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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND
RESERVATION OF EASEMENTS FOR BELLA SOL AT SANTA CLARA.**

RECITALS

- A. Bella Sol Development, a Series of Bella Sol at Santa Clara, LLC, a Utah limited liability company ("Bella Sol Development") is engaged by Bella Sol 35, a Series of Bella Sol at Santa Clara LLC ("Bella Sol 35") to develop all of the property owned by Bella Sol 35 described in the attached Exhibit "A" (the "Property"). Bella Sol Development intends to improve and subdivide the Property in several phases. Each phase and all phases together shall be referred to as the "Subdivision", as the context requires.
- B. In order to provide for the orderly development of the Property and for consistent development and construction within the Subdivision, Bella Sol Development hereby adopts the covenants, conditions and restrictions and reservation of easements contained herein (the "CC&Rs") to apply to all development and construction upon the Property and to the Subdivision.
- C. An integral part of the development plan for the Subdivision is the creation of the Bella Sol Homeowners Association, a Utah nonprofit corporation (the "Association") whose membership is comprised of Bella Sol Development, Bella Sol 35 and all owners of real property within the Subdivision, to own, operate and maintain the various common areas and community improvements within the Subdivision and to administer and enforce this Declaration and the other governing instruments referenced in this Declaration.

**ARTICLE I
DEFINITIONS**

Unless otherwise expressly provided, the following words and phrases when used herein shall have the meanings hereinafter specified.

- 1.1. ACC. "ACC" shall mean the Architectural Control Committee created pursuant to Article VIII hereof.
- 1.2. ACC Rules and Regulations. "ACC Rules and Regulations" shall mean such rules and regulations as may be adopted and promulgated by the Association and/or the ACC pursuant to provisions of this Declaration as such rules and regulations may be amended from time to time.
- 1.3. Annual Assessment. "Annual Assessment" shall mean the annual charge against each Owner and his Lot, representing the Common Expenses, which are to be paid by each Owner to the Association in the manner and proportions provided herein as set forth in this Declaration.
- 1.4. Articles. "Articles" shall mean the Articles of Incorporation of the Association filed in the office of the Department of Commerce of the State of Utah, as such Articles may be amended from time to time.
- 1.5. Association. "Association" shall mean the Bella Sol Homeowners Association, a nonprofit corporation formed under the Utah Revised Nonprofit Corporation Act, as amended or replaced.

- 1.6. Beneficiary. "Beneficiary" shall mean a mortgagee under a mortgage or a beneficiary under a trust deed, as the case may be, and the assignees of such mortgagee or beneficiary.
- 1.7. Board. "Board" shall mean the Board of Directors of the Association, elected pursuant to the Bylaws and governing instruments of the Association.

Notwithstanding anything to the contrary contained in this Declaration or in the Bylaws, so long as Bella Sol 35 owns a Lot or portion of the Property, as recorded or as yet-to-be recorded in keeping with the Official City-Approved Preliminary Plat of Bella Sol at Santa Clara which approves a total of 106 Lots, or as otherwise set forth in this Declaration, (a) Declarant may choose to undertake management of the affairs of the Association without assistance or involvement of Members as Board Members, acting instead, in the capacity as the "Board" or (b) Declarant may elect in its sole discretion to appoint an Advisory Board of Directors ("Advisory Board") to assist Declarant in the management of the Association.

- 1.8. Budget. "Budget" shall mean a written itemized estimate of the revenues to be received and expenses to be incurred by the Association in performing its functions under this Declaration.
- 1.9. Builder. "Builder" shall mean a commercial contractor/builder to whom Bella Sol Development or Bella Sol 35 may sell a Lot or Lots for the purpose of constructing and selling a Dwelling Unit and whom Bella Sol Development or Bella Sol 35 may designate as a "Builder".
- 1.10. Bylaws. "Bylaws" shall mean the Bylaws of the Association as adopted by the Board, as such Bylaws may be amended by the Board from time to time.
- 1.11. Committee. "Committee" means the Architectural Control Committee defined in Section 1.1 of this Declaration.
- 1.12. Common Area. "Common Area" shall mean that portion of the Property owned by the Association, shown on the Plat, which is dedicated to the common use and enjoyment of the Owners and all improvements constructed thereon.
- 1.13. Common Expenses. "Common Expenses" shall mean those expenses and assessments for which the Association is responsible under this Declaration, including the actual and estimated costs of maintenance (including landscaping, gardening and upkeep), management, operation, repairs, utilities, replacements and improvements of the Common Area; costs of management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and other employees; and the cost of any other expenses or improvements incurred by the Association for any reason whatsoever, in connection with the Property for the benefit of all Owners, which are not the obligation of any Owner; provided, if an Owner defaults on or fails to pay an expense or assessment with regard to a Lot he

owns, the Association may pay the expense or assessment and seek reimbursement or recourse against the Owner.

- 1.14. Corrective Assessments. "Corrective Assessments" shall mean a charge against a particular Owner and his Lot representing the costs to the Association for corrective action set forth in this Declaration.
- 1.15. Declarant. "Declarant" shall mean individually and collectively, Bella Sol Development and Bella Sol 35 and their legal successors.
- 1.16. Declaration. "Declaration" shall mean this Declaration of Covenants, Conditions, and Restrictions and Reservation of Easements for Bella Sol at Santa Clara, including any expansion thereof by annexation or otherwise and amendments thereto. Declarant shall have the right for so long as Declarant is engaged to develop and manage the Property to act as the Board, with or without the assistance of an Advisory Board, as provided herein.
- 1.17. Deed of Trust. "Deed of Trust" shall mean a mortgage or a deed of trust, as the case may be.
- 1.18. Development. "Development" shall mean Bella Sol at Santa Clara Subdivision according to the Official Plat thereof, as it may be amended from time to time, as filed in the County Recorder's Office for Washington County, Utah.
- 1.19. Dwelling Unit, Dwelling, or Home. "Dwelling Unit", "Dwelling" or "Home" shall mean a single family dwelling, without structural walls or roofs in common with any other single family dwelling. Dwelling Unit, Dwelling or Home shall include fee title to the real property lying beneath the single family Dwelling Unit, Dwelling or Home within Lot boundary lines.
- 1.20. Fiscal Year. "Fiscal Year" shall mean the fiscal accounting and reporting period of the Association selected by the Board from time to time.
- 1.21. Improvement. "Improvement" or "Improvements" shall mean any structure, improvement or appurtenance to a Lot or to the Property of every type and kind, including but not limited to Dwelling Unit, Dwelling, Home and other buildings, including without limitation, exterior walls, walkways, sprinkler pipes, swimming pools, athletic fields or areas, garages, roads, driveways, alleyways, parking areas, fences, screening walls, block walls, retaining walls, stairs, decks, landscaping, ponds, hedges, wind-breaks, patio covers, railings, plantings, planted trees, poles, signs, storage areas, hot tubs, saunas, casitas, green houses, sun rooms, Arizona rooms, out buildings, exterior air conditioning and water-softening fixtures or equipment, or like structures or improvements, as approved by the Board.
- 1.22. Infrastructure Damage Deposit. "Infrastructure Damage Deposit" shall mean the deposit required by each Owner as security for any repair or replacement of any damaged or broken

sidewalk, curb, gutter, Landscape Park Strip, other Improvement, or any portion thereof as set forth in this Declaration.

- 1.23. Landscape Park Strip, Park Strip. "Landscape Park Strip" or "Park Strip" shall mean the area between the sidewalk and the curb in front of or adjoining each Lot.
- 1.24. Landscaping. "Landscaping" shall mean any trees, shrubs, grass or other vegetative cover, as well as landscape aggregate rock or other landscape material, as approved by the Board, whether native or domestic, decorative planters, borders, ornaments or other such items which alter the appearance of any Lot.
- 1.25. Lot. "Lot" shall mean a platted unit comprising a portion of the Property which is owned in fee simple interest by the Owner thereof. A Lot, at any given time, may or may not have a Dwelling Unit erected thereon. Lot numbers shall be designated on the Plat.
- 1.26. Manager. "Manager" shall mean the Person or entity appointed by the Declarant or the Board as its delegated agent to administer certain duties, powers or functions of the Association as further provided in this Declaration or in the Bylaws, governing instruments or minutes of meetings of the Association.
- 1.27. Member and Membership. "Member" shall mean any person holding a membership interest in the Association, as provided in this Declaration. "Membership" shall mean the property, voting and other rights and privileges of Members of the Association as provided herein, together with the correlative duties and obligations contained in this Declaration and the Articles, Bylaws, governing instruments and any Rules and Regulations of the Association, as may be promulgated and amended from time to time.
- 1.28. Mortgage, Mortgagee, Mortgagor. "Mortgage" shall mean any recorded mortgage or deed of trust. The term Deed of Trust or Trust Deed, when used herein, shall be synonymous with the term Mortgage. "Mortgagee" shall mean a person or entity to whom or in favor of whom a Mortgage is made by the Mortgagor. The term Beneficiary shall be synonymous with the term Mortgagee. "Mortgagor" shall mean an Owner who mortgages his Lot to another individual or entity (i.e., the maker of a Mortgage). The term "Trustor" or "Grantor" shall be synonymous with the term, Mortgagor.
- 1.29. Notice of Members Meeting. "Notice of Members Meeting" required or provided for in this Declaration shall be in writing, shall satisfy the notice requirements set forth in the Bylaws and applicable law, and may be delivered either personally or by first class or registered mail. Notice of Members Meetings shall be delivered at least five (5) days but not more than thirty (30) days prior to the date of the meeting of the Members. Notwithstanding the foregoing, notice given by other means shall be deemed fair and reasonable if given in accordance with the Utah Revised Nonprofit Corporation Act.

- 1.30. Owner. "Owner" shall mean the Person, trust or entity, including Declarant and a Builder, who or which is the Owner of record (as reflected in the office of the County Recorder of Washington County, Utah) of a fee simple or an undivided fee simple interest in a Lot, with or without a Dwelling Unit thereon. Notwithstanding any applicable theory relating to a Mortgage, the term Owner shall not mean or include a Mortgagee unless and until such party has acquired title pursuant to judicial or non-judicial foreclosure or any other arrangement or proceeding in lieu thereof.
- 1.31. Person. "Person" or "person" shall mean a natural individual, trust or any other entity with the legal right to hold title to a Lot within the Property.
- 1.32. Plans and Specifications. "Plans and Specifications" shall mean any and all documents designed to guide or control the construction or erection of any Improvement on a Lot, including but not limited to those indicating location, size, shape, configuration, materials, site plans, excavation and grading plans, foundation plans, drainage plans, landscaping and fencing plans, elevation drawings, floor plans, topographical plans, specifications on all building products and construction techniques, samples of exterior colors, plans for utility services and all other documentation or information relevant to such proposed Improvements to a Lot or to a Dwelling Unit, including all such plans relevant to Improvements or a Dwelling Unit already existing on a Lot.
- 1.33. Plat. "Plat" shall mean the BELLA SOL AT SANTA CLARA SUBDIVISION Plat, including all phases thereof, together with any additional property which may be annexed from time to time, as executed and acknowledged by Declarant and as recorded in the office of the Washington County Recorder, as the same has been or may be modified, supplemented or expanded in conjunction with amendment or annexations to the Property.
- 1.34. Property. "Property" shall mean the Property described in Exhibit "A" attached hereto, as amended or annexed, known as BELLA SOL AT SANTA CLARA SUBDIVISION as described in any Plat(s) filed in the Washington County Recorder's office, as the same may be modified from time to time, including any annexations.
- 1.35. Record, Recorded, Filed or Recordation. "Record", "recorded", "filed" or "recordation" shall mean, with respect to any document, the recordation of such document in the office of the County Recorder for Washington County, Utah.
- 1.36. Rules and Regulations. "Rules and Regulations" shall mean rules and regulations adopted or promulgated from time to time by the Declarant, or by the Board, pursuant to the Bylaws or governing instruments of the Association or this Declaration, as the Declarant and/or the Board deems necessary or desirable (a) to aid it in administering the affairs of the Association, (b) to ensure the Property is maintained and used in a manner consistent with this Declaration and the interests of the Owners, (c) to regulate the use of the Common Areas and the personal conduct of the Members and Owners and their guests and invitees thereon, and (d) to establish sanctions

and/or penalties for violations or infractions thereof, as such Rules and Regulations may be amended from time to time.

- 1.37. Recreational Vehicles. "Recreational Vehicles" shall mean all water-craft, travel trailers, campers, camper shells, tent trailers, motor homes, snowmobiles, dune buggies, all-terrain-vehicles and off-highway-vehicles (ATVs and ORVs, respectively), scooters, or devices similar to any of the foregoing.
- 1.38. Special Assessments. "Special Assessments" shall mean a charge against each Owner and his Lot, representing a portion of the costs to the Association of defraying any extraordinary expenses incurred or special projects approved as set forth in this Declaration.
- 1.39. Subdivision. Shall mean the Property and Plat or collectively the Plats for BELLA SOL AT SANTA CLARA SUBDIVISION once recorded and any amendments thereto.
- 1.40. Streets. "Streets" shall mean public streets, roads and thoroughfares in the Property.
- 1.41. Vehicle. "Vehicle" shall mean any and all equipment or device (mobile or immobile, operable or inoperable) of any type, designed to transport persons, objects or designed to be transported on wheels, skids or tracks including, without limitation, dump trucks, cement mixer trucks, gas trucks, delivery trucks, buses, aircraft, trailers, Recreational Vehicles, minivans, automobiles, SUV's, mopeds, pickup trucks, motorcycles, other devices or equipment similar to any of the foregoing, whether or not used for daily transportation.
- 1.42. Working Capital Assessment. "Working Capital Assessment" shall mean the charge against each initial Owner and when his Lot has a Dwelling Unit on it, which Dwelling receives a Certificate of Occupancy from the City of Santa Clara. The Working Capital Assessment represents a portion of the cost to capitalize and establish the Association's reserve fund which shall be paid by each Owner in the manner and proportions provided herein. All amounts paid to the Association as Working Capital Assessments shall be paid into a "Working Capital Assessment Fund" which shall be retained and used by the Association as provided herein.
- 1.43. Working Capital Assessment Fund. "Working Capital Assessment Fund" shall have the meaning ascribed to it in Section 1.42 of this Declaration.

