

A dark teal horizontal bar with a grid pattern. The text "THE CASCADES" is written in a light teal, serif font across the center. On either side of the text is a small, white, square icon with a cross-like pattern inside. The bar is bordered by thin, light teal lines at the top and bottom.

THE CASCADES

an  
H.C. Elliott Community

**DECLARATION OF  
COVENANTS, CONDITIONS  
AND RESTRICTIONS  
OF  
CASCADES RESIDENTIAL OWNERS  
ASSOCIATION  
(PLANNED DEVELOPMENT)**

**TABLE OF CONTENTS**

**OF**

**DECLARATION OF COVENANTS, CONDITIONS**

**AND RESTRICTIONS**

	Page
RECITALS .....	1
DECLARATION .....	1
1. DEFINITIONS .....	2
1.1. Architectural Committee Defined .....	2
1.2. Articles Defined .....	2
1.3. Association Defined .....	2
1.4. Association Rules Defined .....	2
1.5. Board of Directors or Board Defined .....	2
1.6. Bylaws Defined .....	2
1.7. Common Area Defined .....	2
1.8. County Defined .....	2
1.9. Declarant Defined .....	2
1.10. Declaration Defined .....	2
1.11. Member Defined .....	2
1.12. Mortgage or Mortgagee Defined .....	3
1.13. Owner or Ownership Defined .....	3
1.14. Lot Defined .....	3
1.15. Project or Development Defined .....	3
1.16. Property Defined .....	3
1.17. Subdivision Map Defined .....	3
2. EASEMENT .....	3
2.1. Owners' Nonexclusive Easements; Association Rights .....	3
2.2. Entry and Use Rights .....	4
2.3. Owners' and Association's Easements for Encroachments .....	5
2.4. Power to Grant Easements .....	6
2.5. Other Easements .....	6
2.6. Delegation of Use .....	6
2.7. Discipline of Tenants .....	7
2.8. Association Easement for Front Yard Maintenance .....	8

3.	COVENANTS AND USE RESTRICTIONS .....	8
3.1.	General Classification and Use.....	8
3.2.	Other Improvements Prohibited .....	8
3.3.	Other Improvements and Uses .....	8
3.4.	Residential Use .....	9
3.5.	Leasing .....	9
3.6.	Maintenance of Lots .....	9
3.7.	Oil Drilling .....	9
3.8.	Offensive Conduct; Nuisance .....	10
3.9.	Parking Restrictions; Use of Garages .....	10
3.10.	Signs .....	10
3.11.	Antennae and Clothesline .....	10
3.12.	Fences and Screens .....	11
3.13.	Gas or Liquid Storage .....	11
3.14.	Diseased Plants .....	11
3.15.	Animals .....	11
3.16.	Temporary Structures .....	12
3.17.	Trash Disposal .....	12
3.18.	Outside Laundering and Drying.....	12
3.19.	Common Area Landscaping.....	12
3.20.	Division of Lots .....	12
3.21.	Structure Alterations .....	13
3.22.	Compliance With Law and Association's Insurance Requirements .....	13
3.23.	Indemnification .....	13
3.24.	Segregated Real Property Taxes.....	13
3.25.	Unsegregated Real Property Taxes.....	13
3.26.	Future Construction .....	14
3.27.	Authorization to Seek Legal Remedies for Noncompliance.....	14
4.	DUTIES AND POWERS OF ASSOCIATION .....	14
4.1.	Incorporation.....	14
4.2.	Action Through Designated Officers .....	14
4.3.	Powers of Association .....	15
4.4.	Assessment Rights.....	15
4.5.	Association Rules .....	15
4.6.	Right to Impose Sanctions .....	15
4.7.	Delegation of Powers .....	16
4.8.	Duties of Association .....	17
4.9.	Common Area Maintenance.....	17
4.10.	Contracting for Goods and Services.....	18
4.11.	Payment of Taxes and Assessments .....	18
4.12.	Utilities .....	18
4.13.	Financial Information and Governing Instruments .....	18



4.14.	Other Duties .....	20
4.15.	Limitations on Authority .....	20
4.16.	Limitation on Liability .....	21
4.17.	Inspection of Books and Records .....	21
4.18.	Waiver of Claims .....	22
5.	MEMBERSHIP AND VOTING RIGHTS .....	22
5.1.	Membership in the Association.....	22
5.2.	Majority Approval Required.....	22
5.3.	Class of Membership Voting .....	22
5.4.	Joint Ownership Votes .....	23
5.5.	Cumulative Voting.....	23
6.	ASSESSMENTS .....	24
6.1.	Agreement to Pay .....	24
6.2.	Assessments as Personal Obligation of Owners .....	24
6.3.	Purpose of Assessment .....	24
6.4.	Regular Annual Assessment .....	25
6.5.	Special Assessments.....	26
6.6.	Restriction on Special Assessments.....	27
6.7.	Rate of Assessment.....	27
6.8.	Assessment Period .....	28
6.9.	Due Dates, Late Charges and Interest .....	28
6.10.	Estoppel Certificate .....	29
6.11.	Enforcement of Assessment.....	29
6.12.	Creation of Assessment Lien .....	29
6.13.	Foreclosure Under Assessment Lien .....	31
7.	CONDEMNATION .....	30
7.1.	Sale by Consent .....	30
7.2.	Distribution of Proceeds.....	31
7.3.	Distribution of Condemnation Awards .....	31
8.	MORTGAGEE PROTECTION .....	31
8.1.	Subordination of Assessment Lien .....	31
8.2.	Control of Amendment or Revocation of Project Documents.....	32
8.3.	Restrictions on Certain Changes .....	33
8.4.	Mortgagee's Right to Examine Books and Records .....	33
8.5.	Priority in Distribution of Insurance and Condemnation Proceeds .....	34
8.6.	Default Notice Requirement .....	34
8.7.	Payment By Mortgagees .....	34
8.8.	Lien Not Invalidated .....	34
8.9.	Cure of Breach By Mortgagee .....	34

8.10.	Status of Loan to Facilitate Resale . . . . .	35
8.11.	Right to Attend Meetings . . . . .	35
8.12.	Right of First Refusal Inapplicable to Mortgagee . . . . .	35
8.13.	Limitation on Term of Management Contract . . . . .	35
9.	ARCHITECTURAL CONTROL . . . . .	36
9.1.	Architectural Approval . . . . .	36
9.2.	Appointment of Architectural Committee . . . . .	36
10.	AMENDMENT OF DECLARATION . . . . .	37
10.1.	Amendment Before Close of First Sale . . . . .	37
10.2.	Amendment After Close of First Sale . . . . .	37
10.3.	Conformance with Mortgagee Requirements . . . . .	37
11.	GENERAL PROVISIONS . . . . .	38
11.1.	Headings . . . . .	38
11.2.	Severability of Provisions . . . . .	38
11.3.	Cumulative Remedies . . . . .	38
11.4.	Violations as Nuisance . . . . .	38
11.5.	No Discriminatory Restrictions . . . . .	38
11.6.	Owner's Access to Books . . . . .	38
11.7.	Construction of Provisions . . . . .	39
11.8.	Notification of Sale . . . . .	39
11.9.	Number and Gender . . . . .	39
11.10.	Incorporation of Exhibits . . . . .	39
11.11.	Easements Reserved and Granted . . . . .	39
11.12.	Binding Effect . . . . .	39
11.13.	Term of Declaration . . . . .	40
11.14.	Special Provisions Relating to Enforcement of Declarant's Obligation to Complete Common Area Improvements . . . . .	40

**DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTION  
OF  
CASCADES RESIDENTIAL OWNERS ASSOCIATION  
(PLANNED DEVELOPMENT)**

THIS DECLARATION of Covenants, Conditions and Restrictions is made this 1st day of February, 1989, by H.C. ELLIOTT, INC., a California Corporation ("Declarant").

**RECITALS**

Declarant is the owner of certain real property (the "Property") located in the City of Folsom, County of Sacramento, described in Exhibit "A" attached hereto and incorporated herein by reference.

Declarant has established a general plan, set forth in this Declaration, for the subdivision, improvement and development of the real property, and each and every lot and development of the real property, and each and every lot and parcel on the real property, and any additional real property that may be annexed to this Declaration, and desires to secure the harmonious and uniform development of the real property in accordance with the plan.

**DECLARATION**

Declarant declares that the Property, and each and every Lot and parcel on it, is, and shall be, held, conveyed, hypothecated, encumbered, leased, rented, used and occupied subject to the following limitations, reservations, covenants, conditions, servitudes, liens and charges, all of which are declared and agreed to be in furtherance of and pursuant to a general plan for the development of the Property, and all of which are declared and agreed to be for the purpose of enhancing, maintaining and protecting the value and attractiveness of the Property. These provisions are imposed upon Declarant, the Owners and the Association and are for the benefit of all Parcels and the Common Area, and shall bind the owners and the Association. These provisions shall be a burden upon and a benefit to not only the original Owner of each Lot and the Association but also to their successors and assigns. All covenants are intended as and are declared to be covenants running with the land as well as equitable servitudes upon the land.

## 1. DEFINITIONS

1.1. **Architectural Committee Defined.** "Architectural Committee" means the committee of persons appointed and acting pursuant to Article 9.

1.2. **Articles Defined.** "Articles" means the Association's Articles of Incorporation attached hereto as Exhibit "B," and any amendments.

1.3. **Association Defined.** "Association" means the Cascades Residential Owners Association, a California Nonprofit Mutual Benefit Corporation, and its successors and assigns. The mailing address of the Association is Post Office Box 6336, Folsom, California 95630-9998, or at such other address as may be designated by the Board.

1.4. **Association Rules Defined.** "Association Rules" means the rules and regulations regulating the use and enjoyment of the Common Area adopted by the Board from time to time.

1.5. **Board of Directors or Board Defined.** "Board of Directors" or "Board" means the Board of Directors of the Association.

1.6. **Bylaws Defined.** "Bylaws" means the Association's Bylaws attached hereto as Exhibit "C," and any amendments.

1.7. **Common Area Defined.** "Common Area" means all that portion of the Property which is owned or controlled or maintained by the Association for the benefit of all the Owners within the Project. The Common Area to be owned by the Association at the time of the first conveyance of any Lot within the Property is described in Exhibit "D" attached hereto and incorporated herein by this reference. In addition to Common Area described in Exhibit "D," the Association shall maintain street lights, subdivision and street signs, and front yard areas as that term is defined in Section 2.8.

1.8 **County Defined.** "County" means the County of Sacramento, California, the County in which the Project is located.

1.9 **Declarant Defined.** "Declarant" means H. C. ELLIOTT, INC., its successors and assigns, and a mortgagee acquiring Declarant's interest in the Project by foreclosure or by deed in lieu of foreclosure.

1.10. **Declaration Defined.** "Declaration" means this Declaration of Covenants, Conditions and Restrictions and its amendments, modifications, or supplements.

1.11 **Member Defined.** "Member" means every person or entity holding a membership in the Association.

1.12. **Mortgage or Mortgagee Defined.** "Mortgage" means a mortgage or deed of trust encumbering a Lot or other portion of the Project. A "Mortgagee" shall include the beneficiary under a deed of trust and any guarantor or insurer of a Mortgage. An "institutional" Mortgagee is a Mortgagee that is a bank or savings and loan association or Mortgage company or other entity chartered or licensed under federal or state laws whose principal business is lending money on the security of real property or investing in such loans, or any insurance company or any federal or state agency or instrumentality, including, without limitation, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation. A "first" Mortgage, or "first" Mortgagee is one having priority as to all other Mortgages or holders of Mortgages encumbering the same Lot or other portions of the Project.

1.13. **Owner or Ownership defined.** "Owner" means each person or entity holding a record ownership interest in a Lot, including Declarant, and contract seller under recorded contracts of sale. "Owner" shall also mean member of the Association, and "Ownership" shall include membership in the Association. "Owner" shall not include persons or entities who hold an interest in a Lot merely as security for the performance of an obligation.

1.14. **Lot Defined.** "Lot" means any of the separate plots of land shown on the Subdivision Map and any other plot of land designated as "Lot" in any recorded Supplement to the Declaration.

1.15. **Project or Development Defined.** "Project" or "Development" means the Property and the improvements on the Property.

1.16. **Property Defined.** "Property" means the real property described in the Recitals and such additions as may hereafter be brought within the jurisdiction of the Association.

1.17. **Subdivision Map Defined.** "Subdivision Map" means the recorded Final Map for Cascades recorded in Book 188 of Maps, Map No. 1, of the official records of Sacramento county, California, and any recorded map for any real property hereafter brought within the jurisdiction of the Association.

## **2. EASEMENTS**

### **2.1. Owners' Nonexclusive Easements; Association Rights.**

Every Owner has a nonexclusive easement of use, enjoyment, ingress, egress, and support in, to, and throughout the Common Area and any improvements or facilities on these areas.



Each such nonexclusive easement shall be appurtenant to the respective Lot and shall pass with the title to the Lot. Nonexclusive easements shall be subject to the following rights and restrictions:

(i) Subject to the provisions of Section 8.3, the right of the Association to borrow money to improve, repair or maintain the Common Area.

(ii) The right of the Association to adopt and enforce Association rules concerning the control and use of any private streets located upon the Common Area, including the right to regulate the kind of vehicles and their speed and the parking of vehicles upon such private streets. Declarant or the Association is authorized to delegate to a municipality or other governmental entity or to contract with any private security patrol company to exercise its authorized rights in connection with such private streets, roadways and parking areas.

## **2.2 Entry and Use Rights.**

Each Lot or the Common Area, as the case may be, shall be subject to the following rights of entry and use:

(i) The right of Declarant or its designees to enter upon any portion of the Project to construct any improvements to the Property and to make repairs and remedy construction defects, provided that such entry shall not interfere with the use or occupancy of any occupied Lot unless authorized by its Owner, which authorization shall not be unreasonably withheld.

(ii) The right of the Association, or its agents, to enter any Lot to cure any violation or breach of this Declaration or the Bylaws or the Association Rules, provided that at least fifteen (15) days' prior written notice of such violation or breach (except in cases of emergency) has been given to the Owner, and provided that, within the fifteen (15) day period such Owner had not acted to cure such violation or breach. The Association shall be entitled to levy a special assessment for its costs of effecting such cure against the Owner in accordance with the procedures in Section 6.5. The rights of entry and cure shall be immediate in case of an emergency originating upon or threatening any Lot, whether or not its Owner is present.

(iii) The right of the Association, or its agents, to enter any of the Lots to perform its obligations and duties under this Declaration, including obligations or duties with respect to construction, maintenance, or repair for the benefit of the Common Area or the Owners in common; watering, planting, cutting, removing and otherwise caring for the landscaping upon the Common Area, cleaning, repairing, replacing and otherwise maintaining or causing to be maintained any utility lines serving each Lot. The rights shall be immediate in case of an emergency originating upon or threatening any Lot, whether or not its Owner is present.

(iv) The right of any Owner, or Owner's representatives, to enter the Lot of any other Owner for purposes of performing installations, alterations or repairs to mechanical or electrical services, including installation of television antennae and related cables, which are reasonably necessary for the use and enjoyment of his Lot, provided requests for entry are made in advance and that entry is at a time convenient to the Owner whose Lot is being entered upon. In case of emergency the right of entry shall be immediate.

(v) The right of the Association and Owners (or their representatives) of adjoining Lots of entry upon and access to slopes and drainageways located upon a Lot when such access is essential for the maintenance or stabilization of slopes or drainage, or both, on such adjoining Lots, provided requests for entry are made in advance by written notice. In case of emergency the right of entry shall be immediate. Each Owner shall maintain in good condition and repair all slopes and drainageways located upon the Owner's Lot. No Owner, except Declarant, shall alter any slopes or drainageways without the written approval of the Association, nor shall an Owner interfere with drainage onto the Owner's Lot from any adjoining Lot.

### **2.3. Owners' and Association's Easements for Encroachments.**

(a) Each Lot and its Owner shall have and is granted an easement over the Common Area for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, settlement or shifting of structures, or any other cause as long as the encroachment remains. However, in no event shall a valid easement for encroachment exist in favor of an Owner if the encroachment occurred due to willful misconduct of the Owner. In the event a structure on any Lots is partially or totally destroyed, and then repaired or rebuilt, the Owner of each Lot agrees that minor encroachments over the Common Area shall be permitted and there shall be valid easements for the maintenance of the encroachments as long as they shall exist. Each Lot and its Owner shall have and is granted an easement, appurtenant to such Lot over the Common Area for overhanging roofs and eaves, and other structural components as originally constructed or, if partially or totally destroyed, as subsequently rebuilt or repaired in accordance with the original plans and specifications.

(b) The Common Area and the Association shall have and is granted an easement over each Lot for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, settlement or shifting of structures, or any other cause as long as the encroachment remains. However, in no event shall a valid easement for encroachment exist in favor of the Association if the encroachment occurred due to willful misconduct of the Association. In the event a structure on any Common Area is partially or totally destroyed, and then repaired or rebuilt, each Owner agrees that minor encroachments over the Owner's Lot shall be permitted and there shall be valid easements for

for the maintenance of the encroachments as long as they shall exist.

#### **2.4. Power to Grant Easements.**

Declarant or the Association shall have the power to grant and convey in the name of all the Owners as their attorney in fact (or in the name of the Association as to any property to which the Association holds title) to any Owner or other party easements and rights of way in, on, over, or under the Common Area for the purpose of constructing, erecting, operating or maintaining lines, cables, wires, conduits, or other devices for electricity, cable television, power, telephone and other purposes, public sewers, storm water drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes, and any similar public or quasi-public improvements or facilities; and each purchaser, in accepting a deed to a Lot, expressly consents to such easements and rights of way and authorizes and appoints the Association and Declarant (as long as Declarant owns one or more Lots) as attorney in fact of such Owner to execute any and all instruments conveying or creating such easements or rights of way. However, no such easement can be granted if it would permanently interfere with the use, occupancy or enjoyment by an Owner of his Lot unless approved by the vote or written consent of the holders of not less than seventy-five percent (75%) of the voting rights of each class of members and their first mortgagees.

