owner shall have a non-exclusive right and easement over, under, across and through the Project, except for portions of the Project on which a structure is situated, for utility lines, pipes, wires and conduits installed by Declarant. Additionally, this Declaration and each Lot and the Common Area shall be subject to all easements granted by Declarant to install and Maintain utilities necessary for the development of the Project.

**ARTICLE IV  
USE RESTRICTIONS**

4.1 ALTERATIONS: Except as otherwise specifically provided in this Declaration, no Alteration may be made to any Improvement until plans have been submitted and approved pursuant to Article XI.

4.2 ANIMALS: An Owner may keep not more than a total of two (2) dogs, cats and other customarily uncaged household pets within the Owner's Lot. Each Owner may also keep a reasonable number of small caged animals, birds or fish. Unless the Operating Rules increase the number or type of animals which may be kept, no other animals or pets are permitted in the Project. The Board shall have the right to prohibit the keeping of any pet which, after Notice and Hearing, is found to be a nuisance to other Owners. No animals may be kept for commercial purposes. No dog shall be allowed in the Common Area unless it is under the control of a responsible person by leash or other means. Each Owner or Invitee shall restore the Common Area to the condition it was in immediately preceding its use by any dog permitted on the Common Area by the Owner or Invitee.

4.3 ANTENNAS AND SATELLITE DISHES: No outside television antenna, microwave or satellite dish, aerial, or other such device (collectively "Video Antennas") with a diameter or diagonal measurement in excess of one (1) meter shall be erected, constructed or placed on any Common Area or Lot. Video antennas with a diameter or diagonal measurement of one (1) meter or less may be installed only if they conform to the Architectural Standards and, if then required by the Architectural Standards, any necessary approval is obtained in accordance with the provisions of Article XI. Reasonable restrictions which do not significantly increase the cost of the Video Antenna system or significantly decrease its efficiency or performance may be imposed.

4.4 DRAINAGE: No Owner shall make any Alteration to the drainage patterns and facilities in the Project until plans have been submitted and approved pursuant to Article XI and any public authority with jurisdiction over the Alteration.

4.4.1 Positive Drainage: This Declaration provides notice to each Owner to devote great care and attention to grading and to establishing and maintaining positive drainage away from the entire foundation line of the Owner's Residence. Positive drainage is achieved by shaping Lot grades, establishing drainage "swales" or installing underground area drains. The swales and drains provide a receptacle and conduit to drain water away from the foundation, and the rear, side and front of the Residence to offsite drainage disposal. Swales also prevent drainage water from moving across a Lot to another Lot, Common Area or other property. This Declaration also provides notice to each Owner that if existing drainage swales established on the Lot and around the Residence are interrupted, blocked, filled, or otherwise altered, serious damage can result. Drainage must not be allowed to pond in a yard or run against or under a Residence, foundation, garage floor, driveway or other Improvement. Serious damage can result even during a short period of time.



Each Owner shall verify that all aspects of positive drainage are maintained after the installation of landscaping, grade changes or any modification to drainage systems by Owner or Owner's Invitees. Owners must use due care, install low flow irrigation systems and provide other landscaping measures which will not contribute to subsurface ground water intrusion to adjoining Lots or Common Area

4.4.2 Down Spouts: If a Residence constructed by Declarant has a roof gutter system and down spouts which are directly connected to the Project's storm drainage system, the Residence shall remain connected to the Project storm drainage system at all times. The Owner of such a Residence may not alter the Residence in any manner which results in additional roof waters draining anywhere other than directly into the Project's storm drainage system.

4.5 EXTERIOR LIGHTING: No Owner shall remove, damage or disable any exterior light, regardless of where located, which is connected to the Association's electric service.

4.6 INVITEES: Each Owner shall be responsible for compliance with the provisions of the Project Documents by that Owner's Invitees. An Owner shall promptly pay any Reimbursement Assessment levied and/or any fine or penalty imposed against an Owner for violations committed by that Owner's Invitees.

4.7 LANDSCAPE MAINTENANCE AREAS: No Alteration may be made by an Owner within a Landscape Maintenance Area without first obtaining approval of the Board. Unless otherwise determined by the Board, any Owner who adds landscaping in any Landscape Maintenance Area shall Maintain the additional landscaping. The Association shall not be responsible for any damage caused to any such added landscaping as long as the damage occurs in the ordinary course of the Association's regular landscape maintenance program.

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

4.9 OPERATING RULES: Owners and their Invitees shall comply with all provisions of this Declaration, the Bylaws and the Operating Rules.

4.10 PARKING: Vehicles shall not be parked anywhere in the Project except in compliance with the provisions of this Section.

4.10.1 Common Area: Passenger motor vehicles may be parked in designated spaces within the Common Area. No part of the Common Area may be used for repair, construction or reconstruction of any vehicle.

4.10.2 Driveways: The driveway on a Lot may be used by the residents of the Lot to park passenger motor vehicles as long as no portion of the vehicle extends into the street or across any portion of a sidewalk.

4.10.3 Garages: Vehicles of any type may be parked in a garage. Garage doors shall remain closed, except when the garage is in use. Garages shall be kept sufficiently clear so as to permit parking of the number of vehicles for which the garage was designed.

4.10.4 Guest Parking: No resident may park any vehicles in any space designated as "guest parking."

4.10.5 Removal: As long as applicable ordinances and laws are observed, including the requirements of Section 22658.2 of the California Vehicle Code if applicable, any vehicle which is parked in violation of the provisions of this Declaration may be removed.

4.10.6 Vehicle Restrictions: No boat, trailer, camper, commercial vehicle, mobile home or recreational vehicle shall be parked or stored where Visible from adjacent Lots or streets. No inoperable



or abandoned vehicle may be parked or stored in the Project at anytime. No vehicle with a business sign (including lettering on doors) may be parked or stored where visible from adjacent Lots or streets.

4.11 **REFUSE:** All garbage, trash and accumulated waste material shall be placed in appropriate covered containers. Containers for recyclable materials need not be covered. Any containers provided by the Association may be stored in locations designated by the Board. Containers provided by Owners may be placed on Common Area or where Visible only on the night before and the day that pick-up is to occur.

4.12 **RENTAL OF LOTS:** An Owner shall be entitled to rent or lease a Lot, if: (i) there is a written rental or lease agreement specifying that the tenant shall be subject to all provisions of the Project Documents and a failure to comply with any provision of the Project Documents shall constitute a default under the agreement; (ii) the period of the rental or lease is not less than thirty (30) days; (iii) the Owner gives notice of the tenancy to the Board and has otherwise complied with the terms of the Project Documents; and (iv) the Owner gives each tenant a copy of the Project Documents. Upon satisfaction of the foregoing conditions all rights to the use and enjoyment of the Common Area shall be exercised by the tenant rather than by the Owner of the leased or rented Lot; however, the Owner shall not be relieved of the obligations and duties imposed by this Declaration.

4.13 **SIGNS:** All signs displayed in the Project shall be attractive and compatible with the design of the Project and shall comply with all applicable state and federal laws and local ordinances. The only signs of any kind which may be displayed to the public view on or from any Lot or the Common Area shall be as follows:

4.13.1 **Declarant:** Signs may be displayed by Declarant on Common Area or unsold Lots, as Declarant deems appropriate, advertising Lots owned by Declarant for sale or rent;

4.13.2 **Legal Proceedings:** Signs required by legal proceedings may be displayed;

4.13.3 **Non-Commercial:** Non-commercial signs, posters, flags, or banners may be displayed in accordance with the provisions of California Civil Code Section 1353.6. Any such sign or poster may not exceed nine (9) square feet in size and any such flag or banner may not exceed fifteen (15) square feet in size.

4.13.4 **Project Identification:** Appropriate signs may be displayed by the Association to identify the Project;

4.13.5 **Sale or Rent:** One (1) sign of reasonable dimensions may be placed on a Lot advertising the Lot for sale or rent; and

4.13.6 **Signs Approved By Board:** Other signs, posters and notices approved by the Board or specified in the Operating Rules or in this Declaration may be posted in locations designated by the Board.

4.14 **SPORTS EQUIPMENT:** No basketball standards, fixed sports apparatus or similar equipment shall be attached to the exterior of any Residence or permanently placed on any Lot except in accordance with the provision of Article XI. Portable or movable basketball equipment or other movable sports apparatus may not remain overnight on any Lot where Visible from adjacent Lots or streets without the prior approval of the Board.

4.15 **SURROUNDING PROPERTIES:** The Project is located in the vicinity of surrounding properties which are used for various purposes. Owners should expect these surrounding properties to include domestic and wild animals, mice, rats, rodents, snakes, arachnids, arthropods, worms, ants, flies and other insects and vermin.

4.16 **TAXES:** Each Owner shall be obligated to pay any taxes or assessments assessed by the County Assessor against that Owner's Lot and personal property. Until such time as real property taxes have been segregated by the County Assessor, they shall be paid by the respective Owners. The

proportionate share of the taxes for a particular Lot shall be determined by dividing the initial Lot sales price or, in the case of unsold Lots, the price the Lot is then being offered for sale by Declarant ("Offered Price"), by the total initial sales prices and Offered Prices of all Lots. If an Owner fails to pay that Owner's proportionate share in accordance with the preceding sentence, the Association shall collect such share, including that Owner's interest and penalties, from the delinquent Owner.

**4.17 USE AND OCCUPANCY OF RESIDENCES:** Each Residence may be used for (i) residential purposes, (ii) uses within Residences which cannot be prohibited under federal or state law and (iii) uses permitted by local ordinance (provided that home occupations must be conducted in a manner that does not materially and adversely impact the ability of other Owners to use and enjoy the Project). Otherwise, no business of any kind shall be established, operated, permitted or constructed in any portion of the Project, except for the business of Declarant in completing the development and disposition of the Lots in the Project. No Residence shall be permanently occupied by any more than two (2) persons per bedroom. No Owner may permit or cause anything to be done or kept upon or in a Lot which might obstruct or interfere with the rights of other Owners or which would be noxious, harmful or unreasonably offensive to other Owners. Each Owner shall comply with all of the requirements of all federal, state and local governmental authorities, and all laws, ordinances, rules and regulations applicable to the Owner's Lot.

**4.18 USE OF COMMON AREA:** All use of Common Area is subject to the Operating Rules. All persons residing within the Project may enjoy the use of all facilities in the Common Area as long as they abide by the terms of the Project Documents. There shall be no obstruction of any part of the Common Area. Nothing shall be stored or kept in the Common Area without the prior consent of the Board. Nothing shall be done or kept in the Common Area which will increase the rate of insurance on the Common Area without the prior consent of the Board. No Owner shall permit anything to be physically done or kept in the Common Area or any other part of the Project which might result in the cancellation of insurance on any part of the Common Area, which would interfere with rights of other Owners, or which would be a nuisance, noxious, harmful or unreasonably offensive to other Owners. No Owner or Invitee shall perform any act which results in damage to the Common Area. The provisions of this Declaration concerning using, Maintaining and managing the Common Area are subject to any rights or limitations established by any easements or other encumbrances which encumber the Common Area.

