



REAL ESTATE TRANSFER DISCLOSURE STATEMENT  
(CALIFORNIA CIVIL CODE §1102, ET SEQ)  
(C.A.R. Form TDS, Revised 10/03)

THIS DISCLOSURE STATEMENT CONCERNS THE REAL PROPERTY SITUATED IN THE CITY OF Mountain View, COUNTY OF Santa Clara, STATE OF CALIFORNIA, DESCRIBED AS 7222 Raspberry Lane, Mountain View CA

THIS STATEMENT IS A DISCLOSURE OF THE CONDITION OF THE ABOVE DESCRIBED PROPERTY IN COMPLIANCE WITH SECTION 1102 OF THE CIVIL CODE AS OF (date) Aug 16, 03. IT IS NOT A WARRANTY OF ANY KIND BY THE SELLER(S) OR ANY AGENT(S) REPRESENTING ANY PRINCIPAL(S) IN THIS TRANSACTION, AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR WARRANTIES THE PRINCIPAL(S) MAY WISH TO OBTAIN.

I. COORDINATION WITH OTHER DISCLOSURE FORMS

This Real Estate Transfer Disclosure Statement is made pursuant to Section 1102 of the Civil Code. Other statutes require disclosures, depending upon the details of the particular real estate transaction (for example: special study zone and purchase-money liens on residential property).

**Substituted Disclosures:** The following disclosures and other disclosures required by law, including the Natural Hazard Disclosure Report/Statement that may include airport annoyances, earthquake, fire, flood, or special assessment information, have or will be made in connection with this real estate transfer, and are intended to satisfy the disclosure obligations on this form, where the subject matter is the same:

- Inspection reports completed pursuant to the contract of sale or receipt for deposit.
- Additional inspection reports or disclosures: \_\_\_\_\_

II. SELLER'S INFORMATION

The Seller discloses the following information with the knowledge that even though this is not a warranty, prospective Buyers may rely on this information in deciding whether and on what terms to purchase the subject property. Seller hereby authorizes any agent(s) representing any principal(s) in this transaction to provide a copy of this statement to any person or entity in connection with any actual or anticipated sale of the property.

THE FOLLOWING ARE REPRESENTATIONS MADE BY THE SELLER(S) AND ARE NOT THE REPRESENTATIONS OF THE AGENT(S), IF ANY. THIS INFORMATION IS A DISCLOSURE AND IS NOT INTENDED TO BE PART OF ANY CONTRACT BETWEEN THE BUYER AND SELLER.

Seller  is  is not occupying the property.

A. The subject property has the items checked below (read across)

- |   |  |   |
|---|--|---|
| <input checked="" type="checkbox"/> Range                                       | <input checked="" type="checkbox"/> Oven   | <input checked="" type="checkbox"/> Microwave                               |
| <input checked="" type="checkbox"/> Dishwasher                                  | <input type="checkbox"/> Trash Compactor   | <input checked="" type="checkbox"/> Garbage Disposal                        |
| <input checked="" type="checkbox"/> Washer/Dryer Hookups                        |  | <input checked="" type="checkbox"/> Rain Gutters                            |
| <input checked="" type="checkbox"/> Burglar Alarms                              | <input checked="" type="checkbox"/> Smoke Detector(s)  | <input checked="" type="checkbox"/> Fire Alarm                              |
| <input type="checkbox"/> T.V. Antenna   | <input type="checkbox"/> Satellite Dish  | <input type="checkbox"/> Intercom   |
| <input checked="" type="checkbox"/> Central Heating                             | <input type="checkbox"/> Central Air Conditioning  | <input type="checkbox"/> Evaporator Cooler(s)                               |
| <input type="checkbox"/> Wall/Window Air Conditioning                           | <input type="checkbox"/> Sprinklers  | <input type="checkbox"/> Public Sewer System                                |
| <input type="checkbox"/> Septic Tank  | <input type="checkbox"/> Sump Pump   | <input type="checkbox"/> Water Softener                                     |
| <input type="checkbox"/> Patio/Decking  | <input type="checkbox"/> Built-in Barbecue   | <input type="checkbox"/> Gazebo   |
| <input type="checkbox"/> Sauna  |  |   |
| <input type="checkbox"/> Hot Tub <input type="checkbox"/> Locking Safety Cover* | <input type="checkbox"/> Pool <input type="checkbox"/> Child Resistant Barrier*                                    | <input type="checkbox"/> Spa <input type="checkbox"/> Locking Safety Cover* |
| <input type="checkbox"/> Security Gate(s)                                       | <input checked="" type="checkbox"/> Automatic Garage Door Opener(s)*   | <input checked="" type="checkbox"/> Number Remote Controls <u>2</u>         |
| Garage: <input checked="" type="checkbox"/> Attached                            | <input type="checkbox"/> Not Attached  | <input type="checkbox"/> Carport  |
| Pool/Spa Heater: <input type="checkbox"/> Gas                                   | <input type="checkbox"/> Solar   | <input type="checkbox"/> Electric   |
| Water Heater: <input checked="" type="checkbox"/> Gas                           | <input checked="" type="checkbox"/> Water Heater Anchored, Braced, or Strapped*                                    |   |
| Water Supply: <input checked="" type="checkbox"/> City                          | <input type="checkbox"/> Well  | <input type="checkbox"/> Private Utility or Other _____                     |
| Gas Supply: <input checked="" type="checkbox"/> Utility                         | <input type="checkbox"/> Bottled   |   |
| <input checked="" type="checkbox"/> Window Screens                              | <input type="checkbox"/> Window Security Bars <input type="checkbox"/> Quick Release Mechanism on Bedroom Windows* |   |
| Exhaust Fan(s) in <u>Kitchen</u>  | 220 Volt Wiring in <u>Laundry</u>  | Fireplace(s) in _____   |
| <input type="checkbox"/> Gas Starter _____                                      | <input type="checkbox"/> Roof(s): Type: <u>Composition</u> Age: <u>NEW</u> (approx.)                               |   |
| <input type="checkbox"/> Other: _____   |  |   |

Are there, to the best of your (Seller's) knowledge, any of the above that are not in operating condition?  Yes  No. If yes, then describe. (Attach additional sheets if necessary): \_\_\_\_\_

(\*see footnote on page 2)

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TDS REVISED 10/03 (PAGE 1 OF 3)

Buyer's Initials ( GMP ) ( JS )

Seller's Initials ( MA ) ( \_\_\_\_\_ )

Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



REAL ESTATE TRANSFER DISCLOSURE STATEMENT (TDS PAGE 1 OF 3)

Property Address: 222 Raspberry Lane, Mountain View CA

Date: Aug 16, 08

B. Are you (Seller) aware of any significant defects/malfunctions in any of the following?  Yes  No. If yes, check appropriate space(s) below.

- Interior Walls  Ceilings  Floors  Exterior Walls  Insulation  Roof(s)  Windows  Doors  Foundation  Slab(s)
  - Driveways  Sidewalks  Walls/Fences  Electrical Systems  Plumbing/Sewers/Septics  Other Structural Components
- (Describe: \_\_\_\_\_)

If any of the above is checked, explain. (Attach additional sheets if necessary): \_\_\_\_\_

\*This garage door opener or child resistant pool barrier may not be in compliance with the safety standards relating to automatic reversing devices as set forth in Chapter 12.5 (commencing with Section 19890) of Part 3 of Division 13 of, or with the pool safety standards of Article 2.5 (commencing with Section 115920) of Chapter 5 of Part 10 of Division 104 of, the Health and Safety Code. The water heater may not be anchored, braced, or strapped in accordance with Section 19211 of the Health and Safety Code. Window security bars may not have quick release mechanisms in compliance with the 1995 Edition of the California Building Standards Code.

C. Are you (Seller) aware of any the following:

1. Substances, materials, or products which may be an environmental hazard such as, but not limited to, asbestos, formaldehyde, radon gas, lead-based paint, mold, fuel or chemical storage tanks, and contaminated soil or water on the subject property . . . . .  Yes  No
2. Features of the property shared in common with adjoining landowners, such as walls, fences, and driveways, whose use or responsibility for maintenance may have an effect on the subject property . . . . .  Yes  No
3. Any encroachments, easements or similar matters that may affect your interest in the subject property . . . . .  Yes  No
4. Room additions, structural modifications, or other alterations or repairs made without necessary permits. . . . .  Yes  No
5. Room additions, structural modifications, or other alterations or repairs not in compliance with building codes. . . . .  Yes  No
6. Fill (compacted or otherwise) on the property or any portion thereof . . . . .  Yes  No
7. Any settling from any cause, or slippage, sliding, or other soil problems . . . . .  Yes  No
8. Flooding, drainage or grading problems . . . . .  Yes  No
9. Major damage to the property or any of the structures from fire, earthquake, floods, or landslides . . . . .  Yes  No
10. Any zoning violations, nonconforming uses, violations of "setback" requirements . . . . .  Yes  No
11. Neighborhood noise problems or other nuisances . . . . .  Yes  No
12. CC&R's or other deed restrictions or obligations . . . . .  Yes  No
13. Homeowners' Association which has any authority over the subject property . . . . .  Yes  No
14. Any "common area" (facilities such as pools, tennis courts, walkways, or other areas co-owned in undivided interest with others) . . . . .  Yes  No
15. Any notices of abatement or citations against the property . . . . .  Yes  No
16. Any lawsuits by or against the seller threatening to or affecting this real property, including any lawsuits alleging a defect or deficiency in this real property or "common areas" (facilities such as pools, tennis courts, walkways, or other areas, co-owned in undivided interest with others) . . . . .  Yes  No

If the answer to any of these is yes, explain. (Attach additional sheets if necessary): \_\_\_\_\_

Items 2-3-12-13-14 - please refer to Builder's packet

Seller certifies that the information herein is true and correct to the best of the Seller's knowledge as of the date signed by the Seller.

Seller Michael Al

Date 8.14.08

Seller \_\_\_\_\_ Date \_\_\_\_\_

Buyer's Initials ( GAF ) ( DD )

Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



Property Address: 2222 Raspberry Lane, Mountain View CA Date: Aug 16, 08

**III. AGENT'S INSPECTION DISCLOSURE**

(To be completed only if the Seller is represented by an agent in this transaction.)

THE UNDERSIGNED, BASED ON THE ABOVE INQUIRY OF THE SELLER(S) AS TO THE CONDITION OF THE PROPERTY AND BASED ON A REASONABLY COMPETENT AND DILIGENT VISUAL INSPECTION OF THE ACCESSIBLE AREAS OF THE PROPERTY IN CONJUNCTION WITH THAT INQUIRY, STATES THE FOLLOWING:

Agent notes no items for disclosure.  
 Agent notes the following items: \_\_\_\_\_

Agent (Broker Representing Seller) Rockwell Realty Group By Terry M. Walker Date 8,14,08  
(Please Print) (Associate Licensee or Broker Signature)

**IV. AGENT'S INSPECTION DISCLOSURE**

(To be completed only if the agent who has obtained the offer is other than the agent above.)

THE UNDERSIGNED, BASED ON A REASONABLY COMPETENT AND DILIGENT VISUAL INSPECTION OF THE ACCESSIBLE AREAS OF THE PROPERTY, STATES THE FOLLOWING:

Agent notes no items for disclosure.  
 Agent notes the following items: \_\_\_\_\_

Agent (Broker Obtaining the Offer) \_\_\_\_\_ By \_\_\_\_\_ Date \_\_\_\_\_  
(Please Print) (Associate Licensee or Broker Signature)

V. BUYER(S) AND SELLER(S) MAY WISH TO OBTAIN PROFESSIONAL ADVICE AND/OR INSPECTIONS OF THE PROPERTY AND TO PROVIDE FOR APPROPRIATE PROVISIONS IN A CONTRACT BETWEEN BUYER AND SELLER(S) WITH RESPECT TO ANY ADVICE/INSPECTIONS/DEFECTS.

I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS STATEMENT.

Seller Michael ... Date 8.14.08 Buyer Ang M. ... Date 08/16/08  
Seller / Date / Buyer So J ... Date 08/16/08

Agent (Broker Representing Seller) Rockwell Realty By Terry M. Walker Date 8/17/08  
(Please Print) (Associate Licensee or Broker Signature)

Agent (Broker Obtaining the Offer) \_\_\_\_\_ By \_\_\_\_\_ Date \_\_\_\_\_  
(Please Print) (Associate Licensee or Broker Signature)

SECTION 1102.3 OF THE CIVIL CODE PROVIDES A BUYER WITH THE RIGHT TO RESCIND A PURCHASE CONTRACT FOR AT LEAST THREE DAYS AFTER THE DELIVERY OF THIS DISCLOSURE IF DELIVERY OCCURS AFTER THE SIGNING OF AN OFFER TO PURCHASE. IF YOU WISH TO RESCIND THE CONTRACT, YOU MUST ACT WITHIN THE PRESCRIBED PERIOD.

A REAL ESTATE BROKER IS QUALIFIED TO ADVISE ON REAL ESTATE. IF YOU DESIRE LEGAL ADVICE, CONSULT YOUR ATTORNEY.

THIS FORM HAS BEEN APPROVED BY THE CALIFORNIA ASSOCIATION OF REALTORS® (C.A.R.). NO REPRESENTATION IS MADE AS TO THE LEGAL VALIDITY OR ADEQUACY OF ANY PROVISION IN ANY SPECIFIC TRANSACTION. A REAL ESTATE BROKER IS THE PERSON QUALIFIED TO ADVISE ON REAL ESTATE TRANSACTIONS. IF YOU DESIRE LEGAL OR TAX ADVICE, CONSULT AN APPROPRIATE PROFESSIONAL.  
This form is available for use by the entire real estate industry. It is not intended to identify the user as a REALTOR®. REALTOR® is a registered collective membership mark which may be used only by members of the NATIONAL ASSOCIATION OF REALTORS® who subscribe to its Code of Ethics.



Published by the California Association of REALTORS®

Reviewed by GIF Date \_\_\_\_\_



# Residential Earthquake Hazards Report (2005 Edition)

CLAIM FOR REPAIRS AND SAFETY COMPLIANCE  
EXCLUSION FROM ASSESSMENT  
(See Section 10 of the Homeowner's Guide)

NAME <i>Rockberry Villas</i>	ASSESSOR'S PARCEL NO.
STREET ADDRESS <i>Rock Street</i>	YEAR BUILT <i>2008</i>
CITY AND COUNTY <i>Mtn. View</i>	ZIP CODE

Answer these questions to the best of your knowledge. If you do not have actual knowledge as to whether the weakness exists, answer "Don't Know." If your house does not have the feature, answer "Doesn't Apply." The page numbers in the right-hand column indicate where in this guide you can find information on each of these features.

	Yes	No	Doesn't Apply	Don't Know	See Page
1. Is the water heater braced, strapped, or anchored to resist falling during an earthquake?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	12
2. Is the house anchored or bolted to the foundation?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	14
3. If the house has cripple walls:					
• Are the exterior cripple walls braced?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	16
• If the exterior foundation consists of unconnected concrete piers and posts, have they been strengthened?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	18
4. If the exterior foundation, or part of it, is made of unreinforced masonry, has it been strengthened?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	20
5. If the house is built on a hillside:					
• Are the exterior tall foundation walls braced?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	22
• Were the tall posts or columns either built to resist earthquakes or have they been strengthened?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	22
6. If the exterior walls of the house, or part of them, are made of unreinforced masonry, have they been strengthened?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	24
7. If the house has a living area over the garage, was the wall around the garage door opening either built to resist earthquakes or has it been strengthened?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	26
8. Is the house outside an Alquist-Priolo Earthquake Fault Zone (zones immediately surrounding known earthquake faults)?					36
9. Is the house outside a Seismic Hazard Zone (zone identified as susceptible to liquefaction or landsliding)?					36

To be reported on the  
Natural Hazards Disclosure  
Report

Keep your copy of this form for future reference

If any of the questions are answered "No," the house is likely to have an earthquake weakness. Questions answered "Don't Know" may indicate a need for further evaluation. If you corrected one or more of these weaknesses, describe the work on a separate page.

As seller of the property described herein, I have answered the questions above to the best of my knowledge in an effort to disclose fully any potential earthquake weaknesses it may have.

**EXECUTED BY**

*Michael M.*  
(Seller)

\_\_\_\_\_  
(Seller)

8.14.08  
Date

I acknowledge receipt of this form, completed and signed by the seller. I understand that if the seller has answered "No" to one or more questions, or if seller has indicated a lack of knowledge, there may be one or more earthquake weaknesses in this house.

*Greg M. Tallon*  
(Buyer)

*[Signature]*  
(Buyer)

08/16/08  
Date

This earthquake disclosure is made in addition to the standard real estate transfer disclosure statement also required by law.



JCP-LGS Residential Property Disclosure Reports
The Natural Hazard Disclosure Report
For SANTA CLARA COUNTY

Property Address: 2260 ROCK ST ,
MOUNTAIN VIEW, SANTA CLARA COUNTY, CA 94043
("Property")

APN: 147-12-043
Report Date: 08/07/2008
Report Number: 332540

Statutory Natural Hazard Disclosure Statement

The transferor and his or her agent(s) disclose the following information with the knowledge that even though this is not a warranty, prospective transferees may rely on this information in deciding whether and on what terms to purchase the Property. Transferor hereby authorizes any agent(s) representing any principal(s) in this action to provide a copy of this statement to any person or entity in connection with any actual or anticipated sale of the Property.

The following are representations made by the transferor and his or her agent(s) based on their knowledge and maps drawn by the State. This information is a disclosure and is not intended to be part of any contract between the transferee and the transferor. THIS REAL PROPERTY LIES WITHIN THE FOLLOWING HAZARDOUS AREA(S):

A SPECIAL FLOOD HAZARD AREA (Any type Zone "A" or "V") designated by the Federal Emergency Management Agency.

Yes \_\_\_ No [X] Do not know and information not available from local jurisdiction \_\_\_

AN AREA OF POTENTIAL FLOODING shown on a dam failure inundation map pursuant to Section 8589.5 of the Government Code.

Yes \_\_\_ No [X] Do not know and information not available from local jurisdiction \_\_\_

A VERY HIGH FIRE HAZARD SEVERITY ZONE pursuant to Section 51178 or 51179 of the Government Code. The owner of this Property is subject to the maintenance requirements of Section 51182 of the Government Code.

Yes \_\_\_ No [X]

A WILDLAND AREA THAT MAY CONTAIN SUBSTANTIAL FOREST FIRE RISK AND HAZARDS pursuant to Section 4125 of the Public Resources Code. The owner of this Property is subject to the maintenance requirements of Section 4291 of the Public Resources Code. Additionally, it is not the state's responsibility to provide fire protection services to any building or structure located within the wildlands unless the Department of Forestry and Fire Protection has entered into a cooperative agreement with a local agency for those purposes pursuant to Section 4142 of the Public Resources Code.

Yes \_\_\_ No [X]

AN EARTHQUAKE FAULT ZONE pursuant to Section 2622 of the Public Resources Code.

Yes \_\_\_ No [X]

A SEISMIC HAZARD ZONE pursuant to Section 2696 of the Public Resources Code.

Yes (Landslide Zone) \_\_\_ Yes (Liquefaction Zone) [X]

No \_\_\_ Map not yet released by state \_\_\_

THESE HAZARDS MAY LIMIT YOUR ABILITY TO DEVELOP THE REAL PROPERTY, TO OBTAIN INSURANCE, OR TO RECEIVE ASSISTANCE AFTER A DISASTER. THE MAPS ON WHICH THESE DISCLOSURES ARE BASED ESTIMATE WHERE NATURAL HAZARDS EXIST. THEY ARE NOT DEFINITIVE INDICATORS OF WHETHER OR NOT A PROPERTY WILL BE AFFECTED BY A NATURAL DISASTER. TRANSFEREE(S) AND TRANSFEROR(S) MAY WISH TO OBTAIN PROFESSIONAL ADVICE REGARDING THOSE HAZARDS AND OTHER HAZARDS THAT MAY AFFECT THE PROPERTY.

Signature of Transferor (Seller) [Signature] Date 8-14-08

Signature of Transferor (Seller) \_\_\_\_\_ Date \_\_\_\_\_

Signature of Agent [Signature] Date 8-14-08

Signature of Agent \_\_\_\_\_ Date \_\_\_\_\_

Check only one of the following:

[ ] Transferor(s) and their agent(s) represent that the information herein is true and correct to the best of their knowledge as of the date signed by the transferor(s) and agent(s).

[X] Transferor(s) and their agent(s) acknowledge that they have exercised good faith in the selection of a third-party report provider as required in Civil Code Section 1103.7, and that the representations made in this Natural Hazard Disclosure Statement are based upon information provided by the independent third-party disclosure provider as a substituted disclosure pursuant to Civil Code Section 1103.4. Neither transferor(s) nor their agent(s) (1) has independently verified the information contained in this statement and Report or (2) is personally aware of any errors or inaccuracies in the information contained on the statement. This statement was prepared by the provider below:

Third-Party Disclosure Provider(s) [Signature] Date 08/07/2008 Rept. No. 332540
Greg Rufe, Chief Operating Officer
JCP-LGS Disclosure Reports

Transferee represents that he or she has read and understands this document. Pursuant to Civil Code Section 1103.8, the representations made in this Natural Hazard Disclosure Statement do not constitute all of the transferor's or agent's disclosure obligations in this transaction.