#### **2.5. Other Easements.**

Each Lot and its Owner and the Association, as the case may be, is declared to be subject to all easements, dedications, and rights of way granted or reserved in, on, over, and under the Property and each Lot as shown on the Subdivision Map.

#### **2.6. Delegation of Use.**

Any Owner may delegate his rights of use and enjoyment of the Project, to the members of his family, his guests, tenants, and invitees, and to such other persons as may be permitted by the Bylaws and the Association Rules, subject however, to this Declaration. However, if an Owner has sold his Lot to a contract purchaser or has leased or rented it, the Owner, members of the Owner's family, guests, tenants, and invitees shall not be entitled to use and enjoy any of such rights in the Project, while the Owner's Lot is occupied by the contract purchaser or tenant. Instead, the contract purchaser, or tenant, while occupying such Lot, shall be entitled to use and enjoy such rights, and can delegate the rights of use and enjoyment in the same manner as if such contract purchaser or tenant were an Owner during his period of occupancy. Each Owner shall notify the Secretary of the Association of the names of any contract purchasers or tenants of such Owner's Lot. Each Owner, contract purchaser, or tenant also shall notify the Secretary of the Association of the names of all persons to who such Owner,



contract purchaser, or tenant has delegated any rights of use and enjoyment and the relationship that each such person bears to the Owner, contract purchaser, or tenant. No such delegation shall relieve an Owner from liability to the Association or to other Owners for payment of assessments or performance of the covenants, conditions and restrictions contained in this Declaration. Any lease, rental agreement or contract of sale entered into between an Owner and a tenant or contract purchaser of a Lot shall require compliance by the tenant or contract purchaser with all of the covenants, conditions and restrictions contained in this Declaration, which provision shall be for the express benefit of the Association and each Owner. The Association and each Owner shall have a right of action directly against any tenant or contract purchaser of an Owner, as well as against the Owner, for nonperformance of any of the provisions of this Declaration to the same extent that such right of action exists against such Owner.

## **2.7. Discipline of Tenants.**

In the event that any tenant or occupant fails to honor any provision of this Declaration, the Association shall so notify the Owner and give the Owner a reasonable opportunity to take corrective action or be heard before the Board if the Owner feels corrective action is unwarranted or unnecessary. If, within a reasonable time, the Owner fails to take necessary corrective action with respect to a tenant in violation of this Declaration, or in the alternative fails to request a hearing, the Board shall be entitled to take such corrective action as it deems appropriate under the circumstances which may include the imposition of fines and penalties on the Owner. Notwithstanding the foregoing, the Association shall be entitled to take immediate corrective action against a tenant or occupant when such action is necessary to prevent damage to or destruction of any portion of the Property or to preserve the rights of quiet enjoyment of other Owners and occupants.

Except for circumstances in which immediate corrective action is necessary to prevent damage or destruction to the Property or to preserve the right of quiet enjoyment of other Owners and occupants, the Association shall have no right to initiate disciplinary action against an Owner (or the Owner's tenant) on account of the misconduct of the Owner's tenant unless and until the following conditions have been satisfied: (i) the Owner has received fifteen (15) days' prior written notice from the Board, the Association's general manager or an authorized committee of the Board detailing the nature of the tenant's alleged infraction or misconduct; (ii) the Owner has been given a reasonable opportunity to take corrective action on a voluntary basis or has been given an opportunity to be heard, orally or in writing, by the Board, not less than five (5) days before the effective date of the imposition of the discipline, to present arguments as to why disciplinary action is unnecessary or unwarranted; and (iii) the Owner has failed to prevent or correct the tenant's objectionable actions or misconduct.

## **2.8. Association Easement for Front Yard Maintenance.**

The term "front yard area" herein shall mean and refer to that portion of each Lot which is generally visible from any street within the Property and would commonly be referred to as a front yard or side yard. Front yard area shall not include those portions of a Lot which are covered by structural improvements or which are enclosed for the private use of an Owner. The precise area of each Lot which constitutes front yard area shall be determined by actual location of the residence and fence improvements constructed thereon. The Association shall have and is granted an easement in the across every front yard area within the Project for the purpose of planting, replanting, watering, cutting, removing and otherwise caring for the landscaping in the front yard area of each Lot. Each Owner shall be responsible for keeping any impediments from the front yard area of the Owner's Lot that would interfere with the easement referenced in this Section 2.8.

## **3. COVENANTS AND USE RESTRICTIONS**

### **3.1. General Classification and Use.**

The greenbelt, private road, median strips, tree pockets and subdivision identification signs throughout the Property and landscaping at portions of the Property perimeter constitute the Common area owned and maintained by the Association for the purpose of insuring their aesthetic and practical function for the benefit of all the Property and all the present and future Owners within the Property. The Common Area is hereby declared and classified as an aesthetic asset of the Property providing scenic access through the Property and to the various residential areas within the Property for the enjoyment of the Owners.

### **3.2. Other Improvements Prohibited.**

Except as permitted pursuant to Section 3.1 hereof or as provided in Section 3.3, there shall be no other uses or Improvements whatsoever permitted on the Common Area.

### **3.3. Other Improvements and Uses.**

Improvements and uses may be permitted in specific cases by the Architectural Committee. Approval or disapproval of such use and Improvement by the Architectural Committee may be based in part upon the effect of such use or Improvement on other portions of the Property or upon the Owners or Occupants thereof. If the Architectural Committee approves such use or improvement in principle, then thereafter, plans and specifications for such use shall be submitted to the City of Folsom.

### **3.4. Residential Use.**

Lots shall be used for residential purposes only, and no part of the Project shall be used or caused, allowed, or authorized to be used in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending, or other such nonresidential purpose. However, for a period of three (3) years from the date of recordation of the Declaration, Lots owned by declarant may be used by declarant or its designees as models, sales offices, and construction offices for the purpose of developing, improving, and selling Lots in the Project. The total floor area of any dwelling constructed on a Lot, exclusive of open porches and garages, shall be not less than 1600 square feet. The ground floor area of any dwelling constructed on a Lot, exclusive of open porches and garages, shall be not less than 1000 square feet for a dwelling of more than one story.

### **3.5. Leasing.**

Owner is permitted to lease or rent Owner's Lot. However, any lease or rental agreement shall be in writing and any tenant shall abide by and be subject to all terms and provisions of this Declaration, the Articles, the Bylaws, and the Association Rules; and any lease or rental agreement shall comply with Section 2.6 and shall specify that failure to abide by such provisions shall be a default under the lease or rental agreement.

### **3.6. Maintenance of Lots.**

Each Owner of a Lot shall be responsible for maintaining the structures located upon his Lot, including the equipment and fixtures in the structure and its walls, roof, ceilings, windows and doors in a clean, sanitary, workable and attractive condition. However, each Owner has complete discretion as to the choice of furniture, furnishings, and interior decorating; provided, however, all window coverings shall be fully lined with white backing. Each Owner also shall be responsible for heating, air conditioning, and gas lines, conduits, apparatus, and equipment servicing his Lot and repair, replacement, and cleaning of the windows and glass of his structure. If an Owner is required to make any repair or if the Owner desires to construct any improvement or install any fixture or equipment that will affect or involve any bearing wall or other structural member, the prior written approval of the Architectural Committee must first be obtained. However, such approval need not be obtained to make emergency repairs, provided that the structure so affected is restored to its original condition at the Owner's expense.

### **3.7. Oil Drilling.**

No oil drilling, oil development operations, oil refining, quarrying, or mining operations of any kind shall be permitted on or in the Project; and no oil wells,

tanks, tunnels or mineral excavations or shafts shall be permitted on the surface of the Project or within five hundred (500) feet below the surface of the Project. No derrick or other structure designed for use in boring for water, oil, or natural gas shall be erected, maintained, or permitted on the Project.

**3.8. Offensive Conduct; Nuisance.**

No noxious or offensive activities shall be conducted within the Project. Nothing shall be done on or within the Project that may be or may become an annoyance or nuisance, or that in any way interferes with the quiet enjoyment of occupants of Lots.

**3.9. Parking Restrictions; Use of Garages.**

Unless otherwise permitted by the Association, no motor vehicle shall be parked or left within the Project other than within a garage, carport, or driveway located on the Lot. No boat, trailer, recreational vehicle, camper, truck, or commercial vehicle shall be parked or left within the Project. However, parking by commercial vehicles for the purpose of making deliveries shall be permitted in accordance with the Association Rules. Any garages and carports shall be used for parking automobiles only and shall not be converted for living or recreational activities. Any garage doors shall remain closed at all times except when being used to enter or exit. Parking in the Common Area is restricted to areas designated for parking and is further restricted to use by guests and invitees of Owners. No Owner shall park any vehicle registered to Owner, or to members of Owner's family, in areas designated for parking in the Common Area.

**3.10. Signs.**

No sign of any kind shall be displayed to the public view on or from any Lot or within the Common Area without the approval of the Association, except such signs as may be used by the Declarant or its designees for the purpose of developing, selling, and improving Lots within the Project for a period of time not to exceed (i) the date on which the last Lot is sold by Declarant or three (3) years from the date of recordation of this Declaration, whichever is sooner. In exercising its rights under this provision, Declarant shall not unreasonably interfere with the use of the Common Area by any Owner. However, one sign of customary and reasonable dimensions advertising a Lot for sale or for rent may be placed within that portion of the Lot as designated by the Association for such purpose, or elsewhere to the extent required by law, and its location and design shall be subject to approval by the Association.

**3.11. Antennae and Clothesline.**

No television or radio poles, antennae, flag poles, clotheslines, or other external fixtures other than those originally installed by Declarant or approved



by the Association, and any replacements, shall be constructed, erected, or maintained on or within the Lot or Common Area, including any structures on it. No wiring, insulation, air conditioning, or other machinery or equipment other than that originally installed by Declarant or approved by the Association, and any replacements, shall be constructed, erected, or maintained on or within the Lot or Common Area, including any structures on it. Each Owner shall have the right to maintain television or radio antennae within completely enclosed portions of his Lot. The location of common antennae or connection facilities for any cable television serving more than one Lot shall be as designated by the Association or the Architectural Committee, if any, and each Lot and its Owner shall be subject to the right of other Owners or the Association to install, use, and maintain such common antennae or facilities.

### 3.12. **Fences and Screens.**

No fences, awnings, ornamental screens, sunshades, or walls of any nature shall be erected or maintained on or around any portion of any structure or elsewhere within the Project except those that are installed in accordance with the original construction of the development, and their replacements, or as are authorized and approved by the Association or the Architectural Committee.

### 3.13. **Gas or Liquid Storage.**

No tank for the storage of gas or liquid shall be installed on or in the Project unless such installation is done by Declarant or has been approved by the Association or the Architectural Committee.

### 3.14. **Diseased Plants.**

No plants or seeds infected with noxious insects or plant diseases shall be brought upon, grown, or maintained within the Project.

### 3.15. **Animals.**

No animals, reptiles, rodents, birds, fish, livestock, or poultry shall be kept in any Lot or elsewhere within the Project except that domestic dogs and cats, fish, and birds inside bird cages not to exceed a total of three (3) such animals per Lot may be kept as household pets within any Lot, if they are not kept, bred, or raised for commercial purposes or in unreasonable quantities as determined by the Board. The Association can prohibit the keeping of any animal that in the sole and exclusive opinion of the Board constitutes a nuisance to any other Owner. Each person bringing or keeping a pet upon the Project shall be liable to other Owners, their family members, guests, invitees, tenants, and contract purchasers, and their respective family members, guests, and invitees for any damage to persons or property proximately caused by any pet brought upon or kept upon

the Project by that person or by members of his family, his guests, or invitees, and shall be responsible for removing waste materials created by such pet from Lots or any Common Area.

### 3.16. **Temporary Structures.**

No boat, truck, trailer, van, camper, recreational vehicle, or tent shall be used as a living area while located within the Project. No truck, trailer, van, camper, or recreational vehicle may be stored within the Project by any Owner unless it is that Owner's principal means of transportation. However, trailers or temporary structures for use incidental to the initial construction of the Project or the initial sales of Lots may be maintained within the Project, provided that such use does not unreasonably interfere with any Owner's use of the Common Area. Such trailers or structures shall be promptly removed on completion of all initial construction and all initial sales.

### 3.17. **Trash Disposal.**

Trash, garbage, or other waste shall be kept only in sanitary containers. No Owner shall permit or cause any trash or refuse to be kept within any portion of the Project other than in customary receptacles. Except on the scheduled day for trash pickup, these receptacles shall be located only in places specifically designated for such purpose.

### 3.18. **Outside Laundering and Drying.**

No exterior clothesline shall be erected or maintained, and there shall be no exterior drying or laundering of clothes on balconies, patios, porches, or other outside areas.

### 3.19. **Common Area Landscaping.**

No Owner shall cut, trim, prune, remove, replace, or otherwise alter or affect the appearance or location of any living tree, plant, or other vegetation located in any portion of the Common Area or the front yard area without the prior written consent of the Association. Should any Owner fail to comply with the restriction imposed by this provision, the Association may recover from such Owner the cost of restoring or replacing any such vegetation.

### 3.20. **Division of Lots.**

None of the Lots shall be divided by subdivision map or parcel map, or otherwise, without the prior unanimous approval of the Association.

**3.21. Structure Alterations.**

No Owner shall at his expense or otherwise make any alterations or modifications to the exterior of the buildings, fences, railings, or walls situated upon his Lot without the prior written consent of the Association or the Architectural Committee.

**3.22. Compliance With Law and Association's Insurance Requirements.**

Nothing shall be done or kept in any Lot or in the Common Area that might increase the rate of, or cause the cancellation of, insurance for the Project, or any portion of the Project, without the prior written consent of the Association. No Owner shall permit anything to be done or kept in his Lot that violates any law, ordinance, statute, rule, or regulation of any local, county, state, or federal body.

**3.23. Indemnification.**

Each Owner shall be liable to the remaining Owners for any damage to the Common Area or to Association-owned property that may be sustained by reason of the negligence of that Owner, that Owner's contract purchasers, tenants, guests, or invitees, but only to the extent that any such damage is not covered by casualty insurance in favor of the Association. Each Owner, by acceptance of his deed, agrees personally and for contract purchasers, tenants, guests, and invitees, to indemnify each and every other Owner, and to hold him harmless from, and to defend him against, any claim of any person for personal injury or property damage occurring within the Lot of that particular Owner, except to the extent (i) that such injury or damage is covered by liability insurance in favor of the Association or other Owner or (ii) the injury or damage occurred by reason of the willful or negligent act or omission of the Association or other Owner or other person temporarily visiting his Lot.

**3.24. Segregated Real Property Taxes.**

To the extent allowed by law, all Lots, including their pro rata undivided interest in the Common Area and the membership of an Owner in the Association, shall be separately assessed and taxed so that all taxes, assessments, and charges that may become liens prior to first mortgages under local law shall relate only to the individual Lots and not to the Project as a whole. Each Owner shall be obligated to pay any taxes or assessments assessed by the County Assessor of the County against his Lot and against his personal property.

**3.25. Unsegregated Real Property Taxes.**

Until such time as real property taxes have been segregated by the County

Assessor of the County, 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 sale price or offered initial sale price of the Lot by the total initial sales prices and offered initial sales prices of all Lots within the Project. The term "offered initial sales price" means the price at which an unsold Lot is then being offered for sale by Declarant. If, and to the extent that, taxes are not paid by any Owner of a Lot and are allowed to become delinquent, they shall be collected from the delinquent Owner by the Association.

### **3.26. Future Construction.**

Nothing in this Declaration shall limit the right of Declarant to complete construction of improvements to the Common Area and to Lots owned by Declarant or to alter them or to construct additional improvements as Declarant deems advisable before completion and sale of the entire Project. The rights of Declarant in this Declaration may be assigned by Declarant to any successor to all or any part of Declarant's interest in the development, as developer, by an express assignment incorporated in a recorded deed that transfers any such interest to a successor or to a Mortgagee acquiring Declarant's interest in the Project by foreclosure or by deed in lieu of foreclosure.

### **3.27. Authorization to Seek Legal Remedies for Noncompliance.**

The failure of any Owner to comply with any provision of this Declaration, the Articles, Bylaws, or the Association Rules, shall give rise to a cause of action in the Association and any aggrieved Owner for the recovery of damages or for injunctive relief, or both.

## **4. DUTIES AND POWERS OF ASSOCIATION**

### **4.1. Incorporation.**

The Association is a nonprofit mutual benefit corporation formed under the laws of the State of California. At the recording of the first Lot sale to an Owner, the Association shall be charged with the duties and invested with the powers set forth in the Articles, the Bylaws, and this Declaration.

### **4.2. Action Through Designated Officers.**

Except as to matters requiring the approval of Owners as set forth in this Declaration, the Articles, or the Bylaws, the affairs of the Association, including the exercise of its powers and duties, shall be conducted by the Board, such officers as the Board may elect or appoint, or such persons or entities with delegated authority under the provisions of Section 4.7.



#### **4.3. Powers of Association.**

The Association shall have all the powers of a nonprofit mutual benefit corporation organized under the General Nonprofit Mutual Benefit Corporation Law of California, subject only to such limitations on the exercise of its powers as are set forth in the Articles, the Bylaws, and this Declaration. It shall have the power to do any lawful thing that may be authorized, required, or permitted to be done by the Association under this Declaration, the Articles, and the Bylaws, and to do and perform any act that may be necessary or proper for or incidental to, the exercise of any of the express powers of the Association, including, without limitation, the acts enumerated in Sections 4.4 through 4.7, inclusive.

#### **4.4. Assessment Rights.**

The Association may establish, fix, and levy assessments against the Owners and collect and enforce payment of such assessments, in accordance with the provisions of this Declaration.

