

DECLARATION OF
COVENANTS, CONDITIONS, AND RESTRICTIONS
RAINIER PARK P.R.D. OWNERS' ASSOCIATION

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DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
RAINIER PARK P.R.D. OWNERS' ASSOCIATION
LACEY, WASHINGTON

THIS DECLARATION is made this 29 day of
January, 1992, by Gemini Development Corporation, a
Washington corporation, its successors and assigns,
hereafter referred to as "Declarant."

R E C I T A L S

A. Declarant is the fee owner of the Initial Covered Property as such term is defined in the Article entitled "Definitions" of this Declaration. This Declaration is being imposed by Declarant upon the Initial Covered Property.

B. It is the desire and intention of the Declarant to create a planned development and to establish covenants, conditions and restrictions upon the Covered Property and each and every portion thereof, which will constitute a general scheme for the management of the Covered Property, and for the use, occupancy and enjoyment thereof, all for the purpose of enhancing and protecting the value, desirability and attractiveness of the Covered Property and enhancing the quality of life within the Covered Property.

C. It is desirable for the efficient management of the covered Property and the preservation of the value, desirability and attractiveness of the Covered Property to create a corporation to which should be delegated and assigned the powers of managing the Covered Property, maintaining and administering the Community Property, administering and enforcing these covenants, conditions and restrictions, collecting and disbursing funds pursuant to the assessment and charges hereinafter created and referred to, and to perform such other acts as shall generally benefit the Covered Property.

D. Rainier Park P.R.D. Owners' Association, a nonprofit corporation, has been incorporated under the laws of the State of Washington for the purpose of exercising the powers and functions aforesaid.

E. Declarant will hereafter hold and convey title to all of the Covered Property subject to certain protective covenants, conditions and restrictions hereafter set forth.

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NOW, THEREFORE, Declarant hereby covenants, agrees and declares that all of its interest as the same may from time to time appear in the Covered Property shall be held and conveyed subject to the following covenants, conditions, restrictions and easements which are hereby declared to be for the benefit of said interests in the covered Property, and the owners of said interests, their successors and assigns. These covenants, conditions, restrictions and easements shall run with said interests and shall be binding upon all parties having or acquiring any right or title in said interests or any part thereof, and shall inure to the benefit of each owner thereof and are imposed upon said interests and every part thereof as a servitude in favor of each and every of said interests as the dominant tenement or tenements.

ARTICLE I

DEFINITIONS

Unless the context clearly indicates otherwise, the following terms used in this Declaration are defined as follows:

Section 1.01. "Allowable Charges" shall mean and refer to the costs, late charges and interest in the amounts permitted which may be recovered by the Association when any Assessment becomes delinquent which, as of the date hereof, permits (i) reasonable costs incurred in collecting delinquent Assessments including reasonable attorneys' fees, (ii) a late charge not exceeding twelve percent (12%) of the delinquent Assessments or Ten Dollars (\$10.00), whichever is greater, and (iii) interest on all sums imposed in accordance with this Section, including the delinquent Assessment, reasonable costs of collection and late charges, at an annual percentage rate not to exceed twelve percent (12%) interest, commencing thirty (30) days after the Assessment becomes due.

Section 1.02. "Annexed Property" shall mean and refer to any property described in a Supplementary Declaration that has been recorded in the Official Records and has become a part of the Covered Property.

Section 1.03. "Architectural Committee" shall mean and refer to the committee or committees provided for in the Article hereof entitled "Architectural Control."

Section 1.04. "Articles" and "Bylaws" shall mean and refer to the Articles of Incorporation and Bylaws of the Association as the same may from time to time be duly amended.

Section 1.05. "Assessments" shall mean Capital Improvement Assessments, Reconstruction Assessments, Regular Assessments and Special Assessments, as each is defined in the Article entitled "Assessments" of this Declaration.

Section 1.06. "Association" shall mean and refer to Rainier Park P.R.D. Owners' Association, a nonprofit corporation incorporated under the laws of the State of Washington, its successors and assigns for the purpose of managing the Covered Property.

Section 1.07. "Association Management Documents" shall mean and refer to the Articles, Bylaws, Declaration and the Association Rules and any amendments to any of the foregoing.

Section 1.08. "Association Rules" shall mean rules adopted by the Association pursuant to the Section entitled "Association Rules" of the Article entitled "Discipline of Members" of the Bylaws.

Section 1.09. "Board" shall mean the Board of Directors of the Association.

Section 1.10. "Budget" shall mean an itemized written estimate of the income and Common Expenses of the Association prepared from time to time pursuant to the provisions of the Bylaws.

Section 1.11. "City" shall mean and refer to the City of Lacey, Washington, a municipal corporation of the State of Washington.

Section 1.12. "Common Expenses" shall mean and refer to the actual and estimated costs or amounts paid for:

(a) maintenance, management, operation, repair and replacement of the Community Property, and all other areas which are maintained by the Association pursuant to the provisions of this Declaration;

(b) unpaid Assessments;

(c) maintenance by the Association of areas within the public right-of-way of public streets in the vicinity of the Covered Property as provided in this Declaration or pursuant to the agreements with the City;

(d) management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and employees;

(e) utilities, trash pickup and disposal, gardening and other services which generally benefit and enhance the value and desirability of the Covered Property;

(f) fire, casualty, flood, liability, worker's compensation and other insurance required to be maintained by the Association pursuant to the Article entitled "Insurance" of this Declaration;

(g) Any other insurance obtained by the Association;

(h) premiums on all bonds required in this Declaration for the Association (except for premiums on fidelity bonds obtained by the management agent for its officers, employees and agents;

(i) reasonable reserves as deemed appropriate by the Board;

(j) taxes paid by the Association;

(k) discharge of any lien or encumbrance levied against the Community property or portions thereof;

(l) expenses incurred by the Architectural Committee or other committees established by the Board;

(m) security systems or services installed by or contracted for by the Association; and

(n) other expenses incurred by the Association for any reason whatsoever in connection with the Community Property, or the costs of any other item or items designated by the Association Management Documents, or in furtherance of the purposes of the Association or in the discharge of any duties or powers of the Association.