Signature of Transferee(s) [Signature] Date 08/16/08

Signature of Transferee(s) [Signature] Date 08/16/08

ADDITIONAL SIGNATURE REQUIRED: SEE "ACKNOWLEDGEMENT OF RECEIPT"- NEXT PAGE



# ACKNOWLEDGEMENT OF RECEIPT

Property: 2260 ROCK ST ,  
MOUNTAIN VIEW, SANTA CLARA COUNTY, CA 94043  
("Property")

APN: 147-12-043  
Report Date: 08/07/2008  
Report Number: 332540

I hereby acknowledge the receipt of the following Disclosures and Advisories:

**Natural Hazard Report Disclosures and Advisories**

(Signature Required on the Statutory Form – See preceding page)

- ✓ State Level Natural Hazard Disclosures (Statutory Form)
- ✓ Local City and County Level Natural Hazard Disclosures (where applicable)
- ✓ Commercial/Industrial Disclosure
- ✓ Military Ordnance Disclosure
- ✓ Airport Influence Area / Airport Noise Disclosure
- ✓ Database Disclosure (Megan's Law)
- ✓ San Francisco Bay Conservation and Development Commission Disclosure (where applicable)
- ✓ California Energy Efficiency Disclosure
- ✓ Methamphetamine Contaminated Property Disclosure Advisory
- ✓ Mold Advisory
- ✓ Radon Advisory
- ✓ Endangered Species Act Advisory
- ✓ Abandoned Mines Advisory
- ✓ Oil & Gas Well Advisory

**Environmental Report Disclosures and Advisories**

- ✓ Notification of known contaminated sites in proximity to the property

<u>Michael M.</u>	<u>8.14.08</u>	_____	_____
Transferor (Seller)	Date	Transferor (Seller)	Date
<u>Greg M. Fallon</u>	<u>08/16/08</u>	<u>Joe J. G...</u>	<u>8/16/08</u>
Transferee (Buyer)	Date	Transferee (Buyer)	Date
<u>Terry M...</u>	<u>8.16.08</u>	_____	_____
Agent	Date	Agent	Date

**TO WHOM IT MAY CONCERN**

I have received a copy of the following booklet from the Broker(s) in this transaction: "Homeowner's Guide to Earthquake Safety & Environmental Hazards" a combination of "Residential Environmental Hazards: A Guide for Homeowners, Homebuyers, Landlords and Tenants" including toxic mold, "Protect Your Family From Lead In Your Home", and "The Homeowner's Guide to Earthquake Safety" including natural gas safety.

Property Address: 2222 Raspberry Ln, Raspberry Lane

Date: 8.14.08

Time: 11 AM

~~Buyer/Seller~~ Signature: Michael Ahi

~~Buyer/Seller~~ Printed Name: Michael Ahi

Selling Broker: \_\_\_\_\_

Listing Broker: Rockwell Realty Group Corp

Selling Agent: \_\_\_\_\_

Listing Agent: Rockwell Realty, Terry Mahoff

**TO WHOM IT MAY CONCERN**

I have received a copy of the following booklet from the Broker(s) in this transaction: "Homeowner's Guide to Earthquake Safety & Environmental Hazards" a combination of "Residential Environmental Hazards: A Guide for Homeowners, Homebuyers, Landlords and Tenants" including toxic mold, "Protect Your Family From Lead In Your Home", and "The Homeowner's Guide to Earthquake Safety" including natural gas safety.

Property Address: 2222 Raspberry Lane

Date: 8.16.08

Time: 2:30 PM

~~Buyer/Seller~~ Signature: Gina M Fallon

~~Buyer/Seller~~ Printed Name: Gina M. Fallon

Selling Broker: Rockwell Realty Group Corp

Listing Broker: Rockwell Realty Group Corp.

Selling Agent: Terry Mahoff

Listing Agent: Terry Mahoff

# RECEIPT FOR PUBLIC REPORT OR CALIFORNIA PERMIT

The Laws and Regulations of the California Real Estate Commissioner require that you as a prospective purchaser or lessee be afforded an opportunity to read the public report or permit for this subdivision before you make any written offer to purchase or lease a subdivision interest or before any money or other consideration toward purchase or lease of a subdivision interest is accepted from you.

In the case of a preliminary or interim public report or permit, you must be afforded an opportunity to read the public report or permit before a written reservation or any deposit in connection therewith is accepted from you.

In the case of a conditional public report or permit, delivery of legal title or other interest contracted for will not take place until issuance of a final public report or permit. Provision is made in the sales agreement and escrow instructions for the return to you of the entire sum of money paid or advanced by you if you are dissatisfied with the final public report or permit because of a material change. (See California Business and Professions Code §11012.)

**DO NOT SIGN THIS RECEIPT UNTIL YOU HAVE RECEIVED  
A COPY OF THE PUBLIC REPORT OR PERMIT AND HAVE READ IT.**

I read the Commissioner's Public Report or Permit on 131899SA-F00,  
[FILE NUMBER]  
Tract 9874, Rockberry Villas, Santa Clara County, CA  
[TRACT NUMBER OR NAME]

I understand the public report or permit is not a recommendation or endorsement of the subdivision, but is for information only.

The issue date of the public report or permit which I received and read is: 7/21/2008.

  
[SIGNATURE]

08/16/08  
[DATE]

\_\_\_\_\_  
[ADDRESS]



**NEW CONSTRUCTION  
PROPERTY DISCLOSURE STATEMENT**

SELLER: 2222 Rockberry Villas, LLC- Rockwell Homes , Michael Ahi Lot: 8

BUYER: Gina M. Fallon and Steven D. Osterberg Phase: 1

This Property Disclosure Statement ("Statement") is provided to Buyer in connection with the New Construction Residential Purchase Agreement and Joint Escrow Instructions entered into between Buyer and Seller dated \_\_\_\_\_ ("Agreement") for the purchase of the therein-referenced real property ("Property"), with reference to the Property and the project in which the Property is located ("Project").

1. **BOUNDARY LINES:** The grading of the Project may result in the boundary lines for the Property not being located at either the top or the bottom of any slopes. The Final Map and/or Condominium Plan determines the boundary lines for the Project, not by grading or topography. The perimeter and/or fences of the Property and the Project are located according to the grading of the slopes, and may not necessarily be located on the boundary lines. Buyer should consult with a registered civil engineer about any questions regarding boundaries.
2. **GRADING:** The Project was graded according to the drainage specifications established by the appropriate governmental agency and Seller will not be responsible for the drainage characteristics, subsurface moisture or erosion of the Project in the event of any changes to the grade, whether through the installation of landscaping or otherwise. Buyer is advised not to make any changes to the grade or the lot without the prior written consent of Seller or, if applicable, the Architectural Committee established for the Project, if any, and, if required, by the ordinances or regulations of any governmental agency. Buyer understands that failure to adequately landscape the Property may result in erosion and resulting changes in the drainage of the Project.
3. **SOILS CONDITION:** Soils and geotechnical conditions vary throughout California, and soil are often expansive or composed of large amounts of rock and may react in differing manners to various structural loads. Seller makes no representations or warranty as to the adequacy of the soils' condition for improvements other than those constructed by Seller. Buyer is advised to engage the services of a qualified contractor and geotechnical engineer for the installation of any improvements (including, without limitation, swimming pools and spas) to ensure appropriate design and construction methods, including proper drainage and stabilization measures. Due to differing geologic conditions, design methods vary from location to location.
4. **MOISTURE PERCOLATION:** Due to varying soil conditions on the Property and/or surrounding area, some planting areas on the Property may be resistant to moisture percolation. For example, irrigation water may collect beneath a tree rather than percolate into the ground and could cause the tree to become over-saturated or "waterlogged" and wither and die if adequate protection measures are not taken. Buyer is advised to employ the services of a professional when planning and installing Buyer's landscaping, irrigation and drainage system to properly address the soils condition of the Property and the surrounding area.
5. **DRAINAGE:** The Property has been designated to adequately accommodate anticipated drainage and water runoff. Area drains and/or swales may be located on the Property. If Buyer installs and/or changes landscaping, realigns or interferes with the existing grade or in any way interferes with such area drains and/or swales, Buyer may cause blockage in the existing drainage system and flooding, subsidence of supporting soil, or other damage to the Property and/or nearby properties. Buyer is advised to employ the services of a professional when installing and/or changing landscaping, realigning or interfering with the existing grade or interfering with such area drains or swales, and to take adequate precautions to ensure proper drainage.
6. **SWIMMING POOLS:** Some of the lots in the Project may be of natural cut soil. Some of these cut lots contain rock, which will make it difficult to excavate for an in-ground swimming pool. Seller makes no warranty or assurance with reference to the Property being able to accept such a pool. Buyer is advised to use an outside consultant if Buyer needs clarification with regard to the Property being able to accept a swimming pool.
7. **WATERBEDS:** The residence constructed on the Property has not been designed to support waterbeds or other personal property items of similar weight. Placement of such property above the ground floor level may exceed the design live load, which could cause serious safety hazards. Seller shall not be responsible for any damage or injury caused by such items.
8. **EASEMENTS AND OTHER MATTERS OF RECORD:** Buyer acknowledges that Buyer has reviewed the Final Map for the Project and will read and approve the preliminary (title) report for the Property prior to the Close of Escrow. Additional easements and other matters of record may also be included in the Project after the date of the Agreement which could affect the Property purchased by Buyer. Seller specifically refers Buyer to the preliminary (title) report prepared in connection with Buyer's purchase of the Property as to the existence and location of easements and other matters affecting the Property.
9. **UTILITIES:** Buyer is responsible for requesting installation of utility meters and for obtaining service for telephone, electricity, gas, water, cable television and garbage service, as applicable, prior to Close Of Escrow. As of Close Of Escrow, all utilities under Seller's name will be terminated.
10. **AREAS OUTSIDE OF PROJECT:** Seller makes no representation nor takes responsibility for any activity or condition that takes place or arises on any area outside of the Project.

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REVISION DATE 1/01  
NCDS-11 (PAGE 1 OF 2)

Buyer and Seller acknowledge receipt of a copy of this page.

Buyer's Initials ( GMF ) ( SD )

Seller's Initials ( MA ) ( \_\_\_\_\_ )



Reviewed by \_\_\_\_\_  
Broker or Designee \_\_\_\_\_ Date \_\_\_\_\_

**NEW CONSTRUCTION PROPERTY DISCLOSURE STATEMENT (NCDS-11 PAGE 1 OF 2)**

- 11. **HAZARDOUS MATERIALS:** Seller makes no warranty as to the existence on, in, under, or about the Project, or on any adjoining property, of any hazardous or toxic substances or petroleum products (collectively, "Hazardous Materials"), except that Seller represents that it has no actual knowledge as of the Close of Escrow of the existence of any Hazardous Materials on, in or under the Project or any adjoining properties. Buyer acknowledges that Buyer is assuming the risk of the existence of such Hazardous Materials in, on or about the Project, except to the extent the same were placed on the Project by Seller or Seller had actual knowledge of the same as of the Close Of Escrow, and Buyer hereby waives any claim or cause of action against Seller arising out of the existence of any such unknown Hazardous Materials. Buyer is advised to engage qualified experts and inquire of governmental officials regarding all possible hazards.
- 12. **PLANS AND DIMENSIONS:** The blueprint drawings, sales brochures, plot plans, improvement plans, and other documents and information regarding the Property and the Project all contain dimensions that are approximate. They are not intended to be precise dimensions with regard to the subdivision and its improvements. Construction will occur in substantial conformance with the plans and specifications therefor, but dimensions will vary based on factors such as construction variances, method of measurement, architectural modifications, etc.
- 13. **CHANGES BY SELLER:** Seller may change its pricing, product, development plan and/or marketing methods for the Project or other phases of the Project, including, without limitation, the following that may adversely affect the value of the Project:
  - A. Seller may elect to sell other residences, lots or units in the current phase of the Project, or in future phases, under terms and conditions that are more favorable than those offered to Buyer;
  - B. Seller may elect to sell residences, lots, or units in bulk to another builder or by auction (with or without reserve) to members of the general public under terms and conditions that are more favorable than those offered to Buyer;
  - C. Seller may elect not to build residences on each lot in the current phase of future phases of the Project, or may elect to build different types or sizes of residences on smaller or larger lots, or may use different construction methods to build such residences; and
  - D. Seller may elect to build residences of the same type as the Property in the current or future phases, but to reduce the sales price for such residences, or to improve such residences with more or less expensive features and amenities.
- 14. **CONSTRUCTION AND SALES ACTIVITY:** If all of the residences and related development in the Project have not been completed, some inconvenience will be experienced due to increased noise and dust caused by construction and sales traffic and activities. Construction areas are for construction traffic and personnel only and are not open to the public.
- 15. **PERIMETER WALLS AND FENCES:** The location of any fences and walls to be installed in connection with the Property may vary from the exhibits and drawings. Seller may change or alter its plans for fences and walls and/or substitute materials used in connection with such fences and walls, without notice to Buyer, provided that such changes or substitutions are acceptable to any governmental agencies having jurisdiction over the Project.
- 16. **VARIATIONS IN COLOR - TILE, GROUT AND WOOD:** Certain tiles have a color variance from tile to tile and the consistency of color in tiles is not warranted by Seller. Colored tile grout may be used as a decorator feature on certain tile areas and the color shade may vary on a particular installation due to the wide variety of tiles available, job site conditions and finishing techniques. The elements of nature, including, but not limited to, sun, temperature, food or chemical reactions, may combine with the aging process to change the color of grout in varying degrees from time to time. In the event that repairs or replacement of tile grout are required in the future, it may be impossible to match the original color of the tile or tile grout. The use of colored grout may result in discoloration, flecking and/or cracked appearance of the ceramic tile in the areas where colored grout is used. Because marble, stone and some tiles are natural materials, the color of any such product installed as an option may vary from the model sample. Similarly, the finish color and the color of the wood of any natural wood cabinets installed may vary from the samples displayed in the models and the consistency in color of the wood cabinets installed in the Property is not warranted.
- 17. **BUILDING EXTERIORS:** Stucco, like concrete, is a cement-based product subject to hairline cracks due to, among other reasons, drying shrinkage, settlement, wood shrinkage, earthquakes and weather conditions. Buyer is advised that some cracking is customary at the corners of windows and doors. Buyer acknowledges that, if repairs are made to such cracks, a perfect match of colors is not possible.
- 18. **MISCELLANEOUS:** Seller has not made any written or oral statement, representation or warranty with respect to the Property or the Project that is not specifically set forth in the Agreement, including, but not limited to, any representations of the following:
  - A. That prices will increase or that the Property's value will appreciate. Seller reserves the right to increase or decrease prices for future sales within the Project at any time without notice.
  - B. The availability of any school or school facilities for the Project.
  - C. The existence of any "view" from the Property or that any existing "view" will not be obstructed in the future.
  - D. Traffic conditions in or near the Property.
  - E. Any future use of the Project or adjacent properties.

BUYER *Sina M. Fallon* Date 08/16/08  
SINA M. FALLON  
 (Print Name)

BUYER *Steven D. Osterberg* Date 8.16.08  
STEVEN D. OSTERBERG  
 (Print Name)

(Address)

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Reviewed by \_\_\_\_\_ Date \_\_\_\_\_  
 Broker or Designee \_\_\_\_\_



REVISION DATE 1/01  
 NCDS-11 (PAGE 2 OF 2)



# PRDS® SUPPLEMENTAL SELLER'S CHECKLIST

Supplement to Transfer Disclosure Statement

Revision Date 8/07



www.prdforms.com

Property: 2222 Raspberry Lane, Mountain View, CA 94043

Date: Aug 16, 08

THE INFORMATION ENTERED ON THIS FORM IS PROVIDED BY SELLER ONLY. (AGENTS' DISCLOSURES ARE PROVIDED ELSEWHERE.) THIS DOCUMENT IS SOLELY A SUPPLEMENTAL DISCLOSURE; IT IS NOT, AND SHALL NOT BE DEEMED TO CONSTITUTE, ANY PART OF THE RELATED PURCHASE CONTRACT.

**CAUTION TO SELLER:** California law requires that you disclose to a Buyer all material facts, of which you are aware or reasonably should be aware, bearing on the value or desirability of the Property. This supplemental form serves as an additional checklist intended to aid you in identifying, recalling and disclosing such material facts (including negative conditions that arose during prior ownerships). If you are in doubt as to whether a condition constitutes a "defect," it is always prudent to disclose and explain rather than remain silent. Full disclosure of material facts reduces the risk of subsequent disputes, claims and litigation regarding the Property. Please be aware of your obligation as Seller to be alert to and to disclose problems and defects known by you to exist, even where they are not included in this checklist.

**CAUTION TO BUYER:** California law requires that you exercise reasonable care in investigating the Property and that you take account of facts that are disclosed or otherwise known to you or which are within your diligent attention and observation. You are strongly urged to thoroughly inspect the Property and surrounding neighborhood, carefully read and assess all disclosures and inspection reports (carefully considering inspectors recommendations of additional, specialized inspections) and to ask questions and make additional inquiries of others, including inspection professionals, that you, as Buyer, feel important. Factors relating to the Property and/or the neighborhood may affect you quite differently (positively or negatively) than they do the Sellers, whose perceptions are inevitably subjective. A property or neighborhood condition that is entirely satisfactory to a Seller might be regarded by a Buyer as an annoyance or a nuisance. Understand that this and other Seller disclosures typically reflect a Seller's non-expert, subjective perceptions of the Property, and that items noted on this form reflect only those conditions of which Seller is aware. This list almost certainly does not account for each and every possible defect, and Seller's lack of awareness of a problem does not mean that none exists.

**RESPOND TO EACH AND EVERY ONE OF THE FOLLOWING ITEMS.**

Answer **YES** to any of the items if you are aware of any negative condition or circumstance, **whether past or present, and whether or not previously repaired**, relating to that item. Whenever an item is checked "YES", explain underlying facts in detail on the lines at the end of the relevant category. (If necessary, use additional pages.)

**1. GENERAL PROPERTY INFORMATION:**

- a) Approximate lot size: See prelim.  UNKNOWN Source: Seller
- b) Approximate house square footage: \_\_\_\_\_  UNKNOWN Source: Seller
- c) Approximate age of the house: 0  UNKNOWN Source: Seller
- d) Number of years you have owned the Property: 0 Lived in the Property: 0

**2. ALTERATIONS:** Account for all additions, remodeling, repairs and alterations done by you (and those done, to your knowledge, by prior owners or any other person).

Nature of Work	Approximate Completion Date	Seller has Permit Documentation <sup>(1)</sup> (Complete or Otherwise)		Seller has Other Documentation	
		<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Yes	<input type="checkbox"/> No
a) <u>N/A</u>	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Yes	<input type="checkbox"/> No
b) _____	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Yes	<input type="checkbox"/> No
c) _____	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Yes	<input type="checkbox"/> No
d) _____	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Yes	<input type="checkbox"/> No
e) _____	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Yes	<input type="checkbox"/> No
f) _____	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Yes	<input type="checkbox"/> No
g) _____	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Yes	<input type="checkbox"/> No

(1) For example: copies of permits (including "final" permit sign-offs), inspection reports and worksheets, bids and plans

Seller's Initials (MA)

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Buyer's Initials (GMF) (SHO)

Form RSSCL Revised 8/07

PRDS<sup>®</sup> SUPPLEMENTAL SELLER'S CHECKLIST:

Answer each of the following questions.

Answer YES to any of the items if you are aware of any negative condition or circumstance, whether past or present, and whether or not previously repaired, relating to that item. Whenever an item is checked "YES", explain underlying facts in detail on the lines at the end of the relevant category. (If necessary, use additional pages.)

3. FOUNDATION/BASEMENT/CRAWL SPACE/SOILS/RETAINING WALLS
- |  | YES                      | NO                                  |
|--|--------------------------|-------------------------------------|
| a) Are you aware of any cracks, patches or repairs in the foundation, retaining walls or any other part of the structure? .....  | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| b) Are you aware of any past or present soils problems, such as settlement, movement, cracking, slippage or instability at the Property or any neighboring properties? .....   | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| c) Are you aware of any past or present settlement, movement, cracking, bowing, tilting, rotation or deterioration of foundation members, retaining walls or other structural elements at the Property or any neighboring properties? .....      | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| d) Are you aware of any settlement, movement, cracking, shifting, separation or sub-surface erosion as to walkways, patios, swimming pool or other decking, or any other pavement or hardscape? .....  | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| e) Are you aware of any missing bricks, gaps in the chimney flue, hearth or other part of the fireplace or chimney structure, or any other defect, deficiency, fire-safety hazard or structural or other problems relating to the chimney? ..... | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| f) To your knowledge, has any landfill, grading, "cut and fill", compaction or other soils work taken place at the Property? .....   | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

Explanations (If "yes" is checked on any of the above, please explain below):

4. INTERIOR SURFACES/ELEMENTS
- |  | YES                      | NO                                  |
|--|--------------------------|-------------------------------------|
| a) Are you aware of any interior cracks (e.g., in ceiling, walls, around windows, etc.)? .....   | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| b) Are you aware of any patching or repair of any interior cracks? .....   | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| c) Are you aware of any squeaking, sloping or out-of-level floors? .....   | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| d) Are you aware of any stains, scratches, warping, cupping, chipping, cracking, sponginess, water damage or other defects relating to hardwood (or other wood), tile, linoleum or any other flooring surface? ..... | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| e) Are you aware of any windows that stick or bind, that fail to either latch, open or close with relative ease, or that otherwise fail to operate properly (whether continuously or seasonally)? .....              | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| f) Are you aware of any glass in any interior or exterior door (including shower door) or interior or exterior window that is not "safety glass"? .....  | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| g) Are you aware of any doors that stick or bind, are out of plumb, fail to open or close with relative ease, or that otherwise fail to operate properly (whether continuously or seasonally)? .....                 | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| h) Are you aware of any defect (including seal failure) regarding any dual-pane or thermo-pane windows?...   | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| i) Are you aware of any damage or defect (e.g., stains, spots, tears or odors) regarding any installed carpeting? .....  | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| j) Are you aware of any damage or defect (e.g., stains, spots, tears, odors and/or malfunctions) regarding any existing window coverings? .....  | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

Explanations (If "yes" is checked on any of the above, please explain below):

5. SURFACE/SUB-SURFACE WATER/MOISTURE CONTROL
- |  | YES                      | NO                                  |
|--|--------------------------|-------------------------------------|
| a) To your knowledge, does there presently exist, or are you aware of any history of, any standing or ponding water or periodic or persistent dampness or moisture, in any sub-areas or elsewhere on the Property? ..... | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| b) Are you aware of any past or present flooding (even minor water intrusion) into the garage, basement or sub-areas? .....  | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| c) To your knowledge, has any other part of the Property suffered any flooding or drainage problems? .....   | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| d) To your knowledge, have any drainage systems (e.g., french drains, curtain drains), sump pumps, fans, or dry wells ever been installed at the Property? .....   | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| e) To your knowledge, does a spring, high water table, sub-surface stream or aquifer, or any other natural source of water, exist on, or affect, the Property? .....   | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

Explanations (If "yes" is checked on any of the above, please explain below):

6. ROOF/GUTTERS/SIDING
- |   | YES                      | NO                                  |
|---|--------------------------|-------------------------------------|
| a) To your knowledge, have there been any blockages or other failures of downspouts, gutters, fixed or imbedded gutter extensions or storm drains? .....                    | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| b) Are you aware of the occurrence of any past or present leaks from or through roof, siding, windows, skylights, gutters, downspouts, eaves, awnings or other areas? ..... | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| c) To your knowledge, has any roof repair, restoration, replacement (full or partial) or other work been undertaken? .....  | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

Seller's Initials ( MA ) ( )

Buyer's Initials ( GMF ) ( SJS )

PRDS® SUPPLEMENTAL SELLER'S CHECKLIST:

Answer each of the following questions.