#### **4.5. Association Rules.**

The Association may adopt, amend, and repeal Association Rules as it considers appropriate. The Association Rules shall regulate the use and enjoyment of the Common Area. A copy of the Association Rules as adopted, amended, or repealed shall be mailed or otherwise delivered to each Owner and a copy shall be posted in a conspicuous place within the Project. If any provision in this Declaration, the Articles, or the Bylaws is inconsistent with or materially alters any Association Rule, the Declaration, the Articles, or the Bylaws shall control to the extent of any such inconsistency.

#### **4.6. Right to Impose Sanctions.**

In addition to any other enforcement rights described in this Declaration and the Bylaws, or authorized by law and subject to any restrictions on the Association's enforcement rights, including any due process requirements, imposed by this Declaration, the Bylaws, or by law, the Association may take any of the following actions against any person or entity whose act or failure to act violates or threatens to violate any provision of this Declaration, the Bylaws, or Association rules:

- (a) impose monetary penalties, including late charges and interest,
- (b) suspend voting rights in the Association,
- (c) commence a legal action for damages, injunctive relief, or both.

The determination of whether to impose any of the foregoing sections shall be within the sole discretion of the Association. Any legal action may be brought in the name of the Association on its own behalf and on behalf of any Owner who consents, and the prevailing party in any such action shall be entitled to recover costs and reasonable attorneys' fees. The Association may take more than one of the foregoing enforcement actions against any one violation or threatened violation, provided that a monetary penalty shall not exceed one hundred dollars (\$100.00) (excluding late charges imposed for delinquent assessments) for any one violation. The Association, in its sole discretion, may resolve or settle any dispute, including any legal action, under such terms and conditions as it considers appropriate.

The Association may not cause a forfeiture or abridgement of an Owner's right to the full use and enjoyment of his Lot except by judgment of a Court or a decision arising out of arbitration or on account of a foreclosure or sale under power of sale for failure of the Owner to pay assessments duly levied by the Association.

The enforcement of monetary penalties is subject to the restrictions described in Section 6.5.

Before the Association takes any of the foregoing actions against any Owner whose act or failure to act violates or threatens to violate any provision of this Declaration, the Bylaws, or Association Rules, the Association must act in good faith and must satisfy each of the following requirements:

(i) The Owner is given fifteen (15) days' prior notice of the action to be taken and the reasons therefor. The notice may be given by any method reasonably calculated to give actual notice. If the notice is given by mail, it must be sent by first-class or registered mail to the last address of the Owner as shown on the Association's records.

(ii) The Owner is given an opportunity to be heard, orally or in writing, by the Board, not less than five (5) days before the effective date of the action to be taken.

If an Owner fails to cure a default within sixty (60) days after written notice to that Owner, the Association shall give the notice required in Section 8.6 to the Mortgagee of record.

#### **4.7. Delegation of Powers.**

The Association may delegate any of its powers and duties to its employees, committees, or agents, including a professional management agent. Any agreement for professional management of the development shall be

terminable by either party with or without cause and without payment of a termination fee on thirty (30) days' written notice. The term of any such agreement shall not exceed one year except as provided in Section 4.15, although such agreement may be renewed from year to year by the Association. If the development is professionally maintained or managed, the Board shall not terminate professional management and assume self-management without the consent of seventy-five percent (75%) of first Mortgagees.

#### **4.8. Duties of Association.**

In addition to the duties described in the Articles or Bylaws, the Association shall have the duties set forth in Sections 4.9 through 4.14, inclusive, of this Declaration.

#### **4.9. Common Area Maintenance.**

The Association shall maintain and repair the Common Area and front yard areas in accordance with the provisions set forth in the Declaration. By acceptance of a deed to any Lot of the Property, each Owner covenants and agrees that the Association and their agents, employees, successors and assigns shall have the right to enter upon such Owner's Lot for the purpose of fulfilling the maintenance and repair responsibilities set forth in this Section 4.9. Such maintenance and repair shall include, without limitation:

(a) Maintenance of any fences, walkways, parking areas, landscape islands, private roadways and other improvements within the Common Area in a clean and safe condition, including the repairing and replacement of improvements in such areas when necessary with the type of material originally installed therein or such substitute therefor as shall in all respects be equal thereto in quality, appearance and durability; the removal of debris and waste materials and the washing or sweeping of paved areas as required; the painting or repainting of any signs as required;

(b) Cleaning, maintenance and relamping of any external lighting fixtures except such fixtures as may be the property of any utility or governmental body;

(c) Performance of necessary maintenance of all landscaping of the Common Area and front yard areas, including the trimming, watering and fertilization of all grass, ground cover, shrubs and trees, removal of dead or waste material and replacement of any dead or diseased grass, ground cover, shrubs or trees;

(d) The removal of all trash and rubbish from any portion of the Common Area;

(e) The Association shall obtain and maintain comprehensive public liability insurance insuring the Association, any manager, the Declarant and the Owners and occupants of Lots, and their respective guests, invitees, and the agents and employees of each, against any liability incident to the ownership or use of the Common Area or any other Association-owned or maintained real or personal property and including, if obtainable, a cross-liability or severability of interest endorsement insuring each insured against liability to each other insured. The limits of such insurance shall not be less than one million dollars (\$1,000,000.00) covering all claims for death, personal injury, and property damage arising out of a single occurrence. Such insurance shall include coverage against water damage liability, liability for nonowned and hired automobiles, liability for property of others, and any other liability or risk customarily covered with respect to projects similar in construction, location, and use.

#### 4.10. **Contracting for Goods and Services.**

The Association shall enter into such contracts for services or materials as may be necessary to perform its duties, including contracts with Declarant, subject to the provisions of Sections 4.7, 4.15 and 8.13.

#### 4.11. **Payment of Taxes and Assessments.**

The Association shall pay all real and personal property taxes and assessments, if any, and all other taxes levied against the Association, the Common area, or the personal property owned by the Association. Such taxes and assessments shall be collected as a special assessment pursuant to Section 6.5. Such taxes and assessments may be contested or compromised by the Association, provided that they are paid or that a bond or other security acceptable to the County insuring payment is posted before the sale or the disposition of any property to satisfy the payment of such taxes.

#### 4.12. **Utilities.**

The Association shall acquire, provide, and pay for necessary utility services for the Common Area.

#### 4.13. **Financial Information and Governing Instruments.**

The Association shall prepare and distribute to all Owners the following financial statements, reports, and copies of the governing instruments as indicated:

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



(a) The estimated revenue and expenses on an accrual basis.

(b) The identification of the total cash reserves currently available for replacement or major repair of the Common Area, including improvements located thereon, front yard area and for contingencies.

(c) The identification of the estimated remaining life of, and the methods of funding used to defray the future repair, replacement, or additions to, those major components which the Association is obligated to maintain.

(d) A general statement addressing the procedures used for the calculation and establishment of those reserves to defray the costs of future repair, replacement, or additions to those major components that the Association is obligated to maintain.

(2) A balance sheet as of an accounting date which is the last day of the month closest in time to six (6) months from the date of closing of the first sale of a Lot in the Project, and an operating statement for the period from the date of the first closing to the said accounting date, shall be distributed within sixty (60) days after the accounting date. This operating statement shall include a schedule of assessments received and receivable identified by the numbers of the Lots and the name or names of the members assessed.

(3) A report consisting of the following shall be distributed within one hundred twenty (120) days after the close of the fiscal year: (a) a balance sheet as of the end of the fiscal year; (b) an operating (income) statement for the fiscal year; (c) a statement of changes in financial position for the fiscal year; (d) for any year in which the gross income to the Association exceeds seventy-five thousand dollars (\$75,000.00), a copy of a review of the financial statement of the Association prepared in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy; and (e) any information required to be reported under §8322 of the California Corporations Code. If the report is not prepared by an independent accountant, it shall be accompanied by the certificate of an authorized officer of the Association that the report was prepared from the books and records of the Association without independent audit or review.

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

(5) Copies of this Declaration, the Articles, Bylaws, Association Rules, and the statement regarding delinquent assessments as described in Section 6.10

shall be provided any Owner within ten (10) days of the mailing or delivery of a written request. The Board may impose a fee to provide these materials not to exceed the Association's reasonable costs in preparing and reproducing the materials.

The Board shall do the following not less frequently than quarterly:

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

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

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

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

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

Withdrawal of funds from the Association's reserve account shall require the signatures of either two members of the Board or one member of the Board and an officer of the Association who is not also a member of the Board.

#### 4.14. **Other Duties.**

The Association shall perform such other acts as may be reasonably necessary to exercise its powers or perform its duties under any of the provisions of this Declaration, the Articles, Bylaws, Association Rules, or Board resolutions.

#### 4.15. **Limitations on Authority.**

Except with the vote or written assent of the Owners holding fifty-one percent (51%) of the voting rights of all Owners other than Declarant, the Board shall not take any of the following actions:

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

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

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

(iv) Enter into a contract with a third person to furnish goods or services for the Common Area, front yard area, or the Association for a term longer than one year, with the following exceptions:

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

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

Except as provided in Section 7.1, the Association shall have no authority to mortgage, sell, or convey the Common Area.

#### **4.16. Limitation on Liability.**

No Director, officer, committee member, employee, or other agent of the Association, including the Declarant or any agent of the Declarant when acting in such capacity, shall be liable to any Owner or any other party, including the Association, for any damage, loss, or prejudice suffered or claimed on account of any act, omission, error, or negligence of any such person if such person has acted in good faith and in a manner such person reasonably believed to be in the best interests of the Association.

#### **4.17. Inspection of Books and Records.**

Any Owner, or that Owner's duly appointed representative, shall have access to the Association's membership register (including mailing addresses and telephone numbers), books of account, and minutes from any meeting of the Owners, the Board, or any committee of the Board in order to inspect and copy such records for any purpose reasonably related to his interest as an Owner. Access shall be at any reasonable time at the office of the Association or such other place within the Project as the Board prescribes. The Board shall establish reasonable rules regarding the notice the Owner must give to the custodian of the records to obtain access, the hours and days of the week when the records may be inspected and copied, and the charges imposed by the Association for copying records requested by the Owner.

Any member of the Board may at any reasonable time inspect, copy, or make extracts of any books, records, and documents of the Association and inspect the physical properties owned or controlled by the Association.

**4.18. Waiver of Claims.**

Declarant, on behalf of the Association, hereby releases and discharges the Cascades Residential Owners Association from all claims and liabilities arising from, or caused by any act or omission to act by the Cascades Residential Owners Association, its officers or directors, covered by insurance maintained by the Cascades Residential Owners Association.

**5. MEMBERSHIP AND VOTING RIGHTS**

**5.1. Membership in the Association.**

Each Owner, including Declarant, shall be a member of the Association. Membership shall be appurtenant to each Lot, and the holding of an ownership interest in a Lot shall be the sole qualification for membership. Membership shall terminate automatically when the Owner no longer holds any ownership interest in any Lot. Membership may not be assigned, transferred, pledged, hypothecated, conveyed or alienated in any way except on a transfer of title to a Lot and then only to the transferee. Any attempt to make a prohibited transfer shall be void. Any transfer of title to a Lot shall transfer automatically the appurtenant membership to the transferee. Any party that holds an interest in a Lot merely as security for performance of an obligation shall not be a member of the Association.

Each member of the Association shall have the rights, duties, and obligations set forth in this Declaration, the Articles, Bylaws, and Association Rules.

**5.2. Majority Approval Required.**

Except as otherwise provided in this Declaration, the Articles, or the Bylaws, and subject to the provisions of Section 5.3, all matters requiring the approval of Owners shall be deemed approved if Owners holding a majority of the total voting power of all Owners assent to them by written consent or if approved at any duly called regular or special meeting at which a quorum is present, either in person or by proxy, by Owners holding a majority of the total voting power of all Owners present, either in person or by proxy.

**5.3. Class of Membership voting.**

The Association shall have two classes of voting membership as follows:



Class A: Class A Owners are all Owners, with the exception of Declarant. Each Class A Owner shall be entitled to one vote for each Lot in which he owns an interest.

Class B: The Class B Owner shall be the Declarant who shall be entitled to three (3) times the number of votes which would be allocated to a Lot owned by Declarant if such Lot were owned by a Class A Owner. Class B membership shall cease and be converted to Class A membership on the occurrence of one of the following events, whichever occurs earlier:

(i) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or

(ii) July 15, 1990, which date is prior to the second anniversary of the original issuance of the subdivision public report for the Development.

As long as two classes of voting memberships exist, any action by the Association that requires approval by the Owners shall require the approval by the designated percentage of Class A voting power and a bare majority of the Class B voting power.

Voting rights shall vest at the time assessments are levied against the Owner's Lot.

Voting for the members of the Board shall be by secret written ballot.

#### **5.4. Joint Ownership Votes.**

The votes that are attributed to each Lot may not be cast except as a block. If the Lot has more than one Owner and the Owners are unable to agree as to how the votes should be cast, the votes shall be forfeited on the matter in question. If one Owner casts the votes attributed to a Lot, his vote shall conclusively bind all the Owners of that Lot. If more than one Owner casts the votes attributed to a Lot, the votes cast by such Owners shall not be counted and shall be considered void.

#### **5.5. Cumulative Voting.**

The election of members to the Board may be by cumulative voting as described herein, provided an Owner has placed a candidate's name in nomination prior to the voting and given notice at the meeting prior to the voting of the Owner's intention to cumulate votes. If any Owner has given such notice, then all Owners shall have the right to cumulate their votes for candidates in nomination. Under cumulative voting, each Owner, either in person or by proxy, may give a single candidate the number of votes equal to the number of

directors to be elected multiplied by the number of votes the Owner is entitled to exercise under this Declaration, or the Owner may distribute these cumulated votes among any two or more candidates as the Owner desires. The candidates receiving the highest number of votes up to the number of board members to be elected shall be elected. Unless the entire Board is removed by a vote of the Owners, an individual director may not be removed prior to the expiration of his or her term if the votes against removal would have been sufficient to elect that director if cast cumulatively at an election at which the same total number of votes were cast and all directors authorized at the time of the most recent election of that director were being elected.

## **6. ASSESSMENTS**

### **6.1. Agreement to Pay.**

The Declarant covenants and agrees for each Lot owned by it in the Project that it is expressly made subject to assessments as set forth in this Declaration, and each Owner by acceptance of a deed covenants and agrees for each Lot owned, to pay to the Association the regular and special assessments levied in accordance with the provisions of this Declaration, and to allow the Association to enforce any assessment lien established in accordance with the provisions of this Declaration by nonjudicial proceedings under a power of sale or by any other means authorized by law.

### **6.2. Assessments as Personal Obligation of Owner.**

Each assessment or installment, together with any late charge, interest, collection costs, and reasonable attorneys' fees, shall be the personal obligation of the Owner at the time such assessment or installment becomes due and payable. If there is more than one Owner of a particular Lot, each Owner shall be jointly and severally liable. The personal obligation for any delinquent assessments or installments and related sums shall not pass to an Owner's successor in interest unless expressly assumed by that successor in interest. No Owner may be relieved from the obligation to pay assessments or installments by waiving the use or enjoyment of all or any portion of the Common Area or the Owner's Lot, or by abandoning the Lot.

### **6.3. Purpose of Assessment.**

The assessments levied by the Association shall be used exclusively to promote the health, safety, and welfare of the members of the Association, to improve, replace, repair, operate, and maintain the Common Area, and the improvements and personal property in the Common Area that are owned or maintained by the Association, to provide funds necessary for the performance of the duties of the Association as set forth in this Declaration, and to further

any other purpose that is for the common benefit of the Owners in their use and enjoyment of the Property.

#### **6.4. Regular Annual Assessments.**

Not more than sixty (60) days nor less than forty-five (45) days before the beginning of each fiscal year of the Association, the Board shall meet for the purpose of establishing the regular annual assessment for the forthcoming fiscal year. At such meeting the Board shall review the preliminary pro forma operating budget prepared in accordance with the provisions of Section 4.13, any written comments received from members, and such other related information that has been made available to the Board. After making any adjustment that the Board considers appropriate, the Board, subject to the restrictions described in this provision and without the requirement for a vote of the Owners, shall establish the regular assessment for the forthcoming fiscal year. The Board may not, without the vote or written assent of the Owners, constituting a quorum, casting a majority of the votes at a meeting or election of the Association, impose a regular annual assessment for any fiscal year that is more than twenty percent (20%) greater than the regular assessment for the immediately preceding year (except the Association's first fiscal year if it is less than twelve (12) months). Nothing in this section shall limit assessment increases necessary for emergency situations. An emergency situation is any one of the following:

- (a) An extraordinary expense required by an order of a Court.
- (b) An extraordinary expense necessary to repair or maintain the Common Area or other areas which the Association is obligated to maintain or repair where a threat to personal safety on the Property is discovered.
- (c) An extraordinary expense necessary to repair or maintain the Common Area or other areas which the Association is obligated to maintain or repair that could not have been reasonably foreseen by the governing body in preparing and distributing the pro forma operating budget. However, prior to the imposition or collection of an assessment under this section, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to the Members with the notice of assessment.

For purposes of this Section 6.4, a quorum means more than fifty percent (50%) of the Owners. Any meeting or election of the Association for purposes of complying with this Section 6.4 shall be conducted in accordance with Chapter 5 (commencing with section 7510) of Part 3, Division 2 of Title 1 of the Corporations Code and Section 7613 of the Corporations Code.

Unless the Association is exempt from federal or state income taxes,

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

#### **6.5. Special Assessments.**

Subject to the restrictions described in Section 6.6, the Board may levy a special assessment if the Board, in its discretion, determines that the Association's available funds are or will become inadequate to meet the estimated expenses of the Association, including the maintenance of appropriate reserves, for a particular fiscal year for any reason, including, but not limited to, unanticipated delinquencies, costs of construction, unexpected repairs or replacements of capital improvements or otherwise. The Board shall determine the amount necessary to meet the estimated expenses, and if the amount is approved by a majority vote of the Board, it shall become a special assessment. The Board, in its discretion, may levy the entire assessment immediately or levy it in installments over a period it considers appropriate. Unless the Association is exempt from federal or state income taxes, including without limitation an exemption under Internal Revenue Code §528 and Revenue and Taxation Code §23701t, the Board shall take such steps as may be reasonably necessary to prevent the special assessment from being included in the Association's income for federal and state income tax purposes, including, if necessary, depositing the funds in a segregated account, not commingling the funds with any other funds of the Association, and using the funds solely for the purpose for which they were levied.