## **ARTICLE V IMPROVEMENTS**

**5.1 MAINTAINING COMMON AREA AND IMPROVEMENTS:** Except as otherwise specifically provided in this Declaration or a Declaration of Annexation, the Association shall Maintain the Common Area, all Improvements situated in, upon or under the Common Area and any Improvements which a Declaration of Annexation provides are to be Maintained by the Association. The Association shall provide for all necessary services and cause all acts to be done which may be appropriate or proper to Maintain the Common Area and Improvements in first class condition.

**5.1.1 Regular Inspections by Association:** The Association shall regularly inspect all major components of the Common Area at least once each year. One of the primary purposes of the inspection shall be to determine how to extend the life of Common Area Improvements and to prevent damage to such Improvements resulting from the Association's neglect or the failure to properly and adequately Maintain.

**5.1.2 Compliance With Association Maintenance Manual:** The Association shall Maintain the Project in compliance with all applicable requirements imposed by the Association Maintenance Manual.

5.1.3 **Records:** The Association shall keep appropriate records to document that it has performed all inspections and Maintained all Improvements in compliance with the Association Maintenance Manual.

## 5.2 ALTERATIONS TO COMMON AREA:

5.2.1 **Approval:** Alterations to any Improvements situated in, upon or under the Common Area may be made only by the Association. A proposal for an Alteration to an Improvement may be made at any meeting. A proposal may be adopted by the Board, subject to the limitations contained in the Bylaws.

5.2.2 **Funding:** Expenditures to Maintain an existing capital Improvement for which reserves have been collected may be made from the Reserve Account. Subject to the limitations set forth in Section 6.5, the Board may levy a Special Assessment to fund any Alteration of an Improvement for which no reserve has been collected.

5.3 **MAINTAINING LOTS AND RESIDENCES:** Except as otherwise specifically provided in this Declaration or a Declaration of Annexation, each Owner shall Maintain the Owner's Lot, including the Residence and other Improvements located thereon, in compliance with the provisions of the Owner Maintenance Manual, in a manner consistent with the standards established by the Project Documents and in compliance with the Architectural Standards.

5.3.1 **Driveways:** Each Owner shall Maintain all portions of the driveway which provides access between the Owner's Residence and the street which provides access to that Lot. Each Owner shall keep the surface of the driveway on their Lot clean and free from oil and grease.

5.3.2 **Landscape Maintenance Areas:** The Association shall Maintain all landscaping within Landscape Maintenance Areas.

5.3.3 **Mailboxes:** Each Owner shall Maintain the mailbox which serves that Owner's Lot, wherever it is located. If more than one mailbox is supported by a single structure, the Owners of the mailboxes shall jointly Maintain the support structure.

5.3.4 **Sidewalks:** Each Owner shall Maintain all walkways on the Owner's Lot which serve exclusively that Owner's Lot. The Association shall Maintain all other walkways on Landscape Maintenance Area.

5.3.5 **Storm Drainage:** The Association shall Maintain all portions of the storm drainage system which connect individual storm drain lines serving individual Residences to the main storm drain system at the outlet in the public right-of-way. Each Owner shall clean all catch basins and storm drainage Improvements within the Owner's Lot, so that the Improvement functions as it was designed to function.

5.3.6 **Utility Lines Serving A Single Lot:** Each Owner shall Maintain those portions of all utility lines which (i) are not Maintained by the public or a quasi-public entity or utility company and (ii) serve only that Owner's Lot, irrespective of whether the utility line is located on Common Area or on one (1) or more Lots.

5.3.7 **Utility Lines Serving More Than One Lot:** The Association shall Maintain those portions of all utility lines which (i) are not Maintained by the public or a quasi-public entity or utility company and (ii) serve more than one (1) Lot, irrespective of whether the utility line is located on Common Area or on one (1) or more Lots.

5.4 **ALTERATIONS TO LOTS AND RESIDENCES:** Alterations may be made to the interior of an Owner's Residence, if the Alterations do not impair the structural integrity of the Residence and if the Owner complies with all laws and ordinances regarding alterations and remodeling. Any proposals for Alterations on Lots or to the exteriors of Residences shall be made in accordance with the provisions of Article XI.

5.5 **MAINTAINING FENCES AND WALLS:** If a fence is attached to the top of a wall, that wall shall be deemed to be part of the fence for purposes of this Section.

5.5.1 **Party Fences:** The Owners of a Party Fence shall Maintain it and shall share the costs of Maintaining it equally except that all costs of Maintaining the Party Fence which are a result of the negligent or willful action of an Owner shall be borne by that Owner. An Owner who Maintains a Party Fence is entitled to and has a right of contribution from the other Owners of the Party Fence which shall be appurtenant to the Lot and shall pass to the successor(s) in interest of the Owner entitled to contribution.

5.5.2 **Other Fences and Walls:** Except as provided in Sections 5.5.1, the Owner of a Lot shall Maintain all fences, fence posts, gates and walls which are either situated entirely within the boundaries of an Owner's Lot or which separate the Owner's Lot from property located outside the boundaries of the Project; provided, however, the Association shall maintain the exterior surface (facing away from the Owners' Lots) of the masonry walls constructed by Declarant. If any portion of a wall extends across the common boundary of two (2) Lots, the adjacent Owners shall cooperate as necessary to permit each Owner to Maintain the portion of the wall which is on that Owner's Lot.

5.6 **LANDSCAPING:** All landscaping in the Project shall be Maintained in a manner consistent with the standards of design and quality as originally established by Declarant. All landscaping shall be kept in a neat and orderly condition. Any weeds shall be removed and any diseased or dead lawn, trees, ground cover or shrubbery shall be removed and replaced. All lawn areas shall be neatly mowed and trees and shrubs shall be neatly trimmed. Other specific restrictions on landscaping may be established in the Operating Rules. Irrigation systems, if any, shall be kept in good working condition to ensure continued regular watering of landscape areas, and health and vitality of landscape materials.

5.6.1 **Common Area:** The Association shall Maintain all landscaping located on Common Area.

5.6.2 **Landscape Maintenance Areas:** The Association shall Maintain all landscaping within Landscape Maintenance Areas.

5.6.3 **Lots:** Each Owner shall Maintain all landscaping located within the Owner's Lot, excluding any Landscape Maintenance Area. If landscaping within Lots is not installed by Declarant, each Owner shall install permanent landscaping within the Owner's Lot within six (6) months after (i) the conveyance of the Lot to the Owner or (ii) the issuance of a certificate of occupancy for the Residence, whichever occurs later.

5.6.4 **Public Right-of-Way:** The Association shall Maintain all landscaping located within the public right-of way which adjoins Landscape Maintenance Area.

5.7 **ASSOCIATION'S RIGHT TO ENTER AND MAINTAIN:** If an Owner fails to Maintain an Improvement which that Owner is obligated to Maintain pursuant to this Declaration, and if the Association determines, after Notice and Hearing is provided pursuant to the provisions of the Bylaws, that work must be performed to Maintain the Improvement to preserve the attractiveness, quality, nature and/or value of the Project, the Association may Maintain the Improvement at the expense of the Owner which shall be charged to the Owner as a Reimbursement Assessment. In order to effectuate the provisions of this Declaration, the Association may enter any Lot whenever entry is necessary to Maintain an Improvement which the Association is authorized to undertake pursuant to this Section. Entry within a Lot shall be made with as little inconvenience to an Owner as practicable and only after reasonable advance written notice of not less than forty-eight (48) hours, except in emergency situations.

5.8 **DAMAGE AND DESTRUCTION — ASSOCIATION:** The term "restore" shall mean repairing, rebuilding or reconstructing a damaged Improvement to substantially the same condition and appearance in which it existed prior to fire or other casualty damage. If fire or other casualty damage extends to any Improvement which is insured under an insurance policy held by the Association, the

Association shall proceed with the filing and adjustment of all claims arising under the existing policies. The insurance proceeds shall be paid to and held by the Association.

5.8.1 **Bids:** Whenever restoration is to be performed pursuant to this Section, the Board shall obtain such bids from responsible licensed contractors to restore the damaged Improvement as the Board deems reasonable; and the Board, on behalf of the Association, shall contract with the contractor whose bid the Board deems to be the most reasonable.

5.8.2 **Sufficient Proceeds:** The costs of restoration of the damaged Improvement shall be funded pursuant to the provisions and in the priority established by this Section 5.8.2. A lower priority procedure shall be utilized only if the aggregate amount of funds then available pursuant to the procedures of higher priority are insufficient to restore the damaged Improvement. The following funds and procedures shall be utilized:

1. The first priority shall be any insurance proceeds paid to the Association under existing insurance policies.

2. The second priority shall be all Reserve Account funds designated for the repair or replacement of the capital Improvement(s) which has been damaged.

3. The third priority shall be funds raised by a Special Assessment against all Owners levied by the Board up to the maximum amount permitted without the approval of the Members in accordance with the limitations set forth in Section 6.5.

4. The fourth priority shall be any funds raised by a Special Assessment against Owners levied by the Board pursuant to a vote of the Members pursuant to Section 5.8.3.

5.8.3 **Additional Special Assessment:** If the total funds available to restore the damaged Improvement pursuant to the first three priorities described in Section 5.8.2 are insufficient to restore the damaged Improvement, then a special meeting of the Members shall be called for the purpose of voting whether to impose an additional Special Assessment and deciding upon the amount thereof. The Board shall then contract for the restoration of the damaged Improvement as described above, making use of whatever funds are then available to it.

5.9 **DAMAGE OR DESTRUCTION — OWNERS:** If all or any portion of a Lot or Residence is damaged by fire or other casualty and the loss is not covered by an insurance policy held by the Association, the Owner of the Improvement shall either (i) restore the damaged Improvements or (ii) remove all damaged Improvements, including foundations, and leave the Lot in a clean and safe condition. Any restoration under (i) preceding must be performed so that the Improvements are in substantially the same condition in which they existed prior to the damage, unless the Owner complies with the provisions of Article XI. Unless extended by the Board, the Owner must commence such work within one hundred twenty (120) days after the damage occurs and must complete the work within one (1) year thereafter.

5.10 **CONDEMNATION OF COMMON AREA:** If all or any portion of the Common Area is taken for any public or quasi-public use under any statute, by right of eminent domain or by purchase in lieu of eminent domain, the entire award shall be deposited into the Current Operation Account until distributed. The Association shall distribute such funds equally to all Owners and shall represent the interests of all Owners.

**ARTICLE VI**  
**FUNDS AND ASSESSMENTS**

6.1 **COVENANTS TO PAY:** Declarant and each Owner covenant and agree to pay to the Association the assessments and any Additional Charges levied pursuant to this Article VI.