**ARTICLE IA
A DESCRIPTION OF PROPERTY**

The real property which is associated with the Development and which has been and shall hereafter continue to be held, transferred, sold, conveyed and occupied subject to the provisions of this Declaration consists of all the property described in Exhibit "A" hereto; TOGETHER WITH all easements, rights-of-way, and other appurtenances and rights incident to, appurtenant to, or accompanying the described parcel of real property.

ALL OF THE FOREGOING IS SUBJECT TO: All liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-governmental authorities; all patent reservations and exclusions; any mineral reservations of record and rights incident thereto; all instruments of record which effect the above-described land or any portion thereof, including without limitation, any Mortgage; all visible easements and rights-of-way; all easements and rights-of-way of record; any easements, rights-of-way, encroachments, or discrepancies otherwise existing; an easement for each and every pipe, line, cable, wire, utility line, or similar facility which traverses or partially occupies the above-described real property whether prior to, at or after such time as construction of all Development-related improvements and build-out of Dwelling Units and Improvements on Lots is complete; and, all easements necessary for ingress to, egress from, maintenance of, and replacement of all such pipes, lines, cables, wires, utility lines, and similar facilities.

ARTICLE II OWNERS' PROPERTY RIGHTS

- 2.1 Form For Transferring or Encumbering Title. Any deed, lease, deed of trust, mortgage, or other instrument transferring or encumbering title to a Lot, with or without a Dwelling Unit or Improvements shall describe the interest or estate involved substantially as follows:

"All of Lot _____ of BELLA SOL AT SANTA CLARA SUBDIVISION, Phase _____, according to the official Plat thereof, subject to the Declaration of Conditions, Covenants and Restrictions and Reservation of Easements, on file in the office of the Washington County Recorder."

Whether or not the description employed in any such instrument is in the above specified form, however, all provisions of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Lot.

- 2.2 Transfer of Title to Common Area. Declarant represents that it shall, on or prior to the first conveyance of a Lot or as soon thereafter as is practicable, convey or cause to be conveyed to the Association fee title to all developed Common Areas.

- 2.3 Limitations on Common Area Easement. An Owner shall have a right and easement to use and enjoy the Common Area, provided, an Owner's right and easement of use and enjoyment of the Common Area shall be subject to the following:
- (1) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the Association. In absence of Declarant, any such dedication or transfer must, however, upon Notice of Members Meeting be assented to by two-thirds (2/3) of the *vote* of the Membership which Members present in person or by proxy are entitled to cast at a meeting duly called for the purpose. The quorum requirement for such meeting shall be as set forth in the Bylaws.
 - (2) The right of the Association, to be exercised by the Board, to construct, reconstruct, replace or refinish any Improvement, including but not limited to alleyway paving, or portion

thereof upon the Common Area in accordance with the original design, finish or standard of construction of such Improvement;

- (3) The right of the Association, to be exercised by the Board, to replace destroyed trees or other vegetation and plant trees, shrubs and ground cover upon any portion of the Common Area;
- (4) The right of the Association, to be exercised by the Board, to reasonably restrict access to portions of the Common Area; and
- (5) The easements reserved in Sections 2.4, 2.6, and 2.8.

2.4 Easements for Public Service Use. In addition to the foregoing easements over the Common Area, there shall be and Declarant hereby reserves and covenants for itself and all future owners within the Property, easements for public services of the City of Santa Clara or other municipalities, water companies or water conservancy districts, and the like, in which the Property is located, including but not limited to, the right of the police and fire departments to enter upon any part of the Common Area for the purpose of carrying out their official duties.

2.5 Waiver. No owner, except the Declarant and a Builder, may exempt himself from personal liability for assessments duly levied by the Association or Board nor release the Lot or other property owned by him from any liens, assessments and charges made in connection with such Lot or other property.

2.6 Easements for Water and Utility Purposes. In addition to the foregoing easements over the Common Area, there shall be and Declarant hereby reserves and covenants for itself, for a Builder and all future Owners within the Property, easements for public and private utility purposes. The Lots shall also be subject to such public utility easements as shown on the Plat and as required by the City of Santa Clara or other applicable municipality.

2.7 Taxes. Each Owner shall execute such instruments and take such action as may reasonably be specified by the Board to obtain separate real estate tax assessment of each Lot. If any taxes or assessments applicable to any Lot or property located within the Subdivision not comprising part of the Common Area may, in the opinion of the Board, become a lien on the Common Area, or any part thereof, such Taxes or assessments may be paid by the Association as a Common Expense, and the Association may levy against the Lot as a Corrective Assessment any amounts paid by the Association to recoup any amounts paid.

2.8 Easement for Encroachments. If any portion of a Dwelling Unit or other Improvement constructed or reconstructed by Declarant encroaches upon the Common Areas or other Lots as a result of the construction, reconstruction, repair, shifting, settlement or movement on any Lot or other portion of the Property, a valid easement for the encroachment and for the maintenance of the same shall be deemed granted and shall exist so long as the encroachment exists.

**ARTICLE III
BELLA SOL HOMEOWNERS ASSOCIATION**

- 3.1 Organization of Association. Declarant has caused or shall cause the Association to be organized and the Articles filed with the State of Utah, Department of Commerce, Division of Corporations and Commercial Code.
- 3.2 Parties and Powers. The Association shall have such duties and powers set forth in the Articles, Bylaws, and this Declaration (and such other powers and duties as properly delegated or assigned through the Rules and Regulations), as such documents may be amended from time to time.
- 3.3 Membership. Every Owner shall be a Member of the Association. Membership in the Association shall be mandatory and shall be appurtenant to the Owner's Lot.
- 3.4 Non-transferability of Membership. Membership in the Association is non-transferable and shall not be separated from the Lot to which it appertains.

ARTICLE IV VOTING RIGHTS

- 4.1 Voting Classifications. The Association shall have the following two classes of voting Membership which shall be counted cumulatively (as one class) on any matter submitted for Member voting.
- 4.1.1 Class-A. Class-A Members shall be all the Owners. Class-A Members shall be entitled to one vote for each Lot owned by such Member. In no event shall more than one Class-A vote exist with respect to any Lot.
- 4.1.2 Class-B. Class-B Member shall be the Declarant. Only Declarant (i.e., Bella Sol Development or Bella Sol 35, to be determined by these two parties) shall be a Class-B Member. Class B Members shall be entitled to three (3) votes for each Lot owned. Class-B membership shall cease and be converted to Class-A membership on the happening of any of the following events, whichever occurs first:
- (A) conveyance by Declarant of all Lots, including those in expansion areas in keeping with the City-Approved Preliminary Plat, which includes 106 lots, as approved (or as expanded under provisions hereof), to third-party purchasers; or
 - (B) expiration after fifteen (15) years from the first Phase 1 Lot conveyance is made by Declarant to a purchaser; or
 - (C) surrender of Class-B membership status by the express written action of the Declarant.
- 4.2 Multiple Ownership of a Lot. In the event there is more than one Owner of a particular Lot, the vote pertaining to such Lot shall be exercised as such Owners may determine among themselves. A vote cast at any Association meeting by any of such Owners, whether in person or by proxy, shall be conclusively presumed to be the vote attributable to the Lot concerned, unless an objection is immediately made by another Owner of the same Lot. In the event such objection is made, the vote

involved shall not be counted for any purposes whatsoever, other than to determine whether a quorum exists.

**ARTICLE V
JURISDICTION OF ASSOCIATION**

The Association is organized to provide for the operation, maintenance, preservation and architectural control of the Property and Improvements, to administer the Common Area of the Property, and to reasonably regulate the Members of the Association in connection with their ownership, usage and maintenance of the Lots and Common Area. The Association shall have jurisdiction and authority over the Property and the Members of the Association to the full extent allowed by law and also as provided for in this Declaration and in the Articles, Bylaws, governing instruments and Rules and Regulations, as such documents may be modified from time to time.

**ARTICLE VI
COVENANT FOR ASSESSMENTS**

No assessment as set forth in this Article shall apply to the Declarant. Further, no assessment as set forth in this Article shall apply to a Builder unless the Builder continues to own the Lot for more than 6 months after purchasing the Lot. Declarant's and Builder's sole obligation to provide financial assistance under this Article (applicable to Builder only if it has owned the Lot less than 6 months), or as otherwise approved by the Board, is in the form of subsidy. In no event, however, shall Declarant (or Builder, as applicable) be required to provide a subsidy which exceeds the monthly assessment by the Association for Lots owned by the Declarant or the Builder. If the cash needs of the Association are greater than a subsidy will cover, the Board may undertake to approve a levy of a Special Assessment, as provided herein

- 6.1 Creation of Assessment Obligation. Except as provided in the foregoing paragraph, each Owner of a Lot, with or without a Dwelling Unit thereon, by acceptance of a deed thereof, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association (1) Annual Assessments for Common Expenses, (2) Working Capital Assessments, (3) Special Assessments, (4) Corrective Assessments, and (5) any other amount or assessment levied by the Board pursuant to this Declaration; all such assessments to be determined and collected as provided in this Declaration. The Association shall not levy or collect any Annual Assessment, Working Capital Assessment, Special Assessment or Corrective Assessment that exceeds (or, if estimated, is not expected to exceed) the estimated amount necessary for the purpose or purposes for which it is levied. All such assessments, together with interest, costs of collection and reasonable attorney's fees for the collection thereof, if applicable, shall be charged on the Lot and shall be a continuing lien upon the Lot against which such assessment is made. Each such assessment, together with interest, costs of collection and reasonable attorney's fees, if applicable, shall also be and remain the personal obligation of the Owner of the Lot at the time when the assessment became due. If any Lot is owned by more than one person, liability shall be joint and several. This personal obligation cannot be avoided by abandonment of a Lot or by an offer to

waive use of the Common Area. The personal obligation for delinquent assessment liability shall not pass to any new Owner ("Purchaser") as successor in title unless (a) expressly assumed by such Purchaser or (b) such Purchase had actual or constructive knowledge of the delinquent assessment at the time of purchase unless such Purchaser had a prior recorded lien of record on the Lot and purchased the Lot for an amount equal to or greater than the lien amount. For the purpose of assessment, the term "Owner" shall exclude the Declarant and a Builder unless the Builder has owned the Lot for more than two (2) years.

The determination of the reasonable cash needs for ordinary and necessary maintenance expenses shall be within the sole discretion of the Board and Declarant shall have no liability to the Association if subsequent Boards shall disagree with the determination of the Board which made such determination.

6.2 Purpose of Assessments. The Annual Assessments, Working Capital Assessments, and Special Assessments levied by the Association shall be used exclusively to promote the common health, safety, benefit and welfare of the Owners and for the improvement and maintenance of the Common Area, including establishing and funding a reserve to cover major repair or replacement of Improvements within the Common Area and any expenses necessary or desirable to enable the Association to perform or fulfill its obligations, functions, or purposes under this Declaration or its Articles.

6.3 Annual Assessments. Annual Assessments shall be used to satisfy Common Expenses of the Association, as provided in this Declaration, the Bylaws or in the Rules and Regulations. The Annual Assessment shall be payable in twelve (12) equal monthly installments due on the first day of each month. The Annual Assessment shall be based upon the Budget prepared by the Board. The Common Expenses of the Association, and therefore the Annual Assessment, may increase due to, among other reasons, Improvements constructed in the sole discretion of Declarant. Nothing herein shall obligate Declarant to construct any Improvements.

Each Owner of any Lot shall be subject to the Annual Assessment, provided, however, Declarant shall not be subject to such Assessment for Lots owned by the Declarant or by a Builder, unless the Builder has owned the Lot for more than 6 months. In no event, however, shall any Declarant (or a Builder, as applicable) be required to provide a subsidy to the Association which exceeds the monthly assessment for the Lots owned by the Declarant or a Builder. Such subsidy shall only be required of Declarant (and a Builder, as applicable) when cumulative Annual Assessment funds available to the Association are insufficient to meet the expenses of the Association.

6.4 Determination of Annual Assessments. Until the occurrence of the First Annual Meeting of the Association, the maximum Annual Assessment shall be One Thousand Two Hundred Dollars (\$1200.00) per Lot ("Initial Annual Assessment"). Upon the occurrence of the First Annual Meeting of the Association, the Board shall fix the Annual Assessment in keeping with a Board-approved Budget.

- (1) From and after the First Annual Meeting of the Association, the Initial Annual Assessment may be increased for each subsequent year by the Board, if required, to meet projected Common Expenses, but not by more than fifteen percent (15%) above the Annual Assessment for the previous year without a vote of the Membership.
- (2) If projected Common Expenses are expected to exceed One Hundred Fifteen percent (115%) of the prior year's Annual Assessment, such increase shall be approved by the Membership at a duly constituted meeting of the Association.

6.5 Working Capital Assessment. Upon recording of a deed transferring ownership of a Lot upon which a Dwelling has been constructed, the initial purchaser/Owner of such improved Lot shall pay to the Association an initial Working Capital Assessment, which shall be an amount equal to three (3) months installments of the Annual Assessment in effect for the year in which the sale occurs. The Working Capital Assessment amount will not be assessed to the purchaser of an unimproved Lot, but only on the purchase of an improved Lot; provided, if an Owner purchases an unimproved Lot and then constructs a Dwelling on such Lot and occupies, leases or otherwise uses the Lot without selling to another party, such Owner shall be liable for and shall pay such assessment to the Association immediately upon issuance of the Certificate of Occupancy. The Working Capital Assessment shall only apply once with regard to each Lot and shall be paid in accordance with the provisions of this paragraph. Payment of this amount shall be in addition to (and not in lieu of) the Annual Assessment due hereunder and shall not be considered an advance payment of any assessment.

The Association shall maintain the Working Capital Assessment Fund in a segregated account and each Working Capital Assessment collected shall be deposited into such Fund to be used (a) to repair, maintenance and replacement of the Common Area and Common Area Improvements, (b) to pay for unforeseen expenditures or unbudgeted maintenance or repairs, or (c) to acquire additional equipment or pay for services for the benefit of the Members. Payments to this Fund shall not be refundable to a Member.

6.6 Special Assessments. In addition to the other assessments provided for in this Declaration, a Special Assessment may be assessed to Owners of Lots to pay the following costs and expenses:

- 6.6.1 Approved by Board. Special Assessments for the following extraordinary expenses may be levied by the Board without Member approval:
 - (A) An extraordinary expense or assessment required by an order of a court; or
 - (B) An extraordinary expense or assessment necessary to repair or maintain the Common Area or any portion thereof for which the Association is responsible where a threat to safety of persons or property on the Common Area is discovered. Prior to the imposition or collection of a Special Assessment pursuant to this subsection, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was necessary and was not or could not have been reasonably foreseen in the

budgeting process established to determine the amount of Annual Assessments.