After compliance with the due process requirements in the Bylaws, the Board may impose a monetary penalty and levy a special assessment against a particular Lot to reimburse the Association for costs incurred in repairing damage to the Common Area, front yard area, or any improvements or personal property located thereon, for which the Owner was allegedly responsible, or in bringing the Owner or the Owner's Lot into compliance with this Declaration, the Articles, or Bylaws; provided, however, this special assessment may not become a lien against the Owner's Lot that is enforceable by a power of sale under Civil Code §§ 2924, 2924b, and 2924c. This restriction on enforcement is not applicable to late payment penalties for delinquent assessments or charges imposed to reimburse the Association for loss of interest or for collection costs, including reasonable attorneys' fees, for delinquent assessments.



## **6.6. Restriction on Special Assessments.**

In any fiscal year, the Board may not, without the vote or written assent of Members, constituting a quorum, casting a majority of the votes at a meeting or election of the Association, levy special assessments to defray the costs of any action or undertaking on behalf of the Association which in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year; provided, however, such limitation shall not apply to assessment increases necessary for emergency situations as defined in Section 6.4. The foregoing restriction shall not apply to an assessment levied against a particular Lot to reimburse the Association for costs incurred in bringing the Owner or the Lot into compliance with this Declaration, the Articles, Bylaws, or Association Rules, nor shall such restriction limit assessment increases caused by an individual Owner for the following purposes:

(a) Damage or destruction by an Owner through willful misconduct to the Common Area or other areas which the Association is obligated to maintain or repair. The costs incurred in maintaining or repairing structures or improvements, to the extent not compensated by insurance, shall be charged and assessed solely to such Owner as a special individual assessment.

(b) In the event any act or omission of any Owner, any member of Owner's family, or any guest or employee of Owner, shall in any way cause any increase in the premiums for any insurance purchased or obtained by the Association, the amount of such increase shall be assessed and charged solely to such Owner as a special individual assessment.

For purposes of this Section 6.6, a quorum means more than fifty percent (50%) of the Owners. Any meeting or election of the Association for purposes of complying with this Section 6.4 shall be conducted in accordance with Chapter 5 (commencing with section 7510) of Part 3, Division 2 of Title 1 of the Corporations Code and Section 7613 of the Corporations Code.

## **6.7. Rate of Assessment.**

The regular and special assessments levied by the Board shall be allocated among the Lots as follows:

Except as otherwise provided herein, an assessment shall be allocated among each Lot subject to the assessment by dividing the total amount of the assessment by the total number of Lots subject to the assessment.

Special assessments levied against a particular Lot to reimburse the Association for costs incurred in bringing the Owner or the Lot into compliance with this Declaration, the Articles, Bylaws, or Association Rules shall not be subject to these allocation provisions.

## **6.8. Assessment Period.**

Unless the Board determines otherwise, the Association's fiscal year shall be a calendar year, and the regular assessment period shall commence on January 1 of each year and shall terminate on December 31 of that year, provided that the first regular assessment period for all Lots shall commence on the first day of the calendar month following the date of the closing of the first conveyance of a Lot and shall terminate on December 31 of that year. The regular assessment shall be payable in equal monthly installments unless the Board adopts some other method for payment; provided, however, the Board may, at its sole option, declare the entire unpaid regular assessment immediately due and payable at such time as any installment payment becomes delinquent. The first regular assessment and all special assessments shall be adjusted according to the number of months remaining in the fiscal year and shall be payable in equal monthly installments unless the Board adopts some other method for payment.

## **6.9. Due Dates, Late Charges and Interest.**

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

Any assessment payment, including any installment payment, shall become delinquent if payment is not received by the Association within fifteen (15) days after its due date. There shall be a late charge of ten dollars (\$10.00) for each delinquent payment. The Board may impose a higher late charge provided it does not exceed ten percent (10%) of the delinquent payment. A late charge may not be imposed more than once on any delinquent payment, shall not eliminate or supersede any charges imposed on prior delinquent payments, and shall constitute full compensation to the Association for any additional book-keeping, billing, or other administrative costs resulting from the delinquent payment.

Interest also shall accrue on any delinquent payment at the rate of twelve percent (12%) per annum or at such lesser rate as the Board may impose from time to time. Interest shall commence thirty (30) days after the due date of the assessment and shall accrue through and including the date full payment is received by the Association.

Payments received by the Association shall be applied toward satisfaction of assessment payments, together with any accrued interest and late charge associated with any delinquent assessment payment, beginning with the most

delinquent payment, if any, and continuing forward to the then current assessment payment due.

#### **6.10. Estoppel Certificate.**

Within ten (10) days of the mailing or delivery of a written request by any Owner, the Board shall provide the Owner with a written statement containing the following information: (i) whether to the knowledge of the Association, the Owner or the Owner's Lot is in violation of any of the provisions of this Declaration, the Articles, Bylaws, or Association rules; (ii) the amount of regular and special assessments, including installment payments, paid by the Owner during the fiscal year the request is received; and (iii) the amount of any delinquent assessments, penalties, interest, attorneys' fees, and other charges on the Owner's Lot as provided by this Declaration, the Articles, Bylaws, or Association Rules.

The Board may charge the Owner a fee to recover its reasonable costs in preparing the statement. Any prospective purchaser or mortgagee of the Owner's Lot may rely on the information in this written statement provided that reliance may not extend to any violation of the Declaration, the Articles, or Bylaws of which the Association does not have actual knowledge.

#### **6.11. Enforcement of Assessment.**

The Association has the right to collect and enforce assessments. In addition to the enforcement powers described in Section 4.6, and subject to the restriction on the enforcement of monetary penalties described in Section 6.5, the Association may enforce delinquent assessments, including delinquent installments, by suing the Owner directly on the debt established by the assessment, or by establishing a lien against the Owner's Lot as provided in Section 6.12. The Association may commence and maintain a lawsuit directly on the debt without waiving its right to establish a lien against the Owner's Lot for the delinquent assessment. In any action instituted by the Association to collect delinquent assessments, accompanying late charges, or interest, the prevailing party shall be entitled to recover costs and reasonable attorneys' fees.

#### **6.12. Creation of Assessment Lien.**

A delinquent assessment or installment, together with any accompanying late charges, interest, costs (including reasonable attorneys' fees), and penalties as may be authorized under this Declaration shall become a lien on the Lot against which the assessment was levied on the recordation of a notice of delinquent assessment in the office of the County recorder of the County. The notice shall describe the amount of the delinquent assessment or installment, the related charges authorized by this Declaration, a description of the Lot, the name

of the Owner, and the name and address of the trustee authorized by the Association to enforce the lien by sale; and shall be signed by any officer of the Association, or any employee or agent of the Association authorized to do so by the Board.

Unless the Board considers the immediate recording of the notice to be in the best interest of the Association, the notice shall not be recorded until fifteen (15) calendar days after the Association has delivered a written notice of default and a demand for payment. If the delinquent assessment or installment and related charges are paid or otherwise satisfied, the Association shall record a notice of satisfaction and release of lien.

### **6.13. Foreclosure Under Assessment Lien.**

Not less than fifteen (15) days after the recording of the notice of delinquent assessment, the Board may enforce any assessment lien established under Section 6.12 by filing an action for judicial foreclosure or by recording a notice of default in the form described in Civil Code §2924c(b)(1) to commence a nonjudicial foreclosure. Any nonjudicial foreclosure shall be conducted in accordance with the requirements of Civil Code §§ 2924, 2924b, 2924c, 2924f, 2924g, and 2924h that are applicable to nonjudicial foreclosures of Mortgages or deeds of trust, provided that the Association may appoint its attorney, any officer or Director, or any title insurance company authorized to do business in California to conduct the sale. The Association may bid on the Lot at the sale, and may hold, lease, mortgage and convey the acquired Lot. If the default is cured before the sale, or before completing a judicial foreclosure including payment of all costs and expenses incurred by the Association, the Association shall record a notice of satisfaction and release of lien, and on receipt of a written request by the Owner, a notice of rescission rescinding the declaration of default and demand for sale.

## **7. CONDEMNATION**

### **7.1. Sale By Consent.**

If an action for condemnation of all or a portion of the Common Area is proposed or threatened by any governmental agency having the right of eminent domain, then, after approval by vote or written consent of at least fifty-one percent (51%) of all of the Owners, with the prior written consent of seventy-five percent (75%) of all institutional first Mortgagees, the Common Area, or a portion of it may be sold and conveyed to the condemning authority by the Association or its designees acting as the attorney in fact of all Owners under an irrevocable power of attorney, which each Owner by accepting a deed to a Lot in the



Project grants to the Board and which shall be coupled with the interest of all other Owners, for a price deemed fair and equitable by the Board.

### **7.2. Distribution of Proceeds.**

On a sale occurring under Section 7.1, the proceeds shall be distributed to each Owner in the same proportion as regular annual assessments are allocated, and to their Mortgagees as their respective interests may appear.

### **7.3. Distribution of Condemnation Award.**

If the Common Area, or a portion of it, is not sold but is instead taken, the award shall be apportioned among the Owners and their respective Mortgagees by the terms of the judgment of condemnation, and if not so apportioned, then the award shall be distributed to each Owner in the same proportion as regular annual assessments are allocated, and to their Mortgagees as their respective interests may appear.

## **8. MORTGAGEE PROTECTION**

### **8.1. Subordination of Assessment Lien.**

Any lien created or claimed under the provisions of this Declaration is expressly made subject and subordinate to the rights of any first Mortgage that encumbers all or a portion of the Project, or any Lot, made in good faith and for value; and no such lien shall in any way defeat, invalidate, or impair the obligation or priority of such Mortgage unless the Mortgagee expressly subordinates its interest, in writing, to such lien. If any Lot is encumbered by a first Mortgage made in good faith and for value, the foreclosure of any lien created by any provision set forth in the Declaration for assessments, or installments of assessments, shall not operate to affect or impair the lien of the Mortgage. On foreclosure of the Mortgage, the lien for assessments or the installments that have accrued up to the time of foreclosure shall be subordinate to the lien of the Mortgage, with the foreclosure-purchaser taking title to the Lot free of the lien for assessments or installments that have accrued up to the time of the foreclosure sale. On taking title to the Lot the foreclosure-purchaser shall be obligated to pay only assessments or other charges levied or assessed by the Association that became due or payable on or after the foreclosure-purchaser acquired title to the Lot. The subsequently levied assessments or other charges may include previously unpaid assessments, provided all Owners including the foreclosure-purchaser and his successors and assigns are required to pay their proportionate share as provided in this clause.

## **8.2. Control of Amendment or Revocation of Project Documents.**

In addition to the requirements of Article 10, and unless a greater percentage is expressly required by this Declaration, the Articles, the Bylaws, or by law, the prior written consent (or deemed consent as provided below in this clause) or first Mortgagees of Lots that have at least fifty-one percent (51%) of the votes of all Lots encumbered by first Mortgages shall be required to add or amend any material provisions of the Declaration, the Articles, the Bylaws, or the Subdivision Map, which establish, provide for, govern, or regulate any of the following:

- (i) Voting;
- (ii) Assessment, collection of assessments, assessment liens or subordination of such liens;
- (iii) Reserves for maintenance, repair and replacement of front yard area, Common Area or improvements located on it;
- (iv) Casualty and liability insurance or fidelity bonds;
- (v) Rights to use the Common area;
- (iv) Responsibility for maintenance and repair of Lots and Common Area and their improvements;
- (iiv) Expansion or contraction of the Project or the addition, annexation, or withdrawal of real property to or from the Project;
- (viii) Boundaries of any Lot;
- (ix) The interests or rights of the Association or Owners in and to the Common Area;
- (x) The convertibility of Lots into Common Area or of Common Area into Lots;
- (xi) The leasing of Lots;
- (xii) Imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer, or otherwise convey his Lot; or
- (xiii) Any provisions that are for the express benefit of first Mortgagees or insurers or governmental guarantors of first mortgages.

For purposes of this provision, an addition or amendment shall not be considered material if it is for the purpose of correcting technical errors, or for clarification only. Any first Mortgagee who receives a written request to consent to additions or amendments requiring consent under this provision who does not deliver or post to the requesting party a negative response within thirty (30) days after such receipt shall be deemed to have consented to such request.

### **8.3. Restrictions on Certain changes.**

After the conveyance of a Lot to an Owner other than the Declarant, unless at least fifty-one percent (51%) of the total voting power and at least fifty-one percent (51%) of all first Mortgagees of Lots have given their prior written approval, neither the Association nor the Owners shall be entitled:

(i) By act or omission to seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Area. However, the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Area by the association shall not be deemed a transfer within the meaning of this clause;

(ii) To change the method of determining the obligations, assessments, dues, or other charges that may be levied against an Owner;

(iii) By act or omission to change, waive, or abandon the provisions of this Declaration, or the enforcement of them, pertaining to architectural design or control or the exterior appearance of Lot structures, the exterior maintenance of Lot structures, the maintenance of the Common Area walks or common fences and driveways, or the upkeep of lawns and plantings within the Property;

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

(v) To use hazard insurance proceeds for losses to any Association property, including Common Area improvements, for other than the repair, replacement, or reconstruction of such property.

### **8.4. Mortgagee's Right to examine Books and Records.**

Institutional first Mortgagees shall have the right to examine the books and records of the Association and the right to require the submission of financial data concerning the Association, including annual audit reports, budgets, and operating statements as furnished to the Owners.

#### **8.5. Priority in Distribution of Insurance and Condemnation Proceeds.**

No Owner, or any other party, shall have priority over any right of institutional first Mortgagees of Lots pursuant to their Mortgages in case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or a taking of Lots or Common Area. Any provision to the contrary in this Declaration or in the Bylaws or other documents relating to the development is to such extent void. All applicable fire and all physical loss or extended coverage insurance policies shall contain loss payable clauses acceptable to the affected institutional first Mortgagees, naming the Mortgagees as their interests may appear.

#### **8.6. Default Notice Requirement.**

If any Owner is in default under any provision of this Declaration or under any provision of the Articles, the bylaws or the Association Rules, and the default is not cured within sixty (60) days after written notice to that Owner, the Association shall give to the Mortgagee of record of such Owner written notice of such default and of the fact that the sixty (60) day period has expired.

#### **8.7 Payments By Mortgagees.**

Mortgagees of Lots may, jointly or severally, pay taxes or other charges which are in default and which may or have become a charge against the Common Area and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for Common Area improvements or other insured property of the Association and, upon making any such payments, such Mortgagees shall be owed immediate reimbursement from the Association. This provision shall constitute an agreement by the Association for the express benefit of all Mortgagees and upon request of any Mortgagee the Association shall execute and deliver to such Mortgagee a separate written agreement embodying this provision.

#### **8.8. Lien Not Invalidated.**

No breach of any provision of this Declaration shall invalidate the lien of any Mortgage made in good faith and for value; but all of the covenants, conditions and restrictions shall be binding on any Owner whose title is derived through foreclosure sale, trustee's sale, or otherwise.

#### **8.9. Cure of Breach By Mortgagee.**

Any Mortgagee who acquires title to a Lot by foreclosure or by deed in lieu of foreclosure or assignment in lieu of foreclosure shall not be obligated to cure any breach of this Declaration that is noncurable or of a type that is not practical or feasible to cure.



**8.10. Status of Loan to Facilitate Resale.**

Any first Mortgage given to secure a loan to facilitate the resale of a Lot after acquisition by foreclosure or by a deed in lieu of foreclosure or by an assignment in lieu of foreclosure shall be deemed to be a loan made in good faith and for value and entitled to all of the rights and protections of Mortgages under this Declaration.

**8.11. Right to Attend Meetings.**

Because of its financial interest in the Project, any Mortgagee may appear (but cannot vote) at meetings of Owners and the Board to draw attention to violations of this Declaration that have not been corrected or that have been made the subject of remedial proceedings or assessments.

**8.12. Right of First Refusal Inapplicable to Mortgagee.**

No right of first refusal or similar restriction on the right of an Owner to sell, transfer, or otherwise convey the Owner's Lot shall be granted to the Association without the written consent of any Mortgagee of the Lot. Any right of first refusal or option to purchase a Lot that may be granted to the Association (or other person, firm, or entity) shall not impair the rights of a first Mortgagee (i) to foreclose or take title to a Lot pursuant to the remedies provided in the mortgage; or (ii) to accept a deed (or assignment) in lieu of foreclosure in the event of default under the mortgage; or (iii) to sell or lease a Lot acquired by the Mortgagee.

**8.13. Limitation on Term of Management Contract.**

Any agreement between the Association and Declarant pursuant to which the Declarant agrees to provide services, and any agreement for professional management by a manager shall provide for termination by either party without cause or payment of a termination fee on thirty (30) days' written notice and shall have a maximum contract term of one year, provided that the Association can renew any such contract on a year-to-year basis. If the Project is professionally managed, the Association shall not terminate professional management and assume self-management without the consent of fifty-one percent (51%) of the voting rights of each class of Owners, or of all Owners if only one class exists, and of fifty-one percent (51%) of first Mortgagees.

In the event of any conflict between any of the provisions of Sections 8.1 through 8.13, inclusive, and any other provisions of this Declaration, the provisions of Sections 8.1 through 8.13, inclusive, shall control.