6.1.1 **Liability for Payment:** The obligation to pay assessments shall run with the land so that each successive record Owner of a Lot shall in turn be liable to pay all such assessments. No Owner may waive or otherwise escape personal liability for assessments or release the Owner's Lot from the liens and charges hereof by non-use of the Common Area, abandonment of the Lot or any other attempt to renounce rights in the Common Area or the facilities or services within the Project. Each assessment shall constitute a separate assessment and shall also be a separate, distinct and personal obligation of the Owner of the Lot at the time when the assessment was levied and shall bind the Owner's heirs, devisees, personal representatives and assigns. Any assessment not paid when due is delinquent. The personal obligation of an Owner for delinquent assessments shall not pass to a successive Owner unless the personal obligation is expressly assumed by the successive Owner. No such assumption of personal liability by a successor Owner (including a contract purchaser under an installment land contract) shall relieve any Owner from personal liability for delinquent assessments. After an Owner transfers fee title of record to a Lot, the Owner shall not be liable for any charge thereafter levied against that Lot.

6.1.2 **Funds Held in Trust:** The assessments collected by the Association shall be held by the Association for and on behalf of each Owner and shall be used solely to operate and Maintain the Project as provided in this Declaration.

6.1.3 **Offsets:** No offsets against any assessment shall be permitted for any reason, including, without limitation, any claim that the Association is not properly discharging its duties.

6.2 **REGULAR ASSESSMENTS:**

6.2.1 **Payment of Regular Assessments:** Regular Assessments for each fiscal year shall be established when the Board approves the Budget for that fiscal year. Regular Assessments shall be levied on a fiscal year basis; however, each Owner shall be entitled to pay the Regular Assessment in twelve (12) equal monthly installments, one installment payable on the first day of each calendar month during the fiscal year, as long as the Owner is not delinquent in the payment of any monthly installment. If an Owner fails to pay any monthly installment by the sixtieth (60<sup>th</sup>) day after the date the installment was due, the Board may terminate that Owner's right to pay the Regular Assessment in monthly installments and declare the then unpaid balance of the Regular Assessment for that year immediately due and payable. Regular Assessments shall commence for all Lots in each Phase on the first day of the first month following the month in which the first Lot in that Phase is conveyed to an Owner and may commence prior to that date at the option of Declarant.

6.2.2 **Allocation of Regular Assessments:** The total amount of the Association's anticipated revenue attributable to Regular Assessments as reflected in the Budget for that fiscal year shall be allocated equally among the Lots. After annexation of each Phase, the allocation and assessment of the charges in the Budget shall be reallocated equally among all Lots in the Project, including those in the annexed Additional Property. For the first fiscal year, the Budget shall be substantially based upon the operating budget accepted by the Department of Real Estate of the State of California. After a new Phase has been annexed, the Board shall approve a Budget, which is substantially based upon the operating Budget accepted by the Department of Real Estate of the State of California in connection with the Public Report for that Phase, for the remainder of the current fiscal year for use upon the commencement of Regular Assessments against Lots in the new Phase.

6.2.3 **Exemptions from Regular Assessment:** Notwithstanding the provisions of Section 6.2, the Board shall exempt each Owner of a Lot which satisfies paragraph (a), below, and may

exempt all Owners if paragraph (b), below, is satisfied, from the payment of a portion of the Regular Assessment levied against that Lot as described in those paragraphs.

(a) Lots: An Owner of a Lot is exempt from payment of that portion of the Regular Assessment which is allocated for defraying operating expenses and reserves directly attributable to landscaping situated on Lots for which the Association is responsible until any such landscaping which is to be installed on the Owner's Lot is installed and no one other than the Association has any obligation to Maintain the landscaping.

(b) Other Common Area: Each Owner may be exempted from payment of that portion of the Regular Assessment which is allocated for defraying operating expenses and reserves directly attributable to the existence and use of a common facility (including landscaping) that is not complete at the time Regular Assessments commence until the first to occur of the following events: (i) a notice of completion of the common facility is recorded; (ii) the common facility has been placed into use; or (iii) in the case of landscaping, the landscaping is installed and no one other than the Association has any obligation to Maintain the landscaping.

6.2.4 Non-Waiver of Assessments: If before the expiration of any fiscal year the Association fails to fix Regular Assessments for the next fiscal year, the Regular Assessment established for the preceding year shall continue until a new Regular Assessment is fixed.

6.3 SPECIAL ASSESSMENTS: Subject to the limitations set forth in Section 6.5, Special Assessments may be levied in addition to Regular Assessments for (i) constructing capital Improvements, (ii) correcting an inadequacy in the Current Operation Account, (iii) defraying, in whole or in part, the cost of any construction, reconstruction, unexpected repair or replacement of Improvements in the Common Area, or (iv) paying for such other matters as the Board may deem appropriate for the Project. Special Assessments shall be levied in the same manner as Regular Assessments.

6.4 REIMBURSEMENT ASSESSMENTS: The Association shall levy a Reimbursement Assessment against an Owner to (a) reimburse the Association for the costs of repairing damage caused by that Owner or that Owner's Invitee or (b) if a failure to comply with the Project Documents has resulted in (i) an expenditure of monies, including attorneys' fees, by the Association to bring the Owner or the Owner's Lot or Improvements into compliance or (ii) the imposition of a fine or penalty. A Reimbursement Assessment shall be due and payable to the Association when levied. A Reimbursement Assessment shall not be levied by the Association until Notice and Hearing has been provided in accordance with the Bylaws. Reimbursement Assessments may not be enforced by lien.

6.5 LIMITATIONS ON ASSESSMENTS: All Regular and Special Assessments levied by the Board must comply with the provisions of Section 1366 of the California Civil Code, including the written ballot limitations and special voting and quorum requirements.

#### 6.6 ACCOUNTS:

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

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



6.6.3 Current Operation Account: All other costs properly payable by the Association shall be paid from the Current Operation Account.

6.7 BUDGET, FINANCIAL STATEMENTS, REPORTS AND STUDIES:

6.7.1 Preparation and Distribution of Budget: The Board shall annually prepare, adopt and distribute a Budget in accordance with the requirements of Section 1365 of the California Civil Code. A summary of the Budget may be distributed in lieu of the entire Budget if the requirements set forth in Section 1365 of the California Civil Code are satisfied.

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

6.7.3 Assessments and Foreclosure: During the sixty (60) day period preceding the beginning of each Association fiscal year, the Association shall prepare and distribute the following notices to Owners by first-class mail:

- (a) The notice required by Section 1365.1 of the California Civil Code;
- (b) The statement of the Association's policies and practices in enforcing its remedies against Owners for defaults in the payment of Regular and Special Assessments, including the recording and foreclosing of liens against Lots required by Section 1365 of the California Civil Code; and
- (c) Notice of any increase in Regular Assessments or the levy of any Special Assessments in accordance with the provisions of California Civil Code Section 1366.

6.7.4 Quarterly Reconciliation: If then required by Section 1365 of the California Civil Code, at least quarterly, the Board shall: (i) cause a current reconciliation of the Association's Operating Account(s) to be made and review the same; (ii) cause a current reconciliation of the Association's Reserve Account to be made and review the same; (iii) review the current year's actual reserve revenues and expenses compared to the current year's Budget; (iv) review the most current account statements prepared by the financial institution where the Association has its Operation and Reserve Accounts; and (v) review an income and expense statement for the Association's Operation and Reserve Accounts.

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

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

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

6.8 ENFORCEMENT OF ASSESSMENTS: Prior to recording a lien against an Owner's Lot for failure to pay assessments, the Association shall prepare and serve the notice required by and in compliance with the provisions of California Civil Code Section 1367.1.



6.8.1 **Procedures:** In addition to all other remedies provided by law, the Association, or its authorized representative, may enforce the obligations of the Owners to pay each assessment provided for in this Declaration in any manner provided by law or by either or both of the following procedures:

(a) **By Suit:** The Association may commence and prosecute a suit at law against any Owner personally obligated to pay a delinquent assessment. The suit shall be prosecuted in the name of the Association. Any judgment rendered in any action shall include the amount of the delinquency, and such additional costs, fees, charges and expenditures ("Additional Charges") and any other amounts as the court may award. A proceeding to recover a judgment for unpaid assessments may be prosecuted without the necessity of foreclosing or waiving the lien established herein.

(b) **By Lien:** The Association or a trustee nominated by the Association may commence and prosecute proceedings to establish and/or foreclose assessment liens in accordance with the provisions of California Civil Code Section 1367.1.

6.8.2 **Additional Charges:** In addition to any other amounts due or any other relief or remedy obtained against an Owner who is delinquent in the payment of any assessments, each Owner agrees to pay such Additional Charges as the Association may incur or levy in collecting the monies due and delinquent from that Owner. All Additional Charges shall be included in any judgment in any suit or action brought to enforce collection of delinquent assessments or may be levied against a Lot as a Reimbursement Assessment. Additional Charges shall include, but not be limited to, the following:

(a) **Attorneys' Fees:** Reasonable attorneys' fees and costs incurred in the event an attorney(s) is employed to collect any assessment or sum due, whether by suit or otherwise;

(b) **Late Charges:** A late charge in an amount to be fixed by the Board in accordance with the then current laws of the State of California to compensate the Association for additional collection costs incurred in the event any assessment or other sum is not paid when due or within any "grace" period established by law;

(c) **Costs of Suit:** Costs of suit and court costs incurred as are allowed by the court;

(d) **Interest:** Interest on the delinquent assessment and Additional Charges at a rate fixed by the Board in accordance with the then current laws of the State of California; and

(e) **Other:** Any such other additional costs that the Association may incur in the process of collecting delinquent assessments or sums.

6.8.3 **Satisfaction of Lien:** All amounts paid by an Owner toward a delinquent assessment shall be credited first to reduce the principal amount of the debt. Within twenty-one (21) days of payment or other satisfaction of a delinquent assessment for which a Notice of Delinquent Assessment was recorded pursuant to California Civil Code Section 1367.1(d), the Association shall record a certificate stating the satisfaction and release of the assessment lien.

6.8.4 **Lien Eliminated By Foreclosure:** If the Association has recorded a Notice of Delinquent Assessment and the lien is eliminated as a result of a foreclosure of a Mortgage or a transfer pursuant to the remedies provided in the Mortgage, the new Owner of the Lot shall pay to the Association a pro-rata share of the Regular Assessment for each month remaining in the Association's fiscal year after the date of the foreclosure or transfer pursuant to the remedies provided in the Mortgage.

6.8.5 **Waiver of Homestead Protections:** Each Owner, does hereby waive, to the extent permitted by law, the protections of any declared homestead or homestead exemption or redemption laws under the laws of California as applied to any action to enforce or collect assessments levied by the Association.