The resolution shall be distributed to the Members with the notice of Assessment.

- (C) Utility Fees. Utility connection fees, including without limitation, fees required to be paid to any water conservancy district for connection or access to primary, secondary, irrigation or supplemental water systems.

6.6.2 Member Meetings Approval. Except as referenced in 6.6(a) any additional Special Assessments shall be approved by the Members in accordance with Paragraph 6.11.

6.7 Uniform Rate of Assessment. Annual Assessments, Working Capital Assessments, and Special Assessments imposed pursuant to subsections 6.3, 6.4, 6.5 and 6.6 of this Declaration, together with any other assessments, shall be assessed on a prorata basis among the Owners (and their Lots) in equal amounts, regardless of Dwelling or Lot size.

6.8 Date of Commencement of Annual Assessments. The Board shall authorize and levy the amount of the Annual Assessment upon each Lot, as provided herein, by a majority vote of the Board (or by the Declarant, as applicable). Annual Assessments shall commence on all Lots, with the exception of Declarant-owned Lots (and Builder-owned Lots unless the Builder has owned the Lot more than 6 months), on the date the Owner closes on his purchase of the Lot. If an Owner does not own the Lot for an entire month, the Annual Assessment monthly installment shall be prorated based on the number of days during the month the Owner owned the Lot. The first Annual Assessment shall be adjusted according to the number of months remaining in the Fiscal Year. The Board shall fix the amount of the Annual Assessment for each Lot at least thirty (30) days in advance of each Annual Assessment period. Written notice of any change in the amount of any Annual Assessment shall be sent to each Owner subject thereto, not less than thirty (30) days prior to the effective date of such change. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer or agent of the Association, setting forth whether the assessment on a specific Lot has been paid. A properly executed certificate of the Association as to the status of assessments against a Lot shall be binding upon the Association as of the date of its issuance.

6.9 Corrective Assessments. In addition to the Annual Assessment, Working Capital Assessment, and any Special Assessment, the Association may levy Corrective Assessments against a particular Owner and his Lot to pay the following: costs and expenses directly attributable to, or reimbursable by, that Owner equal to the costs incurred by the Association for corrective action undertaken pursuant to the provisions of this Declaration, plus interest and other charges on such Corrective Assessments. The Board shall deliver a Notice of Non-compliance and Right to Hearing to the Owner upon whom it intends to levy a Corrective Assessment. Corrective Assessments shall be due and payable within thirty (30) days following delivery of Notice of Board Adjudication and shall bear interest thereafter, if unpaid, at the rate of twelve percent (12%) per annum until paid in full. If unpaid, the Board may elect to lien Owner's Lot, as provided elsewhere in this Declaration.

6.10 Exempt Property. The following property shall be exempt from the assessments specified in this Declaration:

- (1) All portions of the Property dedicated to and accepted by a local public authority;

- (2) The Common Area owned by the Association in fee; and
 - (3) All Lots owned by the Declarant or by a Builder, unless the Builder has owned the Lot for more than 6 months, except as may be used in calculation of subsidy which may be required hereunder from time to time (see Section 6.3 hereof).
- 6.11 Notice of Members Meetings; Quorum Requirements. Before any Special Assessment is levied as provided by Paragraph 6.6.2, the Board shall deliver a Notice of Members Meeting. The quorum required for any action authorized by provisions of this Declaration shall be as follows: at the first meeting called the presence of Members or of proxies entitled to cast fifty percent (50%) of all outstanding votes (from Class A and Class B Members) shall constitute a quorum. If a quorum is not present at any meeting, another meeting may be called by the Board issuing a Notice of Members Meeting.
- 6.12 Additional Assessment. In addition to the Annual Assessments, Working Capital Assessments, Special Assessments and Corrective Assessments, the Association shall levy such additional assessments as may be necessary from time to time for the purpose of repairing and restoring the damage or disruption resulting to the Common Area from whatever cause, including the activities of the City of Santa Clara in maintaining, repairing or replacing the City's utility lines and facilities thereon.
- 6.13 Preparation of Budget. The Board shall prepare a Budget to be presented to the Members at the annual meetings of the Members held as provided in the Bylaws.
- 6.14 Reserve Fund. The Board shall, on behalf of the Association, cause to be funded through Annual Assessments, Working Capital Assessments, or other periodic assessments, an adequate reserve to cover the cost of reasonably predictable and necessary major repairs and replacement to the Common Areas.

**ARTICLE VII
NONPAYMENT OF ASSESSMENTS; REMEDIES**

- 7.1 Nonpayment of Assessments; Remedies; Applicable Interests Rate. Pursuant to Utah Code Ann. §§ 57-8(a)101, et seq. any assessment payments not paid when due shall, together with interest and costs of collection, be, constitute, and remain a continuing lien on the Lot; provided, however, that any such lien shall be subordinate to the lien or equivalent security interest of any Mortgage on the Lot recorded prior to the date any such installment payment on assessments became due. If any installment payment on the assessment is not paid within thirty (30) days after the date on which it becomes due, the amount thereof shall bear interest from the date of delinquency at the rate of twelve percent (12%) per annum plus a late payment service charge of Twenty-Five Dollars (\$25.00) if the assessment is not paid within five (5) days of when it is due, or such larger amount as set by the Board. The Association may, in its discretion, bring an action either against the Owner or to foreclose the lien against the Lot. Any judgment obtained by the Association and any foreclosure commenced shall include reasonable attorney fees, court costs,

and each and every other expense incurred by the Association in enforcing its rights as to the collection of the assessment. If a monthly installment payment is not timely made, the Board may declare the entire balance due on all assessments in default and accelerate the balance of all assessments and declare the entire amount of the balance of all assessments immediately due and owing. If an interest rate is mentioned in this Declaration but no interest rate is stated, the interest rate shall be twelve percent (12%).

- 7.2 Washington County Tax Collection. It is recognized that, under this Declaration, the Association shall own the Common Area and is obligated to pay property taxes thereon to Washington County. It is further recognized that each Owner of a Lot is a Member of the Association, and as part of his assessment shall be required to pay the Association his pro rata share of such taxes. Notwithstanding anything to the contrary contained in this Declaration, or otherwise, Washington County shall be, and is, authorized to collect such pro rata share (on an equal basis) of taxes directly from each Owner by inclusion of said share with the tax levied on each Lot. To the extent allowable, Washington County is hereby directed to do so. In the event that the assessor shall separately assess Common Areas to the Association, the Board may impose, in its discretion a Special Assessment to pay such taxes, or they may be incorporated into the Annual Assessment.
- 7.3 Lien. The Board may elect to file a claim of lien against the Lot of the Owner who has not timely paid any assessment made on him or his Lot by recording a Notice of Lien setting forth (a) the amount of the delinquent assessment or other claim, (b) the interest and costs of collections which have accrued thereon, (c) the legal description of the Lot against which the lien is claimed, (d) the name of the Owner thereof. Such Notice of Lien shall be signed and acknowledged by an officer or duly authorized agent of the Association, and (e) a statement that the Association intends to sell the Lot to satisfy the lien pursuant to Utah law. The lien shall continue until the amounts secured thereby and all subsequently accruing amounts are fully paid or otherwise satisfied. When all amounts claimed under the Notice of Lien and all other costs and assessments which may have accrued subsequent to the Notice of Lien have been fully paid or satisfied, the Association shall execute and record a notice releasing the lien upon payment by the Owner of a reasonable fee as fixed by the Board to cover the cost of preparing and recording the release of lien. Unless paid or otherwise satisfied, the lien may be foreclosed in a like manner as a mortgage or any other manner provided by law, including without limitation, a deed of trust as set forth in this Declaration.
- 7.4 Grant by Owner of Trust Deed for Assessments. Each Owner, as Trustor, conveys and warrants to the attorney for the Association, as Trustee, in trust for the benefit of the Association as Beneficiary, with power of sale, the Owner's Lot and all Improvements thereon for the purpose of securing payment of all assessments (including interest and costs of collection) provided for in this Declaration. For purposes of this Section and Utah Code Ann. §§ 57-1-19, *et seq.*, as amended from time to time, the Trustee shall mean the attorney for the Association and the Association may provide notice and disclosure of the Trustee by recording an *Appointment of Trustee* on the records of the Washington County Recorder. Each Owner hereby also grants the

Association and Trustee all powers and rights of non-judicial trust deed foreclosure provided for in Utah Code Ann. §§ 57-1-19, *et seq.*

- 7.5 Perfection of Lien and Priority. Upon the recording of Notice of Lien by the Board, such lien constitutes a lien on the Lot Owner's interest in the property having priority over all other liens and encumbrances, recorded or unrecorded, except:

7.5.1 tax and special assessment liens on the Lot in favor of any assessing lot or special improvement district; and

7.5.2 encumbrances on the interest of the Lot Owner:

- A. recorded prior to the date of the recording of *Notice of Lien*; and
- B. that by law would be a lien prior to subsequently recorded encumbrances.

The Board, or its Manager, may enforce the assessment lien by sale or foreclosure of the Owner's interest. The Board, or its Manager, may bid at a sale or foreclosure and hold, lease, mortgage, or convey the Lot that is subject to the assessment lien.

- 7.6 Future Lease Payments. Payments of Monthly Assessment Fees are to be paid by the Owner to the Association. An Owner who is leasing his Lot to a tenant, with or without a Dwelling, shall not transfer the obligation to the tenant to pay the monthly or other periodic assessment to the Association; rather, each Owner who is leasing his Lot shall be required to make payment of all assessments directly to the Association.

If the Owner of a Lot who is leasing the Lot fails to pay an assessment for more than sixty (60) days after the assessment is due, the Board, upon compliance with this Section, may demand that the tenant pay to the Association all future lease payments due to the Owner, beginning with the next monthly or other periodic payment, until the amount due to the Association is paid in full. The Board shall give the Owner written notice of its intent to demand full payment from the tenant under this Section. The notice shall: (a) provide notice to the tenant that full payment of the remaining lease payments shall begin with the next monthly or other periodic payment unless the assessment is received within the time period provided in the Declaration, Bylaws, or Rules and Regulations; (b) state the amount of the assessment due, including any interest, late payment fees; (c) state that any costs of collection, and other assessments that become due may be added to the total amount due; and (d) provide the requirements and rights described in this Section. If the Owner fails to pay the assessment due by the date specified in the notice, the Board may deliver written notice to the tenant demanding that future payments due to the Owner be paid to the Association pursuant to this Section. The Board shall mail a copy of the notice to the Owner. The notice provided to the tenant under this Section shall state: (a) that due to the Owner's failure to pay the assessment within the time period allowed, the Owner has been notified of the intent of the Board to collect all lease payments due to the Association; (b) that until notification by the Association that the assessment due, including any interest, collection cost, or late payment fee, has been paid, the tenant shall pay to the Association all future lease payments due to the Owner; and (c) that payment by the tenant to the Association in compliance with this Section shall not

constitute a default under the terms of the lease agreement. If a tenant makes payments in compliance with this Section, the Owner may not initiate an action against the tenant. All funds paid to the Association pursuant to this Section shall be: (d) separately accounted for, together with any cost of administration until paid in full. Any remaining balance shall be paid to the Owner within five (5) business days after payment in full to the Association. Within five (5) business days after payment in full of the assessment, including any interest or late payment fee, the Board shall notify the tenant in writing that future lease payments are no longer due to the Association and shall mail a copy of such notification to the Owner. Any Owner that leases a Lot shall include in the lease agreement provisions that obligate the tenant to make payments as set forth in this section in the event the Owner fails to pay assessments as described in this section.

- 7.7 Statement of Account. The Board shall issue a written statement indicating any unpaid assessment with respect to a Lot covered, upon the written request of the Owner, and payment of a reasonable fee. The written statement shall be binding upon the (a) remaining Owners; (b) Manager; and (c) Board in favor of any person who relies in good faith on the written statement. Unless the Board complies with such request within ten (10) days, any unpaid assessment that became due prior to the date the request was made is subordinate to a lien held by the person requesting the statement.
- 7.8 Payment by Encumbrancer. An encumbrancer holding a lien on a Lot may pay any unpaid assessment due with respect to the Lot. Upon such payment, the encumbrancer shall have a lien on the Lot for the amounts paid.
- 7.9 Cumulative Remedies. The assessment liens and the rights to foreclosure and sale thereunder shall be in addition to and not in substitution for all other rights and remedies which the Association and its assigns may have hereunder and by law, including a suit to recover a money judgment for unpaid assessments, as provided above.
- 7.10 Mortgage Protection. Notwithstanding all other provisions hereof, no lien created under this Article VII, nor any breach of this Declaration, nor the enforcement of any provision hereof shall defeat or render invalid the rights of the Beneficiary under any recorded first Deed of Trust (meaning any deed of trust with first priority over the other deeds of trust) upon a Lot made in good faith and for value; provided that after such Beneficiary or some other person obtains title to such Lot by judicial foreclosure or by other means of the powers set forth in such Deed of Trust or through a deed in lieu of foreclosure, such Lot shall remain subject to the Declaration and the payment of all installments of Assessments accruing subsequent to the date such Beneficiary or other person obtains title.
- 7.11 Rent After Foreclosure. In the event the Association takes title to a Lot through foreclosure, the Board may elect to allow the occupant to remain in the Dwelling Unit and the occupant shall be required to pay a fair market rental amount to the Association for the Dwelling Unit/Lot. Under circumstances of foreclosure by the Association, the Association shall not be obligated or required to rent the Dwelling/Lot to the foreclosed Owner, nor shall the Association be obligated or required to sell the Dwelling to said previous/foreclosed Owner.