## **9. ARCHITECTURAL CONTROL**

### **9.1. Architectural Approval**

Except as to construction of improvements by Declarant in any phase of the Project, no building, fence, wall, or other structure shall be commenced, erected, or maintained on the Property; nor shall any exterior addition or change or alteration in any such structures of the Property, including, e.g., solar or heating systems, pools, spas, ponds, fountains, landscaping, stonework, concrete work, related mechanical, plumbing, or electrical facilities, awnings, patio covers, and antennae, be made until the plans and specifications showing the nature, kind, shape, materials, and location of the same have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Architectural Committee provided for in section 9.2. Whenever in this Declaration the prior consent or approval of the Association is required as a condition to any action by an Owner affecting any alterations, changes, additions, or modifications, the Association through the Board may delegate to the Architectural Committee the right and duty to grant or withhold such consent or approval. In the event the Architectural Committee or its designated representatives fails to approve or disapprove such design and location within thirty (30) days after the plans and specifications have been submitted to it, approval will not be required, and this provision will be deemed to have been complied with in full.

### **9.2. Appointment of Architectural Committee.**

The Declarant shall appoint all of the original members of the Architectural Committee, consisting of not less than three (3) nor more than five (5) persons who need not be members of the Association, and any replacements for them. The number of members initially appointed shall constitute the number of authorized members of the Committee until increased or decreased by the vote or written consent of the holders of at least fifty-one percent (51%) of the voting rights of each class of members of the Association. The initial appointees (and any replacements) shall hold office for one year. Thereafter, Declarant may appoint a majority of the members of the Architectural Committee, and any replacements for them, until ninety percent (90%) of the Lots have been sold and deeds to them recorded in favor of Owners or until the fifth anniversary of the issuance of the Final Public Report for the Project. After one year from the date of the issuance of the Final Public Report for the Project, the Board shall have the power to appoint one member of the Architectural Committee, whose power shall continue until ninety percent (90%) of the Lots have been sold and deeds to them recorded in favor of Owners or until the fifth anniversary of the issuance of the Final Public Report for the Project. Thereafter the Board shall have the power to appoint all of the members of the Architectural Committee. Members appointed to the Architectural Committee by the Board shall be members of the Association. Members appointed to the Architectural Committee by Declarant need not be members of the Association.

## **10. AMENDMENT OF DECLARATION**

### **10.1. Amendment Before Close of First Sale.**

Before the close of the first sale of a Lot in the Project to a purchaser other than Declarant, this Declaration and any amendments to it may be amended in any respect or revoked by the execution by Declarant and any Mortgagee of record of an instrument amending or revoking the Declaration.

### **10.2. Amendment After Close of First Sale.**

After the close of the first sale of a Lot in the Project to a purchaser other than Declarant, this Declaration and any amendments to it may be amended in any respect or revoked by the Execution by Declarant and any Mortgagee of record of an instrument amending or revoking the Declaration.

### **10.2. Amendment After Close of First Sale.**

After the close of the first sale of a Lot in the Project to a purchaser other than Declarant, this Declaration may be amended or revoked in any respect by the vote or written consent of the holders of not less than fifty-one percent (51%) of the voting rights of each class of Owners, or if a single class of Owners is then in effect, by the vote or written consent of not less than (i) fifty-one percent (51%) of all the votes and (ii) fifty-one percent (51%) of the votes excluding Declarant. However, if any provision of this Declaration requires a greater or lesser percentage of the voting rights of any class of Owners in order to take affirmative or negative action under such provision, the same percentage of such class or classes of Owners shall be required to amend or revoke such provision. Also, if the consent or approval of any governmental authority, mortgagee or other person, firm, agency, or entity is required under this Declaration with respect to any amendment or revocation of any provision of this Declaration, no such amendment or revocation shall become effective unless such consent or approval is obtained. Any amendment or revocation subsequent to the close of such first sale shall be evidenced by an instrument certified by the Secretary or other duly authorized officer of the Association and shall make appropriate reference to this Declaration and its amendments and shall be acknowledged and recorded in the office of the County Recorder of the County.

### **10.3. Conformance with Mortgagee Requirements.**

It is the intent of Declarant that this Declaration and the Articles and Bylaws of the Association, and the Project in general, shall now and in the future meet all requirements necessary to purchase, guarantee, insure, or subsidize any mortgage of a Lot in the Project by the Federal Home Loan

Mortgage Corporation, the Federal National Mortgage Association, the Federal Housing Administration, and the Veterans Administration. The Association and each Owner shall take any action or shall adopt any resolutions required by Declarant or any Mortgagee to conform this Declaration or the Project to the requirements of any of these entities or agencies.

## **11. GENERAL PROVISIONS**

### **11.1. Headings.**

The headings used in this Declaration are for convenience only and are not to be used to interpret the meaning of any of the provisions of this Declaration.

### **11.2. Severability of Provisions.**

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

### **11.3. Cumulative Remedies.**

Each remedy provided for in this Declaration shall be cumulative and not exclusive. Failure to exercise any remedy provided for in this Declaration shall not, under any circumstances, be construed as a waiver of the remedy.

### **11.4. Violations as Nuisance.**

Every act or omission in violation of the provisions of this Declaration shall constitute a nuisance and, in addition to all other remedies set forth, may be abated or enjoined by any Owner, any member of the Board, the manager, or the Association.

### **11.5. No Discriminatory Restrictions.**

No Owner shall execute or cause to be recorded any instrument that imposes a restriction upon the sale, leasing, or occupancy of his Lot on the basis of race, sex, marital status, national ancestry, color, or religion.

### **11.6. Owner's Access to Books.**

Any Owner may, at any reasonable time and upon reasonable notice to the Board or manager at his own expense, cause an audit or inspection to be made of the books and financial records of the Association.



### **11.7 Construction of Provisions.**

The provisions of this Declaration shall be liberally construed to effectuate its purpose. Failure to enforce any provision of the Declaration shall not constitute a waiver of the right to enforce the provision thereafter.

### **11.8 Notification of Sale.**

Concurrently with the consummation of the sale of any Lot under circumstances where the transferee becomes an Owner of the Lot, or within five (5) business days thereafter, the transferee shall notify the Association in writing of such sale. Such notification shall set forth the name of the transferee and his Mortgagee and transferor, the common address of the Lot purchased by the transferee, the transferee's and the Mortgagee's mailing address, and the date of sale. Before the receipt of such notification, any and all communications required or permitted to be given by the Association, the Board, or the manager shall be deemed to be duly made and given to the transferee if duly and timely made and given to the transferee's transferor. Mailing addresses may be changed at any time upon written notification to the Association. Notices shall be deemed received forty-eight (48) hours after mailing if mailed to the transferee, or to his transferor if the Association has received no notice of transfer as above provided, by certified mail, return receipt requested, at the mailing address above specified. Notices shall also be deemed received twenty-four (24) hours after being sent by telegram or upon personal delivery to any occupant of a Lot.

### **11.9 Number and Gender.**

The singular shall include the plural and the plural the singular unless the context requires the contrary; and the masculine, feminine, and neuter shall each include the masculine, feminine, or neuter, as the context requires.

### **11.10 Incorporation of Exhibits.**

All Exhibits referred to are attached to this Declaration and incorporated by reference.

### **11.11 Easements reserved and Granted.**

Any easements referred to in this Declaration shall be deemed reserved or granted, or both reserved and granted, by reference to this Declaration in a deed to any Lot.

### **11.12 Binding Effect.**

This Declaration shall inure to the benefit of and be binding on the

successors and assigns of the Declarant, and the heirs, personal representatives, grantees, tenants, successors, and assigns of the Owners.

**11.13. Term of Declaration.**


This Declaration shall run with the land, and shall continue in full force and effect for a period of fifty (50) years from the date on which this Declaration is executed. After that time, this Declaration and all its covenants and other provisions shall be automatically extended for successive ten (10) year periods unless this Declaration is revoked by an instrument executed by Owners and their respective institutional first Mortgagees of not less than three-fourths ( $\frac{3}{4}$ ) of the Lots in the development, and recorded in the office of the County Recorder of the County within one year prior to the end of the fifty (50) year period or any succeeding ten (10) year period.

**11.14. Special Provisions Relating to Enforcement of Declarant's Obligation to Complete Common Area Improvements.**

When the Project includes Common Area improvements which have not been completed prior to the close of escrow and the sale of the first Lot, and when the Association is obligee under a bond or other arrangement (hereafter "bond") to secure performance of the commitment of Declarant to complete said improvements, the Board shall consider and vote on the question of action by the Association to enforce the obligations under the bond with respect to any improvement for which 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. If the Association has given an extension in writing for the completion of any Common Area improvement, the Board shall consider and vote on the aforesaid question if a notice of completion has not been filed within thirty (30) days after the expiration of the extension. A special meeting of Members of the Association for the purpose of voting to override a decision by the Board not to initiate action to enforce the obligations under the bond or on the failure of the Board to consider and vote on the question shall be held not less than thirty-five (35) days nor more than forty-five (45) days after receipt by the Board of a petition for such a meeting signed by Members representing five percent (5%) or more of the total voting power of the Association. At such special meeting a vote of a majority of Members of the Association other than the Declarant shall be required to take action to enforce the obligations under the bond and a vote of a majority of the voting power of the Association, excluding Declarant, shall be deemed to be the decision of the Association, and the Board shall thereafter implement this decision by initiating and pursuing appropriate action in the name of the Association.

IN WITNESS WHEREOF, the undersigned has executed this Declaration as of the date first above written.

H. C. ELLIOTT, INC.,  
a California corporation

By:   
Its: President

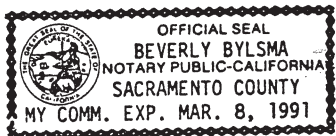
**ACKNOWLEDGMENT**

(Corporation)

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF SACRAMENTO )

On this 1st day of February, 1989, before me, Beverly Bylsma, a Notary Public, State of California, duly licensed and sworn, personally appeared Harry C. Elliott III, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument as president (or secretary) or on behalf of the corporation therein named and acknowledged to me that such corporation executed the within instrument pursuant to its Bylaws or a resolution of its Board of Directors.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the State of California, County of Sacramento, on the date set forth above in this certificate.



Beverly Bylsma  
NOTARY PUBLIC  
My Commission Expires: 3-8-91

(SEAL)



## **EXHIBIT "A"**

All that real property situate in the City of Folsom, County of Sacramento, State of California, more particularly described as follows:

Lots 1 through 115, inclusive, and Lots B through R, inclusive, all as shown on the Map of "CASCADES UNIT NO. 1," recorded in Book 188 of Maps, Map No. 1, records of said County.

## **EXHIBIT "B"**

### **ARTICLES OF INCORPORATION OF CASCADES RESIDENTIAL**

#### **I.**

The name of this Corporation is CASCADES RESIDENTIAL OWNERS ASSOCIATION.

#### **II.**

A. This Corporation is a nonprofit mutual benefit corporation organized under the Nonprofit Mutual Benefit Corporation Law. The purpose of this Corporation is to engage in any lawful act or activity for which a corporation may be organized under such law.

B. The specific and primary purpose of this Corporation is to be a residential real estate management association organized and operated to provide for the acquisition, construction, management, maintenance, and care of property owned by this Corporation (referred to as "association property").

C. No part of the net earnings of this Corporation shall inure to the benefit of any private member or individual other than by acquiring, constructing, or providing management, maintenance, and care of association property and other than by a rebate of excess membership dues, fees, or assessments.

#### **III.**

The name and address in the State of California of this Corporation's initial agent for service of process is David L. Robertson, 601 University Avenue, Suite 265, Sacramento, California 95825.

#### **IV.**

Notwithstanding any of the above statements of purposes and powers, this Corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the specific purpose of this Corporation.

#### **V.**

These Articles may be amended as provided in the Bylaws of this Corporation. If Bylaws have not been adopted, these Articles may be amended as provided in the Nonprofit Mutual Benefit Corporation Law.

DATED: January 18, 1989

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RUSSELL E. DAVIS

**EXHIBIT "C"**

**TABLE OF CONTENTS**  
**BYLAWS OF CASCADES RESIDENTIAL**  
**OWNERS ASSOCIATION**  
(PLANNED DEVELOPMENT)

	Page
1. NAME .....	1
2. PRINCIPAL OFFICE .....	1
3. DEFINITIONS .....	1
4. MEMBERSHIP AND VOTING RIGHTS .....	1
5. MEETING OF MEMBERS .....	1
5.1. Place of Meetings .....	1
5.2. Annual Meetings .....	2
5.3. Special Meetings .....	2
5.4. Notice of Meetings .....	2
5.5. Special Notice Requirements .....	3
5.6. Waiver of Notice or Consent .....	3
5.7. Proof of Membership and Record Date .....	4
5.8. Quorum .....	4
5.9. Proxies .....	5
5.10. Order of Business .....	6
5.11. Parliamentary Procedure .....	6
5.12. Action by Unanimous Consent .....	7
5.13. Action by Written Ballot .....	7
6. ELECTION AND TERM OF OFFICE OF MEMBERS OF THE BOARD OF DIRECTORS .....	7
6.1. Number .....	7
6.2. Nomination .....	8
6.3. Election of Directors .....	8
6.4. Specially Elected Directors .....	9
6.5. Vacancies .....	9
6.6. Compensation .....	10

7.	MEETINGS OF DIRECTORS	
7.1	Place of Meetings .....	10
7.2	Regular Meetings .....	10
7.3	Special Meetings .....	10
7.4	Open Meetings .....	11
7.5	Quorum Requirements.....	11
7.6	Adjourned Meetings .....	11
7.7	Action Taken Without a Meeting .....	12
7.8	Telephone Meetings .....	12
7.9	Waiver of Notice .....	12
8.	POWERS AND DUTIES OF THE BOARD .....	12
8.1	Powers .....	12
8.2	Duties .....	13
8.3	Standard of Care .....	13
8.4	Committees of the Board .....	13
8.5	Due Process Requirements .....	14
9.	OFFICERS AND THEIR DUTIES .....	14
9.1	Officers of the Association.....	14
9.2	Election of Officers .....	14
9.3	Other Officers .....	15
9.4	Removal or Resignation of Officers .....	15
9.5	Vacancies in Office .....	15
9.6	Duties .....	15
9.7	Joint Signatures .....	17
9.8	Compensation .....	17
10.	INDEMNIFICATION AND INSURANCE .....	17
10.1	Indemnification Right and Power .....	17
10.2	Indemnification Approval .....	17
10.3	Standard of Care .....	18
10.4	Advancement of Expenses .....	18
10.5	Insurance .....	18
11.	AMENDMENTS .....	19
11.1	Amending the Bylaws .....	19
11.2	Amending the Articles .....	19
11.3	Amendment Restrictions .....	19
12.	GENERAL PROVISIONS	
12.1	Conflict with declaration.....	19
12.2	Fiscal Year.....	20
12.3	Records.....	20
12.4	Inspection Rights .....	20



**BYLAWS**  
**OF**  
**CASCADES RESIDENTIAL OWNERS ASSOCIATION**  
**(PLANNED DEVELOPMENT)**  
a California Nonprofit Mutual Benefit Corporation

**1. NAME**

The name of the Association is CASCADES RESIDENTIAL OWNERS ASSOCIATION (the "Association").

**2. PRINCIPAL OFFICE**

The principal office of the Association is located at P.O. Box 6336, Folsom, California 95630-9998, or at such other place as may be designated by the Board. The mailing address is Post Office Box 6336, Folsom, California 95630-9998, or at such other address as may be designated by the Board.

**3. DEFINITIONS**

The definitions of the terms contained in Article 1 of the Declaration of Covenants, Conditions and Restrictions, recorded on February 9, 1989, as Instrument No. 028553 in the Office of the County Recorder of the County of Sacramento are incorporated by reference, and shall apply to those same terms as they may appear in these Bylaws.

**4. MEMBERSHIP AND VOTING RIGHTS**

The membership and voting rights provisions contained in Article 5 of the Declaration are incorporated by reference.

**5. MEETINGS OF MEMBERS**

**5.1 Place of Meetings**

All meetings of the members, annual and special, shall be held at a place within the Project as designated by the Board, provided that if there is not an available or appropriate place within the Project, the Board shall designate a meeting place as close as possible to the Project but in no event outside the County unless unusual conditions exist. In the absence of any designation, the meetings of members shall be held at the principal office of the Association.

## **5.2 Annual Meetings**

The first annual meeting of members of the Association shall be held within forty-five (45) days after the closing of the sale of the Lot that represents the fifty-first (51st) percentile interest of the sale of Lots by Declarant, but in no case later than six (6) months after the closing and recording of the sale of the first Lot. Thereafter, the annual meeting of the members of the Association shall be held each year on the third (3rd) Wednesday in February at 5:00 o'clock p.m., or at such other date or time as may be fixed by the Board but in no event shall an annual meeting be held less than once each calendar year. If the scheduled date of the annual meeting falls on a legal holiday, the meeting shall be held at the same time on the next business day.

## **5.3 Special Meetings**

Special meetings of the members may be called for any lawful purpose by the Board, the President, or by written request signed by members representing at least five percent (5%) of the total voting power of the Association. A special meeting called by any person (other than the Board) entitled to call a meeting shall be made by submitting a written request specifying the general nature of the business to be transacted to the President, any Vice President, or Secretary of the Association. The officer receiving the notice shall promptly cause notice to be given the members in the manner required by Section 5.4 that a meeting will be held at a date, time, and place fixed by the Board, which meeting shall be held not less than thirty-five (35) days nor more than ninety (90) days after receipt of the request. If the notice is not given within twenty (20) days after the receipt of the request, the person or persons requesting the meeting may give the notice.

## **5.4 Notice of Meetings**

Notice of all members' meetings, annual or special, shall be given not less than ten (10) nor more than ninety (90) days before the date of the meeting to each member and to any Mortgagee who has requested in writing to receive such notice. Any Mortgagee, or its designated representative, shall be entitled to attend any such meeting, but shall not be entitled to vote at the meeting. The notice shall be given personally, or by first-class, registered, or certified mail addressed to the member or Mortgagee at the address of such member or Mortgagee appearing on the books of the Association or given by the member or Mortgagee to the Association for purpose of notice. If no address appears or is given for any member, notice may be given at the Association's principal office or by publication at least once in a newspaper of general circulation.