Section 1.13. "Community Property" shall mean all real property and the improvements thereon, owned or leased from time to time by the Association for the common use and enjoyment of the Members. The Community Property within the Initial Covered Property is described as:

Open Space Tracts "A thru K" and private streets Tract "AA" of Phase I, Rainier Park P.R.D., per map filed in Volume 26, Pages 5 inclusive, Records of Thurston County, Washington, File No. 9301290137.

Section 1.14. "County" shall mean and refer to the County of Thurston, State of Washington.

Section 1.15. "Covered Property" shall mean and refer to the initial Covered Property and, subsequent to the

annexation thereof pursuant to the Article of this Declaration entitled "Annexations," any Annexed Property.

Section 1.16. "Declarant" shall mean and refer to :

(a) Gemini Development Corporation, a Washington corporation, its successors and assigns, by merger, consolidation or by purchase of all or substantially all of its assets; and

(b) any person or entity, his or its successors and assigns, who purchases or ground leases from the Declarant named in subsection (a) of this Section five (5) or more residences or one or more unimproved lots or parcels shown on a map filed for record in the County, within the Development for the purposes of selling or leasing residences to the public and, if applicable, conveying Community Property to the Association, if such purchaser or lessee agrees in writing with Declarant to accept assignment of the Declarant's rights and duties as to the portion of the covered Property purchased and such writing is recorded against such portion purchased.

Section 1.17. "Development" shall mean and refer to the Covered Property.

Section 1.18. "Exhibit" shall mean and refer to any document so designated herein and attached hereto and each of such Exhibits is by this reference incorporated in this Declaration. If additional property is annexed pursuant to the Article entitled "Annexations" of the Declaration, exhibits similar to any Exhibit attached to this Declaration may be attached to such supplementary Declarations pertaining to the annexed property, and each of such exhibits shall thereby incorporated in this Declaration.

Section 1.19. "Federal Agencies" shall mean and refer to collectively one or more of the following agencies and the following letter designation for such agencies shall mean and refer to respectively the agency specified within the parentheses following such letter designation: FHA (Federal Housing Administration), FHLMC (Federal Home Loan Mortgage Corporation), FNMA (Federal National Mortgage Association), GNMA (Government National Mortgage Association, VA (Veterans Administration).

Section 1.20. "Final Plat Recording" shall refer to the recording of all executed documents by the City of Lacey, Washington, with the Auditor's Office, Thurston County, Washington.

Section 1.21. "Improvement" shall mean all:

(a) structures and appurtenances thereto of every type and kind, including but not limited to, buildings, out buildings, walkways, sprinkler and sewer pipes or lines, garages, carports, swimming pools and other recreational facilities, roads, driveways, parking areas, fences, screening walls, retaining walls, awnings, patio and balcony covers, stairs, decks, landscaping, hedges, slopes, windbreaks, the exterior surfaces of any visible structure, trees and shrubs, poles, signs, solar or windpowered energy systems or equipment, and water softener or heater or air conditioning and heating fixtures and equipment;

(b) the demolition or destruction by voluntary action of any structure or appurtenance thereto of every type and kind;

(c) the grading, excavation, filling, or similar disturbance to the surface of the land including, without limitation, change of grade, change of ground level, change of drainage pattern or change of stream bed;

(d) landscaping, planting, clearing, or removing of trees, shrubs, grass, or plants; and

(e) any change or alteration of any previously approved Improvement including any change of exterior appearance, color or texture.

Section 1.22. "Initial Covered Property" shall mean the real property in the City and County described as:

Open Space Tracts "A thru K", Private Street Tract "AA" and Lots 1 thru 41 inclusive, Rainier Park P.R.D., Phase I, per map filed in Volume ²⁶, Pages ⁵ inclusive, Records of Thurston County, Washington, File No. 9301290137.

Section 1.23. "Lot" shall mean and refer to a lot shown on a final map or a parcel shown on the parcel map filed for record in the County as such lot or parcel may be adjusted by Lot Line Adjustment recorded from time to time to the extent such lots or parcels are part of the Covered Property.

"Lot" shall further be designated as follows for the purposes of landscape, irrigation, fencing and landscape maintenance:

A Lot Lots 1 through 60 inclusive in Phase 1

- 1) front yard to be landscaped, with irrigation and maintained by Association.
- 2) rear yard to be fenced with six-foot (6') high cedar. Landscaping and maintenance by Owner.

Section 1.24. "Member shall mean and refer to every person or entity who qualifies for membership pursuant to the Article of this Declaration entitled "Association Membership," including Declarant so long as Declarant qualifies for membership pursuant to said Article.

Section 1.25. "Mortgage" and "Mortgagee" shall mean and refer respectively to any duly recorded mortgage or deed of trust encumbering a Residence and the holder of the mortgagee's or beneficiary's interest under any such Mortgage. "First Mortgage" and "First Mortgagee" shall mean and refer respectively to a Mortgage which has priority over all other Mortgages encumbering a specific Residence and the holder of any such First Mortgage.