ARTICLE VIII
ARCHITECTURAL CONTROL COMMITTEE ("ACC" or "Committee")

- 8.1 Members of the ACC Committee. An ACC Committee shall not be required to be formed by the Board. If an ACC is not appointed, the Board itself shall perform the duties required of the ACC. The Board shall have the power to appoint and remove all of the Committee members of the ACC, with or without cause. Persons appointed to the ACC by the Board need not be Members of the Association. Individual Board members may also serve as ACC members.
- 8.2 ACC General Powers. The ACC shall have the right and duty to promulgate reasonable standards against which to examine any request for review made pursuant to this Article, in order to ensure that the proposed Plans and Specifications conform harmoniously to the exterior design and existing materials of the Improvements on the Property. This power shall include the power to issue ACC Rules and Regulations which, among other provisions, may set forth procedures for the submission of Plans and Specifications for approval, and state additional factors which it shall take into consideration in reviewing submissions.
- 8.3 Review of Plans and Specifications. The ACC shall consider and act upon any and all Plans and Specifications submitted for its approval under this Declaration and perform such other duties as from time to time shall be assigned to it by the Board, including the inspection of construction in progress to assure conformance with Plans and Specifications approved by the ACC. ACC shall supply necessary submittal forms for Owner's Plans and Specifications request. ACC shall respond to all submittals within forty-five (45) days. No exterior construction, alteration, removal, relocation, repainting, demolition, addition, modification, or redecoration, or reconstruction of a Dwelling Unit or Improvement, including landscaping, on the Property shall be commenced until the Plans and Specifications have been submitted to the ACC (together with such fees for review and inspection as may be reasonably required by the ACC) and approved in writing by the ACC.
- The ACC shall approve Plans and Specifications submitted for its approval only if it deems that the construction, alterations or additions contemplated thereby in the locations indicated shall not be detrimental to the appearance of the surrounding area or the Property as a whole, that the appearance of any structure affected thereby shall be in harmony with the surrounding structures, and that the construction thereof shall not detract from the beauty, wholesomeness and attractiveness of the Lots and the Common Area or the enjoyment thereof by the Members, and that the upkeep and maintenance thereof shall not become a burden on the Association. All changes in the finish grade of any Lot shall be subject to the prior written approval of the ACC. No changes or deviations in or from the Plans and Specifications once approved by the ACC shall be made without the prior written approval of the ACC. Subsequent to receiving approval of the ACC and prior to the commencement of construction, each Owner shall be responsible for obtaining a building permit from Santa Clara City.
- 8.4 Infrastructure Damage Deposit. Each Owner of a Lot, as provided in this Section, shall be responsible to repair or replace any damaged portions, as noticed to the Owner by the ACC, of

(a) sidewalk, (b) curb, (c) gutter, (d) Common Area Walking Paths, (e) handicap ramps, or (f) Landscape Park Strip improvements, including electrical, water distribution systems and landscaping, which are attached or adjacent to the Owner's Lot/lot lines, or areas observed by the ACC to have been damaged by an Owner's construction activity, as such activity may be shown to have impacted adjacent or other Lots or improvements. Any portion of such items listed that has/have been observed by the ACC to have been broken or damaged or allowed to fall into disrepair ("Damaged Area") after the date of purchase of a given Lot shall be subject to the provisions of this Section.

Accordingly, in keeping with this provision, (a) an Owner who has purchased a Lot from the previous Declarant or from the current Declarant or (b) who upon making a request for alteration, modification, or addition to the Lot/Home including, but not limited to detached garage, swimming pool, out-buildings, landscaping, etc., shall escrow with the Association an "Infrastructure Damage Deposit" (or "Deposit") of one thousand (\$1,000.00) per Lot: (y) at the time of Settlement/Closing on the purchase of the Lot as set forth in (a) above, or (z) by direct payment of such Deposit to the Association as set forth in (b) above, to insure the payment, in part or in full, of costs related to the repair, replacement, or other corrective measures regarding such damage, as observed and required by the ACC.

The Association shall keep such deposits in a segregated bank account and shall not use said deposit funds for any purpose other than set forth in this Section. Said Deposit shall be returned to Owner upon completion of home construction or upon completion of later modifications to a Home, following inspection and verification by ACC that (a) no Damaged Areas exist or (b) any Damaged Area identified by the ACC inspection has been satisfactorily repaired or replaced.

When undertaking any work or alteration of Improvements on a Lot, Owner shall be responsible to safeguard the unblemished condition of the curb, gutter, sidewalk and Park Strip elements attached or adjacent to Owner's Lot, that it not be damaged or brought into a condition of disrepair. In any instance of Damaged Areas, Owner shall be required to repair, replace, or otherwise correct related matters according to the conditions of similar elements (curb, gutter, etc.) within other areas of the Subdivision. Said repairs and/or replacements shall be to the sole satisfaction of the ACC.

In the event an Owner, who has been notified by the ACC as to Damaged Area relating to Owner's Lot, fails to timely make repairs or replacements as determined by the ACC inspection, the Association may undertake such repair, replacement, or corrective action. Costs expended by the Association, because of such an Owner's failure, shall be deducted from Owner's Infrastructure Deposit up to the full amount of the Deposit. If the costs of repair or replacement of such Damaged Area exceeds the amount of the Deposit, Owner shall be required to pay/reimburse all associated costs upon demand by the Association as a Corrective Assessment. No interest shall be paid on a Deposit amount. In the event Owner fails to pay any such addition amounts levied as a Corrective Assessment by the Association, the Association may undertake action to lien as provided herein.

It is not the intent of the provisions of this Section that the Association release or refund any portion of the Deposit until and when the ACC has verified that the work relating to the Damaged Area is complete to the sole satisfaction of the ACC.

In addition to the processing of the Infrastructure Damage Deposit as outlined above, the Association may retain the Deposit on account until the Owner completes the front and side-yard landscaping as provided in Section 10.16 hereof.

- 8.5 Meetings of the ACC. The ACC shall meet from time to time as necessary to perform its duties hereunder. The vote of a majority of the ACC shall be sufficient to enact resolutions or motions of the ACC. The attendance of a majority of the members at any meeting shall constitute a quorum.
- 8.6 No Waiver of Future Approvals. The approval by the ACC of any proposals or Plans and Specifications for any work done or proposed or in connection with any other matter requiring the approval and consent of the ACC, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, Plans and Specifications or matters subsequently or additionally submitted for approval or consent.
- 8.7 Compensation of Members. The Members of the ACC shall receive no compensation for services rendered, other than reimbursement for expenses incurred by them in the performance of their duties hereunder.
- 8.8 Limitations on Liability. Neither the ACC, the Board or Declarant, nor any Member, acting in good faith shall be liable to the Association or to any Owner for any damage, loss, or prejudice suffered or claimed on account of (a) the approval or rejection of, or the failure to approve or reject, any Plans and Specifications, or variance requests (b) the construction or performance of any work, whether or not pursuant to approved Plans and Specifications, (c) the development or manner of development of any of the Property, or (d) any engineering or other defect in approved Plans and Specifications.
- 8.9 Declarant's Rights. Neither the Declarant nor any Builder shall be required to comply with the provisions of this Article in the construction of the Property or the construction of individual Homes on Lots within the Property owned by the Declarant or the Builder, as applicable.

ARTICLE IX MAINTENANCE AND REPAIR OBLIGATION

- 9.1 Maintenance by Owner. An Owner shall not commit any act which shall detract from the appearance of the Dwelling Unit or yard areas of the Dwelling Unit or the Park Strips fronting any portion of a Lot.

Each Owner shall be responsible for the repair and maintenance of his Lot and all Improvements thereon, including the Dwelling thereon, together with all landscaping of the yard areas of the Lot, and as set forth in Section 9.2 hereof. These responsibilities, without Amendment to this Declaration, shall not belong to the Association in any degree. As provided elsewhere herein, Park Strips adjoining a Lot shall be installed and maintained by the Owner of such Lot, including the watering thereof and maintenance of landscaping or replacement of such.

Owner shall timely and routinely attend to the matters of care and maintenance as set forth in this Declaration. In the event an Owner fails to comply herewith and Owner's Lot and Improvements thereto fall into disrepair or a damaged condition, the Association shall provide Written Notice of Non-compliance and Right to Hearing ("Notice") to the Owner setting forth the maintenance matters which need to be repaired or replaced. If the Owner does not undertake timely action to repairs, replace, or otherwise correct the identified matter(s) within twenty-one (21) days after Notice is delivered by the Association to the Owner, which Notice shall describe the disrepair and the scope of needed repairs, replacement or corrective action, the Association may elect, in its sole discretion, to make such repairs and may charge the cost of the repairs against the Lot as a Corrective Assessment. Failure to pay such Corrective Assessment may result in further Association action as provided in this Declaration.

- 9.2 Operation and Maintenance by Association of Common Areas; Maintenance of Park Strips and Sidewalks. The Association, by its duly delegated representative, shall provide for maintenance and operation of the Common Areas. The Park Strips shall not be maintained by the Association; rather, each Lot Owner shall be responsible for the maintenance of the Park Strips adjoining Owner's Lot, including the providing of a watering system, water, and electrical power for water valves.

The maintenance, upkeep and repair of such Park Strips shall be the sole responsibility of a Lot Owner whose Lot adjoins or fronts such Park Strips, to maintain said Park Strips in good and repaired condition at all times.

- (A) Park Strip Landscape and Irrigation System Installation: As regards an Owner's responsibility to maintain such Park Strips, such Owner as part of his front-yard landscaping plan, shall be required, as part of his Dwelling Unit construction, to (a) install a Park Strip water distribution system, including a water line and valves, and electrical source to power such valves and (b) install ACC-approved landscaping. Corner Lot Owner shall make provision for this requirement as affects such Lot's dual frontages. Water, under provision of this responsibility, will be provided by each Lot Owner, at Owner's expense, for watering maintenance of the Park Strips which front or adjoin the Owner's Lot. Owner shall cause the water distribution system to operate as part of the Owner's landscape irrigation system clock/controller.
- (B) Additionally, an Owner shall be responsible to install the Park Strip landscaping as part of the Owner's front-yard landscape plan and maintain landscape watering at all times for said landscaping, even during times of Owner's absence from the Lot/Home. Owners shall not allow a discontinuance of water or electric power to the automatic control of landscape watering system.
- (C) As regards Park Strips in all phases, the Declarant reserves the right, without Amendment hereto, subject only to the approval of Santa Clara City, to modify the look and presentation of Park Strips, in consideration of water conservation, such that Park Strips, if approved by the City, may be improved with landscape rock/aggregate in combination with tree and shrub plantings.

- (D) As regards to the type of trees, their planting, and watering distribution system allowed in the Park Strips each Owner will be required to install trees approved by the ACC, subject only to the approval of Santa Clara City. The watering distribution system for all trees in the Park Strip are required to be watered by the installation of a deep watering system which is to be installed 2' below the surface of the finished grade. Furthermore all trees in the Park Strip are required to be planted with a root barrier, extended on all sides, at the time of planting. Exhibit "B" of this document shows how the planting and watering of trees in the Park Strip are required to be done.

9.3 Walls/Mold. This Section sets forth the requirements concerning walls and shared walls within the Subdivision.

9.3.1 Walls/Shared Walls

- (A) REAR YARD AND SIDE WALLS SHALL BE REQUIRED ON LOTS, which walls shall be installed/constructed at the time of Dwelling Unit construction and shall be completed prior to the issuance of a Certificate of Occupancy.
- (B) IT SHALL BE THE RESPONSIBILITY OF A LOT OWNER TO INSTALL WALLS, subject to ACC approval. The "sharing" of the cost of construction of Rear Walls and/or Side Walls is encouraged by the Association but shall not be required of adjacent Lot Owners. If sharing of cost is elected by an adjoining Lot Owner, the manner and extent of such sharing of the cost of Rear and/or Side Walls shall be established between the adjacent Lot Owners and shall not involve the Association.

9.3.2 General Rules of Law to Apply. Except as otherwise provided in this Declaration, each wall placed on the dividing line between the Lots shall constitute a shared wall, and to the extent not inconsistent with the provisions of this Section, the general rules of law regarding shared walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

9.3.3 Destruction by Fire or Other Casualty. If a shared wall is destroyed or damaged by fire or other casualty, then to the extent the responsible party has not paid the cost of repair or said destruction or damage is not covered by insurance, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, such owner shall contribute to 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 others under any rule of law regarding liability for negligent or willful acts or omissions.

9.3.4 Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the shared wall to be exposed to the elements shall bear the entire cost of furnishing the necessary protection against such elements to the extent that said protection is not covered by insurance.

- 9.3.5 Right to Contribution Runs with Land. The right of any Owner to contribution/sharing of cost of a shared wall from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.
- 9.3.6 Arbitration. In the event of any dispute arising concerning a shared wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator to adjudicate the dispute, and the decision shall be by a majority of all the arbitrators. Should any party refuse to appoint an arbitrator within ten (10) days after written request to do so, the Board shall select an arbitrator for the refusing party.
- 9.3.7 Association Not Liable for Construction/Upkeep of Walls. The Association shall not be obligated to provide or maintain any walls in the Subdivision. Walls dividing a Lot and Common Area shall be maintained by the Owner of the Lot, not by the Association.
- 9.3.8 Mold. Whether or not an Owner experiences mold growth depends to a great extent on how the Owner manages and maintains his Dwelling and Lot. Owners are hereby given notice to take all reasonable measures to detect and prevent the growth and infestation of mold and other similar agents. The Declarant or Association shall not be responsible for any damages to do mold growth, and Owner shall not be entitled to damages caused by mold or by some other similar agents from the Association, including but not be limited to, property damage or personal injury. Upon the purchase of any Lot or Dwelling Unit within the Subdivision, each Owner is shall be deemed to have waived as against the Association and the Declarant the following warranties: Any implied warranties, including but not limited to an implied warranty of workmanlike construction, an implied warranty of habitability, an implied warranty of merchantability or an implied warranty of fitness for a particular purpose.

ARTICLE X USE RESTRICTIONS

All Lots/Dwelling Units within the Property shall be held, used and enjoyed subject to such limitations and restrictions set forth below. This list of restrictions may be modified by the Rules and Regulations of the Board, without amendment to this Declaration, so long as such Rules and Regulations do not materially increase the Annual Assessment or cause for additional material assessments as provided herein.

- 10.1 Single Family Residence. Subject to the provisions of Section 10.2, each Lot shall be used as a residence for a single family, as "family" is defined by Santa Clara City Ordinances.
- 10.2 Business or Commercial Activity. An Owner may use an interior portion of a Dwelling Unit as a home office only if the home office business does not violate any federal, state, or local law, ordinance, or regulation, and has no exterior manifestation (including signage) that a business is being conducted in such Dwelling Unit and no deleterious effects result to the residential nature of the neighborhood by the carrying-on of such business (such as increased vehicular traffic). The Declarant and any Builder, and their successors and assigns, may use any portion of the

Property for a model home site, signage and display related to sales and construction and a sales office in connection with the sale of Lots and Dwellings on the Property by Declarant or such Builder, or their successors and assigns.