The notice shall state the place, date, and time of the meeting. If Directors are to be elected at the meeting, the notice shall include the names of all those

who are nominees at the time notice is given. In the case of a special meeting, the notice shall state the general nature of the business to be transacted and no other business may be transacted. In the case of the annual meeting, the notice shall state those matters that the Board intends, at the time the notice is given, to present to the members for action, but any proper matter may be presented at the meeting for action subject to the special notice requirements described in Section 5.5 of these Bylaws.

## **5.5 Special Notice Requirements**

Approval by the members of any of the following proposals, other than by unanimous approval of those members entitled to vote, shall not be valid unless the general nature of the proposal was stated in the notice or in any written waiver of the notice:

- (i) removing a Director without cause;
- (ii) filling vacancies on the Board;
- (iii) amending the Articles, Bylaws or Declaration;
- (iv) approving a contract or transaction between the Association and one or more Directors, or between the Association and any entity in which a Director has a material financial interest;
- (v) electing to wind up and dissolve the Association; or
- (vi) approving a plan of distribution of assets, other than money, not in accordance with the liquidation rights of any class of members (applicable only if the Association is in the process of winding up and there is more than one class of membership outstanding at the time).

## **5.6 Waiver of Notice or Consent**

The transactions of any meeting of members, however called or noticed and wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice, if (1) a quorum is present either in person or by proxy, and (2) either before or after the meeting, each member entitled to vote, not present in person or by proxy, signs a written waiver of notice, a consent to the holding of the meeting, or an approval of the minutes of the meeting. The waiver of notice, consent, or approval need not specify either the business to be transacted or the purpose of any meeting of members, except that if action is taken or proposed to be taken for approval of any of those matters specified in Section 5.5 of these Bylaws, the waiver of notice, consent, or approval shall state the general nature of the proposal. All such waivers, consents, or approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

Attendance of a member at a meeting shall also constitute a waiver of notice of and presence at that meeting, unless the member objects at the beginning of the meeting to the transaction of any business because the meeting

to the transaction of any business because the meeting is not lawfully called or convened. Also, attendance at a meeting is not a waiver of any right to object to the consideration of matters required to be included in the notice of the meeting but not so required to be included in the notice of the meeting but not so included, if that objection is expressly made at the meeting.

### **5.7 Proof of Membership and Record Date**

No person shall exercise the rights of membership in the Association until satisfactory proof of membership has been furnished the Association. Such proof may consist of either a duly executed and acknowledged grant deed or title insurance policy showing that the person has an ownership interest in a Lot that would entitle the person to membership in the Association as provided in Section 5.1 of the Declaration. Such deed or policy shall be deemed conclusive proof of the person's membership in the absence of a conflicting claim based on a later deed or policy.

For the purpose of determining the members entitled to notice of any meeting, to vote, or to exercise any other rights in respect of any lawful action, the Board may fix, in advance, a record date as follows: (a) the record date for notices shall be not more than ninety (90) nor less than ten (10) days before the date of the meeting, (b) the record date for voting shall not be more than sixty (60) days before the date of the meeting or before the date on which the first written ballot is mailed or solicited, and (c) the record date for any other action shall not be more than sixty (60) days before the date of such action. If no record date is fixed by the Board, the record date shall be determined in accordance with California Corporations Code Section 7611. A person holding a membership as of the close of business on the record date shall be a member of record.

### **5.8 Quorum**

The presence at any meeting in person or by proxy of members entitled to cast at least fifty-one percent (51%) of the total votes of all members shall constitute a quorum. Any members' meeting, whether or not a quorum is present, may be adjourned from time to time for any reason by a vote of the members representing a majority of the voting power of the members present at the meeting, either in person or by proxy, to another time not less than five (5) days nor more than thirty (30) days from the date of the original meeting. If the time and place of the adjourned meeting is announced prior to the adjournment of the original meeting, no notice of the adjourned meeting is required, provided that if a new date is fixed for the adjourned meeting after the adjournment of the original meeting, notice of the date, time and place of the adjourned meeting shall be given to members in the manner prescribed in Section 5.4 of these Bylaws. Any business that might have been transacted at the original meeting



may be transacted at the adjourned meeting. In the absence of a quorum no business may be transacted at the meeting other than to adjourn the meeting to another time. If a meeting is adjourned because a quorum is not present, the quorum requirement at the adjourned meeting shall continue to be at least fifty-one percent (51%) of the total voting power of all the members.

The members present at a duly called or held meeting at which a quorum is present may continue to transact business until adjournment notwithstanding the withdrawal of enough members to leave less than a quorum, if any action taken (other than adjournment) is approved by at least a majority of the members required to constitute a quorum.

## 5.9 Proxies

Each person entitled to vote shall have the right to do so either in person or by one or more agents authorized by written proxy, signed by the person and filed with the secretary of the Association. A proxy shall be deemed signed if the member's name is placed on the proxy (whether by manual signature, typewriting, telegraphic transmission, or otherwise) by a member or the member's attorney in fact.

A validly executed proxy shall continue in full force and effect until (i) written notice is received by the Association of the death or incapacity of a member executing the proxy, or (ii) the member executing the proxy revokes it before the vote is cast under that proxy by (a) delivering a written revocation to the Association, (b) executing a subsequent proxy that is presented to the meeting, or (c) attending and voting in person at any meeting. Unless the proxy indicates otherwise, it shall not be valid after eleven (11) months from the date of execution and in no event shall any proxy be valid after three (3) years from the date of execution. Notwithstanding any of the foregoing all proxies shall be revocable and shall automatically terminate when the member's membership in the Association terminates as provided in Section 5.1 of the Declaration. The suspension of any member's voting rights by the Association shall automatically suspend any proxy executed by that member.

Any form of proxy distributed by any person to the membership of the Association shall afford the opportunity to specify a choice between approval and disapproval of each matter or group of matters to be acted upon, except it shall not be mandatory that a candidate for election to the governing body be named in the proxy. The proxy shall provide that, where the member specifies a choice, the vote shall be cast in accordance with that choice. The proxy shall also identify the person or persons authorized to exercise the proxy and the length of time it will be valid.

No proxy shall be valid with respect to a vote on the following proposals

to be approved by the members unless the general nature of the matter to be voted on was set forth in the proxy:

- (i) removing a Director without cause;
- (ii) filling vacancies on the Board;
- (iii) amending the Articles, Bylaws or Declaration;
- (iv) the sale, lease, conveyance, exchange, transfer, or other disposal of all or substantially all of the Association's assets, or the approval of the principal terms of a merger or the amendment to the principal terms of a merger;
- (v) approving a contract or transaction between the Association and one or more Directors, or between the Association and any entity in which a Director has a material financial interest;
- (vi) electing to wind up and dissolve the Association; or
- (vii) approving a plan of distribution of assets, other than money, not in accordance with the liquidation rights of any class of members (applicable only if the Association is in the process of winding up and there is more than one class of membership outstanding at the time).

#### 5.10 **Order of Business**

The order of business of all meetings of the members shall be as follows:

- (i) roll call;
- (ii) proof or notice of meeting or waiver of notice;
- (iii) reading of minutes of preceding meeting;
- (iv) reports of Board and officers;
- (v) election of Directors, if any are to be elected;
- (vi) unfinished business; and
- (vii) new business.

#### 5.11 **Parliamentary Procedure**

All questions of parliamentary procedure shall be decided in accordance with Roberts Rules of Order.

## **5.11 Action by Unanimous Consent**

Any action required or permitted to be taken by the members may be taken without a meeting if all the members consent in writing to the action. The written consents shall have the same force and effect as the unanimous vote of the members. The written consents shall be filed with the minutes of the proceedings of the members.

## **5.13 Action by Written Ballot**

Any action that may be taken at any meeting of the members, except the election of Directors, may be taken by written ballot in accordance with Section 7513 of the Corporations Code if the following requirements are satisfied:

(i) The Association distributes a written ballot to each member entitled to vote on the matter. The ballot shall be given personally, or by first-class, registered, or certified mail addressed to the member at the address of such member appearing on the books of the Association or given by the member to the Association for purpose of notice. The ballot shall provide a reasonable time within which to be returned. The time fixed for the return of ballots may only be increased if the Board so notifies the members in the balloting materials sent to members and then for no more than forty-five (45) days.

(ii) Each ballot shall set forth: (a) the proposed action, (b) an opportunity to specify approval or disapproval of any proposal, (c) the time by which the ballot must be received by the Association in order to be counted, (d) the number of responses needed to meet the quorum requirement, and (e) the percentage of approvals necessary to approve the proposed action.

(iii) The proposed action shall be considered approved by written ballot if (a) within the time period specified the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and (b) the number of approvals equals or exceeds the number of votes that would be required for approval at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

(iv) A written ballot may not be revoked.

# **6. ELECTION AND TERM OF OFFICE OF MEMBERS OF THE BOARD OF DIRECTORS**

## **6.1 Number**

The Board shall consist of five (5) Directors who must be members of the Association.

## 6.2 **Nomination**

Except for the initial Directors selected by the incorporators or the members as provided in Section 6.3 of these Bylaws, nomination for election to the Board shall be made by a nominating committee consisting of three (3) persons. The nominating committee shall consist of a chairman, who shall be a Director, and two other persons who may either be members of the Association or representatives of Declarant. Each member of the nominating committee shall be appointed by the Board to serve for a period of one year, and vacancies thereon shall be filled by the Board. The nominating committee may make as many nominations as it desires but not less than the number of positions to be filled. Nominations may be made from among members or nonmembers.

Notwithstanding the foregoing, any member present in person or by proxy at a meeting in which a Director or Directors are to be elected may place a name in nomination at the meeting prior to the vote.

The Board shall adopt procedures that provide for a reasonable opportunity for nominees to communicate their qualifications and reasons for candidacy to the members and to solicit votes, and for a reasonable opportunity for all members to choose among the nominees. No Association funds may be expended to support a nominee for Director after there are more nominees than can be elected.

## 6.3 **Election of Directors**

The initial Directors shall be elected either by the incorporator of the Association or by the members as soon as practical after the incorporation of the Association, and shall hold office until the first annual meeting of the members as specified in section. 5.2 of these Bylaws. At the first annual meeting, the members shall elect Directors to fill all the positions on the Board. Unless the office is vacated sooner as provided in Section 6.6 of these Bylaws, each Director shall hold office until his or her term expires and a successor has been elected and qualified. The terms of office of the Directors receiving the first, second and third highest number of votes shall be for three (3) year. The terms of office of the Directors receiving the fourth and fifth highest number of votes shall be for two (2) years. Successor Directors shall be elected at each annual meeting thereafter for a term of three (3) years.

The election of Directors shall be by secret written ballot, and subject to the provision regarding specially elected Directors in Section 6.5 of these Bylaws, the persons receiving the highest number of votes up to the number of positions to be filled shall be elected.

Any Director may resign effective on giving written notice to the President,



the Secretary, or the Board, unless the notice specifies a later time for the effectiveness of such resignation.

#### **6.4 Specially Elected Directors**

As long as a majority of the voting power of the Association resides in the Declarant, or as long as there are two outstanding classes of membership in the Association, no less than twenty percent (20%) of the Directors shall be elected by members other than Declarant. If members other than Declarant are unable to elect at least twenty percent (20%) of the Directors by the exercise of cumulative voting or otherwise, the number of positions on the Board necessary to meet the twenty percent (20%) requirement shall be filled by nominees elected by members other than Declarant (the "specially elected" Directors). Nominations for specially elected Directors may be made by any member other than Declarant by submitting a written nomination before the meeting to the Secretary of the Association, or by placing a name in nomination at the meeting prior to the vote. A specially elected Director may be removed prior to the expiration of his or her term only by the vote or written assent of members other than Declarant who hold a majority of the voting rights other than the voting rights held by Declarant. In case of the death, resignation, or removal of a specially elected Director, a successor shall be elected by members other than Declarant to hold office for the unexpired term of his or her predecessor and until a successor has been elected and qualified. Except as otherwise provided in this section, the provisions of these Bylaws, the Declaration and the Articles, applicable to Directors, including their election, removal, rights, and duties, shall apply to specially elected Directors.

#### **6.5 Vacancies**

A vacancy or vacancies on the Board shall exist on the occurrence of any of the following: (i) the death of any Director, (ii) the effective date of any Director's resignation, (iii) the removal of a Director by vote of the members, or by vote of a majority of all the votes entitled to be cast by all the members, provided that, if applicable, the vote for removal satisfied the requirements contained in the cumulative voting or specially elected Director provisions in Sections 6.4 and 6.5 of these Bylaws, (iv) the declaration by resolution of the Board of a vacancy in the office of a Director who has been declared of unsound mind by an order of Court or convicted of a felony, (v) the increase in the authorized number of Directors, or (vi) the failure of the members, at any meeting of the members at which any Director or Directors are to be elected, to elect the number of Directors required to be elected at that meeting.

Unless the entire Board is removed from office by vote of the members, an individual Director shall not be removed prior to the expiration of his term of office if the votes cast against his removal would be sufficient to elect him if

voted cumulatively at an election at which the same total number of votes were cast and the entire number of Directors authorized at the time of the most recent election of Directors were then being elected.

Any vacancy on the Board may be filled by a majority of the Directors then in office, whether or not less than a quorum, or by a sole remaining Director, except for a vacancy created by removal of a Director by vote of the members or a vacancy of a specially elected Director position, which vacancies shall be filled by the members. In addition, the members may fill any vacancy not filled by the Directors. Any Director elected to fill a vacancy shall hold office until the expiration of the term of his or her predecessor and until a successor has been elected and qualified.

## **6.6 Compensation**

A Director shall not receive any compensation for any services rendered to the Association as a Director; provided that Directors may be reimbursed for actual out-of-pocket expenses incurred in the performance of his or her duties.

# **7. MEETINGS OF DIRECTORS**

## **7.1 Place of Meetings**

Meetings of the Board shall be held at any place within the Project designated by the Board or described in the notice of the meeting. In the absence of any designation or notice, meetings shall be held at the principal office of the Association.

## **7.2 Regular Meetings**

Regular meetings of the Board shall be held semiannually at such time and place within the development as may be fixed from time to time by resolution of the Board. If a regular meeting falls on a legal holiday, the meeting shall be held at the same time on the next business day. Notice of the time and place of any regular meeting shall be posted at a prominent place or places within the Common Area and shall be communicated to each Director not less than four (4) days prior to the meeting; provided, however, that notice need not be given to any Director who signs a waiver of notice or written consent to the holding of the meeting.

## **7.3 Special Meetings**

Special meetings of the Board may be called by written notice signed by the President of the Association, or by any two Directors other than the President.

The notice shall specify the time and place of the meeting and the nature of any special business to be considered. The notice shall be posted in a manner prescribed for notice of regular meetings and shall be sent to all Directors not less than seventy-two (72) hours prior to the scheduled time of the meeting; provided that notice need not be given to any Director who signs a waiver of notice or a written consent to the holding of the meeting.

#### **7.4 Open Meetings**

Regular and special meetings shall be open to all members, provided that members who are not Directors may not participate in any deliberation or discussion unless expressly authorized to do so by the vote of a majority of a quorum of the Board. The Board may, with the approval of a majority of a quorum of the Board, adjourn a meeting and reconvene in executive session to discuss and vote on personnel matters, litigation in which the Association is or may become involved, and orders of business of a similar or otherwise sensitive nature. The nature of any and all business to be considered in executive session shall first be announced in open session.

#### **7.5 Quorum Requirements**

A majority of the authorized number of Directors shall constitute a quorum for the transaction of business, except to adjourn. Every act or decision done or made by a majority of the Directors present at a meeting duly held at which a quorum is present shall be regarded as the act of the Board, subject to the requirements of California Corporations Code Section 7211(a)(8), including without limitation, the requirements relating to (i) approval of contracts or transactions between the Association and one or more Directors or between the Association and any entity in which a Director has a material financial interest, (ii) creation of and appointments to committees of the Board, and (iii) indemnification of Directors. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of Directors, if any action taken or decision made is approved by at least a majority of the required quorum for that meeting.

#### **7.6 Adjourned Meetings**

A majority of the Directors present, whether or not a quorum is present, may adjourn any meeting to another time and place. Notice of the time and place of holding an adjourned meeting need not be given unless the original meeting is adjourned for more than twenty-four (24) hours. If the original meeting is adjourned for more than twenty-four (24) hours, notice of any adjournment to another time and place shall be given, before the time of the adjourned meeting, to the Directors who were not present at the time of the adjournment.

## **7.7 Action Taken Without a Meeting**

Any action that the Board is required or permitted to take may be taken without a meeting, if all members of the Board consent in writing to that action. Such action by written consent shall have the same force and effect as any other validly approved action of the Board. Such written consent or consents shall be filed with the minutes of the proceedings of the Board. An explanation of any action so approved shall be posted at a prominent place or places within the Common Area and shall be sent to each member by first-class mail within three (3) days after the written consents of all the Directors have been obtained.

## **7.8 Telephone Meetings**

Any meeting, regular or special, may be held by conference telephone or similar communications equipment, so long as all Directors participating in the meeting can hear one another, and all such Directors shall be deemed to be present in person at such meeting.

## **7.9 Waiver of Notice**

Notice of a meeting need not be given any Director who, either before or after the meeting, signs a waiver of notice, a written consent to the holding of the meeting, or an approval of the minutes of the meeting. The waiver of notice or consent need not specify the purpose of the meeting. All such waivers, consents and approvals shall be filed with the Association's records or made a part of the minutes of the meetings. Notice of a meeting need not be given to any Director who attends the meeting and does not protest, before or at the commencement of the meeting, the lack of notice of him or her.

# **8. POWERS AND DUTIES OF THE BOARD**

## **8.1 Powers**

The Board shall have all powers conferred on the Association as set forth in the Declaration and these Bylaws, except those powers expressly reserved to the members and subject to the requirements to obtain approval of the members before certain actions may be taken. In addition, the Board shall appoint and remove at its pleasure all officers, agents, and employees of the Association, and shall prescribe powers and duties for them that are consistent with the Declaration, the Articles, these Bylaws, and any applicable laws.