6.9 **SUBORDINATION OF LIEN:** Notwithstanding any provision to the contrary, the liens for assessments created pursuant to this Declaration shall be subject and subordinate to and shall not affect the

rights of the holder of a First Mortgage made in good faith and for value. Upon the foreclosure of any First Mortgage on a Lot, any lien for assessments which became due prior to such foreclosure shall be extinguished; provided, however, that after such foreclosure there shall be a lien on the interest of the purchaser at the foreclosure sale to secure all assessments, whether Regular or Special, charged to such Lot after the date of such foreclosure sale, which lien shall have the same effect and shall be enforced in the same manner as provided herein. For purposes of this Section, a Mortgage may be given in good faith or for value even though the Mortgagee has constructive or actual knowledge of the assessment lien provisions of this Declaration.

**ARTICLE VII**  
**MEMBERSHIP IN AND DUTIES OF THE ASSOCIATION**

7.1 **THE ORGANIZATION:** The Association is a nonprofit mutual benefit corporation. Its affairs shall be governed by and it shall have the powers set forth in the Project Documents.

7.2 **MEMBERSHIP:** Each Owner (including Declarant for so long as Declarant is an Owner), by virtue of being an Owner, shall be a Member of the Association. No other person shall be accepted as a Member.

7.2.1 **Appurtenant to Ownership:** Association membership is appurtenant to and may not be separated from the ownership of a Lot. Membership shall terminate upon termination of Lot ownership. Ownership of a Lot shall be the sole qualification for Association membership. Membership shall not be transferred, pledged or alienated in any way except upon transfer of title to the Owner's Lot (and then only to the transferee of title to such Lot). Any attempt to make a prohibited transfer is void. Membership shall not be related to the use or non-use of the Common Area and may not be renounced. The rights, duties, privileges and obligations of all Members shall be as provided in the Project Documents.

7.2.2 **Annexation:** Upon the commencement of Regular Assessments in a subsequent Phase, the Owners of the Lots described in the Declaration of Annexation for that Phase shall become Members.

7.3 **VOTING:** Any action required by law or by the Project Documents to be approved by the Owners, the Members or each class of Members shall be approved, if at all, in accordance with the procedures set forth in the Bylaws.

7.4 **OPERATING RULES:** Operating Rules appropriate for the operation and management of the Project, which are consistent with the Project Documents, may be adopted and changed in accordance with the provisions of California Civil Code Section 1357.100 et seq. The Operating Rules may also include architectural rules, regulations and guidelines ("Architectural Standards") which shall interpret and implement the provisions of this Declaration by setting forth the standards and procedures for architectural review and guidelines for architectural design, placement of buildings, color schemes, exterior finishes and materials, landscaping, fences, and similar features which may be used in the Project; provided, however, that the Architectural Standards may not be in derogation of the minimum standards established by this Declaration. The Architectural Standards may include a schedule of fees for processing submittals (which shall not exceed the amount necessary to defray all costs incurred in processing the submittals) and establish the time and manner in which such fees will be paid. The Architectural Standards may also impose specific requirements on individual Lots if those requirements are reasonable in light of specific Lot topography, visibility or other factors.

7.5 **TRANSFERS OF COMMON AREA:** Subject to any applicable provision in the Bylaws, the Board shall have the power and right in the name of the Association and all of the Owners as their attorneys-in-fact to grant, convey, dedicate, mortgage, or otherwise transfer to any Owner or other person or entity, fee title, easements, exclusive use easements, security rights or other rights or licenses in, on, over or under the Common Area that, in the sole discretion of the Board, are in the best interests of the

Association and its Members. Notwithstanding anything herein to the contrary, in no event shall the Board take any action authorized hereunder that would permanently and unreasonably interfere with the use, occupancy and enjoyment by any Owner of that Owner's Lot without the prior written consent of that Owner.

7.6 **INSURANCE:** The Board shall make every reasonable effort to obtain and keep in full force and effect the insurance policies as provided in this Section. If the Board is unable to purchase a policy or if the Board believes that the cost of the policy is unreasonable, the Board shall call a special meeting of Members to determine what action to take. The Board shall comply with any resolution concerning insurance coverage adopted at such a meeting.

7.6.1 **General Provisions and Limitations:** All insurance policies shall be subject to and, where applicable, shall contain the following provisions and limitations:

(a) **Underwriter:** All policies (except earthquake insurance) shall be written with a company legally qualified to do business in the State of California and (i) holding a "B" or better general policyholder's rating and a "6" or better financial performance index rating as established by Best's Insurance Reports, (ii) reinsured by a company described in (i), above, or (iii) if such a company is not available, the best rating possible or its equivalent.

(b) **Named Insured:** Unless otherwise provided in this Section, the named insured shall be the Association or its authorized representative, as a trustee for the Owners. However, all policies shall be for the benefit of Owners and their Mortgagees, as their interests may appear.

(c) **Authority to Negotiate:** Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Board; provided, however, that no Mortgagee having an interest in such losses may be prohibited from participating in any settlement negotiations related thereto.

(d) **Contribution:** In no event shall the Association's insurance coverage be brought into contribution with insurance purchased by Owners or their Mortgagees.

(e) **General Provisions:** To the extent possible, the Board shall make every reasonable effort to secure insurance policies providing for the following:

(i) A waiver of subrogation by the insurer as to any claims against the Board, the manager, the Owners and their respective servants, agents and guests;

(ii) That the policy will be primary, even if an Owner has other insurance which covers the same loss;

(iii) That no policy may be cancelled or substantially modified without at least ten (10) days' prior written notice to the Association and to each First Mortgagee listed as a scheduled holder;

(iv) An agreed amount endorsement, if the policy contains a coinsurance clause;

(v) A guaranteed replacement cost or replacement cost endorsement; and

(vi) An inflation guard endorsement.

(f) **Term:** The period of each policy shall not exceed three (3) years. Any policy for a term greater than one (1) year must permit short rate cancellation by the insureds.

(g) **Deductible:** The policy may contain a reasonable deductible and the amount of the deductible shall be added to the face amount of the policy in determining whether the insurance equals replacement cost.

7.6.2 **Types of Coverage:** Unless the Association determines otherwise pursuant to Section 7.6, the Board shall obtain at least the following insurance policies in the amounts specified:

(a) Property Insurance: A Special Form or "All-Risk" policy of property insurance for all insurable Common Area Improvements, including fixtures and building service equipment, against loss or damage by fire or other casualty, in an amount equal to the full replacement cost (without respect to depreciation) of the Common Area, and exclusive of land, foundations, excavation and other items normally excluded from coverage. A replacement cost endorsement shall be part of the policy.

(b) Liability Insurance: A combined single limit policy of liability insurance in an amount not less than Three Million Dollars (\$3,000,000.00) covering the Common Area and all damage or injury caused by the negligence of the Association, the Board or any of its agents or the Owners against any liability to the public or to any Owner incident to the use of or resulting from any accident or intentional or unintentional act of an Owner or a third party occurring in or about any Common Area. If available, each policy shall contain a cross liability endorsement in which the rights of the named insured shall not be prejudiced with respect to any action by one named insured against another named insured.

(c) Worker's Compensation: Worker's compensation insurance to the extent necessary to comply with all applicable laws of the State of California or the regulations of any governmental body or authority having jurisdiction over the Project.

(d) Fidelity Bond: A fidelity bond naming the Board, the Owners, the Association and such other persons as the Board may designate as obligees, in an amount equal to at least one-fourth ( $\frac{1}{4}$ ) of the total sum budgeted for the Current Operation Account and Reserve Account for the current fiscal year. The fidelity bond shall contain a waiver of any defense based on the exclusion of persons serving without compensation.

(e) Directors and Officers: Errors and omissions insurance covering individual liability of Directors and officers for their negligent acts or omissions while acting in their capacities as Directors and officers in an amount equal to at least the minimum amount specified in Section 1365.7(a)(4) of the California Civil Code.

(f) Other Insurance: Other types of insurance as the Board determines to be necessary to fully protect the interests of the Owners.

(g) Insurance by Owner: Each Owner, at that Owner's sole cost and expense, shall obtain insurance coverage which the Owner considers necessary or desirable to protect that Owner and that Owner's Lot, Residence and personal property; provided, however, that no Owner shall be entitled to procure insurance coverage which decreases the amount which the Association, on behalf of all Owners and their Mortgagees, may realize under any insurance policy which the Association may have in effect at any time.

7.6.3 Annual Review: The Board shall review the adequacy of all insurance, including the amount of liability coverage and the amount of property damage coverage, at least once every year. At least once every three years, the review shall include a replacement cost appraisal of all insurable Common Area Improvements without respect to depreciation. The Board shall adjust the policies to provide the amounts and types of coverage and protection that are customarily carried by prudent owners of similar property in the area in which the Project is situated.

7.6.4 Annual Notice to Members: The Association shall provide a summary of the Association's property damage, general liability, earthquake and flood insurance policies as required by Section 1365 of the California Civil Code.

<p><b>ARTICLE VIII</b> <b>DEVELOPMENT RIGHTS</b></p>
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8.1 **LIMITATIONS OF RESTRICTIONS:** Declarant is undertaking the work of developing Lots and other Improvements within the Project. The completion of the development and the marketing, sale, lease, rental and/or other disposition of the Lots is essential to the establishment and welfare of the Subject Property and the Additional Property as a residential community. In order that the work may be completed and the Project established as a fully occupied residential community as rapidly as possible, nothing in this Declaration shall be interpreted to deny Declarant the rights set forth in this Article.

8.2 **RIGHTS OF ACCESS AND COMPLETION OF CONSTRUCTION:** Until five (5) years after all of the Additional Property has been annexed to the Project, Declarant, its contractors and subcontractors shall have the right to: (i) obtain reasonable access over and across the Common Area of the Project and/or do within any Lot owned or controlled by it whatever is reasonably necessary or advisable in connection with the completion of the Project; and (ii) erect, construct and use on the Common Area of the Project and/or within any Lot owned or controlled by it such structures as may be reasonably necessary for the conduct of its business to complete the work, establish the Project as a residential community and dispose of the Project in parcels by sale, lease, rental or otherwise. Each Owner acknowledges that: (a) the construction of the Project may occur over an extended period of time; (b) the Owner's quiet use and enjoyment of the Owner's Lot may be disturbed as a result of the noise, dust, vibrations and other nuisances associated with construction activities; and (c) the nuisances will continue until the completion of the construction of the entire Project.

8.3 **SIZE AND APPEARANCE OF PROJECT:** Declarant shall not be prevented from increasing or decreasing the number of Lots that may be annexed to the Project or from changing the exterior appearance of Residences or Common Area structures, the landscaping or any other matter directly or indirectly connected with the Project in any manner deemed desirable by Declarant, if Declarant obtains all governmental consents required by law.