Answer YES to any of the items if you are aware of any negative condition or circumstance, whether past or present, and whether or not previously repaired, relating to that item. Whenever an item is checked "YES", explain underlying facts in detail on the lines at the end of the relevant category. (If necessary, use additional pages.)

ROOF/GUTTERS/SIDING (continued)

Explanations (If "yes" is checked on any of the above, please explain below):

7. HEATING SYSTEM/AIR CONDITIONING

- a) Describe the type of heating system in the Property. (If there are multiple systems, account for each throughout this Paragraph 7.) YES NO
- b) Have you encountered, or are you aware of, any problems with any aspect of the heating system?
- c) Are any bedrooms or other major rooms not directly served by a heating duct?    
(If yes, which rooms?)
- d) What is the approximate age of the heating system? NEW years
- e) When was the heating system last serviced, and by whom? NEW
- f) Does the Property have a central air conditioning system? (If there are multiple systems, account for each with respect to all issues and inquiries raised by this Paragraph 7.) OPTION
- g) Have you ever encountered, or are you aware of, any problems with any aspect of the air conditioning system?
- h) What is the approximate age of the air conditioning system? 0 years
- i) When was the air conditioning system last serviced, and by whom? N/A
- j) If the Property is served by propane, are you aware of any past or present problems with that system?
- k) Are you aware as to whether the central air conditioning (if any) or the furnace at the Property has been installed or replaced since October 1, 2005? (Note: such installation or replacement may trigger a requirement for testing/repair of ductwork in homes situated in certain non-coastal climates. Most residential areas of the San Francisco Peninsula are exempt from compliance. For more exact information regarding areas affected, go to [www.energy.ca.gov](http://www.energy.ca.gov))

Explanations (If "yes" is checked on any of the above, please explain below):

7a, Dual furnaces per home, one per floor

7f, Air Conditioning is an available option, one unit per floor allowing up to 2 condensers per home.

8. ELECTRICAL FIXTURES/APPLIANCES

- a) To your knowledge, have any electrical fixtures, devices or installed appliances (including, e.g., central vacuum, instant hot water) ever failed to perform properly or have any undergone repairs? YES NO
- b) To your knowledge, do lights ever dim, e.g., during use of multiple appliances?
- c) To your knowledge, has the electrical system encountered any blown fuses, tripped circuit breakers or any other problem, or undergone any repair or modification?
- d) Have you yourself, or has any unlicensed worker or contractor, undertaken any electrical repair, wiring, installation or other electrical work at the Property?

Explanations (If "yes" is checked on any of the above, please explain below):

9. ELECTRONICS/NETWORKS/TELEPHONE DEVICES AND SYSTEMS

- a) Does the Property have a television antenna? YES NO
- b) Are cable television lines presently installed and hooked up to a cable television service provider?
- c) If cable television is not presently set up at the Property, are you aware of the availability of cable television service at your Property? CONTACT LOCAL COMPANY
- d) Is a satellite receiver (or "dish") affixed to and wired into the Property?    
If yes, it is  Leased  Owned by Seller
- e) Do any abandoned or unused cable or satellite systems remain at the Property?
- f) Are you aware of any interference to your television, radio, etc., from neighboring transmitters, ham radio operators or other sources?
- g) Are you aware of any cell phone reception or transmission problems at the Property?
- h) How many individual telephone lines (separate telephone numbers) are wired into the Property? 4
- i) Is the Property wired and equipped with an integrated telephone system(s) (e.g., systems incorporating telephone, intercom, radio, other functions)? NO
- j) Is the Property wired and equipped for high-speed internet service? PRE-WIRED    
If yes, who is the current provider? Comcast or AT&T (see Utility Disclosure) please call

Seller's Initials (MA)

Buyer's Initials (GAF) (890)

PRDS® SUPPLEMENTAL SELLER'S CHECKLIST:

Answer each of the following questions.

Answer YES to any of the items if you are aware of any negative condition or circumstance, whether past or present, and whether or not previously repaired, relating to that item. Whenever an item is checked "YES", explain underlying facts in detail on the lines at the end of the relevant category. (If necessary, use additional pages.)

ELECTRONICS/NETWORKS/TELEPHONE DEVICES AND SYSTEMS (continued)

- k) If no, are you aware of the availability of high-speed internet service at your Property? Local Company YES  NO
- l) Does the Property have a built-in alarm system? Please indicate the following: YES  NO 
  - Leased  Owned  Auditory only  "Central Station" only  Auditory and "Central Station" ....
- m) Have you experienced any alarm system failure caused by false alarms or other defects? ..... YES  NO
- n) If applicable, name of alarm system provider used: \_\_\_\_\_
- o) Is the Property equipped with a video surveillance system? ..... YES  NO
- p) Is the Property equipped with automatic security lighting? ..... YES  NO
- q) Is the Property equipped with electronically activated gates? ..... YES  NO
- r) Is the Property equipped with an intercom system? ..... YES  NO
- s) Is the Property equipped with built-in sound or entertainment system(s)? ..... YES  NO
- t) Describe and explain below any system failure or other problem, past or present, and whether or not previously repaired, regarding any item listed above (h-s) in this Paragraph 9.

Explanations (If "yes" is checked on any of the above, please explain below):

9c, See Utility Disclosure      9J, Service not included      9I, Monitoring not included

10. WATER SUPPLY/PLUMBING (INCLUDING NATURAL GAS AND PROPANE) SYSTEMS

- a) Are you aware of any past or present plumbing (including natural gas or propane) leakage or other problems or repairs? ..... YES  NO
- b) When was any part of the plumbing system last serviced? \_\_\_\_\_
- c) Have you yourself, or has any unlicensed worker or contractor, undertaken any repair, installation or work relating to water or natural gas or propane lines at the Property? ..... YES  NO
- d) Are you aware of any past or present episode of flooding of any part of the interior of the Property? ..... YES  NO
- e) Have you experienced high or low water pressure problems at the Property? ..... YES  NO
- f) Have you experienced any problem with water supply, purity, quality or taste? ..... YES  NO
- g) Have you experienced excessive delays in drawing hot water to any faucet? ..... YES  NO
- h) Have you experienced any rust, sediment or discoloration in your water? ..... YES  NO
- i) Is the Property equipped with a water softener? If yes, it is  Leased  Owned. .... YES  NO
- j) Is the Property equipped with a purification system? If yes, it is  Leased  Owned. .... YES  NO
- k) Have, to your knowledge, any plumbed appliances (e.g., refrigerator ice maker/water dispenser, instant hot water) or other plumbing-related systems failed to operate properly? ..... YES  NO
- l) Is the Property equipped with a hot water re-circulating system? ..... YES  NO
- m) Is your water supply fluoridated? ..... YES  NO

Explanations (If "yes" is checked on any of the above, please explain below):

11. PRIVATE WATER SYSTEM/WELL

- a) Is the Property served by a private water system that includes other users? If yes, identify the system and set forth and describe Property's water entitlement (or provide full documentation) ..... YES  NO
- b) Do you have documents setting forth permits, approvals, usage fees and maintenance? ..... YES  NO
- c) Is the Property served by a well? ..... YES  NO
- d) Have you experienced any problem with supply, purity, quality or taste of water from any well or private water system? ..... YES  NO
- e) Do you have copies of inspection reports of the well and of any related water storage tank? ..... YES  NO
- f) Do you have any inspection reports relating to wells, storage tanks, water flow and recovery rates, purity and quality? ..... YES  NO
- g) Are you aware of any government-mandated water hook-up to a public water system contemplated or in process? ..... YES  NO
- h) Are you aware of any information relating to any governmental water flow requirements or restrictions? ..... YES  NO

Explanations (If "yes" is checked on any of the above, please explain below):

Seller's Initials ( MA ) ( \_\_\_\_\_ )

Buyer's Initials ( GMF ) ( SJO )

**PRDS® SUPPLEMENTAL SELLER'S CHECKLIST:**

Answer each of the following questions.

Answer YES to any of the items if you are aware of any negative condition or circumstance, whether past or present, and whether or not previously repaired, relating to that item. Whenever an item is checked "YES", explain underlying facts in detail on the lines at the end of the relevant category. (If necessary, use additional pages.)

- 12. SEWER SYSTEM**  Not Applicable
- |  |                          |                                     |
|--|--------------------------|-------------------------------------|
|  | YES                      | NO                                  |
| a) Are you aware of any past or present blockage, backup, overflow or other failure of the sewer system (this includes toilets, tubs, kitchen and bathroom sinks, etc.)? ..... | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| b) Do any sinks, tubs, showers, etc. drain unreasonably slowly? .....  | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| c) With what frequency have you had waste or sewer lines snaked/rooted, and with which service provider?<br>Not Applicable, this property is new                               |                          |                                     |
| d) Are you aware of any current government-imposed inspection, repair or upgrade requirement (e.g., sewer lateral tests) applicable to the Property? .....                     | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| e) To your knowledge, is the Property equipped with any booster or other pump system related to the sewer system? .....  | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

Explanations (If "yes" is checked on any of the above, please explain below):

\_\_\_\_\_

- 13. SEPTIC SYSTEM**  Not Applicable
- |  |                          |                                     |
|--|--------------------------|-------------------------------------|
|  | YES                      | NO                                  |
| a) Are you aware of any past or present blockage, backup, overflow or other failure of the septic system? .....  | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| b) If you are aware of the material (e.g., concrete, redwood, etc.) of which the septic tank is constructed, please indicate: _____  |                          |                                     |
| c) Are you aware of any repairs, replacements, relocations or expansions of the septic tank? .....   | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| d) When was the septic tank last pumped? _____ by whom: _____  |                          |                                     |
| e) Are you aware of any repairs, replacements, relocations or expansions of the leach field(s)? .....  | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| f) Have you been informed by any advisory, notification, inspection report or any other source that limitations of the septic system may preclude or limit expansion of living space at the Property? .....    | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| g) Have you been informed by any advisory, notification, inspection report or any other source that soils conditions may preclude or limit expansion of the septic system? .....                               | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| h) Are you aware of any governmental plans or requirements that may mandate hook-up to a public sewer system? .....  | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| i) Are you aware of any present or contemplated governmental measure that would require, that the septic system be inspected, replaced or upgraded, or converted and connected to a public sewer system? ..... | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

Explanations (If "yes" is checked on any of the above, please explain below):

\_\_\_\_\_

- 14. ABANDONED WELLS/SEWER/SEPTIC SYSTEMS**  Not Applicable
- |  |                          |                                     |
|--|--------------------------|-------------------------------------|
|  | YES                      | NO                                  |
| a) Are there any abandoned wells, water storage tanks or related equipment at the Property? .....  | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| b) Are you aware as to whether any unused or abandoned sewer/septic system equipment (e.g., tank, leach lines), or abandoned leach field, is located at the Property? If yes, explain below whether and how it has been disposed of (e.g., removed, filled in, etc.) and permit status. .... | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

Explanations (If "yes" is checked on any of the above, please explain below):

\_\_\_\_\_

- 15. LANDSCAPING/IRRIGATION**
- |   |                                     |                                     |
|---|-------------------------------------|-------------------------------------|
|   | YES                                 | NO                                  |
| a) Does the Property have a sprinkling system? .....  | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
|   |                                     |                                     |
| b) Does the Property have a drip system? .....  | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
|   |                                     |                                     |
| c) To your knowledge, does any part of any sprinkling system at the Property direct (or has it directed) water onto any siding, window or other surface of the structure? ..... | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| d) Does the Property have an exterior lighting system (e.g., landscape, security)? .....  | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| e) Does the Property have a pond, waterfall or other decorative water-related landscaping feature? .....  | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| f) Are you aware of any defects or malfunctions regarding any of the above systems? .....   | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| g) Are you aware of any repairs, modifications or replacements to any of these systems? .....   | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| h) Does the Property have a play structure? If yes, please describe below the anchoring mechanism and any defects, modifications or repairs of which you are aware. ....        | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| i) Are you aware of any diseases or infestations affecting trees or other plantings at or near the Property? If yes, please describe below, including treatment, if any. ....   | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |

Explanations (If "yes" is checked on any of the above, please explain below):

\_\_\_\_\_

Seller's Initials ( MA ) ( \_\_\_\_\_ )

Buyer's Initials ( GMF ) ( CS )

**PRDS® SUPPLEMENTAL SELLER'S CHECKLIST:**

Answer each of the following questions.

Answer **YES** to any of the items if you are aware of any negative condition or circumstance, whether past or present, and whether or not previously repaired, relating to that item. Whenever an item is checked "YES", explain underlying facts in detail on the lines at the end of the relevant category. (If necessary, use additional pages.)

- 16. SWIMMING POOL/SPA**  Not Applicable
- |   |                          |                                     |
|---|--------------------------|-------------------------------------|
|   | YES                      | NO                                  |
| a) Are you aware of any water leakages from the pool and/or spa? .....  | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| b) Are you aware of any past or present defects or malfunctions regarding such pool and/or spa equipment as heating, filtration or cleaning systems; pool and/or spa surfaces, decking or coping; lighting, ladders, slides or diving boards; pool enclosures, safety covers or alarms? ..... | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| c) Are you aware of any repairs having been done to the pool and/or spa? .....  | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| d) Does the pool have a heating system? <input type="checkbox"/> Gas <input type="checkbox"/> Electric <input type="checkbox"/> Solar <input type="checkbox"/> Other .....  | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| e) When was the pool heater last utilized? _____  |                          |                                     |
| f) Does the spa have a separate heating system? <input type="checkbox"/> Gas <input type="checkbox"/> Electric <input type="checkbox"/> Solar <input type="checkbox"/> Other (explain below) .....  | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| g) When was the spa heater last utilized? _____   |                          |                                     |
| h) If the pool and/or spa has had regular maintenance, please identify the service provider, frequency, and last date serviced: _____   |                          |                                     |

Explanations (If "yes" is checked on any of the above, please explain below):

- 17. PETS/ANIMALS**
- |   |                          |                                     |
|---|--------------------------|-------------------------------------|
|   | YES                      | NO                                  |
| a) Are you aware of the prior or present existence of pets at the Property? <u>If yes</u> , indicate type, number, and when they were present at the Property.....                            | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| b) Are you aware as to whether at any time any animal urine or feces has come into contact with carpeting or any other interior surface of the Property? .....                                | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| c) Are you aware of any staining, spotting, discoloration, warping or any other damage to carpets, hardwood or other flooring, or any other surface, relating to animal urine or feces? ..... | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| d) Are you aware of any present, past or seasonal (e.g., during warm temperatures) odors at the Property relating to animals? .....   | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| e) To your knowledge, have there ever been any ticks, fleas or other pet-related insect problems at the Property? .....   | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| f) Are you aware of any treatment or process employed to eradicate pet-related odors, stains or other problems? .....   | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

Explanations (If "yes" is checked on any of the above, please explain below):

- 18. NEIGHBORHOOD CONDITIONS**
- |  |                                     |                                     |
|--|-------------------------------------|-------------------------------------|
|  | YES                                 | NO                                  |
| a) Is the Property situated on or near a bus route? .....  | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| b) Is noise related to vehicular traffic, including bus traffic, noticeable at the Property? .....   | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| c) Do problems with any traffic congestion, excess speed, hampered driveway ingress or egress, limited or congested on-street parking, or other road-related difficulties exist at or near, or do they otherwise affect, the Property? .....                     | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| d) Is railroad, train, light rail, BART, or other rail traffic noticeable at the Property? .....   | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| e) Is aircraft-related noise noticeable at the Property? (Note: a city mandated disclosure(s) may be required).  | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| f) Is noise from schools or parks noticeable at the Property? .....  | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| g) Do any local business, recreational, commercial or institutional (e.g., day care, religious, residential care or "group") facilities create noise, litter, traffic/parking congestion, night activities or other annoyances noticeable at the Property? ..... | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| h) Do any local entertainment complexes, amphitheaters or other venues create noise, litter, traffic/parking congestion, night activities or other annoyances noticeable at the Property? .....  | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| i) Do local events, gatherings or traditions (e.g., parades, block parties, holiday decorations, sporting events) create noise, litter, traffic/parking congestion, night activities or other annoyances noticeable at the Property? .....                       | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| j) Is barking and/or are other noises from dogs, cats or other animals noticeable at the Property? .....   | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| k) Has the presence in your neighborhood of birds (e.g., pigeons, seagulls), rodents or other animals, including both feral and domesticated animals, caused or constituted an annoyance or nuisance at the Property? .....                                      | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| l) Are other neighborhood noises (e.g., loud music, construction equipment, shouting, air condensers and other noisy appliances, generators, pool equipment, late-night parties, sporting or other events) noticeable at the Property? .....                     | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |

Seller's Initials ( MA ) ( \_\_\_\_\_ )

Buyer's Initials ( GMP ) ( St & )

**PRDS® SUPPLEMENTAL SELLER'S CHECKLIST:**

Answer each of the following questions.

Answer YES to any of the items if you are aware of any negative condition or circumstance, whether past or present, and whether or not previously repaired, relating to that item. Whenever an item is checked "YES", explain underlying facts in detail on the lines at the end of the relevant category. (If necessary, use additional pages.)

**NEIGHBORHOOD CONDITIONS (continued)**

- |  | YES                      | NO                                  |
|--|--------------------------|-------------------------------------|
| m) Are you aware of any ongoing, planned or otherwise anticipated construction at, on or within any neighboring property or public facility or right of way? .....   | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| n) Are there odors from or in the neighborhood that have been noticeable at the Property? .....  | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| o) Is there a neighborhood litter or debris problem that reflects on, or otherwise affects, the Property? .....  | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| p) Are you aware of any burglaries, assaults or other crimes in the neighborhood within the last three years? .....  | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| q) Are you aware of any Property or neighborhood conditions or circumstances beyond those referred to above that might reasonably affect the value or desirability of the Property? .....  | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| r) Have you, or to your knowledge has anyone in your neighborhood or household, ever complained to police or other governmental authorities regarding any neighborhood condition, including those listed in this Paragraph 18? ..... | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

Explanations (If "yes" is checked on any of the above, please explain below):

18a, Check with the City or County

**19. ENVIRONMENTAL ISSUES**

- |  | YES                      | NO                                  |
|--|--------------------------|-------------------------------------|
| a) Are you aware of the presence of any asbestos (e.g., in sprayed ceiling materials, furnace ducting, etc.) at the Property? .....  | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| b) Are you aware of the past or present disposal, leakage or spills on or near the Property of motor oil, heating oil, solvents or other hazardous chemicals or substances, or the existence (and any known leakage or other failure) of any above-ground or underground storage tank ("UST") located on or near the Property? <u>If yes</u> , describe present status and details regarding any remediation or clean-up. .... | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| c) Are you aware of the presence on the Property of any UST ever containing heating oil, gasoline/diesel or any other fluid? .....   | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| d) Are you aware of the removal from the Property of any previously buried or unburied storage tank? <u>If yes</u> , please provide details, including date, regarding circumstances and public agency involvement. ....   | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| e) Are you aware of any toxic or hazardous material leakages or spills within a half-mile of the Property? .....   | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| f) Are you aware at the Property of lead-based paint, any lead paint residue or any other lead material? .....   | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| g) Are you aware of the past or present existence at the Property of any mold, fungus or spores? .....   | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| h) Are you aware of any environmental inspections or tests undertaken relative to any exterior or interior part of the Property? .....   | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| i) Are you aware of any odors at the Property whether persistent, recurrent, occasional or seasonal? .....   | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| j) Are you aware of any present or prior use of the Property as a site or facility (e.g., ?lab?) used for the manufacture, storage, disposal, release, use or sale of illegal controlled substances, and/or any chemicals or substances used in the manufacture or preparation thereof? .....  | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

Explanations (If "yes" is checked on any of the above, please explain below):

**20. GOVERNMENTAL ISSUES/HOMEOWNER ASSOCIATION ISSUES**

- |   | YES                      | NO                                  |
|---|--------------------------|-------------------------------------|
| a) Are you aware of the existence of any special (e.g., seismic, flood, coastal) zone that covers the Property? .....   | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| b) Are you aware of the existence or pendency of any applicable rent control ordinance? .....   | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| c) Are you aware of any current bonds, fees or assessments that do not appear on the Property's tax bill?...  | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| d) Are you aware of any proposed or contemplated bonds, fees or assessments that would, if enacted, apply to the Property? .....  | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| e) Are you aware of any restrictions on use of the Property other than those imposed by zoning laws or CC&Rs? .....   | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| f) Are you aware of any existing or contemplated building (or other) moratoria that would apply to the Property? .....  | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| g) To your knowledge, is any Property-related application, certification, inspection or investigation (e.g., for building permit violations) by any governmental authority currently pending or contemplated? ..... | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| h) Are you aware of the existence or pendency of any stop work order, order to abate or notice of code or other violation or dangerous condition? .....   | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| i) Are you aware of any government-imposed requirement or order that brush, trees, grass or other vegetation at the Property be cleared, or that flammable materials be removed? .....                              | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| j) Are you aware of any government-mandated tree (or other landscaping) planting, tree removal or cutting restrictions, removal or replacement program that would affect the Property? .....                        | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

Seller's Initials ( MA ) ( )

Buyer's Initials ( GMP ) ( SHO )

**PRDS® SUPPLEMENTAL SELLER'S CHECKLIST:**

Answer each of the following questions.  
Answer YES to any of the items if you are aware of any negative condition or circumstance, whether past or present, and whether or not previously repaired, relating to that item. Whenever an item is checked "YES", explain underlying facts in detail on the lines at the end of the relevant category. (If necessary, use additional pages.)