- 10.3 Signage: Commercial Activity: Restrictions: Declarant Signs. The following restrictions shall govern the placement of signage by an Owner within the Subdivision:

Except for one (1) "For Sale" sign of not more than seven (7) square feet, no advertising signs, billboards, or other form of advertisement whatsoever shall be installed, erected, placed, or otherwise displayed on any Lot or any portion of the Properties.

"For Rent" signs shall not be allowed at any time, in any manner, on any portion of the Property or on a Lot or on any portion of a Dwelling or in the window of a Dwelling Advertising of a Dwelling for rental may only be undertaken as outlined in this Section. Subject to the provisions of Section 10.2 above, no business or commercial activities of any kind whatever shall be conducted in any building or on any portion of the Property. The foregoing restrictions shall not apply at any time to the commercial activities, signs and billboards, if any, of the Declarant, its assigns or successors, or its agents during the construction and sales period through to the completion of the Subdivision in keeping with the City-approved - Plat, or by the Association in furtherance of its powers and purposes set forth hereinafter and in the Association's Articles, Bylaws and Rules and Regulations, as the same maybe amended from time to time.

- 10.4 Quiet Enjoyment. No noxious or offensive activity or noise shall be carried on upon any part of the Property, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood, or which shall in any way interfere with the quiet enjoyment by each Owner or which shall in any way increase the rate of insurance on the Lots or Property. Portable radios, exterior speakers, and other personal sound equipment are permissible so long as they do not create a nuisance or otherwise interfere with the quiet enjoyment of any portion of the Property. All exterior lights must be sheltered or housed in such a way that no light shall shine directly into any neighboring Lot. Each Owner shall be responsible for the conduct of all guests and invitees, including all contractors and subcontractors, while on the Property. Loud music, profanity and other behavior which is offensive or a nuisance is prohibited and shall not be tolerated.

- 10.5 Parking for Vehicles. No equipment other than standard sized automobiles may be kept temporarily or permanently on driveways. Vehicles may not be parked on or allowed to overhang sidewalks or driveway apron areas, landscaped areas of a Dwelling Unit's front-yards, side-yards or in rear or side-yards except behind enclosed Rear and Side Walls, as provided in this Declaration. Sidewalks must be kept clear for pedestrian and bicycle traffic. No Vehicles or Recreational Vehicles shall be parked or stored on a public street or rights-of way within the Property for more than forty-eight (48) consecutive hours. However, any such vehicle may be stored on a Lot as long as it is stored in (a) a garage or (b) on a parking pad/storage area adjacent to the garage of a Home in the side-yard or behind the garage or enclosed Walls, as approved by the ACC.

In the instance of such vehicle parking in a rear or side-yard, a Lot Side Wall shall be constructed and in place prior to any parking of such vehicles.

A "parking pad/storage area" in a Side Yard shall be constructed of a base consisting of concrete or gravel and must be pre-approved by the ACC prior to installation. In no instance shall such a parking pad/storage area accommodate connection for a "sewage/waste dump facility." Election of an Owner to provide for such a parking pad/storage area must include provision for proper drainage of the area such that a neighboring Lot is not affected by such use. In the instance a parking pad/storage area is constructed to facilitate the parking of permitted Vehicles/equipment, the Side Wall MUST EXTEND FROM THE REAR WALL TO THE LINE OF THE FRONT SETBACK OF THE HOME SO THAT ALL VEHICLES/EQUIPMENT PLACED THEREON CANNOT BE SEEN FROM THE STREET. No such parking/storage pad/storage area shall be permitted in absence of a Side Wall as herein provided. Such Side Wall, its construction and cost, is the sole responsibility of the Lot Owner who intends to make use of such a parking/storage area. Sharing of cost of such a Side Wall shall be a matter solely between adjacent Lot Owners. However, there is no obligation for sharing of such cost under this Declaration.

Gates must be installed to enclose such side-yard parking/storage initially hereunder if the vehicles/equipment stored thereon may be seen from the street in the absence of such a gate. If an Owner making such use of a side-yard does not maintain such area and usage in a neat, orderly, clean and non-offensive condition/manner (consistent with the provisions of this Article), the Board may act to require, without Amendment to this Declaration, that gates and/or wall be constructed and/or modified. Upon such action of the Board, Owners who are in violation of this provision may be required to provide such gate in a timely manner, as determined by the Board. Failure of an Owner to comply may result in a fine or possible lien against the Lot.

The Board may enforce this provision by giving notice to the Owner of the violation, or when the Owner is not readily available, by giving notice in the form of a written request placed on door of the Dwelling Unit or upon the vehicle or equipment in question. Vehicles in violation of this provision may be towed at the owner's expense. Unless otherwise approved by the Board, no industrial vehicles and equipment shall be allowed in the Property, other than temporary work equipment required solely for the construction of Improvements and Dwelling Units. No Vehicle or Recreational Vehicle deemed to be unsightly by the Board shall be permitted to remain on any Lot so as to be visible from adjoining Property or from public or private street. No repair or maintenance work shall be performed on any vehicle or equipment (other than in an emergency repairs and unless such repairs are begun and completed within twenty-four (24) hours), except in enclosed garages or other structures. No vehicle shall be permitted to remain in a state of disrepair or disassembly if visible from other Lots or areas of the Property or any street.

- 10.6 Animals, Livestock, Poultry, Agriculture. Pets are a privilege in the Subdivision, not a right. All Owners must see that their dogs, cats (and other animals, as required by Santa Clara City) maintain a current license from Santa Clara City.

It is not anticipated, at the time of recordation of this Declaration, that registering of permitted and approved pets/animals will be necessary. However, if in the opinion of the Board, conditions pertaining to pets not properly being attended to, supervised, and monitored by their Owner occur such that quiet enjoyment and/or danger to persons or property as

expected under provisions of this Declaration is adversely affected, the Board may adopt rules and regulations pertaining to pets, which rules and regulations may include a requirement for registration of a pet. Such rules and regulations may provide for the levy of a fine in a case of continued violation regarding pet conduct. No animals, livestock or poultry of any kind may be raised, bred, or kept on any Lot or in the Common Areas except that dogs, cats or other household pets, no more than two (2) in number, as approved by the Board, may be kept in an Owner's Home, or upon any Lot, subject to the rules and regulations adopted by the Board.

All dogs, while not inside a Dwelling or in an enclosed, gated rear-yard area of a Lot (secured so that the dog may not escape from the yard), shall be on a leash and shall at no time be allowed to run free in the Subdivision or be unattended while not in the Owner's rear-yard.

Cats shall not be allowed to roam the neighborhood, during day or night, nor shall they be allowed to cause disturbances at night. Dogs and other Board-approved pets may be kept in rear-yards provided, however, that a Owner, being solely responsible for the conduct and actions of the pet kept on his Lot, shall not allow the dog (or other approved pets) to disturb the peace, quiet and enjoyment of the Owners within the Subdivision.

Animal owners shall not allow their pets to defecate or urinate on Common Areas, front or side-yard landscaping ('street-side' of an enclosing side and rear-yard fence), or on Lots belonging to other Owners. Pet owners shall be responsible to immediately collect any fecal material and clean up after their pets.

All animals which are permitted hereunder, which are not house-pets (i.e., not kept in the Dwelling Unit) shall be kept within enclosed areas in the rear or side-yards, which must be clean, sanitary, and reasonably free of refuse, insects, and waste at all times. Such enclosed area shall be constructed in accordance with Plans and Specifications approved by the ACC and shall be of reasonable design and construction to adequately contain such animals in accordance with the provisions hereof, and shall be screened so as not to be visible from any other Lot. In the event a pet resides outside (i.e., not in the Home), the enclosed area and/or facility as approved by the ACC to contain the animal, shall be screened from the view from adjacent Lots and the fronting street. Accordingly, such animal-provisions shall be enclosed by rear and side-yard Walls, as provided in this Declaration.

Notwithstanding the other provisions of this Section dealing with animals and pets, no dangerous animals (including dogs and other pets) which (given the breed or size of dog or other animal) may reasonably constitute a threat of physical injury to any person (especially children) shall be permitted within a Dwelling or yard of a Lot within the Subdivision, even if an Owner constructs a "dog-run" or other secure enclosure to house such animal (or dog). Upon the violation of this provision, the Owner of the Lot where such animal (dog) is retained shall be subject to fines and injunctive relief and shall be held STRICTLY LIABLE for any injuries sustained by such animal (dog).

In the instance of "outside pets", the Side Walls and enclosing side wall returns and gates MUST BE IN PLACE PRIOR TO MAKING PROVISION FOR PET ENCLOSURES OR THE FULL-TIME PRESENCE OF A PET IN A REAR-YARD, AS SET FORTH IN THIS SECTION, WHETHER IN THE SIDE-YARD OR REAR-YARD AREAS.

- 10.7 Construction. Commencement of construction, which shall be evidenced by providing a copy of the building permit for the Lot to the ACC, shall be completed within six (6) months after

issuance of a building permit, unless otherwise approved in writing by the Board, but in no case shall the Board extend such period to greater than twelve (12) months. Construction of Dwelling Units shall be diligently pursued to substantial completion. All debris left by construction activity (including construction related vehicles) shall be promptly repaired or cleaned up (as the case may be) by the Owner or his contractor.

- 10.8 Temporary Buildings. No outbuilding, tent, shack, shed or other temporary building or improvement of any kind (except portable outhouses and dumpsters with lids or covers during construction) shall be placed upon any portion of the Property either temporarily or permanently. Notwithstanding the foregoing, the Declarant shall have and reserves the right to use a temporary building or trailer for sales and/or construction purposes, refer also to Section 10.30 hereof.
- 10.9 Unightly Articles. Service areas and storage areas shall be appropriately screened from view from the streets and from other Lots and Common Area, as approved by the Board. No lumber, grass, plant waste, shrub or tree clippings, metals, bulk materials or scrap, compost piles, refuse or trash shall be kept stored or allowed to accumulate on any portion of the Property except within enclosed structures or appropriately screened from view, provided such storage does not constitute a fire or other hazard. Any exterior holiday lighting or decoration pertaining to the holiday celebrated or recognized must be taken down and removed from street or yard visibility within 12 days after the end of holiday.
- 10.10 Clothes Line. No exterior clothes dryer, clothes line or supporting poles or similar equipment shall be erected, installed or maintained on any Lot, nor shall articles of clothing, bedding, etc, be hung outside for drying or any other purpose.
- 10.11 Drilling; Mining. Except as permitted for earth-coupled heat pumps or similar devices as provided for below, no oil drilling, oil, gas or mineral development operations, oil refining, geothermal exploration or development, quarrying or mining operations of any kind shall be permitted on the Property, nor shall oil wells, tanks, tunnels or mineral excavations or shafts be permitted on or below the surface of any Lot. Further, except as permitted for earth coupled heat pumps or similar devices as provided for below, no derrick or other structure used in boring for water, oil, geothermal heat or natural gas shall be erected, maintained or permitted on the Property. The Board in its discretion may approve earth-coupled heat pumps or similar devices which may require the excavation or drilling of vertical or horizontal trenches or shafts below the surface of the improved area of a Lot, provided all such equipment is adequately screened from view from the streets, other Lots and the Common Area.
- 10.12 Minimum Square Footage Required. Upon recordation of this Declaration, (1) for a single story dwelling, the finished area above the finish grade shall be no less than seventeen hundred (1,700) square feet exclusive of open porches and garages. All Dwelling Units must have a minimum of a 2 car garage, but not more than a 4-car garage (facing the street frontage).

10.13 Types of Dwelling Units Prohibited. Four (4) level split entry (bi-level) homes SHALL NOT BE PERMITTED on this Property unless approved by the ACC. Dwelling Units are not to exceed one (1) story in height from the finish grade and not to exceed 20-feet in height from finished grade. No garage conversions shall be allowed. No RVs, modular homes, mobile homes, underground or basement homes, round or domed homes, octagon homes, solar homes, manufactured, prefabricated homes, rebuilt homes, concrete homes, or any other unusual style of Dwelling Units shall be allowed in the Property regardless of ACC approval of the same.

10.14 Exteriors of Dwelling Units. Tumbled or used brick, synthetic stucco, rock/stone or any combination of the same, as approved in style and color by the ACC, are allowed as exteriors for all Dwellings in the Property, including ACC-approved accessory buildings and detached garages. There must be at least two (2) of the above named materials used in the front elevation of the Dwelling Unit, with not less than ten percent (10%) of the front elevation to be of the lesser used material. ACC shall approve the percentage, style type and color of second material required on side elevations.

Aluminum siding, masonite, concrete, or vinyl siding are not permitted. Any other exterior material may only be used upon the express approval of the ACC. Home exteriors using stucco must be of high quality synthetic stucco.

All roofs must be built using tile or slate material. However, metal accent treatments may be used as part of the roof construction and finish, subject to the express written approval of the ACC; said approval may dictate type, color, style, etc.

All materials, including stucco should be of an earth tone color. No pastels or white colors are allowed. Solar energy, electricity-generating devices, windmills, or other ground or roof appurtenances are prohibited. Courtyards shall have the same finish as the front exterior of the Dwelling Unit. All colors and material types shall be governed by and approved by the ACC.

10.15 Setbacks. All structures built on any Lot must be constructed in accordance with all applicable zoning and building ordinances of the City of Santa Clara, as permitted for Bella Sol at Santa Clara.

10.16 Landscaping. Lots shall have front-yard and side-yard(s) landscaping reaching to the rear of the Home, including landscaping of the Park Strips. All front yard landscaping shall be completed on or before issuance of the Certificate of Occupancy. Rear-yard landscaping, if not completed prior to Certificate of Occupancy, shall be completed thereafter in a period of time not to exceed twelve (12) months after issuance of the Certificate of Occupancy. All Lot frontage landscaping shall include not less than ten percent (10%) of the area in grass, shrubs, trees, and other approved vegetation, as well as landscape aggregate, as approved by the ACC; frontage shall mean the area between the Home and the Curb, by the width of the Lot. Any variation must be approved by the Declarant. If landscaping is not installed after 12 months the lot must be fenced in.