8.4 **MARKETING RIGHTS:** Declarant shall have the right to: (i) construct, establish and use model homes, signs, banners, flags, inflatable balloons, blimps, sales offices, sales and construction trailers, leasing offices, rental offices, storage areas, parking lots and related facilities in any Lots owned or controlled by Declarant or Common Area within the Project as are necessary or reasonable, in the opinion of Declarant, for the sale, lease, rental or other disposition of the Lots; (ii) make reasonable use of the Common Area and facilities for the sale, lease, rental or other disposition of Lots; (iii) use any Lots owned or controlled by Declarant in accordance with any promotional programs established from time to time by Declarant; and (iv) conduct its business of disposing of Lots by sale, lease, rental or otherwise; provided, however, Declarant shall pay the Association reasonable rent for the use of any Common Area facilities, if Declarant's use of those Common Area facilities materially interferes with the full use and enjoyment of the Common Area facilities by Owners.

8.5 **TITLE RIGHTS:** This Declaration shall not be construed to constitute a limitation on Declarant's title rights to the Additional Property prior to its annexation, nor shall it impose any obligation on Declarant or any other person or entity to improve, develop or annex any portion of the Additional Property. This Declaration shall not be construed to limit the right of Declarant at any time prior to such an annexation to establish additional licenses, easements, reservations, restrictions and rights-of-way for itself, utility companies or others as reasonably necessary for the proper development and disposition of property owned by Declarant.

**ARTICLE IX  
RIGHTS OF MORTGAGEES**

9.1 **CONFLICT:** Notwithstanding any contrary provision in the Project Documents, the provisions of this Article shall control with respect to the rights and obligations of Mortgagees specified herein.

9.2 **INSPECTION OF BOOKS AND RECORDS:** Upon request, any Owner or First Mortgagee shall be entitled to inspect and copy the books, records and financial statements of the Association, the Project Documents and any amendments thereto during normal business hours.

9.3 **FINANCIAL STATEMENTS FOR MORTGAGEES:** If an audited financial statement for the immediately preceding fiscal year is available, the Association shall provide a copy to any Mortgagee who makes a written request for it. If an audited financial statement is not available and the Project contains fifty (50) or fewer Lots, any Mortgagee who desires to have an audited financial statement of the Association may cause an audited financial statement to be prepared at the Mortgagee's expense. If an audited financial statement is not available and the Project contains more than fifty (50) Lots, the Association, at its expense, shall prepare an audited financial statement for the immediately preceding fiscal year. The audited financial statement shall be available within one hundred twenty (120) days of the end of the Association's fiscal year. The Association shall provide a copy of any audited financial statement to any Mortgagee who makes a written request for it.

9.4 **MORTGAGE PROTECTION:** A breach of any of the conditions or the enforcement of any lien provisions contained in this Declaration shall not defeat or render invalid the lien of any First Mortgage made in good faith and for value as to any Lot in the Project; but all of the covenants, conditions and restrictions contained in this Declaration shall be binding upon and effective against any Owner of a Lot if the Lot is acquired by foreclosure, trustee's sale or otherwise.

**ARTICLE X  
AMENDMENT AND ENFORCEMENT**

10.1 **AMENDMENTS:**

10.1.1 **Approval:** Prior to the conveyance of the first Lot to an Owner other than a Declarant, any Project Document may be amended by Declarant alone. After the conveyance of the first Lot, the Project Documents may be amended if each of the following requirements is satisfied:

(a) The approval of each class of Members is obtained; provided, however, that no provision of this Declaration which provides for a vote of more than fifty-one percent (51%) may be amended by a vote less than the percentage specified in the Section to be amended.

(b) The provisions of Article VIII and this Section 10.1.1(b) may not be amended without the consent of Declarant until three years (3) after all of the Additional Property has been annexed to the Project.

(c) The provisions of Article XII, Section 11.1.3 and this Section 10.1.1(c) may not be amended without the consent of Declarant until all of the Additional Property has been annexed to the Project and all of the Lots in the Project owned by Declarant have been conveyed.

(d) The provisions of Section 10.3 and this Section 10.1.1(d) may not be amended nor shall other provisions be adopted that purport to supercede them without the consent of Declarant.



10.1.2 **Restatement**: After an amendment is duly approved in accordance with the preceding requirements, the Board may prepare a restatement of the Declaration and record the restatement of the Declaration which restates the entire text of the original document, with these exceptions: (a) changes incorporating all amendments approved by the Owners; (b) changes made to rearrange or delete the text for consistency with the approved amendments; and (c) changes made to delete material no longer legally effective or legally required. Upon recordation of the restatement, the restatement shall supersede the Declaration and all prior amendments in their entirety, without, however, affecting the priority of the Declaration in the chain of title to all properties that are subject to the Declaration, as established by the Declaration's initial date of recordation.

10.1.3 **Recordation**: Any amendment to this Declaration shall be effective upon the recordation in the Official Records of the County of either (a) a restatement approved by the Board as provided above which includes a statement executed by the President and Secretary of the Association which certifies that the required percentage of Members has approved all amendments made by the restatement and that the form of the restatement was duly approved by a resolution of the Board, or (b) an amending instrument which sets forth the terms of the amendment and includes a statement executed by the President and Secretary of the Association which certifies that the required percentage of Members has approved all amendments made by the amending instrument.

## 10.2 **ENFORCEMENT**:

10.2.1 **Rights to Enforce**: Subject to the provisions of Section 10.3, Declarant, the Association and/or any Owner shall have the power to enforce the provisions of the Project Documents in any manner provided by law or in equity and in any manner provided in this Declaration. In addition to instituting appropriate legal action, the Association may temporarily suspend an Owner's voting rights and/or levy a fine against an Owner in a standard amount to be determined by the Board from time to time. No determination of whether a violation has occurred may be made until Notice and Hearing has been provided to the Owner pursuant to the Bylaws. If legal action is instituted by the Association, any judgment rendered shall include all appropriate Additional Charges. Notwithstanding anything to the contrary contained in this Declaration, the Association has no power to cause a forfeiture or abridgement of an Owner's right to the full use and enjoyment of the Owner's Lot and Residence, including access thereto, due to the Owner's failure to comply with the provisions of the Project Documents unless the loss or forfeiture is the result of an order of a court or an order pursuant to a final and binding arbitration decision. The provisions of this Declaration are equitable servitudes, enforceable by any Owner or the Association against the Association or any other Owner or resident in the Project. Except as otherwise provided, Declarant, the Association or any Owner(s) has the right to enforce, in any manner permitted by law or in equity, any and all of the provisions of the Project Documents, including any decision made by the Association, upon the Owners, the Association or upon any property in the Project.

10.2.2 **Violation of Law**: The Association may treat any Owner's violation of any state, municipal or local law, ordinance or regulation, which creates a nuisance to the other Owners in the Project or to the Association, in the same manner as a violation of the Project Documents by making such violation subject to any or all of the enforcement procedures set forth in this Declaration, as long as the Association complies with the Notice and Hearing requirements.

10.2.3 **Remedies Cumulative**: Each remedy provided in this Declaration is cumulative and not exclusive.

10.2.4 **No Waiver**: The failure to enforce the provisions of any covenant, condition or restriction contained in this Declaration will not constitute a waiver of any right to enforce any such provisions or any other provisions of this Declaration.

10.3 **DISPUTES WITH DECLARANT**: For purposes of this Section 10.3 only, the term "Declarant" includes each of Declarant's partners, officers, agents, employees, affiliated parent and subsidiary companies, successors and assigns, design centers, contractors, subcontractors, design

professionals, engineers, inspectors and material suppliers who provided labor, services or materials to any portion of the Project.

10.3.1 Agreement to Arbitrate: Any claim, controversy, cause of action, liability or dispute ("Claims") between an Owner and Declarant (including construction defect claims of the kind described in California Civil Code Section 895 et seq. which have not been resolved in the non-adversarial procedures set forth in California Civil Code Sections 910 through 938) shall be resolved in accordance with any binding arbitration provisions set forth in the purchase agreement between the Owner and Declarant or, if Owner did not acquire its Lot from Owner, then in accordance with any binding arbitration provisions referenced in any document recorded before or concurrently with the grant deed by which Declarant initially conveyed the Lot. Any Claims between an Owner and the Association (including construction defect claims of the kind described in California Civil Code Section 895 et seq. which have not been resolved in the non-adversarial procedures set forth in California Civil Code Sections 910 through 938) shall be resolved by binding arbitration pursuant to the Federal Arbitration Act (Title 9 of the United States Code) as provided in this Section 10.3.

10.3.2 Rules: Claims shall be resolved in accordance with the construction industry arbitration rules of the AAA, the AAA's Supplementary Procedures for Consumer/Residential Construction Disputes (collectively, the "Rules") and the terms of this Declaration.

10.3.3 Preliminary Procedures: If state or federal law requires Owner or Declarant to take steps or procedures before commencing an action in court, then Owner or Declarant must take such steps or follow such procedures, as the case may be, before commencing the arbitration. For example, any claims or disputes pursuant to California Civil Code Section 895 et seq. as hereafter amended, may be subject to the non-adversarial procedures set forth in California Civil Code Sections 910 through 938, prior to the initiation of any arbitration or small claims court proceeding against Declarant. In addition, 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.

10.3.4 Arbitrator: The dispute shall be heard and determined by a single neutral arbitrator. The arbitrator shall have expertise in the area of the dispute. Selection of the arbitrator shall comply with California Code of Civil Procedure Sections 1297.121 and 1297.124. The arbitrator shall be selected according to the Rules, but in no event more than sixty (60) days from the date the administrator receives the claims. If the parties cannot mutually agree upon an arbitration agency, the dispute shall be referred to the local office of the AAA.

10.3.5 Joinder: The parties may join other parties as provided in the Rules except that Owner may not join Claims against Declarant with the Claims of any other Owners. The parties may include Declarant's subcontractors and suppliers in the arbitration to the extent they involve Owner's Claims.

10.3.6 Location: The venue of the arbitration may be in the Residence, if Owner agrees, but otherwise shall be held in the County unless the parties agree otherwise. The arbitration shall commence, be conducted and conclude promptly, in accordance with the Rules.

10.3.7 Award: The arbitrator is authorized to provide all recognized remedies available in law or equity for the Claims. The award of the arbitrator shall be in compliance with the statutes and case law of the state of California then in effect and shall be accompanied by detailed written findings of fact and conclusions of law. Any award rendered by the arbitrator may be confirmed, entered and enforced, in any court having jurisdiction.

10.3.8 Confidential: Except as may be required by law or for confirmation of the award, neither the parties nor the arbitrator may disclose the existence, content or results, of the arbitration hearing without the prior written consent of both parties.