The following additional terms describe Mortgagees or insurers or guarantors of Mortgages who are entitled to specific rights described in the Association Management Documents:

"Eligible Mortgage Holder" shall mean a First Mortgagee who is entitled to receive notification from the Association and has the right to vote or approve any proposed amendment or action that requires the consent of a percentage of Eligible Mortgage Holders. such Eligible Mortgage Holder shall be entitled to receive such notification and to vote on such matters only if such Eligible Mortgage Holder delivered to the board a prior written request therefore. Wherever the approval of all or a specified percentage of Eligible Mortgage Holders is required it shall be deemed to mean the vote or approval of all or a specified percentage only of those First Mortgagees who have become eligible Mortgage Holders by reason of having provided such notification to the Board. Wherever the vote or written approval of Eligible Mortgage Holders is required, it shall be deemed to mean such vote or approval of the percentage specified based on one (1) vote for each First Mortgage held.

"Requesting Mortgagee, Insurer or Guarantor" shall mean the Mortgagee, or insurer or guarantor of a Mortgage entitled to receive timely written notification from the Association of certain matters

as provided elsewhere in the Association Management Documents. To be entitled to receive such notification, the Mortgagee, insurer or guarantor must deliver to the Association a written request therefore stating the name and address of such Mortgagee, or insurer or guarantor and the address or other identification of the Residence encumbered by the Mortgage held, insured or guaranteed by such Mortgagee, or insurer or guarantor.

Section 1.26. "Official Records" shall mean the Official Records in the Office of the County Recorder of the County.

Section 1.27. "Owner" shall mean and refer to one or more persons or entities who are alone or collectively the record owner of a fee simple title to a residence, including Declarant, excluding those having any such interest merely as security for the performance of an obligation. If a Residence is leased by Declarant for a term in excess of ten (10) years and the lease or memorandum thereof is recorded, the lessee or transferee of the leasehold interest and not the Declarant shall be deemed to be the Owner. If fee title to a Residence is owned other than by Declarant, the Owner of the fee title and not the lessee of such Residence shall be deemed the Owner regardless of the term of the lease.

Section 1.28. "Phase" shall mean and refer to each increment of the Covered Property.

Section 1.29. "Residence" shall mean and refer to a Lot together with a residential dwelling unit, garages, structures and other improvements on the same Lot. Residence shall not include any Community Property.

Section 1.30. "Supplementary Declaration" shall mean a writing annexing additional property extending the plan of this Declaration of such additional property as provided in the Article entitled "Annexations" of this Declaration. Such writing which must be recorded in the Official Records of the County shall incorporate by reference all of the covenants, conditions, restrictions, easements and other provisions of this Declaration, and shall contain such other provision set forth in this Declaration as relating to Supplementary Declarations, and such complementary additions and modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the annexed property and as are not inconsistent with the plan of this Declaration.

Section 1.31. The "Tradename" of Beckonridge shall be used in Phases I and II of Rainier Park and is intended as a

marketing tool only with no effect on the "Legal Description" of either the Covered Property or the Initial Covered Property.

ARTICLE II

RIGHTS OF OWNERSHIP AND EASEMENTS

Section 2.01 - Amendment to Eliminate Easements. As long as Declarant is an Owner, any attempt to modify or eliminate this Section or any other easement or right reserved to Declarant in this Declaration shall require the prior written approval of Declarant.

Section 2.02 - Nature of Easements. Unless otherwise set forth herein, any easement reserved to Declarant herein shall be nonexclusive.

Section 2.03 - Development Rights and Easements Reserved to Declarant.

(a) Utilities. Easements over the (i) Community Property for the purpose of constructing, operating and maintaining thereon, therein or thereunder roads, streets, walks, driveways, parkways and park areas and (ii) the covered Property for the installation and maintenance of electric, telephone, cable television, water, gas, sanitary sewer lines and drainage facilities as are needed to service the Covered Property are hereby reserved by Declarant together with the right to grant and transfer the same; provided, however, such easements shall not unreasonably interfere with the use and enjoyment by the Members of their Residences of the Community Property. The Declarant shall repair any damage to and complete any restoration of the Covered Property caused or necessitated by such installation and maintenance within a reasonable time after the occurrence of such damage or need for restoration.

(b) Cable Television. There is hereby reserved to Declarant over the Covered Property, together with the right to grant and transfer the same, the right to emplace on, under or across the Covered Property transmission lines and other facilities for a community antenna television system and thereafter to own and convey such lines and facilities and the right to enter upon the Covered Property to service, maintain, repair, reconstruct and replace said lines or facilities; provided, however, that the exercise of such rights shall not unreasonably interfere with any Owner's reasonable use and enjoyment of his Residence.

(c) Construction and Sales. There is hereby reserved to Declarant, together with the right to grant and transfer the same to Declarant's sales agents and representatives and prospective purchasers of Residences, over the Community Property as the same may from time to time exist, easements for construction, display, maintenance, sales and exhibit purposes in connection with the erection and sale or lease of Residences within the Covered Property provided, however, that such use shall not be for a period beyond the sale by Declarant of all Residences within the Development and provided further that no such use by Declarant and others shall otherwise unreasonably restrict the Member in the reasonable use and enjoyment of the Covered Property. The Declarant shall repair any damage to and complete any restoration of the Covered Property caused or necessitated by such construction, display, maintenance, sales and exhibit purposes within a reasonable time after the occurrence of such damage or need for restoration.

(d) Public Bicycle and Pedestrian Trails. There is hereby reserved to Declarant, together with the right to grant and transfer the same, an easement for public ingress and egress over any bicycle, pedestrian, equestrian or other trails shown on any recorded final plat or parcel map covering the Covered Property or improvements.

(e) Utilities Shown on Plat Map. There is hereby reserved to Declarant, together with the right to grant and transfer the same, easements over the Covered Property for the installation and maintenance of electric, telephone, cable television, water, gas, sanitary sewer lines and drainage facilities as shown on any recorded final tract or parcel map covering the Covered Property.