At all times, Owners shall control the growth and proliferation of noxious weeds and flammable growth materials, including weeds, so as to minimize the unsightly presence of

weeds, debris, fire and other hazards within the Property. Noxious weeds shall mean as defined by the City of Santa Clara and Washington County. Particularly, in the event a Lot Owner which elects to delay the installation of the rear-yard landscaping as provided above, said Lot Owner shall be responsible to maintain the un-landscaped areas of his Lot to be weed free as determined by the ACC in its reasonable discretion, at all times by undertaking routine and timely weeding of the un-landscaped area to prevent weeds from growing and going-to-seed such that propagation of weeds spreads within the Property. In this regard, un-landscaped, rear-yard areas are to be kept neat, free of weeds and debris, and unoffensive to a neighboring Lot or from the street and Common Area or to an on-looker in general. The fact that a rear-yard is not landscaped at the time of occupancy does not excuse the need for neatness, absence of clutter and weeds.

All Lots, with or without a Dwelling Unit thereon, in the Property shall maintain an on-going weed control programs which may include but not be limited to mowing, removal, spraying or a combination thereof. This provision may be addressed by the Rules and Regulations of the Board, without amendment to the Declaration.

Failure to timely maintain the Owner's Lot free and clear of weeds and debris, may result in Board action and/or fines pertaining to the nuisance of unattended weeds and debris.

- 10.17 City of Santa Clara Requirements. All structures built on any Lot must be constructed in accordance with all applicable zoning and building ordinances of the City of Santa Clara and Washington County, as applicable.
- 10.18 Driveways. No Dwelling shall be allowed dual access from Streets or alleyways. Driveways shall be constructed out of concrete or other hard materials approved by the ACC. Driveways consisting of cinders, sand, gravel, asphalt or dirt shall not be permitted on any Lot. Driveways shall be of a sufficient size that two (2) vehicles can park thereon side by side, and shall in all other respects conform to City of Santa Clara requirements. Driveways shall be limited solely to providing a connection between the street or alleyways and the garage area; no private lanes or streets traversing a Lot shall be allowed.
- 10.19 Hazardous Activities or Substances. No activities shall be conducted nor objects or substances stored or kept on the Property and no Improvements shall be constructed or allowed to remain on the Property which are or might be unsafe, illegal, or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon the Property. No open fires shall be lighted or permitted except within safe and well-designed interior fireplaces or in contained barbecue units while attended, which may only be operated in accordance with the laws and ordinances of the City of Santa Clara. Backyard natural gas fire pits are allowed when approved by the ACC and shall be required to be professionally installed. No outdoor fire pit shall be approved by the ACC until the Owner's rear-yard is completely enclosed by Rear and Side Walls, with return walls and gates to the sides of the home, to provide for security and safety.

- 10.20 Maintenance. Each Owner shall be responsible to maintain all landscaping on such Owner's Lot, whether improved or unimproved, cultivated, irrigated, pruned, mowed, weeded, and free of trash and other unsightly material. All Improvements upon any Lot, including Dwelling Units, fencing, alleyways, out-buildings, and all other Improvements constructed by the Owner shall be at all times kept in good condition and repair and adequately painted or otherwise maintained in condition and appearance at the sole expense of Owner.
- 10.21 Abandonment. A Lot may be considered abandoned if considered hazardous, it has been unoccupied for a period of more than thirty (30) days, and the Board has not had contact from the Owner within thirty (30) days after notice was sent by certified mail. A Lot may be considered abandoned if the Owner has allowed a hazardous condition to arise or persist for more than thirty (30) days after the Board has sent notice by certified mail to the Lot Owner. In the event an Owner fails to correct any hazardous condition, the Association may, at the Association's discretion, correct the hazardous condition and charge the costs of the correction to the Owner as a Corrective Assessment. Nothing in this section shall create any affirmative duty by the Association to correct any hazardous condition. Declarant shall be exempt from this provision.
- 10.22 Walls, Common Walls, Adjacent or Adjoining Walls, or Shared Walls. The following provisions shall be construed in concert with Section 9.3 hereof and neither shall be deemed to replace the other.

Walls over seven feet (7') high shall not be allowed, except as approved by ACC due to unique elevation considerations. Only masonry block walls, of a color and type as approved by the ACC, shall be permitted on the perimeter of the Lot (Side Walls and Rear Walls).

Fences, walls, and hedge may be erected or planted in rear yards and side yards not extending beyond the front line of the dwelling to a height not exceeding 6 feet unless otherwise approved by the ACC. Fences, walls and hedges may be erected or planted on remaining side yards and property lines not to exceed 6 feet. Only wrought iron fences shall be placed along any front property line or in the front of the house. Shrub and tree planting on corners lots shall be located so as not to create a hazard for the movement of vehicles along streets. No Fence (wrought iron) or trees or shrubs shall be planted on any corner lot within 15 feet of the property lines adjoin the street with height greater than 4 feet. No fence, wall, hedge, tree, plant, shrub or foliage shall be planted, kept or maintained in such manner as, in the opinion of the Committee, shall create a serious potential hazard or aesthetically offensive appearance. Interior fences and walls must be either decorative colored block, brick or stucco and all interior fences must incorporate wrought iron. No wood, vinyl, or chain link fences will be allowed. Every lot owner must fully fence their own lot prior to occupancy in the home. Wall returns from the side wall, in the instance of Side Wall placement, to the exterior of the Home shall be masonry block, including provision for a gate in the space thereof. Gates shall be wrought iron of color and style as approved by the ACC. The cost of any walls that are required between Lots, may be shared between adjacent Lot Owners, at such Owners' sole election and mutual agreement.

The Owner that first commences with construction ("Adjacent Owner-A) on his Lot shall initially complete the work of wall installation and, in keeping therewith, shall be responsible to pay all costs related thereto.

The procedure as outlined in this Section may be modified by Rules and Regulations of the Board in order to better facilitate accomplishment of its intended purpose.

10.23 Unauthorized Uses. No Lot shall be used for the operation of a boarding or rooming house, a residence for transients, a "group home", "family home", "community home" "half-way house", day care center, rehabilitation center, treatment facility, or residence of unrelated individuals who are engaging in, undertaking, or participating in any group living, rehabilitation, treatment, therapy, or training with respect to previous or continuing criminal activities or convictions, alleged criminal activities, alcohol or drug dependency, physical or mental handicaps or illness, or other similar matters, unless otherwise allowed by the terms of any law specifically negating the provisions of restrictive covenants prohibiting same. No Owner may permit the storage or use of illegal substances (including contraband), nor may an Owner engage in or permit the commission of an illegal act (whether felony, misdemeanor, infraction or other breaking of the law) on his Lot. Any violation or breach of this Subsection shall entitle the Association or any Owner or Owners of a Lot or Lots to bring an action for damages at law and/or for remedies in equity, including injunctive relief.

10.24 No Further Subdivision of a Lot: Lease Provisions.

10.24.1 No Further Subdivision of a Lot. No Owner shall further partition or subdivide a Lot or the rooms in the Dwelling Unit, including any division of Lot into time-share estates, time-share uses, or creation of additional living quarters.

10.24.2 Lease Occupancy or Other Temporary Occupancy. No Owner shall lease a Dwelling for transient or hotel purposes. Timeshare is prohibited. No Dwelling shall be made subject to any timeshare program, interval ownership, or similar program whereby the right to exclusive use of the Dwelling rotates among multiple owners or members of a program on a fixed or floating time schedule over a period of years.

By operation of law, an Owner may rent or lease the Owner's Dwelling. Notwithstanding this right, any Owner so doing shall comply with the provisions of this Section. Any temporary or other occupancy, other than by the titled Owner, the Owner's family, friends, and invited guests, must be for a period of at least six (6) months. No Owner may designate as a tenant, a family, friends or invited guests in order to avoid the intent of this Section.

Each such occupancy shall be established between the parties by a written lease/rental/occupancy agreement, a copy of which shall be submitted by the Owner to the Board of Directors, together with a signed copy of the Temporary Occupancy Notification Form (available from the Board). Lease or rental shall be for terms not less than six months and all such lease/rental must comply with this Section.

Any lease agreement between an Owner and a lessee/renter shall provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration

including all rules and regulations enacted by the Board. The lease agreement must further provide that any failure by lessee/renter to comply with the terms of this Declaration, and the rules and regulations of the Association shall be a default under the lease.

The Temporary Occupancy Notification Form may require the following information: (a) that the Owner has conducted credit and reference checks and concluded, thereby, that the lessee/renter will be a responsible, qualified renter; and (b) that the lessee has read these Declaration, the Association Rules and Regulations, and such other documents as may be published by the Association from time to time, and, by signature of the lessee/renter, agrees to abide by same. The Temporary Occupancy Notification Form shall also bear the signature of the Owner, indicating thereby that the Owner has performed all of the above. Failure of the Owner to provide a copy of a properly referenced lease/rental agreement and Lease Notification Form to the Association shall result in the Association imposing on the Owner a fine of two hundred fifty dollars (\$250.00) per occurrence, which shall be a lien upon such Owner's Lot and shall be added to the annual assessment as provided in this Declaration, (and permits the Association to pursue any remedy of law available to it in the enforcement of this provision.) (A modified version of the Temporary Occupancy Notification Form may be used in cases of family, friends and guests occupying the Dwelling for a period longer than two (2) consecutive weeks.)

Additionally, and notwithstanding any other rights of enforcement under provisions of the Declaration, any rules and regulations enacted by the Board, or by applicable law, the Association may impose a fifty dollar (\$50.00) fine (per occurrence) on the Owner whose Lot/Home is being leased or rented where the lessee or renter remains in violation of the Declaration and Association Rules and Regulations, which fine shall be deemed a lien upon such Owner's Lot and shall be added to the annual assessment for that Owner's Lot as provided in the Declaration, for each violation by Owner's lessee/renter of such Declaration or any Rules or Regulations enacted by the Board. Such fine shall be imposed after a ten (10) day notice is given to the Owner of such violation, which notice shall be deemed given on the date such notice is mailed, prepaid, first class U.S. mail, to Owner's address as shown on the County Recorder's ownership records, or by hand delivery to the Owner. The Association may impose an additional fifty dollar (\$50.00) fine on the Owner for each day such violation of non-compliance continues after the ten (10) day notice period provided herein, which additional fines shall constitute a lien upon such Owners Lot and shall be added to the annual assessment as provided in this Declaration.

- 10.25 Drainage. There shall be no interference with or alteration of the established drainage pattern over any Lot on the Property, unless an adequate alternative provision is made for proper drainage and approved by the ACC. For the purposes hereof, "established drainage pattern" is defined as the drainage which exists at the time that such Lot is conveyed to a purchaser from Declarant, and shall include drainage from the Lots on the Property onto the Common Area.

- 10.26 Water Supply and Sewage Disposal Systems. No private or individual water supply or sewage disposal system shall be permitted on any Lot.

Pads and/or parking areas, as approved by the ACC in the side-yards for Recreational Vehicles and the like shall not provide a connection to the Subdivision sewer lines to be used for the purpose of the dumping of waste material from such vehicles. Only surface water drainage is to be accommodated in side-yard parking arrangements.

- 10.27 Rubbish and Debris. No rubbish or debris of any kind shall be placed or permitted to accumulate upon any Lot or the Property and no odors shall be permitted to arise from any Lot for any reason so as to render the Lot or any portion thereof unsanitary, unsightly, offensive or detrimental to any other Lot or Common Area or to its occupants; and same shall be promptly removed by the Owner. Refuse, garbage and trash shall be kept at all times in covered containers and such containers shall be kept within enclosed structures or appropriately screened from view. Trash receptacles shall not be placed in front of the Lot for pick-up more than forty-eight (48) hours before collection and must be removed from pick up areas within a reasonable period not to exceed forty-eight (48) hours of the day the trash is collected. The Board may pass additional Rules and Regulations governing trash receptacles. Each Lot shall be maintained in a clean and orderly manner at all times. The storage of materials shall be in an inconspicuous location in each Lot and stored neatly and orderly. All construction debris shall be cleared from the Lot, from the Property and from the streets at the end of each working day, and the Owner of a Lot shall be responsible to insure that contractors or subcontractors performing work on his Lot shall leave no mud, gravel, cement, mortar or other debris on the Property or streets within the Subdivision at the end of each day. The Association may impose fines on any Lot Owner for any violation of this Subsection.

Included in this provision, each Lot Owner, prior to the installation of rear-yard landscaping, shall be responsible to maintain the rear-yard to be weed-free at all times. Provisions regarding un-landscaped rear-yards may be addressed by Rules of the Board without need for Amendment hereto.

- 10.28 Antennas and Satellite Dishes. No antennas of any type are allowed on the Lot or Improvements without the express written approval of the ACC. Up to two (2) Satellite Dishes, not to exceed twenty-four (24) inches in diameter each, may be installed by an Owner.

- 10.29 Swimming Pools. A private swimming pool may be constructed on a Lot subject to the review and approval by the ACC of the proposed swimming pool. Such approval shall be subject to, among other things, the following: (a) Favorable soils report; (b) construction of acceptable secured walls or fencing around the (i) side yard or back yard where the swimming pool is located and (ii) swimming pool itself, to insure the adequate safety of persons (principally children) who may enter upon such Lot; (c) size, design, construction and materials used; and (d) compliance with all requirements of Santa Clara City (and all applicable laws, regulations and rules) governing the construction and maintenance of swimming pools.

- 10.30 Exception for Declarant. Notwithstanding the restrictions contained in this Article X, Declarant and any Builder, shall have the right to use any Lot or Dwelling Unit owned or leased by it in furtherance of any reasonably necessary or appropriate construction, marketing, sales, management, promotional, or other activities designed to accomplish or facilitate the sale of Lots and/or Dwelling Units owned by Declarant or such Builder, including the use of a temporary building/trailer to be used for construction and/or sales and marketing purposes.

ARTICLE XI DAMAGE AND CONDEMNATION

Damage to or destruction of all or any portion of the Common Area and condemnation of all or any portion of the Common Area shall be handled in the following manner:

- 11.1 Each Member shall be liable to the Association for any damage to the Common Area or Improvement thereon sustained by reason of the negligence or willful misconduct of said Member or his guests or invitees. All expenses of fixing the damage may be levied by the Association against such Member as a Corrective Assessment.
- 11.2 If at any time the Common Area, or any part thereof, shall be taken or condemned by any authority having the power of eminent domain, the Association shall represent the Lot Owners in these proceedings, negotiations, settlements or agreements. All compensation and damages shall be payable to the Association and shall be used promptly by the Association to the extent necessary for restoring and replacing any Improvements on the remainder of the Common Area. Upon completion of such work and payment in full therefore, any proceeds of condemnation then or thereafter in the hands of the Association which are proceeds for the taking of any portion of the Common Area shall be disposed of in such manner as the Board shall reasonably determine.