10.3.9 Fees: Declarant will advance the fees and costs necessary to initiate and conduct the arbitration. If Declarant is the prevailing party in the arbitration, the arbitrator may, to the extent



permitted by law and the Rules, direct Owner to reimburse Declarant for up to one-half of the fees Declarant has advanced. Each party shall bear their own attorney fees and costs.

10.3.10 Small Claims Court: This Section shall not apply to any Claim that can be properly brought by Owner without legal counsel in small claims court. However, any appeal from the small claims jurisdiction to a higher court shall be governed by this Section.

10.3.11 Statute of Limitation: The arbitration must be filed within the applicable warranty period or within the statute of limitations applicable to the Claim.

10.3.12 Severability: If the arbitrator or any court determines that any provisions of this arbitration section are unenforceable for any reason, that provision shall be severed, and proceedings set forth in this Section shall be conducted under the remaining enforceable terms of this Section.

<p><b>ARTICLE XI</b></p> <p><b>ARCHITECTURAL AND LANDSCAPING CONTROL</b></p>
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**11.1 APPLICABILITY:**

11.1.1 Generally: Except as otherwise provided in this Declaration, proposals for Alterations (which includes all landscaping) are subject to the provisions of this Article and may not be made until approved in accordance with the provisions of this Article.

11.1.2 Exceptions: The provisions of this Declaration requiring architectural approvals do not apply to repainting or refinishing any Improvement in the same color, hue, intensity, tone, and shade or repairing or replacing any Improvement with the same materials. The provisions of this Declaration requiring architectural approvals include planting or removing landscaping; provided, however, the Rules may exempt landscaping or other limited Improvements within enclosed rear yards of Lots. The Architectural Standards may establish additional exceptions from time to time.

11.1.3 Declarant Exemption: The provisions of this Declaration requiring architectural approvals do not apply to the original construction of any Improvements on a Lot by Declarant, its agents, contractors or employees.

11.1.4 Relationship to Governmental Approvals: Proposals for Alterations may also be subject to review and approval by state or local governmental entities or agencies. Satisfying the provisions of this Declaration does not automatically satisfy any requirement for governmental approval, permitting or inspection. All approvals, permits and inspections which are required under local, state or federal law for any proposed Alteration are the responsibility of the Owner and must be obtained by the Owner in addition to the approvals required by this Declaration.

11.2 RESERVATION TO DECLARANT: Notwithstanding the power of the Board to appoint committees, Declarant hereby reserves to itself the right to appoint an Architectural Committee in accordance with the provisions of this Article. When there is no longer any Member appointed by Declarant on the Committee, the Board may decide to dissolve the Committee and undertake the Committee's responsibilities.

11.3 MEMBERS: The Architectural Committee ("Committee") shall consist of a chairman and two (2) additional members. Persons appointed to the Committee by the Board shall be Members of the Association. Persons appointed to the Committee by Declarant need not be Members of the Association. All members will serve until the expiration of the term for which they were appointed, if specified by the Board, or until they resign or are replaced. Declarant may appoint all of the original members of the Committee and all replacements until the first anniversary of the issuance of the Public Report for the first Phase of the Project. After the date which is one (1) year from the date of issuance of the Public Report

for the first Phase of the Project and until the conveyance of ninety percent (90%) of the total of all Lots in the Project and all Lots proposed for the Additional Property or the fifth (5<sup>th</sup>) anniversary of the issuance of the Public Report for the first Phase of the Project, whichever first occurs, the Board will have the power to appoint one member of the Committee and Declarant may appoint the remaining members of the Committee. Thereafter, the Board shall appoint all of the members of the Committee or dissolve the Committee as provided in Section 11.2, above. Upon the conveyance of one hundred percent (100%) of all Lots, the term of any remaining members appointed by Declarant will terminate and replacement members shall be appointed by the Board. The Board may appoint a replacement for any member of the Committee originally appointed by the Board who resigns or otherwise fails to act. Declarant may appoint a replacement for any member of the Committee originally appointed by Declarant who resigns or otherwise fails to act, unless such member resigns in order to enable the Board to appoint a member as required by this Section. If Declarant fails to appoint a replacement it is authorized to appoint within fifteen (15) days after receiving notice of the vacancy, the Board shall appoint the replacement.

#### 11.4 DUTIES AND POWERS:

11.4.1 Duties: The Committee shall review and approve, conditionally approve, or deny all plans, submittals, applications and requests made or tendered to it by Owners or their agents, pursuant to the provisions of this Declaration. In connection therewith, the Committee may investigate and consider the architecture, design, layout, landscaping, energy conservation measures, water conservation measures, fence detail, and other features of the proposed Improvements.

11.4.2 Powers: The Committee may adopt procedures for the transaction of business, scheduling of meetings, conduct of meetings and related matters. The Committee may also adopt criteria, consistent with the purpose and intent of this Declaration to be used in making its determination to approve, conditionally approve or deny any matter submitted to it for decision.

11.4.3 Consultants: With the consent of the Board, the Committee may hire and the Association shall pay consulting architects, landscape architects, urban designers, engineers, inspectors, and/or attorneys in order to advise and assist the Committee in performing its duties.

11.5 APPLICATION FOR APPROVAL OF IMPROVEMENTS: Any Owner, except Declarant and its designated agents, who wants to perform any Alteration for which approval is required shall notify the Committee in writing of the nature of the proposed work and shall furnish such information as may be required by the Architectural Standards or reasonably requested by the Committee.

11.6 BASIS FOR APPROVAL OF IMPROVEMENTS: As conditions precedent to approval of any matter submitted to it, the Committee must ordinarily be able to find that (i) the plans and specifications conform to this Declaration and to the Architectural Standards in effect at the time the proposal was submitted and (ii) the proposed Alteration will be aesthetically consistent with the other Improvements in the Project as to harmony of exterior design, landscaping, color schemes, exterior finishes, visibility with respect to existing structures and environment, and placement of structures with respect to topography and finished grade elevation.

11.7 FORM OF APPROVALS, CONDITIONAL APPROVALS AND DENIALS: All approvals, conditional approvals and denials must be in writing. Any denial of a proposal must state the reasons for the decision to be valid. Any proposal which has not been rejected in writing within sixty (60) days from the date of submission will be deemed approved.

11.8 WORK: Upon approval of the Committee, the Owner must diligently proceed with the commencement and completion of all work so approved. Completion of the work approved must occur within one (1) year following the approval of the work unless the Architectural Committee grants an extension. This Section shall not be interpreted to extend any other time period imposed by this Declaration. If the Owner fails to complete the work within the required time period, the Committee may notify the Owner in writing of the non-compliance and proceed in accordance with the provisions of Section 11.10, below.

11.9 **DETERMINATION OF COMPLIANCE**: Any work performed, whether or not the Owner obtained proper approvals, may be inspected and a determination of compliance made as follows:

11.9.1 **Notice of Completion**: Upon the completion of any work performed by an Owner for which approval was required, the Owner must give written notice of completion to the Committee.

11.9.2 **Inspection**: Within sixty (60) days after the Committee's receipt of the Owner's notice of completion, or, if the Owner fails to give a written notice of completion to the Committee within the completion period specified in Section 11.8, above, a designee of the Committee may inspect the work performed and determine whether it was performed and completed in substantial compliance with the approval granted. If the Committee finds that the work was not performed or completed in substantial compliance with the approval granted or if the Committee finds that the approval required was not obtained, the Committee shall notify the Owner in writing of the non-compliance. The notice shall specify the particulars of non-compliance and require the Owner to remedy the non-compliance.

11.10 **FAILURE TO REMEDY THE NON-COMPLIANCE**: If the Committee has determined that an Owner has not constructed an Improvement consistently with the specifications of the approval granted or within the time permitted for completion and if the Owner fails to remedy such non-compliance in accordance with the provisions of the notice of non-compliance, then after the expiration of thirty (30) days from the date of such notification, the Committee shall notify the Board, and the Board shall provide Notice and Hearing to consider the Owner's continuing non-compliance. At the Hearing, if the Board finds that there is no valid reason for the continuing non-compliance, the Board shall determine the estimated costs of correcting it. The Board shall then require the Owner to remedy or remove the same within a period of not more than forty-five (45) days from the date of the Board's determination. If the Owner does not comply with the Board's ruling within such period or within any extension of such period as the Board, in its discretion, may grant, the Board may either remove the non-complying Improvement or remedy the non-compliance. The costs of such action shall be assessed against the Owner as a Reimbursement Assessment.

11.11 **WAIVER**: Approval of any plans, drawings or specifications for any work proposed, or for any other matter requiring approval shall not be deemed to constitute a waiver of any right to deny approval of any similar plan, drawing, specification or matter subsequently submitted for approval.

11.12 **APPEAL OF DECISION OF COMMITTEE**: This Section does not apply if the Board has dissolved the Committee or during the period of time that a majority of the Members of the Architectural Committee have been appointed by Declarant. If the Owner who applied or who the Committee determined should have applied for approval of an Alteration on a Lot or Residence disputes the jurisdiction or powers of the Committee, the interpretation or application of an Architectural Standard or a decision of the Committee applicable to the denial or conditional approval of the Owner's application (collectively referred to as "decision"), that Owner may appeal such decision to the Board. The Board shall notify the Owner of the time, date and place of a hearing to review the decision of the Committee. The notice shall be given at least fifteen (15) days prior to the date set for the hearing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after it has been deposited in the United States mail, first class, postage prepaid, addressed to the Owner at the address given by the Owner to the Board for the purpose of service of notices or to the address of the Owner's Lot if no other address has been provided. After the hearing has taken place, the Board shall notify the Owner of its decision. The decision shall become effective not less than five (5) days after the date of the hearing. The determination of the Board shall be final.

11.13 **NO LIABILITY**: If members of the Architectural Committee have acted in good faith, neither the Committee nor any member will be liable to the Association or to any Owner for any damage, loss or prejudice suffered or claimed due to: (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective; (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications; (c) the development of any property within the Project; or (d) the execution and filing of any estoppel certificate, whether or not the facts therein are correct.

11.14 **EVIDENCE OF APPROVAL OR DISAPPROVAL**: After a determination of compliance is made pursuant to Section 11.9, the Board may issue a written Notice of Architectural Determination. The Notice of Architectural Determination must be executed by any two (2) Directors and shall certify that as of the date of the Notice either (i) the work completed complies with the provisions of this Declaration and the approval(s) issued by the Architectural Committee ("Notice of Approval") or (ii) the work completed does not comply with the provisions of this Declaration or the approval(s) issued by the Architectural Committee ("Notice of Disapproval"). A Notice of Disapproval must also identify the particulars of the non-compliance. Any successor in interest of the Owner will be entitled to rely on a Notice of Architectural Determination with respect to the matters set forth. Each Owner must disclose to the Owner's subsequent purchaser any Notice of Disapproval unless the Owner has a subsequently issued Notice of Approval which covers the same Alteration. The Notice of Architectural Determination will be conclusive as between the Association, the Architectural Committee, Declarant and all Owners and such persons deriving any interest through any of them. Any Owner may make a written request that the Board prepare and execute a Notice of Architectural Determination, and the Board must do so within sixty (60) days of its receipt of the request.