(f) Declarant specifically reserves to itself an easement under, over and upon the private streets designated as Tract "AA" together with all Community Areas/Common Open Space areas designated as Tracts "A" thru "K" inclusive, for ingress, egress and utility purposes. This easement is for the development and or annexation of the property adjacent to the Covered Property on the south.

Section 2.04 - Certain Easements for Owners.

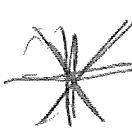
(a) Rights and Duties: Utilities. Wherever sanitary sewer house connections, water house connections, air conditioning connections or ducts, electricity, gas, telephone lines or drainage facilities are installed within the Covered Property, the Owners of any Residence served by said connections, lines or facilities shall have the right, and there is hereby reserved to Declarant,

together with the right to grant and transfer the same to said Owners, an easement to the full extent necessary for the full use and enjoyment of such portion of such connections which service his Residence, and to enter upon the Residences owned by others, or to have utility companies enter upon the Residences owned by others, in or upon which said connections, lines or facilities, or any portion thereof lie, to repair, replace and generally maintain said connections as and when the same may be necessary as set forth below, provided that such Owner or utility company shall promptly repair any damage to a Residence caused by such entry as promptly as possible after completion of work thereon. Entry into a Residence for emergency purposes may be immediate. Entry into a Residence for other than emergency repairs shall be made only after notice has been given to the Owner as required under the provisions of the Bylaws. Entry in either event shall be made with as little inconvenience as possible to the Owner.

(b) Ingress, Egress and Recreational Rights. Declarant hereby reserves to itself, its successors and assigns, and agrees that it will grant to all Owners together with the right of such Owners to grant and transfer same, nonexclusive appurtenant easements for ingress, egress, use and enjoyment (which includes, without limitation, the unrestricted right of ingress and egress to such Owner's Residence) on and upon the Community Property described in this Declaration or in any Community Property annexed pursuant to a Supplementary Declaration. These rights shall be subject to control and management by the Association as more particularly provided in the Section entitled "General Powers of the Association" of the Article entitled "General Powers and Duties of the Association" of this Declaration, and to all of the easements, covenants, conditions, restrictions and other provisions contained in this Declaration.

(c) Sideyard Easements Pertaining to All Lots. Declarant, together with the right to grant and transfer the same to the Owners of the Lots described as "Dominant Tenement" on Exhibit A, sideyard easements as shown on said Exhibit (the "Sideyard Easement"), which easements shall be appurtenant to the Lots described on said Exhibit as "Dominant Tenement," and which easements shall burden the Lots described on said Exhibit as "Servient Tenement." Said sideyard easements shall extend over the portion of the Servient Tenement lying between the boundary of the Dominant Tenement and the wall or fence constructed on the Servient Tenement by the Declarant in the construction of the initial Improvements upon the Lots as depicted on Exhibit A. The Sideyard Easement area contains the stairway and landing appurtenant to the structure located within the Dominant Tenement Lot as such stairway and

landing was originally constructed by the Declarant and as reconstructed in the event of any destruction and may also be used for the purposes of landscaping, drainage, the establishment of a garden area and purposes related thereto which would permit planters, patio slabs and deck flooring but would specifically prohibit any Improvements that would require a building permit or approval by the City. The Sideyard Easement shall be conveyed subject to the following provisions:

 (i) the Owner of the Dominant Tenement shall not attach any object to a wall or dwelling belonging to the Servient Tenement or disturb the grading of the easement area or otherwise act with respect to the easement area in any manner which would damage the Servient Tenement.

(ii) The Owner of the Servient Tenement shall have the right of surface drainage in, over, across and upon the easement area for water draining from the Servient Tenement and/or from any dwelling or structure thereon and shall have the further right to concentrate drainage from the Servient Tenement under or through the subsurface of the easement area except that such subterranean drainage shall only be permitted through drainage devices installed by Declarant in the original construction of the Residences, or, in the event of any damage or destruction, such drainage devices as repaired or reconstructed.

(iii) The owner of the Servient Tenement shall have the right at all reasonable times to enter upon the easement area, including the right to cross over the Dominant Tenement for such entry, in order to (1) maintain eaves and appurtenances thereto and the portions of any dwelling structure fronting the easement area as originally constructed or as constructed pursuant to the Article hereof entitled "Architectural Control" except that the owner of the Servient Tenement shall not have the right to modify the structure or the glass of any window constructed and installed by the Declarant (i.e. windows designed to remain closed cannot be modified to permit opening and clear glass cannot be substituted for opaque glass) or install or construct other windows in any dwelling or structural wall that fronts the easement area, (2) maintain and repair drainage facilities and systems servicing the Servient Tenement located upon or within the easement area. In exercising such right, the Owner of the Servient Tenement agrees to utilize reasonable care not to damage any landscaping or other items existing in the easement area; provided, however, the Owner of the Servient Tenement

shall not be responsible for damage to such landscaping or other items to the extent such damage could not be reasonable avoided in connection with such entry upon the easement area for authorized purposes.

(d) Drainage. There is hereby reserved to Declarant together with the right to grant and transfer same to Owners of adjacent Residences, an easement for sheet flow drainage from the roof of the dwelling structure onto such adjacent Lot except that no Owner will have the right to concentrate drainage onto any adjacent Lot by use of drainage devices.

Section 2.05 - Certain Easements for Association.

(a) Association Rights. There is hereby reserved to Declarant easements over the Covered Property, together with the right and obligation to grant and transfer the same to the Association, for the purpose of permitting the Association to discharge its obligations and powers as described in the Association Management Documents including without limitation a right of entry for such purpose as provided in the Section entitled "Powers and Duties" of the Article entitled "Powers, Duties and Limitations of the Board" of the Bylaws.