ARTICLE XII INSURANCE

- 12.1 Casualty Insurance. The Association may secure liability and casualty insurance on and in connection with the Common Area.
- 12.2 Fidelity Insurance. A fidelity policy or policies shall be purchased to protect against dishonest acts on the part of the Board, officers, Manager, employees, representatives or agents of the Association and all others (including volunteers) who handle or are responsible for handling funds of the Association. This fidelity coverage shall name the Association as the obligee or insured and shall be written in an amount sufficient to offer the protection reasonably required, but in no event less than one hundred percent (100%) of the Association's estimated annual operating expenses including reserves. The fidelity bond or insurance shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of employee or similar expression. Said policy shall also provide that it may not be canceled or substantially modified (including cancellation for non-payment of premiums) without at least thirty (30) days prior written notice to all Mortgagees of Lots.

- 12.3 Lots and Dwelling Units Not Insured by Association. The Association shall have no duty or responsibility to procure or maintain any fire, liability, extended coverage or other insurance covering any Lot or Dwelling Unit on any Lot or any Improvement thereon erected by the Owner.
- 12.4 Homeowner's Insurance. Upon the construction of a Dwelling Unit on any Lot, the Owner shall obtain and pay the cost of a homeowner's insurance policy insuring the Dwelling and any Improvements against casualty loss and liability coverage in normal amounts for the cost of Dwelling and Improvements located on the Lot.

**ARTICLE XIII
MORTGAGEE PROTECTION CLAUSE**

Notwithstanding any other provision of this Declaration, the following provisions concerning the rights of first Mortgagees shall be in effect:

- 13.1 Notice of Matters Affecting Security. The Board or Manager shall give written notice to any first Mortgagee, upon written request, of a Lot requesting such notice wherever:
- 13.1.1. there occurs any substantial damage to or destruction of any Dwelling Unit or any part of the Common Area, in which such first Mortgagee has a financial interest, involving an amount in excess of, or reasonably estimated to be in excess of fifteen thousand (\$15,000.00). Said notice shall be given within fifteen (15) days after the Association learns of such damage or destruction; or
 - 13.1.2. there is any condemnation proceedings or proposed acquisition of a Dwelling Unit or of any portion of the Common Area, in which such first Mortgagee has a financial interest, within fifteen (15) days after the Association learns of the same or the Association plans to abandon or terminate the planned unit development established by this Declaration.
- 13.2 Notice of Meetings. The Association shall give to any first Mortgagee, having a financial interest in a Lot or in the Common Area, requesting the same in writing, notice of all meetings of the Association, and such first Mortgagee shall have the right to designate in writing a representative to attend all such meetings.
- 13.3 Annual Meeting. Annual meetings of the Association shall be held as agreed to by the Board. Upon establishment of the date of the Annual Meeting by the Board, the Annual Meeting shall take place at such time and place as is set by the Board. Changing of the date and time of said Annual Meeting shall not require amendment of this Subsection.
- 13.4 Any first Mortgagee, or Owner shall Have the Right to Examine Association Records. A first Mortgagee, having a financial interest in any Lot or in the Common Area, shall have the right to

examine the books, records and financial statements of the Association, upon reasonable request.

- 13.5 Right to Pay Taxes and Charges. First Mortgagees may pay taxes or other charges which are in default and which may become or have become a charge against any portion of the Common Area, and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for the Common Area; and first Mortgagees making such payments shall be owed immediate reimbursement therefore from the Association.
- 13.6 Rights Upon Foreclosure of Mortgagee. Each holder of a Mortgage (or Deed of Trust) on a Lot and any purchaser from such holder who comes into possession of the Lot by virtue of a foreclosure of the mortgage, or by deed or assignment in lieu of foreclosure, or pursuant to a power of sale foreclosure or otherwise, shall take the Lot free of, and shall not be liable for any claims for unpaid assessments and charges against the Lot which accrue prior to the time such holder comes into possession of the Lot, provided such Mortgagee's lien foreclosed was filed of record prior to the date any such claims or unpaid assessments and charges against the Lot became a lien of record.

**ARTICLE XIV
GENERAL PROVISIONS**

- 14.1 Amendment to Declaration.
- 14.1.1 BY CLASS-A MEMBERS. Except as otherwise specifically provided herein, this Declaration may be amended, modified, extended, or revoked, in whole or in part, by the affirmative vote or written consent, obtained by written ballot or otherwise, or any combination thereof, of Owners representing at least sixty-seven percent (67%) of the total votes in the Association. Notwithstanding the above, the percentage of votes 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.
- 14.1.2 BY DECLARANT. Declarant, its assigns or successors, shall have and hereby reserves the right to unilaterally amend, modify, extend, or revoke this Declaration, in whole or in part, at any time and for any purpose deemed necessary by the Declarant until Declarant or Bella Sol 35 no longer owns a Lot of the recorded phases or of the potential 106 Lots of the Property, as recorded, annexed or may be expanded in keeping with the City-approved Preliminary Plat of Bella Sol at Santa Clara ("Development Phase"), with or without notice to the Class A Members.
- 14.1.3 BY BOARD. The Board may unilaterally amend this Declaration if such amendment is necessary to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination.

- 14.1.4 **VALIDITY.** No amendment made by the Class-A Members during the Development Phase shall be effective unless the Declarant gives its express written consent to such amendment, which consent is within Declarant's sole and absolute discretion. Any procedural challenge to an amendment must be made within six months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.
- 14.1.5 **EFFECTIVE DATE.** Unless a later effective date is specified in the amendment, any amendment shall be immediately effective upon its recordation in the office of the Washington County Recorder accompanied by a verified certificate of the Secretary of the Association stating that the required number of votes or consents was obtained and that a record of such votes or originals of the consents will be placed on file in the Association's office. In the case of unilateral amendment by Declarant as provided for herein, such amendment shall be immediately effective upon recording in the office of the Washington County Recorder a copy of such amendment signed and verified by the Declarant.
- 14.2 **Enforcement.** This Declaration may be enforced by the Association, Declarant, and any Owner as follows:
- 14.2.1 Breach of any of the provisions contained in the Declaration and the continuation of any such breach may be enjoined, abated or remedied by appropriate legal proceedings instituted by any Owner, including Declarant so long as Declarant owns a Lot in the Development, and by the Association. The offending party is entitled to such notice and rights to a hearing as provided for in this Declaration or the Bylaws. Any judgment rendered in any action or proceeding pursuant hereto shall include a sum for attorneys' fees in any amount as the court may deem reasonable, in favor of any prevailing party, as well as the amount of any delinquent payment, interest thereon, costs of collection and court costs. The Association may charge the costs of enforcement of this Declaration as a Corrective Assessment against the Lot owned by the nonconforming Owner.
- 14.2.2 The results of every act or omission whereby any of the provisions contained in this Declaration are violated in whole or in part is hereby declared to be and constitutes a nuisance, and every remedy allowed by law or equity against a nuisance, either public or private, shall be applicable against every such result and may be exercised by any Owner, by the Association, and by the Declarant for so long as Declarant or owns a Lot.
- 14.2.3 The remedies herein provided for breach of the provisions contained in this Declaration shall be deemed cumulative, and none of such remedies shall be deemed exclusive.
- 14.2.4 The failure of the Association to enforce any of the provisions contained in this Declaration shall not constitute a waiver of the right to enforce the same thereafter.
- 14.2.5 Any breach or amendment of the provisions contained in this Declaration, the Articles or the Bylaws shall not affect or impair the lien or charge of any Mortgage made in good faith and for value on any Lot or the Improvements thereon, provided that any subsequent Owner of such property shall be bound by such provisions of the Declaration, Articles and

By Laws, whether such Owner's title was acquired by foreclosure in a trustee's sale or otherwise.

- 14.3 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a residential community and for the maintenance of the Common Area. The article and section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine and neuter shall each include the masculine, feminine and neuter.
- 14.4 Manager. The Association may carry out through a Manager any of its functions which are properly the subject of delegation. Any Manager so engaged may be an independent contractor or an agent or employee of the Association. Such Manager shall be responsible for managing the Property for the benefit of the Association and the Owners, and shall, to the extent permitted by law and the terms of a management agreement with the Association, be authorized to perform any of the functions or acts required or permitted to be performed by the Association itself.
- 14.5 Notice. Any notice, including without limitation Notice of a violation of this Declaration, the Bylaws, or any Rules and Regulations of the Association, permitted or required to be delivered as provided herein shall be fair and reasonable if given in writing and may be delivered either personally or by first class or registered mail. If delivery is made by mail, it shall be deemed to have been delivered three (3) business days after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to any person at the address given by such person to the Association for the purpose of service of such notice, or to the Dwelling of such person if no address has been given to the Association. Such address may be changed from time to time by notice in writing to the Association
- 14.6 Rules and Regulations. The Board shall have the authority to promulgate and adopt Rules and Regulations as the Board deems necessary or desirable (a) to aid it in administering the affairs of the Association, (b) to insure that the Property is maintained and used in a manner consistent with the interests of the Owner's, (c) to regulate the use of the Common Areas and to regulate the personal conduct of the Members and their guests thereon, and (d) to establish penalties and fines for the infractions of any Rules and Regulations, this Declaration, or the Bylaws. Fines levied may be assessed as a Corrective Assessment against the Lot.
- 14.7 Severability. Invalidation of any provision of this Declaration by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.
- 14.8 Term. Unless earlier terminated pursuant to this Article XIV, the covenants and term of this Declaration shall run with and bind the Property, and shall inure to the benefit of and be enforceable by the Association, the Declarant for so long as the Declarant owns a Lot in the Development, or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successive Owners and assigns, for a term of fifty (50) years from the date

this Declaration is recorded, after which term this Declaration shall be automatically extended for successive periods of ten (10) years unless a declaration of termination satisfying the requirements of an amendment to the Declaration as set forth in Article XIV is recorded.

- 14.9 Development Phase. In addition to specific references elsewhere in this Declaration, Development Phase shall refer to the period of time during which the Declarant shall undertake various and related activities pertaining to the development, improvement, entitlement process, recordation, sale of Lots, and/or building of Dwelling Units on said Lots until all Lots as contemplated by the City-Approved Preliminary Plat of Bella Sol at Santa Clara are sold and built upon. During this Development Phase, the Declarant may make use of a Sales Office and/or construction trailer located on the Property to conduct the business of the Development Phase, notwithstanding such trailer is of a temporary nature.
- 14.10 Application of Provisions Upon Declarant. During the Development Phase, certain of the provisions of this Declaration shall not apply to the Declarant or Bella Sol 35, LLC, their assigns or successors, as provided herein, except as required by Rule of Law.

**ARTICLE XV
ANNEXATION OF ADDITIONAL PROPERTY**

- 15.1 Annexation by Declarant. Declarant reserves the right, in its sole discretion and without the consent of Class A members, to expand the Properties to include additional property more particularly described in Exhibit "C" attached hereto and incorporated herein and including other property, in Declarant's discretion, not listed on Exhibit "C", for a period terminating after the expiration of ten (10) years from the first Lot conveyance to a purchaser.
- In the event the Declarant, within the time period set forth in this Article, files other plat(s) creating additional subdivision phases under the name and style of " Bella Sol at Santa Clara"- and states on said plat(s) the intention to have the property described on said plat subject to the terms, covenants and conditions and reservation of easements of the Declaration thereof, as set forth above; then, upon recording of said plat(s), the property described therein shall be subject to said Declaration. The terms, covenants and conditions and reservation of easements contained in said Declaration run not only to, with, and from the Property described herein, but by this reference to said plat or plats, also to, with and from all adjoining additions thereto made pursuant to this Article.
- Declarant Class B membership status shall extend to all Lots in the expansion properties.
- 15.2 Limitations on Annexation. Declarant's right to annex said land to the Property shall be subject to the following limitations:
- 15.2.1 The annexed land must be a part of the land described in Exhibit "C" or other property included in any later plat(s) filed by Declarant;

- 15.2.2 Any additional subdivision phases annexed hereto by the Declarant shall be comprised exclusively of Lots for detached residential single-family dwellings. The Declarant shall have the sole discretion to add or modify Common Areas and Limited Common Areas, if any, in said additions and to include any facilities or amenities thereon that Declarant deems necessary;
- 15.2.3 If additional phases are created by the Declarant pursuant to the terms of this Article, the Lot Owners in said additions shall be members of the Association and shall have the same rights to the use and enjoyment of the property and facilities of the Association as any other Member, either as an Owner in Bella Sol 35, or otherwise. The Common Areas and Limited Common Areas, if any, in any such additional phases as set forth therein shall be deeded by the Declarant to the Association not later than the conveyance of the last Lot on said plat, and the Association must accept the deed to said Common Areas and Limited Common Areas, if any.

Dated this 13th day of August, 2013.

(Signatures Contained on Next Page)

BELLA SOL DEVELOPMENT, a Series of
BELLA SOL AT SANTA CLARA, LLC

By: Robert Smith
Title: Manager

BELLA SOL 35, a Series of
BELLA SOL AT SANTA CLARA, LLC

By: Robert Smith
Title: Manager

STATE OF UTAH)

COUNTY OF WASHINGTON)

On the 13 day of August, 2013, personally appeared before me Robert Smith, who being by me duly sworn, says that he is the manager of Bella Sol Development, a Series of Bella Sol at Santa Clara, LLC, a Utah limited liability company, that he executed the above and foregoing instrument and that said instrument was signed in behalf of said company by authority of its governing instruments and he acknowledged to me that said company executed the same.

Laurie Gregerson
Notary Public



STATE OF UTAH)

COUNTY OF WASHINGTON)

On the 13 day of August, 2013, personally appeared before me Robert Smith, who being by me duly sworn, says that he is the manager of Bella Sol 35, a Series of Bella Sol at Santa Clara, LLC, a Utah limited liability company, that he executed the above and foregoing instrument and that said instrument was signed in behalf of said company by authority of its governing instruments and he acknowledged to me that said company executed the same.

Laurie Gregerson
Notary Public



Exhibit "A"

THE WEST 38 ACRES OF LOTS 1, 2, 3 AND 8, BLOCK 26, ST. GEORGE AND SANTA CLARA BENCH IRRIGATION COMPANY SURVEY, ACCORDING TO THE OFFICIAL PLAT THEREOF, RECORDED IN THE OFFICE OF THE WASHINGTON COUNTY RECORDER, STATE OF UTAH.