**GOVERNMENTAL ISSUES/HOMEOWNER ASSOCIATION ISSUES (continued)**

- |  | YES                      | NO                                  |
|--|--------------------------|-------------------------------------|
| k) Are you aware as to whether any part of the Property falls under provisions of the Williamson Act (tax-benefited covenant to hold and maintain certain properties as agricultural lands)? ..... | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| l) Are you aware as to any ongoing or contemplated eminent domain, condemnation or annexation process or proceedings relating to the Property? .....   | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| m) Are you aware as to whether or not the Property's school district mandates the busing of students? .....  | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| n) Are you aware of any current or contemplated construction, reconfiguration, conversion or closure of any nearby schools? .....  | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| o) Are you aware of any ongoing or contemplated construction, reconfiguration or closure relating to nearby roadways? .....  | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| p) Are you aware of any ongoing or contemplated removal or emplacement of any nearby traffic signals or signs? .....   | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| q) Are you aware of any ongoing or contemplated construction, reconfiguration or closure of nearby parks/recreational facilities? .....  | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| r) Is the Property situated in an unincorporated area of the County? .....   | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

Explanations (If "yes" is checked on any of the above, please explain below):

\_\_\_\_\_  
\_\_\_\_\_

**21. TITLE/OWNERSHIP/LITIGATION**

- |  | YES                                 | NO                                  |
|--|-------------------------------------|-------------------------------------|
| a) Are you aware of any person who, though not currently an owner of record, nevertheless claims an ownership interest in, or right to possess, the Property or any part of the Property? .....                          | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| b) Are you aware of any ongoing or contemplated legal proceedings (e.g., probate, trust, guardianship, quiet title, specific performance) relating to the Property? .....  | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| c) Do you have or intend to utilize a power of attorney in conjunction with the sale of the Property? .....  | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| d) Is the access road to the Property a private road? If yes, indicate whether there is a written road maintenance agreement recorded for the Property, and explain how the road is maintained. .... <u>H.O.A.</u> ..... | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| e) Are you aware of any use (e.g., as a pathway, driveway, landscaping, etc.), continuous or otherwise, permitted or not, made on, at or of the Property by any other person? .....                                      | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| f) Are you aware of any fences, walls or other constructed or natural borders relating to the Property that may be situated off the true Property line? .....  | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| g) Are you aware of any fence, wall, structure or other improvement that encroaches from a neighboring property onto the subject Property or from the subject Property onto a neighboring property? .....                | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| h) Are you aware of any claims made by others of any license, easement (including prescriptive easement) or other right or entitlement relating to the Property? .....   | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| i) Are you aware of the existence of any unrecorded deed, road maintenance agreement, water usage agreement or other agreement or instrument relating to the Property? .....   | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| j) Are you aware of any lease or rental agreement that is, or is claimed to be, currently in effect as to the Property? .....  | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |

Explanations (If "yes" is checked on any of the above, please explain below):

\_\_\_\_\_  
\_\_\_\_\_

**22. HOMEOWNER'S INSURANCE COVERAGE AND CLAIMS HISTORY**

- |   | YES                      | NO                                  |
|---|--------------------------|-------------------------------------|
| a) Within the past five years have you or, to your knowledge, has any prior owner, made any claim relating to a plumbing leak or other water release, water intrusion, property damage, personal injury, or any other matter, against a Homeowner's Insurance policy (i.e., fire and/or other property and personal casualty policy) covering the Property? ..... | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

If yes, please identify the following as to each claim (use additional pages, if necessary):

- 1) name of claimant N/A
- 2) insurance company and policy number N/A
- 3) approximate date of the claim NA
- 4) nature of the claim, and how resolved, if known N/A

Seller's Initials (MA) ( )

Buyer's Initials (GAF) (LS)

PRDS® SUPPLEMENTAL SELLER'S CHECKLIST:

Answer each of the following questions.

Answer YES to any of the items if you are aware of any negative condition or circumstance, whether past or present, and whether or not previously repaired, relating to that item. Whenever an item is checked "YES", explain underlying facts in detail on the lines at the end of the relevant category. (If necessary, use additional pages.)

HOMEOWNER'S INSURANCE COVERAGE AND CLAIMS HISTORY (continued)

YES NO

b) Has, to your knowledge, any insurance company, within the past five years, refused to issue to you or renew for you a Homeowner's Insurance policy covering the Property?  YES  NO  
If yes, please indicate the following (use additional pages, if necessary):

- 1) approximate date of such refusal \_\_\_\_\_
- 2) the insurance company involved \_\_\_\_\_
- 3) the basis of the refusal, if known \_\_\_\_\_

c) Apart from any other insurance requirements, has your lender required you to carry flood or earthquake insurance?  YES  NO

Explanations (If "yes" is checked on any of the above, please explain below):

\_\_\_\_\_  
\_\_\_\_\_

23. GENERAL

YES NO

- a) Are you aware of any death, natural or otherwise, having occurred on the Property within the past three years?  YES  NO
- b) Are you aware of the existence of any current or prior inspection reports, termite/structural pest control reports, contractor estimates/bids or other documents (not otherwise accounted for above) relating to the structure, condition, repair or contemplated repair, or contemplated improvement of the Property?  YES  NO
- c) Are you aware of any problem, defect, deficiency, malfunction or other negative condition or attribute of the Property other than what you have disclosed?  YES  NO
- d) Are you aware as to whether a pool at the Property has been filled in, removed or otherwise abandoned or eliminated?  YES  NO
- e) Are you aware of any fire, interior or exterior (including chimney flue fire) having ever occurred at the Property?  YES  NO
- f) As regards any loan secured by the Property, has to your knowledge any notice of default been recorded against the Property, or do you anticipate receiving a notice of default?  YES  NO
- g) Is it to your knowledge the Property is presently subject or soon to be made subject to the jurisdiction of the federal bankruptcy court?  YES  NO
- h) Are there any electrical, plumbing or other systems (e.g., air conditioning, guest bathrooms, etc.) or any appliances that are being sold as part of the Property that you have not used or operated within the past twelve months?  YES  NO
- i) To your knowledge, has any governmental entity or agency designated the Property as "historic"?  YES  NO

Explanations (If "yes" is checked on any of the above, please explain below):

\_\_\_\_\_  
\_\_\_\_\_

24. ADDITIONAL INFORMATION (Use additional sheet, if necessary)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Seller certifies that the information set forth in this document is true and correct to the best of Seller's knowledge as of the date signed below:

Date: 8.14.08

Seller: [Signature]

Seller: \_\_\_\_\_

Buyer hereby acknowledges receipt of a copy of this document:

Date: 8/16/08

Buyer: [Signature]

Buyer: [Signature]



SUPPLEMENTAL STATUTORY AND CONTRACTUAL DISCLOSURES

(C.A.R. Form SSD, Revised 4/06)

1. Seller makes the following disclosures with regard to the real property or manufactured home described as 2222 Raspberry Lane, Assessor's Parcel No. ... situated in Mountain View, County of Santa Clara, California, ("Property").

2. THE FOLLOWING ARE REPRESENTATIONS MADE BY THE SELLER AND ARE NOT THE REPRESENTATIONS OF THE AGENT(S), IF ANY. THIS DISCLOSURE STATEMENT IS NOT A WARRANTY OF ANY KIND BY THE SELLER OR ANY AGENT(S) AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR WARRANTIES THE PRINCIPAL(S) MAY WISH TO OBTAIN.

- 3. Are you (Seller) aware of any of the following? (Explain any "yes" answers below.) A. Within the last 3 years, the death of an occupant of the Property upon the Property. B. An Order from a government health official identifying the Property as being contaminated by methamphetamine... C. Whether the Property is located in or adjacent to an "industrial use" zone... D. Whether the Property is affected by a nuisance created by an "industrial use" zone... E. Whether the Property is located within 1 mile of a former federal or state ordnance location... F. Whether the Property is a condominium or located in a planned unit development or other common interest subdivision... G. Insurance claims affecting the Property within the past 5 years... H. Matters affecting title of the Property... I. Material facts or defects affecting the Property not otherwise disclosed to Buyer...

4. Seller represents that the information herein is true and correct to the best of Seller's knowledge as of the date signed by Seller. Seller hereby authorizes any agent(s) representing any principal(s) in this transaction to provide a Copy of this statement to any person or entity in connection with any actual or anticipated sale of the Property.

Seller Michael Ahi Rockberry Villas, LLC- Rockwell Date 8.14.08

5. By signing below, Buyer acknowledges Buyer has read, understands and received a copy of this Supplemental Statutory and Contractual Disclosures.

Buyer Greg M. Fallon Date 08/16/08
Buyer J. J. ... Date 08/16/08

Agent (Broker Representing Seller) Rockwell Realty Group Corp.

By Terry Mokhtari (Associate-Licensee or Broker Signature) Terry Mokhtari Date

Agent (Broker Obtaining the Offer)

By (Associate-Licensee or Broker Signature) Date

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SSD REVISED 4/06 (PAGE 1 OF 1)

SUPPLEMENTAL STATUTORY AND CONTRACTUAL DISCLOSURES (SSD PAGE 1 OF 1)

Agent: Terry Mokhtari Phone: (408) 879-1902 Fax: (408) 879-2911 Prepared using WINForms® software
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**FILED** (50)  
in the office of the Secretary of State  
of the State of California

JUL - 2 2008

**ARTICLES OF INCORPORATION**  
**OF**  
**ROCKBERRY VILLAS OWNERS ASSOCIATION**

**ARTICLE I**

The name of the corporation [hereinafter called the "Association"] is Rockberry Villas Owners Association.

**ARTICLE II**

**AGENT FOR THE SERVICE OF PROCESS**

The name of the Association's initial agent for service of process is: Michael Ahi. The address of its initial agent is: 2160 S. Bascom Avenue, Ste. 1, Campbell, CA 95008.

**ARTICLE III**

**PURPOSE OF THE ASSOCIATION**

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, other than credit union business, for which a corporation may be organized under such law.

This corporation is an association formed to manage a common-interest development under the Davis-Stirling Common Interest Development Act. The Association has no business or corporate office. The nine-digit zip code for the common interest development is 94040-0000; and the front street and nearest cross street are Rock Street and Independence Avenue, respectively.

This Association does not contemplate pecuniary gain or profit to the members thereof, and the specific primary purposes for which it is formed are to provide for management, administration, maintenance, preservation, and architectural control of the common area within that certain tract of property situated in the County of Santa Clara, California, more particularly described as follows:

*All of Lots 1 through 15 and Lot A (Common Area), as shown on that certain Map of Tract No. 9874 Rockberry Villas, which Map was filed for record in the office of the Recorder of the County of Santa Clara, State of California on October 15, 2007, in Book 819 of Maps, Pages 27 and 28.  
APN: 147-12-043, ARB: 147-12-043*

and to promote the health, safety, and welfare of all the residents within the above-described property and any additions thereto as may hereafter be brought within the jurisdiction of this Association for this purpose, all according to that certain Declaration of Covenants, Conditions, and Restrictions, hereinafter called the "Declaration" recorded or to be recorded with respect to said property in the Office of the Recorder of Santa Clara County.

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.

#### **ARTICLE IV**

#### **DISSOLUTION**

This Association is intended to qualify as a Homeowners' Association under the applicable provisions of the Internal Revenue Code, and the Revenue and Taxation Code of California. No part of the net earnings of this organization shall inure to the benefit of any private individual, except as expressly provided in those Sections with respect to the acquisition, construction, or provision for management, maintenance, and care of the Association property, and other than by a rebate of excess membership dues, fees, or assessments. So long as there is any unit or parcel for which the Association is obligated to provide management, maintenance, preservation or control, the Association may not transfer all or substantially all of its assets or file a certificate of dissolution without the approval of one hundred percent (100%) of the members. In the event of the dissolution, liquidation, or winding up of the Association, upon or after termination of the project, in accordance with the provisions of the Declaration, its assets remaining after payment, or provision for payment, of all debts and liabilities of the Association, shall be divided among and distributed to the members in accordance with their respective rights therein.

#### **ARTICLE V**

#### **AMENDMENTS**

These Articles may be amended only by the affirmative vote in person or by proxy or written consent of a majority of the Board and of members representing the majority of the voting power of the Association and a majority of the votes of members other than Declarant, or where the two class

voting structure is still in effect, a majority of each class of membership. However, the percentage of voting power necessary to amend a specific clause or provision shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

IN WITNESS WHEREOF, for the purposes of forming this corporation under the laws of the State of California, the undersigned has executed these Articles of Incorporation this 1<sup>st</sup> day of July, 2008.



Michael Ahi, Incorporator

I declare that I am the person who executed the above Articles of Incorporation, and such instrument is my act and deed.



Michael Ahi, Incorporator

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DECLARATIONS OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
OF  
ROCKBERRY VILLAS

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*DO*  
*GMA*

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**DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
ROCKBERRY VILLAS**

THIS DECLARATION is made on the date hereinafter set forth by Rockberry Villas, LLC, a California limited liability company, hereinafter referred to as "Declarant", being the owner of certain real property situated in the City of Mountain View, County of Santa Clara, State of California, more particularly described as follows:

*All of Lots 1 through 15 and Lot A (Common Area), as shown on that certain Map of Tract No 9874 Rockberry Villas, which Map was filed for record in the office of the Recorder of the County of Santa Clara, State of California on October 15, 2007, in Book 819 of Maps, Pages 27 and 28.  
APN- 147-12-043, ARB. 147-12-043*

Declarant does hereby declare, for the purpose of establishing a general plan for the creation of a planned residential development, within the meaning of California Civil Code Section 1351(k), that all of the property described above shall be held, occupied, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, liens and charges, set forth hereinafter, all of which shall run with the real property described above and shall be binding on all parties having any right, title or interest therein or in any thereof, their heirs, successors and assigns, and which shall inure to the benefit of each owner thereof, and all of which are imposed upon said real property and every part hereof as a servitude in favor of each and every lot thereof as the dominant tenement and may be enforced by Declarant, or his or her successors and assigns, each owner, his or her successors and assigns, or by the association, its successors and assigns.

**ARTICLE I**

**DEFINITIONS**

Section 1.01. "Association" shall mean and refer to Rockberry Villas Owners Association, a Nonprofit Mutual Benefit Corporation, its successors and assigns, the members of which shall be the owners of lots in the project.

Section 1.02. "Assessment" shall mean that portion of the cost of maintaining, improving, repairing, operating and managing the property which is to be paid by each lot owner as determined by the association

Section 1.03 "Board" or "board of directors" shall mean and refer to the governing body of

the association.

Section 1.04. "By-laws" shall mean and refer to the by-laws of the association as amended from time to time.

Section 1.05. "Common area" shall mean and refer to all of the property described as Lot A on the above-described subdivision map.

Section 1.06. "Common expense" means and includes the actual and estimated expenses of operating the common area and any reasonable reserve for such purposes as found and determined by the board and all sums designated, and expenses by or pursuant to the project documents.

Section 1.07. "Declarant" shall mean and refer to Rockberry Villas, LLC, a California limited liability company, and their successors and assigns.

Section 1.08. "Declaration" shall mean and refer to this enabling declaration, as amended or supplemented from time to time.

Section 1.09. "Eligible mortgage holder" shall mean a first lender who has requested notice of certain matters from the association in accordance with Section 9.06c.

Section 1.10. "Eligible insurer or guarantor" shall mean an insurer or governmental guarantor of a first mortgage who has requested notice of certain matters from the association in accordance with Section 9.06c.

Section 1.11. "Exclusive use common area" shall mean and refer to those portions of the common area, if any, set aside for the exclusive use of the lot owner or owners pursuant to Article II, Section 2.04. Each such exclusive use common area shall be appurtenant to the owner's lot and may not be conveyed or transferred apart from the lot. Except as expressly provided in this declaration, no other portion of the project is exclusive use common area.

Section 1.12. "First lender" shall mean any person, entity, bank, savings and loan association, insurance company or financial institution holding a recorded first mortgage on any lot.

Section 1.13. "Map" shall mean and refer to that subdivision map entitled Tract No. 9874, Rockberry Villas recorded on the 15<sup>th</sup> day of October, 2007, in Book 819 of Maps at Pages 27 and 28, in the Official Records of Santa Clara County.

Section 1.14. "Member" shall mean and refer to a person entitled to membership in the association as provided herein.

Section 1.15. "Mortgage" shall mean a deed of trust as well as a mortgage

Section 1.16. "Mortgagee" shall include a beneficiary or a holder of a deed of trust as well as a mortgagee

Section 1.17. "Mortgagor" shall include the trustor of a deed of trust as well as a mortgagor.

Section 1.18. "Owner" shall mean and refer to the record fee title owner, whether one or more persons or entities, of a fee simple title to any lot which is a part of the properties, except if a lot is sold under a recorded contract of sale, the contract purchaser, rather than the fee owner, shall be considered the "owner" "Owner" shall not include persons or entities who hold an interest in a lot merely as security for the performance of an obligation.

Section 1.19. "Person" means a natural person, a corporation, a partnership, a trustee, or other legal entity.

Section 1.20. "Project" shall mean and refer to the entire real property above-described.

Section 1.21. "Project documents" shall mean this declaration, as amended from time to time, the exhibits, if any, attached thereto, together with the other basic documents used to create and govern the project, including the map, the articles, and the by-laws

## ARTICLE II

### PROPERTY RIGHTS

#### Title to Homeowner's Association Common Area

Section 2.01. At any time prior to the conveyance of the first lot in the project, Declarant shall convey to the homeowners association fee simple title to the common area, free and clear of all liens and encumbrances, except current real property taxes, which taxes shall be prorated to the date of transfer, and reservations, easements, covenants, conditions, and restrictions then of record, including those set forth in this document.

In connection with the conveyance of the common area to the association, Declarant may reserve easements for a period of time not to exceed three years for the nonexclusive use of any driveways on the project, for drainage and encroachment purposes, and for ingress to and egress from the common areas for the purpose of completing improvements thereon or for the performance of necessary repair work. In addition to the foregoing, in the case of a phased project, Declarant may reserve an easement for entry onto the project in connection with the development of additional phases

#### Owners' Easement of Enjoyment

Section 2.02. Every owner shall have a right and easement of enjoyment in and to the

common area which shall be appurtenant to and pass with title to every lot, subject to reasonable rules and regulations from time to time set by the association as well as the right of the association to dedicate or transfer a portion of the common area to any public agency, authority or utility for such purpose and subject to such conditions as may be agreed to by said members, so long as the dedication or transfer shall be for the general benefit of the association and its members.

### **Delegation of Use**

Section 2.03. Any owner may delegate his or her rights of use and enjoyment of the common area and the facilities to the members of his or her family, his or her guests, tenants, employees, and invitees, and to such other persons as may be permitted by the by-laws and the association rules, subject however to this declaration. However, if an owner has sold his or her lot to a contract purchaser or has leased or rented it, the owner, members of the owner's family, guests, tenants, employees, and invitees shall not be entitled to use and enjoy any of such rights 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, including the recreational facilities, and can delegate the rights of use and enjoyment in the same manner as if such contract purchaser or tenant were an owner during the period of his or her 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 shall also notify the secretary of the association of the names of all persons to whom 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. Any delegated rights of use and enjoyment are subject to suspension to the same extent as are the rights of owners. 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. 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.

### **Exclusive Use Common Areas**

Section 2.04. There are no exclusive use common areas designated on the map and set aside and allocated for the exclusive use of the owner of the lot. The board may not grant exclusive use to any other portion of the common area to any member except in compliance with Civil Code Section 1363.07, or any successor thereto.

### **Parking**

Section 2.05. The board may from time to time assign the exclusive right to use certain spaces to particular lots. All parking spaces not so assigned may be used by all owners, their tenants and guests. Parking is prohibited in the common area other than in designated parking spaces. The common area shall at all times contain signage indicating that parking is prohibited other than in

designated parking areas. All garages shall have automatic garage door openers and shall be used solely for resident parking and no other use that prevents vehicle parking.

### **Non-Severability of Component Interests**

Section 2.06. An owner shall not be entitled to sever his or her lot from his or her membership in the association, and shall not be entitled to sever his or her lot and his or her membership from his or her interest in and to the common area, as provided in Section 2.02 above. Any attempt to sever an owner's interest in and to the common area from the ownership of his or her lot, shall be void. After the initial sale of each lot, any conveyance of the lot by the owner shall be presumed to convey all of the owner's right and easement of enjoyment in and to the common area.

### **Destruction of Common Area Improvements**

Section 2.07. In the event of a partial or total destruction of the improvements upon the common area, it shall be the duty of the association to restore and repair the same to their former condition as promptly as is practicable and in a lawful and workmanlike manner. The proceeds of any insurance maintained pursuant hereto shall be used for such purpose, subject to the prior rights of mortgagees whose interests may be protected by said policies. In the event that the amount available from the proceeds of such insurance policies for such restoration and repair shall be at least ninety-five percent (95%) of the estimated cost of restoration and repair, a reconstruction assessment, with each owner contributing equally as provided in Section 4.07, may be levied by the association to provide the necessary funds for such reconstruction and repair, over and above the amount of any insurance proceeds available for such purpose.

In the event that the amount available from the proceeds of such insurance policies for such restoration and repair shall be less than ninety-five percent (95%) of the estimated cost of restoration and repair, the improvements shall not be replaced or restored unless approved by the vote or written consent of members entitled to exercise two-thirds (2/3) of the voting power of the membership of the association. In such event if the members do not elect to rebuild the improvements, the insurance proceeds received by the association on account of the destruction of the common area shall be distributed by the association among owners of lots and their respective mortgagees proportionately based upon the respective selling prices of the lots in the original sales of the lots by the Declarant.

### **Eminent Domain - Common Area**

Section 2.08. The term "taking" as used in this section shall mean condemnation by eminent domain or sale under threat of condemnation. In the event of a threatened taking of all or any portion of the common area, the members hereby appoint the board of the association and such persons as the board of the association may delegate to represent all of the members in connection with the taking. The board shall act in its sole discretion with respect to any awards being made in connection with the taking and shall be entitled to make a voluntary sale to the condemner in lieu of engaging in a condemnation action. Any awards received on account of the taking shall be paid to

the association. In the event of a taking of less than all of the common area, the rules as to restoration and replacement of the common area and the improvements thereon shall apply as in the case of destruction of improvements upon the common area. In the event of a total taking, the board shall retain any award in the general funds of the association. Notwithstanding anything to the contrary in this section, the distribution of any award or awards for taking of all or any portion of the common area shall be subject to the prior rights of mortgagees under deeds of trust

### **Declarant's Obligation to Complete the Common Area Improvements**

Section 2 09. In the event that there are common area improvements which have not been completed prior to close of escrow on the sale of any first lot, and where the association is the obligee under a bond or other arrangement 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 expiration of the extension. A special meeting of members of the association for the purpose of voting to override a decision of 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 (5%) percent of the total voting power of the association. At such special meeting, a vote of a majority of the members of the association, other than 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

### **Annexation of Additional Parcels**

Section 2.10. Additional parcels may be annexed to become subject to this declaration in accordance with the following provisions:

a. **Annexation Pursuant to Approval.** Upon approval in writing of the association, pursuant to vote or written consent of a two-thirds (2/3) majority of the voting power of its members, excluding the Declarant, and the approval of the Department of Real Estate of the State of California, all mortgagees of lots, the association and the owner of any property who desires to add it to the scheme of this declaration and to subject it to the jurisdiction of the association, may file of record a declaration of annexation in the manner described below.

b. **Declaration of Annexation.** A declaration of annexation shall be recorded covering the

applicable portion of the property to be annexed. Said declaration may contain such complementary additions and modifications of the covenants and restrictions contained in this declaration as may be necessary to reflect the different character, if any, of the added property, and as are not inconsistent with the scheme of this declaration.

c. **Effect of Annexation.** Upon annexation, the property annexed shall become subject to this declaration without the necessity of amending individual sections hereof. Assessments collected from owners in the property may be expended by the association without regard to the particular phase from which such assessments came. All owners shall have ingress and egress to and use of all portions of the common area throughout the property, subject to the provisions of this declaration, the by-laws of the association, and to the rules and regulations of the association in effect from time to time.