(b) Rights and Duties: Utilities. Wherever sanitary sewer house connections, water house connections, air conditioning connections or ducts, electricity, gas, telephone lines or drainage facilities are installed within the Covered Property, and said connections, lines or facilities serve the Community Property, the Association shall have the right, and there is hereby reserved to Declarant, together with the right to grant and transfer the same to the Association, an easement to the full extent necessary for the full use and enjoyment of such portion of such connections which service the Community Property and to enter upon the Residences owned by others, or to have utility companies enter upon the Residences owned by others, in or upon which said connections, lines or facilities, or any portion thereof lie, to repair, replace and generally maintain said connections as and when the same may be necessary as set forth below, provided the Association or utility company shall promptly repair any damage to a Residence caused by such entry as promptly as possible after completion of work thereon.

Section 2.06 - Support, Settlement and Encroachment as Pertains to All Lots. There is hereby reserved to Declarant, together with the right to grant and transfer the same, the following reciprocal easements for the purposes set forth below:

(a) An easement appurtenant to each Residence which is contiguous to another Residence or Community Property which Residence shall be the dominant tenement and the contiguous Residence or Community Property shall be the servient tenement.

(b) An easement appurtenant to the Community Property contiguous to a Residence, which Community Property shall be the dominant tenement and which continuous Residence shall be the servient tenement.

(c) It is provided, however, that in the event Community Property is the dominant tenement in an easement described in this Section, Declarant shall have the right to transfer said easement to the Association and not to Owners.

(d) Said easements shall be for the purposes of:

(i) engineering errors, errors in construction, reconstruction, repair, support, and accommodation of the natural settlement or shifting of any portion of the improvements and for the maintenance thereof;

(ii) minor encroachments by reason of a roof or eave overhang from a Residence and for the maintenance of such roof or eave overhang by the Owner of the dominant tenement for as long as such encroachments exist; and

(iii) encroachment of fireplaces, doorsteps, foundations, footings, garage doors, utilities and other appurtenances or fixtures and the maintenance thereof by the Owner of the dominant tenement, which, in the construction of the structures upon the dominant tenement or from any reconstruction or modifications of such structures, project beyond the external surface of the outer walls of such structures.

The rights and obligations of Owners shall not be altered in any way by said encroachments, settlement or shifting provided, however, that in no event shall an easement for encroachment be created in favor of an Owner if said encroachment occurred due to the willful misconduct of any Owner. In the event any portion of a structure on the Covered Property is partially or totally destroyed and then repaired or rebuilt, each Owner agrees that minor encroachments over adjoining Residences or Community Property shall be easements for the maintenance of said encroachments as long as they shall exist.

Section 2.07 - Delegation of Use. Any Member may delegate his right of enjoyment to the Community Property to the members of his family or his tenants who reside on his Residence, or to his guests, or to a vendee under a land sales contract subject to the rules and regulations adopted by the board. In the event and for so long as an owner delegates said rights of enjoyment to his tenants, or a vendee said Owner shall not be entitled to the use and enjoyment of any facilities or equipment belonging to or controlled by the Association for the use and enjoyment of its Members.

Section 2.08 - Waiver of Use. No Member may exempt himself from personal liability for Assessments duly levied by the Association, or release the residence owned by him from the liens, charges and other provisions of the Association Management Documents by waiver of the use and enjoyment of the Community Property or the abandonment of his Residence.

ARTICLE III

DUTIES AND POWERS OF THE ASSOCIATION

Section 3.01 - General Duties and Powers. In addition to the duties and powers enumerated in its Articles and Bylaws, or elsewhere provided for herein, and without limiting the generality thereof, the Association shall have the specific duties and powers specified in this Article.

Section 3.02 - General Duties of the Association. The Association through the Board shall have the duty and obligation to:

(a) maintain and otherwise manage the following:

(i) all easements and real property and all facilities, improvements and landscaping thereon in which the Association holds an interest, subject to the terms of any instrument transferring such interest to the Association;

(ii) all personal property in which the Association holds an interest, subject to the terms of any instrument transferring such interest to the Association; and

(iii) all property, real or personal, which the Association is obligated to repair or maintain pursuant to this Declaration, including, without limitation, the Article of this Declaration entitled "Repair and Maintenance."

(b) establish and maintain a working capital and contingency fund pursuant to the Section entitled "Reserves" of the Article entitled "Assessments" of this Declaration;

(c) accept and administer on behalf of and for the benefit of the Members any initial working capital fund or contingency reserve fund established by the Declarant, if any, pursuant to an agreement between the Declarant and any of the Federal Agencies;

(d) within ten (10) days of the delivery of written request, provide the Owner with (i) a copy of the Association Management Documents, (ii) a copy of the most recent financial statement of the Association, and (iii) a true statement in writing as to the amount of any unpaid Assessments and information relating to Allowable Charges which as of the date of the statement are or may be made a lien upon such Owner's Residence. A reasonable fee may be imposed for providing such documents and statement, but in no event shall the fee exceed the reasonable cost to prepare and reproduce the requested documents.