## 8.2 Duties

The Board shall be responsible for the performance of the duties of the Association as set forth in the Declaration, and shall supervise all officers, agents, and employees of the Association for the proper performance of their duties.

## 8.3 Standard of Care

Each Director shall perform his or her duties as a Director, including the duties as a member of any committee of the Board on which the Director serves, in good faith, in a manner such Director believes to be in the best interests of the Association, and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

## 8.4 Committees of the Board

The Board, by resolution adopted by a majority of the Directors then in office, provided a quorum is present, may create one or more committees, each consisting of two (2) or more Directors and no persons who are not Directors, to serve at the pleasure of the Board. Appointments to committees of the Board shall be by majority vote of the Directors then in office. The Board may appoint one or more Directors as alternate members of any such committee, who may replace any absent member at any meeting. Any such committee, to the extent provided in the resolution of the Board, shall have all of the authority of the Board, except that no committee, regardless of Board resolution, may:

- (i) take any final action on any matter which, under the Declaration or the California Nonprofit Mutual Benefit Corporation Law, also requires approval of the members or approval of a majority of all members;
- (ii) fill vacancies on the Board or on any committee which has the authority of the Board;
- (iii) amend or repeal these Bylaws or adopt new bylaws;
- (iv) amend or repeal any resolution of the Board which by its express terms is not so amendable or repealable;
- (v) appoint any other committees of the Board or the members of those committees; or
- (vi) expend corporate funds to support a nominee for Director after there are more nominees than can be elected.

Meetings and actions of committees of the Board shall be governed by, held, and taken in accordance with, the provisions of these Bylaws concerning



meetings and other actions of the Board, except that the time for regular meetings of such committees and calling of special meetings of such committees may be determined either by resolution of the Board or, in the absence of a Board resolution, by resolution of the committee. Minutes of each meeting of any committee of the Board shall be kept and shall be filed with the corporate records. The Board may adopt rules for the governing of any committee not inconsistent with the provisions of these Bylaws, or in the absence of rules adopted by the Board, the committee may adopt such rules.

### **8.5 Due Process Requirements**

Before the Board imposes any monetary penalties against any member for failure to comply with the Declaration, these Bylaws, or Association Rules, the Board must act in good faith and must satisfy each of the following requirements:

(i) The member is given fifteen (15) days' prior notice of the discipline to be imposed and the reasons for the imposition of the discipline. The notice may be given by any method reasonably calculated to give actual notice. If the notice is given by mail, it must be sent by first-class or registered mail to the last address of the member as shown on the Association's records.

(ii) The member is given an opportunity to be heard, orally or in writing, by the Board, not less than five (5) days before the effective date of the imposition of the discipline.

## **9. OFFICERS AND THEIR DUTIES**

### **9.1 Officers of the Association**

The officers of the Association shall be a President, a Secretary, and a Chief Financial Officer. The Association may also have, at the discretion of the Board, one or more Vice Presidents, one or more Assistant Secretaries, one or more Assistant Treasurers, and such other officers as may be appointed in accordance with the provisions of Section 9.3 of these Bylaws. Any number of offices may be held by the same person.

### **9.2 Election of Officers**

The officers, except those appointed under Section 9.3 of these Bylaws, shall be chosen annually by the Board and shall serve at the pleasure of the Board. The Board shall appoint one of its Directors as President and one as the Chief Financial Officer; the other officers need not be Directors.

### 9.3 **Other Officers**

The Board may appoint and may authorize the President, or another officer, to appoint any other officers that the Association may require. Each officer so appointed shall have the title, hold office for the period, have the authority and perform the duties specified in these Bylaws or determined from time to time by the Board.

### 9.4 **Removal or Resignation of Officers**

Any officer may resign at any time by giving written notice to the Association. Any such resignation shall take effect as of the date the notice received or at any later time specified in the notice and, unless otherwise specified in the notice, the acceptance of the resignation shall not be necessary to make it effective.

### 9.5 **Vacancies in Office**

A vacancy in any office because of death, resignation, removal, disqualification, or any other cause shall be filled in the manner prescribed in these Bylaws for regular appointments to that office; provided, however, that vacancies need not be filled on an annual basis.

### 9.6 **Duties**

The duties of the officers shall be as follows:

#### (i) **President**

The President shall be the general manager and chief executive officer of the Association and generally supervise, direct, and control the Association's activities, affairs, and officers. The President shall preside at all meetings of members and at all meetings of the Board. The President shall have such other powers and duties as may be prescribed by the Board or these Bylaws.

#### (ii) **Vice President**

In the absence or disability of the President, the Vice Presidents, if any, in order of their rank as fixed by the Board or, if not ranked, a Vice President designated by the Board, shall perform all of the duties of the President. When so acting, a Vice President shall have all of the powers of and be subject to all of the restrictions on the President. The Vice Presidents shall have such other powers and perform such other duties as prescribed by the Board or these Bylaws.

(iii) **Secretary**

The Secretary shall keep or cause to be kept, at the Association's principal office, the following:

(a) A book of minutes of all meetings, proceedings, and actions of the Board, of committees of the Board, and of members. The minutes of meetings shall include the time and place of holding, whether annual, regular, or special, and, if special, how authorized, the notice given, the names of those present at Board and committee meetings, and the number of members present or represented at members' meetings.

(b) A copy of the Articles and Bylaws, as amended to date.

(c) A record of the members, showing the names of all members, their addresses and the class of membership held by each.

Except as otherwise provided in these Bylaws, the Secretary shall give, or cause to be given, the notices required by these Bylaws for meetings of members, of the Board and of committees of the Board. The Secretary shall have such other powers and perform such other duties as may be prescribed by the Board or these Bylaws.

(iv) **Chief Financial Officer**

The Chief Financial Officer shall keep and maintain, or cause to be kept and maintained, adequate and correct books and accounts of the properties and transactions of the Association, and shall send or cause to be sent to the members and Directors such financial statements and reports as are required by law, the Declaration, these Bylaws, or the Board. The books of account shall be open to inspection by any Director at all reasonable times.

The Chief Financial Officer shall deposit, or cause to be deposited, all money and other valuables in the name and to the credit of the Association with such depositories as may be designated by the Board, shall disburse the funds of the Association as may be ordered by the Board, shall render to the President and the Board, when requested, an account of all transactions made on behalf of the Association and of the financial condition of the Association, and shall have such other powers and perform such other duties as may be prescribed by the Board or the Bylaws.

**9.7 Joint Signatures**

Unless the Board authorizes otherwise, any check or other negotiable instrument issued by the Association shall require the joint signatures of any

two (2) of the following officers: the President, the Chief Financial Officer, and the Secretary.

## **9.8 Compensation**

Officers shall not receive any compensation for any service rendered to the Association as an officer; provided that any officer may be reimbursed for actual out-of-pocket expenses incurred in the performance of his or her duties.

# **10. INDEMNIFICATION AND INSURANCE**

## **10.1 Indemnification Right and Power**

The Association shall indemnify any agent of the Association who was a party to any proceeding by reason of the fact that the person is or was an agent of the Association against expenses actually and reasonably incurred in any proceeding to the extent that the agent was successful on the merits in defense of the proceeding or in defense of any claim, issue, or matter therein. Expenses shall include any attorneys' fees and any other expenses of establishing a right to indemnification.

The Association may indemnify any agent of the Association who was or is a party or is threatened to be made a party to any proceeding by reason of the fact that such person is or was an agent of the Association, against expenses actually and reasonably incurred in connection with such proceeding provided the approval requirements described in Section 10.2 of these Bylaws have been satisfied.

For purposes of Section 10.1 through 10.5 of these Bylaws, the term "agent" means any present or former Director, officer, employee, or other agent of the Association, the term "proceeding" means any threatened, pending or completed action or proceeding, whether civil, criminal, administrative or investigative, and the term "expenses" includes judgments, fines, or settlements occurring in any proceeding other than a proceeding brought by or on behalf of the Association.

## **10.2 Indemnification Approval**

Unless indemnification is required as provided in Section 10.1 of these Bylaws, indemnification shall be made only if authorized in the specific case on a determination that indemnification is proper in the circumstances because the agent satisfied the appropriate standard of care described in Section 10.3 of these Bylaws. The determination must be made by one of the following methods:

(i) A majority vote of a quorum of the Board consisting of Directors who are not parties to the proceeding.

(ii) The affirmative vote of a majority of the voting power of the members entitled to vote at a duly held members' meeting in which a quorum was present, or the approval by written ballot under the procedures described in Section 5.13 of these Bylaws, provided that if the agent to be indemnified is a member, the agent shall not be entitled to vote.

(iii) The Court in which such proceeding is or was pending on application made by the Association or the agent or the attorney or other person rendering services in connection with the defense, whether or not the application is opposed by the Association.

Notwithstanding for foregoing, any indemnification in any proceeding brought by or on behalf of the Association shall be subject to the restrictions contained in California Corporations Code Section 7237(c).

### **10.3 Standard of Care**

In any proceeding brought by or on behalf of the Association, the applicable standard of care shall require that the agent acted in good faith, in a manner the agent believed to be in the best interests of the Association and with the care, including reasonable inquiry, that an ordinarily prudent person in like position would use under similar circumstances. In all other proceedings, the agent must have acted in good faith, in a manner the agent believed to be in the best interests of the Association and, in the case of a criminal proceeding, had no reasonable cause to believe that his or her conduct was unlawful.

### **10.4 Advancement of Expenses**

On approval by the Board, expenses incurred in defending any proceeding may be advanced by the Association prior to the final disposition of the proceeding, provided the Association receives an undertaking by or on behalf of the agent that the advances will be repaid unless it is ultimately determined that the agent was entitled to indemnification as required or authorized by these Bylaws.

### **10.4 Insurance**

The Association shall have the power to purchase and maintain insurance on behalf of its agents, against any liability asserted against or incurred by any agent in such capacity or arising out of the agent's status as such whether or not the Association would have the power to indemnify the agent against such liability under Sections 10.1 through 10.4 of these Bylaws.



## **11. AMENDMENT**

### **11.1 Amending the Bylaws**

If a two-class voting system is in effect, these Bylaws may be amended only by vote or written assent of a bare majority of the voting power of all of the members of each class.

If a one-class voting system is in effect, these Bylaws may be amended by vote or written assent of:

- (i) a bare majority of the voting power of the Association; and
- (ii) a bare majority of the votes of members other than Declarant.

### **11.2 Amending the Articles**

If a two-class voting system is in effect, the Articles may be amended by vote or written assent of a majority of the voting power of all of the members of each class.

If a one-class voting system is in effect, the Articles may be amended by a majority vote of the Board, a majority of the voting power of all the members, and a majority of the voting power of all the members other than Declarant.

### **11.3 Amendment Restrictions**

Notwithstanding the amendment requirements contained in Sections 11.1 and 11.2 of these Bylaws, the percentage of the voting power of the Association or of members other than the Declarant necessary to amend a specific clause or provision in these Bylaws or the Articles shall not be less than the prescribed percentage of affirmative votes required for action to be taken under the clause or provision, and, if applicable, any amendment to the Articles of Bylaws shall satisfy the requirements of Section 8.2 of the Declaration regarding the consent of first Mortgagees.

## **12. GENERAL PROVISIONS**

### **12.1 Conflict with Declaration**

If any provision of these Bylaws conflicts with any provision of the Declaration, the Declaration shall control to the extent of any such conflict.

## 12.2 **Fiscal Year**

Unless the Board determines otherwise, the fiscal year of the Association shall be a calendar year.

## 12.3 **Records**

The Association shall maintain the following records:

- (i) adequate and correct books and records of account;
- (ii) written minutes of the proceedings of its members, Board and committees of the Board; and
- (iii) a record of its members, giving their names, telephone numbers and addresses, and the class of membership held by each.

The Association shall keep at its principal office the original or a copy of the Declaration, the Articles and these Bylaws, as amended to date, which shall be open to inspection by the members at all reasonable times during office hours.

## 12.4 **Inspection Rights**

The inspection rights of members and Directors contained in Section 4.17 of the Declaration are incorporated by reference.

**CERTIFICATE OF SECRETARY**

I certify that I am the duly elected and acting Secretary of CASCADES RESIDENTIAL OWNERS ASSOCIATION, a California Nonprofit Mutual Benefit Corporation, and the above Bylaws, consisting of 20 pages, are the Bylaws of this Corporation as adopted by the Board of Directors on \_\_\_\_\_, 198\_\_\_\_, and that they have not been amended or modified since that date.

Executed on \_\_\_\_\_, 1989, at Rancho Cordova, California.

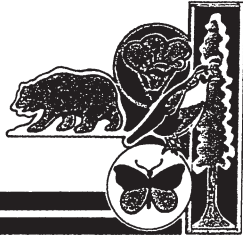
\_\_\_\_\_  
Secretary

## **EXHIBIT "D"**

### **COMMON AREA DEFINED**

All that real property situate in the City of Folsom, County of Sacramento, State of California, more particularly described as follows:

Lots B through R, inclusive, as shown on the Map of "CASCADES UNIT NO. 1," recorded in Book 188 of Maps, Map No. 1, records of said County.



State  
of  
California  
OFFICE OF THE SECRETARY OF

CORPORATION DIVISION

I, *MARCH FONG EU*, Secretary of State of the State of California, hereby certify:

That the annexed transcript has been compared with the corporate record on file in this office, of which it purports to be a copy, and that same is full, true and correct.

IN WITNESS WHEREOF, I execute  
this certificate and affix the Great  
Seal of the State of California this

JAN 24 1989



*March Fong Eu*

Secretary of State



1632002

ARTICLES OF INCORPORATION  
OF  
CASCADES RESIDENTIAL  
OWNERS ASSOCIATION

ENDORSED  
FILED  
In the office of the Secretary of State  
of the State of California  
JAN 24 1989  
MARCH FONG EU, Secretary of State

I.

The name of this Corporation is CASCADES RESIDENTIAL OWNERS ASSOCIATION.

II.

A. This Corporation is a nonprofit mutual benefit corporation organized under the Nonprofit Mutual Benefit Corporation Law. The purpose of this Corporation is to engage in any lawful act or activity for which a corporation may be organized under such law.

B. The specific and primary purpose of this Corporation is to be a residential real estate management association organized and operated to provide for the acquisition, construction, management, maintenance, and care of property owned by this Corporation (referred to as "association property").

C. No part of the net earnings of this Corporation shall inure to the benefit of any private member or individual other than by acquiring, constructing, or providing management, maintenance, and care of association property and other than by a rebate of excess membership dues, fees, or assessments.

III.

The name and address in the State of California of this Corporation's initial agent for service of process is David L. Robertson, 601 University Avenue, Suite 265, Sacramento, California 95825.

IV.

Notwithstanding any of the above statements of purposes and powers, this Corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the specific purpose of this Corporation.

V.

These Articles may be amended as provided in the Bylaws of this Corporation. If Bylaws have not been adopted, these Articles may be amended as provided in the Nonprofit Mutual Benefit Corporation Law.

DATED: January 18, 1989

  
\_\_\_\_\_  
RUSSELL E. DAVIS

Department of Real Estate  
of the  
State of California

RECEIVED  
FEB 22 1989  
H.C. ELLIOTT

FINAL SUBDIVISION PUBLIC REPORT

In the matter of the application of

H.C. ELLIOTT, INC.,  
A California Corporation

PLANNED DEVELOPMENT

FILE NO.: 027459SA-F00

ISSUED: FEB 21 1989 *sw*

EXPIRES: FEB 20 1994

for a Final Subdivision Public Report on

CASCADES UNIT NO. 1

JAMES A. EDMONDS, JR.  
Commissioner

by *Bonnie Myers*  
Deputy Commissioner

SACRAMENTO COUNTY, CALIFORNIA

CONSUMER INFORMATION

- ❖ THIS REPORT IS NOT A RECOMMENDATION OR ENDORSEMENT OF THE SUBDIVISION; IT IS INFORMATIVE ONLY.
- ❖ BUYER OR LESSEE MUST SIGN THAT (S)HE HAS RECEIVED AND READ THIS REPORT.
- ❖ A copy of this subdivision public report along with a statement advising that a copy of the public report may be obtained from the owner, subdivider, or agent at any time, upon oral or written request, *must* be posted in a conspicuous place at any office where sales or leases or offers to sell or lease interests in this subdivision are regularly made. [Reference Business and Professions (B&P) Code Section 11018.1(b)]

This report expires on the date shown above. All material changes must be reported to the Department of Real Estate. (Refer to Section 11012 of the B&P Code; and Chapter 6, Title 10 of the California Administrative Code, Regulation 2800.) Some material changes may require amendment of the Public Report; which Amendment must be obtained and used in lieu of this report.

Section 12920 of the California Government Code provides that the practice of discrimination in housing accommodations on the basis of race, color, religion, sex, martial status, national origin, physical handicap or ancestry, is against public policy.

Under Section 125.6 of the B&P Code, California real estate licensees are subject to disciplinary action by the Real Estate Commissioner if they discriminate or make any distinction or restriction in negotiating the sale or lease of real property because of the race, color, sex, religion, ancestry, national origin, or physical handicap of the client. If any prospective buyer or lessee believes that a licensee is guilty of such conduct, (s)he should contact the Department of Real Estate.

**READ THE ENTIRE REPORT ON THE FOLLOWING PAGES BEFORE CONTRACTING TO BUY OR LEASE AN INTEREST IN THIS SUBDIVISION.**

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## COMMON INTEREST DEVELOPMENT GENERAL INFORMATION

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The project described in the attached Subdivision Public Report is known as a common-interest development. Read the Public Report carefully for more information about the type of development. The development includes common areas and facilities which will be owned and/or operated by an owners' association. Purchase of a lot or unit automatically entitles and obligates you as a member of the association and, in most cases, includes a beneficial interest in the areas and facilities. Since membership in the association is mandatory, you should be aware of the following information before you purchase:

Your ownership in this development and your rights and remedies as a member of its association will be controlled by governing instruments which generally include a Declaration of Restrictions (also known as CC&R's), Articles of Incorporation (or association) and bylaws. The provisions of these documents are intended to be, and in most cases are, enforceable in a court of law. Study these documents carefully before entering into a contract to purchase a subdivision interest.