### **Delivery of Documents to the Association**

Section 2.11. Commencing not later than ninety (90) days after the close of escrow of the first interest in the subdivision, copies of the documents listed below, as soon as readily obtainable, shall be delivered by Declarant to the board of directors of the association at the office of the association, or at such other place as the board of directors of the association shall prescribe. The obligation to deliver the documents listed below shall apply to any documents obtained by the Declarant no matter when obtained, provided, however, such obligation shall terminate upon the earlier of (1) the conveyance of the last subdivision interest covered by a subdivision public report or (2) three years after the expiration of the most recent public report, on the subdivision:

- (1) The recorded subdivision map or maps for the project.
- (2) The deeds and easements executed by the subdivider conveying the common area or other interest to the association, to the extent applicable.
- (3) The recorded covenants, conditions and restrictions for the subdivision, including all amendments and annexations thereto.
- (4) The association's filed articles of incorporation, if any, and all amendments thereto
- (5) The association's bylaws and all amendments thereto.
- (6) All architectural guidelines and all other rules regulating the use of an owner's interest in the subdivision or use of the common area which have been promulgated by the association
- (7) The plans approved by the local agency or county where the subdivision is located for the construction or improvement of facilities that the association is obligated to maintain or repair; provided, however, that the plans need not be as-built plans and that the plans may bear appropriate restrictions on their commercial exploitation or use and may contain appropriate disclaimers

regarding their accuracy

(8) All notice of completion certificates issued for common area improvements (other than residential structures)

(9) Any bond or other security device in which the association is the beneficiary.

(10) Any written warranty being transferred to the association for common area equipment, fixtures or improvements

(11) Any insurance policy procured for the benefit of the association, its board of directors or the common area

(12) Any lease or contract to which the association is a party.

(13) The membership register, including mailing addresses and telephone numbers, books of account and minutes of meetings of the members, of the board of directors and of committees of the board of directors of the association.

(14) Any instrument referred to in Section 11018.6(d) but not described above which establishes or defines the common, mutual or reciprocal rights or responsibilities of the members of the association

Commencing not later than 90 days after the annexation of additional phases to the subdivision, copies of those documents listed above which are applicable to that phase, shall, as soon as readily obtainable, be delivered by the Declarant to the board of directors of the association at the office of the association, or at such other place as the board of directors of the association shall prescribe. The obligation to deliver the documents listed above shall apply to any documents obtained by Declarant no matter when obtained, provided, however, such obligation shall terminate upon the earlier of (1) the conveyance of the last subdivision interest covered by a subdivision public report or (2) three years after the expiration of the most recent public report, on the subdivision

### **ARTICLE III**

#### **MEMBERSHIP AND VOTING RIGHTS**

##### **Membership**

Section 3.01. The owner of a lot shall automatically, upon becoming the owner of same, be a member of the association, and shall remain a member thereof until such time as his or her ownership ceases for any reason, at which time his or her membership in the association shall automatically cease. Membership shall be held in accordance with the articles and by-laws of the association.

## **Transferred Membership**

Section 3 02. Membership in the association shall not be transferred, pledged, or alienated in any way, except upon the sale or encumbrance of the lot to which it is appurtenant, and then only to the new fee owner or contract purchaser, in the case of a sale, or mortgagee, in the case of an encumbrance of such lot. Upon death of a member, his or her membership passes automatically along with title to his or her lot to his or her heirs. The mortgagee does not have membership rights until he becomes an owner by foreclosure or deed in lieu thereof. Any attempt to make a prohibited transfer is void. No member may resign his or her membership. In the event the owner of any lot should fail or refuse to transfer the membership registered in his or her name to the purchaser of his or her lot, the association shall have the right to record the transfer upon its books and thereupon any old membership outstanding in the name of the seller shall be null and void.

## **Membership Classes and Voting Rights**

Section 3.03. Only memberships shall have voting rights, and the association shall have two classes of voting memberships:

a. Class A members shall be all owners with the exception of the Declarant and shall be entitled to one vote for each lot owned. When more than one person holds an interest in any lot all such persons shall be members.

b. Class B member(s) shall be the Declarant and shall be entitled to three votes for each lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of any of the following events, whichever occurs earliest:

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

(2) On the second anniversary of the first close of escrow for the sale of a subdivision interest to an individual owner.

c. Whenever membership approval is necessary for any action to be taken by the association or the board of directors, except with respect to any action to enforce the obligations of the Declarant as specified in Article II, Section 2.09, the vote or written assent of the designated percentage of each class of membership shall be required during the time that there are two outstanding classes of membership.

d. Whenever the vote or written assent of each class of membership is necessary for the initiation of action by or in the name of the association, except with respect to any action to enforce the obligations of Declarant as specified in Article II, Section 2.09, any requirement that the vote of the subdivider shall be excluded is not applicable. After the conversion of Class B memberships to Class A memberships, where the vote or written assent of a prescribed majority of the members is re-

quired other than Declarant, then except as provided in Article II, Section 2.09 of the declaration, the vote or written assent of a bare majority of the total voting power of the association as well as the vote or written assent of a prescribed majority of the total voting power of members other than the Declarant shall be required.

e. Voting rights shall vest either at the time assessments are levied against the owner's lot or as provided in a subsidization plan approved by the California Department of Real Estate.

### **Joint Owner Disputes**

Section 3.04. All votes for each lot for any membership class shall, if at all, be cast as a unit. In the event that joint owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any owner casts a vote or votes representing a certain lot, it will thereafter be conclusively presumed for all purposes that said owner was acting with the authority and consent of all the owners of the lot.

## **ARTICLE IV**

### **COVENANT FOR MAINTENANCE ASSESSMENTS OF COMMON AREA**

#### **Creation of the Lien and Personal Obligations of Assessments**

Section 4.01. The Declarant, for each lot owned within the properties, hereby covenants, and each owner of any lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the association: (1) regular assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The regular and special assessments, together with any late charges, reasonable costs of collection (including reasonable attorney's fees) and interest shall be a lien on the owner's interest in the planned development from and after the time the association causes to be recorded in the recorder's office of the county in which the lot is located, a notice of delinquent assessment, which shall state the amount of the assessment and other sums imposed in accordance with California Civil Code Section 1366, a legal description of the owner's interest in the common interest development against which the assessment and other sums are levied, the name of the record owner of the owner's interest in the common interest development against which the lien is imposed, and, in order for the lien to be enforced by nonjudicial foreclosure as provided in California Civil Code Section 1367(d), the name and address of the trustee authorized by the association to enforce the lien by sale. The notice of delinquent assessment shall be signed by the secretary or the president of the association, and mailed in the manner set forth in Civil Code Section 2924(b) to all record owners of the owner's interest in the project no later than ten (10) calendar days after recordation. Upon payment of the sum specified in the notice of delinquent assessment, the association shall cause to be recorded a further notice stating the satisfaction and release of the lien thereof. Each such assessment, together with any late charges, reasonable costs of collection (including reasonable

attorney's fees) and interest shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his or her successors in title unless expressly assumed by them.

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.

The association shall not place a lien upon the interest of any owner to collect amounts due as provided herein unless the association first complies with the requirements of Civil Code Section 1367 1(a) – (c), and the notice of delinquent assessments complies with Civil Code Section 1367 1(d).

### **Purpose of Assessment**

Section 4.02. The assessments levied by the association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the properties and for the improvement and maintenance of the common area.

### **Regular Assessments**

#### **Section 4 03**

a. Prior to the first meeting of the association, the maximum regular assessment under ARTICLE IV shall be as set forth in the budget worksheet approved by the California Department of Real Estate.

b. The board may not impose a regular assessment that is more than twenty percent (20%) greater than the regular assessment for the association's preceding fiscal year without the approval of owners, constituting a quorum, casting a majority of the votes at a meeting or election of the association conducted in accordance with Chapter V (commencing with Section 7510) of Part III of Division II of Title I of the Corporations Code and Section 7613 of the Corporations Code. For the purposes of this section, quorum means more than 50% of the owners of the association. The foregoing restriction shall not apply to any assessment increases necessary for emergency situations. For purposes of this section, an emergency situation is any one of the following:

- (1) An extraordinary expense required by an order of a court.
- (2) An extraordinary expense necessary to repair or maintain the planned development or any part of it for which the association is responsible where a threat to personal safety on the property is discovered.

(3) An extraordinary expense necessary to repair or maintain the planned development or any part of it for which the association is responsible that could not have been reasonably foreseen by the board in preparing and distributing the pro forma operating budget required by the by-laws of the corporation.

c. The board of directors shall comply with the provisions of Section 1366 of the Civil Code prior to any increase in assessments.

d. Subject to the limitations on the maximum and minimum amount of assessments herein provided, if at any time during the course of the year the board shall deem the amount of the regular assessment to be inadequate or excessive, the board shall have the power at a regular or special meeting, to revise the assessment for the balance of the assessment year, effective on the first day of the month following the date of the revision.

e. During the time the project is subject to an outstanding public report, the Declarant shall notify the Department of Real Estate of any increase of ten percent (10%) over the amount of the regular assessment reflected in the current public report for the project.

#### **Special Assessments for Capital Improvements**

Section 4.04. In addition to the regular assessments authorized above, the association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of a capital improvement upon the common area, including fixtures and personal property related thereto, provided that:

a. The board may not levy special assessments without complying with the provisions of Section 1366 of the Civil Code.

b. Every special assessment shall be levied on the same basis as that prescribed for the levying of regular assessments.

c. The provisions of this section regarding special assessments do not apply to an assessment levied by the board of directors against a member to reimburse the association for costs incurred in bringing the member and his or her subdivision interest into compliance with provisions of the governing instruments as provided in Section 4.12 below.

#### **Reserve Fund Procedures**

Section 4.05.

a. As part of the regular assessment for maintenance authorized above, the board of directors shall annually fix the amount to be contributed pro-rata by each member to reserve funds for the

purpose of defraying, in whole or in part, the cost or estimated cost of any reconstruction, repair or replacement of improvements, including fixtures and personal property related thereto. Such determination shall be made after consideration of the need for additional funds and of the association's capital position. The board shall fix the method of payment of such assessments and shall be empowered to permit either lump sum or monthly payments. Separate records shall be maintained for all funds deposited to the said account, which shall be designated as a "reserve account". The signatures of at least two persons, who shall be members of the association's board of directors, or one officer who is not a member of the board of directors and a member of the board of directors, shall be required for the withdrawal of monies from the association's reserve account. Deposits shall be made and funds accounted for so that reserves for capital improvements and for replacement, can be clearly separated from funds for operating expenses.

b. The board of directors shall not expend funds designated as reserve funds for any purpose other than those purposes set forth in Section 1365.5 of the Civil Code

#### **Notice and Quorum for Any Action Authorized Under Section 4.03, 4.04**

Section 4.06. Any action authorized under Section 4.03 or 4.04 shall be taken at a meeting called for that purpose, written notice of which shall be sent to all members not less than ten (10) days nor more than ninety (90) days in advance of the meeting specifying the place, day and hour of the meeting and in the case of a special meeting, the nature of the business to be undertaken. The presence at any such meeting in person or by proxy of members entitled to cast 33-1/3 percent of the total votes of all members shall constitute a quorum, except that in the case of the imposition of a regular assessment that is more than 20% greater than the regular assessment for the association's preceding fiscal year or the imposition of special assessments which in the aggregate exceed 5% of the budgeted gross expenses of the association for that fiscal year, the quorum requirement shall be more than 50% of the total voting power of the association. If a quorum is present and the proposed action is favored by a majority vote of the members present at such meeting, but such vote is less than a majority of the voting power of the association, including a majority of members other than the Declarant, approval of the action may be obtained by written ballot in accordance with the provisions of California Corporations Code Section 7513.

#### **Rate of Assessment**

Section 4.07. All regular assessments shall be charged to and divided among the lot owners according to the ratio of the number of lots owned by each owner assessed to the total number of lots assessed.

#### **Due Dates for Regular and Special Assessments**

Section 4.08. The regular assessments provided for herein shall commence as to all lots on

the first day of the month following the closing of the first sale of a subdivision interest to an individual owner. The first regular assessment shall be adjusted according to the number of months remaining in the calendar year. The board of directors shall fix the amount of the regular assessment against each lot at least forty-five (45) days in advance of each regular assessment period. The due dates shall be established by the board of directors. The association shall provide notice by first class mail to the owners of all lots of any increase in the regular or special assessments of the association, not less than 30 nor more than 60 days prior to the increased assessment becoming due. The association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the association setting forth whether the assessments on a specified lot have been paid.

#### **Effect of Nonpayment of Assessments; Remedies of the Association**

Section 4.09 Any assessment payment shall become delinquent if payment is not received by the association within fifteen (15) days after its due date. If an assessment is delinquent, the association may recover all of the following: (1) reasonable costs incurred in collecting the delinquent assessment, including reasonable attorney's fees; (2) a late charge not exceeding 10% of the delinquent assessment or \$10.00, whichever is greater; (3) interest on all sums imposed in accordance with this section, including the delinquent assessment, reasonable costs of collection, and late charges, at an annual percentage rate not to exceed twelve percent (12%) interest, commencing thirty (30) days after the assessment becomes due.

#### **Transfer of Lot by Sale or Foreclosure and Priority of First Lender**

Section 4.10. Sale or transfer of any lot shall not affect the assessment lien. However, a lien for regular or special assessments against an owner shall be subordinate to the lien of any first mortgage or first deed of trust against subdivision interests of the owner, and the sale of any lot pursuant to mortgage foreclosure or any proceeding in lieu thereof involving a default under the first encumbrance shall extinguish the lien of assessments which were due and payable prior to the transfer of the subdivision interest. No sale or transfer of a lot as the result of a foreclosure or exercise of the power of sale shall relieve the new owner, whether it be the former beneficiary or the first encumbrance or another person, from liability for any assessments thereafter becoming due or from any lien thereof.

When the mortgagee of a mortgage of record or other purchaser of a lot obtains title to the same as a result of foreclosure of any such mortgage, such acquirer of title, his or her successor and assigns, shall not be liable for the share of the common expenses or assessment by the association which became due prior to the acquisition of title to such lot by such acquirer (except for assessment liens recorded prior to the mortgage). No amendment of the preceding section may be made without the consent of owners of lots to which at least sixty-seven percent (67%) of the votes in the association are allocated, and the consent of the eligible mortgage holders holding first mortgages on lots comprising fifty-one percent (51%) of the lots subject to first mortgages. Such unpaid share of

common expenses of assessments shall be deemed to be common expenses collectible from all of the lot owners including such acquirer, his or her successors and assigns.

### **Priorities; Enforcements; Remedies**

Section 4.11. When a notice of assessment has been recorded, such assessment shall constitute a lien on each respective lot prior and superior to all other liens except (1) all taxes, bonds, assessments and other levies which by law would be superior thereto, and (2) the lien or charge of any first mortgage of record made in good faith and for value.

If the lien is for delinquent assessments equal to or more than \$1,800, or more than 12 months delinquent, such lien, after the expiration of thirty (30) days following the recording of the lien, and after complying with the requirements of Civil Code Section 1367.4(c) may be enforced by sale by the association, its attorneys or other person authorized to make the sale after failure of the owner to pay such assessment in accordance with its terms, such sale to be conducted in accordance with the provisions of Sections 2924, 2924(b), and 2924(c) of the California Civil Code, applicable to the exercise of powers of sale in mortgages and deeds of trust, or in any other manner permitted by law. If the amount of the delinquent assessments is less than \$1,800, not including any accelerated assessments, late charges, fees and costs of collection, attorneys' fees, or interest, the association may not collect the debt through judicial or nonjudicial foreclosure, but may attempt to collect or secure the debt as specified in Civil Code Section 1367.4(b).

The association, acting on behalf of the lot owners, shall have the power to bid for the lot at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Where the purchase of a foreclosure lot will result in a five percent (5%) or greater increase in assessments, the purchase shall require the vote or written consent of a majority of the total voting power of the association, including majority of members other than Declarant. During the period a lot is owned by the association, following foreclosure: (1) no right to vote shall be exercised on behalf of the lot; (2) no assessment shall be assessed or levied on the lot; and (3) each other lot shall be charged, in addition to its usual assessments, its equal share of the assessment that would have been charged to such lot had it not been acquired by the association as a result of foreclosure. Suit to recover a money judgment for unpaid common expenses, rent and attorney's fees shall be maintainable without foreclosing or waiving a lien securing the same.

After acquiring title to the lot at foreclosure sale following notice and publication, the association may execute, acknowledge and record a deed conveying title to the lot which deed shall be binding upon the owners, successors, and all of the parties.

### **Disciplinary Proceedings**

Section 4.12. In addition to all other remedies provided in this declaration, the board may temporarily suspend the voting rights of a member who is in default in payment of any assessment, or was otherwise in violation of this declaration, and may impose reasonable monetary penalties.

which may be in the form of a special assessment against the member to reimburse the association for costs incurred in bringing a member and his or her subdivision interest into compliance with provisions of governing instruments, or for the purpose of repairing damage to common areas and facilities for which the member was responsible. Prior to any finding of liability or any decision to impose sanctions or penalties, the Board shall notify the member in writing, by either personal delivery or first class mail, at least 10 days prior to the meeting. Notification shall contain, at a minimum, the date, time, and place of the meeting, the nature of the alleged violation for which the member may be disciplined, and a statement that the member has a right to attend and may address the board at the meeting. The board shall meet in executive session if requested by the member being disciplined.

If the board imposes discipline on a member, the board shall provide the member a written notification of the disciplinary action, by either personal delivery or first class mail, within 15 days following the action. Any dispute between the Association and a member involving their rights, duties, or liabilities under the Declaration shall be subject to the internal dispute resolution process specified in California Civil Code Section 1363.810 and following.

The association shall not cause a forfeiture or abridgement of an owner's right to the full use and enjoyment of his or her individually-owned subdivision interest on account of the failure by the owner to comply with provisions of the governing instruments or of duly-enacted rules of operation for common areas and facilities except by judgment of a court or a decision arising out of arbitration or on account of a foreclosure or sale under a power of sale for failure of the owner to pay assessments duly levied by the association. Any monetary penalty imposed by the association as a disciplinary measure for failure of a member to comply with the governing instruments except as a means of reimbursing the association for costs incurred by the association in the repair of damage to common areas and facilities for which the member or the member's guests or tenants were responsible, shall not be treated as an assessment which may become a lien against the member's subdivision interest enforceable by sale of the interest in accordance with the provisions of Sections 2924, 2924(b) and 2924(c) of the Civil Code.

The provisions of the preceding paragraph do not apply to charges imposed against an owner consisting of reasonable late payment penalties for delinquent assessments and/or charges to reimburse the association for the loss of interest and for costs reasonably incurred (including attorney's fees) in its efforts to collect delinquent assessments.

Notwithstanding any other provision of this declaration, the association shall not impose or collect an assessment, penalty, or fee that exceeds the amount necessary for the purpose or purposes for which it is levied.

#### **Unallocated Taxes**

Section 4.13. In the event that any taxes are assessed against the common area, or the personal property of the association, rather than against the lots, said taxes shall be included in the

assessments made under the provisions of Section 4.01 and, if necessary, a special assessment may be levied against the lots in an amount equal to said taxes to be paid in two installments, thirty (30) days prior to the due date of each tax installment.

### **Exemption from Assessments**

Section 4.14. Notwithstanding the provisions of Sections 4.01 - 4.08 inclusive, any lot having no structural improvements for human occupancy shall be exempt from the payment of that portion of any assessment that is for the purpose of defraying expenses and reserves directly attributable to the existence and use of the structural improvement. The exemption may include, but is not limited to:

- a. Roof replacement;
- b. Exterior maintenance;
- c. Walkway and carport lighting;
- d. Refuse disposal;
- e. Cable television; and
- f. Domestic water supplied to living units.

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

- (1) Recordation of a notice of completion of the structural improvements;
- (2) Occupation or use of the lot; or
- (3) Completion of all elements of the residential structures that the association is obligated to maintain.

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

- (1) A notice of completion of the common facility has been recorded; or
- (2) The common facility has been placed into use.

## **ARTICLE V**

### **DUTIES AND POWERS OF THE ASSOCIATION**

#### **Maintenance**

Section 5.01. The association shall maintain, repair, replace, restore, operate and manage, all of the common area, including roadways, sanitary sewage facilities, landscaping, on-site drainage, and common open space area, and retaining walls. In addition, the association shall maintain and repair the landscape islands in the alleys between lots, all landscaping adjacent to the common area and the driveway

aprons The responsibility of the association for maintenance and repair shall not extend to repairs or replacements arising out of or caused by the willful or negligent act or neglect of an owner, or his or her guests, tenants, or invitees, the cost of which is not covered by insurance. The cost of repair or replacement resulting from such excluded items shall be the responsibility of each owner; provided, however, that if an owner shall fail to make the repairs or replacements which are the responsibility of such owner, as provided above, then after thirty (30) days notice to the owner and at public hearing, the association shall make such repairs or replacements, and the cost thereof shall be paid immediately to the association by the owner of such lot. Any such amount, together with reasonable costs of collection (including reasonable attorneys' fees) and interest thereon at the legal rate of interest shall be a lien on the owner's interest in the planned development from and after the time the association causes to be recorded in the Recorder's Office of the county in which the lot is located, a notice of delinquent assessment, which shall state the amount incurred the association to perform such maintenance, a description of the owner's interest in the common interest development against which the assessment and other sums are levied, the name of the record owner of the owner's interest in the common interest development against which the lien is imposed, and, in order for the lien to be enforced by nonjudicial foreclosure as provided in California Civil Code Section 1367(d), the name and address of the trustee authorized by the association to enforce the lien by sale. The notice shall be signed by the secretary or the president of the association. Upon payment of the sum specified in the notice, the association shall cause to be recorded a further notice stating the satisfaction release of the lien thereof.