Section 3.03 - General Powers of the Association. Subject to limitations contained in the Section entitled "General Limitations and Restrictions on the Powers of the Board" of the Bylaws, and the Article entitled "Mortgagee Protection" of the Declaration, and elsewhere in the Association Management Documents, the Association, through the Board, shall have the power but not the obligation to:

(a) acquire interests in real or personal property for offices or other facilities that may be necessary or convenient for the management of the Covered Property, the administration of the affairs of the Association or for the benefit or enjoyment of the Members;

(b) limit the number of guests of Members and to limit the use of the recreational facilities, if any, on the Community Property by persons not in possession of a Residence but owning a portion of the interest in a Residence required for Membership;

(c) establish reasonable rules and regulations pertaining to the use of the Community Property;

(d) impose temporary suspensions of an Owner's rights or other appropriate discipline for failure to comply with the Association Management Documents provided that the Association has complied with the requirements for notice and hearing as set forth in the Section entitled "Notice and Hearing; Correction of Violation" of the Article entitled "Discipline of Members" of the Bylaws. Notwithstanding the foregoing, the Association shall not

have the right hereunder to suspend any Member's right to use any portion of the Covered Property necessary for such Member to gain access to his Residence and cannot be empowered to cause a forfeiture or abridgement of any Owner's right to the full use and enjoyment of his Residence on account of the failure by the Owner to comply with provisions of the Association Management Documents except by judgment of a court or a decision arising out of arbitration or on account of a foreclosure or sale under a power of sale for failure of the Owner to pay Assessments duly levied by the Association:

(e) borrow money as may be needed in connection with the discharge by the Association of its powers and duties and for the purpose of improving, replacing, restoring or expanding the Community Property or adding new Community Property and in aid thereof, to mortgage said property, provided that the Board has obtained the written approval of Eligible Mortgage Holders required under the Section entitled "Vote of Eligible Mortgage Holders and Owners" of the Article entitled "Mortgagee Protection" of this Declaration, has otherwise complied with all of the requirements of the Section entitled "General Limitations and Restrictions on the Powers of the Board" of the Article entitled "Powers, Duties and Limitations of the Board" of the Bylaws and provided further that the rights of the lender thereunder shall be subordinated to the rights of the Members. In the event of a default upon any such mortgage of the Community Property, the lender's rights thereunder shall be limited to a right, after taking possession of such properties, to charge admission and other fees as a condition to continued enjoyment by the Members and, if necessary, to open the enjoyment of the Community Property whereupon the possession of such properties shall be returned to the Association and all rights of the Members hereunder shall be fully restored;

(f) subject to the approval rights of Eligible Mortgage Holders and Owners pursuant to the Article hereof entitled "Mortgagee Protection," dedicate or transfer all or any part of the Community Property to any public agency, authority or utility or other entity;

(g) establish in cooperation with the City a special tax assessment district for the performance of all or a portion of the maintenance and other functions now within the responsibility of the Association, together with the right of the Association to convey, lease or otherwise transfer, subject to the provisions of this Section, all or any portion of the Community Property to said district;

(h) grant permits, licenses and easements on, over and under the Community Property for utilities, roads and other purposes not inconsistent with the intended use and

occupancy of the Covered Property and reasonably necessary or useful for the proper maintenance or operation of the Covered Property; provided that such permits, licenses and easements shall not unreasonably interfere with the right of any Owner to the use and enjoyment of his Residence and the Community Property;

(i) negotiate and enter into contracts with Mortgagees and mortgage insurers and guarantors as may be necessary and desirable to facilitate the availability of loans secured by Mortgages within the Covered Property.

Section 3.04 - Pledge of Assessment Rights. The Association shall have the power to pledge the right to exercise its Assessment powers in connection with obtaining funds to repay a debt of the Association provided, however, any such pledge shall require the prior affirmative vote or written assent of not less than sixty-seven percent (67%) of the voting power of the Association. Said power shall include, but not be limited to, the ability to make an assignment of Assessments which are then payable to or which will become payable to the Association, which assignment may be then presently effective but shall allow said Assessments to continue to be paid to and used by the Association as set forth in this Declaration, unless and until the Association shall default on the repayment of the debt which is secured by said assignment. The association may levy Special Assessments against the Members to obtain such funds. Upon the failure of any Member to pay said Special Assessment when due, the Association may exercise all rights, including, without limitation, the right to foreclose its lien pursuant to the Article hereof entitled "Enforcement of Assessment Liens". Without limiting the generality of the foregoing, any pledge of Assessment rights in excess of an amount equal to twenty-five percent (25%) of the total Regular Assessments collected by the Association in the then preceding fiscal year shall require the prior written approval of seventy-five percent (75%) of the Eligible Mortgage Holders. The levying of Special Assessments pursuant to this Section must also comply with the requirements of the Section entitled "Maximum Assessments" of the Article entitled "Assessments" of this Declaration.

Section 3.05 - Power of Attorney. In addition to any other rights, duties, obligations and power granted to the Association herein, and not in limitation of any such rights, duties, obligations and powers, each Owner appoints the Association as attorney-in-fact for the purpose of handling any losses or proceeds from condemnation, destruction or liquidation of all or any part of the Covered Property to the extent such functions

are the obligation of the Association as such obligations are more particularly described in the Association Management Documents. All such proceeds shall be retained in the general funds of the Association except as specifically provided in the Articles entitled "Destruction of Improvements" and "Eminent Domain" of this Declaration.

Section 3.06 - Association to Defend Certain Actions. In the event that a lawsuit is filed against all or substantially all of the Owners as Members, or a lien is levied against all or substantially all of the Covered Property, the Association, upon a majority vote of the Members named as defendants or those Members whose property is covered by the lien, shall defend such lawsuit or cause such lien to be removed. The costs of such litigation or removal shall be a Special Assessment against all Members joined as defendants in such lawsuit or whose property is covered by the lien, provided, however, in the event that an insurance carrier is obligated to provide such defense under a policy of insurance carried by the Association, the Association shall be relieved of the obligation to provide such defense. Nothing contained herein shall in any way limit the rights of any Member of Members to retain counsel of their choice to represent them in such lawsuit at their own expense. In the event that a Member so chooses, he shall not be relieved of liability for the Special Assessment provided for in this Section.