LESS AND EXCEPTING THEREFROM THAT PORTION LYING WITHIN 800 SOUTH STREET AND RACHEL DRIVE AS SET FORTH AND DEDICATED ON DEED OF DEDICATION RECORDED MAY 9, 2008, AS DOC. NO. 20080019166 AND RACHEL DRIVE & NORTH TOWN ROAD AS SET FORTH AND DEDICATED ON ROADWAY DEDICATION RECORDED APRIL 30, 2010, AS ENTRY NO. 20100014031, OFFICIAL WASHINGTON COUNTY RECORDS.

ALSO, LESS AND EXCEPTING THEREFROM THE FOLLOWING DESCRIBED PROPERTY:

A PORTION OF GROUND WITHIN BLOCK 26 OF THE ST. GEORGE AND SANTA CLARA IRRIGATION BENCH SURVEY, SOUTH OF RACHEL DRIVE AND NORTH TOWN ROAD, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF A POINT AT THE SOUTHERLY LINE OF NORTH TOWN ROAD AND THE SOUTHERLY LINE OF SAID BLOCK 26, SAID POINT BEING NORTH 89°26'54" EAST 1,457.12 FEET ALONG THE SECTION LINE AND NORTH 24.75 FEET FROM THE SOUTH QUARTER CORNER OF SECTION 5, TOWNSHIP 42 SOUTH, RANGE 16 WEST, SALT LAKE BASE & MERIDIAN, AND RUNNING; THENCE NORTH 57°24'47" EAST 282.80 FEET ALONG SAID SOUTHERLY LINE OF NORTH TOWN ROAD; THENCE EASTERLY 39.27 FEET ALONG AN ARC OF A 25.00 FEET RADIUS CURVE TO THE RIGHT (CENTER BEARS SOUTH 32°35'13" EAST LONG CHORD BEARS SOUTH 77°35'25" EAST 35.25 FEET WITH A CENTRAL ANGLE OF 89°59'36") ALONG SAID SOUTHERLY LINE OF NORTH TOWN ROAD TO THE WESTERLY LINE OF RACHEL DRIVE; THENCE SOUTH 32°35'37" EAST 167.61 FEET ALONG THE WESTERLY LINE OF SAID RACHEL DRIVE TO THE SOUTHERLY LINE OF BLOCK 26; THENCE SOUTH 89°26'54" WEST 363.11 FEET ALONG SAID SOUTHERLY LINE OF BLOCK 26 TO THE POINT OF BEGINNING.

ALSO, BEGINNING AT A POINT AT THE INTERSECTION OF THE EASTERLY LINE OF RACHEL DRIVE AND THE SOUTHERLY LINE OF RED ROCK CANYON PHASE 3 SUBDIVISION, SAID POINT BEING NORTH 89°26'54" EAST 1,391.07 FEET ALONG THE SECTION LINE AND NORTH 1,348.32 FEET FROM THE SOUTH QUARTER CORNER OF SECTION 5, TOWNSHIP 42 SOUTH, RANGE 16 WEST, SALT LAKE BASE & MERIDIAN, AND RUNNING; THENCE NORTH 89°39'09" EAST 1,232.96 FEET ALONG SAID SOUTHERLY LINE OF RED ROCK CANYON PHASE 3 SUBDIVISION AND TO AND ALONG THE SOUTHERLY LINE OF PADRE CANYON ESTATES PHASE 3; THENCE SOUTH 00°45'58" WEST 120.02 FEET; THENCE SOUTH 89°39'09" WEST 1,213.70 FEET; THENCE SOUTH 45°23'12" WEST 28.64 FEET TO SAID EASTERLY LINE OF RACHEL DRIVE; THENCE NORTH 01°07'15" EAST 140.04 FEET ALONG SAID EASTERLY LINE OF RACHEL DRIVE TO THE POINT OF BEGINNING.

PARCEL 2A:

THAT PORTION OF GROUND WITHIN BLOCK 29 OF THE ST. GEORGE AND SANTA CLARA IRRIGATION BENCH SURVEY, NORTH OF RACHEL DRIVE, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF A POINT NORTHERLY LINE OF RACHEL DRIVE AND THE NORTHERLY LINE OF SAID BLOCK 29, SAID POINT BEING NORTH 89°26'54" EAST 1,957.59 FEET ALONG THE SECTION LINE AND SOUTH 24.75 FEET FROM THE SOUTH QUARTER CORNER OF SECTION 5, TOWNSHIP 42 SOUTH, RANGE 16 WEST, SALT LAKE BASE & MERIDIAN, AND RUNNING; THENCE NORTH 89°26'54" EAST 654.59 FEET ALONG SAID NORTHERLY LINE OF BLOCK 29 TO THE WESTERLY LINE OF RACHEL DRIVE; THENCE SOUTHWESTERLY AND NORTHWESTERLY THE FOLLOWING (7) COURSES ALONG RACHEL DRIVE; THENCE SOUTH 00°41'33" WEST 165.22 FEET; THENCE SOUTHWESTERLY 35.28 FEET ALONG AN ARC OF A 43.00 FEET RADIUS CURVE TO THE RIGHT (CENTER BEARS NORTH 89°18'27" WEST LONG CHORD BEARS SOUTH 24°11'51" WEST 34.30 FEET WITH A CENTRAL ANGLE OF 47°00'35")' THENCE SOUTH 47°42'08" WEST 22.99 FEET; THENCE NORTHWESTERLY 209.64 FEET ALONG AN ARC OF A 340.00 FOOT RADIUS CURVE TO THE LEFT (CENTER BEARS SOUTH 43°08'51" WEST, LONG CHORD BEARS NORTH 64°31'00" WEST 206.34 FEET WITH

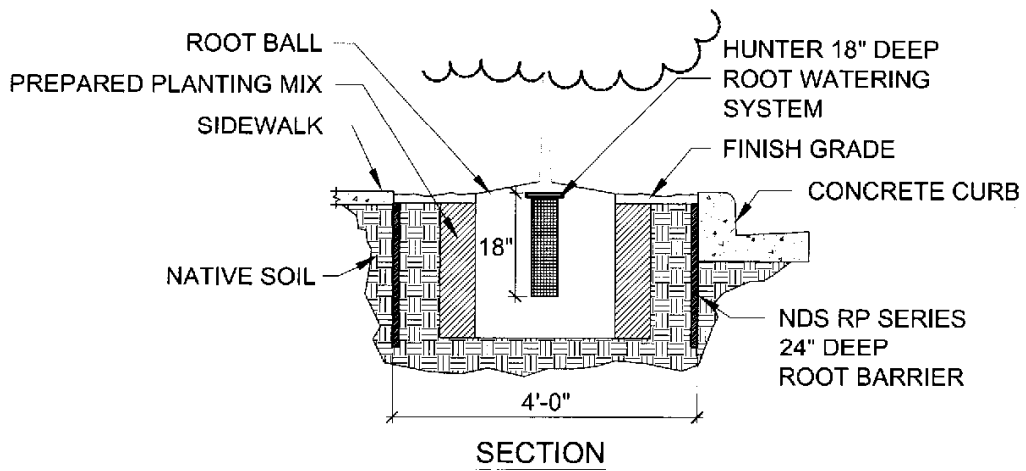
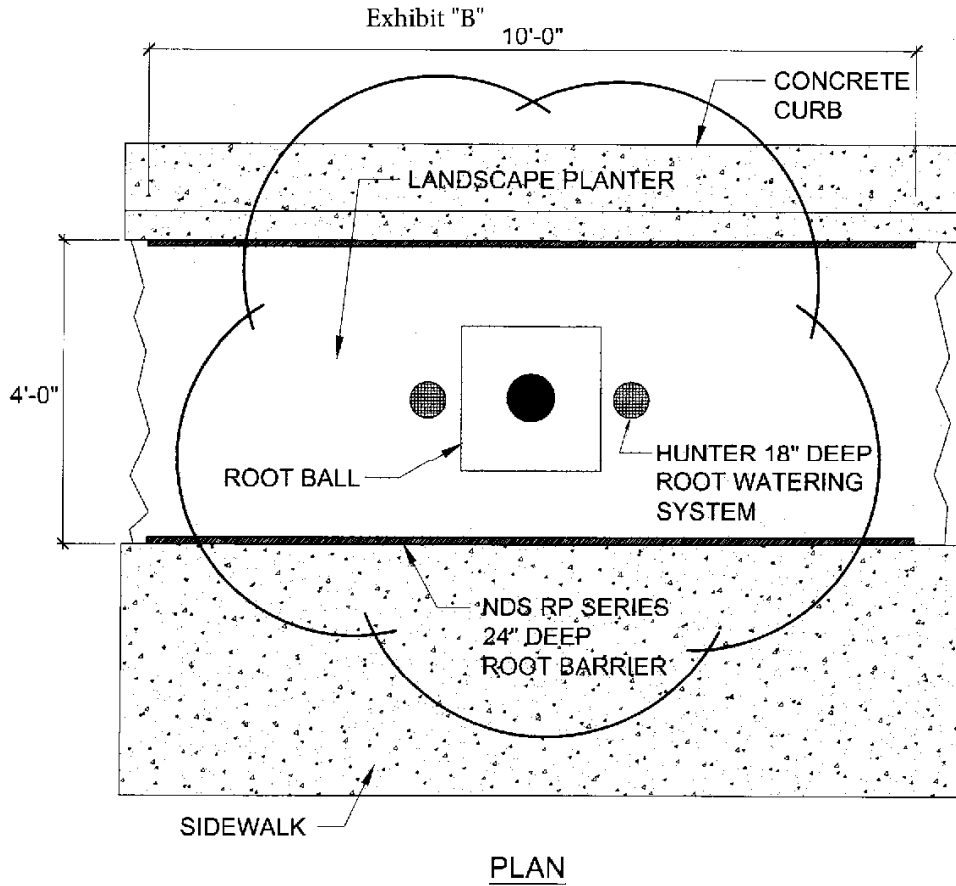
A CENTRAL ANGLE OF 35°19'42"); THENCE NORTH 82°10'51" WEST 268.54 FEET; THENCE NORTHWESTERLY 190.28 FEET ALONG AN ARC OF A 310.00 FOOT RADIUS CURVE TO THE RIGHT (CENTER BEARS NORTH 07°49'09" EAST, LONG CHORD BEARS NORTH 64°35'49" WEST 187.30 FEET WITH A CENTRAL ANGLE OF 35°10'04") TO THE POINT OF BEGINNING.

ALSO, BEGINNING AT THE INTERSECTION OF A POINT AT NORTHERLY LINE OF RACHEL DRIVE AND THE NORTHERLY LINE OF SAID BLOCK 29, SAID POINT BEING NORTH 89°26'54" EAST 1,957.59 FEET ALONG THE SECTION LINE AND SOUTH 24.75 FEET FROM THE SOUTH QUARTER CORNER OF SECTION 5, TOWNSHIP 42 SOUTH, RANGE 16 WEST, SALT LAKE BASE & MERIDIAN, AND RUNNING; THENCE NORTHWESTERLY 65.16 FEET ALONG AN ARC OF A 310 FOOT RADIUS CURVE TO THE RIGHT (CENTER BEARS NORTH 42°59'14" EAST, LONG CHORD BEARS NORTH 40°59'29" WEST 65.04 FEET WITH A CENTRAL ANGLE OF 12°02'34") ALONG SAID NORTHERLY LINE OF RACHEL DRIVE TO THE SOUTHERLY LINE OF SAID BLOCK 26; THENCE NORTH 89°26'54" EAST 691.49 FEET ALONG SAID SOUTHERLY LINE OF BLOCK 26; THENCE SOUTH 00°33'06" EAST 24.75 FEET TO THE SECTION LINE; THENCE NORTH 89°26'54" EAST 5.82 FEET ALONG SAID SECTION LINE TO THE WESTERLY LINE OF RACHEL DRIVE; THENCE SOUTH 00°41'33" WEST 24.76 FEET ALONG SAID WESTERLY LINE OF RACHEL TO THE NORTHERLY LINE OF SAID BLOCK 29; THENCE SOUTH 89°26'54" WEST 654.59 FEET ALONG SAID NORTHERLY LINE OF BLOCK 29 TO THE POINT OF BEGINNING.

ALSO, BEGINNING AT A POINT AT NORTHERLY LINE OF NORTH TOWN ROAD, SAID POINT BEING NORTH 89°26'54" EAST 1,325.31 FEET ALONG THE SECTION LINE AND NORTH 51.57 FEET FROM THE SOUTH QUARTER CORNER OF SECTION 5, TOWNSHIP 42 SOUTH, RANGE 16 WEST, SALT LAKE BASE & MERIDIAN, AND RUNNING; THENCE NORTH 01°07'15" EAST 736.08 FEET TO THE SOUTHERLY LINE OF RACHEL DRIVE; THENCE SOUTHEASTERLY 49.95 FEET ALONG AN ARC OF A 390.00 FOOT RADIUS CURVE TO THE LEFT (CENTER BEARS NORTH 65°04'02" EAST, LONG CHORD BEARS SOUTH 28°36'08" EAST 49.92 FEET WITH A CENTRAL ANGLE OF 07°20'19") ALONG THE SOUTHERLY LINE OF SAID RACHEL DRIVE TO THE WESTERLY LINE OF SAID BLOCK 26; THENCE SOUTH 01°07'15" WEST 683.82 FEET ALONG SAID WESTERLY LINE OF BLOCK 26

**TO THE NORTHERLY LINE OF SAID NORTH TOWN ROAD; THENCE
WESTERLY 26.31 FEET ALONG AN ARC OF A 310.00 FOOT RADIUS CURVE
TO THE RIGHT (CENTER BEARS NORTH 21°06'54" WEST, LONG CHORD
BEARS SOUTH 71°19'00" WEST 26.31 FEET WITH A CENTRAL ANGLE OF
04°51'48") ALONG SAID NORTHERLY LINE OF NORTH TOWN ROAD TO
THE POINT OF BEGINNING.**

Tax Serial No.: SC-6-2-5-22021



A INTERIOR PARK STRIP DETAIL
NO SCALE

Exhibit "C"

THE NORTH ONE-HALF (N 1/2) OF LOT ONE (1) AND ALL OF LOT EIGHT (8), BLOCK TWENTY-FIVE (25), ST. GEORGE AND SANTA CLARA BENCH IRRIGATION COMPANY SURVEY, AS PLATTED ON THE OFFICIAL MAP OF SAID SURVEY ON FILE IN THE OFFICE OF THE RECORDER OF WASHINGTON COUNTY, UTAH.

Tax Serial No.: SC-SB-79