In the event Portland cement concrete is installed over the existing public water main, the association shall reimburse the City of Mountain View for the cost to replace any such paving as may be necessary to repair, replace or maintain the public water main, to the extent it exceeds the cost of standard asphalt paving.

The association shall regularly inspect the roofs and decks of the buildings in the project, or cause them to be inspected by competent professionals. Any exterior repainting of stucco surfaces shall be done with elastomeric paint, or its equivalent.

#### **Exterior Maintenance**

Section 5.02. In addition to maintenance on the common area, the association shall provide exterior maintenance on each lot. Such maintenance shall include painting, repairing, replacing and caring for roof, gutters, downspouts, drainage, sanitary sewer system and exterior building surfaces (except windows and skylights). The responsibility of the association for maintenance and repair shall not extend to repairs or replacements arising out of or caused by the willful or negligent act or neglect of an owner, or his or her guests, tenants, or invitees, the cost of which is not covered by insurance. The cost of repair or replacement resulting from such excluded items shall be the responsibility of each other; provided, however, that if an owner shall fail to make the repairs or replacements which are the responsibility of such owner, as provided above, then after thirty (30) days notice to the owner and at public hearing, the association shall make such repairs or replacements, and the cost thereof shall be paid immediately to the association by the owner of such

lot Any such amount, together with reasonable costs of collection (including reasonable attorneys' fees) and interest thereon at the legal rate of interest shall be the personal obligation of the owner

The association, or its agents, may enter into any residence lot when necessary in connection with any maintenance, repairs or construction for which the association is responsible, subject to 48 hours advance notice. In case of an emergency, the right to enter shall be immediate upon notice to the owner. Such entry shall be made with as little inconvenience to the owner as practicable and any damage caused thereby shall be repaired by the association at the expense of the maintenance fund

#### **Insurance**

Section 5.03. The association shall maintain such policy or policies of insurance as are required by Article X of this declaration.

#### **Discharge of Liens**

Section 5.04. After notice of hearing as provided in Section 4.12, the association shall discharge by payment, if necessary, any lien against the common area, and assess the cost thereof to the member or members responsible for the existence of said lien.

#### **Assessments**

Section 5.05. The association shall affix, levy, collect, and enforce assessments as set forth in Article IV hereof.

#### **Payment of Expenses**

Section 5.06. The association shall pay all expenses and obligations incurred by the association in the conduct of its business including, without limitation, all licenses, taxes or governmental charges levied or imposed against the property of the association.

#### **Enforcement**

Section 5.07. The association shall enforce this declaration and has authority to enforce it as per Article IX hereof.

#### **Utility Service**

Section 5.08. The association shall have the authority to obtain, for the benefit of all of the lots, all water, gas and electric service and refuse collection, and cable TV service.

### **Easements**

Section 5.09. The association shall have the authority by document signed or approved by fifty-one percent (51%) of the total voting power of the association, including fifty-one percent (51%) of the members other than Declarant, to grant easements in addition to those shown on the subdivision map, when necessary, for utilities, cable television and sewer facilities, over the common area, to serve the common and open space areas and the lots.

### **Manager**

Section 5.10. The association shall have the authority to employ a manager or other persons and to contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the association, except for the responsibility to levy fines, impose discipline, hold hearings, file suit, record and foreclose liens, or make capital expenditures, provided that any contract with a firm or person appointed as a manager or managing agent shall not exceed a one (1) year term, shall provide for the right of the association to terminate the same at the first annual meeting of the members of the association, and to terminate the same for cause on thirty (30) days written notice or without cause or payment of a termination fee on ninety (90) days written notice

### **Assessments, Liens and Fines**

Section 5.11. The association shall have the power to levy and collect assessments in accordance with the provisions of Article IV hereof. The association may impose fines or take disciplinary action against any owner for failure to pay assessments or for violation of any provision of the project documents. Penalties may include but are not limited to: fines, temporary suspension of voting rights, or other appropriate discipline, provided that the accused member is given notice and the opportunity to be heard with respect to the alleged violations before a decision to impose fines or discipline is made, as provided in Section 4.12.

### **Dedication**

Section 5.12. The association shall have the power to dedicate all or any part of the common area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication shall be effective unless an instrument has been signed by fifty-one percent (51%) of the total voting power of the association, including fifty-one percent (51%) of the members other than Declarant, or where the two class voting structure is still in effect, three-fourths (3/4) of the voting power of each class of members, agreeing to such dedication.

### **Contracts**

Section 5.13. The association shall have the power to contract for goods and/or services for

the common area or for the association, subject to limitations set forth in the by-laws or elsewhere in the project documents.

### **Delegation**

Section 5.14. The association, the board and the officers of the association shall have the power to delegate their authority and powers to committees, officers or employees of the association, or to a manager employed by the association, provided that the board shall not delegate its responsibility for hearings required to be given by the board.

### **Rules**

Section 5.15. The association shall adopt rules as provided in California Civil Code § 1363.03 regarding elections. The association or the board may adopt reasonable rules not inconsistent with this declaration relating to the use of the common area and all facilities thereon, and the conduct of owners and their tenants and guests with respect to the property and other owners. All such rules shall comply with Civil Code § 1357.100 et seq.

### **Access**

Section 5.16. For the purpose of performing construction, maintenance or emergency repair for the benefit of the common area or the owners in common, the association's agents or employees shall have the right, after reasonable notice (not less than 48 hours) to the owner thereof, to enter any lot or to enter any portion of the common area at reasonable hours. In case of emergency, the right shall be immediate upon notice. Such entry shall be made with as little inconvenience to the owner as practicable and any damage caused thereby shall be repaired by the board at the expense of the association.

### **Preparation and Distribution of Documents**

Section 5.17. The association shall prepare and distribute the following materials as indicated:

a. A written notice as described in Civil Code Section 1365.1(b). A copy of this notice shall be distributed to each owner and to any mortgagee that has requested a copy within sixty (60) days prior to the beginning of each fiscal year, and to the secondary address of any owner as required by Civil Code Section 1365.1(c).

b. Copies of this declaration and the articles, together with a true statement in writing as to the amount of any delinquent assessments, penalties, attorneys' fees, and other charges imposed on the owner's lot, a copy of the most recent financial statement distributed to the members, and a true statement as to the amount of the association's current regular and special assessments and fees shall be provided any owner within ten (10) days of the mailing or delivery of a written request therefor.

The board may impose a fee to provide these materials not exceeding the association's reasonable cost in preparing and reproducing the materials.

c. 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.

#### **Additional Association Powers**

Section 5.18. The association shall have the power, subject to compliance with Section 1354 of the California Civil Code, to institute, defend, settle, or intervene on behalf of the association in litigation, arbitration, mediation, or administrative proceedings in matters pertaining to (A) enforcement of the governing instruments, (B) damage to the common areas, (C) damage to the separate interests which the association is obligated to maintain or repair, or (D) damage to the separate interest which arises out of, or is integrally related to, damage to the common areas or separate interests that the association is obligated to maintain or repair.

The association shall have the power to perform any act reasonably necessary to resolve any civil claim or action through alternative dispute resolution proceedings such as mediation, binding arbitration, or nonbinding arbitration proceedings. The association shall provide, or in good faith attempt to provide, 120 days advance notice of the association's intent to initiate the prosecution of any civil action and of the nature and basis of the claim to every member of the association and every entity or person who is a prospective party to the civil action, provided that notice can be given (A) more than 120 days prior to the expiration of any pertinent statute of limitations, and (B) without prejudice to the association's right to enforce the governing documents, and further provided that no such notice need be given prior to the filing of an action in small claims court or an action solely to enforce assessment obligations. Prior to initiating the prosecution of a civil action solely for declaratory relief or injunctive relief to enforce the governing documents, or for declaratory relief or injunctive relief to enforce the governing documents in conjunction with a claim for monetary damages not in excess of \$5,000, the association shall endeavor to submit the matter to alternative dispute resolution in compliance with the provisions of Section 1354(b) of the Civil Code.

Section 5.19. No association funds shall be used for campaign purposes in connection with any association board election. Funds of the association shall not be used for campaign purposes in connection with any other association election except to the extent necessary to comply with duties of the association imposed by law.

## ARTICLE VI

### UTILITIES

#### Owners' Rights and Duties

Section 6.01. The rights and duties of the owners of lots within the project with respect to sanitary sewer, water, electricity, gas and television receiving and telephone lines and facilities shall be as follows:

a. Whenever storm or sanitary sewer, drainage, plumbing, water, electricity, gas, television receiving, telephone lines or connections, are installed within the property which connections or any portion thereof lie in or upon lots owned by other than the owner of a lot served by said connections, the owners of any lot served by said connections shall have the right of reasonable access for themselves or for utility companies to repair, replace and generally maintain said connections as and when necessary, subject to 48 hours advance notice. In case of emergency the right shall be immediate upon notice.

b. Whenever storm or sanitary sewer, drainage, plumbing, water, electricity, gas, television receiving or telephone lines or connections, are installed within the property which connections serve more than one lot, the owner of each lot served by said connection shall be entitled to the full use and enjoyment of such portions of said connections as service his or her lot.

c. In the event of a dispute between owners with respect to the repair or rebuilding of said connections, or with respect to the sharing of the cost thereof, then, upon written request of one of such owners addressed to the association, the matter shall be submitted to arbitration and the decision of the arbitrator shall be final and conclusive on the parties.

#### Easements for Utilities and Maintenance

Section 6.02. Easements over and under the property for the installation, repair, and maintenance of electric, telephone, water, gas, and sanitary sewer lines and facilities, cable or master television antenna lines, drainage facilities, walkways, and landscaping as shown on the recorded map of the property, and as may be hereafter required or needed to service the property, are hereby reserved by Declarant and its successors and assigns, including the association, together with the right to grant and transfer the same.

### **Association's Duties**

Section 6.03. The association shall maintain all utility installations located in the common area except for those installations maintained by utility companies, public, private, or municipal. The association shall pay all charges for utilities supplied to the project except those metered or charged separately to the lots.

## **ARTICLE VII**

### **USE RESTRICTIONS**

In addition to all the covenants contained herein, the use of the property and each lot herein is subject to the following:

#### **Usage**

Section 7.01. No lot shall be occupied and used except for residential purposes by the owners, their tenants, and social guests, and no trade or business shall be conducted therein, except that Declarant, its successors or assigns, may use any lot or lots in the project owned by Declarant for a model home site or sites and display and sales office during construction and for a time period not to exceed three years from sale of the first lot. Notwithstanding the foregoing, a lot may be used as a combined residence and executive or professional office by the owner thereof, so long as its use does not interfere with the quiet enjoyment by other lot owners of their residences. No tent, shack, trailer, basement, garage, outbuilding or structure of a temporary character shall be used at any time as a residence either temporarily or permanently.

No lot or any portion thereof in the project shall be leased, subleased, occupied, rented, let, sublet, or used for or in connection with any time sharing agreement, plan, program, or arrangement, including without limitation, any so-called "vacation license", "travel club", "extended vacation" or other membership or time interval ownership arrangement. The term "time sharing" as used herein shall be deemed to include, but shall not be limited to, any agreement, plan, program, or arrangement under which the right to use, occupy or possess the lot or lots or any portion thereof in the project rotates among various persons, either corporation, partnership, individual, or otherwise, on a periodically recurring basis for value exchanged, whether monetary or like kind use privileges, according to a fixed or floating interval or period of time of 25 consecutive calendar days or less. Provided, this section shall not be construed to limit the personal use of any lot or any portion thereof in the project by any lot owner or his or her or its social or familial guests.

#### **Nuisances**

Section 7.02. No noxious, illegal, or seriously offensive activities shall be carried on upon any lot, or in any part of the property, nor shall anything be done thereon which may be or may

become a serious annoyance or a nuisance to or which may in any way interfere with the quiet enjoyment of each of the owners of the respective lots, or which shall in any way increase the rate of insurance for the project, or cause any insurance policy to be canceled or to cause a refusal to renew the same, or which will impair the structural integrity of any building.

### **Vehicle Restrictions**

Section 7.03 No trailer, camper, mobile home, motor home, house car, commercial vehicle, truck (other than standard size pickup truck or standard size van), boat, inoperable automobile, or similar equipment shall be permitted to remain upon any area within the property unless placed or maintained within an enclosed garage or carport. Commercial vehicles shall not include sedans or standard size vans and pickup trucks which are used both for business and personal use, provided that any signs or markings of a commercial nature on such vehicles shall be unobtrusive and inoffensive as determined by the board. No noisy or smoky vehicles shall be operated on the property. No unlicensed motor vehicles shall be operated on the property.

### **Signs**

Section 7.04. No commercial sign of any kind shall be displayed to the public view on any lots or on any portion of the property 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 the date on which the last lot is sold by Declarant or three 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. Notwithstanding the foregoing, the association shall not prohibit or restrict the right of any owner or his or her agent to display or have displayed on their lot or on a lot owned by others with their consent, or both, signs which are reasonably located, in plain view of the public, are reasonable dimensions and design, and do not adversely affect public safety, including traffic safety, and which advertise the property for sale, lease or exchange, or advertise directions to the property.

Noncommercial signs and posters that are more than nine square feet in size and noncommercial flags and banners that are more than 15 square feet in size shall not be posted or displayed on any lot or any portion of the property.

### **Animals**

Section 7.05. No animals, reptiles, insects or birds of any kind shall be raised, bred, or kept in any lot, or on any portion of the property; except that no more than a total of two usual and ordinary household pets such as dogs, cats, birds, etc. may be kept provided that they are not kept, bred, or maintained for any commercial purposes, and that they are kept under reasonable control at all times.

After making a reasonable attempt to notify the owner, Declarant or any owner may cause any unleashed dog found within the common area to be removed by Declarant (or any owner) to a point or county animal shelter, by calling the appropriate authorities, whereupon the owner may, upon payment of all expenses connected therewith, repossess the dog. The owner shall be given immediate notice of any such removal. Owners shall prevent their pets from soiling all portions of the common area and shall promptly clean up any mess left by their pets. Owners shall be fully responsible for any damage caused by their pets

### **Garbage and Refuse Disposal**

Section 7.06. All rubbish, trash and garbage shall be regularly removed from the property, and shall not be allowed to accumulate thereon. Trash, garbage and other waste shall not be kept except in sanitary containers. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. All equipment garbage cans, woodpiles, or storage piles shall be kept screened and concealed from view of other lots, streets and common areas. Trash and recycling carts shall be provided for attached homes. Owners and their tenants shall set the carts for collection in front of their garages near the gutter without encroaching into the travelway. All carts shall be stored inside a garage no later than the day after collection.

### **Right to Lease**

Section 7.07. No owner shall be permitted to lease his or her lot for any period less than thirty (30) days. Any lease agreement shall be required to provide that the term of the lease shall be subject in all respects to the provisions of the declaration and the by-laws and that any failure of the lessee to comply with the terms of such documents shall be a default under the lease. All owners leasing or renting their units shall promptly notify the secretary of the association in writing of the names of all tenants and members of tenant's family occupying such house and of the address and telephone number where such owner can be reached. All leases shall be required to be in writing.

### **Architectural Control**

Section 7.08. No building, fence, wall, obstruction, outside or exterior wiring, balcony, screen, patio, patio cover, tent, awning, carport, carport cover, improvement or structure of any kind shall be modified, installed, erected, painted, repainted or maintained upon the property, nor shall any alteration or improvement of any kind be made thereto until the same has been approved in writing by the board, or by an architectural control committee appointed by the board.

Plans and specifications showing the nature, kind, shape, color, size, materials and location of such improvements, alterations, etc., shall be submitted to the board or to the architectural control committee for approval as to quality of workmanship and design and harmony of external design with existing structures, and as to location in relation to surrounding structures, topography, and finish grade elevation. No permission or approval shall be required to repaint in accordance with Declarant's original color scheme, or to rebuild in accordance with Declarant's original plans and

specifications. No permission or approval shall be required to remain in accordance with a color scheme previously approved by the board or the committee, or to rebuild in accordance with plans and specifications previously approved by the board or by the committee. Nothing contained herein shall be construed to limit the right of an owner to paint the interior of his or her lot any color desired.

The architectural control committee shall consist of three members. Declarant may appoint all of the original members of the committee and all replacements until the first anniversary of the issuance of the original final public report for the project. The Declarant shall appoint a majority of the members to the committee until ninety percent (90%) of all lots in the project have been sold or until the fifth anniversary of the issuance of the final public report for the project, whichever occurs first. After one year from the date of issuance of the original public report for the project, the board shall have the power to appoint one member to the architectural control committee until ninety percent (90%) of all the lots in the project have been sold or until the fifth anniversary date of the issuance of the final public report for the project, whichever occurs first. Thereafter, the board shall have the power to appoint all of the members of the architectural control committee. A majority of the architectural control committee may designate a representative to act for it. In the event of death or resignation of any member of the committee, the successor shall be appointed by the person, entity or group which appointed such member until Declarant no longer has the right to appoint any members to the committee, and thereafter the board shall appoint such a successor. Neither the members of the committee nor its designated representatives shall be entitled to any compensation for services performed pursuant hereto. In the event the committee fails to approve or disapprove plans and specifications within thirty (30) days after the same have been submitted to it, approval will not be required and the related covenants shall be deemed to have been fully complied with.

#### **Clothes Lines**

Section 7.09. There shall be no outside laundering or drying of clothes, except inside fenced patios and then only if the clothes cannot be seen from the street, common area, or other lots.

#### **Power Equipment and Car Maintenance**

Section 7.10. No power equipment, hobby shops, or car maintenance (other than emergency work) shall be permitted on the property except with prior written approval of the board. Approval shall not be unreasonably withheld and in deciding whether to grant approval the board shall consider the effects of noise, air pollution, dirt or grease, fire hazard, interference with radio or television reception, and similar objections.

#### **Liability of Owners for Damage to Common Area**

Section 7.11. The owner of each lot shall be liable to the association for all damage to the common area or improvements thereon caused by such owner or any occupant of his or her lot or guest, or by the owners' pets, except that portion of said damage, if any, fully covered by insurance.

Liability of an owner shall be established only in accordance with the provisions of Section 4.12 of this declaration.

### **Sports Apparatus**

Section 7.12. No sports apparatus shall be permitted on any lot which is visible from other lots or from common areas.

### **Garage Sales**

Section 7.13. No auctions, yard sales, garage sales, or similar events shall be conducted on or about any residence lot or the Common Area.

### **Drainage Alterations**

Section 7.14. No owner shall do any act or construct any improvements which may interfere with the natural or established drainage system or patterns within the project without the prior written consent of the Board.

### **Use of the Common Area**

Section 7.15. All use of the Common Area is subject to this Declaration, the Bylaws, and any rules promulgated by the Board. All person residing within the Project may enjoy the use of all facilities in the Common Areas as long as they abide by the terms of this Declaration, the Bylaws, and any rules promulgated by the Board. There shall be no obstruction of any part of the Common Area. Nothing shall be stored or kept in the Common Area without the prior consent of the Board. Nothing shall be done or kept in the Common Area which will increase the rate of insurance on the common area without the prior consent of the Board..

## **ARTICLE VIII**

### **PARTY WALLS**

#### **General Rules of Law to Apply**

Section 8.01. Each wall which is built as a part of the original construction of the homes upon the properties and placed on the dividing line between the lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article VIII, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

### **Sharing of Repair and Maintenance**

Section 8.02 If a party wall is destroyed or damaged by fire or other casualty, any owner who has used the wall may restore it, and if the other owners thereafter make use of the wall, they shall contribute the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such owners to call for a larger contribution from the other under any rule of law regarding liability for negligent or willful acts or omissions.

### **Weatherproofing**

Section 8.03 Notwithstanding any other provision of this article, an owner who by his or her negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements

### **Right of Contribution Runs with the Land**

Section 8.04 The right of any owner to contribution from any other owner under this article shall be appurtenant to the land and shall pass to such owner's successors in title.

### **Arbitration**

Section 8.05. In the event of any dispute arising concerning a party wall, or under the provisions of this article, it shall be settled by binding arbitration before a neutral arbitrator in accordance with the provisions of the California Arbitration Act, California's Code of Civil Procedure § 1981 et seq. If the parties are unable to agree upon an arbitrator, one shall be appointed by the presiding judge of the Superior Court of the county in which the project is located. The arbitrator's fees, and attorneys' fees incurred in connection with the appointment of an arbitrator, shall be allocated as determined by the arbitrator.

## **ARTICLE IX**

### **GENERAL PROVISIONS**

#### **Enforcement**

Section 9.01. The association, or any owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this declaration, and in such action shall be entitled to recover reasonable attorney's fees as are determined by court. Failure by the association or by any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

### **Severability**

Section 9.02. Should any provision or portion hereof be declared invalid or in conflict with any law of the jurisdiction where this project is situated, the validity of all other provisions and portions hereof shall remain unaffected and in full force and effect.

### **Term**

Section 9.03 The covenants and restrictions of this declaration shall run and bind the property, and shall inure to the benefit of and shall be enforceable by the association or the owner of any property subject to this declaration, their respective legal representatives, heirs, successors and assigns, for a term of thirty (30) years from the date this declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by a majority of the then owners of the lots, has been recorded within the year preceding the beginning of each successive period of ten (10) years agreeing to change said covenants and restrictions in whole or in part, or to terminate the same.

### **Amendments**

Section 9.04. Prior to close of escrow on the sale of the first lot, Declarant may amend this declaration (with the consent of the Department of Real Estate as to any amendment constituting a material change). After sale of the first lot, this declaration may be amended only by the affirmative vote (in person or by proxy) or written consent of members representing a majority of the total voting power of the association and a majority of the affirmative votes or written consent of members other than the Declarant, or where the two class voting structure is still in effect, a majority of each class of membership. However, the percentage of voting power necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. No amendment shall adversely affect the rights of the holder of any mortgage of record prior to the recordation of such amendment. Except as provided in California Civil Code Section 1356, an amendment shall be effective after (1) the approval of the percentage of owners required above; (2) the certification in writing of such approval executed and acknowledged by the secretary of the association; and (3) the recording of such writing in the county in which a portion of the planned development is located.