## **ARTICLE XII ANNEXATION**

12.1 **PROPERTY WHICH MAY BE ANNEXED**: Property may be added to the Project by annexation only in accordance with the provisions of this Article.

12.1.1 **Additional Property**: All or any portion of the Additional Property may be added to the Project as one or more subsequent Phases without the approval of the Association or any Owner if the annexation of the Phase is in substantial conformance with a plan of phased development approved by the Department of Real Estate of the State of California. The issuance of a Public Report for a Phase by the Department of Real Estate of the State of California shall be evidence that the annexation of that Phase was in substantial conformance with a plan of phased development.

12.1.2 **Other Property**: Property other than the Additional Property may be annexed to the Project only with the approval of two-thirds (2/3) of each class of Members.

12.2 **PROCEDURE FOR ANNEXATION**: In addition to any required approval by Members, a final subdivision map(s) or final parcel map(s) and a Declaration of Annexation for the property to be annexed must be recorded. The Declaration of Annexation must: (i) describe the portion of the Additional Property to be annexed; (ii) describe any Common Area within the Additional Property to be annexed; (iii) set forth the ownership of any such Common Area; and (iv) specify that all of the covenants, conditions and restrictions of this Declaration will apply to the annexed Additional Property in the same manner as if it were originally covered by this Declaration. The Declaration of Annexation must also provide that if and only if at the time of the first conveyance of a Lot in a Phase Declarant has rented or leased Lots in that Phase for a period of at least one (1) year after the most recent review of a budget for that Phase by the Department of Real Estate, Declarant shall pay to the Association the following amount: an amount equal to that portion of the Regular Assessment which would have been attributable to each Lot in that Phase and which would have been allocable to reserves for replacement and deferred maintenance of Common Area Improvements had Regular Assessments in that Phase commenced at the time of the most recent review of a budget for that Phase. Such amount, if any, must be paid to the Association prior to or concurrently with the first conveyance of a Lot in that Phase. The Declaration of Annexation may also (i) impose any additional covenants, conditions and restrictions on the Additional Property that are necessary to include the property in the Project and to reflect differences in nature, if any, of the Improvements to be constructed on the Additional Property and (ii) provide for a specified date on which assessments will commence for Lots in that Phase, provided that the date specified may not be later than the first day of the first month following the month in which the first Lot in that Phase is conveyed to an Owner. No Declaration of Annexation may diminish the covenants, conditions or restrictions established

by this Declaration or discriminate between the Owners in the Project. No Declaration of Annexation may alter or change the general common plan or scheme created by this Declaration or affect the provisions hereof as covenants running with the land or as equitable servitudes.

12.3 EFFECT OF ANNEXATION: After complying with the procedures for annexation and upon the commencement of assessments for Lots in the annexed Phase, Owners of Lots in the annexed Phase will be Members, will be subject to this Declaration and will be entitled to use all Common Area in the Project. The Association must reallocate the Regular Assessments so as to assess each Owner of a Lot in the Project for a proportionate share of the total expenses of the Project.

12.4 DEANNEXATION AND AMENDMENT: Declarant has the right, at its sole option, to (i) amend a Declaration of Annexation by executing and recording an amendment of the Declaration of Annexation provided that the amendment is consistent with this Article, or (ii) remove from the Project any property described in a recorded Declaration of Annexation for a Phase by executing and recording a rescission of the Declaration of Annexation, as long as all of the following conditions are satisfied at the time of the execution and recordation of the amendment or rescission: (a) no Lot in that Phase has been conveyed to an Owner; (b) no Common Area in that Phase has been conveyed to the Association; and (c) assessments have not commenced for any Lot in the annexed property.

<p><b>ARTICLE XIII</b> <b>MISCELLANEOUS PROVISIONS</b></p>
--

13.1 BINDING: This Declaration is for the benefit of and binding upon all Owners, their respective heirs, legatees, devisees, executors, administrators, guardians, conservators, successors, purchasers, tenants, encumbrancers, donees, grantees, mortgagees, lienors and assigns.

13.2 BONDED OBLIGATIONS: When Common Area Improvements have not been completed prior to the issuance of the original Public Report to which the Common Area is subject and the Association is the obligee under a bond or other arrangement ("Bond") to secure performance of the commitment of Declarant to complete the Improvements, the following provisions apply.

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

13.2.2 Improvements Not Complete: If a notice of completion has not been filed within sixty (60) days after the completion date specified for that Improvement in the planned construction statement appended to the Bond, the Board shall consider and vote on the question of action by the Association to enforce the obligations under the Bond. If the Association has given a written extension for the completion of any Common Area Improvements, the Board shall consider and vote whether to take action if a notice of completion has not been filed within thirty (30) days after the expiration of the most recent extension.

13.2.3 Action by Members: If the Board decides not to act or fails to initiate action to enforce bonded obligations, then upon receipt by the Board of a petition for a special meeting signed by Members entitled to cast five percent (5%) or more of the total number of votes which may be cast by the Members, the Board shall call a special meeting of the Members. If the Board has failed to initiate action, the Members shall determine whether they wish to initiate action. If the Board has decided not to initiate action, the Members shall determine whether to override the Board's decision. The meeting shall be held not less than thirty-five (35) nor more than forty-five (45) days after receipt of the petition by the Board. At the meeting, the approval of the Members, 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. The Board shall

thereafter implement the decision by initiating and pursuing appropriate action in the name of the Association.

13.2.4 **Release of Bond:** On satisfaction of Declarant's obligation to complete the Common Area Improvements, the Association shall acknowledge in writing that it approves the release of the Bond and shall execute any other documents as may be reasonably necessary to effect the release of the Bond. The Association may not condition its approval on the satisfaction of any condition other than completion of the Common Area Improvements. If the Association breaches any of the foregoing obligations, it will be liable to Declarant for any damages incurred thereby, including reasonable attorneys' fees. Any dispute between Declarant and the Association regarding the completion of Common Area Improvements shall be resolved in accordance with the provisions of the escrow instructions which accompany the Bond.

13.3 **CONFLICT:** To the extent there are conflicts or inconsistencies between a Maintenance Manual and this Declaration, the provision which requires the highest standard of Maintenance shall prevail. In the event of any conflicts or inconsistencies between this Declaration and the Bylaws or the Operating Rules, this Declaration shall prevail.

13.4 **CONSTRUCTION OF PROVISIONS:** The provisions of this Declaration are to be liberally construed to effect its purpose of creating a uniform plan for the development and operation of a planned development pursuant to the provisions of the Davis-Stirling Common Interest Development Act, Section 1350 et seq. of the California Civil Code.

13.5 **DOCUMENTS TO BE GIVEN TO PURCHASERS:** As soon as practical before transferring title to the Lot, the Owner shall give to the purchaser copies of all documents and statements required by California Civil Code Section 1368.

13.6 **EXHIBITS:** All exhibits attached to this Declaration are incorporated by this reference as though fully set forth herein.

13.7 **GENDER, NUMBER AND CAPTIONS:** As used herein, the singular includes the plural and masculine pronouns include feminine pronouns, where appropriate. The title and captions of each paragraph hereof are not a part thereof and shall not affect the construction or interpretation of any part hereof.

13.8 **REQUIRED ACTIONS OF ASSOCIATION:** The Association shall at all times take all reasonable actions necessary for the Association to comply with the terms of this Declaration or to otherwise carry out the intent of this Declaration.

13.9 **SEVERABILITY OF PROVISIONS:** The provisions hereof shall be deemed independent and severable, and the invalidity or unenforceability of any one provision will not affect the validity or enforceability of any other provision hereof.

13.10 **SUCCESSOR STATUTES:** Any reference in the Project Documents to a statute will be deemed a reference to any amended or successor statute.

13.11 **TERM OF DECLARATION:** This Declaration will continue for a term of fifty (50) years from its date of recordation. Thereafter, this Declaration will be automatically extended for successive periods of ten (10) years until two-thirds (2/3) of the Owners approve a termination of this Declaration.

IN WITNESS WHEREOF, the undersigned has executed this Declaration on the 5th day of May, 2004.

DECLARANT:

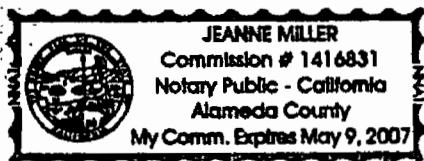
PULTE HOME CORPORATION,  
a Michigan corporation

By: *John L. Johnson*  
Name: John L. Johnson  
Title: Attorney in Fact

STATE OF CALIFORNIA }  
COUNTY OF Alameda } ss.

On May 5, 2004, before me, Jeanne Miller, Notary Public, personally appeared John L. Johnson, personally known to me (~~or proved to me on the basis of satisfactory evidence~~) to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(~~ies~~), and that by his/~~her/their~~ signature(~~s~~) on the instrument, the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



*Jeanne Miller*  
Notary Public



## EXHIBITS

### A Description of Additional Property (Section 2.2)

All of Tract 9534, excluding those lots shown in Section 1.1 herein, recorded February 4, 2004, in Book 767 of Maps, at Pages 42 through 45, inclusive, in the Official Records of the County of Santa Clara, State of California.



DOCUMENT: 17809689

Pages: 3

754559

RECORDED AT THE REQUEST OF:

First American Title

WHEN RECORDED RETURN TO:

Pulte Homes  
7031 Koll Center Parkway  
Suite 150  
Pleasanton, CA 94566



Fees	13.00
Taxes	
Copies	
AMT PAID	13.00

BRENDA DAVIS  
SANTA CLARA COUNTY RECORDER  
Recorded at the request of  
First American Title Company

RDE # 022  
5/25/2004  
3:51 PM

**DECLARATION OF ANNEXATION  
AND  
SUPPLEMENTAL RESTRICTIONS  
FOR  
BENTLEY PARK  
PHASE 2**

PULTE HOME CORPORATION, a Michigan corporation, ("Declarant"), hereby makes this Declaration of Annexation and Supplemental Restrictions for Bentley Park — Phase 2 ("Declaration of Annexation") on the terms and conditions herein stated.

RECITALS:

Declarant makes this Declaration of Annexation based on the following facts and intentions:

A. Declarant is the owner of all that certain real property located in the City of San Jose, County of Santa Clara, State of California, described as follows:

Lots 37 through 60, inclusive, and Lot B, as shown on the subdivision map of Tract No. 9534, filed for record on February 4, 2004, in Book 767 of Maps at Pages 42 through 45, inclusive, in the Official Records of the County of Santa Clara, State of California ("Map").