In order to provide funds for operation and maintenance of the common facilities, the association will levy assessments against your lot or unit. If you are delinquent in the payment of assessments, the association may enforce payment through court proceedings or your lot or unit may be liened and sold through the exercise of a power of sale. The anticipated income and expenses of the association, including the amount that you may expect to pay through assessments, are outlined in the proposed budget. Ask to see a copy of the budget if the subdivider has not already made it available for your examination.



RE 646 (Rev. 2/86)

A homeowner association provides a vehicle for the ownership and use of recreational and other common facilities which were designed to attract you to buy in this development. The association also provides a means to accomplish architectural control and to provide a base for homeowner interaction on a variety of issues. The purchaser of an interest in a common-interest development should contemplate active participation in the affairs of the association. He or she should be willing to serve on the board of directors or on committees created by the board. In short, "they" in a common interest development is "you". Unless you serve as a member of the governing board or on a committee appointed by the board, your control of the operation of the common areas and facilities is limited to your vote as a member of the association. There are actions that can be taken by the governing body without a vote of the members of the association which can have a significant impact upon the quality of life for association members.

Until there is a sufficient number of purchasers of lots or units in a common interest development to elect a majority of the governing body, it is likely that the subdivider will effectively control the affairs of the association. It is frequently necessary and equitable that the subdivider do so during the early stages of development. It is vitally important to the owners of individual subdivision interests that the transition from subdivider to resident-owner control be accomplished in an orderly manner and in a spirit of cooperation.

When contemplating the purchase of a dwelling in a common interest development, you should consider factors beyond the attractiveness of the dwelling units themselves. Study the governing instruments and give careful thought to whether you will be able to exist happily in an atmosphere of cooperative living where the interests of the group must be taken into account as well as the interests of the individual. Remember that managing a common interest development is very much like governing a small community . . . the management can serve you well, but you will have to work for its success. [B & P Code Section 11018.1(c)]

1. THIS PROJECT IS A COMMON-INTEREST SUBDIVISION OF THE TYPE REFERRED TO AS A PLANNED DEVELOPMENT. IT INCLUDES COMMON AREAS AND COMMON FACILITIES WHICH WILL BE MAINTAINED BY AN INCORPORATED OWNERS ASSOCIATION.
2. THE ASSOCIATION HAS THE RIGHT TO LEVY ASSESSMENTS AGAINST YOU FOR MAINTENANCE OF THE COMMON AREAS AND OTHER PURPOSES. YOUR CONTROL OF OPERATIONS AND EXPENSES IS LIMITED TO THE RIGHT OF YOUR ELECTED REPRESENTATIVES TO VOTE ON CERTAIN PROVISIONS AT MEETINGS.
3. SINCE THE COMMON PROPERTY AND FACILITIES WILL BE MAINTAINED BY AN ASSOCIATION OF HOMEOWNERS, IT IS ESSENTIAL THAT THIS ASSOCIATION BE FORMED EARLY AND PROPERLY. THE HOMEOWNER ASSOCIATION MUST HOLD THE FIRST ELECTION OF THE ASSOCIATION'S GOVERNING BODY WITHIN 45 DAYS AFTER 51% SELL OUT OF THE INTERESTS AUTHORIZED FOR SALE UNDER THE FIRST PUBLIC REPORT FOR THE SUBDIVISION; OR, IN ANY EVENT, NO LATER THAN SIX MONTHS AFTER CLOSING THE FIRST SALE (REGULATIONS 2792.17 AND 2792.19). THE HOMEOWNER ASSOCIATION MUST ALSO PREPARE AND DISTRIBUTE TO ALL HOMEOWNERS A BALANCE SHEET AND INCOME STATEMENT (REGULATION 2792.22).
4. NO ESCROWS WILL CLOSE UNTIL COMPLETION OF ALL COMMON AREAS AND FACILITIES OR, AS AN ALTERNATIVE, THE SUBDIVIDER HAS SUBMITTED A BOND OR OTHER SECURITY ACCEPTABLE TO THE DEPARTMENT OF REAL ESTATE UNDER THE PROVISIONS OF SECTION 11018.5 OF THE BUSINESS AND PROFESSIONS CODE TO ASSURE LIEN FREE COMPLETION OF ALL COMMON AREAS AND FACILITIES IN THIS PROJECT.
5. THE SUBDIVIDER MUST PAY ASSESSMENTS TO THE HOMEOWNERS ASSOCIATION FOR ALL UNSOLD LOTS. THE PAYMENTS MUST COMMENCE ON THE FIRST DAY OF THE MONTH AFTER SUBDIVIDER CLOSES FIRST SALE OF A LOT IN THIS PROJECT. (REGULATIONS 2792.9 AND 2792.16.)
6. THE SUBDIVIDER MUST PROVIDE YOU WITH A COPY OF THE ARTICLES OF INCORPORATION, RESTRICTIONS AND BYLAWS, BY FURNISHING YOU COPIES PRIOR TO CLOSE OF ESCROW. THESE DOCUMENTS CONTAIN NUMEROUS MATERIAL PROVISIONS THAT SUBSTANTIALLY AFFECT AND CONTROL YOUR RIGHTS, PRIVILEGES, USE, OBLIGATIONS, AND COSTS OF MAINTENANCE AND OPERATION. YOU SHOULD READ AND UNDERSTAND THESE DOCUMENTS BEFORE YOU OBLIGATE YOURSELF TO PURCHASE A LOT. (SECTION 11018.6 BUSINESS AND PROFESSIONS CODE.)
7. THE SUBDIVIDER STATED HE WILL FURNISH THE CURRENT BOARD OF OFFICERS OF THE HOMEOWNERS ASSOCIATION AND EACH INDIVIDUAL PURCHASER WITH THE DEPARTMENT OF REAL ESTATE APPROVED BUDGET.
8. THE SUBDIVIDER HAS INDICATED THAT HE INTENDS TO SELL ALL OF THE LOTS IN THIS PROJECT; HOWEVER, ANY OWNER, INCLUDING THE SUBDIVIDER, HAS A LEGAL RIGHT TO RENT OR LEASE THE UNITS.



SPECIAL NOTES: (Continued)

9. IF YOU PURCHASE FIVE OR MORE SUBDIVISION INTERESTS (LOTS/UNITS OR MEMBERSHIPS) FROM THE SUBDIVIDER, THE SUBDIVIDER IS REQUIRED TO NOTIFY THE REAL ESTATE COMMISSIONER OF THE SALE. IF YOU INTEND TO SELL YOUR INTERESTS OR LEASE THEM FOR TERMS LONGER THAN ONE YEAR, YOU ARE REQUIRED TO OBTAIN AN AMENDED SUBDIVISION PUBLIC REPORT BEFORE YOU CAN OFFER THE INTERESTS FOR SALE OR LEASE.
10. **WARNING:** WHEN YOU SELL YOUR LOT TO SOMEONE ELSE, YOU MUST GIVE THAT PERSON A COPY OF THE DECLARATION OF RESTRICTIONS, ARTICLES OF INCORPORATION, THE BYLAWS AND A TRUE STATEMENT CONCERNING ANY DELINQUENT ASSESSMENTS, PENALTIES, ATTORNEYS' FEES OR OTHER CHARGES, PROVIDED BY THE RESTRICTIONS OR OTHER MANAGEMENT DOCUMENTS ON THE LOT AS OF THE DATE THE STATEMENT WAS ISSUED.

NOTE: IF YOU FORGET TO DO THIS, IT MAY COST YOU A PENALTY OF \$500.00 -- PLUS ATTORNEY'S FEES AND DAMAGES (SEE CIVIL CODE SECTION 1368).

THE SUBDIVIDER MUST MAKE AVAILABLE TO YOU, COPIES OF THE ASSOCIATION GOVERNING INSTRUMENTS, A STATEMENT CONCERNING ANY DELINQUENT ASSESSMENTS AND RELATED CHARGES AS PROVIDED BY THE GOVERNING INSTRUMENTS AND, IF AVAILABLE, CURRENT FINANCIAL AND RELATED STATEMENTS (SEE BUSINESS AND PROFESSIONS CODE SECTION 11018.6).

INTERESTS TO BE CONVEYED: You will receive fee title to a specified lot, together with a membership in the Cascades Residential Owners Association and rights to use the common area.

LOCATION AND SIZE: This subdivision is located at American River Canyon Drive and Canyon Falls Drive, within the city limits of Folsom, California. Prospective purchasers should acquaint themselves with the kinds of city services available.

This is a single phase project which consists of approximately 21.029 acres divided into 115 lots in addition to the common area which consists of Lots B through R. Lots A-1, A-2 and A-3 have been deeded to and will be maintained by the City of Folsom, California.

Common facilities consisting of landscaping, streets and drives, lighting, street signs and entry structures will be constructed on the common area.

MANAGEMENT AND OPERATION: The Cascades Residential Owners Association, of which you become a member at time of purchase, manages and operates the common area(s) in accordance with the Restrictions, Articles of Incorporation, and the Bylaws.

MAINTENANCE AND OPERATIONAL EXPENSES: The subdivider has submitted a budget for the maintenance and operation of the common areas and for long-term reserves. This budget was reviewed by the Department of Real Estate in January 1989. You should obtain a copy of this budget from the subdivider. Under this budget, the monthly assessment against each subdivision unit will be \$72.00 of which \$10.28 is a monthly contribution to long-term reserves and is not to pay for current operating expenses.

IF THE BUDGET FURNISHED TO YOU BY THE DEVELOPER SHOWS A MONTHLY ASSESSMENT FIGURE WHICH IS AT LEAST 20% MORE OR AT LEAST 10% LESS THAN THE ASSESSMENT AMOUNT SHOWN IN THIS PUBLIC REPORT, YOU SHOULD CONTACT THE DEPARTMENT OF REAL ESTATE BEFORE ENTERING INTO AN AGREEMENT TO PURCHASE.

The association may increase or decrease assessments at any time in accordance with the procedure prescribed in the Restrictions or Bylaws. In considering the advisability of a decrease, or a smaller increase, in assessments, care should be taken not to eliminate amounts attributable to reserves for replacement or major maintenance.

THE BUDGET INFORMATION INCLUDED IN THIS PUBLIC REPORT IS APPLICABLE AS OF THE DATE OF BUDGET REVIEW AS SHOWN ABOVE. EXPENSES OF OPERATION ARE DIFFICULT TO PREDICT ACCURATELY AND EVEN IF ACCURATELY ESTIMATED INITIALLY, MOST EXPENSES INCREASE WITH THE AGE OF FACILITIES AND WITH INCREASES IN THE COST OF LIVING.

Monthly assessments will commence on all lots on the first day of the month following the closing of the first sale of a lot.

The remedies available to the association against owners who are delinquent in the payment of assessments are set forth in the Restrictions. These remedies are available against the subdivider as well as against other owners.

The subdivider has posted a bond as partial security for the obligation to pay these assessments. The governing body of the association should assure itself that the subdivider has satisfied these obligations to the association with respect to the payment of assessments before agreeing to a release or exoneration of the security.

EASEMENTS: Easements for utilities, light and air, centralized mail delivery, drainage, planting and maintaining trees, rights-of-way, sewers and other purposes are shown on the Title Report and Subdivision Map recorded in the Office of the Sacramento County Recorder, Book 188 of Maps, Page 1, on November 15, 1988.

**RESTRICTIONS:** This subdivision is subject to Restrictions recorded in the Office of the Sacramento County Recorder, Book 890209, on February 9, 1989, as Instrument Number 28553, Official Records.

FOR INFORMATION AS TO YOUR OBLIGATIONS AND RIGHTS,  
YOU SHOULD READ THE RESTRICTIONS. THE SUBDIVIDER  
SHOULD MAKE THEM AVAILABLE TO YOU.

**TAXES:** The maximum amount of any tax on real property that can be collected annually by counties is 1% of the full cash value of the property. With the addition of interest and redemption charges on any indebtedness, approved by voters prior to July 1, 1978, the total property tax rate in most counties is approximately 1.25% of the full cash value. In some counties, the total tax rate could be well above 1.25% of the full cash value. For example, an issue of general obligation bonds previously approved by the voters and sold by a county water district, a sanitation district or other such district could increase the tax rate.

For the purchaser of a lot or unit in this subdivision, the full cash value of the lot or unit will be the valuation, as reflected on the tax roll, determined by the county assessor as of the date of purchase of the lot or unit or as of the date of completion of an improvement on the lot if that occurs after the date of purchase.

**ASSESSMENTS:** This subdivision lies within the boundaries of the American River Canyon Landscaping and Lighting Maintenance Assessment District and is subject to any taxes, assessments and obligations thereof. The total amount to be assessed for the fiscal year 1988-1989 will not exceed \$68.93 per lot.

**CONDITIONS OF SALE:** Pursuant to Civil Code Sections 2956 through 2967, inclusive, subdividers and purchasers must make certain written disclosures regarding financing terms and related information. The subdivider will advise purchasers of disclosures needed from them, if any.

If your purchase involves financing, a form of deed of trust and note will be used. The provisions of these documents may vary depending upon the lender selected. These documents may contain the following provisions:

**Acceleration Clause.** This is a clause in a mortgage or deed of trust which provides that if the borrower (trustor) defaults in repaying the loan, the lender may declare the unpaid balance of the loan immediately due and payable.

**Due-on-Sale Clause.** If the loan instrument for financing your purchase of an interest in this subdivision includes a due-on-sale clause, the clause will be automatically enforceable by the lender when you sell the property. This means that the loan will not be assumable by a purchaser without the approval of the lender. If the lender does not declare the loan to be all due and payable on transfer of the property by you, the lender is nevertheless likely to

CONDITIONS OF SALE: (Continued)

insist upon modification of the terms of the instrument as a condition to permitting assumption by the buyer. The lender will almost certainly insist upon an increase in the interest rate if the prevailing interest rate at the time of the proposed sale of the property is higher than the interest rate of the promissory note.

THE SUBDIVIDER WILL OFFER FINANCING IN WHICH A FEDERAL OR STATE REGULATED LENDER WILL MAKE LOANS THAT ALLOW THE INTEREST RATES TO CHANGE OVER THE LIFE OF THE LOAN. AN INTEREST RATE INCREASE ORDINARILY CAUSES AN INCREASE IN THE MONTHLY PAYMENT THAT YOU MAKE TO THE LENDER. THE SUBDIVIDER WILL GIVE YOU A FACT SHEET ABOUT THE FINANCING TO ASSIST YOU IN THE EVALUATION OF YOUR ABILITY TO MAKE INCREASED PAYMENTS DURING THE TERM OF THE LOAN. THIS FACT SHEET WILL BE FURNISHED TO YOU BEFORE YOU EXECUTE A CONTRACT TO PURCHASE PROPERTY IN THE SUBDIVISION.

YOU SHOULD GIVE CAREFUL CONSIDERATION TO YOUR PROSPECTIVE ABILITY TO MAKE REGULAR PAYMENTS AND TO KEEP THE PROPERTY IF THE PAYMENTS INCREASE BY THE ALLOWABLE AMOUNT DURING THE TERM OF THE LOAN.

BEFORE SIGNING, YOU SHOULD READ AND THOROUGHLY UNDERSTAND ALL LOAN DOCUMENTS.

PURCHASE MONEY HANDLING: The subdivider must impound all funds received from you in an escrow depository until legal title is delivered to you. [Refer to Sections 11013, 11013.1 and 11013.2(a), of the Business and Professions Code.]

If the escrow has not closed on your lot within one (1) year of the date of your deposit receipt, you may request return of your deposit.

NOTE: Section 2995 of the Civil Code provides that: No real estate developer shall require as a condition precedent to the transfer of real property containing a single family residential dwelling that escrow services effectuating such transfer shall be provided by an escrow entity in which the developer owns or controls 5% or more of the escrow entity.

THE SUBDIVIDER HAS NO SUCH INTEREST IN THE ESCROW COMPANY WHICH IS TO BE USED IN CONNECTION WITH THE SALE OR LEASE OF LOTS IN THIS SUBDIVISION.

SOILS CONDITIONS: Soils and geologic information is available at City of Folsom, Building Department, 50 Natoma Street, Folsom, California.

Some lots will contain filled ground.

GEOLOGIC CONDITIONS: THE UNIFORM BUILDING CODE, CHAPTER 70, PROVIDES FOR LOCAL BUILDING OFFICIALS TO EXERCISE PREVENTIVE MEASURES DURING GRADING TO ELIMINATE OR MINIMIZE DAMAGE FROM GEOLOGIC HAZARDS SUCH AS LANDSLIDES, FAULT MOVEMENTS, EARTHQUAKE SHAKING, RAPID EROSION OR SUBSIDENCE. THIS SUBDIVISION IS LOCATED IN AN AREA WHERE SOME OF THESE HAZARDS MAY EXIST. SOME CALIFORNIA COUNTIES AND CITIES HAVE ADOPTED ORDINANCES THAT MAY OR MAY NOT BE AS EFFECTIVE IN THE CONTROL OF GRADING AND SITE PREPARATION.

PURCHASERS MAY CONTACT THE DEVELOPER, THE DEVELOPER'S ENGINEER, THE ENGINEERING GEOLOGIST AND THE LOCAL BUILDING OFFICIALS TO DETERMINE IF THE ABOVE-MENTIONED HAZARDS HAVE BEEN CONSIDERED AND IF THERE HAS BEEN ADEQUATE COMPLIANCE WITH CHAPTER 70 OR AN EQUIVALENT OR MORE STRINGENT GRADING ORDINANCE DURING THE CONSTRUCTION OF THIS SUBDIVISION.

STREETS AND ROADS: The private streets within this project will be maintained by the homeowner association. The costs of repair and maintenance of these private streets are included in the budget and are a part of your regular assessment.

If you need clarification as to the statements in this Public Report or if you desire to make arrangements to review the documents submitted by the subdivider which the Department of Real Estate used in preparing this Public Report you may call (916) 739-3631.