### **Encroachment Easements**

Section 9.05 Each lot within the property is hereby declared to have an easement over all adjoining lots and the common area for the purpose of accommodating any encroachment due to minor engineering errors, minor errors in original construction, repair, settlement, shifting, or movement of a structure, or any other cause, including encroachments for footings, foundations and architectural projections such as overhangs, gutters and trim elements not to exceed eighteen (18) inches over any common property line. There shall be valid easements for the maintenance of said encroachments as long as they shall exist, and the rights and obligations of owners shall not be

altered in any way by said encroachment, settlement or shifting; provided, however, that in no event shall a valid easement for encroachment be created in favor of an owner or owners if said encroachment occurred due to the intentional conduct of said owner or owners. In the event a structure is partially or totally destroyed, and then repaired or rebuilt, the owners of each lot agree that minor encroachments, over adjoining lots or common areas shall be permitted and that there shall be valid easements for the maintenance of said encroachments so long as they shall exist.

### **Rights of First Lenders**

Section 9.06. No breach of any of the covenants, conditions and restrictions herein contained, nor the enforcement of any lien provisions herein, shall render invalid the lien of any first mortgage (meaning the mortgage with first priority over any other mortgage) on any lot made in good faith for value, but all of said covenants, conditions, and restrictions shall be binding upon and effective against any owner whose title is derived through foreclosure or trustee's sale, or otherwise. Notwithstanding any provision in the association documents to the contrary, first lender shall have the following rights:

a. Copies of project documents: the association shall make available to lot owners and lenders, and to holders, insurers or guarantors of any first mortgage, current copies of the declaration, by-laws, articles or other rules concerning the project and the books, records and financial statements of the association. "Available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances.

b. Audited statement: the holders of fifty-one percent (51%) or more of first mortgages shall be entitled, upon request, to have an audited financial statement for the immediately preceding fiscal year prepared at their expense if one is not otherwise available. Such statement shall be furnished within a reasonable time following such request.

c. Notice of action: upon written request to the association, identifying the name and address of the eligible mortgage holder or eligible insurer or guarantor, and the lot number or address, such eligible mortgage holder or eligible insurer or guarantor will be entitled to timely written notice of:

(1) condemnation loss or any casualty loss which affects a material portion of the project or any lot on which there is a first mortgage held, insured or guaranteed by such eligible mortgage holder or eligible insurer or guarantor, as applicable;

(2) any default in performance of obligations under the project documents or delinquency in the payment of assessments or charges owed by an owner of a lot subject to a first mortgage held, insured or guaranteed by such eligible mortgage holder or eligible insurer or guarantor, which remains uncured for a period of sixty (60) days;

(3) any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the association;

(4) any proposed action which would require the consent of the specified percentage of eligible mortgage holders as specified in the following subsection;

(5) the association shall discharge its obligation to notify eligible holders or eligible insurers or guarantors by sending written notices required herein to such parties at the address given on the current request for notice, in the manner prescribed by Section 9.07

d. Consent to action: except as provided by statute or by other provision of the project documents in case of substantial destruction or condemnation of the project, the consent of owners of lots which have at least sixty-seven percent (67%) of the votes of lots subject to eligible holder mortgages, shall be required to terminate the legal status of the project as a planned development. For purposes of this paragraph, "eligible mortgage holder" shall mean a first lender who has requested notice of certain matters from the association in accordance with this declaration.

e. Right of first refusal: the right of a lot owner to sell, transfer, or otherwise convey his or her lot shall not be subject to any right of first refusal or similar restriction.

f. Contracts: any agreement for professional management of the project, or lease or any other contract providing for services of the developer, sponsor, or builder, may not exceed one year. Any agreement, contract, or lease, including a management contract entered into prior to passage of control of the board of directors to lot owners, must provide for termination by either party for cause on thirty (30) days written notice, or without cause and without payment of termination fee or penalty on ninety (90) days or less written notice.

g. Reserves: association dues or charges shall include an adequate reserve fund for maintenance, repairs, and replacement of those common area improvements (and restricted common area improvements which the association is obligated to maintain) that must be replaced on a periodic basis, and shall be payable in regular installments rather than by special assessments.

h. Priority of liens: each holder of a first mortgage lien on a lot who comes into possession of the lot by virtue of foreclosure of the mortgage, or any purchaser at a foreclosure sale under a first deed of trust, will take the lot free of any claims for unpaid assessments and fees, late charges, fines or interest levied in connection therewith, against the lot which accrued prior to the time such holder comes into possession of the lot, except for claims for a pro-rata share of such assessments or charges resulting from a pro-rata reallocation of such assessments or charges for all project lots including the mortgaged lot, and except for assessment liens recorded prior to the mortgage

i. Restoration or repair: any restoration or repair of the project, after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with the declaration and the original plans and specifications, unless other action is agreed to by owners representing at least 67% of the total allocated votes in the association, and by eligible mortgage holders representing at least 67% of the votes of lots that are subject to mortgages held by eligible

holders.

j. Termination: any election to terminate the legal status of the project after substantial destruction or a substantial taking in condemnation of the project property must require the approval of lot owners representing at least 67% of the total allocated votes in the association, and by eligible mortgage holders representing at least 67% of the votes of lots that are subject to mortgages held by eligible holders.

k. Limitations in actions of homeowners association: Unless at least 2/3 of the first mortgagees (based on one vote for each first mortgage owned) or 2/3 of the owners of the lots, excluding the developer, have given their prior written approval, the association shall not be entitled to take any of the following actions:

(1) By any act or omissions seek to abandon, partition, subdivide, encumber, sell, or transfer the common property owned, directly or indirectly, by the association for the benefit of the owners. The granting of easements for public utilities or other public purposes consistent with the intended use of the common property by the association is not a transfer within the meaning of this clause;

(2) Change the method of determining the obligations, assessments, dues, or other charges that may be levied against an owner;

(3) By act or omission change, waive, or abandon any scheme of regulations or their enforcement pertaining to the architectural design or the exterior appearance of lots, the exterior maintenance of lots, the maintenance of the common property, party walks, common fences and driveways, and the upkeep of lawns and plantings in the project;

(4) Fail to maintain fire and extended coverage on insurable common property on a current replacement cost basis and in an amount at least 100% of the insurable value (based on current replacement costs);

(5) Use hazard insurance proceeds for losses to any common property for other than the repair, replacement or reconstruction of the common property.

l. Payment of taxes or other charges: First mortgagees of individual lots may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the common property and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for the common property and first mortgagees making such payments shall be owed immediate reimbursement therefor from the association. Entitlement to such reimbursement shall be reflected by an agreement in favor of all first mortgagees of individual lots duly executed by the association.

## Notices

Section 9.07. Any notices permitted or required by the declaration or by-laws may be delivered either personally or by mail. If delivery is by mail, it shall be deemed to have been delivered 72 hours after a copy of the same has been deposited in the United States mail, first-class or registered, postage prepaid, addressed to each person at the current address given by such person to the secretary of the board or addressed to the lot of such person if no address has been given to the secretary.

## Termination of Any Responsibility of Declarant

Section 9.08. In the event Declarant shall convey all of its right, title and interest in and to the property to any partnership, individual or individuals, corporation or corporations, then and in such event, Declarant shall be relieved of the performance of any further duty or obligation hereunder, and such partnership, individual or individuals, corporation or corporations, shall be obligated to perform all duties and obligations of the Declarant

## Owner's Compliance

Section 9.09. Each owner, tenant or occupant of a lot shall comply with the provisions of this declaration, and to the extent they are not in conflict with the declaration, the articles, or the by-laws, as lawfully amended from time to time. Failure to comply with any such provisions, decisions, or resolutions, shall be grounds for an action to recover damages or injunctive relief.

All agreements and determinations lawfully made by the association in accordance with the voting percentages established in this declaration or in the articles or the by-laws shall be deemed to be binding on all owners of lots, their successors and assigns.

## Provisions Required By City of Mountain View

Section 9.10. Upon completion of the original construction in accordance with the approved plans, the project shall be deemed complete and no further expansions shall be allowed without the approval of the City of Mountain View Community Development Department. All homes shall have automatic fire sprinklers. All owners shall comply with California Civil Code § 51.2, prohibiting discrimination in the sale or rental of housing based upon age. There shall be no discrimination against families with children. Notwithstanding any other provision of this declaration, no amendments shall be made to Section 2.05 regarding parking, Section 4.01-4.04 regarding assessments, Section 5.01 regarding maintenance, Section 5.02 regarding exterior maintenance, Section 7.06 regarding garbage and refuse disposal, or this Section 9.10 without the prior consent of the City of Mountain View. The project is approved, developed and constructed as a Planned Unit Development in compliance with permit PUD #036-06-PUD. Any exterior modifications to the project require the prior review and approval of the Community

**ARTICLE X**

**DESTRUCTION - DUTY TO REBUILD - INSURANCE**

**Association Fire Insurance**

Section 10.01. The association shall obtain and maintain a master or blanket policy of fire insurance coverage for the full insurable value of all of the improvements within the project. The form, content, and term of the policy and its endorsements and the issuing company must be satisfactory to all institutional first mortgagees. If more than one institutional first mortgagee has a loan of record against the lot in the project, the policy and endorsements shall meet the maximum standards of the various institutional first mortgagees represented in the project. To the extent available the policy shall contain an agreed amount endorsement or its equivalent; an increased cost of construction endorsement or a contingent liability from operation of building laws endorsement or their equivalent; an extended coverage endorsement; vandalism, malicious mischief coverage; a special form endorsement; and a determinable cash adjustment clause or a similar clause to permit cash settlement covering full value of the improvements in case of partial destruction and a decision not to rebuild. The policy shall provide amounts of coverage as shall be determined by the board. The policy shall name as insured the association, the owners, and Declarant as long as Declarant is the owner of any lot, and all mortgagees as their respective interests may appear, and may contain a loss payable endorsement in favor of the trustee described in the following subparagraph.

**Trustee for Payment of Insurance Proceeds**

Section 10.02. All fire and casualty insurance proceeds payable under Section 10.01 above for losses to real property and improvements, subject to the rights of mortgagees, may be paid to a trustee, to be held and expended for the benefit of the owners, mortgagees, and others, as their respective interests shall appear. The trustee shall be a commercial bank or other financial institution with trust powers in the county in which the project is located and agrees in writing to accept such trust. If repair or reconstruction is authorized, the association shall have the duty to contract for such work as provided for in this declaration.

**Limitations on Individual Insurance**

Section 10.03. Except as provided in this clause, no owner shall separately insure the improvements upon his or her lot against loss by fire or other casualty covered by insurance carried under Section 10.01. If any owner violates this provision, any diminution in insurance proceeds otherwise payable under policies described in Section 10.01 that results from the existence of such other insurance will be chargeable to the owner who acquired other insurance, and such other owner will be liable to the association to the extent of any such diminution. An owner can insure his or her personal property against loss, and may obtain additional living expense coverage and public liability

insurance for the owner's individual lot. All such insurance that is individually carried must contain a waiver of subrogation rights by the carrier as to other owners, the association, Declarant, and institutional first mortgagee of such lot.

### **Other Association Insurance**

Section 10.04. The association shall obtain and continue in effect a master policy of insurance covering all of the personal property and supplies of the association, comprehensive general liability insurance insuring the association and each owner for his or her liability and for the common area, and a fidelity bond covering officers, directors, and employees in an amount to be determined by the board, but in no event less than a sum equal to three (3) months' aggregate assessments on all lots plus reserve funds

Each owner appoints the association, or any insurance trustee to be designated by the association, as attorney-in-fact for the purpose of purchasing and maintaining the association's insurance, including: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. The association and any insurance trustee shall be required to receive, hold, or otherwise properly dispose of any proceeds of insurance in trust for lot owners and their first mortgage holders, as their interests may appear.

All insurance shall contain "severability of interest provision", "cross-liability endorsement" and waiver of subrogation as to the association, officers, directors, members, guests, agents and employees.

The minimum limits on the liability insurance policy shall be two million dollars (\$2,000,000 00) single limit and shall include personal injury, bodily injury, property damage and liability for non-owned automobiles. Worker's compensation insurance shall at all times be carried to the extent required to comply with any applicable law. Officers and directors liability insurance shall be carried by the association to cover persons serving in such capacities.

Insurance premiums for the master policy shall be a common expense to be included in the monthly assessment levied by the association and a portion of such payment necessary for the insurance premiums may be held in a separate account of the association and shall be used solely for the payment of the master insurance policy premiums as such premiums become due

### **Destruction of Improvements**

Section 10.05. If there is a total or partial destruction of any of the improvements in the project, and if the available proceeds of the insurance carried pursuant to Section 10.01 are sufficient to cover not less than 85% of the costs of repair and reconstruction, the improvements shall be promptly rebuilt, unless within sixty (60) days from the date of destruction, owners then holding at least 66-2/3% of the total voting power of each class of owners present and entitled to vote, in person

or by proxy, at a duly constituted meeting, determine that repair and reconstruction shall not take place. If such a meeting is called, the association shall solicit and obtain bids from at least two reputable contractors to repair and reconstruct the improvements in accordance with the original plans and shall present this information to the owners at the meeting. If repair and reconstruction is to take place the association shall be required to execute, acknowledge and record in the Office of the County Recorder of the county not later than 120 days from the date of destruction, a certificate declaring the intention of the owners to rebuild.

If the proceeds of insurance carried pursuant to Section 10.01 are less than 85% of the costs of repair and reconstruction, the improvements shall be promptly rebuilt unless, within 60 days from the date of destruction, owners then holding at least 51% of the total voting power of each class of owners present and entitled to vote, in person or by proxy, in a duly constituted meeting, determine that repair and reconstruction shall not take place. If such a meeting is called, the association shall solicit and obtain bids from at least two reputable contractors to repair and reconstruct the improvements in accordance with the original plans and shall present this information to the owners at the meeting. If repair and reconstruction are to take place, the association shall execute, acknowledge, and record in the office of the County Recorder of the county not later than 120 days from the date of destruction a certificate declaring the intention of the owners to rebuild.

If the improvements are to be rebuilt pursuant to this section, the owners of all lots shall be obligated to contribute such funds as may be necessary to pay their proportionate share of the costs of rebuilding or reconstruction, over and above the available insurance proceeds. The proportionate share of each such owner or owners in the case of damage or destruction to improvements located upon a lot or lots, shall be determined based on the relative square footage of the living area and, in the case of damage or destruction of the common area shall be equally to each lot. If any owner fails to pay his or her proportionate share, the association may levy a special assessment against the lot or such owner, which may be enforced under the lien provisions contained in this declaration or in any other manner provided in this declaration. The contributions of the owners as provided in this section shall be assessed in accordance with the provisions pertaining to special assessments in Section 4.04(a) of this declaration.

If rebuilding is authorized, the association or its authorized representative shall, after having obtained bids from at least two reputable contractors, award the repair and reconstruction work to the lowest bidder that otherwise meets the requirements set forth by the association in soliciting bids. The association shall have the authority to enter into a written contract with the contractor for the repair and reconstruction, and the insurance proceeds held by the trustee shall be disbursed to the contractor according to the terms of the contract. It shall be the obligation of the association to take all steps necessary to assure the commencement and completion of authorized rebuilding at the earliest possible date.

If the owners determine not to rebuild, then subject to the rights of mortgagees as set forth in this declaration, any insurance proceeds then available for such rebuilding shall instead be distributed to the owner or owners of such lot or lots in proportion based on the relative fair market value as

described hereinafter; or, in the case of damage or destruction to the common area, shall instead be distributed to the owners equally. The association, within 120 days of the date of such destruction, shall execute, acknowledge, and record in the office of the County Recorder of the county, a certificate declaring the intention of the association not to rebuild.

The association shall have the duty to repair and reconstruct improvements, without the consent of owners and irrespective of the amount of available insurance proceeds, in all cases of partial destruction when the estimated costs of repair and reconstruction does not exceed \$5,000.00 in the case of destruction to the common area and does not exceed \$2,000.00 in the case of damage to any individual improvement. The association is empowered to levy a special assessment for the cost of repairing and reconstructing improvements to the extent insurance proceeds are unavailable, such assessment to be levied as described in this declaration and in accordance with the provisions of Section 4 04(a) herein.

Whenever reference is made in this section to a determination of the relative fair market value of one or more lots, it shall mean the relative fair market values of such lots as of the date immediately prior to any damage or destruction, as determined by an appraisal by an independent appraiser selected by the board, who shall be a member of the Society of Real Estate Appraisers or other nationally recognized appraiser organization and who shall apply its or such other organization's standards in determining the relative fair market value of each such lot. The costs of such appraisals shall be paid from the insurance proceeds

## **ARTICLE XI**

### **LIMITATION OF LIABILITY AND INDEMNIFICATION**

#### **Limitation of Liability**

Section 11.01. 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.

#### **Indemnification**

Section 11.02. The association shall defend and indemnify the board, and each of its members, and the officers of the association, against expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with any proceedings to which such person may be made a party, by reason of his or her being or having been a board member or an officer of the association, if such person acted in good faith and in a manner such person reasonably believed to be in the best interests of the corporation and, in the case of a criminal proceeding, had

no reasonable cause to believe the conduct of such person was unlawful.

## ARTICLE XII

### DISPUTE RESOLUTION

#### Compliance with California Civil Code Provisions Regarding Construction Defects

Section 12.01. Title 7, Part II of Division II of the California Civil Code, commencing with Section 895, provides certain standards, requirements and procedures for claims of construction defects. California Civil Code Section 914 requires a builder to notify all homeowners whether the builder intends to engage in the non-adversarial procedures of Section 910, and following, or enforce alternative non-adversarial contractual provisions. Declarant has elected to adopt and has elected to adopt and follow the standards and procedures set forth in Section 910, and following, including the pre-litigation procedures set forth in Section 910 through 938 of the California Civil Code. Completion of the prelitigation procedures shall be a condition precedent to pursuing a claim as set forth in Section 11.2 below.

The Association shall be limited to making claims for violations of building standards affecting the Common Area, or affecting the separate interests that the Association is obligated to maintain or repair.

Declarant shall neither participate nor vote on any matters relating to application of Section 895 and following, or on whether any claims should be made for construction defects.

In the event the Association makes a claim for violation of construction standards pursuant to Section 895 and following, the notice of claim shall be served upon Declarant at the address set forth below, or such other address as Declarant provides to the Association.

**Declarant:**

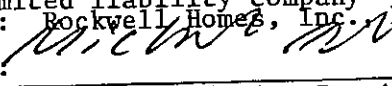
Rockberry Villas, LLC,  
a California limited liability company  
2160 S. Bascom Avenue, Ste. 1  
Campbell, CA 95008

#### Judicial Reference

Section 12.02. It is the desire and intention of the parties to utilize a mechanism and procedure under which any controversy, breach or dispute arising out of this Declaration, including, without limitation, any dispute between Declarant and the Association or any owner arising over the design, specifications, surveying, planning, supervision, testing or observation of construction or construction of any improvements to the Project, will be resolved in a prompt and

expeditious manner. Accordingly, any controversy, breach or dispute arising out of this Declaration or relating to the interpretation of any term or provision of this Declaration, or regarding any construction defect claim not otherwise resolved, shall be heard by a referee pursuant to the provisions of the California Code of Civil Procedure, Section 638-645.1, inclusive. The venue as to any such proceeding shall be in the County of Santa Clara, California, unless all parties agree otherwise. The referee shall have the power to decide all issues of fact and law and report his/her decision thereon, and to issue all legal and equitable relief appropriate under the circumstances of the controversy. The parties shall agree upon a single, neutral referee, who after trial of all the disputed matters of fact and law, shall issue a finding and judgment thereon. If the parties are unable to agree upon a referee within ten days after written request by any party, a referee shall be appointed upon application of any party pursuant to California Code of Civil Procedure Section 638 and 640. The costs of the proceeding shall be born as determined by the referee. Notwithstanding any other provision of this Declaration, this Section may not be amended without the consent of Declarant.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, had signed this  
1 day of July, 2008

Rockberry Villas, LLC, a California  
limited liability company  
By: Rockwell Homes, Inc., Manager  
By:   
Michael Ahi, Vice President

State of California )

County of Santa Clara )

On July 1, 2008 before me, K. Marcelino, Notary Public, personally appeared Michael Ahi, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

K. Marcelino



\_\_\_\_\_(Seal)

CONSENT AND SUBORDINATION AGREEMENT

The undersigned, Bank of the West, a California banking corporation, as Beneficiary of that certain Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated September 20, 2007, recorded October 15, 2007, as Instrument No. 19618394, Official Records of the County of Santa Clara, California executed by Rockberry Villas, LLC, a California limited liability company as Trustor, with First Santa Clara Corporation, a California corporation as Trustee, does hereby consent to the execution and recordation of the Declaration of Covenants, Conditions, and Restrictions - Rockberry Villas attached hereto

and does hereby subordinate said Deed of Trust to the Declaration of Covenants, Conditions and Restrictions - Rockberry Villas, to the same extent and with the same force and effect, as if said Declaration of Covenants, Conditions and Restrictions - Rockberry Villas, and any proper amendments thereto, had been executed and recorded prior to the execution and recordation of said Deed of Trust.

IN WITNESS WHEREOF, the undersigned has executed this Consent and Subordination this 12<sup>th</sup> day of March, 2008.

BANK OF THE WEST, A CALIFORNIA BANKING CORPORATION

BY: Paula J. Maxwell  
TITLE: VP & Documentation Supervisor

State of California

SS.

County of CONTRA COSTA

On MARCH 12, 2008 before me, CHONA DELAFUENTE  
a Notary Public in and for said  
State, personally appeared PAMELA J. MCCLYNN,  
who proved to me on the basis of satisfactory evidence to the  
person(s) whose name(s) is/are subscribed to the within instrument  
and acknowledged to me that ~~he~~/she/~~they~~ executed the same in  
~~his~~/her/~~their~~ authorized capacity(ies), and that by ~~his~~/her/~~their~~  
signature(s) on the instrument the person(s), or the entity upon  
behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature *Chona De La Fuente* (Seal)



**BY-LAWS OF  
ROCKBERRY VILLAS OWNERS ASSOCIATION**

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**BY-LAWS**  
**OF**  
**ROCKBERRY VILLAS OWNERS ASSOCIATION**

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**BY-LAWS OF**  
**ROCKBERRY VILLAS OWNERS ASSOCIATION,**  
**A NONPROFIT MUTUAL BENEFIT CORPORATION**

**ARTICLE I**

**NAME AND LOCATION**

The name of the Association is Rockberry Villas Owners Association [hereinafter referred to as the "Association"]. The principal office of the Association shall be located at Rock Street and Independence Avenue, County, State of California, but meetings may be held at such places within the County of Santa Clara, State of California, as may be designated by the Board of Directors.

**ARTICLE II**

**DEFINITIONS**

Section 2.1. The definitions contained in the Declaration are incorporated by reference herein.