B. Pursuant to the provisions of the Declaration of Covenants, Conditions and Restrictions of Bentley Park recorded on May 24th, 2004, as Series No. 17803971, in the Official Records of the County of Santa Clara, State of California, Declarant desires to annex the Annexation Property to the Project.

C. All of the capitalized terms in this Declaration of Annexation shall have the same meanings given them in the Declaration unless this Declaration of Annexation provides otherwise.

Therefore, Declarant hereby declares the following:

1. ANNEXATION OF ANNEXATION PROPERTY:

1.1 This Declaration of Annexation is made in compliance with Article XII of the Declaration.

1.2 The Map affecting the Annexation Property has been approved by the City of San Jose and duly recorded in the County of Santa Clara.

1.3 Upon the recordation of this Declaration of Annexation in the Official Records of the County of Santa Clara, the annexation of the Annexation Property to the Project shall be deemed accomplished and all of the incidents of annexation, as set forth in the Declaration, shall be in full force and effect.

2. APPLICATION OF RESTRICTIONS: The terms and provisions of the covenants, conditions and restrictions of the Declaration shall apply to the Annexation Property as if the Annexation Property were originally covered by the Declaration as a part of the Project.

3. ASSESSMENTS: Upon the first day of the first month following the close of escrow for the sale of the first Lot in the Annexation Property or at such other earlier date as Declarant may determine, the assessments for the Project shall be reassessed so that all Lots within the Project, including those within the Annexation Property, are assessed for a proportionate share of the total Project expenses as provided in Article VI of the Declaration.

4. ASSOCIATION MEMBERSHIP: Upon the commencement of assessments for the Annexation Property, the Owners of Lots in the Annexation Property shall be entitled to participate in the affairs of the Association pursuant to Article VII of the Declaration.

5. LAND CLASSIFICATION: All land within the Annexation Property shall be divided into the following classifications:

5.1 COMMON AREA: Common Area, as defined in the Declaration, being Lot B, as shown on the Map.

5.2 LOTS: Lots, as defined in the Declaration, being Lots 37 through 60, inclusive, as shown on the Map.

6. RENTAL OF LOTS: If Declarant rents or leases Lots in the Annexation Property for a period of at least one (1) year after the most recent review of a budget for the Annexation Property by the Department of Real Estate, Declarant shall pay to the Association the following amount: an amount equal to that portion of the Regular Assessment which would have been attributable to each Lot in the Annexation Property and which would have been allocable to reserves for replacement and deferred maintenance of Common Area Improvements had Regular Assessments for the Annexation Property commenced at the time of the most recent review of a budget for the Annexation Property. Such amount, if any, shall be paid to the Association prior to or concurrently with the first conveyance of a Lot in the Annexation Property.

7. LIMITATIONS ON APPLICATION: Except to the extent that this Declaration of Annexation reallocates assessments for the Project, none of the provisions contained herein shall be construed in any event as diminishing any of the covenants, conditions or restrictions established by the

Declaration, nor shall any provision be construed to discriminate between any Owner(s) in the Annexation Property and any other Owner(s) within the Project except as otherwise expressly provided in the Declaration. No amendment, addition, change or deletion in this Declaration of Annexation shall be deemed to alter or change the general common plan and scheme created by the Declaration nor shall the same affect the provisions of the Declaration as covenants running with the land or as equitable servitudes, all of which shall be uniformly applicable to all portions of the Project including the Annexation Property.

8. DEANNEXATION AND AMENDMENT: Declarant has the right, at its sole option, to (i) amend this Declaration of Annexation by executing and recording an amendment of this Declaration of Annexation provided that the amendment is consistent with the Declaration, or (ii) remove from the Project any property described in this Declaration of Annexation by executing and recording a rescission of this Declaration of Annexation, as long as all of the following conditions are satisfied at the time of the execution and recordation of the amendment or rescission: (a) no Lot in the Annexation Property has been conveyed to an Owner; (b) no Common Area in the Annexation Property has been conveyed to the Association; and (c) assessments have not commenced for any Lot in the Annexation Property.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration of Annexation on this 5 day of May, 2004.

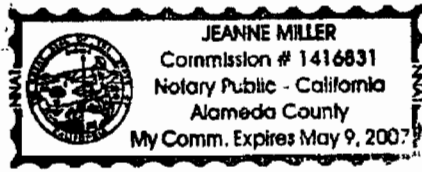
DECLARANT:

PULTE HOME CORPORATION,  
a Michigan corporation

By: [Signature]  
Name: John L. Johnson  
Title: Attorney in Fact

STATE OF CALIFORNIA  
COUNTY OF Alameda }

On May 5, 2004, before me, Jeanne Miller, Notary, personally appeared John L. Johnson, personally known to me (~~or proved to me on the basis of satisfactory evidence~~) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument, the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

[Signature]

754560  
**RECORDED AT THE REQUEST OF:**  
 First American Title  
**WHEN RECORDED RETURN TO:**

Pulte Homes  
 7031 Koll Center Parkway  
 Suite 150  
 Pleasanton, CA 94566

DOCUMENT: 17809690



Pages: 3

Fees..	13 00
Taxes	
Copies	
AMT PAID	13 00

BRENDA DAVIS  
 SANTA CLARA COUNTY RECORDER  
 Recorded at the request of  
 First American Title Company

RDE # 022  
 5/25/2004  
 3:51 PM

**DECLARATION OF ANNEXATION  
 AND  
 SUPPLEMENTAL RESTRICTIONS  
 FOR  
 BENTLEY PARK  
 PHASE 3**

PULTE HOME CORPORATION, a Michigan corporation, ("Declarant"), hereby makes this Declaration of Annexation and Supplemental Restrictions for Bentley Park — Phase 3 ("Declaration of Annexation") on the terms and conditions herein stated.

**RECITALS:**

Declarant makes this Declaration of Annexation based on the following facts and intentions:

A. Declarant is the owner of all that certain real property located in the City of San Jose, County of Santa Clara, State of California, described as follows:

Lots 13 through 36, inclusive, and Lot C, as shown on the subdivision map of Tract No. 9534, filed for record on February 4, 2004, in Book 767 of Maps at Pages 42 through 45, inclusive, in the Official Records of the County of Santa Clara, State of California ("Map").

B. Pursuant to the provisions of the Declaration of Covenants, Conditions and Restrictions of Bentley Park recorded on May 24th, 2004, as Series No. 17803971, in the Official Records of the County of Santa Clara, State of California, Declarant desires to annex the Annexation Property to the Project.

C. All of the capitalized terms in this Declaration of Annexation shall have the same meanings given them in the Declaration unless this Declaration of Annexation provides otherwise.

Therefore, Declarant hereby declares the following:

1. ANNEXATION OF ANNEXATION PROPERTY:

1.1 This Declaration of Annexation is made in compliance with Article XII of the Declaration.

1.2 The Map affecting the Annexation Property has been approved by the City of San Jose and duly recorded in the County of Santa Clara.

1.3 Upon the recordation of this Declaration of Annexation in the Official Records of the County of Santa Clara, the annexation of the Annexation Property to the Project shall be deemed accomplished and all of the incidents of annexation, as set forth in the Declaration, shall be in full force and effect.

2. APPLICATION OF RESTRICTIONS: The terms and provisions of the covenants, conditions and restrictions of the Declaration shall apply to the Annexation Property as if the Annexation Property were originally covered by the Declaration as a part of the Project.

3. ASSESSMENTS: Upon the first day of the first month following the close of escrow for the sale of the first Lot in the Annexation Property or at such other earlier date as Declarant may determine, the assessments for the Project shall be reassessed so that all Lots within the Project, including those within the Annexation Property, are assessed for a proportionate share of the total Project expenses as provided in Article VI of the Declaration.

4. ASSOCIATION MEMBERSHIP: Upon the commencement of assessments for the Annexation Property, the Owners of Lots in the Annexation Property shall be entitled to participate in the affairs of the Association pursuant to Article VII of the Declaration.

5. LAND CLASSIFICATION: All land within the Annexation Property shall be divided into the following classifications:

5.1 COMMON AREA: Common Area, as defined in the Declaration, being Lot C, as shown on the Map.

5.2 LOTS: Lots, as defined in the Declaration, being Lots 13 through 36, inclusive, as shown on the Map.

6. RENTAL OF LOTS: If Declarant rents or leases Lots in the Annexation Property for a period of at least one (1) year after the most recent review of a budget for the Annexation Property by the Department of Real Estate, Declarant shall pay to the Association the following amount: an amount equal to that portion of the Regular Assessment which would have been attributable to each Lot in the Annexation Property and which would have been allocable to reserves for replacement and deferred maintenance of Common Area Improvements had Regular Assessments for the Annexation Property commenced at the time of the most recent review of a budget for the Annexation Property. Such amount, if any, shall be paid to the Association prior to or concurrently with the first conveyance of a Lot in the Annexation Property.

7. LIMITATIONS ON APPLICATION: Except to the extent that this Declaration of Annexation reallocates assessments for the Project, none of the provisions contained herein shall be construed in any event as diminishing any of the covenants, conditions or restrictions established by the

Declaration, nor shall any provision be construed to discriminate between any Owner(s) in the Annexation Property and any other Owner(s) within the Project except as otherwise expressly provided in the Declaration. No amendment, addition, change or deletion in this Declaration of Annexation shall be deemed to alter or change the general common plan and scheme created by the Declaration nor shall the same affect the provisions of the Declaration as covenants running with the land or as equitable servitudes, all of which shall be uniformly applicable to all portions of the Project including the Annexation Property.

8. **DEANNEXATION AND AMENDMENT:** Declarant has the right, at its sole option, to (i) amend this Declaration of Annexation by executing and recording an amendment of this Declaration of Annexation provided that the amendment is consistent with the Declaration, or (ii) remove from the Project any property described in this Declaration of Annexation by executing and recording a rescission of this Declaration of Annexation, as long as all of the following conditions are satisfied at the time of the execution and recordation of the amendment or rescission: (a) no Lot in the Annexation Property has been conveyed to an Owner; (b) no Common Area in the Annexation Property has been conveyed to the Association; and (c) assessments have not commenced for any Lot in the Annexation Property.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration of Annexation on this 5th day of May, 2004.

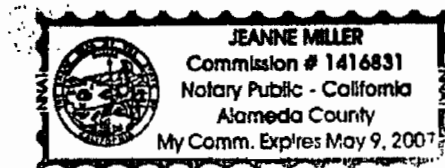
DECLARANT:

PULTE HOME CORPORATION,  
a Michigan corporation

By: *John L. Johnson*  
Name: JOHN L. JOHNSON  
Title: Attorney in Fact

STATE OF CALIFORNIA  
COUNTY OF Alameda }

On May 5, 2004, before me, Jeanne Miller, Notary, personally appeared John L. Johnson, personally known to me (or ~~proved to me on the basis of satisfactory evidence~~) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument, the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

*Jeanne Miller*