ARTICLE IV

ASSOCIATION MEMBERSHIP

Section 4.01 - Membership. Every Owner including the Declarant as long as Declarant continues to be an Owner by virtue of holding title to a Residence shall be a Member. The terms and provisions set forth in this Declaration, which are binding upon all Owners, are not exclusive, as Owners shall, in addition, be subject to the terms and provisions of the Articles, Bylaws and Association rules to the extent the provisions thereof are not in conflict with this Declaration. Membership of Owners shall be appurtenant to and may not be separated from the interest of such Owner in any Residence. Ownership of a Residence shall be the sole qualification for membership; provided, however, a Member's rights or privileges may be regulated or suspended for failure to comply with the Association Management Documents after notice and hearing as provided in the Section entitled "Notice and Hearing; Correction of Violation" of the Article entitled "Discipline of Members" of the Bylaws.

Section 4.02 - Transfer. The membership held by any Owner shall not be transferred, pledged or alienated in any way, except that such membership shall automatically be transferred to the transferee of the interest of an Owner required for membership. Any attempt to make a prohibited transfer is void and will not be reflected upon the books and records of the Association. The Association shall have the right to record the transfer upon the books of the Association without any further action or consent by the transferring Owner.

Section 4.03 - Plural Memberships. A Member may own more than one membership in the Association by complying with the qualifications of membership as to more than one (1) residence as set forth in this Article and the Section entitled "Owner" of the Article entitled "Definitions" of the Declaration.

ARTICLE V

MEMBERSHIP VOTING RIGHTS

Section 5.01 - Voting Rights. All voting rights shall be subject to the restrictions and limitations provided in the Association Management Documents and shall commence at the time specified in the Section entitled "Vesting of Voting Rights" of the Article entitled "Vesting of Voting Rights" of the Article entitled "Assessments" of this Declaration. Except as provided in the Article entitled "Enforcement of Bonded Obligations" of the Declaration, wherever a provision of the Association Management Documents requires the approval of Members other than Declarant, it shall be deemed to mean:

(a) as long as there is a Class B membership, the vote of the prescribed percentage of the total voting power of each class of membership; or

(b) after the Class B membership has been converted to Class A membership, the vote of the prescribed percentage of the total voting power of the Association as well as the vote of a prescribed percentage of the total voting power of Members other than Declarant.

Section 5.02 - Classes of Voting Membership. The Association shall have two (2) classes of voting membership.

Class A. Class A Members shall be all Owners with the exception of the Declarant until the Class B membership has been converted to Class A membership, and after such conversion all Owners shall be Class A

Members. Class A Members shall be entitled to one (1) vote for each Residence in which they hold the interest required for membership. When more than one person owns a portion of the interest in a Residence required for membership, each such person shall be a Member and the vote for such Residence shall be exercised as they among themselves determine, but in no event shall more than one (1) Class A vote be cast with respect to any Residence. The Association may, but shall not be obliged to, refuse to recognize the vote or written assent of any such co-Owner, except the vote or written assent of the co-Owner designated in a writing executed by all of such co-Owners and delivered to the Association.

Class B. The Class B Member shall be Declarant. The Class B Member shall be entitled to three (3) votes for each Residence in which it holds the interest required for membership; provided that Class B membership shall forever cease and be converted to Class A membership on the happening of any of the following events, whichever occurs earlier:

(a) When the total votes outstanding in the Class A membership equals the total votes outstanding in the Class B membership;

(b) January 1, 1997.

Annexation of adjacent properties must be recorded prior to the conversion date of Class B membership in order to retain Class B status of previous phases. All phases shall vote as a whole rather than as individual phases.

Section 5.03 - Approval of All Members. Unless elsewhere otherwise specifically provided in this Declaration, any provision of this Declaration which requires the vote or written assent of either the voting power of the Association or of Members other than Declarant shall be deemed satisfied by the following:

(a) The vote in person or by proxy of the specified percentage of all of the votes which are entitled to be cast. Said vote shall be at a meeting duly called and noticed pursuant to the provisions of the Bylaws dealing with annual or special meetings of the Members;

(b) Written consents signed by the specified percentage of all of the votes which are entitled to be cast. Said vote by written consent shall be solicited pursuant to the procedures provided in the Bylaws.

ARTICLE VI

ASSESSMENTS

Section 6.01 - Agreement to Pay. Subject to limitations contained in the Association Management Documents, the Association shall levy Assessments sufficient to perform its obligations under the Association Management Documents. Each Owner, including the Declarant to the extent Declarant is an Owner as defined herein, is deemed to covenant and agree to pay to the Association Assessments to be fixed, established and collected from time to time as provided in this Declaration.

Section 6.02 - Purpose of Assessments. The Assessments levied by the Association shall be used exclusively for the purposes of promoting the recreation, health, safety and welfare of the Members, the management of the Covered Property, enhancing the quality of life in the Covered Property, and the value of the Covered Property including, without limitation, the improvement and maintenance of the Covered Property, services and facilities devoted to this purpose and related to the use and enjoyment of the Community Property, or in furtherance of any other duty or power of the Association.

Section 6.03 - Cable Television Service Assessments. "Cable Television Service Assessment" shall mean a charge against an Owner and his Residence for cable television services. The Board may but shall not be obligated to contract with a cable television service company to provide service for the benefit of Members who subscribe for such service. In the event the Board makes such election, Cable Television Service Assessments shall be levied against owners who have subscribed with the Association for such service and shall be payable in full or in installments, and at the times designated by the Board.

Section 6.04 - Capital Improvement Assessments. "Capital Improvement Assessment" shall mean a charge against a Member and his Residence levied by the Association in any calendar year applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any installation, construction or replacement (other than due to destruction) of a described capital improvement upon the Community Property to the extent the same is not covered by the provisions affecting Reconstruction Assessments in the Article hereof entitled "Destruction of Improvements," including the necessary fixtures and personal property related thereto. All amounts collected as Capital Improvement Assessments may only be used for capital improvements and shall be deposited by the Board in a separate bank account to be held in trust for such

purposes. Said funds shall not be comingled with any other funds of the Association and shall be deemed a contribution to the capital account of the Association by Members.