Section 2.2. "Declaration" shall mean and refer to the Declaration of Covenants, Conditions, and Restrictions recorded on the \_\_\_\_\_ day of \_\_\_\_\_, 200\_, in Book \_\_\_\_\_ of Official Records at Page \_\_\_\_\_, Santa Clara County Records.

**ARTICLE III**

**MEETINGS OF MEMBERS**

Section 3.1. **Annual Meetings.** Regular meetings of members of the Association shall be held not less frequently than once each calendar year at a time and place prescribed by the By-Laws. The first meeting of the Association, whether a regular or special meeting, shall be held within forty-five (45) days after the closing of the sale of the subdivision interest which represents the subdivision interest which represents the fifty-first (51st) percentile interest authorized for sale under the first public report for the subdivision, provided the public report authorizes the sale of fifty (50) subdivision interests or more in the subdivision. However, in no event shall the meeting be held later than six (6) months after the closing of the sale of the first subdivision interest without regard to the number of subdivision interests authorized for sale in the first public report.

The first annual meeting shall be set by the Board so as to occur no later than ninety (90) days after the close of the Association's fiscal year. Subsequent regular annual meetings of the members shall be held within thirty (30) days of the same day of the same month of each year thereafter, at the hour of 7:00 p.m. If the date for the annual meeting of the members is a legal holiday, the meeting will be held at the same hour on the first day following, which is not a legal holiday (excluding

Saturday and Sunday).

**Section 3.2. Special Meetings.** Special meetings of the members shall be called at any time upon request of a majority of a quorum of the Board of Directors, or upon written request of members representing five percent (5%) of the total voting power of the Association. If the Association is the obligee under a bond to secure performance of the commitment of the Declarant to complete common area improvements which have not been completed prior to the close of escrow of the sale of the first unit, then a special meeting of members 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 35 days nor more than 45 days after receipt by the Board of a petition for such a meeting signed by members representing 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 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.

**Section 3.3. Notice, Place, and Manner of Meetings.** Written notice of each meeting of the members shall be given by, or at the direction of, the Secretary by personal delivery or mailing a copy of such notice, postage prepaid, at least ten (10) but not more than ninety (90) days before such meeting to each institutional lender requesting notice and to each member, addressed to the member's address last appearing on the books of the Association, or supplied by such member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and in the case of a special meeting, the purpose of the meeting. If action is proposed to be taken at any meeting for approval for any of the following proposals, the notice shall state the general nature of the proposal. Member action on such items is invalid unless the notice or written waiver of notice states the general nature of the proposals:

- (a) Removing a director without cause;
- (b) Filling vacancies in the Board of Directors by members;
- (c) Amending the Articles of Incorporation;
- (d) Approving a contract or transaction in which a Director has a material financial interest.

Meetings shall be held within the project or at a meeting place as close thereto as possible. Unless unusual conditions exist, members' meetings shall not be held outside of the County in which the subdivision is situated.

Meetings shall be conducted in accordance with the provisions of Section 1363.05 of the Civil Code. All voting shall be in accordance with the provisions of California Civil Code § 1363.03.

**Section 3.4. Quorum.** The presence either in person or by proxy, at any meeting, of members entitled to cast more than fifty percent (50%) of the votes of the membership, shall consti-

tute a quorum for any action except as otherwise provided in this declaration, or by these By-Laws. If, however, such quorum shall not be present or represented at any meeting, a majority of the members entitled to vote thereat may adjourn the meeting to another time, but may not transact any other business. An adjournment for lack of a quorum by those in attendance shall be to a date not less than five (5) days and not more than thirty (30) days from the original meeting date, at which meeting the quorum requirements shall be one-third (1/3) of the total voting power of the Association, except that for purposes of imposing a regular assessment that is more than 20% greater than the regular assessment for the Association's preceding fiscal year or imposing special assessments which would in the aggregate exceed 5% of the budgeted gross expenses of the Association for that fiscal year, the quorum requirement shall remain at more than fifty percent (50%) of the total voting power of the Association. If a time and place for the adjourned meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for the adjourned meeting after adjournment, notice of the time and place of the adjourned meeting shall be given to members in the manner prescribed for regular meetings.

**Section 3.5. Proxies.** At all meetings of members, each member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary before the appointed time of each meeting. Every proxy shall be revocable and shall automatically cease upon conveyance by the member of his or her unit, or upon receipt of notice by the Secretary or the Board of the death or judicially declared incompetence of a member, or upon the expiration of eleven (11) months from the date of the proxy. Every form of proxy or written ballot 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 or written ballot. The proxy or written ballot 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.

**Section 3.6. Membership and Voting.** Membership shall be held as provided in the Declaration. The Association shall have two classes of voting members:

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

**Class B:** The Class B members shall be the Declarant and shall be entitled to vote as follows: voting shall be the same as for Class A memberships, except that Class B members may triple their votes for each unit owned. The Class B memberships shall cease and be converted to Class A memberships upon the happening of either of the following events, whichever occurs earlier:

(a) When the total votes outstanding in the Class A membership equal the total votes (tripled as stated above) outstanding in the Class B membership; or

(b) On the second anniversary of the first conveyance of a subdivision interest in the development.

Any action by the Association which must have the approval of the members before being undertaken shall require the vote or written assent of at least a majority of each class of membership during the time that there are two outstanding classes of membership. Where the vote or written assent of each class of membership is required, any requirement that the vote of Declarant be excluded is not applicable, except as provided in Article II, Section 2.09 of the Declaration. After the conversion of Class B memberships to Class A memberships, where the vote or written assent of a prescribed majority of the members is required excluding the Declarant, then except as provided in Article II, Section 2.09 of the Declaration, the vote or written assent of a bare majority of the total voting power of the Association as well as the vote or written assent of the prescribed majority of the total voting power of members other than the Declarant shall be required. Voting rights attributable to lots shall vest immediately upon transfer of title or contract to purchase a lot.

**Section 3.7. Action Without Meeting.** Any action that may be taken at any annual or special meeting of the members (except the election of directors) may be taken without a meeting and without prior notice if the provisions of California Corporations Code Section 7513 are complied with. Written ballots must be solicited from all members and received from a number of members at least equal to the quorum applicable to a meeting of members. All such written ballots shall be filed with the Secretary of the Association and maintained in the association's records. All solicitation of ballots shall indicate the time by which the ballot must be returned to be counted.

## ARTICLE IV

### BOARD OF DIRECTORS

**Section 4.1. Number.** The affairs of the Association shall be managed by a Board of three directors, who need not be members of the Association.

**Section 4.2. Election of Directors.** The first election of the Board shall be conducted at the first meeting of the Association, in accordance of the provisions of California Civil Code § 1363.03..

At such election the members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting shall be utilized during all elections in which two or more positions on the Board are to be filled, subject only to the procedural prerequisite to cumulative voting prescribed in Section 7615(b) of the Corporations Code. Voting for Directors shall be by secret ballot, and subject to the provisions regarding specially elected directors which follow, the persons receiving the highest number of votes up to the number of positions to be filled shall be elected.

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 20% of the directors shall be elected by members other than Declarant. If members other than Declarant are unable to elect at least 20% of the directors by the exercise of cumulative voting or otherwise, the number of positions on the Board necessary to meet the 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 the 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, notwithstanding any other provisions of these by-laws, 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.

**Section 4.3. Removal; Vacancies.** Unless the entire Board is removed from office by the vote of Association members, an individual director shall not be removed prior to the expiration of his or her term of office, if the votes cast against his or her 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 remaining directors or by a sole remaining director, except for a vacancy created by removal of a director by vote of the members, which 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.

**Section 4.4. Term of Office.** At the first election of the Board of Directors as specified above, three directors shall be elected for a term of one year each, and at each annual meeting thereafter the members shall elect three directors for a term of one year each.

## ARTICLE V

### MEETINGS OF DIRECTORS

**Section 5.1. Regular Meetings.** Regular meetings of the Board of Directors shall be held every three (3) months at a time and a place within the subdivision fixed by the Board of Directors from time to time. Should said meeting fall upon a legal holiday, then the meeting shall be held at the same time on the next day which is not a legal holiday, excluding Saturday and Sunday. Notice of the time and place of the meeting shall be posted at a prominent place within the common area and shall be communicated to Directors not less than four (4) days prior to the meeting, provided, however, that notice of a meeting need not be given to any Director who has signed a waiver of notice or a written consent to holding of the meeting. If the common area is unsuitable for posting of such notice, the Board of Directors shall communicate the notice of the time and place of such meeting by any means it deems appropriate.

**Section 5.2. Special Meetings.** Special meetings of the Board of Directors shall be held when called by notice signed by the President, Vice-President or Secretary of the Association, or by any two Directors. 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 given to each director by one of the following methods: (a) by personal delivery; (b) written notice by first class mail, postage prepaid; (c) by telephone communication, either directly to the director or to a person at the director's office who would reasonably be expected to communicate such notice promptly to the director; or (d) by telegram, charges prepaid. All such notices shall be given or sent to the director's address or telephone number as shown on the records of the Association. Such notices shall be posted at a prominent place within the common area not less than seventy-two (72) hours prior to the scheduled

time of the meeting. Notices sent by first class mail shall be deposited in a United States mailbox at least four (4) days before the time set for the meeting. Notices given by personal delivery, telephone, or telegram shall be delivered, telephoned, or given to a telegraph company at least seventy-two (72) hours before the time set for the meeting. Notice of a special meeting need not be given to any director who signed the waiver of notice or a written consent to holding of the meeting. If the common area is unsuitable for posting of such notice, the Board of Directors shall communicate the notice of the time and place of such meeting by any means it deems appropriate.

**Section 5.3. Quorum.** A majority of the number of Directors shall constitute a quorum for the transaction of business. Every act performed or decision made by a majority of the Directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

**Section 5.4. Open Meetings.** Any member of the Association may attend meetings of the Board of Directors except when the Board adjourns to executive session to consider litigation, matters relating to the formation of contracts with third parties, member discipline, or personnel matters. The Board of Directors of the Association shall meet in executive session, if requested by a member who may be subject to a fine, penalty, or other form of discipline, and the member shall be entitled to attend the executive session. The Board of Directors shall permit any member to speak at any meeting of the Association or the Board of Directors, except for meetings of the Board held in executive session. A reasonable time limit for all members of the Association to speak to the Board of Directors or before a meeting of the Association shall be established by the Board 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 is approved by at least a majority of the required quorum for that meeting.

**Section 5.5. Executive Session.** The Board may, with approval of a majority of its members present at a meeting in which a quorum for the transaction of business has been established, adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved, and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session.

**Section 5.6. Telephone Meetings.** Any meeting, regular or special, may be held by conference telephone or similar communication 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.

**Section 5.7. Notice of Adjourned Meeting.** Notice of the time and place of holding an adjourned meeting need not be given, unless the meeting is adjourned for more than twenty-four (24) hours, in which case personal notice of the 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, and shall be posted at a prominent place within the common area.

**Section 5.8. Action Without Meeting.** Any action required or permitted to be taken by the Board of Directors may be taken without a meeting, if all members of the Board, individually or collectively, consent in writing to that action. Such action by written consent shall have the same force and effect as a unanimous vote of the Board of Directors. Such written consent or consents

shall be filed with the minutes of the proceedings of the Board. An explanation of the action shall be posted at a prominent place or places within the common area within three (3) days after the written consents of all Board members have been obtained. If the common area is unsuitable for posting of the explanation of the action taken, the Board of Directors shall communicate said explanation by any means it deems appropriate.

**Section 5.9. Waiver of Notice.** The transactions of any meeting of the Board of Directors, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice, if (a) a quorum is present, and (b) either before or after the meeting, each of the Directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting shall also be deemed given to any Director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

**Section 5.10. Minutes of Meeting.** The minutes, proposed for adoption that are marked to indicate draft status, or a summary of the minutes of any meeting of the Board, other than an executive session, shall be available to members within 30 days of the meeting. The minutes, proposed minutes, or summary minutes shall be distributed to any Member on request and on reimbursement of the Association's costs in making that distribution. The members shall be notified in writing at the time that the pro forma budget required in California Civil Code Section 1365 is distributed or at the time of any general mailing to the entire membership of the Association of their right to have copies of the minutes of meetings of the board, how and where those minutes may be obtained, and the cost of obtaining them.

If two or more associations consolidate any of their functions under a joint neighborhood association, the members of each participating association are entitled to attend all meetings of the joint association other than executive sessions. Those members must be given reasonable opportunity to participate in the meetings and must be given the same access to the joint records as they are to the participating association's records.

## ARTICLE VI

### POWERS AND DUTIES OF BOARD OF DIRECTORS

**Section 6.1. Duties.** It shall be the duty of the Board of Directors to:

(a) Enforce applicable provisions of the covenants, conditions, and restrictions, articles, by-laws and other instruments for the ownership, management and control of the subdivision;

(b) Pay all expenses and obligations incurred by the Association in the conduct of its business including, without limitation, all licenses, taxes or governmental charges levied or imposed against the property of the Association;

(c) Contract for casualty, liability and other insurance on behalf of the Association;

(d) Cause to be kept a complete record of all its acts and affairs and to present a

statement thereof to the members at the annual meeting of the members, or at any special meeting when such statement is requested in writing by one-fourth of the Class A members; keep adequate and correct books and records of account, minutes of proceedings of its members, board and committees and a record of its members, giving their names and addresses and classes of membership;

(e) Supervise all officers, agents and employees of the association, and see that all their duties are properly performed;

(f) Maintain the project, including but without limitation, all roads, drainage facilities, landscaping, common space areas and all other common facilities.

(g) With regard to the Association's accounting records:

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

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

(3) Review, on at least a quarterly basis, the current year's actual reserve revenues and expenses compared to the current year's budget.

(4) Review the latest account statements prepared by the financial institutions where the Association has its operating and reserve accounts.

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

(h) Deliver to each Owner by personal delivery or first class mail, a schedule of the monetary penalties that may be assessed by the Association for a violation of a governing documents or rules of the Association, including any monetary penalty relating to the activities of a guest or invitee of an Owner, and shall also distribute personal delivery or first class mail, any changes to the schedule previously distributed to the Owners.

**Section 6.2. Powers.** The Board of Directors shall have power to:

(a) Formulate rules of operation of the common area and facilities owned or controlled by the Association;

(b) Contract for goods and/or services for the common areas, facilities and interest or for the Association subject to limitations set forth below;

(c) Initiate and execute disciplinary proceedings against members of the Association for violation of provisions of the governing instruments in accordance with procedures set forth in the governing instruments;

(d) Enter upon any privately owned lot as necessary in connection with the

construction, maintenance, or emergency repair for the benefit of a common area or the Owners in common; provided, however, that the lot Owner shall be given 48 hours advance notice of such entry. In case of emergency the right to enter shall be immediate upon notice to the Owner;

(e) Delegate its authority and powers to committees, officers or employees of the Association or to a manager employed by the Association. The Board may not delegate to the manager the authority to make expenditures for capital additions or improvements chargeable against the reserve funds; to conduct hearings concerning compliance by an Owner or his or her tenant, lessee, guest or invitee with the Declaration or rules and regulations promulgated by the Board, or to make a decision to levy monetary fines, impose special assessments against the individual units, temporarily suspend an Owner's rights as a member of the Association or otherwise impose discipline following any such hearing; to make a decision to levy regular or special assessments; or to make a decision to bring suit, record a claim of lien, or institute foreclosure proceedings for default in payment of assessments. The Board may delegate to a manager any of its other duties, powers or functions. Any such delegation shall be revocable by the Board at any time. Any such manager may be either a person or firm.

**Section 6.3. Prohibited Acts.** The Board of Directors shall not take any of the following actions, except with the vote or written consent of a majority of the voting power of the association including a majority of members other than Declarant:

(a) Entering into a contract with a third person wherein the third person will furnish goods or services for the common area or the association for a term longer than one (1) year with the following exceptions:

(1) A management contract, the terms of which have been approved by the Federal Housing Administration or Veterans Administration;

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

(3) Prepaid casualty and/or liability insurance policies of not to exceed three (3) years duration provided that the policy permits short rate cancellation by the insured;

(4) Lease agreements for laundry room fixtures and equipment of not to exceed five (5) years duration provided that the lessor under the agreement is not an entity in which the declarant has a direct or indirect ownership interest of ten percent (10%) or more;

(5) Agreements for cable television services and equipment or satellite television services and equipment of not to exceed five years duration provided that the supplier is not an entity in which the subdivider has a direct or indirect ownership interest of 10% or more;

(6) Agreements for sale or lease of burglar alarm and fire alarm equipment, installation and services of not to exceed five years duration provided that the supplier or suppliers are not entities in which the subdivider has a direct or indirect ownership interest of 10% or more.

(7) A contract for a term not to exceed three (3) years that is terminable by the Association after no longer than one (1) year without cause, penalty, or other obligation upon ninety (90) days' written notice of termination to the other party.

(b) Incurring aggregate expenditures for capital improvements to the common area in any fiscal year in excess of five (5%) percent of the budgeted gross expenses of the Association for that fiscal year;

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

(d) Paying compensation to members of the Board or to the officers of the Association for services performed in the conduct of the Association's business; provided, however, that the Board may cause a member or officer to be reimbursed for expenses incurred in carrying on the business of the Association;

(e) Levying special assessments which in the aggregate exceed five (5%) percent of the budgeted gross expenses of the Association for that fiscal year;

(f) Filling a vacancy on the Board created by the removal of a director.

(g) Initiating investigation or incurring expenditures for the investigation of construction defects for the purpose of pursuing claims for construction defects.

## ARTICLE VII

### OFFICERS

Section 7.1. **Enumeration of Officers.** The officers of this Association shall be a President and Vice President, who shall at all times be members of the Board of Directors, a Secretary, and a chief financial officer, and such other officers as the Board may from time to time by resolution create.

Section 7.2. **Election of Officers.** The election of officers shall take place at the first meeting of the Board of Directors and following each annual meeting of the members.

Section 7.3. **Term.** The officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year unless he shall sooner resign, or shall be removed, or otherwise be disqualified to serve.

Section 7.4. **Special Appointments.** The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold offices for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

Section 7.5. **Resignation and Removal.** Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time by giving written notice to the

Board, the President, or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

**Section 7.6. Vacancies.** A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

**Section 7.7. Multiple Offices.** The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 7.4 of this Article.

**Section 7.8. Duties.** The duties of the officers are as follows:

(a) **President.** The President shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds, and other written instruments and shall co-sign all checks and promissory notes.

(b) **Vice President.** The Vice President shall act in the place and stead of the President in the event of his or her absence, inability, or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.

(c) **The Secretary** shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the members; keep the corporate seal of the association and affix it on all papers requiring said seal; serve notice of meetings of the Board and of the members; keep appropriate current records showing the members of the Association together with their addresses, and shall perform such other duties as required by the Board.

(d) **Chief Financial Officer.** The chief financial officer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall cosign all checks and promissory notes of the Association; shall keep proper books of account; and shall prepare and distribute to each member financial documents as required by Civil Code Section 1365.

(e) **Delegation:** The foregoing duties may be delegated to a manager appointed by the Board.

## **ARTICLE VIII**

### **COMMITTEES**

The Association shall appoint an architectural control committee, as provided in the Declaration, and a nominating committee, as provided in these by-laws. In addition, the Board of Directors shall appoint other committees as deemed appropriate in carrying out its purpose.

## ARTICLE IX

### BOOKS AND RECORDS

Section 9.1. **Inspection by Members.** The association shall make available association records and enhanced association records for inspection and copying by a member of the association or the member's designated representative, in accordance with California Civil Code Section 1365.2 and California Corporations Code Section 8330 et seq

Section 9.2. **Inspection by Directors.** Every director shall have the absolute right at any reasonable time to inspect all books, records and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make extracts and copies of documents.

Section 9.3. **Special Rules Regarding Minutes.** Minutes proposed for adoption that are marked to indicate draft status, or a summary of the minutes of any meeting of the Board of Directors, other than an executive session, shall be available to members within thirty (30) days of the meeting and shall be distributed only to members upon request and payment of the cost of reproducing copies. At the time the pro forma operating budget is distributed or at the time of any general mailing, members of the Association shall be notified in writing of their right to have copies of the minutes of meetings of the Board of Directors and as to how and where those minutes may be obtained and the cost of obtaining such copies.

## ARTICLE X

### ASSESSMENTS

As more fully provided in the Declaration, each member is obligated to pay to the Association annual and special assessments which are secured by a continuing lien upon the property against which the assessment is made. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within fifteen (15) days after the due date, there shall be a late charge of \$10.00. 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 bookkeeping, billing, or other administrative costs resulting from the delinquent payment. Interest shall also accrue on any delinquent payment at the rate of twelve percent (12%) per annum or at such rate as the Board may impose from time to time, not to exceed the limits set forth in California Civil Code Section 1725. Late charges and interest shall accrue from the first day following the due date of the assessment through and including the date full payment is received by the Association. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property, and interest, costs, and reasonable attorneys' fees of any such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the common area or abandonment of his or her lot.

ARTICLE XI

AMENDMENTS

Section 11.1. Prior to close of escrow on the sale of the first unit, Declarant may amend these By-Laws, with the consent of the Department of Real Estate. After sale of the first unit, these By-Laws may be amended only by the affirmative vote (in person or by proxy) or written consent of members representing a majority of a quorum of the Association which shall include a majority of the votes or written consent of members other than Declarant, or where the two (2) class voting structure is still in effect, shall include a majority of each class of members. However, the percentage of voting power necessary to amend a specific clause or provision shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

Section 11.2. In the case of any conflict between the Articles of Incorporation and these By-Laws, the Articles shall control; and in the case of any conflict between the Declaration and these By-Laws, the Declaration shall control.

CERTIFICATION

I hereby certify that I am the duly elected and acting Secretary of Rockberry Villas Owners Association, a Nonprofit Mutual Benefit Corporation, and that the foregoing By-Laws constitute the original By-Laws of the Association, duly adopted at a meeting of the Board thereof, held on the 25<sup>th</sup> day of April, 2009, and that they do now constitute the By-Laws of said Association.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 6<sup>th</sup> day of June, 2009.

*[Handwritten Signature]*  
Secretary

ATTEST:

*[Handwritten Signature]*  
President

State of California County of

Santa Clara

Subscribed and sworn to (or affirmed)

Before me on this 6<sup>th</sup> day of June 2009, by

Steven D. Osterberg & Michael G. Grogan

proved to me on the basis of satisfactory evidence

to be the person(s) who appeared before me

Signature: *[Handwritten Signature]*