Section 6.05 - Reconstruction Assessments.

"Reconstruction Assessment" shall mean a charge against each Member and his Residence representing a portion of the cost to the Association for the repair, replacement or reconstruction of any portion or portions of the Community Property pursuant to the provisions of the Article entitled "Destruction of Improvements" of this Declaration.

Section 6.06 - Regular Assessments.

(a) "Regular Assessment" shall mean the charge levied against each Member and his Residence representing such Member's proportionate share of the estimated Common Expenses for the forthcoming fiscal year. Prior to the beginning of each fiscal year, as more particularly provided in the Bylaws, the Board shall distribute to each Member a pro forma operating statement or budget for the upcoming fiscal year which shall estimate the total Common Expenses to be incurred for such fiscal year. The Board shall at that time determine the amount of the Regular Assessment and the installments thereof, to be paid by each Member. Each such installment shall be due and payable on a date established by the Board in the written notice sent to Members.

(b) In the event the Board shall determine that the estimate of total charges for the current year is, or will become, inadequate to meet all Common Expenses for any reason, it shall then immediately determine the approximate amount of such inadequacy, issue a supplemental estimate of the Common Expenses and to the extent permitted in the Section entitled "Maximum Assessments" of this Article, determine the revised amount of the Regular Assessment and installments thereof, if applicable, against each Member, and the date or dates when due.

(c) The Regular Assessment levied against each Member for the initial fiscal year of the Association shall be Fifty-Five Dollars (\$55.00) per lot per month from the date of recording of Final Plat for each phase in the development.

(d) A separate capital improvement account shall be maintained and funded as provided herein. A special assessment equaling two months of the total annual assessment (1/6 of the annual assessment), shall be assessed and paid upon any conveyance of a lot.

Section 6.07 - Special Assessments. "Special Assessment" shall mean a charge against a particular Owner and his Residence, directly attributable to the Owner for charges and costs that are designated as a Special Assessment in the Association Management Documents, and include, without limitation, the following:

(a) cost of any action or undertaking on behalf of the Association which is not specifically covered under Regular Assessments, Capital Improvement Assessments, Reconstruction Assessments, or Cable Television Service Assessments;

(b) any charge designated as a Special Assessment in the Association Management Documents;

(c) charges imposed against any Owner consisting of reasonable late payment penalties for delinquent Assessments and/or charges to reimburse the Association for the loss of interest if permitted by law and for costs reasonably incurred, including attorney's fees, in its efforts to collect delinquent Assessments;

(d) charges against any Member to reimburse the Association for costs incurred in bringing such Member and his Residence into compliance with the provisions of the Association Management Documents, which Special Assessments may be levied upon the vote of the Board after notice and an opportunity for a hearing which satisfy the requirements as set forth in the Section entitled "Notice and Hearing; Correction of Violation" of the Article entitled "Discipline of Members" of the Bylaws;

(e) in the event the Association undertakes to provide materials or services which benefit individual Residences and which can be accepted or not by individual Owners, such Owners in accepting such materials or services agree that the costs thereof shall be a Special Assessment.

Section 6.08 - Maximum Assessments. The Board shall not impose Regular Assessments or any other Assessment to defray any act or undertaking of the Association that is more than ten percent (10%) greater than the Regular Assessment for the Association's preceding fiscal year or impose any other Assessment to defray any act or undertaking of the Association which in the aggregate for the fiscal year exceeds five percent (5%) of the estimated Common Expenses of the Association for the said fiscal year without the vote or written assent of a majority of the voting power of the Association cast at a meeting or election of the Association. The provisions of this Section do not limit Assessment increases for the following purposes:

(a) the maintenance and repair of the Community Property or other areas which the Association is obligated to maintain or repair, including but not limited to, the payment of insurance premiums, the payment of utility bills, the costs incurred in maintaining or repairing structures or Improvements, and funding reserves.

Section 6.09 - Assessment Allocation. Assessment shall be fixed at an equal amount for each Residence for Regular Assessments, Capital Improvement Assessments, Reconstruction Assessments and Special Assessments levied against all Residences for an act or undertaking of the Association not covered under Regular Assessment and Capital Improvement Assessments.

The provisions of this Section do not apply to an assessment levied by the Board to reimburse the Association for costs incurred in bringing the Member and his Residence into compliance with the provisions of the Association Management Documents but any such Assessment shall be subject to the provisions of the Section entitled "Costs and Charges Not Subject to Lien" of this Article.

All Assessments may be due at times selected by the Board.

Section 6.10 - Costs and Charges not Subject to Lien. A monetary penalty imposed by the Association as a disciplinary measure for failure of a Member to comply with the Association Management Documents or as a means of reimbursing the Association for costs uncured by the Association in the repair of damage to Community Property for which the Member was allegedly responsible or in bringing the Member and his Residence into compliance with the Association Management Documents may not be characterized nor treated as an Assessment which may become a lien against such Member's Residence enforceable in accordance with the Section entitled "Foreclosure Sale" of the article entitled "Enforcement of Assessment Liens" of the Declaration. Nothing in this Declaration, however, shall prevent the Association from bringing an action at law or in equity against a Member to collect any monetary penalty imposed by the Association for any of the foregoing reasons.

Section 6.11 - Certificate of Payment. The Association shall, upon demand, furnish to any Member liable for Assessments a certificate in writing signed by an officer or authorized agent of the Association setting forth whether the Assessments on such Owner's Residence have been paid, and the amount of delinquency, if any. A reasonable charge may be collected by the Board for the issuance of these certificates. Such certificates shall be conclusive evidence of payment of any Assessment therein stated to have been paid.